

U.S. House of Representatives
Committee on Natural Resources
Subcommittee for Indigenous Peoples of the United States
“Unmasking the Hidden Crisis of Murdered and Missing Indigenous Women: Exploring
Solutions to End the Cycle of Violence”
Thursday, March 14, 2019
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Written Testimony of Professor Sarah Deer
University of Kansas

The Honorable Chairman Raúl M. Grijalva, Ranking Member Rob Bishop, Chairman Ruben Gallego, Ranking Member Paul Cook, and Members of the Committee,

Hensci! Mvccv nettv ce homv hueret cem kerkuecetv vm pohateckat, mvto cekicis. Svcvfvckes.¹

I would like to express my deep appreciation and thanks for inviting me to testify before this Subcommittee on Missing and Murdered Indigenous Women (MMIW). I am a citizen of the Muscogee (Creek) Nation and currently hold the position of Professor at the University of Kansas and serve as the Chief Justice of the Prairie Island Indian Community Court of Appeals. Today I am testifying in my personal capacity.

My testimony today will focus on our knowledge in terms of the high numbers of MMIW based on open source reporting (media reports and family accounts). I will offer some theories about the causes of this high rate of MMIW. Finally, I will suggest how this committee, and Congress generally, can improve law enforcement’s response to this crisis.

STATISTICS: WHAT WE KNOW

First, it is critical to understand that this crisis has deep roots in the historical mistreatment of Native people throughout the history of the United States. Native women and girls have been disappearing since 1492, when Europeans kidnapped Native people for shipment back to Europe. Targeted killing of Native women is also not a recent phenomenon. This history of oppression makes it difficult to achieve buy-in from marginalized communities who have been victims of oppression at the hands of the federal government for centuries.

When crafting solutions, we have to be ready to accept that there will be no “quick fix” to this problem. This crisis has been several hundred years in the making and will require sustained, multi-year, multi-faceted efforts to understand and address the problem.

Currently, there is no formal government-funded national database that carefully and deliberately tracks cases of MMIW. Fortunately, a Native-owned and -operated non-profit organization known as the

¹ Translation from the Mvskoke language: “Hello! I thank you for inviting me to stand before you to testify today. I am pleased with this invitation.”

Sovereign Bodies Institute (SBI) has been working tirelessly since 2015 to gather as much data as possible using open source reporting and input from family members of MMIW. I share this data with the permission of the Sovereign Bodies Institute (SBI):

Because this database has largely been built by hand, the data likely only represents a fraction of the true numbers.

The SBI database currently tracks the following types of MMIW cases:

- Missing
- Murdered (both solved and unsolved)
- Suspicious deaths
- Deaths in custody (jail/prison/hospital)
- Jane Does (unidentified human remains thought to be Native women)

Currently, the database has over 1870 MMIW names in the United States. Most of the database is recent; approximately 75% of the names of MMIW are cases from the year 2000 or later.

- Demographics: The average age is 26, but over one-third are 18 years old and under.
- Over 436 different tribal nations are represented in the database
- Categories: Within the database, approximately 50% are murder cases, 40% are unsolved missing cases, and the status of 10% are unknown.
- Foster Care: The database tracks Native girls who go missing or are killed while in foster care. Of those girls, over 75% of them were experiencing abuse in their foster home
- Mothers as Victims: The database reveals that over 85% of the MMIW are mothers. This means countless numbers of youth are growing up without a mother.
- Vulnerability: 29 of the 1870 entries of MMIW have another MMIW in their family.
- Police Violence: There are nearly 40 cases of deaths caused by police brutality or deaths in custody in the database.

REASONS FOR HIGH RATES OF MMIW

While there is no single cause (no primary risk factor), that one can point to as the reason for high rates of MMIW, experts suggest several explanations for the disparity.

These explanations include:

- jurisdictional barriers
- indifference from government officials
- the lack of cross-jurisdictional communication and planning
- failure to adequately fund tribal justice systems, and
- the problem of sex traffickers and other predators targeting Native women specifically.

A. Jurisdiction

Native women and girls are vulnerable to violent crime because of the complicated jurisdictional scheme that applies to Indian country. Whether a Native person is taken against their will from the reservation, is being held against her will on the reservation or is the victim of a homicide on the reservation, tribal officials will usually be the first responders. However, tribal criminal jurisdiction is significantly and unacceptably curtailed, particularly when the offender or suspected offender is non-Indian.²

A variety of legal jurisdictional questions instantly arise when a tribal member goes missing. Did they live on the reservation? Did they disappear from the reservation? Did they disappear off the reservation? What agency has jurisdiction? Does the tribe have concurrent jurisdiction? One common scenario, for example, is that a woman fails to show up for an important event, like a family reunion or a funeral. Family members report her missing to the police, but there is no way to know for sure if she went missing from the reservation or from a nearby city or town.

In addition, when adult individuals disappear, there is often a delayed response from law enforcement because, of course, adults have the legal right to go where they wish. Some jurisdictions require that 24 hours or 72 hours pass before a missing person investigation can be initiated. We may need to revisit that assumption, particularly where Native women are involved.

There is less certainty that a crime has even been committed and the law enforcement response is muted in many jurisdictions, but in Indian country this response often non-existent.

Due to jurisdictional questions, it may be difficult for the family to determine if the tribe, the state (especially in a Public Law 280 state) or the federal government has primary jurisdiction for a missing person.

B. Indifference from officials

Unfortunately, many families of MMIW have reported receiving poor treatment from some law enforcement agencies who fail to prioritize the reports of missing Native women.

The United States Senate Committee on Indian Affairs' oversight hearing on "Missing and Murdered: Confronting the Silent Crisis in Indian Country", on December 12, 2018 received testimony from a distinguished panel.³

The Oversight Hearing heard from Ms. Kimberly Loring-Heavy Runner. When Ashley Loring-Heavy Runner went missing on the Blackfeet reservation, her family reported the crime only to find that there wasn't much interest in the case. Her sister, Kimberly said, "No one took it seriously... They just said:

² Tribal nations lack criminal jurisdiction over non-Indians in most cases pursuant to *Oliphant v Suquamish Indian Tribe*, 435 U.S. 191 (1978).

³ Available at: <https://www.indian.senate.gov/hearing/oversight-hearing-missing-and-murdered-confronting-silent-crisis-indian-country>

‘She’s of age, she can leave when she wants to.’ When we talk to other families whose girls went missing, they say that’s what they got from law enforcement, too. It’s not a proper response.”⁴

Another example is a Crow woman who went missing in Montana in 2016. When her mother reported her missing to the police, officers initially said that there was little they could do because the missing woman was an adult. Her mother said, “It seemed like they weren’t helping at all because she jumped into the wrong crowd.”⁵ While the FBI is now investigating the disappearance, there are worries that valuable time was lost because of the initial failure to take action.

C. Failure to adequately fund tribal justice systems

It is not new news to this Committee that tribal justice systems are chronically underfunded, making it difficult to have necessary staffing, training, and resources to adequately address high crime rates on Indian reservations. Tribal nations need to be funded at sufficient levels so that they can respond immediately to a report of a missing woman or girl.

In December 2018, the United States Commission on Civil Rights (USCCR) released a report entitled *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*.⁶ The Commission concludes that, [f]ederal funding for Native American programs across the government remains grossly inadequate to meet the most basic needs the federal government is obligated to provide.”

Despite numerous reports, commissions, and hearings about the failures to fund tribal nations properly since the initial USCCR report was released in 2003, there has been little progress toward change.

Additional funding is needed throughout the justice system, but the number of police officers alone indicates the scope of the funding problem uncovered by the USCCR. “[Bureau of Indian Affairs] analysis found that an additional \$337 million in funding was needed in 2016 to bring Indian Country law enforcement staffing levels up to par with those of county government law enforcement nationwide (currently Indian Country has 1.91 police officers per 1,000 residents).”⁷

According to the report, “[The Government Accountability Office] found that because overall funding has not increased and is therefore scarce, some tribes might need to choose between meeting the [Tribal Law and Order Act] requirements [to exercise enhanced sentencing authority] and shortchanging other programs, or completely forgoing their new felony sentencing powers. The result is relinquishing authority to the federal government, while knowing that the federal criminal justice system is inefficient for Native Americans and, at times, even considered illegitimate by tribal communities.”⁸

⁴ Kate Hodal, *A Young Woman Vanishes: The Police Can’t Help. Her Desperate Family Won’t Give Up*, THE GUARDIAN, (February 25, 2019), <https://www.theguardian.com/us-news/2019/feb/25/a-young-woman-vanishes-the-police-cant-help-her-desperate-family-wont-give-up>

⁵ Sharon Cohen & Mary Hudetz, *Haunting Stories Beyond Missing Posters of Native Women*, ASSOCIATED PRESS, September 4, 2008.

⁶ U.S. Commission on Civil Rights, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans* (2018), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

⁷ *Id.* at 48 (2018).

⁸ *Id.* at 43 (2018) (emphasis added) (footnotes omitted).

The report also cites to a 2011 U.S. Government Accountability Office Report on Indian Country Criminal Justice⁹ concluding that the Departments of the Interior and Justice should strengthen coordination to support tribal courts. The GAO report documents the challenges tribal courts face given their level of support.

Tribes subject to Public Law 280 are particularly struggling with the development of robust criminal justice systems because of chronic underfunding. In September 2015, the Bureau of Indian Affairs (BIA) provided a report to Congress entitled *The Budgetary Cost Estimates of Tribal Courts in Public Law 83-280 States*.¹⁰ The Bureau of Indian Affairs stated that while it was only funding 6.14 percent of the estimated tribal court budget needs for non-P.L. 280 tribes, it was only funding 1.22 percent of the budgetary needs (\$4.2 million) for P.L. 280 tribal courts. The BIA called for an additional \$16.9 million for P.L. 280-tribal courts. They concede this amount is neither "robust or perhaps even adequate", but is at least in parity to the dismal 6.14 percent non-P.L. 280-tribes receive.¹¹

D. Predatory targeting of Native women and girls

While most women victims of homicide in the United States are killed by someone they know, there is sufficient evidence that there are predators who target Native women and girls for trafficking, and sufficient evidence that some serial killers have targeted Native women and girls. There is also some indication that certain types of predators are aware the Native women and girls are particularly vulnerable because of the complicated jurisdictional questions that arise when they go missing.

In 2010, law enforcement officers in Alaska determined that Alaska Native girls and women who travel to Anchorage are often targeted by sex-trafficking rings, in part because of their marketability in the sex trade.¹² FBI agent Jolene Goeden explained, "Native girls are targeted in part because they're considered "versatile," meaning they can be advertised on the Internet as Hawaiian or Asian."¹³ An Anchorage-based sex trafficker named Troy Williams was finally convicted after years of targeting Alaska Native teenage girls who were struggling with rough childhoods, poverty, and addiction. He trapped his victims in the sex trade through brute force, including sadistic beatings, icy baths, and sleep deprivation.¹⁴

In Canada, an investigation by reporters for the *Globe and Mail* newspaper concluded that Indigenous women in Canada are 7 times more likely than a non-Indigenous woman to die at the hands of a serial

⁹ U.S. Government Accountability Office, *Indian Country Criminal Justice: Departments of the Interior and Justice Should Strengthen Coordination to Support Tribal Courts*, (Feb. 2011), <https://www.gao.gov/products/GAO-11-252>.

¹⁰ Bureau of Indian Affairs report

¹¹ Bureau of Indian Affairs September 2015 report

¹² Alex DeMarban, *FBI, APD: Sex-Trafficking Rings Target Rural Girls New to Anchorage*, ANCHORAGE DAILY NEWS (July 7, 2016), <https://www.adn.com/alaska-news/article/fbi-apd-sex-trafficking-rings-target-rural-girls-new-anchorage/2016/07/07/>

¹³ DeMarban, id.

¹⁴ Julia O'Malley, *Accused Sex Trafficker Targeted and Terrorized Alaska Native Teens, Prosecutor Says*, ANCHORAGE DAILY NEWS (February 16, 2017), <https://www.adn.com/alaska-news/crime-courts/2017/02/15/accused-sex-trafficker-targeted-then-terrorized-alaska-native-teens-prosecutor-says/>

killer.¹⁵ The President of the Native Women’s Association of Canada said that “vulnerable indigenous women are being “targeted” in urban centres by killers confident they will get away with it.”¹⁶

Because tribal nations lack criminal jurisdiction over non-Indians, legal-savvy predators are attracted to Indian lands because there is less likelihood of being caught and prosecuted. This has allowed some predators to wreak havoc for generations. Earlier this year, a pedophile named Stanley Patrick Weber was finally charged and convicted of sexually abusing children on Indian reservations for over two decades. Weber was a pediatrician and worked for the Indian Health Service right out of residency in the 1980s. Despite numerous concerns about his behavior, he was transferred from reservation to reservation rather than removing him from practice and was only stopped last year.

There is some evidence to support the contention that drug traffickers and sexual predators are sharing information on lax enforcement of laws with respect to Indian country and native people. The 2011 GAO report is alarming.

"[A]n official from a South Dakota tribe that we visited told us that the tribe has experienced problems with MS-13 and Mexican Mafia gangs who commit illegal activities such as distribution or sale of illegal drugs on the reservation because, as the official explained, they presume that federal prosecutors may be more inclined to focus their resources on higher-volume drug cases...

[A] Mexican drug trafficker devised a business plan to sell methamphetamine at several Indian reservations in Nebraska, Wyoming, and South Dakota that first began with developing relationships with American Indian women on these reservations...

According to a special agent involved in the case, the drug trafficker established drug trafficking operations to exploit jurisdictional loopholes believing that he could operate with impunity."¹⁷

RECOMMENDATIONS

There are currently several legislative proposals in Congress to address this crisis. I know that my fellow witnesses will provide more detail and insight into what these bills provide and how they can be improved. For my part, I am providing a list of more general recommendations that are centered on empowering the families of the MMIW so that these missing and murdered Native women can receive the justice they deserve. In general, I recommend that all Congressional efforts take direction from Native people themselves. While federal task forces and federal reports are an important part of accountability, perhaps the most important benchmark for accountability for this issue is to ensure that families and survivors are treated as the experts they are.

1. Make accurate national data collection on the MMIW crisis a priority.

¹⁵ Kathryn Blaze Baum & Matthew McClearn, *Prime Target: How Serial Killers Prey on Indigenous Women*, THE GLOBE AND MAIL (November 22, 2015), <https://www.theglobeandmail.com/news/national/prime-targets-serial-killers-and-indigenous-women/article27435090/>

¹⁶ Baum & McClearn, id.

¹⁷ U.S. Government Accountability Office, *Indian Country Criminal Justice: Departments of the Interior and Justice Should Strengthen Coordination to Support Tribal Courts*, 15 (Feb. 2011), <https://www.gao.gov/products/GAO-11-252>.

2. Restore criminal jurisdiction so that tribal governments can prosecute non-Indians who murder, kidnap, or traffic in Native people. Currently these crimes *cannot* be prosecuted by the tribal nation if committed by a non-Indian. The Supreme Court's *Oliphant* decision requires a legislative fix. Tribal law enforcement and prosecutors should not be prohibited from protecting the people they serve.
3. Provide funding to tribally-lead local and regional efforts to address the MMIW crisis through the Gathering of Native Americans (GONA) curriculum. The GONA curriculum is already endorsed by the Department of Health and Human Services.¹⁸ The GONA model is an indigenous-centric model that encourages and solicits tribal leadership to develop solutions to difficult problems.
4. Improve the efficacy of the federal NamUs (National Missing and Unidentified Persons System) by encouraging better response times for entering data.
5. Develop at least two dedicated funding streams – one for tribal nations who wish to develop a plan for addressing MMIW within their jurisdiction and a second dedicated funding stream for non-profit organizations that intend to study and support MMIW, particularly non-profits with survivors and family members on the board of directors.
6. Any new MMIW funding for federal agencies must require the development of protocol guidelines for responding to MMIW. Federal agencies should only receive funding for the development of these guidelines if they have a plan for meaningful consultation with tribal leaders and families of MMIW.
7. Require action by all US Attorneys to develop protocols and collaborative efforts with tribal nations for MMIW issues. This should apply even include US Attorneys without tribal lands in their districts, because MMIW cases often arise off reservation, especially in cities. Tribal members travel just as widely as other Americans, but they are not always well served by local police departments far from their ancestral homelands.
8. Require federal law enforcement agencies, including the FBI, to start accurately logging race/tribal affiliation in their database of missing persons.
9. Require federal law enforcement agencies to share information about MMIW with tribal nations. On the basis of comity and respect, if a Native person goes missing outside of tribal jurisdiction, then tribal nations (as sovereigns), are entitled to know if their citizens are missing. This is also an important investigative step in learning more about MMIW.
10. Require federal law enforcement agencies to track the number of MMIW reported in their jurisdiction to be published in the required annual Tribal Law and Order Act report.

CONCLUSION

Thank you for allowing to testify today. I am hopeful that new attention on a very old problem will finally begin to stem the crisis of MMIW. As a nation, I believe we are better than this. Please support the families of MMIW to find their loved ones and bring them home.

¹⁸ Substance Abuse and Mental Health Services Administration, *Gathering of Native Americans Fact Sheet*, (2016)