Montana's probation & parole system is stacked against Indigenous people and the poor.

We're working to change it.



Fall/Winter 2018

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Ramping Up for the 2019 Legislative Session

By SK Rossi Advocacy and Policy Director

On January 7, 2019, the Montana State Legislature will "gavel in" for 90 days, another mad rush to change the laws and regulations that govern our lives. Thankfully, after the November elections, many of our legislative allies are returning for another term, including members of the bipartisan coalition that killed HB 609 (the anti-transgender "bathroom panic" bill) and legislators from both sides of the aisle who voted for criminal justice reform in 2017. We will, however, miss the champion of those bills, Senator Cynthia Wolken, who left her seat to become the Deputy Director at the Montana Department of Corrections.

This will be the last session overseen by Governor Bullock. Bullock has been a great ally to the ACLU on many issues – from reproductive freedom, to LGBTQ equality, to keeping a close watch on attempts to expand our criminal code – and we expect he'll continue to be in his last term.

...with anti-immigrant sentiment higher than we've seen during previous legislative years – egged on by the President – we're preparing to fight for the rights of immigrant friends and neighbors.

As usual, the ACLU of Montana's lobbying team will focus a lot of energy on killing bills that seek to curtail civil liberties. We expect the fervor around the Keystone XL pipeline will motivate opponents of free speech to file bills restricting First Amendment rights. We'll also likely see the usual efforts to

chip away at reproductive rights. And, with anti-immigrant sentiment higher than we've seen during previous legislative years – egged on by the President – we're preparing to fight for the rights of immigrant friends and neighbors. Lastly, after the death of the anti-trans and non-binary bathroom bill and ballot initiative – a huge victory for pro-equality advocates – we expect to see opponents of LGBTQ equality refocus their energy on proposals that seek to justify discrimination against the LGBTQ community under the guise of "religious freedom."

There's hopeful news too. The ACLU of Montana will lead and support efforts to expand civil liberties through criminal justice reform. We will work with our allies to further reform the probation and parole system and expand mental health and addiction services in Montana. Other proactive efforts are in the works, so stay tuned as we get closer to January 7. And, as always, please visit our website to learn more about how you can get involved.



We're gearing up for the 2019 legislative session.

Photo by montanapictures.net.



Join us for the ACLU of Montana Lobby Day on February 11, 2019. Learn more and sign up at aclumontana.org/lobbyday.



Volunteer Program Updates

By Zuri Moreno *Advocacy and Policy Assistant*

Since the launch of our volunteer program in February, the number of Montanans showing up, getting involved, and using their voices and skills to create positive change continues to grow.

We wrapped up our volunteer training events in May and June with discussions in Lame Deer and Crow Agency .

So what were our volunteers up to this summer? A whole lot of public outreach and sharing stories. Our amazing volunteers throughout the state engaged in their communities by providing Know-Your-Rights resources to community members, sharing information about ways people can get involved in their communities, and teaching skills for community engagement. Our volunteers also showed up in force to events throughout the summer.



Letters to the Editor written by ACLU of Montana volunteers.

At Big Sky Pride, the rain couldn't stop volunteers from donning their glitter and rainbow colors, handing out swag, and sharing information about trans and nonbinary advocacy work happening in our communities. When we received the good news that I-183 didn't make it onto the ballot, volunteers rallied to spread the word on social media and joined us at our July celebration. We finished the summer with more glitter and rainbows at the Billings Pride celebration.

We joined other nonprofits at Traveler's Rest and Rock2Vote this summer. At both music festivals, volunteers uplifted the voices of community members in sharing their perspectives on justice and equality.

ACLU of Montana volunteers also joined us at the Wadopana pow-wow in Wolf Point and at Crow Fair, where we heard stories and learned from community members.

This summer, volunteers also raised awareness around immigrants' rights. In July, public demonstrations occurred simultaneously throughout the state of Montana in response to national immigration policy and how that policy is affecting Montana community members. Thanks to our volunteers, we reached more people through social media and were able to educate people on their rights and inform people about ways to stay involved to continue fighting for immigration reform. One of the ways our volunteers used their voices was by publishing letters-to-the editor in their local newspapers.

One thing that our volunteers have taught us is that even with busy schedules, there are so many ways for people to get involved. We heard from many of our volunteers that they do not have consistent hours to give, and yet so many individuals were part of raising awareness and community outreach. This includes people who spent a few hours organizing materials, entering data into spreadsheets, and designing public education handouts. This work is essential to outreach and advocacy efforts happening within our communities. A huge thank you to all our volunteers.

One thing that our volunteers have taught us is that even with busy schedules, there are so many ways for people to get involved.



Thank you to our volunteers!

ACLU of Montana volunteers are an essential part of our work.



A great group of volunteers at our training in Lame Deer.

Photo by Zuri Moreno.

Our volunteers showed up in force at various pro-immigration rallies this summer.

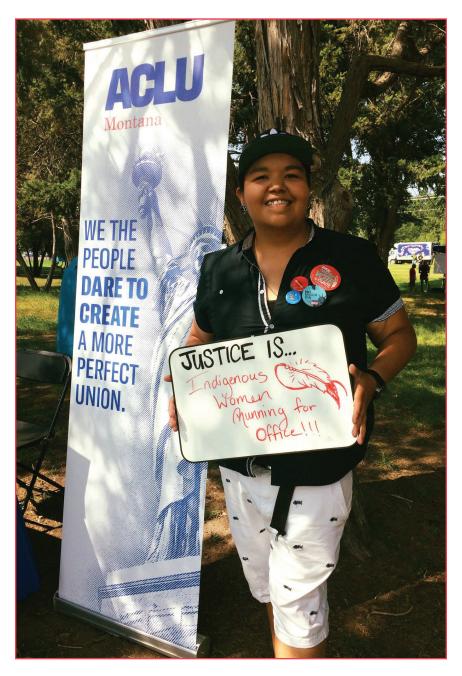
Photo by Zuri Moreno.





Thanks in part to our dedicated volunteers, we had a great presence at Crow Fair this year.

Photo by Zuri Moreno.



Kelli Twoteeth, a well-known community activist, hanging out with us at Rock2Vote this summer. Photo by Zuri Moreno.



FAQs about Donating to the ACLU of Montana

By Kileen MarshallDirector of Philanthropy and Strategic
Initiatives

Q: What does my money help with?

A: So much! Most of our budget goes to pay our staff – people who wake up every day to work for social justice in Montana. The price of a cup of coffee buys five pocket Constitutions that we share with community members when doing outreach and giving presentations; \$200 covers the daily costs to get our Indigenous Justice Organizers on the road for community advocacy in Indian country; \$10,000 hires an expert witness to testify in a lawsuit; and \$1.2 million is our annual budget that allows us to employ 16 people to work on the ground across the state, mobilize people to stand up for their rights, file lawsuits, and lobby in the state legislature. Your support helps fund the entire annual budget of the ACLU of Montana.

We are bigger now than ever before because the work is more important than ever. Your support helps fund the entire annual budget of the ACLU of Montana.

- Q: I want to make a year-end gift to the ACLU. What is the easiest way to do that?
- **A:** To make a tax-deductible gift, use the enclosed Foundation envelope, donate online at www.aclumontana.org, or make a stock transfer (email montana@aclumontana.org for more details). If you are thinking about adding the ACLU to your legacy plans, visit www.aclu.org/legacy for more information.

- Q: I like to see the impact of my giving in my local community. Does my gift to the ACLU really make a difference in Montana?
- A: Yes. The ACLU of Montana is an independent nonprofit that works exclusively to defend the constitutional freedoms of Montanans. Our work in Montana is supported by nationwide donations to the ACLU. It does not matter whether your gift is "banked" at National ACLU or here in Montana. Roughly one quarter of our annual budget comes from National ACLU.

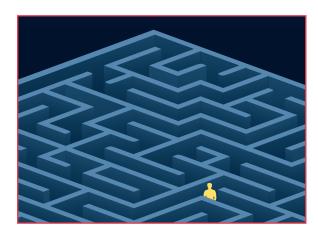
The business of defending civil liberties is a nationwide endeavor. The National ACLU helps ensure that we have experts at our disposal that specialize in specific issue areas from reproductive freedom to national security. And, the national-state partnership is crucial to coordinate our efforts to halt copycat legislation from spreading like wildfire in states across the country. The ACLU of Montana benefits greatly from our partnership with the National ACLU and fellow ACLU affiliates.



New ACLU Report Exposes Deep Flaws in Montana's Probation and Parole System

By SK Rossi Advocacy and Policy Director

With more than two million people in our jails and prisons, our country faces a mass incarceration problem. The problem isn't limited to people who are physically incarcerated, though. Nearly five million additional people are living under community supervision in programs such as probation and parole. Montana is no exception. Of the estimated 16,000 people under Montana Department of Corrections (DOC) jurisdiction in 2016, 9,700 – or 60 percent – were on probation or parole.



Montana's probation & parole system is a never ending maze that fails too many people.

The system is stacked against Indigenous people and the poor.

While historically viewed as a preferable and more humane alternative to incarceration, research has shown that instead of being rehabilitative, this failing – and expensive – system is a significant feeder of mass incarceration.

In September, the ACLU of Montana released an in-depth report highlighting who the system harms and how the system fails Montanans who are trying to get out of the never-ending maze created by probation and parole.

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Set Up to Fail: Montana's Probation and Parole System was funded by the national ACLU's Smart Justice program. With the help of researchers from the national ACLU office and Princeton University, we spent months analyzing DOC data and interviewing incarcerated and formerly incarcerated Montanans about their experiences with the probation and parole system.

Our findings were clear: Montana's criminal justice system is stacked against Indigenous people, the poor, people who live in rural areas, and those with a mental illness or an addiction.

Indigenous people make up 6.5 percent of the state's population, yet account for 20 percent of the men's state prison population, 34 percent of the women's state prison population, and 27 percent of the state's arrests for failures to appear in court or for probation or parole violations. Indigenous people are also more likely than their white counterparts to be sent back to prison for a technical violation of probation or parole conditions.

In rural parts of Montana, many people on probation or parole are asked by the state to travel long distances for a short check-in with their probation officer or to take a mandatory class — all at their own expense. This hardship disproportionately impacts Indigenous people, many of whom live in rural areas. The system sets up for failure people who may not have the luxury of flexible schedules, or who lack access to transportation or money to pay for gas or classes. Take Kris, a mother of four who was trying desperately to fulfill her court-mandated requirement. When one of her children became sick with a respiratory virus, she wasn't able to afford childcare so that she could attend her appointments. The system wasn't flexible or supportive of her situation, and so she was faced with the unconscionable choice of caring for a child or completing her parole requirements. Because of this, her probation was revoked, and she was sent back to jail. Kris's story represents what thousands of people across Montana experience.



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

Our report found that the dearth of mental health and addiction services in Montana leaves people re-entering their communities without adequate support. Of the 94 individuals we interviewed, 45 percent said they had a history of mental health issues and 61 percent reported issues with substance abuse. Many cited mental illness or addiction as the reason they entered the criminal justice system in the first place. Then, when they were unable to find or afford the services they needed while on parole or probation, they noted those two obstacles as the reason they were revoked from supervision and put back in jail. Again, for Indigenous people in Montana, the absence of treatment and programming for addiction and mental health is even starker.

The current probation and parole system sets too many people up for failure and punishes people for circumstances beyond their control. The ACLU of Montana is working to change it.

We made the following recommendations in our report and will be pushing for reform during the 2019 legislative session:

- **1.** Develop holistic defender services that provide assistance and support to people on supervision to find 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 are 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;
- Allow and encourage probation officers 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 Indigenous people on supervision; and
- **6.** Accept and support tribal programs and traditions as part of the rehabilitative process.



Montana Must Evolve Beyond Juvenile Life Without Parole

By Elizabeth Ehret Legal Fellow

Steven Keefe was only 17 when he was sentenced to life in prison without the possibility of parole. At the time of his sentencing, he was too young to vote, buy cigarettes, or join the military. Yet, under our broken criminal justice system he was old enough to be put into prison for the rest of his life.

Steven has spent the last 32 years in prison and is now seeking the chance to reenter society. We're representing him.

There is hope. We have long known that children's brains are not as developed as those of adults. In fact, the human brain continues to develop and mature well into a person's twenties. As a result, children and young adults have limited ability to perceive and appreciate the consequences of their actions. And, when it comes to rehabilitation, they are far more responsive to efforts to modify and rehabilitate negative behaviors.

The U.S. Supreme Court agrees. In the last decade, the Supreme Court decided two cases—*Miller v. Alabama* and *Montgomery v. Louisiana*—that placed substantial limitations on a judge's ability to impose a life without parole sentence on children. The Supreme Court recognized that new scientific understanding of how children's brains develop make it cruel and unusual to punish them without any consideration for how their youth may have influenced their offense. Additionally, the Court cautioned that children only be sentenced to life without parole in extremely rare cases where they show no hope of rehabilitation.

Miller and Montgomery are just the latest in an evolution of Supreme Court cases that have placed limitations on unduly harsh sentencing schemes for juveniles. These decisions reflect our ever-increasing understanding of the juvenile brain and how that should bear on what we consider morally acceptable punishments for children.

Following signals from the Supreme Court about its reformed approach

to juvenile sentencing, there has been a substantial nationwide movement to eliminate juvenile life without parole. Since *Miller*, 16 states and the District of Columbia have prohibited life-without-parole sentences for children. This brings the total to 21 jurisdictions that have completely abandoned juvenile life-without-parole sentencing. Five more states have severely limited the circumstances in which a life-without-parole sentence can be imposed on a child. Several others have offered the opportunity to be resentenced or have automatically granted parole eligibility to people currently serving life-without-parole sentences for an offense committed when they were a child.

This choice by most states to move away from life without parole for juveniles recognizes the cruel and unusual nature of sentencing children to spend the rest of their lives in prison. In fact, the Supreme Court found that sentencing a child to life in prison is akin to sentencing them to death. While a child sentenced to life in prison will not die by the State's hand directly, they will forfeit their lives to the State, living without any freedom of movement, choice, or ownership of any aspect of their existence. Given the similarities between the two sentences, that one is an unacceptable punishment for children should automatically mean the other is also unacceptable.

Our modern standards no longer consider it tolerable to impose sentences of life without parole on children. We're asking Montana to resentence Steven in accordance with the Supreme Court's rulings. Steven's resentencing is an opportunity for Montana to join the majority of states that have already stopped this form of cruel and unusual punishment. Montana should no longer permit our children to die in prison.

Through the courts, the legislature, community outreach, and public education the ACLU of Montana works throughout the state to defend, preserve, and advance civil rights and social justice for all Montanans.



U.S. Citizens Unlawfully Detained in Havre for Speaking Spanish

By Alex Rate Legal Director

Some say that "language is the foundation of civilization – it's the glue that holds everything together, and it's the first weapon drawn in a conflict." There can be no doubt that we are in a historic period of conflict on the issue of immigration. Immigrant families are being separated at the border, Muslims are banned from U.S. soil, and victims of domestic and sexual assault are being denied asylum. And language is indeed the first weapon being drawn in this conflict.

For Ana Suda and Martha "Mimi" Hernandez, May 16, 2018 began like most others. Following a workout at their local gym, Ana and Mimi went to the Town Pump convenience store in Havre, Montana, to buy milk and eggs. As the two shopped, they conversed happily in Spanish. Their tone was normal and casual, two friends having a typical grocery-store conversation. While they were shopping, a Customs and Border Protection Agent ("CBP") entered the convenience store.

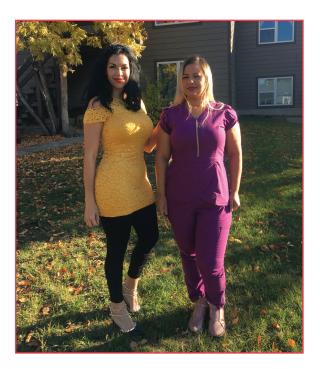
Because the town is so small, the agent's unfamiliar face was notable. It is common in Havre to greet strangers, and so Mimi said hello to the agent in English, and asked how he was doing. The agent responded by commenting on Mimi's accent, calling it very strong. He then asked the two where they were born. Ana was incredulous, and asked, "Are you serious?" The agent responded that he was "dead serious."

Despite the fact that Ana and Mimi were speaking fluent English, the agent took the drastic – and unlawful – step of demanding to see their identification. At this point, Ana and Mimi began filming the interaction. When they asked why they were being detained, the agent stated: "The reason I asked you for your ID is because I came in here, and I saw that you guys are speaking Spanish, which is very unheard of up here." Forty minutes later, after waiting for CBP to fully vet their identifications, Ana and Mimi were told they were free to leave. Exhausted and humiliated, they returned home to their families.

Ana and Mimi are proud members of Montana's vibrant Latinx community. They live in Havre with their families. For both Ana and Mimi, speaking Spanish keeps them connected to their family, community, and culture. America is a multi-lingual, multi-racial, and multi-ethnic country. For millions of Americans, including many Montanans, languages other than English are often an important aspect of their identity.

The ACLU of Montana is proud to represent Ana and Mimi in a case challenging their unlawful detention. The Constitution and the Department of Homeland Security's own nondiscrimination policy prohibit racial profiling. English has never been the only language spoken in Montana. People have the freedom to speak Spanish, or any other language, whenever and wherever they choose without being harassed and detained.

President Trump has radically enlarged the federal government's deportation force. In his own words, he has "take[n] the shackles off" immigration officers and given them expansive and often unreviewed discretion to target people for detention and deportation. That is wrong. Language should be celebrated, not used as a weapon against citizens and non-citizens alike. In the coming months Ana and Mimi, with the ACLU by their side, will fight back against racial profiling and unlawful detention.



Ana Suda (left) and Mimi Hernandez were detained for speaking Spanish.

The ACLU of Montana is proud to represent them.



Great Nations Should Keep Their Word

By Lillian Alvernaz *Indigenous Justice Legal Fellow*

For Indigenous communities and individuals, the last 200 years are filled with broken promises and deceit from a government set on occupying every corner of the continent. This winter, in the case of *Herrera v. Wyoming*, the Supreme Court of the United States has a chance to hold the United States government accountable for promises it made to the Crow Tribe 150 years ago. Those promises, ratified in the 1868 Treaty of Fort Laramie, guarantee the right of the Crow to hunt and fish on all "unoccupied lands" of the United States.

Even though treaties between Indian tribes and the U.S. government are contracts between sovereign nations, the federal government has always held unequal bargaining power. For instance, treaties rarely were translated into the language of the signing tribe, and so many tribes had no way of knowing exactly what they were signing. Furthermore, tribes were usually desperate to stop the suffering caused by white encroachment on their already minimized land. Throughout colonization, tribes have upheld their end of the deal, while the federal government has consistently fallen short of its obligations.

Throughout colonization, tribes have upheld their end of the deal, while the federal government has consistently fallen short of its obligations.

Nevertheless, treaties specifically reserved various important rights to tribes. One right that many tribes retained in their treaties was the right to hunt, fish, and gather food outside the boundaries of their new (and smaller) reservations, as this was necessary for many tribes to access enough food to survive.



The Treaty of 1868 is at issue in *Herrera v. Wyoming*. In 2014, Clayvin Herrera and other members of the Crow Tribe in Montana went hunting on the Crow Reservation. When the elk they were hunting crossed a fence and entered the Bighorn National Forest in Wyoming, Herrera and his companions followed. There, on land ceded by the Tribe in 1868, they shot and killed three elk. The State of Wyoming cited Herrera for taking an elk during a closed season – a misdemeanor under state law.

Herrera pleaded not guilty and moved to dismiss the citations, as his right to hunt on unoccupied lands of the United States is protected under the 1868 Treaty.

The United States Supreme Court can now hold the U.S. government accountable to its Treaty obligations to the Crow Tribe. That treaty was a boon to the United States, which received peace along with 30 million acres of Crow territory, now named the Bighorn National Forest. Wyoming seeks to deprive the Crow Tribe of its rights to hunt and fish under the Treaty. That is wrong. The Crow Tribe has a right to continue subsistence hunting in these lands.

In partnership with several experts in the fields of public health, anthropology, and education, the ACLU of Montana filed a friend-of-the-court brief with the U.S Supreme Court brief in support of the Crow Tribe. We are dedicated to supporting historically marginalized communities to fight back against governmental oppression. As part of our commitment to promote, protect, and defend Indigenous rights, we believe that the United States government – and all of the states in the Union – must live up to treaty obligations. For over two hundred years, Indigenous peoples throughout the country have been on the receiving end of one broken promise after another. This case presents the opportunity for the Supreme Court of the United States to remind our government that treaties are the supreme law of the land and to affirm the important principles of tribal sovereignty.

Meet our new staff

We are excited to introduce the newest members of the ACLU of Montana team.



Kirsten Bokenkamp • *Communications Director*

Kirsten Bokenkamp joined the ACLU of Montana in October 2018. As Communications Director, she is charged with formulating and implementing communications strategies to advance the work of the ACLU of Montana. Kirsten has more than a decade of experience integrating communications into overall advocacy strategies to create

change. She has worked on various social justice issues, including advancing rights and freedoms for LGBTQ people, ending hunger, reforming our criminal justice system, ensuring educational opportunities for our children, and improving the lives of immigrants.

Before joining the ACLU of Montana, Kirsten was the Communications Director for the Southern Poverty Law Center. Previously, Kirsten was the Policy and Communications Director with Equality Virginia, the leading LGBTQ rights organization in Virginia. She also worked with the ACLU of Texas as its Senior Communications Strategist. She has served as a consultant for UNICEF where she oversaw the implementation of a nutrition monitoring pilot program for the Malawi government, and has engaged in community development projects in Nicaragua and Costa Rica.

Kirsten holds a Master in International Affairs from Columbia University's School of International and Public Affairs and a Bachelor of Science degree in Nutrition from the University of Vermont. Originally from Vermont, Kirsten enjoys exploring the beautiful state of Montana, spending time with her family, and snowboarding. She is also a certified yoga teacher.



Samuel Enemy-Hunter • *Indigenous Justice Organizer*

Samuel (Conquers His Enemies) is an enrolled member of the Apsaalooke (Crow Tribe of Indians). He is a member of the Uuwatashe (Greasy Mouth) Clan and a Child of the Ashshitchite (Big Lodge) Clan. He grew up on the Crow Indian reservation and was raised in traditional and cultural ways. Samuel is Biite (Two-Spirit) person being

raised to know both the male and female roles of his tribe.

Samuel joined the ACLU of Montana in July 2018. As an Indigenous Justice Organizer, he spends a lot of his time on the Crow Reservation learning from and engaging with community members and leaders. Samuel attended Little Big Horn College for Crow Language/Studies and the University of Montana for English Literature/Creative Writing (Poetry & Non-Fiction). He has worked for various non-profit organizations for more than 20 years fighting for Native American rights LGBTQ equality. He is currently creating a non-profit organization for cultural enhancement for Apsaalooke youth.

In his free time, Samuel enjoys spending time with his family, hitting the powwow trail, doing beadwork, writing, and participating in tribal social gatherings and ceremonies.



Samuel with three volunteers at Billings Pride this summer.

Photo by Zuri Moreno.

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Lillian Alvernaz • *Indigenous Justice Legal Fellow*

Winchaxbi Wakan Wiya Ki Um Hawi (Sacred Star Woman Who Sits by the Moon) is an enrolled member of the Sisseton-Wahpeton Oyate and traditional Nakoda, born, raised, and educated in Montana. Her passion is combating violence against Native American women and children through holding offenders accountable and

navigating the jurisdictional maze victims and survivors are subject to. Lillian Alvernaz obtained an Indian Law Certificate and joint Master of Public Administration along with her Juris Doctor to find and fill the gaps between the marriage of law and policy left in Indian Country.

Lillian joined the ACLU of Montana in August 2018 as the organization's first position fully dedicated to Indigenous Justice litigation, both in Montana and nationwide. Lillian focuses on legal issues related to tribal sovereignty, discrimination, education equity, and individual Indigenous rights. She also assists the rest of the legal department on the full range of civil liberties issues.

Lillian graduated with honors in 2013 from the University of Montana, and received a Bachelor of Arts degree in Social Work and Native American Studies. She is the second oldest of five children and is honored to be the namesake of her maternal grandmother. Lillian enjoys lifting weights, attending and participating in powwows, spending time with her family, and participating in cultural celebrations, ceremonies, and community events.

Let's stay in touch.

Sign up for our emails at aclumontana.org.

Mark your calendar for

ACLU of Montana LOBBY DAY

February 11, 2019

Join the ACLU of Montana in Helena for our 2019 Lobby Day. This full-day event includes a training on lobbying and an opportunity to share your stories and opinions with your legislators. Your voice is essential to protect civil rights in our state. No experience with lobbying is required. Lunch will be provided.

Visit our website (aclumontana.org) to learn more and sign up!

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