

**TO: Tulsa Criminal Defense Lawyers Association**  
**RE: *McGirt* and *Murphy***

## **INTRODUCTION**

This is an exciting time to be a lawyer in Oklahoma especially if your field of practice is criminal law. We have been waiting a long time to for this decision and to see how it would affect our lives and the lives of our clients. This document is intended as starting point for you to review your practice for the benefit of your clients as to the decisions in *McGirt* and *Murphy*. This will be broken up into three parts: current clients, post-conviction, and past clients. There are many materials attached that will help you navigate this new world: Map of Creek Nation and tribal jurisdictions, federal statutes, flow charts, and a guide to criminal jurisdiction in Indian Country.

## **CURRENT CLIENTS**

When starting a new file and interviewing your client you must find out the following:

### **Is your client Indian?**

Under 25 U.S.C. §1301(4), “Indian” means any person who would be subject to the jurisdiction of the United States as an Indian under section 1153, title 18, if that person were to commit an offense listed in that section in Indian country to which that section applies. In *U.S. v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012), the court adopted a two part evidentiary test to determine whether a person is an Indian for the purposes of federal law. *United States v. Prentiss*, 273 F.3d 1277 (10th Cir. 2001).

“To find that a person is an Indian the court must first make factual findings that the person has “some Indian blood” and, second, that the person is recognized as an Indian by a tribe or by the federal government.” A person satisfies the definition only if both parts are met; conversely the government can prove that a person is not Indian by showing that he fails either prong.”

The court held that this test is a totality of the evidence approach. What cannot be used to determine lack of heritage is name, appearance, speech and testimony they did not grow up in a particular place. *United States v. Romero*, 136 F.3d 1268, 1274 (10th Cir. 1998). This will come in play with the freemen who are members of the tribe but have no tribal blood (so far only the Cherokee have admitted freeman, therefore they can stand in tribal court but would not be considered Indian under the major crimes act). An Indian tribal certificate that includes the degree of Indian blood or membership in a tribe that does not accept members without a certain degree of consanguinity will satisfy the *Prentiss* test.

### **Is your client a member of a tribe?**

If you client is a member, get a copy of their Certificate of Degree of Indian Blood (CBID) card. This card lists an individual’s blood degree by the tribe, named tribe and contains information about their birth dates and can list the last four digits of the social security number. The CBID

card is signed by a BIA representative. A client can go to the Oklahoma Historical Society website to search the Dawes Rolls for family lineage.

**Is that tribe one of the 37 federally recognized tribes?**

See flow chart for all 37 recognized tribes). If it is not you have an uphill battle. See *U.S. v. LaBuff* 658 F.3d 1073 (9th Cir. 2011). If your client is a tribal member, has a CBID card and is a member of one of the 37, federally recognized tribes the rest of this is for you.

Absentee-Shawnee Tribe of Indians	Modoc Tribe of Oklahoma
Alabama-Quassarte Tribal Town	Muscogee (Creek) Nation
Apache Tribe of Oklahoma	Osage Nation
Caddo Nation of Oklahoma	Otoe-Missouria Tribe of Indians
Cherokee Nation	Ottawa Tribe of Oklahoma
Cheyenne and Arapaho Tribes	Pawnee Nation of Oklahoma
Chickasaw Nation	Peoria Tribe of Indians of Oklahoma
Choctaw Nation	Ponca Tribe of Indians of Oklahoma
Citizen Potawatomi Nation	Quapaw Tribe of Indians
Comanche Nation	Sac & Fox Nation
Delaware Nation	Seminole Nation of Oklahoma
Eastern Shawnee Tribe of Oklahoma	Seneca-Cayuga Nation
Fort Sill Apache Tribe of Oklahoma	Shawnee Tribe
Iowa Tribe of Oklahoma	Thlopthlocco Tribal Town
Kaw Nation	Tonkawa Tribe of Indians of Oklahoma
Kialegee Tribal Town	Wichita and Affiliated Tribes
Kickapoo Tribe of Oklahoma	Wyandotte Nation
Kiowa Indian Tribe of Oklahoma	United Keetoowah Band of Cherokee
Miami Tribe of Oklahoma	

**If your client is the average non indian can you stop reading? No.**

If the alleged crime involves a victim you have ask if they are a tribal member. The implications of an Indian victim are discussed below. While finding the defendant's tribal membership and blood percentage should be relatively easy, finding out that information regarding a specific named victim may be daunting. Depending on the personal identifiers listed in available police reports and district attorney files, a request can be made to all the tribes to determine if a person is listed as a tribal member.

**Where did the alleged crime(s) occur?**

Based upon *McGirt*, the Creek Nation reservation is Indian land. (See Tribal Jurisdiction map). If the alleged crime occurred on an allotment or land owned by the tribe, then the crime was committed on Indian land. The Cherokee Chief issued a statement this weekend that they believe it applies to crimes committed on Cherokee land.



On the same day as the *McGirt* decision and in reliance upon it, the United States Supreme Court vacated orders from the Oklahoma Court of Criminal Appeals regarding the following cases:

*Travis W. Bentley v. Oklahoma*, Case No. 19-5417

- Prosecuted in Cleveland County
- Crime occurred in Citizen Potawatomi Nation
- Defendant is a member of Choctaw Nation
- Crimes were Count 1: Manslaughter, 1<sup>st</sup> Degree; Count 2: DUI w/ Great Bodily Injury; Count 3: Possession of Drug Paraphernalia
- Defendant entered a blind plea

*Keith E. Davis v Oklahoma*, No. 19-6428

- Prosecuted in Latimer County
- Crime occurred in Choctaw Nation
- Defendant is a member of the Cherokee Nation
- Crimes were Count 1: Forcible Sodomy; and Count 2: Lewd or Indecent Proposals to a 16 year old

*Patrick J. Terry v. Oklahoma*, No. 18-8801

- Prosecuted in Ottawa County
- Crime occurred in Ottawa Nation
- Defendant is a member of the Cherokee Nation
- Crimes were Count 1: Manufacturing CDS w/in 2000 feet of a Public School; Count 2: Possession of CDS; and Count 3: Possession of Drug Paraphernalia

*Joe Johnson v. Oklahoma*, No. 18-6098

- Prosecuted in Seminole County;
- Crime occurred in Seminole Nation
- Defendant is a member of Seminole Nation
- Crime was 1<sup>st</sup> Degree Murder

Thus, *McGirt* is not limited to crimes occurring within the Creek Nation. However, if the crime occurred on indian land that has been disestablished, *McGirt* does not provide relief. The other five civilized tribes areas may also be ripe for this argument but you will need to look specifically at the history of that tribe's interactions with Congress. A detailed look will have to be spent on the other tribes' interactions with Congress.

### **18 U.S.C. §§ 1152 and 1153**

This section 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. *United States v. John*, 437 U.S. 634 (1978). The enumerated offense are, (for the most part) defined by distinct federal statutes. The offenses which are not defined and punished by federal law are to be defined and punished in accordance with the law of the state where crime was

committed. *See* 18 U.S.C. 1153 (b). Major felonies involving an Indian, whether as victim or accused, are matters for federal prosecutions.

### **What are the crimes in the Major Crimes Act?**

Short list is as follows: Murder 18 U.S.C. § 1111, manslaughter 18 U.S.C. § 1112, kidnapping, maiming 18 U.S.C. § 114, felony under chapter 109A (sexual abuse) 18 U.S.C. § 2241, incest, a felony assault under 18 U.S.C. § 113, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson 18 U.S.C. § 81, burglary, robbery and a felony under section 661 of title 18 (theft/stealing). *See* statutes provided.

If you have one of these charges that have been charged against your client then file a motion to dismiss for lack of jurisdiction in state court. When the case is dismissed the case will be sent to the United States Attorney's office for review.

### **Does the State of Oklahoma have jurisdiction over crimes not enumerated in the Major Crimes Act?**

NO. You must then look at the General crimes Act under 18 U.S.C. 1152. This statute goes to 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. This was extended to Indian country. You must also look at the Assimilative crimes Act 18 U.S.C. § 13 (*see* handout) that is extended to the Indian Country by § 1152. This Act makes state law applicable to conduct occurring on lands reserved or acquired by the Federal Government as provided in 18 U.S.C. § 7 (2), when the act or omission is not made punishable by an enactment of Congress.

## **PAST CLIENTS, DIRECT APPEALS, AND POST-CONVICTION RELIEF**

### **What do I do with my past files?**

You should go back through your files and first determine if you have represented any clients that would benefit from the change in law. You need to notify them that they have one (1) year to file Post-Conviction starting last Thursday, July 9, 2020. You will have to have their CDIB and Tribal Membership card to proceed. If any of your files have a victim associated with the file then you will need to look at your police reports and determine if your client should have gone to tribal or federal court.

### **Federal Statute of Limitations**

As a duty to your past clients, you should look at whether they received an unlawful conviction in State court. *However, it may not be in every client's best interest to challenge the State conviction and sentence.* In federal court, there is no parole, no deferred sentences, and many crimes cannot be expunged. Federal penalties may be more severe for the crime in which the client is alleged to have committed. However, if the statute of limitations has run on the federal offense, the client would not face further prosecution. There is no statute of limitations for



federal crimes punishable by death, nor for certain federal crimes of terrorism, nor for certain federal sex offenses. Most other crimes must begin within five years of the commitment of the offense. There are exceptions so look up the individual crime you are looking at some are as long as 20 years. Crimes that are above the five year mark are arson, art theft, crimes with financial institutions, and some immigration offenses. A good resource is fas.org the congressional research service, Statute of Limitations in Federal Criminal Cases: An Overview by Charles Doyle.

### **Note to Federal Practitioners**

If your client is Indian, then you should look at the conviction on the Presentence Investigation Report and see if post-conviction could help the client. Prosecution in tribal court and facing one (1) year is much different than getting three (3) points under criminal history. Also consider whether or not convictions used for past sentencing were State extra-jurisdictional convictions which should be vacated and excluded from use for calculation of appropriate sentencing range.

### **Post-Conviction**

If your client's case is pending in Court of Criminal Appeals and has the issue preserved, you may want to file a notice of supplemental authority. If you have not raised it but the case is pending before the Court, you should ask for leave to amend or to request leave to file a supplemental brief based on the change in law that the *McGirt* case represents.

For cases not presently on direct appeal or post-conviction, you should consider the proper procedure for relief. If your client entered a guilty plea, you should file an application for post-conviction relief, specifically requesting an appeal out of time in the district court case. After you obtain an order recommending an appeal out of time from the district court, you should request an appeal out of time from the Oklahoma Court of Criminal Appeals. Once the appeal out of time is granted, you should file a motion to withdraw the plea in the district court in order to vacate the judgment and sentence, and ask for the case to be dismissed. If the conviction and sentence was the result of a trial, you will want to file an application for post-conviction relief in the district court.

For practitioners who are mainly located outside of "Indian Country," review all prior convictions used as sentence enhancers or as an element of a crime. A defendant may have been sentenced using an improper punishment range and fine due to extra-jurisdiction convictions in Oklahoma State Courts which are within Indian Country.

Note that there is no waiver of jurisdictional arguments. "In Oklahoma, 'issues of subject matter jurisdiction are never waived and can therefore be raised on a collateral appeal.'" *Murphy v. Royal*, 866 F.3d 1164, fn. 5 (Okla. 10th Cir. 2017). See also *Wallace v. State*, 935 P.2d 366, 372 (Okla. Crim. App. 1997); *Triplet v. Franklin*, 365 Fed. Appx. 86, 95 (Okla. 10th Cir. 2010 (unpublished) (recognizing that issue of subject matter jurisdiction are not waivable and can be raised for the first time in collateral proceedings); *Wackerly v. State*, 237 P.3d 795, 797 (Okla. Crim. App. 2010) (considering jurisdictional claim that crime occurred on federal land raised in

petitioner's second-application for post-conviction relief); *Magnon v. State*, 207 P.3d 397, 402 (Okla. Crim. App. 2009) (Considering Indian Country jurisdictional challenge and explaining subject matter jurisdiction may be challenged at any time); *Armstrong v. State*, 1926 35 Okla. Crim. 116, 248 P. 877, 878 (Subject matter jurisdiction cannot be conferred by consent, nor can it be waived, and it may be raised at any time before or after trial and even for the first time on appeal); *Staley v. State*, 1953 Okla. Crim. 114, 259 P. 545; *Wallace v. State*, 935 P.2d 366, 272 (Okla. Crim. App. 1997) (Even though not raise don direct appeal, issues of subject matter jurisdiction are never waived and can therefore be raised on collateral appeal).

### **CONCLUSION**

If you need help with your motion to dismiss, *see State v. Jesse Nabors* in Tulsa County for both misdemeanor and felony.

If you need help with Post Conviction you can talk to the following:

Beverly Atteberry	Charles Fox	Katie Arnold McDaniel
Beverly Atteberry Law Firm	Oklahoma Litigation Group	Brewster & De Angelis
918-605-1913	918-592-6554	918-742-2021

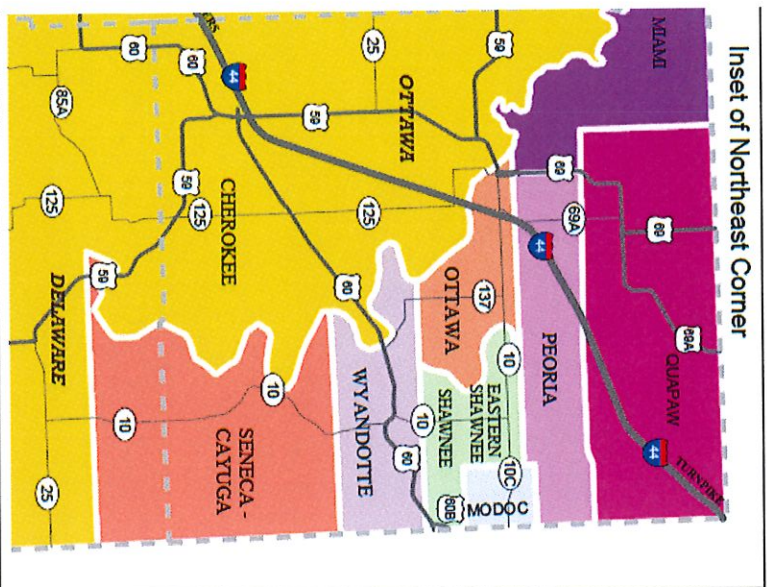
Thank you to the above three in working on this project they are all a great resource!

Shena Burgess  
Smiling, Smiling, & Burgess  
918-477-7500

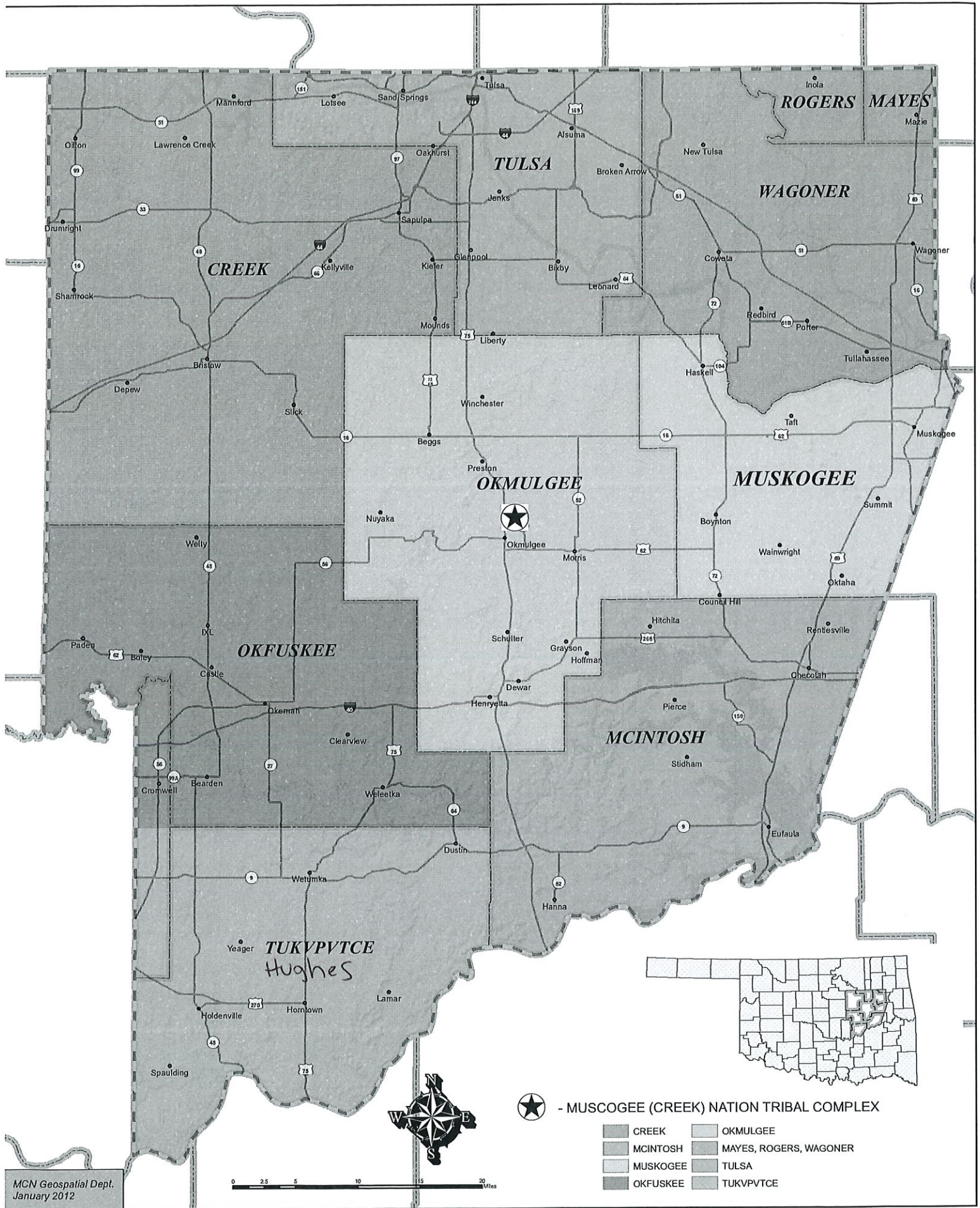


This map illustrates the Cherokee Nation and its geographical context. The Cherokee Nation is highlighted in green, occupying a significant portion of the southeastern United States. Surrounding tribes are color-coded: Chickasaw in yellow, Choctaw in orange, and Creek in red. The map also shows the Mississippi River and other major water bodies. Key cities and towns are labeled, including Washington, D.C., New Orleans, and various locations within the Cherokee Nation. The map is oriented with North at the top.

This inset map shows the Northeast Corner of Iowa. Major towns labeled include PEORIA, OTTAWA, WYANDOTTE, CHEROKEE, SENECA-CATYGA, and OTTAWA. Highways shown include I-44, I-69, I-74, I-80, I-88, I-90, I-94, I-96, I-98, I-100, I-104, I-106, I-108, I-110, I-112, I-114, I-116, I-118, I-120, I-122, I-124, I-126, I-128, I-130, I-132, I-134, I-136, I-138, I-140, I-142, I-144, I-146, I-148, I-150, I-152, I-154, I-156, I-158, I-160, I-162, I-164, I-166, I-168, I-170, I-172, I-174, I-176, I-178, I-180, I-182, I-184, I-186, I-188, I-190, I-192, I-194, I-196, I-198, I-200, I-202, I-204, I-206, I-208, I-210, I-212, I-214, I-216, I-218, I-220, I-222, I-224, I-226, I-228, I-230, I-232, I-234, I-236, I-238, I-240, I-242, I-244, I-246, I-248, I-250, I-252, I-254, I-256, I-258, I-260, I-262, I-264, I-266, I-268, I-270, I-272, I-274, I-276, I-278, I-280, I-282, I-284, I-286, I-288, I-290, I-292, I-294, I-296, I-298, I-300, I-302, I-304, I-306, I-308, I-310, I-312, I-314, I-316, I-318, I-320, I-322, I-324, I-326, I-328, I-330, I-332, I-334, I-336, I-338, I-340, I-342, I-344, I-346, I-348, I-350, I-352, I-354, I-356, I-358, I-360, I-362, I-364, I-366, I-368, I-370, I-372, I-374, I-376, I-378, I-380, I-382, I-384, I-386, I-388, I-390, I-392, I-394, I-396, I-398, I-400, I-402, I-404, I-406, I-408, I-410, I-412, I-414, I-416, I-418, I-420, I-422, I-424, I-426, I-428, I-430, I-432, I-434, I-436, I-438, I-440, I-442, I-444, I-446, I-448, I-450, I-452, I-454, I-456, I-458, I-460, I-462, I-464, I-466, I-468, I-470, I-472, I-474, I-476, I-478, I-480, I-482, I-484, I-486, I-488, I-490, I-492, I-494, I-496, I-498, I-500, I-502, I-504, I-506, I-508, I-510, I-512, I-514, I-516, I-518, I-520, I-522, I-524, I-526, I-528, I-530, I-532, I-534, I-536, I-538, I-540, I-542, I-544, I-546, I-548, I-550, I-552, I-554, I-556, I-558, I-560, I-562, I-564, I-566, I-568, I-570, I-572, I-574, I-576, I-578, I-580, I-582, I-584, I-586, I-588, I-590, I-592, I-594, I-596, I-598, I-600, I-602, I-604, I-606, I-608, I-610, I-612, I-614, I-616, I-618, I-620, I-622, I-624, I-626, I-628, I-630, I-632, I-634, I-636, I-638, I-640, I-642, I-644, I-646, I-648, I-650, I-652, I-654, I-656, I-658, I-660, I-662, I-664, I-666, I-668, I-670, I-672, I-674, I-676, I-678, I-680, I-682, I-684, I-686, I-688, I-690, I-692, I-694, I-696, I-698, I-700, I-702, I-704, I-706, I-708, I-710, I-712, I-714, I-716, I-718, I-720, I-722, I-724, I-726, I-728, I-730, I-732, I-734, I-736, I-738, I-740, I-742, I-744, I-746, I-748, I-750, I-752, I-754, I-756, I-758, I-760, I-762, I-764, I-766, I-768, I-770, I-772, I-774, I-776, I-778, I-780, I-782, I-784, I-786, I-788, I-790, I-792, I-794, I-796, I-798, I-800, I-802, I-804, I-806, I-808, I-810, I-812, I-814, I-816, I-818, I-820, I-822, I-824, I-826, I-828, I-830, I-832, I-834, I-836, I-838, I-840, I-842, I-844, I-846, I-848, I-850, I-852, I-854, I-856, I-858, I-860, I-862, I-864, I-866, I-868, I-870, I-872, I-874, I-876, I-878, I-880, I-882, I-884, I-886, I-888, I-890, I-892, I-894, I-896, I-898, I-900, I-902, I-904, I-906, I-908, I-910, I-912, I-914, I-916, I-918, I-920, I-922, I-924, I-926, I-928, I-930, I-932, I-934, I-936, I-938, I-940, I-942, I-944, I-946, I-948, I-950, I-952, I-954, I-956, I-958, I-960, I-962, I-964, I-966, I-968, I-970, I-972, I-974, I-976, I-978, I-980, I-982, I-984, I-986, I-988, I-990, I-992, I-994, I-996, I-998, I-1000, I-1002, I-1004, I-1006, I-1008, I-1010, I-1012, I-1014, I-1016, I-1018, I-1020, I-1022, I-1024, I-1026, I-1028, I-1030, I-1032, I-1034, I-1036, I-1038, I-1040, I-1042, I-1044, I-1046, I-1048, I-1050, I-1052, I-1054, I-1056, I-1058, I-1060, I-1062, I-1064, I-1066, I-1068, I-1070, I-1072, I-1074, I-1076, I-1078, I-1080, I-1082, I-1084, I-1086, I-1088, I-1090, I-1092, I-1094, I-1096, I-1098, I-1100, I-1102, I-1104, I-1106, I-1108, I-1110, I-1112, I-1114, I-1116, I-1118, I-1120, I-1122, I-1124, I-1126, I-1128, I-1130, I-1132, I-1134, I-1136, I-1138, I-1140, I-1142, I-1144, I-1146, I-1148, I-1150, I-1152, I-1154, I-1156, I-1158, I-1160, I-1162, I-1164, I-1166, I-1168, I-1170, I-1172, I-1174, I-1176, I-1178, I-1180, I-1182, I-1184, I-1186, I-1188, I-1190, I-1192, I-1194, I-1196, I-1198, I-1200, I-1202, I-1204, I-1206, I-1208, I-1210, I-1212, I-1214, I-1216, I-1218, I-1220, I-1222, I-1224, I-1226, I-1228, I-1230, I-1232, I-1234, I-1236, I-1238, I-1240, I-1242, I-1244, I-1246, I-1248, I-1250, I-1252, I-1254, I-1256, I-1258, I-1260, I-1262, I-1264, I-1266, I-1268, I-1270, I-1272, I-1274, I-1276, I-1278, I-1280, I-1282, I-1284, I-1286, I-1288, I-1290, I-1292, I-1294, I-1296, I-1298, I-1300, I-1302, I-1304, I-1306, I-1308, I-1310, I-1312, I-1314, I-1316, I-1318, I-1320, I-1322, I-1324, I-1326, I-1328, I-1330, I-1332, I-1334, I-1336, I-1338, I-1340, I-1342, I-1344, I-1346, I-1348, I-1350, I-1352, I-1354, I-1356, I-1358, I-1360, I-1362, I-









# 8 U.S. Code § 661. Within special maritime and territorial jurisdiction

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Whoever, within the special maritime and territorial jurisdiction of the United States, takes and carries away, with intent to steal or purloin, any personal property of another shall be punished as follows:

If the property taken is of a [value](#) exceeding \$1,000, or is taken from the person of another, by a fine under this title, or imprisonment for not more than five years, or both; in all other cases, by a fine under this title or by imprisonment not more than one year, or both.

If the property stolen consists of any evidence of debt, or other written instrument, the amount of money due thereon, or secured to be paid thereby and remaining unsatisfied, or which in any contingency might be collected thereon, or the [value](#) of the property the title to which is shown thereby, or the sum which might be recovered in the absence thereof, shall be the [value](#) of the property stolen.

# 18 U.S. Code § 1152. Laws governing

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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

# 18 U.S. Code § 1153. Offenses committed within Indian country

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## **(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.



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.

(June 25, 1948, ch. 645, [62 Stat. 757](#).)

# 18 U.S. Code § 13. Laws of States adopted for areas within Federal jurisdiction

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## **(a)**

Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in [section 7 of this title](#), or on, above, or below any portion of the territorial sea of the [United States](#) not within the jurisdiction of any State, Commonwealth, territory, possession, or district is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

## **(b)**

### **(1)**

Subject to paragraph (2) and for purposes of subsection (a) of this section, that which may or shall be imposed through judicial or administrative action under the law of a State, territory, possession, or district, for a conviction for operating a motor vehicle under the influence of a drug or alcohol, shall be considered to be a punishment provided by that law. Any limitation on the right or privilege to operate a motor vehicle imposed under this subsection shall apply only to the special maritime and territorial jurisdiction of the [United States](#).

### **(2)**

**(A)** In addition to any term of imprisonment provided for operating a motor vehicle under the influence of a drug or alcohol imposed under the law of a State, territory, possession, or district, the punishment for such an offense under this section shall include an additional term of imprisonment of not more than 1 year, or if serious bodily injury of a [minor](#) is caused, not more than 5 years, or if death of a [minor](#) is caused, not more than 10 years, and an additional fine under this title, or both, if—

**(i)**

a [minor](#) (other than the offender) was present in the motor vehicle when the offense was committed; and

**(ii)**

the law of the State, territory, possession, or district in which the offense occurred does not provide an additional term of imprisonment under the circumstances described in clause (i).

**(B)**

For the purposes of subparagraph (A), the term "[minor](#)" means a person less than 18 years of age.

**(c)**

Whenever any waters of the territorial sea of the [United States](#) lie outside the territory of any State, Commonwealth, territory, possession, or district, such waters (including the airspace above and the seabed and subsoil below, and artificial islands and fixed structures erected thereon) shall be deemed, for purposes of subsection (a), to lie within the area of the State, Commonwealth, territory, possession, or district that it would lie within if the boundaries of such State, Commonwealth, territory, possession, or district were extended seaward to the outer limit of the territorial sea of the [United States](#).

(June 25, 1948, ch. 645, [62 Stat. 686](#); Pub. L. 100-690, title VI, [§ 6477\(a\)](#), Nov. 18, 1988, [102 Stat. 4381](#); Pub. L. 103-322, title X, [§ 100002](#), Sept. 13, 1994, [108 Stat. 1996](#); Pub. L. 104-132, title IX, [§ 901\(b\)](#), Apr. 24, 1996, [110 Stat. 1317](#); Pub. L. 104-294, title VI, [§ 604\(b\)\(32\)](#), Oct. 11, 1996, [110 Stat. 3508](#).)



## General Guide to Criminal Jurisdiction in Indian Country

Jurisdiction can be defined as the power or authority of a court over a particular person, area, or subject matter.

**Tribal Legal Code Resource:** Tribal Laws Implementing TLOA Enhanced Sentencing and VAWA Enhanced Jurisdiction Guide for Drafting or Revising Tribal Laws to Implement the Enhanced Sentencing Provisions of the Tribal Law and Order Act (TLOA) and the Special Jurisdiction Provisions of the Violence Against Women Reauthorization of 2013 (VAWA 2013) provides guidance for tribes who are interested in implementing the enhanced sentencing provisions in TLOA and/or the special domestic violence criminal jurisdiction over non-Indians provisions in VAWA 2013. This resource provides an overview of the enhanced powers recognized by each statute and explores ways that tribes can comply with the requirements of the federal statutes. The resource contains five sections and fourteen chapters. Part I provides an overview of the statutes, background, and considerations in deciding whether to implement. Parts II, III, and IV examine in more detail the requirements tribes must meet in order to exercise the powers recognized by TLOA and VAWA 2013. Part V provides links to relevant online resources and a model tribal code.

**Criminal Jurisdiction:** In a criminal case, jurisdiction is the power or authority of the court to try and to punish the accused for a violation of a government's penal (or criminal) code.

**How Does a Criminal Action Differ from a Civil Action:** Criminal actions generally differ from civil actions in at least two important ways. First, the government itself generally brings criminal actions to protect the public interest or the community as a whole whereas civil actions are generally brought by one private party against another private party. Second, the available sanctions in a criminal action include imprisonment whereas imprisonment is not available as a remedy in civil actions (except for the court's contempt power). It is important to note, however, that these distinctions between criminal and civil actions have been developed from Anglo-American law and did not necessarily exist in traditional Native justice systems.

**What is Indian Country?** The definition of Indian Country is set forth by federal law (18 U.S.C. § 1151) as follows:

(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

### Criminal Jurisdiction on Reservations Not Affected by PL 280/State Jurisdiction

Indian Status	Type of Crime Major Crime (as defined by Major Crimes Act (MCA))	All Other Crimes
Indian perpetrator, Indian victim*	Federal (under MCA) and tribal jurisdiction	Tribal jurisdiction
Indian perpetrator, non-Indian victim**	Federal (under MCA) and tribal jurisdiction	Federal (under General Crimes Act) and tribal jurisdiction
Non-Indian perpetrator, Indian victim	Federal jurisdiction (under General Crimes Act)***	Federal (under General Crimes Act) jurisdiction***
Non-Indian perpetrator, non-Indian victim	State jurisdiction	State jurisdiction

\* If the offense is listed in the Major Crimes Act (MCA), there is federal jurisdiction, exclusive of the state, but not the tribe. If the listed offense is not otherwise defined and punished by federal law applicable in the special maritime and territorial jurisdiction of the United States, state law is used in federal courts. See section 1153(b). If not listed in MCA, the tribal jurisdiction is exclusive.

\*\* If listed in the Major Crimes Act (MCA), there is federal jurisdiction, exclusive of the state, but probably not of the tribe. If the listed offense is not otherwise defined and punished by federal law applicable in the special maritime and territorial jurisdiction of the United States, state law is used in federal courts. If not listed in MCA, there is federal jurisdiction, exclusive of the state, but not of the tribe, under the General Crimes Act. If the offense is not defined and punished by a statute applicable within the special maritime and territorial jurisdiction of the United States, state law is used in federal courts under 18 U.S.C. § 13. The United States can prosecute an Indian for a non-MCA crime, provided the tribe has not prosecuted.

\*\*\* Tribal jurisdiction for crimes under VAWA 2013 Title IX, when the tribe has opted in to Special Domestic Violence Criminal Jurisdiction (SDVCJ).

Note: There is federal jurisdiction in Indian country for crimes of general applicability.

### Criminal Jurisdiction for States and Reservations Where PL 280 Applies

Indian Status	Type of Crime Major Crime (as defined by Major Crimes Act (MCA))	All Other Crimes



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by Public law 280 (both mandatory states and those states which opted to assume PL280 jurisdiction).

**Other Federal Acts conferring State Jurisdiction:** Some tribes have been affected by federal legislation in which states have received a federal mandate to exercise jurisdiction outside of Public Law 280, e.g., through state-wide enactments, restoration acts, or land claims settlement acts.

**Non-Indian v. Non-Indian Crimes:** The U.S. Supreme Court ruled in United States v. McBratney, 104 U.S. 621 (1881), and Draper v. United States, 164 U.S. 240 (1896), that state courts have jurisdiction to punish wholly non-Indian crimes in Indian country.

#### **Criminal Actions May Need to Be Treated as Civil Actions in Certain Circumstances**

Please note that actions which might be treated as a criminal action in federal or state court may need to be treated as civil actions in tribal courts. This may be due to many factors, including legal jurisdictional limitations (such as the lack of tribal jurisdiction over non-Indians), practical jurisdictional limitations (such as Public Law 280), and resource limitations. Consequently, victims of crime in Indian Country and their advocates may need to research victims' rights in civil procedures to a much greater extent than would be needed in federal and state courts.

XXX

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Indian perpetrator, Indian victim*	State and tribal jurisdiction	State and tribal jurisdiction
Indian perpetrator, non-Indian victim*	State and tribal jurisdiction	State and tribal jurisdiction
Non-Indian perpetrator, Indian victim*	State jurisdiction**	State jurisdiction**
Non-Indian perpetrator, non-Indian victim	State jurisdiction	State jurisdiction

\*Under TLOA, a tribal government may request federal concurrent over crimes in PL 280 states, subject to approval of the U.S. Attorney General.

Note: There is federal jurisdiction in Indian country for crimes of general applicability.

\*\* Tribal jurisdiction for crimes under VAWA Title IX, when a tribe has opted in to Special Domestic Violence Criminal Jurisdiction (SDVCJ).

**Inherent Sovereign Authority:** Indian tribes - as sovereign nations - historically have inherent jurisdictional power over everything occurring within their territory. Tribal courts are courts of general jurisdiction which continue to have broad criminal jurisdiction. Any analysis of tribal criminal jurisdiction should begin with this sovereign authority and determine whether there has been any way in which this broad sovereign authority had been reduced (see below).

**Federal or State Concurrent Jurisdiction:** Congress has granted limited jurisdictional authority to the federal courts (under the General Crimes Act and the Major Crimes Act) and to state courts (under Public Law 280). It is important, however, to note that tribal courts maintain concurrent (or joint) criminal jurisdiction.

**Criminal Jurisdiction over Non-Indians:** The U.S. Supreme Court decision Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978) limits the ability of Native Nations to try and punish non-Indians. Under this decision, Native Nations generally do not have jurisdiction to prosecute non-Indians. The Violence Against Women Act Reauthorization of 2013 slightly modified this decision however. A Native Nation may choose to exercise "Special Domestic Violence Criminal Jurisdiction (SDVCJ) and exert their inherent ability to prosecute non-Indians who commit the following offenses: domestic violence, sexual assault, dating violence, and violation of protection orders. In order to exercise SDVCJ, the Nation must meet certain requirements. The resource listed at the top of this page, TLPI's Tribal Code Resource: Implementing TLOA and VAWA 2013 has a greater discussion of the requirements and provides examples of tribal codes and provides more information and guidance on this topic.

**Criminal Jurisdiction over Non-Member Indians:** The Supreme Court ruled that tribal courts did not have criminal jurisdiction over non-member Indians. Duro v. Reina, 495 U.S. 676 (1990). Congress, however, overturned this decision and restored tribal court criminal jurisdiction over non-member Indians by adding the following language to the definition of "powers of self-government" in the Indian Civil Rights Act (25 U.S.C. § 1301) - "means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians" (Public Law 102-137).

**Sentencing Limitation:** The Indian Civil Rights Act ((25 U.S.C. § 1301 (Definitions); § 1302 (Constitutional rights); § 1303 (Habeas corpus)) provides that tribal courts cannot "impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year or a fine of \$5,000 or both." If a person is convicted of more than one crime (e.g., domestic violence and kidnapping), federal law allows up to one year for each offense. The Tribal Law and Order Act (TLOA) 25 U.S.C. § 1302 amended ICRA, thus increasing tribal court authority to incarcerate for up to three years and/or fine up to \$15,000 for one offense. However, if a tribal court orders incarceration for more than one year, it must:

- Provide licensed legal counsel for an indigent defendant at tribal expense (The defense attorney must be licensed to practice law by a tribe, state, or federal government in a manner that ensures professional competence and responsibility.);
- Ensure that tribal court judges are law trained and licensed;
- Publish criminal laws, rules of evidence, and procedure; and
- Maintain an audio or video record of the criminal trial.

Incarceration for more than a year also requires that the defendant either was previously convicted of the crime or that the crime is one that would carry a penalty of more than a year if prosecuted in a state or federal court. The TLOA also allows for the defendant to be convicted of more than one offense at a time, allowing incarceration for up to nine years. 25 U.S.C. § 1301(a)7D Indian Civil Rights Act does not limit other forms of sanctions—including restitution, banishment, and probation.

**Charging Defendant in both Federal and Tribal Court is NOT a violation of Double Jeopardy:** The U.S. Supreme Court has held that the source of the power to punish offenders is an inherent part of tribal sovereignty and not a grant of federal power. Consequently, when two prosecutions are by separate sovereigns, (e.g. the Navajo Nation and the United States), the subsequent federal prosecution does not violate the defendant's right against double jeopardy. United States v. Wheeler, 435 U.S. 313 (1978).

#### Federal Criminal Jurisdiction

Federal courts are courts of limited jurisdiction (that is, they cannot hear all cases - there must be specific constitutional or statutory authority in order to bring a case in federal court). Congress has granted criminal jurisdiction in Indian country to the federal courts in certain circumstances, including the following:

**General Crimes Act (18 U.S.C. § 1152):** This federal statute (enacted in 1817 and set forth below) provides that the federal courts have jurisdiction over interracial crimes committed in Indian country as set forth below:

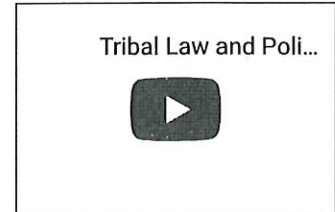
Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except in the District of Columbia, shall extend to the Indian Country. This section shall not 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.

**Major Crimes Act (18 U.S.C. § 1153):** The Major Crimes Act (enacted following the U.S. Supreme Court's 1883 Ex Parte Crow Dog decision) provides for federal criminal jurisdiction over seven major crimes when committed by Indians in Indian country. Over time, the original seven offenses have been increased to sixteen offenses currently.

#### State Criminal Jurisdiction

The states generally do not have jurisdiction over crimes occurring in Indian Country with three exceptions set forth below:

**Public Law 280 (18 U.S.C. § 1162):** Congress in 1953 authorized states to exercise jurisdiction over offenses by or against Indians. Public Law 280 provided for broad state concurrent criminal jurisdiction on those states and reservations impacted



**INDIAN COUNTRY CRIMINAL JURISDICTION CHART**

[crime committed within Indian Country as defined by 18 U.S.C. § 1151 (a), (b) & (c) – (a) tribal trust lands, (b) dependent Indian communities & (c) Indian allotments held in trust.]

Indian Offender: enrolled or recognized as Indian by community of origin

Who is the victim?	What was the crime?	Jurisdiction
<b>1) VICTIM CRIMES</b>	AN OFFENSE AGAINST THE PERSON OR PROPERTY OF A VICTIM:	
Indian ( <i>enrolled or recognized as Indian by community of origin</i> )	Major Crimes Act Crimes: Murder, manslaughter, kidnapping, maiming, sexual abuse, incest, assault with a dangerous weapon, assault resulting in serious bodily injury, assault on a person less than 16 yrs. old, arson, burglary, robbery, theft under 18 USC § 661 (Authority: 18 USC § 1153)	FEDERAL
	All remaining crimes contained in tribal code: (Authority: tribal code or 25 CFR Pt. 11, if no tribal code)	TRIBAL
Non-Indian	Major Crimes Act Crimes: Murder, manslaughter, kidnapping, maiming, sexual abuse, incest, assault with a dangerous weapon, assault resulting in serious bodily injury, assault on a person less than 16 yrs. old, arson, burglary, robbery, theft under 18 USC § 661 (Authority: 18 USC § 1152)	FEDERAL
	All remaining crimes contained in tribal code: (Authority: tribal code or 25 CFR Pt. 11, if no tribal code)	TRIBAL
	All remaining crimes contained in state code (where there is no federal statute for the offense) under the Assimilative Crimes Act: (Authority: 18 USC § 1152 & 13)	FEDERAL
<b>2) VICTIMLESS CRIMES</b>	NO VICTIM'S PERSON OR PROPERTY INVOLVED IN CRIME ( <i>e.g. traffic offenses, disorderly conduct, prostitution, etc.</i> )	
	a. crimes in state code (where there is no federal statute for the offense) under Assimilative Crimes Act: (Authority: 18 USC § 1152 & 13)	FEDERAL
	b. crimes in tribal code (Authority: tribal code or 25 CFR Pt. 11, if no tribal code)	TRIBAL




<b>3) GENERAL FEDERAL CRIMES</b>	OTHER FEDERAL CRIMES OF GENERAL APPLICABILITY (e.g. drug offenses, bank robbery, felon in possession of firearm, mail fraud, child pornography, theft from tribal organization, failure to report child abuse, etc.) (Authority: individual federal statute)	FEDERAL
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### **Non-Indian Offender:**

<b>Who is the victim?</b>	<b>What was the crime?</b>	<b>Jurisdiction</b>
<b>1) VICTIM CRIMES</b>	AN OFFENSE AGAINST THE PERSON OR PROPERTY OF A VICTIM	
Indian (enrolled or recognized as Indian by community of origin)	Indian Country Crimes Act (Federal Enclaves Act) Crimes: murder, manslaughter, kidnapping, maiming, sexual abuse, incest, assault with a dangerous weapon, assault resulting in serious bodily injury, assault on a person less than 16 years old, arson, burglary, robbery, theft under 18 USC § 661 and other crimes which apply to the "special maritime and territorial jurisdiction of the United States under the U.S. Code." (Authority: 18 USC § 1152)	FEDERAL
	All remaining crimes contained in state code (where there is no federal statute for the offense) under the Assimilative Crimes Act: (Authority: 18 USC § 13)	FEDERAL
Non-Indian	All crimes contained in state code (Authority: U.S. vs. McBratney)	STATE
<b>2) VICTIMLESS CRIMES</b>	NO VICTIM'S PERSON OR PROPERTY INVOLVED IN CRIME (e.g. traffic offenses, disorderly conduct, prostitution, etc.)	STATE ONLY
<b>3) GENERAL FEDERAL CRIMES</b>	OTHER FEDERAL CRIMES OF GENERAL APPLICABILITY (e.g. drug offenses, bank robbery, felon in possession of firearm, mail fraud, child pornography, theft from tribal organization, failure to report child abuse, etc.) (Authority: individual federal statute)	FEDERAL

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## 678. THE GENERAL CRIMES ACT—18 U.S.C. § 1152

Under 18 U.S.C. § 1152 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." The "laws" thus extended are those applicable within the Special Maritime and Territorial Jurisdiction of the United States, as defined in 18 U.S.C. § 7, popularly known as "federal enclave laws." See *United States v. Markiewicz*, 978 F.2d 786 (2d Cir. 1991), *cert. denied, sub nom. Beglen v. United States*, 113 S. Ct. 1065 (1993). Among these statutes are: arson, 18 U.S.C. § 81; assault, 18 U.S.C. § 113; 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.* The Assimilative Crimes Act, 18 U.S.C. § 13, is also one of those extended to the Indian country by 18 U.S.C. § 1152, allowing the borrowing of state law when there is no applicable federal statute. *Williams v. United States*, 327 U.S. 711 (1946); *Duro v. Reina*, 495 U.S. 676, 680 n. 1 (1990).

There are four exceptions to the coverage of § 1152, three of them legislative and the fourth judicially created. The second paragraph of 18 U.S.C. § 1152 specifies the three legislative exceptions:

This section shall not extend [1] to offenses committed by one Indian against the person or property of another Indian, nor [2] to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or [3] to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.

It should be emphasized that these exceptions apply only to those laws extended to Indian country by section 1152--the so-called "federal enclave laws." The exceptions do not exempt Indians from the general criminal laws of the United States that apply to acts that are federal crimes regardless of where committed, such as bank robbery, counterfeiting, sale of drugs, and assault on a federal officer. See *United States v. Young*, 936 F.2d 1050 (9th Cir. 1991)(assault on federal officer and firearms); *United States v. Blue*, 722 F.2d 383 (8th Cir. 1983)(narcotics); *United States v. Smith*, 562 F.2d 453 (7th Cir. 1977), *cert. denied*, 434 U.S. 1072 (1978)(assault on federal officer). Despite the explicit holdings in three Circuits that jurisdiction exists over violation of statutes of general applicability, one court of appeals recently held that such statutes do not automatically apply to offenses in Indian country involving only Indians unless there is an independent federal interest to be protected. See *United States v. Markiewicz*, 978 F.2d 786 (2d Cir. 1992), *cert. denied, sub nom., Beglen v. United States*, 113 S. Ct. 1065 (1993). The court went on to hold that each of the statutes charged in the case, 18 U.S.C. § 1163 (theft of tribal funds), 18 U.S.C. § 844(i) (arson of property in interstate commerce), 18 U.S.C. § 1513 (witness tampering), 18 U.S.C. § 402 (contempt), 18 U.S.C. § 1621 (perjury), and 18 U.S.C. § 2101 (riot), reflected such an independent interest or that its violation had not occurred in Indian country. *Markiewicz* was explicitly rejected in *United States v. Begay*, 42 F.3d 486 (9th Cir. 1994), which held that 18 U.S.C. § 371 (conspiracy) applied in Indian country even though it is not a crime enumerated in 18 U.S.C. § 1153. See also *United States v. Yannott*, 42 F.3d 999 (6th Cir. 1994)(18 U.S.C. § 922).

The exceptions stated in the second paragraph of § 1152 also do not apply to violations of § 1153, *United States v. Wheeler*, 435 U.S. 313 (1978), or the liquor law provisions, 18 U.S.C. §§ 1154, 1161. *United States v. Cowboy*, 694 F.2d 1234 (10th Cir. 1982).

The fourth exception to the broad coverage of § 1152 was created by the Supreme Court. Notwithstanding its literal terms, the Supreme Court significantly narrowed the reach of 18 U.S.C. § 1152 in *United States v. McBratney*, 104 U.S.



621 (1882), 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. *Accord, Draper v. United States*, 164 U.S. 240 (1896). Subsequent decisions have acknowledged the rule. *See, e.g., United States v. Wheeler*, 435 U.S. 313, 325 n. 21 (1978); *United States v. Antelope*, 430 U.S. 641, 643 n. 2 (1977); *Williams v. United States*, 327 U.S. 711, 714 (1946).


[cited in [Criminal Resource Manual 685](#); [Criminal Resource Manual 688](#); [JM 9-20.100](#)]

[◀ 677. Indian Country Defined](#)

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[679. The Major Crimes Act—18 U.S.C. § 1153 ▶](#)

*Updated January 22, 2020*

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## 667. ASSIMILATIVE CRIMES ACT, 18 U.S.C. § 13

The Assimilative Crimes Act, 18 U.S.C. § 13, makes state law applicable to conduct occurring on lands reserved or acquired by the Federal government as provided in 18 U.S.C. § 7(3), when the act or omission is not made punishable by an enactment of Congress.

Prosecutions instituted under this statute are not to enforce the laws of the state, but to enforce Federal law, the details of which, instead of being recited, are adopted by reference. In addition to minor violations, the statute has been invoked to cover a number of serious criminal offenses defined by state law such as burglary and embezzlement. However, the Assimilative Crimes Act cannot be used to override other Federal policies as expressed by acts of Congress or by valid administrative orders.

The prospective incorporation of state law was upheld in *United States v. Sharpnack*, 355 U.S. 286 (1957). State law is assimilated only when no "enactment of Congress" covers the conduct. The application of this rule is not always easy. In *Williams v. United States*, 327 U.S. 711, 717 (1946), prosecution of a sex offense under a state statute with a higher age of consent was held impermissible, but a conviction for a shooting with intent to kill as defined by state law was upheld, despite the similarity of provisions of 18 U.S.C. § 113. *Fields v. United States*, 438 F.2d 205 (2d Cir.), *cert. denied*, 403 U.S. 907 (1971); *but see Hockenberry v. United States*, 422 F.2d 171 (9th Cir. 1970). *See also United States v. Bowers*, 660 F.2d 527 (5th Cir. 1981) (child abuse); *United States v. Smith*, 574 F.2d 988 (9th Cir. 1978) (sodomy). There seems to be a definite trend to construe 18 U.S.C. § 13 liberally to provide complete coverage of criminal conduct within an enclave, even where the offense is generally covered by Federal law. *See, e.g., United States v. Johnson*, 967 F.2d 1431 (10th Cir. 1992) (aggravated assault); *United States v. Griffith*, 864 F.2d 421 (6th Cir. 1988) (reckless assault); *United States v. Kaufman*, 862 F.2d 236 (9th Cir. 1988) (assault); *Fesler v. United States*, 781 F.2d 384 (5th Cir.), *cert. denied*, 476 U.S. 1118 (1986) (child abuse).

The Uniform Code of Military Justice (U.C.M.J.), 10 U.S.C. § 801 *et seq.*, because of its unlimited applicability, is not considered an "enactment of Congress" within the meaning of 18 U.S.C. § 13. *See United States v. Walker*, 552 F.2d 566 (4th Cir. 1977), *cert. denied*, 434 U.S. 848 (1977) (drunk driving). *See also Franklin v. United States*, 216 U.S. 559 (1910). Military personnel committing acts on an enclave subject to Federal jurisdiction which are not made an offense by Federal statutes other than the U.C.M.J. may therefore be prosecuted in district court for violations of state law assimilated by 18 U.S.C. § 13, even though they are also subject to court martial. However, dual prosecution, it should be noted, is constitutionally precluded by the Double Jeopardy Clause. *See Grafton v. United States*, 206 U.S. 333 (1907).

Section 13 of Title 18 does not assimilate penal provisions of state regulatory schemes. *See United States v. Marcyes*, 557 F.2d 1361 (9th Cir. 1977). Nor does it incorporate state administrative penalties, such as suspension of drivers licenses. *See United States v. Rowe*, 599 F.2d 1319 (4th Cir. 1979); *United States v. Best*, 573 F.2d 1095 (9th Cir. 1978). Section 13(b) allows suspension of licenses within the enclave.

Federal agency regulations, violations of which are made criminal by statute, have been held to preclude assimilation of state law. *See United States v. Adams*, 502 F. Supp. 21 (S.D.Fla. 1980) (carrying concealed weapon in federal courthouse); *United States v. Woods*, 450 F. Supp. 1335 (D.Md. 1978) (drunken driving on parkway). In *Adams*, 502 F. Supp. 21, the defendant was charged with carrying a concealed weapon in a United States Courthouse in violation of 18 U.S.C. § 13 and the pertinent Florida felony firearms statute. In dismissing the indictment, the Adams court



concluded that a General Services Administration (GSA) petty offense weapons regulation (41 C.F.R. § 101-20.313), explicitly provided for by statute, 40 U.S.C. § 318a, amounted to an enactment of Congress within the meaning of 18 U.S.C. § 13 and, therefore, the defendant could not be prosecuted by the assimilation of state law which prohibited the same precise act.

It is important to note, however, that a critical provision of the GSA regulations apparently was not considered in *Adams*. See 41 C.F.R. § 101-20.315 which provides in part:

Nothing in these rules and regulations shall be construed to abrogate any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated.

This non-abrogation provision arguably would permit the assimilation of appropriate state firearms laws or other state statutes notwithstanding the existence of the GSA regulations. It appears that this language has never been considered in any reported case. Moreover, no discussion of the meaning of this language appears in the pertinent parts of the Federal Register, 43 Fed.Reg. 29001, July 5, 1978; 41 Fed.Reg. 13378, March 30, 1976. We believe it would be reasonable to interpret this non-abrogation provision as permitting the government, in its discretion, to proceed under 18 U.S.C. § 13 and appropriate state firearms laws, rather than under the GSA weapons regulation.

[cited in JM 9-20.100; JM 9-20.115]

◀ 666. Proof of Territorial Jurisdiction

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668. Limited Criminal Jurisdiction Over Property Held  
Proprietorially ▶

*Updated January 22, 2020*