RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to acknowledge and prioritize responding to the Missing and Murdered Indigenous Women (MMIW) crisis; and

FURTHER RESOLVED, That the American Bar Association urges Congress to enact legislation that:

1. Makes accurate national data collection on the MMIW crisis a priority that includes tribal access to those databases;
2. Requires federal and state officials to develop inter-jurisdictional protocols for tracking and responding to the MMIW crisis that include collaborative efforts with tribal nations; and
3. Provides resources to respond to the MMIW crisis to include training of law enforcement and funding for tribal justice systems.
REPORT

RoyLynn Rides Horse, a Crow tribal member, was 28 years old and a ther of six when she was found with third degree burns covering 45 percent of her body and frostbite on her legs. She had walked two miles after being beaten and burned before she collapsed. She died two months later.

Savanna Lafontaine-Greywind, a Spirit Lake tribal member, was 22 years old and 8 months pregnant when she abruptly disappeared. Her body was recovered eight days later, duct-taped in plastic in the Red River. Her baby was found alive and was discovered to have been forcibly removed from Savanna’s womb while she was still alive. Her neighbors were convicted of murder and kidnapping.

At the criminal trial for Savanna’s murderers, the man ultimately convicted of kidnapping her baby testified that when police questioned him about Savanna’s disappearance he told them “She always leaves, her parents were just up here last week looking for her.” In her testimony to House of Representative’s Natural Resources Sub-Committee on Indigenous People, North Dakota State Representative Ruth Buffalo reflected:

The police later stated they did not anticipate looking for a body nor a baby, instead they checked all modes of transportation, the bus and train stations. Could Hoehn’s comment have swayed the police? Are the stereotypes of our indigenous people perpetuated into implicit bias?¹

Ashley Loring Heavy Runner, a Blackfeet tribal member, was 20 years old when she went missing. Her sister, Kimberly Loring Heavy Runner, testified to the Senate Committee on Indian Affairs that law enforcement received information that Ashley was seen running from a vehicle on U.S. Highway 89, and that her sweater had been recovered and was found to have “red spot” stains and holes. Despite this information, Kimberly testified that the case was bounced between the Bureau of Indian Affairs (BIA) and Blackfeet Law Enforcement, that the family was provided no substantive updates from either agency, and that no substantive investigation was ever conducted. Instead, two months after her disappearance, Kimberly’s family was informed by BIA that “Ashley is of age and can leave whenever she wants to.”

These cases are emblematic of systemic and devastating trends across the nation. On some reservations, Indian women are murdered at more than 10 times the national average.² American Indians and Alaska Natives (AI/AN) are 2.5 times as likely to experience violent crimes—and at least 2 times more likely to experience rape or sexual

assault crimes—compared to all other races. More than 4 in 5 American Indian and Alaska Native women, or 84.3 percent, have experienced violence in their lifetime. More than 4 in 5 American Indian and Alaska Native men, or 81.6 percent, have experienced violence in their lifetime, according to the National Institute of Justice. According to the Centers for Disease Control and Prevention, homicide is the third leading cause of death among American Indian and Alaska Native women between 10 and 24 years of age and the fifth leading cause of death for American Indian and Alaska Native women between 25 and 34 years of age.

Efforts to better track missing persons and respond to the missing and murdered crisis have been and continue to be based in indigenous communities. Recently, with awareness of this crisis reaching mainstream Canada and the United States, states and members of Congress have taken steps to address the epidemic. These steps need to be prioritized and expanded in various ways given the severe consequences of inaction.

I. The Need for Data

The crisis of Missing and Murdered indigenous women (MMIW) is not new. It is in fact, the outcome of centuries of policies and indifference. The crisis is not just the staggering rate of MMIW, but the likely many more for which we lack the data. There is currently no national government-funded database tracking MMIW. While individual law enforcement agencies may document cases in their respective jurisdictions, no information exists in an accessible, comprehensive cross-jurisdictional data set. Sovereign Bodies Institute, a private non-profit, has taken on some of this work. Mark Miller-Tanner features a blog “Justice for Native Women”, on which hundreds of flip-cards detail missing and murdered indigenous person posters.

The Urban Indian Health Institute’s (UIHI) report on Missing and Murdered Indigenous Women & Girls notes that 71 percent of American Indian and Alaska Natives live in urban and non-reservation areas. The National Crime Information Center reports that in 2016 there were 5,712 reports of missing American Indian and Alaska Native women and girls, but only 116 of those cases were logged in the U.S. Department of Justice’s federal missing persons database. The report identified 506 cases of MMIW girls across 71

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5 Id.
7 https://www.sovereign-bodies.org/
8 http://www.justicestormativewomen.com/
9 Annita Lucchesi and Abigail Echo-Hawk, Missing and Murdered Indigenous Women & Girls, Urban Indian Health Institute, Seattle Indian Health Board (2018).
10 Id. at 2, citing the National Crime Information Center and NamUs.
urban centers, while simultaneously finding that the cases identified were an extreme undercount due to the limited data available.\textsuperscript{11}

Congress has introduced legislation that begins to tackle this need. The BADGES for Native Communities Act seeks to improve information sharing practices and programs, establishing a Tribal liaison for the National Missing and Unidentified Persons System (NamUS).\textsuperscript{12}

There is a need for both national and state repositories for data. In 2019, there were numerous efforts in the states of North Dakota, South Dakota, New Mexico, and in Congress to address the need for data.\textsuperscript{13} Importantly, tribes \textit{must} have access to and an ability to update this data. For example, North Dakota’s H.B. 1313 requires that missing person information, including demographic data related to indigenous people, which is made available by a tribe, \textit{must} be included in the state criminal justice data repository. N. D. \textsc{Cent. Code} § 54-12-34 (7) (2019).

\textbf{II. Jurisdictional Barriers Necessitate Protocol Development}

The jurisdictional complexity within Indian country has been centuries in the making and has long been recognized as institutionally burdensome. The ABA, in its 2015 adoption of the Attorney General’s report on American Indian and Alaska Native Children Exposed to Violence, noted that jurisdiction in Indian country “is cumbersomely divided between sovereigns,\textsuperscript{14} tribal courts are restrained in their authority,\textsuperscript{15} and federal prosecutors are declining to exercise theirs,\textsuperscript{16} resulting in a debilitated system.”\textsuperscript{17}

\textsuperscript{11} Id. at 1 and 6.
\textsuperscript{12} BADGES for Native Communities Act, S. 1853, 116th Cong. (2019-2020).
\textsuperscript{13} National Indigenous Women’s Resource Center, \textit{MMIW – Monthly Legislative Summary Update: As of 12/30/19}.
\textsuperscript{14} The General Crimes Act, 18 U.S.C. § 1152 (providing that federal courts have jurisdiction over interracial crimes committed in Indian country); the Assimilative Crimes Act, 18 U.S.C. § 1; the Major Crimes Act, 18 U.S.C. § 1153 (providing federal criminal jurisdiction over ten enumerated major crimes committed in Indian country that is exclusive of the states); Public Law 83-280, 18 U.S.C. § 1162 (delegating federal jurisdiction to six states over most crimes throughout most of Indian country within their state borders); \textit{Oliphant v. Suquamish Indian Tribe}, 435 U.S. 191 (1978) (holding that tribes lack criminal jurisdiction over non-Indian defendants); Violence Against Women Reauthorization Act of 2013, S. 47, 113th Congress, Title IX (2013) (expanding tribal criminal jurisdiction to non-Indians for the crimes of domestic violence, dating violence and the violation of protection orders so long as the defendant has certain ties to the community and the tribe provides certain due process protections).
\textsuperscript{15} Indian Civil Rights Act, 25 U.S.C. §§ 1301-1304 (limiting a tribe’s sentencing authority to a term of imprisonment of 1 year and/or a $5,000 fine, or up to 3 years and/or a $15,000 fine so long as the tribe provides five additional due process protections).
\textsuperscript{17} \textit{See} 15A113.
Hon. Sarah Deer, Professor of Law at the University of Kansas, noted in her congressional testimony that this system makes Native women and girls especially vulnerable to violent crime. When crime takes place in Indian country tribal officials will usually be the first responders, despite lacking prosecutorial authority over any non-Indian offender. When a tribal member goes missing, a family must convince a law enforcement response after a mandatory 24-72 hour waiting period or the fact that adults are free to leave without a trace. But even then, proving in what jurisdiction someone went missing, and therefore what agency bears the jurisdictional burden, can be impossible.\(^\text{18}\)

Given the jurisdictional complexities, protocol development, from tracking to response and outcome, becomes a vital resource in facilitating collaborative efforts to search for the missing and investigate cases. In the Missing and Murdered Indigenous Women and Girls report, UIHI found that “challenges and barriers in accessing data on this issue from law enforcement severely impede the ability of communities, tribal nations, and policy makers to make informed decisions on how best to address this violence.”\(^\text{19}\) Further, UIHI noted that many areas did not collect data on a victim’s race or did not include American Indian and Alaska Native as racial categories.\(^\text{20}\) The National Indian Women’s Resource Center elaborates further on the importance of developing protocol given the need for an immediate response to disappearances.\(^\text{21}\) Plainly, the minutes and hours after a disappearance matter. Protocol development not only assists tribal programs alerted of disappearances but all entities a tribal program will engage to find the missing which includes law enforcement (tribal, Bureau of Indian Affairs, state, Federal Bureau of Investigation etc.).

Current Congressional efforts reflect an awareness of the drastic need for protocol development and increased collaboration. Savanna's Act 2019 (S.227 and related bill H.R.2733), named after Savanna LaFontaine-Greywind, focuses on the need for improved protocols in responding to reports of missing persons, the need for improved access to law enforcement databases, and accountability for increased federal engagement in investigations and cases of missing persons or murder cases in Indian country. Savanna’s Act was previously introduced in 2017, passing the Senate but failing to receive consideration in the House. Savanna’s Act 2019 is supported by the National Congress of American Indians, National Indigenous Women's Resource Center, Seattle Indian Health Board, Missing and Murdered Indigenous Women Washington, Alaska Native Women’s Resource Center, Western Native Voice, Friends Committee on National Legislation, All Pueblo Council of Governors (representing 20 Pueblos), Intertribal Association of Arizona (representing 21 Tribal Nations), United South and Eastern Tribes Sovereignty Protection Fund (representing 27 Tribal Nations), Muckleshoot Tribe of

\(^{18}\) *Unmasking the Hidden Crisis of Murdered and Missing Indigenous Women: Exploring Solutions to End the Cycle of Violence: Hearing Before the H. Comm. on Natural Resources Sub-Committee for Indigenous Peoples of the United States*, 116th Cong. 1 (March 14, 2019) (written testimony of Professor Sarah Deer, Professor of Law, University of Kansas).

\(^{19}\) *Supra* note 9 at 20.

\(^{20}\) *Id.*

Washington, the Confederated Tribes of the Colville Reservation, and Navajo Nation.\textsuperscript{22} Savanna’s Act 2019 and similar legislation needs to be a priority for members of Congress and be an example to state governments interested in addressing the MMIW crisis.\textsuperscript{23}

The Not Invisible Act of 2019 addresses the broader issue of violent crime in Native communities.\textsuperscript{24} In addition to forming an advisory committee to examine violent crime in Native communities, the bill would establish more centralized oversight of activities, grants, and programs at the U.S. Department of the Interior.

Numerous jurisdictions are beginning the process or protocol development through the formation of taskforces comprised of key stakeholders from tribal, state, and federal agencies, and organizations.\textsuperscript{25}

\section*{III. A Holistic Approach Needed to Address the MMIW Crisis}

In 2019, the House Committee on Natural Resources, Subcommittee for Indigenous Peoples of the United States, held an oversight hearing, \textit{Reviewing the Trump Administration’s Approach to the MMIW Crisis}. In written testimony, Deputy Bureau Director of the Office of Justice Services of the Bureau of Indian Affairs, Charles Addington, outlined the results of three listening sessions held earlier in 2019 with various tribal leaders and federal representatives. The consensus of tribal participants in the listening sessions was that “a holistic, multi-faceted approach to building safe and secure communities is necessary to address the particular criminal issues that plague Indian Country and Alaska Native villages.”\textsuperscript{26} Resources advocated for by tribal leaders to enact a holistic approach included capacity building for tribal courts and justice systems and training.\textsuperscript{27}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{23} \textit{Supra} note 12 at 8, reporting that North Dakota has passed a concurrent resolution urging Congress to adopt Savanna’s Act and passed ND 1313, The Collection of Data of Missing Persons.
\item \textsuperscript{26} \textit{Reviewing the Trump Administration’s Approach to the MMIW Crisis: Hearing Before the H. Comm. on Natural Resources Sub-Committee for Indigenous Peoples of the United States}, 116th Cong. 1 (September 11, 2019) (written testimony of Charles Addington).
\item \textsuperscript{27} \textit{Id}.
\end{itemize}
\end{footnotesize}
a. Fully funded tribal justice systems

In December 2018, the United State Commission on Civil Rights (USCCR) released a report entitled *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*. The Commission concludes that, “federal funding for Native American programs across the government remains grossly inadequate to meet the most basic needs the federal government is obligated to provide.” Sarah Deer observes that “[d]espite numerous reports, commissions, and hearings about the failures to fund tribal nations properly since the initial USCCR report was released in 2003, there has been little progress toward change.” This is especially troubling since the federal government, while expanding tribal jurisdiction to prosecute non-Indian offenders, is conditioning that expansion on the adoption of costly processes. The USCCR noted that:

“[S]ome tribes might need to choose between meeting the [Tribal Law and Order Act] requirements [to exercise enhanced sentencing authority] and shortchanging other programs, or completely forgoing their new felony sentencing powers. The result is relinquishing authority to the federal government, while knowing that the federal criminal justice system is inefficient for Native Americans and, at times, even considered illegitimate by tribal communities.”

Future legislative acts at the federal, state, and tribal levels addressing the MMIW crisis should include funding for tribal courts and programs to build tribal capacity to better tackle cases of MMIW.

b. Training

In the case of MMIW, training should be extended to similar community members on topics unique to the crisis. One such issue is the nature of missing persons reports being disregarded by law enforcement. Many activists addressing the crisis and families of MMIW have reported receiving poor treatment from law enforcement agencies, who they perceive to fail to prioritize the reports of missing indigenous women.

Moreover, in missing persons cases, time is of the essence. The quicker the response, the better the likelihood that the victim will receive help. Enhancing response times is critical, especially in rural tribal communities which often lack resources and access to needed resources.

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29 *Supra* note 18 at 4.
30 *Supra* note 28 at 43 (footnotes omitted).
32 *Supra* note 21 at 1.
Lastly, given the amount of violence experienced by American Indian and Alaska Native women in this country, cross-training on crimes related to murder and abduction should be prioritized. Murder and abduction live on a spectrum of abusive behavior that includes domestic violence and sexual assault, making the issue of determining a forced disappearance from a voluntary disappearance critical.33

IV. ABA Supportive Policy

The ABA has long called for both holistically addressing gender-based violence, and for empowering tribes to participate in that sovereign responsibility. In 2012 the ABA urged Congress to strengthen tribal jurisdiction to address crimes of gender-based violence on tribal lands.34 This call has been reiterated by the ABA in adopting the recommendations of the 2013 Indian Law and Order Commission and the Attorney General’s Advisory Committee report on American Indian and Alaska Native Children Exposed to Violence.35 The ABA has long called for further financial support for tribal justice systems.36 Tribal nations need to be funded at sufficient levels, so they can respond immediately to a report of a missing person.

Further, including through the Commission on Domestic and Sexual Violence, the ABA has a clear and thorough stance on addressing gender-based violence. This is evidenced only in part by the ABA’s support for the training of community members (including judges, law enforcement, and advocates) on the topic of gender-based violence and topics related to protecting victim safety,37 opposition to the imposition of a legal burden on resistance upon sexual assault victims,38 call for human trafficking protocols and training,39 and the call to eliminate the substantial backlog of rape kits.40

Protections for murdered and missing indigenous women falls directly in line with prior ABA policy, and will represent a significant call to action for a long-neglected crisis.

John J. Morrissey
President, Massachusetts Bar Association

February 2020

33 Id.
34 12A301.
35 See 15M111A and 15A113.
36 See, e.g., 08A109, 08A117A, and 15A113.
37 See, e.g., 96A100 and 08A109, supporting training on the “full faith and credit” mandate of Violence Against Women Act of 1994 and supporting legislation calling for training on gender-based violence and needs of victims respectively.
38 19M115
39 2013M104I, 104H, 104G, 104F, and 11A103A.
40 11A109.
1. **Summary of Resolution(s).**

This resolution urges federal, state, local, territorial, and Tribal governments to acknowledge and prioritize responding to the Missing and Murdered Indigenous Women (MMIW) crisis, and urges Congress to pass legislation that (1) prioritizes national data collection and tribal access to that data, (2) develops inter-jurisdictional protocols, and (3) provides a holistic response.

2. **Approval by Submitting Entity.**

- Massachusetts Bar Association approved sponsorship of the resolution on January 15, 2020.
- King County Bar Association approved co-sponsorship on January 17, 2020.
- Commission on Domestic and Sexual Violence approved co-sponsorship on January 17, 2020.
- Criminal Justice Section approved co-sponsorship on January 22, 2020.
- Commission on Sexual Orientation and Gender Identity approved co-sponsorship on January 22, 2020.
- Coalition on Racial and Ethnic Justice approved co-sponsorship on January 24, 2020.

3. **Has this or a similar resolution been submitted to the House or Board previously?**

No.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**
Over the last forty years the ABA has supported policy that addresses gender-based violence and promotes tribal sovereignty. These include:

- Resolution 301 (2012) (strengthening tribal jurisdiction to prosecute domestic violence);
- Resolution 111A (2015) (adopting the Indian Law and Order Commission report);
- Resolution 113 (2015) (adopting the AI/AN Children Exposed to Violence report); and

These policies are underscored by other ABA policy calling for holistic responses to gender-based violence, including:

- Resolutions 100 (1996) and 109 (2008) (supporting reauthorization of the Violence Against Women Act), and
- Resolution 104I, 104H, 104G, 104F (2013) and 103A (2011) (calling for resources to address human trafficking).

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

N/A


- BADGES for Native Communities Act, S. 1853, 116th Cong. (2019-2020);
- Savanna’s Act 2019 (S.227 and related bill H.R.2733) 116th Cong. (2019-2020); and the

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The sponsors will work with relevant stakeholders within and outside of the American Bar Association and the Governmental Affairs Office to implement the policy.

Adoption of this proposed resolution would result in only minor indirect costs associated with Section staff time devoted to the policy subject matter as part of the staff members’ overall substantive responsibilities.


N/A

10. Referrals.

Prior to or concurrent with the filing of this resolution and Report with the House of Delegates, the Massachusetts Bar Association sent the resolution and report to the following entities and/or interested groups:

Criminal Justice Section
Center on Human Rights
Solo, Small Firm and General Practice Division
Commission on Racial & Ethnic Justice
Young Lawyer’s Division
Section of International Law
Section of Litigation

11. Contact Name and Address Information. (Prior to the meeting)

Lauren Van Schilfgaarde, Director,
San Manuel Band of Mission Indians Tribal Legal Development Clinic,
UCLA School of Law, Los Angeles, California
vanschilfgaard@law.ucla.edu
(310) 794-7344

12. Contact Name and Address Information. (Who will present the report to the House?)

Alice Richmond, Massachusetts State Delegate to ABA House of Delegates
Boston, Massachusetts
arichmond@rpalaw.com
(617) 750-3816
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution urges federal, state, local, territorial, and Tribal governments to acknowledge and prioritize responding to the Missing and Murdered Indigenous Women (MMIW) crisis, and urges Congress to pass legislation that (1) prioritizes national data collection and tribal access to that data, (2) develops inter-jurisdictional protocols, and (3) provides a holistic response.

2. Summary of the Issue that the Resolution Addresses

The MMIW crisis is the outcome of centuries of policies and indifference as evidenced by the high rates of violence experienced by American Indian and Alaska Native women. The MMIW crisis is only recently receiving long overdue regional and national attention, thus the urgent need for the ABA to support, and urge other jurisdictions to act.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The proposed policy position addresses the issue by calling for increased governmental prioritization and supporting examples of pending legislation that seek to take a targeted yet holistic approach to addressing the MMIW crisis.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

N/A