

Testimony of Michelle Demmert, Law & Policy Consultant of Alaska Native Women's Resource Center
Tribal Affairs Committee
Alaska State House of Representatives

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Thank you, Gunalchéesh, Chair Zulkosky, Vice-Chair Edgmon and Committee members for asking me to testify today.

My name is Michelle Demmert. I am an enrolled citizen of Tlingit & Haida as well as their elected Chief Justice of our Supreme Court. I am the Law & Policy Consultant of the Alaska Native Women's Resource Center and a licensed attorney in the state of Washington. I thank you for inviting me to speak today about our organization's work on this topic, our experience with Alaska Native women's rights including on the ground efforts to address Missing and Murdered Indigenous Women (MMIW) and to provide an overview of pending federal legislation. I believe that it is critical that we work together to change laws, policies and that the state and federal government create additional programs and funding opportunities to address this issue, specifically to eradicate the disproportionate number of missing and murdered indigenous women and men.

As you well know, federal Indian law has created jurisdictional issues that leave our communities vulnerable to violent individuals who abduct and/or murder individuals. In Alaska in particular, our jurisdictional maze leaves us far too much without any protections in the way of law enforcement or properly trained police to address the most violent crimes. Alaska Native victims' access to justice and victim services requires many layers to get the help they need, often leaving crimes unsolved, which emboldens criminals, and abusers are left unaccountable. The Supreme Court case in the *Native Village of Venetie*, along with the Alaska Native Claims Settlement Act (ANCSA) have created a challenging situation for Alaska Native tribes to address village safety issues, especially as it relates to the accountability of abusers and criminal defendants and the ability to receive timely law enforcement response and related needed victim services.

There are many stories and experiences of Alaska Native women and girls that have faced victimization just because they are indigenous women. Too many of our relatives have suffered abuse and death because of a government system that fails in their legal trust and moral responsibility to assist Indigenous nations in safeguarding the lives of our women and children. There are many reasons why we have such horrible challenges in Alaska and in protecting Alaska Native women and children. We have few options when seeking help such as safe shelters, law enforcement, medical services, or any type of help dealing with the aftermath of victimization. The following are some of the explanations of the challenges we face, and I offer some ideas for solutions.

While violence against Native women occurs at higher rates than any other ethnic group in the United States, it is at its worst in Alaska. A full 50% of Alaska Native women will have experienced physical or sexual violence in their lifetime.¹

We have no closure with many of our women who die unexpectedly and unnaturally. The manner of death, while it is too often considered “suspicious” and often with visible injuries, the death is classified as accidental, suicidal, or undetermined. In the village of Klawock, police suspected “foul play” in the unnatural death of Francile Ella Turpin (37) on January 14, 2018, a year later, there is no resolution.² Why is it that our women and families do not get the closure regarding cause of death that other nationalities and the general population take for granted? One reason could be that 40 percent of our communities have no law enforcement, or even any 911 services to speak of, so who do they call? The first responders are often volunteer medics whose first inclination is to address the injury. The possibility that there could be a crime committed is not even contemplated and the scene can easily be contaminated before a semi-qualified individual can preserve the scene. Other potential first responders are tribal leaders, and our volunteer women advocates go to attempt to preserve any potential crime. Joel Jackson, President of the Organized Village of Kake has had to respond to the crime scenes, including murders, because he is the closest that the village of 800+ has to a police officer--he was a former policeman as a young man.

Occasionally, our communities do see a resolution, but it could take years. The case of Sophie Sergie is an example of one such case that took 25 years to solve. Ms. Sergie traveled to Fairbanks from her village in western Alaska, to visit a friend at the University of Alaska. She was found in the dormitory bathtub, dead, having been sexually assaulted, stabbed multiple times and shot in the back of her head. The cold case team used Genetic genealogy testing, which uses family genetic history to find suspects. The DNA was linked to a student who was attending the University at the time in the 1990’s and is now a nurse working in Maine.³ Unfortunately, this case is an exception, and not the rule as we have too many unsolved cases.

As for the murder epidemic, the Violence Policy Center reports that Alaska is ranked first among states with the highest homicide rates of women by men and is the most violent state, with Anchorage as the most violent city within the Union. The Seattle-based Urban Indian Health Institute reports that Alaska is among the top ten states with the highest number of missing and murdered Native Americans and Alaska Natives with 52 active cases.⁴

¹ *A Roadmap for Making Native America Safer: Report to the President and Congress of the United States* (November 2013), available at <http://www.aisc.ucla.edu/iloc/report/>.

² <https://www.ktva.com/story/37289178/klawock-police-say-foul-play-suspected-in-womans-death>

³ <https://www.adn.com/alaska-news/crime-courts/2019/02/16/25-years-after-a-woman-was-found-dead-in-a-uaf-bathtub-alaska-state-troopers-make-an-arrest/>

⁴ Report available at <http://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf>

Sadly, Alaska is a violent state. According to the Violent Death Reporting System between 2003 and 2008, Alaska Natives and American Indians make up 29.1 % of the Homicide victims in Alaska, with the 20-29 age group seeing the largest number of murders—22.1%. In addition, during that time period Alaska Native and American Indian Women represented 38% of the overall deaths, with a firearm being the #1 cause killing our women—29%. In addition, the perpetrator in the murders of Alaska Natives and American Indian women, were generally not domestic violence or intimate partner related. The majority of the deaths were non-DV related, or 86.1%.⁵

How do we track the missing and murdered? We don't. NamUs is about the only database that tracks MMIW and does contain valuable information, but it is a volunteer system and it does not currently talk to the FBI CJIS's Missing persons file, which is the system law enforcement is most familiar with. Anyone can have access to NamUs--literally. All they have to do is set up an account and enter the information they want to enter about a missing person. The NamUs staff take that information and confirm with Law Enforcement before it can go out publicly. There are less missing Native persons in NamUs than there are in FBI CJIS's missing persons file, likely because Law enforcement doesn't use it in the same way. NamUs is completely voluntary and was originally set up to try to match remains found with people who were missing. FBI CJIS's database is also voluntary except for entry of missing persons under age 18 which is mandatory, and then some states have mandatory missing person reports to CJIS by their state law, but it is way less than half. A Tribe and everyone have access to initiate cases in NamUs, however, the net effect of going that route is unknown. In addition, there is a component in which genetic material is requested in NamUs. While this request is voluntary, it makes most native Americans shy away from the process.

According to the National Institute of Justice, the NamUs team was in Alaska October 2018 to do outreach with several law enforcement agencies, the Alaska medical examiner, Department of Public Safety, and others. During those discussions it was raised that there is a backlog in digitizing ~1200 missing persons cases. Apparently, there is only one person currently working the backlog (Search and Rescue Program Coordinator, Missing Persons Clearinghouse Manager, Alaska State Troopers). That is not to say those cases are not being worked, just that they are not digitized thus unknown how many of those 1200 cases are American Indian and Alaska Natives.

As for missing persons, Alaska has the highest number of any state in the union and these are not per capita numbers. As of January 2019, out of the 347 missing Alaska Native and American people's in the NamUs system 74 of those were from Alaska—the most of any state. Overall, 92% have been missing for less than a year, and the majority of cases are male—about 1/3 to 2/3 respectfully. See attached. Why does it take so long to work our cases compared to other populations? That is a question that deserves an answer.

⁵ *Alaska Violent Death Reporting System 2003-2008 (August 2011)*, State of Alaska, Department of Health and Social Services, available at <http://dhss.alaska.gov/dph/Epi/injury/Documents/akvdrs/assets/AKVDRS.pdf>

The United States has made progress in addressing Violence Against Women. In 2013, during the Congressional debates to reauthorize the Violence Against Women's Act, United Nations human rights officials came together and released a public statement calling on the United States to act promptly to pass key reforms to the Violence Against Women Act that bolster indigenous tribes; that the continued jurisdictional gaps, especially those in Alaska, are an ongoing human rights crisis.⁶ Sadly, Alaska was mostly left out of these improvements because of its tribal land status that make tribal jurisdiction challenging. Unlike other areas of the United States that share jurisdiction between the United States government and Indian tribes, in the state of Alaska, Indian tribes share jurisdiction with the state government. Because of federal and state laws, policies and allocation of resources, tribal responses have been throttled leaving the investigation and prosecution of crimes, including violence against women and children to the state. Alaska, like the federal government, has failed in providing for public safety in Alaska Native villages as according the Tribal Law and Order Commission Report, about 40% of our communities' lack law enforcement.⁷

The United States has a federal Indian trust responsibility to the first people of the US. In several cases discussing the trust responsibility, the Supreme Court has used language suggesting that it entails legal duties, moral obligations, and the fulfillment of understandings and expectations that have arisen over the entire course of the relationship between the United States and the federally recognized tribes. However, since Alaska entered the Union, the State has been ceded the federal jurisdiction among tribes and as a result left us without access to resources. The US has failed this responsibility in their protection of American Indian and Alaska Native communities. Many of our communities are lawless as a result of the state not living up to its responsibility.

While there is tremendous diversity among all tribes, it is worth noting that many of the 229 tribes in Alaska experience extreme conditions that differ significantly from tribes outside Alaska. Most of the Alaska Native villages are located in remote areas that are often inaccessible by road and have no local law enforcement presence. The Tribal Law and Order Commission found that "Alaska Department of Public Safety (ADPS) officers have primary responsibility for law enforcement in rural Alaska, but ADPS provides for only 1.0-1.4 field officers per million acres."⁸ Without a strong law enforcement presence, crime regularly occurs with impunity. Victims live in small, close-knit communities where access to basic criminal justice services is non-existent and health care is often provided remotely through telemedicine technology. Providing comprehensive services and justice to victims in these circumstances presents unique challenges. In many of these communities, tribal members receive services in informal ways. Domestic violence victims, for example, may be offered shelter in a home that is a known "safe house" in the village. Furthermore, Alaska tribal governments are unique among indigenous

⁶ <http://www.unwomen.org/en/news/stories/2013/6/it-is-time-for-action-to-end-violence-against-women-a-speech-by-lakshmi-puri>

⁷ Supra fn 1.

⁸ *A Roadmap for Making Native America Safer: Report to the President and Congress of the United States* (November 2013), available at <http://www.aisc.ucla.edu/iloc/report/>.

American tribes in their lack of access to the same type of government revenues available to nearly every other sovereign entity in the country.

As previously mentioned, Alaska's track record demonstrates a lack of engagement and follow through with tribal governments that creates one of the most dangerous situations for Native women in the nation. Local control to local solutions with resources is critical to improving the situation for our Alaska Native brothers and sisters.

According to the 2013 Tribal Law and Order Act Commission Report, Alaska Native women are over-represented in the domestic violence victim population by 250%; they comprise 19% of the state population but are 47% of reported rape victims. And among other Indian Tribes, Alaska Native women suffer the highest rates of domestic and sexual violence in the country.

Tribal governments are also unable to prosecute crimes of sexual assault, trafficking, and stalking. A 2016 study from the National Institute for Justice (NIJ), found that approximately 56% of Native women experience sexual violence within their lifetime, with 1 in 7 experiencing it in the past year.⁹ Nearly 1 in 2 report being stalked.¹⁰ Contrary to the general population where rape, sexual assault, and intimate partner violence are usually intra-racial, Native women are more likely to be raped or assaulted by someone of a different race. 96% of Native women and 89% of male victims in the NIJ study reported being victimized by a non-Indian.¹¹ Native victims of sexual violence are three times as likely to have experienced sexual violence by an interracial perpetrator as non-Hispanic White victims.¹² Similarly, Native stalking victims are nearly 4 times as likely to be stalked by someone of a different race, with 89% of female stalking victims and 90% of male stalking victims reporting inter-racial victimization.¹³ The higher rate of inter-racial violence would not necessarily be significant if it were not for the jurisdictional complexities unique to Indian Country and the limitations imposed by federal law on tribal authority to hold non-Indians accountable for crimes they commit on tribal lands.

Historically, Alaska tribes have been treated differently than lower 48 tribes, often making fundamentals of tribal court jurisdiction challenging to understand or ascertain resulting in recognized disparities which resulted in the FY17 appropriations for an Alaska Native Tribal Resource Center on Domestic Violence (see attached article "A Tribal Perspective on VAWA 2018" from Restoration-V15.3- October 2018 NIWRC). With the passage of the Alaska Native Claims Settlement Act (ANCSA) in 1971, the only remaining reservation in the state is the Annette Island Reserve in Southeast Alaska.¹⁴ Rather than recognize sovereign tribal lands, ANCSA tasked the for-profit corporations to manage more than 40 million acres of fee land. ANCSA divided the state into 12 regional corporations and over 200 village corporations that

⁹ Andre B. Rosay, Nat'l Inst. of Justice, *Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey*, U.S. Dep't of Justice 11 (2016), available at <https://www.ncjrs.gov/pdffiles1/nij/249736.pdf>.

¹⁰ *Id.*, at

¹¹ *Id.*, at 18.

¹² *Id.*, at 29.

¹³ *Id.*, at 32.

¹⁴ 25 U.S.C. 495 (1891).

would identify with their regional corporation. Many of these villages had corresponding tribal village governments, but with the passage of ANCSA, no meaningful land base. As a result, unlike most court systems that have defined territorial jurisdiction and personal jurisdiction, Alaska Tribal courts generally exercise jurisdiction through tribal citizenship, and not through a geographic space defined as “Indian country” because of ANCSA and in part due to a United States Supreme Court case.

As a result of the United States Supreme Court’s unfavorable decision in *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998), most of the tribes’ traditional territory is not considered “Indian country.” Without the ability to tax, without Indian gaming, and without consistent and predictable tribal court appropriations, Alaska tribes lack the revenue typically available to other tribal governments to fund and sustain essential governmental programs. All Alaska tribes are in a similar position and must find innovative ways to raise government revenue and to leverage other resources to sustain their tribal courts and public safety programs. As a result of this resource dilemma, available grants for developing and maintaining programs are incredibly important for Alaska tribes.

As required by a provision included in VAWA 2005, DOJ holds an annual consultation with tribal governments on violence against women. For several years tribal leaders have raised concerns at the annual consultation about the inadequate response to cases of missing or murdered Native women. DOJ summarized tribal leader testimony on this issue in 2016:

“At the 2016 consultation, many tribal leaders testified that the disappearance and deaths of American Indian and Alaska Native (AI/AN) women are not taken seriously enough, and that increased awareness and a stronger law enforcement response are critical to saving Native women’s lives. They noted that missing AI/AN women may have been trafficked, and they also provided examples of abusers who murdered their partners after engaging in a pattern of escalating violence for which they were not held accountable. Tribal leaders also raised concerns that cases involving Native victims are often mislabeled as runaways or suicides, and that cold cases are not given sufficient priority. Recommendations included the creation of a national working group to address these issues and an alert system to help locate victims soon after they disappear, as well as the development of an Indian country-wide protocol for missing Native women, children, and men.”¹⁵

Policy or funding recommendations for the State government to address this issue:

1. States are adopting a similar bill to Savanah’s act, S.227
2. In Washington state, they enacted two laws over two years: in year one they had the Washington State Patrol(WSP) study the issue and make recommendations. In year 2,

¹⁵ U.S. Department of Justice, Office on Violence Against Women, “2017 Update on the Status of Tribal Consultation Recommendations,” (2017).

they are implementing those recommendations with two tribal liaisons in the WSP and to develop a best practices protocol when a woman goes missing.

3. In 2003, the state of Montana established Fatality reviews to review cases, trends and make comparisons with non-native deaths: four cases are reviewed each year with two being native American. As a result of these reviews, they have created a protocol for investigations and make recommendations to the Montana law makers.

In addition, this year they passed a law to collect and share data on missing people within Montana's seven Indian reservations.

4. The North Dakota Legislature has passed a bill that would require more law enforcement training related to missing and slain Native Americans.
5. South Dakota there are three bills pending that are similar to those mentioned above.
6. Locally, Tlingit & Haida created a VAW Task Force that is tasked with studying the issues and making recommendations
7. A bi-partisan group of co-sponsors in the Senate, has introduced "Savanna's Act," S. 227, which includes several provisions aimed at improving the response to cases of missing and murdered women in tribal communities. The State could pass a similar law.

There is a unique opportunity to recognize these issues and make corrections to the laws. In Lingit, as with other language groups in Alaska, we had no words or description for violence within a family home. We had traditional forms of justice that kept our community in check and women valued as the life giver of the family. We had community justice, which we are now returning to.

Restoring and enhancing local, tribal governmental capacity to respond to violence against women provides for greater local control, safety, accountability, and transparency. We will have safer communities and a pathway for long lasting justice.

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