

MMIW and the Need for Preventative Reform

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MMIW has received a considerable uptick in interest from mainstream media, the general public and from both Senate and House Representatives in both state and national legislatures. That this issue has been the recipient of new focus and attention, particularly in D.C., is a testament to the families, grassroots advocates, tribes, tribal coalitions, and other allied organizations who have sought to uplift the stories and experiences of their communities. Most recently, the Urban Indian Health Institute released a report to the field, held a press briefing in the Nation's Capital, and brought massive amounts of attention to MMIW in the urban setting.¹ The level of advocacy on this issue from the field in general has been nothing short of a total groundswell.

This past year, in the 2017-2018 Congress, Senator Heitkamp introduced Savanna's Act. Though the Act stalled at the end of the congressional session, the interest in the issue has not faded. In fact, advocates can fully expect that Savanna's Act will be reintroduced, and Senator Heitkamp herself has vowed to continue fighting for it despite having left the Senate. NIWRC will work with its partners NCAI, Alaska Native Women's Resource Center, as well as advocates from the field to review the language in Savanna's Act as it exists presently and will focus attention on making it responsive to what tribal communities needs are around public safety and what Native families need around response and closure.

On December 12, 2018, the United States Senate held an oversight hearing on MMIW in which Kimberly Loring Heavy Runner testified to her experiences with law enforcement and their response to Ashley Loring Heavy Runner's disappearance. She focused on the lack of response and on the lack of seriousness within which officials approached her sister's case.

Jon Tester asked the Senate² to weed out which federal agency is responsible for the incessant inaction on this issue: the Federal Bureau of Investigation (FBI), the Bureau of Indian Affairs (BIA), or tribal law enforcement?

1. <https://goo.gl/RfgmKN>

2. <https://goo.gl/RGsQ4k>

As the hearing highlighted, there are certainly issues around the ways in which local law enforcement take missing person reports and the seriousness in which they pursue them. Anecdotally, families have expressed their difficulty in either getting law enforcement to accept a missing person report or to take that report seriously enough to allocate resources towards it. Some law enforcement agencies have been accused of making assumptions about why a Native person goes missing, and often times those assumptions are formed by underlying prejudice and bias. The UIHI report strongly and unequivocally stated that one reason for the lack of data and the lack of response is fully seeded in institutional bias, which disproportionately affects American Indians and Alaska Natives. No one would disagree.

"The purpose of this hearing is not to talk about if we have a problem. It's to talk about what you're going to do about it," said Senator Heitkamp. "When these crimes go uninvestigated, when they go unsolved for long, long periods of time, or ignored for long, long periods of time, that's your failure. It's not the community's failure, it's your failure."

The UIHI Report called for reforms around the experiences of Urban Indians.³ They state that tribal nations should have the ability to advocate for their citizens who live in urban areas (law enforcement in urban settings should notify tribal nations, who would then be able to advocate for their citizen's case and their family). Furthermore, according to UIHI, tribal

nations there should be meaningful consultations with tribes to ensure proper data collection and sustained access to the data. The report finally highlights the need to fund research that would support effective policy and reform around MMIW in urban areas specifically.

We can also establish minimum standards around police bias, and in fact, the USDOJ issued such guidance under a previous administration (in relation to gender-based violence).⁴ But it is also unfair to state that all law enforcement agencies operate from a place of prejudice any or all of the time, and it narrowly frames the issue. It is just as true that, especially for tribal law enforcement, that the issues surrounding response are compounded by a severe lack of resources for public safety. It is also true that there is a clear issue around confusion about who is to respond in these cases; and

3. <https://goo.gl/P6sVx6>

4. *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence (USDOJ 2015)*. <https://goo.gl/eY4UyC>

that speaks to the many jurisdictional issues in Indian country and how those issues play out in terms of who investigates. This issue should be addressed quickly and with clarity. Far too many people have testified to the issue that law enforcement gets stalled in terms of which agency needs to respond. That is not acceptable. Testimony at the hearing in December also highlighted the lack of seriousness on behalf of law enforcement in adequately addressing these cases. Loring stated that deer poaching cases were taken more seriously than her sister's case. Again, unacceptable.

Aside from the law enforcement response, additional framing surrounding MMIW up to this point has centered on a lack of data and therefore an inability on the part of policy-makers to understand the full scope of the issue as an "epidemic." This demand from Congress is born out of the Western approaches surrounding reform, in which an issue must first be presented in a statistical form in order to be considered "valid." Congress wants numbers. But since colonization, MMIW has consistently been a part of the narrative for Native people. Focusing on the data is critical in that it would provide a breadth of the problem, but additional ideas around reform have to focus on pieces that center more on *why*. In order to have meaningful legislative responses to MMIW, we have to think about what our priorities are around prevention.

So while MMIW as an issue is typically discussed first from a concern around the collection of data or around the law enforcement response once a person has gone missing or has been killed, the time period **before** an individual goes missing or is murdered should be also be centered. This is especially true from a policy reform perspective. The reform that focuses on law enforcement responses or lack thereof to the issue also narrowly focuses on the time between missing and murdered or on the time in which a murder has already occurred. It's a small window, but an important one around which accountability should be the norm, rather than a big legislative ask. The fact that our ask around this issue is that law enforcement simply respond as their duties dictate them to do, serves as social commentary for the overall level of failure in these cases and as Senator Daines put it, "It raises a fundamental question about us as a nation what value we place on human life...It's clear to me [Native American lives] [are] being devalued."

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Educational advocacy and accountability around perhaps a human rights definition of due diligence in terms of responses from law enforcement are two possible reform options if the field wants to address the issue from the law enforcement angle. Establishing baseline standards may differ from community to community based on jurisdictional issues: but prejudice and institutional bias has nothing to do with jurisdiction. So at the very least, that can be addressed across agencies on a national basis. But again, whether or not law enforcement has an appropriate response to homicide once it has occurred, does not prevent the overriding harm: *that someone has been killed*. There is a finality to that in which no reform in terms of response could undo.

The fact is, MMIW is about more than the law enforcement response or lack of response to violence in Indian country. It's about the length of time in which American Indians and Alaska Natives have been

continuously devalued, fetishized, dehumanized, and discarded. It's about how genocide and colonization have informed and served as underpinnings in federal policy. It's about how genocide and colonization were based on the violent thought that land and bodies could be owned and

consumed. It's about how that thought has been allowed to fester and grow and cement itself in the general public's attitudes towards Indian people and Indian tribes.

MMIW is also a symptom of the culmination of the failures on the part of the federal government to fulfill its trust responsibilities, including the obligation to assist Indian tribes in safeguarding the lives of Indian women. There is not enough prioritization around infrastructure or resources for public safety and victim services in Indian country and there are gaps in how the totality of law enforcement operates in tribal and urban communities. Smaller tribal governments have overburdened police departments, little resources, a lot of land to cover and many people to protect. And of course, there is the overarching issue concerning the lack of authority tribes have to exercise jurisdiction over certain cases and certain defendants, which means that the local response will be frustrated, if not completely prohibited. Similar to resource disparity and jurisdictional complexities, the issues of inconsistent access to stable safe housing, the rate at which Natives

age out of foster care, human trafficking issues, and whether or not firearms prohibitors work in practice in tribal communities are all also likely implicated as factors that cause, perpetuate or exacerbate the MMIW. We have to focus on vulnerabilities that increase risk if we want to prevent these cases from ever occurring in the first place.

One Vulnerability: The Risk of IPV and the Presence of a Firearm

A CDC report issued in 2017 found that Non-Hispanic black and American Indian and Alaska Native women experienced the highest rates of homicide (4.4 and 4.3 per 100,000 population, respectively) (Petrosky et al., 2017).⁵ This data is likely under-representative of American Indian and Alaska Native victims due to the issues surrounding reporting as discussed in the Urban Indian Health Institute report. The CDC report further concluded that there was a strong link between homicide and intimate partner violence, finding that 55.4% of the cases involving American Indians and Alaska Natives were at the hands of an intimate partner (Petrosky et al., 2017). Thus, there is a clear connection between MMIW and domestic and dating violence.

Knowing that a significant link exists between MMIW and domestic violence helps to inform reform work around MMIW. Again, reform lenses should center around intersectional issues or vulnerabilities that increase the risk of victimization by an intimate partner or the issues that increase the risk of fatality in an intimate partner violence situation. For example, the CDC report also found that 38.8% of American Indian and Alaska Native women who were murdered by an intimate partner, were killed via *firearm* (Petrosky et al., 2017).

Of course, this will not shock most Native victim's advocates, who can corroborate how the mere existence of a firearm exponentially increases the risk of homicide to a survivor and can from there delve into how the presence of a firearm impacts their safety planning with a survivor. But beyond the basic understanding that firearms, by their nature, increase the risk of fatality in domestic violence situations, there are serious gaps

in how federal firearms prohibitors operate in Indian country. Again, representing one limitation of the *federal response* as an arm of public safety in Indian country. This issue mostly centers around access to federal criminal databases such as NCIC, which is crucial with regards to public safety. Historically access to this information has been frustrated in tribal communities, which has implications in both tribal and urban settings given that law enforcement information sharing across jurisdictions is critical especially pertaining to the purchase or possession of a firearm.

Both the Violence Against Women Act and the Tribal Law and Order Act provide authorization for tribal law enforcement to access these databases. In response, the Department of Justice launched the Tribal Access Program (TAP) in 2015.⁶ Prior to the Tribal Access Program, tribes had unreliable access to federal criminal databases. A lot of access depended on state regulations and policies, and states are historically not cooperative in terms of information sharing with Indian

country. TAP is made up of three components: Access, Technology, and Training. The point of having access to NCIC for tribes in the context of domestic violence and dating violence centers on the importance of qualifying protection orders and misdemeanor domestic violence convictions in triggering the prohibition in Lautenberg Amendment. Under the law, when a

protection order or misdemeanor domestic violence conviction is entered into the database it would prevent a prohibited person from having a firearm transferred to them. Illustrating the importance of TAP in the domestic violence context, the Department of Justice has previously reported that the tribes with access to NCIC have entered in information that **prevented or blocked 300 instances of unlawful purchase of a firearm**. However, not all tribes have access to NCIC through TAP and not all orders or convictions are entered in through other means. This is a serious public safety issue. If an order or a conviction cannot be entered, an abuser is able to purchase a firearm and ammunition. Add the fact that not all tribes can charge and prosecute all defendants who commit domestic and dating violence on their lands, and now in no uncertain terms will those defendants be subject to the prohibition. This is especially true where the federal

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5. <https://goo.gl/CfUZxB>

6. <https://goo.gl/Asm6jp>

government is not going to prioritize misdemeanor domestic violence cases, and where in Public Law 280 states, there has been a demonstrated consistent failure to prosecute in similar instances. Thus, with regards to IPV and firearms and the link to MMIW, there is also an underlying concern around jurisdiction. In this way, further highlighting another priority ask: that tribes have their inherent authority to exercise jurisdiction over all defendants and over all crimes committed on their lands restored.

Considering the tie between domestic violence, homicide, and use of a firearm in committing that homicide (especially where the victim was an American Indian or Alaska Native), the issue of access to NCIC is a significant factor in increasing public safety in Indian country, but also in a very specific way, in decreasing the risk of homicide in domestic violence situations and therefore possibly decreasing the instances of MMIW in the future. Further expansion of TAP and increased authorizations for funding TAP is a reform that could help address the issue of MMIW from a preventative lens.

CONCLUSION

MMIW continues to be one of the most complex problems facing tribal governments. As an issue, it encompasses many of the layers that the movement to end violence against Native women seeks to address. With Savanna's Act continuing to be a priority for both the Senate and the House and with two Native women finally representing our communities, we should continue to leverage the momentum towards meaningful reform. Reforms that certainly include but do not only focus on the law enforcement response to MMIW, but that also focus on an aim towards prevention and on supporting local, tribal authority to develop responses.



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