

# INDIAN COUNTRY CRIMINAL JURISDICTIONAL CHART

for crimes committed within Indian Country as defined by 18 U.S.C. § 1151(a), (b) & (c) -

- (a) **formal** [recognized reservation boundaries] & **informal** [tribal trust lands] **reservations** (including rights-of-way/roads),  
 (b) **dependent Indian communities**, & (c) **Indian allotments held in trust or restricted status** (including rights-of-way/roads).  
 (where no congressional grant of jurisdiction to the state government over the Indian country involved exists)

## INDIAN OFFENDER:

### 1. VICTIM CRIMES: FOR OFFENSES AGAINST A VICTIM'S PERSON OR PROPERTY

WHO IS THE VICTIM?	WHAT WAS THE CRIME?	JURISDICTION
<b>INDIAN</b> (enrolled or recognized as an Indian by a federally recognized tribe or the federal government <u>and</u> possessing some degree of Indian blood)	<p><b>Major Crimes Act crimes:</b>            Murder; manslaughter; kidnapping; maiming; sexual abuse/assault under Ch. 109-A; <u>incest</u>; assault with intent to commit murder or in violation of 18 U.S.C. § 2241 or § 2242; assault with intent to commit any felony; assault with a dangerous weapon; assault resulting in serious bodily injury; assault resulting in substantial bodily injury of a spouse, intimate partner or dating partner; assault on a person under 16 years old; assault of a spouse, intimate partner or dating partner by strangulation; <u>felony child abuse</u> or neglect; arson; <u>burglary</u>; robbery; felony theft under 18 U.S.C. § 661. (Authority: Major Crimes Act - 18 U.S.C. § 1153) (state offense where underlined)</p> <p><b>All remaining crimes contained in tribal code:</b>            (Authority: tribal code or 25 CFR Pt. 11, if a CFR Court of Indian Offenses)</p>	<p><b>FEDERAL</b></p> <p><b>TRIBAL *</b></p>
<b>NON-INDIAN</b>	<p><b>Major Crimes Act crimes:</b>            Murder; manslaughter; kidnapping; maiming; sexual abuse/assault under Ch. 109-A; <u>incest</u>; assault with intent to commit murder or in violation of 18 U.S.C. § 2241 or § 2242; assault with intent to commit any felony; assault with a dangerous weapon; assault resulting in serious bodily injury; assault resulting in substantial bodily injury of a spouse, intimate partner or dating partner; assault on a person under 16 years old; assault of a spouse, intimate partner or dating partner by strangulation; <u>felony child abuse</u> or neglect; arson; <u>burglary</u>; robbery; felony theft under 18 U.S.C. § 661. (Authority: Major Crimes Act - 18 U.S.C. § 1153) (state offense where underlined)</p> <p><b>Other federal crimes (unless the tribe has punished the Indian defendant), including crimes contained in state code (where there is no federal statute for the category of offense) under the Assimilative Crimes Act:</b> (Authority: General Crimes Act - 18 U.S.C. §§ 1152 and 13)</p> <p><b>All remaining crimes contained in tribal code:</b>            (Authority: tribal code or 25 CFR Pt. 11, if a CFR Court of Indian Offenses)</p>	<p><b>FEDERAL</b></p> <p><b>FEDERAL</b></p> <p><b>TRIBAL *</b></p>

### 2. VICTIMLESS CRIMES: NO VICTIM'S PERSON OR PROPERTY INVOLVED IN CRIME

(e.g., traffic offenses, disorderly conduct, prostitution, etc.)

a. Crimes in state code (where there is no federal statute for the category of offense) under the Assimilative Crimes Act. (Authority: 18 U.S.C. §§ 1152 and 13)	<b>FEDERAL</b>
b. Crimes in tribal code. (Authority: tribal code or 25 CFR Pt. 11, if CFR Court)	<b>TRIBAL *</b>

### 3. SPECIAL CRIMES APPLICABLE TO INDIAN COUNTRY (Indian or Non-Indian)

**FEDERAL**

(Federal prosecution based on crime committed in Indian country)

(e.g., Habitual Domestic Violence, 18 U.S.C. § 117; Failure to Register as Sex Offender, 18 U.S.C. § 2250; Unauthorized Hunting/Fishing, 18 U.S.C. § 1165 [tribal trust land and allotments only])

### 4. FEDERAL CRIMES GENERALLY APPLICABLE TO ANY PERSON NATIONWIDE (Indian or Non-Indian) (Affecting Interstate Commerce or a Federal Interest)

**FEDERAL**

(Federal prosecution NOT based on territorial jurisdiction over location of crime)

(e.g., drug offenses, firearms offenses, mail fraud, embezzlement or theft from tribal organization, theft from casino, failure to report child abuse, etc.) (Authority: individual federal statute)

## **NON-INDIAN OFFENDER:**

### **1. VICTIM CRIMES: AN OFFENSE AGAINST A VICTIM'S PERSON OR PROPERTY**

<b>WHO IS THE VICTIM?</b>	<b>WHAT WAS THE CRIME?</b>	<b>JURISDICTION</b>
<b>INDIAN</b> (enrolled or recognized as an Indian by a federally recognized tribe or the federal government <u>and</u> possessing some degree of Indian blood)	<b>Indian Country Crimes Act Crimes:</b> All federal crimes which apply to the "special maritime and territorial jurisdiction of the United States under the U.S. Code." (Authority: General Crimes Act - 18 U.S.C. § 1152)  <b>All remaining crimes contained in state code (where there is no federal statute for the category of offense) under the Assimilative Crimes Act.</b> (Authority: General Crimes Act - 18 U.S.C. §§ 1152 & 13)  <b>Domestic Violence, Dating Violence, or Violation of Protection Order offenses [when defendant: 1) resides in Indian country, 2) is employed in Indian country, or 3) is a spouse, intimate partner or dating partner of a member of a participating tribe or is an Indian residing in Indian country of a participating tribe] (Special Domestic Violence Criminal Jurisdiction)</b> (Authority: tribal code pursuant to authority of 25 U.S.C. § 1304)	<b>FEDERAL</b>  <b>FEDERAL</b>  <b>TRIBAL *</b>
<b>NON-INDIAN</b>	<b>All crimes contained in state code.</b> (Authority: <i>United States v. McBratney</i> , 104 U.S. 621 (1881))	<b>STATE</b>

### **2. VICTIMLESS CRIMES: NO VICTIM'S PERSON OR PROPERTY INVOLVED IN CRIME**

**STATE ONLY**

(e.g., traffic offenses, disorderly conduct, prostitution, etc.)

### **3. SPECIAL CRIMES APPLICABLE TO INDIAN COUNTRY (Indian or Non-Indian)**

**FEDERAL**

(Federal prosecution based on crime committed in Indian country)

(e.g., Habitual Domestic Violence, 18 U.S.C. § 117; Failure to Register as Sex Offender, 18 U.S.C. § 2250; Unauthorized Hunting/Fishing, 18 U.S.C. § 1165 [tribal trust land and allotments only])

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(e.g., drug offenses, firearms offenses, mail fraud, embezzlement or theft from tribal organization, theft from casino, failure to report child abuse, etc.) (Authority: individual federal statute)

\* A tribal court may be a tribal court established under tribal law or a "CFR" Court of Indian Offenses established under Title 25, Part 11 of the Code of Federal Regulations

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## Criminal Jurisdiction in Indian Country

Arvo Q. Mikkonen  
(Kiowa/Comanche)

President, Oklahoma Indian Bar Association

## Why Examine Federal Criminal Jurisdiction over Offenses in Indian Country?

Jurisdictional  
Issues arise in  
many legal areas

Tribal jurisdictions  
are located  
throughout the nation



Criminals don't stay in 1 jurisdiction

Federal Charges May Provide Options  
beyond Tribal or State Prosecution



Cherokee Nation v. Georgia, 30 U.S. 1 (1831)

Worcester v. Georgia, 31 U.S. 515 (1832)

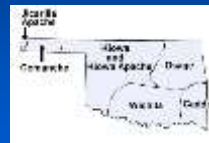
**Indian Tribes = Domestic Dependent Nations  
Beyond the Authority of States**

*Unless Congress Has Granted Authority  
to the State over Indian Country Lands*



**Tribes Originally  
in Oklahoma  
Region**

- ★ Comanche
- ★ Kiowa
- ★ Osage
- ★ Wichita
- ★ Caddo



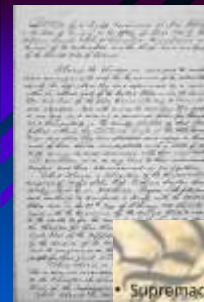
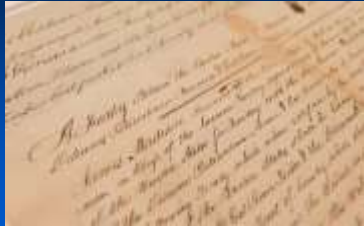
1400:  
Canada

1750:  
Southern  
Plains



"The U.S. secures jurisdiction and government of the tribe in the west... No part of the land shall ever be embraced in any territory or state"

Treaty of Dancing Rabbit Creek with Choctaw Nation, 1830



The United States hereby covenant and agree that the lands ceded to the Cherokee nation in the foregoing article shall, in no future time without their consent, be included within the territorial limits or jurisdiction of any State or Territory. But they shall secure to the Cherokee nation the right by their national councils to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within their own country - **Treaty of New Echota, 1835**

#### Article 6

- **Supremacy:** this constitution and the law of the United States, which shall be made in pursuance thereof and all treaties made, or which will be made, under the authority of America shall be the supreme law of the land.

#### Tribes Removed to Oklahoma During the "Trail of Tears"

- ★ Cherokee
- ★ Choctaw
- ★ Seminole
- ★ Creek
- ★ Chickasaw



Removal of the 5 Tribes to Indian Territory



Tribal Capitol Buildings



I come to say that the Kiowas and Comanche have made with you a peace, and they intend to stick to it. If it brings prosperity to us, of course we will like it better. If it brings poverty and adversity, we will not abandon it, because it is our contract, and it will stand.

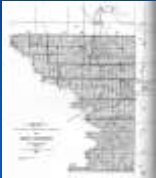
Your people shall again be our people, and peace shall be our mutual heritage. If wrong comes we shall look to you to right them. We know you will not forsake us. Tell your people to be as you have been.

Set-Tainte, Kiowa Chief at Medicine Lodge Treaty Council, 1867



## Tribes Removed from other areas of the nation

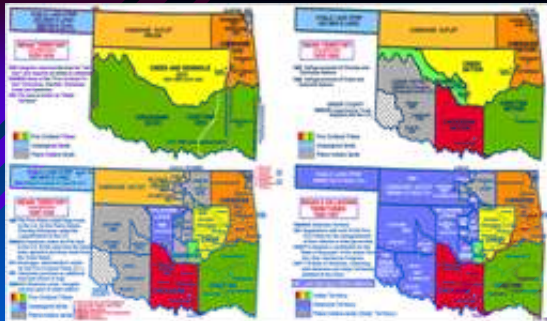
★ Delaware



★ Modoc, removed from California & Oregon



Over 70 tribes are Moved to Oklahoma by 1889



Changing Boundaries as Many Tribes are Removed

## Tribes in Oklahoma in 1889

Kiowa	Caddo
Absentee-Shawnee	Choctaw
Comanche	Yuchi
Wichita	Seminole
Fort Sill Apache	Wyandotte
	Sac & Fox
	Delaware
Citizen Potawatomi	Osage
Osage-Missouri	Pawnee
Chickasaw	Ottawa
	Modoc
Wyandotte	Ponca
Cheyenne-Arapaho	Miami
	Iowa
Apache	Quapaw
Pawnee	Cherokee Creek



Federal Indian Policy Changes as a Result of coalition between former Abolitionists and Land Interests

Result is the "Allotment Policy" aimed at opening reservations, dissolving tribes, & promotion of farming





"Unassigned Lands" wanted by Settlers  
a/k/a "Sooners"



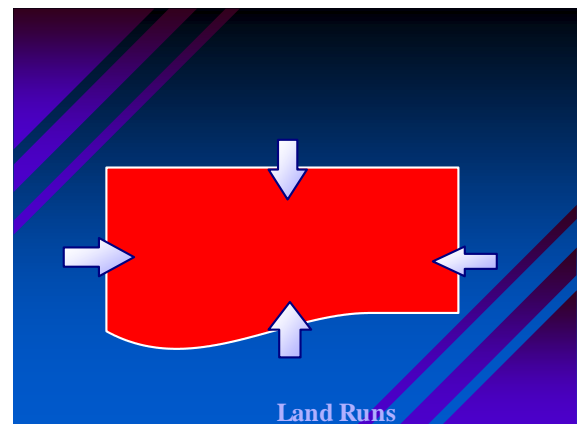
Tribal Encampment



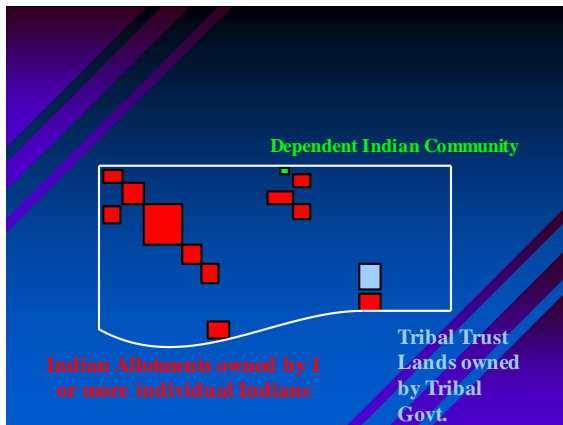
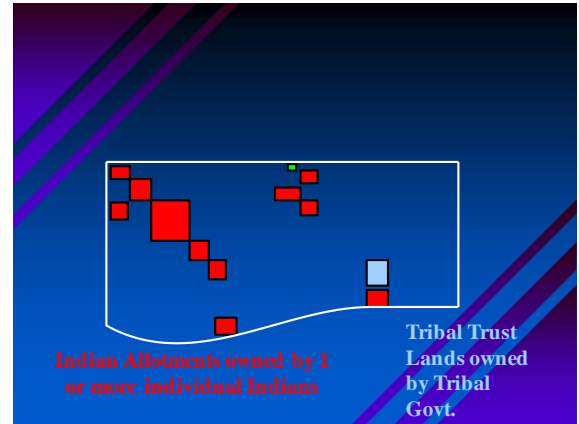
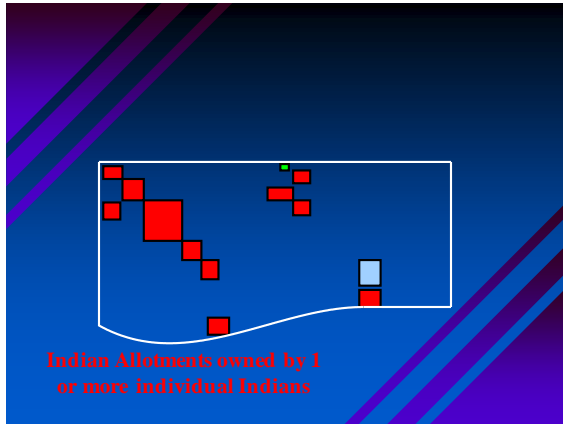
Reservations Opened for  
Non-Indian Settlement and Land Rushes



Original Reservation  
before Land Runs or Openings



Land Runs

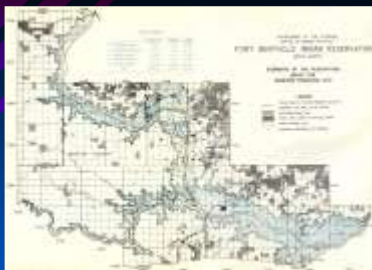


Individualization of commonly held tribal lands through the allotment process transformed the tribal nations in Oklahoma and elsewhere...

CHEROKEE NATION ALLOTMENTS IN 1903



Pine Ridge Reservation, SD



Ft. Berthold Reservation, showing land flooded by Garrison Dam creation



Cheyenne River Sioux Reservation, SD







★ **Tribal Jurisdiction = "Indian Country"**

- ▶ Subject to Federal and Tribal Jurisdiction
- ▶ Beyond State Jurisdiction in some instances
- ▶ Subject to Special Laws and regulations
- ▶ Under jurisdiction of a tribal & federal court




## Indian Country Lands: 18 U.S. Code, Section 1151

- ★ (A) All lands within formal & "informal" reservations
  - ▶ Tribal trust lands
  - ▶ Includes rights of way running through lands (roads)
- ★ (B) **Dependent Indian communities**
  - ▶ Land set aside for Indian occupancy as a tribal community
    - WDOK - Riverside Indian School, Otoe Village - Noble County
    - Consult Venette SCOTUS & Adair cases 10<sup>th</sup> Circuit
- ★ (C) **Indian Allotments held in Trust & Restored Status**
  - ▶ Includes rights of way running through lands (roads)






**Casinos**  
**18 USC 1151(a)**







Citizen Potawatomi      Choctaw


### Tribal Offices & Headquarters

**Today**





Wichita      Kiowa      Kaw



**Concept of an "informal reservation":** *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450, 453 n.2 (1995) (using term "informal reservation"); *Indian Country, U.S.A., Inc. v. Oklahoma*, 820 F.2d 967, 973 (10th Cir. 1987) (stating that "a formal designation of Indian lands as a 'reservation' is not required for them to have Indian country status").


**Indian country clearly includes rights-of-way running through the reservation.** *Ortiz-Barraza v. United States*, 512 F.2d 1176 (1975).

**Can be fee land within reservation boundaries, even if owned by a non-Indian.** See *United States v. John*, 437 U.S. 634 (1978); *Sigmaur v. Superintendent*, 368 U.S. 351 (1962).

## Dependent Indian Community:

To qualify as dependent Indian community, land must be:

- Set aside by Federal government for the use of Indians, and
- Under Federal superintendence.



*Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998).

## Allotments:

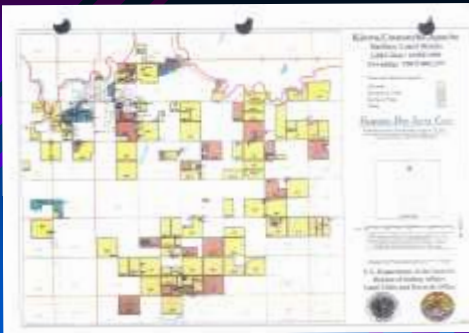


Land owned by the U.S. in trust for an Indian ("trust allotment"), or owned by an Indian subject to a restriction on alienation in favor of the U.S. or its officials ("restricted fee" allotment).  
*United States v. Stands*, 105 F.3d 1656, 1571-72 (8th Cir. 1997) (quoting Felix S. Cohen's Handbook of Federal Indian Law 615-16 (Rennard Stickland ed., 1982 ed.)); *United States v. Barnett*, 777 F.2d 593, 594 (10th Cir. 1985).

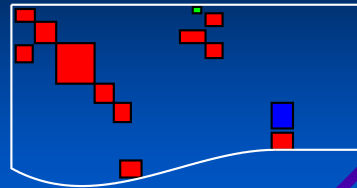
Allotments:  
 Include rights-of-way running through the allotment.  
 Cannot have extinguished title.  
 Has resulted in "checkerboard" patterns.



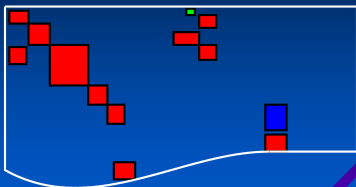
Tribal Land inside city limits of Lawton, OK



"Not Withstanding the Issuance of Any Patent"



"Not Withstanding the Issuance of Any Patent"



With Boundaries, Entire area is Indian Country

Without boundaries, only colored areas remain Indian country

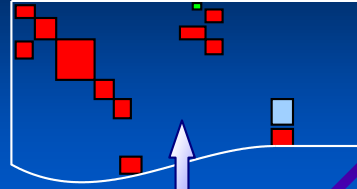
### Indian Country Lands: 18 U.S. Code, Section 1151

(a) All lands within the limits of any Indian reservation, notwithstanding the issuance of any patent



With Boundaries, Entire area is Indian Country

### Majority of Litigation in the Civil Arena Today is Focused on Scope of Tribal Authority Over non-Indian Owned "Fee" Reservation Land



Scope of Tribal Authority in "Fee" land Areas

#### SUPREME COURT OF THE UNITED STATES

No. 16-6038

JIMMY MCINTOSH, PETITIONER v. OKLAHOMA,  
(IN RE: OFF OF VETERANS TO THE COURT OF CRIMINAL  
APPEALS OF OKLAHOMA)  
(JULY 6, 2018)

JUSTICE GORSUCH delivered the opinion of the Court.

On the far end of the Trail of Tears was a promise. Promised to have 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. 306, 340 (1832 Treaty). Both parties outlined an boundary line for a new and "permanent home to the whole Creek nation," located in what is now Oklahoma. Treaty With the Creeks, preamble, Arts. 14, 1832, 7 Stat. 310 (1832 Treaty). The government further promised that "[t]he 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. 389.

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.

Once a reservation is established, only Congress can diminish or disestablish it. Doing so requires a clear expression of congressional intent.

This Court has already rejected the argument that allotments automatically ended reservations.

Oklahoma ultimately claims that historical practice and demographics are enough by themselves to prove disestablishment.

This Court has consulted contemporaneous usages, customs, and practices to the extent they shed light on the meaning of ambiguous statutory terms, but Oklahoma points to no ambiguous language in any of the relevant statutes that could plausibly be read as an act of cession.



#### MUSCOGEE (CREEK) NATION PROTECTING CIVIL RIGHTS



In the end, Oklahoma resorts to the State's long historical practice of prosecuting Indians in state but these supply little help with the law's meaning and much potential for mischief.

Oklahoma claims that the Oklahoma Enabling Act, which transferred all non-federal cases pending in the territorial courts to Oklahoma's state courts, made the State's courts the successors to the "general territorial courts." That argument, however, rests on state prosecutorial practices that defy the MCA, rather than on the law's plain terms.

Finally, Oklahoma warns of the potential consequences that will follow a ruling against it, such as unsettling an untold number of convictions and frustrating the State's ability to prosecute crimes in the future.

This Court is aware of the potential for cost and conflict around jurisdictional boundaries. But Oklahoma and its tribes have proven time and again that they can work successfully together as partners.





## Does McGirt apply only to the Five Tribes?

### *SCOTUS Remands to State Court:*

- ★ Seminole
- ★ Choctaw
- ★ Ottawa
- ★ Citizen Potawatomi

## Does McGirt apply only to the Five Tribes?

### *SCOTUS Remands:*

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- ★ Seminole
- ★ Choctaw
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- ★ Citizen Potawatomi



## Does McGirt apply only to the Five Tribes?



Onida Reservation Boundaries Intact



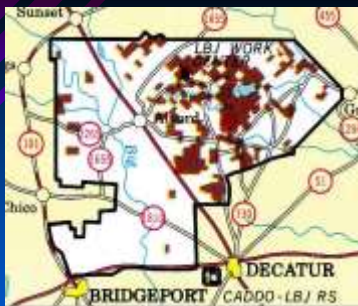
Each Tribe's Law & History will have to be analyzed regarding Boundary Status



### Examples of Checkered Federal Lands in Sabine & Angelina National Forests, Texas



Forest Service Lands in Green within Black Forest Boundary



Checkered Federal lands in LBJ National Grassland, Texas

## Who is an Indian?



Population Figures Show Tribal Presence Today

## Tribal Membership

- ★ Cheyenne
- ★ Citizen Potawatomi
- ★ Ft. Sill Apache
- ★ Cherokee
- ★ Kiowa
- ★ Turtle Mtn. Chippewa
- 1/4 Cheyenne
- Any blood
- 1/8
- Any "Dawes blood"
- 1/4 Kiowa/Captive
- 1/4 any Indian w/ T. Chippewa



## Tenth Circuit - 2 Part Test...

- ★ Indian Blood
- ★ Recognition by Some Government Entity
  - Enrollment
  - Eligibility for Services
  - Recognition by Community
  - “capable of being enrolled” - ICWA
  - Maintaining “tribal relations”

A CDIB card is not enough proof a person is Indian under federal law



This ID Doesn't show Indian Blood



This ID Proves Membership AND Indian Blood = Proves the Person IS an Indian Under Federal Law



## Jurisdictional Basics for Indian Land Crimes



- ★ Status of the Land
- ★ Status of the Crime
  - Misdemeanor vs. Felony
- ★ Status of the Person (Indian or Non-Indian)
  - As a defendant
  - As a victim

## Tribal Jurisdiction in Indian Country in 1978

ONLY OVER INDIANS  
ONLY MISDEMEANORS



Tribe has no jurisdiction over crimes committed by non-Indians against Indians without the express consent of Congress. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).



Gila River Tribal Court Complex, AZ



## Tribal Jurisdiction in Indian Country

### ONLY MISDEMEANORS BY INDIANS

- ★ Indian Victimless Crimes
- ★ Indian vs. Non-Indian Crimes
- ★ Indian vs. Indian Crimes

#### Offenses in Tribal or CFR Code

#### Tribes Limited to Misdemeanor Penalties:

1 Year Jail and/or \$ 5,000. Fine

(Up to 3 years under new Tribal Law & Order Act)

## State Jurisdiction in Indian Country

### WHEN THERE IS NO “INDIAN” INVOLVED

#### *“The McBratney Exception”*

- ★ Non-Indian vs. Non-Indian Crime of any type
  - ▶ U.S. v. McBratney - 1881 U.S. Supreme Court Case
- ★ Non-Indian Victimless Crime

**Many State Agencies Fail to Recognize or Exercise Criminal Jurisdiction in Non-Indian v. Indian Crimes**

## State Jurisdiction in Indian Country

Does Not Apply to Non-Indian v. Indian Crime

#### *“The McBratney Exception”*

**A State can obtain this jurisdiction through Public Law 280, but tribal consent is required**

## State Jurisdiction in Indian Country

Does Not Apply to Non-Indian v. Indian Crime

#### *“The McBratney Exception”*

**A State can obtain this jurisdiction through Public Law 280, but tribal consent is required**

Concurrent state jurisdiction has, moreover, been rejected by the appellate courts of four states with substantial expenses of Indian country within their borders. See *State v. Larson*, 455 N.W.2d 600 (S. Ct. 8.D. 1990); *State v. Flint*, 157 Ariz. 227, 756 P.2d 324 (Cl.App. Ar. 1988), cert. denied, 492 U.S. 911 (1989); *State v. Greenwalt*, 204 Mont. 196, 663 P.2d 1178 (S. Ct. Mont. 1983); *State v. Kuntz*, 66 N.W.2d 531 (S. Ct. N.D. 1954).

### Non-Indian v. Indian Crime

Indian country is treated as a federal enclave under 18 USC 1152

#### *Exclusive Federal Jurisdiction*

Concurrent state jurisdiction has, moreover, been rejected by the appellate courts of four states with substantial expenses of Indian country within their borders. See *State v. Larson*, 455 N.W.2d 600 (S. Ct. 8.D. 1990); *State v. Flint*, 157 Ariz. 227, 756 P.2d 324 (Cl.App. Ar. 1988), cert. denied, 492 U.S. 911 (1989); *State v. Greenwalt*, 204 Mont. 196, 663 P.2d 1178 (S. Ct. Mont. 1983); *State v. Kuntz*, 66 N.W.2d 531 (S. Ct. N.D. 1954).



Ex Parte Crow Dog, 109 U.S. 556 (1883)

*No Federal Jurisdiction over Indian v. Indian murder case; lead to Congressional Action:*

***The Major Crimes Act – 18 USC 1153***



WHAT ARE THE TYPES OF  
FEDERAL CRIMES THAT APPLY  
TO INDIAN COUNTRY?

Indian Country **Federal** Crimes Fall into two categories:

★ Crimes Occurring on Federal or Indian Lands

*Federal Prosecution Because of  
the Location of the Offense*

★ Other Federal Crimes of General Applicability

*Federal Prosecution Because of the  
Crossing of a State Line/Indian Country  
Boundary or Because of Interstate Commerce  
Nexus*



*Federal Prosecution Because of the  
Location of the Offense*

**Major Crimes Act, 18 U.S.C. § 1153**

*Crimes by Indians against Indians or Non-Indians*

**General Crimes Act, 18 U.S.C. § 1152**

*Crimes by Indians against non-Indians  
Crimes by Non-Indians against Indians*



**Major Crimes Act, 18 U.S.C. § 1153**

MCA grants jurisdiction to federal courts, exclusive of the states, **over Indians** who commit any of the listed offenses, regardless of whether the victim is an Indian or non-Indian. *See United States v. John*, 437 U.S. 634 (1978).

**Major Crimes Act, 18 U.S.C. § 1153**

(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.

(b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

**Major Crimes Act, 18 U.S.C. § 1153**

Murder  
Manslaughter  
Kidnapping  
Maiming  
Any felony under Chapter 109A of Title 18 (sexual abuse statutes)  
Incest (state law definition)  
Assault with intent to commit murder  
Assault with a dangerous weapon  
Assault resulting in serious bodily injury  
Assault of a child under sixteen  
Arson  
Burglary (state law definition)  
Robbery  
Felony theft  
Felony child abuse or neglect (state law definition)



Incorporation of state law.  
18 U.S.C. § 1153(b).

Where the specified offense is not contained in the federal criminal code—such as incest, burglary, and felony child abuse or neglect—§ 1153 directs that state law be assimilated.

## General Crimes Act, 18 U.S.C. § 1152, Sometimes called “Indian Country Crimes Act”)

Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

This section ~~shall not extend~~ to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.



## General Crimes Act, 18 U.S.C. § 1152

Under the GCA, the "general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, . . . extend to the Indian country."

## General Crimes Act, 18 U.S.C. § 1152

The "laws" extended are those applicable within the Special Maritime and Territorial Jurisdiction of the United States, as defined in 18 U.S.C. § 7, known as "federal enclave laws." See *United States v. Markiewicz*, 978 F.2d 786 (2d Cir. 1991).

Crimes covered:  
arson, 18 U.S.C. § 81;  
assault, 18 U.S.C. § 1153;  
maiming, 18 U.S.C. § 114;  
theft, 18 U.S.C. § 661;  
receiving stolen property, 18 U.S.C. § 662;  
murder, 18 U.S.C. § 1111;  
manslaughter, 18 U.S.C. § 1112, and  
sexual offenses, 18 U.S.C. § 2241 *et. seq.*

and many others listed in the federal code..

## General Crimes Act, 18 U.S.C. § 1152

Three legislative and a fourth judicially created exceptions apply to the coverage of GCA **as it applies to Indians**.

Three legislative exceptions specified in the GCA:  
Crimes by Indians against Indians;

Crimes by Indians that have been punished by the tribe; and

Crimes over which a treaty gives exclusive jurisdiction to the tribe.

## General Crimes Act, 18 U.S.C. § 1152

The fourth judicially created exceptions applies to the coverage of GCA **as it applies to non-Indians**.

The Supreme Court in *United States v. McBratney*, 104 U.S. 621 (1882), narrowed reach of GCA by holding that, absent treaty provisions to the contrary, the state has exclusive jurisdiction over a crime committed in the Indian country by a non-Indian against another non-Indian. The net effect of *McBratney* is that the GCA applies to non-Indians only when they commit crimes against Indians.



Prosecution must be brought under MCA and not GCA when crime by Indian against non-Indian is one of enumerated offenses in MCA. *See Henry v. United States*, 432 F.2d 114, 117 (9th Cir. 1970).



Because of the doctrine of dual sovereignty, there is no double jeopardy bar to federal prosecution for a discrete federal offense, even though a defendant has been convicted in tribal court for a similar offense stemming from the same conduct. *United States v. Lara*, 541 U.S. 193, 210 (2004).



Extradition of an Indian from tribal lands for state charges **must** follow tribal procedures, if they exist

Indian Country **Federal** Crimes Fall into two categories:

★ Crimes Occurring on Federal or Indian Lands

*Federal Prosecution Because of the Location of the Offense, 1152 & 1153*

★ Other Federal Crimes of General Applicability

*Federal Prosecution Because of the Crossing of a State Line/Indian Country Boundary or Because of Interstate Commerce Nexus*

Indian Country **Federal** Crimes Fall into two categories:

★ Crimes Occurring on Federal or Indian Lands

*Federal Prosecution Because of the Location of the Offense, 1152 & 1153*

*Federal Prosecution Because of Special Statutes*

★ Other Federal Crimes of General Applicability

*Federal Prosecution Because of the Crossing of a State Line/Indian Country Boundary or Because of Interstate Commerce Nexus*

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Indian Country Federal Crimes Fall into two categories:

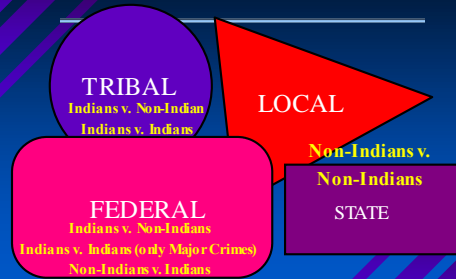
★ Crimes Occurring on Federal or Indian Lands

*Federal Prosecution Because of the Location of the Offense, 1152 & 1153*

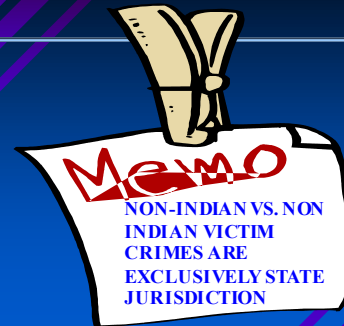
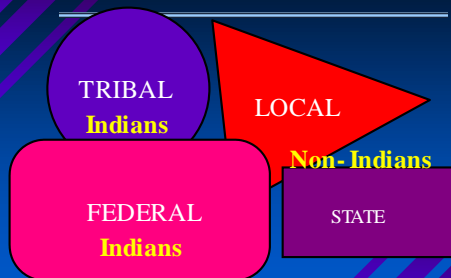
*Federal Prosecution Because of Special Statutes*

- Habitual Domestic Violence, 18 U.S.C. § 117
- Failure to Register as Sex Offender, 18 U.S.C. § 2250
- Unauthorized Hunting & Fishing, 18 U.S.C. § 117

## Prosecution of Victim Crimes



## Prosecution of Victimless Crimes



## Violence Against Women Act (VAWA)



VAWA recognizes that domestic violence is a national problem, but its reach is fairly narrow



It is a federal crime to travel across state/Indian country lines and injure certain victims, violate a protection order, or stalk



It is a federal crime in certain situations for domestic abusers to possess guns

*Majority of domestic violence cases will continue to be handled by tribal, state and local authorities*

## FEDERAL DOMESTIC VIOLENCE LAWS

Generally Require Crossing of Jurisdictional Boundaries by Persons or Communications

Apply to Federal or Indian Lands

Require Proof of Intent

May also Require Injury or Threat of Injury

*These Requirements Allow for Federal Jurisdiction in order to Successfully Prosecute Additional Proof is Needed to prove Assault or Injury*

## Federal Gun Crimes



Based on Interstate Commerce Nexus, No Requirement for Crime to be On Federal or Indian Land

- ☒ Proof of Possession of Guns or Bullets
- ☒ Proof of Prohibited Category: Felon, Alien, Drug Abuser, etc.

## Federal Gun Crimes



Based on Interstate Commerce Nexus, No Requirement for Crime to be On Federal or Indian Land

- ☒ Proof of Possession of Guns or Bullets
- ☒ Proof of Prohibited Category: Felon, Alien, Drug Abuser, etc.



Drug Offenses:  
Nationwide Jurisdiction as  
Crime of General  
Applicability affecting  
Interstate Commerce



## Tribal Law & Order Act of 2010 "TLOA"



Legislation Addressed at Improving Law  
Enforcement in Indian Country

## TLOA Key Provisions

- ★ Allows Tribes to Have Enhanced Penalties for Up to 3 Years per Count, for a total of 9 years, IF certain requirements such as court appointed defense counsel and lawyer judges are utilized in tribal courts
- ★ Federal Authorities Allowed to Testify in Support of Tribal Prosecution
- ★ Increased Training & Protocols for Handling crimes in Indian Country, Especially Sexual Assault and Domestic Violence Cases
- ★ Enhanced Cross-Deputization Program
- ★ Tribal Police Access to NCIC



## VAWA 2013

- ★ "Special DV Criminal Jurisdiction" Over Non-Indians By Tribes over crimes involving Domestic Violence/Dating Violence and Violations of Protective Orders
- ★ Authorizes Dismissal of Case where Defendant and Victim Lacks "Sufficient Ties" to Tribe
- ★ Authorizes Dismissal of Case where Prosecuting Tribe fails to prove that Defendant or Victim reside in Indian country, is employed in Indian country, or is a spouse/intimate partner of a member of a tribe
- ★ Tribe is required to comply with U.S. Constitution to exercise "special DV Criminal Jurisdiction"
- ★ Tribe authorized to issue Protection Orders over all Persons (including non-Indians) in matters arising within Indian country

## VAWA 2013

### ★ WHAT CRIMES ARE COVERED?

★ Covered offenses will be determined by tribal law. But tribes' criminal jurisdiction over non-Indians will be limited to the following, as defined in VAWA 2013:

- ★ Domestic violence;
- ★ Dating violence; and
- ★ Criminal violations of protection orders.

## VAWA 2013

### ★ WHAT CRIMES ARE NOT COVERED?

★ The following crimes will generally not be covered:

- ★ Crimes committed outside of Indian country;
- ★ Crimes between two non-Indians;
- ★ Crimes between two strangers, including sexual assaults;
- ★ Crimes committed by a person who lacks sufficient ties to the tribe, such as living or working on its jurisdiction; and
- ★ Child abuse or elder abuse that does not involve the violation of a protection order.

## Key Elements of Proof for non-Indian VAWA Charge

**Domestic Violence, Dating Violence, or Violation of Protection Order offenses when a defendant:**

- 1) **resides in Indian country,**
- 2) **works in Indian country,**
- 3) **or is a spouse or partner of a member of a participating tribe or is an Indian residing in Indian country of a participating tribe**

(Authority: tribal code)

## Practical Considerations



- ★ Cross Deputization
- ★ Mapping Programs
- ★ Central Violation Bureau – Federal Court
- ★ Collaboration – Murdered & Missing Persons
- ★ Databases of Enrollment & Car Tags
- ★ Mapping Programs
- ★ Task Forces
- ★ SAUSAs

### LAW ENFORCEMENT AUTHORITY SOURCES IN INDIAN COUNTRY CASES

State Officer	Tribal Officer	Federal Officer
X State Authority	State Authority*	State Authority
	* "Peace Officer" on Indian Country or tribal fee land if have CLEET & SLEC under 21 O.S. § 99a	* "Peace Officer" within Oklahoma in rendering assistance to any law enforcement officer in an emergency or to assist in an arrest under 21 O.S. § 99
Tribal Authority	X Tribal Authority	Tribal Authority
* Tribal Cross Dep. or * Federal Cross Dep. with SLEC w/tribal authority addendum		* Tribal Cross Dep.
Federal Authority	Federal Authority	X Tribal Authority
* Federal Cross Dep. with SLEC	* Federal Cross Dep With SLEC	

\* Applicable under 5 circumstances (21 O.S. § 99a (A) (1 – 5)) (emergency involving threats to life or property, with prior consent of state law enforcement agency in response to a request for assistance under a mutual assistance agreement in response to a request by another state peace officer or while peace officer is transporting prisoner.

### COURTS HAVING JURISDICTION IN INDIAN COUNTRY CASES

	State Proceedings	Tribal Proceedings	Federal Proceedings
Law Applied	City or State Code	Tribal Code or 25 CFR if a Court of Indian Offenses	Federal Code (state law assimilated for certain offenses under 18 USC 13)
Court Hearing Case	City or State Court	Tribal or Court of Indian Offenses	Federal Magistrate Court or Federal District Court
Prosecution	Municipal Prosecutor or ADA or Special ADA	Tribal Prosecutor or Special Tribal Prosecutor	Asst. U.S. Attorney or Special Asst. U.S. Attorney
Judge	City or State Judge	Tribal Judge or Court of Indian Offenses Judge	U.S. Magistrate Judge or U.S. District Judge



Questions?