



# A Brief from the Montana Advisory Committee

May 2019

## Bordertown Discrimination in Montana

### Summary Findings and Policy Implications

In 2001, the Montana State Advisory Committee (SAC) to the United States Commission on Civil Rights issued a report analyzing the disparities in education between Native Americans and Whites in Montana. The Committee made recommendations for stemming dropout rates, low achievement levels, low test scores, and little advancement to higher education by Native Americans.

As part of its continuing assessment of progress in the conditions of Native Americans in the state, the Montana SAC held a series of community briefings designed to examine alleged discrimination against Native Americans in border towns.

In August 2016, the Montana SAC held a community briefing in Billings, the largest metropolitan area in the state, to determine the prevalence of discrimination in the social and economic relationships of Native Americans and the white community. The Committee held a second briefing in March 2018 in Hardin, a town bordering a Crow reservation. The briefings revealed anecdotal evidence suggesting continued disparity and or discrimination in the areas of education, healthcare, voting, and the administration of justice.

According to many panelists, whether systemic discrimination exists or not, the perception of unfairness among Native Americans is so pervasive that it negatively affects Native Americans' experiences in border towns.

### Purpose, Scope, and Methods

The U.S. Commission on Civil Rights is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory committees in each of the 50 states and the District of Columbia. These state advisory committees (SACs) are composed of state citizens who serve without compensation. State advisory committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction.

In July 2015 the Montana SAC by unanimous vote selected Border Town Discrimination as its project topic for study.

The Montana SAC held two separate community briefings. The first was held in Billings, in August 2016, The second was held in Hardin March 2018. Invitees included law enforcement, local/county/state/federal/tribal officials, representatives from community organizations, and members of academia. Additionally, each briefing provided an open session for the community at large to make comments.

This brief presents a review of the issues addressed, identifies key findings of the Committee, and provides policy recommendations.

The federal government recognizes seven Tribes in Montana<sup>1</sup>: the Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, the Blackfeet Tribe of the Blackfeet Indian Reservation, The Chippewa Cree Indians of the Rocky Boy's Reservation, the Confederated Salish & Kootenai Tribes of the Flathead Reservation, The Crow Tribe of Montana, the Fort Belknap Indian Community of the Fort Belknap Reservations, and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation. (See fig. 1)



Figure 1 Montana Native American Reservations – US Dept. of Agriculture. <sup>5</sup>

Each of the federally recognized tribes is a nation unto itself, sovereign, self-determining and self-governing. Each tribe maintains a government-to-government relationship with the United States.

American Indians have a unique relationship to the U.S. government because they are dual citizens: U.S. citizens and tribal citizens. This relationship creates a complex set of laws regarding civil rights protections.<sup>2</sup> Native Americans are subject to mostly federal jurisdiction in Indian Country<sup>3</sup>, but are subject to state and local laws when not on reservation land.

Discrimination against Native Americans is common. According to a Harvard study, more than one in three Native Americans report experiences of slurs, offensive comments, threats or harassment, and violence. Thirty eight percent of Native Americans say they or a family member have experienced violence because they are Native, with 23 percent saying they have been sexually harassed.<sup>4</sup>

### Summary Findings of the Montana SAC

In 2015 the Montana Advisory Committee embarked on a study of Bordertown communities in Montana. Communities near American Indian reservations are frequently referred to as border towns.<sup>6</sup> The Montana Advisory Committee held public briefings to collect testimony regarding discrimination in Montana border towns. The following is a representation of the testimony collected at these public briefings and reflects primarily the experience of the Crow and Northern Cheyenne reservations.

### THE ADMINISTRATION OF JUSTICE

The *Administration of Justice*, in this study, is a compendious term that stands for all the complexes of activity that operate to bring the substantive law of crime to bear, or to keep it from coming to bear, on persons who are suspected of having committed crimes in the state of Montana. The term refers to the rules of law that govern the detection, investigation,

<sup>1</sup> U.S. Dept. of Int., Bureau of Indian Affairs, Tribal Leaders Directory Dataset (2018), <https://www.bia.gov/tribal-leaders-directory>.

<sup>2</sup> See Appendix 2.

<sup>3</sup> "Indian Country" is a codified term which refers to lands referred to as "Indian Reservation[s]," though it also includes many others. 18 U.S.C. § 1151 (2006).

<sup>4</sup> Todd Datz, Harvard Chan School of Public Health, Poll Finds More than one-third Native American (2017).

<sup>5</sup> U.S. Dept. of Ag., public domain, <https://www.nrcs.usda.gov/wps/portal/nrcs/mt/about/outreach/tribal/>.

<sup>6</sup> See; Navaho Nation Human Rights Commission. <http://www.nnhrc.navajo-nsn.gov/docs/Border%20Towns.pdf>; UNM newsroom article. <https://news.unm.edu/news/border-town-bullies-goes-international>. IndianZ story. [https://www.indianz.com/News/2006/07/13/border\\_town\\_race.asp](https://www.indianz.com/News/2006/07/13/border_town_race.asp). Arizona Daily Sun. [https://azdailysun.com/news/border-town-bias-against-navajos-in-dispute/article\\_40ea515e-389c-5402-a20b-b1773c020b46.html](https://azdailysun.com/news/border-town-bias-against-navajos-in-dispute/article_40ea515e-389c-5402-a20b-b1773c020b46.html).

apprehension, interviewing, and trial of persons suspected of crime and those persons whose responsibility it is to work within these rules. The administration of justice is not confined to the courts; it encompasses officers of the law and others whose duties are necessary to ensure that the courts function effectively.

The administration of justice then, can be fallible since the factor of human judgement cannot be programmed out.

The testimony gathered in Billings and Hardin include the following:

### Statewide

- Native Americans make up 6.6% of the population in Montana. They represent 18% of those arrested in 2016, and currently comprise 22% of the jail population in Montana.<sup>7</sup>
- Native American women in particular are disproportionately incarcerated, making up roughly 3% of the population and accounting for 36% of incarcerated women.<sup>8</sup>
- For the period 2013-2014 Native Americans in Montana were generally overrepresented as the *arrestees* for 11% of deliberate homicide, 14% for rape, 28% for robbery, 19% for aggravated assault, 12% of burglaries, 20% of motor vehicle thefts, and 9% of DUIs.<sup>9</sup>

- Native Americans in Montana are generally slightly overrepresented as victims of violent crime.<sup>10</sup>

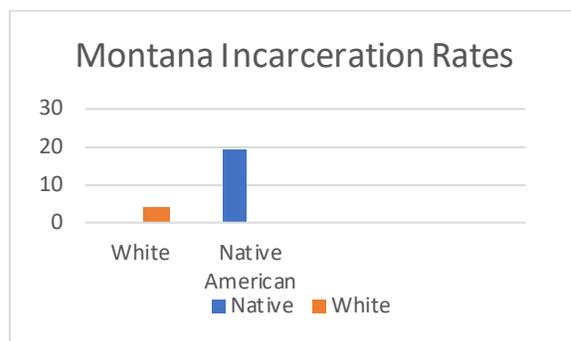


Figure 2: Montana Incarceration rate per 1,000 people in that racial group.<sup>11</sup>

- Crime in Montana has decreased 18% from 2000 to 2014, yet the arrest rates have increased by 12% during the same period.<sup>12</sup>
- The number and proportion of arrests involving revocations, violations, failure to appear, etc. has increased by 15% and accounts for 45% of the increase in total arrests.<sup>13</sup>
- A member of the Montana Sentencing Commission told the committee the increase in arrests is not new crime, but rather the State is arresting more people who are unable to comply with parole conditions, who are revoked, and who are at risk of failure to appear.<sup>14</sup>
- A common problem for Native Americans living on reservations is the inability to comply with court requirements due to the

<sup>7</sup> Prison Policy Initiative, Montana Profile, (2019) <https://www.prisonpolicy.org/profiles/MT.html>.

<sup>8</sup> Caitlin Borgman, Testimony before the Montana Advisory Committee to the U.S. Commission on Civil Rights, hearing, Billings, MT, Aug. 29, 2016, transcript, p.83 (hereafter cited as Hearing Transcript 1).

<sup>9</sup> Brent Brooks, Testimony before the Montana Advisory Committee to the U.S. Commission on Civil Rights, hearing, Billings, MT, Aug. 29, 2016, transcript, p.48 (hereafter cited as *Hearing Transcript 1*).

<sup>10</sup> Brooks Testimony, *Hearing Transcript 1*, p. 48.

<sup>11</sup> Prison Policy Initiative, Montana Profile, (2019) <https://www.prisonpolicy.org/profiles/MT.html>.

<sup>12</sup> Majel Russell, Testimony before the Montana Advisory Committee to the U.S. Commission on Civil Rights, hearing, Billings, MT, Aug. 29, 2016, transcript, p.88 (hereafter cited as Hearing Transcript 1).

<sup>13</sup> *Id.* at p.90.

<sup>14</sup> *Id.* at p.90.

distance between the reservation and the location of court ordered supervision.<sup>15</sup>

- Most Native Americans living on reservations are low-income, lack reliable transportation, and live in rural areas. The probability of missing a court date, or parole meeting, urinalysis, or some other condition of the court is very high. There are Native Americans sitting in jail simply for failure to appear.<sup>16</sup>
- Risk assessment by probation and parole officers in Montana usually consists of assessments such as: “Does this person have a stable family?” “Does this person have a job?” “Does this person have reliable transportation and a stable support group?” Many Native Americans do not meet these standards and are wrongly considered high-risk.<sup>17</sup>
- The U.S. Attorney’s office informed the Committee that past civil rights cases involving Native Americans have included landlord-tenant bias, employment bias, housing sale bias, and equal credit opportunity cases.<sup>18</sup>
- One case recently involved a landlord discrimination complaint which was successfully tried in the Montana U.S. District Court.<sup>19</sup>
- Assistant U.S. Attorney Victoria Francis said implicit bias training is needed to stem civil rights violations.<sup>20</sup>

- Assistant U.S. Attorney Francis said that in 2013 there was an alleged round-up of homeless and intoxicated Native Americans. They were held in holding areas without due-process until after a local rodeo had been held so that tourists would not be chased away.<sup>21</sup>
- These allegations were corroborated by Mary Cleland, a tribal court lay advocate, who told the committee on July 12 and 13 of 2013, there was a mass incarceration of “street people”, who the police referred to as “prairie niggers.” She said they were picked up and held without a warrant or probable cause.<sup>22</sup>
- According to a report by the U.S. Sentencing Commission, there is a nationwide perception among Native Americans, many federal prosecutors, federal defenders, and some federal and state judges, that Indians are subject to sentencing disparities.<sup>23</sup>
- A Native American Justice of the Peace told the committee that he contacted the Bureau of Indian Affairs (BIA) over the inadequate jail facilities on his reservation. The jail was built to house 19 inmates, and currently houses 60 individuals. The Judge met resistance from the BIA, who ships inmates

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<sup>15</sup> *Id.* at p.92.

<sup>16</sup> Russell Testimony, Hearing Transcript 1, p.92-93.

<sup>17</sup> *Id.* at p.100.

<sup>18</sup> Victoria L. Francis, testimony before the Montana Advisory Committee to the U.S. Commission on Civil Rights, hearing, Billings, MT, Aug. 29, 2016, transcript, p.54 (hereafter cited as *Hearing Transcript 1*).

<sup>19</sup> Brendan McCarthy, testimony before the Montana Advisory Committee to the U.S. Commission on Civil Rights, hearing, Hardin, MR, March 29, 2018, transcript, p.72 (hereafter cited as *Hearing Transcript 2*).

<sup>20</sup> Francis Testimony, Hearing Transcript 1, p.55.

<sup>21</sup> Francis Testimony, Hearing Transcript 1, p.70.

<sup>22</sup> Mary Cleland Testimony before the Montana Advisory Committee to the U.S. Commission on Civil Rights, hearing, Billings, MT, Aug. 29, 2016, transcript, p.240 (Hereafter cited as *Hearing Transcript 1*).

<sup>23</sup> U.S. Sentencing Comm’n Tribal Issues Advisory Group, Report of the Tribal Issues Advisory Group (2016), p.15.

as far away as Oklahoma to solve the problem.<sup>24</sup>

- The Tribal Issues Advisory Group to the United States Sentencing Commission recommends “better training of federal employees who work in Indian country about Native American history and culture.”<sup>25</sup>

### Yellowstone County and Billings, Montana

- Native Americans make up 4.4% of the population in Billings, Montana.<sup>26</sup> They represent 23% of those arrested in 2015<sup>27</sup>, and currently comprise 31% of the jail population in Yellowstone County.<sup>28</sup>

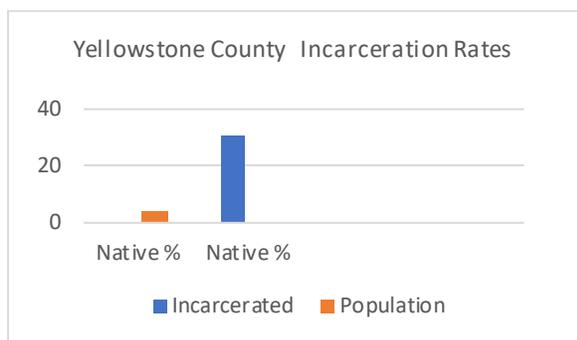


Figure 3 Yellowstone County Native American Incarceration Percentage

- Despite a distance of only a few miles, the Billings Police Chief Rich St. John does not

consider Billings to be in close proximity to a reservation<sup>29</sup>, however, the President of Chief Dull Knife College in Lame Deer, Montana, considers *all of Montana* a Border Town because “discrimination and profiling happens from one end of the state to the other.”<sup>30</sup>

- The Chief St. John told the committee that despite the high disparity between the Native population and their arrest rate, “There are absolutely no red flags for any policing, any profiling, anything of that sort that would be cause for discrimination.”<sup>31</sup>
- According to Chief St. John, the Billings Police Department receives between 3 and 5 discrimination complaints per year. No allegations have been sustained. The review process is internal with no current community oversight. The Chief added, “If we have a committee (oversight), you don’t have any leverage, you don’t have any say-so, it’s advisory only.”<sup>32</sup>
- The Chief told the Committee, “Regardless of what culture you’re from, we expect people to obey the law. We expect people to obey lawful orders of law enforcement officers.”<sup>33</sup>
- In 2017 there were 144 total investigations into Citizen and Department Initiated

<sup>24</sup> Leroy Not Afraid, testimony before the Montana Advisory Committee to the U.S. Commission on Civil Rights, hearing, Hardin, MR, March 29, 2018, transcript, p.122 (hereafter cited as Hearing Transcript 2).

<sup>25</sup> United States Sentencing Commission, Tribal Issues Advisory Group, Report of the Tribal Issues Advisory Group, p.2, (2016). [https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/20160606\\_TIAG-Report.pdf](https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/20160606_TIAG-Report.pdf).

<sup>26</sup> Rich St. John, Testimony before the Montana Advisory Committee to the U.S. Commission on Civil Rights, hearing, Billings, MT, Aug. 29, 2016, transcript, p.10 (hereafter cited as *Hearing Transcript 1*).

<sup>27</sup> *Id.* at p.29.

<sup>28</sup> Mike Linder, Testimony before the Montana Advisory Committee to the U.S. Commission on Civil Rights, hearing, Billings, MT, Aug. 29, 2016, transcript, p.29 (hereafter cited as *Hearing Transcript 1*).

<sup>29</sup> St. John Testimony, Hearing Transcript 1, p.11

<sup>30</sup> Dr. Richard Littlebear, Testimony before the Montana Advisory Committee to the U.S. Commission on Civil Rights, hearing, Billings, MT, Aug. 29, 2016, transcript, p.210 (hereafter cited as Hearing Transcript 1).

<sup>31</sup> St. John Testimony, Hearing Transcript 1, p.11.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*, P. 23.

complaints against the Billings Police Department.<sup>34</sup>

## CULTURAL COMPETENCY

Cultural Competency can be defined as a set of congruent behaviors, attitudes and policies that come together in a system, agency, or professional, and enable effective work in cross-cultural situations.<sup>35</sup>

In the committee's view, public sector cultural competency should be concerned with an organization's commitment to institutionalizing the policies and practices that lead to culturally competent behaviors, and interactions with the public.

The testimony gathered in Billings and Hardin include the following:

- Every point of contact between a government institution and Native Americans in Montana is an opportunity for bias to rear its head.<sup>36</sup>
- ACLU Director Borgmann observed "I don't think you can do any kind of systemic reform in the area of race discrimination without the specified training like cultural competency training."<sup>37</sup>
- Yellowstone County Sheriff Linder told the committee that the deputies receive 4

hours of Cultural Competency training at the academy, and the department tries to have it every two or three years.<sup>38</sup>

- Billings Police Chief St. John said his department tries to have them (cultural competency training) occasionally, although they are not mandatory, unless a situation calls for them.<sup>39</sup>
- The Chief said that he treats people with respect and fairness, and "it's irrelevant who's who."<sup>40</sup>
- Currently the Billings Police Department utilizes an online course called Police One for cultural awareness training.<sup>41</sup>
- Tribal Leader Killsback commented that decision makers and directors in state government should develop cultural competency, there should be education within the state government to have state employees understand tribal governments and tribal government capacity.<sup>42</sup>
- Kassie Runsabove told the committee that in healthcare, part of the solution to tense relations is cultural sensitivity training. She said it would help with communication, because wrongly assuming someone's tribal membership automatically breaks down

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<sup>34</sup> Billings Police Department, 2017 Annual Report, p.33 (2017).

<https://www.ci.billings.mt.us/DocumentCenter/View/36096/2017-Annual-Report---Final>.

<sup>35</sup> Norman & Goodman. *Cultural competency for public administrators*. (32-46). Armonk, NY: ME Sharp, (2012).

<sup>36</sup> Borgmann Testimony, Hearing Transcript 1, p. 81.

<sup>37</sup> *Id.* at p.80.

<sup>38</sup> Linder Testimony, Hearing Transcript 1, p20.

<sup>39</sup> St. John Testimony, Hearing Transcript 1, p.21.

<sup>40</sup> St. John Testimony, Hearing Transcript 2, p. 38.

<sup>41</sup> *Id.* at p.32.

<sup>42</sup> Lawrence Killsback, Testimony before the Montana Advisory Committee to the U.S. Commission on Civil Rights, hearing, Billings, MT, Aug. 29, 2016, Transcript, p135 (Hereafter cited as Hearing Transcript 1).

communication, regardless of the intention.<sup>43</sup>

- Reno Charette who works as an administrator at Montana State University- Billings, said the staff needs to be better educated and trained on cultural diversity and cross-cultural communications. Students are often left humiliated after having to provide proof of their “below the poverty line” economic status.<sup>44</sup>
- Glenda McCarthy, an instructional coach at Billings Public Schools (BPS), told the committee that progress in closing achievement gaps will take an ongoing effort and real understanding of the legacy and the historical trauma that impacts many of the BPS students, and an understanding of the importance of maintaining cultural language.<sup>45</sup>
- One panelist gave an example of a student who is 75% Native American, but of different tribes and not enough of one to be enrolled. According to the government, that student is not a Native American. She said, “In no other race would you have to identify your [lineage], unless you’re a horse or a dog.”<sup>46</sup>

## EDUCATION

The experience of the committee shows that childhood education faces stark disparities in Montana. Every school district has a higher percentage of students of color than teachers of color within the public-school system. Even in schools on reservations serving primarily Native students, the majority of educators are White. The committee’s personal experience and professional interaction with educators notes that American Indian students are predominantly marginalized, and often have little to no curriculum experience with educators who share their cultural heritage.

The testimony gathered in Billings and Hardin include the following:

- In Montana, 13.5% of public-school students are Native American. 112 public schools have a Native population of 25% or more. 58 schools have up to a 75% Native population.<sup>47</sup>
- There is a 20% gap in graduation rates between white students and Native American Students in Montana.<sup>48</sup>
- Indian students at Fort Peck Schools are being discriminated against and excluded from extracurricular activities and are subjected to discriminatory disciplinary actions.<sup>49</sup>
- Wolf Point was the subject of a complaint filed with the U.S. Office of Civil Rights in 2003, charging race discrimination. There have been a few

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<sup>43</sup> Kassie Runsabove, Testimony before the Montana Advisory Committee to the U.S. Commission on Civil Rights, hearing, Billings, MT, Aug. 29, 2016, Transcript, p. 156 (Hereafter cited as Hearing Transcript 1).

<sup>44</sup> Reno Charette, Testimony before the Montana Advisory Committee to the U.S. Commission on Civil Rights, hearing, Billings, MT, Aug. 29, 2016, Transcript, p.173 (Hereafter cited as Hearing Transcript 1).

<sup>45</sup> Glenda McCarthy, Testimony before the Montana Advisory Committee to the U.S. Commission on Civil Rights, hearing, Billings, MT, Aug. 29, 2016, Transcript, p203 (Hereafter cited as Hearing Transcript 1).

<sup>46</sup> Jennifer Smith, Testimony before the Montana Advisory Committee to the U.S. Commission on Civil Rights, hearing, Billings, MT, Aug. 29, 2016, Transcript, p.178 (Hereafter cited as Hearing Transcript 1).

<sup>47</sup> *Id.* at p.164.

<sup>48</sup> McCarthy Testimony, Hearing Transcript 1, p. 199.

<sup>49</sup> Borgmann Testimony, Hearing Transcript 1, p.82

cosmetic changes, but the basic issue is still there.

- Caitlin Borgmann, Executive Director of the ACLU in Montana, said Native American parents are not being informed of their rights and responsibilities under the federal education funding stream for Indian students or that those rights and responsibilities are not being honored by the schools, including their rights to influence curriculum and disciplinary policies.<sup>50</sup>
- One panelist felt that schools, unofficially, are used to eliminate Native culture, language, and way of life.<sup>51</sup> He said, “None of the treaties require that education be conducted in English, this is part of their hidden curriculum where schools were used to getting rid of it (Native language), to homogenize.”<sup>52</sup>
- Principal Jason Cummins told the committee that in the past, he had a staff member tell him that he (the staff member) hated the Crow language and didn’t think that Native Americans should speak their language at work.<sup>53</sup>
- Mr. Cummins related another story of walking in on one of his teachers who was telling her class “The reason your tribe does not speak their language anymore is because your tribe has

progressed.” Mr. Cummins said it is important for teachers to understand that the Native students do not share the teacher’s backgrounds, their values or beliefs. “Differences must be acknowledged instead of pretending we are all the same.”<sup>54</sup>

- A tribal leader indicated that the tribe cannot begin to address the education disparity without data, which the state is slow to provide.<sup>55</sup>
- The Education and Secondary Education Act Title VII<sup>56</sup> requires a student fill out a form to prove eligibility. The student must be an enrolled tribal member or have a parent who is a tribal member. Many students, for whatever reason, do not have access to their number and this creates funding problems for the districts that must still provide special services to these students.<sup>57</sup>
- The state of Montana’s Indian Education for All law<sup>58</sup>, instructs “Every educational agency and all educational personnel will work cooperatively with Montana tribes ... when providing instruction and implementing an educational goal.”<sup>59</sup> Native American leaders have said they have had trouble adding Crow culturally relevant

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<sup>50</sup> *Id.* at p.82-83.

<sup>51</sup> Jason Cummins, Testimony before the Montana Advisory Committee to the U.S. Commission on Civil Rights, hearing, Billings, MT, Aug. 29, 2016, Transcript, p.165 (Hereafter cited as Hearing Transcript 1).

<sup>52</sup> Cummins Testimony, Hearing Transcript 1, p.167.

<sup>53</sup> Cummins Testimony, Hearing Transcript 1, p.166.

<sup>54</sup> Cummins Testimony, Hearing Transcript 1, p.169.

<sup>55</sup> Lawrence Killisback, Testimony before the Montana Advisory Committee to the U.S. Commission on Civil Rights, hearing, Hardin, MT, March 29, 2018, transcript, p.19 (Hereafter cited as Hearing Transcript 2).

<sup>56</sup> 20 U.S.C. § 7427 (a).

<sup>57</sup> Smith Testimony, Hearing Transcript 1, p. 176.

<sup>58</sup> Mont. Code Ann. § 20-1-501 (1999).

<sup>59</sup> *Id.* at 20-1-501 (b).

curriculum to the Hardin Curriculum, even though it is the law.<sup>60</sup>

- Indian Education for All is mandated by the state, but it requires the individual teacher to implement the program, and there are some teachers who resist the change to a cultural approach.<sup>61</sup>
- One educator told the committee that she hears stories from students and families about discrimination from staff members in the Billings Public Schools.<sup>62</sup> She also commented that the recent opening of the Medicine Crow Middle School drew negative comments and revealed prejudice and ignorance in the white community.<sup>63</sup>
- Indians are 6% of the student population at Montana State University – Billings (MSUB).<sup>64</sup>
- The retention rates are low for Native American students at MSUB. Less than half the freshman population move on to their sophomore year.<sup>65</sup>
- Native American students at MSUB, unlike their White counterparts, do not have university staff that they can talk to, and lack a place where they feel safe and are not worried about how they phrase a question, and can speak in mixed language (Crow or Cheyenne). Higher education is a foreign environment for them, most of the Native population is low-income, first generation student, it is

not uncommon for them to feel worthless.<sup>66</sup>

## VOTING

Recent litigation in Montana has centered around voter registration and access to the ballot inequalities for Native Americans. The committee is aware that Native Americans by and large have non-traditional mailing addresses and suffer great distances to travel for in-person voting.

As previously indicated in this brief, a disproportionately high number of Native Americans are incarcerated in Montana. A collateral issue to this phenomenon is that the incarcerated cannot vote in Montana. The numbers of prison population are counted in prison address instead of prisoner's home of record. This inflates the numbers in the prison address and dilutes the numbers in the inmate's home.

The testimony gathered in Billings and Hardin include the following:

- In the big counties in Montana, people can live a fair distance from the county seat. All people have to drive to the county seat, but many people have a car that work, money for gas, and a mailbox. Most tribal members get to town maybe once a week, maybe once a month to pick up mail. These are unique challenges.<sup>67</sup>
- In 2012 the U.S. Attorney for Montana submitted a statement of interest in the

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<sup>60</sup> Killsback Testimony, hearing Transcript 2, p.20.

<sup>61</sup> McCarthy Testimony, Hearing Transcript 1, p.201-202.

<sup>62</sup> *Id.* at p. 204-205

<sup>63</sup> *Id.* at p.207.

<sup>64</sup> Charette Testimony, Hearing Transcript 1, p.171.

<sup>65</sup> *Id.* at 185.

<sup>66</sup> Charette Testimony, Hearing Transcript 1, p.199.

<sup>67</sup> Francis Testimony, Hearing Transcript 1, p.58.

Wandering Medicine<sup>68</sup> case, which claimed the location for in-person registration of early voting in Big Horn county discriminated against Native Americans, a violation of Section 2 of the Voting Rights Act.<sup>69</sup> In his statement, the U.S. Attorney submitted expert testimony which showed Native Americans identified in the lawsuit had significantly less access than Whites.<sup>70</sup>

- In Big Horn County, Whites had to travel an average of 11.6 miles to register, while Native Americans had to travel on average 22 miles. In Yellowstone County, Whites traveled an average of 9.7 miles as opposed to 31.5 miles on average for Native Americans.<sup>71</sup>
- As a settlement of the Wandering Medicine litigation, the ACLU is working to implement the Montana Secretary of State's directive to counties regarding satellite voting offices and polling places on reservations. Two reservations had satellite offices on their reservations for the 2016 primaries.<sup>72</sup>
- In 2014 the ACLU sued the Wolf Point School District for denying Indian people their full voting rights.<sup>73</sup>
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## HEALTHCARE

The special history between the United States government and the Native Americans is a long

one. There is no single issue that has remained as contested as healthcare. The United States government, as stewards of the Native American people, has a responsibility to provide adequate healthcare to the tribes. There is little argument that the government fails to meet its obligation.

The testimony gathered in Billings and Hardin include the following:

- Institutional discrimination in healthcare, housing, education, and criminal justice have produced major racial disparities nationwide, and specifically in Montana, even when we can't pinpoint any specific intent to discriminate.<sup>74</sup>
- Health is an indicator of discrimination.<sup>75</sup>
- Many Native Americans suffer from historical trauma.<sup>76</sup> The theory of historical trauma was developed to explain the current problems facing many Native Americans. This theory purports that some Native Americans are experiencing historical loss symptoms (e.g., depression, substance dependence, diabetes, dysfunctional parenting, unemployment) as a result of the cross-generational transmission of trauma from historical losses (e.g., loss of population, land, and culture). However, there has been skepticism by mental health professionals about the validity of this concept.<sup>77</sup>

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<sup>68</sup> Wandering Medicine v. McCulloch, No. 1:12-cv-135 (D. Mont. Mar. 26, 2014), D.E. 153, 2014 WL 12588302.

<sup>69</sup> 42 U.S.C. § 1971 (2)(a).

<sup>70</sup> B. McCarthy Testimony, Hearing Transcript 2, p.75.

<sup>71</sup> *Id.*

<sup>72</sup> Borgmann Testimony, Hearing Transcript 1, p. 84

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at p.77.

<sup>75</sup> Killisback Testimony, *Hearing Transcript 2*, p. 16.

<sup>76</sup> Killisback Testimony, Hearing Transcript 1, p.142.

<sup>77</sup> Kathleen Brown-Rice, Examining the Theory of Historical Trauma Among Native Americans, *The Professional Counselor* (2017). <http://tpcjournal.nbcc.org/examining-the-theory-of-historical-trauma-among-native->

- Montana recently created the Office of American Indian Health as a response to the 2013 Department of Health and Human Services report on the state of health in Montana. The report indicated that Native Americans in Montana die a whole generation sooner than their White counterparts. On average, Native Americans die at age 59. One panelist felt this disparity implied discrimination because of a lack of health equity. He felt the disparity should bring resources.<sup>78</sup>
- Tribal leader Killsback told the committee that the state of Montana does not consult with or ask for feedback for ways to intervene on this health disparity.<sup>79</sup>
- The problem is exacerbated by the fact that some types of funding, by statute, must go to the state first, and then to the county, and ultimately to the reservations. The counties (using tribal demographics in their request for state funding) don't always filter funds appropriately. In Big Horn County, Crow data is mingled with Cheyenne data, so funds could potentially only make it to the Crow and not the Cheyenne.<sup>80</sup>
- Tribes are now just starting to learn the value of their data, and they want ownership of that data. If dollars follow data, then the tribes should have the resources to address the negative health disparities.<sup>81</sup>
- The Indian Health Service (IHS), an agency within the Department of Health and Human Services, is responsible for providing federal health services to Indians from federally recognized tribes.<sup>82</sup>
- Panelist Killsback said IHS has levels of priority, and the referral for care process is based on life or limb, meaning the agency has funding to care for patients in danger of losing life or limb and nothing else.<sup>83</sup> He said, "Don't get sick after June, because after June the money is gone and the IHS has no more funding for referrals."<sup>84</sup>
- In many instances, the Native American healthcare system is inadequate to deal with actual correct diagnosis because they are too late. There are not enough resources to get prevention measures done, so patients self-medicate. This leads to substance abuse, violence and anger.<sup>85</sup>
- If a Native American is referred from the reservation clinic to Billings, Billings wants to know if IHS is going to pay for the treatment. If IHS is not going to pay, the patient is discharged and told to leave the premises.<sup>86</sup>
- If a tribal member is denied treatment, often they are stranded in Billings without a way to return to the reservation because they were taken in an

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americans/.

<sup>78</sup> Killsback Testimony, Hearing Transcript 1, p.130.

<sup>79</sup> *Id.* at p. 131.

<sup>80</sup> *Id.* at p.137.

<sup>81</sup> *Id.* at p.138.

<sup>82</sup> U.S. Department of Health and Human Services, Indian Health Services, <https://www.ihs.gov/aboutihs/eligibility/>

<sup>83</sup> Killsback testimony, Hearing Transcript 1, p.158.

<sup>84</sup> *Id.* at p. 159.

<sup>85</sup> Killsback Testimony, Hearing Transcript 1, p.143.

<sup>86</sup> *Id.* at 149.

ambulance. The tribal member is then left looking for a shelter, stranded and having to hustle just to get back to the reservation. At this point, they are stuck on the streets.<sup>87</sup>

- Billings Police Chief St. John informed the committee of a program called Motivated Alcohol Addiction Program (MAAP). The Chief said the program is a response to the serial inebriant/transient problem for the residents and businesses in downtown Billings.<sup>88</sup>
- Chief St. John said that the police department “could not arrest ourselves out of the problem”, so the community and the police department came up with a jail diversion program to get Native Americans with co-occurring mental health and substance abuse issues into treatment.<sup>89</sup>
- Panelist Killsback said that tribal members that end up in the judicial system don’t receive resources to address mental health or behavioral health issues, and if they do, they are not culturally appropriate, and they are not in a manner that identifies with “our cultural practices and heritage.”<sup>90</sup>
- Brent Brooks, city attorney for Billings, said the MAAP program is a wonderful example of the city reaching out to the Native American populations, as well as other types of minorities, and affording them a greater opportunity for treatment. “And they need that.”<sup>91</sup>

- Panelist Runsabove told the committee that the Native American almost invariably enters the system in the wrong place: the emergency room. The provider takes care of the tertiary problem and doesn’t understand the whole concept of the patient’s health.<sup>92</sup>
- Physicians need to understand what happened to the Native American people and understand why patients are coming in with major health problems.<sup>93</sup>

## RECOMMENDATIONS

Recognizing that the Charter for the Montana Advisory Committee requires the Committee to initiate and forward advice and recommendations to the Commission upon matters that the committee has studied, the Committee offers three sets of recommendations, a set for the Administration of Justice, for Healthcare, and for Education.

## ADMINISTRATION OF JUSTICE

1. The Montana Advisory Committee asks the U.S. Commission on Civil Rights to send a copy of this brief to the Congress of the United States, who is delegated with trust status over Native Americans.
2. The U.S. Commission on Civil Rights should send a letter to the Secretary of the Department of the Interior and request the Department conduct a study on Native American arrest, sentencing, and incarceration disparities in Border Towns and Indian country.

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<sup>87</sup> *Id.*

<sup>88</sup> St. John Testimony, Hearing Transcript 1, p.8.

<sup>89</sup> *Id.* at p.9.

<sup>90</sup> Killsback Testimony, Hearing Transcript, p.143-144.

<sup>91</sup> Brooks Testimony, Hearing Transcript, p. 37.

<sup>92</sup> Runsabove Testimony, Hearing Transcript 1, p. 140.

<sup>93</sup>

3. The U.S. Commission on Civil Rights should send a letter to the Department of the Interior, Bureau of Indian Affairs, and request that the Bureau encourage local and state governments in Indian Country to enter into agreements so that the tribes can supervise individuals on the reservation that have been charged and sentenced in state court. Services such as drug and alcohol assessments, drug and alcohol treatment, supervision follow-through, and community supervision should take place on the reservation.
4. The U.S. Commission on Civil Rights should send a letter to the Department of Interior, Bureau of Indian Affairs, and suggest that the Bureau develop Cultural Competency curriculum for each of the law enforcement agencies that fall within 100 miles of Indian Country.

## HEALTHCARE

1. The U.S. Commission on Civil Rights should contact the Department of Health and Human Services, Indian Health Service, and request that Cultural Competency training be developed for physicians and healthcare workers that interact with each of the federally recognized tribes. The training should be culturally specific to each tribe, and not Native Americans in general.
2. The U.S. Commission on Civil Rights should send a letter to the Department of Health and Human Services, and request that the Indian Health Service identify what it would cost to provide “Medicaid and Medicare” standard of care to IHS healthcare recipients.

3. The U.S. Commission on Civil Rights should request from the Department of Health and Human Services to include in the FY2020 budget request, the dollar amount identified in item 2 above.

## EDUCATION

1. The U.S. Commission on Civil Rights should send a letter to the Civil Rights Unit with the U.S. Department of Education, and
  - a. Ask that a *Dear Colleague* letter be sent to all State Education Agencies within Indian Country to encourage cooperation between Local Education Agencies and Tribal Governments to ensure all federal and state requirements are met for the education of Native American children.
  - b. Ask that the Civil Rights Unit conduct an investigation regarding complaints of discrimination against Native Americans in Montana Public Schools.

### **Limitations**

Research has largely conceptualized the Native American experience through a racial/ethnic framework. This has yielded valuable insights but is incomplete in capturing the Native American experience as it pertains to the administration of justice. Racial and ethnic frameworks and analysis, as commonly applied, are inadequate to capture the Native American Indians' socio-political status, experience, and group ties. A limitation of existing analysis of Native Americans in US society is not recognizing that while tribes are sovereign nations, they face interlocking power arenas, and unlike other minority groups, Native American sovereignty and justice jurisdiction are key areas of contention.

**Montana Advisory Committee to the  
United States Commission on Civil Rights**



**Gwen Kircher – Chairperson**  
Billings

**Norma Bixby**  
Lame Deer

**Kiah Abbey**  
Missoula

**Dr. John Baden**  
Gallatin Gateway

**Doug Betters**  
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**Dr. Joan Hoff**  
Big Sky

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*This research brief is the work of the Montana Advisory Committee to the U.S. Commission on Civil Rights. The brief, which may rely on studies and data generated by third parties, is not subject to an independent review by Commission staff. State Advisory Committee reports to the Commission are wholly independent and reviewed by Commission staff only for legal and procedural compliance with Commission policies and procedures. State Advisory Committee reports are not subject to Commission approval, fact-checking, or policy changes. The views expressed in this brief and the findings and recommendations contained herein are those of a majority of the Montana State Advisory Committee members and do not necessarily represent the views of the Commission or its individual members, nor do they represent the policies of the U.S. Government.*

## Appendix 1: Panelists

<b>Name</b>	<b>Title</b>	<b>Organization</b>
Carol Blank	Administrator	Riverstone Health Clinic
Brent Brooks	City Attorney	Billings, Montana
Caitlin Borgmann	Executive Director	ACLU Montana
Reno Charette	Dir. Of Am. Indian Outreach	Montana State University, Billings
Jason Cummins	Principal	Crow Agency School
Victoria Francis	Assistant U.S. Attorney	District of Montana
Jose Figueroa	Chief of Police	Bureau of Indian Affairs
Scooter Gates	Administrator	Riverstone Health Clinic
David Graber	Educator	
Jay Harris	County Attorney	Big Horn County, Montana
Lawrence J Killsback	President	Northern Cheyenne Tribe
Jordan Knudsen	City Attorney	Hardin, Montana
Michael LaValley	Native American Liaison	Office of U.S. Senator John Tester
Mike Linder	Sheriff	Yellowstone County, Montana
Dr. Richard Littlebear	President	Chief Dull Knife College, MT
Brendan McCarthy	Assistant U.S. Attorney	District of Montana
Glenda McCarthy	Instructional Coach	Billings Public Schools
Alvin Not Afraid	Chairman	Crow Tribe of Indians
Leroy Not Afraid	Justice of the Peace	
Kassie Runsabove	Administrator	St. Vincent Healthcare
Majel Russell	Attorney Member	Montana Sentencing Commission
Jennifer Smith	Dir. of Indian Education	Billings Public Schools
Frank Simpson	Sheriff	Big Horn County, Montana
Rich St. John	Chief of Police	Billings, Montana

## Appendix 2: Laws Relevant to the Civil Rights of American Indians

### *Indian Citizenship Act of 1924*<sup>94</sup>

The Indian Citizenship Act conferred citizenship to Indians born in the country. Prior to the Civil War, Indian citizenship was typically limited to Indians of one half or less Indian blood. The ratification of the 14th amendment, making all those who were born here U.S. citizens, did not clarify citizenship for Indians.

### *The Voting Rights Act of 1965*<sup>95</sup>

The Voting Rights Act (VRA) prohibited discrimination on the basis of race and color, and the extension of the act in 1975 provided additional protection and assistance to language minorities. This legislation was significant because states used literacy tests and poll taxes as barriers to Indian voting despite their eligibility under the Indian Citizenship Act.

### *The Indian Civil Rights Act (ICRA)*<sup>96</sup>

Congress held hearings regarding the authority of Indian tribes and discovered abuses from the tribal governments. In response, the Indian Civil Rights Act was passed in 1968. Because sections of the law mirror the Bill of Rights, the act is sometimes referred to as the "Indian Bill of Rights;" it offers some, but not all of the protections. The ICRA is Congress' attempt to balance the complicated issue of protecting the civil rights of American Indians while recognizing the authority of the tribal governments.

### *The Indian Self-Determination and Education Assistance Act of 1975*<sup>97</sup>

The Indian Self-Determination and Education Assistance Act of 1975 authorizes government agencies to enter into contracts with (and make grants to) Indian tribes and gives authority to the tribes to administer the funds.

### *Religious Freedom Act of 1978*<sup>98</sup>

The Religious Freedom Act of 1978, enacted to protect and preserve the traditional religious rights of American Indians, Eskimos, Aleuts, and Native Hawaiians, includes the following rights:

Access of sacred sites; Repatriation of sacred objects held in museums; Freedom to worship through ceremonial and traditional rites (including within prisons); Use and possession of objects considered sacred.

### *The Indian Child Welfare Act of 1978*<sup>99</sup>

The Indian Child Welfare Act of 1978 requires American Indian children be placed with extended family members, other tribal members, or other Native American families for foster-care or adoption purposes. The law protects the tribes' interest in retaining custody of their children.

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<sup>94</sup> Indian Citizenship Act of 1924, Pub. L. No. 68-175, 43 Stat. 253.

<sup>95</sup> Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437.

<sup>96</sup> Indian Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73.

<sup>97</sup> Indian Self-Determination and Education Assistance Act of 1975, Pub. L. No. 93-638, 88 Stat. 2203.

<sup>98</sup> American Indian Religious Freedom Act of 1978, Pub. L. No. 95-341, 92 Stat. 469.

<sup>99</sup> Indian Child Welfare Act of 1978, Pub. L. No. 95-608, 92 Stat. 3069.