

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on January 25, 2005 at 8:30 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
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: None.

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: None.
Executive Action: SB 18, SJ 5, SJ 4, SB 181; SB 80,
SB 208, SB 220, SB 43; SB 199,
SB 202, SB 204; SB 149

EXECUTIVE ACTION ON SB 18

Motion/Vote: SEN. CROMLEY moved that SB 18 DO PASS. Motion carried unanimously by voice vote.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 1.1}

SEN. ELLINGSON and SEN. PEASE left the hearing.

EXECUTIVE ACTION ON SJ 5

Motion: SEN. MANGAN moved that SJ 5 DO PASS.

Discussion:

SEN. O'NEIL stated that he did not feel the Resolution was necessary.

SEN. CROMLEY commented that SJ 5 made logical sense as it did not discuss the problem of truancy in Montana.

SEN. PERRY indicated that he did not feel that another study of the problem was going to resolve the problem.

SEN. CURTISS stated that she felt it was a laudable project, however, there did not seem to be any statewide support.

CHAIRMAN WHEAT stated that it was unfortunate that no one had shown up to testify for or against the Resolution and felt that the problem would have been addressed better in bill form. He went on to say that he would vote for the bill in the hopes that it would move the process along.

SEN. MOSS indicated that she believed there was a need to look at the truancy problem, especially in the larger school districts.

Vote: Motion that SJ 5 DO PASS failed 3-7 by roll call vote with SEN. MANGAN, SEN. MOSS, and SEN. WHEAT voting aye.

Motion/Vote: SEN. WHEAT moved that SJ 5 BE TABLED AND THE VOTE REVERSED. Motion carried unanimously.

{Tape: 1; Side: A; Approx. Time Counter: 1.1 - 7.5}

EXECUTIVE ACTION ON SJ 4

Motion/Vote: SEN. CROMLEY moved that SJ 4 DO PASS. Motion carried unanimously.

{Tape: 1; Side: A; Approx. Time Counter: 7.5 - 8.7}

EXECUTIVE ACTION ON SB 181

Motion: SEN. MANGAN moved that SB 181 DO PASS.

Discussion:

SEN. MANGAN asked if there were any amendments. **Valencia Lane** explained that there was an amendment which had been provided during the hearing on the bill. She went on to say that no one had gotten back to her with further comments or amendments. Amendment SB018102.avl is attached as Exhibit 1.

EXHIBIT(jus19a01)

SEN. MANGAN stated that he had spoken with the Sponsor, Bob Gilbert and others, and there was a consensus that the amendment addressed the concerns that had been expressed.

Motion/Vote: SEN. ELLINGSON moved that AMENDMENT NO. SB018102.AVL BE ADOPTED. Motion carried unanimously by voice vote.

Motion: SEN. MANGAN moved that SB 181 DO PASS AS AMENDED.

Discussion:

SEN. MCGEE stated that he was going to vote against the bill and provided an example as to why.

SEN. PERRY informed the Committee that he would support the bill.

SEN. CROMLEY stated that he believed the bill would provide security for the towing company.

CHAIRMAN WHEAT explained that there were differing legal opinions from the County Attorneys around the State regarding what was or was not personal property, therefore, he was going to support the bill in order to resolve the conflict in opinions.

Vote: Motion that SB 181 DO PASS AS AMENDED carried 10-2 by voice vote with SEN. CURTISS and SEN. MCGEE voting no.

{Tape: 1; Side: A; Approx. Time Counter: 8.7 - 16.2}

SEN. PEASE and SEN. ELLINGSON returned to the meeting.

EXECUTIVE ACTION ON SB 80

Motion: SEN. PERRY moved that SB 80 DO PASS.

Discussion:

The amendments related to SB 80 were provided to the Committee.

SEN. SHOCKLEY withdrew Amendment No. SB008002 and SB008004 which are attached as Exhibit 2 and Exhibit 3.

[EXHIBIT\(jus19a02\)](#)

[EXHIBIT\(jus19a03\)](#)

Motion: SEN. SHOCKLEY moved that AMENDMENT NO. SB008001.AVL BE ADOPTED.

Discussion:

SEN. SHOCKLEY explained the Amendment SB008001.avl to the Committee. (The Amendment is attached as Exhibit 4.)

[EXHIBIT\(jus19a04\)](#)

SEN. MANGAN stated that he was opposed to the amendment. He went on to say that they needed to send a message that drinking while driving was not acceptable.

SEN. SHOCKLEY replied that he was thumbing his nose at the Federal Government for imposing the need for the bill on the State. He went on to say that even with the amendment they would still get the highway funding and it would make having an open container illegal.

SEN. O'NEIL expressed his agreement with the amendment and provided his reasons to the Committee.

SEN. PERRY asked SEN. SHOCKLEY if there was any other wording, such as, "up to \$100," or another phrase that would be more

acceptable to him. **SEN. SHOCKLEY** replied that he was concerned mostly about the words "exceed \$100."

{Tape: 1; Side: A; Approx. Time Counter: 16.2 - 28.2}

SEN. PERRY pointed out that the wording in the bill was "not to exceed \$100." He went on to say that he could not support the amendment.

SEN. LASLOVICH expressed his opinion that the \$10 fine was too low.

SEN. ELLINGSON stated that he felt that **SEN. SHOCKLEY** did not like the bill and did not want the bill to do anything but comply with the federal mandate. He then referred the Committee to the Montana Supreme Court's recommended bond schedule for the Courts of Limited Jurisdiction.

SEN. SHOCKLEY stated that he did not feel that the bill was going to have any meaningful impact on drunk driving no matter what the fine might be.

SEN. O'NEIL talked about the fine for going over the speed limit and the fact that the fine could be paid on the spot without going to court. He went on to say, that under the bill, if someone were to call in to the Highway Patrol that they had seen someone get into a vehicle with a drink, the Highway Patrol would then have probable cause to pull that vehicle over; therefore, a \$10 fine would do some good.

SEN. PEASE expressed his opposition to the amendment.

Vote: Motion that **AMENDMENT SB008001.AVL BE ADOPTED** failed 5-7 with **SEN. CURTISS**, **SEN. LASLOVICH**, **SEN. MCGEE**, **SEN. O'NEIL**, and **SEN. SHOCKLEY** voting aye.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 5.9}

Motion: **SEN. SHOCKLEY** moved that **AMENDMENT NO. SB008003.AVL BE ADOPTED**.

Discussion:

SEN. SHOCKLEY explained the Amendment which is attached as Exhibit 5.

EXHIBIT(jus19a05)

SEN. CROMLEY expressed his support for the amendment.

SEN. PERRY stated that he felt it was a friendly amendment.

SEN. ELLINGSON asked if the Attorney General's Office was in favor of the Amendment. Brenda Nordlund stated that the Attorney General's Office had no objection to the Amendment.

Vote: Motion that AMENDMENT NO. SB008003.AVL BE ADOPTED carried unanimously.

{Tape: 1; Side: B; Approx. Time Counter: 5.9 - 8.9}

Motion: SEN. MCGEE moved that AMENDMENT NO. SB008005.AVL BE ADOPTED.

Discussion:

SEN. MCGEE explained the amendment. Amendment No. SB008005.avl is attached as Exhibit 6.

EXHIBIT(jus19a06)

Vote: Motion AMENDMENT NO. SB008005.AVL be adopted carried unanimously by voice vote.

Vote: Motion that SB 80 DO PASS AS AMENDED carried 11-1 by voice vote with SEN. SHOCKLEY voting no.

{Tape: 1; Side: B; Approx. Time Counter: 8.9 - 12.4}

EXECUTIVE ACTION ON SB 208

Motion/Vote: SEN. PERRY moved that SB 208 DO PASS. Motion carried unanimously by voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 12.4 - 14.4}

SEN. MCGEE stepped out of the meeting.

EXECUTIVE ACTION ON SB 220

Motion/Vote: SEN. MANGAN moved that SB 220 BE TABLED. Motion failed 5-6 by roll call vote with SEN. LASLOVICH, SEN. MANGAN, SEN. O'NEIL, SEN. PEASE, and SEN. WHEAT voting aye.

SEN. MCGEE returned to the meeting.

Discussion:

SEN. WHEAT explained his reasons for voting to Table SB 220.

SEN. MANGAN stated that there were a number of bills they would be looking at that might work, however, he did not feel that this bill would work.

SEN. CROMLEY stated that he had missed the hearing on the bill, however, now that he had heard some discussion he would support Tabling the bill.

Motion/Vote: **SEN. CROMLEY** moved that SB 220 BE TABLED. Motion carried 9-3 by roll call vote with **SEN. CURTISS**, **SEN. ELLINGSON**, and **SEN. SHOCKLEY** voting no.

{Tape: 1; Side: B; Approx. Time Counter: 14.4 - 20.4}

EXECUTIVE ACTION ON SB 43

Motion: **SEN. CROMLEY** moved that SB 43 DO PASS.

CHAIRMAN WHEAT asked **Ms. Lane** if there were any amendments. **Ms. Lane** indicated that there were and distributed the amendment to the Committee. Amendment No. SB004301.avl is attached as Exhibit 7.

EXHIBIT(jus19a07)

Motion: **SEN. WHEAT** moved that AMENDMENT NO. SB004301.AVL BE ADOPTED.

Discussion:

SEN. ELLINGSON asked if the Amendment required that the citation be given to the adult passenger and prohibits the driver from receiving the citation. **SEN. WHEAT** replied that the assumption was correct unless the driver was not wearing a seatbelt.

SEN. MCGEE asked **SEN. WHEAT** if the word "adult" was already defined in Statute as an 18 year old. **SEN. WHEAT** replied that he thought it was.

SEN. PERRY stated that he would not want to have to appear in Court for not wearing a seatbelt and asked about the intent of

the wording, "citation or notice to appear." **SEN. WHEAT** asked **Brenda Nordlund** to answer the question. **Ms. Nordlund** stated that she had used the two terms because any citation issued had a heading of "Notice to Appear." She went on to say that it did not mean that anyone had to appear in court. She then referred 61-3-104 and explained that Section of the current law.

SEN. PERRY asked **SEN. WHEAT** if failure to wear a seatbelt would be considered a moving violation. **SEN. WHEAT** referred the question to **Ms. Nordlund**. **Ms. Nordlund** referred to 61-13-104(2) and stated that, "a violation of the seatbelt may not be reported or charged against the driver's record of a person violating this section."

Vote: Motion that **AMENDMENT NO. SB004301 BE ADOPTED** carried unanimously by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 5.8}

Motion: **SEN. CROMLEY** moved that **SB 43 DO PASS AS AMENDED**.

Discussion:

SEN. MANGAN expressed support for SB 43.

SEN. SHOCKLEY stated that he was afraid that the law would be abused by law enforcement.

SEN. MCGEE stated that he was going to oppose the bill.

SEN. LASLOVICH stated that he was not going to support SB 43 because he felt it had serious issues.

SEN. CROMLEY indicated that he felt it was a serious matter and he strongly supported the bill.

CHAIRMAN WHEAT discussed the cost to society for individuals not wearing their seatbelts and stated that it was an issue that was related to public safety. He concluded by saying that he was going to support SB 43.

SEN. PERRY expressed his opposition for the bill.

Vote: Motion that **SB 43 DO PASS AS AMENDED** failed 6-6 by roll call vote with **SEN. CROMLEY, SEN. ELLINGSON, SEN. MANGAN, SEN. MOSS, SEN. PEASE, and SEN. WHEAT** voting aye.

{Tape: 2; Side: A; Approx. Time Counter: 5.8 - 21}

The Committee took a five minute break.

SEN. MCGEE left the Committee Meeting.

EXECUTIVE ACTION ON SB 199

Motion: **SEN. CROMLEY** moved that SB 199 DO PASS.

CHAIRMAN WHEAT asked the Staffer, **Valencia Lane**, if there were any amendments. **Ms. Lane** indicated that there was an amendment. Amendment No. SB019901.avl is attached as Exhibit 8.

EXHIBIT(jus19a08)

Motion: **SEN. CROMLEY** moved that AMENDMENT NO. SB019901.AVL BE ADOPTED.

Discussion:

Ms. Lane explained the amendment to the Committee and informed them that **SEN. TOOLE** had requested it.

SEN. ELLINGSON stated that he felt it was a good amendment.

Vote: Motion AMENDMENT NO. SB 019901.AVL carried 12-0 by roll call vote with **SEN. MCGEE** voting aye by proxy.

Motion: **SEN. CROMLEY** moved that SB 199 DO PASS AS AMENDED.

Discussion:

SEN. ELLINGSON expressed that he felt that it was important to recognize that SB 199 would not stand as a moral endorsement of homosexuality and bisexuality. He went on to say that SB 199 would stand as a statement of our values which reflect that even if we disagree with, do not understand or find the behavior questionable; that difference, behavior, or condition should not form the basis for a person being discriminated against on a job. Furthermore, it should not form the basis for a person being denied housing, not being allowed access to certain areas in establishments such as restaurants, being denied loans, or getting a proper education. **SEN. ELLINGSON** continued saying that SB 199 was about discrimination and treating people differently. He added that SB 199 was about articulating a policy of the State which would say that regardless of how we may feel about these particular behaviors and conditions, individuals should not be treated unfairly because of them. **SEN. ELLINGSON** asked the

Committee to make it very clear that they were not endorsing homosexuality or bisexuality, however, they were endorsing the principle that discrimination against these individuals would not be tolerated.

SEN. MOSS stated that she felt that SB 199 was a very important policy decision for Montana. She went on to say that she felt it was important to listen to the young people of Montana who were asking for tolerance with public policies regarding interaction between all individuals. **SEN. MOSS** expressed her strong support for SB 199.

{Tape: 2; Side: A; Approx. Time Counter: 21 - 30.5}

SEN. O'NEIL stated that he did not feel it was right for the government to tell people who they could be around or rent to, therefore, he was going to vote against SB 199.

SEN. CROMLEY indicated that he did not believe the bill would do anything in regard to an employer being able to select an employee on the basis of personality. He further indicated that through the interview process the employer would pick the individual he felt was best suited for the job.

SEN. PERRY indicated he would oppose the bill because there are already laws that protect every citizen. He went on to say that he agreed that discrimination of any kind was wrong. He then stated that he did not feel they needed to discriminate further by identifying sexual orientation in the bill.

CHAIRMAN WHEAT stated that he felt they had an obligation to reflect their policy with regard to minorities and how those minorities are going to be protected. He went on to say that if they recognized that there was a minority group in society that was being discriminated against, they as legislators needed to do all in their power to protect those minorities. He further stated that he was going to support the bill.

Vote: Motion that SB 199 DO PASS AS AMENDED failed 6-6 by roll call vote with **SEN. CROMLEY**, **SEN. ELLINGSON**, **SEN. LASLOVICH**, **SEN. MANGAN**, **SEN. MOSS**, and **SEN. WHEAT** voting aye.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 5.6}

EXECUTIVE ACTION ON SB 202

Motion: SEN. MANGAN moved that SB 202 DO PASS.

Discussion:

SEN. MANGAN stated that he felt hate crimes and malicious intimidation because of sexual orientation do occur. He went on to say that they needed to recognize this, as a body, and attempt to address the problem. He continued saying that he felt SB 202 did exactly that. SEN. MANGAN indicated that there was an amendment to the bill. Amendment No. SB020201.avl is attached as Exhibit 9.

EXHIBIT(jus19a09)

Motion/Vote: SEN. MANGAN moved that AMENDMENT NO. SB020201.AVL BE ADOPTED. Motion carried 12-0 with SEN. MCGEE voting aye by proxy.

Motion: SEN. MANGAN moved that SB 202 DO PASS AS AMENDED.

Discussion:

SEN. O'NEIL indicated that he had an amendment to SB 202. He asked Valencia Lane if it was a proper amendment. Ms. Lane indicated that she felt the amendment would fall outside the scope of the title of the bill and would not be an appropriate amendment for SB 202. SEN. O'NEIL'S Amendment No. SB020202.avl is attached as Exhibit 10.

EXHIBIT(jus19a10)

Motion: SEN. O'NEIL moved that AMENDMENT NO. SB020202.AVL BE ADOPTED.

Discussion:

SEN. O'NEIL explained that even though the bill listed a large number of individuals who needed to be protected there was still a large group of people who also needed to be protected. He went on to give several examples of those he felt should be included.

SEN. SHOCKLEY indicated that he did not feel the amendment fell under the scope of the bill.

Vote: Motion that AMENDMENT NO. SB020202.AVL BE ADOPTED failed 2-9 by voice vote with SEN. CURTISS and SEN. O'NEIL voting aye. SEN. MCGEE voted no by proxy.

Motion: SEN. MANGAN moved that SB 202 DO PASS AS AMENDED.

Discussion:

SEN. SHOCKLEY expressed his opposition to SB 202 because of the fact that it made hurting one particular class of people worse than hurting another class of people. He went on to say that he felt SB 202 was a political statement.

SEN. ELLINGSON stated that hate crimes were different from assault, battery or intimidation crimes. He went on to say that they not only hurt the immediate victim they also intimidate and terrorize a class of people. He further stated that as a society they needed to make a very strong statement that they would not permit crimes to terrorize entire classes of the population.

SEN. MOSS stated that legislation such as SB 202 sent the message to the young people of the State, that, as legislators, they do understand, respect and practice tolerance in the communities.

SEN. LASLOVICH stated that they were either tolerant or they were not, therefore, it was appropriate that sexual orientation be added to the list, making it against the law to discriminate against anyone on the basis of their sexual orientation. He concluded by saying that he strongly supported SB 202.

SEN. PERRY referred to testimony provided by proponents and asked if their intent was to create a class of citizens in a classless society. He concluded stating that he could not support SB 202.

Vote: Motion that SB 202 DO PASS AS AMENDED failed 6-6 by roll call vote with SEN. CROMLEY, SEN. ELLINGSON, SEN. LASLOVICH, SEN. MANGAN, SEN. MOSS, and SEN. WHEAT voting aye. SEN. MCGEE voted no by proxy.

{Tape: 2; Side: B; Approx. Time Counter: 5.6 - 26.5}

EXECUTIVE ACTION ON SB 204

Motion: SEN. CROMLEY moved that SB 204 DO PASS.

Discussion:

SEN. SHOCKLEY stated that a person is entitled to one fair jury trial and only one fair jury trial. He went on to say that he felt that the system was being misused. **SEN. SHOCKLEY** explained the jury trial process to the Committee and how that process was being abused. He concluded by informing the Committee that if the bill passed it would have to go to the voters for final approval.

{Tape: 2; Side: B; Approx. Time Counter: 26.5 - 29.6}

CHAIRMAN WHEAT asked **SEN. SHOCKLEY** what they would do in those instances in the lower court, where it was not a Court of Record, and there was no record to take to the District Court. **SEN. SHOCKLEY** replied that there was going to be a trial in district court in any event. He went on to say that with passage of SB 202 there would only be one jury trial. He further stated that the attorney could elect to have the jury trial in the Justice Court or wait and have the jury trial in the District Court.

Vote: Motion that SB 204 DO PASS carried 9-3 by voice vote with **SEN. LASLOVICH**, **SEN. MOSS**, and **SEN. WHEAT** voting no. **SEN. MCGEE** voted aye by proxy.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 1.3}

The Committee discussed taking Executive Action on SB 205 and decided to wait for a few days.

EXECUTIVE ACTION ON SB 149

Motion: **SEN. LASLOVICH** moved that SB 149 DO PASS.

The Amendment to SB 149 was distributed to the Committee and is attached as Exhibit 11.

EXHIBIT(jus19a11)

Motion: **SEN. LASLOVICH** moved that AMENDMENT SB014901.AVL BE ADOPTED.

Discussion:

SEN. LASLOVICH stated that the amendment language addressed the technical concerns that had been expressed.

Valencia Lane explained the amendment to the Committee. She went on to say if the amendment was adopted, the amendment would become the bill.

SEN. MANGAN asked **SEN. LASLOVICH** if he was okay with the amendment. **SEN. LASLOVICH** replied that he did support the amendments, even though they watered the bill down.

SEN. MANGAN stated that he would support the bill. He then expressed his concerns regarding the "in the best interest of the State", language.

SEN. CROMLEY asked **SEN. LASLOVICH** if the bill related to all agencies or just the Department of Administration. **SEN. LASLOVICH** deferred to **Valencia Lane** for a response. **Ms. Lane** stated that under Title 18 "the Department" did refer to the Department of Administration. She went on to say that under the purchasing laws, most purchasing was done through the Department of Administration. She further stated that the individual agencies could only make purchases under limited circumstances.

SEN. CROMLEY indicated that he was uncomfortable going forward with the amendment without having the benefit of various individuals opinions regarding it. He went on to say that he would most likely support the amendment, however, he would oppose the bill.

SEN. ELLINGSON referred to the office the Department of Commerce has in either Taiwan or Tokyo and asked **SEN. LASLOVICH** if the amendment would allow the Department to keep that office. **SEN. LASLOVICH** replied that he believed it would.

SEN. MOSS discussed research she had done and the importance of Montana's international policies. She went on to say that she would not be able to support the bill at this time.

Motion: **SEN. SHOCKLEY CALLED THE QUESTION ON THE AMENDMENT FOR SB 149.**

Vote: Motion that AMENDMENT NO. SB014905.AVL BE ADOPTED carried 11-1 by voice vote with **SEN. MOSS** voting no.

Motion/Vote: **SEN. LASLOVICH** moved that SB 149 DO PASS AS AMENDED. Motion carried 9-3 by voice vote with **SEN. CROMLEY**, **SEN. MOSS**, and **SEN. O'NEIL** voting no.

ADJOURNMENT

Adjournment: 10:55 A.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT ([jus19aad0.PDF](#))