MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on January 14, 2005 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:
Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Michael Lange (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

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

Committee Business Summary:
Hearing & Date Posted: HB 190, HB 191, HB 240, 1/7/2005
Executive Action: HB 42-Tabled, HB 210-Tabled;

HB 90-Do Pass, HB 33-Do Pass As Amended, HB 190-Do Pass, Place on Consent Calendar

HEARING ON HB 240

REP. TOM FACEY, HD 95, MISSOULA

Opening Statement by Sponsor:

REP. TOM FACEY (D), HD 95, opened the hearing on **HB 240,** Add disability, gender, and sexual orientation to hate crimes.
EXHIBIT(juh10a01)
EXHIBIT(juh10a02)
{Tape: 1; Side: A; Approx. Time Counter: 0 - 73}

Proponents' Testimony:

Karl Olson, PRIDE, rose in support of HB 240. **Mr. Olson** stated that this affects "everyday" people. Further, this is not special treatment for certain people. He told committee members about the East Indian family in Helena who had experienced a hate crime.
{Tape: 1; Side: A; Approx. Time Counter: 73 - 110}

June Hermanson, Montanans with Disabilities for Equal Access, rose in support of HB 240. **Ms. Hermanson** stated that there are more than 140,000 Montanans that have a disability, 17 percent of our population. She stated that disabled persons also suffer from hate crimes and they need the protection this bill would provide.
{Tape: 1; Side: A; Approx. Time Counter: 110 - 148}

REP. CAROL JUNEAU, HD 16, rose in support of HB 240. **REP. JUNEAU** stated this bill will ensure a better Montana and this bill will send a message to all, that Montana is a safe place to live. The atmosphere in Montana is one of inclusion for some and exclusion for others.
{Tape: 1; Side: A; Approx. Time Counter: 148 - 190}

Linda Gryczan, Montana Womens Lobby, rose in support of HB 240. **Ms. Gryczan** stated that fourteen other states have laws to protect women. Further, the United States Congress has included gender in the section of law that has enhanced sentencing for crimes motivated by bias.

Ms. Gryczan stated that recognizing gender bias may motivate a crime to enable the justice system to better deal with a perpetrator's underlying attitudes which may keep the anger from escalating.
EXHIBIT(juh10a03)
{Tape: 1; Side: A; Approx. Time Counter: 190 - 232}

Kate Cholewa, Montana Coalition Against Domestic and Sexual Violence, rose in support of HB 240.
{Tape: 1; Side: A; Approx. Time Counter: 232 - 243}

Randy Siemers, self, rose in support of the bill, and related a story of the Jewish family in Billings to the committee members.
{Tape: 1; Side: A; Approx. Time Counter: 243 - 271}

Anita Rossmann, Montana Advocacy Program, advised the committee that hate crimes against people with disabilities are the most under-reported. According to the FBI, in 2002, there were only 45 reported hate crimes against disabled persons that were motivated by the disability itself. **Ms. Rossmann** stated the nature of the disability has often silenced people. Often because they don't know that they can report and they are vulnerable and dependent upon the people responsible for the crimes. Disabled people are victimized more often than the general population.

In her further comments, **Ms. Rossmann** stated that there are people who are against hate crime legislation because the behavior is already against the law and what this type of legislation does is criminalize the thought. She stated that this is not true; what hate crime legislation does, is attach a criminal penalty to the motive to create terror.
{Tape: 1; Side: A; Approx. Time Counter: 271 - 342}

Bob Ream, Montana Democratic Party, rose in support and informed the committee that the "hate" church from Alabama will be here in Helena on February 13, 2005 to picket several places of worship.
{Tape: 1; Side: A; Approx. Time Counter: 342 - 376}

Terry Kendrick, Montana Human Rights Network, spoke in support of HB 240. She stated those hate crimes are not random acts of violence, hate crimes are violent acts that are meant to send a message to a group of people based on their race, religion, gender, disability or sexual orientation.
{Tape: 1; Side: A; Approx. Time Counter: 376 - 410}

Bernadette Franks-Ongoy, self, Montana Advocacy Program, spoke as a mother of two children. She related her own 17-year old son's experience as a victim of a hate crime. The incident started December 7, 2002 and has continued to the present.
{Tape: 1; Side: A; Approx. Time Counter: 410 - 500}
{Tape: 1; Side: B; Approx. Time Counter: 0 - 64}

Jessica Grennan, Associated Students of the University of Montana, rose in support of HB 240.
{Tape: 1; Side: B; Approx. Time Counter: 64 - 80}

Don Judge, self, stated to the committee that he had spent more than 33 years working for social and economic justice causes. Mr. Judge referred the new committee members to talk to the veteran members about the hate crime that had happened during the 2003 Session at Carroll College.
{Tape: 1; Side: B; Approx. Time Counter: 80 - 103}

Scott Crichton, ACLU, rose in support of HB 240 and the affect this legislation will have on inadequate local and state response of criminal civil rights violation. **Mr. Crichton** strongly urged the committee members to amend HB 240 to limit its potential affect on constitutionally protected free speech. This amendment would read: "Evidence of expressions or associations of the accused may not be introduced as substantive evidence at trial unless the evidence specifically relates to the crime charged."
EXHIBIT(juh10a04)
{Tape: 1; Side: B; Approx. Time Counter: 103 - 163}

Diane Sands, self, American Association of University Women, spoke to the committee about her own experiences as a former legislator. In 1997, when as a result of publicity about her sexual orientation she and her partner received anonymous phone calls threatening to kill them.
{Tape: 1; Side: B; Approx. Time Counter: 163 - 181}

John Bohlinger, Lt. Governor-State of Montana, rose on behalf of Montana's current administration which is in support of HB 240. He related a story to the committee about his own family's experience with hate crimes regarding religious beliefs.

Lt. Gov. Bohlinger stated: "...as a human being, regardless of our physical or mental capacity, gender or our sexual orientation; we are entitled to protection from malicious intimidation and harassment. Further, as a child of God, we are entitled to protection from harm."

He continued to speak to the committee regarding the Billings incident involving a Jewish family and a janitor's incident that were perpetrated due to his mental impairment.
EXHIBIT(juh10a05)
{Tape: 1; Side: B; Approx. Time Counter: 181 - 249}

Opponents' Testimony:

Doug Nulle, self, Clancy, Montana, stated to the committee that he is opposed to any violent crime or crime in general. However, he asked, "Is this something that we really need?" **Mr. Nulle** reported that in 2003, the Montana Board of Crime Control reported only six reported incidents involving bias motivated offenses.

He stated that a better approach (if there are really any problems) would be to increase the penalties for the underlying offenses.
{Tape: 1; Side: B; Approx. Time Counter: 249 - 299}

Dallas Erickson, Montana Citizen's for Decency, stated to the committee members that the crimes told to the committee are already covered by law. He is opposed to any law having the words sexual orientation added, mainly because searches of the MCA indicate there is no definition of sexual orientation in Montana law.

Mr. Erickson continued to say that if sexual orientations are added to the statutes, so would be other paraphelias (kinky or perverted sexual orientations); homosexuality, bisexuality, pedophilia, incest, gerontuality, exhibitionism, travestitism, partialism, bestiality, sadomasochism and necrophilia. Mr. Erickson suggested that all classifications be taken out of statutes and apply the law to everyone.
EXHIBIT(juh10a06)
{Tape: 1; Side: B; Approx. Time Counter: 299 - 419}

Harris Himes, Montana Family Coalition, stated to the committee members that current law already "takes care" of the proposed individuals. **Mr. Himes** stated that homosexual activists are inserting themselves into all of our lives. He further stated that the various crimes; i.e., the Matthew Shepard case, the case at Carroll College, in Philadelphia, and Missoula are all misreported, over-reported or not factual.
{Tape: 1; Side: B; Approx. Time Counter: 419 - 500}
{Tape: 2; Side: A; Approx. Time Counter: 0 - 39}

Eric Schiedermayer, Montana Catholic Conference, rose in opposition to HB 240. He stated that this legislation brings unintended effects. Further stating that the problem with this legislation is twofold:

1. It will expose to prosecution anyone who speaks out against homosexual behavior.
2. It legitimizes destructive behavior to the person who is "caught" up with it and those close to them.

Mr. Schiedermayer stated the tenants of what his organization believes in.
EXHIBIT(juh10a07)
{Tape: 2; Side: A; Approx. Time Counter: 39 - 76}

Gilda Clancy, Montana Eagle Forum, informed the committee that hate crimes are at an eight-year low and the hate crimes are already covered by current law. **Ms. Clancy** read to committee members the testimony of a lobbyist, Rachel Roberts, of the Montana Family Association.
EXHIBIT(juh10a08)
{Tape: 2; Side: A; Approx. Time Counter: 76 - 127}

Shirley Herrin, self, rose in opposition to HB 240.
{Tape: 2; Side: A; Approx. Time Counter: 127 - 137}

Jacques Trudi, self, rose in opposition to HB 240.
{Tape: 2; Side: A; Approx. Time Counter: 137 - 145}

Phyllis Lambing, self, rose in opposition to HB 240.
{Tape: 2; Side: A; Approx. Time Counter: 145 - 151}

Bonnie Lee Benjamin, self, rose in opposition to HB 240.
{Tape: 2; Side: A; Approx. Time Counter: 151 - 173}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. CLARK asked several questions of Mr. Schiedermayer. **REP. CLARK** questioned Mr. Schiedermayer about the comment he made in his testimony that by putting sexual orientation in the statute it legitimizes a lifestyle. **Mr. Schiedermayer** responded by saying that it begins the process. **REP. CLARK** questioned Mr. Schiedermayer further by asking, "How does protecting individuals, protecting people, has anything to do with a lifestyle or behaviors that you object to?"

Mr. Schiedermayer answered, "If indeed law did not build upon precedent, as we know it does, in the legal world there is such a thing as a slippery slope and this is an example of that."

REP. CLARK then questioned Mr. Schiedermayer about homosexuals harassing Christians. "In law, creed and religion is covered by hate crime legislation," stated **REP. CLARK**. He then asked if Mr. Schiedermayer would be comfortable if the committee took religion out of this bill, **Mr. Schiedermayer** replied, "Absolutely, (they) should strike the whole thing and not make a laundry list."

REP. CLARK then posed the question if there should not be any distinction that deals with the activities of the KKK or those kinds of organizations that systematically choose a distinct subgroup within our population to terrorize. **Mr. Schiedermayer** replied that someone is always left out. **Mr. Schiedermayer** contends that if a legislative body tries to legislate intent, then freedom of thought and expression could be in danger.

The questioning continued with REP. CLARK and Mr. Schiedermayer discussing strong family value, groups that are unaccepted due to behaviors and lifestyles and who they are in society. The discussion also included the idea that there are several groups in this bill that are systematically persecuted in our society and because others do not like their behaviors, and asking if and how this can be addressed.

REP. EVERETT questioned REP. FACEY whether or not there is a definition of "hate" in the statute. "No," was the response by **REP. FACEY**, "...nor are many of the other words in the statute." The Representatives discussed the terms; malicious, intimidation, or harassment as in Line 14. **REP. FACEY** stated that this is in current law. **REP. EVERETT** was trying to understand what constitutes a definition of hate speech; i.e., "If a minister is preaching, would that be subject to this law?" **REP. FACEY** replied that free speech is legally protected in the United States.

REP. GUTSCHE had several questions for Mr. Crichton. **REP. GUTSCHE** commented that members of the opposition stated that this would legislate intent rather than behavior and asked if Mr. Crichton would please comment." **Mr. Crichton** replied, "That is why the amendment was offered, to make clear that distinction, that it is the act, not the belief that is punishable." A discussion continued as to the protection of freedom of speech, the First Amendment, the harassment of opponents who testified here, and if they would be covered by this amendment.

REP. NOONAN asked a question of Mr. Nulle regarding removing the enhanced penalties for everyone. **Mr. Nulle** responded by saying that bias-motivated laws are not effective.

REP. KOOPMAN questioned REP. FACEY at length regarding the specifics of this legislation. **REP. KOOPMAN** spoke to the committee members about the situation in Bozeman ten to twelve years ago involving anti-Semitic information being disseminated to the public. **REP. FACEY** responded that the type of activity described by REP. KOOPMAN is covered by the constitution. He discussed a similar incident that happened in Missoula and how the community responded to that incident. **REP. FACEY** further explained to committee members that an individual would have to be convicted of another crime before this bill is involved.

The two Representatives continued their discussion of free speech, hate speech and additional penalties that would be brought by this statute.

REP. STOKER discussed several topics with Mr. Crichton. Among them were the three categories in this legislation (gender, sexual orientation, and disabilities)and if this bill were passed, would it be an obligation of either the defense or prosecution to breach the confidentiality of lawyer and client. **Mr. Crichton** answered by saying that if someone has been harmed and intimidated, and that person is participating in the legal process for the prosecution of that crime, it is likely that their identity is a public record.

REP. WARD then questioned Mr. Crichton about possible progress that has been made and whether this bill is really necessary.

REP. PARKER continued the questioning with Mr. Erickson. He asked, "What harm can come from extending an extra measure of protection for people who have been singled out for that kind of abuse?" **Mr. Erickson** replied, "I believe the addition of categories in this law is discriminatory on its face."

REP. NOENNIG questioned Mr. Crichton regarding the amendment Mr. Crichton had distributed. He asked if the statutory language in it is necessary; and spoke also to the rules of evidence as to how it is related to this bill and present day statutes.

REP. HARRIS presented two different scenarios involving attempted murder to Mr. Crichton: one, a killer-for-hire with his only motivation being for hire and the other one motivated by bigotry, two, a spur of the moment murder and attempts to murder someone who is gay.

REP. HARRIS asked Mr. Crichton if it makes sense to have the enhanced penalty for the state of mind which is a spur of the moment (murder) as opposed to deliberate (murder). **Mr. Crichton** replied by saying, "I think it would be most appropriate when it is a deliberative act." **REP. HARRIS** continued by asking, "Would it make sense to have the non-deliberate murder get the enhanced penalty?" **Mr. Crichton** did not have an answer for that.

The questioning continued by Rep. Harris to Mr. Crichton regarding the different scenarios for prosecution as it related to this bill.

REP. LANGE asked numerous questions of Mr. Crichton following the same line of questions as REP. HARRIS. The motivation and the mental state of an individual who commits an act of hatred was the emphasis of REP. LANGE'S questions. During the course of questioning, **Mr. Crichton** took a moment to voice his obvious displeasure that the committee members were using the term "laundry list" in reference to the groups that would be addressed in HB 240.
{Tape: 2; Side: A; Approx. Time Counter: 288 - 500}
{Tape: 2; Side: B; Approx. Time Counter: 0 - 500}

Closing by Sponsor:

REP. FACEY closed the hearing on HB 240 by stating that this bill is not about hate crimes but about sentence enhancement. He further informed the committee members that most hate crimes are planned, not random or spur of the moment.

In reference to the reporting arguments that there are not many of these hate crimes, **REP. FACEY** stated that the Board of Crime Control does not ask the question, "Was there a hate crime committed?" He informed the committee that REP. GUTSCHE will bring forth an amendment at Executive Action to assure that civil rights are protected.
{Tape: 3; Side: A; Approx. Time Counter: 0 - 77}

HEARING ON HB 190

REP. ARLENE BECKER, HD 52, BILLINGS

Opening Statement by Sponsor:

REP. ARLENE BECKER (D), HD 52, opened the hearing on **HB 190,** Revise definition of victim for purpose of right to attend proceedings. She stated that this bill was requested by the Department of Justice.

{Tape: 3; Side: A; Approx. Time Counter: 77 - 107}

Proponents' Testimony:

Ali Bovington, Assistant Attorney General, rose in support of HB 190. **Ms. Bovington** informed committee members that in Montana MCA 46-24-106, victims have a right to attend court proceedings related to that offense. She stated the most common victim is a victim of domestic violence.
EXHIBIT(juh10a09)
{Tape: 3; Side: A; Approx. Time Counter: 107 - 140}

Jim Kembel, Montana Police Protective Association, rose in support of HB 190.
{Tape: 3; Side: A; Approx. Time Counter: 140 - 147}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. WARD inquired of Ms. Bovington if there are proceedings that the victim would not have a right to attend. **Ms. Bovington** replied that there are times when victims are not allowed, when the victim does not qualify under the current statute.

REP. KOOPMAN then asked Ms. Bovington if this bill impacts only who can attend or those that are designated. **Ms. Bovington** stated that this definition only pertains to this section of the law.
{Tape: 3; Side: A; Approx. Time Counter: 147 - 185}

Closing by Sponsor:

REP. BECKER closed the hearing on HB 190.
{Tape: 3; Side: A; Approx. Time Counter: 185 - 192}

HEARING ON HB 191

REP. ARLENE BECKER, HD 52, BILLINGS

Opening Statement by Sponsor:

REP. ARLENE BECKER (D), HD 52, opened the hearing on **HB 191**, Clarify application of spousal privilege to certain communications during a marriage.
{Tape: 3; Side: A; Approx. Time Counter: 192 - 224}

Proponents' Testimony:

Ali Bovington, Assistant Attorney General, rose in support of HB 191. **Ms. Bovington** explained to the committee members the case of State of Montana vs. Baldwin.
EXHIBIT(juh10a10)
EXHIBIT(juh10a11)
{Tape: 3; Side: A; Approx. Time Counter: 224 - 297}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS asked Ms. Bovington to look at Lines 18 and 19 regarding the language of except communication during the marriage and if she sees this as redundant and wonders if it could be removed. **Ms. Bovington** responded in the affirmative and said that it could be removed.

REP. HARRIS further delved into the original legislative history of this provision and asked if that purpose was to assure the marriage would not be burdened by forcing one spouse to testify against another. **Ms. Bovington** replied that she could not speak to the legislative history; however, she said this bill is trying to provide that if someone commits a crime and speaks to someone who was not their marital partner at that time, the testimony should not be excluded.

REP. MCGILLVRAY questioned Ms. Bovington about Montana's common-law marriage. **Ms. Bovington** informed the Representative that Montana does not have a statutory definition of common-law marriage regarding the time frame when the parties live together etc. It is taken case by case and how the couple refers to their partnership.
{Tape: 3; Side: A; Approx. Time Counter: 297 - 382}

Closing by Sponsor:

REP. BECKER closed the hearing on HB 191.
{Tape: 3; Side: A; Approx. Time Counter: 382 - 386}

(REP. LANGE left prior to Executive Action)

EXECUTIVE ACTION ON HB 33

Motion: REP. HARRIS moved that HB 33 DO PASS.

Discussion:

REP. NOENNIG informed committee members that he had not requested any amendments but had discussed with Mr. Nielsen that the issue of the right to a trial by jury should be allowed by either side. **REP. NOENNIG** suggested a "conceptual amendment" by Mr. MacMaster to address that particular issue.

REP. RICE commented that the Helena smoking ban is not the most important factor in this bill. It is about the state assumption of the Public Defenders' system and that if this bill passes, the Public Defender issue will be expanded. Thereby, the cases the Public Defender will handle will go all the way down to the Municipal and J.P. infractions.

REPS. EVERETT, NOENNIG, HARRIS, GUTSCHE, PARKER, and **Mr. MacMaster** all spoke to the proposed conceptual amendment language which would be: Page 1, Line 16-Strike "defendant" and insert "either party."

Motion/Vote: REP. NOENNIG moved that HB 33 BE AMENDED. Motion carried 17-1 with REP. STOKER voting no by voice vote.

Motion: REP. HARRIS moved that HB 33 DO PASS AS AMENDED.

Discussion:

REP. STOKER commented that in a small town there will be increased costs for the requested jury trials and presumably there could be a situation of the "Two Bites of the Apple" theory being applied.

Mr. MacMaster commented for informational purposes only regarding the increased costs for a jury trial and the Fiscal Note. He made statements relative to plea bargaining in criminal cases and how that may apply to the proposed civil cases, thereby, resulting in fewer jury trials.

REP. RICE commented about the "unfunded mandate" being pushed down to the local level.

Vote: Motion carried 11-7 by roll call vote with REPS. BECKER, EVERETT, LANGE, MCGILLVRAY, RICE, STOKER and SONJU voting no. (REP. LANGE voted by proxy vote.)

{Tape: 3; Side: A; Approx. Time Counter: 386 - 500}
{Tape: 3; Side: B; Approx. Time Counter: 0 - 134}

EXECUTIVE ACTION ON HB 42

Motion: REP. MCGILLVRAY moved that HB 42 DO PASS.

Discussion:

REP. HARRIS stated that the language is not clear and that the proposed amendment helps.

Motion: REP. NOENNIG moved that HB 42 BE AMENDED with AMENDMENT 42-01
EXHIBIT(juh10a12)

Discussion:

REP. NOENNIG explained the amendment.

REP. KOOPMAN stated the amendment will weaken the intent.

Vote: Motion carried 12-6 by roll call vote with REPS. EVERETT, KOOPMAN, MCGILLVRAY, PARKER, RICE, and SONJU voting no. (REP. LANGE voted by proxy vote)

Motion/Vote: REP. NOENNIG moved that HB 42 DO PASS AS AMENDED. Motion failed 8-10 by roll call vote with REPS. BECKER, HARRIS, KOOPMAN, MCGILLVRAY, NOENNIG, RICE, SONJU, and WARD voting aye. (REP. LANGE voted by proxy vote.)

Motion/Vote: REP. NOENNIG moved that HB 42 BE TABLED AND THE VOTE REVERSED. Motion carried with voice vote 10-8. (REP. LANGE voted by proxy vote.)
{Tape: 3; Side: B; Approx. Time Counter: 134 - 286}

EXECUTIVE ACTION ON HB 210

Motion/Vote: REP. PARKER moved that HB 210 BE TABLED. Motion carried unanimously by voice vote. (REP. LANGE voted by proxy vote.)
{Tape: 3; Side: B; Approx. Time Counter: 286 - 386}

EXECUTIVE ACTION ON HB 90

Motion: REP. GUTSCHE moved that HB 90 DO PASS.

Discussion:

REP. PARKER, HARRIS, WINDHAM, STOKER, SONJU, KOOPMAN and **MCGILLVRAY** discussed this bill.

Vote: Motion carried 14-4 by roll call vote with REPS. EVERETT, KOOPMAN, MCGILLVRAY, and RICE voting no.
(REP. LANGE voted by proxy vote.)
{Tape: 3; Side: B; Approx. Time Counter: 386 - 500}
{Tape: 4; Side: A; Approx. Time Counter: 0 - 26}

EXECUTIVE ACTION ON HB 190

Motion/Vote: REP. GUTSCHE moved that HB 190 DO PASS. Motion carried unanimously by voice vote.
(REP. LANGE voted by proxy vote.)

Motion/Vote: REP. PARKER moved HB 190 BE PLACED ON CONSENT CALENDAR. Motion carried unanimously by roll call vote.
(REP. LANGE voted by proxy vote.)
{Tape: 4; Side: A; Approx. Time Counter: 26 - 40}

Gilda Clancy left an exhibit from the Montana Eagle Forum after the adjournment of the hearing. This is related to HB 240.
EXHIBIT(juh10a13)

ADJOURNMENT

Adjournment: 11:33 A.M.

_____
REP. DIANE RICE, Chairman

_____
PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT(juh10aad0.PDF)