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High Incarceration rates of American Indians in the Montana Justice system undermines reforms

Indian People’s Action reports over representation and lack of reflection in American Indian Staff at Border Town Racism Town Hall in Hardin

Hardin, Montana
Indian People’s will release report and give testimony at today’s forum held by the Human Rights Commission. Sheryl Eagle of Indian People’s Action will provide comments and preliminary results of work examining the disproportionate numbers of American Indians at all levels of the criminal justice system in Montana. Examples are drawn from Yellowstone County, since this forum is being held in Hardin.

Paying the Price

Who profits from the Montana prison pipeline for American Indians?

- In Montana, 1 out of every 14 people is American Indian Native American Defendants in Federal Courts
- 1 out of every 6 people in the Montana corrections system is American Indian
- 1 out of every 5 men in a Montana prison is American Indian
- 1 out of every 3 women in a Montana prison is American Indian
- 1 out of every 3 people facing federal charges in Montana is American Indian

With the 2017 reversal of the Justice Department’s directive cutting funding to private prisons, the contract between the state of Montana and CoreCivic, and moves to reopen the Two Rivers facility in Hardin, corporations and border towns are set to make money off American Indian incarceration.

Gross over-representation of American Indians in Facility Populations
The DOC system continues to be characterized by the over-representation of American Indians, particularly in the prison population. Based on self-reporting by offenders, American Indians continue to be overrepresented in the corrections system. Although they make up less than percent of Montana’s overall population, American Indians account for more than 17 percent of the total number of offenders under department supervision. This includes offenders anywhere in the corrections system, from prison to parole and probation. All other minorities represent less than 4 percent of the offender population” (DOC, 2015: A-16). In 2016, 20% of the male prison population was American Indian as was 34% of the female prison population (DOC, 2017: C-4). No other breakdown of race was given in the 2017 Department of Corrections Biennial Report.
While American Indians enter the DOC system in a disproportionate rate compared to the general population, the over-representation is exacerbated as American Indians in the DOC are more likely to be held in secure facilities.

**Lack of American Indian Staff or accountability to the community**

The percentage of minority employees at the Department of Corrections doubled to 6.5% in 2016. No breakdown of the racial composition of this portion of the workforce is given, or information on the functions carried out by minority employees is given in the Biennial Report. The American Indian Liaison is a prominent position, but it is not included in the Department of Correction’s Organization Chart. One of the roles of this position is to assist in promoting recruitment and retention of American Indians, but no information is provided about the outcomes of these efforts.

The 2017 Department of Corrections Biennial Report provides a lot of information that may identify some of the patterns and possible causes of the persistent over-incarceration of American Indians. Without additional data and trends broken down by race, it is difficult to establish accountability or work towards sustainable, community-based solutions. The same holds true for many of the issues and challenges facing American Indians in Montana’s border towns.

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You can download the report at: [www.indianpeoplesaction.org](http://www.indianpeoplesaction.org)

*Indian People’s Action is a Montana-based organization working on multiple fronts: native rights, anti-discrimination, the injustice in the justice system. Native people make up a little over 6 percent of the population of the state of Montana, but over 30 percent of the incarcerated population. Indian People’s Action works in urban areas to reach out and empower Native Americans to address the social, economic, environmental, and racial inequities that shape their lives.*
American Indians in the Montana Justice System

In Montana, 1 out of every 14 people is American Indian

1 out of every 6 people in the Montana corrections system is American Indian

1 out of every 5 men in a Montana prison is American Indian

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1 out of every 3 people facing federal charges in Montana is American Indian

Who profits from the Montana prison pipeline for American Indians?
Power in the 2018 Native Vote
www.indianpeoplesaction.org

Incarceration, Invisibility and American Indians in Montana

Michaelynn Hawk

Border Town Racism Forum
US Commission on Civil Rights
Hardin, Montana
March 29, 2018
(Prepared by M.J. Vercoe)
Trends in Policing

“Despite our state’s falling crime rates, Montana’s prison population continues to grow and our correction facilities are over capacity.” Governor Steve Bullock (2015)

“Montana is putting more people in prison than it releases — not necessarily because there are more criminals, but largely because the state keeps arresting the same people over and over” (2015 report by the Council of State Governments)

- 85% of prison admissions result from parole revocations – possibly the highest in nation
  - Increased by almost 65% from 2009 to 2014
- In December 2015, Montana prisons were operating at approximately 110% capacity
- With increased incarceration of women, Montana Women’s Prison routinely houses 205 inmates in a 194-bed facility (DOC, 2017)

Race and Incarceration

Although American Indians are just seven percent of the general Montana population, they make up 33 percent of the female prison population, and 17 percent of the total Montana offender population. In 1997, American Indians accounted for 30 percent of the female prison population. (DOC, 2015)

One out of every five incarcerated male offenders is American Indian. That is almost three times higher than the rate at which natives are represented in the general Montana population. The proportion of the prison population that is native has changed little since 2008, but increased to 20 percent since 1997. (DOC, 2015)

This did not change with the 2017 Department of Corrections report with the proportion of Natives in the remaining at the same levels regardless of the prison population.
Montana DOC Race and Incarceration

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<tr>
<td>African American</td>
<td>3%</td>
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<td>69%</td>
<td>60%</td>
<td>64%</td>
<td>66%</td>
<td>64%</td>
<td>63%</td>
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</tr>
<tr>
<td>American Indian</td>
<td>29%</td>
<td>33%</td>
<td>33%</td>
<td>33%</td>
<td>30%</td>
<td>33%</td>
<td>33%</td>
<td>34%</td>
</tr>
<tr>
<td>African American</td>
<td>1%</td>
<td>1%</td>
<td>2%</td>
<td>1%</td>
<td>1%</td>
<td>0.5%</td>
<td>2%</td>
<td>1%</td>
</tr>
<tr>
<td>Other Minority</td>
<td>1%</td>
<td>0%</td>
<td>1%</td>
<td>1%</td>
<td>0%</td>
<td>0.5%</td>
<td>1%</td>
<td>2%</td>
</tr>
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DOC Population Trends

Since 2008, the number of men in prison grew by 30% and the number of women in prison by 34%.

Of the 33% who return to prison, only 5% of men and 7% of women commit new crimes – the vast majority or re-incarceration results from parole violations (DOC, 2017: C-7).
DOC Staffing

<table>
<thead>
<tr>
<th>June 2012</th>
<th>DOC Employees</th>
<th>Montana Offenders</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caucasian</td>
<td>91.8%</td>
<td>77.5%</td>
</tr>
<tr>
<td>American Indian</td>
<td>1.1%</td>
<td>17.4%</td>
</tr>
<tr>
<td>African American</td>
<td>0.4%</td>
<td>1.9%</td>
</tr>
<tr>
<td>Hispanic</td>
<td>1.2%</td>
<td>2.2%</td>
</tr>
<tr>
<td>Asian</td>
<td>0.3%</td>
<td>0.4%</td>
</tr>
<tr>
<td>Not Specified</td>
<td>5.2%</td>
<td>0.7%</td>
</tr>
</tbody>
</table>

Apart from the American Indian Liaison, that is not included in the DOC organizational chart, minority staff have traditionally been employed in service roles.

Data on race has been reduced in DOC biennial reports. From 2014 to 2016 the number of minority staff doubled.

DOC Employee Profile

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>57.5%</td>
<td>56%</td>
</tr>
<tr>
<td>Female</td>
<td>42.3%</td>
<td>44%</td>
</tr>
<tr>
<td>Minority</td>
<td>3%</td>
<td>6.5%</td>
</tr>
<tr>
<td>Union Member</td>
<td>60%</td>
<td>60%</td>
</tr>
<tr>
<td>Average Age</td>
<td>45</td>
<td>44.5</td>
</tr>
<tr>
<td>Average Years with State</td>
<td>10</td>
<td>9.7</td>
</tr>
<tr>
<td>Average Salary</td>
<td>$39,565</td>
<td>$34,796</td>
</tr>
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</table>

American Indian Over-Incarceration in Montana

- The 2017 Montana Department of Corrections report specified the self-reported tribal affiliation of 530 American Indians in the system.
  - Discussions with people previously incarcerated suggest this is underestimated because some prefer not to identify as Native to avoid perceived possible negative consequences.
  - Salish-Kootenai had the greatest number of tribal members in the system because of jurisdictional issues.
American Indian Over-Imprisonment in Montana

- On the Flathead Reservation, Public Law 280 transferred legal jurisdiction over criminal matters from the federal government to the state.
- On Montana’s other reservations, the Major Crimes Act outlines offenses falling under federal jurisdiction.
- In addition to American Indians serving time in the Montana corrections system, tribal members are also serving time in the federal system (710 in 2013).
- The incarceration rates for American Indians in MT are dramatically understated because they include only incidences occurring outside of reservations boundaries, predominantly in border towns.

<table>
<thead>
<tr>
<th>2013 Federal Incarceration by MT Reservation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rocky Boy</td>
</tr>
<tr>
<td>Northern Cheyenne</td>
</tr>
<tr>
<td>Fort Peck</td>
</tr>
<tr>
<td>Sun River</td>
</tr>
<tr>
<td>Crow</td>
</tr>
<tr>
<td>St. Ignatius</td>
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</tbody>
</table>

National Youth Incarceration

- Youth incarceration has decreased in Montana following the national trend, but the length of stay is increasing.
- No data is reported on the race of incarcerated youth in Montana.
- While nationwide youth incarceration has decreased, the percentage of Native youth incarcerates has increased (along with black youth).
- While black youth are incarcerated at 3x their percentage of the population, nationally, Native youth are incarcerated at over 1800x their percentage of the US population.

Source: Annie E. Casey Foundation (2016)
Women in the Corrections System

- Since 2008, women in prison in Montana increased by 34%.
- The 2017 DOC report connects Childhood Adverse Experiences (CAE) to incarceration in women.
- Adverse Childhood Experiences including economic hardship, parental divorce and childhood sexual abuse.
- Extreme Adverse Childhood Experiences for girls have been associated with an increased likelihood of abuse and victimization as adults.

Adverse Childhood Experiences – ACEs

Scores range from 0-10. Each type of trauma counts as one. People with ACE scores of 4 or more:
- Are twice as likely to be smoker.
- Are 7 times more likely to be alcoholic.
- Are 12 times more likely to commit suicide.

People with high ACE scores are more likely to:
- Be violent.
- Have more broken bones and autoimmune diseases.
- Suffer from depression.

People with an ACE score of 6 or higher are at risk of their lifespan being shortened by 20 years.

Of the first 11 women in the Riverside Recovery & Reentry Program, 4 had ACE scores of 8 or 9. The average score for the group was 6.4.

Source: DOC (2017: 9)

Women, Incarceration and Early Life Experiences

- Montana ranks 4th in the nation for childhood exposure with 29.7% of children experiencing two or more Adverse Childhood Events.
- Nationally, 17% of women in prison have been spent time in foster or group homes in childhood (DOC, 2017: 30).
- Approximately 40% of Native children in Montana experience more than 2 ACEs, compared to only 23% of white children (Source: Data Resource Center for Child and Adolescent Health).

Children with more than 2 Adverse Life Events

<table>
<thead>
<tr>
<th>Ethnicity</th>
<th>Montana (MT)</th>
<th>USA</th>
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<tbody>
<tr>
<td>American Indian</td>
<td>21%</td>
<td>4%</td>
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<tr>
<td>Hispanic</td>
<td>28%</td>
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<tr>
<td>Black</td>
<td>34%</td>
<td></td>
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<tr>
<td>White/Native Indian</td>
<td>23%</td>
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</table>
Racism in the Judiciary

- 2014 Montana's Chief Federal Justice Richard Cebull retired after a racially offensive email sent from his work account was reported in local media
- The media reported that Cebull sent 100s of offensive emails
- Legal action seeking the release of Cebull's emails stalled over fears that their release would undermine the Montana judicial discipline system

Persistent Challenges

- The failure of the DOC to meet the projections of the 2013 biennial report and reduce the number of those incarcerated resulted in a crisis of prison over-crowding and critical re-evaluation
- The Governor Steve Bullock commissioned Pew Charitable Trusts to assess drivers of the states prison population
- While the resulting 10 page report found
  - A growing prison population with longer sentences
  - In 2013 85% of incarcerations resulted from revocations rather than new offenses - mainly for technical parole violations
  - The majority of American Indians in jail are serving sentences related to parole violations or failures to appear
- No mention of race was made in Pew's report.
Private Prisons in the Trump Era

- February 23, 2017 Jeff Sessions rescinded the 6 month old Obama administration directive curtailing federal funding to private prisons
  - DOJ had found private prisons offered lower levels of service without significant cost savings
  - Geo Group and CoreCivic made substantial contributions to the Trump presidential campaign
  - A 2014 study found that “minorities were cheaper to incarcerate”
- In the special legislative session in 2017, the legislature voted to renew the CoreCivic contract as part of the budget bailout
  - In 2015, Montana ranked second behind only New Mexico for the proportion of those held in private prisons (with over 40%)
- The BIA is contracting to operate the Two Rivers facility in Hardin – a move lauded as an “economic lifeline” for Hardin

Yellowstone County Incarceration

In 2015 Yellowstone County had the highest pretrial incarceration rate in Montana (Source: The Vera Institute)

- 2017 Yellowstone County had the most offenders in the MT corrections system (2,028)
- While jail admissions in Yellowstone county have decreased, the proportion of Native Americans increased to 24% and the average length of jail stay increased
Policing and the Homeless

- March 7 – 15 (average daily temperature 28° to 33°) three homeless Native people were found frozen dead on the small area in the square on Billings streets.
- The police station location indicated in red.
- One was an elderly man in a wheelchair who was dead for several hours outside of a store. The store owner would not allow a Native woman passing by to use the phone to call the police.