

# SELECTIVE JUSTICE: A CRISIS OF MISSING AND MURDERED ALASKA NATIVE WOMEN

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## ABSTRACT

*Across the country, Indigenous women are murdered more than any other population and go missing at disproportionate rates. This crisis of missing and murdered Indigenous women is amplified in Alaska, where the vast landscape, a confusing jurisdictional scheme, and a history of systemic racism all create significant barriers to justice for Alaska Native women. This Note examines the roots of the crisis and calls for a holistic response that acknowledges the role of colonialism, Indigenous genocide, and governmental failures. While this Note focuses on the epidemic of violence against Alaska Native women in particular, it seeks to provide solutions that will increase the visibility and protection of Indigenous women throughout North America.*

*"If a person is murdered in the village, you'll be lucky if someone comes in three, four days to work the murder site and gather what needs to be gathered so you can figure out a case later . . . but if you shoot a moose out of season, you're going to get two brownshirts there that day."*

*Patricia Alexander, Sitka, Alaska*

## I. INTRODUCTION

Mackenzie Howard's body lay in the back of a church for eleven hours after Kake villagers called Alaska State Troopers.<sup>1</sup> The thirteen-

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1. Sari Horwitz, *In Rural Villages, Little Protection for Alaska Natives*, WASH. POST (Aug. 2, 2014), <https://www.washingtonpost.com/sf/national/2014/08/02/in-rural-villages-%E2%80%8A-little-protection%E2%80%8A-for-alaska->

year-old was beaten to death and left unclothed to be found by the pastor's wife.<sup>2</sup> Her community waited for investigators to travel 114 miles from Juneau to preserve evidence and launch an investigation.<sup>3</sup> Four years later, the community would once again wait for investigators to make the trek to Kake—a village with a population of less than 500<sup>4</sup> and accessible only by plane or boat—to respond to the death of another young woman.<sup>5</sup> Jade Williams was nineteen when she was murdered in her home in August 2017.<sup>6</sup> The two brutal murders rocked the Indigenous village.

While the murders left a community grieving and worried about its safety,<sup>7</sup> they also illustrate an epidemic in Alaska and in Native communities across North America. Every year, a disproportionately high number of American Indian and Alaska Native women go missing or are murdered.<sup>8</sup> The phrase “missing and murdered Indigenous women and girls,” used frequently enough to earn the social media shorthand #MMIW or #MMIWG, describes generally the crisis of racial and gendered violence against Native women in North America, spanning the United States and Canada.<sup>9</sup> The actual number of missing and murdered Indigenous women and girls remains unknown and likely far exceeds current estimates due to missing or inaccurate data.<sup>10</sup> What is known is that Indigenous women are killed at a rate ten times the national average.<sup>11</sup> Further, the National Crime Information Center Database recorded over 5,600 missing Native American women in 2017.<sup>12</sup>

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natives/?utm\_term=.c4baa3cdc0ab.

2. *Id.*

3. *Id.*

4. Brooke Stephenson, *Indigenous Communities Seek More Support to Keep Women, Children Safe*, PULITZER CTR. (Mar. 19, 2019), <https://pulitzercenter.org/reporting/indigenous-communities-keep-more-support-keep-women-children-safe>.

5. Jamie Bartosch, *Why Are So Many Indigenous Women in Alaska Coming Up Missing and Murdered?*, A&E NETWORKS (Feb. 26, 2019), <https://www.aetv.com/real-crime/missing-murdered-indigenous-women-native-alaska-other-states>.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*; Tailyr Irvine, *In the Face of #MMIWG, Indigenous Women Fight Back*, HIGH COUNTRY NEWS (Oct. 26, 2020), <https://www.hcn.org/issues/52.11/photos-in-the-face-of-mmiwg-indigenous-women-fight-back>; see also Stephenson, *supra* note 4.

10. Bartosch, *supra* note 5.

11. Christopher Vondracek, *Federal Task Force Aims to Help Solve Epidemic of Murdered, Missing Indigenous Women*, WASH. TIMES (Feb. 12, 2020), <https://www.washingtontimes.com/news/2020/feb/12/operation-lady-justice-aims-to-help-solve-epidemic/>.

12. Allison Winter, *Native American Women Are Missing and Murdered. Will the*

In Alaska, the circumstances are especially dire. In 2018, a groundbreaking study of missing and murdered Indigenous women and girls conducted by the Urban Indian Health Institute found that Alaska had the fourth-highest number of missing and murdered women in the country, with fifty-two reported cases.<sup>13</sup> Alaska ranked first in the country for the number of women murdered by men in 2017, and more than forty percent of those victims were Alaska Native women,<sup>14</sup> doubling their representation in the state population overall.<sup>15</sup> This Note places a spotlight on deaths and disappearances, but it is important to understand that violence against Native women occurs on a continuum from verbal abuse to murder.<sup>16</sup> Alaska Native communities have the highest rate of domestic abuse in the country, and rape occurs at three times the national average.<sup>17</sup>

Both the enormous size of the state and the number of remote communities cut off from law enforcement exacerbate these trends.<sup>18</sup> Alaska is by far the largest state in the country, with a territory larger than the size of the three largest continental states combined.<sup>19</sup> Of the nation's 566 federally recognized tribes, 229 are in Alaska.<sup>20</sup> Many tribal communities, like Kake, can only be accessed by boat or airplane and have little, if any, local law enforcement.<sup>21</sup> Instead, these communities rely on Alaska State Troopers who may be located hundreds of miles away and whose expedition may be further impeded by severe weather.<sup>22</sup> Even outside of villages, Alaska's urban areas also experience the epidemic of violence against Indigenous women. In fact, Anchorage, the state's largest

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*Federal Government Act?*, COLO. INDEP. (Feb. 18, 2020), <https://www.coloradoindependent.com/2020/02/18/missing-murdered-native-american-women-congress>.

13. URBAN INDIAN HEALTH INST., MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS REPORT 10 (2018), <http://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf> [hereinafter MISSING AND MURDERED REPORT]. It is worth noting that, as stated above, the number is likely higher than fifty-two due to missing data and inaccuracies.

14. VIOLENCE POLICY CTR., WHEN MEN MURDER WOMEN: AN ANALYSIS OF 2017 HOMICIDE DATA 11 (2019), <http://vpc.org/studies/wmmw2019.pdf>.

15. Vondracek, *supra* note 11.

16. *Sexual Assault*, VAWNET, <https://vawnet.org/sc/gender-based-violence-and-intersecting-challenges-impacting-native-american-alaskan-village-1> (last visited Feb. 23, 2021).

17. Horwitz, *supra* note 1.

18. *Id.*

19. Katherine Schulz Richard, *U.S. States Ranked by Area*, THOUGHTCO. (Oct. 6, 2019), <https://www.thoughtco.com/us-states-by-area-1435125>.

20. Horwitz, *supra* note 1.

21. *Id.*

22. *Id.*

city, had the third highest number of missing and murdered cases of cities across the country in the Urban Indian Health Institute's study.<sup>23</sup>

The deaths and disappearances of Indigenous women in America, as well as the disproportionate amount of violence against them, are exacerbated by a confusing jurisdictional scheme that leads to dropped charges, failed prosecutions, and confusion over who has the authority to bring charges against perpetrators on tribal lands.<sup>24</sup> Additionally, the absence of accurate and complete data means that there is not a clear picture of the crisis, who is affected, or how to address it. There is not yet a designated government database for these cases, and the Department of Justice logged only 116 of the 5,712 reported cases in 2016.<sup>25</sup> Given these compounding factors, it is not surprising that evidence demonstrates the links between this epidemic and this country's history of forced assimilation and mistreatment of Native Americans, as well as continued systemic bias and racism.<sup>26</sup>

Indeed, Alaska Natives argue that another barrier to justice is the low priority placed on the protection of Alaskan tribes.<sup>27</sup> Describing this barrier, a retired magistrate judge in Kake said, "[T]he police sometimes take days or weeks to arrive. However, if you shoot a moose outside of moose season, a state trooper will knock on your door within [two] hours and break it down if you do not answer."<sup>28</sup> He called this "selective justice."<sup>29</sup> The families of the victims in Kake have been among the lucky few to see justice since the initial reporting of their crimes. In January 2020, Isaac Friday was arraigned for the 2017 murder of Jade Williams.<sup>30</sup>

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23. MISSING AND MURDERED REPORT, *supra* note 13, at 10.

24. Sierra Crane-Murdoch, *On Indian Land, Criminals Can Get Away with Almost Anything*, ATLANTIC (Feb. 22, 2013), <https://www.theatlantic.com/national/archive/2013/02/on-indian-land-criminals-can-get-away-with-almost-anything/273391> ("The result has been a jurisdictional tangle that often makes prosecuting crimes committed in Indian Country prohibitively difficult.").

25. MISSING AND MURDERED REPORT, *supra* note 13, at 2.

26. See, e.g., Sophia Myszkowski, *On the Trail of Missing American Indian Women*, ATLANTIC (Oct. 10, 2018), <https://www.theatlantic.com/health/archive/2018/10/trail-missing-american-indian-women/571657> ("We can point to an entire system of violence . . . . If we think way back to the roots of colonialism in this country . . . when the federal government initiated assimilation campaigns and a takeover of Indian land, Native women were targeted.") (second omission in original).

27. *Id.*

28. U.S. DEP'T OF JUSTICE, OFFICE ON VIOLENCE AGAINST WOMEN, 2017 TRIBAL CONSULTATION REPORT 45 (2017), <http://files.constantcontact.com/5212f69f401/54330ca7-eff9-4c9d-b5ec-bdb60c8964f8.pdf?ver=1520348013000> [hereinafter TRIBAL CONSULTATION].

29. *Id.*

30. Joe Viechnicki, *Former Kake Man, Back in Alaska, Arraigned on Murder Charge*, KTOO (Jan. 9, 2020), <https://www.ktoo.org/2020/01/09/former-kake->

Mackenzie's case was also solved, although her family expressed frustration with the post-arrest process.<sup>31</sup> Mackenzie's mother said the court proceedings "seemed to take forever."<sup>32</sup> She added that a friend in state government who helped her look into the case said, "[I]f Mackenzie were a white girl it would've been taken care of already."<sup>33</sup> Mackenzie's killer spent only three years in jail, and he now lives in Anchorage.<sup>34</sup> Even with the resolution of their cases, the small village of Kake and the families of two murdered girls will remain forever changed.

As the crisis continues, the epidemic of violence against Indigenous women and girls has begun to receive media attention and political traction due to the voices of an expanding activist movement.<sup>35</sup> In 2020, Congress passed landmark legislation to improve retention of data and increase coordination between state and federal governments.<sup>36</sup> A proposed reauthorization of the Violence Against Women Act would expand the ability of tribes to prosecute non-Natives for crimes on tribal lands.<sup>37</sup> In November 2019, President Donald Trump authorized a task force nicknamed "Operation Lady Justice,"<sup>38</sup> to address new and unsolved cases of missing and murdered women in Indian Country and Alaska Native villages.<sup>39</sup> Operation Lady Justice will present a final report in November 2021.<sup>40</sup> Finally, in Alaska, U.S. Attorney General William

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man-back-in-alaska-arraigned-on-murder-charge.

31. Stephenson, *supra* note 4.

32. *Id.*

33. *Id.*

34. *Id.*

35. See, e.g., Sharon Cohen, #NotInvisible: Why Are Native American Women Vanishing?, AP NEWS (Sept. 6, 2018), <https://apnews.com/cb6efc4ec93e4e92900ec99ccbc7e05/NotInvisible-Why-are-Native-American-women-vanishing?>; Vondracek, *supra* note 11; Winter, *supra* note 12.

36. See *infra* notes 195–200 and accompanying text.

37. Mary Kathryn Nagle, *Lawmakers Can Address the MMIW Crisis. Will They?*, HIGH COUNTRY NEWS (June 18, 2019), <https://www.hcn.org/issues/51.12/tribal-affairs-restoring-tribal-criminal-jurisdiction-is-the-first-step-to-stopping-crisis; Operation-Lady-Justice-Launched; VAWA-Reauthorization-Remains-Grounded>, INDIAN LAW RES. CTR., <https://indianlaw.org/story/operation-lady-justice-launched-va-wa-reauthorization-remains-grounded> (last visited Feb. 28, 2020).

38. Operation Lady Justice is named after artwork created by a Choctaw artist. Acee Agoyo, *Operation Lady Justice Features Artwork by D.G. Smalling of Choctaw Nation*, INDIANZ.COM (Nov. 26, 2019), <https://www.indianz.com/News/2019/11/26/operation-lady-justice-features-artwork.asp>.

39. Stephanie Ebbs, *Trump Administration Launches Task Force on Missing, Murdered Indigenous Peoples: 'Operation Lady Justice'*, ABC NEWS (Jan. 29, 2020, 5:27 PM), <https://abcnews.go.com/Politics/trump-administration-launches-task-force-missing-murdered-indigenous/story?id=68617962>.

40. Native News Online Staff, *Presidential Task Force on Missing and Murdered Indigenous People Releases First-Year Report*, NATIVE NEWS ONLINE (Dec. 11, 2020),

Barr declared a public safety emergency in Native communities in June 2019.<sup>41</sup>

While this response is certainly encouraging, Alaska's many unique characteristics mean that a more specific response is needed in the state. Funding and improved resources run the risk of failing to consider geographic anomalies, jurisdictional confusion, and the history of racial and gendered violence that aggravate the crisis. Further, until the United States and Alaska's state governments are willing to recognize and address the role of colonization and forced assimilation in promoting violence against Native women, any solution proposed will be inadequate.

Going forward, it is crucial that advocates and executives emphasize a holistic, equitable approach to the crisis in Alaska and across the country. President Joe Biden announced in December 2020 that he would nominate Native American Rep. Deb Haaland for Secretary of the Interior.<sup>42</sup> For the first time, an Indigenous woman will manage the government's relationship with Native Americans via the Bureau of Indian Affairs.<sup>43</sup> Hopefully, this will mean elevation of the crisis in the media and the administration.

This Note advocates for a historically-informed response to the epidemic of missing and murdered Alaska Native women, as well as Indigenous women across the country – one that incorporates culture and history while addressing existing legal barriers. Alaska must confront this crisis and protect its Indigenous women by empowering tribal communities, actively listening to and advocating for Alaska Native voices throughout the state, and acknowledging the state's active role in establishing and encouraging structures that fail to adequately protect Alaska Native women.

Part II gives a brief overview of the crisis before explaining legal and jurisdictional barriers to justice for Indigenous women. Part III discusses the roots of the crisis, the implications of settler colonialism, and the

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<https://nativenewsonline.net/currents/presidential-task-force-on-missing-and-murdered-indigenous-people-releases-first-year-report>.

41. Alex DeMarban, *US Attorney General Declares Emergency for Public Safety in Rural Alaska, Freeing Up \$10.5 Million to Support Police*, ANCHORAGE DAILY NEWS (June 29, 2019), <https://www.adn.com/alaska-news/2019/06/28/us-attorney-general-announces-10-million-in-emergency-funds-to-support-public-safety-in-rural-alaska/>.

42. Robert Maxim & Randall Akee, *What Deb Haaland's Historic Nomination as Interior Secretary Means for Indigenous Peoples*, BROOKINGS (Dec. 18, 2020), <https://www.brookings.edu/blog/the-avenue/2020/12/18/what-deb-haalands-historic-nomination-as-interior-secretary-means-for-indigenous-peoples>.

43. *Id.*

history of violence against Indigenous women in this country. Part IV attempts to propose a path forward. It argues that any response must acknowledge the historical erasure of Indigenous women and the ways in which federal and state governments have validated the practice through policy and practice. Finally, Part V evaluates current attempts at resolving the crisis by both federal and state governments in light of the proposals in Part IV. It argues that federal responses such as the reauthorization of VAWA and Operation Lady Justice are steps in the right direction; however, they are steps that must be accompanied by executive acknowledgement of the foundation of violence against women, policy that amplifies Indigenous voices and empowers Native communities, and the expeditious expansion of tribal sovereignty.

## II. UNDERSTANDING THE CRISIS

Each year in the United States, Indigenous women go missing, are murdered, and are victims of violence at alarming and disproportionate rates.<sup>44</sup> This Part first describes this epidemic of violence across the United States and in Alaska, giving an overview of where and how it is experienced most painfully. Then, it demonstrates the legal landscape that has exacerbated this violence by preventing access to justice, showing how the crisis continues through a jurisdictional scheme that leaves Native women unprotected. Finally, it focuses on the peculiarities of the 49th State, including an evolving law enforcement crisis that leaves many Alaska Natives unprotected.

### A. Missing and Murdered Across the Nation

Indigenous women are being killed and going missing in the United States at crisis levels, and they face disproportionate rates of violence across a continuum of abuse, including sexual violence.<sup>45</sup> In 2016, the Department of Justice published a report on violence against American Indian and Alaska Native individuals, finding that more than four in five American Indian and Alaska Native women surveyed experienced violence in their lifetimes.<sup>46</sup> Homicide is the third most common cause of

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44. U.S. COMM'N ON CIVIL RIGHTS, *BROKEN PROMISES: CONTINUING FEDERAL FUNDING SHORTFALL FOR NATIVE AMERICANS* 43 (Dec. 2018), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

45. Adam Creppelle, *Tribal Courts, The Violence Against Women Act, and Supplemental Jurisdiction: Expanding Tribal Court Jurisdiction to Improve Public Safety in Indian Country*, 81 MONT. L. REV. 59, 61 (2020).

46. ANDRÉ B. ROSAY, U.S. DEP'T OF JUSTICE, NAT'L INST. OF JUSTICE, *VIOLENCE AGAINST AMERICAN INDIAN AND ALASKA NATIVE WOMEN AND MEN* 2 (2016), <https://www.ncjrs.gov/pdffiles1/nij/249736.pdf>.

death among American Indian and Alaska Native women, and “rates of violence on reservations can be up to ten times higher than the national average.”<sup>47</sup> But statistics about reservations fail to tell the whole story. First, although many assume this violence to be perpetrated primarily by Indigenous men,<sup>48</sup> Native American women are actually more vulnerable to crimes committed by men of other races: the majority of sex crimes on tribal lands are committed by non-Native men.<sup>49</sup> Further, while violence against Indigenous women is often approached as mostly a tribal problem,<sup>50</sup> seventy-one percent of American Indians and Alaska Natives live in urban areas.<sup>51</sup> The Urban Indian Health Institute’s report centered on the absence of urban communities in dialogue about violence against Indigenous women, noting that the epidemic “deeply impacts urban American Indian and Alaska Native communities.”<sup>52</sup> Finally, the statistics we do have are likely under-representative of the actual numbers of missing and murdered Indigenous women, given inaccuracies and gaps in data about violence against Native Americans.<sup>53</sup>

Indigenous women across North America are victims of violent crime and missing persons cases, but Alaska stands out as uniquely tragic. Alaska often ranks as the most dangerous state in the country for women.<sup>54</sup> From tribal villages to the state’s largest city of Anchorage,

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47. MISSING AND MURDERED REPORT, *supra* note 13, at 2.

48. Luhui Whitebear, *VAWA Reauthorization of 2013 and the Continued Legacy of Violence Against Indigenous Women: A Critical Outsider Jurisprudence Perspective*, 9 UNIV. OF MIAMI RACE & SOC. JUS. L. REV. 75, 82 (2019) (“Many times a narrative is created that depicts violence against Indigenous women as something that needs to be addressed solely within tribal communities. If this is the route used, the normalization of this violence will not be addressed . . .”). This can partially be explained by the fact that crimes committed in the United States are generally intra-racial. *See Crepelle, supra* note 45, at 62.

49. Nellis Kennedy-Howard, *We Are Not Invisible: Addressing the Missing and Murdered Indigenous Women Crisis*, SIERRA CLUB (May 6, 2019), <https://www.sierraclub.org/articles/2019/05/we-are-not-invisible-addressing-missing-and-murdered-indigenous-women-crisis> (“More than eighty percent of sex crimes on Tribal lands are committed by non-Native men.”).

50. *See, e.g.,* Whitebear, *supra* note 48, at 84 (noting that VAWA does not provide protection for Indigenous women living off reservations).

51. MISSING AND MURDERED REPORT, *supra* note 13, at 2; Melody Schreiber, *A Breakthrough in an Alaska Cold-Case Murder Shines a Light on Violence Against Indigenous Women in the Arctic*, ARCTIC TODAY (Feb. 22, 2019), <https://www.arctictoday.com/a-breakthrough-in-alaska-cold-case-murder-shines-a-light-on-violence-against-indigenous-women-in-the-arctic>.

52. MISSING AND MURDERED REPORT, *supra* note 13, at 22.

53. *See generally* MISSING AND MURDERED REPORT, *supra* note 13; Carolyn Smith-Morris, *Addressing the Epidemic of Missing & Murdered Indigenous Women and Girls*, CULTURAL SURVIVAL (Mar. 6, 2020), <https://www.culturalsurvival.org/news/addressing-epidemic-missing-murdered-indigenous-women-and-girls>.

54. Lindsay Schnell, *Missing or Murdered? In America’s Deadliest State, One*

women are raped, beaten, and murdered by men at higher rates than anywhere else in the country.<sup>55</sup> The Urban Indian Health Institute found that Anchorage had the third-highest number of cases of missing and murdered Indigenous women of the cities researched in the United States, with thirty-one deaths or disappearances of Alaska Native women.<sup>56</sup> Many of the cases remain unsolved.<sup>57</sup> Indigenous women across the country are initially more vulnerable to violence, and they face legal, jurisdictional, and geographic barriers to justice that further traumatize Indigenous communities.

## B. Legal Barriers to Justice: A Maze of Tribal Jurisdiction

While Native American women experience violence at alarming rates, layers of statutes, policy, and Supreme Court precedent covering who has criminal jurisdiction over crimes on tribal lands worsen their vulnerability.<sup>58</sup> Usually, criminal jurisdiction in the United States is a simple matter of applying the law that governs the land where the crime occurred.<sup>59</sup> However, prosecutions on tribal lands require complex determinations of the tribal status of the victim, the perpetrator, and the land itself.<sup>60</sup> Across the country, jurisdiction over crimes against Native Americans on tribal lands is shared by local, tribal, state, and federal governments.<sup>61</sup> A hallmark of the jurisdictional patchwork<sup>62</sup> in the United States is the inability of tribal courts to prosecute non-Native

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*Family is Still Searching for Answers*, USA TODAY (June 25, 2019, 12:50 PM), <https://www.usatoday.com/in-depth/news/nation/2019/06/25/deadliest-state-women-alaska-rape-and-murder-too-common-domestic-violence-rape-murder-me-too-men/1500893001>.

55. *Id.*

56. MISSING AND MURDERED REPORT, *supra* note 13, at 26.

57. *Id.*

58. Emma Cueto, *In Indian Country, A 'Maze of Injustice' Persists for Women*, LAW 360 (Sept. 15, 2019), <https://www.law360.com/articles/1197831>. An in-depth explanation of tribal jurisdiction in the United States and how it is divided among concurrent structures is outside the scope of this paper. For background on this issue, see generally Catherine M. Redlingshafer, *An Avoidable Conundrum: How American Indian Legislation Unnecessarily Forces Tribal Governments to Choose Between Cultural Preservation and Women's Vindication*, 93 NOTRE DAME L. REV. 393 (2017).

59. Crepelle, *supra* note 45, at 64.

60. *Id.*

61. Maxine Speier, *Hundreds Turn Out for Montana Native Women's Vigil in Missoula*, MONT. PUB. RADIO (Jan. 21, 2019), <https://www.mtpr.org/post/hundreds-turn-out-montana-native-womens-vigil-missoula>.

62. Tribal jurisdiction in the United States has long been recognized as a "maze." See, e.g., Robert N. Clinton, *Criminal Jurisdiction Over Indian Lands: A Journey Through a Jurisdictional Maze*, 18 ARIZ. L. REV. 503, 508-13 (1976).

perpetrators.<sup>63</sup> In other words, although 95 percent of Native women who were victims of violence reported they had a non-Native perpetrator,<sup>64</sup> if those crimes were on tribal lands, the local tribal government could have no power to investigate or prosecute. Unlike states or municipal governments, a tribe's authority over the investigation and prosecution of a crime committed within its borders is limited by the tribal affiliation of the parties and the severity of the crime committed.<sup>65</sup> This often results in tribal officers acting as first responders or initial law enforcement but then struggling to determine who has jurisdiction before proceeding.<sup>66</sup> Tribes may contact outside agencies like the FBI to request assistance, but these agents are often working with heavy caseloads and have little to no relationships with the tribal community.<sup>67</sup> Further, whichever government ultimately has jurisdiction over the crime may decline to prosecute, and federal prosecutors often do. In 2018, 65.2% of federal declinations on tribal lands involved physical and sexual assaults, sexual exploitation, or failure to register as a sex offender.<sup>68</sup>

In Alaska, criminal jurisdiction is extremely complex, driven by the multifaceted legal scheme applied to all tribal lands in the United States, but made more complicated by legal precedent and federal policy specific to Alaska.<sup>69</sup> Under current law, the jurisdiction allotted to Alaska tribal governments is limited by various legal factors, with many questions still open for debate.<sup>70</sup>

There are two major factors that cause jurisdictional confusion in Alaska beyond that which exists for tribal communities in the rest of the country. First, Alaska is one of six mandatory Public Law 280 states.<sup>71</sup>

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63. In 1978, the Supreme Court held that tribal courts did not have the authority to prosecute non-Native people in *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978). This means that tribes cannot prosecute the vast majority of perpetrators of violence against Indigenous women.

64. Sarah Deer, *Native People and Violent Crime: Gendered Violence and Tribal Jurisdiction*, 15 DU BOIS REV. 89, 91 (2018).

65. Cueto, *supra* note 58.

66. *Id.*

67. *Id.*

68. U.S. DEP'T OF JUSTICE, INDIAN COUNTRY INVESTIGATIONS AND PROSECUTIONS 34 (2018), <https://www.justice.gov/otj/page/file/1231431/download>.

69. This paper will only address jurisdiction in Alaska so far as is necessary to demonstrate its impact on investigation and prosecution of cases of missing and murdered Native women. For a fuller discussion of the legal background of jurisdiction for tribes in Alaska, as well as an argument of how the state may retain jurisdiction over criminal offenses, see generally Ryan Fortson, *Advancing Tribal Court Criminal Jurisdiction in Alaska*, 32 ALASKA L. REV. 93 (2015). See also Laura S. Johnson, *Frontier of Injustice: Alaska Native Victims of Domestic Violence*, 8 MOD. AM. 2 (2012).

70. Cohen, *supra* note 35.

71. Carole Goldberg, *Unraveling Public Law 280: Better Late Than Never*, 43

Public Law 280, which gave six states criminal jurisdiction they would otherwise not have over tribal lands, was passed in 1953 during what is known as the “Termination Era” of policy toward Native tribes.<sup>72</sup> With an eye toward assimilation, the government sought to have tribes simply absorbed by the states.<sup>73</sup> At that time, the federal government shared concurrent jurisdiction with tribal governments, maintaining jurisdiction over particular crimes and offenders.<sup>74</sup> Public Law 280, often referred to as P.L. 280, transferred the federal power to the state governments, giving states jurisdiction over all crimes except in some limited situations where crimes involved two tribal members in Indian Country.<sup>75</sup> Nationally, P.L. 280 is often characterized as a failure.<sup>76</sup> States including Alaska were given the responsibility to police and prosecute lands with no additional funding, creating “lawlessness” on reservations.<sup>77</sup> Rather than the usual concurrent jurisdiction between tribal and federal governments, the state of Alaska retained state jurisdiction but received less funding to manage it. Though nothing in P.L. 280 explicitly gives jurisdiction to states to the exclusion of tribal governments, Alaska’s state government has since denied funding to tribal governments, reasoning that the law stripped tribal governments of jurisdiction.<sup>78</sup>

The second factor confounding jurisdiction in Alaska is the fact that, with one exception, Alaska tribes don’t have reservations or geographic territories where their laws apply.<sup>79</sup> Rather, jurisdiction is based on tribal citizenship.<sup>80</sup> Without reservations, Alaska Native villages are not considered “Indian Country,” a distinction which has allowed the state of Alaska to contest the tribal status of the villages under federal policy.<sup>81</sup>

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HUM. RTS. MAG. 1 (Sept. 1, 2017); Johnson, *supra* note 69, at 4.

72. Deer, *supra* note 64, at 93–94.

73. *Id.*

74. Amanda M.K. Pacheco, *Broken Traditions: Overcoming the Jurisdictional Maze to Protect Native American Women from Sexual Violence*, 11 J.L. & SOC. CHALLENGES 1, 26–27 (2009).

75. *Id.* at 31.

76. Deer, *supra* note 64, at 94.

77. *Id.*

78. Pacheco, *supra* note 74, at 34.

79. Liz Ruskin, *VAWA Bill Would Create Limited Jurisdiction for Five Alaska Tribes*, KTOO (Apr. 4, 2019), <https://www.ktoo.org/2019/04/04/vawa-bill-would-create-limited-jurisdiction-for-five-alaska-tribes>.

80. TRIBAL CONSULTATION, *supra* note 28, at 11. The Supreme Court held in *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998), that there is very little “Indian country” in Alaska because land given to Alaska Natives was given through “native corporations” rather than as reservations. *Venetie*, 522 U.S. at 533. “Indian country” is a legal concept used in determining criminal jurisdiction. Johnson, *supra* note 69, at 3.

81. INDIAN LAW & ORDER COMM’N, A ROADMAP FOR MAKING NATIVE AMERICA SAFER: A REPORT TO THE PRESIDENT & CONGRESS OF THE UNITED STATES 33 (2013),

Compounding questions about the implication of federal law is the state's position that it has exclusive authority over tribal lands, disregarding the fact that courts in Alaska have unanimously found that P.L. 280 left concurrent and inherent tribal jurisdiction intact.<sup>82</sup> Therefore, Alaska Native tribes remain unable to prosecute crimes against their members and unprotected by the state that continues to claim authority over those crimes.<sup>83</sup>

These jurisdictional structures over tribal lands are, at best, unclear and, at worst, a reminder of the paternalistic approach the federal government often takes toward tribes.<sup>84</sup> What is clear is that they make Native American women more vulnerable to crime and less likely to see justice. Alaska Native tribes' lack of funding and hesitancy to exercise jurisdiction means that the most local and effective form of criminal justice is simply unavailable to many victims.<sup>85</sup> When women go missing, there is often frustration with both tribal police and the federal government, especially because it is often unclear who is in charge.<sup>86</sup> Not only does this patchwork of jurisdiction shared by tribal police and state and federal agencies result in victims' families not knowing where to turn, it makes women more vulnerable in the first place. Studies have shown that the failure to hold perpetrators accountable has emboldened them to engage in violence against women.<sup>87</sup> For example, one writer researching injustices for Native women found a forum called "How to rape a woman and get away with it" and consistently saw comments suggesting that non-Native predators should specifically target Native people on

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<https://www.aisc.ucla.edu/iloc/report/> [hereinafter ROADMAP]; Johnson, *supra* note 69, at 3.

82. Alaska bases this on the *Venetie* decision. See *supra* note 80. The effect of this case on tribal jurisdiction and on P.L. 280 is one of the questions yet to be conclusively determined in Alaska. However, the argument that tribes do not have a land base to assert criminal jurisdiction is recognized as "incomplete and unconvincing." ROADMAP, *supra* note 81, at 45.

83. See ROADMAP, *supra* note 81, at 45 (noting "[t]he serious and ongoing crime and disorder problems in rural and Native regions of the State are evidence that the system is deeply flawed and that it has failed. From the standpoint of public safety, to leave the system unchanged makes the State of Alaska's continued assertion of exclusive jurisdiction seem not only unwise, but also incautious.").

84. Jessica Rizzo, *Native American Women are Rape Targets Because of a Legislative Loophole*, VICE (Dec. 16, 2015), [https://www.vice.com/en\\_ca/article/bnpb73/native-american-women-are-rape-targets-because-of-a-legislative-loophole-511](https://www.vice.com/en_ca/article/bnpb73/native-american-women-are-rape-targets-because-of-a-legislative-loophole-511) (quoting Indian Affairs attorney Ryan Drevskracht, who stated that lawmakers "are singing the old song of unsophisticated tribal courts and uneducated tribal judges").

85. ROADMAP, *supra* note 81, at 45.

86. Cohen, *supra* note 35.

87. See S. 1763, S. 872, and S. 1192: *Hearing Before the S. Comm. on Indian Affairs*, 112th Cong. 10 (2011) (statement of Thomas Perrelli, Assoc. Att'y Gen. of the United States).

reservations “because you can do whatever you want there.”<sup>88</sup> Unfortunately, this attitude is one of many that demonstrate the historic roots of violence against Native American women.<sup>89</sup> Indigenous women “have long been considered invisible and disposable in society, and those vulnerabilities attract predators.”<sup>90</sup>

Many—scholars and tribal members alike—argue that returning criminal jurisdiction to tribal courts over crimes against their members is the only feasible solution to protect women on tribal lands.<sup>91</sup> The federal government has taken steps toward this solution through the passage of the Tribal Law and Order Act of 2010 (“TLOA”) and the 2013 reauthorization of the Violence Against Women Act (“VAWA”). However, TLOA’s sentencing provisions require tribes to comply with constitutional procedural safeguards,<sup>92</sup> and legislation to reauthorize VAWA stalled in 2019.<sup>93</sup> Further, VAWA only authorized tribes to prosecute non-Natives who committed domestic violence or dating violence, and even then only those who had some relationship with the tribe, thus leaving tribes unable to prosecute non-Natives who committed rape or murder or who did not have ties to the tribe.<sup>94</sup> Beyond these limitations, tribal jurisdiction does not address the needs of Indigenous women in urban communities. Therefore, this is just one legal step that will begin to restore empowerment to communities.

### C. The Crisis in Alaska

Alaska Native women not only face the highest rates of violence, but they also face the most difficulty accessing resources. In 2015, the Indian Law & Order Commission reported, “problems with safety in Tribal communities are severe across the United States – but they are systematically the worst in Alaska.”<sup>95</sup> The unique challenges in Alaska are caused by both inherent factors such as weather and geography and preventable conditions such as insufficient funding and a complex crisis

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88. Rizzo, *supra* note 84.

89. See *infra* Part II.

90. Cohen, *supra* note 35.

91. See, e.g., Marie Quasius, *Native American Rape Victims: Desperately Seeking an Oliphant-Fix*, 93 MINN. L. REV. 1902, 1939 (2009); Nagle, *supra* note 37.

92. Crepelle, *supra* note 45, at 76.

93. See *infra* notes 187-94 and accompanying text. The 2013 reauthorization of VAWA included a provision giving tribes the ability to apply for special jurisdiction to prosecute non-Indians for dating violence and domestic violence. Cueto, *supra* note 58. However, the special jurisdiction applied to “a very narrow set of cases over non-Indians who voluntarily and knowingly established significant ties to the tribe.” S. REP. NO. 112-153, at 10 (2012).

94. Crepelle, *supra* note 45, at 76-77.

95. ROADMAP, *supra* note 81, at 35.

of law enforcement.

Perhaps the most significant factor making Alaska different from all other states with Native populations is its size. The state of Alaska has an area of 586,412 square miles, making it not only the largest in the country, but larger than the three largest continental states combined.<sup>96</sup> In contrast, Alaska is the nation's least populous state, with 1.26 inhabitants per square mile.<sup>97</sup> Alaska Natives, descendants of Alaska's original inhabitants, make up one-fifth of the population and include eleven distinct cultures.<sup>98</sup> Geographically, the Alaska Native population ranges from a large, heterogeneous group in Anchorage, with representatives from every Native group, to small, homogenous communities in rural Alaska with 250 to 300 residents.<sup>99</sup> Nearly every one of the 229 Native tribes are located completely off the road system or in the Alaskan "bush," often accessible only by plane or snow mobile.<sup>100</sup>

While this landscape alone makes access to justice geographically difficult, Alaska has long faced a law enforcement crisis that contributes to the devastating rates of violence against Indigenous women across the state. Alaska's retention of state jurisdiction over tribal lands applies not only to the prosecution of crimes but also the provision of law enforcement to Native communities.<sup>101</sup> Alaska has a more centralized organization of government than any other state, so it provides services through a set of regional locations, leading to a "dramatic underprovision of criminal justice services" in rural areas and tribal villages across the state.<sup>102</sup> Further, the state government does not often collaborate with local governments, despite the cultural and geographic barriers that must be bridged to adequately protect tribal members.<sup>103</sup> Thus, remote villages are not only cut off from law enforcement, but also state resources.

A study by *ProPublica* and the *Anchorage Daily News* found that one in three communities in Alaska had no law enforcement of any kind, and almost all of those were Alaska Native communities.<sup>104</sup> There are about

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96. *Id.*

97. *Id.*

98. *Id.*

99. ALASKA ADVISORY COMM. TO THE U.S. COMM'N ON CIVIL RIGHTS, RACISM'S FRONTIER: THE UNTOLD STORY OF DISCRIMINATION AND DIVISION IN ALASKA 4-5 (2002) [hereinafter THE UNTOLD STORY].

100. ROADMAP, *supra* note 81, at 39; Johnson, *supra* note 69, at 3.

101. ROADMAP, *supra* note 81, at 43.

102. *Id.*

103. *Id.*

104. *Id.* For more information on the lack of law enforcement in rural Alaska, see generally the three-part investigative series *Lawless* produced in a partnership between the *Anchorage Daily News* and *ProPublica*, cited *infra* notes 105, 111.

300 state troopers in Alaska, which represent the best-trained and best-paid law enforcement officers in the state.<sup>105</sup> However, troopers are only posted directly within about eleven of 170 small villages.<sup>106</sup> In northwestern Alaska, five troopers service an area surrounding nine native villages.<sup>107</sup> The five troopers are the only law enforcement for an area about the size of the state of Ohio.<sup>108</sup> The next form of police provided by the state is unique to Alaska. Village Public Safety Officers, known as VPSOs, are often the only law enforcement presence in an Alaska Native village.<sup>109</sup> While VPSOs are trained and paid by the state, they are often unarmed, and their numbers recently reached an all-time low with only forty-two officers in 2019.<sup>110</sup> While the program was launched in 1979 to handle water rescues, fires, and law enforcement backup, ambiguous state laws have led to confusion over what VSPOs are actually expected to do.<sup>111</sup> There are not enough state troopers to provide much-needed protection to Alaska Native women, and the VPSO program is not capable of picking up the slack.

Other villages are so desperate for law enforcement that there is often no alternative than to hire applicants with criminal backgrounds. In July 2019, all seven police officers in Stebbins, Alaska, a village of two Native communities, had pled guilty to domestic violence charges before being hired.<sup>112</sup> Only one had received formal training.<sup>113</sup> In these cases, the same Alaska villages that have the highest rates of sexual assault in the country are forced to choose between no law enforcement at all or officers that have a history of perpetrating the very crimes that put women at continued risk across the state.<sup>114</sup>

The law enforcement crisis puts women at risk and means investigations could be tarnished by the passing of time and

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105. Kyle Hopkins, *The Village Where Every Cop Has Been Convicted of Domestic Violence*, PROPUBLICA (Jul. 18, 2019, 11:30 AM), <https://www.propublica.org/article/stebbins-alaska-cops-criminal-records-domestic-violence> [hereinafter *The Village Where Every Cop Has Been Convicted*].

106. Kyle Hopkins, *Looking for Alaska's 'Rural' State Police Force? Check the Fast-Growing Mat-Su Borough*, ANCHORAGE DAILY NEWS (Dec. 5, 2019), <https://www.adn.com/alaska-news/lawless/2019/12/05/looking-for-alaskas-rural-state-police-force-check-the-fast-growing-mat-su-borough/>.

107. Schnell, *supra* note 54.

108. *Id.*

109. Johnson, *supra* note 69, at 3.

110. *The Village Where Every Cop Has Been Convicted*, *supra* note 105.

111. Kyle Hopkins, *Alaska's Public Safety Program Is Failing. Can It Be Saved?*, PROPUBLICA (Jan. 24, 2020, 11:00 AM), <https://www.propublica.org/article/alaskas-public-safety-officer-program-is-failing-can-it-be-saved>.

112. *The Village Where Every Cop Has Been Convicted*, *supra* note 105.

113. *Id.*

114. *Id.*

contamination of crime scenes. In 2017, a legally blind woman in the village of Kiana called the police to report that she had been raped.<sup>115</sup> Although her rapist was still present when village police officer Annie Reed arrived, it took three weeks for troopers to arrive in Kiana to arrest him.<sup>116</sup> He visited the victim's home several times during those weeks.<sup>117</sup> This story, far from unique in rural Alaska, demonstrates that Alaska Native victims face challenges unlike women anywhere else in the country. While they are vulnerable to crimes due to their race and circumstance, they are also vulnerable to the re-traumatization that delayed investigation and indifference from the state government brings.

Exploring the problems within each level of law enforcement leads to a singular conclusion: Alaska's current strategy of public safety is not working for Alaska Native women. There are too few troopers to protect tribes off the road system; the VPSO program appears to be failing; and village police officers are unqualified at best. Further, tribes do not have the funding to protect their own. In order to improve public safety and therefore protect women and girls in Alaska, tribes need the resources and jurisdiction to prevent, investigate, and prosecute crimes in their communities.<sup>118</sup> In November 2013, the Indian Law & Order Commission (ILOC),<sup>119</sup> an independent advisory committee, released a report and recommendations to make Native American and Alaska Native communities safer, dedicating an entire chapter to problems in rural Alaska.<sup>120</sup> After visiting Alaska and seeing the need for safer communities through tribal autonomy and improved resources to rural areas, the commission reported that Alaska's approach to criminal justice was "fundamentally on the wrong track."<sup>121</sup> While the problem remains unremedied after the commission's report, there remains hope that direct funding, if accompanied by action and attention, can begin to address the needs of women in rural Alaska.

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115. Kyle Hopkins, *Lawless*, PROPUBLICA (May 16, 2019), <https://features.propublica.org/local-reporting-network-alaska/alaska-sexual-violence-village-police>.

116. *Id.*

117. *Id.*

118. ROADMAP, *supra* note 81, at 50.

119. The advisory committee, the Indian Law and Order Commission, was established through the passage of the Tribal Law and Order Act. *Id.* at i. The Commissioners were appointed by the President and Congress, representing both Democrats and Republicans, and unanimously agreed on the recommendations. *Id.*

120. *Id.* at viii.

121. *Id.* at 44.

### III. HISTORICAL VIOLENCE AGAINST INDIGENOUS WOMEN

So far, the aim of this Note has been to provide an overview of the crisis of missing and murdered Indigenous women in the United States with a focus on the nation's largest state. This Part explains the historical roots of this crisis: entrenched bias and generational trauma that have been in place since the colonial era. It traces the rape of and violence against Indigenous women to settler colonialism and forced assimilation by the federal government, demonstrating the need for policymakers to address the historical trauma caused by federal oppression of Indigenous people in the United States.

#### A. Colonialism and Violence

The crisis of missing and murdered Indigenous women has its genesis in centuries of historical mistreatment of Native American women and forced migration or assimilation of Native communities.<sup>122</sup> As Hossein Dabiri argues, "There is no beginning or end to the relationship between colonial violence and gender violence."<sup>123</sup> Before colonization, scholars believe that most tribes did not experience domestic violence or rape.<sup>124</sup> However, during European colonization of Native nations, Indigenous women were targeted through enslavement, kidnapping, and sexual and physical violence.<sup>125</sup> In fact, disempowering Native women was a primary goal of colonizers as an aspect of destabilizing and dominating Indigenous groups.<sup>126</sup> Settlers engaged in warfare against Indigenous communities, seeking to control both Indigenous land and Indigenous bodies.<sup>127</sup> Indigenous women were seen as objects to conquer – along with the land they inhabited – and rape was

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122. Winter, *supra* note 12.

123. Hossein Dabiri, Comment, *Kiss the Ring, But Never Touch the Crown: How U.S. Policy Denies Indian Women Bodily Autonomy and the SAVE Native Women Act's Attempt to Reverse That Policy*, 36 AM. INDIAN L. REV. 385, 393 (2012).

124. Hilary N. Weaver, *The Colonial Context of Violence: Reflections on Violence in the Lives of Native American Women*, 24 J. INTERPERSONAL VIOLENCE 1552, 1555–62 (2009).

125. Doug Fabrizio, *Confronting the Crisis of Missing and Murdered Indigenous Women*, RADIOWEST KUER (Feb. 21, 2020), <https://radiowest.kuer.org/post/confronting-crisis-missing-and-murdered-indigenous-women>; see also Winter, *supra* note 12 ("Native women and girls have been disappearing literally since 1492, when Europeans kidnapped native women for shipment back to Europe.").

126. Karina L. Walters & Jane M. Simoni, *Reconceptualizing Native Women's Health: An "Indigenist" Stress-Coping Model*, 92(4) AM. J. OF PUB. HEALTH 520, 520 (2002).

127. Whitebear, *supra* note 48, at 78.

viewed as an acceptable aspect of land acquisition.<sup>128</sup> In justifying these actions, colonists imagined Native bodies as sexually obscene.<sup>129</sup> As one colonist wrote, “Their marriages are not a sacrament but a sacrilege. They are idolatrous, libidinous, and commit sodomy. Their chief desire is to eat, drink, worship heathen idols, and commit bestial obscenities.”<sup>130</sup> Not only rape but genocide was justified by the thought that Indigenous people were an “abominable contamination,” and Indigenous women became objects to destroy.<sup>131</sup> Andrew Jackson recommended the systematic killing of women and children after massacres in order to complete “extermination” of Indigenous nations.<sup>132</sup> Beyond initial colonial violence, federal assimilation and forced “civilization” policies contributed to both higher rates of sexual abuse and the introduction of patriarchal control against young Native women.<sup>133</sup> As Sarah Deer argues, by forcing Native children into abusive government boarding schools, “Western gender hierarchies were literally beaten into the children.”<sup>134</sup> Thus, violence against Indigenous women was a function of the successful colonization of the United States.

Alaska Natives encountered colonialism later than those in the continental United States; however, the outcomes were similarly grim. Russian explorers first traveled to Alaska in 1741 with weapons in tow and encountered the Aleut people, who were subsequently enslaved or killed by the thousands.<sup>135</sup> Although the Russians were small in number, they soon took children hostage, destroyed hunting equipment, and used extreme force against Alaska Natives.<sup>136</sup> About eighty percent of the Aleut population died within fifty years from a combination of warfare, disease, and slavery.<sup>137</sup> By the time the United States purchased Alaska in 1867, only an estimated 50,000 Indigenous people were left, compared to the

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128. *Id.* at 79–80.

129. Andrea Smith, *Not an Indian Tradition: The Sexual Colonization of Native Peoples*, 18(2) *HYPATIA* 70, 73 (2003).

130. *Id.*

131. Whitebear, *supra* note 48, at 79.

132. Smith, *supra* note 129, at 78.

133. Sarah Deer, *(En)Gendering Indian Law: Indigenous Feminist Legal Theory in the United States*, 31 *YALE J.L. & FEMINISM* 1, 9–10 (2019).

134. *Id.* at 10.

135. William L. Iggiagruk Hensley, *There Are Two Versions of the Story of How the U.S. Purchased Alaska From Russia*, *SMITHSONIAN MAG.* (Mar. 29, 2017), <https://www.smithsonianmag.com/history/why-russia-gave-alaska-americas-gateway-arctic-180962714>; *Russians in Alaska and U.S. Purchase*, UNIV. OF ALASKA FAIRBANKS: FED. INDIAN L. FOR ALASKA TRIBES, [https://www.uaf.edu/tribal/112/unit\\_1/russiansinalaskaanduspurchase.php](https://www.uaf.edu/tribal/112/unit_1/russiansinalaskaanduspurchase.php) (last visited Apr. 20, 2020).

136. Hensley, *supra* note 135.

137. *Russians in Alaska and U.S. Purchase*, *supra* note 135.

100,000 living there before Russian settlers arrived.<sup>138</sup> After cession, Alaska was either ignored or exploited by the federal government, with little regard for Native traditions and claims to the land until it became a state in 1959, at which time “Termination Era” policies wreaked havoc on Indigenous tribes.<sup>139</sup> Thus, Alaska Natives, like American Indians, experienced the effects of colonialism through cultural erasure, disease, and genocide.<sup>140</sup>

## B. A Painful Legacy

Today, the epidemic of missing and murdered Indigenous women exists as a legacy of the oppression and genocide of Indigenous communities. White supremacy in the United States has long held to the logic that Indigenous people must disappear in order for the non-Indigenous claim over this land to be solidified.<sup>141</sup> The colonial objectification of Indigenous women as objects of desire and destruction may be seen through the severity and prevalence of violence against American Indian and Alaska Native women,<sup>142</sup> especially given the fact that it is so often perpetrated by members of another race.<sup>143</sup> These rates of violence demonstrate the need to address the normalization of violence against Native women.<sup>144</sup> Further, the inability of tribes to prosecute crimes committed on tribal lands cements reservations and tribal villages as a sort of hunting ground where predators cannot be punished, continuing the exoneration of perpetrators of violence seen in settler colonialism.<sup>145</sup> Finally, it is important to note that much of the colonial treatment of Native Americans was shaped by ideas surrounding racial hierarchy, leaving a legacy of racial bias and exclusion.<sup>146</sup> Indifference and racism against Indigenous women are direct results of white supremacy and government-sanctioned policies.

Unfortunately, beyond the continuation of colonial violence against Indigenous women, governmental structures and policies have exerted a

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138. Hensley, *supra* note 135.

139. From the time of cession to Alaska’s statehood, Alaska Natives had no rights as citizens, could not own property, and often faced overt discrimination as well as cultural eradication. *See id.* (noting that signs such as “No Natives Need Apply” and “No Dogs or Natives Allowed” were common in Alaska at the time).

140. THE UNTOLD STORY, *supra* note 99, at 3.

141. Dabiri, *supra* note 123, at 414–15.

142. Whitebear, *supra* note 48, at 80.

143. Valerie N. Wieskamp & Cortney Smith, “What to Do When You’re Raped”: Indigenous Women Critiquing and Coping Through a Rhetoric of Survivance, 106 Q. J. SPEECH 72, 77 (2020).

144. Whitebear, *supra* note 48, at 79, 81.

145. *Id.* at 83.

146. *Id.* at 87.

modern form of violence through the erasure of tribal empowerment, and the State of Alaska has continued to treat its Indigenous women as disposable. In its 2015 Report to the President and Congress, discussed in Part I.C, the ILOC stated that the prevailing sentiment among State and Federal leaders was that Alaska Natives who lived in villages lacking law enforcement presence should “just move.”<sup>147</sup> Remarkably, as Alaska Native women face a crisis where they continue to disappear, the state government has encouraged them to do just that.

#### IV. A PATH FORWARD

Given the history of genocidal violence against Indigenous women, this Part highlights the steps forward in Alaska. These action steps, while necessarily tailored to the State of Alaska, can also be applied more generally to the crisis throughout the United States. First, state policy makers must actively listen to and amplify the voices of Alaska Natives. In order to combat the crisis throughout Alaska’s varied landscape, Indigenous women will need to be heard, supported, and protected. Second, Alaska must confront the crisis of missing and murdered Indigenous women by empowering tribal communities to protect their own, whether through criminal tribal jurisdiction or through tribal approaches. Finally, the State of Alaska must acknowledge its role in the foundational structures that have endangered Indigenous women and failed to provide justice where it is most needed. There is no “quick fix” to a multigenerational, cross-border crisis; rather, the response must be comprehensive and able to adapt where needed in order to ensure that it not only addresses the many peculiarities of the Last Frontier but also embraces its diversity.

##### A. Shift the Conversation

Prioritization of the protection of Indigenous women and girls is a clear starting point to address the crisis and its underlying causes. Any solution must not only include voices of Indigenous women but also amplify them. To establish a response without doing so will be to continue the same paternalistic and colonial-based thinking that has established broken structures of jurisdiction and law enforcement. Rather, shifting the conversation in order to prioritize the lives of Indigenous women and girls requires placing Native voices and philosophies at the forefront.<sup>148</sup> A holistic approach must address the

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147. ROADMAP, *supra* note 48, at 47.

148. See Whitebear, *supra* note 48, at 88 (offering steps to emphasize

crisis through an antiracist, anticolonial framework.<sup>149</sup> Whether this means applying practices of restorative justice, establishing task forces that are led by activists and survivors rather than politicians, or simply building policy that centers on ensuring the safety of Indigenous women from Anchorage to rural Alaska, it is clear that Indigenous women must be protected and prioritized in and out of their communities.

Luihui Whitebear advocates for an approach that looks toward the knowledge of Indigenous women rather than relying completely on governmental law and policy, a system used “by those who maintain dominance and control of a system that has benefited from the continued erasure of Indigenous people.”<sup>150</sup> Whitebear argues that bringing tribal knowledge systems into the conversation will mean creating a strategy that makes sense to Indigenous people.<sup>151</sup> Given this understanding, Indigenous women should not only be seated at the table where decisions are being made, they should be the ones leading the conversations.

## B. Empower Tribal Communities

Empowering tribes to respond to crimes is a concrete way for the state and federal governments to acknowledge the historical structures that have contributed to the crisis in Alaska. In providing recommendations to the Office on Violence Against Women, a group of combined Native villages supported the recognition of local control of public safety of tribes, stating a “local response is the only way to ensure the safety of Alaska Native women and children against all forms of violence.”<sup>152</sup> Giving control and accountability to local tribes will allow consideration of place-based knowledge in creating plans for prevention and data collection.<sup>153</sup> It will also foster the improvement of emergency responses and informed allocation of resources.<sup>154</sup>

The return of tribal jurisdiction so that Alaskan tribes can prosecute crimes against their own members and therefore protect Native women is a necessary start to empower Indigenous communities to protect their own.<sup>155</sup> Further, the federal government should prioritize closing

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Indigenous activists’ approach to healing).

149. *Id.*

150. *Id.* at 87.

151. *Id.* at 88.

152. TRIBAL CONSULTATION, *supra* note 28, at 6. The Alaska Native villages made this joint statement at the twelfth Violence Against Women Tribal Consultation in 2017.

153. ROADMAP, *supra* note 81, at 43–44.

154. *Id.* at 44.

155. See Nagle, *supra* note 37 (“The first test will be whether the Senate reauthorizes a VAWA with tribal provisions that restore tribal jurisdiction. But

jurisdictional gaps that contribute to the sense of lawlessness across tribal lands. However, gender violence does not result from the lack of criminal jurisdiction alone.<sup>156</sup> Tribal criminal jurisdiction is an important step in self-governance for all Native American tribes, but Alaska's inability to provide for the public safety of tribes drives home an urgent need for funding and support of general tribal self-governance.<sup>157</sup> Therefore, until Congress acts to return tribal jurisdiction, Alaska should discontinue its assertion of exclusive jurisdiction over the provision of law enforcement and over criminal jurisdiction.

In acknowledging the failures in its current relationship with tribes, the State of Alaska, as well as the federal government, should remain open to non-colonial thinking that treats tribes as truly sovereign, with the capability of self-governance as sovereign nations.<sup>158</sup> Tribes across the nation have methods of criminal justice that vary greatly from systems seen in American jurisprudence. Governments should allow tribal models such as peacemaking, sentencing circles, and restorative justice to be incorporated when addressing cases of violence against women so that Alaska Native and American Indian communities can begin to heal through practices of their own.<sup>159</sup> By allowing Indigenous communities to apply traditional methods of dispute resolution, they can begin to restore self-governance in a way that emphasizes the value of Indigenous lives.

### C. Acknowledge History

In order to address generational trauma and the historical factors leading to continued violence against Alaska Native women, the federal government should first acknowledge that this violence was caused in part by damaging policies of colonialism, genocide, and assimilation. Recognizing the impact of colonial structures on erasure of and systematic racism toward Indigenous people will allow those affected by it to begin to heal.<sup>160</sup> It will also allow activists, scholars, and policymakers to develop a holistic response to the crisis of missing and murdered

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until we restore the right of tribal nations to protect their citizens, MMIW will remain a crisis.”).

156. Dabiri, *supra* note 123, at 414.

157. Alex DeMarban & Kyle Hopkins, ‘Enough Is Enough’: Alaska Native Leaders Ask U.S. Attorney General for Help, Tribal Authority to Make Up for Lack of Police, ANCHORAGE DAILY NEWS (May 29, 2019), <https://www.adn.com/alaska-news/rural-alaska/2019/05/30/alaska-native-leaders-call-on-attorney-general-barr-for-help-tribal-authority-to-make-up-for-lack-of-police>.

158. See Nagle, *supra* note 37 (“It is about time that this epidemic is being described as a genocide, but with that, we will need concrete action.”).

159. Redlingshafer, *supra* note 59, at 414.

160. Whitebear, *supra* note 48, at 88.

Indigenous women. It will demonstrate a willingness to change course while giving credibility to governmental initiatives.<sup>161</sup> Beyond that, a governmental statement could educate non-Natives in a way that encourages exploration and understanding of internal biases, therefore addressing bias and indifference that are still felt so sharply by Indigenous victims.

While the federal government and the State of Alaska must acknowledge the roots of the crisis of deaths and disappearances, these policies must be joined with actions such as those recommended above. As a note of caution, Canada's National Inquiry into Missing and Murdered Indigenous Women and Girls, initially praised for acknowledging that the crisis was an ongoing "genocide,"<sup>162</sup> has since been criticized for the fact that the government has failed to follow through with the actions recommended in the Inquiry.<sup>163</sup> The National Inquiry's Final Report acknowledged the roots of this genocide as racism, oppression, and state actions rooted in colonial ideologies.<sup>164</sup> It offered concrete measures to remedy systemic discrimination and violence, but one year later, the Canadian government delayed national action due to the COVID-19 pandemic.<sup>165</sup> This is not to discourage the United States from following suit and forming a national inquiry; rather, it is a reminder that imminent action is necessary and goes hand in hand with recognition of the government's role. Intentions and action are both crucial pieces to beginning to remedy the crisis, and one without the other will leave gaping holes in any governmental solution.

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161. See Sarah Deer, *Relocation Revisited: Sex Trafficking of Native Women in the United States*, 36 WM. MITCHELL L. REV. 621, 624 (2010) ("Failure to understand [the legacy of sexual subjugation of women of color] makes the United States government's efforts seem disingenuous, if not dishonest, in the eyes of victims' advocates around the world."). While Deer's argument focuses on sex trafficking of Native women in particular, it is instructive for addressing the history of violence against Native women in general.

162. Nagle, *supra* note 37.

163. Laura Bergamo, *Report of the National Inquiry on MMIWG: One Year Later, Where's the Action?*, GREENPEACE (June 5, 2020), <https://www.greenpeace.org/canada/en/story/38672/report-of-the-national-inquiry-on-mmiw-one-year-later-wheres-the-action>.

164. NAT'L INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS, EXECUTIVE SUMMARY OF THE FINAL REPORT: RECLAIMING POWER AND PLACE 4 (2019), [https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Executive\\_Summary.pdf](https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Executive_Summary.pdf). The National Inquiry chose to include gender-diverse and non-binary people in the report, represented by the acronym 2SLGBTQQIA (Two-Spirit, lesbian, gay, bisexual, transgender, queer, questioning, intersex, and asexual).

165. Bergamo, *supra* note 163.

## V. FALLING SHORT: EVALUATING CURRENT EFFORTS

### A. Federal Efforts to Address a National Crisis

Native communities have called for Congress to address the deaths and disappearances of American Indian and Alaska Native women and girls for years.<sup>166</sup> While division remains over how the crisis of missing and murdered Indigenous women should be addressed in this country, both the executive and legislative branches have taken the first step of acknowledging that it must be addressed. While the following proposals must go further and do more in the coming years, they at least indicate that Native women will not remain invisible forever.

#### 1. *Reauthorization of the Violence Against Women Act*

In 2013, Congress passed a reauthorization of the Violence Against Women Act to begin to grant tribal jurisdiction over domestic violence crimes on reservations and tribal land committed by non-Natives.<sup>167</sup> It allowed tribes to apply for special jurisdiction to prosecute nontribal members.<sup>168</sup> While the 2013 reauthorization was certainly a step in the right direction, only eighteen of the more than 500 federally recognized tribes were approved to exercise that jurisdiction.<sup>169</sup> Additionally, those tribes that did exercise it still could not prosecute crimes of sexual assault or stalking by non-Natives.<sup>170</sup>

The VAWA reauthorization bill that passed in the U.S. House in 2019 included proposed changes that would extend special jurisdiction to charge nontribal members for crimes of sexual violence, violence against children, and human trafficking.<sup>171</sup> In Alaska, it would create a pilot program for up to five tribes, giving them territorial jurisdiction over crimes by non-Natives.<sup>172</sup> However, the historically bipartisan bill stalled in the Senate when Republicans took issue with provisions that would (1) allow transgender individuals in women's shelters and (2) prevent gun sales to those with domestic abuse convictions.<sup>173</sup> If passed, the 2019 bill

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166. Vincent Shilling, *Savanna's Act and Not Invisible Act Pass Senate*, INDIAN COUNTRY TODAY (Mar. 12, 2020), <https://indiancountrytoday.com/news/savanna-s-act-and-not-invisible-act-pass-senate-PPMB9ypKmU-NtSHOW8W7jg>.

167. Nagle, *supra* note 37.

168. Cueto, *supra* note 37.

169. *Id.*

170. *Id.*

171. *Id.*

172. Ruskin, *supra* note 79.

173. Grace Segers, *Congress Tackles Crisis of Missing and Murdered Native American Women*, CBS NEWS (June 12, 2019), <https://www.cbsnews.com/news/congress-crisis-missing-and-murdered->

would begin to pave the way for Alaska to have tribal jurisdiction, but it would do so slowly. In any case, it does little to address the roots of the crisis from a cultural perspective, and it has thus far failed to close loopholes that allow Indigenous women to be treated as prey.<sup>174</sup>

2. *Savanna's Act and the Not Invisible Act*

With the prospect of a VAWA reauthorization at a standstill, lawmakers introduced two stand-alone bills, *Savanna's Act* and the *Not Invisible Act*, which were signed into law in October 2020.<sup>175</sup> *Savanna's Act* is named for a young pregnant Native woman who was abducted and murdered in North Dakota in 2017.<sup>176</sup> The bill aims to improve cooperation between federal and tribal agencies, to increase access to law enforcement data for tribes, and to empower tribes to effectively respond to new cases.<sup>177</sup> It will require the Justice Department to create standardized guidelines to respond to cases of missing and murdered Native women and enforce better reporting and data.<sup>178</sup> Standardization of data retention and cooperation between governments will hopefully lead to innovation in the protection of Indigenous women. Additionally, improving tribal data is crucial in planning the next steps of addressing the crisis. Some have pointed out, however, that *Savanna's Act* primarily sets mandates for federal law enforcement and could therefore leave out data about cases in cities and outside tribal lands.<sup>179</sup>

The *Not Invisible Act*, introduced to work in conjunction with *Savanna's Act*, would require the creation of an advisory commission on violent crime that would include tribal leaders, law enforcement, survivors, and family members to make recommendations for addressing the crisis.<sup>180</sup> The *Not Invisible Act* takes a promising step forward in empowering Native voices. It could not only help bridge cultural divides in the federal response to the crisis, but it could also result in the type of

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native-american-women.

174. Whitebear, *supra* note 48, at 86.

175. Press Release, Haaland: Not Invisible, *Savanna's Acts Now Law* (Oct. 10, 2020), <https://haaland.house.gov/media/press-releases/haaland-not-invisible-savanna-s-acts-now-law>.

176. Barry Amundson, *Savanna's Act, Named for Murdered Native American Woman from Fargo, Passes US Senate*, DULUTH NEWS TRIBUNE (Mar. 11, 2020), <https://www.duluthnewstribune.com/news/government-and-politics/4994656-Savannas-Act-named-for-murdered-Native-American-woman-from-Fargo-passes-US-Senate>.

177. *Savanna's Act*, S. 227, 116th Cong. (2019).

178. *Id.*

179. Mary Hudetz, *Report Cites Weak Police Documentation on Missing and Murdered Native Women Across U.S.*, ANCHORAGE DAILY NEWS (Nov. 14, 2018), <https://www.adn.com/nation-world/2018/11/14/report-cites-weak-police-documentation-on-missing-and-murdered-native-women>.

180. The *Not Invisible Act* of 2019, S. 982, 116th Cong. (2019).

historical acknowledgment that is crucial to begin to allow healing from this epidemic.

The passage of these laws represents an important step by the legislature in taking concrete action in responding to this crisis. Additionally, the laws' passage is encouraging in its demonstration that the protection of Indigenous women and girls is not an issue to be pushed aside by partisan politics.

### 3. *Operation Lady Justice*

In 2019, President Donald Trump established a task force nicknamed "Operation Lady Justice" to address the crisis. The task force, made of eight officials, was met with "mixed" views from Native Americans.<sup>181</sup> Tribal leaders that joined Trump in announcing the task force welcomed support and recognition of the epidemic.<sup>182</sup> However, other Native Americans expressed views that the task force itself, as well as its funding, was inadequate. Then-Congresswoman Deb Haaland of New Mexico issued a press release arguing that the plan "falls short from what Indian Country needs to address this crisis" and fails to include adequate funding.<sup>183</sup> She expressed further concern about the absence of voices of survivors or tribal leaders on the task force.<sup>184</sup> Olivia Gray, an MMIWG activist, worried that meetings with the task force would be limited to "a few people, one hour, and one page to present," which would be "simply insulting" given the enormity of the problem.<sup>185</sup>

In December 2020, Operation Lady Justice released its one-year report that detailed findings from fifteen in-person and remote meetings with tribes, individuals, and stakeholders.<sup>186</sup> The task force released three recommendations in its initial report: (1) draft and propose legislation to

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181. Cecily Hilleary, *Native American Views Mixed on Trump Task Force for Missing, Murdered*, VOA (Dec. 2, 2019), <https://www.voanews.com/usa/native-american-views-mixed-trump-task-force-missing-murdered>.

182. *Id.*

183. Press Release, Haaland: President Trump's Dep't of Justice MMIW Plan Falls Short (Nov. 23, 2019), <https://haaland.house.gov/media/press-releases/haaland-president-trump-s-department-justice-mmiw-plan-falls-short>.

184. Acee Agoyo, *Trump Administration Faulted for Efforts to Address 'Epidemic' of Missing and Murdered in Indian Country*, INDIANZ.COM (Feb. 10, 2020), <https://www.indianz.com/News/2020/02/10/trump-administration-faulted-for-efforts.asp>.

185. Kendra Germany-Wall, *Operation Lady Justice: Addressing the Missing and Murdered Indigenous People Crisis*, CHOCTAW NATION, <https://www.choctawnation.com/operation-lady-justice-address-missing-and-murdered-indigenous-people-crisis> (last visited Apr. 25, 2020).

186. Native News Online Staff, *Presidential Task Force on Missing and Murdered Indigenous People Releases First Year Report*, NATIVE NEWS ONLINE (Dec. 11, 2020), <https://nativenewsonline.net/currents/presidential-task-force-on-missing-and-murdered-indigenous-people-releases-first-year-report>.

authorize Department of Justice databases to share information, (2) provide funding to support tribes in developing programming to support their teams or task forces, and (3) consider adding additional task force members from agencies who have a role in addressing specific challenges outlined in the report.<sup>187</sup> While these recommendations are encouraging demonstrations of federal involvement, they fail to alleviate concerns about the absence of tribal members on the task force. Additionally, the task force has so far failed to take into consideration historical and cultural causes such as genocide and systemic racism.

## B. Action in Alaska

### 1. *A Law Enforcement Emergency*

In June 2019, Attorney General William Barr declared a law enforcement emergency in rural Alaska, authorizing funding and measures to support village public safety and victim services.<sup>188</sup> In doing so, the federal government directed much-needed funding to tribes in Alaska. In the present early phases, it is nearly impossible to evaluate the results of the Attorney General's actions. However, Barr addressed a major concern about dedicating a budget: he acknowledged that "the important thing is that we don't just dribble in grants here and there to make ourselves feel good."<sup>189</sup> This expresses willingness to address the crisis in Alaska and to acknowledge that it needs a response separate from the Lower 48.

### 2. *H.B. 277*

In the state legislature, a proposed bill introduced in February 2020 would take the initial step of creating state and local standardized methods for investigating missing persons reports.<sup>190</sup> The bill would also establish liaisons between law enforcement agencies and tribes for investigations.<sup>191</sup> Including liaisons between tribes and law enforcement agencies will promote cooperation and hopefully allow law enforcement to address the needs of communities more readily. However, the bill's fate remains unclear.

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187. *Id.*

188. DEP'T OF JUSTICE OFFICE ON VIOLENCE AGAINST WOMEN, 2019 UPDATE ON THE STATUS OF TRIBAL CONSULTATION RECOMMENDATIONS (2019), <https://www.niwrc.org/sites/default/files/documents/Resources/2019-ovw-tribal-consultation-report.pdf>.

189. Segers, *supra* note 173.

190. H.B. 277, 31st Leg. (Alaska 2020).

191. *Id.*

## CONCLUSION

In attempting to address the crisis of missing and murdered Indigenous women and girls, the first step is to acknowledge that there is no quick solution. Any response will require a gradual cultural shift that celebrates and empowers Native women and girls rather than dismissing and diminishing them. This Note has provided an overview of the historical, cultural, and structural pieces that contribute to the larger puzzle of an epidemic in the United States, with an eye toward the unique qualities of the crisis in Alaska.

A top-down solution that directs funding to long-standing structures is not going to solve the crisis. Any attempt must be rooted in recognition of the historical structures of settler colonialism, empowerment of communities and local voices, and the provision of cultural competency within law enforcement. These measures are crucial to begin to reform broken structures and build new ones. While these needs are focused on Alaska specifically, they also underline much of what will likely ensure success across the country.

The “selective justice” faced by Alaska Native women can only be ended by eliminating the forces that created it. Therefore, the epidemic of missing and murdered women will be confronted only through recognition of the historical forces perpetuating the mistreatment of Indigenous women, acknowledgement of the role of government and law in exacerbating the crisis, and the restoration of Indigenous autonomy.