**MINUTES**

**MONTANA SENATE**
**59th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By **SEN. BRENT R. CROMLEY**, on January 21, 2005 at 9:00 A.M., in Room 303 Capitol.

**ROLL CALL**

**Members Present:**
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

**Members Excused:** Sen. Mike Wheat, Chairman (D)

**Members Absent:** None.

**Staff Present:** Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**
Hearing & Date Posted: SB 204, SB 205 and SB 202, 1/14/2005
Executive Action: None.

## HEARING ON SB 204

**Opening Statement by Sponsor:**

**SEN. JIM SHOCKLEY, SD 45, VICTOR,** opened the hearing on **SB 204,** Allow only one jury trial. **SEN. SHOCKLEY** explained that under the current system an individual who had committed a misdemeanor would be able to have more jury trials than an individual accused of a felony. He went on to explain the Court system and how it worked. **SEN. SHOCKLEY** indicated that the present system cost more time and money than was necessary. He went on to explain why it was important to have a system that would allow for only one jury trial and the need for the lower courts to be Courts of Record.

**Proponents' Testimony:**

**Mark Murphy, Chief Criminal Deputy for Yellowstone County Attorney's Office,** expressed Yellowstone County's support for SB 204. He then provided background information regarding the bill to explain the reason that a Constitutional Amendment was necessary. **Mr. Murphy** explained SB 204 would eliminate double trials. He then referred to the zero fiscal impact for the State and indicated that there would be a fiscal impact to the counties. He further indicated that, in fact, it would save money for the counties every year. **Mr. Murphy** stated that the appeals they saw in his county were congregated into two areas, partner/family member assaults and DUIs. He continued stating that in these situations there were usually substantial delays involved and could pend in the system for about one year. He concluded saying that SB 204 would streamline the system and save money in the process.

**Bob Zenker, Madison County Attorney,** explained to the Committee that in Montana individuals were afforded greater process for lesser offenses and provided several examples to prove his point. He further indicated that in years past the lower court judges were not necessarily as well trained, however, now they are extremely well trained and explained the extensive training that they receive. **Mr. Zenker** expressed his support for the bill and urged the Committee to pass SB 204.

**Leo Gallagher, Lewis and Clark County Attorney,** informed the Committee that it was DUIs and family member ssaults that usually went to trial because of the consequences of these offenses. He further stated that present law tended to make deals rather than have the consequences and to avoid a double trial. **Mr. Gallagher** then referenced the last Session and the option that had been provided to counties to have Justice Courts of Record had only

been adopted by a few counties. He went on to discuss the problems involved in turning lower courts into courts of record. **Mr. Gallagher** urged support for SB 204.

**Jim Smith, Montana County Attorney's Association,** expressed their support for SB 204. He went on to say that the concept was fair and it would save the counties a significant amount of money. He asked the Committee for their favorable consideration of SB 204.

**John Connor from the Attorney General's Office,** stated that they had struggled with the issue for a long time. He went on to say that it was a victims issue that needed to be addressed. He strongly requested that the Committee give SB 204 their support.

**Jim Kembel representing the Montana Association of Chiefs of Police** and the **Montana Police Protective Association,** stated that they too agreed with the cost savings and time savings.

**Opponents' Testimony**: None.

**Informational Testimony**: None.

**Questions from Committee Members and Responses**:

**VICE CHAIRMAN CROMLEY** asked **SEN. SHOCKLEY** if the law passed during the preceding Session had allowed justice courts and city courts to be courts of record and, if so, how it had impacted Yellowstone County. **SEN. SHOCKLEY** explained the Court system, which courts were courts of record along with the requirements for the judges for each level of court. **SEN. SHOCKLEY** stated that SB 204 was designed for Justices of the Peace and city courts, particularly in the smaller jurisdictions.

**VICE CHAIRMAN CROMLEY** asked **SEN. SHOCKLEY** what the bill did that had been passed two years previously. **SEN. SHOCKLEY** replied that if the Court was a Court of Record, regardless of the name, it would be an appeal from that Court to the Supreme Court. He went on to say that the reason there was a trial *de novo* was because there was no record.

**VICE CHAIRMAN CROMLEY** asked **Mr. Murphy** if the JP courts in Yellowstone County were courts of record with regard to criminal misdemeanor cases. **Mr. Murphy** responded that they were not and explained the reason was that courts of record had to be manned by attorney judges.

**SEN. MCGEE** asked **Mr. Murphy** how many cases in Judge Hernandez' Court were overturned compared to Judge Herman's Court by District Court. **Mr. Murphy** replied that he did not know.

**Closing by Sponsor**:

**SEN. SHOCKLEY** stated that SB 204 was an economy bill. He went on to say that the Constitution should only require one fair jury trial. He continued saying that the taxpayers should only have to pay for one jury trial and he would appreciate a positive vote on the bill.

***{Tape: 1; Side: A; Approx. Time Counter: 0 - 23.4}***

## HEARING ON SB 205

**Opening Statement by Sponsor**:

**SEN. JIM SHOCKLEY, SD 45, VICTOR,** opened the hearing on **SB 205,** Restrict reinstatement of driver's license for violation of liability insurance. **SEN. SHOCKLEY** stated that this bill would simply say that on the second offense an individual's license be taken away and they would not get it back until they proved they had insurance or a bond and that insurance would not be allowed to be cancelled. He further stated it was simple and fair. He then stated that if people drive without insurance they imperil everyone. **SEN. SHOCKLEY** concluded saying he thought it was reasonable and good public policy and he encouraged the Committee to vote for SB 205.

**Proponents' Testimony**:

**Greg Van Horssen representing State Farm Insurance Company, and on behalf of the American Insurance Association and Farmers' Union Mutual Insurance,** stated that his comments were specific to State Farm Insurance. He went on to say that State Farm Insurance supported the concept of SB 205, however, they did have some problems in the details. **Mr. Van Horssen** referred to Page 2, Lines 6 and 7, and explained the difficulties they would have. He concluded saying that they did support the bill with some reservations.

***{Tape: 1; Side: A; Approx. Time Counter: 23.4 - 30.6}***

**Jon Metropoulos, Farmers Insurance Group,** stated that he was a supporter of SB 205 with some concerns. He went on to say that he did feel that his concerns could be addressed.

**Harris Himes, Retired California Attorney,** stated that if they were going to uphold the law that people were supposed to have insurance to drive, they needed to pass SB 205.

**Dean Roberts, Administrator, Motor Vehicle Division for the Department of Justice,** stated in principal they stood in support of anything that would lower the number of uninsured motorists in Montana.

**Bob Zenker, Madison County Attorney,** stated that he supported SB 205 to the extent that he understood it.

**Becky Stockton representing herself,** stated that she strongly stood in support SB 205.

**Opponents' Testimony**: None.

**Informational Testimony**: None.

**Questions from Committee Members and Responses**:

**SEN. MANGAN** asked **Mr. Roberts** if he saw a nightmare process trying to deal with keeping track of those folks without insurance and notifying the insurance companies. **Mr. Roberts** responded that they had added a 1/2 FTE to the fiscal note. He further stated that it would involve some more work to his office. He suggested that they may have to think about requiring SR 22 insurance to make the process simpler.

**SEN. MANGAN** then asked **Mr. Roberts** if they currently contacted insurance companies for any of the offenses. **Mr. Roberts** indicated that they did on SR 22 insurance when they were informed that someone had cancelled with one company and had transferred to another company.

**SEN. MCGEE** asked **Mr. Roberts** to explain what SR 22 insurance was. **Mr. Roberts** replied that it was the type of insurance that was on the individual not on an automobile. He went on to say that they used SR 22 on insurance suspensions. He then explained the process involved when SR 22 insurance was required.

**SEN. MCGEE** asked **Mr. Van Horssen** if there was anything that would prohibit an insurance company from requiring the entire six month premium at the time the person reapplies for insurance. He further asked if there was a mechanism in place whereby an insurance company could find out if a person had been cited for lack of insurance. **Mr. Van Horssen** replied that if there had been a conviction, they would be able to find the information on the driver's record. He then stated that they could require that an individual pay for six months of insurance up front, however, they did not do it in all cases.

**SEN. PERRY** asked **SEN. SHOCKLEY** what real impact SB 205 would have on the problem of individuals who simply cannot afford the insurance, so they are cited and fined continuously and still continue to drive without insurance and how it would apply to the solution of the problem. **SEN. SHOCKLEY** replied that with people who got in trouble with DUI and that sort of issue, there did tend to be a spiraling affect. He went on to say that he was not focusing on the criminals, he was focusing on the public. He continued saying that the law was that everyone was suppose to have insurance to protect the other person should there be an accident.

**SEN. PERRY** asked **SEN. SHOCKLEY** to address how they could solve the revolving door of the problem. **SEN. SHOCKLEY** replied that like all bills passed, this one was not perfect. He went on to say that he did not believe that the Legislature could solve all of the problems of society. He stated that he was simply trying to prevent individuals who had been irresponsible from hurting the responsible public.

**VICE CHAIRMAN CROMLEY** asked **SEN. SHOCKLEY** if he felt he could come up with some amendments that would still fulfill the purpose of the bill. **SEN. SHOCKLEY** replied that he had spoken with the insurance folks and they were going to work it out.

**Closing by Sponsor**:

**SEN. SHOCKLEY** stated that the focus of the bill was the public. He went on to say that he wanted to protect the public from those individuals who drive without insurance. He requested that the Committee give this bill favorable consideration.

***{Tape: 1; Side: B; Approx. Time Counter: 0 - 16.5}***

## HEARING ON SB 202

**Opening Statement by Sponsor**:

**SEN. KEN TOOLE, SD 41, HELENA**, opened the hearing on **SB 202**, Include sexual orientation, disability, and gender in malicious intimidation law. **SEN. TOOLE** stated that SB 202 was a bill which would amend the malicious harassment statute. He went on to say that they were adding sexual orientation, disability and gender to the current statute. **SEN. TOOLE** then stated that he felt that this law was the statement of the values of society. He provided the Committee with an example to emphasize the need for the amendment to present statute. He then discussed the

definition of hate crimes and how they affect society. **SEN. TOOLE** explained that there would be an amendment to SB 202 which would define "sexual orientation."

**Proponents' Testimony**:

**Lt. Governor John Bollinger** spoke in support of SB 202. **Lt. Governor Bollinger's** written testimony is attached as Exhibit 1.

**EXHIBIT(jus16a01)**

***{Tape: 1; Side: B; Approx. Time Counter: 16.5 - 28.6}***
***{Tape: 2; Side: A; Approx. Time Counter: 0 - 0.9}***

**REP. CAROL JUNEAU, HD 16, BROWNING,** expressed her support for SB 202. She went on to say that amendment of the present statute would insure that the laws and policies of Montana would include all citizens of the state. She then discussed those citizens that needed to be protected by such a law. **REP. JUNEAU** related a story regarding a hate crime issue that had occurred on the MSU Campus. She concluded by indicating that it was time for such a bill and urged that the Committee give SB 202 a do pass recommendation.

**Jennifer Hendricks, Member of the Board of Directors of PRIDE,** which is Montana's Gay and Lesbian Civil Rights Organization, stated that she was requesting support for SB 202 because it would provide an important remedy for victims and a tool in the hands of prosecutors. Further, she stated it would send a powerful message to criminals, would-be criminals and the victims of hate crimes that bias-motivated harassment and violence was taken seriously by the State of Montana. **Ms. Hendricks** indicated that the most important aspect of the law was that it would not infringe on anyone's thought or right of free speech, or the ability to express their ideas that other individuals might find offensive. She went on to say that SB 202 would not be a cure all for hate and would not cure the problems of discrimination, however, it would be a tool that would help achieve that goal in the long run. **Ms. Hendricks** asked for a do pass recommendation.

**June Hermanson, Montanans With Disabilities For Equal Access,** told the Committee about her experiences as a victim of a violent crime. She then discussed an incident which occurred in Billings where she had been harassed by some teenage boys when she had gotten off the bus. **Ms. Hermanson** stated that individuals with disabilities were the largest minority in the State and are treated like second-class citizens. She further stated that when people talk about protective classes, the population with

disabilities is never recognized. She went on to say that equal protection needed to extended to all citizens and urged the Committee to pass SB 202.

**Kate Cholewa on behalf of the Montana Coalition Against Domestic and Sexual Violence,** expressed support for SB 202. She went on to say that they would like to focus on why women should be included as a category in the law. She further stated that 14 other states have bias crime laws which include women and she felt that Montana should also recognize that violent crimes against women could be hate crimes. **Ms. Cholewa** stated that they would encourage the Committee to give SB 202 a favorable vote.

**Dr. Ann Perkins representing herself,** spoke in strong support for SB 202. **Dr. Perkins** discussed research which had been done regarding sexual orientation. She went on to discuss information which would be obtained in a book entitled "Sexual Orientation Toward Biological Understanding". (A copy of the cover of this book is included in these minutes.) **Dr. Perkins** indicated that sexual orientation was not a choice and that as such all people should be free from intimidation and harassment. She concluded by asking for a do pass vote.

**Bernadette Franks-Ongoy, Executive Director, Montana Advocacy Program,** speaking for herself, spoke in support of SB 202. **Ms. Franks-Ongoy** provided written testimony, which is attached as Exhibit 2.

**EXHIBIT(jus16a02)**

***{Tape: 2; Side: A; Approx. Time Counter: 0.9 - 28.9}***
***{Tape: 2; Side: B; Approx. Time Counter: 0 - 2.4}***

**Gene Fenderson, Montana Progressive Labor Caucus,** spoke in strong support of SB 202. He went on to say that discrimination was a tool of the bosses and should not be allowed. He added that discrimination in all forms was wrong no matter where it took place, no matter who it was done against, and no matter when. **Mr. Fenderson** stated that he felt SB 202 would help to stop some of the discrimination and clarify where Montana stands on the issue. He concluded by asking for passage of SB 202.

**Brad Martin, Executive Director, Montana Democratic Party,** rose in support of SB 202. He stated that SB 202 would bring about real change with regard to a terrible problem. He went on to say that he hoped the Committee would listen carefully to the testimony and realize the impact they could have on the quality of life of Montanans. He continued saying that SB 202 would help to restore the rights and security of a group of Montanans who

find that their rights and security are undermined. **Mr. Martin** encouraged the Committee to pass SB 202.

**Adrian Soucek representing herself**, stated that they did not have to believe that homosexuality was moral, however, they should protect people as a whole. She went on to say that any citizen of Montana should be protected from any hate crime. She expressed her hope that SB 202 would be passed.

***{Tape: 2; Side: B; Approx. Time Counter: 2.4 - 8.4}***

**Opponents' Testimony**:

**Eric Schiedermayer, Executive Director, Montana Catholic Conference**, spoke in opposition to SB 202, **Mr. Schiedermayer's** written testimony is attached as Exhibit 3.

**EXHIBIT(jus16a03)**

**Esther Fishbaugh, Bozeman**, expressed her opposition to SB 202 and provided written testimony which is attached as Exhibit 4.

**EXHIBIT(jus16a04)**

**Jeanette Zentgraf, Lolo**, spoke in opposition to SB 202. **Ms. Zentgraf's** written testimony is attached hereto as Exhibit 5.

**EXHIBIT(jus16a05)**

**Stephanie Lane, Hamilton**, spoke in opposition to SB 202. **Ms. Lane** provided her written testimony which is attached as Exhibit 6.

**EXHIBIT(jus16a06)**

**Dallas Erickson representing Montana Citizens for Decency Through Law**, spoke in opposition to SB 202. **Mr. Erickson's** written testimony is attached hereto as Exhibit 7.

**EXHIBIT(jus16a07)**

***{Tape: 2; Side: B; Approx. Time Counter: 8.4 - 26.8}***
***{Tape: 3; Side: A; Approx. Time Counter: 0 - 6}***

**Jill DeClancy appearing on behalf of Montana Eagle Forum**, expressed opposition to SB 202. She went on to say that the bill would be a fair bill if all categories were stricken from the language. **Ms. DeClancy** discussed research done by Leah Farish

and provided a copy of that research to the Committee. This research is attached as Exhibit 8. **Ms. DeClancy** closed asking for a no vote on SB 202.

**EXHIBIT(jus16a08)**

**Shannon Bennett, Hamilton,** spoke against SB 202. **Ms. Bennett's** written testimony is attached as Exhibit 9.

**EXHIBIT(jus16a09)**

**Jeannie Poe, Hamilton, representing herself and All Nations Ministry,** stated that the language in the bill was what bothered her the most. She went on to say that the language was restrictive and discriminatory. She further stated that the moral structure was being trashed by choices being made. She concluded by asking the Committee to make the appropriate choice and vote against SB 202.

**Rachel Roberts representing the Montana Family Foundation,** spoke in opposition to SB 202 and provided written testimony. **Ms. Roberts'** written testimony is attached hereto as Exhibit 10.

**EXHIBIT(jus16a10)**

**Becky Stockton representing herself** spoke in opposition to SB 202. **Ms. Stockton** discussed the definition of bisexual and stated that she did not believe the definition was important. She then discussed two books on homosexuality, "When Homosexuality Hits Home" and "Homosexuality and the Politics of Truth". **Ms. Stockton** urged the Committee to read these two books. She then discussed the inclusion of disability in the law and indicated that she felt that it would be okay to include. **Ms. Stockton** urged the Committee to vote against SB 202.

**Doug Nulle, Retired California Attorney and resident of Clancy,** stated that he opposed violent crimes, however, he questioned if SB 202 was something that was really needed. He went on to discuss the State's statistics on violent crimes. **Mr. Nulle** then talked about the California Hate Crimes Law and the number of bias-related crimes reported. He expressed his opinion that he did feel passage of such a bill was necessary and asked the Committee to vote "no" on SB 202.

***{Tape: 3; Side: A; Approx. Time Counter: 6 - 26.8}***
***{Tape: 3; Side: B; Approx. Time Counter: 0 - 5.5}***

**Harris Himes representing the Montana Family Coalition,** spoke in opposition to SB 202 and expressed his concerns regarding the vague terms used in the bill. **Mr. Himes** stated that it appeared to him that adding disabilities and gender was a smoke screen to take the emphasis off of sexual orientation. **Mr. Himes** went on to talk about several legal cases regarding these matters. He then stated that from a legal standpoint SB 202 was unconstitutional due to vagueness and discrimination. He further stated that he felt SB 202 was offensive to God for those that care.

***{Tape: 3; Side: B; Approx. Time Counter: 5.5 - 12.8}***

**Informational Testimony**: None.

**Questions from Committee Members and Responses**:

**SEN. ELLINGSON** asked **Mr. Himes** if he considered people from a different sexual orientation wicked and, therefore, if they were beaten up and assaulted, it would be acceptable. **Mr. Himes** responded that he felt God would call those from different sexual orientations "workers of iniquity." He further stated that being beaten would not be a proper reprisal.

**SEN. ELLINGSON** asked **Eric Schiedermayer** why, if he is against violence, he was opposed to placing sexual orientation in the law so that we aspire to avoid intimidation in order to lead society to a better place. **Mr. Schiedermayer** replied that as the law does reflect our values, therein lies his concern for SB 202. He further stated that he was in agreement that the value of individual human dignity was fundamental. He went on to say that the problem was in placing the words "sexual orientation" into the law, thereby enshrining and beginning the process of making it an acceptable and equally valid way of life.

**SEN. MCGEE** asked **SEN. TOOLE** if they struck the language beginning on Line 12, "because of another persons race, creed, religion, color ...," if they would have described more clearly all people in the State of Montana. **SEN. MCGEE** further ask if they included "all people in the State of Montana" if that would be the object of the proponents of the bill. **SEN. TOOLE** replied that he did not agree with his reasoning. He went on to say that he felt if they deleted that language it would miss the point. He continued saying that the point for bringing the bill forward was to recognize the problem that people are targeted because of their status, such as; their sexual orientation, disability or gender.

***{Tape: 3; Side: B; Approx. Time Counter: 12.8 - 24.4}***

**SEN. MCGEE** asked **SEN. TOOLE** how SB 202 would meet the constitutional provision of "no person shall be denied equal access to the law." **SEN. TOOLE** responded that everyone would fit under the categories in one way or another and provided some examples. He went on to say that it was the specific nature of the crime when someone was targeted and the different effect it had on society that was being addressed.

**SEN. PERRY** asked **Bob Zenker** how they made the determination of what law to prosecute under. **Mr. Zenker** stated that they would compare the facts, the elements of the offense, and the intent to cause bodily harm to a person for an additional reason.

**SEN. PERRY** asked **Mr. Zenker** regarding the itemized offenses against a person listed in Title 45, which of the laws in the Code did not apply to every citizen of the State. **Mr. Zenker** replied that he could not point to any of the criminal code that did not apply to every citizen of the State.

**SEN. PERRY** asked **SEN. TOOLE** the reason why they had not amended Section 45, Chapter 5, Section 222. **SEN. TOOLE** responded that there was a companion bill in the House that would amend that part of the Code.

**SEN. PERRY** asked **SEN. TOOLE** how they could recognize a new class of citizens and how they could make a determination as to someone's sexual orientation. **SEN. TOOLE** replied that he was not sure how to ascertain someone's sexual orientation. He further stated he was not sure how you could look at someone and ascertain their religious belief. He then stated that when someone in the community was targeted because of their religious beliefs or sexual orientation, it became a concern for the entire community.

**VICE CHAIRMAN CROMLEY** asked **Eric Schiedermayer** if the Montana Catholic Conference was a member of the Montana Association of Churches. **Mr. Schiedermayer** replied that they were a member.

**VICE CHAIRMAN CROMLEY** asked **Eric Schiedermayer** if he knew if there had been any discussion by the Montana Association regarding potential support for SB 202. **Mr. Schiedermayer** replied that two years before there had been considerable discussion. He went on to say that at present the Montana Association of Churches was going through some personnel changes and does not have an effective voice present during this Session.

**VICE CHAIRMAN CROMLEY** asked **Eric Schiedermayer** if the Montana Catholic Conference represented a 100 percent opinion of the priests in the State of Montana. **Mr. Schiedermayer** stated that

it did not. He went on to say that what he represented was the two bishops. He further explained that in the Catholic Church the bishops were the spiritual shepherds of the Church and they are the sole teachers of the Catholic Church. He continued saying that the priests did not have any authority apart from the bishops.

**VICE CHAIRMAN CROMLEY** asked **Eric Schiedermayer** if it was the position of the Montana Catholic Conference that, if the term "sexual orientation" were not in the bill, and the language was limited to gender and disability, it would be a satisfactory amendment. **Mr. Schiedermayer** responded that the source of their concern was placing the term "sexual orientation" into the bill.

**Closing by Sponsor**:

**SEN. TOOLE** pointed out that there had been charges brought under the Hate Crimes Law and presented some examples. He went on to say that the concept that all crime is the same is not the case and are viewed differently.

***{Tape: 4; Side: A; Approx. Time Counter: 0 - 16.8}***

**ADJOURNMENT**

Adjournment: 12:03 P.M.

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SEN. MIKE WHEAT, Chairman

_____
MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

**EXHIBIT(jus16aad0.PDF)**