

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.

19
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;

