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***McGirt v Oklahoma* and What Clinicians Should Know About Present-Day Child Abuse and Legacies of Forced Migration**

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Abstract

In 1997, Jimcy McGirt was convicted by the State of Oklahoma for sex crimes against a minor. McGirt appealed his conviction, citing that Oklahoma lacked jurisdiction over the case due to his tribal citizenship, since the crime took place on tribal territory. On July 9, 2020, the Supreme Court of the United States (SCOTUS) reversed the Oklahoma Court of Criminal Appeals' original decision for the case, citing that Congress had failed to disestablish reservations with regard to the Major Crimes Act, which gave the federal government jurisdiction over major felony crimes perpetrated by Native Americans on reservations. This ruling has already caused sweeping changes in the investigations and prosecutions of child maltreatment in eastern Oklahoma, as such cases may fall under the jurisdiction of federal agencies or tribal law enforcement. This article details the historic significance of the decision and the experiences of 3 child abuse pediatricians working as part of a multidisciplinary team while jurisdictional changes were implemented following the SCOTUS ruling.

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Forced Migration and Child Abuse

Mistreatment of Indigenous peoples happened long before the creation of the United States and has continued to the present day. In the 1830s, the ruling of the Supreme Court of the United States (SCOTUS) in *Worcester v Georgia*, which held that states could not impose regulations on Native American lands, was openly defied by then-president Andrew Jackson, making way for the forced migration of tribes—including Cherokee, Creek, Chickasaw, Choctaw, and Seminole peoples—to Oklahoma.^{1,2} During these removals, each tribe was promised lands in the West, via treaties.^{3,4,5}

Knowledge of this history is invaluable for understanding the implications of SCOTUS' decision in *McGirt v Oklahoma*—a case involving sex crimes committed against a minor

on tribal land—for child maltreatment cases in Oklahoma.^{6,7} This article details the significance of this decision and the experiences of 3 child abuse pediatricians (CAPs) working as part of a multidisciplinary team when jurisdictional changes that followed the *McGirt* decision first influenced child maltreatment cases' prosecution.

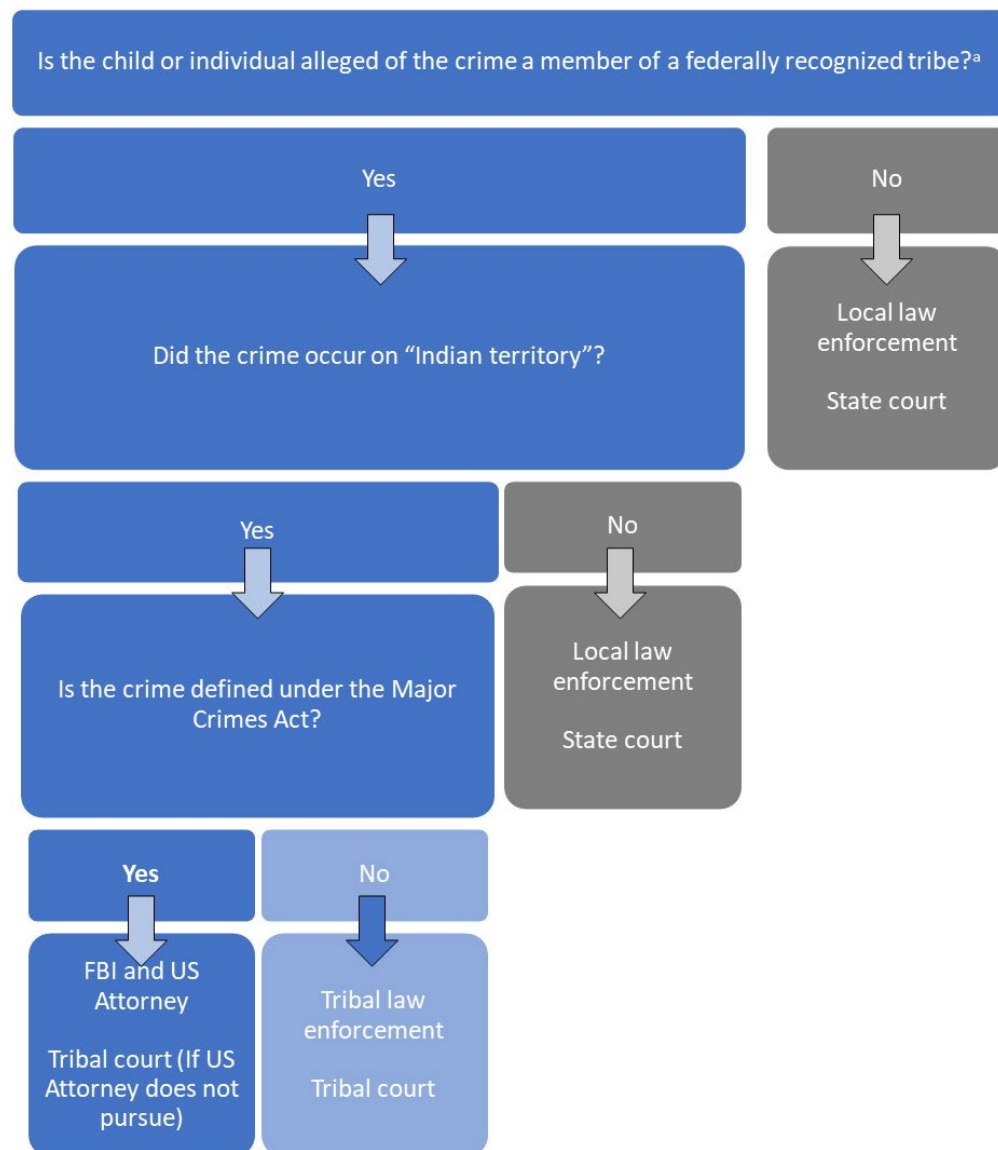
***McGirt* Overview**

Jimcy McGirt was convicted by the State of Oklahoma for first-degree rape by instrumentation, lewd molestation, and forcible sodomy in Wagoner, Oklahoma, in 1997.^{6,8,9} McGirt, a member of the Muscogee (Creek) and Seminole nations, first appealed his conviction to the Oklahoma Court of Criminal Appeals. After the court declined to review his case, he petitioned SCOTUS, arguing that the state lacked jurisdiction over the case due to his status as a tribal citizen, since the crime took place in what the US federal government calls “Indian Country” (eg, territory belonging to a tribal nation).⁶ The State of Oklahoma argued that the Creek Reservation was disestablished by Congress through federal statutes enacted to further strip the Creek government and its people of their rights after they settled in Oklahoma.⁶

On July 9, 2020, SCOTUS reversed the Oklahoma Court of Criminal Appeals' decision, citing that Congress had failed to disestablish Indian reservations with regard to the Major Crimes Act, which gave the *federal* government—not *state courts* like the one that convicted McGirt—jurisdiction over major felony crimes perpetrated by Native Americans on reservations.^{6,8,10} In his majority opinion, Justice Neil Gorsuch cited the 1832 Treaty With the Creeks, Article XIV, which states: “[no] 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.”⁶ He further contended that Congress had never formally disestablished the Creek Reservation (by divesting it of its land and diminishing its boundaries) regardless of the number of promises broken by the federal government to the tribe.⁶ This ruling reaffirmed the commitment the United States made to tribes when the parties signed treaties hundreds of years ago, while also opening the door to sweeping changes in the investigation and prosecution of child maltreatment-related crimes in eastern Oklahoma. As of April 2022, the *McGirt* decision applies to the Creek, Cherokee, Choctaw, Chickasaw, Seminole, and Quapaw nations.¹¹

The SCOTUS *McGirt* decision fundamentally changed the way cases falling under the Major Crimes Act are investigated. Previously, maltreatment crimes were prosecuted primarily by the State of Oklahoma regardless of the crime's location. Now, when a major crime (eg, homicide, **rape**, maltreatment) occurs, local law enforcement agencies, who remain the immediate response group for crimes, generate a police report looking at the factors outlined in the Figure to determine if the investigation will stay with local law enforcement or should be transferred to the Federal Bureau of Investigation (FBI) and the US Attorney's Office or to tribal law enforcement. In some cases, in which the jurisdiction is unknown, the investigation will be concurrent with all 3 parties.

Figure. Jurisdiction Decisions After the US Supreme Court *McGirt* Decision



Adapted from Mckkanen AQ.¹²

^a In some cases, young children may be eligible for tribal enrollment but not be officially enrolled with a tribe. When one or more parent is an enrolled member of a tribe and the child is eligible for enrollment, this ruling still applies. On June 29, 2022, SCOTUS ruled in favor of Oklahoma in *Oklahoma v Castro-Huerta*,¹³ further complicating jurisdictional procedures when a non-Native individual is alleged to have committed a crime on a member of a federally recognized tribe on Indian territory. Those changes are not included within this figure.

Unlike legislative processes, the *McGirt* decision did not come with a case processing framework, leaving tribal governments and multidisciplinary teams to navigate these unprecedented jurisdictional changes. Tribal governments have relied on the FBI and US Attorney's Office to handle cases, in part because the Indian Civil Rights Act severely limited the sentencing power of tribal courts.¹⁴ This reliance is not without issue, as federal agents' and prosecutors' refusal to become involved in cases has been a point of contention among tribes and their members for some time.¹⁵ Tribal members' mistrust of the federal government's handling of cases is not without merit, given the **historical mistreatment** orchestrated by the federal government that Indigenous peoples have endured, including genocide and ethnocide.

Child Abuse Pediatrics After *McGirt*

The Tulsa County Children's Advocacy Center (CAC) is located in the second-largest city in Oklahoma, which is one area that has been greatly affected by the SCOTUS *McGirt* decision. Tulsa County contains part of the Cherokee Nation reservation in its northern half and part of the Muscogee (Creek) Nation reservation in its southern half. In 2021, 18.45% of the 1767 children utilizing services at the CAC were Native American (S. Beilke, written communication, January 18, 2022). The CAC is home to the Tulsa County Multidisciplinary Team, a team created under a State of Oklahoma statute to investigate suspected child maltreatment.^{16,17} The team includes local, federal, and tribal law enforcement agencies, federal and state prosecutors, forensic interviewers, social workers, and CAPs.¹⁶

Jurisdictional change. The unprecedented nature of the SCOTUS *McGirt* decision and its lack of processing framework have created unique challenges. Multidisciplinary teams involved in child maltreatment investigations in Oklahoma were not prepared for the seismic shift in cases and workflow. While the CAC's client database was not created to track jurisdiction, the center typically saw less than 10 cases of child maltreatment per year involving the FBI and/or tribal or federal courts before the *McGirt* decision (B. Sarah, written communication, April 22, 2022). That number has risen into the hundreds since then, highlighting the impact of jurisdictional changes (B. Sarah, written communication, April 22, 2022).

Overwhelming case numbers. After the *McGirt* decision, the FBI faced unprecedented caseloads and lacked the workforce to investigate; as such, local law enforcement was deputized under the federal government.^{18,19} Although federal prosecutors and FBI agents were sent to Oklahoma, most federal investigators were only there for 6 to 12 weeks.¹⁸ This period of time did not allow investigators to become familiar with the workings of maltreatment investigations, the geography of Oklahoma, the inner workings of the child abuse multidisciplinary team, or the cultural considerations of working with tribal authorities. All of these factors have played a significant part in the disruption of investigative processes.

Evaluation delay. Of this paper's 4 authors, 3—M.A.B., S.J.P, and L.K.C—have practiced child abuse pediatrics in northeastern Oklahoma. Based on the experiences of CAPs working in eastern Oklahoma, the jurisdictional changes related to the SCOTUS *McGirt* decision initially resulted in team members changing for some cases, which led to a delay in case investigations. New team members, in many cases, had not previously been involved in child maltreatment investigations. In addition to new investigators, political power struggles playing out in the courts regarding jurisdiction^{20,21} also considerably affected the functioning of the team.

Negotiating Delays Caused by *McGirt*

The CAPs have responded to these challenges by providing education to new team members and advocating for the needs of the children they serve. The education focused on the core functions of every member's role and what is required of new team members for those roles to be fulfilled. During the 18 months following the SCOTUS *McGirt* decision, the CAPs held continuing education training sessions on the medical aspects of child maltreatment for staff of both the Eastern and the Northern District US Attorney's Offices, which included federal prosecutors, FBI agents, other Department of Justice employees, as well as for social workers and tribal police departments. These trainings, which were approved by the Council on Law Enforcement Education and

Training (CLEET), consisted of PowerPoint lectures with handouts. An additional CLEET-approved training delivered through a partnership with the Oklahoma Commission on Children and Youth was given to the Assistant US Attorney's Office. The Tulsa County Multidisciplinary Team has also provided these groups with protocol training, which included discussions of how each agency functions within the CAC.

Since the SCOTUS *McGirt* decision applies to Native Americans who either are alleged to have committed a crime or have had a crime committed against them, the implications of the decision are wide-ranging and apply to the general public. It is imperative that other members of the multidisciplinary team understand the risks associated with and ramifications of delayed evaluations of child maltreatment. Based on the authors' experiences, it is crucial that investigations be handled in a timely manner. Early and comprehensive training for new federal and tribal team members is recommended. Additionally, child protective service workers' and federal investigators' joint response is vital for the safety and well-being of children. When investigations aren't conducted in a timely manner, children may be left vulnerable to further maltreatment, increasing their risk of morbidity and mortality. Delays could also result in a child being placed in a foster home for a prolonged period of time.

The authors urge others working in maltreatment-related fields—particularly in areas of the United States that may one day see jurisdictional changes—to prepare appropriate case processing and training frameworks to prevent delays in investigations. Timely and appropriate preparation for potential jurisdictional changes has the potential to increase the safety and welfare of all children. As such, medical professionals who interact with children they suspect of being maltreated should be prepared to educate investigators with whom they interact.

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