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for the State-Tribal Relations Committee

FINAL REPORT TO THE 66TH MONTANA LEGISLATURE

**SJ 3: IMPROVING
REENTRY OUTCOMES
FOR AMERICAN
INDIAN OFFENDERS**

STATE-TRIBAL RELATIONS COMMITTEE

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This report is a summary of the work of the State-Tribal Relations Committee, specific to the committee’s 2017-2018 work pertaining to improving reentry outcomes for American Indian offenders as outlined in the committee’s 2017-18 [work plan](#) and Senate Joint Resolution 3 (2017). Members received additional information and public testimony on the subject, and this report is an effort to highlight key information and the processes followed by the committee in reaching its conclusions. To review additional information, including audio minutes, and exhibits, visit the committee website: <http://leg.mt.gov/tribal>.

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INTRODUCTION

[Senate Joint Resolution No. 3](#) (2017), assigned to the State-Tribal Relations Committee, requested an interim study of access to tribal resources for tribal members who are in the state's criminal justice system. The request grew out of the work by the 2015-2016 Commission on Sentencing, which studied racial and ethnic disparity issues in the criminal justice process.

The Commission found that while American Indians comprise about 7% of Montana's population they account for 27% of all arrests that relate to failure to appear for court events or for violations of conditions related to community supervision. The Commission recommended that an interim committee explore methods to increase access to tribal resources for tribal members with hopes that would decrease recidivism and improve outcomes for those offenders.

But the STRC took a broader look at access to reentry resources, in part because data from the Department of Corrections show that while 30% of American Indians on parole or probation are supervised on a reservation and 18% are in a nearby community, 51% are supervised in an urban area of the state.

Wherever the resources are located, the committee learned that tailoring those resources to the unique cultural backgrounds and needs of American Indians may be an important factor to their successful reentry.

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FACTS AND FIGURES

Overrepresentation

While American Indians comprise 7% of Montana's overall population, they are overrepresented in the state's criminal justice system, according to [data](#) from the Department of Corrections.

What percent of Montana's offenders are American Indian by gender?*

	American Indian Women	American Indian Men
Prison	33%	20%
Alternate location‡	31%	22%
MT parole and probation	20.5%	14.5%
Other jurisdiction custody or supervision‡	9%	8%
All of state custody by gender	22%	16%
Percent of Montana's total population	~3.32%	~3.38%

*As of 6/30/2017

‡Interstate compact supervision, federal custody, other state jail or prison.

‡‡Prerelease, chemical dependency/alcohol treatment, assessment/revocation center, county jail.

What percent of prerelease admissions are American Indian?

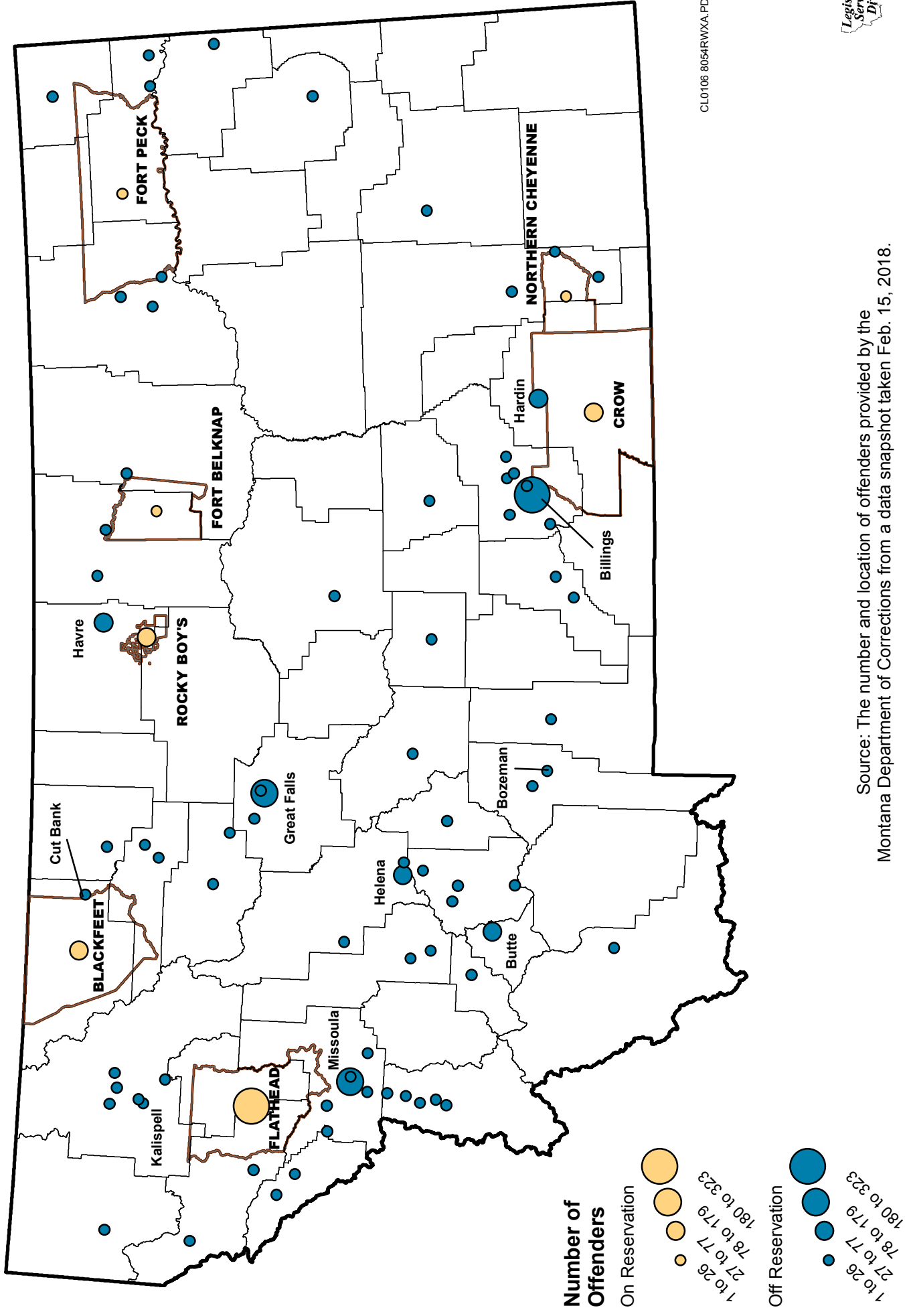
FY 2016-2017

	American Indian Women	American Indian Men
Billings	43%	25%
Butte	24%	18%
Gallatin County	N/A	15%
Great Falls	39%	28%
Helena	N/A	24%
Missoula	19%	18%

Location of American Indian Offenders on Supervision

Data from the Department of Corrections show that while 30% of American Indians on parole or probation are supervised on a reservation and 18% are in a nearby community, 51% are supervised in an urban area of the state.

Locations of American Indian Offenders on Community Supervision



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Source: The number and location of offenders provided by the Montana Department of Corrections from a data snapshot taken Feb. 15, 2018.

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Top 10 Convictions

A review of the primary convictions for Indian and non-Indian offenders between Fiscal Years 2013 and 2017 show similarities, especially in the top three convictions.

Top 10 Convictions: Men

American Indian	All Offenders
1. Criminal Possession of Dangerous Drugs	1. Criminal Possession of Dangerous Drugs
2. Criminal Endangerment	2. DUI
3. DUI	3. Criminal Endangerment
4. Burglary	4. Theft
5. Theft	5. Burglary
6. Partner/Family Member Assault	6. Assault with a Weapon
7. Assault with a Weapon	7. Partner/Family Member Assault
8. Failure to Register	8. Criminal Distribution of Dangerous Drugs
9. Criminal Distribution of Dangerous Drugs	9. Criminal Possession with Intent to Distribute
10. Aggravated Assault	10. Failure to Register

Top 10 Convictions: Women

American Indian	All Offenders
1. Criminal Possession of Dangerous Drugs	1. Criminal Possession of Dangerous Drugs
2. Criminal Endangerment	2. Theft
3. DUI	3. Criminal Endangerment
4. Theft	4. DUI
5. Criminal Distribution of Dangerous Drugs	5. Criminal Distribution of Dangerous Drugs
6. Assault with a Weapon	6. Forgery
7. Criminal Child Endangerment	7. Burglary
8. Forgery	8. Issuing a Bad Check
9. Bail Jumping	9. Criminal Possession with Intent to Distribute
10. Criminal Possession with Intent to Distribute	10. Criminal Child Endangerment

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GROUND LEVEL VIEW

In September 2017, the STRC visited the Montana Women's Prison in Billings to learn about rehabilitative programs used in the prison to help offenders deal with issues such as addiction that might have contributed to their incarceration and learn life skills that could smooth their reentry into the community.



STATE-TRIBAL RELATIONS COMMITTEE MEMBERS MEET WITH WOMEN'S PRISON STAFF IN BILLINGS, SEPTEMBER 2017

STRC members also participated in a reentry simulation to get a sense of what challenges an offender might face with housing, transportation, employment, and meeting other requirements of parole and probation.

The STRC met with probation and parole staff in Billings and Helena in September 2017 and March 2018, respectively, to learn about the common conditions offenders must fulfill to successfully complete community supervision.

Knowing where to go for help upon release can be a challenge. News of many resources, such as employment and housing opportunities, is spread by word-of-mouth among offenders.

The STRC learned in March 2018 there is no comprehensive reentry resource list currently available to offenders. The last [comprehensive list](#) of tribal resources was published in 2012. The STRC included the task of building such a list in its SJ 3 work plan. However, the effort proved monumental and untenable within the allotted time.

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Other states and communities have compiled interactive reentry resource guides. Pennsylvania offers an [online, statewide map](#). Mississippi details [national, state, and local resources](#). Philadelphia built the [Prisoner Reentry Network](#), which provides an online rolodex of resources.

The Department of Corrections says it lacks personnel to compile and curate a comprehensive resource list. The department says it will continue to explore funding options and partnerships with other agencies or entities that could mutually benefit from a statewide list.

TAILORING REENTRY RESOURCES

South Dakota

Faced with a problem similar to Montana's, in 2012, South Dakota connected with the [Justice Reinvestment Initiative](#) through a U.S. Department of Justice partnership with the Pew Charitable Trusts.

[Analysis](#) found that American Indians accounted for 44% of offenders returning to prison for a parole violation in South Dakota, despite comprising 24% of the entire parole population. The initiative identified several challenges contributing to high failure rates, including residential conditions, limited access to services in tribal areas, and a limited ability for state agents to supervise American Indians on tribal lands.

In 2013, the South Dakota Legislature passed [Senate Bill 70](#), which among other things allowed the Department of Corrections to create parole supervision pilot programs tailored to tribal communities.

The Sisseton-Wahpeton Oyate (SWO) of the Lake Traverse Reservation in northeast South Dakota signed an agreement with the state in 2014 to allow the SWO to supervise parolees who returned to SWO tribal lands. Although the state pays for the tribal parole agent's salary, office space, and other expenses, the agent answers to the tribal council and a Wellness Team. The team works with the parole agent and parolees to access services and provide appropriate supervision, support, and responses to violations.

The program requires the tribe to return parolees to the Department of Corrections if they violate terms of their supervision and the parole agent and the Wellness Team recommend revocation.

Before the pilot program, the parole success rate for SWO members was 43%. In the first 2 years of the pilot program, that climbed to 72%. The absconding rate also dropped.

In July 2016, the program became permanent.

Flathead Reservation Reentry Program

In Montana, the Confederated Salish and Kootenai Tribes' Tribal Defenders Office implemented a reentry program for the Flathead Reservation to help connect offenders with community resources, including

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chemical dependency and mental health treatment providers, financial assistance programs, housing, education, employment, transportation, and cultural mentoring and programming.

Statistics for the 313 participants who entered the program between February 2016 and August 2018 include:

- 77% unemployed
- 12% part-time or seasonally employed
- 68% in unstable housing
- 82% with co-occurring mental health and substance use disorders
- 48% report clinically significant symptoms of Post Traumatic Stress Disorder
- 76% at medium to high risk for reoffending
- 81% are parents

The program found frequent thoughts about historical losses (e.g., colonization, prohibition on practicing traditional beliefs and languages, family history of boarding school experiences, ongoing economic depression, discrimination, personal trauma) were associated with a reduced likelihood of recidivism, while increased anger and avoidance of those thoughts appeared to be a risk factor for recidivism. The program suggests that interventions (either preventive or through reentry programs) could focus on addressing historical loss and its associated symptoms (e.g., anxiety, depression, anger, grief, substance abuse) as well as increasing access to and participation in cultural activities.

Participants had a 100% recidivism rate upon entering the program. Afterward, their recidivism rate dropped to 35.5%.

Funding for the program ends September 30, 2018. The Tribal Defenders Office is seeking a new grant.

Missoula County Detention Facility

Between January 2017 and March 2018, Missoula County implemented the [Native Outreach Project](#) using a \$50,000 grant from the John D. and Catherine T. MacArthur Foundation, which partnered with the Urban Institute to support innovative local justice reforms designed to safely reduce jail populations while maintaining or enhancing public safety.

The project aimed to address the disproportionate number of American Indians incarcerated at the Missoula County Detention Facility (MCDF) by implementing culturally centered programming for offenders and providing cultural awareness training to staff. The project team hoped to learn more about Indians' perceptions of and experiences with culturally relevant services, how Indians engage with their cultural identity while incarcerated, and how incarceration may affect their life plans and future goals.

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During the project, team members conducted culturally based sobriety and well-being programs geared specifically for American Indian men and women. The team also interviewed the project's 22 participants and found:

- different levels of engagement with their American Indian identity;
- most were married and had children;
- 18% had a family member who is or was incarcerated;
- religious and cultural practices are limited at the MCDF;
- culturally specific programming is the most meaningful;
- a perception of preferential treatment to certain individuals for access to services;
- hesitation to ask for help because of past trauma or negative experiences in the MCDF;
- the MCDF administration can be unresponsive to repeated requests or leave issues unresolved despite multiple communications;
- knowing how to navigate the system can be a roadblock for those who want to participate in programs and services;
- 86 percent felt the MCDF had not prepared them for release or to pursue their postincarceration goals;
- nearly 60 percent planned to stay in Missoula upon release.
- approximately half were aware of general resources available to them postrelease. Sixty-eight percent were aware of culturally specific resources in Missoula.

Participants made a number of recommendations related to reentry, including:

- expand programs and services specific to American Indians, particularly for employment placement and housing services;
- conduct direct outreach to American Indian offenders because many have a hard time asking for help. This would include outreach in the MCDF so offenders are aware of programs and services available upon release.
- establish a tribal reentry program facilitated between the MCDF and the Missoula Indian Health Center to connect offenders with American Indians on the outside upon release;
- establish sobriety and well-being groups within the community for continued attendance upon release.

Related to cultural practices, participants also recommended that the MCDF:

- provide books on sobriety and recovery that are specific to American Indians in the facility's library;
- allow individuals to participate in ceremonial practices, such as smudging, prayer, organized song, and the carrying of medicine pouches;
- provide additional sobriety and well-being programs and talking circles that are specific to American Indians;
- provide American Indian language or cultural classes;
- establish a peer mentorship program with American Indians who have been previously incarcerated.

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STRC DISCUSSIONS

In March 2018, the STRC held a [panel discussion](#) with representatives of the Flathead Reservation Reentry Program, the MCDF Native Outreach Project, and reentry services in Billings to learn more about their work with American Indian offenders. Based on the discussion, the STRC honed in on a need for more culturally based programming.

Culturally Based Programming

The STRC asked staff for [information](#) about creating an American Indian reentry program for Montana but did not opt to move forward with the concept at its May 2018 meeting. Instead, the STRC developed [LCsj31](#) in concert with MCDF Native Outreach Project team members. The proposal would create a reentry cultural programming grant for programs that serve American Indian offenders with multifaceted, traditional practices to provide recovery support, recidivism prevention, and community resource referrals.

In response to difficulties offenders have finding housing upon release, the committee also developed [LCsj32](#), which would set aside a specific percentage of available supportive housing funds for programs that serve American Indian offenders. At the recommendation of the 2015-2016 Commission on Sentencing, the 2017 Legislature enacted the supportive housing grant program via [Senate Bill No. 65](#) and provided a one-time appropriation of \$400,000. The Board of Crime Control awarded those funds to programs operated by the City of Billings, Missoula County, and Ravalli County in early 2018.

Peer Support

The STRC also heard about the potential for using [peer support](#) to assist offenders upon release. The 2017 Legislature passed another proposal championed by the Commission on Sentencing, [Senate Bill No. 62](#), which established a certification process for peer support specialists. However, there is no dedicated source of funding. The STRC learned that some facilities provide peer support through their existing financial resources while others receive substance abuse and mental health grants through the state for which peer support can be an eligible activity.

Legislative options include providing a specific appropriation for peer support or adding peer support as an eligible service for which providers may receive payment under the state Medicaid plan. The Department of Public Health and Human Services (DPHHS) is currently gathering data to determine whether there is evidence to make a case for the latter.

Initially, the STRC asked staff to draft a proposal to require future state grant disbursements that can be used for peer support to consider whether applicants would serve tribal communities. However, the concept proved complicated and a draft was not developed. Instead, the STRC advanced a bill ([LCpmed](#)) that would give DPHHS the authority to conduct rulemaking to include services provided by certified peer support specialists as a type of medical assistance covered under the Montana Medicaid program.

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Use of Tribal Defenders in State Courts

The 2017 Legislature asked that the SJ 3 study look at how the state could create a grant program to enable the Office of the State Public Defender to enlist tribal defense attorneys to represent tribal members in state courts.

Available funding at the state and tribal level is a primary obstacle. Ann Miller, managing attorney of the CSKT Tribal Defenders Office, told the STRC in May 2018 that, without funding, representing tribal members in state court is not feasible for her office.

Based on experience with the CSKT Reentry Program, Miller alternatively suggested creating a pilot project to fund [case managers](#) who could be hired by tribal governments or public defenders to help tribal members not only navigate the state court system, but also the collateral consequences of being charged with a crime (e.g., loss of housing, loss of job, child protection involvement, child custody complications, loss of financial assistance) and issues that might contribute to their criminal charges (e.g., mental illness, addiction, poverty, and implicit bias). Case managers would help clients find and connect to services.

The STRC did not move forward with such a proposal.

CONCLUSIONS

At its September 2018 meeting, the STRC adopted all three legislative proposals developed in response to SJ 3 discussions. They include:

- [LCsj31](#) (assigned as [LC 316](#), 2019) - creating the reentry cultural programming grant program. The bill defines cultural programming and provides a \$150,000 appropriation.
- [LCsj32](#) (assigned as [LC 311](#), 2019) - requiring a percentage of supportive housing grant program funding to be awarded to those serving American Indian offenders. The percentage would be based on the percentage of persons incarcerated or supervised by the Department of Corrections in the previous year who are American Indian.
- [LCpmed](#) (assigned as [LC 312](#), 2019) - giving DPHHS the authority to conduct rulemaking to include services provided by certified peer support specialists as a type of medical assistance covered under the Montana Medicaid program.