

WABANAKI RESTORATIVE JUSTICE AND HEALING COMMISSION

REPORT TO THE U.S. COMMISSION ON CIVIL RIGHTS REGARDING CRIMINAL SENTENCING DISPARITIES FOR NATIVE AMERICANS IN MAINE

As with most state government entities, Maine’s criminal justice system does not have complete and accurate data on Wabanaki people and other Native Americans who are incarcerated in state-run prisons and jails. Once again, Indigenous people remain invisible. Much more extensive data exists on African Americans, Asians, Latinos and Whites in the Maine system. In statistical reports, the living descendants of the original inhabitants of the place that is now called Maine are usually lumped under the category of “Other.” Statistical reports and studies often state that the relatively small numbers of Native Americans do not fit the “methodology” and would not produce verifiable results. This Maine phenomenon of “invisibility” is exacerbated by the fact that most Wabanaki people live in small communities in remote parts of northern and eastern Maine. **This is a problem for small Tribes nationwide, but even more so in Maine where there was a history of resistance to documentation at every level.** The Maine Department of Corrections **started tracking numbers only a year ago and only at the insistence of the Maine Indian Tribal-State Commission. In the rural counties where the Wabanaki Reservations are located and where the problem of disparity for Native Americans is most pronounced, accurate statistics are still not developed and reported.**

However, to the extent that statistics have been systematically gathered, they have indicated substantial disparities regarding Native Americans in Maine, at all stages from initial police contact to prison. The Wabanaki Restorative Justice and Healing Commission (WRJHC) is submitting this report so that Wabanaki prisoners and other Native Americans incarcerated in Maine will not be invisible. The disproportionate incarceration of Native American men, women and youth is an ongoing crisis for tribal communities in Maine.

A report by the Prison Policy Initiative, based on 2010 US census data, demonstrates that Natives comprise just .6% of total population but 1.7% of the prison/jail population in Maine. That represents a grossly disproportionate rate of incarceration of almost 3 to 1. The Maine Indian Tribal-State Commission obtained data from the Maine Department of Corrections that indicates that the disparity may actually be more like 5 to 1. A “snapshot” prepared by the Maine DOC in June of 2014 showed that Native Americans comprised approximately 3% of the persons in DOC custody. (Copies of these reports are attached). Based on this information, it appears that, as bad as the U.S. Census-based data is for Indian people in Maine, that data may be dramatically underestimating the scope of disproportionate rates of incarceration for Native Americans in Maine by as much as 40%.

For Native American women, the numbers are even more discouraging. The June 2014 data from the Maine DOC indicates that 8% (12 out of 149) of the women were Native, a rate that dwarfs the DOC rates not only for White women but also for all other minority women combined.

Available data also carries bad news for Wabanaki youth. A March 2008 Report by the National Council on Crime and Delinquency revealed that in Maine Native American youth are placed in residential custody at a rate more than three times that of whites in Maine; more than double the rate for African Americans in Maine; and higher than the national average of placement of Native youth which is two and a half times the rate for white youth. (Attached).

The collective experience of the WRJHC has taught us that there will continue to be a disproportionate number of Native People in Maine’s prisons and jails as long as the State of Maine retains its level of jurisdiction over our reservations and as long as racism continues to be a major problem in Maine. Higher arrest and incarceration rates have a lot to do with where and when the offense took place. And often that has to do with income. But it's more than that. Arrest rates simply show who's watching whom. And history has shown that whites, regardless of their attempts to be unbiased or objective, will be more observant about the way minorities behave, and will craft their law enforcement systems (whether intentionally or not) along the same lines.

In the unusual jurisdictional structure that was created under the 1980 Maine Indian Land Claims Settlement, the Penobscot and Passamaquoddy Tribes secured exclusive jurisdiction over adult misdemeanors and juvenile offenses, if committed by tribal members on the Reservations. The State obtained exclusive jurisdiction over such offenses occurring outside Reservation boundaries. Based on court decisions prior to the Settlement, the federal government would have had jurisdiction over major felonies (as it does in most of Indian Country pursuant to the federal Major Crimes Act). However, under the Settlement the State has jurisdiction over all felonies. Within their limited jurisdiction under the Settlement structure, criminal and juvenile procedures in Tribal Court are governed by tribal rules. This means that the Tribal Court can function in ways that implement Tribal values, aspirations, and ideas of justice and accountability. However, for many years after the Settlement, the Tribal Courts operated in ways that basically mirrored state courts. Current community-based efforts are underway to reshape the Tribal Courts according to concepts of restorative justice that reflect tribal community values. Of course, these efforts are hindered and limited by the fact that the State has exclusive jurisdiction over all but a narrow range of offenses by Indian adults and juveniles.

The existing system operates under policies and practices that do not take into consideration the unique situation, historical consequences or poor living conditions of the Native population. Not only are Wabanaki people grossly overrepresented in Maine’s prison population, racial disparities also exist in

sentencing, furloughs, probation and pre-trial release on bail. These are systematic problems that need to be addressed at the government to government level based on the concept of tribal self-determination. Until that happens Native people will continue to be marginalized and discriminated against in Maine's criminal justice system. It is important to understand the even the most well intentioned individuals working within the current state-dominated system cannot diminish the effects that systematic racism has on individual tribal members as well as whole tribal communities. Ironically, the relatively small population of tribal communities that makes it so difficult to collect reliable statistical data and keeps the problems of tribal people invisible to the State, also multiplies the negative impact of disproportionate incarceration. Collectively these policies and practices of the State have had tragically destructive impact on small tribal communities and Indian families. Most of the growing numbers of Native people who enter the prison system are non-violent drug offenders who return home violent and full of rage from their prison experience where they are brutalized and isolated from their culture. Our Wabanaki communities are so condensed and interwoven that even one alienated and broken individual can have an immense and lasting negative impact on the lives of all others in the community; and the cycle of substance abuse, crime, arrest, imprisonment and further abuse continues from one generation to the next.

We have learned firsthand that there is a high rate of recidivism for Wabanaki people because the impact of racism on rehabilitation and reintegration is never recognized or acknowledged and therefore is not addressed strategically or structurally within the Maine correctional system. Lack of understanding of our Native communities creates tension and resentment that leads to eventual failure of the individual and disintegration of families. The cultural incompetence of probation officers causes significant problems for Natives awaiting trial or participating in drug court. This frequently leads to Native probationers pleading out their cases and consequently acquiring felony records and prison time. These criminal records and their numerous collateral consequences make it impossible for these individuals to support themselves, much less their families. In the case of drug court, the lack of knowledge of history, intergenerational trauma and its impacts, and understanding of Wabanaki culture is a barrier to healing, including effective treatment of substance abuse.

One major factor contributing to the growing incarceration rate is not only that more drug related crimes are being committed, but that drug addicts are more likely to plead guilty to serious offenses because they know that they cannot comply with the rigorous drug testing requirements that are imposed as part of their conditions of release. They are targeted and hunted down for testing. Detoxing in jail is something that addicts want to avoid at all costs. We are literally locking people up for failing to kick their drug habit, not for committing new crimes. If you are a non-drug addict on probation and not required to submit to random testing, you are substantially more likely to stay out of prison than a drug addict. A non-addicted rapist or murderer on some type of conditional release is much more likely to remain free on the streets than a drug addict who commits a victimless crime to support their habit. Native families do not even have the same access to bail as non-Natives because their property is on Federal trust land and cannot be used as security, as the District Attorney regularly points out in state court.

The personal experience of members of this Commission and other members of the tribal communities who have shared their experiences, has shown that, at any given time, a substantial portion of the inmates in the Washington County Jail, sometimes even a majority of the inmates, may be from the two Passamaquoddy Reservations, although we represent only a small fraction of Washington County's total population. Most Passamaquoddy family members know the experience of trips to the Washington County jail to visit incarcerated relatives. The results of this ongoing injustice will ultimately destroy our Wabanaki communities. We are losing many of our young people to prison, suicide and drug-related deaths. It has been said many times that there is no other disease in our history that has included jail as

part of its treatment. Yet in Maine's Wabanaki communities even those who love the addict the most have had to turn to a defective, unfair and culturally alien criminal justice system to lock up their relatives and friends, rationalizing that prison is better than death.

Locking addicts up in prison does not promote restorative justice. There are economic and racial issues involved. Addicts who are fortunate enough to have been well educated, have steady incomes, and good social support do not need to turn to crime to support their addictions, and when the law does turn on them they have the social privilege of going to expensive treatment centers. Wabanaki people, most of whom are poor, have limited access to treatment. They commit crimes, go to prison, and all too often die at an early age, with less than a 20% chance of recovering.

Collateral Consequences of Disproportionate Prosecution

In addition to the pervasive harm done to Wabanaki communities by disproportionate incarceration itself, substantial further harm is caused by the many collateral consequences that flow from convictions and imprisonment.

- Students convicted of the crime of possession or sale of illegal drugs may be ineligible to receive federal student financial aid.
- Native Americans in Maine are heavily dependent on federally subsidized housing because of the lack of adequate housing in tribal communities. But federally assisted housing programs, such as tribal housing programs under NAHASDA, "public housing" and "Section 8," follow federal rules that allow housing agencies to deny admission to an entire household or a specific member of a household if that member has a criminal record. Criminal activities that can be grounds for denial of admission or eviction are: drug related criminal activity; violent criminal activity; or other criminal activity that would threaten the health, safety or right to peaceful enjoyment of the property by other tenants, or threaten the health or safety of the housing authority, owner or employees. The housing agencies can contact law enforcement in the state where the housing is located or any state in which a household applicant has lived.
- Maine is an "employment at will" state. This means that without a contract you do not have the right to get a job or keep a job. It is not illegal for an employer to ask about your criminal history. Many jobs require a professional license or permit and registration with a state licensing agency. All felonies and many misdemeanors are likely to create barriers to licensing.
- Wabanaki people, like Indians nationwide, have a proud tradition of military service. But the military can access all information regarding criminal activity, including sealed juvenile records and information kept at local police departments. The military can reject an enlistment if it has evidence that the applicant may be a discipline problem.
- Hunting is an important part of Wabanaki culture. But the Federal Gun Control Act of 1968 restricts possession of firearms and ammunition. Two types of convictions trigger an automatic prohibition for life: an indictment or conviction of a felony; or a conviction for a domestic violence misdemeanor.
- While Maine permits felons to vote, felony convictions may prevent tribal members from running for tribal office and voting in tribal elections.

Recognizing and Respecting Native American Spiritual Practices in Maine Prisons and Jails

Historically Native American spirituality has not been respected or treated equally in the State of Maine correctional settings. Some of this mistreatment is based on racial bias. Sometimes cultural ignorance rather than overt racism or malice leads to the creation or maintenance of unnecessary restrictions. Prisoners who adhere to “mainstream” religions are afforded more opportunities to exercise their beliefs. For example, Maine law currently requires county jails to provide Bibles to inmates at the county’s expense, and Sunday religious instruction. 30-A MRSA sec. 1653. In recent years some progress has been made. At the urging of tribal community advocates and the Maine Indian Tribal-State Commission, the Maine Department of Corrections adopted a new policy that promises greater protection for the exercise of Native spiritual practices. But a great deal remains to be done to overcome the bias that is built into the system. Disregard of rights of Native American prisoners has persisted despite good intentions and efforts by some correctional officials. In one instance, prison staff removed a Sweat Lodge and altar and filled the fire hole- a desecration. In the winter, Native prisoners and spiritual leaders, including a frail 80 year old Pipe Carrier, have been required to use outdoor areas and unheated buildings for smudging and Pipe Ceremony. In one instance they were relegated to a maintenance building with gasoline fumes, tools, and supplies of various sorts.

The free exercise of spiritual practices is a critically important human and civil right for Native prisoners. It is essential to the rehabilitation of the Native offenders and the well-being of the tribal communities to which the offenders will eventually return. The government of the United States has a trust responsibility regarding all Indian Tribes including the Wabanaki Tribes located in Maine. That trust responsibility includes criminal justice and corrections issues. Cultural myopia is not an excuse for denying Wabanaki people a fair chance to recover from alcohol and substance abuse.

This issue should be viewed in the context of historical and contemporary relationships between the Indian Tribes and the State and Federal governments. But for the Maine Settlement Act of 1980, Native American prisoners who committed offenses in Indian Country in Maine would be confined in Federal and Tribal prisons and jails. But under the Settlement, Indians are sentenced to state and county facilities. None of the Maine Wabanaki Tribes have a jail.

Removing unjustifiable barriers to the personal observance of spirituality by Native prisoners will promote both prison security and rehabilitative purposes. Almost all prisoners will return at some point to Maine communities. Prison environments make it especially difficult for isolated Native American prisoners to hold on to traditional spiritual ways that are rooted in a communal connection to the natural world. Access to spiritual ceremonies with other Native prisoners can help them to maintain or enhance their sense of personal identity, and strengthen their capacity to deal with the potentially debilitating challenges of prison life. In much the same way that the Indian Child Welfare Act protects the greatest resource of the Tribes-their children- Native spiritual gatherings in prison can promote the survival of tribal communities for whom it is critically important to maintain social connections to tribal people who are incarcerated in culturally alien and often distant correctional facilities. Traditional ceremonies attended by spiritual leaders and others from the tribal communities can provide a crucial lifeline to tribal members who may otherwise be effectively lost as human resources to the Wabanaki Tribes.

SEPTEMBER 16, 2014

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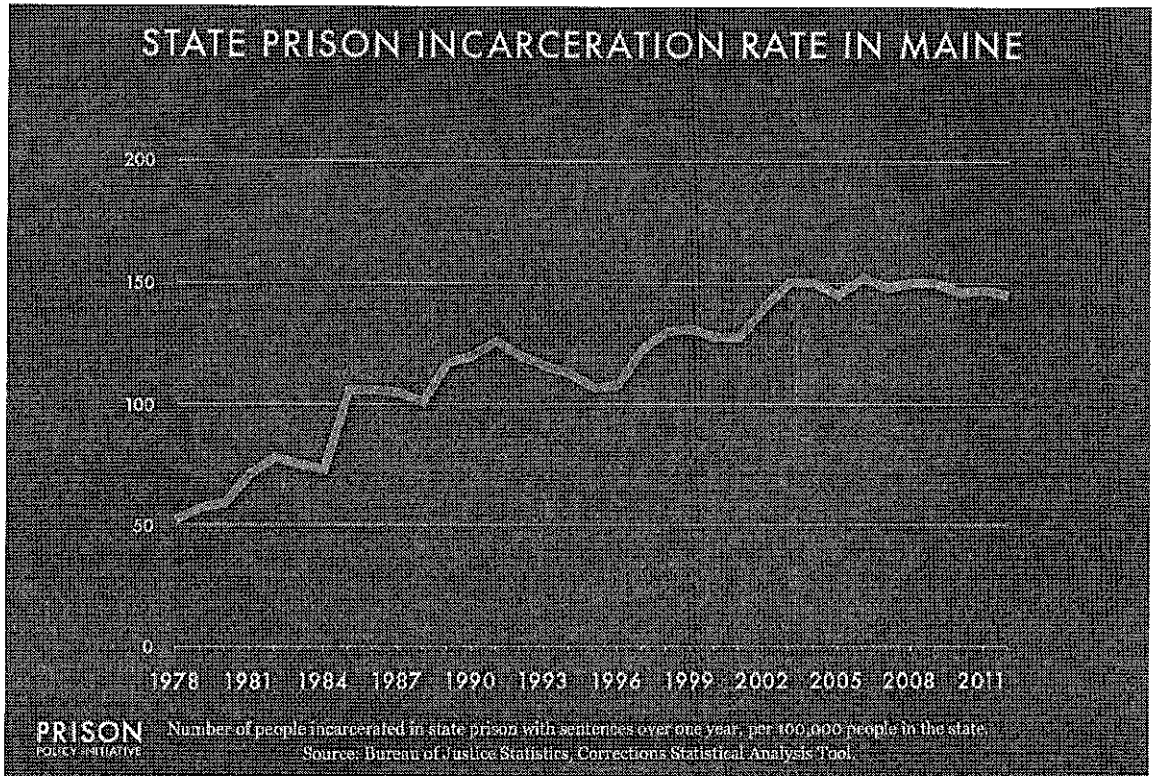
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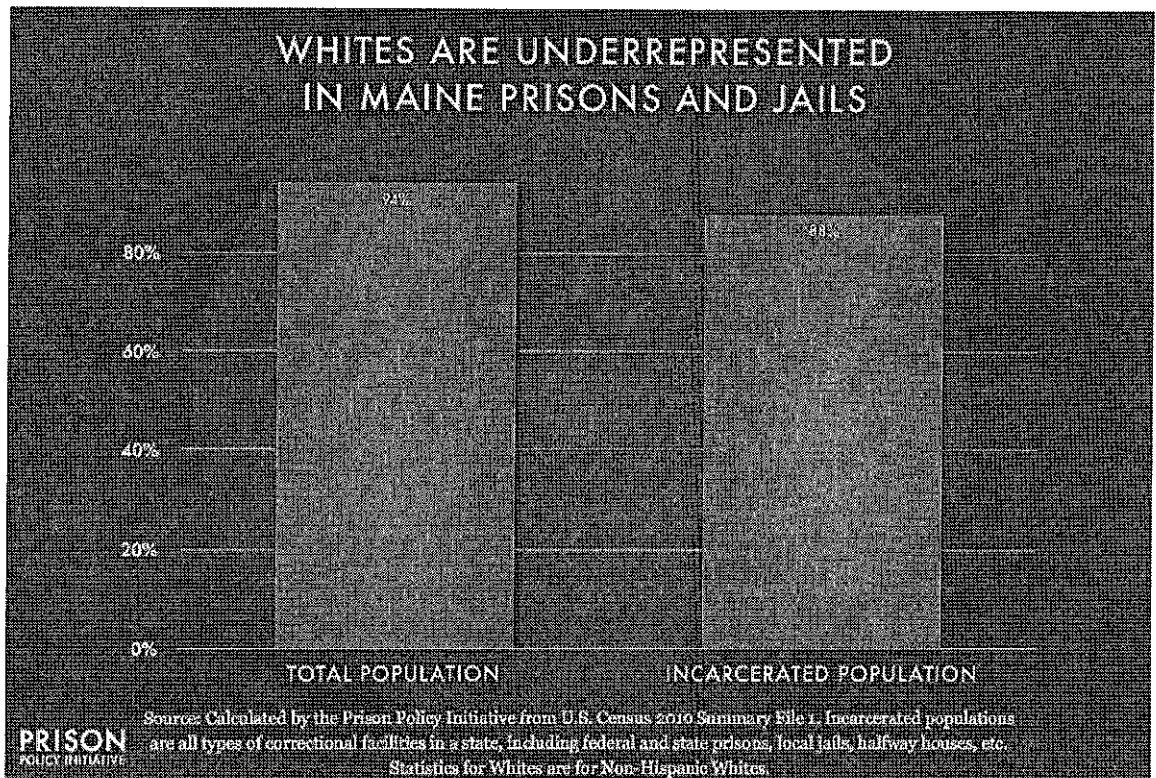
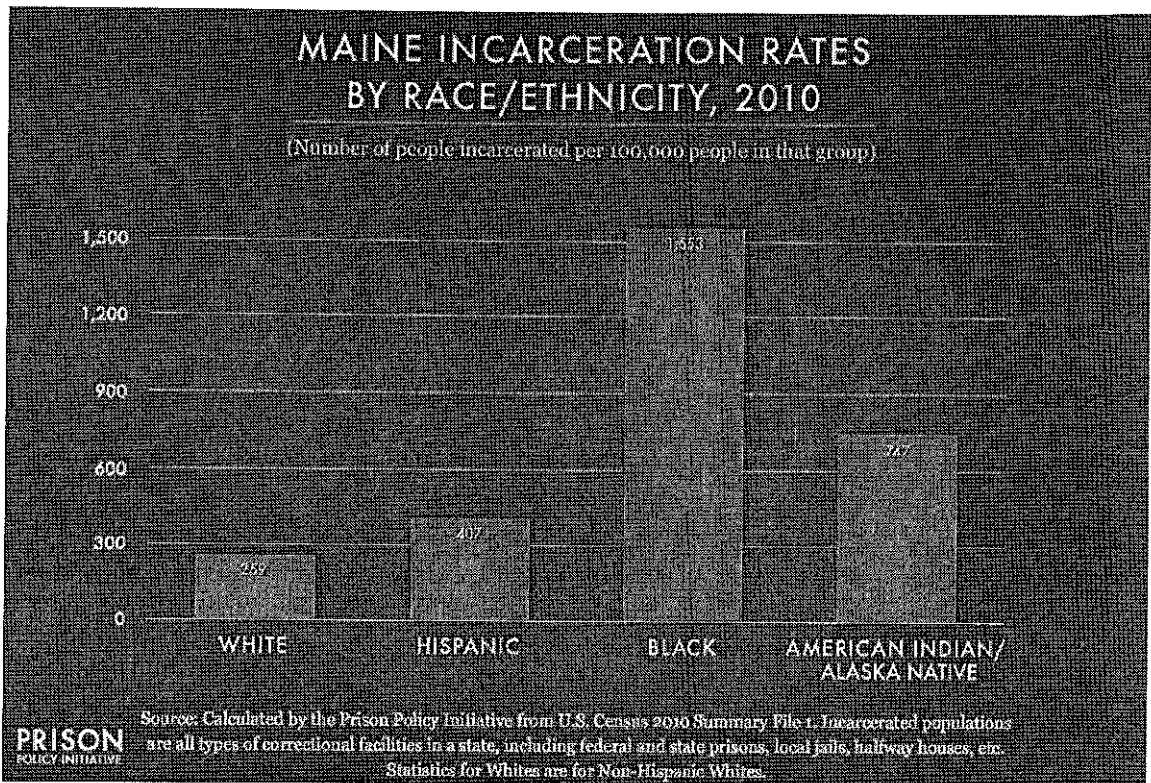
The graphs on this page are from our [50 State Incarceration Profiles](#).

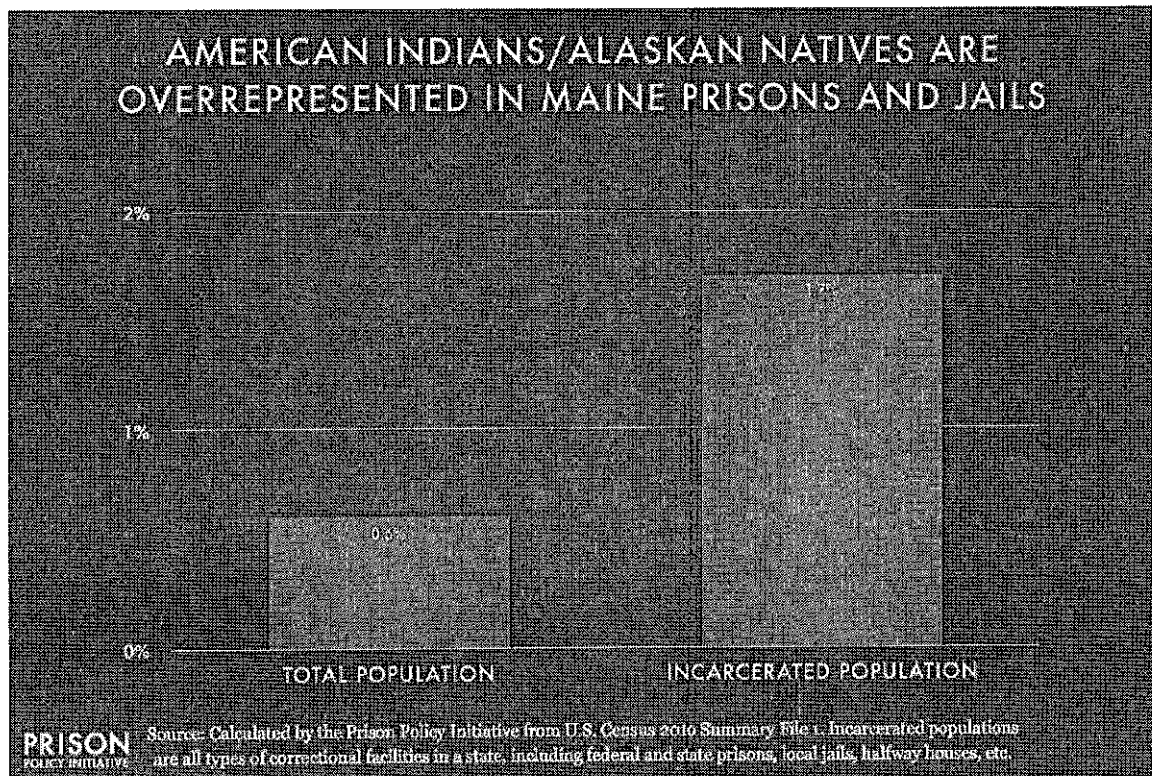
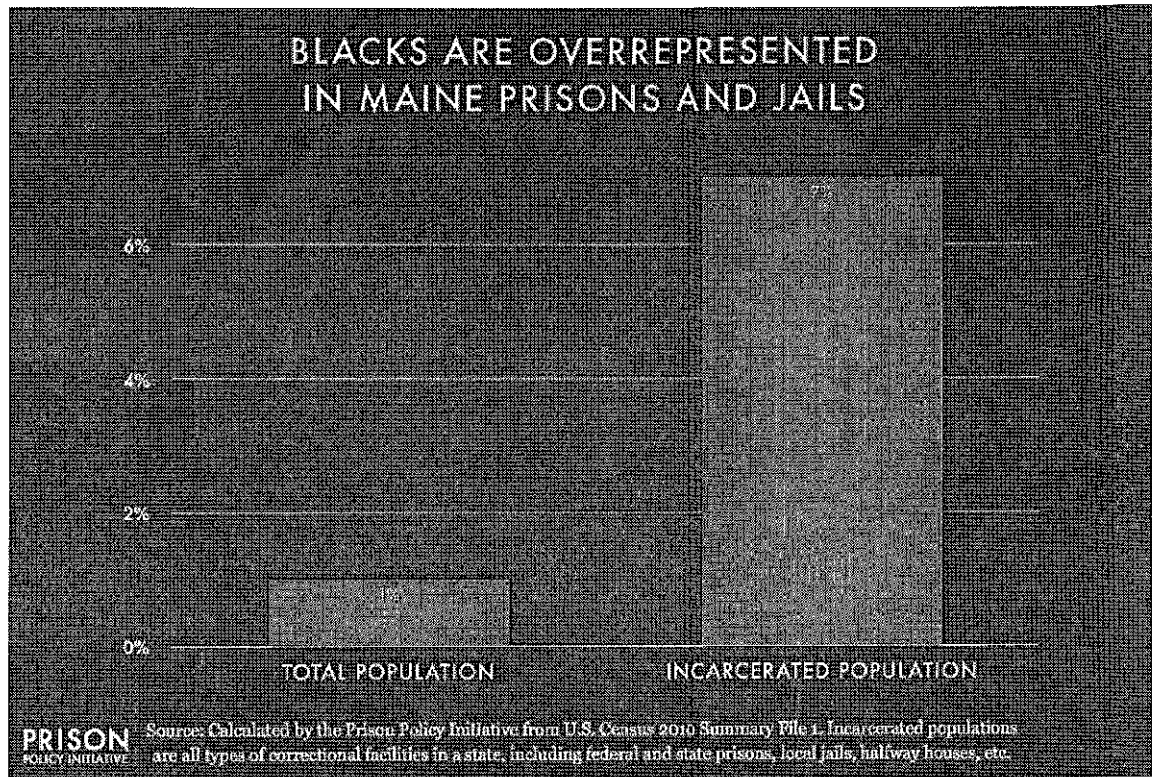
Over time



You can also see the same graph [expressed as numbers](#) rather than as rates per 100,000.

Racial disparities





Other research and materials on Maine

- [Prison-based gerrymandering costs Maine 8th graders local schooling](#), by Peter Wagner, [Prison Gerrymandering Blog](#), February 15, 2011



State of Maine
Department Of Corrections
Count of Clients By Race
All Adult Facilities

| Race | Male Client Count | Female Client Count | Total Client Count |
|----------------------------------|------------------------------|--------------------------------|-------------------------------|
| Asian | 11 | 1 | 12 |
| Black or African American | 162 | 4 | 166 |
| Native American | 52 | 12 | 64 |
| Two or More Races | 13 | 2 | 15 |
| Unknown | 27 | 1 | 28 |
| White | 1758 | 129 | 1887 |
| Total | 2023 | 149 | 2172 |



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State & County QuickFacts

Maine

| People QuickFacts | Maine | USA |
|---|----------------------|-------------|
| Population, 2013 estimate | 1,328,302 | 316,128,839 |
| Population, 2010 (April 1) estimates base | 1,328,361 | 308,747,716 |
| Population, percent change, April 1, 2010 to July 1, 2013 | Z | 2.4% |
| Population, 2010 | 1,328,361 | 308,745,538 |
| Persons under 5 years, percent, 2013 | 4.9% | 6.3% |
| Persons under 18 years, percent, 2013 | 19.7% | 23.3% |
| Persons 65 years and over, percent, 2013 | 17.7% | 14.1% |
| Female persons, percent, 2013 | 51.0% | 50.8% |
| <hr/> | | |
| White alone, percent, 2013 (a) | 95.2% | 77.7% |
| Black or African American alone, percent, 2013 (a) | 1.4% | 13.2% |
| American Indian and Alaska Native alone, percent, 2013 (a) | 0.7% | 1.2% |
| Asian alone, percent, 2013 (a) | 1.1% | 5.3% |
| Native Hawaiian and Other Pacific Islander alone, percent, 2013 (a) | Z | 0.2% |
| Two or More Races, percent, 2013 | 1.6% | 2.4% |
| Hispanic or Latino, percent, 2013 (b) | 1.4% | 17.1% |
| White alone, not Hispanic or Latino, percent, 2013 | 94.0% | 62.6% |
| <hr/> | | |
| Living in same house 1 year & over, percent, 2008-2012 | 86.3% | 84.8% |
| Foreign born persons, percent, 2008-2012 | 3.3% | 12.9% |
| Language other than English spoken at home, pct age 5+, 2008-2012 | 7.0% | 20.5% |
| High school graduate or higher, percent of persons age 25+, 2008-2012 | 90.6% | 85.7% |
| Bachelor's degree or higher, percent of persons age 25+, 2008-2012 | 27.3% | 28.5% |
| Veterans, 2008-2012 | 130,685 | 21,853,912 |
| Mean travel time to work (minutes), workers age 16+, 2008-2012 | 23.3 | 25.4 |
| <hr/> | | |
| Housing units, 2013 | 723,128 | 132,802,859 |
| Homeownership rate, 2008-2012 | 72.1% | 65.5% |
| Housing units in multi-unit structures, percent, 2008-2012 | 19.4% | 25.9% |
| Median value of owner-occupied housing units, 2008-2012 | \$175,800 | \$181,400 |
| Households, 2008-2012 | 553,208 | 115,226,802 |
| Persons per household, 2008-2012 | 2.34 | 2.61 |
| Per capita money income in past 12 months (2012 dollars), 2008-2012 | \$26,464 | \$28,051 |
| Median household income, 2008-2012 | \$48,219 | \$53,046 |
| Persons below poverty level, percent, 2008-2012 | 13.3% | 14.9% |
| <hr/> | | |
| Business QuickFacts | Maine | USA |
| Private nonfarm establishments, 2012 | 40,120 ¹ | 7,431,808 |
| Private nonfarm employment, 2012 | 486,838 ¹ | 115,938,468 |
| Private nonfarm employment, percent change, 2011-2012 | 1.5% ¹ | 2.2% |
| Nonemployer establishments, 2012 | 110,117 | 22,735,915 |
| Total number of firms, 2007 | 150,389 | 27,092,908 |
| Black-owned firms, percent, 2007 | 0.5% | 7.1% |
| American Indian- and Alaska Native-owned firms, percent, 2007 | 0.5% | 0.9% |
| Asian-owned firms, percent, 2007 | 0.7% | 5.7% |
| | 0.0% | 0.1% |

| | | |
|---|--------------------|---------------|
| Native Hawaiian and Other Pacific Islander-owned firms, percent, 2007 | | |
| Hispanic-owned firms, percent, 2007 | 0.7% | 8.3% |
| Women-owned firms, percent, 2007 | 25.6% | 28.8% |
| ----- | | |
| Manufacturers shipments, 2007 (\$1000) | 16,363,192 | 5,319,456,312 |
| Merchant wholesaler sales, 2007 (\$1000) | 8,823,719 | 4,174,286,516 |
| Retail sales, 2007 (\$1000) | 20,444,031 | 3,917,663,456 |
| Retail sales per capita, 2007 | \$15,520 | \$12,990 |
| Accommodation and food services sales, 2007 (\$1000) | 2,515,827 | 613,795,732 |
| Building permits, 2012 | 3,001 ¹ | 829,658 |

| Geography QuickFacts | Maine | USA |
|---------------------------------|-----------|--------------|
| Land area in square miles, 2010 | 30,842.92 | 3,531,905.43 |
| Persons per square mile, 2010 | 43.1 | 87.4 |
| FIPS Code | 23 | |

1: Includes data not distributed by county.

(a) Includes persons reporting only one race.

(b) Hispanics may be of any race, so also are included in applicable race categories.

D: Suppressed to avoid disclosure of confidential information

F: Fewer than 25 firms

FN: Footnote on this item for this area in place of data

NA: Not available

S: Suppressed; does not meet publication standards

X: Not applicable

Z: Value greater than zero but less than half unit of measure shown

Source U.S. Census Bureau: State and County QuickFacts. Data derived from Population Estimates, American Community Survey, Census of Population and Housing, State and County Housing Unit Estimates, County Business Patterns, Nonemployer Statistics, Economic Census, Survey of Business Owners, Building Permits
 Last Revised: Tuesday, 08-Jul-2014 06:37:34 EDT

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|||

| State* | Asian and Pacific Islander | Latino | African American | White | Native American |
|-----------------|----------------------------|------------|------------------|------------|-----------------|
| US Total | 113 | 348 | 754 | 190 | 496 |
| Minnesota | 280 | 400 | 1,149 | 156 | 1,712 |
| Nebraska | 194 | 447 | 1,529 | 214 | 1,682 |
| South Dakota | 873 | 1,449 | 3,199 | 310 | 1,575 |
| Wyoming | 0 | 947 | 3,035 | 507 | 1,285 |
| North Dakota | 0 | 747 | 1,384 | 235 | 1,240 |
| Iowa | 117 | 520 | 1,337 | 242 | 1,025 |
| Alaska | 206 | 0 | 339 | 177 | 896 |
| Oregon | 181 | 314 | 1,075 | 291 | 870 |
| West Virginia | 0 | 567 | 953 | 229 | 775 |
| Idaho | 328 | 463 | 725 | 250 | 747 |
| Rhode Island | 409 | 188 | 1,425 | 192 | 735 |
| Connecticut | 36 | 316 | 669 | 105 | 672 |
| Colorado | 112 | 396 | 1,150 | 268 | 646 |
| Washington | 155 | 207 | 770 | 200 | 607 |
| Montana | 0 | 482 | 418 | 188 | 588 |
| Wisconsin | 282 | 226 | 1,389 | 143 | 580 |
| Utah | 324 | 564 | 951 | 258 | 558 |
| Maine | 0 | 188 | 182 | 149 | 492 |
| Maryland | 22 | 326 | 319 | 98 | 450 |
| California | 140 | 448 | 1,246 | 217 | 425 |
| Indiana | 0 | 381 | 1,188 | 316 | 417 |
| Nevada | 152 | 332 | 958 | 289 | 405 |
| Oklahoma | 48 | 239 | 673 | 196 | 343 |
| Kansas | 187 | 364 | 1,320 | 213 | 318 |
| Michigan | 27 | 231 | 602 | 169 | 287 |
| Louisiana | 90 | 151 | 663 | 202 | 269 |
| Pennsylvania | 329 | 639 | 1,207 | 139 | 246 |
| New Mexico | 0 | 105 | 823 | 153 | 212 |
| New York | 45 | 261 | 712 | 138 | 205 |
| Arizona | 72 | 363 | 579 | 223 | 199 |
| Florida | 81 | 186 | 973 | 355 | 195 |
| North Carolina | 45 | 77 | 332 | 106 | 195 |
| South Carolina | 143 | 453 | 567 | 201 | 193 |
| Massachusetts | 160 | 522 | 811 | 111 | 172 |
| Mississippi | 0 | 60 | 246 | 75 | 155 |
| New Jersey | 15 | 203 | 795 | 51 | 153 |
| Texas | 18 | 327 | 771 | 194 | 139 |
| Georgia | 59 | 237 | 500 | 142 | 127 |
| Illinois | 14 | 144 | 589 | 120 | 113 |
| Missouri | 87 | 287 | 690 | 159 | 93 |
| Ohio | 71 | 296 | 916 | 207 | 87 |

Rates of Youth in Residential Custody, 2003

In 2003, nearly 500 Native American youth were committed to residential placement for every 100,000 Native American youth in the general US population. This is over two and a half times the rate for White youth and, among all race/ethnic groups, is second only to the rate for African American youth. Northern Midwestern states tended to have the highest rates of Native American youth in placement.

State by State

Representing a variety of custody settings, "residential placement" is the most serious juvenile justice system disposition. It is most akin, in the adult system, to being sentenced to serve time in jail or prison.

Note: The residential custody rate is the number of juvenile offenders in residential placement on October 22, 2003, per 100,000 juveniles age 10 through the upper age of jurisdiction in the general population of each state. US totals include 1,398 youth in private facilities for whom the state of offense was not reported and 124 youth in tribal facilities. Data may include youth held in a different state than their state of residence or the state where the offense took place.

*States not listed had too few Native Americans to reliably estimate rates. Data is from 2002, the last year the Bureau of Justice Statistics released these data.

Sources: Census of Juveniles in Residential Placement 1997, 1999, 2001, and 2003.