



Smart Justice for Montana

Growing spending on corrections. Prisons filling to capacity. More Montanans returning to jail and prison for probation violations. At the start of the 2015 legislature, the picture of mass incarceration in Montana was grim.

It had been more than 20 years since our state took an in-depth look at criminal justice, sentencing, and incarceration. Legislators were concerned about increasing corrections budgets and had questions about the direction our state was heading when it came to mass incarceration. So, with the support of a diverse group of stakeholders including the ACLU of Montana, the 2015 legislature passed SB 224 by Sen. Cynthia Wolken and created a Commission on Sentencing. As the Commission begins its work, Montana is on the cusp of an exciting opportunity to make dramatic progress toward a smarter criminal justice system.

The newly formed Commission held its first meeting earlier this fall. Its first order of business was to announce a plan to collaborate with the Council of State Governments (CSG) in a year-long justice reinvestment

project. Shortly after the Montana Legislature passed SB 224, bipartisan leaders from all three branches of our state government had joined together and requested CSG's assistance in exploring our criminal justice system's performance. CSG and its partners agreed.

The Council of State Governments is a national non-profit association that offers practical, nonpartisan, data-driven advice to state governments. Through its justice reinvestment initiative, the CSG partners with the US Department of Justice Bureau of Justice Assistance and the Pew Charitable Trusts to assist states in rethinking their criminal justice systems. The program is "a data driven approach to reduce corrections

spending and reinvest savings in strategies that can decrease recidivism

and increase public safety."

After agreeing to Montana's request for assistance, the CSG immediately began work on a comprehensive analysis of our corrections system. The initial data is startling. According to CSG's preliminary assessment of our corrections data, our prison popu-

lation is increasing at a rate more than double the national average, even though

our crime rates are generally below national rates; our prison population is expected to grow by more than 10% over the next five years; admissions to prison outpace releases; 85% of all prison admissions are for revocations from community supervision and alternative placements, such as probation and pre-release programs; and the length of time that people stay in prison has increased significantly over recent years.

The good news is that these challenges are not insurmountable, nor are they unique to Montana. More than 20 other states have engaged in the justice reinvestment process with CSG. The reforms suggested and adopted by those other states are tailored to their specific needs and included changing how those states handle probation and parole violations, funding more treatment programs, and expanding programs to reduce recidivism. And the results from those states have been impressive. For example, just three years after North Carolina passed its justice reinvestment reforms, the state saw an 8% drop in its prison population and cut its probation revocations in half.

Over the next year, the CSG and



Niki Zupanic
Public Policy Director



ISSUE HIGHLIGHTS

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This newsletter is published
three times a year.

Caitlin Borgmann, Publisher

Returning Home...

It's great to be back home! I've been leading the ACLU of Montana for two months, but in many ways my new job is an extension of decades of work for the ACLU. I've served the ACLU in diverse capacities, most recently as a member of the boards of the directors of the ACLU of New Jersey and the national ACLU. I first worked for the ACLU as law school intern in the national office's Reproductive Freedom Project. Not long after law school, I rejoined the Reproductive Freedom Project as the State Strategies Coordinator and spent six years working with ACLU affiliates across the country on state legislation and policy. I remember traveling to embattled states where reproductive rights were under siege and feeling such admiration for the ACLU affiliates and their coalition members. I was struck by their sense of community and camaraderie in the face of formidable challenges. I'm excited to have joined the community of civil rights supporters in my beloved home state of Montana. Although we face our share of threats to individual rights and freedoms, opportunities for advancing civil liberties in Montana counterbalance the threats.

In meeting with ACLU supporters across the state over the past two months, I've asked people what civil liberties issues they are most passionate about. It's striking how many find it hard to choose. That is the beauty of the ACLU. We address a broad waterfront of issues, and our supporters know that we will be there to meet whatever challenges arise. The fight to protect civil liberties is never static. It is a constantly shifting landscape that requires us articulate new goals and develop strategies to meet them. To take just one example, we have achieved marriage equality for LGBT

couples, but the fight for freedom from discrimination based on sexual orientation and gender identity is far from over.



*Caitlin Borgmann
Executive Director*

We won't stop until the law protects every LGBT Montanan from discrimination, including refusals to serve them in places of public accommodation, practices that harken disturbingly back to the days of "whites only" establishments.

In this new chapter of the ACLU-MT's history, it's appropriate for us to take stock of the current landscape, and to assess as an organization what we've achieved and what priorities to adopt moving forward. I've already engaged in productive retreats with the staff and board to begin this process. As Judy discusses in the Board President Column, our Racial Justice Project is an important new component of our program that draws on and intersects with many traditional focuses of our work, including criminal justice reform and voting rights. Throughout this year, the ACLU-MT will continue this strategic planning process alongside our vital work to defend and advance civil liberties across the state. These efforts will culminate in the board's adoption of a new strategic plan in June of 2016, which we will be excited to share with you.

I am energized for the work ahead and deeply grateful to you, our supporters, who ensure that we can continue the fight for the freedom, dignity, and autonomy of all Montanans.

Meet Caitlin! Come meet ACLU of Montana's new Executive Director Caitlin Borgmann in Billings on Dec. 4th. Mingle with other supporters.

Get updates about our work in Montana.

Bring a friend - or two - and enjoy hors d'oeuvres and refreshments.

Friday, December 4 • 5:00 – 7:00 pm

Broadway Café • 313 N Broadway

To RSVP, please visit the events page on the ACLUMontana.org website.

An Update on Prison Litigation

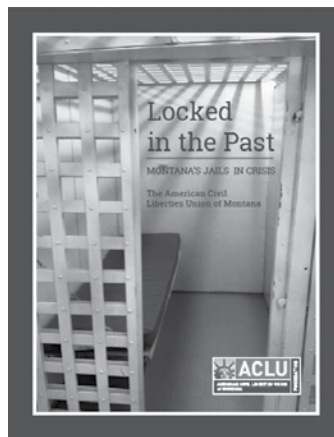
The ACLU of Montana has made an extraordinary investment of time and resources in working to improve the conditions of inmates in our jails and prisons. These people are often the forgotten members of our society. We need to remind ourselves that inmates are human beings who are like us in most ways. They have an inviolable right to human dignity under our Montana Constitution and they will be returning to our society after serving their sentences. Debasing them will not make them better citizens or people when they interact with us once again.

With these values in mind, this affiliate has investigated conditions in Montana jails resulting in the jail report, "Locked in the Past." We have investigated the pregnancy policies in Montana jails, we have successfully litigated the reasonable right to fresh air for inmates, and we have brought cases resulting in policy changes at prisons that better protect Native American inmates' rights to practice their faith free from discrimination and communicate with friends and family in their native tongues.

In addition, we have initiated litigation to protect the rights of inmates who are mentally ill and have continued work on a case of long standing to protect the rights of disabled inmates. Let me describe

recent developments in each.

Our *Langford* case seeks to apply the requirements of the Americans with Disabilities Act (ADA) to the Montana State Prison (MSP). The prison has numerous programs to educate inmates and facilitate their successful transition to the outside world. But if an inmate has a disability that prevents his participation, those programs are of no avail. Moreover, if an inmate cannot effectively participate in a disciplinary proceeding against him because of a mental illness or other disability, he will often be unfairly punished. The ADA requires that reasonable accommodations be made for such inmates so that they are not disadvantaged because of their disability. We hope to negotiate a settlement that results in the prison becoming fully compliant with all of



Read our comprehensive jail report online at www.aclumontana.org

the requirements of the ADA.

We have two other cases designed to protect the rights of the mentally ill in prison. Both are brought with the cooperation and assistance of Disability Rights Montana, the leading disability rights organization of the state. One asks that the state provide constitutionally adequate mental health services to those inmates who are seriously mentally ill. In addition, this suit asks for a blanket prohibition on the placement of these inmates into solitary confinement. In this effort we join a growing nationwide movement that has seen success in more and more states.

The second case seeks to impose adequate due process protections on the Department of Public Health and Human Services before it can transfer mentally ill prisoners from the therapeutic setting of the State Hospital to the punitive environment of the State Prison. These cases are in very different procedural postures at this time. One is on appeal and the other is proceeding toward a trial in 2017. We are confident in the merits of both lawsuits and look forward to a conclusion in each that will protect the human dignity of inmates as they pay their debt to society.



Jon Ellingson
Staff Attorney

The Death Penalty is Dying

We were ecstatic earlier this month when District Judge Jeffrey Sherlock ruled that the State's execution protocol did not comply with the state statute. Montana law stipulates that one of the drugs in its lethal injection mix must be an "ultra fast-acting barbiturate" and the current drug intended to play that role, pentobar-

bital, does not meet that criteria. This ruling effectively put Montana into a death penalty moratorium. For the foreseeable future, the state is not executing anyone.

But Montana is not alone.

Governors in Oregon, Washington, and Colorado have all declared an official death penalty moratorium.

Legal challenges in California,

North Carolina, Pennsylvania, Louisiana and Arkansas have put all executions on hold in their states.

Ohio is putting off executions until at least 2017 as the Department of Corrections struggles to obtain supplies of lethal injection



Jennifer Kirby
Dir., Abolition Coalition

Death Penalty, cont. on page 6

Happy Anniversary

It seems hard to believe that it's been a year since we won marriage for Montana.

In 2010, marriage for same sex couples in Montana looked like a long way off. With no statewide protections for LGBT persons and an unconstitutional law on the books that made intimate contact between two persons of the same gender a felony, Montana was not considered an ideal environment for a challenge to the marriage amendment. And only four years later, who would guess that we would win marriage equality in the state of Montana?

On the first day of marriage one year ago, ACLU of



ACLU of Montana prepared for celebrations in six Montana cities.

Montana facilitated weddings in courthouses in six cities across the state. Watching couples who in some cases had been waiting decades to wed, or never thought they

would see the day in their lifetimes was a monumental source of joy and accomplishment.

Couples like Kellie Gibson and Denise Boettcher,



Donaldson plaintiffs, Kellie and Denise wed in Billings after many years of waiting

plaintiffs in our Donaldson case, waited to marry in their home state instead of going somewhere that had marriage equality earlier. “We wanted to get married in our own town, in our own church, with our family and community supporting us,” Kellie said after the two wed in a ceremony in Billings this summer.

Greg Smith, an Episcopal priest in Bozeman and a long time HIV/AIDS advocate, also wanted to marry Ken, his partner of many years, in their church. Faith has always been a crucial part of who Greg is and according to Greg, “It meant the world to me to get married in my church – by a bishop!” Greg and Ken were married this summer in Bozeman and invited Episcopal Bishop Gene Robinson to officiate. Greg met Bishop Robinson, the first openly gay priest to be ordained in the Episcopal church, during the Fair is Fair tour in 2013.



Greg Smith and Ken Spencer were wed by Episcopal Bishop Gene Robinson in a private ceremony in Bozeman

When Angie and Tonya Rolando became plaintiffs in the *Rolando* case, they had already been together for years and were raising a family together. But getting legally married was still something that was important to them. They were the first in line to receive their marriage license from the very same clerk that had been required to deny them a license only a few months before. After months of intense planning, the wedding of the two lovely brides affirmed the exchange of rings and vows they had made privately to each other years before as well as committed them in the eyes of the law.

Yet, the marriage decision goes beyond just the legal recognition of a couple's relationship. Representative Bryce Bennett of Missoula remembers, “When the ruling came down that Montana would join the growing number of states with full marriage equality it felt



Angie and Tonya renewed their vows with ACLU staff Jim Taylor and Liz Welch in attendance.



Wedding cake at a Montana wedding

unbelievable. It was just ten years prior that an overwhelming majority of Montanans voted to ban same-sex marriage. But today, two people in love can have that bond recognized by this state we call home. It is victories like this that give me hope and the determination to continue the critical work to end discrimination, provide trans-inclusive

healthcare, and ensure our schools are safe for all our students.”

If the work for LGBTQ equality in the state is a journey, then Montana still has miles to go before LGBTQ Montanans have full protections. We need statewide protections that cover more than the four cities with nondiscrimination ordinances. Montanans living in cities without such ordinances or in rural spaces should not be denied housing, employment or access to public accommodations because they are lesbian, gay, bisexual or transgender. Businesses and public spaces need to be responsible for serving everyone and not exempted based on religious objections. Schools need inclusive protections for all students. Healthcare should be available to all regardless of their gender identity or sexual orientation.

ACLU of Montana remains committed to full equality for all LGBTQ citizens in Montana.

Now who wants some wedding cake?

ACLU's Jake Coolidge wins prestigious legal award

We are proud to announce that Jake Coolidge received the Montana Law Student Pro Bono Service Award this fall. This award is a collaborative effort between the University of Montana Law School, private firms and attorneys, Montana Legal Services Association, and the local judiciary to recognize the outstanding volunteer work of law students. The award is given annually in October during National Pro Bono week to a 3rd year student who has demonstrated extraordinary commitment to public service – in particular the field of pro bono legal work.

The ACLU of Montana office has worked with Jake on multiple projects for over three years, even before he started law school. Jake exudes a passion for helping those in society with less political power, such as those who are incarcerated or Native American populations, and working towards systemic change.



Jake Coolidge (center), 3rd year law student, receives Montana Law School Student Pro Bono Service Award for his extensive work with ACLU of Montana.

He has surpassed expectations with every project we've ever collaborated on and we were thrilled to nominate Jake for this award.

Jake's many contributions to our work over the past several years include: helping to design the methodology, conducting legal research, and writing and re-writing many sections of the ACLU of Montana's jail report, *Locked in the Past*, which was published in February, 2015; working as a leader in the ACLU-MT Law School Chapter, ensuring that public education events happened at the law school, and serving as the Law Student Representative to the ACLU-MT's Board of Directors; and helping with preliminary research and project design for our Racial Justice Project, which is working to address systemic racial justice issues in Montana.

Jake is planning to pursue a career as a public defender in Montana when he graduates from the University of Montana's Law School in May, 2016.



COMING EARLY 2016

Watch for the new ACLU of Montana website coming in early 2016. We'll have more ways for you to connect with our work for civil liberties in Montana and to stay up to date on our litigation, legislative and public education work.

Looking Ahead With a Renewed Purpose

As is tradition, the ACLU-MT board and staff gathered at the picturesque B Bar Ranch in September for our biennial working retreat. With the arrival of our new executive director Caitlin in late August, the retreat afforded the opportunity for board and staff to welcome and work closely with Caitlin as well as with each other. The retreat is a time to reflect on our strategic priorities and accomplishments, for board members to delve deeper into the issues as well as renew our commitment to serve and support the mission of our affiliate.



Judy Hart
Board President

An invaluable part of the retreat was learning more about ACLU-MT's new Racial Justice Project, including an overview of its advisory group's work and meetings conducted over the last two years with tribal governments. This "listening tour" has helped to identify a number of civil liberties issues affecting our Native population. Prior to the retreat, staff forwarded supplemental reading materials that provided helpful background information on issues such as disparate disciplining of Indian schoolchildren, historical trauma among Native

Americans, and the Voting Rights Act and its impact on Native Americans in Montana.

We then broke into four small groups to discuss substantive civil liberties topics as they relate to this racial justice work. Topics included criminal justice, voting rights, reproductive

justice, and education, which in addition to the disparate impacts of school discipline includes the rights of parents to have a voice in educational policies affecting their children. The purpose of this educational exercise and the break-out discussions for board and staff was to review the work already done and the work we hope to do in the future.

This in depth focus on racial justice issues, coupled with updates from staff on the important work they continue to do in criminal justice reform, LGBT equality, voting rights, the death penalty, and intellectual freedom and privacy issues clearly demonstrates the staggering amount of work that our talented, professional, yet limited staff in this small affiliate continues to accomplish daily. As we move forward under Caitlin's capable leadership, staff will continue to prioritize among these issues, laying the groundwork for a full strategic planning session scheduled for board and staff in June 2016.

In my short tenure as President of the Board, I have had the privilege of working closely with Caitlin and with a group of volunteers, your ACLU-MT board members, who are fully committed, engaged and invested in the work of this affiliate. We are an effective board thanks to the wide range of expertise and experience of our members. In the upcoming months there will be a number of opportunities to meet Caitlin as she travels the state. To all our members and supporters, champions of civil liberties in Montana, thank you for sustaining the critical work of the ACLU of Montana.

Death Penalty, cont. from page 3

drugs. Ohio has run out of supplies of its previous drugs and has unsuccessfully sought new amounts, including so-far failed attempts to import chemicals from overseas. Execution dates set for 2016 and early 2017 have been moved to 2019. Lack of supply of execution drugs means Ohio is delaying capital punishment in their state for a full two years.

The Oklahoma Court of Criminal Appeals imposed an indefinite stay on all executions as investigations proceed into how a horrible drug mix up occurred. It was discovered earlier this month, in advance of the execution of Richard Glossip, that the state had ordered potassium acetate instead of potassium chloride. Autopsy results from the January execution of Charles Warner showed potassium acetate was used instead of potassium chloride. This puts all executions in Oklahoma on hold indefinitely.

And there hasn't been a single (not ONE!) new death sentence handed down in the state of Texas this year. For a state that leads the nation by a wide margin in death sentences and executions, this is astounding.

Beyond the states, we're hearing more and more voices calling for the end of the death penalty.

During his recent visit to the United States, Pope Francis told Congress to abolish the death penalty; saying, "My brother bishops here in the United States renewed

their call for the abolition of the death penalty. Not only do I support them, but I also offer encouragement to all those who are convinced that a just and necessary punishment must never exclude the dimension of hope and the goal of rehabilitation."

And the National Association of Evangelicals announced their new position on the death penalty. A resolution, passed by the NAE Board of Directors, outlines serious concerns with the death penalty and acknowledges growing opposition and differing views on the issue among Evangelicals. The resolution represents a significant shift for the organization, which had a position in staunch support of the death penalty for the last four decades.

This all bodes well for our campaign to end the death penalty in Montana. However, the fight is not won yet. What we do know for sure is that we need your help moving forward. Our work to abolish the death penalty is more than one case in District Court. We must work diligently in the legislature to advocate for justice and the end of capital punishment. Please add your name to the growing list of Montanans who want the death penalty officially abolished in Montana. Join the Montana Abolition Coalition today at www.mtabolitionco.org and get involved.

The world is changing and the death penalty is a relic of the past. Soon it will be history.

Follow the Money: FAQ About Donating to the ACLU

Q: I like to see the impact of my giving in my local community. Does my gift really make a difference if I donate to the National ACLU?

A: Yes. We are one ACLU, regardless of where your gift is sent. Unlike many other national / state-based organizations, the ACLU shares donations and so it truly does not matter whether your gift is “banked” at National or here in Montana. In a small state like Montana, we benefit more from this sharing formula, similar to federal transportation dollars; in fact, roughly one quarter of our annual budget comes from National ACLU just for being a small state. This would not be possible without the cadre of nationwide ACLU supporters.

And unlike our local foodbanks or pet shelters, the business of defending and advocating for civil liberties is truly a nationwide endeavor. The National ACLU helps ensure that we have experts on staff that specialize in specific arenas, whether it is reproductive freedom or national security issues. Also, we need to fight battles the first time they spring up in a state legislature, so we do not get copycat legislation spreading like wildfire across the country. The ACLU of Montana benefits greatly from all this in-kind support from National.

Q: What’s the difference between being a “card-carrying member” of ACLU and donating to the ACLU Foundation? Which does the ACLU prefer?

A: Membership dues, which go to the ACLU’s 501c4 organization, **are not** tax-deductible. Membership dues and other donations to our 501c4 entity help fund our lobbying and legislative advocacy – activities that non-profit, 501c3 foundations can engage in only in very limited ways. **Foundation gifts** to the 501c3 ACLU Foundation **are** tax-deductible. These gifts support our legal program and educational activities, which make up over 90% of our work. Making a gift to the ACLU Foundation, however, does not make the donor a member of the ACLU – the 501c3 (Foundation) and the 501c4 (Union) are two separate legal entities. For some supporters, also being a “card-carrying member” of the Union is incredibly important because it evokes a certain pride of belonging to an organization that has fought for equality,

liberty, democracy, and freedom for nearly 100 years.

Q: When I donate to the ACLU will my name be published like when I make a political donation?

A: No. Just like most other non-profits, the ACLU Foundation is a 501c3 organization and the Union is a 501c4 organization. Gifts to such organizations are in a different category than political donations and do not need to be reported. In fact, the ACLU has very strict confidentiality protocols in place. To sum up these protocols, the ACLU will follow standards of professional practice and codes of ethical principles, including but not limited to: handling donor information with respect and confidentiality; recording data accurately; recording only information that is relevant for fundraising purposes; and using security measures to protect donor information.

Q: You get Government grants, right?

A: No. We sue the government, so we do not receive any grants from them. We occasionally receive funds from private Foundations, but the amount of philanthropic dollars available in Montana is small compared to other states.

Q: You have a lot of resources from winning attorneys’ fees, right?

A: No. While it is true that we sometimes win attorneys’ fees when we win a lawsuit, it is rare and the dollar amount we receive is never equal to the resources we put into the case. We never file lawsuits expecting to get money back; rather we file lawsuits to argue for systemic change.

Q: I want to make a year-end gift to the ACLU. What’s the easiest way to do that?

A: Lots of ways are the easiest way! To make a tax-deductible gift, you can make a donation using the enclosed Foundation envelope, donating online at www.aclumontana.org, or transferring stock (contact Kileen Marshall, Development Director, at kileenm@aclumontana.org for more details). Additionally, if you’re re-doing your will, or making one for the first time, consider adding the ACLU to your plans. Visit www.aclu.org/legacy for more information.



*Kileen Marshall
Development Director*

Smart Justice, cont. from page 1

Commission on Sentencing will conduct comprehensive data analyses, engage stakeholder input, and develop a broad set of policy options. The timeline for Montana’s justice reinvestment work is designed to produce recommendations by next summer – in time for the Governor and Legislature to consider proposed reforms during the 2017 legislative session and as part of the budget process.

The ACLU is excited by this opportunity, and we look

forward to offering our input and being an active stakeholder in this process. Nationwide, the ACLU has adopted smart justice reform as a top organizational priority, so it is gratifying to see the Montana Legislature taking this issue seriously. States all across the country are starting to turn the tide on mass incarceration by enacting smart justice reforms. Montana can soon join them.



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Like to write? Want to help?

*We are looking for a volunteer
to help with grant writing.
Email KileenM@aclumontana.org*

Fall 2015

Save the Dates

RANKIN AWARDS & ANNUAL MEETING MARCH 5, 2015 • MISSOULA

A half-day, conference style event, the Annual Meeting allows ACLU supporters and newcomers to hear detailed updates on our work from the Executive Director, Legal Director, and Public Policy Director. Always a crowd favorite, we include time for two roundtable discussions for attendees to delve deeply into an array of specific civil liberties topics.

The Jeannette Rankin Civil Liberties Award acknowledges individuals and organizations who demonstrate the strength of character and commitment to principles exemplified by Jeannette Rankin — ACLU’s first vice president in the 1920’s — and embodied in ACLU’s mission and vision.

ANTHONY ROMERO IN MONTANA APRIL 13, 2015 • MISSOULA APRIL 14, 2015 • BOZEMAN

We are delighted to announce that Anthony Romero, ACLU’s National Executive Director, will be visiting Montana next April. An attorney with a history of public-interest activism, Romero has been with the ACLU since 2001.



*Welcome
Caitlin!*

- Join us to meet Caitlin Borgmann, new ACLU of Montana Executive Director.
- Hear updates about our work.
- Mingle with other supporters.
- Invite a friend - or two - who would like to learn more about civil liberties work in Montana.
- Hors d'oeuvres and refreshments will be served.

WHEN

*Friday, December 4th, 2015
5:00 - 7:00 p.m.*

WHERE

*Broadway Café
(across from Alberta Bair Theater)
313 N. Broadway
Billings*

RSVPs Appreciated

*By November 30th at
www.aclumontana.org/events*



Change is coming...

Happy Autumn