

## Racial Legislation in Montana that Affected African Americans in Particular

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Montana's first Legislative Assembly established the territory's legal framework. It based many of its laws on those of Idaho Territory, from which Montana was carved in 1864. The laws listed below include legislation passed between 1864 and 2003 that particularly impacted the African American residents of the state. Further research may reveal additional laws.

### Suffrage:

Voting in the Territory was at first limited to white males:

- [1864 Idaho Territorial Laws \(Idaho T.L.\) 560](#).
- [1864 Montana Territorial Laws \(T. Laws\) 375](#)
- *Reaffirmed* [1867 T. Laws 96](#)
- *Voting rights extended to all male citizens* [1871-2 T. Laws 460](#)

The [14th Amendment to the U.S. Constitution](#) granted citizenship to "all persons born or naturalized in the United States," which included former slaves recently freed. In addition, it forbids states from denying any person "life, liberty or property, without due process of law" or to "deny to any person within its jurisdiction the equal protection of the laws."

The [15th Amendment to the U.S. Constitution](#), and the Congressional Legislation to enact it in the Territories extended suffrage to all male citizens regardless of "race, color, or previous condition of servitude."

Congressional legislation to enact the provisions of the 15<sup>th</sup> Amendment in the Territories:

- 14 U.S. Statutes [379-380](#)

Montana voting laws brought the Territory into compliance under 15<sup>th</sup> Amendment:

- [1871-2 T. Laws 460](#)

Racial Restrictions on School Board elections (bill establishing the school system: Council Bill 38):

- 1864-5 Council Journal (C.J.) [57](#), [109-110](#), [123](#), [209](#), [270-271](#)
- [1864-5 House Journal \(H.J.\) 135](#)
- [1864 T. Laws 443](#) (Section 16: only white males can vote in school elections)
- *Voting rights extended to all male citizens* [1871-2 T. Laws 460](#)

Racial Limitation on Poll Tax (because only white males could vote, only they paid poll taxes)

- [1864 T. Laws 429](#) (Section 61)

### Legal Proceedings:

Racial Limitation on Witnesses at Trials (African Americans, Chinese, and Native American residents of the state could not testify at trials involving white litigants. They could, however, provide witness accounts in trials involving members of their own race.)

- [1864-5 T. Laws 178](#) (Section 13 of Montana Civil Practice Act)
- [1864-5 T. Laws 110-11](#) (Section 320 of Montana Civil Practice Act)
- *Reaffirmed* [1867 T. Laws 210](#) (Section 372)
- *Racial restrictions for witnesses no longer law:* [1871-2 T. Laws 125](#)

Racial Exclusion from Jury Service (only people legally able to vote, white males, could serve on juries)

- [1864-5 T. Laws 140](#) (Section 490 of 1864 Civil Practice Act)
- *Reaffirmed* [1867 T. Laws 70](#) (Section 8)
- *Retained* [1871-2 T. Laws 506](#) (Section 8)

#### Definition of Races

- [1864-5 T. Laws 178](#) (Section 13 of Montana Civil Practice Act)

**Anti-Slavery Statute** (disallowing the taking of any person from the Territory in order to enslave them)

- [1864-5 T. Laws 186](#) (Sections 50 and 51)

#### Interracial Marriage:

Idaho Territory disallowed marriages between whites and Native Americans, Chinese, and African Americans

- [1864 Idaho T. Laws 604](#)

The first Montana Territorial Legislature considered a law (House Bill 19) that would have made interracial marriage illegal, but several members had Indian wives, and prevented its passage.

- [1864 H.J. 30, 36](#)

Another attempt to pass a miscegenation law (House Bill 27) failed in 1866.

- [1866 House Bill \(H.B.\) 27](#). “House Bill 27,” MT Territorial Assembly Records, 2<sup>nd</sup>: 1866, MT Terr 2, Box 1, Folders 5-8a.
- 1866 (Second Session) H.J. [35](#), [38](#), [46](#), [47](#), [52](#), [54](#)
- [1866 \(Second Session\) C.J. 93, 127, 129, 130](#)

In 1907, Senator Charles Muffley introduced an anti-miscegenation bill (S.B. 71) that would have made it illegal for whites to marry African Americans, Native Americans, Chinese, and Japanese people. The bill failed.

- [1907 S.J. 140, 206](#)

In 1909, Muffley again introduced a similar bill, but this one did not include Native Americans in the list of banned spouses. After much debate and political maneuvering, the bill became law. The Anti-Miscegenation Act of 1909 made it illegal for whites to marry African Americans, Chinese, or Japanese, and penalized those who performed such marriages.

- *Original bill:* [1909 Senate Bill \(S.B.\) 34](#). “1909 Senate Bill 34,” MT Governors’ Records, MC 35, Bills Received by Governor, Box 4, Folders 8-9.
- *Debate and votes in Senate:* 1909 S.J. [72](#), [99](#), [112](#), [129](#), [155](#), [171](#), [239](#), [257](#), [258](#), [282](#)
- *Debates and votes in House:* 1909 H.J. [202](#), [238](#), [276](#), [286](#), [287](#), [300](#), [332](#), [341-342](#), [368](#)
- *Signed into law:* [1909 S.J. 386](#)
- *Statute:* 1909 Laws C. 19; [1915 Supplement to 1907 MT Rev Codes 532-533 \(§3615a\)](#).

The Montana Supreme Court upheld the Anti – Miscegenation law in 1942.

- *In re Shun Takahashi’s Estate*, [113 Mont. 490](#) [aka 129 Pac 2d 217 (1942)]

Montana’s Anti-Miscegenation Act of 1909 was repealed in 1953

- [1953 H.B. 8](#). “House Bill 8,” MT Legislative Assembly Records, 33<sup>rd</sup>: 1953, LR 33 Box 1, Folder 14, Box 2 Folders 4-8.
- *Introduced:* [1953 H.J. 23](#)
- 1953 H.J. [48](#), [52](#), [58](#), [60-61](#), [99](#), [109](#), [113](#), [117](#)

- Signed by Governor Hugo Aronson: [1953 H.J. 140](#)
- Statute: [1961 update to 1947 Rev Codes 349](#) (Chapter 48 Sections 106-110).

### School Segregation:

In 1872, the Montana Legislature passed a law requiring separate schools for African American children.

- [1872 T. Laws 627-628](#) (§34)
- Debated after City of Helena petitions to repeal [1876 H.J. 339-340](#)
- Repealed [1883 T. Laws 56-57](#) (Section 1149)
- Segregation retained in recodification of Territorial Statutes [1887 Revised Statutes 1185](#) (§1892 of the School Law)
- Final repeal/recodification (Senate Bill 39): [1895 S.J. 290](#); [1895 H.J. 386](#)
- [1895 MT Codes 163](#) (§ 1920; Part III, Title III, Chapter VI, Article XIV)

### Civil Liberties

The Montana Supreme Court struck down a law briefly on the books that prohibited members of African American organizations, particularly fraternal orders including the Improved Benevolent and Protective Order of Elks of the World (IBPOEW), from wearing the fraternal organizations' insignia.

- [1907 Laws 24](#).
- [The Montana Plaindealer, May 15, 1908, p. 1](#).
- [State v. Holland, 37 Mont. 393](#) [aka 96 Pacific Reporter 719 (1908)]

### Anti-Discrimination Laws

The 1951 Legislature considered, but did not pass, an anti-discrimination bill aimed at fair employment practices.

- [1951 H.B. 58](#). "House Bill 58," MT Legislative Assembly Records (32<sup>nd</sup>: 1951), LR 32, Box 1, Folder 8 (HB 58)
- Introduced and debated: [1951 H.J. 66, 85, 86, 158](#)
- Killed: [Helena Independent Record, January 31, 1951, p. 3 col. 3](#)

Also in 1951, the Legislature considered a bill "to guarantee full and equal enjoyment of all places of public accommodation." It did not pass.

- [1951 H.B. 391](#). "House Bill 391," MT Legislative Assembly Records (32<sup>nd</sup>: 1951), LR 32, Box 1, Folder 8 (HB 391)
- Consideration in House: 1951 H.J. 276, 437, 443, 458 (Passed House: [Helena Independent Record, February 17, 1951, p. 5 col. 6](#))
- Consideration in Senate: 1951 S.J. 409, 423 (Killed in Senate: [Helena Independent Record, February 24, 1951, p. 2, col. 4](#))

In 1955, an anti-discrimination in accommodations law (very similar to 1951's House Bill 391 above) did pass, though virtually all of the original language and all penalties for non-compliance were stripped from the final version.

- [1955 House Bill 52](#)
- Consideration in House: [1955 H.J. 52, 132, 179, 187-190, 541, 549-550](#)
- Consideration in Senate: [1955 S.J. 163, 217, 228, 242, 257, 271, 385 \(new language\), 392, 410, 423, 430, 461, 473-474](#)
- Statute: [1955 Session Laws 525 and 526 \(Chapter 240\)](#)

The **1972 Montana Constitution** established anti-discrimination rights for all.

- [Constitution of Montana, Article II, Declaration of Rights, Section 4.](#)

**Montana Human Rights Act** (Title 49, Chapter 2 of Montana Codes Annotated), passed in 1974, addresses illegal discrimination.

(See also Timothy Kelly, [“Montana’s Human Rights Law: Learning the Fundamentals about Fundamental Rights,”](#) (Emigrant, MT: Kelly Law Firm, n.d.) pp. 1-17.)

Title 49, Chapter 2, [Part 3](#) enumerates prohibited discriminatory practices:

Discrimination in Employment

- [MCA 49-2-303](#)

Discrimination in Public Accommodations

- [MCA 49-2-304](#)

Discrimination in Housing

- [MCA 49-2-305](#)

Discrimination in Financing and Credit Transactions

- [MCA 49-2-306](#)

Discrimination in Education

- [MCA 49-2-307](#)
- [Constitution of Montana, Article X, Title X, Section 7](#) Discrimination by the State
- [MCA 49-2-308](#)

The Human Rights Act is enforced via the **Administrative Rules of Montana**

- Human Rights Bureau, [ARM 24.8](#)
- Human Rights Commission, [ARM 24.9](#)

In 2003, the State of Montana outlawed **racial profiling**:

- [MCA 44-2-117](#)

**Hate Crimes:** Sentence Enhancement -- Offenses Committed Because of Victim's Race, Creed, Religion, Color, National Origin, or Involvement in Civil Rights or Human Rights Activities

- [MCA 45-5-222](#)

**Criminal Sentencing** – sentences handed down to those convicted of a crime “must be neutral with respect to the offender’s race...”

- [MCA 46-18-101](#)