



NHCSL

THE NATIONAL HISPANIC CAUCUS OF STATE LEGISLATORS

RESOLUTION

No. 2019-24

Improving Law Enforcement Resources to Address Disparities in Investigating Violence Against Native American Women

Reported to the Caucus by the NHCSL
Law and Criminal Justice Task Force
Del. Joseline Peña-Melnyk (MD), Chair

Sponsored by Rep. Ponka-We Victors (KS)

Unanimously ratified by the Caucus on December 5, 2019

1 **WHEREAS**, according to The Research Report's National Institute of Justice of 2016,
2 around 84.3%¹ of American Indian and Alaska Native women have experienced
3 violence in their lifetime, 56%² have experienced sexual violence in their lifetime, and
4 55%³ have experienced physical violence by intimate partners; and,

5 **WHEREAS**, according to the same report, based on the national average in U.S.
6 counties⁴, American Indian and Alaska Native women are ten times more likely to be

¹ National Institute of Justice Report: Violence Against American Indian and Alaska Native Women and Men 2016 findings by Andre B Rosay, at p. 2-3, available at <https://www.ncjrs.gov/pdffiles1/nij/249822.pdf>; See also the National Institute of Justice Research Report: Violence Against American Indian and Alaska Native Women and Men 2010 findings by Andre B Rosay p. 4-5. Available at <https://www.ncjrs.gov/pdffiles1/nij/249736.pdf>

² Ibid

³ Ibid

⁴ National Institute of Justice Report: Violence Against American Indian and Alaska Native Women and Men 2016 findings, p. 4-5, at available at <https://www.ncjrs.gov/pdffiles1/nij/249822.pdf>

Address Disparities in Investigating Violence Against Native American Women

7 murdered and more than four in five of them (89%) have experience stalking by a
8 non-Native perpetrator⁵; and,

9 **WHEREAS**, The Violence Against Women Act (VAWA) of 1994, 2000, and 2005⁶
10 supported by the National Hispanic Leadership Agenda (NHLA), responded to our
11 nation’s crisis of domestic violence, dating violence, sexual assault, and stalking by
12 requiring the U.S. Attorney General to conduct an annual consultation with Indian
13 tribal governments and to address the federal administration of all tribal funds and
14 programs established under the VAWA;⁷ and,

15 **WHEREAS**, the 2019 Reauthorization of the Violence Against Women Act (VAWA)
16 reaffirmed the tribes’ inherent power to exercise Special Domestic Violence Criminal
17 Jurisdiction (SDVCJ) over non- Indian perpetrators who commit acts of violence,
18 dating violence, or violations of certain protection order in Indian Countries;⁸ and,

19 **WHEREAS**, the U.S. Department of Justice in 2016 acknowledged it has both “a legal
20 duty and moral obligation to address violent crime in Indian Country and to assist
21 tribes in their efforts to provide for safe tribal communities;”⁹ and,

22 **WHEREAS**, the 2017 Tribal Consultation report by the Department of Justice
23 highlights the progress on the recommendations of missing and murdered Native
24 women, human trafficking, enforcement of tribal protection orders and tribal access
25 to federal crime information databases for the purpose of entering tribal orders, and
26 VAWA grant funding;¹⁰ and,

27 **WHEREAS**, according to that report, the training and technical assistance in tribal
28 communities has to be further funded in order to increase the capacity of response to
29 abuses and sex trafficking;¹¹ and,

⁵ Ibid

⁶ US Department of Justice: Office on Violence Against Women (OVW)- Tribal Affairs, Tribal Consultation Reports (October 4, 2019), available at www.justice.gov/ovw/tribal-consultation

⁷ Ibid. *See also* the National Hispanic Leadership Agenda (NHLA), that voted yes on the HR 1585, the bipartisan Violence Against Women Act (VAWA) Reauthorization of 2019, and in addition indicated that they will closely monitor this matter to include in future NHLA scorecards evaluating each Member’s support for the Latino Community, available at https://nationalhispanicleadership.org/images/advocacy_letters/NHLA_VAWA_-4-1-19.pdf

⁸ 2019 VAWA Reauthorization of the Violence Against Women (Special Domestic Violence Criminal Jurisdiction provision), available at: https://debbiedingell.house.gov/uploadedfiles/1903_vawafactsheet.pdf

⁹ National Institute of Justice Report: Violence Against American Indian and Alaska Native Women and Men 2016 findings by Andre B Rosay, at p. 6, available at <https://www.ncjrs.gov/pdffiles1/nij/249822.pdf>

¹⁰ *See* Office on Violence Against Women: 2017 Update on the Status of Tribal Consultation Recommendations on the Violence Against Women Tribal Consultation by the Department of Justice 2017, p. 4 available at: <https://www.justice.gov/ovw/page/file/1206986/download>

¹¹ Ibid p. 5

Address Disparities in Investigating Violence Against Native American Women

30 **WHEREAS**, the Department of Justice has called for the training and funding of the
 31 Indian Country justice system in order to enhance to mechanisms utilized by the
 32 Indian Country to counter lethal domestic violence, however, according to the
 33 National Institute of Justice (NIJ) the issue has been unresolved;¹² and,

34 **WHEREAS**, eleven states in 2019 introduced measures that address missing and
 35 murdered indigenous men and women, and many of those measures recognized that
 36 barriers to
 37 reporting and difficulties of sharing information in regard to databases and different
 38 levels of law enforcement, including tribal authorities, state and federal law police
 39 departments; and,

40 **WHEREAS**, there is ongoing lack of enforcement of tribal orders by state and local
 41 law enforcement demonstrating a need for training on tribal court's procedures by
 42 state and local law enforcement officials as well as a need for technical assistance for
 43 tribes and local jurisdictions to build collaborative relationships;¹³ and,

44 **WHEREAS**, various relevant articles dated on 2019 highlight the fear that native
 45 American women and girls face on tribal lands in America due to the major gaps in
 46 VAWA's protections such as the lack of prosecuting power when the issue is

¹² See National Institute of Justice Report: Violence Against American Indian and Alaska Native Women and Men by Andre B Rosay, at p. 4-5. Available at <https://www.ncjrs.gov/pdffiles1/nij/249822.pdf>CNN ; See also Justice for Kaysera: Native Teen's Mysterious Death Highlights Epidemic of Murdered Indigenous Women (dated October 10, 2019), available at: https://www.democracynow.org/2019/10/10/kaysera_stops_pretty_places_family_justice ; See Office on Violence Against Women: 2017 Update on the Status of Tribal Consultation Recommendations on the Violence Against Women Tribal Consultation by the Department of Justice 2017, p. 4-5 available at: <https://www.justice.gov/ovw/page/file/1206986/> (where the DOJ grants funding to combat human and sex trafficking including the OVW funding the Minnesota Indian Women's Assault Coalition (MIWSAC) training and technical assistance).

¹³ See the Office on Violence Against Women: 2017 Update on the Status of Tribal Consultation Recommendations on the Violence Against Women Tribal Consultation by the Department of Justice 2017, p. 5 available at: <https://www.justice.gov/ovw/page/file/1206986/download> (In response to this concerns, however, the DOJ has tried to provide supported technical assistance through the National Center on Protection Orders and Full Faith and Credit (NCPOFFC) and The Tribal Law and Policy Institute (TLPI). The former is working with tribal organizations and other stakeholder to maximize available resources or addressing issues related to tribal protection orders, while, the latter is working with tribes and states that have developed effective strategies in tribal protection order enforcement. The TLPI has an online resource made available on both organizations websites and TLPI has an online resource for drafting and enforcing Tribal protection orders available at www.Tribalprotectionorder.org)

Address Disparities in Investigating Violence Against Native American Women

47 recognized as domestic violence,¹⁴ and, the difficulty of reconciling laws enacted by
48 Congress and the tribal governments;¹⁵ and,

49 **WHEREAS**, in 2016, as reported by the National Crime Information Center, 5,712
50 missing American Indian and Alaska Native women were reported, but only 116 of
51 those reports were logged in the United States Department of Justice’s federal missing
52 person’s database;¹⁶ and,

¹⁴ See *The Law Fails Victims of Violence on Tribal Lands* by Catherine Cortez Masto, available at: <https://www.cnn.com/2019/09/18/opinions/law-fails-victims-of-violence-on-tribal-lands-cortez-masto/index.html> (addressing the fact that there are still major gaps in VAWA’s protections that this Congress needs to fill. Currently, the law doesn’t allow tribes to go after rapist, stalkers, or other criminals. It doesn’t permit them to protect children from domestic violence. The law doesn’t let tribes’ step in if a tribal police officer gets assaulted.)

¹⁵ Congress has attempted to solve this issue through several bills but, as of now, they have been unsuccessful. See S.290- 116th Congress (2019-2020) Native Youth and Tribal Officer Protection Act (Introduced on January 31, 2019) the bill extends tribal jurisdiction over the following crimes; violence committed against a child by a caregiver, violence against law enforcement involved in preventing, investigation, arresting or prosecution a person for domestic violence, dating violence or child violence, attempted dating violence or domestic violence or threatened dating violence or domestic violence (the bill reauthorizes grants to tribal governments for exercising tribal criminal jurisdiction for those crimes through FY2024) available at: <https://www.congress.gov/bill/116th-congress/senate-bill/290> ;

See also S. 982 -116th Congress (2019-2020) Not Invisible Act of 2019 (Introduced on April 2, 2019) bill introduced in Senate in an effort to increase intergovernmental coordination to identify and combat violent crime within Indian lands and of Indians. The bill aims to coordinate with the secretary of interior and the Office of Justice Services everything in terms of grants and sharing of information with the Department of Justice. Additionally, the bill creates an advisory committee on violent crime within Indian lands and of Indians. The bill directs the Department of Justice to provide training to law enforcement agencies, develop and implement a strategy to notify citizen of the National Missing and Unidentified Persons System. For more information on the committee best practices recommendations and content go to: <https://www.congress.gov/bill/116th-congress/senate-bill/982> ;

And see S. 227 116th Congress (2019-2020) Savanna’s Act (Introduced on January 25, 2019) directing the Attorney General to review, revise, and develop law enforcement and justice protocols appropriate to address missing and murdered Indians, and for other purposes. The act aims to improve tribal access databases and create consultation on how to further improve the exchange of information. Additionally, the bill also sets up guidelines for responding to cases of missing and murdered Indian among the solutions it includes aiming for a inter-jurisdictional cooperation among law enforcement agencies at the Tribal, Federal, State and local level. Additionally, standards of collection, guidance on best practices communications, training and technical assistance. Bill available: <https://www.congress.gov/bill/116th-congress/house-bill/2733>

¹⁶ 2018 Report on Missing and Murdered Indigenous Women & Girls by the Urban Indian Health Institute (November 2018) p. 1-3 available at, <https://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf> (Reporting on the 5,712 latest statistic available up to date and also reporting that murder is the number three cause of death of indigenous women in the United States); *See also* *The Remains of a Native American Women who went missing on October have been found*, (July 2019) available at: <https://www.cnn.com/2019/07/15/us/native-woman-remains-found/index.html> ; *Native American Women still have the highest rates of rape and assault* (Dated June 2016), available at: <https://www.hcn.org/articles/tribal-affairs-why-native-american-women-still-have-the-highest-rates-of-rape-and-assault>

Address Disparities in Investigating Violence Against Native American Women

53 **WHEREAS**, the tribes’ access to the national crime information databases and the
 54 information sharing via state networks has been an ongoing issue because the level
 55 of access given to the tribal community depends on the regulations, statutes and
 56 policies of the state in which tribe’s land is located;¹⁷ and,

57 **WHEREAS**, the access to base funding to address violence against Native women to
 58 allow for consistent programming in all tribal communities is lacking and despite the
 59 provisions dictated in VAWA the funds are either insufficient or hard to qualify for;¹⁸
 60 and,

61 **WHEREAS**, after VAWA 2013 the Department of Justice has made efforts to include
 62 the Tribal Access Program for National Crime Information (TAP) program to address
 63 tribal access to national crime information by providing participating tribes¹⁹ with
 64 various capabilities including, *inter alia*; the ability to submit records to national
 65 databases, as well as the ability to access the Criminal Justice Information Services
 66 Division (CJIS) systems for criminal and civil purposes through DOJ’s Criminal Justice
 67 Information Network; and,

68 **WHEREAS**, the Department of Justice as of 2017 only selected 15 tribes to participate
 69 in their 2018 program, and those tribes selected were complying with the register sex

¹⁷ See Office on Violence Against Women: 2017 Update on the Status of Tribal Consultation Recommendations on the Violence Against Women Tribal Consultation by the Department of Justice 2017, p. 6 available at: <https://www.justice.gov/ovw/page/file/1206986/download2017> (stating that there has been an effort by the DOJ to create access programs one of them launched in 2015 called Tribal Access Program for National Crime Information (TAP) a computer/biometric system with capacity to process finger and palm prints among other things and with the ability to access Criminal Justice Information Service Division (CJIS) for criminal and civil purposes through the DOJ’s network- after 2015 the DOJ selected twenty tribes to test the initiative. However, many tribes have raised the concern of tribes not been eligible for the TAP system. According to the DOJ in 2018 the funding for expanding the scope of the TAP was increased for more information on this visit www.justice.gov/tribal/tribal-access-program-tap.)

¹⁸ Ibid at p. 9 (However the OVW programs grants are insufficient because they award fund for two to three years on a *discretionary* basis by the DOJ. Discretion on amount of funds and thus the tribal communities are unable to know how much their funding is going to be granted or reduced.); *See also* p. 6 (discussing the fact that the tribal agencies and programs that were eligible to use TAP included agencies whose staff and volunteers have contact with or control over Indian children, public housing agencies, child support enforcement agencies, Heart Start programs, civil agencies that investigate allegations of abuse, neglect, and exploitation of children, civil courts that issue orders of protection, restraining orders or other keep away orders and sex offender registration programs.); *But see*, p. 6-7 (although not determinative, the TAP program according to the DOJ, enhances tribal efforts to register sex offenders pursuant to the Sex Offender Registration and Notification act (SORNA). However, in 2016 the DOJ gave priority access to tribes utilizing the SORNA program.)

¹⁹ Ibid p. 6-8, where the DOJ states that there are allowed to require SORNA because the first phase of the TAP program was funded entirely by the SMART office, that required a SORNA implementation; *See also* p. 6-8, where it indicates that tribes have been limited to requirements placed by the DOJ. The most prominent requirement has been the requirement of SORNA regardless of where the funding is coming from.

Address Disparities in Investigating Violence Against Native American Women

70 offenders program called Sex Offender Registration and Notification Act (SORNA²⁰),
 71 and that tribal communities that do not have SORNA generally don't qualify or there
 72 are not available funds to be able to fall under the DOJ eligibility criteria;²¹ and,

73 **WHEREAS**, the Department of Justice amended the optional requirement to include
 74 the STOP program to a mandatory requirement in December 2016, and, in their
 75 efforts to include the tribal communities it required that states invite all state or
 76 federally recognized tribes in state to participate in the STOP planning process,²² and
 77 also it required tribal communities wanting to utilize the TAP program to also
 78 participate in the STOP program; and,

79 **WHEREAS**, the DOJ programs for VAWA such as the Sexual Assault Services Program
 80 (SASP)²³ which provides generally intervention, advocacy, accompaniment, support
 81 services for adult, youth and child victims of sexual assaults in the tribal communities
 82 requires the tribes to go through an application process where there is an eligibility
 83 criteria that is rather bureaucratic, and that the reason the DOJ has denied some of
 84 the applications for funding of the previously mentioned program is because of small
 85 procedural mistakes.²⁴

86 **THEREFORE, BE IT RESOLVED**, that the National Hispanic Caucus of State
 87 Legislators urges the United State Department of Justice to develop and implement
 88 methods of collecting and reporting accurate and complete data on missing and murdered
 89 American Indian and Alaska Native men and women; and,

90 **BE IT FURTHER RESOLVED**, that the United States Department of Justice, develop a
 91 universal database or utilize the TAP program where data can be shared on missing
 92 and murdered indigenous women between federal, state, county, city, and tribal
 93 authorities without the need of implementing programs such as SORNA; and,

94 **BE IT FINALLY RESOLVED**, that funding be made widely available, including directly
 95 to tribes and state law enforcement to facilitate the training and coordination of
 96 collecting and reporting data as well as funding for newly created assistance
 97 programs, and existing assistance programs where the Department of Justice should

²⁰ SORNA is very controversial because it requires the enactment of additional punitive laws that may find objectionable. Most states are not in total compliance with SORNA, and Kentucky, New York, Rhode Island and Arizona are not in compliance at all. Tribes whose territories are coextensive with those states would not be able to achieve much because of that. And, regardless, this is also an attempt of the Federal Government to tell states what to criminalize. See what states have approved SORNA here: <https://www.smart.gov/pdfs/SORNA-progress-check.pdf>

²¹ See Office on Violence Against Women: 2017 Update on the Status of Tribal Consultation Recommendations on the Violence Against Women Tribal Consultation by the Department of Justice 2017, p. 7 available at: <https://www.justice.gov/ovw/page/file/1206986/download2017>

²² Ibid p. 9, (indicates that all tribal governments in the STOP (Services-Training-Officers-Prosecutor) to include all tribal governments, both federally and states recognized – the funding includes all tribal populations – research.)

²³ Ibid p. 14

²⁴ Ibid

Address Disparities in Investigating Violence Against Native American Women

98 ensure a smooth application process to obtain funding for the programs need and the
99 funding.

100
101 THE NHCSL EXECUTIVE COMMITTEE UNANIMOUSLY APPROVED THIS RESOLUTION
102 ON DECEMBER 3, 2019 AT ITS FALL MEETING IN SAN JUAN, PR.

103
104 THE NATIONAL HISPANIC CAUCUS OF STATE LEGISLATORS UNANIMOUSLY
105 RATIFIED THIS RESOLUTION ON DECEMBER 5, 2019, AT THE ANNUAL MEETING IN
106 SAN JUAN, PR.

