



Criminal Issues After the Sizemore Decision FAQ

- **What is the Sizemore decision?** It is a ruling from Oklahoma's highest criminal appeals court, the Oklahoma Court of Criminal Appeals (OCCA) that the Choctaw Nation's 1866 reservation boundaries were never changed, therefore land within those boundaries constitutes a reservation and is Indian Country. Therefore, Indians who commit crimes on the reservation must be tried in either federal court or Choctaw Nation court and not state court. Non-Indians who commit certain crimes against Indians on the reservation may also be tried in federal court or in Choctaw Nation court.
- **Will defendants face new charges if their cases are dismissed in state court?** The Choctaw Nation prosecutor's office has been working closely with the U.S. Attorney's Office for the Eastern District of Oklahoma for months to determine which cases affected by the Sizemore decision will be filed in federal court and which cases will be filed in Choctaw Nation District Court. New charges will be filed in federal or Choctaw Nation District Court immediately. Once new charges are filed, the criminal process will begin in either federal court in Muskogee, Oklahoma, or Choctaw Nation District Court in Durant, Oklahoma, similar to the process in the state court (bond, initial appearance, arraignment, trial, etc.)
- **What happens to existing state criminal charges?** If the state lacks the jurisdiction to charge a defendant after the Sizemore decision, the state district court where the charges are filed should dismiss the charges. The District Attorney may withdraw the charges or it may be necessary for a defendant's attorney or the defendant to file a motion to dismiss the charges for lack of jurisdiction.
- **Will the Nation provide a criminal defendant in state court with an attorney?** The Choctaw Nation does not currently provide or pay for

legal representation for Choctaw members facing criminal charges in state court or seeking to appeal their state criminal conviction. Other resources may be available such as the Oklahoma Indigent Defense System or the defendant may represent themselves (which is known as acting pro se).

- **Will currently incarcerated defendants whose cases are affected by the Sizemore decision remain in jail/prison?** Yes, if a person has been convicted of a crime, there is clear law that establishes the process by which defendants can challenge their conviction. The Sizemore decision will give some defendants a new ground to challenge their convictions, but they will still have to go through the established legal process to obtain post-conviction relief and be released from prison. If a person has not yet been convicted and the Choctaw Nation or the federal government files new charges against them, they may still be incarcerated if they cannot bond out.
- **Is a defendant required to obtain their own attorney in Choctaw Nation or federal court?** If they are able, an individual charged with a crime in Choctaw Nation District Court or federal court should retain their own attorney who is licensed to practice in either federal or Choctaw Nation courts to represent them in their new criminal case.
- **Will a defendant who cannot afford an attorney be provided one in federal or Choctaw Nation District Court?** The Choctaw Nation District Court may provide an attorney for a criminal defendant who is unable to pay for one. During an initial appearance the judge will inquire as to a defendant's ability to obtain their own legal counsel or their need to be assigned counsel by the court. This same process will also occur in federal court.