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Missing and Murdered Indigenous People (MMIP): Overview of Recent Research, Legislation, and Selected Issues for Congress

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SUMMARY

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Missing and Murdered Indigenous People (MMIP): Overview of Recent Research, Legislation, and Selected Issues for Congress

Across many countries and in the United States, Indigenous peoples—women and girls in particular—are disproportionately affected by violence. In the United States, for example, 84% of American Indian and Alaskan Native (AI/AN) women and 82% of AI/AN men reported experiencing violent victimizations in their lifetime. Studies have also shown that Native American children are more likely to experience abuse and trauma than their non-Native peers. In November 2021, 3.6% of the missing persons included in the National Missing and Unidentified Person System (NamUs) were identified as AI/AN, which was approximately four times their percentage in the U.S. population (0.9%). Advocacy by Native American and other Indigenous communities has brought increased attention to experiences of violence in Indigenous communities using the terms Missing and Murdered Indigenous People (MMIP) and Missing and Murdered Indigenous Women and Girls (MMIWG). This report provides an overview of recent research and commonly cited barriers to addressing MMIP, background on legislation and programming to improve data collection and criminal justice services for Native Americans, and selected policy issues Congress may consider when conducting oversight or considering legislation related to MMIP.

In recent years, the federal government has made efforts to address MMIP and the high rate of violence experienced by Native Americans. This report provides background on these issues, including an in-depth review of major sources of data on missing Native Americans and violent victimizations. Data sources include the Federal Bureau of Investigation's (FBI's) Uniform Crime Reporting (UCR) Program, as well as federal databases tracking missing persons. These data sources present a consistent picture of high rates of violent victimization of Native Americans.

The report then discusses three common barriers to the federal government's and criminal justice systems' ability to fully understand and address MMIP. The first potential barrier is the relative lack of culturally specific services for Native American crime victims who live outside of tribal lands. Second, complicated jurisdictional overlaps between federal, state, local, and tribal law enforcement can lead to confusion regarding responsibility for investigations and prosecutions of crimes that occur on tribal land and can lead to loss of time and inefficient use of resources. The third barrier concerns gaps in the criminal justice data about MMIP.

The report next discusses federal legislation and initiatives related to MMIP, including alerts for missing persons, efforts to encourage collaboration across federal agencies and with tribal governments, and efforts to improve data collection. This section covers Operation Lady Justice, which was created by Executive Order 13898, and the recently launched U.S. Department of the Interior Missing and Murdered Unit. Recent federal legislation to address MMIP is also discussed, including Savanna's Act (P.L. 116-165) and the Not Invisible Act of 2019 (P.L. 116-166).

The report concludes with a discussion of MMIP issues policymakers might consider when conducting oversight or considering legislation.

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Introduction

Across many countries, Indigenous peoples—women and girls in particular—are disproportionately affected by violence.[1] In the United States, 84% of American Indian and Alaskan Native (AI/AN) women and 82% of AI/AN men reported experiencing violent victimization in their lifetime, which is significantly higher than the rate of lifetime violence experienced by non-Hispanic White women and men.[2] Studies have also shown that AI/AN children are more likely to experience abuse and trauma than their non-Native peers.[3] In November 2021, of the 20,993 missing persons included in the National Missing and Unidentified Person System (NamUs), 749 (3.6%) were identified as AI/AN.[4] The proportion of missing people who were identified as AI/AN is more than three times the AI/AN percentage of the U.S. population (0.9%).[5] Advocacy by Native American and other Indigenous communities has brought increased attention to experiences of violence in Indigenous communities using the terms Missing and Murdered Indigenous People (MMIP) and Missing and Murdered Indigenous Women and Girls (MMIWG). In recent years, the federal government has made efforts to address MMIP and the high rate of violence experienced by Native American women, girls, and two-spirit people.[6]

This report provides an overview of recent research about and commonly cited barriers to addressing MMIP and background on legislation and programming to improve data collection and services for Native Americans. It concludes with selected policy issues Congress may consider when conducting oversight or considering legislation related to MMIP.

MMIP is an issue that bridges several policy domains of interest to many in Congress, including tribal jurisdiction and self-determination, violent crime, and human trafficking. The broader scope and history of this issue could encompass events as early as the first arrival of Europeans in the Americas. As stated in a January 2021 article in the *Department of Justice Journal of Federal Law and Practice*,

> 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 people continued with

[1] United Nations Entity for Gender Equality and the Empowerment of Women, *Breaking the Silence on Violence against Indigenous Girls, Adolescents and Young Women*, https://www.unwomen.org/en/digital-library/publications/2013/5/breaking-the-silence-on-violence-against-indigenous-girls.

[2] Department of Justice, National Institute of Justice, *Violence Against American Indian and Alaska Native Women and Men*, 2016, https://www.ojp.gov/pdffiles1/nij/249822.pdf (hereinafter, "NIJ VAWA"), p. 2. In this case, violence includes sexual violence, psychological aggression or physical violence by an intimate partner, and stalking.

[3] Department of Justice, *Ending Violence So Children Can Thrive*, November 2014, https://www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2015/03/23/ending_violence_so_children_can_thrive.pdf.

[4] NamUs, Missing Persons Search, https://www.namus.gov/MissingPersons/Search (hereinafter, "NamUs Search").

[5] U.S. Census Bureau, "Selected Characteristics of the Total and Native Populations in the United States," https://data.census.gov/cedsci/table?q=population%20by%20race&tid=ACSST1Y2019.S0601 (hereinafter, "U.S. Census: Native American Population").

[6] The term *two-spirit* is a modern pan-Indian term that refers to an identity akin to a third gender. According to the Indian Health Service, "Traditionally, Native American two-spirit people were male, female, and sometimes intersexed individuals who combined activities of both men and women with traits unique to their status as two-spirit people. In most tribes, they were considered neither men nor women; they occupied a distinct, alternative gender status." For more information, see https://www.ihs.gov/lgbt/health/twospirit/. In this report, the term *MMIP* should be understood as being inclusive of two-spirit people and data specific to two-spirit people will be presented when available.

> U.S. colonizing policies throughout the 18th, 19th, and 20th centuries. These policies included wars, massacres, and attacks on Indigenous civilian populations, boarding schools with assimilatory policies, laws suppressing cultural and religious practices, and forced removal of Indigenous peoples from their traditional lands.[7]

A full elucidation of this history and its relationship to modern patterns of victimization are beyond the scope of this report. Similarly, the long history of Native American advocacy for equal justice and self-determination is germane to the topic of MMIP but not a focus of this report.

Note On Terminology

A variety of terms are used in research, policy, and advocacy concerning peoples native to the Americas. This report primarily discusses issues related to communities native to the contiguous United States,[8] but may at times include Alaska Natives, Native Hawaiians, and American Samoans. In the context of this report, the following terms are defined as such:

- *American Indians* refers to peoples who originally inhabited the territories included in the continental United States prior to European colonization.
- *Alaska Natives* refers to peoples who originally inhabited the territories included in Alaska.
- *Native Americans* refers to peoples who originally inhabited the territories comprising the United States, including American Indians and Alaska Natives as well as Native Hawaiians and American Samoans.
- *American Indians and Alaska Natives (AI/AN)* is the category used to collect data about Indigenous peoples in many U.S. government surveys, including the Census. In this report, this label is used when discussing data that were collected and reported with the term.
- When capitalized, *Indigenous* refers to people or groups of people who are the original inhabitants of a place. The term is used in the lowercase when not referring to people.
- The terms *Indian* and/or *Indian tribe* may be used when referring to Native American populations that are statutorily defined.[9]
- *Indian Country* is a legal term defined in Title 18, Section 1151 of the United States Code as "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."[10]

Data on Violence Experienced by Native Americans

There is no single source for data on MMIP; instead, one can begin to gain an understanding of the violence experienced by Native Americans by examining several federal databases as well as data gathered by researchers. However, researchers and advocates have identified significant gaps in available data, indicating that they do not provide a comprehensive picture of the issue. This

[7] Heather Sauyaq, Jean Gordon, and Travis W.M. Roberts, "Missing or Murdered Indigenous People: Culturally Based Prevention Strategies," *Department of Justice Journal of Federal Law and Practice*, vol. 69, no. 1, (January 2021), pp. 46-47.

[8] The contiguous 48 states and the District of Columbia.

[9] *Indian* is a legal term of art used to denote people or tribes that fall under the special legal relationship that exists between the U.S. government and federally recognized tribes. This term is neither synonymous nor congruent with *Native American*. In this report, *Indian* is used in the sections that discuss jurisdictional issues addressed in federal law.

[10] For more information on tribal lands, see CRS In Focus IF11944, *Tribal Lands: An Overview*.

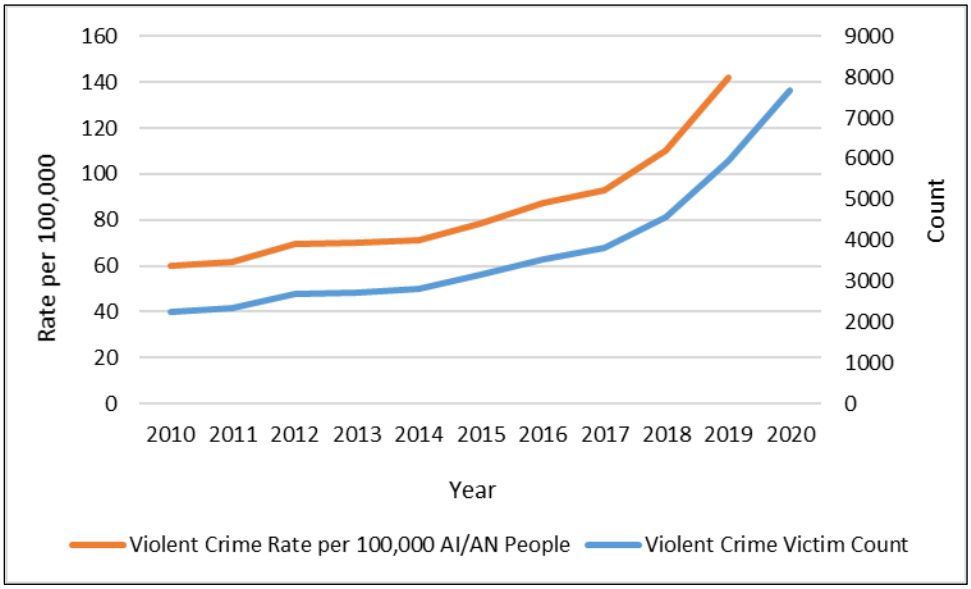
section presents available data and later portions of this report discuss both potential reasons for data gaps and actions Congress could take to address them.

FBI Uniform Crime Reporting Program

The Federal Bureau of Investigation's (FBI's) Uniform Crime Reporting (UCR) program collects annual data on reported crime in the United States.[11] The FBI uses these data to create an aggregate measure of reported violent crime, which includes homicide (i.e., murder/nonnegligent manslaughter), rape, robbery, and aggravated assault. Agencies that submitted crime data to the UCR program via the National Incident-Based Reporting System also submitted demographic data on violent crime victims.[12] From 2010 to 2020, 1.0% of violent crime victims were identified as AI/AN.[13] This rate remains consistent when looking at the data separately for homicide, rape, robbery, and aggravated assault. **Figure 1** demonstrates that the number of violent crime victims identified as AI/AN in UCR has increased since 2010 (blue line, right axis). Similarly, the rate of violent crime victimization has increased from 60 per 100,000 AI/AN residents in 2010 to 142 in 2019 (orange line, left axis).[14]

Figure 1. AI/AN Victims of Violent Crime

2010–2020



Source: Victimization data are from Federal Bureau of Investigation, *Crime Data Explorer*, https://crime-data-explorer.fr.cloud.gov/pages/explorer/crime/crime-trend. Population estimates for 2010-2019 are from U.S. Census Bureau, Population Division, https://www2.census.gov/programs-surveys/popest/tables/2010-2019/national/asrh/nc-est2019-sr11h.xlsx.

[11] For more information on the UCR program, see CRS Report R46668, *The National Incident-Based Reporting System (NIBRS): Benefits and Issues* or CRS Report RL34309, *How Crime in the United States Is Measured*.

[12] The agencies that reported using the NIBRS system covered 53% of the total U.S. population in 2020, thus the data included in **Figure 1** and **Figure 2** (i.e., the data reported with victim demographic information) are only a subset of the violent crimes and homicides reported to the FBI.

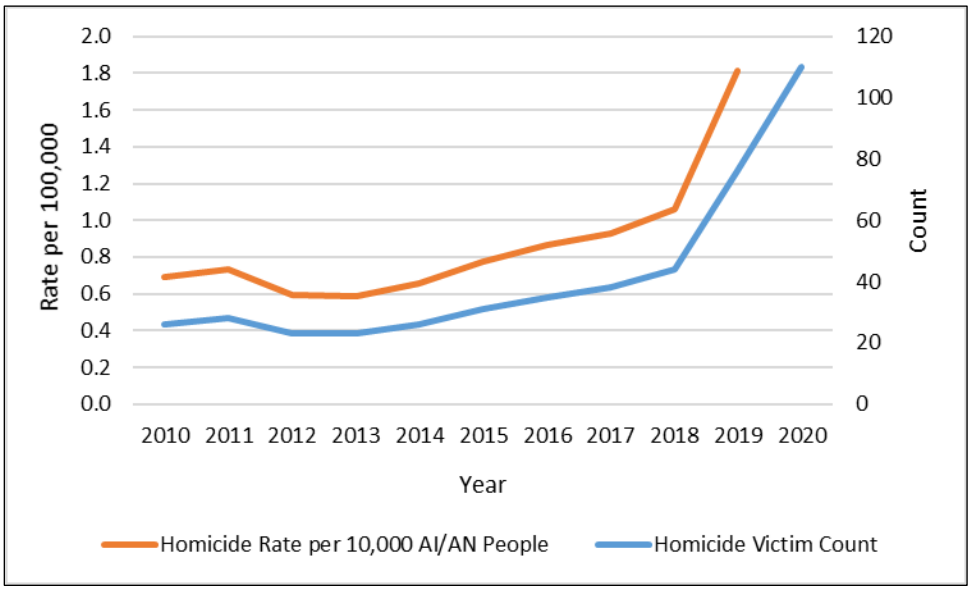
[13] Federal Bureau of Investigation, *Crime Data Explorer*, https://crime-data-explorer.fr.cloud.gov/pages/explorer/crime/crime-trend.

[14] 2020 population estimates from the U.S. Census were not yet available.

Figure 2 shows that the number of homicide victims identified as AI/AN in the UCR data has been increasing since 2012, but has increased significantly since 2018 (blue line, right axis). The rate of homicide victimization has increased from 0.7 per 100,000 AI/AN residents in 2010 to 1.8 in 2019 (orange line, left axis).

Figure 2. AI/AN Victims of Homicide

2010–2020



Source: Victimization data are from Federal Bureau of Investigation, *Crime Data Explorer*, https://crime-data-explorer.fr.cloud.gov/pages/explorer/crime/crime-trend. Population estimates for 2010-2019 are from U.S. Census Bureau, Population Division, https://www2.census.gov/programs-surveys/popest/tables/2010-2019/national/asrh/nc-est2019-sr11h.xlsx.

These data alone do not necessarily mean that the number of violent crimes committed against Native Americans has changed. It may be the case that the violence experienced by Native Americans has remained steady but other factors, such as increased crime data reporting by tribal law enforcement,[15] greater willingness to report crimes to the police,[16] or improved practices in identifying Native American victims, may have changed.[17]

CDC National Vital Statistics System

The Centers for Disease Control and Prevention (CDC) collects and publishes annual data on the leading causes of death in the United States through its National Vital Statistics System (NVSS). The most recent data are for 2019 and include homicide rates broken down by race and age.[18] In

[15] Department of Justice (DOJ), Office of Justice Programs (OJP), *Tribal Crime Data Collection Activities, 2021*, https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/tcdca21.pdf, pp. 8-9.

[16] Eric P. Baumer and Janet L. Lauritsen, "Reporting crime to the police, 1973–2005: A multivariate analysis of long-term trends in the National Crime Survey (NCS) and National Crime Victimization Survey (NCVS)," *Criminology*, February 2010, vol. 48, no. 1.

[17] A related issue is that the AI/AN population captured in the census is considered by some researchers and advocates to be a significant undercount. For more information, see https://www.ncai.org/policy-issues/economic-development-commerce/census.

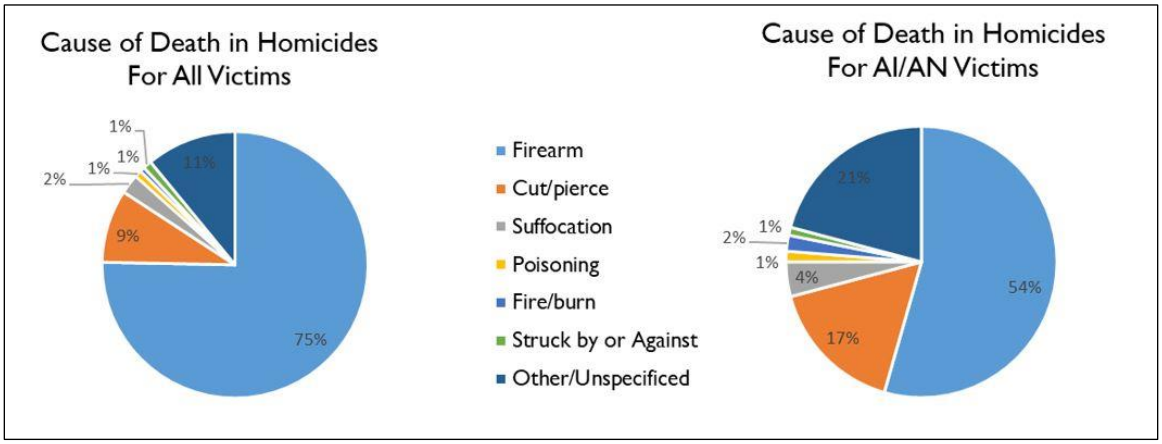
[18] Centers for Disease Control and Prevention (CDC), *WISQARS- Web-based Injury Statistics Query and Reporting*

2019, homicide was the 12th leading cause of death for AI/AN people across all ages and sexes[19] and the 16th leading cause in the United States overall.[20] For persons 1 to 19 years of age, on average, homicide was the third leading cause of death for AI/AN people and the fourth leading cause of death for this age group in the overall population. For those who were 20 to 44 years of age, homicide was, on average, the fifth leading cause of death for AI/AN people and the fourth leading cause of death in the overall population. Homicide was a less common cause of death for those 45 to 64 in the AI/AN and overall populations, and it was not in the top 20 causes of death for those 65 and older in the AI/AN and overall populations.

The CDC also provides cause of death data for homicides. As shown in **Figure 3**, the cause of death for all victims (75%) and AI/AN (54%) victims in 2019 was most commonly firearms. This was followed by other/unspecified causes (11% overall and 21% for AI/AN victims) and those homicides involving a cut or pierce (9% overall and 17% for AI/AN victims).

Figure 3. Cause of Death in Homicides Involving All and AI/AN Victims

2019



Source: Centers for Disease Control and Prevention (CDC), *WISQARS- Web-based Injury Statistics Query and Reporting System*, https://webappa.cdc.gov/sasweb/ncipc/leadcause.html.

Notes: All victims includes AI/AN victims. AI/AN data are for those identifying only as non-Hispanic AI/AN. The Other/Unspecified category includes drowning, falls, and transportation related deaths as well as those listed only as "other" or "unspecified."

Additional Federal Data Sources

Other federal sources of data about violence experienced by AI/AN individuals include the National Crime Victimization Survey (NCVS), the National Violence Against Women Survey (NVAWS), and the National Intimate Partner and Sexual Violence Survey (NISVS). Dr. André B. Rosay, Professor of Justice & Associate Dean of the College of Health at the University of Alaska-Anchorage, published a review of the violent victimization data on Native Americans

System, https://webappa.cdc.gov/sasweb/ncipc/leadcause.html.

[19] In most cases, the data reported in this section use a binary female/male or women/men classification system that was collected from law enforcement and criminal justice or medical agencies. For example, WISQARS data are gathered using death certificates, which are typically completed by funeral directors, attending physicians, medical examiners, and coroners. Therefore, it is not typically clear whether or how this term relates to gender.

[20] The overall category includes all races and both Hispanic and non-Hispanic people. AI/AN data is for those identifying only as non-Hispanic AI/AN.

from these three surveys.[21] This section will provide an overview of the analyses summarized in Rosay's report, which included the work of several researchers as well as a report on NISVS authored by Rosay.

The National Crime Victimization Survey (NCVS)

The Bureau of Justice Statistics (BJS) administers the NCVS, which collects criminal victimization data via interviews with a nationally representative sample of households and captures both reported and unreported victimizations.[22] Dr. Rosay summarized findings from several analyses of NCVS data collected from 1992 to 2005. The pattern of findings consistently demonstrated that violent victimizations were highest among participants who identified as AI/AN relative to other groups regardless of the crime, gender, age, location, and household income. One study summarized by Rosay found that AI/AN participants had a violent crime victimization rate 2.5 times the national rate and "experienced one violent crime for every eight residents, compared to the national average of one violent crime for every 20 residents."[23] Analyses of NCVS data also indicated that participants identifying as AI/AN were more likely to report interracial victimizations, particularly for rape and sexual assault. The summarized studies found AI/AN participants reported that between 50% and 70% of perpetrators were not Native American.[24]

The National Violence Against Women Survey (NVAWS)

The NVAWS, which was sponsored by Office of Justice Programs (OJP) and the National Institute of Justice (NIJ), used telephone surveys to collect data from men and women about both lifetime and past-year incidents of emotional abuse, physical assault, rape, and stalking during 1995 and 1996.[25] The analysis and interpretation of these data are limited as they were collected 25 years ago and included only 193 AI/AN participants (88 women and 105 men). However, lifetime prevalence rates estimated from these data appear to align with those found in the NCVS. Participants who identified as AI/AN reported

> 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). 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).... 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).[26]

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[21] André B. Rosay, "National Survey Estimates of Violence Against American Indian and Alaska Native People," Department *of Justice Journal of Federal Law and Practice*, January 2021, vol. 69, no. 1 (hereinafter, "DOJ Rosay").

[22] DOJ, OJP, Bureau of Justice Statistics (BJS), *National Crime Victimization Survey (NCVS)*, https://bjs.ojp.gov/data-collection/ncvs.

[23] DOJ Rosay, p. 94.

[24] DOJ Rosay.

[25] DOJ, OJP, National Institute of Justice (NIJ), *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women*, November 2000, https://www.ojp.gov/pdffiles1/nij/183781.pdf.

[26] DOJ Rosay, p. 96.

The National Intimate Partner and Sexual Violence Survey (NISVS)

Since 2010, the CDC has conducted the NISVS, which uses telephone surveys to gather national and state-level data on both the past-year and lifetime prevalence rates of psychological aggression[27] by intimate partners[28], physical violence by intimate partners, stalking, and sexual violence.[29] In 2010, the NIJ partnered with the CDC to oversample AI/AN participants.[30] The NIJ and the CDC collected data from areas with large AI/AN populations, including rural areas and tribal lands that may not be as well represented in other victimization surveys.[31] The final sample (i.e., general population sample combined with the oversample participants) of AI/AN participants included 2,473 women and 1,505 men. Eighty-three percent of the women and 79% of the men reported an affiliation or enrollment[32] with a tribe or village, and 54% of both the women and men had lived on a reservation or in an Alaska Native village during the past year.[33]

In 2016, Rosay published a comprehensive report on the 2010 NISVS data regarding AI/AN experiences of victimization for NIJ.[34] The 2010 NISVS findings echo the high rates of violent victimization of Native Americans, and especially women, observed in previous surveys. The analyses looked separately at the past-year[35] and lifetime experiences of violent victimization of Native American men and women and compared these data to the experiences of non-Hispanic White women and men.[36]

As shown in **Table 1**, the majority of both AI/AN women and men reported experiencing a violent victimization during their lifetimes.[37] Both AI/AN women and men were significantly more likely to have experienced violence in their lifetimes relative to non-Hispanic White participants, and AI/AN women were significantly more likely to have experienced violence in the past year than non-Hispanic White women.[38] AI/AN women were 1.2 times more likely to

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[27] *Psychological aggression* is defined as "expressive aggression (such as name calling, insulting or humiliating an intimate partner) and coercive control, which includes behaviors that are intended to monitor and control or threaten an intimate partner." CDC, National Intimate Partner and Sexual Violence Survey 2010 Summary Report, p. 37, https://www.cdc.gov/violenceprevention/pdf/NISVS_Report2010-a.pdf, (hereinafter, "2010 NISVS Summary"). *Sexual violence*, *physical violence* and *stalking* are also defined here.

[28] *Intimate partners* is defined as "cohabitating or non-cohabitating romantic or sexual partners and among opposite or same sex couples." 2010 NISVS Summary, p. 37.

[29] CDC, *The National Intimate Partner and Sexual Violence Survey (NISVS)*, https://www.cdc.gov/violenceprevention/datasources/nisvs/index.html.

[30] DOJ Rosay.

[31] See 2010 NISVS Summary, p. 100, for technical notes on sampling strategy.

[32] Tribal affiliation indicates association with a federal recognized Indian tribe. Tribal enrollment is a more formal identifier based on unique membership criteria (e.g., lineal descent) established by a tribe.

[33] DOJ Rosay, and Dr. André B. Rosay and NIJ, "Violence Against American Indian and Alaska Native Women and Men, May 2016," https://www.ojp.gov/pdffiles1/nij/249736.pdf (hereinafter, "NIJ Rosay). As stated in NIJ Rosay: "The combined sample includes ... American Indians and Alaska Natives who live in geographical areas with low densities of American Indians and Alaska Natives. Some of these areas (e.g., Oklahoma, Texas, New York, Colorado, Florida, Illinois, and Michigan) have low densities but large numbers of American Indians and Alaska Natives" (p. 6).

[34] NIJ Rosay.

[35] This indicates experiences that occurred in the 12 months prior to taking the survey. 2010 NISVS Summary, p. 7.

[36] Here and in other studies discussed in this report, the term *White* is typically not defined. The term frequently indicates a person who self-identifies as being of European, Middle Eastern, or North African descent. See https://www.census.gov/quickfacts/fact/note/US/RHI625219 for an example definition.

[37] In this study, *violent victimization* included sexual violence, physical violence by an intimate partner, psychological aggression by an intimate partner, or stalking.

[38] NIJ Rosay, pp. 44-45.

have experienced violence in their lifetimes relative to non-Hispanic White women, and 1.7 times more likely to have experienced violence in the past year.[39] AI/AN men were 1.3 times more likely to have experienced violence in their lifetimes relative to non-Hispanic White men.[40] There was not a significant difference in violence experienced in the past year by AI/AN and non-Hispanic White men.

Table 1. Lifetime and Past-Year Violence Experienced by AI/AN Women

Lifetime	Past Year
84% experienced violence	40% experienced violence[a]
56% experienced sexual violence[a]	14% experienced sexual violence
56% experienced physical violence by an intimate partner	9% experienced physical violence by an intimate partner
49% experienced stalking	12% experienced stalking
66% experienced psychological aggression by an intimate partner	26% experienced psychological aggression by an intimate partner

Source: Dr. André B. Rosay and National Institute of Justice (NIJ), "Violence Against American Indian and Alaska Native Women and Men, May 2016," https://www.ojp.gov/pdffiles1/nij/249736.pdf, p. 44.

a. The statistic for violence includes sexual violence, physical violence by an intimate partner, psychological aggression by an intimate partner, and stalking.

Table 2. Lifetime and Past-Year Violence Experienced by AI/AN Men

Lifetime	Past Year
82% experienced violence[a]	35% experienced violence[a]
28% experienced sexual violence	10% experienced sexual violence.
43% experienced physical violence by an intimate partner	6% experienced physical violence by an intimate partner
19% experienced stalking	4% experienced stalking
73% experienced psychological aggression by an intimate partner	27% experienced psychological aggression by an intimate partner

Source: Dr. André B. Rosay and National Institute of Justice (NIJ), "Violence Against American Indian and Alaska Native Women and Men, May 2016," https://www.ojp.gov/pdffiles1/nij/249736.pdf, p. 45.

a. The statistic for violence includes sexual violence, physical violence by an intimate partner, psychological aggression by an intimate partner, and stalking.

This study also found that both AI/AN women and men were significantly more likely than non-Hispanic White participants to have been victimized by an *interracial*[41] perpetrator and significantly less likely than non-Hispanic White participants to have been victimized by an *intraracial*[42] perpetrator.[43] For example, among women who reported experiencing sexual violence, 96% of AI/AN victims experienced it at the hands of an interracial perpetrator

[39] NIJ Rosay, p. 44.

[40] NIJ Rosay, p. 45.

[41] A racial outgroup member (e.g., a non-AI/AN perpetrator and AI/AN victim).

[42] A racial ingroup member (e.g., an AI/AN perpetrator and AI/AN victim).

[43] NIJ Rosay, p. 46.

compared to 32% of non-White Hispanic women, and 21% of the AI/AN victims experienced sexual violence at the hands of an intraracial perpetrator compared to 91% of non-White Hispanic women.

As shown in **Table 3**, among AI/AN participants who reported experiencing violence in their lifetime, the majority experienced it at the hands of interracial perpetrator in each category of crime measured.[44]

Table 3. Percentage of AI/AN Victims Reporting Violence by an Interracial Perpetrator

	AI/AN Women	AI/AN Men
Sexual violence	96%	89%
Physical violence by an intimate partner	90%	85%
Stalking	89%	91%
Psychological aggression by an intimate partner	91%	88%

Source: Dr. André B. Rosay and National Institute of Justice (NIJ), "Violence Against American Indian and Alaska Native Women and Men, May 2016," https://www.ojp.gov/pdffiles1/nij/249736.pdf, pp. 19, 26, 33, 41.

The study also looked at how these experiences affected the lives of participants. For example, the results indicated that 67% of AI/AN women and 26% of AI/AN men reported feeling concerned for their safety, 41% of AI/AN women and 20% of AI/AN men were physically injured, and 41% of AI/AN women and 10% of AI/AN men missed days of work or school as a result of these victimizations.[45] Further, 49% of AI/AN women and 20% of AI/AN men reported they needed services[46] as a result of these victimizations.[47] The most commonly reported service needed was medical care. Thirty-eight percent of AI/AN women and 17% of AI/AN men reported they were unable to gain access to the services they required.[48] Compared to non-Hispanic White women, AI/AN women were significantly less likely to receive services; there was no significant difference between AI/AN and non-Hispanic White men.[49]

Federal Data on Missing Persons

The federal government has two primary sources for data on missing persons: the National Crime Information Center (NCIC) and NamUs.[50] Although neither database captures the totality of missing persons in the United States, typically NCIC includes greater numbers of missing persons.[51]

[44] NIJ Rosay, pp. 19, 26, 33, 41.

[45] NIJ Rosay, pp. 47-48.

[46] Including medical care, housing services, community services, advocacy services, and legal services. NIJ Rosay, p. 66.

[47] NIJ Rosay, pp. 47-48.

[48] NIJ Rosay, pp. 49-50.

[49] NIJ Rosay, p. 50.

[50] For more information, see CRS Report RL34616, *Missing Adults: Background, Federal Programs, and Issues for Congress*.

[51] NamUs, *Frequently Asked Questions*, https://namus.nij.ojp.gov/frequently-asked-questions#faq-why-is-the-number-of-missing-persons-in-ncic.

NCIC is not available to the public. NamUs displays some information to the public and allows for public submission pending review by an "appropriate criminal justice agency."[52]

National Crime Information Center

The NCIC is an index of criminal justice information, which includes criminal records, fugitives, stolen property, and missing persons, maintained by the FBI's Criminal Justice Information Services (CJIS) Division. The NCIC has maintained records of missing persons since October 1975; these data are obtained from state and local law enforcement agencies, several federal agencies, and select non-law enforcement agencies (e.g., courts).[53] Missing person records are removed from the NCIC when the person is located or their remains are identified. The FBI releases an annual Missing Person and Unidentified Person Statistics report using records from NCIC. The NCIC missing person data are broken down by race, age, and sex.[54] The NCIC report also includes statistics on missing people who fall into the following categories:

- have a proven physical or mental disability,
- are missing under circumstances indicating that they may be in physical danger,
- are missing under circumstances indicating their disappearance may not have been voluntary,
- are under the age of 21 and do not meet the above criteria,
- are missing after a catastrophe, and
- are 21 and older and do not meet any of the above criteria but for whom there is a reasonable concern for their safety.

The 2020 NCIC Missing Person and Unidentified Person Statistics report included 9,575 missing persons who were identified as Native American. Of these persons, 55% were female and 45% were male, and 74% were 17 or younger and 26% were 18 or older.[55] As shown in **Table 4**, the percentage of missing persons in NCIC identified as Native American was in many cases higher than the AI/AN percentage of the U.S. population (0.9%).[56]

Table 4. Age and Sex of Native American Missing Persons in the NCIC

2020

Age	Female		Male		Unknown Sex	
	Count	% of Overall	Count	% of Overall	Count	% of Overall
0-17	4,128	2%	2,932	1%	2	3%
18 or older	1,165	0%	1,336	0%	2	3%
Unknown	2	0%	8	0%	0	0%

[52] DOJ, OJP, "Operation Lady Justice: Comparison of the NamUs and NCIC Databases," fact sheet, https://operationladyjustice.usdoj.gov/sites/g/files/xyckuh281/files/media/document/oljnamusncic.pdf.

[53] For more information, see CRS Report RL34616, *Missing Adults: Background, Federal Programs, and Issues for Congress*.

[54] FBI, 2020 NCIC Missing Person and Unidentified Person Statistics, https://www.fbi.gov/file-repository/2020-ncic-missing-person-and-unidentified-person-statistics.pdf/view (hereinafter, "NCIC 2020 Missing Persons").

[55] NCIC 2020 Missing Persons. The NCIC uses the term *Indian* in its report but does not define it; as such, this CRS report uses the term *Native American* to refer to the NCIC data.

[56] U.S. Census: Native American Population.

Age	Female		Male		Unknown Sex	
Total	5,295	2%	4,276	2%	4	5%

Source: FBI, 2020 NCIC Missing Person and Unidentified Person Statistics, https://www.fbi.gov/file-repository/2020-ncic-missing-person-and-unidentified-person-statistics.pdf/view.

Notes: "Count" is the total number of missing Native American persons recorded in each category. The "% of Overall" is the percent of the total missing persons in each category that are Native American. For example, 2% of all the females between the ages of 0-17 in NCIC were Native American.

As shown in **Table 5**, the largest category of missing persons in NCIC among both female and male Native Americans in 2020 was juveniles. This was followed by "other" (i.e., 21 and older and do not meet any of the criteria listed above but for whom there is a reasonable concern for their safety) and those missing under circumstances indicating that they may be in physical danger.

Table 5. Circumstances Under Which Native American Persons Are Missing in the NCIC

2020

Category	Female	Male	Unknown Sex	Total
Juvenile[a]	3,965	2,837	2	6,804
May be in physical danger	356	347	0	703
Proven physical or mental disability	107	150	0	257
Disappearance may be involuntary	102	78	0	180
Missing after a catastrophe	0	1	0	1
Other	765	863	2	1,630

Source: FBI, 2020 NCIC Missing Person and Unidentified Person Statistics, https://www.fbi.gov/file-repository/2020-ncic-missing-person-and-unidentified-person-statistics.pdf/view.

a. "Juvenile" indicates under the age of 21 and does not meet the other criteria. "Other" indicates 21 and older and does not meet the other criteria but there is a reasonable concern for their safety.

National Missing and Unidentified Persons System

NamUs is a Department of Justice (DOJ) data collection effort operated by the University of North Texas (UNT) Health Center under a cooperative agreement with NIJ since 2011.[57] NamUs data are obtained from law enforcement agencies, coroners, and medical examiners. The majority of AI/AN cases included in this database are investigated by a non-tribal law enforcement agency.[58] NamUs data show a steady increase in the number of AI/AN cases published in its

[57] For more information, see CRS Report RL34616, *Missing Adults: Background, Federal Programs, and Issues for Congress*.

[58] NamUs, Unresolved Missing Person Cases with Tribal Enrollment/Affiliation, https://namus.nij.ojp.gov/sites/g/files/xyckuh336/files/media/document/namus-stats-tribal-report-august-2021.pdf (hereinafter, "NamUs AI/AN August 2021").

database since September 2019.[59] This could reflect a base rate increase in missing AI/AN persons, but it may also reflect increased rates of reporting and improved data collection. NamUs has stated it is working to improve its data on Indigenous persons and releases monthly data reports and maps about cases involving AI/AN individuals.[60] However, there may be racial misclassifications in data included in this database, particularly in cases when the absence of identifying documentation or positive identification by family and friends results in the race of victim being determined by law enforcement personnel.

NamUs Missing Persons Data

As of November 12, 2021, the NamUs database of missing persons included 751 cases of missing AI/AN individuals:[61] 235 females, 514 males, and 2 individuals listed as "other." Among the 751 missing AI/AN persons in NamUs, 118 were 18 or younger at the time they went missing: 65 females and 53 males. Other characteristics of the missing AI/AN people include the following:

- 133 had a known tribal enrollment or affiliation,[62] 13 had no affiliation, 350 had an unknown tribal affiliation, and 255 had no affiliation provided;
- 80 went missing from tribal land,[63] 399 did not go missing from tribal land, and for 272 it was either unknown (48) or not provided (224) whether they went missing from tribal land; and
- 56 had their primary residence on tribal land,[64] 337 did not have their primary residence on tribal land, and for 358 the primary residence locations were unknown (42) or not provided (316).

NamUs Unidentified and Unclaimed Persons Data

As of November 12, 2021, the NamUs database included 167 cases (33 females, 127 males, 7 unsure) of AI/AN unidentified persons (i.e., unidentified decedents).[65] Of these 167 decedents, 7 were found on tribal lands, 51 were not found on tribal land, and in 109 cases it was unknown or

[59] NamUs, NamUs Support for Missing Indigenous Person Cases, https://namus.nij.ojp.gov/missing-indigenous-persons (hereinafter, "NamUs Indigenous Cases"). NamUs is an operational rather than historical database, and as a result its data do not include cases currently under investigation but not yet officially classified by law enforcement, nor the number of cases resolved and archived between data collections.

[60] NamUs Indigenous Cases.

[61] NamUs Search.

[62] NamUs releases a monthly fact sheet about the tribal membership of persons recorded in the database. As of November 2021, the most recent release was for August 2021. As stated in this fact sheet, "cases include indication of enrollment or affiliation with state- or federally-recognized tribes; it does not include all American Indian and Alaska Native missing persons. Tribal enrollment and affiliation information is reported to NamUs by local, state, tribal, or federal law enforcement, or it may be self-reported by family members of missing persons. Data fields to capture tribal enrollment and affiliation information were added to NamUs in December 2018 with no requirement for investigating agencies to add this information retroactively; therefore, tribal data may not yet be entered into NamUs for some missing persons." NamUs AI/AN August 2021, p. 1.

[63] "These data reflect cases in which individuals went missing from tribal land, whether or not they resided on tribal land." NamUs AI/AN August 2021, p. 1.

[64] "These data reflect cases in which individuals had a primary residence on tribal land at the time of their disappearance. These individuals may -- or may not -- have gone missing from tribal land, or they may have gone missing from tribal land other than their own communities." NamUs AI/AN August 2021, p. 1.

[65] Racial identification is made by medical examiners and coroners at the agency managing the case, which may result in misclassifications of the decedent's race.

not provided whether the individuals were found on tribal land or not. The NamUs database also included 26 cases (5 females and 21 males) of unclaimed persons[66] identified as AI/AN.

National Center for Missing and Exploited Children (NCMEC) Data on Missing Native American Children

The National Center for Missing and Exploited Children (NCMEC) released a fact sheet summarizing its data on missing Native American children from January 2009 to December 2018.[67] During this time, NCMEC had case records for 1,909 Native American children who were reported missing from 43 states and 52 reservations. Fifty-nine percent were female and 41% male, with a mean age of 14. Thirty-five percent of the missing Native American children recorded by NCMEC had at least one tribal affiliation; 125 tribal affiliations were included, with the most common being Cherokee, Navajo, Sioux, Chippewa, and Alaska Native.[68] Eight percent were missing from tribal lands, and these children tended to be younger (mean age of 11) and more likely to be victims of family abduction than Native American children missing from outside of tribal lands.

Eighty-five percent of the total cases involving Native American youth were considered endangered runaways, meaning a "missing child between 11 and 17 years of age who is missing of his or her own accord and whose whereabouts are unknown to his or her parent(s) or legal guardian."[69] The next most common category was family abduction (i.e., "The taking, retention or concealment of a child, younger than 18 years of age, by a parent, other person with a family relationship to the child, or his or her agent, in violation of the custody rights, including visitation rights of a parent or legal guardian."),[70] which described 12% of NCMEC's records involving Native American children. Eleven percent of the cases involving missing Native American children included a history of sexual abuse, including sex trafficking, sexual abuse by a family member, statutory rape, and sexual assault by an acquaintance.

Data on Adverse Life Experiences Among Native American Children

As of September 2021, NamUs data indicated that 3% of the missing persons who were 18 or younger at the time they went missing were identified as AI/AN.[71] According to the Annie E. Casey Kids Count Data Center,[72] in 2019 AI/AN youth comprised 1% of the minor population in the United States.[73] These data suggest that AI/AN youth

[66] NamUs defines an *unclaimed person* as "a decedent who has been identified by name, but for whom no next-of-kin has been located to make death notifications or have the remains claimed for burial or cremation."

[67] National Center for Missing and Exploited Children (MCMEC), *Native American Children Reported Missing to NCMEC,* https://www.missingkids.org/content/dam/missingkids/pdfs/Native%20American%20Children_2009-2018.pdf (hereinafter, "NCMEC Native American Children").

[68] NCMEC did not provide greater detail on the children identified as Alaska Native. They state, "Tribal name/affiliation for each child was documented based upon information provided by an official source and any omissions or lack of Tribal specificity is unintentional." NCMEC Native American Children, p. 32, footnote 3.

[69] NCMEC Native American Children, p. 1.

[70] NCMEC Native American Children, p. 1.

[71] NamUs Search.

[72] The Annie E. Casey Foundation is a nonprofit organization focused on child well-being in the United States. The foundation collects and publishes data on child well-being and produces an annual report called the KIDS COUNT Data Book. For more information, see https://datacenter.kidscount.org/about.

[73] Annie E. Casey Foundation, Kids County Data Center, *Child population by race in the United States,* https://datacenter.kidscount.org/data/tables/103-child-population-by-race?loc=1&loct=1#detailed/1/any/false/1729,37,871,870,573,869,36,868,867,133/68,69,67,12,70,66,71,72/423,424.

are missing at a disproportionate rate to their representation in the overall U.S. population of children. Kids Count analyses also indicate that 35% of American Indian[74] youth reported experiencing two or more adverse life experiences (i.e., "frequent socioeconomic hardship, parental divorce or separation, parental death, parental incarceration, family violence, neighborhood violence, living with someone who was mentally ill or suicidal, living with someone who had a substance abuse problem or racial bias.")[75] compared to an average of 18% for all children surveyed.[76] In 2019, Kids Count reported that American Indian youth had a death rate of 32 per 100,000 compared to a rate of 25 per 100,000 in the overall population of children.[77] Also in 2019, Kids Count reported that 1% of the children who were confirmed by child protective services as victims of maltreatment were American Indians,[78] 2% of the children in foster care were American Indians,[79] and the rate of American Indian youth in juvenile detention, correctional, and/or residential facilities was 236 out of every 100,000 compared to 114 for every 100,000 youth in the overall population.[80]

Urban Indian Health Institute Study on MMIWG

A study conducted by the Urban Indian Health Institute (UIHI) examined the rates of MMIWG in urban areas.[81] UIHI focused on these areas because the 2010 census data indicated that 71% of the AI/AN population lived in urban areas.[82] UIHI used Freedom of Information Act (FOIA) requests to law enforcement agencies, missing persons databases, local news media and online archives, social media, and direct contact with family and community members to gather data across 71 cities in 29 states. According to UIHI, "These cities were selected because they either

[74] This is the descriptor used in the data; the Annie E. Casey Foundation did not denote racial identity or membership in a federally recognized tribe.

[75] Annie E. Casey Foundation, Kids County Data Center, *Children who have experienced two or more adverse experiences by race and ethnicity in the United States*, https://datacenter.kidscount.org/data/tables/9729-children-who-have-experienced-two-or-more-adverse-experiences-by-race-and-ethnicity?loc=1&loct=1#detailed/1/any/false/1696,1648,1603/10,11,9,12,1,13/18990,18991 (hereinafter "KidsCount Adverse Life Experiences").

[76] KidsCount Adverse Life Experiences.

[77] Annie E. Casey Foundation, *Child and teen death rate by race and ethnicity in the United States*, https://datacenter.kidscount.org/data/tables/11053-child-and-teen-death-rate-by-race-and-ethnicity?loc=1&loct=1#detailed/1/any/false/1729,37/10,11,9,12,1,13,185/21389,21390.

[78] Annie E. Casey Foundation, Kids County Data Center, *Children who are confirmed by child protective services as victims of maltreatment by race and Hispanic origin in the United States*, https://datacenter.kidscount.org/data/tables/9909-children-who-are-confirmed-by-child-protective-services-as-victims-of-maltreatment-by-race-and-hispanic-origin?loc=1&loct=1#detailed/1/any/false/1729,37,871,870,573/2638,2601,2600,2598,2603,2597,2602,1353/19244,19245.

[79] Annie. E. Casey Foundation, Kids County Data Center, *Children in foster care by race and Hispanic origin in the United States*, https://datacenter.kidscount.org/data/tables/6246-children-in-foster-care-by-race-and-hispanic-origin?loc=1&loct=1#detailed/1/any/false/1729,37,871,870,573,869,36,868,867,133/2638,2601,2600,2598,2603,2597,2602,1353/12992,12993.

[80] Annie E. Casey Foundation, Kids County Data Center, *Youth residing in juvenile detention, correctional and/or residential facilities by race and Hispanic origin in the United States*, https://datacenter.kidscount.org/data/tables/8391-youth-residing-in-juvenile-detention-correctional-and-or-residential-facilities-by-race-and-hispanic-origin?loc=1&loct=1#detailed/1/any/false/1729,871,573,36,867,133,18,17,14,12/4038,4411,1461,1462,1460,4157,1353/16996,17598.

[81] Urban Indian Health Institute (UIHI), *Missing and Murdered Indigenous Women and Girls: A snapshot of data from 71 cities in the United States*, November 2018, http://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf (hereinafter, "UIHI Report"), p. 5.

[82] Urban Indian Health Institute, *U.S. Census Marks Increase in Urban American Indians and Alaska Natives*, http://www.uihi.org/wp-content/uploads/2013/09/Broadcast_Census-Number_FINAL_v2.pdf (hereinafter, "AI/AN Census").

have an urban Indian health center that is affiliated with UIHI, a significant population of urban Indians, or [were] found to have a large number of MMIWG cases in a preliminary consultation with key community leaders."[83] In its sample of 71 cities, UIHI identified 506 cases of MMIWG: 128 (25%) missing persons cases, 280 (56%) murder cases, and 98 (19%) unknown cases.[84] In the 387 cases for which the victim's age was determined, ages ranged from younger than 1 to 83, with a mean age of 29. Three-quarters of the cases UIHI identified did not include tribal affiliation or enrollment information.

UIHI identified 153 cases that were not in law enforcement records obtained via FOIA requests.[85] UIHI located these cases using government missing persons databases, media reports, social media and advocacy sites, and contact with families and communities.[86]

UIHI identified racial misclassification as a common barrier to accurate data collection regarding missing and murdered Native Americans. Native American victims may be misreported as White or Hispanic, particularly in the absence of family or government identification.[87] UIHI also found technical shortcomings, such as data systems that cannot accurately identify Native American victims, which may result in racial misclassification or inaccuracies. For example, nine of the cities included in the study reported they were unable to search their data systems for American Indian, Native American, or Alaska Native victims because of missing race information and muddled race coding schemes, among other reasons.[88]

Human Trafficking of Native Americans

Another issue commonly associated with MMIP is human trafficking, and sex trafficking in particular. U.S. Code defines *severe trafficking in persons* as "(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery."[89] Several studies have identified Indigenous people both in the United States and abroad as being at increased risk for trafficking.[90]

There are many shortcomings in the existing data on sex trafficking in Native American communities. Among other reasons, victims may not be willing or able to share their experiences with law enforcement, other government agencies, or researchers. Additionally, some law enforcement agencies may not be adequately trained in identifying and responding to victims of trafficking.[91] Often the best source for data may be from victim advocacy or victim resource centers; however, the number of trafficking victims in a sample of people accessed via

[83] UIHI Report, p. 5.

[84] UIHI labeled cases as "unknown" when "law enforcement gave a number of total cases in response to a record request but did not clarify how many were missing and how many were murdered (16 cases total), and when a case was listed on a missing persons database but had been removed, UIHI could not verify whether the woman or girl was located safe or deceased"; UIHI Report, p. 6.

[85] UIHI Report, p. 17.

[86] In at least one case, jurisdictional issues might have contributed to the law enforcement agency not having a record of the murdered individual. In the UIHI report, a case is described where the victim was allegedly kidnapped in the law enforcement agency's jurisdiction, but murdered in a different agency's jurisdiction. UIHI Report, p. 17.

[87] UIHI Report.

[88] UIHI Report, p. 16.

[89] 22 U.S.C. §7102 (11).

[90] DOJ, "Human Trafficking (Including Sex Trafficking) of American Indians and Alaska Natives," September 2017, https://www.justice.gov/ovw/page/file/998081/download (hereinafter, "DOJ Human Trafficking"). Some reasons for this increased risk may include higher rates of prior sexual victimization, poverty, and homelessness in Native American and Indigenous communities.

[91] DOJ Human Trafficking.

a victim resource center may not be representative of the overall population rate. For example, a commonly cited report from the Minnesota Indian Woman's Sexual Assault Coalition and Prostitution Research & Education found that in a sample of 105 "Native women in prostitution,"[92] nearly half had life experiences that met "a conservative legal definition of sex trafficking."[93] However, the overlap between prostitution and sex trafficking may be quite large and thus the rate of trafficking among Native American women in prostitution may be higher than the trafficking rate in the population of Native American women overall. Further, the study's sample was recruited in partnership with several organizations and agencies that provide services or resources to victims of sexual and domestic violence who may also have a higher base rate of trafficking than the general population.[94] Given the difficulty of obtaining data from trafficking victims, this method may be the best available; still, a study's ability to estimate a population base rate may be limited by the absence of a random sample of Native American participants.

In 2017, the U.S. Government Accountability Office (GAO) released a report on the human trafficking of Native Americans. GAO surveyed 132 tribal law enforcement agencies and found that from 2014 to 2016, 20% (27 agencies) reported they had initiated at least one investigation involving human trafficking, 75% (99 agencies) reported they had not, and 5% (6 agencies) reported they did not know if they had.[95] GAO also surveyed 61 major city law enforcement agencies and found that from 2014 to 2016, 10% (6 agencies) initiated human trafficking investigations involving at least one Native American victim, 61% (37 agencies) initiated human trafficking investigations that did not involve any Native American victims, 20% (12 agencies) indicated they had initiated human trafficking investigations but did not know (or did not respond) about Native American victims, and 10% (6 agencies) did not initiate any human trafficking investigations.[96]

There is also a lack of information about Native American victims of human trafficking who have received victim services funded by federal grants. Another GAO report found that from FY2013 to FY2016, DOJ, Health and Human Services (HHS), and Homeland Security (DHS) administered at least 50 grant programs that may be used to serve Native American victims of human trafficking.[97] However, there are no data to indicate the number of Native American recipients in these programs.

Complications in Addressing MMIP

Several factors may contribute to complications in both capturing the true scope of violent victimization experienced by Native Americans and addressing MMIP. This section of the report

[92] Melissa Farley, Nicole Matthews, Sarah Deer, Guadalupe Lopez, Christine Stark, and Eileen Hudon, *Garden of Truth: The Prostitution and Trafficking of Native Women in Minnesota*, Minnesota Indian Women's Sexual Assault Coalition and Prostitution Research & Education, October 2011, p. 3, https://www.niwrc.org/resources/report/garden-truth-prostitution-and-trafficking-native-women-minnesota (hereinafter, "Garden of Truth").

[93] Garden of Truth, p. 3. In the context of this study, *prostitution* was defined as "exchange of sex acts for food and shelter and other needs; outcall/escort/cell phone; Internet advertised prostitution; massage parlors; pornography of children and adults; stripclub prostitution; sauna-or nail parlor-based prostitution; live sex shows; street prostitution; peep shows; phone sex; international and domestic trafficking; mail order bride or servile marriages; and prostitution tourism" (pp. 10-11). *Trafficking* was defined as "a form of prostitution that involves third party control and exploitation" (p. 11). Thus, when prostitution is a result of coercion, force, or exploitation, it is a form of trafficking. This distinction can often be complicated to make in practice, as a victim who meets the legal definition of trafficking may not consider that to be true. For example, they may be trafficked by a person whom they consider an intimate partner. For more information on the spectrum of sex work and differences between prostitution and sex trafficking, see https://uaht.org/prostitution-and-human-trafficking/.

[94] National Resource Center on Domestic Violence, *Human Trafficking, Domestic Violence, and Sexual Assault*, https://vawnet.org/sc/human-trafficking-domestic-violence-and-sexual-assault.

[95] U.S. Government Accountability Office (GAO), *Human Trafficking: Information on Cases in Indian Country or that Involved Native Americans*, GAO-17-624, July 24, 2017.

[96] Because these statistics are rounded to full numbers, the percentages do not sum to 100%.

[97] U.S. Government Accountability Office (GAO), *Human Trafficking: Action Needed to Identify the Number of Native American Victims Receiving Federally-funded Services*, GAO-17-325, March 30, 2017.

discusses a selection of these complicating factors; however, this list is not comprehensive and may not represent the totality of concerns raised by researchers or Native American communities.

Gaps in Data and Services for Urban Native American Populations

The majority of Native Americans reside in urban areas outside of tribal lands.[98] Despite this fact, federal policies aimed at reducing violence against Native Americans often focus on tribal lands. Many Native American people moved away from tribal lands during World War II either to enlist in the military or for employment opportunities in war-related industries. After World War II, the federal government pursued policies of termination and relocation that resulted in great numbers of Native Americans moving away from tribal land from 1953 to 1968.[99] *Termination* refers to the federal policy involving "termination of the federal government's trust relationship with Indian tribes and, as a consequence, the elimination of federal benefits and support services to the terminated tribes."[100]

The termination policy was coupled with relocations efforts. The Indian Relocation Act of 1956 (P.L. 84-959) appropriated federal funds to pay for vocational training and housing assistance to encourage assimilation and relocation. Some 100,000 Native Americans entered into these programs, and about a third ultimately returned home.[101] Although the policies of termination and relocation ended by the 1970s, the pattern of Native American migration toward urban areas has continued. The 2010 Census found that 71% of AI/AN individuals were living in urban areas.[102] The five cities with the largest populations identifying as AI/AN (alone or in combination with another racial identity) were New York City, Los Angeles, Phoenix, Oklahoma City, and Anchorage.[103]

Although the available data demonstrate that Native Americans are more likely to experience violent victimizations than other racial and ethnic groups, limited information exists to determine how victimization rates may differ on and off tribal lands. Further, NamUs data demonstrate that the majority of missing and unidentified cases involving AI/AN persons occur off tribal land.[104] In addition, the majority of NCMEC cases involving AI/AN children occurred outside of tribal lands.[105] Given that most Native Americans reside outside of tribal lands, it is likely that a considerable percentage of violent victimizations of AI/AN people were also occurring off tribal lands. Native Americans living in urban areas and off tribal lands do have access to federal victim services resources; however, many federal programs and resources to specifically address the experiences of Native Americans are directed toward tribal communities rather than urban areas.[106]

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[98] AI/AN Census.

[99] Stephen L. Pevar, *The Rights of Indians and Tribes*, 4th ed., (New York City, NY: Oxford University Press, 2012) (hereinafter, "The Rights of Indians and Tribes"), p. 11.

[100] The Rights of Indians and Tribes, p. 11.

[101] The Rights of Indians and Tribes, p. 12.

[102] AI/AN Census.

[103] U.S. Census Bureau, *The American Indian and Alaska Native Population: 2010*, https://www.census.gov/history/pdf/c2010br-10.pdf, p. 11.

[104] NamUs Search.

[105] NCMEC Native American Children.

[106] For example, the Tribal Sexual Assault Services Program in VAWA is focused on enhancing sexual assault services in Indian tribal lands and Alaska Native villages.

Jurisdictional Overlap

The Bureau of Indian Affairs (BIA) reports there are about 400 tribal justice systems nationwide.[107] Tribal justice systems vary widely in size, and tribal courts vary in their structure and judicial philosophy. Federally recognized tribal governments retain authority for self-governance in many respects, and thus may establish justice systems that differ from others in the United States. The concept of tribal sovereignty predates, but also finds some support in, the U.S. Constitution, which acknowledges Indian tribes as separate entities in a list that also includes foreign nations and the states.[108] In practice, tribal authority to pass and enforce laws has been restricted by acts of Congress, executive orders, federal administrative agreements, court decisions, and treaties.[109] The federal government has assumed the authority to regulate the powers and scope of tribal justice systems' jurisdiction and sentencing authority, although many tribes do not recognize this as a legitimate institutional power nor as an effective public safety strategy. A report on tribal justice systems mandated under the Tribal Law and Order Act of 2010 (P.L. 111-211; TLOA) states

> For more than 200 years, the Federal government has undertaken to impose Federal laws, procedures, and values concerning criminal justice on American Indian nations. An oft-used justification for these jurisdictional modifications is that the overlay of Federal and State law will make Indian country safer. But, in practice, the opposite has occurred. Indian people today continue to experience disproportionate rates of violent crime in their own communities. An exceedingly complicated web of jurisdictional rules, asserted by Federal and State governmental departments and agencies whose policy priorities usually pre-date the modern era of Tribal sovereignty and self-determination contributes to what has become an institutionalized public safety crisis....
>
> Because the systems that dispense justice originate in Federal and State law rather than in Native nation choice and consent, Tribal citizens tend to view them as illegitimate; these systems do not align with Tribal citizens' perceptions of the appropriate way to organize and exercise authority. The Commission heard this observation at virtually every one of its field hearings from the Eastern United States to Alaska.[110]

Tribal Criminal Jurisdiction

Tribal courts have jurisdiction over certain types of criminal offenses. Generally, tribes only have jurisdiction to prosecute crimes that occur in Indian Country.[111] However, the responsibility for

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[107] U.S. Department of the Interior (DOI), Bureau of Indian Affairs (BIA), *Tribal Court Systems*, https://www.bia.gov/CFRCourts/tribal-justice-support-directorate. This section only covers the exercise of criminal jurisdiction; civil jurisdiction is beyond the scope of this report. Also not covered in this report is how jurisdiction differs in Alaska.

[108] U.S. Constitution, Article 1, Section 8, Clause 3. A full discussion of the history and complexity of tribal sovereignty and jurisdiction is beyond the scope of this report. However, CRS has several reports that may provide more information on these topics, including the history of congressional power with regard to tribal issues and the federal trust-relationship. For examples, see CRS Report R46647, *Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress*; CRS Legal Sidebar LSB10608, *Supreme Court Rules on Authority of Tribal Police to Stop Non-Indians*; and CRS Legal Sidebar LSB10527, *This Land Is Whose Land? The McGirt v. Oklahoma Decision and Considerations for Congress*.

[109] For a table of major statutes and cases affecting tribal criminal jurisdiction, see Indian Law and Order Commission, *A Roadmap for Making Native America Safer: A Report to the President and Congress of the United States, Chapter 1 – Jurisdiction: Bringing Clarity Out of Chaos*, May 2015 (hereinafter, "TLOA Report"), p. 2.

[110] TLOA Report, pp. 3-4.

[111] Tribal Law and Policy Institute, Tribal Court Clearinghouse, General Guide to Criminal Jurisdiction in Indian

investigation and prosecution of a criminal offense could fall into multiple jurisdictions, including federal, state, and tribal (see the **Appendix** for a jurisdiction chart).[112] Jurisdiction for offenses committed on tribal lands is determined by a combination of the type of offense, the status of the encompassing state with regards to P.L. 83-280 (commonly referred to as "P.L. 280"), and the tribal membership status of both the victim and offender.

An Indian tribe has the inherent sovereignty to exercise criminal jurisdiction over crimes that occur on its land involving an Indian offender regardless of the victim's race.[113] In 1885, the Major Crimes Act (MCA; 18 U.S.C. §1153) established federal jurisdiction for certain crimes committed within Indian Country by Indians.[114] Under current law, MCA offenses include murder, manslaughter, kidnapping, maiming, certain sexual abuse felonies, incest, assault against minors, felony child abuse or neglect, arson, burglary, robbery, and certain crimes within the special maritime and territorial jurisdiction of the United States.[115] Thus, if an offense committed by an Indian in Indian Country falls under the MCA and is contained in tribal code, both the tribal government and the federal government generally may choose to prosecute that offense, but a state government generally may not.[116]

There is, however, a major exception to this general rule. P.L. 280 transferred responsibility for major crimes from the federal government to some states. The original statute, passed in 1953, identified six states that came to be known as *mandatory P.L. 280* states (Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin).[117] P.L. 280 extinguished the federal government's authority to prosecute MCA offenses in those six states.

Since the enactment of P.L. 280, several states have become *optional P.L. 280* states by choosing to assume at least some jurisdiction to be exercised concurrently with the federal government.[118] In both mandatory and optional P.L. 280 states, if an offense listed in the MCA is committed by an Indian in Indian Country, the state may also have jurisdiction. In non-P.L. 280 states, the same set of circumstances would fall under federal jurisdiction, exclusive of state jurisdiction. In optional P.L. 280 states, the federal government retains concurrent jurisdiction with the state to prosecute offenders under the MCA.[119]

Country, https://www.tribal-institute.org/lists/jurisdiction.htm.

[112] An accused offender may be prosecuted for the same conduct in both tribal and U.S. courts. The 2004 Supreme Court decision in *U.S. vs. Lara* established that the double jeopardy clause does not bar a successive prosecution in U.S. court because a tribal prosecution in the act of a separate sovereign exercising inherent authority. 541 U.S. 193, 200 (2004) ("Congress does possess the constitutional power to lift the restrictions on the tribes' criminal jurisdiction over nonmember Indians as the statute seeks to do.").

[113] At least one circuit court has determined that federal MCA jurisdiction is not exclusive of tribal jurisdiction. "A tribal court, which is in compliance with the Indian Civil Rights Act[,] is competent to try a tribal member for a crime also prosecutable under the Major Crimes Act." Wetsit v. Stafne, 44 F.3d 823, 825 (9th Cir. 1995).

[114] 18 U.S.C. §1153. *Indian Country* is defined in 18 U.S.C. §1151 as generally including all land within Indian reservations, dependent Indian communities, and individual Indian allotments.

[115] 18 U.S.C. §1153.

[116] McGirt vs. Oklahoma, 140 S. Ct. 2452, 2482 (2020).

[117] DOJ, United States Attorney's Office, District of Minnesota, "Frequently Asked Questions about Public Law 83-280," https://www.justice.gov/usao-mn/Public-Law%2083-280 (hereinafter, "USAO-MN FAQ").

[118] USAO-MN FAQ. Some optional P.L. 280 states accepted only partial jurisdiction that may not include MCA offenses.

[119] See United States v. High Elk, 902 F.2d 660 (8th Cir. 1990): but see United States v. Burch. 169 F.3d 666 (10th Cir. 1999).

P.L. 280 did not alter the extent of tribal jurisdiction. However, a process called retrocession allows the Secretary of Interior to grant a request made in agreement between a state and tribe for the removal of a state's P.L. 280 jurisdictional authority.[120] In 1968, P.L. 280 was amended to require tribal consent for a state to assume optional P.L. 280 jurisdiction. No tribes have consented to state jurisdiction since the amendment's passage.[121] TLOA also allows tribes in mandatory P.L. 280 states to petition the federal government to re-assume criminal jurisdiction from the state without the agreement of the state.[122]

The determination of jurisdiction for offenses that occur on tribal lands may also depend on the tribal membership status of the offender and the victim.[123] If the offender is a member of a tribe and the victim is not, then the tribe may have jurisdiction along with the state or federal government (as determined by the MCA and P.L. 280). If neither the offender nor the victim are members of a federally recognized tribe, but the offense occurs on tribal lands, then the federal or state government has jurisdiction, but the tribe generally does not. In most circumstances, tribes do not have jurisdiction over non-Indian offenders, even if the victim is a tribal member.[124] However, the 2013 reauthorization of the Violence Against Women Act (VAWA; Title IV of P.L. 103-322) granted certain tribal courts special domestic violence jurisdiction over non-Indian offenders when the victim is Indian.[125]

Tribal Law and Order Act

In 1968, Congress passed the Indian Civil Rights Act (ICRA), which, among other things, limited tribal justice systems' sentencing authority to one year of imprisonment and/or a $5,000 fine.[126] President Barack Obama signed TLOA into law in 2010, which, in part, encouraged coordination between federal, state, local, and tribal law enforcement as well as clarified and expanded tribal authority over criminal cases on tribal lands involving Indian offenders.[127] TLOA increased tribal justice systems' sentencing authority to up to three years of imprisonment and/or a $15,000 fine per felony offense, with a maximum of nine years total imprisonment for individuals convicted of multiple offenses. However, to exercise this authority tribal justice systems must meet certain

[120] USAO-MN FAQ.

[121] Carole Goldberg, "Unraveling Public Law 280: Better Late than Never," *American Bar Association Human Rights Magazine*, Vol. 43, no. 1, (September 01, 2017), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/vol--43/vol--43--no--1/unraveling-public-law-280--better-late-than-never/.

[122] USAO-MN FAQ.

[123] Under current law, tribal governments have jurisdiction over both member and non-member Indians (i.e., both individuals who are members of the tribe exercising jurisdiction *and* members of different federally recognized tribes). See P.L. 102-137 (superseding by statute the contrary judicial decision in Duro v. Reina, 495 U.S. 676, 693 (1990) holding that "[c]riminal trial and punishment is so serious an intrusion on personal liberty that its exercise over non-Indian citizens was a power necessarily surrendered by the tribes in their submission to the overriding sovereignty of the United States").

[124] Tribal officials may detain non-Indians suspected of an offense to turn custody over to state or federal authorities or eject non-Indians from Indian land and not permit them to return. See CRS Legal Sidebar LSB10561, *High Court to Review Tribal Police Search and Seizure Case*.

[125] For more information, see CRS Report R45410, *The Violence Against Women Act (VAWA): Historical Overview, Funding, and Reauthorization* (hereinafter, "VAWA Overview").

[126] 25 U.S.C. §1302.

[127] See P.L. 111-211.

standards, including the ability to convene a representative jury and meet certain due-process requirements.[128]

Violence Against Women Act

The 2013 VAWA Reauthorization extended tribal criminal jurisdiction further to include non-Indian offenders in cases of domestic and dating violence against Indian victims when the conduct occurs on tribal lands, as well as the enforcement of certain protection orders.[129] To exercise this expanded jurisdiction, tribes must meet certain requirements to protect a non-Indian defendant's constitutional rights. For a non-Indian to be prosecuted for a VAWA-related crime in a tribal court, they must have sufficient ties to the tribal community. Under current law, this may include residing in the territory of the prosecuting tribe, employment by the prosecuting tribe, or being the spouse, intimate partner, or dating partner of either a member of the prosecuting tribe or a member of a different tribe who resides in the territory of the prosecuting tribe.[130] The tribal court must guarantee the non-Indian defendant's constitutional rights, including the right to due process and habeas corpus, and if imprisonment may be imposed, the right to a trial by an impartial jury that is both a fair cross section of the community and does not "systematically exclude any distinctive group in the community, including non-Indians."[131] According to the National Congress of American Indians (NCAI), as of February 2021, 27 tribes exercise this expanded jurisdiction.[132]

The complicated laws governing tribal jurisdiction can adversely affect the ability of tribes, law enforcement, and both tribal and federal/state judicial systems to address MMIP. First, jurisdictional confusion can slow down investigations and waste resources.[133] Another potential limitation is that tribal members may not have equivalent access to state or federal law enforcement or be as willing to rely on these external systems. The TLOA report states

> Because Tribal nations and local groups are not participants in the decision making, the resulting Federal and State decisions, laws, rules, and regulations about criminal justice often are considered as lacking legitimacy. As widely reported in testimony to the Commission, nontribally administered criminal justice programs are less likely to garner Tribal citizen confidence and trust, resulting in diminished crime-fighting capacities. The consequences are many: victims are dissuaded from reporting and witnesses are reluctant to come forward to testify. In short, victims and witnesses frequently do not trust or agree with State or Federal justice procedures. Potential violators are undeterred.[134]

Further, limitations on tribal justice systems can result in crimes commonly associated with domestic violence falling outside of tribal reach. A 2018 report on the expanded domestic violence jurisdiction found that five years after passage, implementing tribes reported being constrained by the inability to prosecute crimes that commonly co-occur with domestic violence such as drug and alcohol offenses and crimes against children.[135] A VAWA reauthorization bill

[128] 25 U.S.C. §1302.

[129] VAWA Overview.

[130] 25 U.S.C. §1304(b)(4)(B).

[131] 25 U.S.C. §1304(d).

[132] National Congress of American Indians, *Currently Implementing Tribes*, https://www.ncai.org/tribal-vawa/get-started/currently-implementing-tribes.

[133] TLOA Report.

[134] TLOA Report, p. 4.

[135] National Congress of American Indians, *VAWA 2013's Special Domestic Violence Criminal Jurisdiction Five-Year Report*, 2018, http://www.ncai.org/resources/ncai-publications/SDVCJ_5_Year_Report.pdf. At the time of publication,

that passed the House during the 117th Congress (H.R. 1620) would expand tribal jurisdiction over certain non-Indian conduct to include obstruction of justice, sexual violence, sex trafficking, stalking, and assault of a law enforcement or corrections officer.[136]

Oil Pipeline *Man Camps* and Violence Against Native American Women

Research has established a connection between sexual violence, human trafficking, and *man camps* in the United States and Canada.[137] Man camps refer to areas of temporary housing for oil and gas workers who are characteristically well paid, male, and non-Indigenous. Man camps can be formal settlements of portable housing set up by extraction companies to house workers, or informal settlements of mobile homes and trailers rented out to workers by local property owners.[138] In either case, the influx of workers into frequently under-resourced rural areas can strain local emergency and health services. There has been a documented relationship between man camps and increases in crime rates, drug and alcohol-related offenses, and sexual violence.[139] Law enforcement often does not have the resources to serve these temporarily inflated populations and struggle to address the increase in crime. Because man camps often cross into tribal lands, there is also jurisdictional confusion about agency responsibility. Law enforcement may also not be able to monitor the presence of sex offenders in these formal or informal man camps.[140] According to testimony by Lisa Brunner, a program specialist at the National Indigenous Women's Resource Center, "The Fort Peck Tribes Sex Offender Registration and Notification Act (SORNA) program reports that 1 year ago there were 48 registered sex offenders. Now there are over 600 registered sex offenders. The struggle has been that non-Native sex offenders do not recognize the tribal jurisdiction and feel they do not have to report to the tribal SORNA program."[141]

Rates of sexual assault, domestic violence, and human trafficking doubled or tripled in the Bakken oil-producing region of North Dakota and Montana where extractive industries were present.[142] The violence connected to man camps disproportionately affected Native American women and girls.[143] The Bureau of Justice Statistics funded a study of violent victimization rates in the Bakken region from 2006 through 2012.[144] Study findings indicated that during this time, rates of violent victimization reported to law enforcement increased 23% in the Bakken region and declined 8% in the non-Bakken regions of Montana and North Dakota. The rate of serious violent victimization (i.e., homicide, sexual assault, aggravated assault, and robbery) increased 38% in the Bakken region but decreased by 4% in the non-Bakken regions studied. Aggravated assault rates increased by the greatest margin (70%) in the Bakken region (while decreasing by 4% outside the Bakken region); it increased 72% for males and 67% for females. Rape and sexual assault rates decreased by 3% in the Bakken region (while decreasing by 5% outside the Bakken region), but the rates of unlawful sexual contact (i.e., incest and statutory rape) increased 45%

18 tribes had implemented the expanded jurisdiction.

[136] For more information, see CRS Report R46742, *The Violence Against Women Act (VAWA) Reauthorization: Issues for Congress*, hereinafter "VAWA Reauthorization".

[137] Kathleen Finn, Erica Gadja, Thomas Perin, and Carla Fredericks, "Responsible Resource Development and Prevention of Sex Trafficking: Safeguarding Native Women and Children on the Fort Berthold Reservation," *Harvard Journal of Law & Gender*, vol. 40, 2017.

[138] National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, Canada, 2019, p. 593, https://www.mmiwg-ffada.ca/final-report/.

[139] Testimony of Lisa Brunner, Program Specialist at National Indigenous Women's Resource Center, in U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Combating Human Trafficking: Federal, State, and Local Perspective*, hearings, 113th Cong., 1st sess., September 23, 2013, S.Hrg. 113-455 (Washington, DC: GPO, 2013), transcript available at https://www.govinfo.gov/content/pkg/CHRG-113shrg85505/pdf/CHRG-113shrg85505.pdf (hereinafter, "Senate Hearing on Trafficking"), p. 42.

[140] Senate Hearing on Trafficking, p. 41.

[141] Senate Hearing on Trafficking, p. 42.

[142] Senate Hearing on Trafficking, p. 41

[143] Senate Hearing on Trafficking, p. 42.

[144] Kimberly Martin, Kelle Barrick, Nicholas J. Richardson, Dan Liao, and David Heller, "Violent Victimization Known to Law Enforcement in the Bakken Oil-Producing Region of Montana and North Dakota, 2006-2012," RTI International, 2017, https://www.ojp.gov/ncjrs/virtual-library/abstracts/violent-victimization-known-law-enforcement-bakken-oil-producing (hereinafter, "Bakken Report").

in the Bakken region (while decreasing by 7% outside the Bakken region).[145] Domestic violence[146] rates increased by 27% in the Bakken region (while decreasing by 6% outside the Bakken region), and serious domestic violence[147] rates increased by 47% (while increasing by 11% outside the Bakken region). Although the violent victimization rate in the Bakken region increased for all racial categories, it was particularly pronounced for Native Americans.[148] From 2006 to 2012, the violent crime victimization rate for Native Americans in the Bakken region increased from 239 per 10,000 to 295; in comparison, the rate for White victims increased from 90 per 10,000 to 112. Outside the Bakken region, the rates of violent victimization decreased by 11% for Native Americans and 10% for White victims.

Data Gaps

Another difficulty in understanding the victimization of Native Americans generally, and MMIP in particular, is incomplete data. There are several federal programs to gather data on crime, including the FBI's UCR program and the NCVS. Federal agencies, researchers, and advocates have identified gaps in tribal participation in these programs as a significant issue. Beyond gaps in tribal participation, tribes may also have difficulty accessing data resources (e.g., software, equipment, trained personnel) that can be helpful in preventing or addressing violence in tribal communities.

There are 574 federally recognized tribes, and the reasons underlying these gaps in participation and access vary widely. However, some commonly identified reasons are lack of funding and resources (e.g., personnel, equipment, and reliable internet access), state laws preventing tribal access to programs or resources, and tribal government decisions not to share information.[149] Additional causes of gaps in the data on violence experienced by Native Americans include racial misclassification, incorrect classification of a crime or cause of death, and hesitancy of victims or witnesses to report a crime due to poor relationships with or mistrust of law enforcement.[150]

Federal Programs and Grants

The federal government has several programs that either directly or indirectly address MMIWG. Some of these programs were created specifically to address this issue, such as the recently launched Missing and Murdered Unit (MMU) at the BIA. Other programs may address MMIWG but were not explicitly developed for this purpose. For example, many DOJ grants address crime in Indian Country, which may include offenses related to MMIWG.

[145] Bakken Report, p. 8. The study authors note that "the magnitude of the percentage increase in other unlawful sexual contact during this period (up 45%) is due to the relatively low rate of these crimes compared with other types of violent sex offenses recorded in NIBRS. For example, although the rate of other unlawful sexual contact increased during the study period, the rate of violent sex offenses in 2012 (9.0 per 10,000) was more than four times higher than the comparable rate of other unlawful sexual contact (2.5 per 10,000)."

[146] Bakken Report, p. 7, defined as "violent crimes committed by intimate partners and non-intimate family members."

[147] Bakken Report, p. 7, "serious violent crime consists of murder, non-negligent manslaughter, rape, sexual assault, aggravated assault, and robbery."

[148] Bakken Report, p. 10.

[149] Kristi A. Naternicola, "The Tribal Engagement Program (TEP) Builds Bridges for Tribal Partners," *Department of Justice Journal of Federal Law and Practice*, January 2021, vol. 69, no. 1 (hereinafter, "DOJ TEP"), p. 37.

[150] DOJ TEP, pp. 52-53; UIHI Report, p. 4.

Federal Programs

In recent years, the federal government has launched initiatives to address MMIWG, including executive branch task forces to encourage collaboration and communication between federal agencies. Other programs created via legislation include Ashanti Alerts, among others.

Missing and Murdered Unit (MMU)

In April 2021, the Department of the Interior (DOI) announced the formation of the MMU within the BIA's Office of Justice Services. The MMU is an extension of the Operation Lady Justice task force, discussed below, launched under President Donald J. Trump to address unsolved MMIP cases. One focus of the MMU will be to increase cooperation between DOI and other federal entities such as the DOJ's NamUs, the U.S. Marshals' Missing Child Unit (MCU), and the FBI's Behavioral Analysis Units (BAU) and Forensic Laboratory.[151] The press release announcing the MMU also stated there will be new positions, such as a Unit Chief responsible for collaboration with stakeholders, as well as positions to manage services for the families of victims and to perform data collection and analysis.

Operation Lady Justice Task Force

In November 2019, President Trump signed an executive order[152] that created the Task Force on Missing and Murdered American Indians and Alaska Natives, also called Operation Lady Justice. The task force was comprised of members from DOJ, DOI, and HHS. The aims of this task force were to "enhance the operation of the criminal justice system and address the legitimate concerns of American Indian and Alaska Native communities regarding missing and murdered people — particularly missing and murdered women and girls."[153]

The executive order also outlined particular purposes the task force was to fulfill, including

- consultations with tribal governments;
- developing new protocols for use in both new and unsolved cases, including improving law enforcement responses, strengthening procedures for data sharing between jurisdictions, and broader use of databases (e.g., NamUs or the Combined DNA Index System);[154]
- creating a multi-disciplinary, multi-jurisdictional team, including members of tribal law enforcement as well as DOJ and DOI, to review cold cases; and
- clarifying responsibilities and jurisdiction throughout the investigation and prosecution of cases involving missing and murdered American Indians and Alaska Natives, including guidelines for communications with victims' families, commitments between jurisdictions to utilize both cooperative and trauma-informed approaches, and public awareness campaigns to prevent crime and educate affected communities about available resources.

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[151] DOI, "Secretary Haaland Creates New Missing & Murdered Unit to Pursue Justice for Missing or Murdered American Indians and Alaska Natives," press release, April 1, 2021, https://www.doi.gov/news/secretary-haaland-creates-new-missing-murdered-unit-pursue-justice-missing-or-murdered-american.

[152] Executive Order 13893, "Establishing the Task Force on Missing and Murdered American Indians and Alaska Natives," 84 *Federal Register* 231, December 2, 2019.

[153] Operation Lady Justice, *Executive Order*, https://operationladyjustice.usdoj.gov/about/executive-order.

[154] For more information on CODIS, see CRS Report R41800, *The Use of DNA by the Criminal Justice System and the Federal Role: Background, Current Law, and Grants*.

In November 2020, the task force submitted a one-year progress report that includes accomplishments, project status reports, and recommendations for future actions; a final report is expected in November 2021. The one-year progress report lists the following accomplishments:

- holding five in-person listening sessions prior to COVID-19 mitigation measures and 12 virtual tribal consultations (one for each of the BIA regions);
- establishing and convening 10 working groups on topics including developing new protocols, solving cold cases, and outreach;
- developing "draft standard operating procedures and protocols;"[155] and
- opening six offices to "operationalize solving cold cases involving missing and murdered American Indians and Alaska Natives."[156]

Advocates have criticized Operation Lady Justice most notably for a lack of participation from and communication with affected families and grassroots organizations. In May 2021, a group of MMIWG and MMIP grassroots advocates released a letter outlining their concerns, including

- lack of outreach and opportunities for families, advocates, and grassroots organizations to participate or testify in listening sessions;
- task force communications were conducted mainly using government websites and listservs that were not effective at reaching tribal community members and affected families;
- difficulty in accessing both in-person and digital listening sessions; participation in virtual meetings required strong internet connections to which many tribal communities do not have access;
- participants were only given three and a half minutes to testify on a first-come, first-served basis, which the authors' assert was not sufficient for all those interested to share their stories, nor was it sufficient time for affected families to communicate their losses; and
- no points of contact (e.g., a known phone line) to the cold case review teams for advocates or affected families.[157]

Federal Alert Programs

While not specific to MMIP, the federal government has developed two national alert programs to aid in the search and recovery of missing persons:

- In 2003, The PROTECT Act (P.L. 108-21) created the AMBER (America's Missing: Broadcast Emergency Response) Alert system, which supports the recovery of children under the age of 17. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) launched the AMBER Alert in Indian Country (AIIC) Initiative to expand tribal participation in this program.[158] A 2019 DOJ

[155] Operation Lady Justice, *Report to the President Activities and Accomplishments of the First Year of Operation Lady Justice* (hereinafter, "OLJ First Year"), p. v.

[156] OLJ First Year, p. v.

[157] "Public Statement on Operation Lady Justice, From MMIWG & MMIP Grassroots Advocates," https://2a840442-f49a-45b0-b1a1-7531a7cd3d30.filesusr.com/ugd/6b33f7_1c1b44893a2e4385a8314b53e31ea4be.pdf.

[158] DOJ, OJP, AMBER Alert, *AMBER Alert in Indian Country*, https://amberalert.ojp.gov/amber-alert-indian-country.

study found that among the 100 federally recognized tribes surveyed, 76 participated in state or regional AMBER alert programs.[159]

- The Ashanti Alert Act of 2018 (P.L. 115-401) was enacted in December 2018 to create a similar voluntary national communications system to support the recovery of missing adults between the ages of 17 and 64. The Ashanti Alert pilot program was launched in 2020.

Federal legislation has been introduced in both chambers to create a national alert system for senior citizens, especially those with Alzheimer's disease or dementia (e.g., National Silver Alert Act of 2014, H.R. 5361); no federal law establishing the system has been enacted. Several states have Silver or Senior Alert systems that provide alerts about missing seniors.[160]

Federal Efforts to Improve Data Collection

As discussed above, many researchers and advocates have highlighted data collection weaknesses as a significant barrier to federal work to address MMIP. Two laws enacted during the 116th Congress aimed, in part, to improve data quality.

Savanna's Act

Congress enacted Savanna's Act (P.L. 116-165) in 2020 to clarify the responsibilities of law enforcement agencies at all levels of government in responding to MMIP, increase cooperation between law enforcement agencies, provide tribal governments with additional resources to address MMIP, and increase data collection and reporting on MMIP. The law authorizes grants to implement policies and report data on MMIP, requires the FBI to include gender in annual statistics publications about missing and unidentified persons, and includes new requirements for the DOJ to address MMIP. The included DOJ requirements are as follows:

- provide training to law enforcement agencies on how to record tribal enrollment for victims in federal databases;
- develop and implement a strategy to educate the public on the National Missing and Unidentified Persons System;
- conduct specific outreach to tribes, tribal organizations, and urban Indian organizations regarding the ability to publicly enter information through the National Missing and Unidentified Persons System or other non-law enforcement sensitive portal;
- develop regionally appropriate guidelines for response to cases of missing or murdered Native Americans;
- provide training and technical assistance to tribes and law enforcement agencies for implementation of the developed guidelines; and
- report statistics on missing or murdered Native Americans.[161]

[159] DOJ, *Justice Department Upgrades Amber Alert Website, Adds Resources for Tribes*, November 2019, https://www.justice.gov/opa/pr/justice-department-upgrades-amber-alert-website-adds-resources-tribes.

[160] For more information on missing persons alert systems, see CRS Report RL34616, *Missing Adults: Background, Federal Programs, and Issues for Congress*.

[161] S. 227, Congressional Research Service Bill Summary, https://www.congress.gov/bill/116th-congress/senate-bill/227.

The law also states that tribes may submit individual guidelines for responding to MMIP cases to DOJ.

Not Invisible Act

The Not Invisible Act of 2019 (P.L. 116-166) was signed into law in 2020 with the broad purpose of reducing violent crime in Indian Country and against Native Americans through improved interagency coordination. This law requires DOI to designate within the BIA an official who is responsible for coordinating prevention initiatives, grants, and programs that pertain to MMIP as well as human trafficking. The law further requires DOI and DOJ to establish a joint commission on violent crime in Indian Country and against Native Americans. The commission is tasked with creating recommendations for improving the identification, reporting, and responses to missing, murdered, and trafficked Native Americans, and both DOI and DOJ must produce written responses to these recommendations.

A GAO study released in October 2021 found that neither the DOJ nor DOI had met all the requirements of Savanna's Act and the Not Invisible Act.[162] The report included the following recommendations:

> The Attorney General should develop a plan—including key steps, who will achieve them, and by when—for accomplishing ongoing analyses of data in existing federal databases and future data that may be gathered to identify relevant trends in cases of missing or murdered American Indian and Alaska Native women and areas of concern.
>
> The Attorney General should develop a plan, including milestone dates, to develop and implement a dissemination strategy to educate the public about the National Missing and Unidentified Persons System (NamUs).
>
> The Attorney General should develop a plan, including milestone dates, to conduct specific outreach to Indian tribes, tribal organizations, and urban Indian organizations regarding the ability to publicly enter information regarding missing persons through NamUs or other non-law enforcement sensitive portal.
>
> The Secretary of the Interior, in coordination with the Attorney General, should finalize its draft plan establishing and appointing all members to the Joint Commission on Reducing Violent Crime Against Indians, as required by the Not Invisible Act of 2019, and include milestone dates for all steps in the process.[163]

Federal Grants

Several federal grant programs are aimed at addressing the needs of tribal justice systems and the experiences of Native American women:

Coordinated Tribal Assistance Solicitation (CTAS): Since 2010, this solicitation has been an avenue by which federally recognized tribes can apply for many of DOJ's tribal grant programs across several agencies using a single application. The FY2021 CTAS purpose areas include Public Safety and Community Policing, Comprehensive Tribal Justice Systems Strategic Planning, Tribal Justice Systems, Tribal Justice System Infrastructure, Children's Justice Act Partnerships for Indian Communities, Juvenile Tribal Healing to Wellness Courts, and the Tribal

[162] U.S. Government Accountability Office (GAO), *Missing or Murdered Indigenous Women: New Efforts Are Underway but Opportunities Exist to Improve the Federal Response*, GAO-22-104045, October 28, 2021 (hereinafter, "GAO Federal Response to MMIW").

[163] GAO Federal Response to MMIW, p. 42.

Youth Program.[164] Two common critiques of the CTAS solicitation are that the competitive nature of these grants force tribes to compete with each other for resources, and the process may favor tribes with more resources to devote to grant writing.[165]

Grants to Tribal Domestic Violence and Sexual Assault Coalitions Program: These grants are administered by DOJ's Office on Violence Against Women (OVW) for the development and operating costs of nonprofit, nongovernmental tribal domestic violence and sexual assault coalitions. This program is authorized at two points in statute, each defining distinct aims. Under 34 U.S.C. Section 10441(d)(1), the purpose areas for these grants include the following:

> 1. Increasing awareness of domestic violence and sexual assault against Indian women;
>
> 2. Enhancing the response to violence against Indian women at the federal, state, and tribal levels;
>
> 3. Identifying and providing [technical assistance] to coalition membership and tribal communities to enhance access to essential services to Indian women victimized by domestic and sexual violence, including sex trafficking;
>
> 4. Assisting Indian tribes in developing and promoting state, local, and tribal legislation and policies that enhance best practices for responding to violent crimes against Indian women, including the crimes of domestic violence, dating violence, sexual assault, sex trafficking, and stalking.[166]

Additionally, under 34 U.S.C. Section 12511(d)(2), eligible coalitions may receive additional funding if they address the following purpose areas:

> 1. Work with local sexual assault programs and other providers of direct services for sexual assault victims to encourage appropriate responses to sexual assault within the state, territory, or tribe;
>
> 2. Work with judicial and law enforcement agencies to encourage appropriate responses to sexual assault cases;
>
> 3. Work with courts, child protective services agencies, and children's advocates to develop appropriate responses to child custody and visitation issues when sexual assault has been determined to be a factor;
>
> 4. Design and conduct public education campaigns on sexual assault;
>
> 5. Plan and monitor the distribution of grants and grant funds to their state, territory, or tribe; or
>
> 6. Collaborate with and inform federal, state, or local public officials and agencies to develop and implement policies to reduce or eliminate sexual assault.[167]

Grants to Tribal Governments to Exercise Special Domestic Violence Criminal Jurisdiction (SDVCJ): These funds support tribes in implementing the expanded responsibilities of tribal

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[164] See the FY2021 CTAS solicitation at https://www.justice.gov/tribal/page/file/1353346/download for more information about each purpose areas, including the estimated amount of funding available, estimated number of awards to be made, and length of award.

[165] Testimonies of the Honorable Fawn Sharp, President of the National Congress of American Indians, and Julia Kitka, President of the Alaska Federation of Natives, in U.S. Congress, Senate Committee on Indian Affairs, *A Call to Action: Native Communities' Priorities in Focus for the 117th Congress*, hearings, 117th Cong., 1st sess., February 24, 2021, S.Hrg. 117-8 (Washington, DC: GPO, 2021).

[166] FY2021 Tribal DV and SA Coalitions.

[167] FY2021 Tribal DV and SA Coalitions.

justice systems to address domestic violence, dating violence, and violations of protection orders granted in the 2013 reauthorization of VAWA. These funds may be used to defray costs associated with law enforcement, prosecution, trial and appellate courts, probation systems, detention and correction facilities, alternative rehabilitation, culturally appropriate assistance for victims and families, providing counsel for indigent defendants, and empaneling juries.[168]

Violence Against Women Tribal Special Assistant U.S. Attorney Project (SAUSA): This grant funds three-year fellowships for cross-designated prosecutors that work to address violence against women in cases in tribal and federal courts.[169] The SAUSA program aims to aid tribal governments in exercising the special domestic violence criminal jurisdiction granted under VAWA.[170] As such, the programs purpose areas include the following:

> 1. To strengthen tribal criminal justice systems to assist Indian tribes in exercising SDVCJ, including: (A) Law enforcement (including the capacity of law enforcement or court personnel to enter information into and obtain information from national crime information databases); (B) Prosecution; (C) Trial and appellate courts; (D) Probation systems; (E) Detention and correctional facilities; (F) Alternative rehabilitation centers; (G) Culturally appropriate services and assistance for victims and their families; (H) Criminal codes and rules of criminal procedure, appellate procedure, and evidence.
>
> 2. To provide indigent criminal defendants with the effective assistance of licensed defense counsel, at no cost to the defendant, in criminal proceedings in which a participating tribe prosecutes a crime of domestic violence or dating violence or a criminal violation of a protection order.
>
> 3. To ensure that, in criminal proceedings in which a participating tribe exercises SDVCJ, jurors are summoned, selected, and instructed in a manner consistent with all applicable requirements.
>
> 4. To accord victims of domestic violence, dating violence, and violations of protection orders rights that are similar to the rights of a crime victim described in section 3771(a) of Title 18, consistent with tribal law and custom.[171]

Tribal Sexual Assault Services Program (TSASP): This program is administered by OVW to aid in the creation, maintenance, and growth of programs in Indian Country and Alaska Native villages that provide intervention and assistance to victims of sexual assault.[172] Under 34 U.S.C. Section 12511, victims may include adult, youth, and child victims of sexual assault as well as victims' family and household members and those "collaterally affected by the victimization, except for the perpetrator."[173] TSASP purpose areas include the following:

> 1. 24-hour hotline services providing crisis intervention services and referral.

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[168] DOJ, OVW, "OVW Fiscal Year 2021 Grants to Tribal Governments to Exercise Special Domestic Violence Criminal Jurisdiction," https://www.justice.gov/ovw/page/file/1353556/download (hereinafter, "FY2021 SDVCJ Solicitation").

[169] DOJ, OVW, "FY2022 Budget Request At A Glance," https://www.justice.gov/jmd/page/file/1399101/download (hereinafter, "FY2022 At A Glance").

[170] 25 U.S.C. §1304(f).

[171] DOJ, OVW, "OVW Fiscal Year 2021 Grants to Tribal Governments to Exercise Special Domestic Violence Criminal Jurisdiction Solicitation," https://www.justice.gov/ovw/page/file/1354661/download (hereinafter, "FY2021 SAUSA").

[172] 34 U.S.C. §12511(e).

[173] 34 U.S.C. §12511(a)(1).

2. Accompaniment and advocacy through medical, criminal justice, and social support systems, including medical facilities, police, and court proceedings.

3. Crisis intervention, short-term individual and group support services, and comprehensive service coordination and supervision to assist sexual assault victims and family or household members.

4. Information and referral to assist the sexual assault victim and family or household members.

5. Community-based, culturally specific services and support mechanisms, including outreach activities for underserved communities.

6. The development and distribution of materials on issues related to the services described in (1) – (5).[174]

Tribal Access Program (TAP): This program provides tribes with access to national crime information systems and trainings on using these systems.[175] Through TAP, both criminal (e.g., law enforcement, prosecutors) and non-criminal tribal agencies (e.g., public housing, civil courts) can gain access to databases such as NCIC, the Next Generation Identification (NGI) system, the National Instant Criminal Background Check System (NICS), and the National Data Exchange (N-DEx).[176] Participating tribes can use these databases for several purposes relevant to MMIP and MMIWG; for example, entering orders of protection, registering sex offenders, entering arrest warrants, obtaining criminal histories, and checking the records for individuals with access to Native American children.[177]

Recent Legislative History

Several recent legislative proposals introduced in the 116th and 117th Congresses are relevant to the federal response to MMIP. This section includes details on a non-exhaustive selection of bills related to MMIP. A common theme in these legislative efforts is an interest in collecting more and better data on MMIP, increasing interagency cooperation, and tribal access and participation in federal criminal justice programs.

- **AI/AN CAPTA (H.R. 1566 and S. 1868):** This bill was introduced in the House and Senate during the 117th Congress and would address child abuse and neglect in tribal communities. The bill would "require that equitable distribution of assistance include equitable distribution to Indian tribes and tribal organizations and to increase amounts reserved for allotment to Indian tribes and tribal organizations under certain circumstances, and to provide for a Government Accountability Office report on child abuse and neglect in American Indian tribal communities."[178]
- **Native Youth and Tribal Officer Protection Act (H.R. 2740):** This bill was introduced during the 117th Congress and would, among other things, expand

[174] DOJ, OVW, *Fiscal Year 2021 Tribal Sexual Assault Services Solicitation*, https://www.justice.gov/ovw/page/file/1356356/download (hereinafter, "FY2021 TSASP").

[175] DOJ, *Tribal Access Program*, https://www.justice.gov/tribal/tribal-access-program-tap (hereinafter, "TAP").

[176] DOJ, Tribal Access Program, *National Crime Information Systems*, https://www.justice.gov/tribal/national-crime-information-systems. For more information on this data program, see FBI CJIS services at https://www.fbi.gov/services/cjis.

[177] TAP.

[178] H.R. 1566 and S. 1868.

tribal criminal jurisdiction to include "violence committed against a child by a caregiver; violence against law enforcement officers involved in preventing, investigating, arresting, or prosecuting a person for domestic violence, dating violence, or child violence; attempted dating violence or domestic violence; or threatened dating violence or domestic violence."[179]

- **Extreme Risk Protection Order and Violence Prevention Act of 2021 (S. 292):** This bill was introduced in the 117th Congress and would create a new grant program to help states and tribes implement extreme risk protection order laws (i.e., red flag laws), which "allow certain individuals (e.g., law enforcement officers or family members) to petition a court for a temporary order that prohibits an at-risk individual from purchasing and possessing firearms."[180]
- **Violence Against Women Act (H.R. 1620):** This bill passed the House in March 2021 and would expand tribal jurisdiction over certain nonmembers to include obstruction of justice, sexual violence, sex trafficking, stalking, and assault of a law enforcement or corrections officer. It also included an annual reporting requirement that mandates that the Attorney General and the Secretary of the Interior prepare and submit a report to Congress with statistics about missing and murdered Indian women and recommendations for improving data collection on these victims.[181]
- **Preventing Domestic Violence Homicides Through Assessment Training Act (H.R. 1907):** This bill was introduced in the 117th Congress and would authorize DOJ to award technical assistance and training grants to states, local governments, tribes, and domestic violence victim service providers to implement and operate lethality assessment programs.
- **Native American Child Protection Act (H.R. 1688 and S. 2326):** This bill passed the House in May 2021 and was subsequently introduced in the Senate. The bill reauthorizes through FY2027 certain programs related to the prevention, investigation, treatment, and prosecution of family violence, child abuse, and child neglect involving Indian children and families. It also, among other things, would require National Indian Child Resource and Family Services Centers to "(1) provide advice, technical assistance, and training to urban Indian organizations; (2) develop certain technical assistance materials for Indian tribes, tribal organizations, and urban Indian organizations; and (3) develop model intergovernmental agreements between tribes and states to prevent, investigate, treat, and prosecute incidents of family violence, child abuse, and child neglect involving Indian children and families."[182]
- **The People's Response Act (H.R. 4194):** This bill was introduced in the 117th Congress and would create a division on Community Safety in HHS. This bill includes funds to help tribal communities to hire first responders and address community safety both on and off tribal lands.

[179] H.R. 2740, Congressional Research Service Bill Summary, https://www.congress.gov/bill/117th-congress/house-bill/2740.

[180] S. 292, Congressional Research Service Bill Summary, https://www.congress.gov/bill/117th-congress/senate-bill/292.

[181] VAWA Reauthorization.

[182] H.R. 1688, Congressional Research Service Bill Summary, https://www.congress.gov/bill/117th-congress/house-bill/1688.

- **Tribal Reporting and Accountability to Congress Act (TRAC Act; S. 1892):** Introduced in the 116th Congress, this bill would have amended Section 13 of the Indian Law Enforcement Reform Act (25 U.S.C. §2810) to require an annual report on MMIP from each district's Assistant United States Attorney tribal liaison. The bill did not become law.
- **Bridging Agency Data Gaps and Ensuring Safety for Native Communities Act (BADGES for Native Communities Act; H.R. 4289 and S. 1853)**: Versions of this bill were introduced in both the House and the Senate during the 116th Congress. It was not taken up by either body. These bills would have addressed shortcomings in information sharing as well as the reporting and investigation of MMIP through technical assistance, grant programs, and increased mental health resources to tribal and BIA law enforcement. These bills also sought to increase tribal access to and participation in the NamUs and NCIC.
- **Studying the Missing and Murdered Indian Crisis Act of 2019 (H.R. 2029):** Introduced in the 116th Congress, this bill would have required a report from GAO on law enforcement agencies' responses to MMIP and on recommendations to improve database and notification systems. The bill did not become law.

Issues for Congress

Services for Native American Populations in Urban Areas

As discussed previously, the majority of Native American people live in urban areas while most federal programs to address violence against Native Americans focus on tribal lands.[183] Although federal crime data collection programs are generally insufficient to compare Native American experiences of violent victimization on and off tribal lands, given that most Native Americans live in urban areas it seems likely that many victimizations are also occurring off tribal lands. Although Native Americans living off tribal lands would be eligible for federal victim resources, Congress may consider potential gaps in services to address violent victimizations of Native Americans in urban areas and the possible need for culturally specific services.

VAWA includes several grant programs that specifically serve Native American victims. For example, the Tribal Sexual Assault Services Program (Tribal SASP) provides "intervention, advocacy, accompaniment (e.g. accompanying victims to court, medical facilities, and police departments), support services, and related assistance for adult, youth, and child victims of sexual assault; non-offending family and household members of victims; and those collaterally affected by sexual assault."[184] Only federally recognized tribal governments, tribal organizations, and nonprofit tribal organizations are eligible to apply for these grants, so they may be limited in their ability to serve Native American victims residing in urban areas. For example, current grant funding may not be sufficient for tribal governments to serve victims living on tribal lands and to identify and meet the needs of Native American victims residing outside of tribal lands.

The Grants to Tribal Domestic Violence and Sexual Assault Coalitions Program is a formula grant program to support the development and operation of nonprofit, nongovernmental tribal domestic

[183] UIHI, *U.S. Census Marks Increase in Urban American Indians and Alaska Natives*, http://www.uihi.org/wp-content/uploads/2013/09/Broadcast_Census-Number_FINAL_v2.pdf (hereinafter, "AI/AN Census").

[184] VAWA Measuring Effectiveness Initiative, *Tribal SASP Program*, https://www.vawamei.org/grant-program/tribal-sasp-program/.

violence and sexual assault coalitions.[185] Tribal coalitions provide education, support, and technical assistance to member Indian service providers and tribes to enhance their response to victims of domestic violence, dating violence, sexual assault, and stalking. However, these coalitions may also be limited in their ability to aid victims living in urban areas.[186] Congress may consider amending the authorizations for these grant programs to expand services for Native Americans living off tribal lands. For example, Congress may consider providing funds to help tribal governments deliver services to members who are victimized while living off tribal lands.

Alternatively, Congress may consider leveraging existing programs to improve services for Native American crime victims. For example, VAWA funds three grants for culturally specific services and outreach to underserved populations:

- **Grants to Enhance Culturally Specific Services for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking:** This grant program helps develop and support community-based programs with the primary purpose of providing or enhancing access to culturally specific services for victims of domestic violence, dating violence, sexual assault, and stalking.
- **Grants for Outreach and Services to Underserved Populations:** This program supports nonprofit organizations in the development and implementation of outreach strategies targeted at adult or youth victims of sexual assault, domestic violence, dating violence, or stalking in underserved populations, and victim services for these populations.
- **Sexual Assault Services Culturally Specific Program:** This program funds nonprofit organizations that focus primarily on culturally specific communities to create, maintain, and expand sustainable sexual assault services provided by organizations that are uniquely situated to respond to the needs of sexual assault victims from culturally specific populations.[187]

Congress may consider amending the authorizations for these programs to emphasize services for Native American victims living in urban areas or off tribal lands.[188]

The Office for Victims of Crime's (OVC's) Vision 21 report emphasized the need for American Indian and Alaska Native crime victims to receive targeted, culturally specific support, though Vision 21 primarily conceived of this support being offered on tribal lands and in Alaska Native Villages.[189] OVC funds culturally responsive services for victims of crime; organizations that

[185] As defined in 34 U.S.C. Section 12291(a)(35)), tribal coalitions are "established nonprofit, nongovernmental Indian organization, Alaska Native organization, or a Native Hawaiian organization that— (A)provides education, support, and technical assistance to member Indian service providers in a manner that enables those member providers to establish and maintain culturally appropriate services, including shelter and rape crisis services, designed to assist Indian women and the dependents of those women who are victims of domestic violence, dating violence, sexual assault, and stalking; and (B)is comprised of board and general members that are representative of— (i)the member service providers described in subparagraph (A); and (ii)the tribal communities in which the services are being provided."

[186] However, Native Americans victims may access VAWA programs and other victim services for the broader population.

[187] VAWA Overview.

[188] HHS has programs to address the health of Native American urban populations. See https://www.ihs.gov/urban/urban-indian-organizations/ for more information on Urban Indian Organizations (UIOs) at HHS.

[189] DOJ, OJP, Office for Victims of Crime (OVC), *OVC Builds Capacity To Serve Crime Victims in Indian Country*, https://ovc.ojp.gov/sites/g/files/xyckuh226/files/pubs/TribalVictimsofCrime/intro.html (hereinafter, "OVC in Indian

serve urban Native American populations may be eligible, but the only specific mention of Native Americans is in reference to tribal governments and organizations.[190] There are some OVC funds for collaborative programs to meet the needs of Native American victims in Indian Country; for example, OVC's Children's Justice Act (CJA) and Comprehensive Tribal Victim Assistance Discretionary Grant (CTVA) programs have encouraged partnerships between federal, state, local, and tribal stakeholders.[191] In one case, a partnership between the California CJA program and the Washoe Tribe of Nevada "contributed to a 62.5-percent increase in services provided to child abuse victims during the second phase of the grant program."[192] In another case, collaboration between the Prairie Band Potawatomi Nation CTVA program and law enforcement from several jurisdictions resulted in 115 partnerships to broaden access to victim services.[193]

Native Americans who do not reside on tribal lands can receive federal, state, and local resources that support victims and at-risk populations of all races and ethnicities. Congress may consider programs that encourage partnerships between tribal governments and cities or states where large populations of Native Americans reside to provide culturally specific services or conduct outreach to Native American victims. Congress may also consider programs that provide targeted prevention or victim support services to Native Americans living in urban areas. For example, Congress may consider expanding eligibility criteria, objectives, or funding for existing programs that provide victim services and serve at-risk youth on tribal lands, such as the Victims of Crime Act (VOCA) tribal set-aside grants, to provide culturally specific services to Native Americans residing in urban areas. This would allow Native Americans who live in cities such as New York, Los Angeles, or Phoenix to access targeted programs. In FY2020, DOJ appropriations (P.L. 116-260) included a 5% set-aside in the Crime Victims Fund (CVF) for tribal victim services.[194] Only federally recognized Indian tribes, tribal designees, and tribal consortia consisting of two or more federally recognized Indian tribes are eligible to receive these funds. Grantees may not have the resources or partnerships in place to direct these funds toward services for Native Americans victims living in urban areas.

Tribal Law Enforcement and Criminal Jurisdiction over MMIP

Tribal jurisdiction over criminal offenses related to MMIP is complex. Although tribal governments have jurisdiction over offenses on their lands involving Indian offenders, they are limited in their sentencing authorities. Some have suggested that these sentencing limitations may decrease the likelihood a tribal justice system will pursue a case that falls under the MCA, particularly when the federal government is also pursuing the case.[195] In addition, with the exception of those offenses included in the VAWA special domestic violence criminal jurisdiction, tribes do not have criminal jurisdiction over non-Indian offenders. This may be of particular concern given the high rates of interracial violence associated with crimes against Native Americans. Congress could keep tribal jurisdiction in its present form or it may address or alter tribal jurisdiction in any number of ways. For example, Congress could address this issue by

Country").

[190] DOJ, OJP, OVC, *OVC FY 2021 National Center for Culturally Responsive Victim Services*, https://ovc.ojp.gov/funding/opportunities/o-ovc-2021-32002.

[191] OVC in Indian Country.

[192] OVC in Indian Country.

[193] OVC in Indian Country.

[194] For more information, see CRS Report R42672, *The Crime Victims Fund: Federal Support for Victims of Crime*.

[195] The Rights of Indians and Tribes, p. 136.

expanding tribal jurisdiction over non-Indian offenders to include additional offenses. The House passed a VAWA reauthorization bill in the 117th Congress that would expand tribal jurisdiction over certain nonmembers to include obstruction of justice, sexual violence, sex trafficking, stalking, and assault of a law enforcement or corrections officer.[196] Alternatively, Congress could preserve current limitations on tribal jurisdiction and instead invest greater resources in federal and state programs that address violent crime in Indian Country.

Justice System Resource Shortages and Low Federal and State Prosecution Rates

Federal, or some state criminal justice systems, have jurisdiction over MCA offenses that occur in Indian Country, regardless of the victim's or offender's tribal status. Some data has been used to argue that both states and the federal government may not be adequately resourced to meet this responsibility. In P.L. 280 states, some argue there are often insufficient funds to address crime on Indian lands.[197]

Similar underfunding concerns have been identified at the federal level. A Senate report that accompanied TLOA stated declination statistics (i.e., cases referred to the U.S. Attorney's Office [USAO] that they decline to prosecute) in Indian Country, "likely reflect difficulties caused by the justice system in place"; for example, shortages in law enforcement personnel on tribal lands, training, and equipment.[198] GAO found that the USAO declined to prosecute violent crime cases in Indian Country 52% of the time and nonviolent crime cases were declined 40% of the time.[199] The two most common offenses referred to the USAO by the FBI and BIA were assault and "sexual abuse and related matters." The USAO declined to prosecute 46% of referred assaults cases and 67% of sexual abuse and related matters. Further, jurisdictional confusion can result in the loss of time and resources when a violent victimization occurs on tribal lands.[200]

Past efforts to address low prosecution rates in Indian Country have included efforts to increase USAO staff. Congress may also address this issue by encouraging greater collaboration between federal, state, local, and tribal law enforcement. For example, Congress may consider programs to expand the use of cross-deputization, which can give jurisdictional powers to tribal law enforcement officers equivalent to that of state or federal officers and allow for mutual enforcement of federal, tribal, or state law.[201] Congress may consider creating or expanding grant programs to encourage collaboration between tribal governments and law enforcement agencies in cities with large Native American populations.

Communication and Notification of Tribal Governments

There is also no federal requirement to notify a tribal nation if one of its members is the victim of a crime or killed while outside of tribal lands. This is different from how the United States

[196] VAWA Reauthorization.

[197] The Rights of Indians and Tribes, p. 131; U.S. Government Accountability Office (GAO), *U.S. Department of Justice Declinations of Indian Country Criminal Matters*, GAO-11-167R, December 13, 2010 (hereinafter, "Indian Country Prosecutions").

[198] S.Rept. 111-93, p. 14.

[199] Indian Country Prosecutions.

[200] TLOA Report.

[201] CRS Legal Sidebar LSB10561, *High Court to Review Tribal Police Search and Seizure Case*.; Kevin Morrow, "Bridging the Jurisdictional Void: Cross-Deputization Agreements in Indian Country," *North Dakota Law Review*, vol. 94, no. 65, 2019.

typically handles relations with other sovereign nations; for example, the United States has mutual legal assistance treaties with many foreign nations.[202] Also, if a foreign person were to be killed in the United States, it would not be unusual for the deceased's nation representatives to be notified and cooperation to be extended in providing documentation and resources to the victim's family.[203] Congress may consider action to encourage or require notification of tribes when their members are victims of crimes outside of Indian Country.

Competitive Grant Funding for Tribal Justice Systems

Congress currently funds several grants that address MMIP through competitive or short-term grant programs like the CTAS. Some tribes have criticized competitive grant programs that require tribal communities to compete against each other for finite resources and they also argue that this may favor larger, more resourced tribes that can employ grant writers.[204] Tribes have also expressed concern about the viability of funding public safety initiatives through short-term grants.[205] Congress may wish to preserve current grant structures or may shift tribal grant funding to different models, such as formula grants.

Tribal Law Enforcement Funding Shortages

Congress may also provide additional funding for tribal law enforcement. On average, law enforcement agencies have 3.5 officers per 1,000 residents nationwide; in comparison, tribal agencies have an average of 1.9 officers per 1,000 residents.[206] In 2020, the BIA submitted a report to Congress analyzing estimated needs for law enforcement in Indian Country for 2018 and found that $1.3 billion was needed for tribal law enforcement, $240.6 million for existing detention/corrections programs, and $1.2 billion for tribal courts.[207] DOI's FY2022 budget request includes a proposed $38 million increase for Criminal Investigations and Police Services.[208] Of the requested increase, more than $15 million would be used to hire additional officers to improve direct service and law enforcement programs in Indian Country.[209] DOI's FY2022 budget request includes a $5 million increase in funding for Law Enforcement Special Initiatives to support the MMU.[210]

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[202] For more information, see CRS Report 94-166, *Extraterritorial Application of American Criminal Law*.

[203] UIHI Report.

[204] Testimony of the Honorable Fawn Sharp, President of the National Congress of American Indians, in U.S. Congress, Senate Committee on Indian Affairs, *A Call to Action: Native Communities' Priorities in Focus for the 117th Congress*, hearings, 117th Cong., 1st sess., February 24, 2021, S.Hrg. 117-8 (Washington, DC: GPO, 2021).

[205] Testimony Julia Kitka, President of the Alaska Federation of Natives, in U.S. Congress, Senate Committee on Indian Affairs, *A Call to Action: Native Communities' Priorities in Focus for the 117th Congress*, hearings, 117th Cong., 1st sess., February 24, 2021, S.Hrg. 117-8 (Washington, DC: GPO, 2021).

[206] U.S. Commission on Civil Rights, "Broken Promises: Continuing Federal Funding Shortfall for Native Americans," December 2018, p. 48, https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf. For more information on BIA law enforcement, see CRS In Focus IF11709, *Department of the Interior (DOI) Law Enforcement Programs*.

[207] DOI, BIA, *Report to Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country, 2018*, p. 5, https://www.bia.gov/sites/bia.gov/files/assets/bia/ojs/ojs/pdf/2018_TLOA_Report_Final.pdf.

[208] BIA Budget Justification, p. IA-PSJ-1.

[209] BIA Budget Justification, p. 44. Other portions of the requested funds would address shortages in police and investigative staff arising from the *McGirt v. Oklahoma* decision and provide body-worn cameras to law enforcement in Indian Country.

[210] BIA Budget Justification, p. IA-PSJ-3.

Data and Crime Reporting Gaps

Tribal communities' limited access to and participation in federal crime data collection efforts have been cited as significant limitations to understanding and addressing MMIP. As discussed above, the federal government has recently passed legislation to try to enhance data collection about crime on tribal lands. DOJ has also made efforts to improve tribal access to federal crime databases. For example, the FBI's CJIS Division made efforts to increase tribal access to federal crime data resources and databases beginning in 2010. In 2015, CJIS launched an outreach program called the Tribal Engagement Program (TEP) with this same focus.[211]

Congress may consider further efforts to expand tribal access to federal data resources, both to share crime data and to access data that may aid law enforcement on tribal lands. Congress might also consider programs to expand the reporting of crimes involving Native Americans occurring outside of tribal lands. For example, Congress may consider requiring agencies that accept federal criminal or juvenile justice grant funding to report Native American crime victims and offenders by nation and tribal affiliation,[212] and notify tribes when police interact with members outside reservations.[213]

Another contributing factor to data gaps is limited access to broadband internet in Indian Country.[214] The federal government has launched initiatives in the past to expand tribal internet access. The BIA administers the National Tribal Broadband Grant program to bring Native American communities greater high-speed internet access.[215] In June 2021, the Department of Commerce announced that nearly $1 billion would be made available to expand internet access on tribal lands via National Telecommunications and Information Administration (NTIA) grants.[216] Congress may consider continuing or changing efforts to expand internet access.

In 2018, the NCAI adopted a resolution in support of indigenous data sovereignty.[217] Indigenous data sovereignty is defined as "the right of a nation to govern the collection, ownership, and application of its own data. It derives from tribes' inherent right to govern their peoples, lands, and resources."[218] Congress may consider adopting measures to support Native American ownership or management of data collections about their members.[219] Congress may also consider directing agencies to include Native American community representatives on advisory boards such as the NCIC's Advisory Policy Board. Alternatively, Congress could preserve data collection and ownership practices as they are currently structured.

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[211] DOJ TEP.

[212] UIHI Report, p. 22. Further considerations are how law enforcement agencies determine tribal membership and how to collect data on Native Americans that are not members of federally recognized tribes.

[213] UIHI Report, p. 22.

[214] DOJ TEP.

[215] DOI, BIA, "Expanding Broadband Access," https://www.bia.gov/service/infrastructure/expanding-broadband-access.

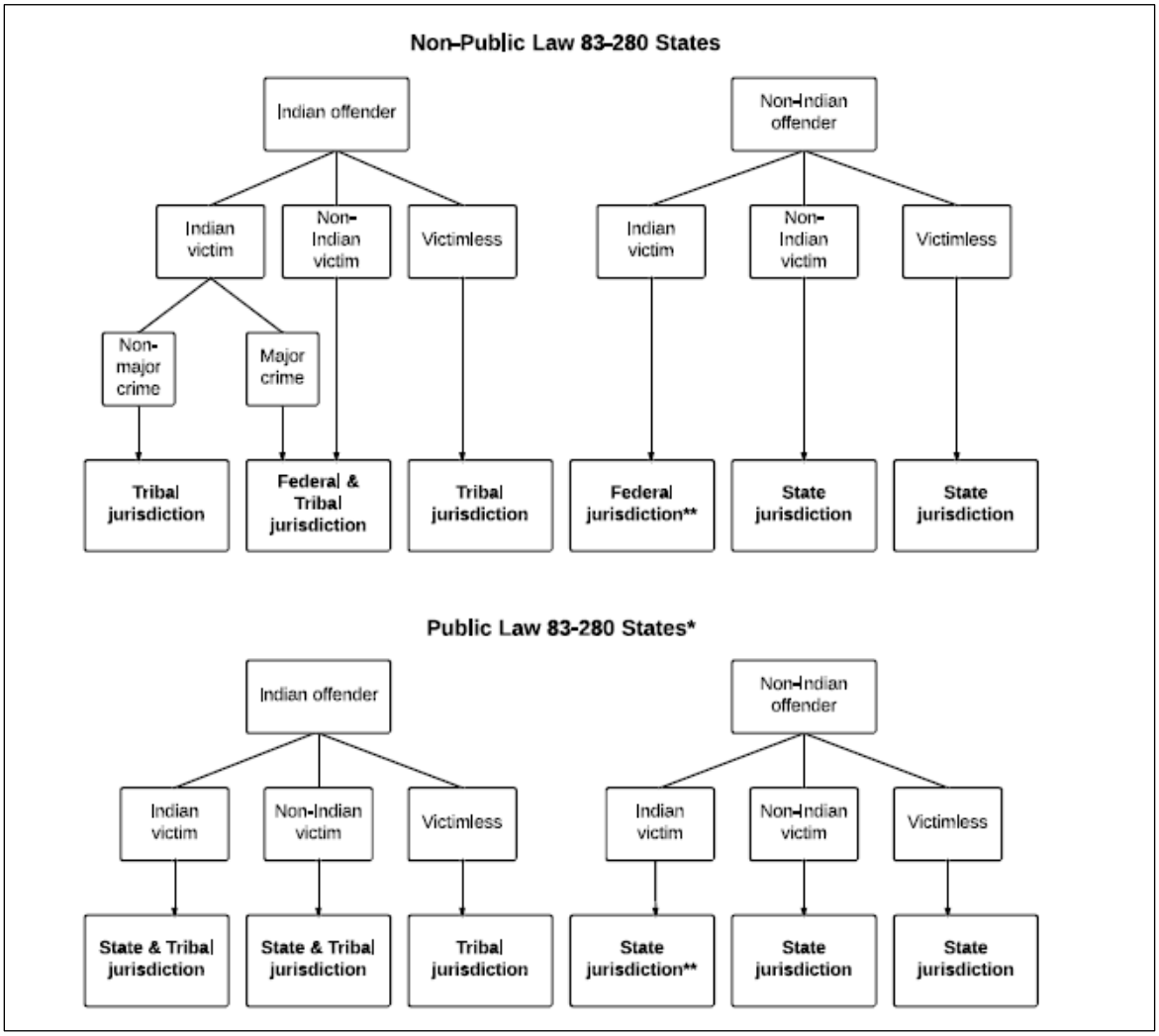
[216] Department of Commerce, National Telecommunications and Information Administration, "Department of Commerce's NTIA Announces Nearly $1 Billion in Funding to Expand Broadband on Tribal Land," press release, June 3, 2021, https://www.ntia.doc.gov/press-release/2021/department-commerce-s-ntia-announces-nearly-1-billion-funding-expand-broadband.

[217] National Congress of American Indians, *Support of US Indigenous Data Sovereignty and Inclusion of Tribes in the Development of Tribal Data*, https://www.ncai.org/resources/resolutions/support-of-us-indigenous-data-sovereignty-and-inclusion-of-tribes-in-the-development-of-tribal-data.

[218] United States Indigenous Data Sovereignty Network, https://usindigenousdata.org/.

[219] United States Indigenous Data Sovereignty Network, *Policy Brief Indigenous Data Sovereignty in the United States*, https://usindigenousdata.org/s/policy_brief_indigenous_data_sovereignty_in_the_united_states.pdf.

Appendix. Jurisdictional Responsibility Diagram



Source: Indian Law and Order Commission, A Roadmap for Making Native America Safer: A Report to the President and Congress of the United States, Chapter 1 – Jurisdiction: Bringing Clarity Out of Chaos, May 2015, p. 7.

Notes: "Non-Public Law 83-280" and "Public Law 83-280 States" headings refer to whether the federal government has transferred responsibility for major crimes to the state in which the alleged offense occurred. For more information on Public Law 83-280, see page 19 of this report.

*Under the Tribal Law and Order Act of 2010 (P.L. 111-211), tribes can opt for added concurrent federal jurisdiction, with federal consent. Neither this tribe-by-tribe issue nor the various configurations of "Optional 280" status are shown in this chart.

**Under the Violence Against Women Act Reauthorization of 2013 (VAWA Amendments), after 2015 tribes may exercise special domestic violence jurisdiction with the federal government and with states for certain domestic violence crimes.

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