

State Recommendations

Recommendation #1

Increase state funding for DNA testing and forensic genetic genealogy of unidentified remains through the Death Investigations Account administered by the Forensic Investigation Council.

Background

NamUs provides grant funding for DNA testing of unidentified remains. Testing through NamUs is available to investigating agencies nationwide at no cost. Due to a significant backlog, it may take up to 18 months for agencies to receive the results. State funding to test DNA of unidentified remains is currently administered through the Forensic Investigation Council, authorized by RCW 43.103, utilizing the Death Investigations Account.¹ Medical examiner and coroners offices also receive funding from counties for death investigations.

Identification of remains can happen through a number of means, with increasing cost and complexity:

1. If a tentative identification is available, comparison of dental records or medical imaging.
2. Fingerprint comparisons and dental records, also called *forensic odontology*.
3. DNA testing, which compares results against the Combined DNA Index System (CODIS). CODIS is a digital database created and maintained by the FBI that merges local, state, and national databases of DNA profiles from convicted offenders, unsolved crime scene evidence, missing and unidentified persons, from family members who have provided samples to law enforcement to aid investigations.²
4. Forensic Genetic Genealogy (FGG), also known as Investigative Genetic Genealogy, which combines DNA testing with traditional genealogy research by using public genetic genealogy databases containing genetic data from consumers. Use of FGG to identify remains is a relatively recent development.

In Washington, death investigations are conducted by county medical examiners and coroners. Coroners are elected officials who are not required to have any medical training and generally do not have dedicated space to do their work, while medical examiners have extensive training, dedicated facilities, and trained staff.³ The six medical examiner's offices in Washington sometimes offer space and assistance to under-resourced coroner offices.

As a result of this system, most, but not all, of the 163 unidentified remains in Washington are currently in possession of the King County Medical Examiner (KCME). These remains have complete fingerprint and dental documentation if the information was obtainable from the remains. DNA testing was generally completed for remains in KCME's possession as of 2019. However, during the COVID-19

pandemic, there was no national funding available through NamUs for DNA testing, which stalled testing across the country. Testing resumed in spring 2022, but has not caught up with the need. NamUs is currently prioritizing homicides and tribal affiliated cases, then will focus on cases that have a tentative ID and DNA on file to make a direct comparison. The longest delays are for non-homicide deaths and individuals whose identity is unknown. Funding from local jurisdictions and the state, in addition to NamUs funding, is limited and falls short of the need.

When DNA testing is completed but does not yield a match in CODIS, FGG is the next step. This process focuses on a different portion of the DNA than the profiles entered into CODIS and can be used to locate individuals who are closely related to the unidentified person. According to the KCME, agencies have great success using FGG to identify individuals. FGG can suggest potential matches who are not themselves included in CODIS and thus provide new investigative leads. Although a lengthy process, FGG is the logical next step for unidentified individuals with no match in CODIS.

DNA testing of individual remains typically costs agencies approximately \$2,500, and FGG costs approximately \$8,000. Available funding for agencies to conduct FGG is limited. While it will not be possible to identify all remains successfully, providing ongoing funding to ensure 1) that DNA testing can be completed, and 2) when positive matches are not made in CODIS, that FGG can be utilized, to maximize the opportunity to identify remains and provide information and closure to families missing their loved ones.

Proposed Recommendation

The Task Force recommends that the Legislature provide one-time funding to the Forensic Investigation Council in the Death Investigations Account to identify remains in Washington that have not yet had DNA testing completed and, for those for which DNA testing has failed to yield a match, for FGG to be conducted. The Legislature should also provide sustained ongoing funding for DNA testing and FGG for future cases to ensure that identification resources consistently meet the need.

Recommendation #2

Establish a work group co-led by the AGO, Washington Association of Sheriffs and Police Chiefs, and a Tribal Epidemiology Center to develop best practices for Indigenous demographic data collection by law enforcement, coroners and medical examiners.

Background

Racial misclassification is the inaccurate perception or documentation of a person's race in the context of data collection, and in some cases it can occur due to a data collector's subjective assumptions based on physical appearance or surname, rather than asking a person about their racial background.⁴ Other times, racial misclassification occurs because of outdated or inadequate data collection systems that need reforming. For example, racial misclassification occurs when an individual's race is not collected or recorded and the data system defaults to 'white,'⁵ or when data collection tools only allow for single race identification.⁶

The issue of racial misclassification has been observed in many systems, including in health services delivery⁷ and criminal justice institutions.⁸ Indigenous racial misclassification is one of the contributing factors to the incomplete understanding of MMIWP, and impacts how resources are allocated to fighting the crisis.

According to research by the Urban Indian Health Institute (UIHI), a number of law enforcement agencies say that they are unable to search their records for categories of American Indian, Native American, or Alaska Native for several different reasons. UIHI was told by law enforcement in Seattle that the letter 'N' was used from the 1960s through the early 1980s to capture the categories of "Negro" and Native American.⁹ There are ways to correct racial misclassification in these records, although they are time-consuming and expensive. AGO staff continues to explore opportunities to correct historical data, while focusing here on improving data collection practices going forward.

In addition to their data research, UIHI produced a guide titled *Best Practices for American Indian and Alaska Native Data Collection*.¹⁰ Among their guidance, UIHI provides that:

- American Indian and Alaska Native (AIAN) should always be defined as AIAN alone, and individuals who also identify as another race, including those who identify as Latinx/Hispanic, should be able to select any combination with any other race.¹¹
- Data tools should have the ability to disaggregate data once collected.¹²
- Personnel who collect data should receive training on asking people about their race and ethnicity and on recording responses correctly to enable people to report more than one race if that is how they self-identify.¹³

Draft Recommendation

The Legislature should act to establish a work group to develop best practices for law enforcement agencies, county coroners, and medical examiners on how to implement a self-identification and family-centered procedure for collecting Indigenous demographic data. The work group should be jointly led by the AGO, the Washington State Association of Sheriffs and Police Chiefs (WASPC), and a Tribal Epidemiology Center. Each organization should receive adequate funding for staff to administer and support the work group.

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Recommendation #3

Establish a local news journalism fellowship program for journalists and journalism students who are members of federally-recognized tribes.

Background

Indigenous journalists are underrepresented in newsrooms. According to the News Leaders Association 2019 Diversity Survey, Indigenous journalists represent less than 0.25 percent of employees of daily print and online organizations nationally.¹⁴ Of those employed by Washington news outlets that voluntarily responded to this study, 1.2% of journalists—three of 243—identified as AIAN.¹⁵ According to data from the U.S. Census Bureau, 1.6% of Washingtonians identify as AIAN alone, and 3.6% of Washingtonians identify as AIAN alone or in combination with another race.¹⁶ It is broadly understood that newsrooms should reflect the diversity of their audiences, and the quality and reach of news coverage suffers when news outlets do not employ individuals with lived experience. Lived experience is knowledge based on someone's perspective, personal history, and background beyond their professional or educational experience.¹⁷

While media coverage of the MMIWP crisis has increased in recent years, family and community members consistently describe a noticeable absence of media coverage for missing and murdered Indigenous people, particularly compared to coverage of white women who are missing and murdered.¹⁸ Importantly, although under-represented in media coverage, Indigenous people make up a disproportionate portion of missing people in Washington.¹⁹

When MMIWP cases do receive media coverage, it sometimes includes inaccuracies or demeaning language that diminish the humanity of the missing person. The MMIWP crisis is a result of historic systemic and institutional discrimination and injustice. As MMIWP cases receive increasing media and public attention, coverage must consider the historical context of generations of harmful policies against Indigenous people, and take care to not, intentionally or unintentionally, diminish or minimize Indigenous people or issues impacting tribes and Indigenous communities.

A number of Indigenous-led organizations have developed guidance and resources for journalists covering MMIWP and Indigenous issues. One of the primary recommendations is to hire Indigenous reporters, who can accurately and authentically provide an Indigenous voice and perspective, informed by lived experience. Other guidance includes developing relationships and trust with tribal communities, learning more about the history of colonialism and government violence against Indigenous people, understanding tribal sovereignty, and using a survivor-centered approach to reporting.

Draft Recommendation:

The Legislature should establish a journalism fellowship program to address the underrepresentation of Indigenous people in Washington newsrooms and to support accurate and authentic reporting on tribal

issues, including MMIWP. The fellowship program should provide meaningful financial support and experience to journalism students or journalists early in their careers who are members of federally-recognized tribes. This fellowship should be modeled on the public-interest journalism fellowship program established by the Legislature in the 2023 session.²⁰

Additionally, the AGO should compile and provide links on its website to resources developed by Indigenous-led organizations to guide journalism and media coverage of the MMIWP crisis and tribal issues. These resources currently include, but are not limited to:

- The National Indigenous Women’s Resource Center’s War on Indigenous Women – A Short Guide for Journalists Reporting on MMIWG.²¹
- The Native American Journalist Association Tribal Nations Media Guide,²² Reporting and Indigenous Terminology²³ resource, and Covering the Violence Against Women Act (VAWA) in Indian Country²⁴ resource.

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Federal Recommendations

Recommendation #4

The U.S. Department of Justice Office of Justice Programs should establish a nationwide Missing Indigenous Persons Alert.

Background

The Washington State Patrol (WSP) is the lead agency for America's Missing Broadcast Emergency Response (AMBER) Alert system and Endangered Missing Person Advisory (EMPA), and also operates a Missing Children and Endangered Person (MCEP) Clearinghouse. The clearinghouse distributes information about missing children and endangered persons to local law enforcement agencies, school districts, state agencies, and the general public.

AMBER Alerts, to assist in finding abducted children, are activated by local law enforcement agencies that have approved AMBER Alert plans, or by the WSP if the local agency does not have an approved plan. When a missing person does not qualify for an alert under the AMBER Alert system, an EMPA may be activated by a local law enforcement agency or the WSP. A silver alert designation is used when a missing endangered person is aged 60 or older.

In the 2022 session, legislators passed Substitute House Bill 1725, sponsored by Task Force member Representative Debra Lekanoff and requested by the Attorney General, to create a Missing Indigenous Person Alert (MIPA) as part of the WSP EMPA plan.²⁵ The law explicitly states that missing endangered person means "a missing Indigenous woman or Indigenous person" in recognition of the fact that missing Indigenous people are endangered. Washington is the first state in the U.S. to establish an alert for missing Indigenous people.

Since Washington enacted the MIPA, other states, including Colorado,²⁶ have explored or established a similar alert. In 2022-2023 the AGO received inquiries from a number of other jurisdictions interested in the MIPA.

Washington's MIPA system is very successful. Previously, the process of activating alerts for missing endangered people was lengthy, taking hours or days. The MIPA system allows alerts to be activated within minutes, and data shows that it helps locate people. As of June 2023, 63 MIP alerts were issued, and 52 individuals were located. Sadly, one individual was found deceased.

The AMBER Alert system began with local alerts in the Dallas-Fort Worth area, and similar alerts were adopted by states and localities across the country. In October 2002, following the first White House Conference on Missing, Exploited and Runaway Children, a National AMBER Alert Coordinator was appointed. The 2003 PROTECT Act permanently establishes the Coordinator role within the U.S. Department of Justice (DOJ).²⁷ The Coordinator's role is to facilitate the development of the network of AMBER Alerts, support state AMBER plans, identify and close geographic gaps in AMBER networks, and provide guidance and regional coordination.²⁸ The Coordinator position is within the Office of Justice

Programs (OJP) at the DOJ. The PROTECT Act requires the DOJ to issue standards or guidelines for AMBER Alerts that states can voluntarily adopt.

The federal AMBER Alert system can provide a framework for a nationwide MIPA. This is particularly important because state borders do not reflect tribal boundaries. The MMIWP crisis crosses state borders. Missing Indigenous people are endangered regardless of which state they are in, and the federal government has a trust responsibility to protect Indigenous people. The MIPA is a valuable tool that should be available to all missing Indigenous people and their loved ones, to help bring them home. A nationwide MIPA is consistent with Executive Order 14053, issued on November 15, 2021 by President Biden, which commits his administration to prioritizing support of “prevention and intervention efforts that will make a meaningful and lasting difference on the ground.”²⁹ It is also consistent with DOJ’s commitment to addressing the systemic violence endured by Indigenous families and communities across the country.³⁰

Draft Recommendation

The Task Force recommends that the DOJ OJP appoint a national MIPA coordinator to facilitate and support states with the development of state MIPA plans, identify and address gaps in MIPA networks as they develop, and provide guidance and regional coordination. The MIPA coordinator should work collaboratively with the existing AMBER Alert coordinator, as well as with DOJ’s Office of Tribal Justice and the Bureau of Indian Affairs within the Department of the Interior. The individual appointed to the position should have a background working with tribal governments and law enforcement.

Recommendation #5

Require federal law enforcement agencies to timely review cases of unidentified remains found on tribal land, and either retain jurisdiction and expedite DNA testing or cede jurisdiction to allow the tribe or state to conduct DNA testing.

Background

Criminal jurisdiction on tribal land is frequently complicated, involving multiple agencies, including the Federal Bureau of Investigation (FBI), the federal Bureau of Indian Affairs (BIA), and tribal, state, or local, law enforcement. Under the Indian Law Enforcement Reform Act of 1990 (ILERA),³¹ the FBI and BIA each have investigative jurisdiction for crimes on tribal land, including some shared jurisdiction.³² When a crime occurs on tribal land, the BIA may also enforce tribal law with the consent of the tribe.

In November 2022, Assistant Secretary of the Interior for Indian Affairs Bryan Newland and FBI Director Christopher Wray signed a Memorandum of Understanding (MOU) to establish jurisdictional guidelines for the BIA and FBI on tribal land.³³ The MOU includes only a few references to DNA testing: requiring the lead investigative agency to enter missing person cases into NCIC in a timely manner, and submit DNA to the National Missing Person DNA Database. Investigators are also required to enter murder cases into the National Incident-Based Reporting System (NIBRS) and other appropriate federal criminal databases.³⁴

The MOU is silent on DNA testing or database entry of unidentified human remains found on tribal lands. When remains are found on tribal lands, tribal law enforcement may not have jurisdiction to investigate. The FBI and the BIA generally do not share information or invite collaboration with tribal, state, or local law enforcement on cases in which they retain jurisdiction, which includes ensuring that DNA testing occurs and the results are entered into the appropriate databases. In practice, federal law enforcement agencies do not pay for DNA testing of unidentified human remains found on tribal lands without a clear indication that a crime occurred. In some cases, this can be impossible to determine without first identifying the remains and linking them to an open investigation. Federal law enforcement agencies should act as quickly as possible to determine if they will retain jurisdiction, and if so, expedite DNA testing, and if not, cede jurisdiction to allow the tribe or state to conduct DNA testing and investigate.

Draft Recommendation

The Task Force recommends that the BIA and FBI amend their 2022 Memorandum of Understanding to require the agencies to determine as quickly as practicable whether they will retain jurisdiction in cases of unidentified remains found on tribal land. In recognition of tribal sovereignty, the MOU should clearly direct the agencies from the time of discovery of the remains to regularly communicate about the status of the case with the tribe and tribal law enforcement to the fullest extent allowable while maintaining integrity of the investigation. When the agencies retain jurisdiction, the MOU should require timely DNA testing of the remains found on tribal land and, consistent with existing requirements related to DNA

testing in the MOU, entry of the information into the National Missing Person DNA Database and other appropriate federal criminal databases as quickly as possible. When the federal agencies cede jurisdiction to the tribe or the state, funding in the state Death Investigations Account, administered through the Forensic Investigation Council,³⁵ should be made available to ensure DNA testing occurs as quickly as possible. In cases when the federal agencies fail to communicate with tribal law enforcement within 6 months of discovery of the remains, for the purposes of identification, including DNA testing, the tribe should have authority to commence identification efforts.

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ENDNOTES

¹ The Forensic Investigation Council adopted rules in 2003 (Chapter 218-10 WAC) governing how and when funds are provided to local jurisdictions to assist in death investigations. The rules restrict eligibility for funding assistance from the Death Investigations Account to investigations of multiple deaths involving unanticipated, extraordinary, and catastrophic events or investigations of multiple deaths involving multiple jurisdictions. It also limits funding to only amounts needed to supplement the death investigation budget of a local jurisdiction, and not in place of funding reasonably available from other state or federal sources.

<https://app.leg.wa.gov/WAC/default.aspx?cite=218-10>.

² [Combined DNA Index System \(CODIS\) | Bureau of Justice Statistics \(ojp.gov\)](https://www.fbi.gov/services/laboratory/codis/codis.html)

³ <https://www.knkn.org/other-news/2020-10-20/coroners-in-washington-manage-to-investigate-deaths-despite-untenable-conditions>

⁴ <https://www.uihi.org/download/best-practices-for-american-indian-and-alaska-native-data-collection/>.

⁵ Id.

⁶ <https://www.doj.state.wi.us/sites/default/files/ocvs/UIHI-MMIWG-We-Demand-More.pdf> page 13

⁷ <https://journalofethics.ama-assn.org/article/racialization-barrier-achieving-health-equity-native-americans/2020-10>; <https://ncuih.org/misclassification/>.

⁸ “Missing and Murdered Indigenous People (MMIP): Overview of Recent Research, Legislation, and Selected Issues for Congress,” Congressional Research Service, January 10, 2022, <https://crsreports.congress.gov/product/pdf/R/R47010/2>.

⁹ Urban Indian Health Institute, *Missing and Murdered Indigenous Women & Girls*, p.16, <https://www.uihi.org/download/missing-and-murdered-indigenous-women-girls/?wpdmdl=13090&refresh=64f01292772461693454994>.

¹⁰ <https://www.uihi.org/download/best-practices-for-american-indian-and-alaska-native-data-collection/>.

¹¹ <https://www.uihi.org/download/best-practices-for-american-indian-and-alaska-native-data-collection/?wpdmdl=16644&refresh=64dcd8f0c66841692195056>, p.7.

¹² <https://www.uihi.org/download/best-practices-for-american-indian-and-alaska-native-data-collection/?wpdmdl=16644&refresh=64dcd8f0c66841692195056>, p.2.

¹³ <https://www.uihi.org/download/best-practices-for-american-indian-and-alaska-native-data-collection/?wpdmdl=16644&refresh=64dcd8f0c66841692195056>, p.5.

¹⁴

https://static1.squarespace.com/static/5d2df6a6231a750001881b75/t/5d76c698c87c4c7550640ec2/1568065177406/Summary+Tables+2019_9.6.19.pdf

¹⁵

https://static1.squarespace.com/static/5d2df6a6231a750001881b75/t/6042967698b7262ced3b7b67/1614976631174/2019_ASNE_Newsroom_Diversity_Survey+Managers+and+Salaried+Employees.pdf

¹⁶ [P8: RACE - Census Bureau Table](#)

¹⁷ [Diversity in the newsroom can build better media. Here's why | World Economic Forum \(weforum.org\)](https://www.weforum.org/articles/diversity-in-the-newsroom-can-build-better-media-heres-why)

¹⁸ <https://www.npr.org/2023/06/10/1181526829/missing-white-woman-syndrome-the-media-bias-towards-missing-people-of-color>; <https://ccjls.scholasticahq.com/article/11134-media-messages-surrounding-missing-women-and-girls-the-missing-white-woman-syndrome-and-other-factors-that-influence-newsworthiness/attachment/27402.pdf>; <https://www.insider.com/experts-missing-women-of-color-are-not-centered-news-coverage-2021-9>

¹⁹ <https://www.king5.com/article/news/community/facing-race/washington-missing-murdered-indigenous-people-awareness-action/281-1e7c2fff-10a1-4829-8835-6d766b7e5920>;
<https://www.bia.gov/service/mmu/missing-and-murdered-indigenous-people-crisis>

²⁰ <https://senatedemocrats.wa.gov/keiser/2023/04/26/wa-legislature-establishes-fellowship-for-journalism-in-the-public-interest/>

²¹ <https://www.niwrc.org/sites/default/files/files/reports/War%20on%20Indigenous%20Women%20-%20A%20Short%20Guide%20for%20Journalists%20Reporting%20on%20MMIWG.pdf>

²² <https://najanewsroom.com/wp-content/uploads/2020/10/2020-NAJA-Tribal-Nations-Media-Guide-1.pdf>

²³ https://najanewsroom.com/wp-content/uploads/2018/11/NAJA_Reporting_and_Indigenous_Terminology_Guide.pdf

²⁴ <https://najanewsroom.com/wp-content/uploads/2018/11/naja-vawa.pdf>

²⁵ <https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1725-SL.pdf?q=20230831072443>

²⁶ <https://publicsafety.colorado.gov/press-release/colorado-announces-launch-of-missing-indigenous-person-alert>

²⁷ <https://www.govinfo.gov/content/pkg/STATUTE-117/pdf/STATUTE-117-Pg650.pdf>

²⁸ <https://www.ojp.gov/sites/g/files/xyckuh241/files/media/document/amberfaq.pdf>

²⁹ Executive Order 14053 of November 15, 2021, “Improving Public Safety and Criminal Justice for Native Americans and Addressing the Crisis of Missing or Murdered Indigenous People,” Federal Register, Vol. 86, No. 220, p. 64338, [2021-25287.pdf \(govinfo.gov\)](#).

³⁰ [Tribal Justice and Safety | Missing or Murdered Indigenous Persons | United States Department of Justice](#)
³¹ 25 U.S.C. §§ 2801-2815

³² In 1993, the Department of Justice and the Department of the Interior entered into a memorandum of understanding (MOU) that established guidelines regarding the respective jurisdictions of the Bureau of Indian Affairs (BIA) and the Federal Bureau of Investigation (FBI). Part IV of the MOU requires each United States Attorney whose criminal jurisdiction includes Indian country to develop local written guidelines outlining the responsibilities of the BIA, FBI, and the Tribal Criminal Investigators, if applicable. ([9-20.000 - Maritime, Territorial And Indian Jurisdiction | JM | Department of Justice](#))

³³ [MOU 2022 FBI BIA](#)

³⁴ [MOU 2022 FBI BIA](#), p. 7.

³⁵ RCW 43.79.445, <https://app.leg.wa.gov/RCW/default.aspx?cite=43.79.445>

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