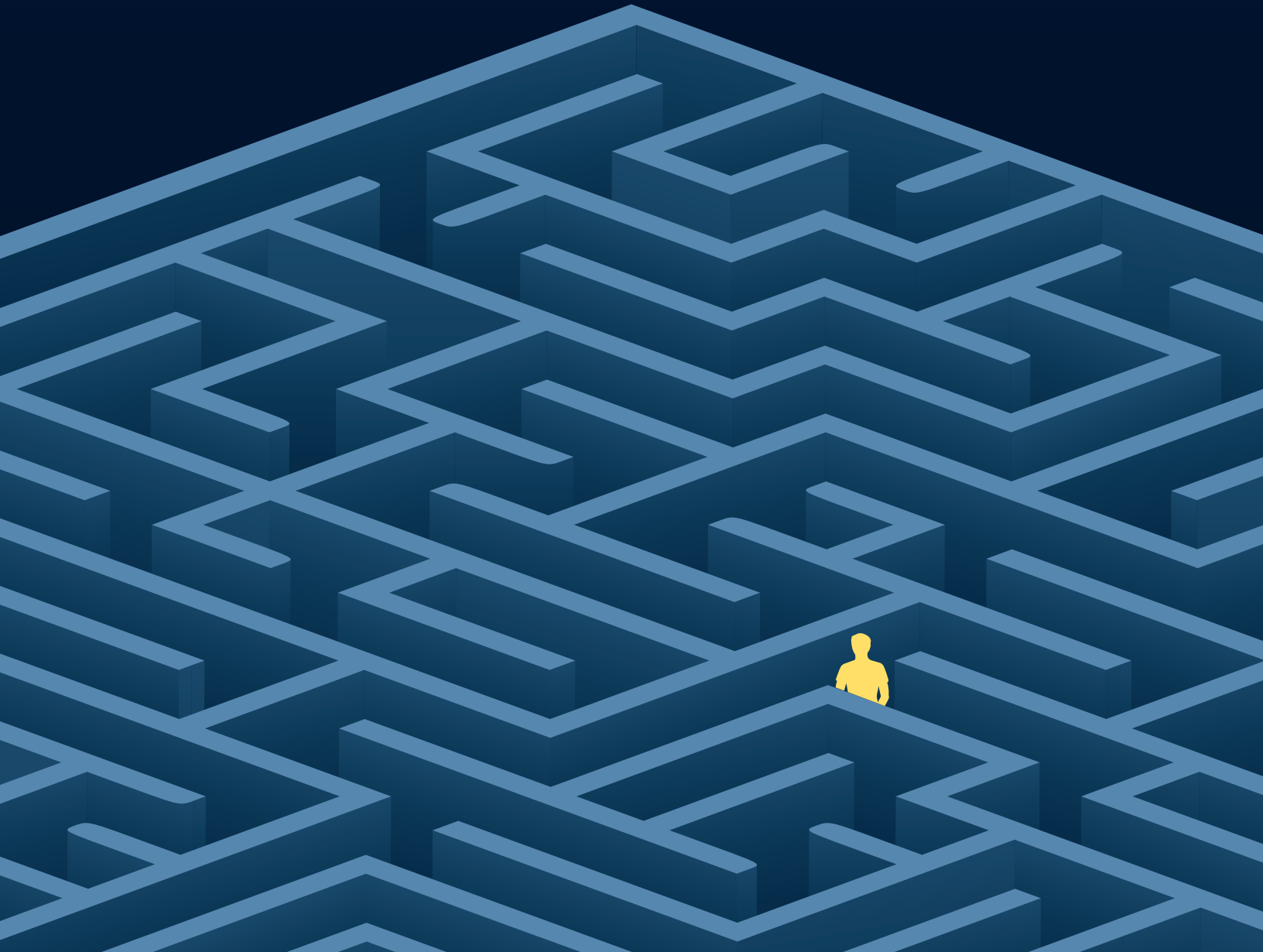




Set Up to Fail:

Montana's Probation & Parole System



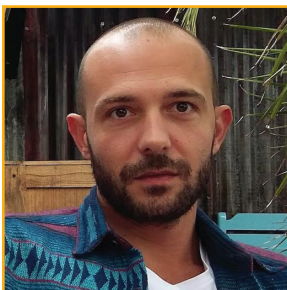
Acknowledgments

The ACLU of Montana expresses its deepest appreciation to those who contributed their time, expertise, and personal stories to this report. Those most impacted by the inequities and flaws of the probation and parole system are often forgotten in the fight to end mass incarceration. It is our goal that this report will spur Montana to become a leader in probation and parole reforms, decreasing the number of Montanans in our jails and prisons, and truly supporting the formerly incarcerated as they attempt to reintegrate into their communities.



Sarah Mehta

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Robin Gomila

Robin is a PhD candidate in social psychology at Princeton University, studying the psychological processes underlying social change. He is interested in the interplay between social structures and psychological processes in the development of inequality. In his dissertation work, Robin asks: what leads (some) people to behave in counter-normative ways, and among those who do, what characterizes those who can influence their peers?

Table of Contents

We Need Your Help	5
<hr/>	
I. Introduction and Key Recommendations	6
<hr/>	
II. Methodology	9
<hr/>	
III. Background: Probation and Parole Revocation Around the United States	10
<hr/>	
IV. Revocation in Montana	15
<hr/>	
A. Factual Background	15
B. Legislative Background and Developments in Montana	17
C. ACLU Findings: Common Impediments to Success on Supervision	20
1. Access to Substance Abuse and Mental Health Treatment Upon Release	21
2. Check-ins and Transportation	31
3. Housing	36
4. Reentry Assistance	40
V. Impact of Probation and Parole on Indigenous Communities	45
<hr/>	
A. Health Concerns and Disparities for Indigenous People	46
B. Distrust of the System and Experiences of Discrimination	48
C. Lack of Cultural Programming and Competency Training for Probation Staff	49
VI. Conclusion & Recommendations	51
<hr/>	
VII. References	53
<hr/>	
VIII. Appendix A	57
<hr/>	
IX. Appendix B	61
<hr/>	
X. Appendix C	67
<hr/>	

We Need Your Help

Probation and parole feed mass incarceration. In Montana, we spend nearly \$200 million a year incarcerating people – either in prisons or through constant supervision under the probation and parole systems. Reducing incarceration means reducing the number of people stuck in the maze probation and parole create. As Montanans, as legislators, as people directly impacted by these systems, we must work to reform this system and free people who do not deserve to have their lives controlled by the government. Not only will this reduce incarceration numbers overall, it will obligate the state to spend less money on incarcerating and monitoring Montanans and more money on our most vulnerable populations.



Are you a state legislator interested in reducing the harmful impacts of probation and parole?

Please contact Director of Advocacy and Policy, SK Rossi, at rossis@aclumontana.org.



Are you a member of the public who wants to help us push for reform in the probation and parole system?

Please contact Advocacy and Policy Assistant, Zuri Moreno, at morenoz@aclumontana.org.



Are you a Montanan currently on probation or parole? Or a Montanan who was formerly on probation or parole?

Please share your story with us. Contact media@aclumontana.org.

I. Introduction & Key Recommendations

Instead of being an alternative to custody, **COMMUNITY SUPERVISION** (probation and parole) in Montana is actually a significant feeder of incarceration.

Around the country, millions of people are living under community supervision—more than twice the number of people in jails or prisons. Montana is no exception. According to the Montana Department of Corrections (DOC), as of June 2016, 60% of the DOC population was under community supervision through probation and parole.¹ Community supervision—meaning here, probation and parole—has historically been viewed as a preferable and more humane alternative to incarceration. But increasingly, high costs, stringent conditions, and lengthening lists of responsibilities associated with supervision have created an onerous regime that is anything but rehabilitative. Far from being an alternative to custody, community supervision in Montana is actually a significant feeder of incarceration.

In Montana, hundreds of people—462 people in 2017—are incarcerated each year for technical or compliance violations of probation or parole. State research demonstrates that most of these individuals are returning to custody as a result of a violation of their supervision rules as opposed to the commission of a new crime. Indigenous people, already significantly overrepresented in the Montana prison system, are also more likely to return to prison for a technical violation. Between 2010 and 2017, 961 Native Americans were incarcerated as a result of a probation violation, 81% of whom were placed in custody for a compliance or technical violation of their probation—not for a new crime. Comparatively, white people were 5% less likely to return to prison for a compliance or technical violation.

In the last year, Montana has made important legislative changes to address the procedural reasons that lead individuals into state custody for technical or compliance violations. The state's acknowledgment that prison should generally be reserved for those who are actually committing crimes is critical in creating a cultural shift away from incarceration. However, in the absence of meaningful reentry and community rehabilitative services, it is likely that people will continue to incur supervision violations and enter or reenter state custody as a result of those violations or related new crimes.

ACLU research, conducted between November 2017 and March 2018, suggests that the primary reason for which people are

unsuccessful on community supervision is a combination of unmet treatment needs (for substance abuse and mental health in particular) and unmanageable costs associated with supervision requirements. Of the 94 individuals who responded to the ACLU's questionnaire, 45% said they had a history of mental health issues and 61% reported having substance abuse issues. Thirty-five percent said they had no housing when they were released to the community on supervision, and few people reported having any transportation to get to work, meet with probation and parole staff, or attend treatment.

The existing supervision system penalizes people on supervision for the ABSENCE of SERVICES and assistance in the community, neither of which they can control. This is counterproductive and harmful not only to those on supervision, but to their communities, families, and public safety.

Around the country, research now shows that supervision fines and fees levied on an impoverished population are counter-productive, ineffective, and fundamentally unjust.² In Montana, the costs of being on supervision are numerous—treatment, check-ins, rent for pre-release programs, etc.—and these costs weigh heavily on people already grappling with poverty, substance abuse, and mental health issues who are trying to rebuild their lives in the community and meet family and other responsibilities. At the same time, these heavy costs are not matched with services that help people on community supervision to be successful. People on parole or probation in Montana still aren't able to find, access, or afford critical social services and substance abuse treatment. This is particularly true for Indigenous people given the dearth of resources available on reservations, prevalent health disparities, and discrimination Indigenous people face in accessing services.

The current probation and parole system builds unnecessary and sometimes paralyzing obstacles across all demographics that delay people from getting the help they need, but the primary obstacle to successful reentry is the lack of services. Without treatment, housing, transportation and other basic services, people under supervision are unable to meet the conditions and responsibilities—as well as costs—imposed by supervision. Instead of providing support and incentives to comply and be successful on supervision, the existing system penalizes people on supervision for the absence of services and assistance in the community, neither of which they can control. This is ultimately counterproductive and harmful not only to those on supervision but to their communities, families, and public safety.

Key Recommendations to the State of Montana

People on parole or probation in Montana still aren't able to **FIND**, **ACCESS**, or **AFFORD** critical social services and substance abuse treatment.

1. **FUND** community mental health and substance abuse treatment programs so that individuals can have their treatment needs met without reentering DOC custody and can be more successful on community supervision;
2. **DEVELOP** individualized community supervision plans with realistic goals that identify an individual's needs as well as their responsibilities;
3. **SHORTEN** community supervision terms;
4. **PROVIDE** reentry planning for individuals released from state custody to ensure basic needs (such as housing, continuity of medical care, etc.) can be met;
5. **RECRUIT** Indigenous staff for parole and probation offices and provide regular cultural competency training for all staff;
6. **INVESTIGATE** and develop alternative check-in methods for people living in rural or tribal areas given the lack of transportation options



On the road to Colstrip, Montana.

II. Methodology

It is our goal that this report spurs Montana to become a leader in **PROBATION AND PAROLE** reform, decreasing the number of Montanans in our jails and prisons, and truly supporting the formerly incarcerated as they attempt to reintegrate into their communities.

This report is based on data obtained from the Montana Department of Corrections (DOC); interviews with service providers, advocates, correctional staff, and individuals on supervision and their families; and questionnaires sent to individuals in DOC custody between December 2017 and March 2018. In October 2017, the ACLU submitted a data request to the Montana Department of Corrections for information regarding probation and parole. Specifically, the request sought information regarding the demographics of individuals who were returned to custody for violating parole or probation. The information received from the DOC in February 2018 was analyzed by Robin Gomila, Ph.D. candidate in social psychology and social policy at Princeton University. The data requests and responses that the DOC provided, as well as Mr. Gomila's analyses, are provided as Appendices A-C to this report.

The ACLU conducted in-person interviews in Montana in February 2018, did interviews by phone between November 2017 and February 2018, and sent questionnaires to people in 14 jails, secure facilities, or community corrections facilities across the state of Montana. Of the 94 individuals currently or formerly on supervision who either responded to the questionnaire or were interviewed by phone or in person regarding their experience on community supervision: Forty-two identified themselves as women and 52 identified as men; 31 individuals identified themselves as Native American; 56 individuals identified as white; three individuals identified as Black; one as Black and Asian; one as Latino; and one as Latino and white. Two people did not provide a race/ethnicity. Of the 31 individuals who self-identified as Native American, 14 were women and 17 men.

To encourage individuals on supervision as well as state, tribal, and non-governmental staff to be open and forthright about the challenges and pitfalls of the existing system, this report does not identify by name the individuals interviewed. The first name and first initial of the last name is used for individuals in custody who authorized the use of their name and story.

III. Background:

Probation & Parole Revocation Around the United States

The number of people on probation and parole has increased four-fold since 1980; at the same time, the number of conditions for those on supervision and the average workload for caseworkers have also increased.

In the United States, in addition to the two million people in jails and prisons each day, approximately 4,650,900 people are under community correctional supervision.³ This includes people who were released on parole after serving a portion of their sentence in custody, people who are on supervision after incarceration, and individuals who were given probation as an alternative to time in prison.

The number of people on parole and probation has increased four-fold since 1980; at the same time, the number of conditions for those on supervision and the average workload for caseworkers have also increased.⁴ According to a recent report by the Columbia Justice Lab on mass supervision, the number of probation conditions—and conditions with a financial obligation—have multiplied over the years as probation has become more punitive in design and impact.⁵ The expansion of supervision conditions without a parallel increase in resources and services has resulted in a huge number of people being revoked for violating their conditions of supervision.⁶



Across the country, the probation and parole system is pushing people back into the criminal justice system instead of fulfilling its mandate to help people reintegrate into and succeed in their communities.

What is a Compliance Violation?

Under Montana law, a “compliance violation” is a violation of the conditions of supervision that is not a new criminal offense, possession of a firearm in violation of a condition of probation, behavior by the offender that is threatening to the victim of the offense or a member of the victim’s immediate family or support network, fleeing, or failure to enroll in or complete a required sex offender treatment program or a treatment program designed to treat violent offenders. Basically, a “compliance violation” means you broke the rules of your probation but you didn’t actually commit a new crime. Compliance violations are sometimes referred to as “technical” violations.

Information about recidivism is imperfect, given significant differences in how states categorize recidivism and also differences between states that have post-release supervision and those that do not.⁷ However, national-level data suggests that approximately three-quarters of released prisoners came back into contact with the legal system, with many individuals on probation or parole incarcerated as a result of violating their supervision requirements.⁸ Between 1990 and 2004, around the United States, the number of probationers revoked for non-compliance grew by 50% (from 220,000 to 330,000).⁹ Research from Professor Michelle S. Phelps shows that, in the mid-2000s, 33% of people in jail and 23% of people in prison were on probation at the time of their arrest. Around 25% of those had been re-incarcerated solely for a technical violation of their probation.¹⁰ A 2017 study by the Marshall Project, based on a survey of 42 state corrections departments (including Montana), similarly found that more than 61,250 individuals were incarcerated for technical parole violations.¹¹

The reasons why people may be unable to comply with probation or parole conditions are multiple, and not every violation leads to revocation or a custodial sentence. But in general, around the country and certainly in Montana, people under state supervision are contending with interrelated obstacles including mental health issues, substance abuse, and the challenges that accompany poverty. These include lack of transportation, housing, and insufficient income to pay for fees, services, and treatment or to provide a safety net during transition from prison to the community.

Many of the costs frequently borne by people on probation or parole—for example, drug testing, GPS monitors, and treatment—were originally paid for by the state, but fiscal pressures have now pushed these costs onto the individuals on supervision.¹² Dan

Beto, a former probation director in Texas, observed that the increased conditions and their heavy costs have created a “sense of hopelessness” among many people on supervision, while also dramatically altering the function of probation officers (POs): “[W]ith [the] introduction of these financial conditions of probation, the role of the probation officer changed; no longer are they agents of change, but rather they have assumed the job of collection agent.”¹³ Similarly, Michael Jacobson, former commissioner of New York City Probation, and his colleagues wrote that the rising case load and lack of resources for probation officers has made it impossible for most officers to provide tailored sanctions or responses when people violate their conditions of supervision:

Few probation agencies have the ability to “step up” people on probation who technically violate (or are at risk of violating) to drug treatment, cognitive behavioral therapy, or employment programs. As a result, probation officers with little to no resources, eager to manage risk and their large caseloads, default to the most available option they have — the most expensive and punitive option — the formal violation process which often results in jail or prison.¹⁴

The research demonstrates that probation and parole terms, instead of replacing prison, are now a feeder for incarceration. Instead of serving a rehabilitative function, probation and parole—or rather, the supervision and compliance conditions of probation and parole—make reentry difficult if not impossible for the indigent. As the former Massachusetts probation commissioner Ronald Corbett wrote, many people involved in the criminal justice system reportedly prefer a short incarceration sentence to supervision because “probation is not viewed as an act of grace or a second chance at law-abiding living but rather a staging area for eventual imprisonment.”¹⁵ This may hold true even where probation programs or conditions include rehabilitative treatment. Law professor Cecelia Klingele observes that many studies of probation have found that people who are given rehabilitative interventions including counseling or drug treatment are more likely to be revoked than those who are not given those services: “Researchers have attributed this result to the higher level of visibility and surveillance that attach to state-imposed interventions, however benevolent their design; in short, more conditions tend to mean more opportunities for violation and detection.”¹⁶ This may be particularly true and problematic for poor people—and particularly poor people of color—where risk assessment tools may exaggerate the risk of recidivism and lead to more and stricter supervision requirements.¹⁷ Studies further suggest that some of the primary factors influencing desistance from crime such as age or personal history “bear little connection to the conditions and programmatic interventions imposed by sentences of community supervision.”¹⁸

In response, some researchers and officials are advocating for the reduction or even elimination of probation. Former New York probation commissioner Michael Jacobson and others have recommended shortening or eliminating probation terms for low risk

individuals, utilizing instead conditional discharges or informal, unsupervised probation.¹⁹ Acknowledging that some probation departments “‘make a living’ off the fines and fees they charge probationers,” these professionals suggest that departments should be allowed to reinvest the savings from reduced caseloads back into services for individuals who are “high risk” and need more services. New York adopted this approach and is now able to spend twice as much per client as it could 14 years ago, essentially doubling the department’s budget.²⁰

Some states are exploring early termination of parole or probation terms after a successful period of compliance, offering individuals an incentive to comply with supervision terms early on at the time when they are most likely to be re-arrested.²¹ The 2017 Council of State Governments Report to the Montana Commission on Sentencing similarly recommended that probation officers recommend early conditional discharge for people who are complying with the conditions of their supervision.²² Though this policy was adopted in 2017, it may not immediately result in a huge reduction of the supervision population in Montana, if one of the core causes of criminal conduct and supervision failure—substance abuse—is not addressed through community-based care and programs. However, longer supervision periods hamper reentry and are difficult even for people who are doing well on probation.

The Columbia Justice Lab report on “mass supervision” was accompanied by a statement signed by 35 current and former community corrections administrators, in addition to every major national community corrections organization (the American Probation and Parole Association, the Association of Paroling Authorities International, the Association of State Correctional Administrators, the International Community Corrections Association, the National Association of Pretrial Services Agencies, and the National Association of Probation Executives).²³ These officials and organizations wrote that the exploding growth of community supervision was a core contributor to the prison system and, far from being a cheap alternative to incarceration, was straining public resources given the high volume of cases on supervision: “Public resources for community corrections have been stretched, fostering large caseloads and inadequate programming and, in some cases, forcing community corrections agencies to rely on fees from impoverished clients for their very existence.”²⁴

Every major national community corrections organization and 35 individual corrections experts signed a statement listing these **6 key reform recommendations:**



1. **RESERVING** the use of community corrections for only those who truly require supervision.
2. **REDUCING** lengths of stay under community supervision to only as long as necessary to accomplish the goals of sentencing.
3. **EXERCISING** parsimony in the use of supervision conditions to no more conditions than required to achieve the objectives of supervision.
4. **INCENTIVIZING** progress on probation and parole by granting early discharge for those who exhibit significant progress.
5. **ELIMINATING** or significantly curtailing charging supervision fees and instead,
6. **PRESERVING** most or all of the savings from reducing probation and parole populations and focusing those resources on improving community based services and supports for people under supervision.²⁵

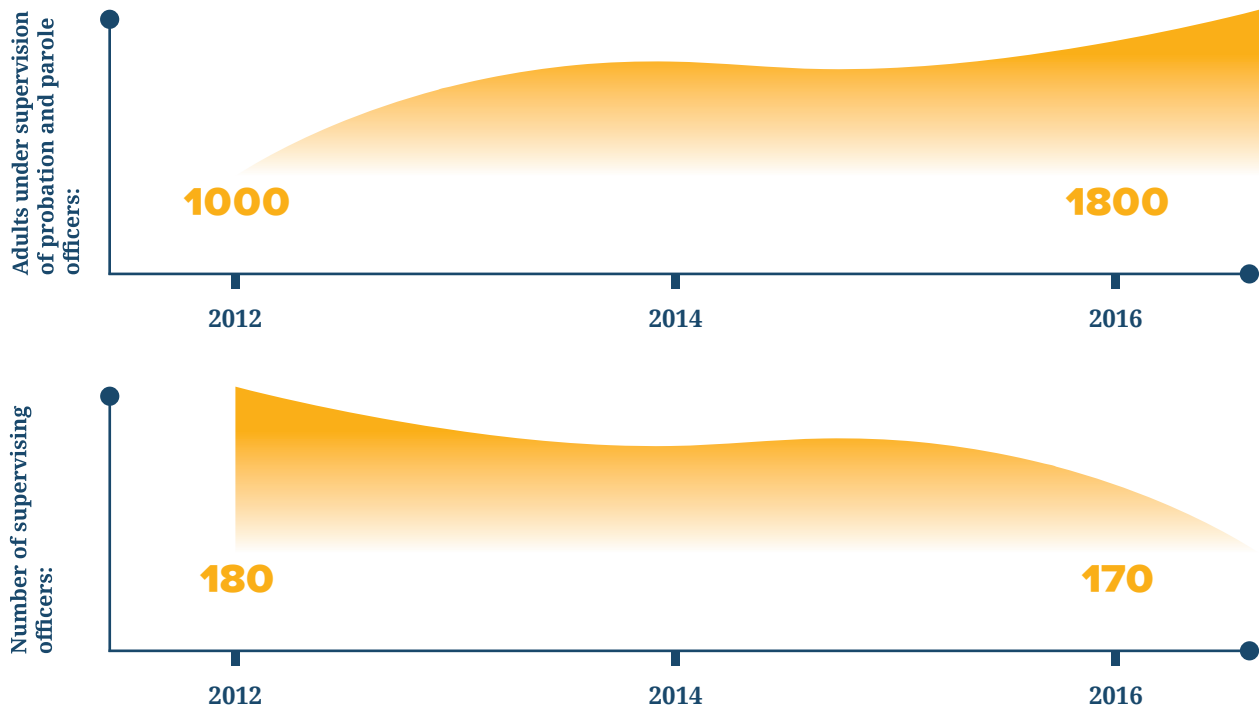
As discussed below, many probation or parole conditions are a real obstacle to reentry, adding impediments to community reintegration instead of facilitating rehabilitation. However, even if conditions like check-ins and program participation did not exist, people with addiction and substance abuse issues may still recidivate and return to custody on a new charge or be unable to comply with core conditions like securing housing and a job. For these individuals to be successful living independently and/or on community supervision, the state must view meaningful treatment and related assistance as a pre-condition to success on supervision, rather than the goal of supervision.

IV. Revocation in Montana

Despite being only 6.5% percent of **MONTANA'S POPULATION**, Indigenous people comprised 20% of the men's state prison population and 34% of the women's state prison population in 2015-2016.

A. FACTUAL BACKGROUND

According to the 2017 Council of State Governments (CSG) Report to the Montana Commission on Sentencing, the primary source of growth in arrests, admissions to alternative facilities, and prison admissions is the substantial number of people revoked from supervision due to either technical violations or new crimes.²⁶ Specifically, between FY 2009 and FY 2015, arrests for revocations, violations, and failures to appear increased by 65% and were responsible for a 45% increase in total arrests in the state.²⁷ According to CSG's report, the supervision population is expected to increase by an additional 19% between FY2018-FY2023.²⁸ If revoked, people on probation spend an average of 23 months in prison (15 months for people whose parole is revoked).²⁹ At the same time that the number of people on supervision and the number of people returning to custody as a result of a revocation is increasing, the number of supervising officers has decreased in recent years.³⁰ This has an impact similar to what public defender and child protective service offices experience – line officers become overwhelmed, with less time to provide individualized, supportive supervision, choosing revocation over a deeper investment in the success of the probationer as a way to save time and conserve scarce resources.



This growth in revocations does not affect everyone equally. In Montana, the Indigenous population is significantly overrepresented in the Montana prison system. Despite being only 6.5% percent of the state population, Native Americans accounted for 19% of arrests and 27% of all arrests for supervision and failure to appear violations in FY2015 and comprised 20% of the men's state prison population and 34% of the women's state prison population in FY2015-2016.³¹ This already dramatic disparity is actually an underestimate of Indigenous incarceration rates, as Indigenous people convicted of crimes on tribal lands are incarcerated either by the tribal or federal systems, depending on the offense, and so are not captured by the DOC data.

According to data the ACLU obtained from the Department of Corrections, in the years 2010 through 2017, 3,703 men and 530 women were released on parole in Montana. Seventy-six percent of men released on parole were white and 20% were Native American. Among women released on parole, 67% were white and 30% were Native American. Of those released on parole, 26.33% of white men returned to prison for a parole violation. By contrast, 34.78% of Native Americans returned to prison for a parole violation.

Not all probation or parole violations receive a custodial sanction, but the DOC data indicate that individuals on probation who subsequently return to custody are overwhelmingly incarcerated for a violation of their probation, not for a new crime. In the years 2010 through 2017, 2,970 men on probation were placed in or returned to prison,³² of whom 71.55% were white, 25.32% were Native American, 2.83% were Black, and 0.30% were Asian. Approximately 27% of white men were sent (back) to custody for a new offense, whereas around 73% were incarcerated for a violation of their probation. For Native Americans, 19% were placed in custody for a new offense, whereas 80% were placed in custody for a violation of their probation. Among Asian men, approximately 78% were incarcerated for a probation violation compared with 22% for a new crime. The disparity was highest for Black men, with approximately 18% placed in custody for a new offense but around 82% placed in custody for a violation of their probation.

What is the difference between Parole and Probation?

“Parole” means the release to the community of a person incarcerated in a detention facility, subject to conditions set by the parole board and to government supervision.

“Probation” means the release by the court, without imprisonment, of a person convicted of a crime, subject to conditions imposed by the court and government supervision.

From 2010 to 2017, **78% of men and women** incarcerated as the result of a probation violation were revoked not for new crimes, but for breaking the rules of their supervision.

Males

	ETHNICITY	PROBATION TO PRISON	FOR NEW OFFENSE	FOR VIOLATION
	White	2125	26.73%	73.27%
	Nativam	752	19.81%	80.19%
	Black	84	17.86%	82.14%
	Asian	9	22.22%	77.78%

Females

	ETHNICITY	PROBATION TO PRISON	FOR NEW OFFENSE	FOR VIOLATION
	White	277	21.66%	78.34%
	Nativam	209	19.14%	80.86%
	Black	10	10%	90%
	Asian	3	0%	100%

Among women, during the same years, 499 women on probation were placed in or returned to prison, of whom 55.5% were white, 41.9% were Native American, 2% were Black, and 0.6% were Asian. Approximately 78% of white women in/returned to custody were incarcerated for a probation violation compared with 22% incarcerated for a new offense. Among Native American women, approximately 80% were incarcerated for a probation violation compared with 19% for a new offense. Among Black women, 90% were incarcerated for a probation violation compared with 10% for a new crime, and 100% of Asian women on probation and returned to custody were incarcerated for a probation violation.

B. LEGISLATIVE BACKGROUND & DEVELOPMENTS IN MONTANA

In 2017, the Montana Legislature passed a set of new laws on parole and probation. One issue addressed in this legislation is the way violations are treated—what leads to revocation and what sanctions can be imposed when a person violates supervision conditions. Recognizing that many people in Montana return to custody and/or have their probation revoked due to failure to comply with conditions, this legislation is an important attempt to recognize when violations are purely technical or compliance failures and also to curtail and guide the use of a custodial sentence.

One issue addressed in legislation passed during the 2017 legislative session is the way violations are treated—what leads to revocation and what sanctions can be imposed when a person violates supervision conditions.

Under Senate Bill No. 63, a probation and parole officer (PO) who suspects that an individual on supervision has violated a condition will look to an incentives and interventions grid – a tool that guides POs through different responses to a list of supervision violations – and may initiate an informal hearing on compliance without a formal revocation hearing.³³ In theory, this will decrease probation revocations by avoiding a formal hearing and give the supervisee and PO the opportunity to address the issue leading to non-compliance in a less pressurized setting. A person accused of a compliance violation will only be sent for a formal revocation hearing if “appropriate responses under the incentives and interventions grid have been exhausted.”³⁴ At a formal revocation hearing, the hearing officer can still order a person to detention or recommend placement in a community facility like a prerelease center.³⁵



The Montana State Senate in Helena, Montana.

Also under SB 63, if a judge finds that a person has violated the terms of their deferred or suspended sentence, the judge shall refer the matter back to the probation hearings officer if the violation is a compliance violation and the PO has not yet exhausted the responses required under the incentives and interventions grid.³⁶ If the violation responses have already been exhausted, however, the judge may (a) continue the suspended or deferred sentence without changing the conditions; (b) modify or add terms and conditions to the sentence; or (c) amend the sentence if it appears that the individual will not be responsive to further responses under the grid.³⁷ For example, the judge may order the individual to a residential treatment program or revoke a suspended sentence and require that the individual serve time in custody. SB 63 also requires POs to petition for conditional discharge (early release) for probationers if they have been in compliance with their probation conditions for a certain period of time determined by regular risk assessments. For example, if a probationer is determined to be “low risk” and has been in compliance for nine months, the PO is required by law to petition for conditional discharge.

This new law is significant in preventing—or at least severely limiting—revocation based on technical or compliance violations and overly long supervision periods for low risk probationers. But ultimately, many people who remain on probation or who qualify for conditional discharge will still struggle to comply with conditions due to poverty, health, and addiction issues. Similarly, the incentives and interventions grid may be unsuccessful if required programming is unavailable or if people must undertake a substantial financial burden to comply with the conditions. Expanding the range of penalties does not address the lack of opportunities and programs in the community – a necessity for success.

Our research and interviews to date suggest that, with or without the threat of a custodial sanction, people on supervision will be unable to move forward and be successful in reentry unless significant changes are made to:

1. Improve access to treatment for substance abuse;
2. Provide better, holistic and culturally appropriate reentry services; and
3. Reduce the costs of supervision.

As one tribal counselor observed, probation and parole officers can be flexible and tailor conditions to the individual’s circumstances, but “often probation and being on [probation] is the fact that keeps people from being successful.”³⁸

C. ACLU FINDINGS: COMMON IMPEDIMENTS TO SUCCESS ON SUPERVISION

The ACLU interviewed or corresponded with 94 individuals who were either on probation, had been charged with a probation or parole violation, or had their probation or parole revoked. Of those, 51% said their probation or parole was revoked at least in part because of drug use; 22% said their probation or parole was revoked at least in part due to alcohol use; 20% said it was revoked due to absconding.³⁹ Absconding is defined in law as intentionally concealing one's whereabouts from one's supervision officer. The definition leaves a great amount of room for interpretation, usually in a way unfavorable to those on probation or parole. Fourteen individuals did not list the specific condition violated. Of the 31 Native Americans who responded to the ACLU, 71% said their probation or parole was revoked for use of drugs and/or alcohol.



Of the many ways a person's probation can be revoked, only one violation is a standalone criminal offense outside of the probation and parole setting—**driving without a license**.

Other issues that people said contributed to or were the reason for their probation or parole was revoked included failure to get/stay in mental health, drug, alcohol, or sex offender treatment, missing check-ins, driving without a license, gambling, not having a living establishment, spending time with individuals with felony convictions, failure to pay fines or restitution, or being arrested for a new crime (before being convicted thereof). Only one of these, driving without a license, is a standalone criminal offense outside of the probation and parole setting, and even then it carries no jail time for the first offense.

Individuals interviewed or surveyed by the ACLU identified a number of problems with community supervision. Several interlinked issues were consistently raised by almost all: (1) lack of access to treatment upon release; (2) inability to check in with POs and transportation challenges; (3) lack of housing upon release; and (4) the lack of meaningful reentry services.

1. Access to Substance Abuse and Mental Health Treatment Upon Release

The absence of affordable substance abuse and mental health treatment in the community is both a primary reason people end up in the criminal justice system on the front end and also one of the greatest impediments to reentry and success on probation or parole. A Montana DOC official said that addressing mental health and substance abuse is essential to reducing the number of people coming to prison and returning to custody from supervision:

In terms of what interrupts people’s ability to have a quality of life to manage the large load that is a court judgment and navigate supervision, the most common challenge is addiction and co-occurring disorders. The main violations we see are addiction-related. The thing that creates success is a combination of having an available treatment program and having a positive social support system. Without the latter, there is a lot of financial stress.⁴⁰

As one advocate noted, getting treatment and assistance is really a precondition to success on supervision; complying with supervision requirements, finding work, and maintaining healthy habits and relationships often requires that a person has support and assistance first.⁴¹ Similarly, a tribal case worker observed that complying with supervision requirements while dealing with unmet mental health and substance abuse needs sets people up for failure: “People are told to go to treatment, get help, come back fixed. . . . It’s hard to follow all the rules—it would be hard for any of us. But then you add addiction and mental disabilities and it’s impossible.”⁴²

Many people on probation or parole in Montana have mental health conditions and may not have received treatment prior to their initial arrest. Of the 94 individuals who responded to the ACLU’s questions, 45% said they had a history of mental health issues. (Thirty individuals either did not respond to this question or said they were unsure.) 61% reported having substance abuse issues. (Twenty-seven individuals did not answer this question and 10 indicated that substance abuse was not a factor for them.) As noted above, among individuals who responded to the ACLU questionnaire or interview request, the most commonly reported probation or parole violation involved substance abuse.

While many probation and parole staff said they understood the impact of addiction and disease on a person’s ability to comply with supervision, some individuals on probation felt that their substance abuse concerns were not understood and were consistently penalized by the probation system.



Voices of Probation and Parole

Amanda H., who grew up in foster care and was diagnosed with PTSD, trauma, and depression, became dependent on alcohol and says her addiction has continuously impacted her ability to comply with probation conditions:

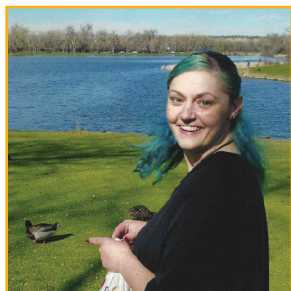
“Addiction is a disease but [probation officers] treat it as a choice. We didn’t choose to be addicts. Many of us have had childhood trauma that led us to where we are.”⁴³

Kendra K. said her substance dependency issues made compliance with probation conditions a challenge: “It would be nice to do your sentence on clean time. Then you know what you are doing with your life.”⁴⁴ Some probation and parole officers certainly recognize that unless and until those immediate treatment needs are met, compliance with supervision conditions may be unrealistic. As one DOC official observed:

There are things people with addiction can’t do. Even if they get transportation to a job, at some point they might not be able to work. This isn’t about people in the criminal justice system, this is about people, working class people who need assistance. And in the midst of this is my agency. We are trying to get people access to treatment and support. If we take care of people, that will minimize who is in the system.⁴⁵

Addiction or mental health issues were often the reason someone first had contact with the criminal justice system, and some people wrote that incarceration was their first opportunity to get treatment. However, being on probation or parole—even where treatment was required—did not ensure that people were able to access quality care in

the community. To the contrary, many people told the ACLU that their relapse in the community led to a probation or parole violation and then re-incarceration.



Featured Voice: Rhonda

Rhonda is 37 years old and grew up in Judith Basin County. In 2007, she was convicted of stealing \$390 from a hotel and two other non-violent crimes. Rhonda served three years in the Montana Women’s Prison (MWP) before being released on supervision. While under supervision, Rhonda was unable to carry a pregnancy to term because she had cancer. After this trauma, she began using drugs. When her probation officer (PO) sent her to Passages (an in-patient treatment and detention facility), she lost her job and her apartment. Rhonda could not find a job, a house, or an apartment upon release from Passages. She asked for help from her PO, but did not receive it.

Rhonda has a history of depression and wishes that before her supervision was revoked, she would’ve been asked if she was using drugs, if she asked for help while on supervision, and if she received the help she asked for. Since she has been in prison, she has lost her grandmother and sister and was unable to be with her mother during brain surgery for multiple sclerosis.

Rhonda hopes that by raising awareness about the flaws in the supervision system, other people will have a better chance – “no one should lose this much of there [sic] life incarcerated for anything short of murder and sexual crimes.”



Voices of Probation and Parole

One man with schizophrenia told the ACLU he violated his probation by using drugs and wished his mental health had been taken into consideration by the probation officers:

“I relapsed after mental health issues. I was on my way to the emergency room to get admitted to the psych ward and a friend called the cops, concerned I would commit suicide. Now I’m being revoked after two stays in a psychiatric ward and a serious suicide attempt.”⁴⁶

Several advocates and people on supervision noted that on the treatment side, it is understood that relapse is part of recovery—but that acknowledgment did not exist in the probation and parole world. One tribal counselor observed:

The benchmark of success is recidivism but relapse doesn't mean people aren't improving their lives along the way. We keep an eye out for what else a person is doing that can show progress and success. There is a misconception that relapse means failure or that a person has to hit rock bottom. We don't expect relapse [from our patients] but we don't tell a person that a relapse means they can't change.⁴⁷

Several individuals told the ACLU that asking for help from their PO resulted in a violation or more supervision and conditions—but not better or more affordable treatment. A tribal case worker said, “Criminalization of addiction is the biggest problem for our clients. We’ve had clients ask for help from probation officers and that just gets them more conditions.”⁴⁸ One woman who said she was dealing with substance abuse issues wrote that she wished her probation period had been an opportunity to get real help and treatment: “I personally felt that if my probation officer would have sat down and talked to me, really took the time to understand my situation with my drug use, I think we could have come up with a plan that was more effective than going back to jail without treatment.”⁴⁹



As the number of supervision officers declines, and the number of people on supervision increases, individualized and flexible **support becomes unrealistic.**



Voices of Probation and Parole

Margaret B., an Indigenous woman in prison after her probation was revoked, told the ACLU:

I get overwhelmed easily and ISP (intensive supervision plan) was hard. I told them when they put me on ISP that I was going to fail. I believe if I was on proper medication I would function better. . . . I struggle with depression, PTSD [and] I turn to drugs and alcohol to self-medicate. I believe if I was on proper meds I'd feel normal and not get overwhelmed with stress and give up on myself.⁵¹

Again, some POs understood that treatment, not incarceration, was the necessary response, but they did not have the ability to make treatment opportunities immediately appear. Said one DOC officer who works with people on probation:

“ The goal is to individualize the strategy to the offender and their risk level. The goal and ideal is to provide that structure and get you to a point where you are at your most productive. It doesn't mean you won't have issues. But hopefully they will have enough skills and they are committed to it so that if they drink and use again, they won't enter into the CJ system again. It's about whether we can get someone's quality of life better. I wish we had the ability to give super intense one-on-one attention but we just can't now as the numbers grow. We don't choose who is on probation; we are just the receptacle for what gets charged.”⁵⁰

Participating in treatment, when available, was often difficult for people with addiction or disabilities who didn't have assistance or support in the community. Yet failure to get treatment could result in a probation or parole violation.

Several people wrote to the ACLU that they wished they had had more time to get treatment and get set up in the community before their supervision regime started.

For most people the ACLU interviewed, the lack of mental health and substance abuse treatment in the community (combined with barriers to accessing treatment like transportation and affordability) made compliance with the rest of their probation or parole conditions almost impossible. Individuals released to the community after a custodial sentence said the transition back to their community from a controlled environment where treatment was consistent was traumatic and overwhelming. Several individuals wrote that they felt from the moment of their release that they were going to fail on supervision.



Voices of Probation and Parole

Michelle C., a 50-year-old former nurse with physical health as well as mental health and addiction issues, said: “You get back to the streets after being in a controlled environment where you have support, and you are put back in the community with no tools to adjust. . . . Life hits you when you get out.” Michelle, currently incarcerated for a violation of her probation, says when she was previously released, she was homeless and stressed, and as her physical health worsened, she returned to drug use. She says she hopes to find more long-term treatment in another part of the state when she is released:

‘When people leave jails, we are leaving in relapse mode. We leave hungry, angry, and tired. For people who are looking for change—if you don’t advocate for yourself, you can’t expect people to scoop you out of the hundreds and find help for you. People are in survival mode in these facilities and you can’t get past anything when you are in that mode. There needs to be more long-term services for people with addiction. It took my whole life to get to where I am now and it will take the rest of my life to deal with it.’⁵²

Individuals interviewed by the ACLU said that while they wanted treatment, programming, and assistance, the programs available and required for probation or parole were just “ticking a box” and seemed to be driven by the profit interests of the pre-release centers, rather than the individualized needs of the person on supervision. One tribal legislator, listing the numerous costs of probation and then the absence of jobs and housing once people return to the reservation, explained: “People are being pick-pocketed by the state. They are setting them up for failure in the rehabilitation process.”⁵³

Another service provider observed that most treatment options in the community—when they exist—are not affordable for people returning from prison, looking for work, and trying to comply with **supervision requirements and their related costs**:

“ **It’s a lot of money to save for treatment when people are making minimum wage.**”⁵⁴

Several advocates and people on supervision suggested a conflict of interest in sending people to mandatory treatment programs—even those that were in the community but part of the state correctional system—because of the expenses borne by the person on supervision who is required to participate in programs and related services. Said one man, who has been in and out of prison for decades (all for alcohol-related crimes and related probation violations):

“The whole system is designed around failure, not your success. **If you fail, they get money.**”⁵⁵

One service provider, who runs an urban sober living house said that the individuals she sees have often had extended and expensive stays in facilities like Passages, but these programs are not clearly responsive to the needs of the person: “There is no individualized plan for people with different treatment needs.”⁵⁶ Instead these programs—including required “rent” to be paid at non-residential facilities—may leave individuals in further debt and with fewer resources to seek out alternative assistance.⁵⁷

One state employee who works with people on pre-trial release and probation said that unless people receive custodial sentences, they cannot get into treatment programs; similarly, individuals released on probation are put on waiting lists because of the absence of services. “But the treatment period for meth addiction is a minimum of two years,” this provider noted, and gaps or delays in treatment interrupt progress and lead to relapse. One Indigenous woman, now back in prison for a probation violation, wrote that she was getting treatment, but “I need help, not prison.”⁵⁹ Similarly, individuals on probation mentioned that they often could not get into programming because it was unavailable in their area, there was a wait list, and/or programming was not consistently available so they had to wait for classes to restart.



Featured Voice: Kris

Kris is a 32-year-old mother of four. She grew up in Fort Belknap and is Gros Ventre/Assiniboine. After receiving probation for a criminal offense, Kris was required to complete out-patient treatment at the Carol Graham Home. She had been convicted of criminal endangerment, and the treatment program at Carol Graham was meant as a rehabilitative measure. When her baby became sick with R.S.V. (respiratory syncytial virus), it became impossible for Kris to complete the treatment programs required by her probation. She could not afford childcare and her mother, who usually helped her with the baby, was also too sick to help. Kris could not complete her treatment programs and simultaneously take care of her sick child. Because of this, her probation was revoked and Kris was sent back to jail. “My daughter was sick for 5 months w/ RSV and she couldn’t go to day care, and then my mom was sick and couldn’t help me with [my baby] so I got pulled and put back in jail because I couldn’t make it to treatment.”⁶⁰ Kris wishes that the probation office had helped her find solutions when her daughter was sick, instead of putting her “back in jail over day to day life issues.”

A man with mental disabilities wrote to the ACLU that he was suspended from his sex offender treatment because he was using drugs; he was then told he had to get another chemical dependency evaluation but the program still would not allow him to reenroll, even with the second evaluation.⁶¹ An Indigenous man who said he needed substance abuse counseling said, “You have to be in a chemical dependency program consistently but they are term classes and aren’t available on a year-round basis, and that gap has to be explained [to the probation office].” A tribal attorney noted that even getting the required evaluation involves delays and costs that probation and parole officers might not accommodate: “My clients need to get a chemical dependency evaluation, which they cannot get until they are out of jail. And then there is a backlog and few staff for these evaluations.”⁶³

Case workers similarly described the difficulty of getting people into community treatment given the shortages, waitlists, and costs: “Getting someone into treatment is really difficult. The first step is a chemical dependency evaluation and that’s only available two days a week, if you can get in and have \$25 in hand. A lot of people do not have that \$25. When people are asking for help, they need help right now. And after a while, if they aren’t getting anything, they give up.”⁶⁴

Moreover, as one counselor noted, while probation and parole services—and courts—may like to order a person to receive treatment, they are not medical professionals and are not best placed to decide whether such treatment is necessary:



In many of Montana’s rural communities, services and treatment programs required by probation and parole simply do not exist, which requires people to travel long distances to comply with their supervision conditions (Drummond, MT. Population 348).

When a probation officer orders treatment, if the person's assessment doesn't require in-patient treatment, they can't get in. But the officer may have ordered it anyway and then the person is facing a violation through no fault of their own. We can't give treatment that isn't warranted. A lot of system-wide advocacy and education is necessary. Some of the groups or programming are not relevant so [probation officers should not] tell people they have to do them. A lot of this is about developing relationships with probation to be able to communicate about appropriate treatment goals.⁶⁵

Some probation and parole staff told the ACLU they understood there were treatment shortages and costs that people on supervision could not meet, and it might not have been the officer's own decision to require treatment. Nevertheless, getting treatment and/or refraining from drug or alcohol usage remains a central supervision condition. Yet without community services, compliance with this condition is virtually impossible for the majority of people on supervision.



2. Check-ins & Transportation

Transportation is a critical issue, raised by every person the ACLU interviewed. In a large state like Montana, with virtually no advanced public transportation and few rural services or employment opportunities, the inability to get to work, treatment programs, and supervision check-ins is essentially a bar to an individual's success on supervision and reentry to the community. Twenty-six people told the ACLU they had to rely on friends for rides to work, check-ins with probation and parole officers, and treatment; nineteen said they walked or took a bus (when and if available).

The absence of transportation was frequently raised as an obstacle to reentry and compliance with supervision conditions—in particular, check-ins with the probation and parole officer. Amanda H. said, “I’m not allowed to drive so I have to take the bus everywhere. But where I live, I couldn’t get a job at night because so many buses stop at 7 p.m.”⁶⁶ One Indigenous woman with mental disabilities told the ACLU that she was not allowed to drive as a result of her conviction but was 60 miles from the nearest probation office.⁶⁷ A criminal defense attorney observed, “There are counties with no probation officer, and you have to go to them; and if you aren’t available when they want you to go, you get violated.”⁶⁸

“ I’m not allowed to drive so I have to take the bus everywhere. But where I live, I couldn’t get a job at night because so many buses stop at 7 pm.”

– Amanda H.

Being able to check in with POs in person and to show up at required appointments for drug testing and other rehabilitative programming requires a car or at least a drivers’ license in a rural state like Montana. However, many people on probation cannot afford their own transport, and some people are not permitted to drive, having had their drivers’ license revoked or suspended due to their conviction. Under Montana law, the state will revoke the driver’s license of an individual who is convicted of certain crimes, including negligent homicide resulting from the operation of a motor vehicle, any felony in the commission of which a motor vehicle is used, and fleeing from a peace officer.⁶⁹ The state will also suspend a driver’s license for an individual convicted of offenses including three reckless driving offenses committed within a period of 12 months or driving under the influence of drugs or alcohol.⁷⁰ While the defender office for the Confederated Salish and Kootenai Tribes (CSKT) has a driver restoration program, in most communities, there is limited assistance in getting a license back even for those eligible and with funds.

One tribal lawyer in the eastern part of the state observed, “Drivers safety training is also required for DUIs but there really isn’t a program on the reservation or the county.”⁷¹

One man who said his drivers’ license was revoked explained that not having transportation and yet having a curfew, work responsibilities, and check-in obligations made success on probation feel impossible: “I told my officer I can’t keep coming to the office so many times a week because it was affecting my job. I had no transportation to the P&P office and 3 or 4 times a week I was forced to leave work and walk miles and miles to get there.”⁷² One case manager who works with people on probation said that poverty stops many people from getting a drivers’ license, which impacts their ability to get work: “Most jobs require a drivers’ license. For some people \$200 is holding them up from getting a license and then a job.”⁷³

Juveniles on community supervision also face real difficulties in complying with probation requirements when they do not control their transportation and their families are already overburdened with work, childcare, and other responsibilities. As one teacher told the ACLU, “The officers think, this is serious and their families will get them there. And it is serious, but so is poverty.”⁷⁴ One mother whose son had spent his youth in and out of detention facilities said that even though he is now an adult, he needs significant support in navigating basic social services and getting to appointments: “[H]e needed someone to help him transition into adulthood. When a kid has never had a normal life and experienced being a teenager, they have no idea what to expect or how to negotiate things. He was required to go get groceries and go to therapy and he had no idea how to get to therapy or where a store was.”⁷⁵



Montana is the fourth largest state in the country. The public transportation system in Montana is sparse as a whole, and only a few cities have local bus networks, which have limited service hours.

Similarly, several people on reservations and from rural areas mentioned the difficulty of staying in contact with probation and parole officers when a telephone check-in was not a local call and it often took several calls to get in touch with one’s officer. One attorney in tribal court observed that many of her clients don’t have their own phone. With the burden on the person on supervision, many people dealing with poverty are unable to comply with check-in conditions: “The probation officers need to follow up themselves and have a human interest instead of just waiting for the defendant to call in. It could be a more proactive approach.”⁷⁶

Against All Odds:

Melissa's Story of Success in Spite of the Criminal Justice System



Shelby, MT is an 85 mile drive from Great Falls.

My name is Melissa Smylie. I am a mother, a former AmeriCorps member, and student. I also have three felony convictions and a hefty handful of probation violations. I have reclaimed my life, but re-entry into life after being convicted and incarcerated was hard. The barriers the probation system created made recovery nearly impossible. I was successful because I found ways to get active, volunteer, and be of service to others. I filled my days with this, so that I wouldn't be thinking about giving up. When a person is on probation, they are not allowed to drink. You aren't allowed to go into any drinking establishments, even if your conviction had

nothing to do with alcohol. In 2008, while on probation, I was caught drinking and received a probation violation. I pled guilty to the violation and was resentenced in the Department of Corrections (DOC).

Attached to this sentence was a requirement of treatment at the Elkhorn Treatment Center and nine months detention at a pre-release center, but at the time of my sentencing, no bed was available in the Elkhorn facility. I was sent to a women's community-based correctional facility, where I spent five months waiting for a bed at Elkhorn. That's five months of my life I could've spent at home with family but couldn't, because there weren't enough treatment beds available.

It was during my time at Elkhorn that I realized I didn't have a drinking problem, I had a thinking problem – I had a constant feeling of hopelessness, of being unable to escape the hold of my convictions and violations. Eventually, I successfully completed my treatment at Elkhorn and was released into the Great Falls Pre-Release Center. Shortly after arriving at pre-release I found out that a Montana law allowed for the remainder of my sentence to be suspended. I walked out of the pre-release center and back into probation supervision seven months early, not because the authorities told me I could, but because I did my own research. No wonder detention facilities are overflowing.

In Great Falls, I had a job set up before I walked out of the pre-release center. But then, upon release, I was told I had to report to the Shelby probation office within 24 hours. I drove to Shelby from Great Falls in order to meet this requirement – 85 miles one way. For some reason, my PO (probation officer) in Shelby was quite livid that I had somehow found a way to avoid serving the full sentence in the pre-release and was once again on her caseload. She immediately saw me as a burden when I thought I was being resourceful.



Melissa graduating from UGF in 2016.

that my probation officer was also calling these locations and providing employers with bad information about me. I was not receiving any job offers because of that. I felt like she actually wanted me to fail and go back to jail, no matter how hard I was trying to keep it together.

I finally got offered a job doing the bookkeeping for Lucky Lil's. Per rules of probation, I was not allowed to gamble or be in a casino. I explained to my PO that the office was separate from the casino. The PO refused to allow me to work there. I felt that I was out of options since employment in Shelby is limited.

Shortly after realizing that I had run out of options for employment, a probation officer in Shelby had me picked up out of Toole County on a "no bond" hold, hoping to send me back to the women's prison. The no-bond hold is a tool used by the DOC to hold probationers in custody without bond while they build a case against you for probation violations. You have no access to a lawyer, witnesses, or family members. Then, 72 hours later the PO and a hearings officer will tell you what you're guilty of and then you go to prison. The "no bond" hold ordered by my PO was actually improper and I was eventually released. I went before a judge once my PO officially recommended I be revoked from probation.

During that initial visit, I was informed that I would not receive a travel permit to commute to my job in Great Falls. My probation officer informed me that she would bring charges against me if she caught me driving at all, even though I had a valid driver's license. She communicated that she felt my license should have been revoked over the DUI that was formally dismissed the year before. This meant I had to quit my job in Great Falls and move to Shelby. In one meeting, she took away my transportation and my job. She then told me I had to find another job immediately or she would hit me with a violation.

Being on probation meant I had to follow a lot of rules. It felt like the probation officer was in charge of my life, but never acted as an advocate. I felt like I was the only advocate I had, to make sure that I could get past my term of probation and accomplish the goals I had. For the next few weeks, I applied for jobs and only got calls back from the places that were not in contact with my probation officer. After following up with a couple of places, I learned

Once in front of the judge, I learned why I was picked up and being accused of violating my probation. The charges in the violation from the probation officer read: “Melissa continues to run amok.” Confused and frustrated, I asked for her to be more specific because I was not pleading guilty to that. The violation also charged: “Melissa continues to be a menace to society,” and again, I asked her to be more specific. Finally, the last charge was: “Melissa fails to work an honest program.” And I refused to plead guilty to that either. Although I received tremendous pressure from my own public defender to plead, I continued to refuse. I knew that I had to advocate for myself – I was not going to plead to things that had no basis in fact.

While waiting for my bond to be posted, I was visited by the regional probation officer. He informed me that I would need to make arrangements for moving to and living in Great Falls upon my release. He thought I would not get a fair chance if I were to return to Shelby. So, upon release, I did as I was told, left my family in Shelby, and came back to Great Falls. My daughter was still in Shelby, with my mom. I asked for a travel permit from my new PO in Great Falls to go up and get her. Instead I was told to contact Child Protective Services (CPS) in Shelby.

I thought the move back to Great Falls would be beneficial. There are more employment options here. I thought I would be free from the frustrations of my probation officer. Instead, I began to battle to get my daughter back. My PO in Shelby was working with Shelby CPS to convince me I would be going to prison soon for the baseless probation violations I had been accused of. They said I should leave my kiddo with my mom. If not, the CPS officer would get an emergency custody order from the state. I made it clear to CPS that I would not be pleading guilty to the violations and that he had no grounds for investigating my custody of my own child. Once the CPS officer was convinced I would not give up custody of my child, he agreed that there were no legal grounds for them to keep us apart any longer and he would call my PO and let them know I could parent again. I couldn’t believe that instead of helping me figure out a way to maintain a connection with my child, my PO made it sound like I should be willing to leave her.

Our society sets up so many barriers for individuals affected by the criminal justice system. For the next six months of my life, I wasn’t allowed to get food assistance because of this. I was told that I couldn’t sign a lease agreement until the “running amok” charges were settled. And I was told I would not be able to go to college because of this legal uncertainty. Hungry, homeless, and underprivileged is where I landed while on probation.

Since 2010, I have successfully completed five years of college to earn a bachelor’s degree in Paralegal Studies from the University of Great Falls. I continue to share my story, hoping to raise awareness about the pressure to plead and how the probation system continues to drive prison rates up every year. I will continue to be part of conversations that help to address issues like probation and parole, pressure to plead, and re-entry, as I have lived it and survived it, against all the odds.

3. Housing

Returning to the community to find work and rebuild one's life is particularly difficult given housing shortages, costs, and restrictions. Thirty-three individuals (35% of questionnaire respondents) said they had no housing when they were released on probation or parole, with four individuals saying they remained homeless until returning to DOC custody for a probation violation. Going to prison often resulted in people losing their housing for a variety of reasons: because of the conviction; defaulting on payments while incarcerated; being unable to return to their shared home because another occupant had a felony; or because of lost ties while incarcerated. Upon release, individuals told the ACLU they had to figure out how to balance the costs of housing with the numerous fines and fees related to restitution payments, treatment costs, transportation, and other costs related to their supervision. One man, who says he had bipolar disorder as well as other mental disabilities and substance abuse issues, wrote to the ACLU that between child support payments, medication costs, required programming, and transportation costs, he was repeatedly homeless after being released on probation.⁷⁷

Thirty-three individuals (35% of questionnaire respondents) said they had no housing when they were released on probation or parole.

Housing is particularly challenging for Indigenous people returning to reservations, unless they have family housing available, given severe public housing shortages on tribal lands. Native families, for cultural as well as economic reasons, commonly have many relatives living in one home.⁷⁸ When probation or parole restrictions rule out a family home as a possible place to return to, this leaves many Native people with nowhere to go. Several tribal services providers told the ACLU there is no homeless shelter on their reservation, adding to the stress and dangers of homelessness.

An Indigenous man who has been on and off probation for decades reported that probation officers were hesitant to let him live with his family, perceiving the home to be overcrowded. But for him, living in this inter-generational home was a cultural priority.⁷⁹ Another Indigenous man felt the probation officers thought this showed a lack of independence: "In Native culture, family comes first, and we have our cultural beliefs. I think it's tougher for Natives to be successful because POs look down on Natives for living with and relying on their families for support."⁸⁰

Many families struggle to support relatives returning to the reservation, given high rates of poverty and unemployment on many reservations. One teacher on a reservation observed that many Native families are poor and already housing many members of their family due to housing shortages; some families are not able or willing to provide housing for relatives returning from prison: “So many people come home [from prison] homeless. Being in prison isolates you from your family. Many don’t want anything to do with someone when they come home. There is a terrific amount of shame.”⁸¹



Many people on probation experience homelessness because they cannot find or afford housing. Without a consistent address, they will very likely be in violation of their probation.

Being homeless adds significant challenges to compliance with probation—not having an address being a violation itself—and several people said the system does not assist or accommodate with homelessness. One Indigenous man said, “I wish they would’ve given me more time to check in because I was homeless. I don’t know how to connect with services in this [urban] community [because] I was born and raised on the reservation.”⁸² One tribal case worker who helps people living on a reservation said, “How can you go find a job when you are stressed trying to find a place to sleep that night? We have a real housing shortage here and a lot of people are homeless.”⁸³ This case worker added that, aside from the social stress and anxiety that people without housing face, they may now also risk violating terms of their probation or parole or quickly reentering an unhealthy lifestyle: “Without a mailing address, people can’t get official mail from their probation officer. Bouncing from home to home can be a probation violation. Sometimes people who are couch-surfing have to return to the environment that got them in trouble because these are the only people and homes that will take them.”⁸⁴

For individuals returning to the community even after a short stay in custody, the lack of transitional planning and assistance means that many are without a place to go when first released from prison.



Voices of Probation and Parole

Dakota B. told the ACLU that delays in processing his release combined with his conviction for assault have left him without immediate housing options and complicated release:

“[It] took a month to have my conditional release go through. By the time it did, my rental company had put in for an eviction. Had the process been faster, I would still have a home. Now I can’t be released without an address. I suggested a local shelter but was told that’s not a possibility for me, being a violent offender.”⁸⁵

Four other individuals (three men and one woman) also told the ACLU that they lost their housing while in custody for revocation of their probation. An additional four said they continued to be homeless and were unable to find housing upon release. One of these men wrote to the ACLU that, at the time his probation was revoked, he was living in a motel, working two jobs, and supporting his grandmother, girlfriend, and two daughters. Being revoked and going into custody meant his family also lost a place to live.⁸⁶ Susan H. wrote that many management companies don’t want to rent to people with a felony conviction, and finding a place to accept you before you are released to your community is a challenge: “When at pre-release, it is very difficult to secure housing without being in the town you are going to.”⁸⁷

Finding public housing is especially difficult for individuals convicted of sex offenses who often cannot get housing due to their conviction and/or presence on the sex offender registry. One person noted that even though his probation is now over, he is still dependent on a month-to-month lease because of his 25-year old sex offense, for which he received probation.⁸⁸

One police officer who works with youth on probation recommended that housing and related services be provided for children who are homeless and otherwise without support. In many cases, the officer said, when they investigate why children are getting into

trouble with the law, neglect or abuse at home was a root cause: “There are a lot of kids looking for an escape.”⁸⁹ Having housing with accompanying reentry services can help youth and adults comply with conditions and reintegrate into the community. As one person who does pre-trial and probation work observed, “Transitional homes can provide structure and life skills,” and this is particularly true for individuals also dealing with substance abuse issues.⁹⁰

Several people also discussed the isolation and anxiety of living alone upon release. In many cases, individuals said that they were required to stay in a new city for treatment purposes but had no support or assistance there. In others, they found themselves alone because their probation conditions barred them from living with anyone with a felony conviction, including their spouses or other relatives.



Voices of Probation and Parole

Matthew U. wrote to the ACLU that he was not allowed to return home to his girlfriend because she had a deferred sentence. He was homeless and ended up self-medicating with drugs while living on the streets.⁹¹

One Indigenous man, who says his parole violation was driving without a license, wrote that his PO told him he was not permitted to live with someone who is not a U.S. citizen.⁹² Several individuals told the ACLU that separation from their family upon release or the deaths of relatives prompted them to start using drugs or alcohol again. As one tribal service provider noted, “For people released to have to live by themselves, they are being set up for failure.”⁹³ One advocate who runs a sober living home said the isolation can be crippling for people released after time in custody: “You go from being completely surrounded by people to being all alone.”⁹⁴ This drastic change in life conditions would be difficult anyone, let alone someone who is faced with a complete rebuilding of their life once outside of prison and completely disconnected from the only relationships and community they have known for years.

Several people, including advocates and people on community supervision, recommended that the state provide more transitional living housing so that people returning to the community have a place to live and some assistance while finding a job, setting up treatment, figuring out transportation, and establishing a routine. Without that basic security, many people on supervision explained they found reentry to be overwhelming. The additional benefit of transitional housing, many said, was the community and stability that housing provides; it creates structure for people who need more assistance returning to a (sometimes new and unknown) community.

4. Reentry Assistance

The primary recommendation from everyone the ACLU spoke to—from service providers to people on supervision to officers providing supervision—was for better reentry services to ensure that people released to the community had immediate and continuous access to programming and knew how to find and navigate basic social services. Particularly for individuals returning to the community after time in custody, the transition to independent living and the responsibilities of community supervision can be extremely daunting. A social service provider who runs a sober living house said, “People are getting out of prison and treatment without the basics—no driver’s license, no food stamps, no cell phone. Women are leaving prison with only the clothes on their back.”⁹⁵

Many people returning to the community after incarceration told the ACLU that they were returning with additional financial burdens from their incarceration before they even started paying for supervision costs and other obligations (restitution, child support, required courses to reestablish custody of their children, housing, treatment, etc.). For example, individuals who are placed in custody at community-based prerelease facilities are required to pay room and board. According to the Montana Parole and Probation division, individuals housed in a prerelease facility were required to pay \$14.00 per day in 2016. While that cost might sound nominal, for individuals required to spend three to six months in these facilities, the costs can be overwhelming, especially without a steady income.⁹⁶ In fiscal year 2016, the average length of stay in a prerelease facility was 164 days for men (\$2,296) and 153 for women (\$2,142); in that same year, the state reported that “residents paid \$3,899,829 toward room and board.”⁹⁷



The addition of probation or parole supervision costs to the every day expenses of people returning to their communities create an insurmountable burden.

As one tribal staff member said, these community care facilities are viewed as exploitative: “The pre-release centers are particularly problematic; they can cost \$450 a month just for housing and then you have to pay for transport for daily check-ins and for programming. It seems like they are all about profit in these programs.”⁹⁸ For individuals who have been incarcerated without an income and are now returning to the community to find employment while also meeting new financial burdens, the costs of prerelease may be significant. This is true of other supervision costs and responsibilities as well. As one community advocate observed, “You pay \$60 to do community service in Billings and then breathalyzers are around \$500 a month. They really set people up for failure. For parenting classes, it’s \$600-900 for required classes, and that’s an entire month’s salary.”⁹⁹ Many people on supervision, as well as service providers, noted that they had to choose between or deprioritize essential expenses in order to meet the costs imposed by community supervision or pre-release. At the same time, some of these needs, like housing, are preconditions for other obligations, like restoration of parental rights. These preconditions are often required, but requiring them does not mean they are affordable or even available.

In 2016, Montana reported that residents paid over **\$3,899,829** towards room and board at pre-release facilities.



In tribal communities and rural areas, there may be even fewer resources and programs for people on supervision. As one tribal attorney observed, “If people come back to the same environment it isn’t too long before they fall off the wagon again. We need something here for them to return to. There are few jobs and resources are very limited.” Just releasing people to urban areas, however, is not enough as people need support and often want to return to their family responsibilities as part of their rehabilitation: “If a person is really motivated they can do well but often they don’t have family support and are in an environment that is totally different. I really liked the possibility of our people, instead of being jailed, being home to take care of their families. Right now, the system is very regressive. We see a lot of people back in custody.”¹⁰¹ A tribal community organization observed that if Indigenous people are not returning to the reservation, it is critical that there are targeted services available in cities: “If they are going to stay in urban areas, they need job training and opportunities so people aren’t ostracized.”¹⁰² Moreover, Indigenous people who have always lived on a reservation may be unfamiliar with the services they now need to navigate while on probation or parole and may need additional assistance. As one Indigenous teacher and mentor explained, “Getting any medical care, plus housing, [and] childcare takes so much time and work. For people who live on a reservation, the terms and vocabulary are also really different.”¹⁰³

Our interviews indicate that most people are unable to arrange for these services independently immediately upon release, particularly when struggling with poverty and addiction. As one teacher who works primarily with Indigenous students said, “To reestablish someone in society after being in prison or being homeless takes a lot of advocacy.”¹⁰⁴ With the students she sees who are trying to move forward with their lives, the lack of basic services and assistance in accessing them makes reentry a trap: “Where is the safety net? [These kids] aren’t eligible for any of the social programs they need due to poverty. I have lots of students who work two jobs and are full-time students and then add a conviction onto that. Few come out of this system unscathed.”¹⁰⁵

One consistent recommendation, particularly among Indigenous people, was the creation and support of a peer system to assist in reentry. One tribal legislator explained, “We need a way that works within the tribe to provide rehabilitation.”¹⁰⁶ A community service provider noted that supervision restrictions that limit contact with felons is problematic because people who have been through the criminal justice system are in many cases better equipped to help explain and guide reentry: “If the system isn’t going to help, you need a mentor who can help people.”¹⁰⁷ Some probation staff said they didn’t use this restriction to stop people on supervision from getting mentorship, support, and other assistance from people with prior convictions.

Throughout our conversations with service providers, correctional staff, advocates, and people on supervision, we consistently heard two seemingly contradictory conclusions: on the one hand that there is too much supervision, too many conditions, and too much required contact. And on the other, that the system provides too little support, individualized attention, and contact. What linked these two observations was a shared conclusion that people on supervision need support in creating and maintaining structure. An overly punitive response from probation and parole services when a person fails to adhere to the structure and requirements of supervision disincentivizes cooperation. As one Indigenous man on probation and facing substance abuse issues noted, “When a probationer makes a mistake, the first thing they think is, ‘well now I’m going back [to prison] no matter what.’ Knowing the officer can send you back to prison—there is a power dynamic that affects trust.”¹⁰⁸

As one tribal advocate who works as a peer mentor observed, community supervision is supposed to be about reentry and rehabilitation but the system in place denies people real opportunities to become independent and successful on probation: “They say they are reintegrating [probationers] into society but they block the path at every turn. They treat them as children but tell them they are adults. They have to plan their schedules out in advance, in a way few adults can, but life intervenes.”¹⁰⁹ Several people on probation said that the burden of checking in and complying with the numerous conditions was stressful and made it difficult to reintegrate into daily life. For example, one Indigenous man said the constant check-ins and other conditions felt like they were designed to trap you in failure: “You are constantly walking on eggshells trying not to mess up, and that stress makes people slip.”¹¹⁰

“ They say they are reintegrating [probationers] into society but they block the path at every turn. They treat them as children but tell them they are adults. They have to plan their schedules out in advance, in a way few adults can, but life intervenes.”

– Montana Tribal Advocate

A government employee who works with people on pretrial and probation said, “When it comes to probation, the contact is important and once a month doesn’t cut it. . . . You still have to hold people accountable. Some know they can’t do well with infrequent check-ins.” This was an opinion shared not only by people who work for the state. Even some individuals who had been on probation said they wanted more contact—and more assistance. One Indigenous man on probation said the check-ins were helpful in getting him accustomed to life post-release: “A little structure goes a long way and addicts have no structure,” he explained. “It’s our choice to be successful but we need more [probation officers] to be understanding and to listen and ask questions. As an addict, we lose our freedom and often we just want to be heard—it’s our choice but that cycle is going to continue otherwise.”¹¹¹ While these two conclusions seem to be at odds, it appears that both sides are recommending a similar proposal: that people on community supervision need support and programming, and the assistance of someone they trust who is required and empowered to help them get the services they need.

Many of the complaints about the type and frequency of contact with probation officers are linked to the conduct and personality of the POs themselves. Several individuals and a few advocates told the ACLU that probation and parole officers seemed singularly focused on finding violations, sometimes explicitly telling people on supervision that they would be looking for opportunities to put a person back in the system. An Indigenous man who had served probation on and off his reservation said, “I understand the probation officers have a job to do but some probation officers are looking for opportunities to violate you. . . . Probation officers have the power to take away your freedom, and they take advantage of that. This causes a lot of stress, when you are doing everything right and a person seems like they are out to get you.”¹¹²

Conversely, others said it was the attention, support and commitment of probation and parole officers that helped them find treatment. One thing almost everyone mentioned, however, was that their officers were overloaded with cases and unable to provide individualized attention or more flexible assistance. It is clear that contact and check-ins with probation and parole officers must be individualized and meaningful, which would inevitably lead to less frequent check-in requirements. Programs like the Tribal Defendants Office at the Confederated Salish and Kootenai Tribes (CSKT) are particularly successful because there is a holistic approach and individual case attention that probation officers are not often equipped to provide.

The CSKT Model

Already well-known to the State of Montana, the Tribal Defenders Office for the Confederated Salish and Kootenai Tribes continues to be a model of success that should be supported and replicated around the state—not only by tribal communities but by the State, particularly in rural areas. This office has adopted a holistic representation approach that includes cultural mentoring, assistance with reentry and collateral consequences of an arrest (with housing, a driver’s license restoration program and other assistance), and mental health assistance. The office has developed a reentry intake tool that appreciates the specific experiences of Native people and matches their needs with appropriate services for both the individual and their family. One of the hallmarks of this program is providing individualized assistance that works to remove the barriers and impediments to reentry through better communication and holistic representation. It looks to the underlying reasons for a person’s contact with the criminal justice system and identifies treatment needs and goals. According to the Tribal Defenders’ Office, they have seen a one-year recidivism rate as low as 35.5% which constitutes a major reduction in recidivism, given that the participants previously had a recidivism rate of 100%. Because this program is based on a reservation, it has not only been able to provide specialized assistance for Indigenous people but is also a realistic model for identifying services and goals that can be met in a rural area.

For most people, the problems were interlinked—too many or inflexible check-ins made it hard to get a job; without a job, a person was unable to pay for transportation or housing; without transportation or housing, people struggled to keep to appointments and continue work but also couldn’t afford treatment or access the few programs available in the community. As one man with mental disabilities wrote to the ACLU, “I couldn’t pay for my medications and then I couldn’t afford the fines and fees with probation and for child support. I couldn’t get to my anger management class because of my work schedule and I had no transportation because I had a suspended license. I was homeless repeatedly with all the fines and fees.”¹¹³ People on supervision need assistance and structural flexibility in prioritizing the costs that cannot be removed, but there also must be a re-examination of whether it makes sense to force the people on probation and parole to absorb all these costs.

V. Impact of Probation and Parole on Indigenous Communities

For Indigenous people in Montana, whether they live in urban, rural, or tribal areas, there are unique and additional challenges in accessing rehabilitative services.

Montana is home to thirteen federally recognized tribes on seven reservations and also has a large Indigenous population in urban areas across the state. Several thousand Indigenous people live on or near reservations in Montana; as of 2015, nearly 69,000 people lived on reservations in the state.¹¹⁴ For Indigenous people in Montana, whether they live in urban, rural, or tribal areas, there are unique and additional challenges in accessing rehabilitative services. These challenges are reflected in their overrepresentation in the criminal justice system and among probation or parole revocations in particular.

Indigenous people comprise approximately 6.5% of the Montana state population and yet account for 20% of the men's state prisoners, 34% of the women's state prisoners, and 27% of the state's arrests for failures to appear in court or for probation or parole violations.¹¹⁵ Striking as these statistics are, they actually underestimate the disparity, as they do not encapsulate the number of Indigenous people over whom the state does not have jurisdiction. Indigenous people convicted of crimes committed on reservations are incarcerated in either tribal or federal prisons, depending on the offense, and so are not included in the state prison population. In FY 2016, 1,255 Indigenous people were convicted of federal offenses and comprised 2% of federal offenders but over 35% of the federal criminal caseload for the District of Montana.¹¹⁶ In Montana, as of June 2016, tribal jails held approximately 300 Native individuals.¹¹⁷ Because of overcrowding and poor conditions, the Bureau of Indian Affairs is considering re-opening the Two Rivers Prison in Hardin to house Indigenous people convicted of federal and tribal crimes. This would add over 400 hard beds reserved exclusively for Indigenous people.

State data analyzed by the ACLU indicates that not only are Indigenous people overrepresented in arrests for supervision violations and as state prisoners but there is also a disparity in their rates of revocation leading to incarceration and the frequency with which Indigenous people have had their probation revoked. According to data requested by the ACLU, in 2017, 462 people were incarcerated for a technical or compliance violation of their parole or probation, 116 of whom were Native American (just over 25%).¹¹⁸ Of the 169 men sent to prison for a violation of their parole, 22.5% were Native American. Of the 233 men incarcerated for a technical probation violation, 24.5% were Native. The disparities were even starker for women. Of the 45 women incarcerated for a technical/compliance violation of their probation, 35.55% were Native American; of the 15 women incarcerated for a technical parole violation, Native American women accounted for 33.33%.

This disparity in revocation, leading to incarceration or re-incarceration of minorities at heightened rates, is not unique to Montana. Around the country, there are concerns that minority community members are more likely to have their probation revoked than their white counterparts. A 2014 study on racial disparities in probation by the Urban Institute found significant disparities in revocation between white and black probationers that could not be accounted for based on group differences. Identifying where and when that disparity occurred (from police, courts, or the probation system, for example) was less obvious.¹¹⁹ Wherever bias is operating in the criminal justice system, however, from policing at the outset through release and revocation on the backend, it may continue to operate and may be magnified at different stages. For example, the Urban Institute notes, “If bias is present in front-end practices, it will be ‘soaked up’ in objective measures of criminal history.”¹²⁰ This means bias will impact risk assessment scores, probation or parole supervision conditions, re-arrest, and revocation rates.

In Montana, individuals on parole or probation raised concerns about discrimination against Indigenous people in the criminal justice system at all levels, from policing and harsher sentences to discriminatory, sometimes outright racist, treatment in the probation system. Beyond discriminatory treatment by state actors, the overrepresentation of Indigenous people in the criminal justice system for a new crime or a parole or probation violation appears related to several factors including (1) acute health needs and the lack of services and resources on reservations and in rural areas; (2) distrust of state actors and programs, where available; and (3) the absence of culturally appropriate services, Indigenous staff, and cultural awareness among non-Indigenous state staff.

A. Health Concerns & Disparities for Indigenous People

For Indigenous people in Montana, the absence of treatment and programming for substance abuse and mental health upon reentry is exacerbated by the general lack of health services for Indigenous people on reservations. In Montana, there are stark disparities in the health status and life expectancy of Indigenous people, with the median age at death in Montana nearly 20 years shorter for Indigenous people than for white people.¹²¹ The U.S. Department of Health and Human Services, which funds the Indian Health Service (IHS), observes that Indigenous people often lack access to quality medical care due to “cultural barriers, geographic isolation, inadequate sewage disposal, and low income.”¹²² Poverty compounds these difficulties in access to health care as Indigenous people have the highest rate of poverty (almost twice the national average) of any racial group in the United States.¹²³ Moreover, according to a 2017 study, around 25% of Native Americans report experiencing discrimination when they try to access the health system.¹²⁴ According to this poll, “Native Americans who live in areas where they are in the majority reported experiencing prejudice at rates far higher than in areas where they constituted a minority.”¹²⁵

In Montana, there are stark disparities in the health status and life expectancy of Indigenous people, with the median age at death in Montana nearly 20 years shorter for Indigenous people than for white people.¹²¹

According to a 2011 report from the Office of the Inspector General for the U.S. Department of Health and Human Services, 82% of tribal and IHS facilities reported they provide mental health services to the Native American population.¹²⁶ However, the quality and range of those services varied and were limited by staffing shortages and qualifications, among other factors. Even among those facilities that did provide services, over 50% reported that physical barriers (poor roads, distance, or weather) prevented clients living on rural reservations from obtaining mental health services.¹²⁷ Specifically for mental healthcare, 34% of surveyed facilities said that Indigenous clients faced additional obstacles due to childcare obligations, 28% cited the cost of services, and others cited additional impediments like stigma and concern over confidentiality as obstacles to mental health services.¹²⁸ In the ACLU questionnaires, 10 of the 33 individuals (30%) who identified as Native American said they had a mental health condition, and a further 18 (55%) said they had substance abuse issues.

Indigenous people interviewed by the ACLU in Montana similarly said that the stigma of substance abuse and mental health concerns was a real issue preventing people from accessing health services, even when available, on the reservation. One tribal policymaker observed that there are no treatment services on her reservation and no transit system available to take people to urban areas for treatment.¹²⁹ A tribal attorney observed that even when services are technically available, there is a significant waiting list on many reservations and the programs and treatment required for probation may not be consistently offered: “It is problematic to get resources that aren’t there.”¹³⁰ One tribal counselor added that there is a lot of staff turnover and finding consistent programming on a reservation is a challenge.¹³¹ As earlier noted, the costs of transportation make access to programming and treatment particularly difficult for people living on tribal lands. Several advocates mentioned that their clients had found more culturally appropriate and affordable programming out of state and hoped there would be more support from lawmakers and the DOC for allowing individuals to serve their probation where the treatment was.

But Indigenous people also cited difficulties accessing services in urban areas due to discrimination, stigma, and lack of information. One Indigenous teacher told the ACLU that her students frequently “need counseling and mental health services, but for Natives, they hesitate and want a safe entryway to counseling. But there are few Indian counselors [here.]”¹³²

B. Distrust of the System and Experiences of Discrimination

Indigenous service providers, advocates, and community members noted that Indigenous people routinely face explicit discrimination in their daily lives, but particularly from law enforcement agencies. One tribal policy maker observed that “non-Indian probation officers in the border towns are discriminatory and seem to want Natives to go back in the system.”^{133[i]} An Indigenous teacher and student mentor said her students regularly mention racism from police and POs they encounter and wish there were more Indigenous officers in both departments.¹³⁴ Another Indigenous advocate observed that given Native peoples’ historic and very recent experience with state violence, forced assimilation, destruction, and neglect of Indigenous communities, it is predictable they would be suspicious of agencies like the police, child protective services, and other social or law enforcement agencies.¹³⁵

One Indigenous man who lives on a reservation said that discrimination but also lack of cultural education needs to be addressed in order to create trust between the probation officers and the Indigenous people under supervision: “Cultural education is necessary because there is a lot of trauma that has been brought down through the generations and impacts how people view probation and state officers.”¹³⁶ Another Indigenous man who has struggled with alcohol addiction for years said he would like to have had a Native probation officer because there would have been more implicit trust: “I’d be more open

and they would be more willing to intervene and give you help early on, to help you calm down by going to sweat and smudging. I have gone to [Native] people and told them when I wanted to drink, and I’m more open because I feel comfortable with them.”¹³⁷



Entering Crow Agency in south central Montana.

A Native advocate mentioned that where the criminal justice system allows for discretion, discrimination often seeps in too: “What is considered a violation - that is where the implicit bias comes in. Any time there is discretion, it goes against Indian people. You need to know did the probation officer try to find out why the per-

son couldn’t ‘comply’?”¹³⁸ Another tribal case manager similarly said, “Implicit bias also comes in when you have a difficult person. Probation doesn’t want to do the extra work for someone who has addiction, needs housing, is difficult, and is Native American.”¹³⁹

C. Lack of Cultural Programming & Competency Training for Probation Staff

Several Indigenous people interviewed by the ACLU said that participating in cultural programming like sweat lodge ceremonies had been essential for their rehabilitation but the lack of funding and availability for such services was a real impediment.



Voices of Probation and Parole

Nadine R. said that being involved in cultural therapeutic programming was helpful for him in dealing with previous substance abuse issues and the challenge of dealing with a criminal conviction:

“The fear, stress, anxiety of being involved in the criminal justice system was eating me alive. Sweat has helped me let go of things and now I can go home sober to my family.”¹⁴⁰

In part because of this historic distrust of the state, he continued, many Native people like himself struggle to communicate with the officers overseeing their probation or parole in the community: “Probationers don’t ask questions and that’s not the officer’s fault. It’s part of the historical trauma. Indigenous people don’t ask questions, we are afraid to ask and we communicate differently. And that is part of survival.”¹⁴¹

Several tribal staff and tribal members recommended that POs receive cultural education training, and some probation and parole offices have done this already. Whether the training is impactful depends a lot on the office leadership and should be supplemented with greater outreach efforts to hire Indigenous staff. One tribal counselor observed that while cultural competency may get lip service, the importance of understanding historical trauma and specific Indigenous experience continues to be underappreciated: “The cultural sensitivity piece is overlooked a lot and you need to explain that trauma is not an excuse but it explains the roots—things like going to boarding school, being taken from your family and told it was bad to be Native.”¹⁴² Taking this trauma into account, she explained, matters for treatment purposes: “There is research now on how historical trauma continues to impact future generations. The goal here is to make people more resilient and to meet their goals.”¹⁴³

Having cultural training and appropriate tools is not only about making Indigenous people more comfortable with the state machinery; it also about making community supervision more effective for and responsive to the Indigenous population. As one advocate observed, chemical dependency evaluations and other psychological tests “are not normed for Indian people, and yet they are used for recommendations for treatment and supervision. There are very few Indians who do these tests or professionals who know that the tests need to be different for this population. Unless you address the underlying problem, treatment won’t work.”¹⁴⁴ The CSKT defender program is currently developing a risk assessment tool that will be validated for the Native population, taking cultural connectedness, historical trauma and other factors into account and also looking into whether particular services address recidivism.¹⁴⁵

Finally, Native treatment providers and advocates recommended that the state adopt or authorize the use of more holistic and restorative programs embedded in cultural traditions, for example the White Bison program,¹⁴⁶ a culturally-based healing program for Indigenous people, or family treatment models that some tribes used to employ. Programs like the holistic defender program at CSKT work because they meet people where they live and provide wraparound, individualized support and services based on what exists in the community. But it’s no accident that this program, which originated with a grant from the Bronx Defenders, is effective for non-Native communities who also need assistance with reentry, rehabilitation, and basic needs to be successful in their communities.



The intricate support structure of a Tipi at the 2018 Crow Fair.

VI. Conclusion & Recommendations

Recent reforms have not addressed the primary reasons people enter and repeatedly return to the criminal justice system—namely, substance abuse and mental health concerns. This is exacerbated by state funding cuts to treatment and addiction support.

In recent years, the state of Montana has undertaken reforms to its probation and parole system, recognizing that the state prison population is growing as a result of unnecessary incarceration for violations of correctional community supervision. However, the reforms to date have not addressed the primary reasons why people come into and repeatedly return to the criminal justice system—namely, substance abuse and mental health concerns. Recent state cuts to community programming in mental health generally, and addiction treatments and programming in particular, mean that people are likely unable to get preventative care before their contact with the criminal justice system. It also means, for those who were arrested and are now on community supervision, that they are unable to get into treatment and programming required as a condition and necessity for successful reentry and rehabilitation.

While probation and parole offices do not control who is charged with a crime and put on community supervision, they can play a critical role in facilitating successful reentry and helping people on supervision comply with conditions, access services, and remain with their families in the community. In many cases, the conditions of community supervision are too inflexible to accommodate the daily realities of reentry, particularly for people without resources returning to impoverished communities. Even when parole and probation officers are more tolerant and understanding of these complications, in the absence of community treatment programming and individualized assistance, people return to custody as a result of repeated compliance violations or new crimes.



Montana's capitol on an early legislative session morning.

To address the large number of people returning to custody for technical or compliance violations and provide a more impactful system, **we recommend the following:**

Reforms must focus on providing treatment and services and, in the case of Indigenous people, culturally relevant programming.

1. **DEVELOP** holistic defender services like the CSKT office that can provide assistance and support to people on supervision in finding housing, treatment, transportation, and required or otherwise appropriate programming;
2. **PROVIDE** community mental health and substance abuse treatment—particularly in rural areas— to ensure that people on supervision can be successful upon reentry and have continuity of care upon release from custody;
3. **DEVELOP** achievable goals that recognize the reality of dealing with poverty and environmental circumstances. For example, for people with disabilities and dealing with addiction issues, the goal may not be to obtain a job immediately but at least to write a resume, apply for several jobs, etc. If a required treatment program is costly or unavailable, work with the person on supervision to find alternatives and give credit for self-initiated efforts to engage in alternative programming;
4. **ALLOW** and encourage probation offices to reduce probation terms and to reduce in-person check-ins where appropriate;
5. **RECRUIT** Indigenous staff in probation, parole, and other public service positions (including for treatment and diagnosis of mental health and substance abuse) to work with Native people on supervision; and
6. **ACCEPT** and support traditional tribal programs and traditions as part of the rehabilitative process.

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- ¹² Corbett at 1714; Joseph Shapiro, As Court Fees Rise, the Poor Are Paying the Price, NPR (May 19, 2014, 4:02 PM), <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>.
- ¹³ Corbett at 1712 (citing email from Dan Beto to author).
- ¹⁴ Michael P. Jacobson, Vincent Schiraldi, Reagan Daly, and Emily Hotez, Harvard Kennedy School Program in Criminal Justice Policy and Management. Less Is More: How Reducing Probation Populations Can Improve Outcomes (2017), available at https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/less_is_more_final.pdf.
- ¹⁵ Corbett at 1711.
- ¹⁶ Cecelia Klingele, Rethinking the Use of Community Supervision, 103 J. Crim. L. & Criminology 1015, 1038 (2013).
- ¹⁷ THE URBAN INSTITUTE, EXAMINING RACIAL AND ETHNIC DISPARITIES IN PROBATION REVOCATION:SUMMARY FINDINGS AND IMPLICATIONS FROM A MULTISITE STUDY (2014), available at <https://www.urban.org/sites/default/files/publication/22746/413174-Examining-Racial-and-Ethnic-Disparities-in-Probation-Revocation.PDF>; Fiona Doherty, Obey All Laws and Be Good: Probation and the Meaning of Recidivism, 104 GEO.L.J. 291, 353 (2016) ("the poor can be disproportionately punished both by being placed under supervision at higher rates (as they present a higher risk of recidivism) and by being monitored more strictly once they are under supervision (for the same reason).")

- ¹⁸ Id.
- ¹⁹ Jacobson et al. at 12.
- ²⁰ Id.
- ²¹ See Klingele at 1064.
- ²² COUNCIL OF STATE GOVERNMENTS, JUSTICE CENTER, JUSTICE REINVESTMENT IN MONTANA:REPORT TO THE MONTANA COMMISSION ON SENTENCING at 11 (2017).
- ²³ Statement on the Future of Community Corrections Aug. 28 2017, available at https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/statement_on_the_future_of_community_corrections_final.pdf.
- ²⁴ Id.
- ²⁵ Id.
- ²⁶ COUNCIL OF STATE GOVERNMENTS, JUSTICE CENTER, JUSTICE REINVESTMENT IN MONTANA:REPORT TO THE MONTANA COMMISSION ON SENTENCING at 2 (2017).
- ²⁷ COUNCIL OF STATE GOVERNMENTS, JUSTICE CENTER, JUSTICE REINVESTMENT IN MONTANA:REPORT TO THE MONTANA COMMISSION ON SENTENCING (“CSG”) at 2 (2017).
- ²⁸ CSG at 5.
- ²⁹ Id. at 13.
- ³⁰ Montana Department of Corrections, 2017 BIENNIAL REPORT, at C-3, available at <https://cor.mt.gov/Portals/104/Resources/Reports/2017BiennialReport.pdf>.
- ³¹ Id. at C-4.
- ³² While some people on probation had never been in custody or served a prison term prior to their probation term, these statistics refer to individuals who were given a term of probation and subsequently were either returned to or placed in prison.
- ³³ Mont. Code Ann. § 46-23-1015 (West)
- ³⁴ Mont. Code Ann. § 46-23-1015(3)(d) (West).
- ³⁵ Mont. Code Ann. § 46-23-1015(3) (West).
- ³⁶ Mont. Code Ann. § 46-18-203 (West).
- ³⁷ Id.
- ³⁸ Interview with the ACLU, Billings, MT, Feb. 21, 2018.
- ³⁹ “Absconding” means to deliberately makes the offender’s whereabouts unknown to a probation and parole officer or fails to report for the purposes of avoiding supervision, and reasonable efforts by the probation and parole officer to locate the offender have been unsuccessful. Mont. Code Ann. § 46-18-203(11)(a) (West).
- ⁴⁰ Interview with the ACLU, by phone, March 12, 2018.
- ⁴¹ Interview with the ACLU, Feb. 20, 2018.
- ⁴² Interview with the ACLU, Feb. 20, 2018.
- ⁴³ Interview with Amanda H. by phone, December 18, 2017.
- ⁴⁴ ACLU Questionnaire response from Kendra K. (on file with the ACLU).
- ⁴⁵ Interview with the ACLU, by phone, March 12, 2018.
- ⁴⁶ ACLU Questionnaire response from Earl S. (on file with the ACLU).
- ⁴⁷ Interview with the ACLU, Feb. 20, 2018.
- ⁴⁸ Interview with the ACLU, Feb. 20, 2018.
- ⁴⁹ ACLU Questionnaire response from Alliana L. (on file with the ACLU).
- ⁵⁰ Interview with the ACLU, by phone, March 12, 2018.
- ⁵¹ ACLU Questionnaire Response from Margaret B. (on file with the ACLU).
- ⁵² Interview with Michelle C. by phone, March 12, 2018.
- ⁵³ Interview with the ACLU, Feb. 13, 2018.
- ⁵⁴ Interview with the ACLU by telephone, March 8, 2018.
- ⁵⁵ Interview with the ACLU, Billings, MT, Feb. 15, 2018.
- ⁵⁶ Interview with the ACLU, Billings, MT, Feb. 15, 2018.
- ⁵⁷ Interview with the ACLU, Billings, MT, Feb. 15, 2018.
- ⁵⁸ ACLU Questionnaire response from Danielle T. (on file with the ACLU).
- ⁵⁹ ACLU Questionnaire response from Krista H. (on file with the ACLU).
- ⁶⁰ ACLU Questionnaire response from Michael P. (on file with the ACLU).
- ⁶¹ Interview with the ACLU, Feb. 14, 2018.
- ⁶² Interview with the ACLU, Feb. 15, 2018.
- ⁶³ Interview with the ACLU, Feb. 20, 2018.
- ⁶⁴ Interview with the ACLU, Feb. 20, 2018.
- ⁶⁵ Interview with Amanda H. by phone, December 18, 2017.
- ⁶⁶ ACLU Questionnaire from June M. (on file with the ACLU).
- ⁶⁷ Interview with the ACLU, Billings, MT, Feb. 15, 2018.
- ⁶⁸ Mont. Code Ann. § 61-5-205 (West).
- ⁶⁹ Id.
- ⁷⁰ Interview with the ACLU, Feb. 15, 2018.
- ⁷¹ ACLU Questionnaire response from Derek C. (on file with the ACLU).
- ⁷² Interview with the ACLU, Feb. 13, 2018.
- ⁷³ Interview with the ACLU, Billings, MT, Feb. 15, 2018.
- ⁷⁴ Interview with Heidi N., by phone, Dec. 19, 2017.
- ⁷⁵ Interview with the ACLU, by phone, Feb. 15, 2018
- ⁷⁷ David Murray, The Billings Gazette, April 11, 2016, “Montana Native American tribes struggle with decades of housing neglect,” available at http://billingsgazette.com/news/state-and-regional/montana/montana-native-american-tribes-struggle-with-decades-of-housing-neglect/article_2c84fbf3-bc1b-5ea5-b4c2-3e22bc6965b9.html; Elizabeth Leman, Human Rights Brief, Oct. 21, 2016, “Indian Housing in the U.S.” available at <http://hrbrief.org/2016/10/indian-housing-u-s/>; Naomi Schaefer Riley, The Atlantic, July 30, 2016 “One Way to Help Native Americans: Property Rights,” available at <https://www.theatlantic.com/politics/archive/2016/07/native-americans-property-rights/492941/>.
- ⁷⁸ Interview with the ACLU, Billings, MT, Feb. 15, 2018.
- ⁷⁹ Interview with the ACLU, MT, Feb. 14, 2018.
- ⁸⁰ Interview with the ACLU, Feb.13, 2018.

⁸¹ ACLU Questionnaire response from Robert B. (on file with the ACLU).

⁸² Interview with the ACLU Feb. 20, 2018.

⁸³ Interview with the ACLU Feb. 20, 2018.

⁸⁴ ACLU Questionnaire response from Dakota B. (on file with the ACLU).

⁸⁵ ACLU Questionnaire response from Johnathon K. (on file with the ACLU).

⁸⁶ ACLU Questionnaire response from Susan H. (on file with the ACLU).

⁸⁷ Interview with the ACLU by telephone, February 19, 2018.

⁸⁸ Interview with the ACLU, February 13, 2018.

⁸⁹ Interview with the ACLU, Feb. 14, 2018.

⁹⁰ ACLU Questionnaire from Matthew U. (on file with the ACLU.)

⁹¹ ACLU Questionnaire from Bennie L. (on file with the ACLU).

⁹² Interview with the ACLU, Billings, MT, Feb. 15, 2018.

⁹³ Interview with the ACLU, Billings, MT, Feb. 15, 2018.

⁹⁴ Interview with the ACLU, Billings, MT, Feb. 15, 2018.

⁹⁵ Montana Department of Corrections, Parole and Probation Division, PROBATION AND PAROLE AT A GLANCE at 19, (Jan 2017) available at <https://cor.mt.gov/Portals/104/ProbationParole/2017%20Rain-bow%20Book.pdf>

⁹⁶ Id.

⁹⁷ Interview with the ACLU, Billings, MT, Feb. 15, 2018.

⁹⁸ Interview with the ACLU, Billings, MT, Feb. 15, 2018.

⁹⁹ Interview with the ACLU, Billings, MT, Feb. 15, 2018.

¹⁰⁰ Id.

¹⁰¹ Interview with the ACLU, Butte, MT, Feb. 16, 2018.

¹⁰² Interview with the ACLU, Billings, MT, Feb. 15, 2018.

¹⁰³ Interview with the ACLU, Feb. 13, 2018.

¹⁰⁴ Interview with the ACLU, Billings, MT, Feb. 15, 2018.

¹⁰⁵ Interview with the ACLU, Feb. 13, 2018.

¹⁰⁶ Interview with the ACLU, Billings, MT, Feb. 15, 2018.

¹⁰⁷ Interview with the ACLU, Feb. 14, 2018.

¹⁰⁸ Interview with the ACLU, Feb. 16, 2018.

¹⁰⁹ Interview with the ACLU, Feb. 16, 2018.

¹¹⁰ Interview with the ACLU, Feb. 14, 2018.

¹¹¹ Interview with the ACLU, February 14, 2018.

¹¹² ACLU Questionnaire response from Joshua M. (on file with the ACLU).

¹¹³ See generally Montana State University, Montana Poverty Study Report Card, available at <http://www.montana.edu/extensionecon/countydata/all-reservations.pdf> (last accessed March 19, 2018).

¹¹⁴ COUNCIL OF STATE GOVERNMENTS, JUSTICE CENTER, JUSTICE REINVESTMENT IN MONTANA:REPORT TO THE MONTANA COMMISSION ON SENTENCING at 12 (2017).

¹¹⁵ United States Sentencing Commission, “Quick Facts: Native Americans in the Federal Offender Population,” Aug. 2017, available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Native_American_Offenders_FY16.pdf.

¹¹⁶ Department of Justice, Office of Justice Program, Bureau of Justice Statistics, JAILS IN INDIAN COUNTRY 2016 (Dec. 2017) available at <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6146>.

¹¹⁷ See Appendix B.

¹¹⁸ THE URBAN INSTITUTE, EXAMINING RACIAL AND ETHNICAL DISPARITIES IN PROBATION REVOCATION:SUMMARY FINDINGS AND IMPLICATIONS FROM A MULTISITE STUDY (2014), available at <https://www.urban.org/sites/default/files/publication/22746/413174-Examining-Racial-and-Ethnic-Disparities-in-Probation-Revocation.PDF>

¹¹⁹ Id. at 9.

¹²⁰ Montana Healthcare Foundation, “Reducing American Indian Health Disparities,” available at <https://mthcf.org/focus-area/american-indian-health/health-disparities/> (accessed March 19, 2018).

¹²¹ U.S. Department of Health and Human Services, Office of Minority Health, “Profile: American Indian/Alaska Native,” available at <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=3&lvlid=62> (last accessed February 17, 2018).

¹²² United States Census Bureau, Facts for Features: American Indian and Alaska Native Heritage Month: November 2015 (2015), available at <https://www.census.gov/newsroom/facts-for-features/2015/cb15-28ff22.html>; see also Naomi Schaefer Riley, The Atlantic, July 30, 2016 “One Way to Help Native Americans: Property Rights,” available at <https://www.theatlantic.com/politics/archive/2016/07/native-americans-property-rights/492941/>.

¹²³ Eric Whitney, Montana Public Radio, Dec. 12, 2017, “Native Americans Feel Invisible In U.S. Health Care System,” available at https://www.npr.org/sections/health-shots/2017/12/12/569910574/native-americans-feel-invisible-in-u-s-health-care-system?utm_source=twitter.com&utm_medium=social&utm_campaign=morningedition&utm_term=nprnews&utm_content=2041; see also HEALTH RIGHTS ORGANIZING PROJECT, AN AMERICA DEBT UNPAID:STORIES OF NATIVE HEALTH at 17 (2009), available at https://static1.squarespace.com/static/581649c3e4fcb5fd5918948d/t/581666cca893fc013e67b3b1a/1477864667173/2009-0925_An-American-Debt-Unpaid.pdf.

¹²⁴ Id.

¹²⁵ U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, OFFICE OF INSPECTOR GENERAL, ACCESS TO MENTAL HEALTH SERVICES AT INDIAN HEALTH SERVICE AND TRIBAL FACILITIES(2011), available at <https://oig.hhs.gov/oei/reports/oei-09-08-00580.pdf>.

¹²⁶ Id. at 19.

¹²⁷ Id.

¹²⁸ Interview with the ACLU, Feb. 13, 2018.

¹²⁹ Interview with the ACLU, Billings, MT, Feb. 15, 2018.

¹³⁰ Interview with the ACLU, Feb 21, 2018.

¹³¹ Interview with the ACLU, Billings, MT, Feb. 15, 2018. [i] Interview with the ACLU, Feb. 13, 2018.

¹³² Interview with the ACLU in billings on feb. 15, 2018

¹³³ Interview with the ACLU, Billings, MT, Feb. 21, 2018.

¹³⁴ Interview with the ACLU Feb. 14, 2018.

¹³⁵ Interview with the ACLU, Billings, MT, Feb. 15, 2018.

¹³⁶ Interview with the ACLU, Feb 21, 2018.

¹³⁷ Interview with the ACLU, Feb 21, 2018.

¹³⁸ Interview with the ACLU Feb. 14, 2018.

¹³⁹ Id.

¹⁴⁰ Interview with the ACLU, Feb. 21, 2018.

¹⁴¹ Id.

¹⁴² Interview with the ACLU, Feb. 21, 2018.

¹⁴³ Interview with the ACLU, Feb. 21, 2018.

¹⁴⁴ White Bison, <http://www.whitebison.org/>

¹⁴⁵ Corin Cates-Carney, Montana Public Radio, Dec. 15, 2017, “Hundreds Losing Mental Health Services Due To State Budget Cut,” available at <http://mtpur.org/post/hundreds-losing-mental-health-services-due-state-budget-cut>; Dillon Kato, The Missoulian, Jan. 27, 2018, “County attorney worries about effect of mental health cuts on homeless,” available at http://missoulian.com/news/local/county-attorney-worries-about-effect-of-mental-health-cuts-on/article_54754dd4-093a-50f9-b220-4b27653d7006.html; Susan Olp, Billings Gazette, Jan. 27, 2018, “After cutting case management, Mental Health Center looks at deeper funding cuts,” available at http://billingsgazette.com/news/local/after-cutting-case-management-mental-health-center-looks-at-deeper/article_b7ad73b6-445e-519d-b4f1-1204d88e16f1.html.

VIII. Appendix A:

ACLU of Montana Public Information Request for Probation and Parole Demographics to the Department of Corrections



Director Reginald D. Michael
Montana Department of Corrections
PO Box 201301
Helena, MT 59620- 1301

American Civil Liberties Union
of Montana Foundation
P.O. Box 9138
Missoula, MT 59807
406-443-8590
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October 23, 2017

Dear Director Reginald D. Michael,

Re: ACLU Request for Public Records Regarding Parole and Probation Violations

The American Civil Liberties Union (ACLU) is conducting research on the sources of recidivism and, in particular, the reasons for which individuals released from prison on parole or probation reenter the prison system (including any custodial facility in control of the DOC or under contract with the DOC). This information is requested for a public report to be used for public education and future advocacy, identifying the reasons people on probation or parole may violate their conditions of release. We would appreciate your assistance in providing the information requested below.

Pursuant to the Montana Public Records Act § 2-6-101 *et seq.*, I respectfully request the following records from the Department of Corrections for the years 2010 to 2015, broken down by year and in electronic format unless only available in paper:

A. Statistical Information: We request records from calendar years 2015 and 2016 sufficient to demonstrate:

1. The number and gender of prisoners/inmates released on parole who are:
 - a. White or Caucasian
 - b. American Indian
 - c. Black or African-American
 - d. Hispanic or Latino
 - e. Asian
 - f. Other.
2. The number and gender of prisoners/inmates released on probation who are:
 - a. White or Caucasian
 - b. American Indian
 - c. Black or African-American
 - d. Hispanic or Latino
 - e. Asian
 - f. Other.

3. The number and gender of individuals on parole who returned to prison and who are:
 - a. White or Caucasian
 - b. American Indian
 - c. Black or African-American
 - d. Hispanic or Latino
 - e. Asian
 - f. Other.
4. The number and gender of individuals on probation who were incarcerated and who are:
 - a. White or Caucasian
 - b. American Indian
 - c. Black or African-American
 - d. Hispanic or Latino
 - e. Asian
 - f. Other.
5. For request #3 and #4, the number of individuals in each category who returned to prison for a new offense;
6. For request #3 and #4, the number of individuals in each category who returned to prison for a violation of their condition of release on parole or probation (i.e. a technical or compliance violation).
7. For request #6, the number of individuals who had previously had their parole or probation revoked on technical/compliance grounds:
 - a. Once
 - b. Two times
 - c. Three times
 - d. Four or more times.
8. For request #6, the number of individuals whose violation of parole and/or probation includes:
 - a. Failure to enroll in a required class;
 - b. Failure to complete a required class;
 - c. Drug use;
 - d. Alcohol use;
 - e. Missing a drug test;
 - f. ETC
 - g. Failure to pay fines or fees or make other payments related to conditions of probation and/or parole.
9. For requests #7-8, number and gender of individuals in each category who are:
 - a. White or Caucasian
 - b. American Indian
 - c. Black or African-American

- d. Hispanic or Latino
 - e. Asian
 - f. Other.
10. The number of technical or compliance probation and parole violators who were incarcerated for
- a. 1-3 months;
 - b. 4-6 months;
 - c. 7-9 months;
 - d. 10-12 months;
 - e. 13-15 months;
 - f. 18 months – 2 years.
11. For request #10, the number and gender of individuals who were
- a. White or Caucasian
 - b. American Indian
 - c. Black or African-American
 - d. Hispanic or Latino
 - e. Asian
 - f. Other.

B. Guidance and Policies: we further request any guidance, policies, memoranda or other documents provided to county probation and parole staff, judicial district staff, and district judges regarding:

- 12. What parole or probation release conditions are appropriate;
- 13. When a change in parole or probation release conditions is appropriate;
- 14. What constitutes a compliance violation;
- 15. What warning should be given to individuals on parole or probation regarding their alleged violation of the release conditions;
- 16. What sanctions are appropriate for a violation of parole or probation conditions.

If this request could be restructured to minimize the demands on your department's resources, I would be happy to discuss alternatives with you. Similarly, should you have any questions regarding the information sought in this request, please call me directly at 406-204-0287.

The ACLU is a nationwide, nonprofit, and nonpartisan organization dedicated to protecting civil rights and civil liberties in the United States. It is the largest civil liberties organization in the country, with offices in the fifty states and over 500,000 members. The ACLU publishes newsletters, news briefings, right-to-know handbooks, and other materials that are widely disseminated to the public. These materials are made available to everyone—including tax-exempt organizations, non-profit groups, and law students and law faculty—for either no cost or for a nominal fee through its public education department. The ACLU also disseminates

information through its high-traffic website, <http://www.aclu.org>, which specifically features information obtained through public records requests. *See, e.g.*, <http://www.aclu.org/safefree/torture/torturefoia.html>; http://www.aclu.org/patriot_foia/index.html.

The information sought in this record request will be compiled in an ACLU research document on prisoners and parole and will be made available to the public through our website. Thus, because this request is on a matter of public concern and it is made on behalf of a non-profit organization, we request a fee waiver. If, however, such a waiver is denied, we will reimburse you for the reasonable cost of research. Please inform us in advance if a cost will be assessed.

If access to the records I am requesting will take longer than a 'reasonable' amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

Please do contact me should you have any questions regarding this request. We look forward to your response and thank you for your prompt attention to this matter. Please furnish all documents to the address below.

Sincerely,


Alex Rata
Legal Director

Cc: Colleen Ambrose

IX. Appendix B:

Department of Corrections Response to the ACLU of Montana's Public Information Request

1. The number and gender of prisoners/inmates released on parole who are:

MALES	2010	2011	2012	2013	2014	2015	2016	2017
A. White or Caucasian	328	330	303	383	366	364	327	429
B. American Indian	76	89	90	89	102	93	85	112
C. Black or African-American	9	16	10	20	16	19	13	22
D. Hispanic or Latino								
E. Asian	0	0	3	1	3	1	2	2
F. Other								

FEMALES	2010	2011	2012	2013	2014	2015	2016	2017
A. White or Caucasian	37	38	43	53	49	42	46	48
B. American Indian	11	14	16	14	22	22	26	34
C. Black or African-American	3	0	1	2	2	2	1	1
D. Hispanic or Latino								
E. Asian	0	1	0	0	0	0	0	2
F. Other								

2. The number and gender of prisoners/inmates released on probation who are:

MALES	2010	2011	2012	2013	2014	2015	2016	2017
A. White or Caucasian	210	227	163	185	158	164	175	159
B. American Indian	75	72	59	91	54	48	59	52
C. Black or African-American	9	5	11	7	10	8	6	7
D. Hispanic or Latino								
E. Asian	0	0	1	1	0	1	0	0
F. Other								

FEMALES	2010	2011	2012	2013	2014	2015	2016	2017
A. White or Caucasian	17	24	21	19	25	21	15	15
B. American Indian	15	16	12	12	12	11	13	9
C. Black or African-American	0	1	1	1	0	1	0	0
D. Hispanic or Latino								
E. Asian	0	0	0	0	0	2	0	1
F. Other								

3. The number and gender of individuals on parole who returned to prison and who are:

MALES	2010	2011	2012	2013	2014	2015	2016	2017
A. White or Caucasian	95	87	77	94	91	97	130	136
B. American Indian	31	32	33	28	33	29	45	44
C. Black or African-American	6	2	4	2	3	3	8	8
D. Hispanic or Latino								
E. Asian	1	1	0	1	1	0	0	2
F. Other								

FEMALES	2010	2011	2012	2013	2014	2015	2016	2017
A. White or Caucasian	13	6	14	7	8	12	10	12
B. American Indian	1	4	3	4	4	7	7	5
C. Black or African-American	0	0	0	0	0	0	0	0
D. Hispanic or Latino								
E. Asian	0	0	0	1	0	0	0	0
F. Other								

4. The number and gender of individuals on probation who were incarcerated and who are:

MALES	2010	2011	2012	2013	2014	2015	2016	2017
A. White or Caucasian	328	330	303	383	366	364	327	429
B. American Indian	76	89	90	89	102	93	85	112
C. Black or African-American	9	16	10	20	16	19	13	22
D. Hispanic or Latino								
E. Asian	0	0	3	1	3	1	2	2
F. Other								

FEMALES	2010	2011	2012	2013	2014	2015	2016	2017
A. White or Caucasian	45	27	27	24	51	29	34	40
B. American Indian	30	29	18	21	25	23	33	21
C. Black or African-American	1	1	1	2	3	0	1	1
D. Hispanic or Latino								
E. Asian	1	0	0	1	0	0	1	0
F. Other								

5. For request #3 and #4, the number of individuals in each category who returned to prison for a new offense;

PAROLE MALE	2010	2011	2012	2013	2014	2015	2016	2017
A. White or Caucasian	7	2	10	1	6	4	18	14
B. American Indian	1	1	1	1	2	5	2	6
C. Black or African-American	0	0	1	0	0	0	0	1
D. Hispanic or Latino								
E. Asian	0	0	0	0	0	0	0	0
F. Other								

PAROLE FEMALE	2010	2011	2012	2013	2014	2015	2016	2017
A. White or Caucasian	3	2	1	0	1	2	2	2
B. American Indian	0	0	1	0	0	1	0	0
C. Black or African-American	0	0	0	0	0	0	0	0
D. Hispanic or Latino								
E. Asian	0	0	0	0	0	0	0	0
F. Other								

PROBATION MALE	2010	2011	2012	2013	2014	2015	2016	2017
A. White or Caucasian	79	74	52	77	76	62	59	89
B. American Indian	19	21	18	19	20	13	21	18
C. Black or African-American	0	3	2	4	2	1	2	1
D. Hispanic or Latino								
E. Asian	1	0	3	0	0	0	1	0
F. Other								

PROBATION FEMALE	2010	2011	2012	2013	2014	2015	2016	2017
A. White or Caucasian	9	5	4	3	10	10	7	12
B. American Indian	15	9	2	0	1	2	6	5
C. Black or African-American	1	0	0	0	0	0	0	0
D. Hispanic or Latino								
E. Asian	0	0	0	0	0	0	0	0
F. Other								

6. For request #3 and #4, the number of individuals in each category who returned to prison for a violation of their condition of release on parole or probation (i.e. a technical or compliance violation).

PAROLE MALE	2010	2011	2012	2013	2014	2015	2016	2017
A. White or Caucasian	88	85	67	93	85	93	112	122
B. American Indian	30	31	32	27	31	24	43	38
C. Black or African-American	6	2	3	2	3	3	8	7
D. Hispanic or Latino								
E. Asian	1	1	0	1	1	1	0	2
F. Other								

PAROLE FEMALE	2010	2011	2012	2013	2014	2015	2016	2017
A. White or Caucasian	10	4	13	7	7	7	8	10
B. American Indian	1	4	2	4	4	4	7	5
C. Black or African-American	0	0	0	1	1	0	0	0
D. Hispanic or Latino								
E. Asian	0	0	0	0	0	0	0	0
F. Other								

PROBATION MALE	2010	2011	2012	2013	2014	2015	2016	2017
A. White or Caucasian	210	253	180	227	208	148	169	162
B. American Indian	91	91	59	91	84	78	52	57
C. Black or African-American	10	8	7	8	9	7	7	13
D. Hispanic or Latino								
E. Asian	0	2	0	2	1	0	1	1
F. Other								

PROBATION FEMALE	2010	2011	2012	2013	2014	2015	2016	2017
A. White or Caucasian	36	22	23	21	41	19	27	28
B. American Indian	25	20	15	21	24	21	27	16
C. Black or African-American	0	1	1	2	3	0	1	1
D. Hispanic or Latino								
E. Asian	1	0	0	1	0	0	1	0
F. Other								

7. For request #6, the number of individuals who had previously had their parole or probation revoked on technical/compliance grounds:

	TOTAL	MALE	FEMALE
A. Once	972	854	118
B. Two times	156	137	19
C. Three times	44	43	1
D. Four or more times	16	13	3

8. The number of individuals' whose violation of parole' and/or probation includes:

- A. Failure to enroll in a required class;
- B. Failure to complete a required class;
- C. Drug use;
- D. Alcohol use;
- E. Missing a drug test;
- F. ETC
- G. Failure to pay fines or fees, or make other payments related to conditions of probation and/or parole.

9. For requests #7-8, number and gender of individuals in each category who are*:

MALES	ONCE	TWICE	3 TIMES	OR MORE
A. White or Caucasian	599	87	26	6
B. American Indian	23	44	16	6
C. Black or African-American	25	5	1	0
D. Hispanic or Latino				
E. Asian	0	1	0	1
F. Other				

FEMALES	ONCE	TWICE	3 TIMES	OR MORE
A. White or Caucasian	62	13	1	3
B. American Indian	54	5	0	0
C. Black or African-American	1	1	0	0
D. Hispanic or Latino				
E. Asian	1	0	0	0
F. Other				

10. The number of technical or compliance probation and parole violators who were incarcerated for:

A. 1-3 months;	56
B. 4-6 months;	271
C. 7-9 months;	568
D. 10-12 months;	999
E. 13-15 months;	371
F. 18 months - 2 years;	783

11. For request #10, the number and gender of individuals who were:

	TOTAL	MALE	FEMALE
A. White or Caucasian	2,586	2,301	285
B. American Indian	1,050	848	202
C. Black or African-American	112	103	9
D. Hispanic or Latino			
E. Asian	16	12	4
F. Other			

*A missed keystroke led to an inaccurate response to Question 9. The corrected response is available below.

9. For requests #7-8, number and gender of individuals in each category who are:

MALES	ONCE	TWICE	3 TIMES	OR MORE
A. White or Caucasian	599	87	26	6
B. American Indian	230	44	16	6
C. Black or African-American	25	5	1	0
D. Hispanic or Latino				
E. Asian	0	1	0	1
F. Other				

X. Appendix C:

Qualitative Analysis of Response Provided by the Department of Corrections to the ACLU of Montana

PAROLE DATA:

The second column of the following two tables displays the overall number of people who were released on parole between 2010 and 2017. The third column shows the overall percentage of people who returned to prison from parole. Finally, the last two columns display the percentage of people who returned to prison from parole for a new offense and for a violation, respectively. There is approximately a 10 percentage point difference in the overall probability of return to prison between White and Native American males who are on parole. Native Americans are also more likely to return to prison for technical violation of parole than white people. The differences between white and Native American females show the same trend but are less significant in magnitude.

Males:

Ethnicity	Released on parole	Returned to prison (%)	For new offense (%)	For Violation (%)
White	2830	28.52	2.19	26.33
Nativam	736	37.36	2.58	34.78
Black	125	28.80	1.60	27.20
Asian	12	50.00	0.00	50.00

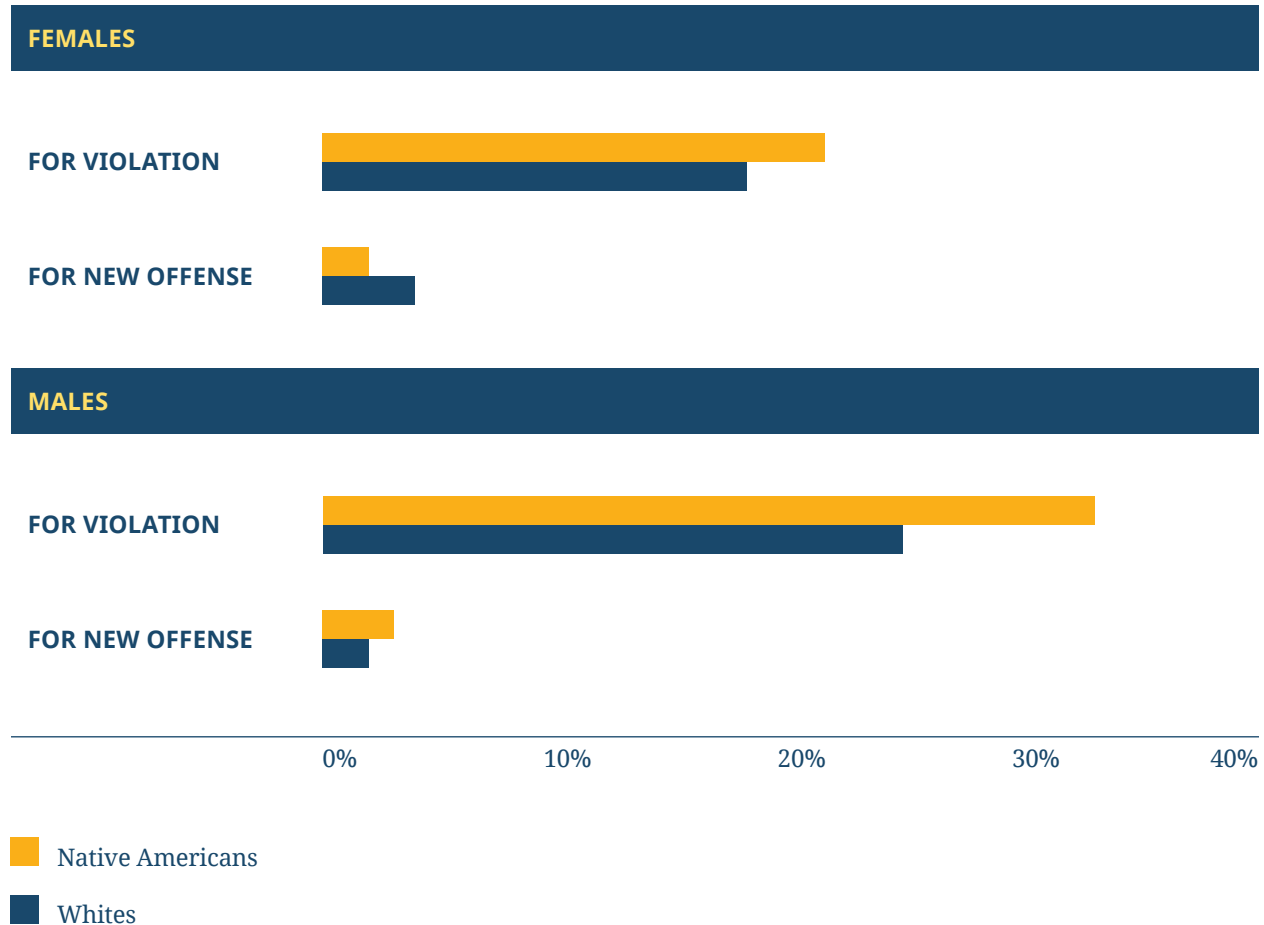
Females:

Ethnicity	Released on parole	Returned to prison (%)	For new offense (%)	For Violation (%)
White	356	23.03	3.65	19.38
Nativam	160	21.88	1.25	20.62
Black	11	0.00	0.00	9.09
Asian	3	33.33	0.00	0.00

FIGURE 1:

This panel is a graph of the last two columns of the previous two tables.

Percentage of people who returned to prison from parole, grouped by type of offense:



PROBATION DATA SUMMARY:

The second column of the following two tables displays the number of people who returned to prison from probation. The last two columns represent the proportion of people who returned to prison from probation for a new offense and for a violation of the terms of their probation, respectively. These analyses suggest that both Native American males and females who are on probation are more likely to be incarcerated for technical violations than white males and females. Again, the magnitude of the difference is greater for males than for females.

Males:

Ethnicity	Probation to prison	For new offense (%)	For violation (%)
White	2125	26.73	73.27
Nativam	752	19.81	80.19
Black	84	17.86	82.14
Asian	9	22.22	77.78

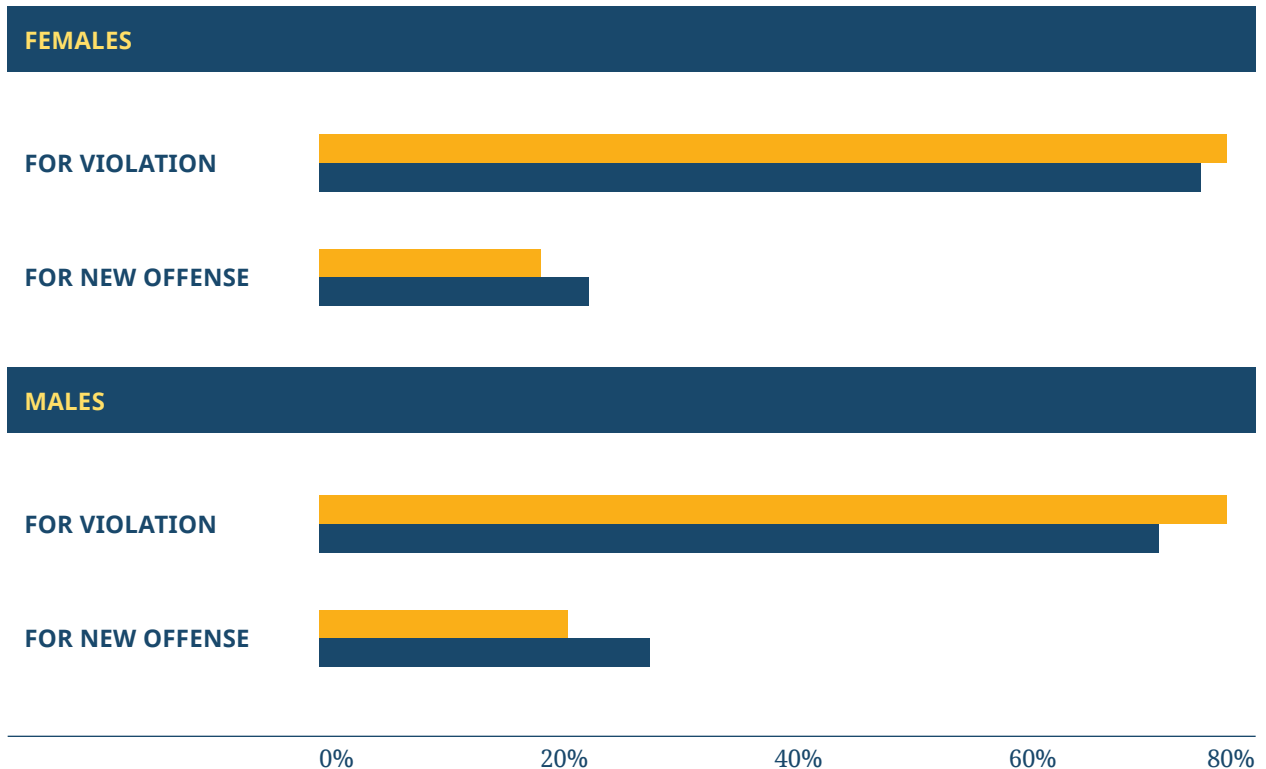
Females:

Ethnicity	Probation to prison	For new offense (%)	For violation (%)
White	277	21.66	78.34
Nativam	209	19.14	80.86
Black	10	10.00	82.14
Asian	3	0.00	77.78

FIGURE 2:

This panel is a graph of the last two columns of the previous two tables.

Percentage of people who returned to prison from probation, grouped by type of offense:



TECHNICAL VIOLATIONS:

Past technical violations for males who returned to prison after a technical violation:

In the following two tables: The second column displays the number of people who returned to prison for a technical violation of parole or probation. The next five columns represent the proportion of these people who were on their first vs. second vs. . . . vs. fifth or more violation of parole or probation when they returned to prison. It appears that Native Americans are more likely to be incarcerated for their 2nd, 3rd, 4th or 5th parole or probation violation than whites. Conversely, whites are more likely to be on their first instance of parole or probation violation.

Males:

Ethnicity	Nbr of violations	Is 1st vio (%)	Is 2nd vio (%)	Is 3rd vio (%)	Is 4th vio (%)	Is 4th vio (%)
White	2302	68.81	26.02	3.78	1.13	0.26
Nativam	859	65.54	26.78	5.12	1.86	0.70
Black	103	69.90	24.27	4.85	0.97	0.00
Asian	13	84.62	0.00	7.69	0.00	7.69

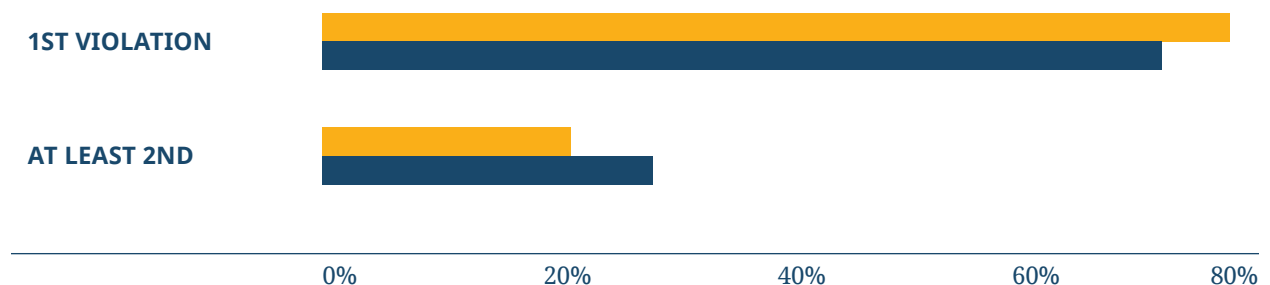
Females:

Ethnicity	Nbr of violations	Is 1st vio (%)	Is 2nd vio (%)	Is 3rd vio (%)	Is 4th vio (%)	Is 4th vio (%)
White	286	72.38	21.68	4.55	0.35	1.05
Nativam	202	70.79	26.73	2.48	0.00	0.00
Black	10	80.00	10.00	10.00	0.00	0.00
Asian	3	66.67	33.33	0.00	0.00	0.00

FIGURE 3:

The following figure displays the likelihood of whites vs. Native Americans of returning to prison for their very first technical violation of parole or probation. As it appears on the previous tables, whites are more likely to be returning to prison for their very first parole or probation violation than Native Americans.

Percentage of people who were incarcerated for a ‘first’ vs. ‘second or more’ technical violations of parole or probation:





This report, *Set Up to Fail: Montana's Probation & Parole System*, and other resources are available online at:
www.aclumontana.org/en/publications.

Let's stay in touch! Connect with us for updates and ways to take action. Sign up for our emails at
www.aclumontana.org.

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