

## 1 HOUSE JOINT RESOLUTION NO. 32

2 INTRODUCED BY E. STAFMAN

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4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF  
5 MONTANA REQUESTING AN INTERIM STUDY TO EXAMINE DISCRIMINATION IN MONTANA'S CRIMINAL  
6 JUSTICE SYSTEM BASED ON RACE, ETHNICITY, OR NATIONAL ORIGIN.

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8 WHEREAS, Indians and other minorities in the state are disproportionately overrepresented in the  
9 criminal justice system compared to their representation in the general population; and

10 WHEREAS, there are numerous points of discretion in the criminal justice system and the corrections  
11 system that need to be reviewed for causes behind racial disparity in sentencing, including quality of counsel,  
12 arrest rates, detention in jail versus release on bail, the various uses of plea agreements and trials, rates of  
13 conviction, sentencing patterns, opportunities for effective treatment, rates of incarceration, rates in receiving  
14 deferred or suspended sentences and in granting of parole, and differences in probation and parole  
15 revocations; and

16 WHEREAS, Indians represent at least 8.4% of the overall population of the state according to 2019  
17 American Community Survey data from the United States Census Bureau, yet Indian females represent 24%  
18 and Indian males represent 17% of the overall 2020 state adult offender population, including prison, intensive  
19 supervision parole, prerelease, and probation; and

20 WHEREAS, the numbers incarcerated in state prisons are even more disproportionate—37% of  
21 incarcerated females and 20% of incarcerated males are Indian; and

22 WHEREAS, Indian youth are also disproportionately overrepresented in the Youth Court system,  
23 representing 14% of all referrals to a youth court in 2020, and in the juvenile corrections systems, ranging from  
24 26% of the youth population at the Pine Hills Youth Correctional Facility for boys and up to 44% at the Five  
25 County Treatment and Youth Rehabilitation Center for girls for fiscal year 2020; and

26 WHEREAS, discrimination in our criminal justice system based on race, ethnicity, or national origin  
27 ("race" or "racial bias") has a deleterious effect not only on individual criminal defendants but on our system of  
28 justice as a whole. The United States Supreme Court has said: "Discrimination on the basis of race, odious in

1 all respects, is especially pernicious in the administration of justice" (Rose v. Mitchell, 443 U.S. 545, 556 (1979)  
2 (quoting Ballard v. United States, 329 U.S. 187, 195 (1946))). The United States Supreme Court has also  
3 recognized "the impact of... evidence [of racial bias] cannot be measured simply by how much airtime it  
4 received at trial or how many pages it occupies in the record. Some toxins can be deadly in small doses" (Buck  
5 v. Davis, 137 S. Ct. 759, 777 (2017)). Discrimination undermines public confidence in the fairness of the state's  
6 system of justice and deprives Montanans of equal justice under the law; and

7 WHEREAS, even though racial bias is widely acknowledged as intolerable in our criminal justice  
8 system, it nevertheless persists because courts generally only address racial bias in its most extreme and  
9 blatant forms; and

10 WHEREAS, existing precedent may tolerate the use of racially incendiary or racially coded language,  
11 images, and racial stereotypes in criminal trials, at least until these remarks and language reach a very high  
12 threshold. For example, in a case alleging racially incendiary remarks by a prosecutor, Montana courts have  
13 held that "it is not enough that the prosecutor's remarks are undesirable or even universally condemned; rather  
14 the question is whether the comments so infected the trial with unfairness as to make the resulting conviction a  
15 denial of due process" (State v. Haithcox, 2019 MT 201, 397 Mont 103, 447P. 2d 452 (Mont. 2019)); and

16 WHEREAS, there is growing awareness that no degree or amount of racial bias is tolerable in a fair  
17 and just criminal justice system, that racial bias is often insidious, and that purposeful discrimination is often  
18 masked and racial animus disguised.

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20 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF  
21 THE STATE OF MONTANA:

22 That the Legislative Council be requested to designate an appropriate interim committee or statutory  
23 committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to examine discrimination in  
24 Montana's criminal justice system based on race, ethnicity, or national origin.

25 BE IT FURTHER RESOLVED, that the study must:

- 26 (1) identify potential causes of discrimination in Montana's criminal justice system;  
27 (2) identify points in the state's criminal justice system at which discrimination may occur and affect  
28 proceedings and outcomes;

