

**Testimony of
David W. Hill
Principal Chief of the Muscogee (Creek) Nation
Before the House Natural Resources Committee
Subcommittee on Indigenous Peoples
Hearing on Examining Federal Facilities in Indian Country
June 17, 2021**

Chairwoman and members of the subcommittee, my name is David Hill and I am proud to serve as Principal Chief of the Muscogee (Creek) Nation. Thank you for the invitation to share our experience with federal facilities in Oklahoma and to discuss the most urgent priorities that impact the Muscogee Nation's reservation.

Meaningful federal investment in infrastructure on tribal lands paces far behind that of the rest of the United States. Coupling that lack of support with few economic opportunities and a limited tax base, leaves tribal nations with tough decisions about providing direct services to citizens and making high-cost investments in large capital projects. Dedicated and specific spending in Indian Country is needed to address some of the most critical services tribal governments must deliver to geographically isolated and persistently poor communities.

The lack of investment in infrastructure has never been more apparent to the Muscogee Nation than in the weeks following the Supreme Court's decision in *McGirt vs. Oklahoma*. Federal support in Oklahoma today means more than ever before in ensuring prosperity and security, not only for tribal nations but for the communities, towns, cities, and states in which our reservations exist. It is never too late to do the right thing, and this moment is a historical opportunity to build the future together.

The citizens of the Muscogee Nation found themselves in Oklahoma after being forcibly removed from their native lands during the "Trail of Tears," in return for a promise from the federal government that "the Creek country west of the Mississippi shall be solemnly guaranteed to the Creek Indians."

Yet for over 110 years, the State of Oklahoma illegally acted as though much of the reservation established in law did not exist. The federal government participated through willful inaction.

Last July, the Supreme Court not only affirmed that our reservation remains intact but that all treaties and agreements entered between the federal government and Native Americans cannot be ignored and remain in force unless modified by an act of Congress.

Months before the decision and certainly in the year since, Muscogee Nation leadership has evaluated the need for new and expanded physical and utility infrastructure to support critical public safety services including law enforcement officers, tribal courts, and prosecutors and related social service support systems.

In making their finding, the Supreme Court provided a jurisdictional clarity that is good for Native peoples and good for the communities around our reservations. This clarity enables

sovereign Tribal Nations to work collaboratively with states, contribute more to relieve the stress on state justice systems, and contribute more to economic growth and prosperity in many places that need it the most.

But the reality is that that tribal capacity at the time of the Supreme Court decision had been severely limited by the state's illegal assumption of jurisdiction. As a result, much work remains to rectify the consequences of the state's actions and the federal inaction.

Our Nation has already taken immediate steps to respond to the change in the jurisdictional environment, including expanding our law enforcement, increasing efforts to coordinate with state and municipal law enforcement agencies, and leasing additional facilities to provide judicial services. However, there remains a critical role for the federal government in building capacity to manage the long-term post-McGirt workload. The *McGirt* decision does not change the trust obligation or create any new federal responsibilities, it magnifies the systemic lack of investment and increase the need for more funding, more personnel, and more infrastructure within that federal trust responsibility.

URGENT INFRASTRUCTURE NEEDS

The Muscogee (Creek) Nation reservation encompasses urban cities, towns, and small communities with densities from fewer than fifty (50) residents, to Tulsa, one of the two largest urban centers in Oklahoma. The Muscogee Nation employees over 3,500 people with an annual budget of more than \$370 million. The Nation has twenty-five (25) individual chartered Indian communities, nine (9) gaming sites and eleven (11) tribal health facilities, a main tribal complex and multiple satellite office, six (6) tribally-owned housing properties, and a large commercial retail property. To ensure the safety of our citizens, as well as the non-tribal neighbors, we must build courthouses and jails, hire more public safety officers and first responders, and respond to many other needs.

Prior to the *McGirt* decision, our law enforcement officials and related offices limited exercising criminal and civil jurisdiction to the 120,000 acres of trust and restricted property. After *McGirt*, those responsibilities expanded to cover more than three million acres – a land mass greater than New Jersey. The substantial increase in geographic responsibilities, coupled with significant population growth in the Tulsa metropolitan area, has created a unique reservation when compared to others in the United States.

Since last July, MCN Lighthorse police officers, courts and attorneys general have worked with federal, state and local staff across the eleven county reservation. Our courts have had to expand services to tribal citizens of not only our Nation, but the more than one hundred thousand American Indian and Alaska Natives living within the reservation.

Incarceration Facilities

One of the most urgent and pressing needs on the Muscogee Reservation is providing proper incarceration facilities, not only for our Nation, but for other tribal governments in the region and federal officials whose responsibilities have grown overnight. The only correctional facility

operated specifically for American Indians and Alaska Natives is the Sac and Fox Juvenile Detention Center – more than one hour from Okmulgee.¹ State law prevents contracting with state-operated facilities leaving Sac and Fox as the only option. Its capacity is limited and does not respect the need to keep young people close to their family, loved ones, and community resources due to the distance from the center of the reservation.

Adult incarceration options, while larger, present geographic and operational challenges. There are just a few federal adult facilities and none are located in eastern Oklahoma. The closest federal facility to the center of our reservation is more than two hours away. Currently, the capacity of the three federal facilities is just under 2,500 inmates and there are no maximum security options in the state.²

Limited access to federal and tribal facilities is also exacerbated by the incarceration rates in Oklahoma, which are among the highest in the United States. The Prison Policy Initiative estimated that American Indians and Alaska Natives in Oklahoma are incarcerated at 1,059 per 100,000. If the rate of incarceration remains similar to other trends in the state, the reservation is woefully under resourced to respond to the need. Since the *McGirt* decision MCN has entered into four lease agreements with local and municipal correctional facilities across the reservation. This increases direct costs to the Nation of more than one million dollars year over year. However, placement in these facilities depends on available space and creates significant operational expense and safety concerns related to inmate transfer, travel to the single tribal courtroom and personnel capacity.

While it is not the goal of the Nation to maintain incarceration rates, it is our goal to maintain law and order for all of the reservation residents. Without additional federal support, these costs will undoubtedly grow as result of costs and the growing population on the reservation. This could require the Nation to reevaluate our priorities and change available social service programs. The Nation invests millions annually in reintegration, victims' services, and behavioral health services to tribal citizens.

Meaningful investment and collaboration in response to the correctional challenges presented by *McGirt* will help tribal nations offset direct and anticipated costs. There are several options to consider, the federal government could engage with local and municipal facilities to provide space on behalf of tribes. Or the government could construct a centralized facility which could be consistently made available to federally-recognized tribes in eastern Oklahoma. Alternatively, the federal government could use a Joint Venture-like Program that approves tribes to construct and maintain facilities at their expense and then provides recurring staffing funding for the facility. MCN's preference is to keep incarcerated individuals on or close to the reservation, because the Nation provides wrap around services for inmates and families. If the federal government does not make an investment in additional infrastructure in Oklahoma, the tribes will continue to incur significant costs without additional resources available.

Tribal Courts

¹ Minton, Todd D. and Cowhig, Mary. "Jails in Indian Country, 2016." Bureau of Justice Statistics. Department of Justice. <https://bjs.ojp.gov/content/pub/pdf/jic16.pdf>

² Federal Bureau of Prisons. Locations. <https://www.bop.gov/locations/map.jsp>

While incarceration is the most pressing issue due to the serious safety concerns the lack of space generates, readily available courtroom space is a rising concern. Today, the Nation has just one courtroom and three District Court Judges for all tribal cases. This infrastructure was sufficient prior to the Supreme Court decision with just over 700 case filings in 2019. By then end of 2020, our courts had more 1,300 cases pending and 2021 is on pace to double the 2020 case load. Comparatively, the federal court system in Oklahoma includes three District Courts – two located within the reservation.

It is clear that additional resources are needed to expand physical and personnel capacity of the Muscogee (Creek) Nation. In fact, the federal government is already exercising low-to-no cost options offered by county governments. On June 15, 2021, Muskogee County Commission Payne stated “that the U.S. District Court of Eastern Oklahoma ‘is having problems finding venues’ for an increased caseload” following the Supreme Court decision.³

Muscogee Nation is similarly seeking additional venues to ensure effective administration and provide ancillary support for attorneys and clients. While, the federal governments scales its support to meet the growing need on the reservation, the MCN has initiated a lease agreement for a current unused federal courtroom in Okmulgee. However, the lease negotiations are now in their eighth month, leaving our courts and citizens waiting. There is no efficient way to enter into a lease with the federal government and in the meantime cases stack up, as do related incarceration and transportation costs. Based on the number of tribal citizens, geographic distances and increased caseloads, MCN believes at least four additional courtrooms are necessary for civil and criminal cases heard in tribal courts.

Infrastructure and Personnel Capacity

While MCN manages growth of criminal and civil cases it is imperative that the federal government provide resources to support of the physical plant needs. MCN law enforcement, prosecutorial, and judicial professionals will require office space, appropriate storage and evidence archive space, and sufficient utility infrastructure, including high-speed broadband, to provide public safety services to tribal and non-tribal citizens. These needs outpace the available resources of the Nation and will require partnership and collaboration between tribal governments and federal officials.

According to the Bureau of Indians Affairs, Office of Justice Services (OJS)⁴ and the American Community Survey estimates of the American Indian and Alaska Native population⁵ on the reservation the MCN must maintain a police force of 312 full time equivalents (FTEs). In order to achieve this level of operation, OJS estimates that nearly \$34.4 million is required on a recurring basis for increased personnel, equipment, and other operational costs. Using formulas

³ Smoot, D.E.. “Commissioners OK Federal Use of County Courthouse.” Muskogee Phoenix, OK June 15, 2021.

⁴ Bureau of Indians Affairs, Office of Justice Services. “Report to Congress on Spending, Staffing and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country, 2018.” https://www.bia.gov/sites/bia.gov/files/assets/bia/ojs/ojs/pdf/2018_TLOA_Report_Final.pdf

⁵ The 2019 American Community Survey estimates the American Indian and Alaska Native population in combination with other races is 111,606 citizens.

in the same report, MCN estimates that an additional \$40 million is required to support expanded responsibilities of tribal courts and \$20.6 million for detention costs. These expenses are for recurring costs, however, and do not represent the one-time costs to build infrastructure or acquire existing infrastructure to support operations

When considering the growing and collective needs of Eastern Oklahoma, the time for the federal government to act is now. There are multiple examples already available that promote tribal-federal partnerships, including the Indian Health Service Joint Venture Program, fully funding the Indian Self-Determination and Education Assistance Act 105(l) lease needs, and tribal housing programs. Each of these programs give tribes the authority to site physical plants as necessary and provide ongoing, recurring expenses to operate and maintain the facilities. Our hope is that this Subcommittee will work with us and others to prioritize the significant needs as a result of *McGirt* and expanding needs in the region.

CONCLUSION

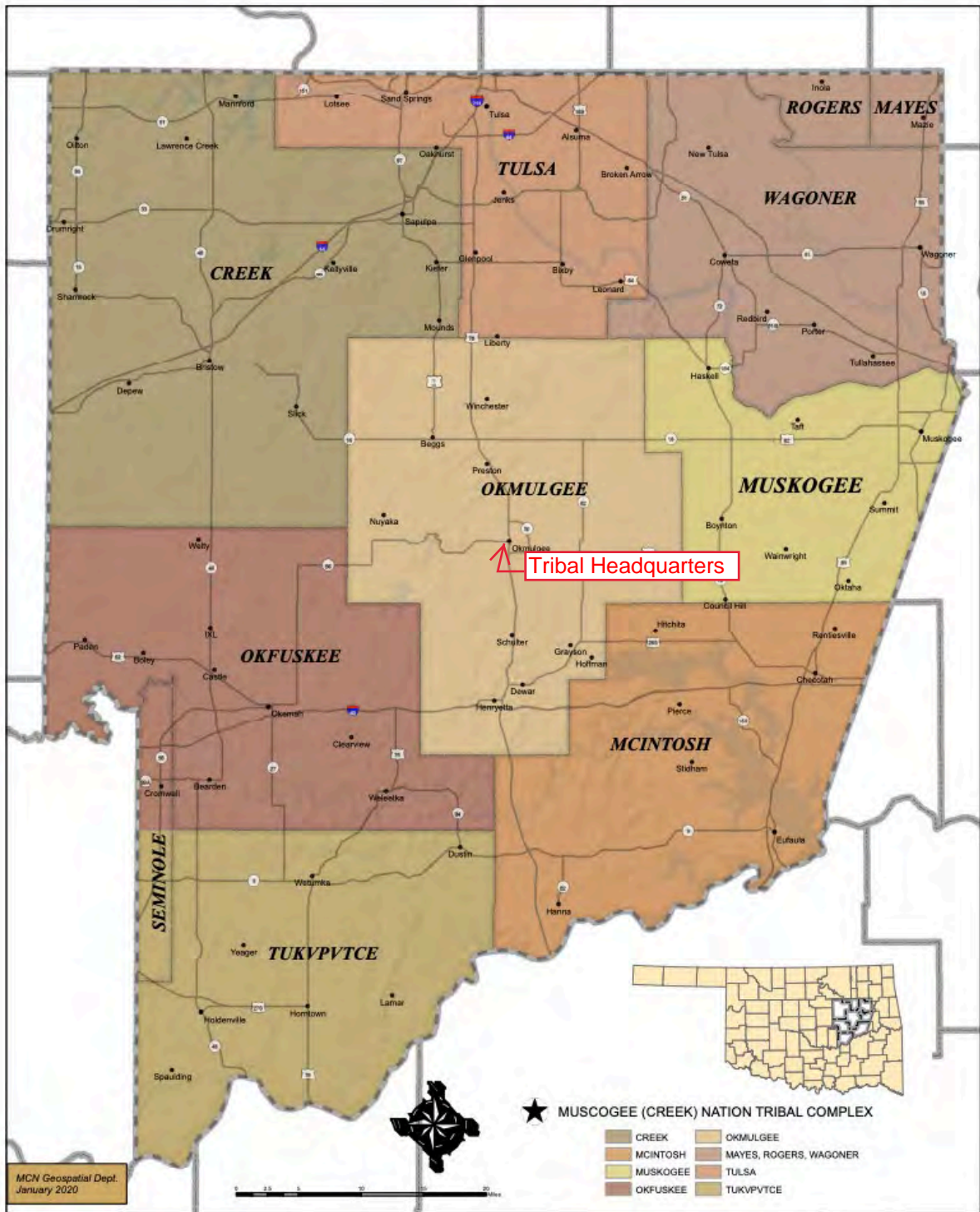
While other tribes are undoubtedly impacted by the recent Supreme Court decision, MCN's needs are substantially different due to the diverse community encompassed in the reservation and urbanity of the Tulsa Metropolitan Area. While there is no one size fits all solution for Tribes in Oklahoma. We must work together to right the wrongs of the past.

Repairing the systemic damage done to Tribal capacity by decades of illegally denying our jurisdiction will not be solved in one budget cycle or one infrastructure bill. We can and must, however, address short-term pressing needs. Investments in tribal capacity are not only needed, but they are essential.

I do not want to leave the impression that the additional responsibilities we find ourselves with now are burdensome or unwanted. On the contrary, we welcome them as part and parcel of self-governance and sovereignty for which Native Americans have fought so hard.

And we are doing our part. We are making substantial investments, updating laws, and working cooperatively with local, state, and federal officials to enter agreements that preserve public safety and increase prosperity. But we need the federal government to live up to its part of the bargain and fulfill its trust responsibilities by adjusting and building permanent capacities that reflect the new law of the land, the opportunities it provides, and the needs that come with it.

Thank you for your time and consideration.



MUSKOGEE (CREEK) NATION

ELEVEN COUNTY TRIBAL JURISDICTION

PRINCIPAL CHIEF
DAVID HILL
SECOND CHIEF
DEL BEAVER

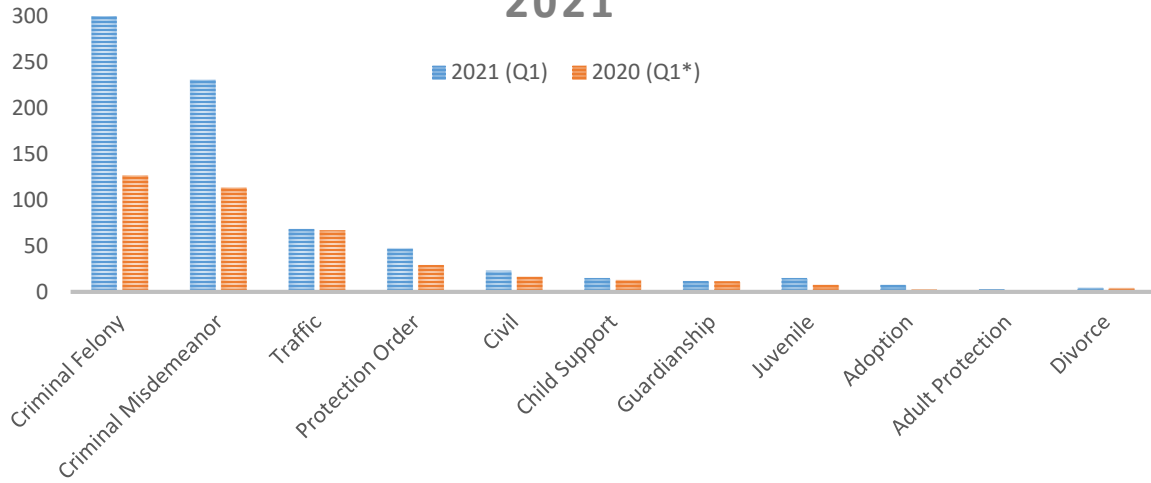
Overall Reservation Statistics

11 counties

4,867 sq miles

	Pre McGirt	Post McGirt	increase
Exercise of Jursidiction	120,000 acres	3,114,880 acres	2,994,880
Lighthorse officers	42	76	34
Courthouse	1	1	0
Judges	3	4	1
Prosecutors	4	7	3

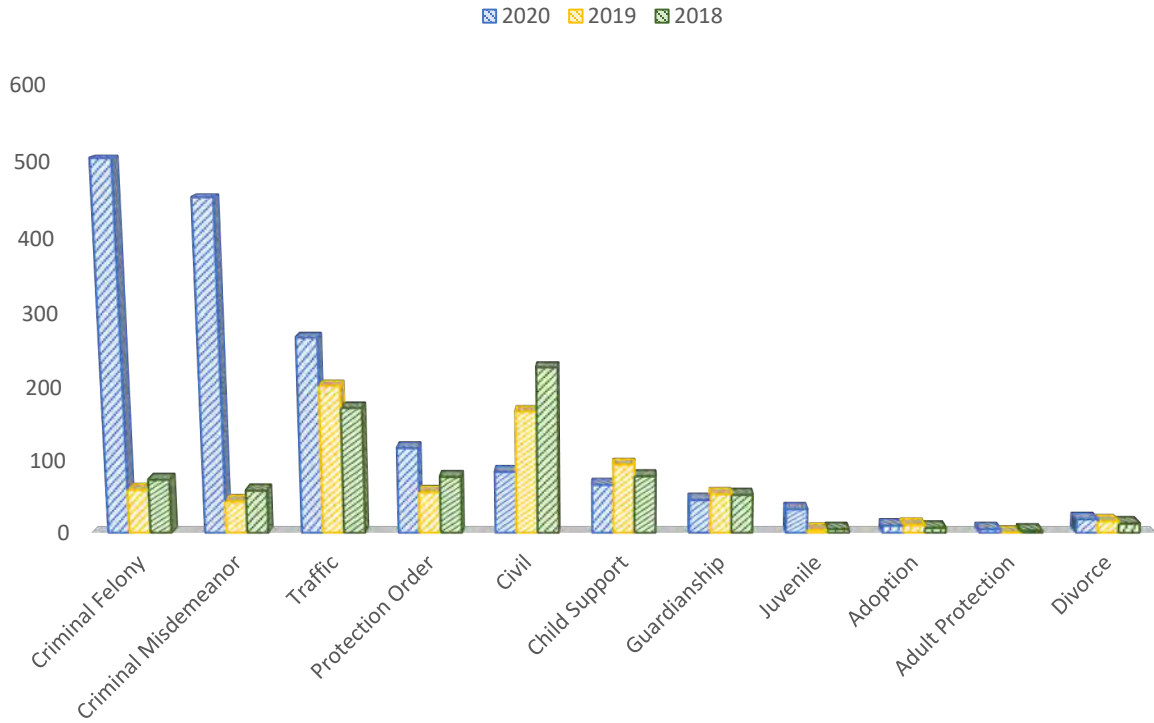
MCGIRT CASE LOAD BY QUARTER 2020 - 2021



	2021 (Q1)	2020 (Q1*)
Criminal Felony	301	126
Criminal Misdemeanor	231	113
Traffic	69	67
Protection Order	48	30
Civil	23	17
Child Support	15	13
Guardianship	12	12
Juvenile	15	8
Adoption	8	3
Adult Protection	3	1
Divorce	5	5
Total	730	394

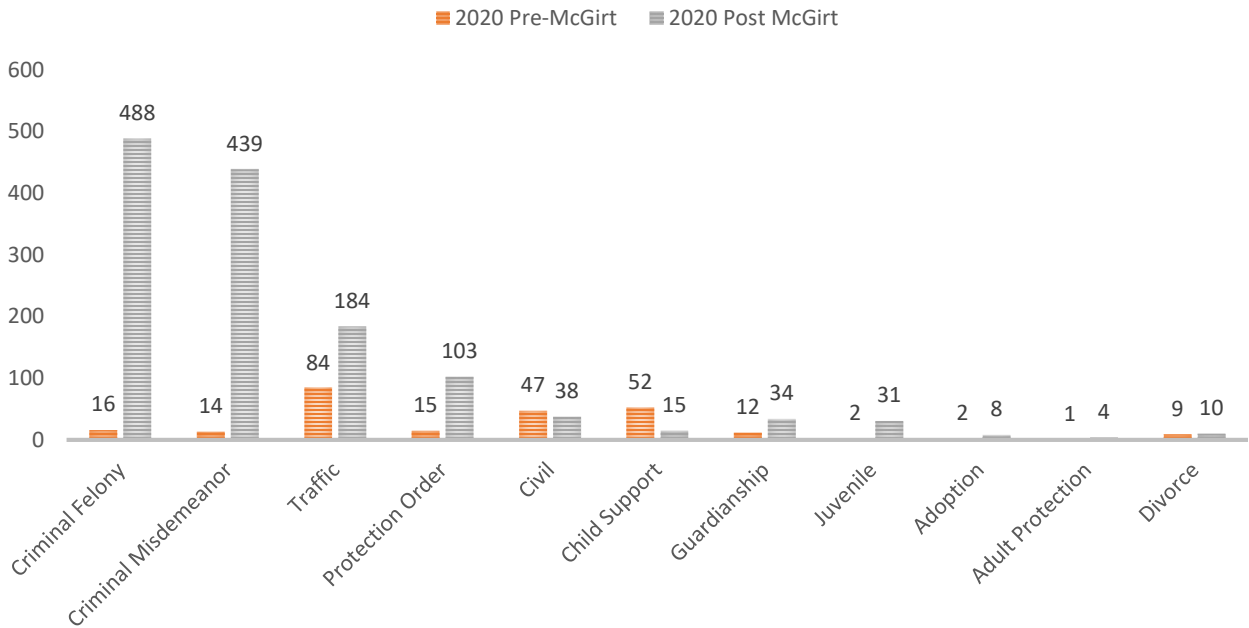
*Averaged values

MCN CASE FILINGS 2018-2020



	2020	2019	2018
Criminal Felony	504	60	74
Criminal Misdemeanor	453	44	59
Traffic	268	203	173
Protection Order	118	57	78
Civil	85	168	228
Child Support	67	95	79
Guardianship	46	54	53
Juvenile	33	4	5
Adoption	10	11	7
Adult Protection	5	0	3
Divorce	19	16	13
Total	1608	712	772

MCGIRT IMPACTS ON CASE FILINGS



	2020 Pre-McGirt	2020 Post McGirt
Criminal Felony	16	488
Criminal Misdemeanor	14	439
Traffic	84	184
Protection Order	15	103
Civil	47	38
Child Support	52	15
Guardianship	12	34
Juvenile	2	31
Adoption	2	8
Adult Protection	1	4
Divorce	9	10
Total	254	1354

The Mound Auditorium, located at tribal headquarters in Okmulgee, houses the District Court and the Supreme Court.

The District Court consists of three judges, who hear cases in civil, criminal and family law.

The Supreme Court consists of seven justices.





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The Office of the Attorney General has seen a significant increase in cases since the McGirt decision and as a result, has nearly doubled the amount of staff prosecutors. The budget increases have also included greater salary amounts to remain competitive with other tribes increasing case-load





The Muscogee Nation Lighthorse Police have successfully doubled the amount of cross-deputizations in the wake of the McGirt decision to over 60 now in place. The force has also increased officers on the ground from 47 Pre-McGirt to now being budgeted for 76 officers. The amount of tribal funding allocated for increases at Lighthorse since McGirt, has totaled more than \$7 million.



The Muscogee Nation Community Services Building houses the tribe's Family Violence Prevention Program and the Children and Family Services Division. The workload of these two programs have also significantly increased post-McGirt with more advocacy services and case-worker responsibilities in demand.