

Commission for the Protection of Cherokee Nation Sovereignty

First Periodic Report to Principal Chief Hoskin

Executive summary:

Expansion of the Cherokee Nation criminal justice system as a result of McGirt, is not limited to the financial and staffing needs of the Office of the Attorney General, the Marshal Service, and the Court. The fact is that roughly every single branch of government, department, and organization within Cherokee Nation is affected by the McGirt decision in some fashion, and the majority of these effects will have a budgetary component.

During the initial stage of the commission's work, it has concentrated on the areas that will be affected first. For the most part those include the Office of the Court, the Marshal Service, the Human Services Department, and the Office of the Attorney General.

This executive summary and the attached initial reports were prepared in contemplating a Cherokee Nation criminal justice system that would completely supplant the current state system. Please note that these are preliminary reports and subject to modification upon receipt of additional information.

The Court

The attached report contemplates an expanded Supreme Court mainly associated with an increased case load, increased judicial time, increased judicial salaries, and a legal research clerk. It further contemplates expanding the district court system from one singular physical district court to up to ten separate districts, requiring physical space and staff. A full expansion would increase the court budget from \$1,250,000 to \$16-20,000,000. This projected amount does not include the cost of contracts for rehabilitation of inmates instead of incarceration, or an estimate of costs for criminal delinquent child cases. The caseload increase for our court system would come from cases that historically the state's municipal courts, administrative courts, district courts, and the court of criminal appeals would have heard. The projected increase for a six month budget amount for the Court is an additional \$10 million.

The Attorney General

As evident in the Cherokee Nation Attorney General's report, a substantial amount of staffing and resources must be immediately budgeted and allocated for the OAG to investigate and prosecute the thousands of cases that office is about to inherit as well as new criminal cases that will arrive daily. The Attorney General will assume all of the cases currently within the state system within the 14 counties. This means every criminal case involving a native defendant that is currently being completed by the state attorney general, every district attorney within the 14 counties, and every municipality that has a prosecuting attorney for their municipal court, which is well over 100 attorneys involved within the Cherokee Nation's reservation. The projected increase for a six month budget amount for the Attorney General is an additional \$3.5 million.

The Marshal Service

The Marshal's Report projects costs for a full replacement of all other law enforcement located within the reservation with Cherokee Nation Marshals. The BIA has estimated that it would cost the Cherokee Nation \$200 million per year. Further, the Marshall has put created a chart to ramp up the CNMS with 12 marshals which increases the operating budget from \$2,419,877 to 1,188,662 per year. No matter what type of system, number of new officers, and/or cross deputization agreements we have in place, there must be a large budget increase to pay for detention costs. The current detention budget is \$49,999, which is approximately enough to incarcerate 3 inmates for 1 year. Through commission discussions and discussions with other law-enforcement and other governments the detention budget for Cherokee Nation should be conservatively estimated to require \$30 million per year. One concept that has been considered is the possibility of building a tribally operated prison, which would require a massive capital expenditure, years to complete the construction, and inspections process. The staffing of a prison and the attendant liability associated with operations, are dollar figures that are astronomical but are being analyzed. The projected increase for a six month budget amount for the Marshal Service is an additional \$16.25 million.

The Human Services Department

The department's report is forth coming. The other three reports are closely related to the Human Services Department. Such as the Court report discusses a criminal delinquent child program and what the cost would be for detention. The Human Services Department is the most likely department to house a new delinquent program, because it would be a sister program to the ICW/CPS department. Other areas closely related to human services will be the reentry program that will need to be revamped with consequent budgetary increases.

ICW in general is also associated with the court budget. The court has the line item for court ordered juvenile services such as mental health assessments for children and parents involved in deprived cases. Although we do have a new agreement with the state concerning ICWA cases, ICW will feel the effects of McGirt in increased case load. As the Court expands to multiple district courthouses it is expected that cases will be brought before the CN court and not the state courts. Historically many ICW cases have remained within the state system because the CN courthouse and services were too far to require parents and children to travel on a regular basis from the outlying counties. There are probably a dozen areas within the human services department that will need to be reorganized with additional staff due to the criminal justice system expansion.

Grant money can be used to offset some of these costs, but there are hundreds of tribes requesting that same money, not to mention all five tribes and the US Attorney offices within Oklahoma are all clamoring for the same funds on an emergency basis whether it's from DOJ, BIA, or elsewhere. Potential grant money is not a panacea and will not come close to solving the Nation's budgetary crisis as a result of McGirt.

It is highly likely that the Oklahoma Court of Criminal Appeals will issue an opinion concerning a Cherokee Nation specific case within the next 90 days. Therefore it is the recommendation that the Court, the Attorney General, the Marshal, and the Human Services Department submit budget modifications to the Tribal Council for consideration.

It is recommended that the Principal Chief engage with members of Congress who may be contemplating legislation after the Supreme Court's decision in McGirt. Federal legislation could authorize, but not require, Oklahoma and the Five Tribes to enter into compacts regarding criminal jurisdiction. Such an arrangement could allow some types crimes – such as those that involve non-Indian offenders – to stay in state courts and lessen the Cherokee Nation's reliance on federal law enforcement. In addition, Chief Hoskin could discuss with the Oklahoma delegation how new federal funding could offset the added expenses the Nation will bear for law enforcement throughout the reservation boundaries.

The Commission for the Protection of Cherokee Nation Sovereignty voted on September 29, 2020 to deliver this first periodic report of the Commission's findings and recommendations to Cherokee Nation Principal Chief Hoskin.