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Missing or Murdered Indigenous Persons: Law Enforcement & Prevention

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Missing or Murdered Indigenous Persons: Law Enforcement & Prevention

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Introduction

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Executive Director

Presidential Task Force on Missing and

Murdered American Indians and Alaska Natives

Office of Justice Programs

U.S. Department of Justice

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Missing & Murdered Indigenous Persons Coordinator

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For years, tribal citizens and grass roots organizations sought to bring attention to the issues surrounding missing or murdered American Indians and Alaska Natives. In tribal consultations and listening sessions, tribal leaders, advocates, law enforcement, community members, and others raised concerns about the disappearance or murder of American Indian and Alaska Native people across the United States. Tribes began taking concerted action to address these issues in their communities. Some states also recognized these concerns and took action through legislation, state-level task forces, and tribally based field hearings. Individual Federal agencies also responded, with the Department of Justice (Department), Department of the Interior (DOI), and Department of Health and Human Services (HHS) all proposing solutions. In 2019, the federal response began coordination in earnest.

In November 2019, the U.S. Attorney General announced the Department's Missing and Murdered Indigenous Persons (MMIP) Initiative noting, "American Indian and Alaska Native people suffer from unacceptable and disproportionately high levels of violence, which can have lasting impacts on families and communities." The Department's MMIP Initiative is a coordinated effort by U.S. Attorneys, the Federal Bureau of investigation (FBI), the Office of Tribal Justice (OTJ), and the Office of Justice Programs (OJP). Its objectives focus on placing MMIP coordinators in select U.S. Attorneys' Offices (USAOs) to work with federal, tribal, state, and local agencies to develop common protocols and procedures for responding to reports of missing or murdered indigenous people; deploying the FBI's most advanced response capabilities to support MMIP related investigations; and providing for the analysis of

federally supported databases and data collection practices to identify opportunities to improve missing persons data.

For similar reasons, the President issued Executive Order 13898 on November 26, 2019, establishing the Presidential Task Force on Missing and Murdered American Indians and Alaska Natives, also known as Operation Lady Justice (OLJ). OLJ is co-chaired by the Department and DOI with participation by HHS and has complementary goals to the Department's MMIP Initiative. These goals include developing guidelines applicable to new and unsolved cases of missing or murdered persons in American Indian and Alaska Native communities, improving the way law enforcement investigators and prosecutors respond to the high volume of such cases, collecting and sharing data among various jurisdictions and law enforcement agencies, and establishing Bureau of Indian Affairs Office of Justice Services (BIA-OJS) led cold case teams to address unsolved homicides and unresolved, long-term missing person cases involving American Indians and Alaskan Natives.

Since the launch of the Department's MMIP Initiative and OLJ, concerted efforts have advanced the development of the Tribal Community Response Plans (TCRP) containing guidelines for responding to missing indigenous person cases. The guidelines were developed as a result of nationwide listening sessions and tribal consultations that provided pertinent insight into the nature and scope of the MMIP problem. The referenced guidelines address law enforcement response, victim support services, involvement of key community stakeholders and community-based organizations, and strategies for media and public outreach and communications.

In October 2020, two bills addressing MMIP matters and violent crime impacting tribal communities were signed by the President. The Not Invisible Act provides for the creation of a joint commission on violent crime on Indian lands and against American Indians and Alaska Natives. Savanna's Act, named after Savanna Greywind, a 22-year-old member of the Spirit Lake Tribe who was tragically murdered in North Dakota in 2017, reinforces the steps to improve MMIP data relevance and access and to create guidelines to respond to MMIP cases.

The issue of MMIP is a priority for the Department. Accordingly, two special editions of the DOJ Journal are dedicated to the issues surrounding missing or murdered American Indians and Alaska Natives. Both editions compile articles from tribal, local, state,

federal, and private sector authors. The January 2021 edition is focused on law enforcement and prevention related issues. And, the March 2021 edition will be focused on topics related to law, prosecution, advocacy, and health care related issues. It is our hope that these articles serve as a basis for continuing the conversation and advancing this work forward.

The best solutions to tribal issues come from tribes, and it is our responsibility to listen. Over the last year, listening has made it clear that a coordinated response that involves prevention, intervention, and law enforcement efforts is critical to both understanding these issues and providing the resources that tribes need to solve them at a tribal level.

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Help for Missing American Indian and Alaska Native Children

John F. Clark

President and CEO

The National Center for Missing & Exploited Children

A tribal court was so concerned about the welfare of four children, ages 5, 6, 11, and 14, that it removed them from their home and placed them with a family outside the reservation for their protection. Their mother was ordered to have absolutely no contact with them. It wasn't long before an AMBER Alert was issued in Wyoming, underscoring why the tribal court took such drastic action: All four children were missing and in imminent danger.

The AMBER Alert—broadcast on highway signs, cellphones, radios, and social media—galvanized people all over the state who wanted to help. In unison, they looked for the mother's 2019 gray Dodge Ram pickup truck and began calling 911 with tips. One came from a glass shop where the mother stopped to have a window repaired, offering guns in exchange for the work. A homeless man saw the mother with her children switching vehicles with someone she appeared to know at a truck stop.

Using the cellphone number the mother left at the Wyoming glass shop, law enforcement tracked her movements into Colorado, where a second AMBER Alert was issued with the new vehicle description. That vehicle was then spotted at a motel, where a review of surveillance video led to the safe recovery of the children in their room. The mother had fled, but she was later arrested on felony charges.

"This is a success story that could have gone really bad, really quick," Chris McGuire, Wyoming's AMBER Alert coordinator, said of what marked AMBER's 1,000th successful recovery.¹

The case was distinctive for another reason: for being reported. Too often, missing Native American children are not reported. A recent 10-year analysis by the National Center for Missing & Exploited Children (NCMEC) showed that NCMEC received 1,909 reports of missing Native American children, nearly all of whom were living off

¹ Interview with Chris McGuire, Coordinator, Wyoming AMBER Alert (July 2020).

reservations.² Of those missing during that time period, 162 children (8% of the total) were reported missing from tribal territory.³

Every year, more than 400,000 cases of missing Indian and non-Indian children are reported to the FBI and entered in its National Crime Information Center (NCIC).⁴ Most children are quickly recovered. NCMEC helps law enforcement with about 30,000 unresolved cases every year. In this Indian country case, NCMEC assisted with the AMBER Alerts and would have tapped into its vast network of resources if the children had not been found quickly.

“The challenge of getting more reports of missing children from—and more resources in—tribal communities may be rooted in generational trauma, jurisdictional complexities, and a fear of state encroachment on tribal sovereign territories,” said Jim Walters, administrator of the AMBER Alert Training and Technical Assistance Program for the Department of Justice (Department).

“It’s a real complex web of history and limited resources and lack of infrastructure,” said Walters.

Pamela Foster, a Native American from the Navajo Nation tribe and a single parent, was living with her two children, Ashlynnne and Ashlynnne’s brother, in Phoenix while going to medical school. By the time she graduated, her funds were depleted, so her children temporarily stayed with their father on the Navajo reservation in Shiprock, New Mexico. During their stay, on May 2, 2016, after stepping off their school bus, Ashlynnne, 11, and her brother, 9, were lured into a red van by a man offering them a ride home. After driving deep into the desert, her brother got out of the van and took off, but the man sexually assaulted Ashlynnne and beat her to death with a tire iron. Several hours later, her brother was spotted by passing motorists, wandering alone in the desert trying to find his way home for help, still an hour away by car.

Their frantic parents reported the children missing to tribal police in the early evening. When their son was returned safely by the passersby, police learned what happened.

² NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN, NATIVE AMERICAN CHILDREN REPORTED MISSING TO NCMEC (2019).

³ *Id.*

⁴ See 2019 NCIC Missing Person and Unidentified Person Statistics, FED. BUREAU OF INVESTIGATION (Feb. 10, 2020) <https://www.fbi.gov/file-repository/2019-ncic-missing-person-and-unidentified-person-statistics.pdf/view>.

“We don’t have roadway signs, no digital signs, no text alerts,” Foster said in an interview at NCMEC.⁵ “The infrastructure on the Navajo Reservation isn’t there for an AMBER Alert system. So when my child went missing, I had no way to find her.”⁶



Photo of Ashlynnne Mike



Photo of Pamela Foster

After Ashlynnne’s murder, Foster vowed to get an AMBER Alert for Indian country and took her fight to Capitol Hill, resulting in passage of the “Ashlynnne Mike AMBER Alert in Indian Country Act” in 2018.⁷

Three years earlier, the Department launched the Tribal Access Program for National Crime Information (TAP)⁸ to provide tribes access to national crime information systems, including NCIC, and to help tribes better protect their nation’s citizens with the exchange of critical data. Walters called TAP a “game changer” that helps pave the way for AMBER Alerts.

So far, about 100 of the 574 federally recognized tribes are working toward connecting to the AMBER Alert plans in their 34 states, said

⁵ Interview with Angeline Hartmann, Media Director, *National Center for Missing & Exploited Children* (Jan. 2018).

⁶ *Id.*

⁷ Ashlynnne Mike AMBER Alert in Indian Country Act, Pub. L. No. 115-166, 132 Stat. 1274 (2018).

⁸ *Tribal Access Program (TAP)*, U.S. DEPT OF JUST., <https://www.justice.gov/tribal/tribal-access-program-tap>.

Walters, who conducts trainings for the National Criminal Justice Training Center of Fox Valley Technical College.⁹

“Since the passage of the Ashlynnne Mike Act, I’ve seen more tribes and states collaborate, working to bring AMBER to the reservations, than I have in 30 years working in Indian country,” said Walters, whose program partners with NCMEC. “I’m optimistic but there’s so much work to be done.”¹⁰

I. A snapshot of missing Native American children reported to NCMEC

When people think of missing children, what often comes to mind are the tragic, high-profile cases of children abducted by strangers and held captive or killed: Adam Walsh, abducted and murdered; Elizabeth Smart, abducted and held for nine months; Jaycee Dugard, abducted and held for 18 years; and Ashlynnne Mike.¹¹

These cases strike fear in the hearts of communities, but fortunately, they are extremely rare. When a child is abducted, it is far more common for the abductor to be someone they know, like a parent or relative, as in the Wyoming case.¹² People often think, “Well, at least the child is safe with a family member.” Tragically, that’s not often the case, and family abductions can be among the most violent and deadly cases, as children are caught in the crossfire of domestic violence.¹³

But the vast majority of missing children are endangered runaways, many of whom are missing from foster care or group homes and represent some of the most vulnerable children in this country.¹⁴

⁹ Interview with Patricia Davis, Senior Writer, Nat’l Ctr. for Missing & Exploited Child. (Aug. 2020).

¹⁰ *Id.*

¹¹ NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN, LONG-TERM MISSING CHILD GUIDE FOR LAW ENFORCEMENT: STRATEGIES FOR FINDING LONG-TERM MISSING CHILDREN 16–19 (2016).

¹² NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN, MISSING AND ABDUCTED CHILDREN: A LAW-ENFORCEMENT GUIDE TO CASE INVESTIGATION AND PROGRAM MANAGEMENT 53 (4th ed. 2011).

¹³ NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN, FAMILY ABDUCTIONS: WHAT WE’VE LEARNED AN IN-DEPTH ANALYSIS BY THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN 3, 7 (2018).

¹⁴ NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN, CHILDREN MISSING FROM CARE: 2019 UPDATE (2020).

Many of these traumatized children strike out on their own because they thought running away was their best option. Many were abandoned, orphaned, abused, or neglected and are at potential risk of being taken in by traffickers and sold for sex.¹⁵

While NCMEC's analysis of missing Native American children yielded a relatively small sample, it offers a rare glimpse into who these children are, said Alan Nanavaty, executive director of NCMEC's Missing Children Division.

"Reporting of missing Native American children is vital in understanding the risks and challenges they face," said Nanavaty. "This information allows NCMEC to target programs and resources to the specific needs of these communities."

The analysis—from January 1, 2009, to December 31, 2018—examined the 1,909 Native American children reported missing to NCMEC over that decade. In many ways, the cases mirrored the national trend of all missing children. Of the total number, 85% were endangered runaways, and 12% were family abductions. The breakdown of girls and boys was 59% and 41% respectively. Almost two thirds were between the ages of 15 and 17, and nearly a fourth were ages 10 to 14. The mean age was 14.¹⁶

A large majority, nearly 70%, of the Native American children reported to NCMEC were missing from foster care and group homes. Historically, children of all demographics who have been missing from state care have not been routinely reported missing.¹⁷ To correct the problem, legislation was signed into law in 2014, which is known as the "Preventing Sex Trafficking and Strengthening Families Act."¹⁸

Because these children are especially vulnerable to sex trafficking and other kinds of sexual exploitation, the new law requires two things: (1) that all children missing from care be reported to law enforcement within 24 hours so they can be entered into NCIC; and (2) they must also be reported missing to NCMEC. The law has dramatically increased the overall number of children reported missing from care. At NCMEC alone, its caseload has more than

¹⁵ *Id.*

¹⁶ NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, NATIVE AMERICAN CHILDREN REPORTED MISSING TO NCMEC (2020).

¹⁷ *Id.*

¹⁸ Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, 128 Stat. 1919 (2014).

doubled.¹⁹ NCMEC also helps law enforcement with critically missing young adults up to the age of 21.

In one case, a 15-year-old Native American boy was reported missing to NCMEC after he ran away with a male companion, his pastor. The man pretended the child was his son and was suspected of trafficking him for sex. NCMEC sent missing posters of the pair to specific areas where law enforcement suspected they might be. The child was recovered when employees from a car dealership recognized him from the posters. The mother had also put the posters on her Facebook page, and other children came forward and claimed they, too, were victimized by the same man.

In another case, a 15-year-old Native American girl with a distinguishing tattoo ran away from her group home and was suspected of being victimized by a gang. She was recovered in Oregon when someone recognized her from her missing poster at a Walmart. She was provided a range of services after her recovery.

In examining the narratives of missing Native American children, abuse is a common theme as reported by parents, legal guardians, social workers, or law enforcement. The analysis showed that 11% experienced some type of sexual abuse, including by family members or acquaintances. Most of those children were trafficked for sex.

The Presidential Task Force on Missing and Murdered American Indians, also known as Operation Lady Justice (OLJ), is tasked with strengthening law enforcement protocols and working with tribes to improve investigations, information sharing, and a more seamless response to missing person and murder investigations of American Indians and Alaska Natives. The plans also call for the deployment of the FBI's most advanced response capabilities when needed and improved data collection and analysis to share with its partners.

"Relationships are key," said Marcia Good, OLJ task force executive director, who wants to make tribes aware of NCMEC's free resources. "We consider NCMEC to be incredible partners."

Estimates of how many Native Americans live in tribal communities exist, however Walters believes the population is undercounted. Walters, who has spent much of his career working with Native Americans, says more live off reservations than on them and are sometimes referred to as urban Indians.

¹⁹ *Id.*

In NCMEC's analysis, Native American children missing from tribal territory tended to be younger, with a mean age of 11, compared to 14. Of the 13 missing children who were recovered deceased, nine were from tribal territories.²⁰ The top five tribes and reservations with missing incidents reported to NCMEC are the Navajo Nation, the Fort Peck Reservation, the Tulalip Tribes of Washington, the Pine Ridge Reservation, and the Blackfeet Reservation.

Like all endangered runaways in this country, a majority of Native American children have been missing at least once before and have a history of drug or alcohol abuse. It is also common to have a reported mental health condition, as well as self-harm and suicidal tendencies.²¹

A 15-year-old Native American girl in South Dakota was reported missing to NCMEC after becoming upset with her boyfriend and running from home. All-terrain vehicles and helicopters were used to search for her. Several months later, remains were found hanging from a tree, and NCMEC facilitated the DNA testing, which confirmed it was the child. Her death was ruled a suicide.

Ashlynnne Mike's mother hopes that Indian country will embrace AMBER Alerts to find and save more missing children and use the free resources and decades of experience NCMEC has to offer.

"I made a promise to [Ashlynnne] that I would do my part to fix the loophole that exists in the system," said Foster, who shared her painful story at the symposium about AMBER Alerts in Indian country in 2019. "I would fight for an AMBER Alert for Indian country. Although Ashlynnne is no longer physically here with us, she is still working for us. Long after I am gone, her work will still be in action. It is through the love we have for our little girl that we have moved mountains, and I am thankful her legacy will be remembered."

²⁰ NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, NATIVE AMERICAN CHILDREN REPORTED MISSING TO NCMEC 3 (2020).

²¹ *Id.* at 8.

II. How NCMEC can help in American Indian and Alaska Native communities

On July 27, 1981, a six-year-old boy named Adam Walsh went shopping with his mom at a mall in Hollywood, Florida. Revé Walsh told her son she was going to look at lamps one aisle over. She never saw her son again. Adam was abducted by a stranger.

Adam's distraught parents, John and Revé Walsh, had little help searching for their son. At that time, law enforcement had no coordinated way to search for missing children outside their jurisdiction. Stolen cars could be entered into the FBI's database, NCIC—but not stolen children. There were no AMBER Alerts. There was no national missing children hotline. No emotional support for distraught families. Sixteen days after he vanished, Adam was found murdered 100 miles from his home in a case that shook the nation and helped launch a missing children's movement.

Adam's parents co-founded NCMEC and have devoted their lives to helping families of missing and sexually exploited children and seeking justice. NCMEC, the leading child protection agency in the country, is a private, non-profit organization that partners with the Office of Juvenile Justice Delinquency and Prevention (OJJDP), other federal law-enforcement agencies, non-profit organizations, and corporate entities. It serves as the national clearinghouse on missing and exploited children issues. NCMEC's mission is to help find missing children, reduce child sexual exploitation, and prevent child victimization.

In the more than 37 years since opening its doors in 1984, NCMEC's 24/7 national toll-free hotline has received more than five million calls, as many as 400 a day. It has circulated billions of photos of missing children; assisted law enforcement in the recovery of more than 341,000 missing children; and facilitated training for more than 377,000 law enforcement, criminal justice, and healthcare professionals. Since 1998, its CyberTipline has received more than 82 million reports of suspected child sexual abuse.

The Alexandria, Virginia, based organization receives federal funds from Congress for work on 15 programs related to missing and exploited children. NCMEC's work is bolstered by strong



Photo of Adam Walsh

private and corporate partnerships, which have helped develop new technology; put search dogs and equipment on the ground; issued missing alerts on Ring, billboards, and gas pumps; and facilitated programs such as the ubiquitous “Have you seen me?” flyers that appear in mailboxes across the country.

“There’s so much NCMEC can do to help Native American families when their children go missing,” said John E. Bischoff III, vice president of the Missing Children Division. “NCMEC has unique searching capabilities for immediate and long-term assistance, all at no cost. We’re here to help.”

III. NCMEC resources

A. Call center

NCMEC’s Call Center is the point of entry for reporting missing and sexually exploited children. It operates 24/7, with the ability to take calls in 190 languages, and receives as many as 400 calls a day.



Photo of NCMEC Headquarters

Those calling 1-800-THE-LOST (1-800-843-5678) include parents, people reporting tips and sightings, law enforcement, schools seeking safety information, and social services agencies.

B. AMBER alerts

The Department has partnered with NCMEC to provide operational support of its AMBER Alert program. Law enforcement issues AMBER Alerts in the most serious child abduction cases, using the criteria of an AMBER Alert plan at the state, local, or tribal level. NCMEC re-broadcasts these alerts through cellphones, digital billboards, social media, internet service providers, truck stops, and a growing number of other outlets.

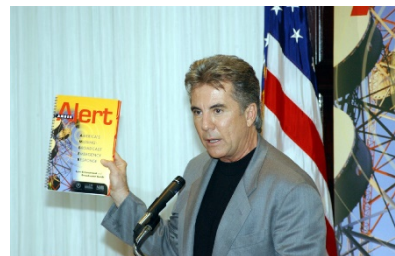


Photo of John Walsh

C. Team Adam

When a child is critically missing, NCMEC deploys Team Adam, a rapid-response team of retired law enforcement officers and other specialists. These consultants, who have experience with these types

of cases and live all over the United States, offer technical assistance to law enforcement and connect them with NCMEC's free resources. Team Adam also assists law enforcement with long-term missing children cases, providing expertise in case reviews, search assessments, and landfill assessments.

D. Photo distribution

Photos are the single most effective way to find missing children. NCMEC works closely with more than 270 photo partners to quickly disseminate photos and posters of missing children every day to millions of homes and businesses across the United States. NCMEC targets specific geographic areas where a child was reported missing or is believed to be at any given time.

E. Media assistance

The media can play a vital role in disseminating photos and information about missing children. NCMEC works with traditional media outlets and social media platforms to raise public awareness and to find missing children, targeting specific geographic areas and using help from partners to get the word out. It also assists law enforcement and families with media strategies and highlights anniversaries of long-term missing children.

F. Analytical support

NCMEC offers analytical and technological support to law enforcement for missing children cases, including children who've been missing a long time, children who were abducted and taken out of the country by a parent, young adults between the ages of 18–20, children who are trafficked for sex, or children who have special needs and are missing. This support includes public database searches, mapping, timelines, and open-source internet searches. NCMEC also provides detailed registered sex offender data in proximity to abductions.

G. Attempted abductions

NCMEC encourages law enforcement to report when someone attempts to abduct a child in their communities. This information is analyzed to gain insight and spot trends—how children got away, lures that were used, where and when they occurred—and to help link cases. NCMEC works proactively to prevent abductions by looking for similarities in these attempts.

H. Forensic services

Highly trained forensic artists age progress facial images of long-term missing children to show what they may look like as time passes and provide facial and skull reconstructions for unidentified deceased children. They provide fresh eyes and support for long-term missing and unidentified children cases, resource assistance, analytical support, and case strategies. In addition, they help collect biometrics (DNA, dental records, fingerprints) and facilitate advanced forensic testing through public and private partnerships, adding current-day technologies to these comprehensive strategies.

I. Children missing from care

State social workers are required by federal law to immediately report missing children in their care to both law enforcement and NCMEC. This legislation is geared toward children in foster care who are most at risk of child sex trafficking or other kinds of exploitation.

J. Special needs children

Nearly half of children with special needs, especially those on the autism spectrum, will wander from safe environments, often with dire consequences. Children who wander typically make a beeline to things they are attracted to—particularly bodies of water, street signs, firetrucks, or trains. Of the fatalities, the vast majority drown. These children present unique challenges for those searching for them, and traditional methods often don't work. Responding to this trend, NCMEC created special search protocols and training for first responders.

K. CyberTipline

The CyberTipline is the centralized reporting system in the United States for suspected child sexual exploitation online. Reports can be made online at [CyberTipline.org](https://www.cybertipline.org) or by calling 1-800-THE-LOST (1-800-843-5678). NCMEC takes reports of online enticement of children for sexual acts, child sexual molestation, child pornography, child sex tourism, child sex trafficking, unsolicited obscene materials sent to a child, misleading domain names, and misleading words or digital images on the internet. Analysts review these reports 24/7 to prioritize for immediate action those children who may be in imminent danger. All pertinent information is made available to the appropriate law enforcement in this country and worldwide. NCMEC

works closely with internet crimes against children task forces in each state, with federal law enforcement agencies, with Interpol, with Europol, and with other international agencies.

L. Child Victim Identification Program

Known as CVIP, this program serves as the central repository in the United States for information relating to children depicted in sexually abusive images and videos. NCMEC provides information about previously identified child victims and helps identify children who are unidentified so they can be rescued from abuse.

M. Child sex trafficking

NCMEC analysts assist families, law enforcement, social workers, prosecutors, and victim specialists regarding the identification, location, and recovery of child sex trafficking victims. They analyze CyberTipline reports of suspected child sex trafficking, search for links to missing child cases, and provide information to law enforcement working to locate and recover these children. NCMEC also provides “Hope Bags,” which contain clothes, shoes, toiletries, snacks, and other basic items a child victim might need in the moments or days after they are recovered.

N. Disaster response

Working with the Federal Emergency Management Agency, NCMEC operates the unaccompanied minors registry, a tool for reporting children displaced during disasters such as hurricanes, tornadoes, or terrorist attacks. It also operates the National Emergency Child Locator Center. When the president declares a national disaster, NCMEC can activate this call center to assist in locating children and deploy Team Adam to assist in re-unifying children and their families.

O. Family services

For families with a missing or sexually exploited child, NCMEC provides crisis intervention and local counseling referrals to appropriate professionals. Its Team HOPE program connects families with peers who’ve had similar experiences and can offer coping skills and compassion. When a missing or sexually exploited child is recovered, NCMEC helps families with the reunification process, including mental health services and travel assistance.

P. Child safety/prevention

NCMEC uses its decades of experience to create data-driven and innovative prevention education programs for children. NetSmartz[®], an online safety program, and KidSmartz[®], a personal safety program, help families and child-serving professionals talk to children about safety. NetSmartz offers age-appropriate videos, games, and presentations to equip children with digital literacy and online safety skills. KidSmartz empowers kids in grades K–5 and their families to practice safer behaviors with tips, printable activities, quizzes, articles, and videos focused on personal safety. To learn more about NCMEC’s child safety programs, visit www.MissingKids.org/Education.

Q. Legal services

NCMEC’s lawyers provide technical assistance to families, attorneys, law enforcement, and judicial officials regarding laws and issues related to missing children. They also provide information to qualifying families about legal assistance, restitution, and attorney referrals to assist with preventing and responding to missing children and child abductions and work with Congress to help create stronger laws to protect children from abduction and sexual exploitation.

R. Training/NCMEC Connect

NCMEC provides free training, technical assistance, and resources to law enforcement, healthcare professionals, prosecutors, and others who investigate crimes against children or help victims, specifically in cases of missing and sexually exploited children. NCMEC hosts traditional classroom training sessions and has created a new, robust, online training program called NCMEC Connect. To register for classes, go to NCMEC Connect at <https://connect.missingkids.org/?referral=DOJarticle>.

NCMEC hosts and co-sponsors the annual Northeast Tribal Conference on Child Victimization in partnership with the Seneca Nation of Indians, the Native American Children’s Alliance, the Northeast Regional Children’s Advocacy Center, the National Criminal Justice Training Center, the New York State Children’s Alliance, and the Native American Community Services. This two-day conference brings together attendees from across the United States and Canada representing sovereign Tribal Nations, non-governmental organizations, multi-disciplinary team representatives, and tribal and

non-tribal professionals that provide services to children and families in American Indian and Alaska Native communities.

For more information, please visit MissingKids.org or call 1-800-THE-LOST® (1-800-843-5678).

IV. After 37 years, a Native American family finally has answers

Peggy Elgo and her one-year-old son were living with her older sister on the San Carlos Apache Indian Reservation in Arizona when she vanished without a trace in 1983. With each passing year, her family’s hope of ever seeing her again, or even knowing what happened to her, began to gradually diminish—but it never died.

Now, 37 years later, one of NCMEC’s partners, Bode Technology, gave Peggy’s family some long-sought answers. Using her family’s DNA samples, Bode positively identified Peggy as a Jane Doe whose remains were found in a remote desert area six months after the 19-year-old disappeared and 100 miles from where she was last seen. Her family still doesn’t know who killed her or why, but they’re grateful to be able to bring their relative back home to her reservation for burial. She would be 57 this year.

“It was emotional for them,” said Phoenix Detective Stuart Somershoe, who delivered the news to Peggy’s sister and son. “Other relatives came forward and were thankful to at least have an answer to what happened to Peggy. DNA is what solved this case.”

At NCMEC, in the last 10 years alone, 238 cases of missing or unidentified deceased children were resolved using DNA, said Carol Schweitzer, supervisor of NCMEC’s Forensic Services Unit. Her team, which is currently working on nearly 700 cases of unidentified deceased children, is also helping law enforcement with 25 “living Doe” cases. Four have been identified.

“We’re using forensics to bring children home, and DNA is the number one way we’re doing that,” said Schweitzer. “We wouldn’t be able to do that if not for labs offering to help. Memories fade, witnesses die, families move away, but DNA doesn’t go away. It gives hope to any living relatives seeking answers.”

Phoenix Detective Somershoe said he was approached in 2018 by one of Peggy’s cousins



Photo of Peggy Elgo and her son

wondering if a Jane Doe, a Native American female found the same year Peggy disappeared, could be her. The detective reached out to NCMEC for help and obtained DNA samples from Peggy's sister and son, which the University of North Texas (UNT) compared with the Jane Doe remains. "Our Jane Doe wasn't Peggy," said Somershoe.

Undaunted, the detective opened a missing person's case, and UNT loaded the DNA samples into the Combined DNA Index System (CODIS) database. It didn't result in a match, but it did find possible similarities with another Jane Doe found in the desert in Pinal County, Arizona, about six months after Peggy went missing.

Somershoe was connected with Bode, which was willing to try advanced DNA testing. They cracked the case. The lab positively identified Peggy as the Pinal County Jane Doe in January 2020.

Harnessing the power of DNA will give answers to more searching families, and the new frontier is forensic genealogy.

About the Author

John F. Clark is the president and CEO of the National Center for Missing & Exploited Children (NCMEC), the nation's leading nonprofit organization on the forefront of child protection for more than 36 years.

Since 1984, NCMEC's mission has been to help find missing children, reduce child sexual exploitation, and prevent child victimization. The organization has helped law enforcement recover more than 311,000 missing kids, distributed billions of missing posters, operated a 24/7 missing children hotline, offered comfort to countless families, and trained and provided free resources to law enforcement and other professionals across the country.

Clark has served as NCMEC's leader for five years. He has an extensive law enforcement background, including 28 years with the United States Marshals Service (USMS). Before joining NCMEC, Clark was the director of security at Lockheed Martin Corp., the nation's largest defense contractor.

As CEO, Clark oversees a staff of nearly 360 employees and offices in four states, including Virginia, New York, Florida, and Texas. In December 2018, Clark ushered in a new era for NCMEC as the organization moved to its new headquarters in Alexandria, Virginia.

For 23 years, NCMEC has operated the CyberTipline, a centralized mechanism for reporting child sexual exploitation. During his tenure

at NCMEC, Clark has seen an exponential rise in these reports, with more than 35 million reports made to the CyberTipline in the last two years alone.

What makes NCMEC unique is its 30,000-foot view of the evolving threats to our nation's children. Clark is passionate about sharing this knowledge with families and communities to better protect children.

Throughout his career, Clark has been a leading child advocate. During his tenure at the USMS, Clark implemented and administered Title I of the Adam Walsh Child Safety and Protection Act, which directed the USMS to locate and apprehend fugitive sex offenders. He also oversaw the implementation and operation of the National Sex Offender Targeting Center.

Clark was appointed as the ninth director of the USMS in 2006 by then-President George W. Bush, a post he held for five years. Before joining the USMS, Clark worked for the U.S. Capitol Police and the U.S. Border Patrol. He earned a Bachelor of Science Degree from Syracuse University.

AMBER Alert in Indian Country

Jim Walters

Program Administrator

Amber Alert Training and Technical Assistance Program

Melissa Blasing

Program Manager

AMBER Alert Training and Technical Assistance Program

On May 2, 2016, Pamela Foster’s world “shattered in a million pieces.”¹ That was the day a predator took the promising life of her 11-year-old daughter, Ashlynn Mike.

Ashlynn’s abduction, rape, and murder on the Navajo reservation in northwest New Mexico is considered one of the worst crimes ever to hit the Navajo Nation. It also exposed a troubling truth. The nation’s largest Indian reservation—spanning three states (New Mexico, Arizona, and Utah) and 27,000 square miles—experienced challenges in Ashlynn’s case with communication and jurisdictional complexities that cost precious time. And tribal communities across the country would collectively realize the need to enact their own child abduction recovery plans on Native lands.

On Ashlynn’s last day, the budding artist and musician got off her afternoon school bus with her 9-year-old brother. Together, they were spotted playing with friends not far from their Lower Fruitland home. Unfortunately, a stranger, a 27-year-old perpetrator, was watching. He pulled up his van near the siblings and lured them inside with an offer to see a movie.

As the sun began to set hours later, an elderly couple traveling a remote stretch of desert road happened upon Ashlynn’s brother, exhausted and in tears. He had escaped several miles back, but Ashlynn was still with her kidnapper.

A frantic search for the girl got underway that evening as Ashlynn’s relatives repeatedly called area law enforcement on the reservation as well as police stations in nearby Shiprock and Farmington. A number of factors resulted in an AMBER Alert that was not issued for Ashlynn until 2:30 a.m. the next morning.

Nearly 12 hours after her abduction, Ashlynn’s body was found south of Shiprock (Navajo: Tsé Bit’a’í), a towering volcanic rock

¹ BONNIE FERENBACH & PAUL MURPHY, I HAD TO BECOME A WARRIOR MOM, 4 AMBER ADVOCATE 3 (2019).

formation the Navajos deem sacred. There in its shadow, Ashlynnne was assaulted and murdered. On October 20, 2017, Tom Begaye, Jr., was sentenced to life imprisonment without the possibility of release for his conviction on murder, aggravated sexual abuse, and kidnapping charges.²

“No child deserves to die in this way,” said Russell Begaye, then president of the Navajo Nation.³ He promised to strengthen protections for Navajo children and tribal members.

The news was reassuring to Ashlynnne’s mother, but it did not go far enough. She wanted to ensure no Native child or family would ever have to experience such a frustrating, heartbreaking ordeal. “[T]here was nothing worse than finding out there were no AMBER Alert systems on the reservation at the time when we needed it most,” Foster said.⁴

The self-described “warrior mom” would set out on an 18-month campaign to “fix the loopholes and fight for AMBER Alert in Indian Country”⁵—to allow for a coordinated response and an alert that could have assisted in locating her daughter.

The AMBER Alert program was established in 1996 when Dallas–Fort Worth broadcasters teamed with local police to develop an early warning system to help find abducted children. The program was created as a legacy to nine-year-old Amber Hagerman, who was kidnapped while riding her bicycle in Arlington, Texas, and then murdered. Other states and communities soon set up their own AMBER Alert plans as the idea was adopted across the nation. These AMBER Alert plans, however, did not extend to tribal communities.

The late Arizona Senator John McCain and a bipartisan group in Congress were won over by Pamela’s unwavering spirit and sense of urgency, resulting in Bill S. 772, which won widespread support from

² Press Release, U.S. Dep’t of Justice (D.N.M.), *Navajo Man Sentenced to Life Imprisonment for Kidnapping, Sexually Assaulting and Murdering 11-Year-Old Navajo Child* (Oct. 20, 2017).

³ Katherine Locke, *Navajo Man Sentenced to Life for Kidnapping, Assault of 11-Year-Old Ashlynnne Mike*, NAVAJO-HOPI OBSERVER (Oct. 24, 2017), <https://www.nhnews.com/news/2017/oct/24/navajo-man-sentenced-life-kidnapping-assault-11-ye/>.

⁴ Mary Hudetz, *Mom of Slain Navajo Girl Urges Tribes to Use AMBER Alerts*, ASSOCIATED PRESS (July 31, 2019), <https://apnews.com/31300928d7724f308f6b65e224dfe439>.

⁵ FERENBACH & MURPHY, *supra* note 1, at 3.

the National Congress of American Indians, the Inter-Tribal Council of Arizona, the Navajo Nation, and tribes across the country. The next spring, President Donald Trump signed the Ashlynnne Mike AMBER Alert in Indian Country Act of 2018 into law.⁶

Shortly before the AMBER Alert Act of 2018 became law, the Navajo Nation also fulfilled its promise by creating an emergency alert system capable of issuing AMBER Alerts and other urgent notifications to the 11 counties within its tribal boundaries. Now, all tribes across the United States are working to ensure they have access to AMBER Alert plans, and as of July 24, 2020, have saved 1,000 missing or abducted children.

“There is no greater strength than a parent who has been through a tragedy,” said Jim Walters, an internationally recognized expert on law enforcement training/child protection and recovery strategies.⁷

I. Navajo Nation overcomes challenges, inspires others

Challenges are all too common for the nation’s tribes, which often lack staffing; the training to investigate child abductions; access to the criminal justice information systems where they can enter details about the missing child and suspect; infrastructure, such as road signs; and broadcasting capability, software, and computers. Additionally, tribal citizens often lack quick access to communication channels because of the vast expanses of difficult terrain in which they live and economic disparities.

The greatest obstacles are often jurisdictional ones stemming from Native tribes’ historic relationship with the federal government—and in turn, issues of tribal sovereignty. This has impacted the need to build relationships and collectively solve crimes.

“Jurisdiction can pretty much get in the way for the well-being of our people, especially in Indian Country,” Navajo Nation Vice President Jonathan Nez said.⁸ For instance, the Navajo Nation comprises 110 chapters of semi-autonomous local governments that need to be communicated with and respected. This scenario often

⁶ Ashlynnne Mike AMBER Alert in Indian Country Act, Pub. L. No. 115-166, 132 Stat. 1274.

⁷ FERENBACH & MURPHY, *supra* note 1, at 4.

⁸ Denise Gee, *Sharing a Vision*, AMBER ADVOCATE (Jan. 2, 2019), <https://amber-ic.org/news/sharing-a-vision/>.

impedes efforts undertaken by law enforcement agencies outside the reservation.

“The laws in our criminal justice system on the reservation need to change,” Foster said of the traditional way Navajos resolve disputes. “We need to step away from *hozhooji naat’aanii* (“talking things out in a good way”) and let the Justice System take action in prosecuting criminals to the fullest extent.”⁹

Tribes’ societal norms of dealing with crimes are deeply ingrained.

“In our society, a lot of people believe that if you ignore something it will just go away. But it won’t. In fact, it probably will increase,” said David Antone, a previous council member with the Salt River Pima Maricopa Indian Community.¹⁰

Antone knows this firsthand. During his career in law enforcement, he sometimes felt caught between his role as a cop and what he learned from his grandmother—that talking about evil invites it into your community.

“They don’t wish [abductions] to happen, which is why they don’t want you to have these [training] exercises,” Kevin Mariano, former Pueblo of Isleta Chief of Police said.¹¹

It also leads to families and communities protecting people who are likely to repeat crimes, especially those involving children.

Statistics show more children are abducted by a person known to the child or the family than by a stranger. In Ashlynn’s case, her killer lived only a few miles away.

In December 2017, Navajo Nation President Russell Begaye signed a contract to purchase a mass notification system for emergency alerts (from AMBER Alerts to fire notifications).

The Navajo Nation had previously negotiated access to the AMBER Alert systems of New Mexico, Arizona, and Utah, but the added steps needed to send alerts in all three states created a dangerous delay.

“In an emergency situation, time is of the essence to get information out to community members,” said Harlan Cleveland, director of the

⁹ Rachel Monroe, *The Delay*, ESQUIRE (April 18, 2018),

<https://www.esquire.com/news-politics/a19561163/ashlynn-mike-amber-alert-navajo-reservation/>.

¹⁰ Gee, *Sharing a Vision*, AMBER ALERT IN INDIAN COUNTRY, <https://amber-ic.org/news/sharing-a-vision/> (last visited Dec. 9, 2020).

¹¹ Rachel Monroe, *The Delay*, ESQUIRE (Apr. 18, 2018),

<https://www.esquire.com/news-politics/a19561163/ashlynn-mike-amber-alert-navajo-reservation/>.

Navajo Nation Department of Emergency Management.¹² “Especially, in the instance of a child abduction, the public is our eyes and ears.”¹³

The emergency alert system is overseen by the Navajo Division of Public Safety (NDPS) and managed by the Navajo Department of Emergency Management (NDEM). It has the capability to push alerts over radio or television and text messaging to the Nation’s 11 counties. It began operation in January 2018.

“We’re so proud [that] never before has an independent tribe had this system to themselves,” said NDPS Director Jesse Delmar.¹⁴

A year earlier, the Navajo Nation signed a memorandum of understanding (MOU) with the Federal Emergency Management Agency to give Navajo public safety officials the ability to access the Integrated Public Alert and Warning System (IPAWS).

After completing the necessary IPAWS training and certification process, the next step was purchasing and fine-tuning the software, developed by Everbridge, a global company specializing in critical events software.

Future goals are to add capabilities for issuing a Blue Alert (pertaining to missing, injured, or endangered law enforcement officers) and a Silver Alert (related to impaired senior citizens).

Cleveland recounted how the tribe resolved a case that didn’t meet the AMBER Alert criteria. They issued an Endangered Person Advisory, “which is a powerful tool,” he said. “The suspect called in and said, ‘Take my photo down.’ Getting the child back is your reward when you are done.”¹⁵

¹² Bonnie Ferenbach, *Navajo Nation Gets AMBER Alert*, AMBER ADVOC. (Dec. 2017), <https://www.amberadvocate.org/indian-country/navajo-nation-gets-amber-alert/>.

¹³ *Id.*

¹⁴ M. Perez, *AMBER Alert Secured for Navajo Nation*, ARIZ. DAILY IND. NEWS NETWORK (Dec. 13, 2017), <https://arizonadailyindependent.com/2017/12/13/amber-alert-secured-for-navajo-nation/>.

¹⁵ FERENBACH & MURPHY, *supra* note 1, at 3.

II. AMBER Alert Training and Technical Assistance Program

As those involved in Ashlynnne Mike's case are acutely aware, the need to act quickly and effectively is essential in responding to a child abduction case. In fact, it can mean the difference between life and death. Accordingly, tribes are now seeking guidance on how to best implement the AMBER Alert Act of 2018.

The primary mission of the AMBER Alert Act of 2018 is to design, develop, and implement AMBER Alert programs in Indian country. The new law amends the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act, better known as the PROTECT Act, to allow for grants to states and federally recognized Indian tribes to:

- develop or enhance programs and activities for the support of AMBER Alert communications plans;
- integrate tribal AMBER Alert systems into state AMBER Alert systems;
- integrate state or regional AMBER Alert communication plans with Indian tribes; and
- allow the waiver of the matching funds requirement for grants awarded to Indian tribes that do not have sufficient funds to comply with the matching requirement.¹⁶

The AMBER Alert Training and Technical Assistance Program (AATTAP) was established in 2003 under the direction of the Department of Justice (Department), Office of Juvenile Justice and Delinquency Prevention (OJJDP), to help implement the PROTECT Act by training law enforcement to obtain the specialized skills and training needed to successfully locate and safely recover missing and abducted children. In 2004, Jim Walters joined the AATTAP team and, in 2006, became its first liaison to Indian country. At this time, Mr. Walters helped build the AMBER Alert in Indian Country (AIIC) initiative within the AATTAP to assist tribes in developing programs to safely recover endangered, missing, or abducted children.

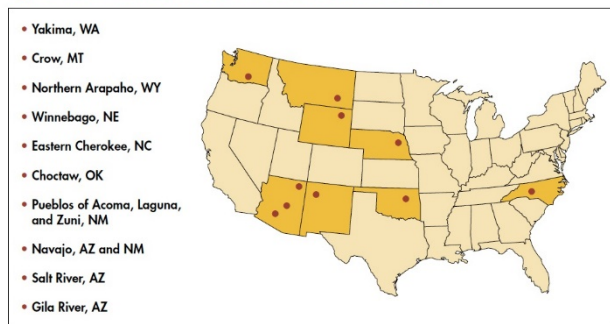
¹⁶ Ashlynnne Mike AMBER Alert in Indian Country Act of 2018, Pub. L. No. 115-166, 132 Stat. 1274.

In 2007, in recognition of the needs and gaps in Indian country, OJJDP launched the AMBER Alert in Indian Country Pilot Project, which provided an unprecedented opportunity for tribal communities to develop capabilities and capacity to respond to endangered, missing, and abducted children.

The goal of the pilot project was to support the recovery of missing and abducted children by providing interoperability, infrastructure, and resources to meet the specific needs of tribal communities. The 10 pilot sites identified across the country (see figure 1) underwent in-depth assessments of their preparedness, infrastructure, and capabilities to respond to endangered, missing, and abducted children.

The assessments found most tribes did not have adequate call intake and case management systems. Additionally, many faced infrastructure limitations that made it impossible to create their own plans or collaborate with their state's AMBER Alert plan.

Figure 1. Ten Pilot Sites Identified Across the Country



The pilot project also revealed that, with the right training, resources, and protocols, tribal agencies were able to provide a response to reports of missing and abducted children that was as effective as the state or local agencies serving their neighboring communities. Furthermore, it demonstrated that the investigation of child abductions requires specialized training and ongoing preparation to keep procedures, equipment, and skills current.

The AIIC initiative offers training and technical assistance opportunities to tribal communities. AIIC training is delivered via classrooms; conferences; self-paced online courses; live, online, instructor-led courses; and through live and recorded webinars. The AIIC program offers an array of training topics specific to Indian country, including but not limited to:

- Missing Child Investigations in Indian Country;
- Cold Case Investigations in Indian Country;
- Recognition and Response to Missing and Exploited Children at Tribal Casinos;
- Community Response to Missing and Exploited Children in Indian Country; and
- How to Build AMBER Alert in Indian Country.

Additionally, the AIIC program provides multidisciplinary Child Abduction Response Team (CART) training and certification. The goal is to ensure a rapid and comprehensive community response to a child abduction via communications, equipment training, and an understanding of nontraditional community resources available during an investigation.

“I’m a huge proponent of this training because it brings together multiple disciplines—law enforcement, schools, social services, fire, EMS, community members—and allows them to train together before an emergency and develop a set of protocols,” Walters said. “That means when a child goes missing, they can pull out the entire community and everybody has a role and knows what to do.”¹⁷

As part of the AMBER Alert Act of 2018, the AIIC initiative is also responsible for hosting a series of state tribal meetings with stakeholders from the state and regional AMBER Alert programs and representatives from federally recognized tribes. The purpose of the meetings are to assist tribes in bringing AMBER Alert plans to their communities by reviewing best practices for collaborating with the state or regional AMBER Alert program. This includes examining the specific requirements for requesting issuance of an AMBER Alert and the steps tribal communities would take to request an AMBER Alert for an abduction occurring on tribal lands. Furthermore, participants are given the opportunity to assess various case studies to assist in developing an action plan for implementing the AMBER Alert program in their community. At the conclusion of the meetings, additional resources to assist tribes with the implementation of their AMBER Alert plans are shared and made available.

¹⁷ *Webinar, AMBER Alert in Indian Country*, NAT’L CRIM. JUST. TRAINING CTR., <https://ncjtc.fvtc.edu/trainings/TR00009168/TRI0009169/amber-alert-in-indian-country> (last visited Dec. 9, 2020).

To assist tribal partners in accessing all of the available AIIC training and technical assistance opportunities, the AIIC Website (www.amber-ic.org), which was originally created in 2015 and upgraded in 2017, was created to assist in connecting all partners on issues related to AMBER Alert in Indian Country. This online platform provides an interactive, multi-dimensional website offering information, resources, video content, and the latest developments for the tribal child protection work of AATTAP-AIIC and its partners. Information and resources address a wide array of protection and prevention topics, including issues related to investigation, intervention, and prevention of victimization, exploitation, and trafficking in tribal communities.

The AIIC website also connects tribal AMBER Alert partners to every state and regional AMBER Alert coordinator and clearinghouse manager by giving them access to the secure partners portal on its AMBER Advocate website. The Portal contains a partner contact information listing, resource library, discussion boards, special training content, and more. The website gives much needed access to Native American and Alaska Native communities who suffer rates of violence that far exceed the national average.

III. AMBER Alert coordinators prove invaluable

Thankfully, child abductions are not high-frequency occurrences. A law enforcement team might handle a predator—stranger abduction case once in every 10 years, Walters said.

“But our partners at the state, see this much more often, unfortunately. They have the experience, and they have those resources, and they understand what it is that they’re doing,” Walters said. “They bring that knowledge to assist us.”¹⁸

Also, in the immediate aftermath of a child abduction, we very often see that the abductor is going to move the child. In many cases, it will be off tribal lands. So, if our alert stops at the tribal boundary, what happens when that person takes our child into the state or the neighboring state?”¹⁹

AMBER Alert coordinators (AAC) have the skills and experience, gleaned from multiple AMBER Alert activations, to provide swift and

¹⁸ *Id.*

¹⁹ *Id.*

decisive public alerting in the case of a child abduction. They can also enlist tools, technology, and external contacts to strengthen searches.

In many states, the AAC makes the final determination on the issuance of an AMBER Alert; in other jurisdictions, the investigating law enforcement agency may issue an AMBER Alert. Regardless of who has final activation authority, all cases must meet the criteria outlined in their state or regional AMBER Alert plans. If met, the AAC or person with activation authority issues an AMBER Alert. “Either way, we’re always cognizant of protecting tribal sovereignty,” Walters said.²⁰

As a result, a broadcast of an AMBER Alert is sent to cell phones, radios, televisions, roadway signs, and a network of secondary distributions operated by the National Center for Missing & Exploited Children (NCMEC). Secondary distribution includes digital signage, hotel chains, Internet service providers, apps, and other technologies.

Each AMBER Alert is a catalyst that sets in action a series of notifications that connect tribes with experienced investigators—with no fees involved.

The Federal Bureau of Investigation, which is immediately notified, offers investigative resources throughout the country. And NCMEC has analytical and case management capabilities that most tribes do not have.

Government involvement rankles some in Native communities, but “they’re not going to take anything away from the community. They’re bringing support,” Walters said. “I always ask them, if your child was missing, wouldn't you want every single resource available in the effort to recover your child? I would.”²¹

IV. Success stories

On April 10, 2020, the national AMBER Alert program met a milestone of 1,000 successfully recovered children thanks to a collaboration between the Wyoming Highway Patrol (WHP), the Northern Arapaho Tribe, and a crucial third partner—the public.²² It would amount to a 10-hour, two-state child recovery odyssey.

²⁰ *Id.*

²¹ *Id.*

²² Patricia Davis, *An Enduring Legacy for Amber: 1,000 Success Stories*, NAT'L CTR. FOR MISSING & EXPLOITED CHILD. (July 23, 2020), <https://www.missingkids.org/blog/2020/1000-success-stories>.

Chris McGuire, WHP's AMBER Alert Coordinator, first confirmed that the children were in imminent danger. Their non-custodial mother took them from a home outside the reservation where they were placed by the tribe for protection.²³

McGuire also had sufficient descriptions of the vehicle, suspect, and children for the public to help find them. With that, she issued an AMBER Alert at 11:26 a.m.²⁴

According to McGuire, the alert generated a lead after the mother, Stacia Potter-Norris, 30, stopped at a glass company to have her vehicle's rear window replaced. With no money, she offered to sell some guns in exchange for the work. The mom left her phone number with the clerk, who then provided it to the WHP.²⁵

Within hours, another tip came from a homeless man who reported seeing the vehicle described in the alert at a truck stop. He saw the driver swap the vehicle with another one belonging to someone she knew. He gave the WHP a description of it. Meanwhile, the cell phone number the mother gave to the glass store clerk revealed that she was in the Denver area.²⁶

McGuire quickly contacted her counterpart in Colorado with the updated information, and an AMBER Alert was sent out there. Shortly afterward, a call came in from someone who saw a vehicle matching that description parked at a Motel 6.²⁷

The motel's security footage revealed the children were in Room 222. Investigators found them there safe at 9:20 p.m., but the mother was missing. She was later found, arrested on felony charges, and extradited back to Wyoming.²⁸

"This is a success story that could have gone really bad, really quick," said McGuire, WHP Communications Supervisor and 30-year veteran. "It really does show how the AMBER Alert works."²⁹

McGuire also credits her solid relationship with the Wind River Indian Reservation in the central-western area of Wyoming, where the Eastern Shoshone and Northern Arapaho tribes call home. The

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

region comprises 2.2 million acres, stretching about 60 miles east to west and 50 miles north to south.

In 2017, McGuire began helping officials with the Wind River Inter-Tribal Council adopt an AMBER Alert plan. After connecting with the AMBER Alert in Indian Country Program, McGuire invited the Wind River group to participate in a training that was hosted by the AATTAPP-AIIC program.

“The turnout was impressive,” McGuire said. “We had members of the Wind River Tribal council and law enforcement, social workers, members of the FBI, BIA—even tribal game and fisheries officers. They were all excited about the opportunity, which opened the door to lines of communication.”³⁰

McGuire recalls there being a lot of questions during the training, especially relating AMBER Alert issuance criteria.

“It’s never an easy call, but we have to make it based on the information we have—and instinct,” McGuire said.³¹

The Wind River representatives contributed ideas of what would work best for them, and in January 2019, the WHP and Wind River issued their first two alerts—one an AMBER Alert for a missing non-verbal child (later found safe) and the other an endangered person advisory.

As a follow-up to this ongoing commitment to an AMBER Alert partnership, in March 2020, in collaboration with the AIIC program, the WHP and Wind River Indian Reservation participated in a State–Tribe implementation meeting to solidify this commitment and worked together to develop an AMBER Alert plan in the event of a missing or abducted child incident.

“Having the federal grant money for training and technical assistance allowed them to jump right in,” McGuire said.³²

On March 9, 2020, Wyoming Governor Mark Gordon also signed a bill allowing Wind River tribes to implement their own AMBER Alert systems. As part of that process, data on missing or murdered indigenous people, which is sorely lacking, will be collected. Representatives from 22 tribes across 34 states attended the OJJDP sponsored National AMBER Alert in Indian Country Symposium in

³⁰ Interview by Denise Gee with Chris McGuire, WHP AMBER Alert Coordinator (Aug. 10, 2020).

³¹ *Id.*

³² *Id.*

Albuquerque for three days in July 2019. The event brought together AMBER Alert coordinators, Missing Persons Clearinghouse managers, and CART members from across the United States to exchange ideas about bringing AMBER Alert to Indian country.

At the conference, data from 100 tribes in 26 states, collected in the “Implementation the Ashlynnne Mike AMBER Alert in Indian Country Act of 2018—A Report to Congress,” was shared, revealing the following:

- 86 tribes are authorized for state AMBER Alert participation;
- 76 tribes have an emergency plan for a child abduction;
- 25 tribes use their own systems to disseminate an alert; and
- 50 tribes say more AMBER Alert training is needed.³³

Looking ahead, NDEM Director Harlan Cleveland recommends other tribes work with state AMBER Alert coordinators and others to “piggyback” on existing AMBER Alert programs. “Take a proactive approach,” he said. “Be committed when you get that call. It *is* going to happen.”³⁴

About the Authors

Jim Walters is the program administrator for the AMBER Alert Training and Technical Assistance Program, a U.S. Department of Justice initiative. Mr. Walters has more than 35 years of experience as a peace officer and military professional and more than 15 years of experience as a consultant to the AMBER Alert Training and Technical Assistance Program, where he has acted as the liaison for training and technical assistance to the AMBER Alert Initiative for Indian Country and the U.S. Southern Border Initiative. He was also part of the original AMBER Alert in Indian Country Pilot Project.

Melissa Blasing is a Program Manager for the AMBER Alert Training and Technical Assistance Program and is responsible for the AMBER Alert in Indian Country Initiative. She has over 10 years of experience managing and facilitating the design and delivery of training and technical assistance for state, local, and tribal law

³³ OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, IMPLEMENTATION OF THE ASHLYNNNE MIKE IN INDIAN COUNTRY ACT OF 2018: A REPORT TO CONGRESS (June 2019).

³⁴ FERENBACH & MURPHY, *supra* note 1, at 5.

enforcement; nonprofit organizations; and other criminal justice practitioners. Previously, Ms. Blasing managed the National AMBER Alert Symposium for State AMBER Alert Coordinators and Clearinghouse Managers, the National Symposium on Tribal Child Protection, the AMBER Alert webinar series, the AATTAP Family and Survivor Roundtables, and product development for AMBER Alert course offerings.

The AATTAP-AIIC would also like to thank Denise Gee, Associate with AMBER Alert Training and Technical Assistance Program, for her contributions to this article. Denise is a North Texas-based writer and publicist who covers AATTAP events, conducts interviews, and develops inspiring and informative content for program reports, feature articles in the *AMBER Advocate Newsletter*, and for official program publications.

The Tribal Engagement Program (TEP) Builds Bridges for Tribal Partners

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I. Introduction

The Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Division TEP is an outreach effort focused on establishing and fostering relationships with tribal agencies to understand the scope of tribal access to CJIS Division services. The mission of TEP is to identify and overcome obstacles that may prevent tribes from accessing and participating in CJIS Division services.¹

II. Background

The CJIS Division TEP was formally established in 2015. The CJIS Division, however, has focused on increasing tribal participation in CJIS Division services for more than a decade. In 2010, the CJIS Division named a tribal executive and dedicated personnel to increase tribal activity in CJIS Division programs and services. An initial emphasis was placed on tribal law enforcement access to the National Crime Information Center (NCIC), as this service helps law enforcement professionals apprehend fugitives, locate missing persons, recover stolen property, and identify terrorists, while helping to improve officer safety. As the TEP progressed, however, the program added all CJIS Division services to its outreach efforts as TEP staff realized the need for tribal agencies to have access to all services available to effectively protect their own communities. These programs include the Next Generation Identification (NGI), the National Instant Criminal Background Check System (NICS), the National Data Exchange (N-DEx), the Law Enforcement Enterprise Portal, and the Uniform Crime Reporting Program.

¹ *FBI, This Week Tribal Engagement Program Increases Participants*, FED. BUREAU OF INVESTIGATION (Nov. 21, 2018), <https://www.fbi.gov/audio-repository/ftw-podcast-tribal-engagement-program-112118.mp3/view>.

Currently, there are 574 federally recognized Indian tribes located in 34 states.² The TEP customer base includes all 574 tribes. Many of these tribes have reservations that cross into multiple states. For example, the Navajo Nation's reservation is the size of the state of West Virginia and covers parts of Arizona, New Mexico, and Utah.³ Territory boundaries that cross county and state lines can cause interstate reservations to face jurisdictional issues that create obstacles to accessing and participating in CJIS Division systems. These obstacles include access via multiple state CJIS Systems Agencies (CSA), state statutory limitations or omissions for tribes, and remote locations limiting electronic capabilities.

TEP personnel work hand in hand with tribal law enforcement agencies to help them access and use CJIS Division systems for criminal justice purposes, such as the entry of missing persons and wanted individuals into NCIC, submission of criminal justice fingerprints to NGI, and sharing of tribal records with NICS to support firearm background checks. TEP also works with tribal housing, foster care, and Native American education to access noncriminal justice background checks for employees, volunteers, and housing applicants.

III. Educating, overcoming obstacles, and enabling access

A primary focus of the TEP staff is to listen and learn about a tribal agency's needs, evaluate how the CJIS Division can assist, and work with tribes to access services. In some cases, TEP encounters tribes with no knowledge of the CJIS Division or the programs and services available to them.

Based on interactions with the tribes and focusing on their specific needs, TEP staff developed and followed an outreach plan to educate tribes on CJIS Division services and how to access them. TEP conducted two CJIS tribal conferences; visited tribes on site; participated in tribal-sponsored conferences and events, such as the National Native American Law Enforcement Association and the

² Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs, 85 Fed. Reg. 5462, 5462 (Jan. 30, 2020).

³ *History*, THE NAVAJO NATION, <https://www.navajo-nsn.gov/history.htm> (last visited Dec. 14, 2020).

National Native American Human Resources annual conferences; collaborated with federal agencies, including the Bureau of Indian Affairs; and responded to questions and interest in CJIS Division programs. Through years of such research and conversations with tribal partners, TEP staff recognized a universal solution does not exist to enable tribal access to CJIS Division services. Each tribe is unique, with different issues and obstacles preventing access to services. Although some obstacles can be mitigated, some obstacles are beyond FBI control, such as:

- state statutes excluding tribes from access;
- tribal council decisions not to participate or share criminal justice information;
- lack of internet access; and
- lack of funding to support hardware requirements, personnel, etc.

While some circumstances cannot be amended, TEP staff can often provide support to overcome challenges and help tribes participate in CJIS Division programs. For example, many tribes work with a local CSA or state identification bureau to access CJIS Division services. In other cases, tribes may not have a collaborative relationship with a state, and the tribes may seek another route to access CJIS systems. The TEP strives to break down barriers and work with the state, the tribe, and CJIS Division programs to establish lines of communication to discuss a tribe's needs and concerns, state access policies and procedures, and required access agreements with the CJIS Division.

During its outreach with tribal agencies, the TEP learned that a large percentage of tribes access CJIS Division services via agreements with local law enforcement agencies and are satisfied with this arrangement. Some tribes, however, wish to become fully independent. The TEP assists these tribes in instituting the necessary security requirements for user access.

In addition, tribes are self-governed and responsible for conducting required background checks for employment, foster care, housing, etc. Many tribes had little to no means of conducting the necessary checks. Thus, TEP staff expanded their focus from only tribal law enforcement or criminal justice agencies to the entire tribe. The TEP became involved in tribal conferences focused on management of tribally owned services such as Indian health centers, Indian schools, Indian housing, and elder care facilities. Participation in these conferences

allowed the TEP to share the importance and potential requirement of noncriminal justice background checks to a specific audience, as well as provide guidance and assistance to tribes in submission of these background checks to the FBI. While conducting on-site visits to tribal reservations, the TEP also met with tribal representatives responsible for conducting these types of background checks. The TEP continually works with tribal agencies to establish originating agency identification numbers (ORIs) and user agreements for access to perform these important checks.

As part of the effort to provide the most convenient access, tribes can reach CJIS Division services using one of the following four pathways:

- a state program;
- the Department of Justice (Department);
- paper copies sent to the CJIS Division (tribes are the only entities that can still send hard copy cards to the CJIS Division as it may be the only means for submission of a fingerprint-based background check); or
- a third-party channeler that submits background check information on a tribe's behalf.⁴

Tribal participation in CJIS Division services increased 16% from fiscal year (FY) 2018 to FY2019 directly due to the TEP outreach efforts. The CJIS Division issued 171 new ORIs to tribal agencies in FY2019. The ORIs enable agencies to access CJIS Division services. This increase can be attributed directly to the ongoing efforts of the TEP in establishing and fostering trusting relationships with tribes by focusing on the specific needs of the individual tribal communities. The TEP's enthusiastic approach to sharing and educating tribes on the CJIS Division services available has resulted in tribes understanding the importance of sharing criminal justice information with the FBI to keep communities safe across the country.

⁴ CRIMINAL JUSTICE INFO. SERVS. DIV., CRIMINAL HISTORY REPORTING GUIDE FOR TRIBAL AGENCIES 5–6 (Mar. 1, 2018).

IV. Specific initiatives that resulted in increased participation in CJIS Division services

Since 2015, the TEP has facilitated more than 35 visits to tribes located in Arizona, California, Connecticut, Florida, Kansas, Louisiana, Maine, Massachusetts, Minnesota, Nebraska, Nevada, North Carolina, Oklahoma, Rhode Island, and Washington. During on-site visits, TEP staff engaged with each tribe by experiencing their culture and participating in informal discussions regarding the tribes' needs and barriers to accessing CJIS Division services. The visits proved to be important in learning what each tribe faces on a daily basis. TEP personnel could then offer relevant guidance and solutions and build lasting relationships with tribal members.

In 2015 and 2016, the TEP hosted two CJIS Tribal Conferences in Tulsa, Oklahoma, and Phoenix, Arizona, respectively. Attendees from more than 100 federally recognized tribes participated in CJIS Division program overviews and breakout sessions, informational galleries, and social engagement opportunities. Tribal representatives could also meet with federal and state representatives to discuss issues directly affecting Indian country and collaborate on potential solutions to gain access to services. Tribal representatives requested follow-up conferences, but such efforts have been placed on hold due to budget reductions.

Annually, TEP staff actively participate in five tribal-specific conferences across the country and provide in-depth CJIS Division overviews and CJIS program-specific breakout sessions to offer education and guidance in participating in CJIS Division services. By attending these events, TEP staff make connections and build valuable relationships with tribal partners.

TEP representatives are also active members of two task forces and three working groups focused on Indian country issues. One such working group is the Federal Law Enforcement Coordination Working Group (FLECWG). The FLECWG meets quarterly and is comprised of representatives from federal law enforcement agencies who discuss

issues directly affecting Indian country.⁵ Members work together to formulate solutions to provide guidance to the tribal community.

The CJIS Division communicates with all tribes via letters to tribal leaders. These letters provide pertinent information regarding CJIS Division services, changes to those services, or the addition of new services. For example, TEP staff distributed letters to tribal leaders to share information on the national use-of-force data collection and the development and distribution of the Criminal History Reporting Guide for Tribal Agencies.

The TEP also partners with the Department's Tribal Access Program (TAP). The TAP provides tribes access to national crime information systems for federally authorized criminal and noncriminal justice purposes. The TAP allows selected federally recognized tribes to more effectively serve and protect their nations' citizens by ensuring the exchange of critical data across CJIS systems. The TEP collaborates with the Department to provide tribes with accurate information regarding access to CJIS Division services. The TEP also shares current program information with Department trainers for training purposes. To date, 75 tribes participate in the TAP.⁶

In 2019, TEP staff coordinated filming of a CJIS tribal video. Six federally recognized tribes agreed to share their experiences. The resulting video is a marketing tool that highlights the six tribes' participation in six of the largest CJIS programs. The video is scheduled for release in FY2021. TEP personnel plan to provide copies of the video to all 574 federally recognized tribes, present the video at events, and make it available upon request to any law enforcement agency.

V. Demonstrating the benefit of CJIS Division services

⁵ Press Release, U.S. Dep't of Just., Att'y Gen. Jeff Sessions Announces New Actions to Support Law Enf't and Maintain Pub. Safety in Indian Country (Apr. 18, 2017).

⁶ U.S. Dep't Just, *Thirty Tribes Selected for Expansion of Program Enhancing Tribal Access to National Crime Information Databases* (Dec. 16, 2019), <https://www.justice.gov/opa/pr/thirty-tribes-selected-expansion-program-enhancing-tribal-access-national-crime-information>.

Success stories are an effective way to share the utility of CJIS Division services for tribal agencies. The following success story demonstrates collaboration among law enforcement agencies and the benefit of using N-DEx in an investigation. It also shows how another agency's information in N-DEx assisted with this investigation and prosecution.

In early 2020, a tribal member and employee of a tribe in California did not show up for work as scheduled. The tribal police department and his coworkers performed a welfare check on the tribal member at his residence and found him deceased from an accidental overdose. Due to the nature of the death, a local police department task force was called to the scene to investigate. The local task force agents received the name of a person who possibly supplied the drug to the deceased individual. Because it was a common name, however, agents were not able to narrow the likely supplier to a specific individual. During the investigation, the tribal police department used the FBI's N-DEx system to confirm the suspected supplier's identity, criminal history, address, companions, and at least one vehicle. Upon confirmation of the suspect's address, a surveillance team was established. During surveillance, a local police department task force witnessed a drug deal involving the suspect. When law enforcement intervened, agents recovered 200 counterfeit OxyContin tablets laced with fentanyl in the vehicle. Upon a search of the suspect's residence, law enforcement recovered an additional 200 counterfeit OxyContin tablets, 84 grams of heroin, 14 grams of cocaine, cash, and a firearm. The suspect was arrested for a conspiracy to sell a controlled substance, possession, and possession for sale of controlled substances. Ultimately, law enforcement personnel brought charges against the suspected drug supplier associated with the death of the tribal member.

VI. The path forward

The TEP plans to continue outreach and education with tribal agencies to ensure they have access to the CJIS Division's invaluable criminal justice resources. The following list summarizes the TEP's plan to continue growing tribal participation and engagement with the FBI's CJIS Division:

- market the CJIS tribal video starting in FY2021;

- increase the TEP's involvement with national tribal organizations to include the National Congress of American Indians, the United South and Eastern Tribes, and the National Native American Law Enforcement Association;
- continue partnerships with federal agencies;
- conduct on-site visits to tribal agencies;
- hold another CJIS Tribal Conference; and
- continue to measure and seek to increase tribal participation in CJIS Division services.

For more information regarding the TEP, please email cjistribaloutreach@fbi.gov.

About the Author

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The National Crime Information Center (NCIC)—Missing Person File

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The NCIC is a computerized database of documented criminal justice information available to law enforcement agencies nationwide 24 hours a day, 365 days a year. The NCIC became operational on January 27, 1967, with the goal of assisting law enforcement in apprehending fugitives and locating stolen property. This goal has since expanded to include locating missing persons and providing further protection to law enforcement personnel and the public.

The Federal Bureau of Investigation's (FBI) Criminal Justice Information Services (CJIS) Division manages and maintains the NCIC, which includes the missing person file. Over 18,000 federal, state, local, tribal, and territorial criminal justice agencies from all 50 states, U.S. territories, and Canada enter records into the NCIC. Access to, use of, and dissemination of, the information contained within the NCIC is strictly governed by 28 U.S.C. § 534.¹ More specifically, 28 C.F.R. part 20 authorizes access to the NCIC to criminal justice agencies performing the administration of criminal justice, unless otherwise authorized under a federal statute or an executive order.²

Entering any record into the NCIC is strictly voluntary, and participation varies from state to state, with the only exceptions pertaining to certain characteristics of sex offender registrations and missing persons. In accordance with 34 U.S.C. § 41307 (Suzanne's Law), a record for a missing person under the age of 21 must be entered into the NCIC.³ In addition, 34 U.S.C. § 41308 (Adam Walsh Child Protection and Safety Act of 2006) mandates entry of those

¹ 28 U.S.C. § 534.

² 28 C.F.R. pt. 20.

³ 34 U.S.C. § 41307.

individuals into the NCIC within two hours of receipt of the minimum data required to enter an NCIC record.⁴

To support the entry of a record into the NCIC, an agency must have on file an electronic or hard copy of the missing person report. At a minimum, the entry must include personal descriptors such as the individual's name, sex, race, date of birth, height, weight, eye color, and hair color. An active missing person record has an indefinite retention period and remains active until the entering agency removes the record or determines the record is invalid or another agency finds the missing person. Active missing person records must be reviewed by the entering agency for accuracy and completeness within 90 days of initial entry and annually thereafter.

To be entered into the NCIC missing person file, an individual must meet one of the following categories:

- **Disability:** any person who is missing and under a proven physical or mental disability or is senile, thereby subjecting themselves or others to personal and immediate danger.
- **Endangered:** any person who is missing under circumstances indicating her physical safety may be in danger.
- **Involuntary:** any person who is missing under circumstances indicating his disappearance was not voluntary, for example, an abduction or kidnapping.
- **Juvenile:** a person who is missing and not declared emancipated as defined by the laws of his state of residence and does not meet any of the entry criteria set forth in the disability, endangered, involuntary, or catastrophe victim categories.
- **Catastrophe Victim:** any person who is missing after a catastrophe.
- **Other:** a person that does not meet the criteria in any other category who is missing, there is a reasonable concern for her safety, or who is under age 21 and declared emancipated by the laws of her state of residence.

To further assist agencies in locating missing individuals, the NCIC cross-match functionality conducts an automatic comparison of records in the NCIC missing person file and records in the NCIC

⁴ 34 U.S.C. § 41308.

unidentified person file⁵ based on personal descriptors and dental characteristics. This comparison is performed daily on records entered or modified in the missing and unidentified person files during the previous day and generates a list of potential matching candidates that is provided to both the entering or modifying agencies and the agencies that may have a possible matching record.

Finally, under the Crime Control Act of 1990,⁶ the FBI annually publishes a NCIC Missing Person and Unidentified Person Statistics report, which is publicly available at www.fbi.gov. The report summarizes the total number of missing persons entered into and removed from the missing person file during each calendar year. Statistical breakdowns of the missing person entry totals by age, sex, race, and category are also presented.

About the Author

Russell J. Myers is a management and program analyst with the FBI CJIS Division. He has been with the FBI since 1997, serving in multiple capacities during his tenure. Since 2016, he has been with the NCIC Operations and Policy Unit, where he serves as the subject-matter expert for the missing person and unidentified person files.

⁵ The unidentified person file contains records of unidentified deceased persons, living persons who are unable to verify their identities, unidentified catastrophe victims, and recovered body parts.

⁶ Crime Control Act of 1990, Pub. L. No. 101-647, 104 Stat. 4789, 4967 (codified at 34 U.S.C. § 41307(c)).

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Missing or Murdered Indigenous People: Culturally Based Prevention Strategies

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I. Introduction

To address the ongoing crisis of missing or murdered Indigenous persons (MMIP),¹ we must explore the historical context that led to the extent of the victimization today. The issue is steeped in centuries of interracial physical and cultural violence carried out through colonial oppression of Indigenous peoples. What began with European colonialization and the kidnapping and murdering of Indigenous people² continued with U.S. colonizing policies throughout the 18th, 19th, and 20th centuries. These policies included wars, massacres, and attacks on Indigenous civilian populations,³ boarding schools with

¹ MMIP in the United States is synonymous with the term missing and murdered Native Americans (MMNA). Another term used to bring attention to the missing or murdered is MMIW or missing or murdered Indigenous women. This paper refers to the Indigenous people of the United States as either Indigenous, Native Americans, American Indian/Alaska Native, or as Indian in reference to U.S. laws that use this term.

² *Unmasking the Hidden Crisis of Murdered and Missing Indigenous Women: Exploring Solutions to End the Cycle of Violence, Before the Subcomm. for Indigenous Peoples of the United States, H. Comm. on Nat. Res., 116th Cong. 1 (2019)* (written testimony of Professor Sarah Deer, citizen of the Muscogee (Creek) Nation, Professor at the University of Kansas, and Chief Justice of the Prairie Island Indian Community Court of Appeals).

³ KARINA L. WALTERS ET AL., DIS-PLACEMENT AND DIS-EASE: LAND, PLACE, AND HEALTH AMONG AMERICAN INDIANS AND ALASKA NATIVES, IN COMMUNITIES, NEIGHBORHOODS, AND HEALTH: EXPANDING THE BOUNDARIES OF PLACE 174 (2011).

assimilatory policies,⁴ laws suppressing cultural and religious practices,⁵ and forced removal of Indigenous peoples from their traditional lands.⁶

Indigenous peoples have a long history of experiencing interracial violence. Like other races in the United States, there is intraracial violence perpetrated by Natives on Natives; however, multiple studies demonstrate that the majority of the violence experienced by Natives is interracial, meaning it is done by non-Natives to Native people and experienced by Native people living on and off reservation land.⁷ A report analyzing the findings from the National Intimate Partner and Sexual Violence Survey found that, when looking at specific types of violence, such as intimate partner psychological aggression and physical violence, sexual violence, and stalking, American Indian/Alaska Native (AI/AN) women experienced interracial violence 2.8 times as much as intraracial violence (97% vs. 35%), and AI/AN men experience interracial violence 2.7 times as much as intraracial violence (90% vs. 33%).⁸

Although Indigenous families and communities have experienced this violence for centuries, beginning with colonization in 1492, only recently has the topic of MMIP made national news headlines. This is due to the increased advocacy of Indigenous people coming together to raise awareness of the issues surrounding missing persons and

⁴ DENISE K. LAJIMODIERE, AMERICAN INDIAN BOARDING SCHOOLS IN THE UNITED STATES: A BRIEF HISTORY AND THEIR CURRENT LEGACY, *IN* INDIGENOUS PEOPLES' ACCESS TO JUSTICE, INCLUDING TRUTH AND RECONCILIATION PROCESSES 255 (Wilston Littlechild & Elsa Stamatopoulou eds., 2014).

⁵ Lee Irwin, *Freedom, Law, and Prophecy: A Brief History of Native American Religious Resistance*, 21 AM. INDIAN Q. 35 (1997).

⁶ See 25 U.S.C. § 174.

⁷ ANDRÉ B. ROSAY, U.S. DEP'T OF JUSTICE, NATIONAL INSTITUTE OF JUSTICE RESEARCH REPORT: VIOLENCE AGAINST AMERICAN INDIAN AND ALASKA NATIVE WOMEN AND MEN (2016); see also BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, AMERICAN INDIANS AND CRIME (1999); see also STEVEN W. PERRY, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, A BJS STATISTICAL PROFILE, 1992–2002: AMERICAN INDIANS AND CRIME (2004); see also RONET BACHMAN ET AL. VIOLENCE AGAINST AMERICAN INDIAN AND ALASKA NATIVE WOMEN AND THE CRIMINAL JUSTICE RESPONSE: WHAT IS KNOWN (2008).

⁸ See ROSAY, *supra* note 7, at 46. These rates were in stark contrast to rates for Non-Hispanic White people who experienced intraracial violence at much higher rates (95% vs. 35% for women and 94% vs. 30% for men).

murder cases⁹ and recent studies and news articles addressing the lack of data surrounding the issues of Indigenous missing persons or murder cases.¹⁰ The movement has experienced growing media coverage and has raised a call for action from law enforcement and lawmakers at tribal, state, and federal levels.

Tribal, state, and federal governments are working on an array of actions to prevent further Indigenous people from going missing or being murdered. The federal government and state governments have technical expertise and funding that is useful to tribes. Tribes, however, are the first and foremost experts on their own communities and have resources that can and should be leveraged to help their own people. While we recognize that the MMIP issue is complex, involving different sectors (criminal justice, public health, housing, education, etc.) and factors (resource development, laws, and policies) that tribes have limited control over, in this article, we explore areas where tribes can utilize their self-determination to draw on their cultural resources to help protect their members from certain risk factors that can lead to them going missing or being murdered.

Studies in recent years demonstrate that active participation in tribal culture serves as a preventative factor against crime and victimization.¹¹ The Administration for Native Americans (ANA),

⁹ See such organizations as the Coalition to Stop Violence Against Native Women, the StrongHearts Native Helpline, the Sovereign Bodies Institute, the Indian Law Resource Center, Seeding Sovereignty, the WomenSpirit Coalition, the Native Alliance Against Violence, the Montana Native Women's Coalition, the National Indian Women Resource Center, the Alliance of Tribal Coalitions to End Violence, the Urban Indian Health Institute, the National Congress of American Indians, MMIW USA, the Alaska Native Women's Resource Center, Mending the Sacred Hoop, and the White Earth Reservation Tribal DOVE Program.

¹⁰ See URBAN INDIAN HEALTH INST., MISSING AND MURDERED INDIGENOUS WOMEN & GIRLS (2018); see also YUOK TRIBE, I WILL SEE YOU AGAIN IN A GOOD WAY: A YEAR 1 PROJECT REPORT ON MISSING AND MURDERED INDIGENOUS WOMEN, GIRLS, AND TWO SPIRIT PEOPLE OF NORTHERN CALIFORNIA (2020); see also Jeannie Hovland, *Missing and Murdered Native Americans: How to Combat the Worsening Crisis in the U.S.*, FORTUNE (June 15, 2020), <https://fortune.com/2020/06/15/missing-murdered-native-americans/>.

¹¹ See Jia Pu et al., *Protective Factors in American Indian Communities and Adolescent Violence*, 17 MATERNAL & CHILD HEALTH J. 8 (2014); see also MARIANNE O. NIELSEN & JAMES W. ZION, NAVAJO NATION PEACEMAKING:

established in 1974 through the Native American Programs Act (NAPA), is a part of the Administration for Children and Families (ACF), located in the U.S. Department of Health and Human Services (HHS). ANA provides funding to support tribal self-sufficiency and cultural preservation. Federal fiscal year (FY) 2020 was the first time that Native American applicants could explicitly apply for projects to address issues surrounding missing persons or murder victims. Funded projects will be able to support training programs, data collection, and the creation of legislative codes or laws through tribal councils that respond to those issues.¹²

ANA provides discretionary grant funding to federally and state-recognized American Indian and Alaska Native tribes. ANA also funds Native Hawaiians and non-profits in all 50 states and Native populations in the Pacific Basin (including American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands). Through ANA grant awards, some funded grantees are conducting projects that use culture as a preventative factor. For example, the Salish School of Spokane, located in Spokane, Washington, is implementing a Native Youth Initiative for Leadership, Empowerment, and Development (I-LEAD) project called, the Native Youth Empowerment Project, which began in 2016. Before the project, the grantee reported that its urban native youth had low rates of school completion, the lowest standardized test scores of any racial or ethnic group in the city of Spokane, and many came from communities and neighborhoods with high rates of poverty. The Salish School of Spokane proposed addressing these issues in its project application through teaching youth the Salish language and culture, supporting the youth through an academic program, and involving the youth in a cultural leadership and internship program with work and mentorship. This grantee reported to ANA that several youth were dramatically impacted by the school and were becoming more connected to the culture and engaging in the community, bringing them out of depression, drug use, and poor academic performance.

LIVING TRADITIONAL JUSTICE 111–23 (Marianne O. Nielsen & James W. Zion eds., 3d ed. 2005).

¹² *Missing and Murdered Indigenous Women (MMIW) and Girls, Before the Subcomm. for Indigenous Peoples of the United States, H. Comm. on Nat. Res.*, 116th Cong. (2019) (statement of Jeannie Hovland, Comm’r Administration for Native Americans).

In this article, our focus is on public health considerations for improving outcomes for Indigenous people who go missing or are murdered. We begin this paper briefly exploring the problem, looking at testimonies, and explaining how the lack of data is part of the problem. Second, we look at the role of culture in prevention through a public health model of primary, secondary, and tertiary prevention and through examples of ACF programs and grantees utilizing culture as prevention. At the primary level, we look at population-wide interventions aimed at enculturation and developing family and community bonds to prevent possible victimization before injury occurs. On the secondary level, we explore dealing with the early stages of violence, abuse, or risky behaviors and how those who provide legal, medical, and social service to Indigenous people can engage in culturally competent ways. On the tertiary level, we explore how tribes can utilize their sovereignty and culture to work with people already impacted by violence and dealing with recovery and rehabilitation through tribal practices to heal people so that they feel included as part of the community and to help remove some risk of going missing or being murdered.

II. Missing or murdered indigenous persons

Testimony provided by Indigenous people in the United States during congressional hearings and federal listening sessions emphasized both the long-term nature and prevalence of the MMIP crisis. Professor Sarah Deer of the Muscogee (Creek) Nation testified to the U.S. House of Representatives that, historically, Indigenous peoples in the United States have been kidnapped and murdered by non-Indigenous people since 1492, when Europeans arrived on the continent.¹³ This oppressive history, started by Europeans, continued when the United States became a country. Indigenous communities were marginalized¹⁴ and taken to war¹⁵ by the U.S. government.¹⁶

¹³ *Unmasking the Hidden Crisis of Murdered and Missing Indigenous Women*, *supra* note 2.

¹⁴ *Id.*

¹⁵ WALTERS ET AL., *supra* note 3, at 174.

¹⁶ *Unmasking the Hidden Crisis of Murdered and Missing Indigenous Women*, *supra* note 2.

Today, Native Americans continue to experience disproportionate rates of interracial violence.¹⁷

In an Operation Lady Justice (OLJ),¹⁸ the Presidential Task Force on Missing and Murdered American Indians and Alaska Natives, listening session, Native American tribal members explained their experiences with family members who went missing or were murdered and described how crimes against their family members are often not well covered in the media or investigated, which leads to cold cases and a lack of recognition of the problems and urgency needed to address the MMIP crisis.¹⁹ During one OLJ listening session, Tamra Borchardt-Slayton, Chairwoman for the Paiute Indian Tribe of Utah said, “Because the MMIWG Missing and Murdered Indigenous Women and Girls crisis spans multiple policy domains, jurisdictions, and regions, the response must be multi-pronged. For far too long, our communities and nations have grieved and mourned for our brothers, sisters, mothers, fathers, grandfathers, grandmothers, aunties, uncles, nieces, and nephews.”²⁰ These listening sessions have captured the tragedies Native families and communities have experienced and express the true urgency of the MMIP crisis and the need for increased intervention and funding by governmental agencies that Native American communities are calling for.

With the variety of jurisdictions involved in the MMIP crisis, including federal, state, tribal, and local levels, there are issues with data being collected on Indigenous people who are missing or murdered, including: (1) who the data is on: men, women, boys, girls, two-spirit, or LGBTQ+; (2) using the correct racial classifications of those missing or murdered; (3) using the correct classifications of how someone was killed; (4) agencies reporting their data to federal

¹⁷ See ROSAY, *supra* note 7.

¹⁸ The Operation Lady Justice Presidential Task Force on Missing and Murdered American Indians and Alaska Natives was formed by Executive Order 13898 on November 26, 2019, to consult with Tribal governments and hold listening sessions on missing and murdered American Indians and Alaska Natives and then to write a report on its findings.

¹⁹ *BIA General Session Virtual Consultation, The Presidential Task Force on Missing and Murdered American Indians and Alaska Natives* (September 17, 2020).

²⁰ *Tribes in BIA's Southern Plains, Southwest, Western, Rocky Mountain and Eastern Oklahoma Regions Webinar, The Presidential Task Force on Missing and Murdered American Indians and Alaska Natives* (May 29, 2020).

databases; and (5) Indigenous people underreporting people missing due to poor relationships with law enforcement agencies.²¹ These issues lead to a lack of data showing the full picture of the MMIP crisis across reservations, rural areas, and urban spaces.²² At the federal level, missing person cases are tracked in the Federal Bureau of Investigation's (FBI's) National Crime Information Center (NCIC) database; however, it is up to different tribal, state, and local agencies to report those missing to this database.²³ The National Missing And Unidentified Persons System (NamUs) also tracks missing people nationwide that people report to them and provides resources such as missing person records, free forensic testing, investigative support, victim services, training, and outreach.²⁴ The FBI's Uniform Crime Reporting (UCR) program collects data on nationwide murders from law enforcement agencies that report them to the FBI.²⁵ States, tribes, and local law enforcement also keep records on those reported missing or murdered, as do Indigenous organizations like the Sovereign Bodies Institute.²⁶

In order to begin to address these data issues, build better relationships between tribes and law enforcement, provide law enforcement with resources, and promote transparency, different states and tribes have been introducing legislation around the issue of MMIP.²⁷ In 2020, two acts were passed through Congress and signed into law to strengthen the federal government's response to the MMIP

²¹ See URBAN INDIAN HEALTH INSTITUTE, *supra* note 10; see also YUROK TRIBE, *supra* note 10.

²² Hovland, *supra* note 10.

²³ *National Crime Information Center (NCIC)*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/services/cjis/ncic> (last visited Dec. 4, 2020).

²⁴ NAMUS, <https://www.namus.gov> (last visited Dec. 4, 2020).

²⁵ *Federal Bureau of Investigation Uniform Crime Reporting*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/services/cjis/ucr> (last visited Dec. 4, 2020).

²⁶ *MMIWG2 Database*, SOVEREIGN BODIES INST., <https://www.sovereign-bodies.org/mmiw-database> (last visited Oct. 26, 2020).

²⁷ See *Legislation*, ASS'N ON AM. INDIAN AFFS., <https://www.indian-affairs.org/legislation.html> (last visited Dec. 7, 2020); see also *Missing and Murdered Indigenous Women (MMIW)*, UNM U. LIBRS., <https://libguides.unm.edu/c.php?g=931968&p=6782138> (last visited Dec. 7, 2020).

crisis, Savannah’s Act²⁸ and the Not Invisible Act.²⁹ Savannah’s Act includes improvements to reporting MMIP in databases; improvements to communication between federal, state, tribal, and local law enforcement agencies; increases tribal access to resources; and develops guidelines for responding to Indigenous missing or murdered people and providing training to develop guidelines.³⁰ The Not Invisible Act includes increased intergovernmental coordination through the establishment of a Joint Commission on Reducing Violent Crimes Against Indians, which has federal, tribal, and local stakeholders to make recommendations to the Departments of Justice and Interior on how to address the MMIP crisis.³¹

ANA, ACF, and HHS all advocate for prevention efforts to support the health of our Native communities.³² ACF funds programs such as Head Start, Tribal Maternal, Infant and Early Childhood Home Visiting (MIECHV), Family Violence and Prevention Services, Runaway and Homeless Youth, and Healthy Marriage and Responsible Fatherhood in order to address historical trauma, domestic violence, and heal Native families.³³ The StrongHearts Native Helpline, the National Indigenous Women’s Resource Center (NIWRC), and the Alaska Native Women’s Resource Center (AKNWRC) are all funded through the Family Violence and Prevention Services Act³⁴ and help Native people dealing with domestic violence. Additionally, HHS created and funds resources for vulnerable populations, including “foster children; runaway and homeless youth; victims of domestic violence and children who witness it; homeless adults; lesbian, gay, bisexual, and transgender individuals; individuals with mental disabilities; and those struggling with substance abuse or addiction.” ACF also addresses the MMIP crisis through its Missing and Murdered Native Americans: A Public Health Framework for Action, which improves collaboration between

²⁸ Pub. L. No. 116-165, 134 Stat. 765 (2020).

²⁹ Pub. L. No. 116–165, 134 Stat. 766 (2020)

³⁰ Pub. L. No. 116-165, 134 Stat. 765 (2020).

³¹ Pub. L. No. 116–165, 134 Stat. 766 (2020).

³² *Missing and Murdered Indigenous Women (MMIW) and Girls*, statement of Jeannie Hovland, *supra* note 12.

³³ *Id.*

³⁴ Pub. L. No. 98-457, 98 Stat. 1749 (1984).

ACF program offices and Native communities.³⁵ ANA funding not only supports creating codes around missing and murdered persons as mentioned above, but it supports “the preservation of Native cultures and languages which have been shown to stand as strong protective and preventative factors.”³⁶

While the exact scale of the crisis is difficult to measure, research has helped shine a light on some of the major drivers and risk factors that contribute to the MMIP crisis. Understanding these contributing factors is crucial for developing preventative measures, particularly in the context where enforcement after the fact is logistically and legally difficult. Obtaining justice for those that have been murdered is a critical need, but working on prevention efforts to protect Indigenous men, women, boys, and girls from further victimization is also crucial.

During a conference on the MMIP crisis hosted by the Confederated Salish and Kootenai Tribes, community members identified their understanding of several potential risk factors for victimization, including a lack of sense of community, interactions with the foster care system, substance use, and the presence of transitory predators from outside of the reservation.³⁷ When the Canadian government produced a report on missing or murdered women and girls, it identified several pathways to violence, including multigenerational trauma, social and economic marginalization, denying agency and expertise in restoring culture, naming the foster care system, disconnection from culture, and substance use as examples of specific risk factors for exposure to violence.³⁸ Borchardt-Slayton, Chairwoman for the Paiute Indian Tribe of Utah, stated that “Bringing an end to the crisis requires serious attention to underlying factors to alleviate risky behavior.”³⁹ In this paper, we explore how the

³⁵ ADMINISTRATION FOR CHILDREN AND FAMILIES, MISSING AND MURDERED NATIVE AMERICANS: A PUBLIC HEALTH FRAMEWORK FOR ACTION (2020).

³⁶ *Id.*; see also Pu et al., *supra* note 11, at 8.

³⁷ Olivia Reingold, *Conference Finds Links Between Human Trafficking, MMIW* (Aug. 30, 2019), YELLOWSTONE PUBLIC RADIO, <https://www.ypradio.org/post/conference-finds-links-between-human-trafficking-mmiiw#stream/0>.

³⁸ NAT’L INQUIRY INTO MISSING & MURDERED INDIGENOUS WOMEN & GIRLS, RECLAIMING POWER AND PLACE: THE FINAL REPORT OF THE NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS III (2019).

³⁹ Tribal Regional Virtual Listening Session Southern Plains, Southwest, Western, Rocky Mountain and Eastern Oklahoma Regions, The Presidential

Indigenous Tribes and communities in the United States are engaging with their culture to address these identified risk factors tied to victimization and violence, including a lack of a sense of community, substance use, and disconnection from culture.⁴⁰

III. Culture as prevention

Indigenous persons have lived in the United States and its territories for thousands of years with thriving societies and diverse cultures. In the United States, there are 574 federally recognized tribes,⁴¹ additional state recognized tribes, and other Indigenous organizations and entities. Over 5.2 million people identify as AI/AN⁴² and are living throughout the United States and its territories. Culture, unique to each Indigenous tribe, includes the customary beliefs, social forms, and material traits, such as values, languages, spirituality and ceremony, and traditions that are transmitted between generations.⁴³ Before European contact, Indigenous communities widely practiced their cultures and spoke their Native languages.

The United States enacted policies that disrupted culture and policies that made practicing Indigenous culture in the United States illegal.⁴⁴ The Indian Removal Act of 1830 moved tribes across the United States, away from their homelands where they practiced traditional hunting and gathering practices, to new places where the same resources were not available.⁴⁵ The Indian Religious Crimes Code of 1883 diminished religious freedom and outlawed Native

Task Force on Missing and Murdered American Indians and Alaska Natives (May 29, 2020).

⁴⁰ See Reingold, *supra* note 37; see also NAT'L INQUIRY INTO MISSING & MURDERED INDIGENOUS WOMEN & GIRLS, *supra* note 38.

⁴¹ 25 U.S.C. § 5130–5131.

⁴² TINA NORRIS ET AL., THE AMERICAN INDIAN AND ALASKA NATIVE POPULATION: 2010 (2012).

⁴³ *Culture*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/culture> (last visited Oct. 28, 2020).

⁴⁴ Irwin, *supra* note 5. The Indian Religious Crimes Code of 1883 denied Native Americans “freedom of religion” as outlined in the First Amendment, banning traditional dances and ceremonies.

⁴⁵ 25 U.S.C. § 174.

ceremonial dancing.⁴⁶ The boarding school era, beginning in the 1860s, separated Native youth from their families, their language, and their culture, and exposed them to physical and sexual abuse.⁴⁷ Finally, the General Allotment Act (Dawes Act) of 1887 allotted Native land, breaking up reservations and further disrupting traditional land management practices and family connectivity.⁴⁸ For generations, the Indigenous peoples of the United States found their cultural practices outlawed, their people removed from sacred places, and their children purposely separated from parents to be assimilated into mainstream U.S. culture.⁴⁹

These methods of colonization and assimilation caused significant trauma in Indigenous communities, which was passed down through generations. Historical trauma is a term used to describe the resulting emotional and psychological damage to Indigenous people from the generations of wars, massacres, removal policies, criminalization of culture, and boarding schools.⁵⁰ Historical trauma is linked to a variety of problematic community conditions in Indigenous communities, such as suicide, substance use, poverty, low educational achievement, shaming of cultural identity, loss of Native language and culture, dysfunctional families, trauma, and violence.⁵¹ One way to address historical trauma is through engaging with traditional culture, drawing on the strengths that Indigenous people have.⁵² Some of these community conditions, such as lack of community

⁴⁶ Irwin, *supra* note 5. The Indian Religious Crimes Code of 1883 was developed by the Secretary of the Interior Henry Teller and instituted through the Bureau of Indian Affairs for the Indian Courts.

⁴⁷ LAJIMODIERE, *supra* note 4, at 255.

⁴⁸ 46 Cong. Ch. 119, 24 Stat. 388, 25 U.S.C. § 331, repealed by the Indian Land Consolidation Act Amendments of 2000, Pub. L. No. 106-462, 114 Stat. 1992.

⁴⁹ Irwin, *supra* note 5; LAJIMODIERE, *supra* note 4, at 255.

⁵⁰ Maria Yellow Horse Brave Heart et al., *Historical Trauma Among Indigenous Peoples of the Americas: Concepts, Research, and Clinical Considerations*, 43 J. OF PSYCHOACTIVE DRUGS 282 (2011).

⁵¹ SAMHSA, *Culture is Prevention*, YOUTUBE (Aug. 23, 2018), <https://www.youtube.com/watch?v=t8GJtTSKgQQ>; see also WALTERS ET AL., *supra* note 3, at 174–76.

⁵² Joseph P. Gone, *Redressing First Nations Historical Trauma: Theorizing Mechanisms for Indigenous Culture as Mental Health Treatment*, 50 TRANSCULTURAL PSYCHIATRY 696 (2013).

bonds, substance use, and cultural alienation may be putting Indigenous people at risk of becoming vulnerable to violence.⁵³ In the next three sections, we explore how culture is used as a preventative factor to make Indigenous communities safer and protect Indigenous people through utilizing a public health prevention model of primary, secondary, and tertiary prevention and giving examples of ACF programs and grantees utilizing culture as a preventative factor.

A. Primary prevention: increasing connectedness

Preliminary studies reported that social and cultural integration serve as a powerful protective factor against victimization. In a survey of five Midwestern reservation schools, parental involvement in an adolescent's life was found to prevent violence, and the survey specifically found that "an adolescent's interest in the tribe's culture had a strong positive, indirect relationship with adolescents' violent behavior."⁵⁴ The pathway described in this study involves boys and girls becoming interested in their culture, which leads to closer parental monitoring and higher self-efficacy, which in turn leads to decreased exposure to violence.⁵⁵ This pathway was echoed in anti-human trafficking research that surveyed survivors of trafficking, including those connected to an ANA grantee, Native Connections. In this study, survivors reported on three key themes that could have helped prevent trafficking: "(1) having family/parents, (2) having someone other than parents who cared about them, and (3) having the support of one's community."⁵⁶ This pathway can serve as a guideline for primary population-level prevention. Primary prevention works to stop violence before it happens.⁵⁷ By utilizing existing cultural resources, Indigenous communities can integrate their members into both their cultures and their immediate families in order to build the community bonds that can prevent violence or victimization.

⁵³ See Reingold, *supra* note 37; see also NAT'L INQUIRY INTO MISSING & MURDERED INDIGENOUS WOMEN & GIRLS, *supra* note 38.

⁵⁴ Pu et al., *supra* note 11, at 8.

⁵⁵ *Id.*

⁵⁶ DEBRA SCHILLING WOLFE ET AL., HUMAN TRAFFICKING PREVALENCE AND CHILD WELFARE RISK FACTORS AMONG HOMELESS YOUTH: A MULTI-CITY STUDY 47 (2018).

⁵⁷ Lucy Kirk et al., *Effectiveness of Secondary and Tertiary Prevention for Violence Against Women in Low and Low-Middle Income Countries: A Systematic Review*, 17 BMC PUB. HEALTH 622 (2017).

The literature on prevention research in Indigenous communities refers to the concepts of *enculturation*, or the degree to which an individual is engaged with their cultural traditions and practices, and *cultural orientation*, or how an individual's self-image and sense of purpose is informed by their cultural beliefs.⁵⁸ These aspects of identity are measurable, and scales have been developed to accurately quantify enculturation and cultural orientation, and those scales can be used to measure the impact of prevention programs promoting connectedness.⁵⁹ Public health researchers have found that higher enculturation and greater cultural orientation serves as a protective factor against substance use (a possible risk factor tied to Indigenous people going missing or being murdered)⁶⁰ and self-harm.⁶¹ Additionally, greater enculturation involves developing and deepening community bonds and community cohesion as a crucial preventative factor against violence.⁶²

As discussed, Indigenous peoples in the United States have faced assimilation and colonization practices that led to historical trauma in their communities. This pattern of intentional cultural genocide was accompanied by physical acts of violence, including the Wounded Knee Massacre, where U.S. Army soldiers murdered hundreds of Lakota women and children.⁶³ It is important to repair this cultural damage and treat historical trauma to prevent Indigenous people from developing the risk factors tied to victimization.⁶⁴ In one Lakota treatment model, community members engaged in memorializing and

⁵⁸ John Fleming & Robert J. Ledogar, *Resilience and Indigenous Spirituality: A Literature Review*, 47 PIMATSIWIN: A J. OF ABORIGINAL & INDIGENOUS CMTY. HEALTH 6 (2008).

⁵⁹ *Id.*

⁶⁰ See Reingold, *supra* note 37; see also NAT'L INQUIRY INTO MISSING & MURDERED INDIGENOUS WOMEN & GIRLS, *supra* note 38.

⁶¹ Fleming & Ledogar, *supra* note, at 58.

⁶² GRETA M. MASSETTI & CORINNE DAVID-FERDON, PREVENTING VIOLENCE AMONG HIGH-RISK YOUTH AND COMMUNITIES WITH ECONOMIC, POLICY, AND STRUCTURAL STRATEGIES (Feb. 12, 2016).

⁶³ 1890: U.S. Cavalry Massacres Lakota at Wounded Knee, U.S. NAT'L LIBR. OF MED., <https://www.nlm.nih.gov/nativevoices/timeline/377.html> (last visited Oct. 28, 2020).

⁶⁴ See Reingold, *supra* note 37; see also NAT'L INQUIRY INTO MISSING & MURDERED INDIGENOUS WOMEN & GIRLS, *supra* note 38; see also Gone, *supra* note, at 52.

mourning Wounded Knee using cultural resources, including Lakota language and ritual.⁶⁵ Seventy-five percent of participants expressed “high agreement that the intervention helped them overcome feelings of cultural shame.”⁶⁶

Lakota communities have also worked to undo the effects of cultural trauma in a family setting. In an attempt to prevent substance use (a possible risk factor tied to Indigenous people going missing or being murdered),⁶⁷ the Takini Network, established by prominent historical trauma researcher Maria Yellow Horse Brave Heart, designed a historical trauma and unresolved grief intervention (HTUG) that, when used in parenting sessions, showed “a decrease in hopelessness[,] . . . an increase in joy, . . . an increase in positive Lakota identity, . . . an increase in protective factors and a decrease in risk factors for substance abuse, . . . improvement in parental relationships . . . , and . . . improvement in parenting skills.”⁶⁸ More research is needed to determine the long-term and intergenerational effects of these kinds of interventions. These types of interventions, however, offer promising practices to address the policies of cultural degradation and assimilation that pulled communities apart and disposed of cultural resources for family and community cohesion. By re-introducing or increasing access to cultural resources in a community context, families and communities can come together to help protect their members from victimization as individuals learn coping strategies to increase resilience and reduce vulnerability through growing community bonds.

Many ANA projects incorporate aspects of enculturation and community bonds, particularly through social development programs. A recent ANA grantee, Native American Connections (funded in 2019), seeks to counteract historical trauma from the residential school system by providing cultural activities for Indigenous people in

⁶⁵ John Oetzel & Bonnie Duran, *Intimate Partner Violence in American Indian and/or Alaska Native Communities: A Social Ecological Framework of Determinants and Interventions*, 11 AM. INDIAN & ALASKA NATIVE MENTAL HEALTH RES. J. OF NAT’L CTR. 59 (2004).

⁶⁶ *Id.* at 59–60.

⁶⁷ See Reingold, *supra* note 37; see also NAT’L INQUIRY INTO MISSING & MURDERED INDIGENOUS WOMEN & GIRLS, *supra* note 38.

⁶⁸ Maria Yellow Horse Brave Heart, *The Historical Trauma Response Among Natives and its Relationship with Substance Abuse: A Lakota Illustration*, 35 J. PSYCHOACTIVE DRUGS 11 (2003).

Phoenix, Arizona. The program has three outputs: a series of cultural events and presentations for hundreds of community members in Phoenix; professional development for educators regarding historical trauma; and Indigenous food demonstrations. Each of these outputs includes hundreds of community members. This programming takes place primarily in a Native American cultural center in a predominately Indigenous neighborhood in Phoenix. While these activities may seem far removed from the issues surrounding missing persons or murder cases, this and interventions like it are an important component of primary prevention. This intervention tackles the problem from two angles: community awareness and Indigenous enculturation. By informing community members about the specific traumas faced by Indigenous people in their area, the community can gain a better understanding of the historical events that primed conditions for the MMIP crisis. By teaching Indigenous people about specific cultural practices and history, enculturation is achieved, and community bonds are built. These may not have an immediate impact on the rates of Indigenous persons going missing or being murdered, but over time, this intervention and others like it can help repair the wounds of historical trauma and bring communities together to reduce some of the risk factors thought to be associated with Indigenous persons going missing or being murdered.

B. Secondary prevention: service providers

After physical or emotional violence occurs, but before the long-term impacts set in, a response is needed. A case of domestic battery can escalate to murder; coercion and emotional abuse can escalate to human trafficking.⁶⁹ It is vital to look at who responds to these cases and who Indigenous people trust to respond. In communities deeply impacted by historical trauma, institutional trust may be low, and historical harms are compounded by the impact they have on preventing Indigenous people from accessing the help they need. This phenomenon has significant impacts for secondary interventions, which detect violent behaviors or attitudes early and prevent

⁶⁹ ANDREW R. KLEIN, PRACTICAL IMPLICATIONS OF CURRENT DOMESTIC VIOLENCE RESEARCH: FOR LAW ENFORCEMENT (2009); *see also Mental Health Needs*, OFF. FOR VICTIMS OF CRIME TRAINING & TECH. ASSISTANCE CTR., <https://www.ovcttac.gov/taskforceguide/eguide/4-supporting-victims/44-comprehensive-victim-services/mental-health-needs/> (last visited Oct. 28, 2020).

reoccurrence or escalation.⁷⁰ These interventions may occur in the immediate aftermath of violent acts and are often concerned with the initial response, as opposed to tertiary prevention, which is concerned with the long-term ramifications of escalated violence and avoiding mortality or re-offense.⁷¹

In the context of Indigenous communities and missing persons or murder cases, service providers, such as law enforcement, social workers, lawyers, and medical professionals, are an important component of secondary prevention. These professionals often interact with men, women, boys, and girls shortly after physical, emotional, or sexual violence occurs and can help or hinder victims as they seek to avoid future victimization or serious ongoing trauma. They may also interact with Indigenous people after they were exposed to risk factors for violence, such as substance use.⁷² Unfortunately, without a robust understanding of the dynamics of intergenerational and historical trauma and the cultural resources available to Indigenous victims, these service providers, at best, fail to provide optimal care and, at worst, can actively harm victims.⁷³ Understanding the concepts of trauma-informed and culturally-informed care are requirements for every professional who interacts with Indigenous people. Having this knowledge helps ensure the professional's response meets professional standards and ethics guidelines.⁷⁴ Additionally, there is a real need for increased training of Indigenous service providers to help guarantee that communities can be served by people with immediate expertise in their conditions and culture.⁷⁵

Developing cultural safety may involve recruiting Indigenous service providers, training non-Indigenous service providers in Indigenous

⁷⁰ Kirk et al., *supra* note 57.

⁷¹ *Id.*

⁷² See Reingold, *supra* note 37; see also NAT'L INQUIRY INTO MISSING & MURDERED INDIGENOUS WOMEN & GIRLS, *supra* note 38.

⁷³ Rachelle D. Hole et al., *Visibility and Voice: Aboriginal People Experience Culturally Unsafe Health Care*, 25 QUALITATIVE HEALTH RSCH. 1662 (2015).

⁷⁴ Caroline L. Tait, *Ethical Programming Towards a Community-Centered Approach to Mental Health and Addiction Programming in Aboriginal Communities*, 6 PIMATSIWIN: A J. OF ABORIGINAL & INDIGENOUS CMTY. HEALTH 29 (2008).

⁷⁵ Crystal Jongen et al., *Working Well: Strategies to Strengthen the Workforce of the Indigenous Primary Healthcare Sector*, 19 BMC HEALTH SERVICES RES. 910 (2019).

culture or spirituality, and equipping Indigenous or non-Indigenous service providers with culturally appropriate interventions. Indigenous scholars and social work researchers discuss the concept of cultural safety, or the creation of “an environment that is spiritually, socially, emotionally and physically safe for people” and that avoids “stereotyping and racism . . . discrimination and structural inequalities” that often dissuade Indigenous people from seeking care.⁷⁶ Creative and common-sense ways of integrating Indigenous people and Indigenous knowledge into the systems that serve Indigenous communities can help generate cultural safety and improve outcomes. Indigenous service providers are also able to change community perceptions and increase engagement with agencies charged with providing care, opening up new sets of resources and protection to community members.

An example of a program that deals with training service providers to respond in culturally attuned ways is the Rural Human Services (RHS) Program, which is a certificate offered through the University of Alaska Fairbanks (UAF) College of Rural and Community Development.⁷⁷ The program based at UAF was developed for Alaska Native people interested in working in their own rural villages as human service providers.⁷⁸ The program is built around Alaska Native traditions, values, and learning styles and addresses such areas as suicide prevention, mental health counseling, crisis intervention, interpersonal violence, substance use, healing, and grief through cooperative learning, involving elders in the education process, and hands-on experience that is grounded in the oral traditions of Alaska Native people.⁷⁹ The program is taught through partnerships between University of Alaska faculty, Alaska Native elders, and Alaska Native health services providers.⁸⁰ There are both eurocentric and Alaska Native components to the program as Native and non-Native faculty work with Alaska Native elders and health service providers.⁸¹ By

⁷⁶ Donna M. Klinspohn, *The Importance of Culture in Addressing Domestic Violence for First Nation's Women*, 9 FRONTIERS IN PSYCH. 1, 3 (2018).

⁷⁷ *Rural Human Services*, UNIV. OF ALASKA FAIRBANKS, <https://uaf.edu/rhs/about/index.php> (last visited Oct. 28, 2020).

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Valerie Gifford & Diane McEachern, *Reclaiming the Elder Role of Educator in Higher Education for Alaska Native Elders*, J. OF SOC. WORK EDUC. (2019).

learning both viewpoints, the RHS Program graduates are ready to work with the Indigenous populations in their villages and the more eurocentric medical and social services sectors.⁸²

Two examples from ACF demonstrate the possibilities in training non-Indigenous service providers to more effectively combat and prevent Indigenous people from going missing or being murdered. First, the Stop, Observe, Ask, and Respond (SOAR) to Health and Wellness Program for Native Communities trained service providers on how to identify cases of human trafficking using trauma-informed, culturally appropriate approaches.⁸³ SOAR for Native communities provides training to help health care and social service providers identify and respond to human trafficking in Indigenous settings and provides culturally appropriate resources for those interacting with survivors of trafficking.⁸⁴ This training is freely available on demand for self-paced learning through SOAR *Online* and through live delivery upon request via the National Human Trafficking Training and Technical Assistance Center.⁸⁵ In addition, an ANA partnership with the ACF Office of Trafficking in Persons provided Native survivors of human trafficking and frontline professionals the opportunity to examine cultural protective factors aimed at prevention of human trafficking of Native youth through its Human Trafficking Leadership Academy (HTLA).⁸⁶ By training the service providers most involved in the MMIP crisis, these HHS programs can contribute powerfully to secondary prevention efforts.

⁸² *Id.*

⁸³ *Missing and Murdered Indigenous Women (MMIW) and Girls*, statement of Jeannie Hovland, *supra* note 12.

⁸⁴ *Id.*

⁸⁵ For SOAR online training visit *SOAR Online*, NAT'L HUM. TRAFFICKING TRAINING & TECH. ASSISTANCE CTR., <https://nhttac.acf.hhs.gov/soar/soar-for-individuals/soar-online>. To contact the National Human Trafficking Training and Technical Assistance Center visit *National Human Trafficking Training and Technical Assistance Center (NHTTAC)*, OFF. OF TRAFFICKING IN PERSONS, <https://www.acf.hhs.gov/otip/training/nhttac>.

⁸⁶ *Human Trafficking Leadership Academy*, NAT'L HUM. TRAFFICKING & TRAINING TECH. ASSISTANCE CTR., <https://nhttac.acf.hhs.gov/survivor-involvement/human-trafficking-leadership-academy> (last visited Sept. 17, 2020).

C. Tertiary prevention: restorative justice practices

In comparison to the U.S. population in general, AI/AN populations have higher rates of alcohol and substance use and dependence due to the lasting impact of historical trauma resulting in poverty, chronic stress, violence and victimization, as well as other social determinants of health.⁸⁷ When considering tertiary violence prevention, it is important to remember that substance use can serve as a risk factor for Indigenous people linked to being murdered or going missing.⁸⁸ Additionally, when comparing AI/AN with other ethnic groups in the United States, Native people have consistently “been overrepresented in the justice system for alcohol-related arrests throughout the past three decades” due to crimes either associated by or precipitated with alcohol use or abuse.⁸⁹ Overall, Native people are overrepresented in the criminal justice system when compared to other Whites and Hispanics, and these high rates of incarceration in the United States justice system mean that many Native criminal offenders are removed from their communities and social structures, which further puts Indigenous people at risk of going missing or being murdered as their ties to their community are weakened.⁹⁰

Historically, tribes had their own justice systems as sovereign governments. Of the 574 federally recognized tribes, the Bureau of Indian Affairs states that, today, approximately 400 have some form of a judicial system.⁹¹ Tribes can protect their own community members through utilizing their sovereignty to establish judicial systems that serve their needs: Some judicial systems are more

⁸⁷ Robert S. Young & J. Richelle Joe, *Some Thoughts About the Epidemiology of Alcohol and Drug Use Among American Indian/Alaska Native Populations*, 8 J. OF ETHNICITY IN SUBSTANCE ABUSE 223 (2009); see also Brave Heart et al., *supra* note 50.

⁸⁸ See Reingold, *supra* note 37; see also NAT'L INQUIRY INTO MISSING & MURDERED INDIGENOUS WOMEN & GIRLS, *supra* note 38.

⁸⁹ Sarah W. Feldstein, et al., *American Indian/Alaska Native Alcohol-Related Incarceration and Treatment*, 13 AM. INDIAN & ALASKA NATIVE MENTAL HEALTH RSCH. 2 (2006).

⁹⁰ ZHEN ZENG, U.S. DEP'T OF JUSTICE, JAIL INMATES IN 2018 (2020); see also Reingold, *supra* note 37; MAY LEUNG, THE ORIGINS OF RESTORATIVE JUSTICE, Alberta, Canada: Canadian Forum on Civil Justice (1999).

⁹¹ *Tribal Court Systems*, U.S. DEP'T OF INTERIOR, INDIAN AFFS., <https://www.bia.gov/CFRCourts/tribal-justice-support-directorate> (last visited Oct. 28, 2020).

traditional and restorative, such as peacemaking courts/circles, councils of elders, or sentencing circles; other tribes have established systems that more closely follow the U.S. system through a Code of Federal Regulations (CFR), courts with judges, and consequences such as fines or imprisonment; while still other tribes have a hybrid system where they have elements of cultural restorative justice and CFR courts.⁹²

Since the formation of the United States, the practical sovereignty of tribes has been diminished, and limitations have been imposed on tribes that weaken their ability to exercise their sovereign powers due to United States federal laws and court cases.⁹³ In some cases, tribes have judicial powers over Native American people and can use restorative justice practices to resolve the crimes.⁹⁴ Restorative justice practices increase the person's integration into the community, protecting community members from being removed from the community and being incarcerated, which leads to a loss of community ties.⁹⁵ Tribes are engaging Indigenous people at the tertiary level of

⁹² STEPHEN W. PERRY, CENSUS OF TRIBAL JUSTICE AGENCIES IN INDIAN COUNTRY, 2002 (2005).

⁹³ See the Marshall Trilogy cases: *Johnson v. M'Intosh*, 21 U.S. 543 (1823), *Cherokee Nation v. Georgia*, 30 U.S. 1, 17 (1831), *Worcester v. Georgia*, 31 U.S. 515, 520 (1832) that together recognized a persisting but limited tribal sovereignty over a tribe's Aboriginal lands and its members. See *United States v. Kagama*, 118 U.S. 375 (1886) for Congressional plenary power to extinguish tribal sovereignty. See *United States v. Wheeler*, 435 U.S. 313, 322 (1978) for tribes having inherent sovereignty that was never extinguished.

⁹⁴ See the Indian Country Crimes Act (ICCA) 18 U.S.C. § 1152, Major Crimes Act (MCA) 18 U.S.C. § 1153, the Indian Civil Rights Act (ICRA) 25 U.S.C. § 1301–1304, 28 U.S.C. § 1360; 83 Pub. L. No. 280 (1953), Tribal Law and Order Act of 2010 (TLOA), Pub. L. No. 111-211, 124 Stat. 2258, the Duro Fix statute Pub. L. No. 101-511, 104 Stat. 1856 (1990) (codified at 25 U.S.C. § 1301(2)), and the 2013 Amendments to the Violence Against Women Act (VAWA), Pub. L. No. 103-322, 108 Stat. 1902 (1994), amended by Congress, reauthorized, and expanded in 1996 and 2000, Violence Against Women Act of 2000, Pub. L. No. 106-386, 114 Stat. 1491; Pub. L. No. 104-201, 110 Stat. 2655 (1996) (codified as amended at 18 U.S.C. § 2261A). For further understanding of Federal Indian law, please see Cohen's Handbook of Federal Indian Law: NELL JESSUP NEWTON, FELIX COHEN, & ROBERT ANDERSON, COHEN'S HANDBOOK OF FEDERAL INDIAN LAW (2012).

⁹⁵ See LEUNG, *supra* note 90; see also Reingold, *supra* note 37.

prevention, which is concerned with the long-term effects of escalated violence and avoiding recidivation.⁹⁶ Restorative justice takes Indigenous people engaging in high-risk behaviors, has them interact with tribal justice systems in a more culturally safe way, and engages them with their community, improving cohesion, rehabilitating, treating substance abuse issues, and helping to protect them from the risk factors of substance abuse, disconnection from culture, and a loss of sense of community, which are risks associated with becoming a missing or murdered person.⁹⁷ Indigenous restorative justice practices emphasize restoring harmony and peace to the community, healing, resolving conflict, and restoring relationships.⁹⁸

The peacemaking circle is the most widely used type of restorative justice in U.S. Indigenous communities.⁹⁹ The Navajo Nation, in 1982, was the first tribe to use a peacemaking circle as a traditional Indigenous justice system to be part of their post-colonial judicial system.¹⁰⁰ The type of cases handled by peacemaking circles include juvenile issues such as misdemeanors, minors in possession of alcohol or drugs, shoplifting, truancy, property damage, auto thefts, assault and battery, and vandalism; adult issues include drunk driving, child support, child custody, and domestic relations issues that were non-violent.¹⁰¹ Participants in peacemaking circles include the offender, the victim, their families, the peacemaker, and community members such as church representatives, counselors, police, and other interested community members.¹⁰² The peacemaker is not a neutral

⁹⁶ Kirk et al., *supra* note 57.

⁹⁷ See Reingold, *supra* note 37; see also NAT'L INQUIRY INTO MISSING & MURDERED INDIGENOUS WOMEN & GIRLS, *supra* note 38.

⁹⁸ ADA PECOS MELTON, INDIGENOUS JUSTICE SYSTEMS AND TRIBAL SOCIETY, *in* JUSTICE AS HEALING: INDIGENOUS WAYS 108 (Wanda D. McCaslin ed., 2005).

⁹⁹ *Id.*

¹⁰⁰ Nancy A. Costello, *Walking Together in a Good Way: Indian Peacemaker Courts in Michigan*, 76 U. DET. MERCY L. REV. 875 (Spring 1999).

¹⁰¹ *Id.*; see also Laura Mirsky, *Restorative Justice Practices of Native American, First Nation and other Indigenous People of North America: Part One*, INT'L INST. FOR RESTORATIVE PRAC., <https://www.iirp.edu/news/restorative-justice-practices-of-native-american-first-nation-and-other-indigenous-people-of-north-america-part-one> (last visited Oct. 28, 2020).

¹⁰² *Kake Circle Peacemaking*, HARVARD KENNEDY SCHOOL ASH CTR. FOR DEMOCRATIC GOVERNANCE & INNOVATION, <https://www.innovations.harvard.edu/kake-circle-peacemaking> (last visited Oct. 28, 2020).

mediator, they often know the parties involved and could even be a relative; the peacemaker is chosen for their leadership and knowledge and provides teaching to the parties involved.¹⁰³ The circles can have anywhere from 6 to 60 people.¹⁰⁴ The circle begins with a prayer and then works to negotiate and build consensus about what should be done through conciliation instead of punishment.¹⁰⁵ The wrongdoer usually apologizes and has consequences such as attending a culture camp, performing community service with an elder, having a curfew, or enrolling in substance use treatment, and they have to compensate the victim through repairing relationships and feelings.¹⁰⁶

Peacemaking circles have had success in reducing recidivism. In Kake, Alaska, the Circle Peacemaking program had low rates of recidivism, with 68 adults going through the program and not violating any laws or repeating their offense during their probationary periods.¹⁰⁷ The Kwnalin Dun First Nations Community in Yukon, Canada found that adults who went through the circle program had “dramatic decreases in the frequency and seriousness of criminal behavior.”¹⁰⁸ The criminal activity of the adults involved in the Kwnalin Dun First Nations Community decreased by 80%.¹⁰⁹ The Navajo Nation compared the rates of recidivism between their Peacemaking Program and their family court and found a 60% lower rate of reoffending in their Peacemaking Program.¹¹⁰ Lower rates of recidivism are linked to the involvement of culture and traditions in the circle, the successes in the circles of reducing substance use, and the healing that happens between the offender, the victim, and the community.¹¹¹ Treating these offenders through connecting them to the community, addressing their substance use, and involving them in

¹⁰³ Costello, *supra* note 100, at 875.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Kake Circle Peacemaking*, *supra* note 102.

¹⁰⁸ DAVID CAYLEY, *THE EXPANDING PRISON: THE CRISIS IN CRIME AND PUNISHMENT AND THE SEARCH FOR ALTERNATIVES* 187 (1998).

¹⁰⁹ *Id.*

¹¹⁰ NIELSEN & ZION, *supra* note 11, at 123.

¹¹¹ *Kake Circle Peacemaking*, *supra* note 102.

their culture could help lower their risk of going missing or being a murder victim.¹¹²

ANA awarded a Social and Economic Development Strategies grant to the Mashpee Wampanoag Tribe in Massachusetts from 2014–2016 to help them integrate traditional peacemaking as a process to resolve disputes into their existing court system.¹¹³ The tribe worked through an Elder’s Judiciary Committee (EJC), and the EJC sought out community advisors, including spiritual advisors, clan mothers, and chief’s circle members to develop the techniques for dispute resolution and the peacemaking guidelines.¹¹⁴ Through the ANA funding, the tribe developed a peacemaker court and trained 18 peacemakers.¹¹⁵ The Mashpee Wampanoag Tribe is engaging in tertiary prevention in its community, it is working with people who have escalated to committing crimes and are treating these offenders, healing them, the victim, and the community to make the community stronger and safer. Restorative justice practices help reintegrate offenders into the community, help resolve their substance use issues, and may make them less at risk for going missing or being murdered.

IV. Conclusion

MMIP is a serious issue endangering the lives of Indigenous men, women, boys, and girls. Indigenous peoples in the United States have a history of colonization and historical trauma that puts them at risk for going missing or being murdered as they lose connectedness with their communities, use substances, and are alienated from their culture. Indigenous communities, however, have great strength in their culture and can use it as a preventative factor to enculturate and connect people to their communities, engage with service providers to respond in culturally competent ways, and rehabilitate their offenders through restorative justice practices, all to protect them from becoming at risk of going missing or being murdered.

¹¹² See Reingold, *supra* note 37; see also NAT’L INQUIRY INTO MISSING & MURDERED INDIGENOUS WOMEN & GIRLS, *supra* note 38.

¹¹³ ADMINISTRATION FOR NATIVE AMERICANS, FY 2017 REPORT TO CONGRESS ON THE OUTCOME EVALUATIONS OF ADMINISTRATION FOR NATIVE AMERICANS PROJECTS 57 (2018).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

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Jurisdictional Solutions in Indian Country to Support Missing or Murdered Indigenous People Efforts

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I. Introduction

Jurisdictional challenges in Indian country may hamper tribal law enforcement's efforts to address missing or murdered Indigenous persons cases. To provide justice and fair treatment of tribal members and communities, tribal law enforcement must work in close cooperation with their local, state, and federal law enforcement partners in and around Indian country. These partnerships are critical when a tribal member goes missing or is murdered, as these types of cases may cross jurisdictional boundaries and often involve neighboring departments.

In addition to the establishment the Presidential Task Force on Missing and Murdered American Indians and Alaska Natives, also known as Operation Lady Justice, several states have enacted legislation establishing task forces or studies on the issue of missing or murdered Indigenous persons.¹ These state reports are starting to

¹ Establishing the Task Force on Missing and Murdered American Indians and Alaska Natives, Exec. Order No. 13898, 84 Fed. Reg. 66059 (2019);

come to fruition and be released, with the first few indicating that jurisdictional challenges hamper the investigation and resolution of these cases. For example, in several of the meetings hosted by the Washington State Patrol in the development of its “Missing & Murdered Native American Women Report,” jurisdictional challenges were raised, including that “When a loved one is missing the last thing a person wants to hear is, ‘I cannot assist you.’”² Further, the Nebraska report, “LB154 Report: Prevalence of Missing Native American Women and Children in Nebraska; Barriers to Reporting and Investigating; and Opportunities for Partnerships” indicated that:

jurisdictional issues between tribal and non-tribal law enforcement agencies may convolute the reporting process, where Native American community members must decide to whom they should report the case. . . . This issue is strongly tied to a second problem, which is that tribal and non-tribal law enforcement agencies may not agree on which agency should investigate the missing person case.³

It is well understood in American law enforcement that crime does not stop at the city, county, state, or reservation boundary. In and around tribal communities, this is particularly true given the often checkerboarded lands within reservations as well the general movement of people as they go about their daily lives. Reservation border towns and counties, such as Big Horn county, Montana, in the case of Selena Not Afraid, may be locations where Indigenous persons go missing.⁴ Through effective multi-jurisdictional partnerships and

Melodie Edwards, *7 States Step Up Efforts To Fight Violence Against Indigenous Women*, WYO. PUB. RADIO (July 23, 2019), <https://www.npr.org/2019/07/23/743659569/7-states-step-up-efforts-to-fight-violence-against-indigenous-women>.

² MONICA ALEXANDER, U.S. DEP’T OF JUSTICE, MISSING & MURDERED NATIVE AMERICAN WOMEN REPORT 8 (June 1, 2019).

³ MATTHEW SUTTER ET AL., LB154 REPORT: PREVALENCE OF MISSING NATIVE AMERICAN WOMEN AND CHILDREN IN NEBRASKA; BARRIERS TO REPORTING AND INVESTIGATING; AND OPPORTUNITIES FOR PARTNERSHIPS, at 8 (Neb. 2020).

⁴ Jack Healy, *Rural Montana Had Already Lost Too Many Native Women. Then Selena Disappeared*, N.Y. TIMES (Jan. 20, 2020), <https://www.nytimes.com/2020/01/20/us/selena-not-afraid-missing-montana.html>.

agreements, tribal law enforcement agencies can successfully engage with communities to build trust while also demonstrating their legitimacy and effectiveness among their law enforcement peers.

This article discusses some of the typical jurisdictional partnerships and arrangements in tribal communities, including Special Law Enforcement Commissions (SLEC), cross-deputizations, memorandums of understanding/agreement (MOU/MOA), and state recognition of tribal law enforcement. First, we discuss an example of state recognition of tribal officers to enforce state laws by examining the process in Alabama to pass the Poarch Band of Creek Indians—State Police Powers Act.⁵ Next, we describe how agreements among tribal and local law enforcement and prosecutors, such as the agreement between the Sycuan Tribal Police Department and the County of San Diego District Attorney’s Office, can address jurisdictional challenges. Finally, we discuss how SLECs can assist in addressing jurisdictional challenges in Indian country by providing federal enforcement authority to tribal officers.

II. Jurisdictional challenges that impact missing or murdered American Indians and Alaska Natives

Criminal jurisdiction in Indian country can be a complex web that poses a challenge to effective law enforcement in and around tribal communities. Criminal jurisdiction in Indian country traces back to the early development of the United States with treaties, which are the “supreme Law of the Land,” between tribes and the United States that recognized the inherent sovereignty of tribal nations and are a source of criminal jurisdiction.⁶ The Marshall Trilogy of Supreme Court cases, which includes *Cherokee Nation v. Georgia*, holding that Indian nations are “domestic dependent nations,” also influenced federal policy.⁷ Through the early eras of federal Indian policy, criminal jurisdiction shifted as legislation such as the General Crimes

⁵ H.B. 149, 2018 Reg. Sess. (Ala. 2018).

⁶ U.S. CONST. art. VI; Carrie E. Garrow, *Treaties, Tribal Courts, and Jurisdiction: The Treaty of Canandaigua and the Six Nations’ Sovereign Right to Exercise Criminal Jurisdiction*, 2 J. CT. INNOVATION 249 (2009).

⁷ *Cherokee Nation v. Georgia*, 30 U.S. 1, 10 (1831).

Act (1817) and the Major Crimes Act (1885) was passed.⁸ In the termination era, Public Law 83-280 (PL 280) transferred criminal jurisdiction from the federal government to states in certain “mandatory” and “optional” states.⁹ Then, the *Oliphant* decision in 1978 held in part that “Indians do not have criminal jurisdiction over non-Indians absent affirmative delegation of such power by Congress.”¹⁰

Several decades later, the self-determination era of federal policy brought advances such as the Tribal Law and Order Act of 2010 (TLOA) and the Violence Against Women Reauthorization of 2013 (VAWA). These laws recognized the inherent sovereignty of tribes and their criminal jurisdiction over Indians and, in limited cases, non-Indians alike.¹¹ The TLOA permitted tribes to request re-assumption of federal (concurrent) jurisdiction in PL 280 states, while the VAWA authorized tribes to try non-Indians for the first time since the *Oliphant* decision under “special domestic violence criminal jurisdiction” if the case/defendant meets certain criteria.¹²

Today, the landscape of criminal jurisdiction in Indian country continues to evolve as evidenced by *McGirt v. Oklahoma*, where the Supreme Court was “asked whether the land [two] treaties promised remains an Indian reservation for purposes of federal criminal law” and concluded that, “[b]ecause Congress has not said otherwise, we hold the government to its word.”¹³ In the decision aftermath, the governor of Oklahoma signed an executive order to establish the Oklahoma Commission on Cooperative Sovereignty “to address concerns and make recommendations to the State and the U.S. Congress in light of the recent U.S. Supreme Court decisions.”¹⁴

What this means for tribal law enforcement is that they must know the following for any call they respond to:

⁸ General Crimes Act, 18 U.S.C. § 1152 (1817); Major Crimes Act, 18 U.S.C. § 1153 (1885).

⁹ Pub. L. No. 83-280, 18 U.S.C. § 1162 (1953).

¹⁰ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 208 (1978).

¹¹ Tribal Law and Order Act of 2010, Pub. L. No. 111–211, H.R. 725, 124 Stat. 2258, (2010); Violence Against Women Reauthorization Act of 2013, 42 U.S.C. § 13701.

¹² *Id.*

¹³ *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2459 (2020).

¹⁴ Okla. Exec. Order No. 2020-24 (Jul. 20, 2020), <https://www.sos.ok.gov/documents/executive/1952.pdf>.

- (1) The location of the offense—Is it Indian country as defined by federal law?¹⁵
- (2) The status of the victim—Are they Indian or non-Indian?
- (3) The status of the suspect—Are they Indian or non-Indian?

They must ascertain all this information to determine if they can exercise tribal criminal jurisdiction exclusively or whether they can rely on federal or state authority, if the tribe has it through SLECs; state law; cross-deputizations; or some other agreement with state or local authorities. There are multiple ways tribal law enforcement can obtain recognition to enforce federal and state laws, such as passage of statewide legislation, agreements with local authorities, and agreements with the Bureau of Indian Affairs (BIA), examples of which are described in the following sections.

Jurisdictional issues resulted in federal government action like the executive order establishing the Presidential Task Force on Missing and Murdered American Indians and Alaska Natives, which establishes “a multi-disciplinary, multi-jurisdictional team” and “addresses the need for greater clarity concerning roles, authorities, and jurisdiction.”¹⁶ Recommendations from the first state-issued reports also include jurisdictional questions such as who the community reports incidents to; which agency should enter missing cases; and the lack of law enforcement staffing, resources, and training. For example, Nebraska’s LB154 report recommended “[i]ncreas[ing] the capacity of tribal law enforcement departments through the cross-deputization of Nebraska State Patrol officers” and “[e]ncourag[ing] Memorandums of Understanding (MOUs) between tribal and non-tribal law enforcement agencies” to help address jurisdictional challenges.¹⁷

Some of the ways tribes and tribal law enforcement can address this myriad of jurisdictional challenges can be through state recognition for tribal officers, agreements with local law enforcement and

¹⁵ 18 U.S.C. § 1151.

¹⁶ Establishing the Task Force on Missing and Murdered American Indians and Alaska Natives, Exec. Order No. 13898, 84 Fed. Reg. 66059 (2019).

¹⁷ MATTHEW SUTTER ET AL., LB154 REPORT: PREVALENCE OF MISSING NATIVE AMERICAN WOMEN AND CHILDREN IN NEBRASKA; BARRIERS TO REPORTING AND INVESTIGATING; AND OPPORTUNITIES FOR PARTNERSHIPS, SUBMITTED TO THE NEBRASKA LEGISLATURE 5 (Neb. 2020).

prosecutors, or SLECs from the BIA, all of which are described in detail in the next sections.

III. State recognition for tribal officers

State recognition and authority for peace officer standards and training certified tribal police officers to enforce state law is an important component to investigating missing or murdered indigenous persons (MMIP). The collaboration and support of state and local law enforcement with and for tribal police can improve the overall response to tribal victims. There are more than 200 police departments operating in Indian country according to the Tribal Court Clearinghouse.¹⁸

I have gained an immense amount of respect for tribal police officers who have made a career out of working law enforcement in Indian country. Having come to Indian country late in my career, after 27 years in local law enforcement, I have been impressed by the work performed by the tribal officers I have met, especially considering the overall complexity of the jurisdictional puzzle they work in daily. Whether they work in a PL 280 state or a PL 638 state, the one constant they must deal with is state jurisdiction issues and questions.¹⁹ Those who work in Indian country are not surprised that even those two laws fail to cover all the federally recognized Indian tribes.²⁰ Based on what I have seen firsthand or learned from my colleagues, this tribal, state, and local law enforcement relationship can take many forms and runs the gamut from friendly and supportive to outright hostile.

Tribal police officers want to provide the same thing that all police officers want, which is to protect and serve their tribes and communities. No matter how this sentiment is expressed, it is a universal constant in law enforcement. The desire to protect and serve

¹⁸ *Tribal Law Enforcement*, TRIBAL COURT CLEARINGHOUSE, <http://www.tribal-institute.org/lists/enforcement.htm> (last visited Oct. 16, 2020).

¹⁹ *See Frequently Asked Questions about Public Law 83-280*, U.S. ATT'YS OFF. DISTRICT OF MINN., <https://www.justice.gov/usao-mn/Public-Law%2083-280> (last updated May 1, 2015); Indian Self-Determination and Education Assistance Act, as Amended, Pub. L. No. 93-638, 88 Stat. 2203 (codified as amended at 25 U.S.C. §§ 450–450n, 455–458e, 458aa– 458hh, 458aaa–458aaa-18 (2006)).

²⁰ Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993, Pub. L. No. 103-116, 25 U.S.C § 941.

binds law enforcement together, and this commonality is important because it helps the police counter the criminals who use their mobility to escape detection or evade apprehension. The cooperation and information sharing between law enforcement agencies is built on shared goals and is one of the best tools the police have at their disposal. Tribal police officers, however, often lack the ability to enforce state laws on non-tribal members on the reservation. They also historically lacked adequate access to the National Crime Information Center (NCIC) system, which is primarily operated through a single gateway in each state.²¹ It is hard to imagine working a missing person investigation without the ability to use the NCIC system.

This lack of clear police authority is a long-recognized problem that is well documented but seldom understood or appreciated by law enforcement outside of Indian country.²²

Before I began working for the Poarch Band of Creek Indians, I did not understand this. One of the first things I encountered as the public safety director for the Poarch Band of Creek Indians was the reality of a checkerboard reservation and working cases by MOUs with three separate sheriff's offices in Alabama.

The Poarch Band of Creek Indians are fortunate to have great local partners, but each one of these MOUs may only last through the individual sheriffs' terms in office. The magnitude of this complexity only increases when one considers trying to work cases against non-Indians on the reservation and prosecuting them in three separate state court districts, which involves working with three different district attorney offices. Tribal police departments must balance rules and procedures that vary from location to location. A very good example of this was proffered by Chief Goss of the Tulalip Tribal Police, where he described the murder of an elder that occurred on the reservation by a non-member and two Tribal members.²³ The tribal

²¹ *National Crime Information Systems*, U.S. DEP'T JUST., <https://www.justice.gov/tribal/national-crime-information-systems> (last visited Oct. 16, 2020).

²² See NATIONAL SHERIFFS' ASSOCIATION, OFF. OF COMMUNITY ORIENTED POLICING SERVICES, CROSS-DEPUTIZATION IN INDIAN COUNTRY (2018).

²³ J. A. Goss Jr., *To Honor and Protect: The Tenets of Law Enforcement*, in TRIBAL LAW ENFORCEMENT STRATEGIES: LAW ENFORCEMENT OFFICIALS ON UNDERSTANDING THE LATEST TRENDS AND ENFORCEMENT STRATEGIES EFFECTING TRIBES 42–58 (2012).

police had jurisdiction to investigate the case but had to prosecute it in state court for the non-member, in federal court for one of the tribal members, and in tribal court for the other tribal member. That one case had to be presented and prosecuted in three court systems. Justice can be found in Indian country, but sometimes the tribe has to work harder to achieve it.

The Poarch Band of Creek Indians is fortunate that, after a two-year effort, the state of Alabama passed a state law granting police powers to tribal police officers who are certified within the regulations of the Alabama Peace Officer Standards and Training Commission.²⁴ With the passage of this law, the state of Alabama cleared up jurisdiction issues that handicapped tribal police officers. Although the tribe still has the support of our local sheriffs, it is no longer solely dependent on their goodwill and do not have to risk the loss of deputization that comes with each election. Operationally, the tribe no longer needs to be mindful of whose procedures apply to Poarch Officers on three separate reservations when working crimes committed by non-tribal perpetrators. Additionally, the Poarch Tribal Police Officers can feel a sense of pride and professional recognition from their state and local peers as an equal and not some afterthought, forgotten and overlooked.

The problems with criminal jurisdiction issues are not new in Indian country and have been well documented in previous years.²⁵ As a new national focus looks at the problems surrounding missing or murdered indigenous people, it is worth reviewing these earlier works. State and local officers need to be trained to recognize the possibility of tribal member victims. The federal government must do more to support the full integration of tribal police departments into the national law enforcement fabric.

Policies and protocols exist for working crimes across state boundaries, and extradition between the states has been regulated since at least 1793.²⁶ The victimization rate for MMIP should get the attention it deserves, and carefully crafted responses should be implemented. The working relationship between tribal police and

²⁴ ALA. CODE §36-21-120 (2013).

²⁵ See *Indian Law and Order Commission Report: A Roadmap for Making Native America Safer: Hearing before the S. Comm. on Indian Affairs*, 113th Cong. (2014).

²⁶ Milton Hirsch, *Midnight Run Re-Run: Bail Bondsmen, Bounty Hunters, and the Uniform Criminal Extradition Act*, 62 U. MIAMI L. REV. 59, 70 (2007).

their respective states should not be overlooked as one of these remedies.

IV. Agreements with local law enforcement and prosecutors

With fewer than 20 states having statutes giving tribal police officers the authority to enforce state law, and with many tribal law enforcement programs working under a PL 280 jurisdiction, it is very important for these programs to have agreements in place with their local law enforcement partners.²⁷ These agreements would be in an effort to provide comprehensive and seamless law enforcement services to the people they are sworn to serve and protect. In some cases, these agreements go well beyond just MOUs to deputize or commission tribal officers to enforce state laws. Some of the more robust agreements address such things as dispatching services, including access to interoperable radio communications; booking and housing services for state-charged offenders; access to local, regional, and state law enforcement information systems; and even utilization of local agencies' crime and forensics labs.

Having comprehensive agreements in place only expands the capacities of tribal law enforcement agencies. The ability for tribal officers to respond to and handle all calls for service regardless of the Indian or non-Indian status of an offender or victim or the status of the land greatly increases the effectiveness of the programs. One could also easily argue that tribal law enforcement agencies operating with such comprehensive agreements in place increase police accountability and legitimacy with the communities they serve. Although having effective agreements in place can allow tribal police officers to have the tools and jurisdiction to provide comprehensive law enforcement services within their respective communities, there is another benefit—the ability to effectively coordinate with other local agencies on serious cases such as missing or murdered persons. We all know criminals don't recognize Indian country boundaries. Therefore, requiring coordinated, multi-agency investigations on serious cases that exceed reservation boundaries creates the most effective outcome.

²⁷ Matthew Lysakowski & Priya Sarathy Jones, *Tribal Law Enforcement Authority to Enforce State Laws*, POLICE PRAC. & RES. 49 (2016); Kevin Morrow, *Bridging the Jurisdictional Void: Cross Deputization Agreements in Indian Country*, 94 N.D. L. REV. 65, 72 (2019).

The Sycuan Tribal Police Department, which provides law enforcement services for the Sycuan Band of the Kumeyaay Nation in California, struggled for years to find a solution for its officers to have the authority to enforce state laws and also access local, regional, and state justice information systems. In 2000, Sycuan supported comprehensive legislation that would have qualified tribal police officers as state peace officers—unfortunately, this effort died during the legislative process. In realizing that many of the crimes the police department was responding to were violations of concurrent federal and state law, the department entered into a deputation agreement with the BIA. This agreement allowed for federal commissioning of all of Sycuan’s police officers. Federal commissioning of officers is more fully described in the next section, and it was this federal law enforcement status that Sycuan built all its now-current agreements on over the next several years. It is also what allowed for the tearing down of years of barriers to perceived lack of credibility and recognition by law enforcement local agencies.

Although most of the department’s concurrent jurisdiction cases did not meet the threshold for prosecution by the U.S. Attorney’s Office (USAO), the San Diego County District Attorney’s Offices would prosecute the department’s cases if the cases were submitted through the San Diego County Sheriff’s Department. Over the next few years, the department continued to gain more and more credibility within the local law enforcement community by its officers submitting thorough cases, working transparently and in good faith with local agencies, and professionally testifying in state court. Along with this recognized credibility came new, productive partnerships with both the sheriff’s department and the district attorney’s office. The trust these two local partners had in the capacity of Sycuan’s police department resulted in the department handling more and more of its concurrent jurisdiction cases independently—which really set up its soon-to-come historical agreements.

A. Access to criminal justice information systems

While Sycuan was expanding its capacities to respond to and investigate both federal and state cases, the department also had another pressing capacity gap to address—the lack of access to criminal justice databases. This gap partially closed in 2010 when the U.S. Department of Justice (Department) identified the Sycuan Tribal Police Department as part of a pilot project for direct connectivity to some of the FBI's Criminal Justice Information Services (CJIS) systems, including the NCIC.²⁸ That pilot project developed into the Department's current Tribal Access Program.²⁹ Although Sycuan was recognized by the federal government as qualified for access to justice information systems, it was the opposite with the state of California. The problem lies in state law that does not specifically define or recognize tribal law enforcement as qualified for access to the state's system, specifically the California Law Enforcement Telecommunications System (CLETS). This system is governed by the California Attorney General's Office, and it also serves as the gateway to FBI CJIS access for law enforcement agencies in California, hence Sycuan's need for the Department's pilot project to allow access to FBI CJIS systems.

Realizing a legislative fix would have been an uphill battle, Sycuan's police department collaborated with its local partners, the BIA's Office of Justice Services and the California Attorney General's Office to resolve this long-standing problem to CLETS access. In essence, the solution was to have the BIA apply for access on behalf of Sycuan's BIA-commissioned officers. With strong support from Sycuan's local law enforcement partners, especially the sheriff, and some language modification to the attorney general's CLETS Policies, Procedures and Practices Manual, the department's officers were finally approved for access. During the same timeframe, at a more local level, the department was also approved for access to one of the nation's most comprehensive regional justice information systems—the Automated Regional Justice Information System (ARJIS), along with other local

²⁸ *Overview of Tribal Access Program for National Crime Information (TAP) for the National Congress of American Indians*, U.S. DEP'T OF JUSTICE (2019), http://www.ncai.org/tribal-vawa/events/9.4.19_TAP_Webinar_Slides_FY19_NCAI.pdf.

²⁹ *Id.*

criminal justice information systems.³⁰ Further, the police department had recently upgraded its record management system to one that automatically pushes the data fields and narratives of all approved case reports to ARJIS. It is important to note that ARJIS shares its information nationally with the FBI's National Data Exchange (N-DEx).

B. Booking and prosecuting state offenders

With the capacity gap regarding access to justice information systems completely closed and the police department enjoying a very cooperative relationship with both the sheriff's department and the district attorney's office, it was time for Sycuan to close the jurisdictional gap of not having the ability to enforce state law. The solution, which wouldn't require a contentious legislative process, was much closer than anyone realized at the time. It came down to a state statute that allows federal officers with a prescribed minimum level of state training to invoke state peace officer authority with the permission of the local sheriff. Since the sheriff recognized Sycuan's federal law enforcement authority bestowed upon it by the BIA and the fact that all of Sycuan's police officers met California's Peace Officer Standards and Training minimum, the sheriff agreed to allow Sycuan's officers to handle all calls for service on the Sycuan reservation that fall under state jurisdiction. The only caveat was for the police department to have an agreement with the district attorney's office for direct state prosecution.

The district attorney's office, in good faith, immediately began working with Sycuan on a formal MOU, with both parties executing the MOU within just a few months. The agreement is predicated off Sycuan police officers' federal status. Its mission is the direct prosecution of adult and juvenile offenders who violate state laws. Their cases are referred to the district attorney by the police department for prosecution in state court after such cases are declined by the USAO or involve solely state charges. Additionally, there is no waiver of sovereign immunity. Sycuan, however, agreed to recognize case-related subpoenas and turn over any exculpatory evidence, including evidence that may be in an officer's personnel file.

Once the MOU was executed with the district attorney's office, the sheriff's department immediately approved the police department to

be able to book its state-charged arrestees into county jail at no charge, along with access to the sheriff's crime and forensics lab. The reason for not charging for the services was predicated off the fact that California is a PL 280 state. Essentially, if Sycuan's police department hadn't started handling the state jurisdiction component of law enforcement on the reservation, the sheriff's department would have been required to respond to every call and handle all follow-up investigations. Additionally, during the roll out of the police department's expanded position and capacity, the department moved its radio communications onto the county-wide regional radio communications system (RCS). And, after a county RCS policy modification, it was approved for access to all regional law enforcement mutual aid channels on the system.

C. Positive outcomes

The Sycuan Tribal Police Department has been providing comprehensive policing services to the greater Sycuan community since closing its capacity gaps approximately six years ago. The outcome has truly been a win-win for all partners involved. As a full-service policing agency now, the Sycuan Tribal Police Department is more accountable to the community it serves and can really focus on those problems the community feels are most pressing, regardless of jurisdiction. Since the agreements were put into place, the police department has solved hundreds of cases, such as thefts, assaults, domestic violence, and at-risk missing persons. As far as the win for local agencies, with the police department having access to multiple justice information systems, Sycuan's officers have been able to arrest hundreds of fugitives from other surrounding jurisdictions. Additionally, with the information the police department shares, other local agencies have been able to solve and close out many of their own cases based off the information the Sycuan Tribal Police Department has put into the different justice information systems. The sheriff's department has directly benefitted too, because the sheriff can now deploy to other parts of the county personnel that would have normally responded to calls for service or investigated crimes on the reservation. Finally, and just as importantly, both departments are always ready to cover each other on calls and assist each other with investigations, regardless of the tribe's reservation boundaries.

V. Special law enforcement commissions from the Bureau of Indian Affairs

The BIA was established in 1824 and is one of the oldest bureaus in the federal government.³¹ In 1849, the BIA was transferred to the newly created U.S. Department of the Interior.³² The mission of the BIA “is to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes and Alaska Natives.”³³ Within the BIA is the Office of Justice Services (OJS).³⁴

OJS is responsible for protecting lives, resources, and property—which lies at the heart of the BIA’s law enforcement efforts. Under the Indian Law Enforcement Reform Act, OJS is charged with providing or assisting in providing law enforcement throughout Indian country and in areas near and adjacent to Indian country.

Criminal jurisdiction within Indian country, as defined by 18 U.S.C. § 1151, has often been referred to as a jurisdictional maze. Jurisdiction may be divided among federal, state, and tribal governments through a combination of statutes and court decisions. For instance, if an Indian commits a crime within Indian country, the tribe has jurisdiction over the tribal member, and if the crime is listed in the Major Crimes Act, the federal government would also have jurisdiction. If, however, the crime is committed by a non-Indian, either the federal government or the state government may have jurisdiction, dependent on whether the victim is an Indian. In other situations, the tribe may retain jurisdiction.

While the jurisdiction matrix within Indian country is complex, requiring a determination of who the offender, the victim, and the crime may be, sometimes determining what constitutes Indian country can be just as difficult. It’s important to recognize that Indian country is not always apparent to a responding law enforcement officer. Additionally, when law enforcement officers arrest a criminal suspect, the officers may not know whether the suspect or the victim

³¹ *Bureau of Indian Affairs*, U.S. DEP’T OF THE INTERIOR, <https://www.bia.gov/bia#:~:text=Mission%20Statement,Indian%20tribes%20and%20Alaska%20Natives> (last visited Jan. 7, 2021).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

is an Indian or non-Indian. These situations create difficulty in determining the proper jurisdiction for filing charges. To assist law enforcement officers, the BIA OJS has the statutory authority, with a tribe's consent, to issue a SLEC to tribal, state, and local law enforcement operating in or around Indian country.

The BIA OJS SLEC grants officers the same law enforcement authority as BIA officers. SLEC officers have the power to enforce applicable federal laws within Indian country, including the General Crimes Act, 18 U.S.C. § 1152, and the Major Crimes Act, 18 U.S.C. § 1153. Additionally, SLEC officers are deemed an employee of the Department of the Interior for purposes of the Federal Tort Claims Act while exercising federal authority in Indian country.

The BIA's authority to enter into deputization agreements and SLECs is based on 25 U.S.C. § 2804; 25 C.F.R. pt. 12; and the Tribal Law and Order Act of 2010. SLECs are issued or renewed at the BIA OJS's discretion and only when a legitimate law enforcement need requires issuance. SLECs are issued to individuals and do not have to be issued to everyone at an agency. SLECs are not issued solely for furthering inter-agency relations or public relations.

Before granting SLECs to law enforcement officers, the BIA executes a deputation agreement with the federally recognized Indian tribe and the tribal, state, or local law enforcement agency. The BIA maintains model deputation agreements and, before executing an agreement, must determine that the applying law enforcement agency has written law enforcement policies and procedures in place that are at least as stringent as those of the BIA OJS.

Before the BIA OJS enters into a deputation agreement with a state or local law enforcement agency to provide law enforcement within a tribe's jurisdiction, the BIA OJS must have an authorizing resolution from the appropriate tribal government supporting the deputation agreement with the state or local law enforcement agency.

Before law enforcement officers may apply for BIA SLECs, they must meet specific pre-requisites, defined in 25 C.F.R. pt. 12, such as training requirements and background investigations. Officers must also attend a Criminal Jurisdiction in Indian Country (CJIC) course and pass a final exam. Upon determining that all requirements have been met, the BIA issues a SLEC to the law enforcement officer.

While the BIA has well established regulations and policies designed to streamline the issuance of SLECs, there are, often times, barriers to overcome before a deputation agreement may be agreed

upon and executed. Some of these barriers include questions of liability, questions of authority, and questions of immunity, as well as local politics and cultural tensions between tribes and local governments.

Finally, the BIA OJS offers technical assistance to tribal, state, and local governments to help navigate barriers and help develop successful cooperative relationships that will lead to the effective combating of crime in Indian country and nearby communities. Participating in cross deputation is a force multiplier and allows agencies to equip their officers with the authority to address criminal offenses in multiple jurisdictions. Inter-governmental cooperation has resulted in better law enforcement services within and around Indian country.

VI. Conclusion

While jurisdictional challenges can hamper investigations and efforts to resolve missing or murdered Indigenous persons cases, the strategies reviewed above may aid tribal law enforcement in overcoming these challenges. Alabama is just one example of a state that recently passed legislation authorizing tribal officers to enforce state laws. A summary of the status of tribal law enforcement authority in the various states, along with other examples of jurisdictional arrangements, can be found in various articles.³⁵

Solutions like state recognition, agreements with local law enforcement and prosecutors, and SLECs can also increase partnerships among tribal and non-tribal law enforcement. These partnerships with other governmental organizations are one of the key components of community policing.³⁶ Another pillar of community policing is engaging with the community to build trust, which can be accomplished through working closely with family members of missing or murdered tribal members and keeping them informed on investigations and efforts when appropriate. Through community

³⁵ See Matthew Lysakowski & Priya Sarathy Jones, *Tribal Law Enforcement Authority to Enforce State Laws*, POLICE PRAC. & RES. (2016); Kevin Morrow, *Bridging the Jurisdictional Void: Cross Deputization Agreements in Indian Country*, 94 N.D. L. REV. 65 (2019).

³⁶ OFF. OF COMMUNITY ORIENTED POLICING SERVICES, COMMUNITY POLICING DEFINED 1 (2014).

policing, tribal law enforcement can increase its responses and effectiveness in addressing the MMIP crisis.

About the Authors

Bill Denke has served the Sycuan Band of the Kumeyaay Nation as its Chief of Police for the past 15 years. He has served as a subject-matter expert for California's Commission on Peace Officer Standards and Training in developing new training curriculums, "Policing Indian Lands" and "Responding to Domestic Violence and Sexual Assault Calls on Tribal Lands." Bill was appointed to the National Indian Law and Order Commission's Advisory Committee in 2012. He is the current chairman of the Indian Country Section of the International Association of Chiefs of Police (IACP) and a member of IACP's Board of Directors. Bill is also the chairman of the California Tribal Police Chiefs' Association. In 2014, he was appointed by the director of the FBI to the FBI's Criminal Justice Information Systems (CJIS) Advisory Policy Board and also chairs that board's tribal task force. Locally, Bill serves on the board of directors for Crime Stoppers San Diego. He received his formal law enforcement training at the San Diego Regional Law Enforcement Training Center and executive training at the Federal Law Enforcement Training Center.

Bruce Lee is the public safety director for the Poarch Band of Creek Indians. Bruce has more than 34 years of experience in law enforcement and public safety, including patrol, investigations, drug enforcement, special operations, administrative services, personnel management, and emergency management. He began his career as a FBI support employee in Washington, DC, and became a security police officer at Quantico, VA. Bruce returned home and spent the next 27 years as a member of the Mobile County Sheriff's Office (MCSO). During this time, he enjoyed 22 years of progressively more responsible positions of leadership and supervision. As an MCSO captain, Bruce was responsible for the direct management and supervision of each of the main divisions in sequence (Criminal, Patrol, CID, Administrative). From this experience, Bruce developed a strong belief that it is important to train and develop talent within an agency and that your legacy as a leader will always be the people you leave behind, not the individual accomplishments. Bruce has been the public safety director for the Poarch Band of Creek Indians for the past four and a half years, managing a staff of 52 police officers and support personnel, 29 firefighters, and 7 court employees. Bruce holds

a Master of Science Degree in Criminal Justice with a concentration in Emergency Management and a bachelor's degree in Criminal Justice and in History and is a FBI National Academy Graduate (179th Session). He has been an adjunct instructor for Faulkner University and was a national trainer for the Gulf States Regional Center for Policing Innovations. Bruce is also currently providing support as a subject-matter expert for a Community Oriented Policing Services (COPS) Office Collaborative Reform Initiative—Technical Assistance Center project.

Matthew Lysakowski is the senior advisor for tribal affairs at the office of Community Oriented Policing Services (COPS Office). In this role, Matt works to coordinate both internal and external tribal issues for the COPS Office, including development and implementation of the Department of Justice's Coordinated Tribal Assistance Solicitation, coordination with other government agencies on policies and procedures affecting tribes, and conducting outreach activities to tribes. Matt also assists Operation Lady Justice, the Presidential Task Force on Missing and Murdered American Indians and Alaska Native, with engaging tribal law enforcement. Before this position, Matt was a social science analyst in the Research and Development Division (R&D) of the COPS Office. Matt focused on several issue areas in R&D, including tribal policing, policing underserved populations, and fear of crime. Before his 20 years of service at the COPS Office, Matt worked for the Texas Regional Community Policing Institute and has experience as a law enforcement officer with the National Park Service. He holds a Master of Arts in Criminal Justice and Criminology from Sam Houston State University and a Bachelor of Science in Criminal Justice from West Chester University, as well as a Native American Studies Certificate from Montana State University.

Jason O'Neal began his law enforcement career as a military police canine handler in the U.S. Marine Corps, handling both narcotic and explosive detector dogs assisting the U.S. Secret Service on executive protection details. He then joined the Bureau of Indian Affairs, Office of Justice Services (BIA-OJS), serving as a uniformed police officer and supervisory police officer throughout the country. Jason left federal service to be appointed as the chief of police for the Chickasaw Nation Lighthorse Police Department in Oklahoma, where he served for eight years, championing multiple cross-deputation partnerships. Jason returned to federal law enforcement in 2012 with the BIA-OJS,

where he has served as a special agent in charge, a deputy associate director, and presently, the deputy bureau director in Washington, DC. Jason has 25 years in law enforcement, 21 of which he has served in Indian country. Jason is an enrolled member of the Citizen Potawatomi Nation.

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National Survey Estimates of Violence Against American Indian and Alaska Native People

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When one in three Native American women will be raped in their lifetimes, that is an assault on our national conscience; it is an affront to our shared humanity; it is something that we cannot allow to continue.¹

Advocates, researchers, practitioners, and policymakers are increasingly working together to raise awareness on the level of violence experienced by American Indian and Alaska Native people. National survey estimates have been indispensable to increasing our awareness and understanding of this scourge. National survey estimates have also been indispensable to justifying the allocation of new resources and to impelling changes in both policy and practice. This article reviews the three surveys that provide national data on the victimization experiences of American Indian and Alaska Native people—the National Crime Victimization Survey (NCVS), the National Violence Against Women Survey (NVAWS), and the National Intimate Partner and Sexual Violence Survey (NISVS).

All three of these surveys provide national estimates on the prevalence and incidence of violence against American Indian and Alaska Native people. Prevalence assesses the number of people who have experienced violence in a given time period (usually from a specific point in time up to the administration of the survey). It measures the number of victims. On the other hand, incidence measures the number of times that people are victimized, or the number of victimizations. Official statistics such as reports to law enforcement and caseload statistics usually measure incidence, not prevalence (they provide information about the number of cases or incidents). The distinction between prevalence (the number of victims)

¹ Press Release, Office of the Press Secretary, Remarks by the President before signing the Tribal Law and Order Act (July 29, 2010).

and incidence (the number of victimizations) is an important one, particularly when we examine issues that impact jurisdiction. Estimates of prevalence and incidence can sometimes provide divergent implications for policy and practice, depending on whether the goal is to reduce the number of people who experience violence or the number of victimizations that people experience.

While the NCVS, the NVAWS, and the NISVS provide information about the victimization experiences of American Indians and Alaska Natives, it is important to emphasize that the people who participated in these surveys were not necessarily enrolled members of federally recognized tribes. The surveys were designed to describe the victimization experiences of people in the United States who identify themselves as American Indian or Alaska Native. They were not designed to provide estimates of violence against members of federally recognized tribes, of crimes committed by members of federally recognized tribes, or of crimes that occurred in Indian country. The victimizations that were reported in these surveys did not necessarily occur in Indian country. These limitations have important implications for developing policy and practice recommendations that are sensitive to jurisdictional boundaries. All three surveys also count American Indians and Alaska Natives in one single group, ignoring the large heterogeneities that exist within the American Indian and Alaska Native population.

Nonetheless, all three surveys provide important information about violence against women and men who identify themselves as American Indian or Alaska Native. When results are appropriately contextualized and correctly interpreted, they provide an accurate (albeit limited) portrayal of the victimization experiences of people in the United States who identify themselves as American Indian or Alaska Native. This article provides some of the details about the NCVS, the NVAWS, and the NISVS that are essential to correctly interpreting results and to properly justify implications for policy and practice. When results are contextualized and interpreted correctly, they provide a robust knowledge base to inform our policies and practices to reduce violence against people who identify themselves as American Indian or Alaska Native.

I. National Crime Victimization Survey

The primary source of information about criminal victimization in the United States is the NCVS. This annual survey has been administered by the U.S. Census Bureau for the Bureau of Justice Statistics since 1972. The survey provides detailed information about criminal victimization reported and not reported to police. Nationally representative samples of households are selected to participate in the NCVS. All household members 12 years of age and older are invited to complete an initial survey. Most of these initial surveys are completed in person. Household members are then invited to complete follow-up surveys every six months for a period of three years. The follow-up surveys can be completed in person or telephonically.

In each survey, participants are asked detailed, incident-specific questions about their criminal victimizations. For example, they are asked whether anyone attacked or threatened them with rape, attempted rape, or another type of sexual attack. The NCVS data allow us to produce past-year prevalence and incidence estimates for non-fatal personal crimes (rape or sexual assault, robbery, aggravated and simple assault, and personal larceny) and household property crimes (burglary, trespassing, motor vehicle theft, and other types of theft). Participants are also asked about their demographic characteristics. They are asked to self-report if they consider themselves to be American Indian or Alaska Native. If they report being victimized, they are asked to report the race of the perpetrator.

While the NCVS uses a large sample of households, the number of American Indian and Alaska Native household members included in each survey tends to be small. As a result, estimates for American Indian and Alaska Native people can only be generated when pooling data across multiple survey years. In 1999, the Bureau of Justice Statistics pooled data from the surveys conducted from 1992 to 1996 to create a sample of over 7,000 people who identified themselves as American Indian or Alaska Native.² The Bureau of Justice Statistics expanded this analysis in 2001, using data from the 1993 to 1998 surveys,³ and again in 2004, using data from the 1992 to 2002 surveys.⁴ More recently, Dr. Ronet Bachman and colleagues used data

² LAWRENCE A. GREENFELD & STEVEN K. SMITH, *AMERICAN INDIANS AND CRIME* (1999).

³ CALLIE RENNISON, *VIOLENT VICTIMIZATION AND RACE, 1993–1998* (2001).

⁴ STEVEN W. PERRY, *AMERICAN INDIANS AND CRIME* (2004).

from 1992 to 2005 to produce a detailed analysis of nonfatal violent victimizations.⁵

Despite the differences in these samples, the results are fairly consistent: high rates of violent victimization and high rates of interracial violence. Greenfeld and Smith (1999) showed that the incidence of violent crime against American Indian and Alaska Native people was 2.5 times the national rate (124 per 1,000 versus 50 per 1,000). Overall, American Indians and Alaska Natives experienced one violent crime for every eight residents, compared to the national average of one violent crime for every 20 residents. Relative to others, American Indians and Alaska Natives had the highest victimization rates for both women and men and across all ages, locations (urban, suburban, and rural), and household incomes. They also had the highest victimization rates for rape and sexual assault, aggravated assault, and simple assault. Relative to other victims, American Indian and Alaska Native victims experienced more interracial violence (that is, violence by a perpetrator who was not identified by the victim as American Indian or Alaska Native). American Indian and Alaska Native victims identified 70% of their perpetrators as White or Black. The incidence of interracial violence was particularly high for rape and sexual assault (94% of the perpetrators were identified as White or Black). Similar results were obtained by Perry (2004).

Rennison (2001) also found that American Indians and Alaska Natives had the highest violent victimization rates, regardless of the type of crime, gender, age, ethnicity, marital status, place of residence, household income, and ownership of residence. For American Indian and Alaska Native victims, interracial violence was again found to be more common than intraracial violence. More than half of the American Indian and Alaska Native victims were assaulted by perpetrators who were not American Indian or Alaska Native. Similar results were obtained by Bachman (2008).

Overall, despite differences in samples and analyses, the NCVS results show that the past-year incidence of violent victimization is higher for people who identify themselves as American Indian or Alaska Native than for people who do not. The results also show that

⁵ RONET BACHMAN ET AL., *VIOLENCE AGAINST AMERICAN INDIAN AND ALASKA NATIVE WOMEN AND THE CRIMINAL JUSTICE RESPONSE: WHAT IS KNOWN* (2008).

the incidence of interracial violence is higher for people who identify themselves as American Indian or Alaska Native than for people who do not. In fact, American Indians and Alaska Natives are more likely to experience interracial violence than to experience intraracial violence.

II. National Violence Against Women Survey

The NVAWS was conducted in 1995 and 1996. The purpose of the survey was to provide lifetime and past-year prevalence and incidence estimates of emotional abuse, physical assault, forcible rape, and stalking experienced by adult women and men in the United States.⁶ The survey was only conducted by telephone. Random digit dialing was used to reach women and men residing in households throughout the United States. People who did not reside in a household or did not have residential telephones were excluded from the survey. Overall, 8,000 women and 8,000 men completed the survey, but few of these women and men identified themselves as American Indian or Alaska Native (88 women and 105 men). Because of these low sample sizes, few analyses were possible to describe the violence experienced by American Indians and Alaska Natives. The only estimates available from the NVAWS for American Indians and Alaska Natives are lifetime prevalence estimates.

Participants were asked behaviorally specific questions about their victimizations. These questions avoid the use of legal terms such as rape. They also avoid requiring participants to identify what happened to them as a crime or to identify themselves as victims or survivors. Rather than asking whether someone attacked or threatened them with rape (as done in the NCVS), the NVAWS asked participants if someone had ever made them have sex by using force or threats of physical harm.

Although few estimates could be produced for American Indians and Alaska Natives, the results are consistent with those of the NCVS. Results from both surveys show high rates of violence against women and men who identify themselves as American Indian or Alaska Native. More specifically, women and men who identified themselves

⁶ PATRICIA TJADEN & NANCY THOENNES, FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY (2000).

as American Indian or Alaska Native had the highest lifetime prevalence rates for physical assault (61.4% for women and 75.2% for men). They also had the highest lifetime prevalence rates for stalking (17.0% for women and 4.8% for men).⁷ American Indian and Alaska Native women had the highest lifetime prevalence rates for rape (34.1%; estimates for men were not available due to low sample sizes). Overall, almost two out of every three American Indian and Alaska Native women experienced at least one rape or physical assault at some point in their lifetime. When examining intimate partner violence (including physical, sexual, and psychological violence), women and men who identified themselves as American Indian or Alaska Native had significantly higher lifetime prevalence rates than women and men who identified themselves as White—38.2% of American Indian and Alaska Native women and 41.2% of American Indian and Alaska Native men had experienced intimate partner violence in their lifetime (compared to 29.3% of White women and 22.2% of White men).⁸

These NVAWS results complement the NCVS results to increase our understanding of violence against American Indian and Alaska Native people. While the NCVS provided estimates of incidence in the past year, the NVAWS provided estimates of prevalence in a lifetime. The NVAWS results showed that American Indians and Alaska Natives are more likely to be victimized, and the NCVS results showed that American Indians and Alaska Natives experience a greater number of victimizations. Information about the perpetrator's race was not available from the NVAWS.

III. National Intimate Partner and Sexual Violence Survey

The NISVS is a newer survey. It began in 2010 and is administered by the U.S. Centers for Disease Control and Prevention. The purpose of this survey is to collect national- and state-level data on the lifetime and past-year prevalence of violence experienced by women and men

⁷ PATRICIA TJADEN & NANCY THOENNES, *STALKING IN AMERICA: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY* (1998).

⁸ Ann L. Coker et al., *Physical and Mental Health Effects of Intimate Partner Violence for Men and Women*, 23 *AM. J. PREVENTIVE MED.* 260 (2002).

in the United States.⁹ The forms of violence measured in the NISVS include psychological aggression by intimate partners, physical violence by intimate partners, stalking, and sexual violence. The survey is conducted by telephone, using both landlines and cell phones. Participants are randomly selected from the general population in each state to create a large, nationally representative sample. People who do not reside in a private residence are excluded from the survey, as are people who do not have a landline or cell phone. As in the NVAWS, participants are asked behaviorally specific questions about their victimization experiences. They are also asked about their race and the race of their perpetrators. Prevalence estimates for people who identified themselves as American Indian or Alaska Native are currently available from the 2010 to 2012 surveys.¹⁰

In 2010, the National Institute of Justice partnered with the Centers for Disease Control and Prevention to add an oversample of people who identified themselves as American Indian or Alaska Native.¹¹ This oversample was collected from geographical areas that have a high density of residents who identify themselves as American Indian or Alaska Native. Many of these geographical areas tend to have low population sizes and are not typically well represented in national surveys. By including these geographical areas, data were obtained from rural areas (including tribal lands) with high densities of American Indians and Alaska Natives. This additional sample, when combined with the 2010 general population sample, provides information from 2,473 women and 1,505 men who identified themselves as American Indian or Alaska Native. These women and men provide a good representation of all people in the United States who identify themselves as American Indian or Alaska Native. Most of

⁹ MICHELLE C. BLACK ET AL., NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT (2011).

¹⁰ *Id.*; MATTHEW J. BREIDING ET AL., PREVALENCE AND CHARACTERISTICS OF SEXUAL VIOLENCE, STALKING, AND INTIMATE PARTNER VIOLENCE VICTIMIZATION—NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY, UNITED STATES, 2011 (2014); SHARON G. SMITH ET AL., THE NATIONAL INTIMATE PARTNER SEXUAL VIOLENCE SURVEY (NISVS): 2010–2012 STATE REPORT (2017).

¹¹ ANDRÉ B. ROSAY, VIOLENCE AGAINST AMERICAN INDIAN AND ALASKA NATIVE WOMEN AND MEN: 2010 FINDINGS FROM THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (2016).

them (83% of the women and 79% of the men) reported being affiliated or enrolled with a tribe or village, and more than half (54% of both the women and men) had lived on a reservation or in an Alaska Native village in the past year.

Key findings from the NISVS show that most women and men who identified themselves as American Indian or Alaska Native experienced violence at some point in their lifetime (including psychological aggression by intimate partners, physical violence by intimate partners, stalking, and sexual violence). More than four in five people who identified themselves as American Indian or Alaska Native experienced one of these forms of violence at least once in their lifetime (84.3% of the women and 81.6% of the men).¹² Past-year prevalence rates were also high. More than two in five people who identified themselves as American Indian or Alaska Native experienced these forms of violence at least once in the past year (39.8% of the women and 34.6% of the men).

While American Indian and Alaska Native women and men were victimized at similar rates, they were victimized in different ways. Among people who identified themselves as American Indian or Alaska Native, lifetime experiences of sexual violence were more prevalent among women than among men (56.1% versus 27.5%). Lifetime experiences of stalking were also more prevalent among women than among men (48.8% versus 18.8%).

Fewer gender differences were found in the lifetime prevalence rates for psychological aggression by intimate partners (66.4% for women and 73.0% for men) and physical violence by intimate partners (55.5% for women and 43.2% for men).

Consistent with the findings from the NCVS and NVAWS, the NISVS findings show that victimization rates are higher for American Indians and Alaska Natives than for others. Overall, the lifetime victimization rate was 13.3 percentage points higher for women who identified themselves as American Indian or Alaska Native than for women who identified themselves as non-Hispanic White (84.3% versus 71.0%). The past-year victimization rate was 16.5 percentage points higher (39.8% versus 23.3%). For men, the lifetime victimization rate was 17.6 percentage points higher for those who identified themselves as American Indian or Alaska Native than for

¹² NAT'L INST. OF JUST., FIVE THINGS ABOUT VIOLENCE AGAINST AMERICAN INDIAN AND ALASKA NATIVE WOMEN AND MEN (2016).

those who identified themselves as non-Hispanic White (81.6% versus 64.0%). The past-year victimization rate was 8.9 percentage points (34.6% versus 25.7%).

The NISVS results on the prevalence of intraracial victimizations are consistent with the NCVS results. For people who identified themselves as American Indian or Alaska Native, interracial violence was more prevalent than intraracial violence. Most people who identified themselves as American Indian or Alaska Native were victimized by a perpetrator of a different race at least once in their lifetime (97% of the women and 90% of the men). Fewer of them were victimized by a perpetrator of the same race at least once in their lifetime (35% of women and 33% of men). For all forms of violence measured by the NISVS, people who identified themselves as American Indian or Alaska Native had significantly higher lifetime prevalence rates for interracial violence than for intraracial violence.

IV. Summary of key findings and limitations

The results from the NCVS, the NVAWS, and the NISVS reveal two key, consistent findings. First, violent victimizations are more common for people who identify themselves as American Indian or Alaska Native than for people who do not. Second, interracial victimizations are also more common for people who identify themselves as American Indian or Alaska Native than for people who do not. These results are robust, despite differences in survey methodologies and data analyses. The NVAWS and the NISVS showed that people who identified themselves as American Indian or Alaska Native had higher prevalence rates than people who did not. The NCVS showed that they also had higher incidence rates. Overall, people who identified themselves as American Indian or Alaska Native were more likely to be victims (prevalence) and had a higher number of victimizations (incidence). The NISVS also showed that people who identified themselves as American Indian or Alaska Native had higher prevalence rates for interracial victimizations than people who did not. The NCVS showed that they also had higher incidence rates for interracial victimizations. Relative to others, people who identified themselves as American Indian or Alaska Native were more likely to experience violence by a perpetrator of a different race (prevalence), and they experienced a higher number of victimizations by perpetrators of different races (incidence).

Although these findings are robust, it is important to emphasize that there are key limitations to the NCVS, the NVAWS, and the NISVS. Estimates from these three national surveys are generalizable to people in the United States who identify themselves as American Indian or Alaska Native. The survey estimates are not necessarily generalizable to people who are enrolled members of federally recognized tribes. The eligibility criteria to participate in the NCVS, the NVAWS, and the NISVS were not based on tribal enrollment or affiliation. Data were included in each analysis when the participants identified themselves as American Indian or Alaska Native. Information about the race of each perpetrator was also analyzed as it was reported by the participants. Participants were not asked (nor would they necessarily know) the tribal affiliation of each perpetrator. In addition, not all participants lived in Indian country. More than half (54%) of the NISVS participants lived on a reservation or in an Alaska Native village in the past year, but that means 46% had not. Even if they did live on a reservation or in an Alaska Native village, some of their victimizations obviously occurred outside of Indian country.

Because of these limitations, it is understandable that the conclusions from the NCVS, NVAWS, and NISVS do not necessarily reflect the realities that are seen in the daily work of practitioners. Some of the cases that were disclosed by the survey participants were never reported to police. Some of the cases that were reported to police were never referred for prosecution. Some of the victims never sought assistance. Some did, but they were not able to receive assistance. The advantage of self-report surveys is that they allow us to broadly examine the level of violence against American Indian and Alaska Native people, both reported and not reported, across jurisdictional boundaries. Results from national surveys allow us to see beyond the cases that we know about. This is why national surveys are so powerful in raising awareness.

There is one additional finding that is consistent in both the NCVS and the NISVS. Relative to other victims, American Indian and Alaska Native victims were more likely to be injured and were more likely to need medical care, but they were less likely to receive treatment for injuries.¹³ This has important implications for policy

¹³ GREENFELD & SMITH, *supra* note 2; BACHMAN, *supra* note 5; ROSAY, *supra* note 11.

and practice. It highlights the disparities in health outcomes and access to health care that continue to impact the health and safety of American Indians and Alaska Natives. This finding supports the call for additional services for American Indian and Alaska Native victims.¹⁴

V. National estimates of missing or murdered indigenous persons

At this time, the data on the prevalence of missing or murdered indigenous persons are, unfortunately, incomplete. National estimates are not yet available. Alternative approaches will be needed to document the extent of this problem. In the meantime, some information is available from the National Missing and Unidentified Persons System (NamUs). The NamUs provides a national database of missing, unidentified, and unclaimed persons.¹⁵ Monthly case updates are available for American Indian and Alaska Native missing persons. This database, however, only includes individuals who were reported missing to NamUs by family members or law enforcement agencies (including local, state, tribal, and federal agencies). A similar problem exists with measuring the prevalence of human trafficking. Data from the Uniform Crime Reporting (UCR) program capture the number of human trafficking incidents reported to law enforcement, but these data severely undercount the incidence of human trafficking.¹⁶

The Urban Indian Health Institute categorized the lack of data on missing or murdered persons as a “nationwide data crisis.”¹⁷ This crisis hinders our ability to effectuate change. As shown with our work on violence against American Indian and Alaska Native people, data can raise public awareness, and they have the power to influence policymakers and practitioners. Data can also influence resource allocation decisions. It will remain challenging to address the problem of missing or murdered indigenous persons at the national level when

¹⁴ OFF. FOR VICTIMS OF CRIME, VISION 21: TRANSFORMING VICTIM SERVICES (2013).

¹⁵ NATIONAL MISSING AND UNIDENTIFIED PERSONS SYSTEM, <https://www.namus.gov/> (last visited Jan. 22, 2021).

¹⁶ AMY FARRELL ET AL., CAPTURING HUMAN TRAFFICKING VICTIMIZATION THROUGH CRIME REPORTING (2019).

¹⁷ URBAN INDIAN HEALTH INST., MISSING AND MURDERED INDIGENOUS WOMEN & GIRLS: A SNAPSHOT OF DATA FROM 71 CITIES IN THE UNITED STATES (2019).

the national data are incomplete. Despite these shortcomings, the data currently available offer compelling reasons to act now. The Department of Justice is well positioned to lead this effort in fulfillment of its “legal duty and moral obligation to address violent crime in Indian country and to assist tribes in their efforts to provide for safe tribal communities.”¹⁸

About the Author

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¹⁸ *Hearing on Oversight of the Department of Justice Before the S. Comm. on the Judiciary*, 111th Cong. 15 (2009) (statement of Eric H. Holder Jr., Att’y Gen.).

Addressing the Crisis of Missing or Murdered Indigenous Persons: A Path Forward Utilizing a Structured Cold Case Investigation Protocol

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Since 1980, the United States has accumulated well over 262,661 unsolved murders,¹ and it is estimated that, by the end of the year 2020, that figure will exceed 275,000.² Furthermore, according to the National Institute of Justice's (NIJ) best practices guide for investigating cold cases,³ the United States is in the middle of a "Cold Case Crisis."⁴

As to missing persons, the National Missing and Unidentified Persons System's (NamUS) website⁵ indicates that over 600,000 people go missing each year.⁶ While many of these individuals are quickly found, tens of thousands remain missing for more than one year. This statistic suggests there is a high probability that foul play was involved in a significant number of those cases.

¹ Homicide data that originated from the Uniform Crime Reports and the Supplemental Homicide Reports 1980–2018 as reported by the Murder Accountability Project. MURDER ACCOUNTABILITY PROJECT, www.murderdata.org (last visited July 31, 2020).

² Based on the Uniform Crime Reports data over the past few years the United States accumulates between 6,000–7,000 unsolved homicides each year. For 2019, the total figure was 269,205 and if the accumulation trend holds, 2020 will exceed 275,000.

³ NAT'L INST. OF JUSTICE, NATIONAL BEST PRACTICES FOR IMPLEMENTING AND SUSTAINING A COLD CASE INVESTIGATION UNIT (2019).

⁴ *Id.*

⁵ NATIONAL MISSING AND UNIDENTIFIED PERSONS SYSTEM, <https://www.namus.gov/> (last visited July 31, 2020).

⁶ *Id.*

Its website further reports that, each year, 4,400 unidentified dead bodies are found, with about 1,000 of those remaining unidentified after one year, bringing our unidentified dead body count to approximately 40,000.⁷ NamUs calls this “[t]he Nation’s Silent Mass Disaster.”⁸

It has been suggested that the reported number of missing or murdered Native Americans is far less than actual occurrences, especially with regard to missing persons statistics. And while efforts are ongoing to more accurately report the data, there are studies that indicate indigenous women are murdered more than 10 times the national average.⁹ Further, studies indicate that homicide is the third leading cause of death among Native American Indians and Alaska Native women between the ages of 10 and 24.¹⁰ Homicide is the fifth leading cause of death for ages between 25 and 34.¹¹ This is an obvious crisis that needs to be addressed.

As a result, the decision process of how to address the problem becomes more difficult. Additionally, the unreported data would significantly increase the national totals and the magnitude of the overall problem.

The purpose of this article is to outline a path forward by describing a structured cold case investigation protocol that helps resolve the issue. By following this process, many of the missing or murdered cold cases that plague our society will be solved, providing justice for our communities and some finality for the “Forgotten Victims”—the surviving families.

I. Background

The first questions that come to mind are, “How did we get here?” and, “What can we do about it?” While a lot of factors come into play, there are three salient ones that are identified in this writing along with concerns related to Native American populations.

⁷ *Id.*

⁸ *Id.*

⁹ Lisa Monchalin et al., *Homicide and Indigenous peoples in North America: A Structural Analysis*, 46 *AGGRESSION AND VIOLENT BEHAVIOR* 212 (2019).

¹⁰ *Id.*

¹¹ *Id.*

A. Clearance/solve rates

In 1967, the solve or clearance rate for homicides reached an all-time high of about 90%.¹² But life and society were vastly different back then compared to 2020. As time progressed into the 1970s, 1980s, and 1990s, people became more mobile, societal changes occurred yearly, and the term “serial killer” was coined. There was also a steady rise in the number of homicides, peaking in 1993 at nearly 25,000.¹³ In that same year, the solve rate dropped to 67%.¹⁴

During the next couple of decades, the number of homicides steadily declined to about 13,741 in 2010, with a clearance rate of 64.8%.¹⁵ Throughout this time frame (1993–2010), while the number of homicides dropped by 40%, the clearance rate, surprisingly, remained in the mid-sixties.¹⁶

B. Manpower

Today, the United States has about 18,000 police agencies, and approximately 80% of those have less than 25 sworn officers.¹⁷ Departments all around the country are experiencing manpower shortages. Some homicide units are severely understaffed (approximately half of what they should have, maybe not from allocations but based on case load).¹⁸ Another contributory factor is that detectives are spending about 60% of their time conducting non-case related activities and administrative tasks that keep them from their primary function of investigating.¹⁹

¹² FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS FOR 1967.

¹³ FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS FOR 1993.

¹⁴ *Id.*

¹⁵ FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS FOR 2010.

¹⁶ FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS FOR 1993–2010.

¹⁷ BUREAU OF JUSTICE STATISTICS, NATIONAL SOURCES OF LAW ENFORCEMENT EMPLOYMENT DATA (APR. 2016, REVISED OCT. 4, 2016).

¹⁸ Personal communications of the author with detectives from around the country who attended his cold case workshops and personally seen at the Memphis Police Department, Memphis, TN where their homicide unit is 40% understaffed.

¹⁹ While this was originally reported in the Rand studies of the 1970s it can also be found in Eric J. Liederbach et al., *Detective Workload and Opportunities for Increased Productivity in Criminal Investigations*, 12 POLICE PRAC. & RES., AN INT’L J. (Feb. 2011). Decades later the problem still exists.

Collectively, all of these factors led to detectives being overworked with little to no time to attend investigative training, especially with advanced material, not to mention getting burned out and becoming less effective.

Most, if not all, of those smaller agencies (less than 25 officers) do not have the time and manpower to adequately address the everyday cases brought to their attention, much less spend time trying to clear the cold and unresolved. A potential remedy for this is addressed later with a recommendation to create more multi-agency units or task forces.

C. Funding

Along with manpower shortages comes the lack of adequate funding not only to hire new police officers, but also for specialized training and updated equipment. To make matters worse, due to these funding deficits, many crime labs are understaffed and overworked, causing the turnaround time for a DNA sample and other forensic evidence to take as long as 8–12 months (or even extended into years). This factor slows the process even more.

What about the Native American population? Quite frankly, due to the lack of reported data, especially for the missing, it is almost impossible to identify how bad the problem really is. As the process for the path forward is described, one has to keep in focus that cultural differences significantly alter the landscape and present many challenges not otherwise encountered elsewhere in the country.

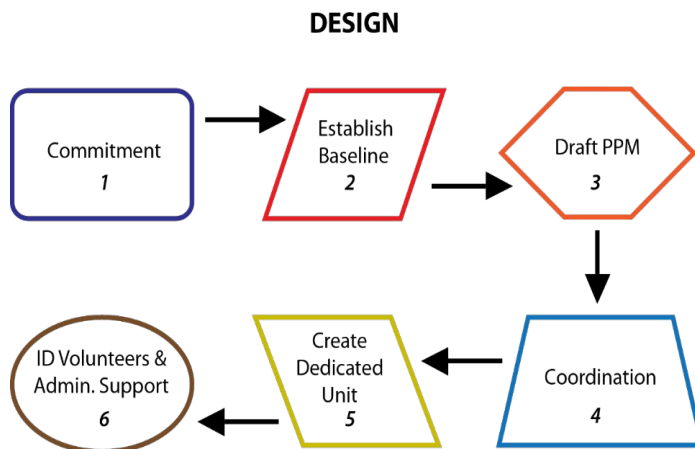
II. Cold case investigations

Whether it is a missing person or an unresolved homicide, there are certain key elements that must be included in any conversation. While cold case homicides are the main focus here, the following structured process will improve on what has been done and significantly increase the resolution of cold cases, both missing persons and homicides. Plus, more and more police agencies with cold case units are including long term missing as part of their protocol and investigative process as they have realized the significance of them.

A. Organization and structure

Any effort toward a path forward must include a meticulously organized and structured process. Otherwise, the unit will waste time, unnecessarily expend funds, and will not solve its cold cases at the desired level.

This proposed protocol for investigating cold cases is a combination of recommendations from the NIJ's best practices guide and my experiences and my handbook²⁰ for detectives that outlines the design, operation, and management of a cold case unit. As one reads through this narrative, three connecting flow charts (Design, Operation, and Management) were inserted to simplify the process. It is intended to be flexible so that changes can be made to fit the individual needs of a department.



In forming a cold case unit, the most important aspect is to include a strong commitment to a sustained process that will keep the unit moving forward. If this does not happen, the agency will eventually find itself at ground zero again with unresolved cases piling up with every passing day.

Second, along with a commitment to pursue this endeavor, police supervisors should select seasoned detectives (not those that are retiring in six months) who are dedicated to the cold case process and are not assigned other duties or to other cases. Periodically taking a detective away to perform other functions only slows the process down

²⁰ JAMES M. ADCKOCK, *COLD CASE PROTOCOL: SOLVING THE COLD CASE CRISIS IN AMERICA* (2019) (intended as a supplement to the NIJ Best Practices guide) (Available on Amazon).

and makes accomplishing the overall mission extremely difficult, if not impossible.

As one looks at indigenous populations and the perspective that there may be, most likely, missing information in the original case files, investigators selected for this unit must be well trained in investigative interviewing, be culturally aware, and overall, be experienced investigators. Considering the cultural challenges some investigators may face, those having these skills will be more successful at gathering information that can increase the probability of proper resolutions.

The next step is to establish a baseline of how many cold cases the jurisdiction has. At this stage, retrieving the agency's crime data for a given period of time will suffice, but this aspect will be covered in the operations section, where further examination of the cases is required. This data review process provides a more accurate picture of the problem.

Every project requires a properly structured and flexible policy and procedures manual. And the team leader needs to identify, if available, administrative support, an analyst, and the availability of properly vetted volunteers (as described below) to assist in accomplishing many of the administrative functions that detectives were previously doing. Examples of potential volunteers include graduate student interns, university professors, along with other community professionals (non-police). They will contribute to the solution that manpower shortages created,²¹ therefore releasing the detectives from some of the administrative burden and allowing them more time to investigate.

Cold case rule:

New eyes bring new ideas and concepts.

Lastly, during the preparation and planning stages, the leader must coordinate with many agencies. These include the coroner or medical examiner, the crime laboratory, the prosecutor, and others as appropriate who may be able to contribute to the mission. Having a

²¹ Darrell Price, *Notes From the Field: Expanding the Cold Case Team Beyond Law Enforcement*, NAT'L INST. OF JUST. (Oct. 16, 2019), <https://nij.ojp.gov/topics/articles/notes-field-expanding-cold-case-team-beyond-law-enforcement>.

prosecutor on the team or the same attorney readily available for all consultations is imperative for continuity and successful prosecutions.

The following steps of the protocol delve into the intricate details of the operational aspects of a cold case unit and describe the various functions of the unit members from the analyst, to interns, to outside voluntary resources, and the detectives. Some who read this might oppose the utilization of outside resources or volunteers, but both the NIJ guide and other research have proven them to be successful and extremely valuable.



CASE IN POINT:

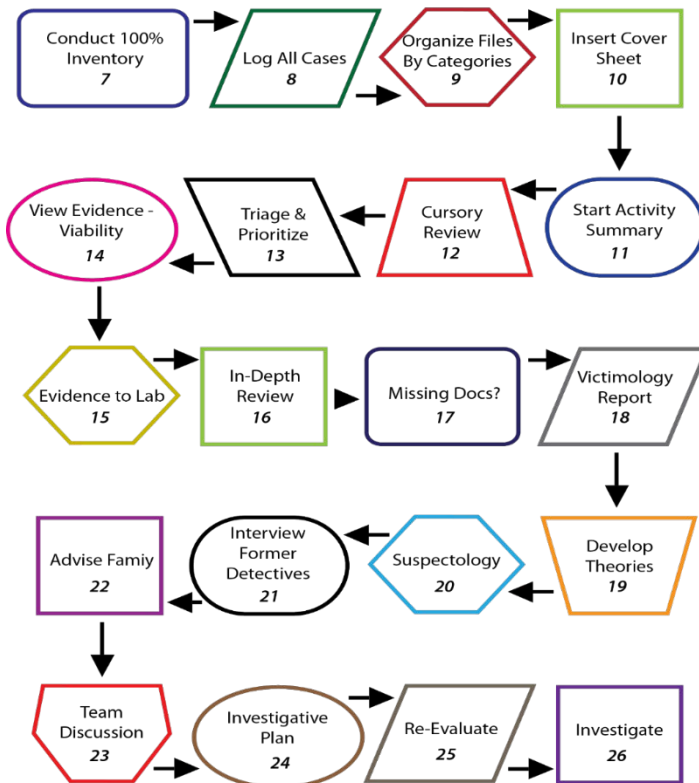
As reflected in footnote 21, the Charlotte Mecklenburg County Police Department Cold Case Unit utilizes nine unpaid volunteers consisting of former police and other (non-police) professionals to solve many of their cases. Since its inception in 2004, this model has consistently maintained a homicide clearance rate 15 percentage points higher than the national average.

III. Operation

A. Inventory of cases (100%)

It was previously mentioned in the design phase that the unit needs to establish a baseline of the types of cases (murders, missing persons, sexual assaults, etc.) and their respective numbers. It was suggested to begin this phase with an accounting of the department's unsolved homicide crime data, but to validate those, there must be a physical, 100% case file inventory conducted for the period in question (for example, 2000–2018) that is compared to the homicide/cold case statistical data as reported by the department.

OPERATION



My experience and the experiences of others have shown that departmental crime data is not always accurate, and case files may or may not be what the initial accounting reflects (for example, cases listed as unsolved when, in fact, an arrest was made or the missing person was located). Once this inventory action is completed, the department now has an accurate accounting or cold case baseline from which to work today and for detectives in the future.

B. Log all cases, organize files, insert cover sheet

The next three steps are basically administrative functions. A cold case log tracks the files and the investigative process. Organizing the files into a semblance of order is helpful for reviewers and detectives; whether that is chronological or by category²² is entirely up to the

²² Categories of case file documents can include, evidence related material such as crime scene notes, photos, lab reports, etc.; police reports with supplements sorted alphabetically by the author then by date; witness statements alphabetically then by date; records checks alphabetically then by

unit's policy, as it is a matter of individual preference. If, however, the files are digitized (a NIJ recommendation), this probably is not an issue, but many of the older cases or those in small rural or tribal communities are still in paper form and should be digitized if possible.

Placing a cover sheet as the very top document in the file is helpful to provide the reviewer a quick overview of the file's contents without having to sort through the entire file. The cover sheet should contain a synopsis of what happened, when it happened, where it happened, and how it happened. Also, consider adding to it a list of undeveloped leads. Over time, as an investigation progresses, this document may change, and the leads section should be adjusted accordingly.

C. Activity summary, cursory review

I am a firm believer in maintaining activity summary sheets where all actions related to the file, whether by administrative personnel, analysts, volunteers, detectives, or supervisors, are noted. This establishes a sequence of events as to who handled the case file, when it was handled, and why it was handled. These are not intended to be long narratives, just a short, chronological listing about the movement of the file. Years down the road, when a new detective picks up the case, she will be able to see, along with the investigative plan, where the investigation has been and where it needs to go.

Next, it is time to conduct a cursory review of the case file; a precursor to the next stage of triage and prioritizing the file for follow up investigation. This can be done by analysts, well-trained and vetted volunteers, or detectives. This is not the time to fully review the file—that comes later. Here, the team should just identify cases that immediately show potential solvability factors, such as physical evidence, person(s) of interest named in the file, etc. In other words, which cases, at a glimpse, appear to be solvable based on the established probability indicators as found in the file. These files should be flagged accordingly for the triaging and prioritizing phases of the protocol.

When it comes to missing person cases, depending on how far back in time the team decides to go, they may have limited information, frequently much less than a homicide case. Therefore, once the files receive a cursory review, the onus is on the analyst and volunteers to

date; media accounts by date; social media documents alphabetically then by date; and any other categories needed based on the individual case file.

search out additional sources of public information (including social media) regarding the person who is missing. In some situations, one may have to reconstruct the entire file, bringing it up to date and ensuring that all names in the file and their relationship to the missing person are listed. Furthermore, the team must verify that databases, such as the National Crime Information Center, NamUs,²³ the National Center for the Analysis of Violent Crime,²⁴ and the National Center for Missing and Exploited Children²⁵ contain all the necessary identifying data or other information about the victim, as required. Besides being helpful, these organizations are a tremendous source of information and potential investigative leads.

D. Triage and prioritization

The unit wants to solve as many cases as it can and should, therefore, attack first those cases that show the most promise: triaging so they can be prioritized. Research indicates that successful cold case units rarely exceed clearing 35–40% of the total cases they have,²⁶ and in those cleared cases, science with physical evidence and people named as suspects are the biggest producers. Therefore, triage the files to determine their solvability and prioritize them for further actions and investigation. When establishing priorities, I suggest the following:

- Priority I:** Files with physical evidence and a female victim.
- Priority II:** Files with physical evidence and a male victim.
- Priority III:** Files with a suspect named in case documents.
- Priority IV:** Files with investigative possibilities.
- Priority V:** Files that probably are not solvable.

Why female victims first? They tend to provide more physical evidence than males. Variables of how the incident occurred may

²³ NAT'L MISSING AND UNIDENTIFIED PERSONS SYSTEM, <https://www.namus.gov/> (last visited July 31, 2020).

²⁴ *Investigative Programs Critical Incident Response Group*, NAT'L CTR. FOR THE ANALYSIS OF VIOLENT CRIME, <https://www2.fbi.gov/hq/isd/cirg/ncavc.htm> (last visited July 31, 2020).

²⁵ NAT'L CENTER FOR MISSING AND EXPLOITED CHILDREN, <https://www.missingkids.org/> (last visited July 31, 2020).

²⁶ Davis, Robert C., Carl Jensen and Karin E. Kitchens; March 2012; Cold-Case Investigations: An Analysis of Current Practices and Factors Associated with Successful Outcomes; Rand Corporation and NIJ document number 237558.

affect the availability of physical evidence. For example, a distant gunshot wound is not likely to reveal much evidence. A blunt-force or sharp-force injury or asphyxiation, however, has a higher probability of leaving evidence due to the closeness and intensity of the contact between the perpetrator and the victim. Remember Locard's (French criminalist) theory of exchange: "Every contact leaves a trace."²⁷

Seeing a suspect's name in a file is a good reason to pursue the investigation further, and only through the more in-depth review (number 16 in the chart) will this information present itself. Since caseload and staffing will vary in a cold case unit, it is unlikely that the team will have time to investigate Priority IV or V cases.

Cold case rule:

Ninety percent of the time, the perpetrator's name is found in the case file during the first 30 days of the investigation.²⁸

As to missing persons, the prioritization classification may vary a little, as the initial focus should be "how" did this person disappear and "why."²⁹ And, since one can expect a dearth of information with older cases, the process that goes forward will require extensive searches and interviews to fill in the gaps in order to establish a good timeline that will help identify the how and why. Investigators with finely honed interviewing skills will experience more success.

The tasks up to this point are primarily for the cadre of analysts, volunteers, etc., but not the detectives. One of the largest issues with dealing with these cases is the preparation time it takes to move them to the investigative stage. Therefore, utilization of the support personnel as outlined herein will lessen the administrative burden on

²⁷ RICHARD SAFERSTEIN, CRIMINALISTICS: AN INTRODUCTION TO FORENSIC SCIENCE (9th ed. 2007).

²⁸ ROBERT D. KEPPEL & WILLIAM J. BIRNES, THE PSYCHOLOGY OF SERIAL KILLER INVESTIGATIONS: THE GRISLY BUSINESS UNIT (2003); Sarah L. Stein et al., *Cold Cases: An Exploratory Study into the Status of Unresolved Homicides in the USA*, 9 INVESTIGATIVE SCIENCES J. 3 (2017) (as presented at the Annual Meeting of the American Academy of Forensic Sciences, February 2017 and published in May 2017 by the Investigative Sciences Journal, Vol 9, No 2; the research reflected that in 80% of the cases the perpetrators name was found in the case file.).

²⁹ STEPHEN J. MOREWITZ & CAROLINE STUDY COLLS, HANDBOOK OF MISSING PERSONS (2016).

the detectives, leaving them more time to conduct investigative duties. The key here is to prep the file through logging, organizing, and triaging before handing it off to the detective, thereby saving them time.

Cold case rule:

All homicides are not solvable, nor are all missing persons recoverable.

E. Evidence viability: crime laboratory

Now that the cases have been prioritized as having physical evidence (Priority I and II), the issue here is to validate the viability of the evidence. This means that every piece of evidence listed in the file must be located, and someone has to physically view each piece to ensure a proper chain of custody exists and whether or not the evidence still has the ability, when examined by a forensic scientist, to produce useable results. All case files with items of evidentiary value must be sent to the crime laboratory as soon as possible. And due to technological advances, any evidence examined more than three years ago should be reevaluated today. When in doubt, get it examined.

F. In-depth review, missing documents, victimology assessment

Since examining the evidence at the laboratory could take months (if not years) to accomplish, the detective now has the time to conduct an in-depth review of the entire file for a complete understanding of what occurred and to identify investigative leads, etc. My preferred approach is to first review the crime scene photographs, evidence collected, and crime laboratory reports (if available). Next, proceed to examining how the case was initiated, for example, the 911 call and proceed through the witness statements, etc. This crime scene examination at the onset may indicate a personality type you need to be looking for while reviewing the rest of the case file (see suspectology below for more details).

During this process, the detective must also look for documents that might be missing from the file and gather information necessary to develop a valid victimology assessment. This assessment includes learning as much as possible about the victim from family, friends and associations close and distant, personal habits, work history, financial status, social life, sexual behavior, drug usage, religious feelings, etc. And because some of these questions can be difficult to ask family and

others, extreme sensitivity and compassion by the investigator need to be in place to garner the answers needed for a valid assessment.

History has proven that the more information a detective has about the victim, the higher the probability that this information will lead to the identity of the suspect. Regarding missing person cases, a victimology assessment may identify motives or persons of interest with information that could be crucial to a recovery or provide significant leads relating to a recovery.

Bottom line, in all these cases, the value of the victimology assessment cannot be overstated. It is imperative to emphasize the importance of this information to detectives responsible not only for conducting homicide investigations, but to those investigating missing persons cases as well. The process may also help the investigator establish the risk factors relative to the situation that, in turn, may dictate how the investigation proceeds. Gathering the proper data for an assessment in the preliminary stages cannot be over emphasized.



CASE IN POINT:

A 16-year-old girl was dropped off by her mother at a rural town pond to work as the lifeguard. She disappeared within 20 minutes of her arrival, leaving her sandals and an open first aid kit at the lifeguard stand.

The police developed theories of what happened that included her running away, drowning in the pond, and later, drugs. These theories, however, were all speculation without proper basis in fact. About three years later, her skeletal remains were recovered from the slopes of a mountain about five miles away.

If the authorities had gathered information for a victimology assessment, they would have quickly realized that this person's missing status was out of character, which indicated foul play. But sadly, they never started collecting that data until about eight years later, when a state official gave the family a lengthy series of questions, they said the FBI would need in order to create a victimology assessment.

Twenty years later, the case remains unsolved. And one can only wonder, if the initial response to the missing person report had been any different, would this case have been accurately resolved?

Since the above case example of the missing 16-year old girl, Child Abduction Response Teams (CART) were created, and the FBI now has Child Abduction Rapid Deployment (CARD) teams, significantly changing the law enforcement response to these incidents involving children and resulting in many cases being resolved quickly with

saved lives. But since rapid response teams only exist for children, what about the adults that go missing?

While other tasks in the protocol are completed, it is recommended that the analyst and volunteers start gathering the data and formulating timelines for the victim (or missing person); one may even want to incorporate a timeline of the crime scene or last known location of the person. Then, develop relationship charts that accurately reflect the inner and outer circles of the victim. Of course, it is likely many of these individuals will need to be re-interviewed or interviewed for the first time if not reflected in the case file as being previously contacted. Experience in hundreds of cold cases has proven that, with the passage of time, witnesses are more likely to provide fruitful information today than they would have years ago.

Cold case rule:

Changes in relationships help solve cases.

G. Develop theories of the crime: suspectology

As investigators sort through all the documents in the review, they will naturally develop theories of the crime and begin to visualize potential persons of interest or suspects. As a side note, while teaching at the Dutch Police Academy in the Netherlands, I was introduced to their concept called *hypotheses and scenarios*, which they use as a means of analyzing data to identify their theory of the crime.

This process is thorough and time consuming but beneficial in many aspects, as it eliminates the “noise” in an investigation and concentrates on the facts. It also identifies arguable positions that a defense attorney might proffer in court and gives the Dutch Police the opportunity to validate or refute it ahead of time. For example, a homicide might have four hypotheses: (1) victim killed by wife; (2) victim killed by neighbor; (3) victim killed by a gang; and (4) victim committed suicide. Under each hypothesis would be the possible scenarios as to how the death occurred to explain the hypothesis. Frequently, investigators end up with one, sometimes two, plausible hypotheses to which they then focus their investigative attention. Though tedious and time consuming, the case review is significantly strengthened when this task is completed.

The term suspectology means the study of suspects or a process to identify suspects. I have always suggested that, with each named person of interest, the team should identify all the pros and cons as to

why this person is or is not the perpetrator and include the MOM concept of *means*, *opportunity*, and *motive*, but each pro and con must be validated through evidence, witness statements, timelines, etc. Ultimately, an investigator must always ask the following: “How do I know that? Where is the documentation to support that premise?” It cannot be just conjecture or a gut feeling.

Another concept I have proffered is that all investigations have three components: (1) the physical (evidence, autopsy, etc.); (2) the informational (witness accounts, statements, record checks, social media, etc.); and (3) the behavioral aspects of the actions taken by the perpetrator and the victim in response. Unfortunately, enough credence is not given to behavioral analysis, which is often more critical than the other two elements combined. This is because a poor behavioral analysis may lead investigators to pursue, and possibly convict, the wrong individual, with justice eluded for the victim and family, thereby increasing the opportunity for the real perpetrator to re-offend. Some of the questions that should be asked are:

- Is the crime scene organized or disorganized?
- Is this a planned event or something that just happened?
- Was the weapon brought to the scene and taken away or one acquired at and left at the scene?

Ultimately, utilizing behavioral actions seen in the crime scene or in documents of the investigative report may be extremely helpful in not only how and where one focuses the investigation, but for successful interview strategies as well. Detectives must be sure to develop opposing theories of the crime as a balancing act, along with a validation process to ensure the investigation remains on track. It will bring another perspective to the table and help ensure that one does not succumb to tunnel vision.

Another tool frequently used in this behavioral category is the pre-crime, crime, and post-crime behavior of the perpetrator. But that is assuming the detective has the data to evaluate, and when they do not, the need to develop that information in subsequent interviews is imperative.

With missing persons, much of this information has not been collected. Therefore, going back to the time of the disappearance, one must thoroughly search for behavioral indicators of the missing person before and up to the time of going missing. The detective must carefully review information provided by witnesses, especially those

close to the missing person, looking for a motive or reason for their action. The sad part is, if they were murdered and the body has not surfaced, a no-body homicide³⁰ becomes more problematic. But it is doable; if a person of interest is identified in addition to the usual information gleaned from the case file, the detective should focus on that person's pre- and post-crime behavior for a connection to the incident.

Additionally, research has shown that, if a missing person is a child, there is a strong possibility they were killed soon (within 3–5 hours) after the abduction, and their remains are generally discovered within 3–5 miles from the abduction site.³¹ The key is whether the responding police ask the right questions and keep an open mind as to why the person is missing. Again, the functions of the CART and CARD teams have significantly improved the timing to resolution of these cases.

H. Interview former detectives, advise family

Interviewing the original case detectives is positioned at this point in the protocol because it gives the cold case detective the opportunity to formulate his own theory of the crime and not be influenced by an earlier interview by the original case detective. Not that it is wrong, just another viewpoint. Theories developed in the beginning may not be valid today, and cold case detectives should consider whether a bias existed in the original investigation.

Therefore, detectives should enter the dialogue with the former case detectives with open eyes, while being armed with case file data. Be sure to ask if they still have any case file documents or notes in their possession; some detectives never give up on their unsolved cases and may very well, even against departmental procedures, retain documents and notes. For example, in one cold case, I could not locate the case file, which led to an interview of the retired but original homicide detective. It turned out, he had the entire case file in the trunk of his car.

³⁰ For more information on no-body homicides, go to THOMAS A. (TAD) DIBIASE, *NO BODY HOMICIDE CASES: A PRACTICAL GUIDE TO INVESTIGATING, PROSECUTING, AND WINNING CASES WHEN THE VICTIM IS MISSING* (2015).

³¹ Katherine Brown et al., *Investigative Case Management for Missing Children Homicides: Report II*, NAT'L CRIMINAL JUST. REFERENCE SERVICE (2006), <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=240688>.

Many times, the question arises, “At what point in time do you contact the family and advise them that the case has been rejuvenated and is now actively being pursued?” Again, this action is placed later in the equation to give detectives the necessary time to absorb the contents of the file. This family interview is extremely important and is a detective’s opportunity to fill in the blanks and see if the family can recall more information now than at the onset of the case. The detective will let the family know that he is investigating the case and that someone (the detective or a victim’s advocate) will remain in contact with them throughout the process.

In these conversations with the family, be careful to not give them false hope about quick resolutions or other information that could mislead them to believe a resolution is at hand. But at the same time, be sure they understand that certain pieces of information may be withheld to protect the integrity of the investigation. Lastly, one should always keep in mind that, in some cases, the family may have been involved in the incident and could become a person of interest, a caution that should be heeded by all when investigating these cases.

I. Team discussions: investigative plan

Having team discussions about the case is something that should be a continual process from start to finish, especially when the evidence has been identified, sent to the lab, and the in-depth review begins. All unit members should be present, and most likely, each will have input that contributes to the overall success. It is the time and place where theories can be hashed out, pros and cons of certain hypotheses established, and the development of a priority list of what to do next as reflected in the investigative plan.

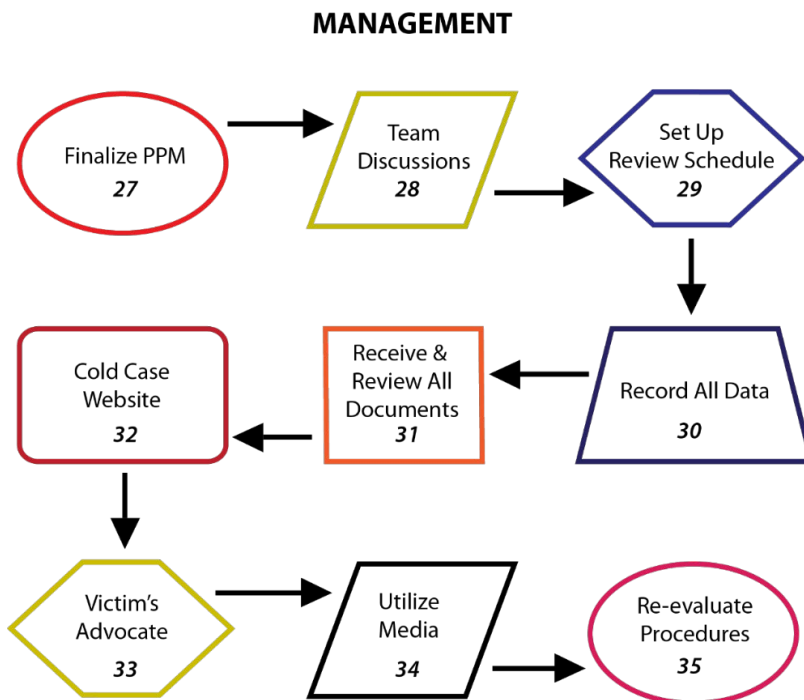
The investigative plan is a well thought out path forward. All actions should be prioritized, and as they are completed, place a note in the activity summary and the plan to indicate their completion, providing further references to those documents added to the file that reflect the results of the actions taken. This becomes more critical as time passes and others, such as team leaders or new detectives, review the file. They can readily identify what actions were taken by the team, thus saving time.

The case information should be re-evaluated as needed and is now ready to proceed to the actual investigation, remembering that the missing person cases will probably require many more interviews and searches for information than the standard cold case homicide.

Nevertheless, utilizing a structured process saves time and money and leads to success for the missing and homicide victims.

IV. Management

The cold case team leader should first finalize the policy and procedures manual. Then, throughout the entire process, she should host team discussions that are necessary to keep the team on track. Leaders should also institute periodic case file review schedules where they are able to stay on top of what is going on. Team leaders are in the best position to use that information to apprise superiors and others of the status of each case.



The statistical data generated from this process provides the team leader with invaluable information that can be utilized to not only keep supervisors apprised but will assist in making decisions about changes that need to be made to the system. The collection of this data helps sustain the existence of the unit over time.³² The metrics that should be tracked include:

³² *Promising Strategies for Strengthening Homicide Investigations*, BUREAU OF JUSTICE ASSISTANCE (Oct. 2018), <https://www.policeforum.org/assets/homicideinvestigations.pdf>.

- How many cases are there?
- What are the types of cases (homicides, sexual assaults, missing persons)?
- How many cases have been reviewed?
- How many had physical evidence?
- How many of those were sent to the laboratory?
- What was the turnaround time for laboratory reports?
- How much time was consumed by detectives to conduct a thorough review?
- How much time was expended by support staff in creating timelines, relationship charts, searches, etc.?

Traditionally, a detective's performance was evaluated based on their number of cleared (solved) cases. Not solving a homicide or a cold case does not necessarily mean a detective did not do his job satisfactorily. It is a known fact that "not all homicides are solvable." So, rating detective performance solely on clearance/solve rates is not fair or equitable, as other investigative factors and actions have to be included in the equation. Additionally, the team leader should be the focal point for all new documents as they are added to the case file, especially all laboratory reports. Immediately giving these to the leader and case detective prevents them from getting lost in the paper shuffle of the case file and not being seen for days, weeks, or months.



CASE IN POINT:

A department received a DNA report from their laboratory that identified a perpetrator with a Combined DNA Index System (CODIS) hit from a sexual assault case. This report was placed in the case file by an administrative person without any of the leaders or detectives knowing that it arrived, much less that it identified a perpetrator.

A couple of years later in a murder investigation, a prosecutor found that the DNA in his murder case identified the same person from the sexual assault case that occurred two years earlier. The crucial identifying information was always there, but no one in a position of authority saw it; therefore, it was overlooked, and the offender attacked another girl, this time killing her before he was finally arrested.

Another good tool is to design a cold case website related to the cases the unit is investigating. These frequently cause leads to surface from the public. The site should be updated and monitored accordingly. Some departments have been successful in solving their cases by designing playing cards bearing the pictures of the missing or murdered victims and giving these cards to prisoners. As result, valuable leads from these prisoners that came forward resulted in resolutions.

If one talks to the “forgotten victims,” the surviving family members, the biggest complaint is not keeping them informed as to the status of the investigation involving their loved one. In some cases, they do not hear anything for months or years at a time. Talking to family members can be a time-consuming process; therefore, having a victims’ advocate as a member of the team or available is critical.

When that first contact is made with the family about the rejuvenation of the case, establish a point of contact for the family with a schedule of how often they will be advised on the status of the investigation. As previously mentioned, do not give them false hope, but do tell them something, even if it is that the case is “still under investigation.” They just want to know that someone cares and is still investigating the case. But there may come a time where all leads have been exhausted and nothing is resolved. That too is important to know, and periodic contact, even if it is once a year, is helpful.

The last two stages of the protocol are for the team leader to find ways to work with and to use the media to his advantage. Media can be problematic, but it can also be useful. Then, it is a matter, once all these actions are in place and the system is working, of constantly re-evaluating the process and adjusting based on the investigations and the needs of the department.

V. Discussion

The first point of discussion centers around the missing person cases that have plagued our society for decades. In the past, when someone filed a missing person complaint, they were probably told to come back after the person was missing for 24 hours. As a result, not only did police departments obtain little information, but they lost valuable time. Hopefully that does not happen anymore. But if a cold case unit starts digging through some of the older cases, no doubt it will find that case files are severely lacking in information.

With the high numbers of reported missing persons each year, where thousands are found or recovered/returned within a reasonable time, it is no wonder that law enforcement's attitudes about these cases, especially with adult victims, comes across as uncaring and without any sense of urgency about the matter. They just ran away and will return soon! Quite frankly, that is true of many reported cases, but there are those that do not! As a result, most agencies now have an investigative system in place that helps sort through the initial information to identify the type of missing person scenario that exists, all in hopes of making an early determination as to whether this was a runaway or the person was a victim of foul play (intentional versus unintentional). The direction that law enforcement takes hinges on this early determination.

Nevertheless, the future looks good or at least better if police agencies follow proper protocols while conducting the preliminary investigation. And since technological advancements have provided tools like DNA, Next Generation ID, databases like NamUs, Combined DNA Index System, etc., they are in a much better position to successfully resolve some of these cases that might not have otherwise been solved.

A. Multi-agency task forcing

Dealing with crimes related to or occurring within our indigenous populations is no easy task. Other jurisdictions in the United States, especially the smaller ones, have experienced success by forming multi-agency task forces to address the homicide cold case problem. Some pooled together the resources of detectives from neighboring counties, run by the state police, to investigate the cold cases from those counties. Each sheriff's office or city police department within those counties were not individually able to address the problem due to a lack of manpower and funding, but as a multi-agency task force where they provide only one or two detectives, they collectively have a viable cold case unit.

The same concept could be applied here. With that in mind, in November 2019, the President enacted Executive Order 13898, which provides for the establishment of "a multi-disciplinary, multi-jurisdictional team including representatives from tribal law enforcement and the Departments of Justice and the Interior to

review cold cases involving missing and murdered American Indians and Alaska Natives.”³³

In the regions where these teams are stood up, agencies involved will most likely include tribal law enforcement, the FBI, the Bureau of Indian Affairs, and police representatives from each county (and city) that surrounds the reservation. Working collaboratively, the number of successes should increase significantly, benefiting all concerned people, agencies, and jurisdictions. The real winners will be the justice system, the victims, and their families.

B. Obstacles

While providing background information about how the system got into this dilemma with so many unsolved homicides, I mentioned three contributing factors: (1) clearance rates; (2) manpower; and (3) funding, along with the special issues relating to our indigenous population. These will be addressed in reverse order, starting with the special issues regarding Native Americans.

1. Cultural differences

There is no question that the cultural differences found within the American Indian and Alaska Native population is a significant challenge. Understanding what those differences are should make an impact on the rate of successes. But at the same time, regardless of the culture, many of the basic premises associated with investigating these cases will remain, only the method used in gathering the data may need adjusting. Thus, the emphasis on the interviewing skills of the detectives cannot be overstated. Extra training in that direction is a must.

Successful detectives must gain and have the trust of the people they serve, and that is done more frequently through personal contact and face to face conversations. Remember, the reasons people go missing are the same in all population groups, and murder is still murder, regardless of who did it and where it occurred.

2. Funding

With the current backlash against policing and a troubled economy, police departments with financial difficulties are struggling. As a

³³ 84 FED. REG. 66059–66061.

result, special projects, like cold case investigations, become a low funding priority.

In addition to applying for federal and state grants, another possible source to obtain funding for these projects is from local stakeholders or non-profits, including police foundations. There are a couple around the country who have already contributed funds to an agency to expedite DNA testing versus waiting 8–12 months for the state crime lab to generate results. And another group is sponsoring specialized investigative training³⁴ for detectives.

3. Manpower

Outside funding could assist with manpower shortages as well. But the real remedy is the utilization of outside resources, such as graduate interns, volunteers, and other professionals from the community, who all have to be properly vetted. Many agencies around the country are utilizing these “free” volunteers, saving their detectives many hours of digging through case files doing administrative work. Plus, in the review of cases, some have done an excellent job of evaluating the case file information with accuracy and bringing to the forefront sound investigative ideas.

Remember the cold case rule:
New eyes bring new ideas and concepts!

4. Clearances

The clearance issue or solve rate is difficult to explain for many reasons, but I believe inadequate funding and manpower shortages have significantly contributed to the low rates. Police departments seem to have the propensity to not beef up their homicide units and especially do not see the great need for a cold case unit. In a study by the Murder Accountability Project, its findings concluded that “there is a broadly inverse relationship between homicide clearance rates and homicide occurrence rates.”³⁵ In other words, as clearance rates

³⁴ *Event Details*, SHERRY BLACK FOUND, <https://sherryblackfoundation.org/event-details> (last visited Aug. 7, 2020).

³⁵ MURDER ACCOUNTABILITY PROJECT, <http://www.murderdata.org/search?updated-max=2019-02-18T23:50:00-05:00&max-results=15> (last visited Aug. 7, 2020); *Promising Strategies for Strengthening Homicide Investigations*, BUREAU OF JUST. ASSISTANCE (Oct. 2018), <https://www.policeforum.org/assets/homicideinvestigations.pdf>.

decline, murder rates rise and vice versa. But many agencies still have homicide units working at half the staff, carrying high caseloads. These units are basically only able to close the easy cases, while others get set aside and sometimes never looked at again.

VI. Conclusions

Cold case rule:

Do not point fingers or find blame—you were not there.

Finding blame or pointing fingers does not help matters at all. Mistakes will always occur, but they should become lessons learned that hopefully never occur again. But occasionally, they need mentioning in order to convey a point. Society has become highly technical, and while that is a good thing where it moves things along faster and sometimes ends up with more concrete results, for example DNA, it is not the answer to all of the problems. Detectives should not rely solely on technology to solve these investigations.

Criminal investigations have always been about the detectives and their abilities to recognize things as having evidentiary value, being able to decipher whether a witness is being truthful, and having the ability and passion to efficiently and effectively talk to families, victims, and others in order to accurately determine what happened, by who, when, where, how, and why. But today, the old gumshoe detective does not always exist, and some seem to rely too heavily on Google and technology to solve problems and challenges. Along with that comes the feeling that maybe some police have either lost their ability or do not have the necessary social skills to get away from the computer, out of their cars, and talk to people face to face.

In furtherance of that belief, it is interesting to note that, in the sixth season of *Bosch*, (an LAPD Detective) on Amazon Prime, there is a note next to Bosch's desk that states, "Get off your ass and go knock



CASE IN POINT:

A homicide lieutenant in a large police department directed two of his detectives to go out and interview a person of interest (POI) in their case. A couple of weeks later, he asked them what happened with the interview when one responded that he had called the POI, leaving a voice message for him to come into the police station for an interview! Of course, this person never returned the call and never came to the station. The lieutenant then directed the detectives to get off their asses, go to his apartment, and physically look him in the eye as they interview him.

on doors.”³⁶ While TV shows and movies are entertainment, they sometimes provide a reality check where similar things are seen playing out in police departments today.

Hopefully, this is not a sign of the future, because if it is, agency workloads are going to become much more difficult to manage, and the likelihood that fewer cases will be solved will increase. A possible solution to this problem is to require additional and advanced training for all detectives, especially on investigative interviewing of witnesses and suspects.

The NIJ's best practices guide clearly states that the United States is in a cold case crisis, and this justifies the need for having an operational cold case unit because it will:

- better serve the criminal justice system;
- enhance public safety;
- increase clearance rates;
- help restore public confidence;
- provide information to the forgotten victims (surviving families);
- and

³⁶ *Bosch* (Prime Video 2020) (A series about an LAPD homicide detective.).

- be accomplished with a cost savings. It is not how much it will cost to operationalize a cold case unit but how much it will cost if you do not.

Other benefits of having an operational cold case unit include increased overall clearance rates and the identification of deficiencies in older files. This discovery can translate into training initiatives to prevent such errors in the future, thereby increasing the effectiveness of ongoing hot homicide cases while attending to the cold and unresolved.

As mentioned at the outset of this writing, this structured cold case protocol is designed to help our police detectives solve more cases, such as missing persons, sexual assaults, and of course, homicides. While every detail could not be discussed in this short space, the outline does address many of the key elements that provide a path forward. Over time, these elements have proven to save money and provide better utilization of manpower while solving cases for justice, community, the victims, and their families (the forgotten victims).

About the Author

Jim Adcock, PhD, is a Retired U.S. Army Criminal Investigative Division supervisory special agent, a former chief deputy coroner, and a tenured professor. He has written three books, one on cold cases, another on death investigation, and the third on a cold case protocol for detectives.

In addition to training hundreds of detectives from all over the United States, he was a frequent guest lecturer on cold case investigations at the Dutch Police Academy in the Netherlands. He is also a former vice president for the American Academy of Forensic Sciences (AAFS) and served four years on the board of directors and eight years on the AAFS Ethics Committee.

More recently, Dr. Adcock served as a member of the NIJ Cold Case Working Group. He conducts lectures and training as requested on death investigation and the nuances of conducting cold case investigations; published a podcast entitled “Solving Cold Cases with Dr. Jim”; and is the founder/president of the Mid-South Cold Case Initiative.³⁷

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Addressing Sexual Abuse, Assault, and Trafficking as Co-Morbidities in Missing or Murdered Indigenous Populations

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Lifetime prevalence of sexual violence in the United States, which includes sexual abuse, assault, and trafficking, ranges from 19–44% in women and 1–23% in men, making it a substantial health concern.¹ Sexual violence prevalence rates are largely underestimates and frequently do not differentiate sex trafficking from other forms of sexual violence.² Only since 2013 has the Uniform Crime Reporting (UCR) system captured information on trafficking cases.³ Despite the clear definition of sex trafficking as the “recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act” through process, means, and goal,⁴ law enforcement continues to identify a primary challenge as differentiating sex trafficking from prostitution.⁵ When trying to differentiate rates of sex trafficking in American Indian and Alaska Native populations, UCR data are even murkier because race-specific data are absent.

According to the U.S. Department of Justice’s Office (Department) of Juvenile Justice and Delinquency Prevention, approximately 1.6 million children run away every year, putting them at significant risk

¹ MATTHEW J. BREIDING ET AL., PREVALENCE AND CHARACTERISTICS OF SEXUAL VIOLENCE, STALKING, AND INTIMATE PARTNER VIOLENCE VICTIMIZATION—NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY, UNITED STATES, 2011 2 (2014).

² See SHARON G. SMITH ET AL., THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2015 DATA BRIEF—UPDATED RELEASE 1, 12 (2018).

³ FEDERAL BUREAU OF INVESTIGATION, HUMAN TRAFFICKING IN THE UNIFORM CRIME REPORTING (UCR) PROGRAM 1–2 (2013).

⁴ 28 C.F.R. § 1100.25; see also U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 9 (June 2016).

⁵ AMY FARRELL ET AL., CAPTURING HUMAN TRAFFICKING VICTIMIZATION THROUGH CRIME REPORTING 4, 13–15, 21–22 (2019).

of sexual exploitation.⁶ “Alarming numbers” of these children are likely at risk for, or a victim of, sex trafficking.⁷ If the child had contact with the child welfare system, they are at greater risk of being trafficked; often times, a history of sexual abuse already exists.⁸ American Indian and Alaska Native (AI/AN) women experience higher rates of domestic and sexual violence, including sex trafficking, than other U.S. populations. More than 80% of AI/AN women have experienced violence in their lifetime, with 56.1% experiencing sexual violence specifically.⁹ According to the 2019 National Crime Information Center (NCIC) data, 10,447 AI/AN persons were identified as missing, 75% of whom were under 18 years of age.¹⁰ Between 2009 and 2018, the National Center for Missing and Exploited Children (NCMEC) received 1,909 reports of missing AI/AN children.¹¹ Eighty-five percent were endangered runaways, and 12% were familial abduction cases with almost an equal distribution of girls (59%) and boys (41%)—both having a mean age of 14 years.¹² A common thread in these cases is a history of sexual abuse, including trafficking.¹³

The existing data, or lack thereof, confounds the ability to fully assess the connection between missing or murdered AI/AN persons and the extent to which sexual assault/trafficking played a role in their disappearance or death. Despite the challenges in data collection

⁶ HEATHER HAMMER ET AL., RUNAWAY/THROWN AWAY CHILDREN: NATIONAL ESTIMATES AND CHARACTERISTICS 1, 2, tbl.1, 6 (2002); *see also* NAT’L CTR. FOR MISSING & EXPLOITED CHILD., NAT’L COUNCIL OF JUV. AND FAM. CT. JUDGES, & OFF. OF JUV. JUST. & DELINQ. PREVENTION, MISSING CHILDREN, STATE CARE, AND CHILD SEX TRAFFICKING: ENGAGING THE JUDICIARY IN BUILDING A COLLABORATIVE RESPONSE 2 (2015) [hereinafter NCMEC & NCJFCJ].

⁷ HAMMER ET AL., *supra* note 6, at 8 tbl.4; *see also* NCMEC & NCJFCJ, *supra* note 6, at 1.

⁸ LINDA A. SMITH ET AL., THE NATIONAL REPORT ON DOMESTIC MINOR SEX TRAFFICKING: AMERICA’S PROSTITUTED CHILDREN 31–32, 35 (May 2009).

⁹ André B. Rosay, *Violence Against American Indian and Alaska Native Women and Men*, 277 NAT’L INST. OF JUST. J. 1, 2 tbl.1 (Sept. 2016).

¹⁰ NAT’L CRIME INFO. CTR., 2019 NATIONAL CRIME INFORMATION CENTER (NCIC) MISSING PERSON AND UNIDENTIFIED PERSON STATISTICS 5 (Feb. 2020).

¹¹ NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN, NATIVE AMERICAN CHILDREN REPORTED MISSING TO NCMEC 1 (2020).

¹² *Id.* at 1–2.

¹³ *Id.* at 2.

and reporting, the vast majority of missing persons return safely.¹⁴ However, the AI/AN rates of sexual abuse—in combination with the health sequelae—underscore the critical need for an effective healthcare and multidisciplinary response. Victims identified medical care as the most commonly needed service following violent victimization, and yet, 38% were unable to obtain the services they required.¹⁵

Sexual violence in children, adolescents, and adults, including sex trafficking, lead to acute and chronic health consequences. Often times, types of sexual violence are siloed in a manner that labels them on a continuum from bad to worse, inaccurately leading people to believe that the sequelae may be “worse” for one group as opposed to another. Although clinical indicators may look different between populations of sexual violence victims,¹⁶ the risk of health consequences exists whether the victim is a one-time familial sexual abuse survivor or a three-year sex trafficking victim.

In the acute timeframe following sexual violence, victims are at risk of unwanted pregnancy; acquisition of sexually transmitted infections (STIs), including human immunodeficiency virus (HIV); physical injury; and depression.¹⁷ Sexual violence pregnancy rates can range from 5–26%, depending on the nature of the relationship between the victim and assailant.¹⁸ One of the leading causes of death globally for females 15–49 years of age is sexual and reproductive health conditions, including complications during pregnancy and childbirth.¹⁹

¹⁴ See, e.g., HAMMER ET AL., *supra* note 6, at 6; see also National Crime Information Center, *supra* note 10, at 3–4.

¹⁵ Rosay, *supra* note 9, at 6.

¹⁶ See, e.g., Jennifer Cole et al., *The Trauma of Commercial Sexual Exploitation of Youth: A Comparison of CSE Victims to Sexual Abuse Victims in a Clinical Sample*, 31 J. INTERPERSONAL VIOLENCE 122 (2016).

¹⁷ See Avid Reza et al., *Sexual Violence and Its Health Consequences for Female Children in Swaziland: A Cluster Survey Study*, 373 LANCET 1966 (2009).

¹⁸ Kathleen C. Basile et al., *Rape-Related Pregnancy and Association With Reproductive Coercion in the U.S.*, 55 AM. J. PREVENTIVE MED. 770, 774 (2018).

¹⁹ ELIZABETH SULLY ET AL., ADDING IT UP: INVESTING IN SEXUAL AND REPRODUCTIVE HEALTH 2019 44 (June 2020) (stating if unmet healthcare needs were provided, maternal deaths would decrease by 62%, from 299,000 to 113,000 annually); see also EVERY WOMAN EVERY CHILD, THE GLOBAL

In the months and years following the sexual violence, the sequelae continue and include mental health effects—such as clinical depression, posttraumatic stress disorder, conduct disorders, alcohol and drug misuse, and suicide attempts—when compared to those without a history of sexual violence and exploitation.²⁰ Women who experience sexual violence and exploitation as a child have a substantially increased risk of being re-victimized in adulthood.²¹ Victims of sex trafficking, particularly due to the long-term nature of the abuse, often have additional health concerns, including tuberculosis and urinary tract infections, pelvic inflammatory disease, ectopic pregnancy and infertility, poorly controlled medical conditions like diabetes and asthma, malnutrition, dental problems, chronic pain issues, traumatic brain injury, and exposure to unsafe abortion practice.²²

STRATEGY FOR WOMEN’S, CHILDREN’S AND ADOLESCENTS’ HEALTH (2016–2030); SURVIVE, THRIVE, TRANSFORM 25–27 (2015); UNITED NATIONS POPULATION FUND, STATE OF WORLD POPULATION 2005: THE PROMISE OF EQUALITY GENDER EQUITY, REPRODUCTIVE HEALTH AND THE MILLENNIUM DEVELOPMENT GOALS 34 (2005); Sarah Neal et al., *Childbearing in Adolescents Aged 12–15 Years in Low Resource Countries: A Neglected Issue. New Estimates from Demographic and Household Surveys in 42 Countries*, 91 ACTA OBSTETRICIA ET GYNECOLOGICA SCANDINAVICA 1114 (2012).

²⁰ See Carla Kmett Danielson et al., *Risky Behaviors and Depression in Conjunction with—or in the Absence of—Lifetime History of PTSD Among Sexually Abused Adolescents*, 15 CHILD MALTREATMENT 101 (2010); Shanta R. Dube et al., *Long-Term Consequences of Childhood Sexual Abuse by Gender of Victim*, 28 AM. J. PREVENTATIVE MED. 430 (2005); Jordan Greenbaum, *A Public Health Approach to Global Child Sex Trafficking*, 41 ANN. REV. OF PUB. HEALTH (2020).

²¹ See Catherine C. Classen et al., *Sexual Revictimization: A Review of the Empirical Literature*, 6 TRAUMA, VIOLENCE, & ABUSE 103 (2005).

²² See Sibnath Deb et al., *Aggression in Sexually Abused Trafficked Girls and Efficacy of Intervention*, 26 J. OF INTERPERSONAL VIOLENCE 745 (2011); Le et al., *supra* note 20; Laura J. Lederer & Christopher A. Wetzel, *The Health Consequences of Sex Trafficking and Their Implications for Identifying Victims in Healthcare Facilities*, 23 ANNALS HEALTH L. 61 (2014); Jay G. Silverman, *Adolescent Female Sex Workers: Invisibility, Violence and HIV*, 96 ARCHIVES DISEASE IN CHILD. 478 (2011).

I. Addressing complex health concerns

Every known or suspected victim of sexual violence should be offered a comprehensive, trauma-informed, victim-centered medical forensic examination with treatment. This is critical to ensure the patient's short- and long-term physical and mental health consequences are addressed, including identifying ongoing needs and available resources. It requires not only a health system response but a trauma-informed, multidisciplinary one due to the overarching advocacy, educational, jurisdictional, legal, prevention, and safety issues involved.²³

According to the Substance Abuse and Mental Health Services Administration, "Individual trauma results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual's functioning and mental, physical, social, emotional, or spiritual well-being."²⁴ To effectively engage in trauma-informed care, one must realize how trauma affects the individual being served, recognize how the experience of trauma manifests itself, and respond in a way that applies trauma-informed principles and purposeful avoidance of re-traumatizing.²⁵ A trauma-informed approach is delivered in a transparent fashion, free from cultural or gender bias, ensuring safety and autonomy in decision-making for the victim.²⁶ Training clinicians in trauma-specific approaches, available resources, and partnering agencies is a key factor.²⁷

²³ See generally U.S. DEP'T OF JUST., OFF. ON VIOLENCE AGAINST WOMEN, A NATIONAL PROTOCOL FOR SEXUAL ABUSE MEDICAL FORENSIC EXAMINATIONS: *PEDIATRIC* (2016) [hereinafter OVW 2016]; U.S. DEP'T OF JUST., OFF. ON VIOLENCE AGAINST WOMEN, A NATIONAL PROTOCOL FOR SEXUAL ABUSE MEDICAL FORENSIC EXAMINATIONS: *ADULTS/ADOLESCENTS* (2d. ed. 2013) [hereinafter OVW 2013].

²⁴ SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., SAMHSA'S CONCEPT OF TRAUMA AND GUIDANCE FOR A TRAUMA-INFORMED APPROACH 7 (2014).

²⁵ *Id.* at 9–10.

²⁶ *Id.* at 11.

²⁷ CHRISTOPHER MENSCHNER & ALEXANDRA MAUL, ISSUE BRIEF: KEY INGREDIENTS FOR SUCCESSFUL TRAUMA-INFORMED CARE IMPLEMENTATION 4 (Apr. 2016).

Access to healthcare services differs dramatically from community to community, challenging the ability to ensure a trauma-informed approach. Although many communities have access to sexual assault nurse/forensic examiners (SANEs/SAFEs) and child abuse pediatricians, the majority rely on emergency department and primary care providers to address the health concerns of sexual violence victims. Many clinicians receive limited to no training regarding sexual assault care. Physicians include discomfort with the topic area and communicating about it with patients as barriers to providing care.²⁸ Additionally, although providers believe that understanding sex trafficking is important in their practice, they report a lack of knowledge about the scope of the problem and the proper response when a sex trafficking victim is identified in the health setting.²⁹

To standardize the approach for training clinicians, the Department developed the *National Training Standards for Sexual Assault Medical Forensic Examiners*.³⁰ Although the *Training Standards* outline the expected education of clinicians functioning in the role of a sexual assault examiner, they also contain the minimum training requirements for all clinicians who may find themselves in a position to care for victims of sexual violence. In almost every health setting, the possibility exists that the patient presenting for care has experienced sexual violence. As such, every clinician should receive training on the proper identification and management of sexual violence.

Any patient presenting with suspected or disclosed sexual victimization requires that consent for treatment be acquired in a developmentally, linguistically, and culturally appropriate manner with the clinician's disclosure of any mandatory reporting

²⁸ See Priyanka Amin et al., *Physician's Perceived Roles, as Well as Barriers, Towards Caring for Women Sex Assault Survivors*, 27 WOMEN'S HEALTH ISSUES 43 (2017).

²⁹ See Kanani E. Titchen et al., *Domestic Sex Trafficking of Minors: Medical Student and Physician Awareness*, 30 J. PEDIATRIC & ADOLESCENT GYNECOLOGY 102 (2017).

³⁰ U.S. DEP'T OF JUST., OFF. ON VIOLENCE AGAINST WOMEN, NATIONAL TRAINING STANDARDS FOR SEXUAL ASSAULT MEDICAL FORENSIC EXAMINERS (2d. ed. 2018).

requirement.³¹ A comprehensive medical, surgical, and victimization history is obtained—not only to guide the examination and treatment, but to establish potential ongoing health needs to address in follow-up.³² It may be possible to obtain evidence from the body of the patient, depending on the timeframe between the last sexual contact and the examination, but it is critical that clinicians understand that the entire medical record can be used as evidence in future legal proceedings. In prepubescent children, the evidence collection window is generally accepted to be “a *minimum window* of 72 hours” post sexual contact.³³ In the adolescent and adult patient, the evidence collection window is up to 120 hours post sexual contact.³⁴ If substances are suspected to have been used at the time of the victimization—whether voluntarily consumed by the patient or covertly given to the patient by someone else—toxicology testing will likely be necessary. Typically, if the patient is seen within 24 hours of the victimization, both blood and urine samples are collected, and if seen between 24 and 120 hours, only a urine sample for toxicology is collected.³⁵ In instances where injuries are visible, photo documentation is used along with other methods of documenting the full examination in the medical record. Because strangulation is a common co-occurrence in sexual assault, clinicians should be prepared to properly evaluate strangulation injuries as well. One study found the co-occurring prevalence of strangulation in sexual assault to range from 12–38%.³⁶ Depending on the nature of the victimization, consideration must also be given to risk, acquisition, and prevention of pregnancy, STIs, and HIV.³⁷ Follow-up and discharge planning depends upon the complexity of the individual case, but it is not

³¹ See OVW 2016, *supra* note 23, at 75, 99–101; OVW 2013, *supra* note 23, at 5, 36, 45, 47–49, 51, 60.

³² See OVW 2016, *supra* note 23, at 121; OVW 2013, *supra* note 23, at 4, 17, 60–61, 117.

³³ OVW 2016, *supra* note 23, at 87.

³⁴ OVW 2013, *supra* note 23, at 89.

³⁵ *Fact Sheet: Drug-Facilitated Sexual Assaults*, SOCIETY OF FORENSIC TOXICOLOGISTS, http://www.soft-tox.org/files/DFSA_Fact_Sheet.pdf.

³⁶ Colleen Mcquown et al., *Prevalence of Strangulation in Survivors of Sexual Assault and Domestic Violence*, 34 AM. J. OF EMERGENCY MED. 1281, 1283 (2016).

³⁷ See OVW 2016, *supra* note 23, at 165–73; OVW 2013, *supra* note 23, at 111–16.

uncommon for victims to need extensive follow-up, particularly in cases of sex trafficking where substance abuse and mental health issues; malnutrition; reproductive problems; and chronic, unaddressed medical problems are often discovered in the evaluation process.³⁸ The clinician and multidisciplinary team should know and have access to the ongoing resources these victims may need to provide appropriate follow-up and discharge planning.

With the majority of missing persons returning alive, it is critical that tribal communities and multidisciplinary responders have systems in place to address the often-complex medical forensic needs these victims face.

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³⁸ See AM. PRO. SOC'Y ON THE ABUSE OF CHILD. (APSAC) TASKFORCE, APSAC PRACTICE GUIDELINES: THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN: THE MEDICAL PROVIDER'S ROLE IN IDENTIFICATION, ASSESSMENT, AND TREATMENT 8 tbl.2, 18–19 (2013).

Enhancing Law Enforcement Response to Missing Person Cases in Tribal Communities

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From February 2020 to September 2020, the White House Task Force on Missing and Murdered American Indians and Alaskan Natives, also known as Operation Lady Justice (OLJ), held national listening sessions and consultations with tribal leaders, community members, and tribal chiefs of police from around the United States.¹ In these assemblies, a number of questions were posed to participants relating to the nature and scope of the missing person problem in their community, the availability of specialized training and resources, the use of community-based resources during law enforcement response, and what they believed were the most important factors in creating an effective missing person response. Through these discussions, the two most important factors for a successful law enforcement response to missing person cases occurring in tribal communities were identified. They are (1) timely reporting; and (2) having a multidisciplinary law enforcement response plan that includes members and resources from the tribal community. So how do tribal law enforcement agencies ensure that missing person cases are reported promptly and effectively responded to? This is accomplished through effective community engagement and by developing a tribal community response plan.²

¹ Listening sessions and consultations with transcripts are located on the Operation Lady Justice Task Force Website, located at *The Presidential Task Force on Missing and Murdered American Indians and Alaska Natives*, OPERATION LADY JUSTICE, <https://operationladyjustice.usdoj.gov/>.

² Although the focus of this article is on tribal communities, its concepts are universally applicable to communities all over the United States.

I. Timely reporting and community engagement

At OLJ-led discussions in July 2020, when asked to identify the most important factor in an effective police response when a tribal member goes missing, chiefs of police from a diverse collection of tribal police departments universally identified a “timely initial report” as the most important factor in a successful outcome. Often, a person is reported missing days, or even weeks, after family members or friends suspect she is missing. Reporting delays in missing person cases in tribal communities happen for many reasons. Some may be related to a community’s historical distrust of law enforcement or concerns the police will not take them seriously. In cases where a juvenile goes missing, a family may be concerned social workers will remove their children from their home. Others believe, or have been told, there is a 24- or 48-hour “waiting period” before their family member can be reported missing. The list of reasons why people fail to report promptly differ in each community, but delays are abundant and have a substantial negative effect on law enforcement efforts to locate and safely return a missing person. As time passes, the effectiveness of broadcast media is diminished, potential crime scenes change, crucial evidence is lost, witnesses move on, memories fade, and many opportunities for a quick resolution, once present, are no longer available.

Since reporting delays are outside a law enforcement agency’s immediate control, what can be done to address this problem? According to our surveyed tribal chiefs of police, it takes time, hard work, and a consistent effort to gain the trust of the community, especially if there is a long history of distrust. The good news is that the solution may not be complicated. Trust can be earned through enhanced community engagement by way of proven community-oriented policing methods, education and outreach campaigns, and integration of community-based organizations into the police response in missing person cases. Additionally, social media platforms and smart phone applications can be leveraged to assist messaging efforts and provide people with alternative ways of reporting when a member of their community goes missing. Regular messaging about the need for prompt reporting should be integrated into all kinds of police outreach efforts, like child car seat checks and safety programs, 911 education programs, emergency preparedness classes, and police

citizen academies. Being creative and consistent in community engagement efforts develops trust and confidence and is key to an agency being successful in “winning over” its community and ensuring timely reporting.

II. Developing a tribal community response plan

Between November 2019 and March 2020, while examining the key components of an effective missing person response plan in tribal communities, tribal leaders in Montana emphasized the need for a customized “community-based” response. They stressed that tribal members who go missing are “not just a law enforcement issue.” This sentiment was echoed by tribal leaders and community members in subsequent OJ-led listening sessions. Participants contended that the most effective response in missing person cases is multidisciplinary, incorporates resources found within the community, and includes the participation of community members and community-based organizations. So, how do we create a tribal community response plan (TCRP) that enhances law enforcement efforts in missing person cases by integrating community members and resources into their response? The following are steps that can be taken by law enforcement officials, working closely with tribal leaders, key community members, and outside agencies, to create a TCRP.

A. Inventory resources

Missing person cases often involve multiple agencies and community organizations. This is particularly true in tribal communities. Thus, the first step in developing an effective TCRP is identifying and documenting available resources that can contribute to a missing person investigation. This process begins with tribal law enforcement officials having a clear understanding of their capacity to respond to and properly address a variety of missing person cases (for example, abducted child, teenage runaway, person missing under suspicious circumstances, elder with dementia or cognitive impairment, etc.). Law enforcement leaders must critically assess their agency’s personnel, resources, specialized skills, training, and ability to respond effectively when a person is reported missing.

Since missing person cases require a multidisciplinary response, the tribal law enforcement agency preparing the TCRP should next identify which non-law enforcement organizations make their

response and investigation more effective. Thus, a thorough understanding of the capabilities, resources, and training of child protection agencies, tribal emergency services, victim support agencies, medical services, and other community-based organizations is imperative. Other groups to consider may be tribal missing person task forces/working groups, tribal search and rescue teams, cultural societies, elder programs, tribal public affairs personnel, substance abuse programs, and local faith organizations. The individuals and organizations selected will be dependent on the community they serve, the services they provide, and their relationship with tribal law enforcement.

An effective TCRP also identifies resources outside the community. These resources include law enforcement agencies in nearby jurisdictions, state facilitated broadcast alert systems (for example, Amber Alert, Ashanti Alert, Silver Alert), state missing person/child clearinghouses, state missing person task forces, and so on. The plan must also include federal resources from the Bureau of Indian Affairs Office of Justice Services (BIA-OJS), the Federal Bureau of Investigation (FBI), the United States Marshals Service Missing Child Unit (USMS-MCU), the Department of Justice missing and murdered indigenous persons (DOJ MMIP) coordinators, BIA-OJS/FBI victim specialists, local representatives of the National Center for Missing and Exploited Children (NCMEC), the regional National Missing and Unidentified Persons System (NamUs) representatives, and BIA-OJS regional cold case teams. The completed TCRP should have an up-to-date list of contact information for each person, tribal organization, and outside agency identified in the plan.

B. Identify and understand legal mandates and policies

There are a variety of tribal, federal, and state legal mandates and policies that apply in a missing person case. For example, federal law requires local, state, and federal agencies to enter information about any missing person under the age of 21 years into the National Crime Information Center's (NCIC) missing person file within two hours of receiving information that the person is missing.³ There are also

³ Title 34 U.S.C. § 41307 requires federal, state, or local law enforcement agencies to report each case of a missing person under the age of 21 years to the National Crime Information Center (NCIC). Title 34 U.S.C. § 41308(3)(D)

specific federal requirements if someone goes missing while in foster care or under government supervision.⁴ Tribal and non-tribal agencies may also be subject to other provisions regarding missing person cases, including providing specific notifications if the person is elderly or notice to schools when a child goes missing. Moreover, BIA-OJS has policy requirements that apply to both BIA-OJS led police agencies and tribes contracting with their law enforcement services through a Public Law 93-638 contract.⁵ All TCRPs should be developed with a clear understanding of all legal mandates and policy requirements. Thus, it is crucial that the agency preparing the TCRP consult with legal counsel so applicable law and policies are incorporated into the plan.

C. Have a clearly defined purpose or mission statement

A TCRP should begin by stating its purpose or mission in the introductory section. This is a statement describing why the plan exists. The purpose could read:

The purpose of this protocol is to establish guidelines and responsibilities regarding law enforcement and community response to reports of a missing person.

It can also be a statement emphasizing in greater detail how the tribal community is taking direct responsibility for the safety and well-being of its members when someone goes missing. Either way, this portion of the plan should be thoughtfully considered because it

requires that the report be made within two hours of receipt of the information. Note that this statute does not apply to tribal law enforcement agencies.

⁴ Title 34 U.S.C. § 41308(4) requires that state and local law enforcement agencies notify the National Center for Missing & Exploited Children (NCMEC) of each report of a child missing from a foster care family home or childcare institution.

⁵ In the early 1970s, Congress passed the Indian Self Determination and Education Assistance Act, which allowed Indian tribes and tribal organizations to acquire increased control over the management of federal programs that impact their members, resources, and governments. These agreements are referred to as “638 compacts and contracts.” *Public Law 93-638 Contracting and Compacting*, U.S. DEP’T OF THE INTERIOR, www.doi.gov/ost/tribal_beneficiaries/contracting (last visited Jan. 8, 2021).

sets the tone for future law enforcement and community collaboration and action.

D. Develop policy statements

A TCRP may also set forth broad policy statements to help guide the general actions of law enforcement officers, tribal leaders, supporting agencies, community-based organizations, and volunteers during a missing person investigation. These statements should be general and easy to remember because they are guiding principles for law enforcement and the community. Examples of such statements are:

- Law enforcement will not require a waiting period before a missing person report can be submitted.
- Responses to missing person cases will be multidisciplinary and employ victim-centered, trauma-informed, and culturally appropriate practices.
- law enforcement led multidisciplinary teams will promptly respond to and thoroughly investigate all reports of missing persons in their jurisdictions.

E. Planning and executing a missing person investigation

A missing person investigation will be tailored to the circumstances of the case. The creators of a properly considered TCRP should assess the types of missing person cases that regularly occur in their community. If a large percentage of cases involve teenagers, a specific multidisciplinary response for those situations should be planned and practiced. Those types of cases in particular may require a response that includes law enforcement officers, social workers, victim advocates, school counselors, and behavioral health professionals. It is also important to plan for the less frequent and “worst case scenario” cases, like a missing or abducted child, a suicidal adult, a senior who goes missing during a snowstorm, or a missing person with a known ailment or disability.

There are countless circumstances requiring different investigative strategies and resources, and it is impossible to address all scenarios in a single response plan. There are key components, however, to missing person investigations that are common in most cases. They include the need for an effective command structure; a timely and informed initial response and preliminary investigation; a plan to

expand the investigation and introduce specialized resources; the introduction of timely, victim/family centered, and culturally appropriate victim services; and an understanding of how to transition the case to a long-term investigation when the missing person is not located or recovered for an extended period.

1. Creating an effective command structure

Creating a command structure to manage the investigation in a missing person case is the responsibility of the lead law enforcement agency. It is dependent on case facts, personnel, and resources available. The first step in establishing effective command and control is designating the lead agency. Once the lead agency is determined, that agency must specify who is in charge, either in the form of an incident commander for larger operations or a case agent for smaller law enforcement led actions. An effective command structure will include a person or persons to manage incoming leads, oversee work performed at the site where the missing person was last seen, and supervise operations at potential crime scenes, indoor/outdoor searches, neighborhood canvasses, and vehicle checkpoints.

Special consideration should be given to having the right person(s), with appropriate backgrounds, to direct media relations and supervise the more technical aspects of the investigation, like forensic searches, digital searches, examination and exploitation of social media, cellular telephone analysis, and video collection/analysis. A person should also be designated to coordinate and direct useful, non-law enforcement resources in the investigation, such as tribal social services, community-based victim support services, tribal search and rescue teams, K-9 support teams, and community volunteers. When developing a TCRP, a law enforcement agency should create a detailed list of roles and responsibilities based on anticipated case circumstances and available resources.

2. Timely and informed initial response and preliminary investigation

There can be multiple stages in a missing person investigation, and the movement from one stage to another is not always linear. The initial response by law enforcement is arguably the most important part of the investigation because of its impact on the composition, the urgency, and the resourcing of the overall response. When a missing person report is received, the responding officer must travel to the location of the reporting party or site where the person was last seen.

This officer must be trained to perform an effective preliminary investigation so he can quickly obtain the most vital information, such as name, age, and description of the missing person; circumstances surrounding the disappearance; where, when, and with whom the person was last seen; risk factors that might indicate the person is endangered; and any information about a possible suspect, if foul-play is suspected. If a child goes missing, especially one 12 years of age or younger, special care must be given to understanding the child's custody status and if she wandered outside the "zone of safety" for their age and development.

Once preliminary information is obtained, an officer should consult with her supervisor to assess and properly classify the missing person case. This is extremely important and should be done with great care. If the missing person is a child, teenager, or adult, and there are clear indicators of endangerment, the follow-on response will be much different than if there were no signs of foul play or endangerment. This assessment/classification information is also used to enter the person into the NCIC missing person file,⁶ to send out BOLO (be on the lookout) messages to local officers and surrounding jurisdictions, and to determine if certain broadcast media options like an Amber Alert, an Ashanti Alert, a Missing Endangered Person Advisory (MEPA), or a Silver Alert are available.

3. Plan to expand the investigation when a person is confirmed missing

Following confirmation that a person is missing, the lead law enforcement agency must be prepared to expand its investigation. It is at this point that special consideration should be directed to the composition of resources. This is where outside agencies and community-based resources come into play. If the missing person is a teenager, law enforcement may work closely with BIA or tribal social

⁶ Entering information into the NCIC missing person file (MPF) is a critical piece of any missing person investigation and helps facilitate the law enforcement response. Information is entered into the NCIC MPF when a missing person has a proven mental disability, is missing under circumstances indicating that they may be in physical danger, is missing under circumstances indicating their disappearance may not have been voluntary, is under age 21 and does not meet the previous criteria, is missing after a catastrophe, or is 21 or older and does not meet any of the previous criteria but there is reasonable concern for their safety.

workers, behavioral health professionals from the Indian Health Service, or a leader of a cultural youth group. If it is an elder, the investigative team may include a worker from an elder care facility or tribal victim advocacy group. If an outdoor search is needed, law enforcement may rely on members from the tribe's Emergency Services Department, Forestry Department, or volunteers from its Warrior Societies. These common scenarios should be contemplated and addressed in the TCRP *before* a person goes missing.

If warranted by case facts, law enforcement and community resources should be quickly and thoughtfully added to the investigation with an understanding that the timeliness and thoroughness of the response may be the difference in locating a person quickly and safely. Important steps in this phase of the investigation include gathering more information about the missing person, to include obtaining a recent photograph of the person; securing and distributing photos of the clothing they were last seen wearing; identifying items in their possession; establishing their access to cellular telephones, computers, gaming systems, and other communication devices or platforms; and gathering email addresses, social media usernames and profiles, passwords, and online identities.

Determining and communicating the need for specialized resources to the state, BIA-OJS, USMS, or the FBI is crucially important. These resources may include BIA incident command assistance, analytical support, Child Abduction Rapid Deployment (CARD) teams, Evidence Response Teams (ERT), Computer Analysis Response Teams (CART), cyber experts, Cellular Analysis Survey Teams (CAST), Digital Image Video Recovery Teams (DIVRT), incident command support, Victim Specialist Response Teams, USMS-MCU assistance, polygraph support, and media coordination assistance.

While this is taking place, law enforcement officers can protect potential crime scenes or the last known location of the missing person, work with volunteers to search the site where the person was last seen, set up checkpoints, perform a neighborhood canvass, and/or secure the missing person's room or residence.

As the investigation extends into several days or weeks, there are a number of additional considerations that generally fall into four categories: (1) administrative; (2) communications; (3) evidence collection and analysis; and (4) investigative tasks.

Administrative tasks likely include establishing a command post, tracking large amounts of case information, establishing shifts and

briefing schedules, updating the NCIC missing persons file, and entering the person into NamUs (in cases of long-term missing persons).

Communications will include deciding on an overall media strategy, messaging to tribal leadership, engagement with local/regional media, ongoing coordination with outside agencies and prosecutors, establishing a phone number and website to share and receive information, and continuing to actively elicit community assistance.

Evidence collection and analysis may consist of analyzing records of 911 or police dispatch calls, cellular telephone analysis, area searches, digital searches, collection of additional physical evidence, and reviews of forensic laboratory testing results.

Investigative tasks may include performing comprehensive interviews, developing an accurate timeline, detailed intelligence analysis, performing a neighborhood investigation, investigating known sex offenders, performing investigations into possible suspects, obtaining “known samples” (for example, hair, DNA, fingerprints), obtaining medical and dental records, and creating a victim profile.⁷

F. Introducing culturally appropriate victim services

Justice for victims comes in many forms, and law enforcement action in missing person cases impacts victims, witnesses, and families in different ways. Thus, the timely introduction of culturally appropriate, victim-centered, and trauma-informed victim support services is essential. Victim support can help people during the most difficult times of their lives while also assisting law enforcement in engaging victim families during an investigation. Family members will contribute to the overall efforts of law enforcement when they are supported and provided with opportunities to contribute. The composition of victim service providers (VSP) and how they collaborate will vary across all tribal jurisdictions, depending on the availability of resources and case circumstances. Some VSPs may be “system based” providers who work for law enforcement or prosecutors and have limited confidentiality. System-based VSPs work in partnership with the investigative team and must have a clear understanding of the information that can be shared with victims, as well as an understanding of relevant information to be shared with

⁷The Federal Bureau of Investigation refers to this investigative process as *Victimology*.

law enforcement and prosecutors. “Community based” VSPs frequently come from the tribal community and generally work for non-governmental organizations. They often have advocate privileges, which may impact or limit the sharing of information with law enforcement. All investigative personnel and VSPs need to understand their roles, responsibilities, and boundaries.

When VSPs are limited or non-existent in tribal communities, pre-incident planning may involve identifying resources such as behavioral health, school social workers or counselors, social service agencies, and community programs. Training can be provided for law enforcement personnel so that interactions with families occur in a victim-centered manner. Some remote communities may also utilize technology in the delivery of services. The NamUs Victim Services Division (VSD) and NCMEC are resources for peer support where families are connected with others who have had similar experiences. Additional resources exist for trauma-informed counseling, reunification, repatriation, or burial. While system-based VSPs are the most seamless because of their existing integration with law enforcement, other existing resources can be utilized to assist families.

G. Transitioning to a long-term missing person investigation

Some cases are not immediately resolved, and the missing person remains unrecovered or missing for months or years. In these cases, the TCRP should plan for a transition to a long-term missing person investigation. Considerations for an effective conversion include how the case will be transitioned to a smaller investigative unit; how resources will be reduced and normal police operations resumed; how multi-agency reports are received and maintained; how information is centralized and the case file organized; the messaging to the family and community about the agency’s transition; and how to preserve and store evidence for future use. Additionally, BIA-OJS operates seven regional cold case teams⁸ to investigate long-term missing person cases involving American Indians and Alaska Natives. Engagement and coordination with these teams should be performed

⁸ BIA-OJS Regional Cold Case Teams are currently located in Albuquerque (NM), Anchorage (AK), Billings (MT), Minneapolis (MN), Nashville (TN), Phoenix (AZ), and Rapid City (SD).

so unresolved cases can be periodically reviewed and considered for BIA Cold Case Team assistance.

An enhanced response in missing person cases in tribal communities is dependent on timely reporting and having a flexible, multidisciplinary law enforcement response plan that includes the greater tribal community in its response. This is accomplished by law enforcement agencies performing effective community outreach and working closely with tribal leaders, community members, and community-based organizations to create a TCRP. Direct involvement by the tribal community ensures law enforcement has a more complete understanding of the person who is missing, along with ample and appropriate resources when they are needed most. A properly considered TCRP gives law enforcement and the community its best chance at quickly locating and recovering a lost or missing tribal member.

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FBI Resources in Missing Person Cases

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The Federal Bureau of Investigation (FBI) houses several specialized units that may be requested to add value to investigations involving cases of missing, abducted, or murdered victims. These units include the Child Abduction Rapid Deployment (CARD) Team,¹ as well as two Behavioral Analysis Units (BAUs)—BAU-3 (crimes against children) and BAU-4 (crimes against adults).² BAU-4 also houses the Violent Criminal Apprehension Program (ViCAP), which is an additional resource in these types of cases.³ The BAUs reside in the National Center for the Analysis of Violent Crime (NCAVC).⁴ This article addresses the mission critical work performed by the CARD Team in partnership with BAU-3 in child abduction investigations; it describes the additional capabilities BAU-3, BAU-4, and BAU-4's

¹ *Crimes Against Children/Online Predators*, WHAT WE INVESTIGATE, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/investigate/violent-crime/cac> (last visited Oct. 2, 2020).

² *Critical Incident Response Group (CIRG)*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/services/cirg> (last visited Oct. 2, 2020).

³ *Id.*

⁴ *Id.*

ViCAP can bring to bear in cases of missing and murdered persons; and it discusses how law enforcement officials can request assistance.

I. The CARD Team

In a child abduction case, the first few hours are critical. One of the most critical missions of the FBI's Criminal Investigative Division (CID) has been the development of a nationwide capability to provide a quick and effective response to a child abduction or mysterious disappearance.⁵ The FBI formed the CARD Team in late 2005, and it first deployed it in 2006.⁶ As of December 2020, the CARD Team has officially deployed over 180 times, averaging approximately 12–15 deployments per year.⁷ The CARD Team consists of specially trained investigators experienced in child abduction cases who can rapidly deploy anywhere in the country. The CARD Team is designed to temporarily deploy to provide investigative, technical, and resource assistance to state and local law enforcement during the most critical time period following a child abduction.⁸

The average CARD Team cadre consists of 75 seasoned agents and intelligence personnel strategically placed throughout the FBI's 56 field offices to facilitate a rapid, on-site response to child abduction cases. With its experience in handling these critical, often highly publicized cases, the CARD Team enhances field resources. BAU-3, the Cellular Analysis Survey Team (CAST), victim specialists, and child adolescent forensic interviewers (CAFI) from the Victim Services Division routinely support and deploy with the CARD Team, bringing additional resources to the local area. In addition, FBI personnel assigned to the National Center for Missing and Exploited Children

⁵ *Crimes Against Children/Online Predators*, *supra* note 1.

⁶ *When Kids Go Missing, Our New Teams Will Help Find Them*, FED. BUREAU OF INVESTIGATION (June 6, 2006), https://archives.fbi.gov/archives/news/stories/2006/june/cardteam_061606.

⁷ See Grace White, *Elite FBI Team Helps Find Missing Children*, KHOU11 (Feb. 12, 2020), <https://www.khou.com/article/news/nation-world/elite-fbi-team-helps-find-missing-children/285-da050006-11bd-4e2e-b6c5-12792355527c>.

⁸ *Investigating Child Abductions—FBI CARD Team Plays Vital Role*, FED. BUREAU OF INVESTIGATION (May 9, 2014), <https://www.fbi.gov/news/stories/investigating-child-abductions1>.

(NCMEC) regularly assist the FBI and our local, state, and federal partners with missing child investigations.⁹

The CARD Team brings a unique experience in child abduction cases, serves an advisory role in the investigation, and quickly establishes an on-site command post to centralize and organize operations. The team can access the full resources of a local FBI field office, and the FBI at large, to generate leads and mobilize appropriate resources. The CARD Team provides a systematic approach to neighborhood investigations and supports large area searches through the assistance of canines, divers, and local search and rescue teams. The team uses electronic case management tools to assign and track leads, which typically involve multiple jurisdictions and agencies.

The CARD Team uses the FBI's Child Abduction Response Plan (CARP) to guide investigative efforts.¹⁰ The FBI developed the CARP based on case studies and research conducted by BAU-3 on missing children investigations. The CARP is the FBI's national model for best practices when responding to and investigating cases involving children who are missing under suspicious circumstances.

The CARD Team is deployed primarily in the following cases: non-family child abductions, ransom child abductions, and any mysterious disappearance of a child. There is no need to wait 24 hours or show interstate travel to request CARD Team assistance. The FBI can assist in all types of child abduction cases and is not limited to ransom abductions.¹¹ While some local law enforcement agencies may only work one or two child abduction cases a year, CARD Team members are frequently called to assist law enforcement agencies around the country, enabling them to improve their unique skill set recovering missing children.

The FBI works in partnership with our local, state, and tribal partners to save innocent lives. The CARD Team is a resource available to federal, state, tribal, and local law enforcement at no cost to the requesting agency. The top priorities of the CARD Team are to assist in the quick recovery of the child, prevent others from becoming victims, and facilitate the identification and arrest of the offender(s).

⁹ *Crimes Against Children/Online Predators*, *supra* note 1.

¹⁰ See Joy Shelton *et al.*, *Residential Child Abduction Cases*, ARTICLES, LAW ENFORCEMENT BULL., (Nov. 15, 2017).

¹¹ *Id.*

CARD assistance can be requested through a local FBI field office.¹² When the CARD Team is deployed, the full resources of the FBI are available to assist with the investigation. While not all circumstances warrant a full CARD Team deployment, CARD Team members are always available to provide phone consultations and further resources if needed.

II. The NCAVC and the BAU

In 1985, the Department of Justice (Department) established the NCAVC to consolidate research, training, and operational support activities for the express purpose of providing that expertise to any legitimate law enforcement agency confronted with an unusual, bizarre, or particularly vicious or repetitive violent crime.¹³ In a strategy designed to address problems related to crimes against children and serial murders, Congress passed the Protection of Children from Sexual Predators Act of 1998.¹⁴ This law gives investigative authority and responsibility to the FBI and, specifically, to the NCAVC.¹⁵ This legislation mandates that the NCAVC provide operational assistance, develop research projects, and conduct training for law enforcement agencies involved in the investigation of child abductions, mysterious disappearances of children, child homicides, and serial murders.¹⁶

The NCAVC is part of the Investigative and Operational Support Section (IOSS) of the FBI's Critical Incident Response Group (CIRG). CIRG addresses crisis situations requiring emergency response or specialized multidisciplinary investigative support, including the NCAVC BAU.¹⁷

The BAU is a law enforcement oriented behavioral and data analysis center that provides behaviorally based operational support to federal, state, local, tribal, campus, and foreign law enforcement,

¹² *Investigating Child Abductions—FBI CARD Team Plays Vital Role*, *supra* note 8.

¹³ Roger L. Depue, *An American Response to an Era of Violence*, FED. BUREAU OF INVESTIGATION L. ENFORCEMENT BULL. 5 (Dec. 1986).

¹⁴ Protection of Children From Sexual Predators Act of 1998, Pub. L. No. 105-314, 112 Stat. 2974 (1998).

¹⁵ Pub. L. No. 105-314, at § 703(b).

¹⁶ Pub. L. No. 105-314, at § 703(c).

¹⁷ *Critical Incident Response Group (CIRG)*, FED. BUREAU OF INVESTIGATION, <http://www.fbi.gov/services/cirg> (last visited Oct. 2, 2020).

intelligence, and security agencies.¹⁸ The BAU specializes in investigating unusual, high-risk, vicious, or repetitive violent crimes; communicated threats; terrorism; and other violent crime related matters.¹⁹ The BAU is comprised of supervisory special agents (commonly known as “profilers”), major case specialists (MCS), analysts, and professional staff. The BAU also retains contracted specialists, such as psychiatrists, psychologists, medical examiners, and medical doctors.²⁰ Although the BAU provides support through expertise and consultation in certain nonviolent matters, two of the four operational BAUs provide support in cases of missing, abducted, and murdered victims: BAU-3 (crimes against children) and BAU-4 (crimes against adults).²¹ BAU-4 also houses the Violent Criminal Apprehension Program (ViCAP).²²

III. BAU-3

Through the application of investigative case experience, education, specialized training, and research, BAU-3 provides behaviorally based investigative and operational support to complex and time-sensitive crimes and other matters of significance involving crimes perpetrated against child victims.²³ BAU-3 resources are focused on child abductions, mysterious disappearances of children, child homicides, child sexual victimization, and other criminal acts targeting child victims. Many of these cases are seemingly “bizarre,” and even experienced law enforcement officials can go an entire career and experience just one such case.²⁴ At the BAU, the special supervisory agents (SSAs) and analysts consult and conduct research on many of these cases. This experience allows the BAU to offer recommendations to investigators based on education, research, specialized training,

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See *Behavioral Analysts*, AUDIO, FED. BUREAU OF INVESTIGATION (May 2, 2011), <https://www.fbi.gov/audio-repository/news-podcasts-inside-bau-profilers.mp3/view>.

²¹ *Critical Incident Response Group (CIRG)*, *supra* note 2.

²² *Id.*

²³ *Behavioral Interview Program—Attempting to Understand Violent Offenders*, FED. BUREAU OF INVESTIGATION (May 9, 2011), <https://www.fbi.gov/news/stories/behavioral-interview-program>.

²⁴ See *Behavioral Analysts*, *supra* note 20.

and the collective experience of the BAU. The three pillars of BAU's mission include operations, training, and research.²⁵

Operationally, BAU-3 provides a variety of services. Some examples of these services include the following: interview/interrogation strategies, investigative strategies, media strategies, communication/statement analysis, crime analysis, expert testimony, personality assessment, prosecution strategies, and search warrant affidavit assistance.²⁶ BAU-3 provides these services during on-site consultations, telephonic conference calls, and case consultations from the NCAVC near Quantico, Virginia.²⁷ Through prior training and during deployments, the CARD Team works with BAU-3 to help the investigating agencies implement the FBI's CARP to guide investigative efforts.²⁸ The CARP is a time-tested, research-based plan authored by BAU-3 to ensure law enforcement completes critical lines of investigation concurrently. During missing child deployments, BAU-3 SSAs work along with the CARD Team but have a slightly different focus. Deployed BAU-3 SSAs, for example, may help investigators design behaviorally based interview strategies to elicit the most helpful information or develop media strategies to engage the public.

In addition to delivering training with the CARD Team, BAU-3 provides specialized, behaviorally based training for federal, state, local, tribal, and international law enforcement agencies.²⁹ Each year, BAU-3 participates in a variety of training events throughout the world, providing instruction to multi-disciplinary audiences, including law enforcement, scientific, and academic communities. BAU-3 participates in BAU regional conferences and regularly instructs senior law enforcement executives at the FBI's National Academy.

The operations and training conducted by the BAUs are solidly grounded in research. BAU-3 conducts research from a law enforcement perspective to gain insight into the thought processes, motivations, and behavior of criminals. This insight is further refined into innovative investigative techniques that can be applied to

²⁵ *See id.*

²⁶ *Critical Incident Response Group (CIRG)*, *supra* note 2.

²⁷ *Id.*

²⁸ *See Investigating Child Abductions—FBI CARD Team Plays Vital Role*, FED. BUREAU OF INVESTIGATION (May 9, 2014), <https://www.fbi.gov/news/stories/investigating-child-abductions1>.

²⁹ *See Critical Incident Response Group (CIRG)*, *supra* note 2.

improve the effectiveness of law enforcement. Results from this research are shared with the law enforcement, scientific, and academic communities through publications, presentations, and training. Examples of research topics include child abductors, false allegations of child abductions, sexual exploitation of children, maternal filicide, sex trafficking, undercover chat with sex offenders, 911 calls, and interviewing and interrogating child sex offenders. BAU-3 research also includes direct behavioral interviews with convicted offenders.³⁰

IV. BAU-4

Through the application of investigative case experience, education, specialized training, and research, BAU-4 provides behaviorally-based investigative and operational support to complex and time-sensitive crimes and other matters of significance involving crimes perpetrated against adult victims.³¹ BAU-4's resources are primarily focused on violent criminal acts such as serial murders, mass murders, and other murders; sexual assaults; kidnappings; and missing person cases. BAU-4's SSAs and MCSs consult and conduct research on many of these types of cases. These experiences, combined with education and specialized training, allow the BAU to offer recommendations to investigators. The cases accepted by BAU-4 are the seemingly "bizarre" and unique and are generally considered once-in-a-lifetime cases.³²

Operationally, BAU-4 provides similar services to those provided by BAU-3. Some examples of these services include: interview/interrogation strategies, investigative strategies, media strategies, communication/statement analysis, personality assessment, prosecution strategies, and search warrant affidavit assistance.³³ BAU-4 provides these services during deployments, on-site consultations, conference calls, and case consultations.³⁴

³⁰ See *Behavioral Interview Program—Attempting to Understand Violent Offenders*, FED. BUREAU OF INVESTIGATION (May 9, 2011), <https://www.fbi.gov/news/stories/behavioral-interview-program>.

³¹ *Id.*

³² See *Behavioral Analysts*, AUDIO, FED. BUREAU OF INVESTIGATION (May 2, 2011), <https://www.fbi.gov/audio-repository/news-podcasts-inside-bau-profilers.mp3/view>.

³³ *Critical Incident Response Group (CIRG)*, *supra* note 2.

³⁴ *Id.*

The operations and training conducted by the BAUs are solidly grounded in research. BAU-4 conducts research from a law enforcement perspective to gain insight into the thought processes, motivations, and behavior of criminals. This insight is further refined into innovative investigative techniques that can be applied to improve the effectiveness of law enforcement. Results of this research are shared with law enforcement, scientific, and academic communities through publications, presentations, and training. Much of the instruction done by BAU-4 is through a partnership with the International Homicide Investigators Association (IHIA).³⁵ The purpose of the IHIA is to assemble world-class experts for presentations covering topics such as serial homicide investigations, child abductions and murder, death and unidentified remains investigations, interviewing and interrogation, cutting edge forensics and technology, victim issues, response to terrorism, mass casualties, and catastrophic events.³⁶ Through this relationship, the BAUs assist with the development of curriculum and instruction for IHIA. In addition to delivering training in conjunction with IHIA, BAU-4 provides specialized, behaviorally based training for federal, state, local, tribal, and international law enforcement agencies. Each year, BAU-4 participates in a variety of training events throughout the world, providing instruction to multi-disciplinary audiences, including law enforcement, scientific, and academic communities. BAU-4 participates in BAU regional conferences and regularly instructs senior law enforcement executives at the FBI's National Academy.³⁷

V. ViCAP

BAU-4 is also responsible for the ViCAP.³⁸ The mission of this congressionally mandated program is to provide criminal investigative and case linkage analytical support to federal, state, and local law enforcement agencies involved in the investigation of violent crimes.³⁹

³⁵ *About IHIA*, INT'L HOMICIDE INVESTIGATORS ASS'N, <https://www.ihia.org/About-US> (last visited Oct. 2, 2020).

³⁶ *See id.*

³⁷ *See Critical Incident Response Group (CIRG)*, *supra* note 2.

³⁸ *Id.*

³⁹ *Violent Criminal Apprehension Program Part 1: Sharing Information to Stop Serial Offenders*, FED. BUREAU OF INVESTIGATION (May 3, 2016), <https://www.fbi.gov/news/stories/violent-criminal-apprehension-program-part-1>.

Specifically, ViCAP focuses on unusual, random, and/or serial homicides and sexual assaults, as well as missing person and unidentified human remains cases where foul play is suspected. One of the cornerstones of ViCAP is the continued operation and maintenance of the ViCAP database, the national investigative repository for these types of cases.⁴⁰ Each case is compared against other case submissions to identify similar characteristics and generate potential leads. ViCAP services include crime analysis, the creation of analytical products, resource referrals, information dissemination, multi-agency coordination, liaison, and task force assistance.

The ViCAP database is available to law enforcement agencies nationwide through the secure internet connectivity of the FBI's Criminal Justice Information Services Division, Law Enforcement Enterprise Portal (LEEP).⁴¹ Each user must maintain active access to LEEP in order to access the ViCAP database.⁴²

ViCAP also oversees the Highway Serial Killings (HSK) Initiative, an extensive effort to provide support to state and local law enforcement agencies investigating violent crimes on the nation's highways.⁴³ ViCAP Crime Analysts developed, and continue to develop, extensive timelines on suspects through the utilization of a variety of reliable information sources. By comparing details of unsolved ViCAP cases to suspect timelines, ViCAP crime analysts can provide investigating agencies with new potential suspects. When a suspect is identified, or a group of cases are linked to a common offender, additional behavioral analytical services can be provided in furtherance of the investigation.

VI. How to request assistance

Generally, law enforcement agencies should reach out to their local FBI office for assistance. Domestically, the FBI is organized into 56

⁴⁰ *Id.*

⁴¹ *ViCAP Brochure*, CTR. FOR IMPROVING INVESTIGATIONS, <https://centerforimprovinginvestigations.org/wpcontent/uploads/2018/04/ViCAP-Brochure.pdf> (last visited Oct. 2, 2020).

⁴² *Id.*

⁴³ *Violent Criminal Apprehension Program Part 2: The Highway Serial Killings Initiative*, FED. BUREAU OF INVESTIGATION (May 6, 2016), <https://www.fbi.gov/news/stories/violent-criminal-apprehension-program-part-2>.

field offices. Each field office has at least one BAU coordinator.⁴⁴ These special agents receive additional training from the BAU and can help determine if a case would qualify for and benefit from BAU services. They can also coordinate transfer of case materials to the appropriate BAU. International partners should request assistance through the FBI legal attaché assigned to their country.

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⁴⁴ *Critical Incident Response Group (CIRG)*, FED. BUREAU OF INVESTIGATION, <http://www.fbi.gov/services/cirg> (last visited Oct. 2, 2020).

Prevention Strategies Related to Missing or Murdered Native Americans

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American Indians and Alaska Natives experience domestic violence in epidemic proportions. The Centers for Disease Control (CDC) publishes data on the 10 leading causes of death in the United States by race and gender. Suicide ranks as the second leading cause of death for Native women and girls ages 1–19 (17.1%) and third for those ages 20–44 (9.6%).¹ Homicide ranks as the fourth leading cause of death for Native women and girls ages 1–19 (5.5%) and sixth for those 20–44 years (4.3%).² These are not just statistics, they are daughters, granddaughters, mothers, wives, grandmothers, and great-grandmothers who were suddenly relegated to memories for the way they left us, rather than the way they lived for us. Lucy R. Simpson, Executive Director of the National Indigenous Women’s Resource Center (NIWRC), suggests that “We are all sacred. We must be treated with dignity and with respect. The issue of missing and murdered native women should receive an adequate response from law enforcement and prosecutorial bodies. As the life-givers of our communities, our sovereignty very literally depends on it.”³

The Administration for Children & Families (ACF) at the U.S. Department of Health and Human Services (HHS) focuses on three primary areas across all 60 programs under the ACF umbrella: primary prevention, economic mobility, and permanency for children

¹ *Leading Causes of Death—Females—Non-Hispanic American Indian or Alaska Native—United States, 2017*, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/women/lcod/2017/nonhispanic-native/index.htm> (last visited Oct. 19, 2020).

² *Id.*

³ Press Release, Nat’l Indigenous Women’s Res. Ctr., NIWRC Supports May 5th as the National Day of Awareness for Missing and Murdered Indigenous Women (May 2, 2018).

and youth in the child welfare system. Rather than waiting to address families and youth in crisis after the fact, ACF seeks to identify systemic issues, including poverty and child neglect, with a goal of reducing the need for many of the services ACF provides. The Administration for Native Americans (ANA) within ACF works across all ACF programs to ensure the inclusion of Native Americans and Alaska Natives in policy and programming. Prevention strategies, economic mobility, and permanency for tribal children and families are integrated throughout ACF programs.

A division within ACF is the Administration on Children, Youth and Families (ACYF). ACYF is comprised of two bureaus:

1. “The Children’s Bureau (CB) focuses on improving the lives of children and families through programs that reduce child abuse and neglect, increase the number of adoptions, and strengthen foster care” throughout the states, territories, and in Native communities.⁴
2. “The Family and Youth Services Bureau [(FYSB)] supports the organizations and communities that work every day to reduce the risk of youth homelessness, adolescent pregnancy and domestic violence.”⁵ FYSB programs include the following: Runaway and Homeless Youth, Adolescent Pregnancy Prevention, and Family Violence Prevention and Services.⁶

All programs within ACYF support and promote the health and well-being of children, youth, and families by facilitating economic self-sufficiency, promoting resilience, strengthening family supports, increasing protective factors, and elevating outcomes for children and youth. Most ACYF programs have a specific tribal set aside only available to Native communities.

ACYF partners across the federal government with numerous agencies and departments on shared strategies to address issues faced

⁴ *Children’s Bureau, An Office of the Administration for Children and Families*, U.S. DEP’T OF HEALTH & HUM. SERVS., <https://www.acf.hhs.gov/cb> (last visited Oct. 22, 2020).

⁵ *Family & Youth Services Bureau, Administration for Children and Families*, U.S. DEP’T OF HEALTH & HUM. SERVS., <https://www.acf.hhs.gov/fysb> (last visited Oct. 22, 2020).

⁶ Family and Youth Services Bureau, *Overview of FYSB Programs*, <https://www.acf.hhs.gov/fysb/programs> (last visited Dec. 17, 2020).

in Indian country, including the devastating epidemic of Missing or Murdered Indigenous Persons (MMIP). MMIP encompasses a wide scope of crimes, many of which ACYF programs address, including domestic violence, child abuse, rape, sexual assault, sex and labor trafficking, murder/suicide, stalking, and substance use coercion.

I. HHS/ACF/ACYF/FYSB/Runaway and Homeless Youth Program

The scourge of MMIP affects all in its wake, including Native youth, who may find themselves homeless or on the streets because of family dynamics or circumstances that seem overwhelming and insurmountable. Since 1975, the Runaway and Homeless Youth (RHY) Program at HHS has worked to establish and strengthen faith- and community-based programs that address the immediate needs of runaway and homeless youth and their families. The RHY Program aims to increase youth safety, well-being, and self-sufficiency and help youth, including Native youth, build permanent connections with caring adults, with the goal of reuniting them with their families whenever possible and appropriate. Youth in crisis receive emergency shelter, counseling, preventive interventions, and aftercare services. In addition, RHY grantees work to strengthen family relationships and, in the absence of family reunification, help youth find safe and appropriate alternative living arrangements where they can become independent, self-sufficient, contributing members of society.

*According to *Missed Opportunities: Youth Homelessness in America, National Estimates*, a 2017 study by Chapin Hall at the University of Chicago, around one in 10 young adults ages 18–25 (an estimated 3.5 million) and at least one in 30 youth ages 13–17 (an estimated 700,000) experienced unaccompanied homelessness within a 12-month period. On the street, youth can become victims of violence, develop serious mental health and addiction problems, and be forced to trade sex for basic needs.⁷*

They may also be declared missing, never heard from again, and become statistic in a MMIP database.

⁷ Admin. for Child. & Fams., U.S. Dep't of Health & Hum. Servs.: FYSB Fact Sheet 1 (2020).

“The [RHY] Program serves as the national leader for the provision of shelter services to homeless youth.”⁸ Each year, thousands of U.S. youth run away from home, are asked to leave their homes, or become homeless. RHY programs support street outreach to find and identify youth in need, emergency shelters to support youth while counselors work to reunite families when possible, and longer-term transitional living and maternity group home programs to serve and protect young people unable to return to their home or family. RHY also supports a national runaway hotline.

A. Street outreach programs

These programs provided by RHY

fund grants to provide prevention and intervention services to runaway, homeless, and street youth, who have been subjected to, or are at risk of . . . , sexual abuse, human trafficking, or sexual exploitation. Services include basic needs, including food, clothing, hygiene or first aid packages; and information about services and safe places, and encouragement to seek shelter or housing.⁹

B. Basic center programs

“Basic Center Programs fund grants to community-based . . . [organizations] for the provision of emergency shelter” services to youth (individuals under the age of 18 who ran away from home or are otherwise homeless for up to 21 days). These shelter services provide “food, clothing, and medical care; mental and physical health services; education and employment assistance; outreach; crisis intervention; individual, group, and family counseling; family reunification; and aftercare services to runaway and homeless youth and their families.”¹⁰

C. Maternity group home programs

“Maternity Group Home Programs, funded through the Transitional Living Program, are specifically designed to meet the needs of pregnant and parenting youth and their young families. Maternity

⁸ *Id.*

⁹ *Id.* at 2.

¹⁰ *Id.* at 1.

group homes provide parenting support in addition to all the services available through Transitional Living Programs.”¹¹

D. Transitional living programs

The Transitional Living Programs provide grants to public and private organizations for community-based, adult-supervised group homes, family homes, and scattered site apartments for youth ages 16 to under 22 years who cannot safely live with their own families. These services are designed to help youth that are homeless develop the skills necessary to make a successful transition to self-sufficient living. These programs provide long-term, safe and stable shelter for homeless youth; individual and group counseling; life skills training; interpersonal skill building; educational advancement; job attainment skills; and physical and behavioral health care.¹²

E. The National Runaway Safeline

The National Runaway Safeline (NRS), at 1-800-786-2929 or <https://www.1800runaway.org/>, has been a critical component of the RHY program since 1976, assisting youth in crisis, runaway youth, and youth experiencing homelessness by communicating with their families and linking them with service providers. NRS provides a neutral and confidential communication system that is available 24 hours a day, 365 days a year throughout the United States and U.S. territories.

NRS helps in the following ways:

- 1. Crisis Intervention:** Front line staff and volunteers are trained to use a solution-based crisis intervention model.
- 2. Information and Referrals:** NRS locates local resources and makes appropriate referrals to meet each caller’s needs.
- 3. Three-Way Conference Calls:** NRS initiates calls between youth and their parents or guardians, staying on the line to mediate the discussion. NRS also initiates calls

¹¹ *Id.*

¹² *Id.*

between youth and social service protection agencies, and between adults and organizations that can help resolve their problems.

4. **Message Relay:** When youth and their parents or guardians are not yet ready for one-on-one interactions, they may take the first step toward reconnecting with each other by leaving messages with NRS.
5. **Free Trip Home:** NRS has a partnership with Greyhound Bus Lines to be able to offer runaway and homeless youth a free bus ticket home.
6. **Advocacy:** The NRS front line team advocates for youth and ensures they get support and guidance from authorities, school administrators, social service agencies, and medical and legal professionals.¹³

RHY programs use a positive youth development model to help all at-risk youth, including Native youth, find safety and structure; belonging and membership that is strength based and focused on optimal health; self-worth and encourage social contribution and community service; and independence and control over one's life and health, all while modeling and facilitating positive interpersonal relationships.

Helping youth develop these skills and strengths also cultivates protective factors that can help balance the effects of trauma and adverse childhood experiences that, in and of themselves, do not have to define a youth's self-image, nor limit his opportunities for a successful transition to adulthood.¹⁴ Far too many lives are shattered by MMIP, but there is hope. Here is the story of one young Native American woman who changed the outcome of her journey by sheer will and determination:

¹³ *National Runaway Safeline, Family and Youth Services Bureau, U.S. DEP'T OF HEALTH & HUM. SERVS.*, <https://www.acf.hhs.gov/fysb/programs/runaway-homeless-youth/programs/nrs> (last visited Oct. 22, 2020).

¹⁴ *See Fighting ACEs PBC, CTR. FOR CHILD COUNSELING*, <https://www.centerforchildcounseling.org/category/blog/fightingacespbc/> (last visited Oct. 22, 2020).

Bailee, age 22, lives in Oklahoma and is a member of the Muscogee Nation Youth Council.¹⁵ She is the mother of a two-year-old daughter and has an associate degree with plans to work toward her bachelor's degree in the coming years. Bailee is also the chair of the NRS Youth Advisory Board.

Bailee's service on the NRS Youth Advisory Board and her commitment to runaway and homeless youth, especially Native youth, is personal. When she was a young girl, she used to run away, get in trouble, hang around with gangs, and do drugs. Estranged from friends and family, she was filed as a missing person and could have been among those classified as MMIP if she had not decided to seek a way out.¹⁶ Tired of living such a precarious lifestyle, she decided to turn her life around, went back to high school, and graduated. At the time, she was unaware there were resources available for runaway and homeless youth—resources that could have made her own transition back less challenging. Now, she wants to make sure that young people know that there is help, that there is a way back, and that hope and healing are possible.¹⁷

One resource Bailee discovered on her way back to wellness was the Creek Nation Lighthouse program. Similar to a reserve officer training corps (ROTC), Lighthouse is a tribal police program that engages tribal youth with police officers as mentors and guides and creates opportunities to give back to the community. Soon, Bailee was also involved in the local Native American Youth Council, where she met youth from many different cultures and learned about resources and opportunities specifically for Native youth.¹⁸

What helped Bailee the most in dealing with the trauma of being a runaway was United National Indian Tribal Youth (UNITY), an organization providing access to talking circles where Native youth can discuss issues including suicide awareness, support for survivors of suicide, human trafficking, the effects of drug and alcohol abuse on families and youth, and communication and conflict resolution.¹⁹ Just being able to listen to other people's stories opened her eyes to the

¹⁵ *Family & Youth Services Bureau, Helping Native Youth: A Youth Voices Podcast*, YOUTUBE (July 14, 2020), https://www.youtube.com/watch?v=7aEFgM05SpA&feature=emb_title.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

realization that, if she had not changed her life's trajectory, the subject of these discussions of suicide, trafficking, murder, and missing people could have been about her.²⁰

Bailee expresses it well when she says, "Kids just take off because they feel like some people don't care at their house, or wherever they're from, but they're just wanting help and they just want to be understood."²¹ When asked what service providers could do to better support Native youth, Bailee wisely wants to remind adults to take into consideration that it takes time to get to know someone, for them to open up. Just asking questions and expecting youth to repeat their stories multiple times with different therapists, counselors, and others does not allow young people to be seen for who they are—only for where they have been and what they have done. Give youth time to heal and then get to know them, she advises. Comfort them first and create safety and belonging.²²

Bailee reminds us that every day, in communities across the country, troubled young people run from, or are asked to leave, their homes and, consequently, may become temporarily homeless. In many cases, they leave homes that are characterized by violence; physical, sexual, or emotional abuse; neglect; rejection; or parental drug and alcohol use.²³ Once on the streets, these young people often lose touch with the caring adults in their extended families, schools, and communities that could help protect them. As a result, they frequently fall victim to sexual exploitation, physical or sexual assault, human trafficking, robbery, and gang activity.²⁴

Bailee wants everyone—youth and their families—to know that the NRS is a place all young people in need can turn to for advice, to find a way home, or to get access to health and wellness services. Bailee's service on the NRS Youth Advisory Board is her way of giving back, turning her life experience into a force for good.²⁵

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

II. HHS/ACF/ACYF/FYSB Adolescent Pregnancy Prevention Program

Adolescent pregnancy prevention programs (APP) are part of a proven strategy within the ACYF to support future economic mobility and family stability for all youth. APP promotes optimal health and increases protective factors for youth while also strengthening families; facilitating economic mobility; and reducing the occurrence of substance abuse, domestic and dating violence, homelessness, and runaway episodes, any one of which can exacerbate issues that result in persons being filed as missing or those whose lives are cut short.

Adolescent pregnancy and childbearing can carry high health, emotional, social, and financial costs for both adolescent parents and their children. To prevent [non-marital] adolescent pregnancy, the spread of sexually transmitted diseases, and other risky behaviors among adolescents, [APP] takes a holistic approach [in supporting] state, Tribal, and community efforts to help youth reduce and avoid risks associated with teen sex and other risk behaviors.²⁶

“Nonmarital birth rates declined from 2016 to 2017 for women in age groups under 35, with the rate for teenagers aged 15–19 dropping 8% (to 17.1 per 1,000 in 2017), and the rate for females aged 15–17 at an all-time low (7.7).”²⁷ Although the reasons for the declines are not totally clear, evidence suggests these declines are due to more unmarried teens abstaining from sexual activity and more sexually active teens using birth control.²⁸ Still, the U.S. teen pregnancy rate is

²⁶ *About the Adolescent Pregnancy Prevention Program, Family & Youth Services Bureau*, U.S. DEP'T OF HEALTH & HUM. SERVS., <https://www.acf.hhs.gov/fysb/programs/adolescent-pregnancy-prevention/about> (last visited Oct. 22, 2020).

²⁷ Joyce A. Martin et al., *Births: Final Data for 2017*, 67 NAT'L VITAL STATS. REPS. 1, 6 (2018).

²⁸ John S. Santelli et al., *Explaining Recent Declines in Adolescent Pregnancy in the United States: The Contribution of Abstinence and Improved Contraceptive Use*, 97 AM. J. PUB. HEALTH 150 (2007); Laura Lindberg et al., *Understanding the Decline in Adolescent Fertility in the United States, 2007–2012*, 59 J. ADOLESCENT HEALTH 1–7 (2016).

substantially higher than other western industrialized nations,²⁹ and racial/ethnic and geographic disparities in teen birth rates persist.³⁰

ACYF's APP promotes focus on the "Success Sequence": (1) graduate from high school or get a GED; (2) get a full-time job; and (3) wait until marriage to have children.³¹ Research shows that youth with less than a high school diploma or GED have a 346% higher risk of homelessness; youth with an annual household income of less than \$24,000 have a 162% higher risk of homelessness; and unmarried, parenting youth have a 200% higher risk of homelessness.³²

APP has several different funding opportunities to address optimal health, which are discussed in detail below.

A. Sexual Risk Avoidance Education Program

The purpose of the Sexual Risk Avoidance Education (SRAE) Program is to fund projects to implement sexual risk avoidance education that teaches participants how to voluntarily refrain from non-marital sexual activity. . . .

Grantees use an evidenced based approach and/or effective strategies to educate youth on how to avoid risks that could lead to non-marital sexual activity. SRAE projects are implemented using a Positive Youth Development (PYD) framework as part of risk avoidance strategies, to help participants build healthy life skills, develop individual protective factors that reduce risks, empower youth to make healthy decisions, and provide tools and resources to prevent, pregnancy and [sexually transmitted infections]. Linking program participants to services provided by local community partners that

²⁹ Gilda Sedgh et al., *Adolescent Pregnancy, Birth, and Abortion Rates Across Countries: Levels and Recent Trends*, 56 J. ADOLESCENT HEALTH 223 (2015).

³⁰ Lisa Romero et al., *Reduced Disparities in Birth Rates Among Teens Aged 15–19 Years—United States, 2006–2007 and 2013–2014*, 65 MORBIDITY & MORTALITY WKLY. REP. 409–14 (2016).

³¹ Julie Baumgardner, *The Millennial Success Sequence*, FIRST THINGS FIRST (Sept. 1, 2017), <https://firstthings.org/the-millennial-success-sequence/>.

³² VOICES OF YOUTH COUNT, MISSED OPPORTUNITIES: YOUTH HOMELESSNESS IN AMERICA—NATIONAL ESTIMATES 12 (2017).

support the safety and well-being of youth is also a key component to the program.³³

B. Personal responsibility education programs

Personal responsibility education programs (PREP) promote proven methods for reducing adolescent pregnancy among young people, including American Indian and Alaska Native youth, by teaching abstinence and increasing the use of contraceptives among sexually active youth, while also supporting strategies for cessation.

C. Tribal personal responsibility education programs

Tribal personal responsibility education programs (Tribal PREP) help tribes combat the disproportionately high rates of non-marital teen pregnancy and birth among American Indian and Alaska Native youth. “Tribal PREP promotes proven and culturally appropriate methods for reducing adolescent pregnancy, delaying sexual activity among youths and increasing abstinence and contraceptive education among sexually active youth in native communities. Programs are . . . specially designed to honor tribal needs, traditions and cultures.”³⁴

Tribal PREP programs must target services to youth, ages 10–19, who are at high-risk or vulnerable for pregnancies. This group includes[, but is not limited to,] youth in or aging out of foster care, homeless youth, youth with HIV/AIDS, victims of human trafficking, pregnant and/or parenting youth who are under 21 years of age, and youth who live in areas with high [adolescent] birth rates.³⁵

³³ *Sexual Risk Avoidance Education Program (General Departmental-Funded)*, FAMILY AND YOUTH SERVICES BUREAU, U.S. DEP’T OF HEALTH & HUM. SERVS., <https://www.acf.hhs.gov/fysb/programs/adolescent-pregnancy-prevention/sexual-risk-avoidance-education> (last visited Oct. 22, 2020).

³⁴ *Tribal Personal Responsibility Education Program*, FAMILY AND YOUTH SERVICES BUREAU, U.S. DEP’T OF HEALTH & HUM. SERVS., <https://www.acf.hhs.gov/fysb/programs/adolescent-pregnancy-prevention/programs/tribal-prep> (last visited Oct. 22, 2020).

³⁵ *Tribal Personal Responsibility Education Program Fact Sheet*, FAMILY AND YOUTH SERVICES BUREAU, U.S. DEP’T OF HEALTH & HUM. SERVS.,

In addition to educating youth about abstinence and contraceptive use, Tribal PREP projects also prepare young people for adulthood by addressing three or more of the subjects below:

1. healthy relationships, including development of positive self-esteem and relationship dynamics, friendships, dating, romantic involvement, marriage, and family interactions;
2. positive adolescent development, including promotion of “healthy attitudes and values about adolescent growth and development, body image, racial and ethnic diversity, and other related subjects”;
3. financial literacy, to support the development of self-sufficiency and independent living skills;
4. parent-child communication skills;
5. education and employment preparation skills; and
6. “[h]ealthy life skills, such as goal-setting, decision making, negotiation, communication and interpersonal skills, and stress management.”³⁶

* * *

One young woman’s story: When asked about challenges that may lead youth to run away, one Native youth, who asked to remain anonymous, said her desperation was the result of growing up in a biracial family, which created unintentional challenges she had to face on a daily basis. With a Native father and a white mother, she struggled to fit into either demographic, even though she lived in an urban area that included kids of all races. She made good grades and had her sights set on college so she could become a veterinarian someday. Unfortunately, substance abuse and physical abuse were part of the family dynamic, passed on from grandparents and extended family to her own. She sought solace online and through social media, where she could be whoever she wanted to be. When someone she knew questioned her background, the posts got ugly, and the bullying began.

<https://www.acf.hhs.gov/fysb/resource/tribal-prep-fact-sheet> (last visited Oct. 22, 2020).

³⁶ *Id.*

Against her better judgement, she met up with an older young man who promised to give her the attention she desperately craved. Within a few months, she was pregnant, alone, and desperate—so she ran. Her family filed a missing person’s report and, after a year, assumed she was dead, that is until she showed up at their door with a baby in tow.

Ten years and a lifetime later, she volunteers as a mentor to tribal youth, stressing the importance of goal setting, healthy relationships, developing communication skills, graduating from high school, and not having babies until marriage—when two people can share the burden and the joy of parenting. She wishes she had the opportunity to develop healthy attitudes and values and learn some basic communication skills as a teen. Running away isn’t the answer and, too often, ends up in tragedy and loss. Programs like Tribal PREP can help teens set smart goals despite their circumstances, giving tribal youth a chance at a life free from violence and abuse.

III. HHS/ACF/ACYF/FYSB Family Violence Prevention and Services Act Program

The harsh reality of our lives as Native women is that we witness our sisters, mothers, daughters, and community members disappear and nothing is done. The National Indigenous Women’s Resource Center offers our prayers to all of the families of missing and murdered Native women and girls. Turning our grief to action we strongly support . . . a “National Day of Awareness for Missing and Murdered Native Women and Girls” [and other efforts] to help increase awareness and shed light on the countless tragedies involving our Native sisters.³⁷

The third major program within the FYSB falls under the Family Violence Prevention and Services Act (FVPSA), the only federal funding source dedicated to shelter and supportive services for victims of domestic and family violence. “Codified into law since 1984 under the Child Abuse Prevention and Treatment Act, (42 U.S.C. § 10401–

³⁷ Press Release, Nat’l Indigenous Women’s Res. Ctr., Call to Action: Your Support is Needed to Create a National Day of Awareness for Missing and Murdered Native Women and Girls (July 1, 2016).

10414) the (42 U.S.C. § et seq) (FVPSA) funds the federal response system to ensure vital crisis services are available to individuals experiencing domestic or dating violence and their dependents.”³⁸ In many instances, domestic violence shelters provide safety and refuge for women and men who might otherwise have no place to turn when faced with a domestic crisis. Sheltering programs may be unavailable in rural areas, however, adding to the challenges faced by many Native Americans who find themselves in need of safe sheltering and supportive services.

When the FVPSA was first written, Congress used the term “family violence” in the legislation as synonymous with domestic violence. As research and evidence grew over the first 35 years of the FVPSA’s existence, however, the more commonly used terms of *domestic violence* and *dating violence* were adopted; these definitions are consistent with those found in the Violence Against Women Act and the Victims of Crime Act.³⁹

FVPSA implements statutorily required programs for the purposes of:

1. Increasing public awareness and primary prevention of domestic and dating violence
2. Providing immediate shelter and supportive services for individuals experiencing domestic or dating violence and their dependents
3. Operating a national domestic violence hotline
4. Providing technical assistance and training relating to domestic and dating violence to local public agencies, non-profits, tribal organizations, and others, including the establishment of state domestic violence coalitions and national resource centers.⁴⁰

Each year, local domestic violence programs, including tribal programs, serve approximately 1.2 million victims of domestic

³⁸ Fam. & Youth Servs. Bureau, U.S. Dep’t of Health & Hum. Servs., Family Violence Prevention and Services Program Overview 1 (2018).

³⁹ *Id.*

⁴⁰ *Id.*

violence and their children. An estimated 91% of the adults served are female, and 9% are male.⁴¹ FVPSA-funded programs seek to

restor[e] agency and self-determination to individuals experiencing domestic violence, and empower[] them with information and emotional support to make the best decisions for themselves and their families. Tribal advocates act as companions, both to individuals and as a voice across multiple service systems. They support people in shelter, answer calls on the crisis line, facilitate support groups for adults and children exposed to domestic violence, accompany victims to court or other appointments, and provide individual one-on-one counseling, among other supportive services. For tribes, trauma-informed and culturally responsive advocacy may also include smudging, sweat lodges, or talking circles, among other cultural practices.⁴²

FVPSA's focus on violence prevention is aligned with the CDC's prevention framework, which is

based on the best available evidence to help communities[, tribes,] and states sharpen their focus on prevention activities with the greatest potential to prevent intimate partner violence (IPV) and its consequences across the lifespan. These strategies include teaching safe and healthy relationship skills; engaging influential adults and peers; disrupting the developmental pathways toward IPV; creating protective environments; strengthening economic supports for families; and supporting survivors to increase safety and lessen harms.⁴³

⁴¹ *State & Tribal Domestic Violence Services Fact Sheet*, U.S. DEP'T OF HEALTH AND HUM. SERVS. (Apr. 2018), https://www.acf.hhs.gov/sites/default/files/documents/fysb/fvpsa_state_and_tribal_factsheet_081518_508.pdf.

⁴² Fam. & Youth Servs. Bureau, U.S. Dep't of Health & Hum. Servs., *Tribal Domestic Violence Services 2* (2018).

⁴³ CTRS. FOR DISEASE CONTROL, PREVENTING INTIMATE PARTNER VIOLENCE ACROSS THE LIFESPAN: A TECHNICAL PACKAGE OF PROGRAMS, POLICIES, AND PRACTICES 9 (2017).

A. FVPSA funding

FVPSA funds a variety of programs that provide

emergency shelter and other non-shelter support services, such as victim advocacy, crisis counseling, safety planning, support groups, information and referrals, legal aid, and housing assistance to address domestic violence and dating violence . . . Appropriated funds are allocated through three types of formula grants to states and territories for distribution to local programs, to Tribes, and to state domestic violence coalitions.⁴⁴

FVPSA formula grants are distributed through states and territories then . . . sub-[granted] to local public, private, nonprofit, and faith-based organizations to provide shelter and non-residential supportive services to individuals[, including Native Americans,] experiencing domestic violence and their children. All federally recognized tribes are eligible to apply for FVPSA Tribal Formula grants. These programs may operate their own shelter facility, contract with hotels, or use volunteer safe homes to meet the emergency shelter needs of victims.”⁴⁵

Two hundred and fifty-two tribes receive funding to provide shelter and supportive services to American Indians and Alaska Natives.⁴⁶

Typically, the largest number of tribes funded are in Alaska and California (between 45 to 70 tribes), followed by Nevada, Oklahoma, and Washington (13 to 23 tribes). All other states have fewer than ten tribes funded through FVPSA. . . . A large majority of clients served each year access non-residential supportive services only, such as victim advocacy, crisis counseling, safety planning, support groups, information and referrals to other community-based services, legal aid,

⁴⁴ Tribal Domestic Violence Services, *supra* note 42, at 1.

⁴⁵ Fam. & Youth Servs. Bureau, U.S. Dep’t of Health & Hum. Servs., State & Tribal Domestic Violence Services 1 (2018).

⁴⁶ *State & Tribal Domestic Violence Services Fact Sheet*, *supra* note 41.

housing assistance, transportation, and home visits, among other services.⁴⁷

“FVPSA also funds competitive discretionary grants to national, special issue, culturally specific, and emerging or current issue resource centers to provide training, technical assistance, and systems-based advocacy across the United States”⁴⁸

Discretionary grants also support the national domestic violence hotline and the StrongHearts Native Helpline, “which helps victims of domestic violence access immediate crisis counseling, safety planning, and local resources from highly trained, compassionate advocates.”⁴⁹

Tribal domestic violence programs “conduct a wide variety of education and community outreach activities to the general public to prevent and raise awareness of domestic violence.”⁵⁰ Examples include conducting culturally specific, age-appropriate trainings on dating violence at high schools and colleges, tabling at public and private events, hosting talking circles, referring to elders for guidance, hosting Domestic Violence Awareness Month events, and providing training for allied professionals and community members.⁵¹

* * *

ACYF understands that American Indians and Alaska Natives experience domestic violence in epidemic proportions, leading in many instances to increased MMIP numbers. ACYF works closely with the HHS’s ANA on strategies to prevent domestic and dating violence, decrease instances of runaway and homeless youth, and reduce non-marital pregnancies using a multi-disciplinary, trauma informed, framework. By focusing on prevention and economic mobility, ACYF programs seek to strengthen Native American and Alaska Native families and individuals and elevate outcomes for children and youth.

Keeping quiet about domestic violence at the expense of keeping peace in a community is not okay. Any form of domestic violence—sexual, emotional, cultural and

⁴⁷ Tribal Domestic Violence Services, *supra* note 42, at 1.

⁴⁸ State & Tribal Domestic Violence Services, *supra* note 45, at 1.

⁴⁹ *Id.* at 2.

⁵⁰ *Id.*

⁵¹ *Id.*

spiritual, financial and digital, or any combination of—
goes against our traditional ways.

. . . .

Domestic violence is a reality we can't afford to ignore in our communities. Together, we can hang onto the traditions that promote listening, caring and healing for our relatives. It's time to carry the best of our traditions forward and leave abuse behind.⁵²

* * *

ACF and its programs at HHS are dedicated to supporting children, youth, and families in every state, every territory, and across tribal lands and Native communities. Every life is precious and deserving of dignity and respect. The safety, economic security, health, and well-being of all citizens is of paramount importance to achieving our mission.

APPENDIX A

A. Tribal specific resources

1. National Indigenous Women's Resource Center

The NIWRC is part of the network of training and technical assistance providers funded through the FVPSA within the ACYF at HHS. The NIWRC serves as the National Indian Resource Center addressing domestic violence and safety for Indian women. "NIWRC is dedicated to restoring sovereignty to Native nations and safeguarding Native survivors and families from domestic, sexual, and intersecting violence. To this end, [it] prioritize[s] cultivating partnerships with tribes and Native communities, national partners, tribal and non-tribal organizations, tribal/state coalitions, domestic violence advocates, survivors, and federal agencies."⁵³

⁵² *Carrying Our Traditions Forward, Leaving Abuse Behind*, STRONGHEARTS: NATIVE HELPLINE, <https://www.strongheartshelpline.org/carrying-traditions-forward-leaving-abuse/> (last visited Dec. 17, 2020).

⁵³ DOMESTIC VIOLENCE RES. NETWORK, DVRN ORGANIZATIONAL DESCRIPTIONS 1 (Jan. 2019), https://www.nrcdv.org/sites/default/files/2019-05/DVRN-Org-Descriptions-Jan2019_0.pdf.

As the National Indian Resource Center, NIWRC offers interwoven specialized expertise across domestic violence, sexual violence and healthy relationships through various disciplines and culturally specific resources across and for the movement. NIWRC is a national technical assistance provider to Alaska Village programs and Tribal Coalitions across Indian Country. NIWRC offers free trainings, networking, NIWRC Toolkits, resources and culturally relevant responses to intimate partner and gender violence and promotes the leadership of Indigenous programs serving their communities. With additional circles of the anti-violence movement, NIWRC is dedicated to grassroots and policy advocacy, prevention, education, research activities, program development, raising public awareness, events sharing, offender accountability and traditional interventions of healthy relationships, justice on and off-tribal lands designed by and for Native Women based on their tri[b]al beliefs and practices.⁵⁴

In recent years, more than 200 tribal, state, regional, and national organizations have joined the NIWRC in recognizing and amplifying a National Day of Awareness for Missing and Murdered Native Women and Girls annually on May 5th.⁵⁵ Since 2017, national day of awareness activities have reached millions of people across the United States and the world through social media platforms. The public call for increased awareness is to raise the visibility of the extent of the crisis of missing or murdered Native women. The ongoing reports of the abductions and murders of Native women and girls represent one of the most horrific aspects of the spectrum of violence committed against them.

Despite the challenges of the COVID-19 pandemic, NIWRC continued to lead the national day efforts to commemorate the lives of those taken unjustly and to shed light on the countless tragedies

⁵⁴ DOMESTIC VIOLENCE RES. NETWORK, DVRN ORGANIZATIONAL DESCRIPTIONS 1 (2017), https://www.acf.hhs.gov/sites/default/files/fysb/dvrn_descriptions_20170420.pdf.

⁵⁵ NAT'L INDIGENOUS WOMEN'S RES. CTR., *NIWRC Campaign Performance: May 5th 2020 National Day of Awareness for Missing & Murdered Native Women and Girls* (May 5, 2020).

involving Native women. With shelter-in-place orders and social distancing in place, we also recognized that such measures put survivors in abusive relationships at further risk, given these disappearances or murders are directly connected to other crimes such as domestic violence, dating violence, sexual assault, stalking, and sex trafficking.

2. Alaska Native Women’s Resource Center

“The Alaska Native Women’s Resource Center [(AKNWRC)] (aknwrc.org) serves as the State Resource Center to Reduce Tribal Disparities. Its goal is to improve the services available to Alaska Native people experiencing domestic violence statewide, especially those who are in geographically isolated areas.”⁵⁶

AKNWRC is dedicated to strengthening local, tribal governments’ responses through community organizing efforts advocating for the safety of women and children in their communities and homes, especially against domestic and sexual abuse and violence. Through the voices, languages, and teachings of tribes, survivors and advocates, and in partnership with [its] allies and other stakeholders, AKNWRC provides a voice at the local, statewide, national and international levels for life-saving changes needed in laws, policies, and social norms. AKNWRC envisions [its] Tribal women, communities and families free from violence, healing the trauma and utilizing the wisdom of our ancestors to create effective community/Tribal responses to domestic violence, dating violence, stalking, trafficking, sexual assault and related injustices.⁵⁷

3. StrongHearts Native Helpline

The StrongHearts Native Helpline (strongheartshelpline.org) is a project of the National Domestic Violence Hotline and the NIWRC. StrongHearts “is the first national helpline staffed by and uniquely designed for Native people experiencing domestic or dating violence.

⁵⁶ Tribal Domestic Violence Services, *supra* note 42, at 2.

⁵⁷ *Learn About FVPSA*, <http://www.learnaboutfvpsa.com/dvrn#:~:text=AKNWRC%20is%20dedicated%20to%20strengthening,and%20sexual%20abuse%20and%20violence> (last visited Dec. 17, 2020).

StrongHearts is a culturally relevant, safe, and confidential” helpline offering support and advocacy daily from 7 a.m. to 10 p.m. CT. Chatline users reaching out after hours receive a message re-directing them to reach out to The National Domestic Violence Hotline, a non-Native hotline available 24-7.

4. Special collection: missing and murdered indigenous women and girls

The NIWRC developed an online, special collection of Missing and Murdered Indigenous Women and Girls (MMIWG) resources to help readers locate advocates and provides “information to share with professionals, schools, or resources to use for their own outreach projects.”⁵⁸ Resources can be used in American Indian and Alaska Native communities to raise awareness and help others learn about MMIWG.

B. Tribal community response when a woman is missing: a tool kit for action⁵⁹

Coping with the disappearance of a loved one or community member is very difficult. The fact that American Indian and Alaska Native women experience higher rates of domestic violence and sexual assault than any other population of women in the United States has broad ramifications. One consequence of this reality is that domestic and sexual violence occurs on a spectrum of abusive behavior and can include abduction and murder. If a woman you know is missing, taking immediate action is very important. The quicker you respond, the faster she may be located and provided the help needed.⁶⁰

⁵⁸ *Resource Libr.*, NAT’L INDIGENOUS WOMEN’S RESOURCE CTR., <https://www.niwrc.org/resources/special-collection-was-talks> (last visited Dec. 17, 2020).

⁵⁹ See *Tribal Community Response When a Woman Is Missing: A Toolkit for Action*, NAT’L INDIGENOUS WOMEN’S RES. CTR., <https://www.niwrc.org/resources/tribal-community-response-when-woman-missing-toolkit-action> (last visited Oct. 26, 2020).

⁶⁰ *Id.*

1. Native youth handbook: *Strong Families Respect Each Other: What Native Youth Need To Know About The Connection Between Sexual Assault And Domestic Violence*⁶¹

This 12-page booklet “contains definitions on domestic violence and sexual assault, examples of sexual assault, myths and truths about sexual assault, what to do if you have been sexually assaulted, what to do if you know or think a friend or family member has experienced sexual assault,” and more.⁶²

2. *Restoration magazine*⁶³

The Restoration of Native Sovereignty and Safety for Native Women magazine is a publication dedicated to informing tribal leadership and communities of emerging issues impacting the safety of American Indian and Alaska Native women. The name of the magazine . . . reflects the grassroots strategy of the Task Force that by strengthening the sovereignty of Indian nations to hold perpetrators accountable the safety of Native women will be restored. The magazine is a joint project of the [National Congress of American Indians] Task Force [on Violence Against Women] and the National Indigenous Women’s Resource Center. It is produced and made available during national NCAI conventions and the annual [Department of Justice]—Tribal [Violence Against Women Act] Consultation.⁶⁴

⁶¹ NAT’L INDIGENOUS WOMEN’S RES. CTR., *STRONG FAMILIES RESPECT EACH OTHER: WHAT NATIVE YOUTH NEED TO KNOW ABOUT THE CONNECTION BETWEEN SEXUAL ASSAULT AND DOMESTIC VIOLENCE* (2019).

⁶² *Strong Families Respect Each Other: What Native Youth Need to Know About the Connection Between Sexual Assault and Domestic Violence*, VAWNET (Aug. 2019), <https://vawnet.org/material/strong-families-respect-each-other-what-native-youth-need-know-about-connection-between>.

⁶³ *Restoration of Native Sovereignty and Safety for Native Women*, NAT’L INDIGENOUS WOMEN’S RES. CTR., <https://www.niwrc.org/restoration-magazine> (last visited Jan. 22, 2021).

⁶⁴ *Restoration of Native Sovereignty and Safety for Native Women*, NAT’L INDIGENOUS WOMEN’S RESOURCE CTR., <https://www.niwrc.org/restoration-magazine#:~:text=fulfill%20this%20task.,The%20Restoration%20of%20Nativ>

C. ACF Resources

1. Training & Technical Assistance

1. *Kauffman & Associates, Inc., Sex Trafficking in Indian Country Webinar (Grantee Webinar)*, YOUTUBE (Oct. 15, 2015), <https://www.youtube.com/watch?v=k9VsNcnM5jo>.
2. *ANA Eastern Region T/TA Center, Addressing Human Trafficking in Native Communities (Grantee Webinar)*, YOUTUBE (Feb. 2, 2018), <https://www.youtube.com/watch?v=saFvXpukXKw>.
3. *Combating Human Trafficking in Native Communities*, OFF. ON TRAFFICKING IN PERSONS: AN OFF. OF THE ADMIN. FOR CHILD. & FAM., <https://www.acf.hhs.gov/otip/resource/native-communities>.
4. NAT'L INDIGENOUS WOMEN'S RESOURCE CTR., <https://www.niwrc.org/>.
5. *National Human Trafficking Training and Technical Assistance Center*, OFF. ON TRAFFICKING IN PERSONS: AN OFF. OF THE ADMIN. FOR CHILD. & FAM., <https://www.acf.hhs.gov/otip/training/nhttac>.
6. NAT'L HEALTH RESOURCE CTR. ON DOMESTIC VIOLENCE, PREVENT, ASSESS, AND RESPOND: A DOMESTIC VIOLENCE TOOLKIT FOR HEALTH CENTERS & DOMESTIC VIOLENCE PROGRAMS (2017).
7. *Relationships and Safety, Office on Women's Health*, U.S. DEP'T OF HEALTH & HUM. SERVS., <https://www.womenshealth.gov/relationships-and-safety>.

2. Funding

1. *Social and Economic Development Strategies (SEDS), Administration for Native Americans: An Office of the Administration for Children & Families*, U.S. DEP'T OF HEALTH & HUM. SERVS., <https://www.acf.hhs.gov/ana/programs/seds>.

e%20Sovereignty%20and%20Safety%20for%20Native%20Women,Indian%20and%20Alaska%20Native%20women (last visited Dec. 17, 2020).

2. *Domestic Victims of Human Trafficking (DVHT) Program*, OFF. ON TRAFFICKING IN PERSONS: AN OFF. OF THE ADMIN. FOR CHILD. & FAM., <https://www.acf.hhs.gov/otip/resource/dvht>.
3. *Family Violence Prevention and Services Discretionary Grants*, *Family & Youth Services Bureau*, U.S. DEP'T OF HEALTH & HUM. SERVS., <https://www.acf.hhs.gov/fysb/resource/fvspa-discretionary-grants>.
4. *About the Runaway and Homeless Youth Program*, *Family & Youth Services Bureau*, U.S. DEP'T OF HEALTH & HUM. SERVS., <https://www.acf.hhs.gov/fysb/programs/runaway-homeless-youth/about>.
5. *Tribal Personal Responsibility Education Program*, *Family & Youth Services Bureau*, U.S. DEP'T OF HEALTH & HUM. SERVS., <https://www.acf.hhs.gov/fysb/programs/adolescent-pregnancy-prevention/programs/tribal-prep>.

About the Author

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Note from the Editor-in-Chief

The sobering problems surrounding missing or murdered American Indians and Alaska Natives are so serious that, in late 2019, the Attorney General created a Department of Justice special initiative to coordinate the response of federal, tribal, state, and local agencies. This issue of the DOJ Journal of Federal Law and Practice and the next are devoted to this timely and important initiative. We believe that these two issues will form the most comprehensive thinking to date on one of the Department's highest priorities.

The authors in this issue come from a wide variety of backgrounds, and their articles reflect the rich diversity of ideas on this subject. Their opinions, however, are their own and do not necessarily reflect the opinions of the Department of Justice. Special thanks to the Office of Legal Education's Indian country expert, Leslie Hagen, who acted as this issue's point of contact and who not only recruited and advised authors, but who also went beyond the call of duty and assisted in the drafting and review of articles. And, as always, thanks to my Publications Team colleagues, our resident editorial gurus—Addison Gantt, Gurbani Saini, Phil Schneider, and the team of law students—without whom timely delivery of the DOJ Journal would not be possible.

Chris Fisanick
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