

“Statistics Are Human Beings with the Tears Wiped Away”: Utilizing Data to Develop Strategies to Reduce the Number of Native Americans Who Go Missing

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INTRODUCTION

On New Year’s Eve night, 2019, sixteen-year-old Selena Shelley Faye Not Afraid attended a party in Billings, Montana, about fifty miles west of her home in Hardin, Montana, near the Crow Reservation.¹ A junior at the local high school, she was active in her community.² The party carried over until the next day, and she caught a ride back toward home with friends in a van the following afternoon.³ When the van stopped at an interstate rest stop, Selena got out but never made it back to the van.⁴ The friends reported her missing to the police and indicated they had last seen her “wandering into a field” and that she was intoxicated at the time.⁵ Once they heard she was missing, Selena’s family quickly went to the rest stop and began their own search.⁶

Selena and her family had known tragedy. Selena’s twin sister died by suicide when she was just eleven years old; another sister had been struck and killed by a car; and a brother had been shot and killed by police officers in Billings.⁷ The law enforcement response to her disappearance was unusually swift, accounted for at least in part by the recent attention to the crisis of missing or murdered indigenous persons across Indian country.⁸ Tribal, federal, state, and local law enforcement—along with volunteers—scoured the area for any sign of Selena.⁹ Unfortunately, about three weeks after her disappearance, Selena’s body was found about a mile

1. Jack Healy, *Rural Montana Had Already Lost Too Many Native Women. Then Selena Disappeared*, N.Y. TIMES (Jan. 20, 2020), <https://www.nytimes.com/2020/01/20/us/selena-not-afraid-missing-montana.html> [<https://perma.cc/2ER7-HBWA>]; *Selena Shelley Faye Not Afraid*, <https://www.dahlfuneralchapel.com/obituaries/Selena-Shelley-Faye-Not-Afraid?obId=10699748> [<https://perma.cc/XUC4-E53Y>] [hereinafter *Obituary*].

2. *Obituary*, *supra* note 1.

3. Healy, *supra* note 1.

4. *Id.*

5. Jeanelle Slade, *Autopsy Reveals Not Afraid’s Cause of Death*, KRTV (Feb. 29, 2020), <https://www.krtv.com/news/montana-and-regional-news/autopsy-reveals-not-afraids-cause-of-death> [<https://perma.cc/9Y8S-ZLCH>].

6. Healy, *supra* note 1.

7. *Id.*

8. See, e.g., Bettina Hansen & Lauren Frohne, *Not Invisible: Confronting a Crisis of Violence Against Native Women*, SEATTLE TIMES (Aug. 11, 2019), <https://projects.seattletimes.com/2019/mm/iw/> [<https://perma.cc/D5W3-D9VQ>]; Healy, *supra* note 1.

9. Healy, *supra* note 1.

from where she had last been seen; the official cause of death was exposure to extreme natural cold.¹⁰

Missing person cases involving American Indians or Alaska Natives (AI/AN) pose unique investigative challenges. Foremost among these is the “maze” of investigative jurisdiction in Indian country.¹¹

The term “Indian country” first appeared in federal law in 1790 as part of the Indian Trade and Intercourse Act.¹² While the term has since been used in numerous legislative provisions, for our purposes, we refer to Indian country as defined in 18 U.S.C. § 1151:

[T]he term “Indian country” as used in [Chapter 18 of the U.S. Code], means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.¹³

Whether a particular law enforcement agency has the authority to investigate a missing person case involving an AI/AN individual is entirely dependent upon (1) whether the disappearance occurred on lands that are Indian country; (2) whether the missing person is an Indian;¹⁴ (3)

10. *Id.*; Slade, *supra* note 5. For a discussion of classification of deaths involving the elements, see JEFFREY BURKO, DEBORAH D. INGRAM, SHUBHAYU SAHA & JENNIFER D. PARKER, NAT’L CTR. FOR HEALTH STAT., NATIONAL HEALTH STATISTICS REPORTS NO. 76: DEATHS ATTRIBUTED TO HEAT, COLD, AND OTHER WEATHER EVENTS IN THE UNITED STATES, 2006–2010 (Jan. 30, 2014), <https://www.cdc.gov/nchs/data/nhsr/nhsr076.pdf> [<https://perma.cc/XZ86-WCDP>].

11. *See, e.g.*, INDIAN LAW & ORDER COMM’N, A ROADMAP FOR MAKING NATIVE AMERICA SAFER, REPORT TO THE PRESIDENT & CONGRESS OF THE UNITED STATES 18 (2013), https://www.aisc.ucla.edu/iloc/report/files/A_Roadmap_For_Making_Native_America_Safer-Full.pdf [<https://perma.cc/ZAA8-4X3H>]; Adam Goodrum, *Meeting the McGirt Moment: the Five Tribes, Sovereignty & Criminal Jurisdiction in Oklahoma’s New Indian Country*, 46 AM. INDIAN L. REV. 201, 215 (2021).

12. An Act to Regulate Trade and Intercourse with the Indian Tribes, ch. 33, § 3, 1 Stat. 137, 138 (1790).

13. 18 U.S.C. § 1151. For a comprehensive legislative history of the term “Indian country,” see John H. Dossett, *Indian Country and the Territory Clause: Washington’s Promise at the Framing*, 68 AM. U. L. REV. 205 (2018).

14. A two-part test is used to determine whether a missing person is an “Indian”: “[T]he government must prove that the [person] (1) has some quantum of Indian blood and (2) is a member of, or is affiliated with, a federally recognized tribe.” *United States v. Zepeda*, 792 F.3d 1103, 1106–07 (9th Cir. 2015) (en banc). It is important to note that “the term ‘Indian’ has not been statutorily defined but instead has been judicially explicated over the years,” *United States v. Broncheau*, 597 F.2d 1260, 1263 (9th Cir. 1979), and that the definition of “Indian” may vary slightly from circuit to circuit.

the nature of the person's disappearance; and (4) the age of the person who has gone missing. The first two criteria are unique to investigations conducted on tribal lands.

If an AI/AN person goes missing on lands that are Indian country, the tribe has the authority to investigate the disappearance. An investigation on tribal lands is ordinarily conducted by one of two entities. In some situations, the Bureau of Indian Affairs, Office of Justice Services (BIA-OJS) serves as the primary law enforcement agency for the tribe. In other instances, the tribe's own law enforcement agency may conduct the investigation. However, exceptional cases exist in which another law enforcement agency may have primary investigative authority. For example, in cases involving children under the age of twelve, the FBI may take the lead in an investigation. Additionally, on request, the BIA, FBI, or U.S. Marshals Service (USMS) might be requested to assist in the investigation.¹⁵

Investigations are further complicated when jurisdictional issues arise. Depending on whether the tribal lands are located in a Public Law 280 (PL-280) state,¹⁶ it is possible that state or local law enforcement may have primary or concurrent jurisdiction over the investigation. Additionally, in *Oklahoma v. Castro-Huerta*, the United States Supreme Court granted state and local law enforcement expanded concurrent law enforcement jurisdiction in portions of Indian country.¹⁷ One unintended result of this decision has been continued litigation and further confusion regarding jurisdictional issues.¹⁸

15. USMS assistance is limited to cases where the missing person is under age eighteen, or where there is a nexus to a fugitive or noncompliant sex offender investigation. U.S. MARSHALS SERV., FACT SHEET: MISSING CHILD PROGRAM 2022 (2022), <https://www.usmarshals.gov/sites/default/files/media/document/2022-Missing-Child-Program.pdf> [<https://perma.cc/E7AF-WGHZ>]. When the missing person is not AI/AN, the FBI or USMS (if a missing child) may provide assistance, depending on the circumstances.

16. An Act to Confer Jurisdiction on the States of California, Minnesota, Nebraska, Oregon, and Wisconsin, with Respect to Criminal Offenses and Civil Causes of Action Committed or Arising on Indian Reservations Within such States, and for Other Purposes, Pub. L. No. 83-280, ch. 505, 67 Stat. 588 (codified as amended at 18 U.S.C. § 1162) [hereinafter PL-280]. For a full discussion of the jurisdictional issues created by PL-280, see FELIX S. COHEN, COHEN'S HANDBOOK OF FEDERAL INDIAN LAW ch. 6 (2022) (Tribal-State Relationship); Vanessa J. Jiménez & Soo C. Song, *Concurrent Tribal and State Jurisdiction Under Public Law 280*, 47 AM. U. L. REV. 1627 (1998). For reference, a current chart explaining criminal jurisdiction in Indian country can be found online. ARVO Q. MIKKANEN, U.S. ATT'Y'S OFF., W. DIST. OKLA., INDIAN COUNTRY CRIMINAL JURISDICTION CHART (2022), <https://www.justice.gov/usao-wdok/page/file/1049076/download> [<https://perma.cc/PN4D-J7BC>].

17. *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486, 2491 (2022).

18. For examples of ongoing litigation based on *Castro-Huerta*, see *Oklahoma v. Sims*, 143 S. Ct. 70 (2022) (vacating and remanding conviction based on *Castro-Huerta*); *In re Garcia-Meza*, 2022 U.S. App. LEXIS 35119 (6th Cir. Dec. 19, 2022) (denying a habeas claim by concluding that *Castro-Huerta* did not announce a new rule of constitutional law).

If an AI/AN person goes missing on lands that are not Indian country, neither the tribe nor the BIA has any primary authority to investigate the case; state or local law enforcement will generally have lead investigative jurisdiction. This was the situation in Selena Not Afraid's case, where state and local law enforcement had primary investigative authority because the disappearance happened on state (i.e., non-tribal) lands. However, these jurisdictional complexities can sometimes result in cases falling through the cracks, incomplete investigations, or a failure to utilize available critical resources.

Law enforcement has properly focused its efforts on narrowing the gaps through which the investigation into the disappearance of a missing AI/AN person might fall, and on improving their overall response to reports of missing persons. For example, building off the success of the AMBER Alert program,¹⁹ some states are now developing similar alert programs for when an AI/AN person goes missing, regardless of their age.²⁰ These alerts have proved very successful in a short period of time.²¹ Additionally, some states require law enforcement to receive training

19. The federal legislation establishing a nationwide AMBER Alert system was enacted in 2003. Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, tit. III, subtitle A, Pub. L. No. 108-21, 117 Stat. 650 [hereinafter PROTECT Act of 2003]. The effort to enact a nationwide AMBER Alert program stretched over several years. *See, e.g.*, 146 CONG. REC. H8816 (daily ed. Oct. 5, 2000) (statement of Rep. Lampson) (asking members to support the Amber Alert program); Sense of the House that Communities Should Implement Amber Plan for Recovery of Abducted Children, H.R. Res. 605, 106th Cong. (2000) (agreed to in House of Representatives) (resolution text and statements in support); National AMBER Alert Network Act of 2002, S. 2896, 107th Cong. (passed Senate); Protecting our Children from Violence Act of 2002, H.R. 5397, 107th Cong. § 7 (designating an AMBER Alert Coordinator); Child Abduction Prevention Act, H.R. 5422, 107th Cong. tit. III (2002) (passed House of Representatives); National AMBER Alert Network Act of 2003, S. 121, 108th Cong. (passed Senate). There are numerous other "alerts" available for when a person goes missing. *See, e.g.*, Rafael Ramos and Wenjian Liu National Blue Alert Act of 2015, Pub. L. 114-12, 129 Stat. 192 (2015) (codified at 34 U.S.C. §§ 50501-50503) (codifying "Blue Alerts," which signal a suspect at large for a crime involving death or serious injury of law enforcement); Ashanti Alert Act of 2018, Pub. L. 115-401, 132 Stat. 5336 (codified at 34 U.S.C. §§ 21901-21907) (codifying Ashanti Alerts for missing adults with severe impairments or mental, cognitive, physical, or developmental disabilities); TEX. GOV'T CODE § 411.4502 (West 2019) (codifying alerts for missing at-risk veterans); MD. CODE ANN., PUB. SAFETY § 3-606 (West 2021) (codifying alerts for suspects at large for serious hit-and-run accidents).

20. Emergency Notification: Feather Alert: Endangered Indigenous People, 2022 Cal. Legis. Serv. ch. 476 (West) (codified at CAL. GOV'T CODE § 8594.13 (West 2022)); 2022 Colo. Sess. Laws 3309 (codified at COLO. REV. STAT. 24-33.5-431(3) (2022)); An Act Relating to the Creation of an Endangered Missing Person Advisory Designation for Missing Indigenous Persons, 2022 Wash. Sess. Laws 1845 (codified at WASH. REV. CODE § 13.60.010 (2022)).

21. Press Release, Wash. State Patrol, The Washington Missing Persons Alert System: Something to be Thankful For! (Nov. 23, 2022), <https://www.wsp.wa.gov/wp-content/uploads/2022/11/WSP-Press-Release-Missing-Persons-Alert-System-is-Working-in-Washington.pdf> [<https://perma.cc/LU5S-JR25>] (finding that out of seventeen Missing Indigenous Person Alerts issued in the first eleven months of 2022, there were "13 recoveries, three of which directly resulted from a member of the public seeing the alert").

about responding to cases of missing AI/AN persons or participate in developing plans to respond to missing AI/AN persons.²²

In addition to the efforts described above, which are designed to recover missing persons more quickly, it is important to remember that *it is possible to reduce the number of AI/AN persons who go missing altogether and to reduce the amount of time that AI/AN persons are missing*. To do so requires quality law enforcement responses, as well as acknowledging and effectively responding to the circumstances that result in people going missing. The field of public health has done an excellent job of identifying those drivers; any holistic solution to the issue of missing AI/AN must also address the issues identified by that discipline.²³

Research has identified several factors that increase the risk of someone going missing. We know that substance abuse, depression, other mental health issues, suicidal ideation, and self-harming behaviors are all risk factors to may contribute to a person going missing.²⁴ Data shows that if a person is Two-Spirit or LGBTQI+, they are more likely to go missing.²⁵

22. See, e.g., MONT. CODE ANN. § 2-15-2018(3)(c) (2021); WASH. REV. CODE § 43.43.876 (2019).

23. See, e.g., ADMIN. FOR CHILD. & FAMS., MISSING AND MURDERED NATIVE AMERICANS: A PUBLIC HEALTH FRAMEWORK FOR ACTION (2020), <https://www.acf.hhs.gov/ana/mmna-framework> [<https://perma.cc/URR7-YV2N>].

24. Thresia B. Gambon & Janna R. Gewirtz O'Brien, *Runaway Youth: Caring for the Nation's Largest Segment of Missing Children*, 145 AM. ACAD. PEDIATRICS 4 (2020) (clinical report); Joan S. Tucker, Maria O. Edelen, Phyllis L. Ellickson & David J. Klein, *Running Away from Home: A Longitudinal Study of Adolescent Risk Factors and Young Adult Outcomes*, 40 J. YOUTH & ADOLESCENCE 507, 507 (2011). While not framed in the language of "missing persons," studies of the causes of homelessness among adults reflect similar drivers to those identified herein regarding runaway or missing children. See generally Brodie Fraser, Nevil Pierse, Elinor Chisholm & Hera Cook, *LGBTIQ+ Homelessness: A Review of the Literature*, 16 INT'L J. ENV'T RSCH. & PUB. HEALTH 2677 (2019) (drivers of homelessness include poverty, racism, substance use, mental health, sexual abuse, foster care, discrimination, family dysfunction, and physical illness).

25. Lisa Fedina, Tasha Perdue, Charlotte L. Bright & Celia Williamson, *An Ecological Analysis of Risk Factors for Runaway Behavior Among Individuals Exposed to Commercial Sexual Exploitation*, 12 J. CHILD & ADOLESCENT TRAUMA 221, 222 (2019) (finding LGBTQI+ youth have disproportionately higher rates of runaway behavior, are less likely to stay in a shelter, and are more likely to stay with a stranger); see also Jennifer Pearson, Lisa Thrane & Lindsey Wilkinson, *Consequences of Runaway and Throwaway Experiences for Sexual Minority Health During the Transition to Adulthood*, 14 J. LGBT YOUTH 145, 145 (2017); MINN. INDIAN WOMEN'S SEXUAL ASSAULT COALITION, WALKING IN TWO WORLDS: SUPPORTING THE TWO SPIRIT AND NATIVE LGBTQ COMMUNITY, <https://tribalinformationexchange.org/files/resources/twospiritbrochure.pdf> [<https://perma.cc/9NQQ-SG6P>] [hereinafter WALKING IN TWO WORLDS]. The term "Two-Spirit" generally refers to a person "whose body simultaneously houses a masculine spirit and a feminine spirit"; "Two-Spirit" is *not* analogous to the term "transgender." WALKING IN TWO WORLDS, *supra*, at 2, 6.

Children go missing from foster care and state care at significantly higher rates than children not in those systems.²⁶ Data has also shown that disengagement from school and having an older romantic partner are strong predictors of runaway behavior.²⁷ Moreover, a history of abuse, neglect, or exposure to violence can increase the rates at which individuals go missing.²⁸ Specific to AI/AN individuals, the Indian Health Service (IHS) only provides limited abortion services, which could drive vulnerable persons to travel to seek that care in larger urban areas without the knowledge of friends, family, or guardians.²⁹ All these issues can be addressed—and *must* be addressed—to comprehensively reduce the number of AI/AN who go missing each year.

In the forthcoming sections, this Article will continue to address the complexities of investigating missing person cases involving American Indians and Alaskan Natives. Section I begins with a discussion of the available data about missing persons and the various legal requirements for submitting that data. Section II outlines what is known about missing AI/AN individuals and the practical challenges to collecting accurate and complete data. Section III discusses legal considerations about missing person investigations involving AI/AN persons and the legal landscape as it affects collection of data about those cases. Finally, Section IV connects the data and legal considerations discussed in Sections I through III with possible public health solutions and other strategies that can reduce the number of missing AI/AN individuals.

I. DATA SOURCES/LEGAL MANDATES FOR SUBMISSION

The efforts to improve the response to missing person cases over the last forty years have been extraordinary.³⁰ Beginning in 1982 with the Missing Children Act, Congress has enacted numerous laws intended to improve the response of law enforcement when a person—and most

26. Gambon & Gewirtz O'Brien, *supra* note 24, at 6 (finding that older youth in foster care are more than 2.5 times more likely to run away than youth not in foster care).

27. Tucker, Edelen, Ellickson & Klein, *supra* note 24, at 515 (significant predictors of future runaway behavior include “school disengagement, substance use, and depressive affect”); Fedina, Perdue, Bright & Williamson, *supra* note 25, at 228 (“having an older girlfriend/boyfriend was the strongest predictor of runaway behavior”).

28. Gambon & Gewirtz O'Brien, *supra* note 24, at 4–5; Kimberly A. Tyler, Kellie J. Hagemen & Lisa A. Melander, *Risk Factors for Running Away Among a General Population Sample of Males and Females*, 43 *YOUTH & SOC'Y* 583, 588 (2011).

29. DEP'T HEALTH & HUM. SERVS., INDIAN HEALTH SERVICE CIRCULAR NO. 22-15, USE OF INDIAN HEALTH SERVICE FUNDS FOR ABORTIONS (2022), <https://www.ihs.gov/ihs/circulars/2022/use-of-indian-health-service-funds-for-abortions> [<https://perma.cc/V8Q9-FNJJ>] (noting that IHS is required to abide by the limitations imposed pursuant to the Hyde Amendment).

30. Susan N. Elliott & Dianna L. Pendleton, *S. 321: The Missing Children Act – Legislation by Hysteria*, 11 *U. DAYTON L. REV.* 671 (1986) (addressing the history of early federal missing child legislation).

notably, when a child—goes missing.³¹ Collectively, this legislation creates a national framework for collecting data about missing persons, including biographic and biometric data.

To facilitate this discussion, this Article will address *biographic* and *biometric* data separately.³² Generally speaking, *biographic* data refers to descriptive data about a person: name, date of birth, last location seen, etc. *Biometric* data refers to physical evidence gathered from an individual and the results of its forensic analysis: DNA, dental records, fingerprints, etc. Biometric data may be held in separate systems from those holding biographic data.

A. Biographic Data

Biographic data on missing persons may be held in a number of large databases, including those administered by the FBI, state-level missing person clearinghouses, the National Missing and Unidentified Person System (NamUs), and the National Center for Missing & Exploited Children (NCMEC).

National Crime Information Center/Missing Person File. Federally recognized tribes have historically had limited direct access to the national FBI criminal justice database system, the National Crime Information Center (NCIC). The reasons for this lack of access included technical and legal issues. By 2002 only 17% of tribes were submitting criminal history

31. See, e.g., Missing Children Act, Pub. L. 97-292, 96 Stat. 1259 (1982) (establishing NCIC/MPF); President Ronald Reagan, Remarks on Signing the Missing Children Act and the Victim and Witness Protection Act of 1982 (Oct. 12, 1982), <https://www.reaganlibrary.gov/archives/speech/remarks-signing-missing-children-act-and-victim-and-witness-protection-act-1982> [<https://perma.cc/FUE9-VJER>]; Juvenile Justice, Runaway Youth, and Missing Children's Act Amendments of 1984 §§ 610–57, Pub. L. No. 98-473, 98 Stat. 1838, 2107–25; Missing Children's Assistance Act §§ 401–08, Pub. L. No. 98-473, 98 Stat. 1838, 2125–29 (1984); Anti-Drug Abuse Act of 1988, Amendments to the Missing Children's Assistance Act §§ 7285–91, Pub. L. No. 100-690, 102 Stat. 4181, 4459–62 (1988) [hereinafter 1988 Amendments]; Violent Crime Control and Law Enforcement Act of 1994 §§ 170301–03, Pub. L. No. 103-322, 108 Stat. 1796, 2043–45 (1998); Child Abuse Prevention and Treatment Act Amendments of 1996 §231, Pub. L. No. 104-235, 110 Stat. 3063, 3092; Protection of Children From Sexual Predators Act of 1998, §703, Pub. L. No. 105-314, 112 Stat. 2974, 2987-2989; Missing, Exploited, and Runaway Children Protection Act, Pub. L. No. 106-71, 113 Stat. 1032 (1999); Runaway, Homeless, and Missing Children Protection Act, Pub. L. No. 108-96, 117 Stat. 1167 (2003); Adam Walsh Child Protection and Safety Act of 2006 §§ 154, 639(c), Pub. L. No. 109-248, 120 Stat. 587, 611, 647; E. Clay Shaw, Jr. Missing Children's Assistance Reauthorization Act of 2013, Pub. L. No. 113-38, 127 Stat. 527; Missing Children's Assistance Act of 2018, Pub. L. No. 115-267, 132 Stat. 3756.

32. Biographic data refers to text-based descriptive information about an individual or an individual's circumstances, such as their name, date of birth, residential address, and circumstances under which that person went missing. See Lucy L. Thomson, *Critical Issues in Identity Management—Challenges for Homeland Security*, 47 JURIMETRICS 335, 343 (2007).

records to NCIC.³³ However, recent developments have meaningfully addressed that situation. In 2010, the Tribal Law and Order Act (TLOA) contained multiple provisions allowing tribal law enforcement to access, submit, and retrieve data from NCIC.³⁴ The Tribal Access Program (TAP) has since expanded direct access to NCIC to over 120 tribes.³⁵ While concerns about tribes' lack of access to NCIC are being alleviated, concerns persist regarding the accuracy and completeness of biographic data, amongst other issues.

Until late 2022, the only national-level law enforcement database with a statutory mandate for entry was the Missing Person File (MPF), a subfolder of NCIC.³⁶ Under this system, tribal, local, state, and federal law enforcement agencies can submit information about any qualifying missing person; upon submission, it will become available to law enforcement personnel across the country via the NCIC system.³⁷ In 1990, Congress mandated the submission of information about missing children to NCIC.³⁸ Federal, state, and local law enforcement were initially required to “report each case of a missing child under the age of 18” to NCIC and MPF (hereinafter NCIC/MPF).³⁹ In 2003, this requirement was changed to mandate the submission of information to NCIC/MPF about

33. U.S. DEP'T JUST., BUREAU JUST. STATS., NCJ 205332, CENSUS OF TRIBAL JUSTICE AGENCIES IN INDIAN COUNTRY 57 (2002), <https://bjs.ojp.gov/redirect-legacy/content/pub/pdf/ctjaic02.pdf> [<https://perma.cc/7T7G-B5EP>].

34. Tribal Law and Order Act of 2010 § 233, Pub. L. No. 111-211, 124 Stat. 2258, 2279.

35. As of January 2023, there are 450 tribal government agencies from 123 Tribes participating in TAP. *Tribal Access Program (TAP)*, U.S. DEP'T JUST., <https://www.justice.gov/tribal/tribal-access-program-tap> [<https://perma.cc/GA28-AJ7R>].

36. *See* Billy's Law, Pub. L. No. 117-327, 136 Stat. 4454 (2022); U.S. DEP'T JUST., FEDERAL LAW ENFORCEMENT STRATEGY TO PREVENT AND RESPOND TO VIOLENCE AGAINST AMERICAN INDIANS AND ALASKA NATIVES, INCLUDING TO ADDRESS MISSING OR MURDERED INDIGENOUS PERSONS 14 (2022) [hereinafter STRATEGY], <https://www.justice.gov/media/1260756/dl?inline> [<https://perma.cc/G7TD-FNTS>].

37. *Law Enforcement Resources: National Crime Information Center (NCIC)*, FBI, <https://le.fbi.gov/informational-tools/ncic> [<https://perma.cc/42LV-CZHM>].

38. National Child Search Assistance Act of 1990 § 3701, 101 Pub. L. No. 101-647, 104 Stat. 4789, 4966–67 (codified at 34 U.S.C. § 41307).

39. *Id.* In addition, a statistical summary of the reports received by NCIC/MPF is required to be published annually by the FBI, and each state is required to “ensure that no law enforcement agency within the State establishes or maintains any policy that requires the observance of any waiting period before accepting a missing child or unidentified person report.” *Id.* § 3702(1). Archived historical annual summaries of NCIC/MPF reports from 2007–2021 are provided on the FBI's Criminal Justice Information Services (CJIS) page. *See Services: National Crime Information Center (NCIC)*, FBI, <https://web.archive.org/web/20220323021459/https://www.fbi.gov/services/cjis/ncic> [<https://perma.cc/Z7W5-N8JA>]. Going forward, to access annual NCIC Missing and Unidentified Person reports, see *How We Can Help You: Reports and Publications*, FBI, <https://fbi.gov/library> [<https://perma.cc/S4WH-XVWE>]. Notably, tribal law enforcement are not included in the provisions of 34 U.S.C. §§ 41307 or 41308.

any missing person under twenty-one.⁴⁰ Moreover, the Adam Walsh Child Protection and Safety Act of 2006 changed the timing of the required entry to “within 2 hours of receipt.”⁴¹ Thus, state, local, and federal law enforcement agencies *must* submit information to NCIC/MPF about any missing person who is twenty years of age or younger within two hours of receipt of a report being made.⁴² Entry of information about any missing person twenty-one years of age or older remains discretionary under federal law.⁴³

To further complicate matters, every state has its own laws governing missing children cases. Although most states have incorporated the NCIC/MPF submission requirements into their statutory schemes, the extent of that incorporation varies widely. While many states follow the federal requirement of submission within two hours of a report of a

40. PROTECT Act of 2003, *supra* note 19, at § 204. Also known as Suzanne’s Law, the requirement was drafted in response to the disappearance of Suzanne Lyall, a nineteen-year-old college student who went missing in 1998. *Missing Person: Suzanne G. Lyall*, FBI MOST WANTED, <https://www.fbi.gov/wanted/kidnap/suzanne-g.-lyall> [<https://perma.cc/UW2J-9WAV>]. Suzanne is listed in NamUs as the second person ever entered in the database, and has not yet been found. *Missing Persons*, NAMUS, <https://www.namus.gov/MissingPersons/Case#/2> [<https://perma.cc/M95G-N8RU>] (designating Suzanne the NamUs number “MP2”).

41. Adam Walsh Child Protection and Safety Act of 2006, *supra* note 31, at § 154(a)(3). The timing requirement had previously been “immediately,” and is still reflected in many states’ statutes, see *infra* note 44. National Child Search Assistance Act, *supra* note 38, at § 3702(2)(C).

42. 34 U.S.C. § 41308(3).

43. The Missing Person File is designed to hold information about “[i]ndividuals of any age who are missing and for whom there is a reasonable concern for the well-being of the person and/or others, such as: A missing person who suffers from a documented physical/mental disability; a person missing under circumstances indicating that the disappearance was not voluntary or that the person’s health or physical safety may be in danger; a missing child under the age of 21 reported to law enforcement; a person missing after a catastrophe; and, persons reasonably believed to have information regarding missing persons.” Notice of a Modified System of Records, 84 Fed. Reg. 47533, 47534–35 (Sept. 10, 2019).

missing child,⁴⁴ other states lag.⁴⁵ Many states also require school records,⁴⁶ or birth certificates,⁴⁷ to be “flagged” when a child is reported missing. Others mandate that certain professionals report to the authorities when a child goes missing from state or foster care.⁴⁸ Regardless of these differences, in nearly every state, a missing child is defined as a person under the age of eighteen.⁴⁹

State-level Missing Person Clearinghouses. Beginning in the 1980s, every state created its own missing person or missing child clearinghouse, and in 1988, Congress approved grant funding to develop and maintain

44. ARIZ. REV. STAT. ANN. § 8-901(A)(1) (West 2021); CAL. PENAL CODE § 14211 (West 2021) (anyone under 21 or at risk); FLA. STAT. § 937.021(4)(a) (2023) (amended by 2023 Fla. Sess. Law Serv. ch. 2023-77 (H.B. 7061) (West)); KAN. STAT. ANN. § 75-712c(a)(3) (2016); MD. CODE ANN., FAM. LAW § 9-402(b)(1) (West 2016) (missing child under 17); MINN. STAT. § 299C.53(4) (2009) (“comply with federal law”) (statute amended by 2023 Minn. Sess. Law Serv. ch. 52 (S.F. 2909) (West)); MISS. CODE ANN. § 43-15-401(5)(d) (2016) (as required by federal law); MONT. CODE ANN. § 44-2-408(2)(a) (2019) (within two hours for persons under 21); NEV. REV. STAT. § 432.200(1)(c) (2015) (comply with federal law); N.J. STAT. ANN. § 52:17B-217(e)(1) (West 2008) (any high-risk missing person); N.M. STAT. ANN. § 29-15-7(A)(3) (2019) (any missing person); OKLA. STAT. tit. 74, § 151.3(H) (2019); TENN. CODE ANN. § 37-10-203 (2012); TEX. CODE CRIM. PROC. ANN. art. 63.009(a)(3) (West 2021) (amended by 2023 Tex. Sess. Law Serv. ch. 729 (H.B. 2660) (West)). Most of the remaining states with codified requirements utilize the “immediately” time frame found in the National Child Search Assistance Act, *supra* note 38, at § 3702(2). ALA. CODE § 26-19-7 (2021) (any missing person); ARK. CODE ANN. § 12-12-205(d)(1) (2019); DEL. CODE ANN. tit. 11, § 8535(a) (2023) (unemancipated minors); HAW. REV. STAT. § 577-27(a)(3) (1994) (if it appears the child has, or may, leave the state); 50 ILL. COMP. STAT. § 722/10(c)(1) (2007) (anyone under 21 or at risk); IND. CODE § 31-36-1-3(6) (2017); IOWA CODE § 694.5(1) (2017) (unemancipated minors); ME. STAT. tit. 25, § 2154(1)(C) (2003); MICH. COMP. LAWS § 28.258(2) (2018) (missing child under 17); MO. REV. STAT. § 43.401(1)(2) (2018) (amended by 2023 Mo. Legis. Serv. S.B. 186 (West)); NEB. REV. STAT. § 29-214(1) (2005) (unemancipated minor); N.Y. COMP. CODES. R. & REGS. tit. 9, § 6055.3(a) (1995) (“without delay”); N.C. GEN. STAT. § 143B-1015(a) (2019) (amended by 2023 N.C. Sess. Laws 2023-86 (S.B. 171)); 18 PA. CONS. STAT. § 2908(a)(3) (2022); R.I. GEN. LAWS § 42.28.8-3 (2015); S.D. CODIFIED LAWS § 23-3-18.6 (2020); WASH. REV. CODE § 36.28A.120 (2007) (“without delay”); W. VA. CODE § 49-6-112(a) (2020).

45. KY. REV. STAT. ANN. § 17.460(2) (West 2007) (within 24 hours); N.H. REV. STAT. ANN. § 169-E:3(I) (1985) (within 12 hours); OR. REV. STAT. § 146.181(1) (2018) (within 12 hours).

46. *See, e.g.*, ARIZ. REV. STAT. ANN. § 15-829 (1987); FLA. STAT. § 937.025 (2013); IDAHO CODE § 18-4509(2) (2000); MINN. STAT. § 123B.08 (1998); R.I. GEN. LAWS § 42-28.8-7 (1986); VA. CODE ANN. § 22.1-288.1 (2006).

47. *See, e.g.*, NEV. REV. STAT. § 432.205(2) (2015); N.Y. EXEC. LAW § 837-e(1-a)(a) (2017); NEB. REV. STAT. § 43-2005 (1987); UTAH CODE ANN. § 26B-8-130(2) (2023).

48. *See, e.g.*, CAL. PENAL CODE § 11166(j)(3) (West 2023) (when the child is at risk of being the victim of commercial sexual exploitation); FLA. STAT. § 39.0141 (2008) (amended by 2023 Fla. Sess. Law Serv. ch. 2023-77 (H.B. 7061) (West)); 325 ILL. COMP. STAT. 58/10 (2017).

49. Some states designate a different age to qualify as a “missing child.” Some limit the definition of a missing child as a person under seventeen, MICH. COMP. LAWS § 28.258(1)(a) (2018), MO. REV. STAT. § 43.400(1) (2022) (amended by 2023 Mo. Legis. Serv. S.B. 186 (West)), NEB. REV. STAT. § 43-2003(3) (2007); S.C. CODE ANN. § 23-3-210(1) (1990); while others expand it to persons under the age of twenty-one, MONT. CODE ANN. § 44-2-502(1)(a) (2019); TENN. CODE ANN. § 37-10-201(b)(1) (2005); VA. CODE ANN. § 52-32 (2004). Further research is necessary to determine what, if any, impact these age cutoffs have on the state’s relative number of missing child entries in NCIC/MPF.

state-level clearinghouses.⁵⁰ The clearinghouses' structure and activities vary by state. Various functions include posting information about missing persons on a standalone state website, gathering resources for the public, and providing a single point of contact for individuals to report a person missing.⁵¹ Because law enforcement is involved with the state clearinghouses, most data that a state might maintain in their clearinghouse is likely already contained within the NCIC/MPF system. Some states may collect additional data over and above what is reported to NCIC/MPF, such as a description of the clothing the person was last seen wearing.⁵²

National Missing and Unidentified Persons System. While the preceding data systems are generally available only to law enforcement, the National Missing and Unidentified Persons System (NamUs) is available to the public. Although not designed as a database per se, NamUs is "a national centralized repository and resource center for missing, unidentified, and unclaimed person cases across the United States," operated by the Department of Justice.⁵³ With the passage of Billy's Law in December 2022, states will be required to submit information on missing persons to NamUs in the same manner and circumstances as that data is submitted to NCIC/MPF;⁵⁴ some states already mandate the submission of information to NamUs on certain missing person cases.⁵⁵

50. 1988 Amendments, *supra* note 31, at 4461 (codified at 34 U.S.C. § 11294(a)(9)). Every state has a webpage through which the public can contact their missing child clearinghouse or otherwise receive assistance. *Missing Child Clearinghouses*, NAT'L CTR. FOR MISSING & EXPLOITED CHILD., <https://www.missingkids.org/gethelpnow/clearinghouses> [<https://perma.cc/3SFP-MEG4>].

51. *See, e.g., Missing Persons Clearinghouse*, ALA. DEP'T PUB. SAFETY, <https://dps.alaska.gov/AST/ABI/MissingPerson> [<https://perma.cc/FL7Y-P76U>]; *Louisiana Repository for Unidentified and Missing People*, LA. STATE UNIV., http://identify.lsu.edu/la_missing.php [<https://perma.cc/AB9P-VAUP>]; *Missing Persons*, OHIO ATT'Y GEN., <https://www.ohioattorneygeneral.gov/Law-Enforcement/Local-Law-Enforcement/Ohio-Missing-Persons/All-Missing-Persons> [<https://perma.cc/2U8L-SJGS>]; *Wyoming Missing Persons*, WYO. DEP'T CRIM. INV., <https://wyomingdci.wyo.gov/dci-homepage/missing-persons> [<https://perma.cc/8HGF-ESF2>].

52. *See, e.g., Missing Person Information*, N.M. DEP'T PUB. SAFETY, <http://missingpersons.dp.s.state.nm.us/> [<https://perma.cc/35MX-VGFF>].

53. *National Missing and Unidentified Persons System*, U.S. DEP'T JUST., <https://namus.nij.ojp.gov/> [<https://perma.cc/5MQD-5J6D>]; *see also* UNT HEALTH SCIENCE CENTER, NAMUS OVERVIEW BOOKLET 1–22, <https://namus.nij.ojp.gov/sites/g/files/xyckuh336/files/media/document/NamUsOverviewBooklet.pdf> [<https://perma.cc/K5DW-KT2L>]; *Systems of Records*, 83 Fed. Reg. 13306–09 (Mar. 28, 2018).

54. Billy's Law, Pub. L. No. 117-327, 136 Stat. 4453, 4454–4458 (2022). Sections (c)(1) and (c)(2) of Billy's Law amend the requirements of 34 U.S.C. §§ 41307(a) and 41308, respectively, to include NamUs entry.

55. ARIZ. REV. STAT. ANN. § 8-901(A)(1) (2004); ARK. CODE ANN. § 12-12-110(d)(1) (2019); 50 ILL. COMP. STAT. 722/10(c)(1) (2021); MICH. COMP. LAWS § 28.258(2) (2018); N.M. STAT. ANN. § 29-15-3.4(A) (2019); N.Y. EXEC. LAW § 837-e(1-b) (McKinney 2017); N.Y. EXEC. LAW § 837-f-2 (McKinney 2017); N.C. GEN. STAT. § 143B-1015(c) (2019) (amended by 2023 N.C. Sess. Laws 2023-86 (S.B. 171)); OKLA. STAT. tit. 74, § 151.3(C)(1) (2019); 44 PA. CONS. STAT. § 2316.2(b) (2022);

NamUs hosts three databases—one for missing persons, one for unclaimed persons,⁵⁶ and one for unidentified persons—and uses computer algorithms to suggest matches between its missing person and unidentified person databases.⁵⁷ Public users can see basic biographic data within NamUs, submit information to be entered—after law enforcement verification—and search for information about missing or unidentified persons.⁵⁸

One helpful feature of NamUs in cases involving missing AI/AN persons is that the database can capture tribal enrollment and tribal affiliation data.⁵⁹ In November 2021, the Department of Justice committed \$800,000 to NamUs to update its records with tribal enrollment or affiliation data.⁶⁰ Specifically, this will require records to indicate whether missing persons resided on tribal land before their disappearance or were last known to be on tribal lands, as well as whether unidentified decedents were found on tribal land.⁶¹ These are crucial data points when determining the scope and scale of the problem regarding missing American Indians and Alaska Natives. The funding may also be used to ensure that AI/AN cases have the most up-to-date forensic and biometric information possible.

National Center for Missing & Exploited Children. The National Center for Missing & Exploited Children (NCMEC or ‘the Center’) also

TEX. CODE CRIM. PROC. ANN. art. 63.009(a)(4) (2021) (amended by 2023 Tex. Sess. Law Serv. ch. 729 (H.B. 2660) (West); WASH. REV. CODE § 36.28A.112 (2020). Others specifically authorize submission but do not require it. CAL. PENAL CODE § 14209 (West 2015); W.VA. CODE § 15-3D-4(d) (2022). Some states also have provisions governing the submission of DNA evidence to NamUs. See, e.g., TENN. CODE ANN. § 38-6-125 (2017).

56. Unclaimed persons are “deceased persons who have been identified by name, but for whom no family members have been identified or located to claim the body.” *Identification: NamUs*, NYC OFF. CHIEF MED. EXAM’R, <https://www.nyc.gov/site/ocme/for-families/namus.page> [<https://perma.cc/TE8F-JY95>].

57. Elizabeth A. Murray, Bruce E. Anderson, Steven C. Clark & Randy L. Hanzlick, *The History and Use of the National Missing and Unidentified Persons System (NamUs) in the Identification of Unknown Persons*, in *NEW PERSPECTIVES IN FORENSIC HUMAN SKELETAL IDENTIFICATION* 115, 120 (Krista E. Latham, Eric J. Bartelink, Michael Finnegan, eds., 2018).

58. *Id.* at 116. A detailed history of the development of NamUs can also be found in Randy Hanzlick, Steven Clark & Kevin Lothridge, *History of the National Missing and Unidentified Persons System (NamUs)*, 1 *ACAD. FORENSIC PATHOLOGY* 310 (2011).

59. *Reports & Statistics: Monthly NamUs Case Reports*, NAT’L MISSING & UNIDENTIFIED PERSONS SYS. (Jan. 2023), <https://namus.nij.ojp.gov/library/reports-and-statistics> [<https://perma.cc/D3DK-RR9U>] (American Indian and Alaska Native Case Statistics and Tribal Case Reports).

60. Press Release, U.S. Department of Justice, Justice Department Boosts Efforts to Solve American Indian and Alaska Native Missing Person and Unidentified Remains Cases (Nov. 23, 2021), <https://www.ojp.gov/news/news-release/justice-department-boosts-efforts-solve-american-indian-and-alaska-native-missing> [<https://perma.cc/F5YV-2BZB>].

61. *Id.*

holds data about missing persons.⁶² The Center provides a wide array of services to the public and law enforcement in missing or exploited children cases.⁶³ Individuals and law enforcement can report a missing child case to NCMEC, which intakes the case and connects the family and investigating authorities with assistance and resources.⁶⁴ There is a federal mandate requiring submission of information about children missing from foster care to NCMEC,⁶⁵ and some states also require submission to NCMEC in other circumstances.⁶⁶ Further, any case accepted by NCMEC must also be entered into NCIC/MPF.⁶⁷ Thus, although NCMEC may have additional data about particular cases, most of the organization's biographic data about missing persons mirrors data held by NCIC/MPF.

B. Biometric Data

In addition to biographic data held in the systems above, there is also biometric data and evidence available about missing AI/AN. Although this data can be stored by a range of public and private entities, the most prominent are databases administered by the FBI and NamUs.

Federal Bureau of Investigation. DNA is sometimes regarded as the key to solving long-term missing person cases. To that end,

The FBI administers the [National Missing Person DNA Database] NMPDD as part of the National DNA Index System (NDIS). The NMPDD compares DNA records stored in the Missing Person,

62. *Search Missing Children Posters*, NAT'L CTR. FOR MISSING & EXPLOITED CHILD., <https://www.missingkids.org/gethelpnow/search> [<https://perma.cc/9R6T-VMSQ>] [hereinafter NCMEC].

63. *Our Work: Case Resources*, NAT'L CTR. FOR MISSING & EXPLOITED CHILD., <https://www.missingkids.org/ourwork/caseresources> [<https://perma.cc/LBY3-5CK7>].

64. *Outreach & Resources for Native American, Tribal & Indigenous Communities*, NAT'L CTR. FOR MISSING & EXPLOITED CHILD. (2021), <https://www.missingkids.org/content/dam/missingkids/pdfs/native-american-tribal-indigenous-communities-long.pdf> [<https://perma.cc/L7AT-DRUQ>].

65. States must establish a policy where state or local child welfare systems submit information about any "child reported missing from a foster care family home or childcare institution" to NCMEC. Bringing Missing Children Home Act, Justice for Victims of Trafficking Act of 2015 § 116, Pub. L. No. 114-22, 129 Stat. 227, 244 (codified at 34 U.S.C. § 11101). State child welfare agencies are also directly required to submit information to NCIC *and* NCMEC about any child missing from care "immediately, and in no case later than 24 hours after receiving" the information. Preventing Sex Trafficking and Strengthening Families Act § 104(B), Pub. L. No. 113-183, 128 Stat. 1919, 1922 (2014) (codified at 42 U.S.C. § 671(35)(b)). Only a handful of states have codified these requirements vis-à-vis submission to NCMEC. CAL. PENAL CODE § 11166(j)(3) (West 2023); COLO. REV. STAT. § 19-1-115.3 (2022); D.C. CODE § 4-1323.01(c)(2) (2015) (if missing more than 30 days); IND. CODE § 31-36-1-3.5(a) (2018); MINN. STAT. § 260C.212(13)(b) (2022); MISS. CODE ANN. § 43-15-401(6)(b) (2016); UTAH CODE ANN. § 80-2a-303(1)(a) (West 2022).

66. D.C. CODE § 4-1323.01(c)(1) (2015) (if child deemed critical missing); MD. CODE ANN., FAM. LAW § 9-402(b)(3) (West 2016) (any missing child under 17); 42 R.I. GEN. LAWS § 42-28.8-3 (1988) (any missing child); WIS. STAT. § 48.47(7g) (2017) (permitted for any missing child).

67. *See, e.g.*, NCMEC, *supra* note 62.

Relatives of Missing Person, and Unidentified Human Remains Indexes of NDIS [to identify possible matches].”⁶⁸

Relatives of missing persons are also permitted to have analysis of their DNA submitted to NMPDD.⁶⁹ While beyond the scope of this article, advances in DNA analysis in recent years, particularly with regards to forensic genetic genealogy and familial searching, have created meaningful new avenues for the identification of missing persons.⁷⁰ That being said, the taking of DNA samples from persons who are American Indian or Alaska Native has a fraught history, and among some AI/AN persons there is an ongoing reluctance to submit DNA samples for analysis:⁷¹ “To us, any part of ourselves is sacred. Scientists say it’s just DNA. For an Indian, it is not just DNA, it’s part of a person, it is sacred, with deep religious significance. It is part of the essence of a person.”⁷²

Recent decades have seen a near-exponential proliferation of biometric databases, which can assist in resolving missing person cases. For example, the FBI operates the National Dental Image Repository (NDIR)⁷³ and the Next Generation Identification/Advanced Fingerprint Identification Technology (NGI/AFIT);⁷⁴ either might be used in a missing

68. Angi M. Christensen, Ann D. Fasano, Richard B. Marx, John E.B. Stewart, Lisa G. Bailey & Richard M. Thomas, *Identification of Human Skeletal Remains at the Federal Bureau of Investigation (FBI) Laboratory*, in FORENSIC SCIENCE AND HUMANITARIAN ACTION 582 (Roberto C. Parra, S.C. Zapico & H.H. Ubelaker eds., 2020); see also DNA Identification Act of 1994 § 210304, Pub. L. No. 103-322, 108 Stat. 1796, 2069-2070 (codified as amended at 34 U.S.C. § 12592). The Combined DNA Index System (CODIS) is the “overall system that retains the DNA profiles [submitted to the FBI] as well as the software that DNA laboratories use to track and compare profiles.” ADRIENNE L. FERNANDES-ALCANTARA, CONG. RSCH. SERV., RL34616, MISSING ADULTS: BACKGROUND, FEDERAL PROGRAMS, AND ISSUES FOR CONGRESS 7 (2019), <https://sgp.fas.org/crs/misc/RL34616.pdf> [<https://perma.cc/7GB9-399G>] [hereinafter MISSING ADULTS].

69. 34 U.S.C. § 12592(a)(4).

70. See, e.g., Daniel Kling, Christopher Phillips, Debbie Kennett & Andreas Tillmar, *Investigative Genetic Genealogy: Current Methods, Knowledge and Practice*, 52 FORENSIC SCI. INT’L GENETICS 102474 (2021).

71. See, e.g., Jenny Reardon & Kim TallBear, ‘Your DNA Is Our History’: *Genomics, Anthropology, and the Construction of Whiteness as Property*, 53 CURRENT ANTHROPOLOGY S233, S238 (2012) (describing the legal dispute between the Havasupai Tribe and Arizona State University over the use of DNA samples from Havasupai tribal members).

72. Nanibaa’ A. Garrison, *Genomic Justice for Native Americans: Impact of the Havasupai Case on Genetic Research*, 38 SCI. TECH. & HUM. VALUES 201 (2013) (author manuscript at 3) (quoting Dr. Frank Dukepoo).

73. FBI, U.S. DEP’T JUST., FBI LAW ENFORCEMENT BULL.—FEB. 2007, TECHNOLOGY UPDATE: LEO’S NEW NATIONAL DENTAL IMAGE REPOSITORY 21 (2007). For more information about the use of forensic dentistry in unresolved cases, see Norman D. Sperber & Anthony R. Cardoza, *Forensic Dentistry in Cold Cases*, in R. H. Walton, COLD CASE HOMICIDES: PRACTICAL INVESTIGATIVE TECHNIQUES 401–18 (2017).

74. *Law Enforcement Resources: Next Generation Identification (NGI)*, FBI, <https://le.fbi.gov/science-and-lab-resources/biometrics-and-fingerprints/biometrics/next-generation-identification-ngi> [<https://perma.cc/ZCZ9-9KPD>].

person investigation. These systems generally operate in a standalone fashion but, where appropriate, are linked to one another.⁷⁵

NamUs. In addition to these FBI databases, “*NamUs* was the first 100% web-based data system sponsored by the US Federal Government that allowed direct data input from medicolegal offices (Medical Examiner, Coroner, and Justice of the Peace) whose morgues housed the unidentified bodies as well as input from the public who had direct knowledge of the missing person[s].”⁷⁶ *NamUs* receives, holds, and compares biometric data such as dental records, DNA analysis status, and fingerprints.

II. BASELINE: WHAT WE KNOW ABOUT MISSING INDIGENOUS PERSONS

All data has its limitations, and data about missing AI/AN persons is no different in this respect. Numerous contributing factors include the failure to report a missing person to law enforcement, the failure of law enforcement to take a report promptly, and outright failure to submit a report to national databases.⁷⁷ Additionally, even when reported, AI/AN missing person cases present unique data collection challenges. Issues of racial misclassification, mistrust of law enforcement in AI/AN communities, and absent or insufficient law enforcement response further complicate attempts to fully capture the scope of the problem regarding missing AI/AN in the United States.⁷⁸

Because tribes are inherently sovereign nations and do not derive their sovereignty from the U.S. government, Congress can ask tribes to provide data but cannot compel them.⁷⁹ In October 2020, the President signed *Savanna’s Act*, which directed the Attorney General to “request all Tribal, State, and local law enforcement agencies to submit to the Department of Justice, to the fullest extent possible, all relevant information pertaining to missing or murdered Indians collected by the Tribal, State, and local law enforcement agency” and to publish an annual report with the data.⁸⁰ In addition, *Savanna’s Act* amended the Omnibus

75. See generally U.S. GOV’T ACCOUNTABILITY OFF., GAO-20-479SP, FORENSIC TECHNOLOGY: ALGORITHMS USED IN FEDERAL LAW ENFORCEMENT (2020).

76. Murray, Anderson, Clark & Hanzlick, *supra* note 57, at 116.

77. STRATEGY, *supra* note 36, at 14.

78. *Id.* at 14–15.

79. Christopher B. Chaney, *Data Sovereignty and the Tribal Law and Order Act*, FED. LAW., Apr. 2018, at 22, 24. For a discussion of indigenous data sovereignty, see generally Rebecca Tsoie, *Tribal Data Governance and Informational Privacy: Constructing “Indigenous Data Sovereignty”*, 80 MONT. L. REV. 229 (2019).

80. *Savanna’s Act*, 25 U.S.C. § 5705(b)(1). The U.S. Department of Justice has indicated it will begin including statistics on missing and murdered indigenous persons beginning in its 2022 Indian Country Investigations and Prosecutions report to Congress. *Savanna’s Act*, U.S. DEP’T JUST. (June 10, 2022), www.justice.gov/tribal/mmip/SavannasAct [https://perma.cc/T5VN-A8WU].

Crime Control and Safe Streets Act of 1968 to allow for grant funding to tribes to be used for this data collection and reporting.⁸¹ The available data about AI/AN individuals consistently shows that (1) AI/AN individuals go missing at a higher rate than most other racial and ethnic groups; (2) most AI/AN persons reported missing are under the age of eighteen; (3) AI/AN men and boys go missing at a similar rate to AI/AN women and girls; and (4) the vast majority of AI/AN missing person cases are resolved within a relatively short period.

NCIC's Missing Person File (NCIC/MPF) is the official national-level law enforcement database in the United States for missing persons.⁸² As described above, missing persons under twenty-one must be entered in NCIC/MPF by state, local, and federal law enforcement nationwide;⁸³ investigative agencies can also enter information, when appropriate, about persons over twenty-one who have gone missing.⁸⁴

AI/AN individuals go missing at a higher rate than most other racial or ethnic groups. In 2022 alone, 546,568 missing persons were entered into NCIC/MPF, and 1.85% of those entries—or 10,123 of the total—were identified as AI/AN.⁸⁵ 2020 Census data shows that 1.1% of the U.S. population identifies as American Indian or Alaska Native alone, and 2.9% identifies as American Indian or Alaska Native, either alone or in combination with other races/ethnicities.⁸⁶

In comparison, in 2022, there were 193,151 NCIC/MPF entries for missing Black persons, constituting 35.3% of the total.⁸⁷ This is nearly triple the percentage of the Black population, equivalent to 13.6% nationwide.⁸⁸ However, white individuals constituted 75.5% of the population but only 57.2% of the NCIC/MPF entries in 2022, while Asian

81. Savanna's Act, Pub. L. No. 116-165, § 7, 134 Stat. 760, 765 (2020).

82. STRATEGY, *supra* note 36, at 13 n.18.

83. 34 U.S.C. § 41307(a). Tribal law enforcement agencies are not included in this provision.

84. *See* discussion *supra* note 43.

85. 2022 NCIC Missing and Unidentified Person and Unidentified Person Statistics, FBI, (Feb. 2, 2023), <https://www.fbi.gov/file-repository/2022-ncic-missing-person-and-unidentified-person-statistics.pdf/view> [<https://perma.cc/MHL6-FBKF>].

86. Nicholas Jones, Rachel Marks, Roberto Ramirez & Merarys Ríos-Vargas, *Improved Race and Ethnicity Measures Reveal U.S. Population Is Much More Multiracial: 2020 Census Illuminates Racial and Ethnic Composition of the Country*, U.S. CENSUS BUREAU (Aug. 12, 2021), <https://www.census.gov/library/stories/2021/08/improved-race-ethnicity-measures-reveal-united-states-population-much-more-multiracial.html> [<https://perma.cc/B9SK-TYJ4>].

87. 2022 NCIC Missing and Unidentified Person and Unidentified Person Statistics, *supra* note 85.

88. *QuickFacts*, U.S. CENSUS BUREAU (2022), <http://www.census.gov/quickfacts/fact/table/US/PST045221> [<https://perma.cc/L989-GQ2M>].

individuals are 6.3% of the population but only 2.1% of the entries.⁸⁹ The root causes of these racial disparities are ripe for additional research.

Annual data about missing AI/AN persons from 2007 to 2022 shows that the vast majority of missing AI/AN persons reported to NCIC/MPF are under the age of eighteen.⁹⁰ For example, among the 2022 missing person entries for AI/AN women and girls, 74.5% were under eighteen, while 25.4% were eighteen or older.⁹¹ Among the 2022 missing person entries for AI/AN men and boys, 60.8% were under eighteen and 39.0% were eighteen or older.⁹²

Data also shows that the vast majority of reported AI/AN missing person cases are resolved in a relatively short period. For example, of the 9,572 AI/AN missing person entries in 2021, only 288 remained open as of June 2022.⁹³ Identifying the characteristics of cases where there is not a quick resolution could help inform investigators and policymakers about critical prevention, intervention, and investigation techniques.

It is likely that the actual number of AI/AN persons who go missing exceeds the numbers reflected in the data above. However, further research and analysis are required to determine the size of that disparity, whether certain geographic areas experience a higher rate of missing AI/AN persons than these national levels reflect or reveal higher rates of missing AI/AN persons than those described above because of racial misclassifications, failure to submit cases to databases, or failure to report to law enforcement.

A critical data point for prevention and intervention efforts is determining the primary investigative law enforcement agencies responsible for cases involving missing AI/AN persons. For example, in a 2022 point-in-time data collection of missing AI/AN children listed in NCIC/MPF, 66% of the reporting agencies are state or local law enforcement, 25% are tribal law enforcement, and only 8% are BIA or FBI.⁹⁴ This is an example of how data can help drive tailored solutions; namely, the need to include state and local law enforcement in training and outreach initiatives addressing the problem of missing AI/AN children.

89. *Id.*; 2022 NCIC Missing and Unidentified Person and Unidentified Person Statistics, *supra* note 85.

90. National Crime Information Center (NCIC), FBI, <https://www.fbi.gov/services/cjis/ncic> [<https://perma.cc/EA9C-F3BG>].

91. 2022 NCIC Missing and Unidentified Person and Unidentified Person Statistics, *supra* note 85.

92. *Id.*

93. STRATEGY, *supra* note 36, at 13.

94. Data retrieved May 10, 2022, for missing persons listed in NCIC/MPF who are seventeen years old or younger. Data on file with author McPherson.

It is a truism that criminal jurisdiction in Indian country is complicated, and the complexity sometimes contributes to difficulties in responding effectively to AI/AN missing persons reports. Moreover, the full impact of a recent Supreme Court decision, *Oklahoma v. Castro-Huerta*,⁹⁵ which held that state and local law enforcement agencies hold concurrent criminal jurisdiction in Indian country over non-Native individuals, remains to be seen.⁹⁶ With state and local law enforcement already receiving two-thirds of the reports of missing AI/AN children, policy solutions must explicitly include those agencies in future efforts.

NCIC/MPF is one of two national-level databases holding missing person information submitted by law enforcement. NamUs maintains the other database, but because entry into NamUs was largely voluntary until the recent passage of Billy's Law, and because NamUs is designed as an operational—rather than analytical—database, it has not proven particularly useful for national-level data analysis.⁹⁷ Depending on whether a state mandates missing person entries to NamUs, and what circumstances law enforcement officials are required to do so, NamUs could be a valuable resource for targeted state- or local-level data analysis.⁹⁸ However, compliance with state statutory mandates appears inconsistent. For example, Arizona requires entry of a missing child case to NamUs within two hours,⁹⁹ but review of recent data showed zero missing children listed as AI/AN in NamUs, yet a contemporaneous data pull from NCIC/MPF showed seventy-eight AI/AN missing children under the age of eighteen.¹⁰⁰

Other research has focused on state-level efforts to find and analyze accurate data about missing AI/AN. For example, the following states have published formal state-level reports from different official data

95. 597 U.S. ___, 142 S. Ct. 2486, 2491 (2022) (“the Federal Government and the State have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country”).

96. *Id.*

97. See Morgan B. Hawes, Danielle C. Slakoff & Nikolay Anguelov, *Understanding the Missing and Murdered Indigenous Women Crisis: An Analysis of the NamUs Database*, 34 CRIM. J. POL'Y REV. 184, 199 (2022).

98. *See id.*

99. ARIZ. REV. STAT. ANN. § 8-901(A)(1) (2021).

100. Data retrieved May 10, 2022, for missing persons listed in NCIC/MPF who are seventeen years old or younger and listed as AI/AN; data retrieved May 10, 2022, for missing persons listed in NamUs who are seventeen years old or younger and listed as AI/AN. Data on file with author McPherson.

sources about missing AI/AN persons: Arizona,¹⁰¹ Hawaii,¹⁰² Idaho,¹⁰³ Minnesota,¹⁰⁴ Montana,¹⁰⁵ Nebraska,¹⁰⁶ New Mexico,¹⁰⁷ Oregon,¹⁰⁸

101. See generally KATHLEEN A. FOX, CHRISTOPHER SHARP, TURQUOISE DEVEREAUX, KAYLEIGH STANEK, SARA JULIAN, MICHELLE HOVEL, CHESTON DALANGYAWMA, VALAURA IMUS-NAHSONHOYA, TRACI MORRIS, JACOB MOORE, AKIMEL O'ODHAM, HALLIE BONGAR WHITE, DOMINIQUE ROE-SEPOWITZ, MAK MARS, HILARY EDWARDS & MORGAN EATON, REDUCING MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS: ARIZONA'S STATEWIDE STUDY IN PARTNERSHIP WITH HB2570 LEGISLATIVE COMMITTEE (2020), https://academyforjustice.asu.edu/wp-content/uploads/2022/04/asu_mmiwg_report_for_distribution_november_2020.pdf [<https://perma.cc/RRJ4-Y958>]. The study utilized missing persons data from NamUs and Justice for Native Women (JFNW). *Id.* at 45.

102. See generally OFFICE OF HAWAIIAN AFFAIRS: HAWAI'I STATE COMMISSION ON THE STATUS OF WOMEN, HOLOI A NALO WAHINE 'OIWI: MISSING AND MURDERED NATIVE HAWAIIAN WOMEN AND GIRLS TASK FORCE REPORT (Khara Jabola-Carolus & Lisa Watkins-Victorino, eds., 2022) [hereinafter HOLOI A NALO WAHINE 'OIWI], https://www.oha.org/wp-content/uploads/MMN_HWG-Report-Web.pdf [<https://perma.cc/76LF-3X8K>].

103. See generally MELANIE L. FILLMORE, LANE K. GILLESPIE, LISA M. GROWETTE BOSTAPH, LAURA L. KING & SHEENA L. GILBERT, HCR33 REPORT: IDAHO'S MISSING & MURDERED INDIGENOUS PERSONS (2021), https://icdv.idaho.gov/wp-content/uploads/2021/10/HCR33-Report_Idahos-Missing-and-Murdered-Indigenous-Persons.pdf [<https://perma.cc/XP5Q-UPZV>]. Idaho examined detailed data from their state clearinghouse, NamUs, and NCMEC; summary NCIC data was also examined.

104. See generally NICOLE MARTINROGERS & VIRGINIA PENDLETON, WILDER RSCH., MISSING AND MURDERED INDIGENOUS WOMEN TASK FORCE, A REPORT TO THE MINNESOTA LEGISLATURE (2020), <https://dps.mn.gov/divisions/ojp/Documents/missing-murdered-indigenous-women-task-force-report.pdf> [<https://perma.cc/LAZY-Q25F>].

105. See generally MONT. DEP'T JUST., LOOPING IN NATIVE COMMUNITIES: REPORT TO THE STATE-TRIBAL RELATIONS INTERIM COMMITTEE (2020), <https://leg.mt.gov/content/Committees/Interim/2019-2020/State-Tribal-Relations/Meetings/august-2020/miptf-report-aug2020.pdf> [<https://perma.cc/6MKT-59B2>]. The report used Montana Missing Persons Clearinghouse data. *Id.* at 24.

106. See generally MATTHEW SUTTER, JUDI GAIASHKIBOS, SCOTT SHAFER, ELIZABETH WEIDDNER, TARA N. RICHARDS, EMILY WRIGHT, ALYSSA NYSTROM & KIRBY WILLIAMS, LB154 REPORT: PREVALENCE OF MISSING NATIVE AMERICAN WOMEN AND CHILDREN IN NEBRASKA (2020) [hereinafter LB154 REPORT], https://statepatrol.nebraska.gov/sites/default/files/lb154_report_-_5.22.20_final.pdf [<https://perma.cc/34XP-LVVH>]. It utilized data from the Nebraska Missing Persons List, NamUs, and NCMEC. *Id.* at 12.

107. See generally NEW MEXICO MISSING AND MURDERED INDIGENOUS WOMEN AND RELATIVES TASK FORCE REPORT (2020), https://www.iad.state.nm.us/wp-content/uploads/2020/12/NM_MMIWR_Report_FINAL_WEB_v120920.pdf [<https://perma.cc/T3V9-8MRT>]. This report primarily used county-level data.

108. See generally OR. STATE POLICE, OREGON STATE POLICE REPORT ON MISSING AND MURDERED NATIVE AMERICAN WOMEN (2020), https://www.oregonlegislature.gov/citizen_engagement/Reports/2020-OSP-Report%20on%20Missing%20and%20Murdered%20Native%20American%20Women.pdf [<https://perma.cc/PCZ3-UZBZ>]. Oregon utilized law enforcement data for its report, as would be submitted to NCIC, and including seven of the nine recognized tribes in Oregon. *Id.* at 5. The report revealed 13 missing Indigenous females as of January 23, 2020. *Id.* at 7.

Washington,¹⁰⁹ and Wyoming.¹¹⁰ These studies use various methodologies, including gathering data from NamUs, NCMEC,¹¹¹ NCIC/MPF, and state-level clearinghouses.

For example, Hawaii reviewed local law enforcement data to determine that from 2018-2021, there were 182 cases of missing *Kānaka Maoli* girls from the island of Hawai'i, which was higher than any other racial group.¹¹² In Nebraska, there was a comprehensive analysis of quantitative data (from the state's missing persons list, NamUs, and NCMEC) and qualitative data, finding that Native Americans went missing at a rate 3.1 times their representation in the general population.¹¹³ Wyoming reviewed a ten-year range of NCIC and NamUs entries to find that of the 8,431 missing person records reviewed, 15% (1,254) were for indigenous persons.¹¹⁴

In addition, nonprofit entities have created their own initiatives to fill the gap in data about missing AI/AN persons. These organizations often publish reports using data that is not available to non-native peer reviewers, and thus, the quality or accuracy of their conclusions cannot be meaningfully ascertained by non-native researchers.¹¹⁵ Reports by such nongovernmental organizations have addressed the issue of missing

109. *See generally* MONICA ALEXANDER, MISSING & MURDERED NATIVE AMERICAN WOMEN REPORT, WASHINGTON STATE PATROL (2021), https://www.wsp.wa.gov/wp-content/uploads/2022/02/Missing-and-Murdered-Native-American-Women_2019.pdf [<https://perma.cc/UR3X-JFHS>]. The report utilized NCIC data.

110. *See generally* EMILY A. GRANT, LENA DECHERT, LAUREL WIMBISH & ANDRIA BLACKWOOD, MISSING & MURDERED INDIGENOUS PEOPLE (2021) [hereinafter WYOMING 2021 REPORT], <https://wysac.uwyo.edu/wysac/reports/View/7713> [<https://perma.cc/NX6Y-LXUP>]. Wyoming analyzed data from NCIC and NamUs. *See also* EMILY A. GRANT, LENA DECHERT & LAUREL WIMBISH, WYOMING MISSING & MURDERED INDIGENOUS PEOPLE TASK FORCE: 2023 UPDATE, <https://wysac.uwyo.edu/wysac/reports/View/7726> [<https://perma.cc/9GC7-MJYV>].

111. *See* John Clark, *Help for Missing American Indian and Alaska Native Children*, 69 DOJ J. FED. L. & PRAC. 5, 12-13 (2021).

112. HOLOI A NALO WAHINE 'O IWI, *supra* note 102, at 5. The term *Kānaka Maoli* is used in this report “when referring to those of Native Hawaiian descent regardless of blood quantum.” *Id.* at 6 n.1.

113. LB154 REPORT, *supra* note 106, at 15.

114. WYOMING 2021 REPORT, *supra* note 110, at 11.

115. *Id.* at 8.

AI/AN persons in Alaska,¹¹⁶ Northern California,¹¹⁷ California,¹¹⁸ the Dakotas, Montana, and Nebraska,¹¹⁹ Washington,¹²⁰ and other urban areas across the United States.¹²¹ As a follow-up to work previously done with a nonprofit, the Yurok Tribe published a comprehensive report and toolkit addressing the issue of missing or murdered individuals in their community.¹²²

Academic researchers are also examining available data to better understand the scope and scale of the problem of missing indigenous persons. Looking at multiple points-in-time data from Nebraska, researchers analyzed information about all missing indigenous persons listed by the Nebraska Missing Persons List, NamUs, or NCMEC.¹²³

116. See generally DATA FOR INDIGENOUS JUST., WE ARE CALLING TO YOU: ALASKA'S MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS (2021), <https://dataforindigenousjustice.com/wp-content/uploads/2021/02/We-Are-Calling-To-You-1.pdf> [<https://perma.cc/438T-8ZQ5>].

117. See generally ABBY ABINANTI, ANGI CAVALIERE, ALANNA NULPH, BLYTHE K. GEORGE, ANNITA LUCCHESI, MICHAELA MADRID, ARYN FISHER, TAYLOR RUECKER, VIRIDIANA PRECIADO, JESSICA SMITH & GABRIELLA BALANDRAN, TO' KEE SKUY' SOO NEY-WO-CHEK', I WILL SEE YOU AGAIN IN A GOOD WAY (Year 1) (2020), https://www.sovereign-bodies.org/_files/ugd/6b33f7_c7031acf738f4f05a0bd46bf96486e58.pdf [<https://perma.cc/HME8-FA2X>]; ABBY ABINANTI, ANGI CAVALIERE, KENDALL ALLEN-GUYER, ALANNA NULPH, MICHAELA MADRID, VIRIDIANA PRECIADO, ARYN FISHER, TAYLOR RUECKER, JESSICA SMITH & SHEREENA BAKER, TO' KEE SKUY' SOO NEY-WO-CHEK', I WILL SEE YOU AGAIN IN A GOOD WAY (Year 2) (2021), https://yuroktribalcourt.org/wp-content/uploads/2021/09/Y2_Report_FINAL-w-grantinfo.pdf [<https://perma.cc/8HJX-GAJ6>].

118. See generally ANNITA LUCCHESI, MICHAELA MADRID, CARLA CHENEY, LENNY HAYES, ARYN FISHER, TAYLOR RUECKER, VIRIDIANA PRECIADO, GABRIELLA BALANDRAN, JESSICA SMITH & JACLYN BISSONETTE, THEY FAILED TO PROTECT ME: ENHANCING RESPONSE TO AND SURVEILLANCE OF DOMESTIC & INTIMATE PARTNER VIOLENCE AND MISSING AND MURDERED INDIGENOUS WOMEN, GIRLS, AND TWO SPIRIT PEOPLE OF CALIFORNIA DURING THE COVID-19 PANDEMIC (2021), https://2a840442-f49a-45b0-b1a1-7531a7cd3d30.filesusr.com/ugd/6b33f7_bc2e17b8500049a6bc64d055272d0649.pdf [<https://perma.cc/CY7T-URAA>].

119. See generally SOVEREIGN BODIES INST. & BRAVE HEART SOC'Y, ZUYA WINYAN WICAY'UONIHAN: HONORING WARRIOR WOMEN (2019), https://www.sovereign-bodies.org/_files/ugd/6b33f7_4be43934b55e4f3685f3528c878a4d52.pdf [<https://perma.cc/F745-N7N6>].

120. See generally URB. INDIAN HEALTH INST., MISSING AND MURDERED INDIGENOUS WOMEN & GIRLS: WE DEMAND MORE, (2019), <https://www.uihi.org/download/mmiwg-we-demand-more/> [<https://perma.cc/6NYL-8SQH>].

121. See generally URB. INDIAN HEALTH INST., MISSING AND MURDERED INDIGENOUS WOMEN & GIRLS: A SNAPSHOT OF DATA FROM 71 URBAN CITIES IN THE UNITED STATES (2018), <https://www.uihi.org/resources/missing-and-murdered-indigenous-women-girls/> [<https://perma.cc/BCC3-T2BU>].

122. MISSING & MURDERED INDIGENOUS WOMEN, GIRLS & TWO SPIRIT PEOPLE OF N. CAL., TO' KEE SKUY' SOO NEY-WO-CHEK', I WILL SEE YOU AGAIN IN A GOOD WAY (Year 3) (2020), https://yuroktribalcourt.org/wp-content/uploads/2022/07/Yurok-Tribe-Year-Three-Report-Toolkit-FINAL-DRAFT.pdf?fbclid=IwAR0j4_qchmrqMMeXwhAXtE8ZLD9qa7R18kHkKdPXSTfAmSpXR3_SmE3yWYc [<https://perma.cc/RU7N-DNLE>].

123. Tara N. Richards, Emily M. Wright, Alyssa Nystrom, Sheena L. Gilbert & Caralin Branscum, *On Assessing the Scope of Missing Native Americans in Nebraska: Results from a State-Wide Study and Recommendations for Future Research*, RACE & JUST., 7 Original Manuscript (Oct. 30, 2021), <https://www.ojp.gov/library/publications/assessing-scope-missing-native-americans-nebraska-results-state-wide-study-and> [<https://perma.cc/2LPC-WSVA>].

Another article examined the correlation between missing indigenous persons and extractive industry locations,¹²⁴ as such locations are known to significantly increase the rates of sexual assault, domestic violence, and human trafficking in areas where they are located.¹²⁵

Challenges to Data Collection on Missing AI/AN Persons. There are numerous challenges to accurately collecting data about missing AI/AN persons. Some are unique to missing person cases involving AI/AN people, others are more generally applicable, and some are accentuated because of the legacy of historical trauma experienced by AI/AN people.¹²⁶

Racial Misclassification. Racial misclassification¹²⁷ occurs when an individual is classified as a different race than that with which they identify; in the case of missing AI/AN, this typically manifests as an individual being classified as non-AI/AN when, in fact, they are.¹²⁸ Racial misclassification can occur when the data collector makes assumptions based on stereotypes instead of making specific inquiries with the tribe,

124. A. Skylar Joseph, *A Modern Trail of Tears: The Missing and Murdered Indigenous Women (MMIW) Crisis in the US*, J. FORENSIC & LEGAL MED. 79, 80–83 (2021).

125. EMILY J. HANSON, MISSING AND MURDERED INDIGENOUS PEOPLE (MMIP): OVERVIEW OF RECENT RESEARCH, LEGISLATION, AND SELECTED ISSUES FOR CONGRESS 22 (2022), <https://crsreports.congress.gov/product/pdf/R/R47010/2> [<https://perma.cc/J3E4-QARW>].

126. See, e.g., Christina M. Schnalzer, *The Importance of Abolition of the Carceral State for Native Survivors*, 10 AM. INDIAN L.J. 98, 103 (2022) (“Historical trauma is understood as the collective trauma exposure within and across generations, including interpersonal losses and unresolved grief.” (internal quotation marks omitted)).

127. When examining the issue of racial misclassification in criminal justice statistics it is important to make an important clarification. As discussed above, *supra* note 14 and accompanying text, the legal definition of “Indian” in 18 U.S.C. § 1151 expands beyond racial classifications to also include a requirement of tribal citizenship or affiliation. However, missing person databases such as NCIC/MPF and NamUs retain a race-only field without regard to tribal citizenship or affiliation. As a result, the universe of persons identified only via race as AI/AN in criminal justice systems will necessarily be larger than those who would meet the federal definition of “Indian.” NamUs and NCIC/MPF both can collect tribal affiliation information about missing persons. These fields are not mandatory, however, and as a result, tribe-specific data is difficult to ascertain when reviewing national-level data about missing or murdered AI/AN.

128. Michele Connolly, Meghan Gallagher, Felicia Hodge, Mary Cwik, Victoria O’Keefe, Bette Jacobs & Amy Adler, *Identification in a Time of Invisibility for American Indians and Alaska Natives in the United States*, 35 STAT. J. IAOS 71, 76 (2019); Malia Villegas, Amber Ebarb, Sarah Pytalski & Yvette Roubideaux, *Disaggregating American Indian & Alaska Native Data: A Review of Literature*, NCAI POL. RSCH. CTR. 1, 5–7 (2016), https://www.ncai.org/DataDisaggregationAIAN-report_5_2018.pdf [<https://perma.cc/B5YZ-ZYAK>]; Mose A. Herne, Alexandra C. Maschino & Anita L. Graham-Phillips, *Homicide Among American Indians/Alaska Natives, 1999-2009: Implications For Public Health Interventions*, 131 PUB. HEALTH REPS. 597, 602 (2016); Jenine Dankovchik, Megan J. Hoopes, Victoria Warren-Mears & Elizabeth Knaster, *Disparities in Life Expectancy of Pacific Northwest American Indians and Alaska Natives: Analysis of Linkage-Corrected Life Tables*, 130 PUB. HEALTH REPS. 71, 72 (2015); Melissa A. Jim, Elizabeth Arias, Dean S. Seneca, Megan J. Hoopes, Cheyenne C. Jim, Norman J. Johnson & Charles L. Wiggins, *Racial Misclassification of American Indians and Alaska Natives by Indian Health Service Contract Health Service Delivery Area*, 104 AM. J. PUB. HEALTH S295, S295-S301 (2014).

family, or friends of the missing person.¹²⁹ For example, in a study of racial classification in death certificates, researchers found that “the odds of being classified as AI/AN were 2.9 times higher” for those who died of cirrhosis of the liver, even if the decedent was not identified as AI/AN by their next of kin in subsequent surveys.¹³⁰ Racial misclassification can also occur when systems use inadequate definitions of AI/AN identity.¹³¹

Presently, we are not aware of any available research discussing AI/AN racial misclassification in criminal justice databases such as NCIC/MPF or NamUs. That said, the public health field has also examined the racial misclassification of AI/AN individuals in death certificate records. For example, one study compared the racial classifications on death records to IHS records and found that the percentage of AI/AN misclassification ranged from 6.3% to 35.6%, depending on the region of the country being examined.¹³² It is unknown if the racial misclassification rates in public health research are similar to, higher than, or lower than rates found in criminal justice data.

Other Misclassifications. In some cases, missing AI/AN individuals self-identify as a different gender or sex than the one they were assigned at birth. This presents additional misclassification issues, as Two-Spirit and LGBTQI+ individuals might be commonly known by one name, and yet their missing person database entry only contains their birth name (or “deadname”).¹³³ In addition, the national databases described in this article generally do not capture a person’s sexual orientation or gender identity.¹³⁴ Because accurate data collection is lacking, the number of Two-Spirit and LGBTQI+ AI/AN individuals who go missing each year is unknown.

Failure to Report Incident to Law Enforcement. If a missing person case is not reported to law enforcement, that case will appear in neither

129. Emily A. Haozous, Carolyn J. Strickland, Janelle F. Palacios & Teshia G. Arambula Solomon, *Blood Politics, Ethnic Identity, and Racial Misclassification among American Indians and Alaska Natives*, J. ENV'T & PUB. HEALTH 1, 4–6 (2014).

130. *Id.* at 5; Andrew Noymer, Andrew M. Penner & Aliya Saperstein, *Cause of Death Affects Racial Classification on Death Certificates*, PLOS ONE 1, 2 (2011). Despite persistent stereotypes to the contrary, Native Americans have higher rates of abstinence from alcohol (59%) and otherwise consume alcohol at a rate similar to or lower than that of whites. James K. Cunningham, Teshia A. Solomon & Myra L. Muramoto, *Alcohol Use Among Native Americans Compared to Whites: Examining the Veracity of the ‘Native American Elevated Alcohol Consumption’ Belief*, 160 DRUG & ALCOHOL DEPENDENCE 65, 67 (2016).

131. Haozous, Strickland, Palacios & Arambula Solomon, *supra* note 129, at 5.

132. David K. Espey, Melissa A. Jim, Thomas B. Richards, Crystal Begay, Don Haverkamp & Diana Roberts, *Methods for Improving the Quality and Completeness of Mortality Data for American Indians and Alaska Natives*, 104 AM. J. PUB. HEALTH S286, S290 (2014).

133. A transgender or nonbinary person’s “deadname” is their birth name (or other former name) they no longer use because they have changed their name as part of their gender transition.

134. NCIC MISSING PERSON FILE: DATA COLLECTION ENTRY GUIDE (2013) (on file with author).

NCIC/MPF nor NamUs.¹³⁵ Geographic, technological, and language barriers are common inhibitors of timely reporting to law enforcement.¹³⁶ Additionally, mistrust of law enforcement may dissuade family members or friends from reporting a person missing.¹³⁷ Overcoming these barriers to increase reporting of missing persons to law enforcement will improve the completeness of the data in those systems.

Failure of Law Enforcement to Report to State/National Databases. The quality of the data found in NamUs and NCIC/MPF is dependent on the timely and accurate submission of information from law enforcement. Higher compliance rates in data submission to these databases will improve the available statistics on missing AI/AN.

III. LEGAL CONSIDERATIONS IN MISSING PERSON CASES IN INDIAN COUNTRY

The investigation of missing person cases has a unique set of constitutional, legislative, and case law considerations, spanning federalism, the right of privacy, the right to be forgotten, and authority to search for the missing. Moreover, these general legal considerations are overlaid with treaties, legislation, and case law uniquely applicable to Indian country. The resulting landscape provides challenges as well as opportunities for improving the response to reports of missing persons in Indian country. Because we know from the data that American Indians and Alaska Natives go missing at significant rates from both tribal and non-tribal lands, both circumstances are examined here.

A. Federalism and Limits of Federal Power

In the United States, the federal government is limited in what it can compel the states to do. Under the U.S. Constitution, power is divided vertically between the federal and state governments in a federalist system, and power not expressly granted to the federal government is reserved to the states.¹³⁸ The restrictions on the federal government include the following: it cannot compel states to enact laws,¹³⁹ nor administer a

135. While the general public is able to submit information about missing persons to NamUs, it will not appear on the public-facing website until confirmed by law enforcement. *Frequently Asked Questions*, NAMUS, <https://namus.nij.ojp.gov/frequently-asked-questions#faq-what-happens-when-i-enter-a-case-into-namus> [<https://perma.cc/RH4K-UJ8W>].

136. STRATEGY, *supra* note 36, at 14.

137. *Id.*

138. U.S. CONST., amend. X.

139. *See* *Murphy v. NCAA*, 138 S. Ct. 1461, 1482 (2018) (holding that Congress had exceeded its authority when it passed a law barring states from authorizing sports betting).

regulatory program,¹⁴⁰ nor require state employees to perform certain acts.¹⁴¹ However, whether the federal government may compel states to collect and share criminal justice data has not been squarely addressed by the Supreme Court.¹⁴²

Because the federal government does not have authority to compel states in the aforementioned ways, it is limited in how it can require states to provide information about missing persons to the federal government. Congress has not enacted legislation requiring states to provide data on missing adults—and it is unclear if it has the authority to do so.¹⁴³ In the absence of a clear mandate to require information on missing adults, the federal government has established a technically voluntary system, in which states are encouraged to and can submit information on missing persons to the National Crime Information Center’s Missing Person File.

In contrast, the federal government likely does have some authority to compel tribes to take certain actions. However, political realities and current practices cut strongly against any such efforts by the federal government. For example, tribal law enforcement is not included in the federal statutory mandate to immediately submit information to NCIC/MPF about persons under twenty-one who are reported missing.¹⁴⁴

The federal government has “plenary and exclusive authority” over matters in Indian country and may “impose federal policy directly on tribes without their consent.”¹⁴⁵ The federal government has a sovereign-to-

140. *New York v. United States*, 505 U.S. 144, 188 (1992) (holding that Congress had exceeded its authority when it passed a law requiring states to “enact or administer a federal regulatory program” related to nuclear waste).

141. *Printz v. United States*, 521 U.S. 898, 935 (1997) (holding that Congress had exceeded its authority when it passed a law “conscripting the States’ officers directly” to execute federal laws related to background checks for gun purchases).

142. *See id.* at 936 (O’Connor, J., concurring) (noting that the Court refrained “from deciding whether other purely ministerial reporting requirements imposed by Congress on state and local authorities pursuant to its Commerce Clause powers are similarly invalid”); *id.* at 960 n.22 (Souter, J., dissenting) (“The enactment of statutes that merely involve the gathering of information, or the use of state officials on an interim basis, do not raise even arguable separation-of-powers concerns.”). For a discussion of governmental use of data and data sharing, see generally Bridget A. Fahey, *Data Federalism*, 135 HARV. L. REV. 1007 (2022), and Robert A. Mikos, *Can the States Keep Secrets from the Federal Government*, 161 U. PA. L. REV. 103 (2012).

143. 34 U.S.C. § 41307 requires federal, state, and local law enforcement agencies to report cases of missing children under age 21 to the National Crime Information Center; 34 U.S.C. § 41308 details what information states must report. The statute is silent on submitting reports of those 21 and older who have been reported missing to NCIC.

144. *See supra* note 39 and accompanying text.

145. COHEN, *supra* note 16, at § 5.02. For a discussion of tribal sovereignty, see *id.* § 4.01. *See also* *United States v. Lara*, 541 U.S. 193, 200 (2004); *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 192 (1989) (outlining the differences between the Interstate Commerce Clause and the Indian Commerce Clause). For general discussions of the issue, see generally Philip P. Frickey, *The William B. Lockhart Lecture: Article: Domesticating Federal Indian Law*, 81 MINN. L. REV. 31 (1996).

sovereign relationship with federally recognized tribes, where tribes are generally recognized as “dependent sovereign nations.”¹⁴⁶ While the intricate details of the relationship between the federal government and tribes extend far beyond the scope of this Article, a few main points are pertinent to this discussion. First, the authority of the federal government to regulate criminal activities in Indian country is based on what is colloquially known as the “Indian Commerce Clause.”¹⁴⁷ Second, while the federal government may have general policing powers in some parts of Indian country, tribes retain police power over their members and are able to pass their own criminal and civil laws.¹⁴⁸ Third, states and localities sometimes have concurrent police power on tribal lands, depending on a web of provisions outlined below.¹⁴⁹ Finally, the laws governing American Indian and Alaska Native children’s welfare and custody are a complicated mix of tribal, state, and federal laws.¹⁵⁰

Treaties. Because of the unique sovereign-to-sovereign relationship between tribes and the federal government, many tribes have fully enacted treaties with the United States.¹⁵¹ Such treaties were developed and adopted until 1871.¹⁵² While most treaties between tribes and the federal government were silent on the precise issue of criminal jurisdiction, the ones where it was enunciated envisioned concurrent tribal-federal criminal jurisdiction¹⁵³ or exclusive tribal jurisdiction.¹⁵⁴

146. Andrea M. Seielstad, *The Recognition and Evolution of Tribal Sovereign Immunity Under Federal Law: Legal, Historical, And Normative Reflections on a Fundamental Aspect of American Indian Sovereignty*, 37 *Tulsa L. Rev.* 661, 715 (2002); see also *United States v. Wheeler*, 435 U.S. 313, 322 (1978); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 208 (1978).

147. U.S. CONST. art. I, sec. 8, cl. 3 (“The Congress shall have Power . . . To regulate Commerce . . . with the Indian Tribes . . .”).

148. Frickey, *supra* note 145, at 32; *United States v. Wheeler*, 435 U.S. 313, 313 (1978).

149. *Cf. Worcester v. Georgia*, 31 U.S. 515(1832) (holding that the state does not have police authority on tribal lands).

150. See, e.g., *Construction and Application by State Courts of Indian Child Welfare Act of 1978 Requirement of Active Efforts to Provide Remedial Services*, 25 U.S.C.A. § 1912(d), 61 A.L.R. 6th 521.

151. For a full searchable database of those treaties as they existed from 1788–1883, see CHARLES J. KAPPLER, *INDIAN AFFAIRS: LAWS AND TREATIES*, VOL. 2 (1904), <https://dc.library.okstate.edu/digital/collection/kapplers/id/29743/> [<https://perma.cc/H32J-AUUV>].

152. *Indian Appropriations Act of 1871 ch. 120, § 1, Mar. 3, 1871, 16 Stat. 566*; see also Mark Hirsch, *1871: The End of Indian Treaty-Making*, *SMITHSONIAN: AMERICAN INDIAN* (Vol. 15, No. 2, Summer/Fall 2014), <https://www.americanindianmagazine.org/story/1871-end-indian-treaty-making> [<https://perma.cc/VP6Y-75GW>].

153. See, e.g., *Treaty with the Cherokee art. 2, Aug. 6, 1846, 9 Stat. 871, 871*; *Treaty with the Cherokee art. 5, July 27, 1866, 14 Stat. 799, 800* (stating that President may suspend tribally enacted police regulations if too onerous).

154. See, e.g., *Treaty with the Seminole sec. 3d, July 19, 1866, 14 Stat. 755, 759*; *Treaty with the Choctaw and Chickasaw sec. 4, June 28, 1866, 14 Stat. 769, 772*; *Treaty with the Cherokee art. 12, sec. 3, July 27, 1866, 14 Stat. 799, 802*.

Indian Commerce Clause. Located in Article I, Section 8, Clause 3 of the U.S. Constitution, the Indian Commerce Clause has been understood by the Courts as “grant[ing] Congress plenary power over tribal affairs.”¹⁵⁵ Federal authority to govern matters in Indian country is generally delegated either to the BIA, within the Department of the Interior,¹⁵⁶ or IHS, within the Department of Health and Human Services.¹⁵⁷ The Office of Justice Services (OJS) within BIA was created in 1990 and is responsible for “carrying out the law enforcement functions of the Secretary [of Interior] in Indian country.”¹⁵⁸ BIA-OJS provides direct law enforcement services to some tribes.¹⁵⁹ However, BIA has no broad authority to enforce laws outside of Indian country, even where an American Indian or Alaska Native is the victim of a crime or has gone missing.¹⁶⁰ In the context of missing person cases, this is significant because when a tribal resident goes missing and travels to state lands, BIA will depend on the invitation and cooperation of the local law enforcement agency to continue the investigation. It is in this jurisdictional handoff that cases can fall through the cracks.

Tribes Retain General Policing Power. Over the last 150 years, an increasing number of tribes have created and now maintain their own tribal police forces.¹⁶¹ These are structured in three primary ways.¹⁶² First, tribes

155. Joseph Mantegani, *Slouching Towards Autonomy: Reenvisioning Tribal Jurisdiction, Native American Autonomy, and Violence Against Women in Indian Country*, 111 J. CRIM. L. & CRIMINOLOGY 313, 319; see also *Cotton Petroleum*, supra note 145, at 192. The explicit concept of Congress having plenary power in Indian country was first mentioned in *Ahboah v. Hous. Auth. of the Kiowa Tribe of Indians*, 660 P.2d 625, 629 (Okla. 1983).

156. 25 U.S.C. §§ 2, 9, 13.

157. 25 U.S.C. §§ 5361, 5382. Historically, reservations were initially policed by the United States military, but in the later part of the 19th century this practice gradually gave way to the direct federal employment of Indian police officers. David Wachtel, *An Historical Look at BIA Police on the Reservations*, AMER. INDIAN J. 13, 14 (May 1980). Even during these early years, some tribes also maintained their own police forces. *Id.* In the early 1900s, Office of Indian Affairs (OIA, predecessor agency to BIA) police forces came under more centralized control. *Id.* OIA was established in the War Department in 1824 and transferred to the Department of the Interior in 1849. *War Department, Office of Indian Affairs, 1824–1849*, NAT'L ARCHIVES CATALOG, <https://catalog.archives.gov/id/10452221> [<https://perma.cc/98H7-T9BX>]; 9 Stat. 395 (1849). In 1947, OIA was renamed the Bureau of Indian Affairs. Secretary's Order 2362, Delegation of Authority-Personnel Actions (Sept. 29, 1947). For a more complete history of law enforcement in Indian country, see *Indian Law Enforcement History*, BUREAU OF INDIAN AFFAIRS L. ENF'T SERVS., <https://www.tribal-institute.org/download/Indian%20Law%20Enforcement%20History.pdf> [<https://perma.cc/MS2G-VJ7T>].

158. 25 U.S.C. §§ 2802(b)(1), 2806(a) (“[BIA] shall have investigative jurisdiction over offenses against criminal laws of the United States in Indian Country . . .”).

159. See *infra* note 162.

160. See *infra* note 162, at 84–86.

161. See, e.g., *Tribal Law Enforcement*, TRIBAL CT. CLEARINGHOUSE, <https://tribal-institute.org/lists/enforcement.htm> [<https://perma.cc/Y4ZE-Q8HN>].

162. See, e.g., Bill Denke, Bruce Lee, Matt Lysakowski & Jason O'Neal, *Jurisdictional Solutions in Indian Country to Support Missing or Murdered Indigenous People Efforts*, 69 DEP'T JUST. J. FED. L. & PRAC. 71 (2021).

sometimes fund and administer their own tribal police departments.¹⁶³ Second, many tribes receive direct law enforcement services from BIA, where police officers are federal employees.¹⁶⁴ Third, tribes can enter into “638 contracts” or “self-governance compacts” with BIA to fund their tribal police agencies.¹⁶⁵ The distribution of the types of law enforcement agencies on any particular tribal lands may therefore vary from year to year as contracts are initiated, renewed, or terminated, or expire. In a missing person case, tribal law enforcement officers, whether self-funded or funded through a 638 contract—without any cross-deputization agreements—are limited to operating on their own tribal lands. In a similar manner to the jurisdictional limitations of BIA officers, any jurisdictional or agency handoff creates the possibility of a missing person case falling through the cracks.

Indian Child Welfare Act. Congress enacted the Indian Child Welfare Act (ICWA) in 1978 to counter the long-standing practice of state courts and private adoption agencies separating American Indian and Alaska Native children from their parents and extended tribal communities.¹⁶⁶ The provisions of ICWA will affect missing person cases when an American Indian or Alaska Native minor goes missing and is recovered outside of the tribal lands of the tribe with which they are affiliated.¹⁶⁷

B. Right to Privacy & the Right to Be Forgotten

In general, adults have the right to go missing.¹⁶⁸ Or rather, it is not a crime for an adult to disappear intentionally. Individuals may intentionally disappear for myriad reasons, including wanting to leave

163. *Id.* at 76–79.

164. *Id.* at 84–86.

165. *Id.*

166. Indian Child Welfare Act of 1978 (ICWA), Pub. L. No. 95-608, 92 Stat. 3069 (codified at 25 U.S.C. § 1901 *et seq.*) Guidelines for implementation of ICWA’s terms are issued by BIA and can be found in the Code of Federal Regulations. 25 C.F.R. § 23.101–44 (2021). For a history of ICWA, see, e.g., Neoshia R. Roemer, *Finding Harmony or Swimming in the Void: The Unavoidable Conflict Between the Interstate Compact on the Placement of Children and the Indian Child Welfare Act*, 94 N.D. L. REV. 149, 152 (2019).

167. ICWA gives exclusive jurisdiction to a Tribe for “any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe” except where jurisdiction is otherwise vested in a state. 25 U.S.C. § 1911(a). For a discussion of Tribal jurisdiction issues related to ICWA, see generally Patrice H. Kunesh, *Borders Beyond Borders: Protecting Essential Tribal Relations Off-Reservation Under the Indian Child Welfare Act*, 42 NEW ENG. L. REV. 15 (2007).

168. This principle is widely acknowledged as an extension of the interpretation of the First Amendment in *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 334 (1995), where the Court recognized a Constitutional right to remain anonymous in most circumstances; see also MISSING ADULTS, *supra* note 68, at 2; TRISHA CHAKRABORTY, REPORTING & INVESTIGATING MISSING PERSONS: A BACKGROUND PAPER ON HOW TO FRAME THE ISSUE 1 (2020), <https://www.ojp.gov/pdffiles1/nij/grants/255934.pdf> [<https://perma.cc/V82R-BS9J>].

difficult financial situations, intimate partner violence, family violence, and more. Victims of intimate partner violence may intentionally leave without informing loved ones and friends of their intentions to limit an abuser's ability to find them. When there is no indicia of criminality, risk, or danger, law enforcement's authority to intervene in a person's life is appropriately very limited. This reality can frustrate efforts to find missing adults and is not unique to American Indians and Alaska Natives.

Under the Fourth Amendment, individuals have a right to be free from unreasonable search and seizure, such as surveillance, data mining, and information tracking.¹⁶⁹ The Supreme Court has interpreted this protection to include a zone of physical privacy for an individual.¹⁷⁰ The protection turns on whether a person has a "reasonable expectation of privacy," which has two facets: that the person subjectively had an expectation of privacy and that expectation was objectively reasonable.¹⁷¹ To overcome a reasonable expectation of privacy, law enforcement must obtain a warrant to search or seize the person, place, or item in question.¹⁷² In the context of a missing person or an individual who intentionally disappeared, this means that barring exigent circumstances, law enforcement would generally need to obtain a warrant to search an individual's home, car, phone, communications, or records.¹⁷³

The concept of a "right to be let alone" in the United States dates at least to 1890, which is credited as the first reference to a right to privacy in this country.¹⁷⁴ Under the Fourteenth Amendment, adults have a limited

169. *See* *United States v. Jones*, 565 U.S. 400, 402-04 (2012) (holding that attaching a GPS device to suspect's wife's car for 28 days without a warrant was unconstitutional search); *Carpenter v. United States*, 138 S. Ct. 2206, 2219 (2018) (holding that the government's access of defendant's cell site location information without a warrant was unconstitutional); *Riley v. California*, 573 U.S. 373, 386 (2014) (holding that search of arrestees' cellphones without a warrant was unconstitutional). *But see* *Florida v. Riley*, 488 U.S. 445, 445 (1989) (holding that aircraft flying over property was not unreasonable search); *United States v. White*, 401 U.S. 745, 745 (1971) (holding that exposure of information to a third party removed Fourth Amendment protections).

170. "[T]he Fourth Amendment protects people, not places." *Katz v. United States*, 389 U.S. 347, 351 (1967).

171. *See* *Katz v. United States*, 389 U.S. 347, 360-62 (1967) (creating a two-part test that required a person to have a reasonable expectation of privacy and that, objectively, society agreed); *Minnesota v. Olson*, 495 U.S. 91, 91 (1990) (holding that an overnight guest had a reasonable expectation of privacy in a home); *Kyllo v. United States*, 533 U.S. 27, 27 (2001) (holding that using a heat gun to detect grow lights inside a house was an unreasonable search).

172. To be valid, a search warrant must be based on probable cause and must describe with particularity the places to be searched or persons or items to be seized. *See* WILLIAM E. RINGEL, *SEARCHES AND SEIZURES, ARRESTS AND CONFESSIONS* §§ 2, 4, 5 (2d. ed. 1979).

173. *See, e.g.,* *Carpenter v. United States*, 138 S. Ct. 2206, 2222 (2018) (holding that the government is required to obtain a warrant supported by probable cause to obtain third-party records in which a person has a "legitimate privacy interest," such as a cellphone location records).

174. *See* Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 195 (1890).

right to informational privacy, which a sufficiently compelling government interest can override.¹⁷⁵ Included is the right to avoid disclosing personal matters, based on a reasonable expectation of confidentiality.¹⁷⁶ Information that may be protected, based on particular circumstances, includes medical information, mental health information, employment information, and crime victim information.¹⁷⁷

There are two branches of informational privacy law in the United States: traditional privacy law and data protection law.¹⁷⁸ Traditional privacy law involves an individual's effort to prevent disclosure of sensitive or confidential information—such as intimate sexual relations, interpersonal strife, illnesses, and personal history—that an individual might be embarrassed about.¹⁷⁹ In contrast, data protection laws concern information routinely exposed to the public (e.g., names, addresses, physical features, travel on public roads) or owned by third parties (e.g., cellphone account numbers).¹⁸⁰ Data protection in the United States varies sector by sector—such as medical, consumer, and financial—as opposed to a uniform approach that provides broad coverage.¹⁸¹ Similarly, criminal history data is generally available to the public.¹⁸²

When a person is reported missing, law enforcement is required, in some instances, to report identifying information about the missing individuals to various databases, including NCIC/MPF, state criminal history systems, state missing persons clearinghouses, or NamUs.¹⁸³ Because this information is made widely available to law enforcement and cannot be rightly categorized as “public” information, individuals may have a privacy interest in that information. In other words, if a person is erroneously reported missing or is an adult who has chosen to disappear, they should have the right to have entries about them in any of these

175. For a summary of cases that address state liability for violating constitutional rights to informational privacy, see generally Fern L. Kletter, *State or Municipal Liability for Invasion of Constitutional Right to Informational Privacy Under 42 U.S.C.A. § 1983*, 65 A.L.R. FED. 3D ART. 1 (2021).

176. *Id.*

177. *Id.*

178. RAYMOND T. NIMMER & HOLLY K. TOWLE, *DATA PRIVACY, PROTECTION, AND SECURITY LAW* §§ 2.01, 2.05(1) (LexisNexis A.S. Pratt 2022).

179. *Id.* § 102.

180. *Id.* This type of data is also called personally identifiable information or PII.

181. See generally NIMMER & TOWLE, *supra* note 178. In contrast, the European General Data Protection Regulation applies one regulation scheme to all data types. See DAVID BENDER, *COMPUTER LAW: A GUIDE TO CYBERLAW AND DATA PRIVACY LAW* ch. 51 (Matthew Bender, rev. ed. 2022).

182. See, e.g., *U.S. Dep't of Just. v. Reps. Comm. for Freedom of Press*, 489 U.S. 749, 753 (1989) (noting that arrests, indictments, convictions, and sentences are usually available to the public in court records, while criminal history summaries are generally restricted).

183. See discussion *supra* Part I.

systems removed and entirely cleared from those systems in the absence of a sufficient government interest.

C. Authority to Search for Missing Children/Missing Persons

The question remains: Does law enforcement have any authority to investigate missing person cases in the absence of any indicia of criminal activity? Generally speaking, police investigation of cases involving missing persons falls under their fairly broad authority to be “community caretakers.”¹⁸⁴ While the *community caretaker doctrine* often arises in the context of Fourth Amendment challenges to searches and seizures, the general investigation of missing person cases falls cleanly under the doctrine’s *public servant exception*.¹⁸⁵ Additional police activity in such cases—such as searching premises for a missing individual—could also fall under the *emergency aid doctrine*, wherein an officer believes that a person’s safety is in danger.¹⁸⁶ However, with this authority comes responsibility.

184. Debra Livingston, *Police, Community Caretaking, and the Fourth Amendment*, 1998 U. CHI. LEG. F. 261, 302 (1998); see also *Idaho v. Cutler*, 141 P.3d 1166, 1171 (Ct. App. Idaho 2006); *People v. McDonough*, 940 N.E.2d 1100, 1107 (Ill. 2010).

185. *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973). For a detailed analysis of the Community Caretaker Doctrine, see, e.g., Mary Elisabeth Naumann, *The Community Caretaker Doctrine: Yet Another Fourth Amendment Exception*, 26 AM. J. CRIM. L. 325 (1999); Paul C. Redrup, *When Law Enforcement and Medicine Overlap: The Community Caretaker Exception and the Right to Refuse Medical Treatment*, 38 U. TOL. L. REV. 741 (2007).

186. Naumann, *supra* note 185, at 333, and cases cited therein. Under the doctrine of *parens patriae*, the sovereign is responsible for the welfare of its people. Practically speaking, this means that governments—state, federal, or tribal—can step in to protect citizens who may be unable to protect themselves. Definitions for “*parens patriae*” include “the state regarded as a sovereign; the state in its capacity as provider of protection to those unable to care for themselves” and “a doctrine by which a government has standing to prosecute a lawsuit on behalf of a citizen, esp. on behalf of someone who is under a legal disability to prosecute the suit.” *Parens Patriae*, BLACK’S LAW DICTIONARY (11th ed. 2019). Typically, this doctrine comes into play under two sets of circumstances: 1) when a state acts on behalf of a minor or someone who disabled or infirm such that they cannot make their own decisions, and 2) when a state acts on behalf of a group of its citizens. In the first set of circumstances, the state is said to be acting in the best interest of the individual. In the case of minors, for instance, a state may use its *parens patriae* authority to remove them temporarily or permanently from a custodial parent. See e.g., *P.W. v. Kan. Dep’t of Soc. & Rehab. Servs.*, 877 P.2d 430, 835, 436 (1994) (noting that *parens patriae* “empowers, but does not impose a duty on, the State to act on behalf of the welfare of those unable to care for themselves.”). For an infirm person in a persistent vegetative state, a state can determine if life support can be discontinued. Or, when a state declares a missing person deceased, it is exercising *parens patriae* authority. Under the second definition, states can sue on behalf of its citizens in cases that affect a large number of people or that would be difficult for individuals to pursue. See, e.g., *Alaska Sport Fishing Ass’n v. Exxon Corp.*, 34 F.3d 769, 773 (9th Cir. 1994) (discussing how the State of Alaska acted in the best interest of its citizens under the *parens patriae* doctrine). However, several federal district courts have held that, in order to have *parens patriae* standing, a tribe must be acting on behalf of all of its citizens, not a select number. Cami Fraser, *Protecting Native Americans: The Tribe as Parens Patriae*, 5 MICH. J. RACE & L. 665 (2000).

Civil Liability Under 42 U.S.C. § 1983. Section 1983 “provides a cause of action against any person acting under color of state law who . . . causes [a person] to be subjected . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws.”¹⁸⁷ However, in the absence of any special relationship between the government and the person subjected to the violation, there is generally no duty for law enforcement to protect any particular person or prevent any particular crime.¹⁸⁸ For instance, liability has been found when a woman called 911 to report an attempted break in and was told police would be sent right away; due to an incorrect address, the dispatcher assumed the call was “fake,” and police did not respond until after the woman had been fatally stabbed.¹⁸⁹ In contrast, a court found no liability when a woman, who had called 911 repeatedly about a stalker, was attacked and partially blinded by the stalker because there was no duty to protect a member of the public, generally.¹⁹⁰ In the first case, the court found a special relationship existed because the dispatcher promised to respond, whereas no such promise was made in the second case.

There have been a handful of published cases where the failure to investigate a missing person case thoroughly was brought as a cause of action under 42 U.S.C. § 1983, sometimes framed as a failure to investigate because of the race of the missing person.¹⁹¹ These suits have been unsuccessful. For instance, no § 1983 liability was found when police were negligent in their investigation of the abduction of Pamela Bandy, including telling her daughter that Bandy, a recovering alcoholic, “would come home when she had finished ‘bingeing’(sic)” and lying to the daughter about investigating the car wash where Bandy disappeared.¹⁹² Bandy was found dead six days after she had been abducted and put in the trunk of her car; she had died twelve to thirty-six hours before she was found of dehydration, starvation, and “methanol poisoning from drinking windshield fluid in the trunk.”¹⁹³ In another case, no § 1983 liability was found when police initially refused to take a missing person report from Tonia Carmichael’s family when the African American woman had been missing for 48 hours, reportedly saying, “Tonia would show up ‘after she finishes smoking crack.’”¹⁹⁴ Police eventually took a report three weeks

187. *Vega v. Tekoh*, 142 S. Ct. 2095, 2101 (2022), *quoting* 42 U.S.C. § 1983.

188. *See, e.g., Gazette v. City of Pontiac*, 41 F.3d 1061, 1063 (6th Cir. 1994).

189. *De Long v. County of Erie*, 457 N.E.2d 717, 721 (N.Y. 1983).

190. *Riss v. City of New York*, 240 N.E.2d 860 (N.Y. 1968).

191. *See, e.g., Carmichael v. City of Cleveland*, 571 F. App’x 426, 432 (6th Cir. 2014).

192. *Gazette v. City of Pontiac*, 41 F.3d 1061, 1063 (6th Cir. 1994).

193. *Id.*

194. *Carmichael v. City of Cleveland*, 571 F. App’x 426, 427 (6th Cir. 2014).

after she disappeared.¹⁹⁵ Carmichael's body was discovered a year later in 2009, a victim of the serial murderer Anthony Sowell.¹⁹⁶ Likewise, no § 1983 liability was found when police took a report in 2012 for Chelsea Hutchinson, a sixteen-year-old with demonstrated mental health issues, but expended minimal effort on an investigation because they considered her a runaway.¹⁹⁷ Police suspended the investigation after about ten days, when Hutchinson turned seventeen.¹⁹⁸ Her skeletal remains were found six months later in a nearby creek bed.¹⁹⁹ Similarly, no § 1983 liability was found when the New York Police Department refused to take a missing person report for Romona Moore, an African American woman, in 2014 because she was over age sixteen.²⁰⁰ Moore's mother tried repeatedly to have a report taken, to no avail, until public officials intervened four days later.²⁰¹ Moore's body was found seventeen days after she had gone missing, very close to where she was last seen.²⁰² She had been kidnapped and was murdered the day before police finally agreed to take her missing person report.²⁰³

IV. COMPREHENSIVE SOLUTIONS DEMAND A HOLISTIC APPROACH

It is possible to reduce the number of AI/AN persons who go missing altogether and to reduce the amount of time that they are gone. There is a broad swath of issues and circumstances that could drive a person to go missing. In many ways, by the time a person goes missing, it might be the culmination of a lifetime—or many lifetimes—of difficulties, setbacks, and challenges: a symptom of the underlying problems in a community. Earlier interventions and prevention strategies can mitigate the risk of a person going missing in the first place, and better law enforcement responses can lessen the time a person is gone. Both are essential to increasing the well-being and safety of tribal communities.

There is a robust set of research findings addressing the root causes and drivers that may make it more likely that a person goes missing. Knowing *all* the data—not just *about* missing persons but also data on *why* those persons go missing—is essential to developing long-lasting solutions and improving public safety.

195. *Id.*

196. *Id.* at 428.

197. *Hutchinson v. Whaley*, 777 S.E. 2d 251, 252 (Ct. App. Ga. 2015).

198. *Id.* at 253.

199. *Id.*

200. *Carmichael v. City of New York*, 34 F. Supp. 3d 252, 256–57 (E.D. N.Y. 2014).

201. *Id.* at 259.

202. *Id.*

203. *Id.*

By way of example, this section explores one subgroup of missing AI/AN persons: runaway children. By identifying why children might run away from their living situation and the consequences that often result from that decision, communities can work toward improving prevention efforts, and law enforcement can better respond to reports of endangered runaways.

A. Why Do Children Run Away?

It is sometimes difficult to distinguish between circumstances that *precede* a child's decision to run away from home and the circumstances that develop *as a result of* running away.²⁰⁴ In many instances, it is too difficult a riddle to solve. To the extent the research discloses specific answers, we identified four broad categories of factors that may drive a child to run away from home: (1) systemic or community factors, (2) home-based factors, (3) relational factors, and (4) personal factors. An important caveat to the entirety of this discussion is that unless otherwise noted, none of the cited research is specific to tribal communities or AI/AN children; that investment gap in research, however, should not prevent us from leveraging it to inform future work investigating the circumstances that drive AI/AN children to run away.

As a starting point in the analysis, it is particularly important to recognize the centuries-long history of colonization, genocide, forced relocation, removal of children, and other historical trauma that AI/AN communities have endured—not simply for the fact of its occurrence, but for the impact that centuries of maltreatment have on a population—and how that affects the drivers that lead to a person going missing. For example, “the impact of residential boarding schools on Native children was profound, resulting in ‘a dual loss—identity and family connection’ . . . [and] many boarding school attendees may be unable to form secure attachments in their interpersonal relationships, thus perpetuating a cycle of recurring trauma within Native families and communities.”²⁰⁵ Historical trauma manifests in varying ways across the four categories discussed below.

204. Similarly, research about homeless youth often overlaps with research on runaway youth. Although our discussion here is limited to runaway or missing youth, similar principles may apply to adult missing persons.

205. Tara N. Richards, Joseph A. Schwartz & Emily Wright, *Examining Adverse Childhood Experiences Among Native American Persons in a Nationally Representative Sample: Differences Among Racial/Ethnic Groups and Race/Ethnicity-Sex Dyads*, 111 CHILD ABUSE & NEGLECT 1, 2 (2021); see also Kat C. Moon-Riley, Jennifer L. Copeland, Gerlinde A.S. Metz & Cheryl L. Currie, *The Biological Impacts of Indigenous Residential School Attendance on the Next Generation*, SSM-POPULATION HEALTH 7, 1-8 (2019); Melissa S. Z. Olson & Kirk Dombrowski, *A Systematic Review*

Although not a direct measure of the consequences of this historical trauma, adverse childhood experiences are a useful proxy indicator of how harm transfers across generations. Adverse childhood experiences may include traumatic events such as witnessing caregiver domestic violence or caregiver substance use, or experiencing child abuse, emotional neglect, parental incarceration, or physical neglect.²⁰⁶ AI/AN individuals experience the highest average of adverse childhood experiences among any racial/ethnic group.²⁰⁷ This persistent high rate of adverse childhood experiences among AI/AN individuals is followed by known and predictable adverse outcomes, in turn creating situations where the next generation again suffers from adverse childhood experiences.²⁰⁸ For example, experiencing abuse or neglect as a child creates a higher risk for substance abuse problems.²⁰⁹ Teenage substance abuse is an independent risk factor for increased runaway behavior, and the teenagers whose substance abuse problems persist into adulthood may become the parents whose alcoholism or drug addiction creates an adverse childhood experience for the next generation.²¹⁰

Systemic or Community Factors. There are broad systemic and community factors that may contribute to a higher rate of persons going missing or remaining in a missing status. Among these are community poverty, placement in foster care, lack of access to medical care, and connections with criminal activity.

Children are more likely to run away from home if they experience poverty or economic insecurity.²¹¹ In 2021, over one-fifth of all AI/AN

of Indian Boarding Schools and Attachment in the Context of Substance Use Studies of Native Americans, 7 J. RACIAL & ETHNIC HEALTH DISPARITIES 62 (2020); Jessica L. Garcia, *Historical Trauma and American Indian/Alaska Native Youth Mental Health Development and Delinquency*, 169 NEW DIRECTIONS FOR CHILD & ADOLESCENT DEV. 40 (2020).

206. Richards, Schwartz & Wright, *supra* note 205, at 2.

207. *Id.* at 6. Native American females (mean=2.24) and males (mean=2.03) reported the greatest overall number of adverse childhood experiences, followed by Black females (mean=1.63) and males (mean=1.54).

208. *Id.* at 2. Such negative outcomes include mental health problems, financial stress, sexual violence, chronic diseases, and intimate partner violence.

209. *Id.* at 3.

210. Miguel Basto-Pereira, Maria Gouveia-Pereira, Cicero R. Pereira, Emma L. Barrett, Siobhan Lawler, Nicola Newton, Lexine Stapinski, Katrina Prior, Maria S. A. Costa, Jocélia M. Ximenesf, André S. Rocha, Grégory Michel, Mathieu Garcia, Emma Rouchy, Ameel A. Shawi, Yassen Sarhan, Celso Fulano, Angélica J. Magaia, Sofián El-Astal, Kefaya Alattar, Khetam Sabbah, Leon Holtzhausen, Emma Campbell, Lidón Villanueva, Aitana Gomis-Pomares, Juan E. Adrián, Keren Cuervo & Jarawan Sakulku, *The Global Impact of Adverse Childhood Experiences on Criminal Behavior: A Cross-Continental Study*, 124 CHILD ABUSE & NEGLECT 105459 (2022).

211. Fedina, Perdue, Bright & Williamson, *supra* note 25, at 228. In addition, AI/AN youth experience the second-highest rate of housing instability across all racial groups (7.9%); the highest rate is among Native Hawaiian/Oceania/Pacific Islander youth (10.0%). JONETTA J. MPOFU, J.

persons were living under the poverty level, and for people in AI/AN families with a female householder and no spouse present, over one-third were living under the poverty level.²¹² People living in areas with high poverty “experience more acute systemic problems than people in lower poverty areas (e.g., limited access to medical services, healthy and affordable food, quality education, and civic education opportunities).”²¹³ In fact, AI/AN “are the most disproportionately overrepresented group in poverty. Their share of the poverty population is twice as large as their share of the total population.”²¹⁴ Moreover, counties containing reservations are regularly ranked among the poorest in the United States; examples of this include: Todd County, South Dakota (Rosebud Sioux Reservation);²¹⁵ Sioux County, North Dakota (Standing Rock Sioux Reservation);²¹⁶ and Big Horn County, Montana (Crow Reservation).²¹⁷ All three counties are identified as experiencing “persistent poverty”—geographic areas that have maintained poverty rates of twenty percent or more for the past thirty years.²¹⁸

MICHAEL UNDERWOOD, JEMEKIA E. THORNTON, NANCY D. BRENER, ADRIANA RICO, GRETA KILMER, WILLIAM A. HARRIS, MICHELLE LEON-NGUYEN, DAVID CHYEN, CONNIE LIM, CECILY K. MBAKA, SMITH-GRANT, LISA WHITTLE, SHERRY EVERETT JONES, KATHLEEN H. KRAUSE, JINGJING LI, SHARI L. SHANKLIN, IZZY MCKINNON, LOREDONA ARREY, BARBARA E. QUEEN, ALICE M. ROBERTS, CTRS. FOR DISEASE CONTROL & PREVENTION, YOUTH RISK BEHAVIOR SURVEILLANCE—UNITED STATES, 2021 30 (vol. 72, no. 1 2023) [hereinafter YRBS], <https://www.cdc.gov/mmwr/volumes/72/su/pdfs/su7201-H.pdf> [<https://perma.cc/L9VU-2G88>].

212. JOHN CREAMER, EMILY A. SHRIDER, KALEE BURNS & FRANCES CHEN, U.S. CENSUS BUREAU, CURRENT POPULATION REP. NO. P60-277, POVERTY IN THE UNITED STATES: 2021 31 (2022), <https://www.census.gov/content/dam/Census/library/publications/2022/demo/p60-277.pdf> [<https://perma.cc/A9SX-CNQS>].

213. CRAIG BENSON, ALEMAYEHU BISHAW & BRIAN GLASSMAN, U.S. CENSUS BUREAU, AM. COMTY. SURV. REP. NO. ACS-51, PERSISTENT POVERTY IN COUNTIES AND CENSUS TRACTS 1 (2023), <https://www.census.gov/content/dam/Census/library/publications/2023/acs/acs-51%20persistent%20poverty.pdf> [<https://perma.cc/AF3N-2XRY>].

214. CREAMER, SHRIDER, BURNS & CHEN, *supra* note 213, at 5.

215. *American Community Survey, S1701: Poverty Status in the Past 12 Months*, U.S. CENSUS BUREAU (2021), <https://data.census.gov/table?q=todd+county,+south+dakota+poverty+rate&tid=ACSSST5Y2021.S1701> [<https://perma.cc/7B3F-VBG4>] (table containing data on Todd County, South Dakota indicates that 59% of the population falls below the poverty level).

216. *American Community Survey, S1701: Poverty Status in the Past 12 Months*, U.S. CENSUS BUREAU (2021), <https://data.census.gov/table?q=sioux+county,+north+dakota+poverty+rate&tid=ACSSST5Y2021.S1701> [<https://perma.cc/H22U-6ADR>] (table containing data on Sioux County, North Dakota shows 38.5% of the population falls below the poverty level).

217. *American Community Survey, S1701: Poverty Status in the Past 12 Months*, U.S. CENSUS BUREAU (2021), <https://data.census.gov/table?q=big+horn+county,+montana+poverty+rate&tid=ACSSST5Y2021.S1701> [<https://perma.cc/E84K-TYPR>] (table containing data on Big Horn County, Montana indicates that 28.6% of the population falls below the poverty level).

218. BENSON, BISHAW & GLASSMAN, *supra* note 213.

Another known indicator that a child might run away is school disengagement.²¹⁹ AI/AN students have a higher dropout rate²²⁰ and lower levels of school connectedness²²¹ than any other race or ethnicity. The graduation rate in schools operated by the Bureau of Indian Education (BIE) is 53%,²²² compared to a nationwide 89% graduation rate for white public high school students.²²³ There continue to be extraordinary problems in schools operated by BIE, which serves nearly 50,000 students in primarily rural and reservation communities, including BIE's failure to comply with the Every Student Succeeds Act.²²⁴

Another known risk factor for a child going missing is that they are in state or foster care.²²⁵ AI/AN children are disproportionately represented in the foster care system.²²⁶ For example, 12% of the child population in South Dakota is AI/AN, but AI/AN children make up 53% of the state's foster care population.²²⁷ Nationwide, AI/AN children are placed in foster care at a rate double that of white children.²²⁸

219. Tucker, Edelen, Ellickson & Klein, *supra* note 24, at 507.

220. Institute of Educational Sciences, *Status and Trends in the Education of Racial and Ethnic Groups, Indicator 17: High School Status Dropout Rates*, NAT'L CTR. FOR EDUC. STAT. (Feb. 2019), https://nces.ed.gov/programs/raceindicators/indicator_rdc.asp [<https://perma.cc/R7NT-T79A>].

221. YRBS, *supra* note 211, at 16 (noting 53.9% versus 65.2% for white youth).

222. *Blueprint for Reform Implementation*, BUREAU OF INDIAN EDUC., <https://www.bie.edu/to-pic-page/blueprint-reform-implementation> [<https://perma.cc/9PNS-D2G6>].

223. *The Condition of Education 2021: Public High School Graduation Rates*, NAT'L CTR. FOR EDUC. STAT. (2021), https://nces.ed.gov/programs/coe/pdf/2021/coi_508c.pdf [<https://perma.cc/GM-X6-Z5Q4>] (citing chapter 2: Primary, Elementary, and Secondary Education, under the section titled "High School Persistence and Completion"). In public schools nationwide, AI/AN students have the lowest graduation rate of any racial or ethnic group (74%). *Id.*

224. Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1802 (2015); Alden Woods, *The Federal Government Gives Native Students an Inadequate Education, and Gets Away with It*, PROPUBLICA (Aug. 6, 2020), <https://www.propublica.org/article/the-federal-government-gives-native-students-an-inadequate-education-and-gets-away-with-it> [<https://perma.cc/D4RG-TVJF>] (the Every Student Succeeds act mandates the adoption of uniform standards for student learning and accountability and sets requirements for transparency).

225. Gambon & Gewirtz O'Brien, *supra* note 24, at 6. All statewide child welfare agencies are required to develop protocols for locating youth who are missing from care. 42 U.S.C. § 671(35)(a).

226. *Disproportionality in Child Welfare: Fact Sheet*, NAT'L INDIAN CHILD WELFARE ASS'N (2019), <https://www.nicwa.org/wp-content/uploads/2019/10/2019-AIAN-Disproportionality-in-Child-Welfare-FINAL.pdf> [<https://perma.cc/3ENN-G8LJ>] (AI/AN children are 1% of children in the United States, but 2.6% of all children placed outside their homes in foster care). For a detailed discussion of AI/AN children in foster care, see Claudette Grinnell Davis, Allison Dunnigan & Bailey B. Stevens, *Indigenous-Centered Racial Disproportionality in American Foster Care: a National Population Study*, 17 J. PUB. CHILD WELFARE 280 (2022).

227. Deana A. Him, *American Indian and Alaska Native (AIAN) Children Are Overrepresented in Foster Care in States with the Largest Proportions of AIAN Children*, CHILD TRENDS (Apr. 26, 2023), <https://www.childtrends.org/blog/american-indian-and-alaska-native-ai-an-children-are-overrepresented-in-foster-care-in-states-with-the-largest-proportions-of-ai-an-children> [<https://perma.cc/K5K3-SVJ9>].

228. *Disproportionality in Child Welfare*, *supra* note 226.

The Office of Inspector General for the Department of Health and Human Services recently issued a report detailing the number and characteristics of all children missing from care in the United States, and it provides interesting data to guide further research.²²⁹ Surveying child welfare agencies across all fifty states, OIG-HHS found that in a 30-month period, there were over 110,000 episodes where a child in state care had been reported missing, involving more than 43,000 unique children.²³⁰ Reviewing cases where children went missing for two days or more, OIG-HHS estimated that 46.9% were never reported to NCMEC,²³¹ and that 11.2% were never entered into NCIC/MPF.²³² The average length of time that a child was missing from care nationwide was thirty-four days;²³³ this is a considerably longer period than that observed in a study of the general runaway population, showing that 92% of runaways return in less than one month.²³⁴ The vast majority—79%—of children missing from care were fifteen years of age or older, and there was nearly an even split between boys (48%) and girls (51%) who went missing; 45 of the children who went missing died before they were found.²³⁵ Unfortunately, data was not broken down by race in the public-facing report.

However, research tells us that a child in foster care is less likely to run away if they are placed with relatives or siblings, and most youth in foster care run away to go back to their family of origin or their friends.²³⁶ The provisions of the Indian Child Welfare Act (ICWA) are designed to encourage placement with kin and, failing that, placement in an AI/AN

229. OFF. INSPECTOR GEN., U.S. DEP'T HEALTH & HUM. SERVS., No. A-07-20-06095, NATIONAL SNAPSHOT OF STATE AGENCY APPROACHES TO REPORTING AND LOCATING CHILDREN MISSING FROM FOSTER CARE (2022) [hereinafter NATIONAL SNAPSHOT], <https://oig.hhs.gov/oas/reports/region7/72006095.asp> [<https://perma.cc/QHS5-2VT8>].

230. *Id.* at 7.

231. OFF. INSPECTOR GEN., U.S. DEP'T HEALTH & HUM. SERVS., No. A-07-21-06102, STATE AGENCIES DID NOT ALWAYS ENSURE THAT CHILDREN MISSING FROM FOSTER CARE WERE REPORTED TO THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN IN ACCORDANCE WITH FEDERAL REQUIREMENTS 18 (2023), <https://oig.hhs.gov/oas/reports/region7/72106102.pdf> [<https://perma.cc/7CD3-657M>].

232. OFF. INSPECTOR GEN., U.S. DEP'T HEALTH & HUM. SERVS., No. A-07-21-06104, STATE AGENCIES CAN IMPROVE THEIR REPORTING OF CHILDREN MISSING FROM FOSTER CARE TO LAW ENFORCEMENT FOR ENTRY INTO THE NATIONAL CRIME INFORMATION CENTER DATABASE AS REQUIRED BY FEDERAL STATUTE 19 (May 2023), <https://oig.hhs.gov/oas/reports/region7/72106104RIB.pdf> [<https://perma.cc/TAY6-9ES3>].

233. NATIONAL SNAPSHOT, *supra* note 189, at 9.

234. HEATHER HAMMER, DAVID FINKELHOR & ANDREA J. SEDLAK, U.S. DEP'T JUST.: OFF. JUV. JUST. & DELINQ. PREVENTION, RUNAWAY/THROWN AWAY CHILDREN: NATIONAL ESTIMATES AND CHARACTERISTICS 7 (2002), <https://www.ojp.gov/pdffiles1/ojdp/196469.pdf> [<https://perma.cc/V3X8-NCAY>].

235. NATIONAL SNAPSHOT, *supra* note 229, at 14.

236. Gambon & Gewirtz O'Brien, *supra* note 24, at 6. Conversely, multiple foster-care placements are shown to increase the risk that a child might run away. *Id.* Children who run away have experienced an average of six foster-care placements. *Id.*

household where cultural connections might be kept. A reduced capacity to keep tribal children in the community or with extended kinship networks may increase the risk of children running away from these non-tribal foster care placements.

It is apparent that a lack of access to affordable health care can drive persons to a higher risk of suicide or homelessness;²³⁷ it is worth further examination to determine whether and in what ways a lack of access to such care may drive a child to go missing. Recent efforts to restrict access to medical care for vulnerable youth might also drive up the number of children and young adults who run away or go missing. For example, in 2022 and 2023, numerous states enacted bans on gender-affirming care; some of those states, such as Arizona, Oklahoma, and South Dakota, have a proportionally high AI/AN population.²³⁸ Increasing bans on abortion services may likewise create a similar situation, driving pregnant teenagers to seek care away from their home states.²³⁹ How many kids or young adults go missing to seek abortion services or gender-affirming care? This area is ripe for further inquiry.

High-quality medical care is often difficult to access for AI/AN persons. The problems of the Indian Health Service are well documented elsewhere, and many tribal enrollees obtain their health care through IHS.²⁴⁰ Of particular note, IHS does not provide abortion care unless necessary to save the mother's life or if the pregnancy results from rape or incest.²⁴¹

237. *Risk and Protective Factors*, CTR. FOR DISEASE CONTROL & PREVENTION (Nov. 2, 2022), <https://www.cdc.gov/suicide/factors/index.html> [https://perma.cc/E93S-W6V8]; *Why Are People Homeless?*, NAT'L COAL. FOR THE HOMELESS (July 2009), <https://www.nationalhomeless.org/factsheets/why.html> [https://perma.cc/3MQK-RWFC].

238. 2022 ARIZ. SESS. LAWS 104 (codified at Ariz. REV. STAT. ANN. § 32-3230); 2023 OKLA. SESS. LAWS ch. 150; 2023 S.D. SESS. LAWS ch. 127. The Indian Health Service added the gender-affirming medications testosterone and estradiol to its National Core Formulary in 2022, which “represents the basic standard of care drugs which must be carried by all federal facilities.” *National Core Formulary*, INDIAN HEALTH SERV. (June 6, 2023), <https://www.ihs.gov/nptc/formularysearch> [https://perma.cc/ES8V-QFE5].

239. For example, Idaho, Oklahoma, and South Dakota—each with a high population of AI/AN persons—now completely ban abortion. *Tracking the States Where Abortion is Now Banned*, N.Y. TIMES (July 24, 2023), <https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html> [https://perma.cc/UVD8-XDGS].

240. *See, e.g.*, U.S. GOV'T ACCOUNTABILITY OFF., GAO-18-580, INDIAN HEALTH SERVICE: AGENCY FACES ONGOING CHALLENGES FILLING PROVIDER VACANCIES (2018), <https://www.gao.gov/products/gao-18-580> [https://perma.cc/7YUG-EY4E]; U.S. GOV'T ACCOUNTABILITY OFF., GAO-17-181, INDIAN HEALTH SERVICE: ACTIONS NEEDED TO IMPROVE OVERSIGHT OF QUALITY OF CARE (2017), <https://www.gao.gov/products/gao-17-181> [https://perma.cc/L46V-77DM].

241. INDIAN HEALTH SERV., INDIAN HEALTH SERV. CIRCULAR NO. 22-15, USE OF INDIAN HEALTH SERVICE FUNDS FOR ABORTIONS (2022), <https://www.ihs.gov/ihm/circulars/2022/use-of-indian-health-service-funds-for-abortions/> [https://perma.cc/F2YT-PCY5].

Finally, it is unknown how many AI/AN missing person cases might involve—either as a causative, contributing, or persisting factor—criminal activity such as sex trafficking, labor trafficking, or gang activity. In 2021, there were more than 25,000 children reported as missing to NCMEC, and it was likely that one in six of them were likely victims of child sex trafficking, with that number rising to nearly one in five for kids who had run away from child welfare placements.²⁴² Further research could reveal more details about these connections and better inform policymakers on how gang or trafficking activity contributes to the incidence and persistence of AI/AN persons going missing, or remaining in a missing person status.

Home-based Factors. One of the most frequently cited reasons for children running away from home is family conflict.²⁴³ In addition, we know that abuse, neglect, or violence in the home can also make it more likely that a child will go missing.²⁴⁴ Of any racial or ethnic group, Native American children experience the highest rate of physical abuse, emotional abuse, sexual abuse, physical neglect, and emotional neglect and witness greater rates of violence, parental substance abuse, parental incarceration, and parental mental illness.²⁴⁵ As discussed below, certain home-based factors, such as experiencing parental neglect or sexual abuse, may put children who go missing at particular risk for more serious adverse consequences once they leave home.

There have been concerted efforts in recent years to address the high rate of violence, intimate partner violence, and sexual abuse in AI/AN communities.²⁴⁶ In particular, as of 2022, the Violence Against Women Act permits tribes to exercise criminal jurisdiction over non-Native

242. *The Issues: Child Sex Trafficking*, NAT'L CTR. FOR MISSING & EXPLOITED CHILD., <https://www.missingkids.org/theissues/trafficking> [<https://perma.cc/M5FP-C3L4>].

243. Gambon & Gewirtz O'Brien, *supra* note 24, at 5; *see also* ADRIENNE L. FERNANDES-ALCANTARA, CONG. RSCH. SERV., RL33785, RUNAWAY AND HOMELESS YOUTH: DEMOGRAPHICS AND PROGRAMS 5 (2019), <https://crsreports.congress.gov/product/pdf/RL/RL33785/5> [<https://perma.cc/X9BS-4573>].

244. Tucker, Edelen, Ellickson & Klein, *supra* note 24, at 507–08.

245. Richards, Schwartz & Wright, *supra* note 205, at 6.

246. *See, e.g.*, EMILY J. HANSON, CONG. RSCH. SERV., R47010, MISSING AND MURDERED INDIGENOUS PEOPLE (MMIP): OVERVIEW OF RECENT RESEARCH, LEGISLATION, AND SELECTED ISSUES FOR CONGRESS (2022), <https://crsreports.congress.gov/product/pdf/R/R47010/2> [<https://perma.cc/J3E4-QARW>]; U.S. GOV'T ACCOUNTABILITY OFF., GAO-22-10405, MISSING OR MURDERED INDIGENOUS WOMEN: NEW EFFORTS ARE UNDERWAY BUT OPPORTUNITIES EXIST TO IMPROVE THE FEDERAL RESPONSE (2021); *Not Invisible Act Commission*, U.S. DEP'T INTERIOR, <https://www.doi.gov/priorities/strengthening-indian-country/not-invisible-act-commission> [<https://perma.cc/JEV8-9VHE>]; *Tribal Affairs*, U.S. DEP'T JUST., OFF. ON VIOLENCE AGAINST WOMEN, <https://www.justice.gov/ovw/tribal-affairs> [<https://perma.cc/527R-EPBN>].

offenders who commit child abuse and child sexual abuse.²⁴⁷ It remains too early to determine whether this expanded criminal jurisdiction will reduce the rate of child abuse and child sexual abuse by non-Native offenders in AI/AN communities.

Relational Factors. When an older person dates a teenager two or more years younger than they are, the older partner is at a significantly increased risk of perpetrating mental, emotional, and physical violence on the younger partner.²⁴⁸ In addition, research shows that dating a much older peer is a risk factor that can lead to a higher risk of running away.²⁴⁹

AI/AN students report experiencing the highest levels of dating violence (18.5%) and sexual violence (15.8%) of any racial or ethnic group.²⁵⁰ We already know that AI/AN persons experience a disproportionately high rate of violence in their lifetimes;²⁵¹ in fact, intimate partner violence is a contributing factor in more than 55% of homicides against AI/AN women.²⁵² While not every missing child case will result in a homicide, it is unknown how many AI/AN runaway children are, in fact, the victims of homicide.²⁵³ Researchers with NamUs have started to examine these connections.²⁵⁴

Personal Factors. The last category of risk factors involves personal circumstances such as substance abuse and mental health issues, which are known to be drivers of a person going missing. AI/AN youth living on or near reservations use “nearly all [controlled] substances at substantially higher rates than adolescents from a nationally representative sample.”²⁵⁵

247. Violence Against Women Act Reauthorization Act of 2022 § 804, Pub. L. No. 117-103, 136 Stat. 840, 899 (codified at 25 U.S.C. § 1304(a)(5)).

248. Alana M. Vivolo-Kantor, Greta Massetti, Phyllis Niolon, Vangie Foshee & Luz McNaughton-Reyes, *Relationship Characteristics Associated with Teen Dating Violence Perpetration*, 25 J. AGGRESSION, MALTREATMENT & TRAUMA 936, 936 (2016).

249. Fedina, Perdue, Bright & Williamson, *supra* note 25, at 228.

250. YRBS, *supra* note 211, at 68.

251. André B. Rosay, *Violence Against American Indian and Alaska Native Women and Men*, U.S. DEP'T JUST., NAT'L INST. JUST. 2 (2016), <https://www.ojp.gov/pdffiles1/nij/249736.pdf> [<https://perma.cc/AVP9-JSNU>].

252. Lori McPherson, *Homicides Involving American Indian and Alaska Native Individuals*, 328 J. AM. MED. ASS'N 1181 (2022).

253. Likewise, it is unknown how many missing AI/AN children are victims of suicide or accidental death. The risk factors contributing to higher suicide risk among AI/AN youth are similar to the risk factors that may drive a child to go missing. See Jennifer Weniger, Sonya Young & Christine Hernandez, *Risk and Protective Factors with Native American Indian and Alaska Native Children Who Have a History of Suicidal Behavior*, 8 J. INDIGENOUS RSCH. 1, 3 (2020).

254. Steven P. Hafner, B.J. Spamer & Bruce Budowle, *Cases Associated with Violence in the National Missing and Unidentified Persons System (NamUs): The Examination of Circumstances & Characteristics Project*, U.S. DEP'T JUST. (2020), <https://www.ojp.gov/pdffiles1/nij/grants/301932.pdf> [<https://perma.cc/ZSET-2GXR>].

255. Randall C. Swaim & Linda R. Stanley, *Substance Use Among American Indian Youths on Reservations Compared with a National Sample of US Adolescents*, 1 JAMA NETWORK OPEN 1, 6 (2018).

Studies have also shown a higher rate of depression and generalized anxiety among AI/AN youth than among their peers.²⁵⁶ As a proxy for measuring mental illness, AI/AN adolescents have triple the suicide rate of the next highest racial group, and that rate grew at double the clip of any other racial group from 2010 to 2020.²⁵⁷ Over one-third of AI/AN students have seriously considered attempting suicide (36.8%), the highest rate of any racial group.²⁵⁸ The lack of affordable health services, as described above, combined with stigma in seeking help, negatively affects the ability of AI/AN youth to access effective treatment.²⁵⁹

B. Consequences of Going Missing

If children were always able to run away to homes where they were loved, with their emotional, mental, and physical needs cared for, there would be much less urgency in preventing their disappearance or finding them so quickly. Unfortunately, we know that children who run away often find themselves in dangerous circumstances, even life-threatening ones, with no feasible way of extricating themselves:

Most runaways are gone for less than a week and stay within 50 miles of home,²⁶⁰ eventually returning to their parents or guardian.²⁶¹ Nonetheless, being on their own for even a short period of time may exacerbate the problems that caused the youth to run away in the first place, as well as increase their likelihood of engaging in high-risk behavior, being exploited or victimized by others, and resorting to illicit activities in order to secure basic necessities such as food and a place to stay while away from home.²⁶² Better understanding the risk

256. Kelly Serfini, Dennis M. Donovan, Dennis C. Wendt, Brandon Matsumiya & Carolyn A. McCarty, *A Comparison of Early Adolescent Behavioral Health Risks Among Urban American Indians/Alaska Natives and their Peers*, 24 AM. INDIAN ALASKA NATIVE MENTAL HEALTH RSCH. 1 (2017).

257. Nirmita Panchal, Heather Saunders & Nambi Ndugga, *Five Key Findings on Mental Health and Substance Use Disorders by Race/Ethnicity*, KFF (2022), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/five-key-findings-on-mental-health-and-substance-use-disorders-by-race-ethnicity/> [https://perma.cc/M4HV-JSUF].

258. YRBS, *supra* note 211, at 47.

259. *See, e.g.*, Eleanor E. Yurkovich, Izetta H. Lattergrass, Stuart Rieke, *Health-Seeking Behaviors of Native American Indians with Persistent Mental Illness: Completing the Circle*, 26 ARCHIVES PSYCHIATRIC NURSING 1 (2012).

260. HEATHER HAMMER, DAVID FINKELHOR & ANDREA J. SEDLAK, *RUNAWAY/THROWN AWAY CHILDREN: NATIONAL ESTIMATES AND CHARACTERISTICS* (2002), <https://www.ncjrs.gov/html/ojdp/nismart/04/ns4.html> [https://perma.cc/VY4C-9B93].

261. Norweta G. Milburn, Doreen Rosenthal, Mary J. Rotheram-Borus, Shelley Mallet, Philip Batterham, Eric Rice & Rosa Solorio, *Newly Homeless Youth Typically Return Home*, 40 J. ADOLESCENT HEALTH 574, 575 (2007).

262. *See generally* Xiaojin Chen, Lisa Thrane, Les B. Whitbeck, Kurt D. Johnson & Dan R. Hoyt, *Onset of Conduct Disorder, Use of Delinquent Subsistence Strategies, and Street Victimization*

factors for running away from home and the long-term consequences of this behavior is necessary in order to better serve these at-risk youth.²⁶³

Children who run away face an increased risk of further trauma, including violent victimization and being forced to engage in survival sex.²⁶⁴ Runaways are also at a higher risk of other adverse outcomes, such as substance abuse, health issues, and lack of educational attainment.²⁶⁵ Runaway children are also at a higher risk of getting involved in delinquent or criminal behavior.²⁶⁶

There are overlaps between specific kinds of experiences or conditions and a higher risk of particular adverse outcomes. For example, youth with a history of neglect or sexual abuse may run away sooner and be more likely to experience victimization while they are gone.²⁶⁷ Youth who remain missing for longer periods of time or travel farther from home are more likely to have a history of abuse in the home.²⁶⁸ LGBTQI+ homeless youth report higher rates of substance use, survival sex, and victimization than their non-LGBTQI+ homeless peers.²⁶⁹ Layering negative experiences such as these on top of the conditions that drove a child to run away in the first place only exacerbate the damage to that child, even if recovered safely.

There is no “safe” amount of time that a child can be missing before being susceptible to adverse outcomes such as the ones described above. Every day counts when finding a runaway child, as every day on the streets likely involves risks they would not experience at home. That said, it remains true that in *some* cases, home is more dangerous than the gamble of living life as a runaway.

C. Preventing Runaways and Finding Kids More Quickly

Many of the recent federal initiatives addressing missing AI/AN have largely focused on improving law enforcement’s response once a child

among Homeless and Runaway Adolescents in the Midwest, 22 J. INTERPERSONAL VIOLENCE 1156 (2007); Michele D. Kipke, Thomas R. Simon, Susanne B. Montgomery, Jennifer B. Unger & Ellen F. Iversen, *Homeless Youth and their Exposure to and Involvement in Violence while Living on the Streets*, 20 J. ADOLESCENT HEALTH 360 (2007); Lisa S. Wagner, Linda Carlina, Ana Mari Cauce & Adam Tenner, *A Snapshot of Homeless Youth in Seattle: Their Characteristics, Behaviors and Beliefs about HIV Protective Strategies*, 26 J. COMMUNITY HEALTH 219 (2001).

263. Tucker, Edelen, Ellickson & Klein, *supra* note 24, at 507.

264. Gambon & Gewirtz O’Brien, *supra* note 24, at 2, 6; Tyler, Hagewen, Melander, *supra* note 28, at 584.

265. Gambon & Gewirtz O’Brien, *supra* note 24, at 2, 4.

266. Tyler, Hagewen, Melander, *supra* note 28, at 584.

267. Gambon & Gewirtz O’Brien, *supra* note 24, at 5.

268. *Id.*

269. *Id.*

goes missing. Wide-ranging reports have been and will continue to be issued describing how law enforcement has, and should continue to, improve its responses to cases of missing AI/AN persons.²⁷⁰ While this is a necessary part of the solution, on its own, it is insufficient. Law enforcement, standing alone, cannot resolve the crisis of missing indigenous children.

To be effective, any solutions must be cross-cutting and address *all* factors that drive children to go missing and stay missing. This requires garnering resources and investment for the entire AI/AN community for an extended period—not piecemeal, siloed approaches that run their course in a handful of years.

AI/AN advocates and academics have identified various strategies to address each of the four identified categories driving runaway behavior and strategies to tackle historical trauma. Though not a comprehensive list, it is intended to be a starting point for additional conversations and scholarship about holistic approaches to solving the crisis of missing AI/AN persons.²⁷¹

- *Historical Trauma*: tribal land restoration, removing barriers to land transfers, acceptance of responsibility for historical wrongs, acknowledgment of tribal sovereignty.²⁷²
- *Systematic or Community Factors*: fully supporting and investing in community infrastructure, job creation, food security efforts, health

270. See, e.g., INDIAN LAW & ORDER COMM'N, A ROADMAP FOR MAKING NATIVE AMERICA SAFER (2013), https://www.aisc.ucla.edu/iloc/report/files/A_Roadmap_For_Making_Native_America_Safer-Full.pdf [<https://perma.cc/3393-BB3Q>]; REPORT TO THE PRESIDENT: ACTIVITIES AND ACCOMPLISHMENTS OF THE FIRST YEAR OF OPERATION LADY JUSTICE (2020), https://operationladyjustice.usdoj.gov/sites/g/files/xyckuh281/files/media/document/operation-lady-justice-report-508_final.pdf [<https://perma.cc/R7N5-PS55>]; FINAL REPORT TO THE PRESIDENT: ACTIVITIES AND ACCOMPLISHMENTS OF OPERATION LADY JUSTICE (2022), <https://www.justice.gov/lo/media/1226361/dl?inline> [<https://perma.cc/TN6W-WSJ6>]; STRATEGY, *supra* note 36.

271. For a detailed discussion of strategies which could be used by the federal government to better support AI/AN communities, see U.S. COMM'N ON CIV. RIGHTS, BROKEN PROMISES: CONTINUING FEDERAL FUNDING SHORTFALL FOR NATIVE AMERICANS (2018), <https://www.usccr.gov/files/pubs/2018/12-20-Broken-Promises.pdf> [<https://perma.cc/3BKE-3H5A>]; U.S. COMM'N ON CIV. RIGHTS, A QUIET CRISIS: FEDERAL FUNDING AND UNMET NEEDS IN INDIAN COUNTRY (2003), <https://www.usccr.gov/files/pubs/na0703/na0204.pdf> [<https://perma.cc/3LAM-ATYU>].

272. See, e.g., U.S. Department of the Interior, Press Release: Interior Department Takes Steps to Restore Tribal Homelands, Empower Tribal Governments to Better Manage Indian Lands (Apr. 27, 2021), <https://www.doi.gov/pressreleases/interior-department-takes-steps-restore-tribal-homelands-empower-tribal-governments> [<https://perma.cc/4TXC-B3PT>]; *Estate Planning*, INDIAN LAND TENURE FOUND., <https://iltf.org/special-initiatives/estate-planning/> [<https://perma.cc/49DX-856B>]; Stephen M. Gavazzi & Brian Snyder, *Stepping Out & Stepping Up: Toward Truth & Reconciliation with Dispossessed Native American Tribes*, OHIO STATE UNIV. (Dec. 17, 2020), <https://discovery.osu.edu/stepping-out-stepping-toward-truth-reconciliation-dispossessed-native-american-tribes> [<https://perma.cc/7MSL-MABL>]; Matthew Atkinson, *Red Tape: How American Laws Ensnare Native American Lands, Resources, and People*, 23 OKLA. CITY U. L. REV. 379 (1998).

care, mental health care, housing, access to capital, and efforts to reduce wage gaps and inflation.²⁷³

- *Home-based Factors*: developing and supporting child abuse and neglect prevention initiatives, efforts to prevent intimate partner violence and sexual abuse, and alternatives to incarceration for parents with children.²⁷⁴

- *Relational Factors*: Healthy dating programs and efforts to reduce intimate partner violence.²⁷⁵

- *Personal Factors*: Access to culturally competent care for drug and alcohol abuse, mental health issues, and suicide prevention efforts.²⁷⁶

It is also critical to develop localized and regionalized approaches to reducing the number of AI/AN persons who go missing. For example, only 13% of people who identify as AI/AN alone or in combination live on

273. See, e.g., NAT'L CONG. AM. INDIANS, TRIBAL INFRASTRUCTURE: INVESTING IN INDIAN COUNTRY FOR A STRONGER AMERICA, <https://www.ncai.org/NCAI-InfrastructureReport-FINAL.pdf> [<https://perma.cc/PBSS-ZPTL>]; Katia Riddle, *Poll: 69% of Native Americans Say Inflation Is Severely Affecting Their Lives*, NPR NEWS (Aug. 20, 2022), <https://www.npr.org/2022/08/20/1117689118/poll-69-of-native-americans-say-inflation-is-severely-affecting-their-lives> [<https://perma.cc/9Y9M-VZ3Z>]; *Native American Poverty*, RED ROAD, <https://theredroad.org/issues/native-american-poverty/> [<https://perma.cc/2E8Q-EDRU>]; Randall Akee, *Sovereignty and Improved Economic Outcomes for American Indians: Building on the Gains Made Since 1990*, WASH. CTR. FOR EQUITABLE GROWTH, (Jan. 14, 2021), <https://equitablegrowth.org/sovereignty-and-improved-economic-outcomes-for-american-indians-building-on-the-gains-made-since-1990/> [<https://perma.cc/6MMB-CE8Y>]; Shawn Regan, *5 Ways the Government Keeps Native Americans in Poverty*, FORBES (Mar. 13, 2014), <https://www.forbes.com/sites/realspin/2014/03/13/5-ways-the-government-keeps-native-americans-in-poverty> [<https://perma.cc/H6PV-B52D>]; *What Drives Native American Poverty?*, INST. FOR POL'Y RSCH. (Feb. 24, 2020), <https://www.ipr.northwestern.edu/news/2020/redbird-what-drives-native-american-poverty.html> [<https://perma.cc/JT2Q-BSJQ>]; Arohi Pathak, *How the Government Can End Poverty for Native American Women*, CTR. FOR AM. PROGRESS (Oct. 22, 2021), <https://www.americanprogress.org/article/government-can-end-poverty-native-american-women/> [<https://perma.cc/NAA7-X75D>].

274. See, e.g., Apryl Joe, Cora McElwain, Kyla Woodard & Stephen Bell, *A Call for Culturally-Relevant Interventions to Address Child Abuse and Neglect in American Indian Communities*, 6 J. RACIAL & ETHNIC HEALTH DISPARITIES 447 (2019); Katie M. Edwards, Laura Siller, Leon L. Charge, Cimone Bordeaux, Damon L. Charge & Ramon Herrington, *Efficacy of a Sexual Abuse Prevention Program with Children on an Indian Reservation*, 29 J. CHILD SEXUAL ABUSE 900 (2020); *CDC Works to Address Violence Against American Indian and Alaska Native People*, CTRS. DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/injury/pdfs/tribal/Violence-Against-Native-Peoples-Fact-Sheet.pdf> [<https://perma.cc/KHH3-FCAX>].

275. See, e.g., *Empowering Our Teens to Create Healthy Relationships*, SUQUAMISH TRIBE (Feb. 10, 2023), <https://suquamish.nsn.us/empowering-our-teens-to-create-healthy-relationships/> [<https://perma.cc/WV5T-WKNJ>].

276. See, e.g., Rupinder Kaur Legha & Douglas Novins, *The Role of Culture in Substance Treatment Programs for American Indian and Alaska Native Communities*, 63 PSYCHIATRIC SERVS. 686 (2012); *TO LIVE TO SEE THE GREAT DAY THAT DAWNS: PREVENTING SUICIDE BY AMERICAN INDIAN AND ALASKA NATIVE YOUTH AND YOUNG ADULTS*, SAMHSA.GOV (2010), <https://store.samhsa.gov/sites/default/files/d7/priv/sma10-4480.pdf> [<https://perma.cc/7E25-Y6HS>].

reservations or trust lands, and 60% live in metropolitan areas,²⁷⁷ and some studies show that the risk of running away in urban areas is higher than in rural areas.²⁷⁸ The AI/AN population skews younger than other racial and ethnic groups, with over one million persons identified as AI/AN alone were under the age of 18—27% of the AI/AN population as a whole.

CONCLUSION

It is possible to reduce the number of AI/AN persons who go missing altogether and to reduce the amount of time that they are gone.

Universal data collection on missing persons is elusive, and data collection on missing AI/AN persons is perhaps even more so. The dearth of data on missing AI/AN individuals is compounded by the complexities of law enforcement jurisdiction in and around Indian country. Further complexities exist around constitutional protections and limitations, both generally and related to AI/AN individuals. Considering all these factors, it is critical to improve the response of the community and law enforcement when an AI/AN person goes missing so that they may be returned to safety.

Perhaps as important as returning to safety those who have gone missing is working to reduce the number of AI/AN people who go missing. But it is nonsensical to work to reduce the number of AI/AN persons who go missing without directly addressing what propels people to go missing. The circumstances and drivers for how and why AI/AN individuals go missing are myriad and complex. Thus, the efforts to address the drivers must be both broad and nuanced. They must encompass efforts to reduce violence and substance abuse and improve mental and physical health.

In 2022, there were 10,123 entries of AI/AN individuals in the NCIC/MPF. Thankfully, the majority have returned home. But what if we could reduce the number of people who go missing altogether and reduce the amount of time they were gone?

277. *Profile: American Indian/Alaska Native*, U.S. DEP'T HEALTH & HUMAN SERV. OFF. MINORITY HEALTH, <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=3&lvlid=62> [<https://perma.cc/BP7G-2GWJ>].

278. Ka H. B. Chor, Zhidi Luo, Amy Dworsky, Rameela Raman, Mark E. Courtney & Richard A. Epstein, *Development and Validation of a Predictive Risk Model for Runaway Among Youth in Child Welfare*, 143 CHILDREN & YOUTH SERVS. REV. 10 (2022).