

Racial Equity in Montana's Criminal Justice System:

An Analysis of Court, Corrections, and Community Supervision Systems

Executive Summary

Between April 2021 and February 2022, with funding and support from the U.S. Department of Justice's Office of Justice Programs, Bureau of Justice Assistance (BJA), The Council of State Governments (CSG) Justice Center conducted an analysis of racial equity across Montana's criminal justice system in partnership with Montana judicial branch stakeholders. This project builds on previous work by CSG Justice Center staff in Montana as part of the Justice Reinvestment Initiative (JRI), which documented initial evidence of American Indian and White racial disparities in arrests and corrections populations.¹ However,

because JRI was not focused exclusively on racial equity issues, more in-depth analysis was not possible at that time. In light of these previous findings, this new analysis aimed to investigate patterns of racial disparity across the criminal justice system, to the extent that they exist, and provide insight into the drivers behind them in order to offer actionable recommendations to address them. Additionally, this work sought to closely document any data gaps or data quality issues so the judicial branch can improve any racial equity-related data collection challenges within the court system.

CSG Justice Center staff's **key findings** from this work include the following:

- When sentenced to "DOC commit" status,² DOC staff determine the best placement option for a person convicted of a felony offense. In such cases, American Indian people are 1.3 times more likely to be incarcerated for felony criminal endangerment and other person offenses, relative to comparable White people. Similarly, American Indian people are 1.2 times more likely to be incarcerated for felony public order offenses, relative to comparable White people.
- Among those who receive a sentence other than DOC commit, a placement decision is made by the sentencing judge. In such cases, American Indian people are 1.5

times more likely to be incarcerated for felony criminal endangerment and other person offenses, relative to comparable White people. Additionally, American Indian people are 1.4 times more likely to be incarcerated for felony public order offenses, relative to comparable White people.

- There are no observed differences for incarceration sentence length imposed between White and American Indian people.
- Once incarcerated, American Indian people remain in secure or alternative secure facilities for an average of 27.4 days longer than similarly situated White people.

- American Indian people on probation or conditional release are about 1.4 times more likely than comparable White people to have supervision revoked during the first year of supervision. Supplemental analysis identified revocation disparities for both compliance and non-compliance violations.
- American Indian people are 1.3 times more likely to have parole revoked relative to similarly situated White people.
- There are no observable racial disparities in sentencing or placement decisions for drug offenses; however, for both American Indian and White people, more than 30 percent of all felony convictions are due to drug offenses.

Based on these results, CSG Justice Center staff propose the following **five recommendations** to improve racial equity in Montana’s criminal justice system:

- 1.** To address disparities in the decision to incarcerate American Indian people for criminal endangerment and other person offenses, the judiciary should educate judges about racial disparities driven by use of the criminal endangerment offense and explore the role of plea agreements in enabling these disparities.
- 2.** To address disparities in the decision to incarcerate American Indian people for public order offenses, the judiciary should coordinate with judges, law enforcement, Montana Department of Corrections (MT DOC), and Tribal Nations to investigate and address challenges specific to the inequitable treatment of people failing to comply with pretrial and post-conviction legal requirements, like bail jumping and failure to register.
- 3.** To address longer lengths of stay for American Indian people, the judiciary, MT DOC, and Board of Pardons and Parole should continue their efforts to address the factors contributing to this disparity.
- 4.** To reduce unequal revocations for supervision violations, MT DOC should continue to investigate and analyze how supervision revocation recommendations and decisions are made through a racial equity lens.
- 5.** To impact racial disparities within the criminal justice system, the judiciary should build upon existing efforts to understand, track, and reduce bias. This includes coordinating ongoing racial equity initiatives in the state, implementing judicial education on equity and bias, and improving the collection of race data by courts.

Endnotes

1. The Council of State Governments Justice Center, *Justice Reinvestment in Montana: Report to the Montana Commission on Sentencing* (New York: The Council of State Governments Justice Center, 2017).
2. In Montana, a judge has the option to sentence a person to “DOC commit.” The Montana Department of Corrections (MT DOC) then conducts an assessment and determines where to place the person next; options include a prison term, placement in an alternative secure facility, or community supervision.



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