

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN RUSSELL FAGG**, on February 17, 1993,
at 7:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: None

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

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

Committee Business Summary:

Hearing: HB 603, HB 598, HB 633, HB 547, HJR 21
HB 487, HB 22, HB 602, HB 624, HB 610
HB 620
Executive Action: HB 582, HB 597, HB 157, HB 416, HB 554
HB 562, HB 598, HB 603

HEARING ON HB 598

Opening Statement by Sponsor:

REP. PAVLOVICH, House District 70, Butte, requested that the committee table HB 598 without discussion. See Executive Action page 9.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: None

HEARING ON HB 633

Opening Statement by Sponsor:

REP. ANGELA RUSSELL, House District 99, Lodge Grass, expressed her strong belief that jail is not good for the mentally ill. This bill clarifies language regarding the mentally ill, and it does not include individuals addicted to drugs and/or alcohol.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members and Responses:

CHAIRMAN FAGG, referring to page 9, lines 2 and 3, asked REP. RUSSELL what is meant by "minor misdemeanor offense" and why it's included in the bill. She explained that, when the bill was originally introduced in the 1991 session, they were discussing misdemeanors that weren't against persons; actions that were not dangerous kinds of offenses. CHAIRMAN FAGG compared the language with a low misdemeanor as opposed to a high misdemeanor. REP. VOGEL pointed out that minor misdemeanor defense is defined on page 9, lines 2-6.

Closing by Sponsor: None

HEARING ON HB 547

Opening Statement by Sponsor:

REP. BOB REAM, House District 54, Missoula, presented written testimony. EXHIBIT 1

Proponents' Testimony:

Written testimony was provided by:

Ken Toole, Montana Human Rights Network EXHIBIT 2

Steve Simpson, Montana Gay Health Project EXHIBIT 3

Pastor Gina L. Hartung, Shepherd of the Plains Metropolitan Community Church, Great Falls EXHIBIT 4

Opponents' Testimony:

Written testimony was provided by:

Rev. Rick DeMato, Liberty Baptist Church, Helena EXHIBIT 5

Jeri Snell, Registered Nurse, Miles City EXHIBIT 6

Steven White, concerned citizen EXHIBIT 7

Laurie Koutnik, Christian Coalition EXHIBITS 8 and 9

John T. Lewis, concerned citizen EXHIBIT 10

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. REAM said HB 547 is not part of the homosexual agenda and does not involve God in the political agenda. He urged the committee to extend all human rights to all classes of people.

HEARING ON HJR 21

Opening Statement by Sponsor:

REP. TIM WHALEN, House District 93, Billings, stated that this is a joint resolution of the Montana Senate and the House of Representatives asking the United States Attorney General to discontinue the practice of allowing the American Bar Association (ABA) to recommend judicial nominees to federal judgeships.

Currently, ABA has started taking stands on many social issues in this country. REP. WHALEN said there's a fundamental difference between the legislative and the judicial branches of government. REP. WHALEN believes the country runs a risk of losing the confidence of the public that the judicial branch of government is, in fact, an objective branch of government.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. SAYLES asked who would replace the ABA in making recommendations on judges' positions. REP. WHALEN suggested that the President of United States would submit the final analysis to Congress.

Closing by Sponsor: None

HEARING ON HB 487

Opening Statement by Sponsor:

REP. BRANDEWIE, House District 49, Bigfork, said that, since 1985, the state has been trying to solve the Workers' Compensation problem. The crux of this Constitutional amendment is that the legislature has the ability to set reasonable benefits and criteria for Workers' Compensation benefits.

Proponents' Testimony:

Don Allen, Coalition for Worker's Compensation System Improvement (CWCSI), noted that the CWCSI is a citizen group of 200 members representing 35,000 employers/workers in the state. Mr. Allen proposed amendments for the bill. EXHIBIT 11

Harlee Thompson, Manager, Intermountain Truss, Helena, presented written testimony. EXHIBIT 12

On the record in support of HB 487:

James Tutwiler, Montana Chamber of Commerce
Charles Brooks, Montana Retail Association
Jacqueline Lenmark, American Insurance Association
Steve Turkiewicz, Montana Automobile Dealers Association

Opponents' Testimony:

Russell Hill, Executive Director, Montana Trial Lawyers Association, presented written testimony. EXHIBIT 13

Questions From Committee Members and Responses:

REP. TOOLE said HB 487 started out as a bill that set eligibility criteria and limits, but now it deals with claims of a worker who has been injured by someone altogether unrelated. REP. BRANDEWIE said this bill still allows legislators to set limits and the benefit criteria of workers' compensation. It recognizes that the legislature has some control over what happens to the system.

Closing by Sponsor:

REP. BRANDEWIE said the legislature has been working to solve the workers' compensation issue since 1987 when it was a \$1 million problem, and now it's nearly a \$400 million problem. Taxpayers lose, employers and employees lose, and the state of Montana is losing its ability to compete.

HEARING ON HJR 22

Opening Statement by Sponsor:

REP. DAVE BROWN, House District 72, Butte, said that in 1992, Don Hutchinson, Paul Clark House, Butte, visited REP. BROWN to discuss the Paul Clark House. The Paul Clark House is a home for families of terminally ill children.

Proponents' Testimony:

Don Hutchinson, Paul Clark House. Mr. Hutchinson contacted Chief Justice Turnage, the Senate, and the House of Representatives to establish a trust fund in order to use the home to house families of the terminally ill.

Gretchen Leipheimer, Vice President, Paul Clark Home, presented the history of the home.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: None

HEARING ON HB 602Opening Statement by Sponsor:

REP. WILLIAM BOHARSKI, House District 44, Kalispell, said this bill provides immunity from liability a person involved in selling real property that was the site of a felony or suicide or that was occupied by a person infected with a disease.

Proponents' Testimony:

Tom Hopgood, Montana Association of Realtors, said this is a privacy issue for people selling their homes.

Barbara Hamlin, Associated Incorporated Realtors, has been involved in cases like this and says it's difficult to know what to tell the home buyer. People are hesitant to buy homes in which there has been a suicide, "ghosts" in the house, AIDS and abduction. They want to know what has transpired in a home before they buy it.

Opponents' Testimony:

Russell Hill, Executive Director, Montana Trial Lawyers Association (MTLA), said they are not sure there's a need for this bill. He said there's no recourse if there are problems. Line 14 reads, "There is no cause of action against a seller or other transferor." The MTLA believes the realtor has an obligation to tell the buyers who the owners were and what transpired in that home. The MTLA also feels this is an important bill for the simple fact that property is valuable - this is not a frivolous issue.

Questions From Committee Members and Responses:

REP. TOOLE asked REP. BOHARSKI what the underlying concern is with this bill. REP. BOHARSKI said that once a buyer finds out why the original owners moved, and if the buyer wasn't told about that, an attorney has an obligation to defend the new owners and file a lawsuit.

REP. BROOKE is concerned about protecting people's privacy. For example, once someone dies of AIDS and it's published in papers, how is the original owner going to sell that house? She asked for Mr. Hopgood's comments. Mr. Hopgood said that it is very rare that AIDS will appear in the obituaries, and there's a good chance the buyers will find that out anyway. Mr. Hopgood addressed two important issues: 1) Realtors would be violating the Fair Housing Act by not disclosing that information; and 2) If the buyers want to know why the house is for sale, the realtor could say the information is not to be disclosed.

REP. RICE pointed out that federal regulations require realtors to disclose that information and that realtors must avoid the risk of language of immunity.

Closing by Sponsor: None

HEARING ON HB 624

Opening Statement by Sponsor:

JOHN COBB, House District 42, Augusta, noted that this bill revises the procedural provisions of the Human Rights Laws.

Proponents' Testimony:

Anne MacIntyre, Human Rights Commission, presented written testimony. EXHIBITS 14 and 15

Ken Toole, Human Rights Network, said that he believes there are two systems of justice in our country. One of them is hiring a lawyer; but because many people can't afford to hire a lawyer, that person can go to the Human Rights Commission.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: None

HEARING ON HB 610

Opening Statement by Sponsor:

REP. TIM WHALEN, House District 93, Billings, explained that HB 610 is the result of the collaboration of the Department of Health and Environmental Sciences (DHES) and the Coalition for Nursing Home Reform. REP. WHALEN said that proponents would discuss the bill in more detail.

Proponents' Testimony:

Katherine Orr, Chief Counsel, DHES, said this bill applies to health care facilities, including hospitals, nursing homes, hospices, home care agencies, etc. It reflects a clarification of what exists in the law now. The new section, Section 2, is an analysis and the basis for collecting penalties from counties.

She emphasized that HB 610 is a spectrum of tools available to DHES, and she proposed amendments. **EXHIBIT 16**

Bob Olson, Montana Hospital Association (MHA), said that MHA believes this is a very good bill but is concerned that it will create a single department as the policeman, judge and the jury.

On record in support of HB 610:

Mike Craig, Bureau Chief, DHES

Melissa Case, Montana Coalition for Nursing Home Reform

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. SMITH asked Ms. Orr if this bill is to be applied to all health care facilities and whether all rules in the policy manual are basically the same for all facilities. Ms. Orr said it includes nursing homes, home health agencies, and hospitals. Each facility has a different level of care, different instructions, standards.

REP. SMITH said that she had heard that some facilities, primarily hospitals, are reviewed by two or three different entities, i.e., Medicare, state review, etc. This can be very costly, and each reviewing entity requires something different of each facility; this puts a demand on the consumer. Ms. Orr said entities do act as the government's contracting agency, and the state tries to remove a layer of regulation there. However, because DHES is short on resources and funding, they try to enter into voluntary compliance.

REP. VOGEL asked REP. WHALEN if the bill has been discussed with these health facilities. REP. WHALEN asked if the Administrator of the Montana Nursing Home Association has taken a position on the bill. The administrator indicated she hadn't had time to thoroughly review it, but it was something she felt was probably the state following current federal regulations, and she hadn't seen any major problems.

Closing by Sponsor: None

HEARING ON HB 620

Opening Statement by Sponsor:

REP. WHALEN, House District 93, Billings, introduced HB 620 as modeled after HB 887 which REP. WHALEN and REP. TOOLE sponsored in the 1991 session. Changes were made in that bill, and those

changes were incorporated into HB 620. The bills deal with what is commonly referred to by lawyers as "discovery." Discovery is the process that takes place after a lawsuit is filed, whereby the client has an opportunity to "discover" the facts and events that make up that trial in answer to a complaint.

Proponents' Testimony: None

Opponents' Testimony:

John Sullivan, Montana Defense Trial Lawyers (MDTL), said that the Montana Supreme Court is the constitutional entity charged with the responsibility of amending rules of civil procedure. Mr. Sullivan said that an advisory committee for the Supreme Court, composed of both trial lawyers and defense lawyers, has proposed amendments to the rules of civil procedure. Those amendments, currently before the Supreme Court for consideration, do exactly what HB 620 is designed to do without the complex details required in REP. WHALEN's bill.

Jacqueline Lenmark, American Insurance Association, said that, until the Supreme Court takes final action on these rules, there are existing protection against an attorney abusing the discovery process. Ms. Lenmark referred to page 1, line 22, Rule 26 (b), subsection (1).

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. WHALEN told the committee that he had received a letter from Judge Turnage promising to keep REP. WHALEN informed about actions of the Advisory Council. REP. WHALEN has only received a letter about some of the actions of the Advisory Commission.

EXECUTIVE ACTION ON HB 598

Motion/Vote: REP. BROWN MOVED HB 598 BE TABLED. Motion carried 17-1 with REP. BROWN voting no.

EXECUTIVE ACTION ON HB 582

Motion: REP. BROWN MOVED HB 582 DO PASS.

Discussion:

REP. VOGEL noted that he has a problem with section 3, reciprocity agreements. He prefers that people coming in from

out of state and carrying concealed weapons follow proper procedures.

Motion/Vote: REP. VOGEL moved an amendment to delete section 3 from the bill. Motion carried 17-1 with REP. BROWN voting no.

Motion: REP. BROWN MOVED HB 582 DO PASS AS AMENDED.

Motion/Vote: REP. VOGEL MOVED TO TABLE HB 582. Motion carried 9-8 with REP. SAYLES not voting. Those voting not to table the bill were REPS. BROWN, BIRD, CLARK, MCCULLOCH, TASH, TOOLE, WHALEN and WYATT.

EXECUTIVE ACTION ON HB 597

Motion: REP. WHALEN MOVED HB 597 DO PASS.

Discussion:

CHAIRMAN FAGG is opposed to HB 597 for three reasons: 1) He doesn't think taxpayers should pick up the tab for a person who decides to have a jury trial. 2) It's important to note on page 1, line 11, that the court may require a convicted defendant of a misdemeanor to pay costs now, and it has been CHAIRMAN FAGG'S experience with jury trials, that if it's a legitimate jury trial, then the court does not assess costs. However, when the defendant really doesn't have a case, the court does assess jury costs. He believes that discretion should be left with the District, City or Justice Court. 3) There will be a small budget crunch on clerks. Jury trials cost between \$300 and \$350 for a typical six-person jury and about double for a typical 12-person jury. Typically, jury costs are never awarded in District Court cases. They are awarded most often in City and Justice Court.

REP. VOGEL said people do have trials in City Court to create a financial burden on the city. This causes overtime costs and an inconvenience to the city. For these reasons, he believes that people should pay for their own jury trials.

REP. WHALEN disagreed with REP. VOGEL'S comments, stating that the U.S. Constitution entitles people to a trial jury whether they can pay for it or not.

Vote: REP. VOGEL MOVED THAT HB 597 BE TABLED. Motion carried 11-7 with REP. SAYLES excused from voting. Those voting to table the bill are CHAIRMAN FAGG, REPS. VOGEL, BERGMAN, BROOKE, CLARK, GRIMES, RICE, SAYLES, SMITH, TASH, and WINSLOW.

EXECUTIVE ACTION ON HB 157

Motion: REP. VOGEL MOVED TO RECONSIDER HB 157. Motion carried 11-7. Those voting against the reconsideration were

REPS. BROWN, BIRD, BROOKE, MCCULLOCH, RUSSELL, TOOLE, WYATT.

Discussion:

REP. VOGEL said a similar law was passed in Oregon two years ago; in two years time, the number of DUI-related fatalities in Oregon has been reduced BY 38 percent. The bill has been reworked by REP. RICE.

Vote: HB 157 TO BE OFF TABLE. Motion carried 11-7. Those voting against the reconsideration are REPS. BROWN, BIRD, BROOKE, MCCULLOCH, RUSSELL, TOOLE, WYATT.

Motion: REP. VOGEL MOVED HB 157 DO PASS.

Discussion:

REP. VOGEL said one of the changes made in the bill was to allow the judge more discretion to return a forfeited vehicle to the family.

Vote: HB 157 DO PASS. Motion carried 11-7. Those voting against the do pass motion were REPS. BROWN, BIRD, BROOKE, MCCULLOCH, RUSSELL, TOOLE, and WYATT.

EXECUTIVE ACTION ON HB 562

Motion: REP. RICE MOVED HB 562 DO PASS AND OFFERED AMENDMENTS.

Discussion:

REP. RICE offered a conceptual amendment. He had spoke with sociologists working in the area of homophilia who use materials of pictures of sexual conduct as part of the therapy process; they were concerned that this ability not be taken away. REP. RICE said he had no objection to that and offered an amendment that Mr. MacMaster will prepare. The amendment will say, "this is not applicable to sex offender treatment programs."

Motion/Vote: CHAIRMAN FAGG moved to amend HB 562. Amendment carried unanimously.

Motion/Vote: REP. RICE moved an amendment to leave "possesses with intent to sell" as a felony, and "possession" as a misdemeanor. Amendment carried unanimously.

Motion: REP. RICE MOVED HB 562 DO PASS AS AMENDED.

Motion/Vote: REP. TOOLE moved an amendment to strike "proceeding and purchasing" from the bill. Amendment carried unanimously.

vote: HB 562 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 416

Motion/Vote: REP. BROWN MOVED HB 416 TO RECONSIDER OFF THE TABLE. Motion carried 18-3. Those voting against reconsideration were REPS. TOOLE, WHALEN, and SMITH.

Motion: REP. BROWN MOVED HB 416 DO PASS.

Discussion:

REP. BROWN said that "sexual orientation" has been taken out of the amendments in the bill wherever it appears. On line 9, and in the title "actually perceived" was eliminated. On line 6, before information "statistical" is inserted. On the back page, line 11-15, the sentence starting with "the...curriculum" was deleted.

REP. RICE said line 7, page 2 was a vague notion and suggests that the line be changed and insert federal language which would read: "regarding crimes that manifest evidence it's based on."

Motion/Vote: REP. RICE moved the amendment. Amendment carried unanimously.

Discussion:

REP. GRIMES asked if the bill involves civil rights and human rights activities. REP. BROWN assumed so as they are based on hate crimes. REP. GRIMES asked why statistics are kept on civil rights and human rights activities. REP. BROWN said that the issue is human rights activities, and that's across the board. These activities apply to everything, and he doesn't see any group that's discriminated against in that category.

REP. WHALEN offered his amendment before the bill was tabled to insert political activity because, in looking at the list included in the bill, he sees a lot more anger against people who are involved in certain types of political activity than the list in the bill. He said the bill is defective because trying to discover another individual's motivation and then reporting that as a statistic is impossible.

Motion/Vote: REP. GRIMES moved an amendment to strike "or involved in human rights or civil rights activities." Amendment failed 13-5. Those voting against the amendment were REPS. RICE, WHALEN, GRIMES, BIRD, and SMITH.

Motion/Vote: REP. BROWN MOVED HB 416 DO PASS AS AMENDED. Motion carried 11-7. Those voting against the do pass motion were REPS. BIRD, CLARK, GRIMES, MCCULLOCH, SMITH, TASH, and WHALEN.

EXECUTIVE ACTION ON HB 554

Motion: REP. CLARK MOVED HB 554 DO PASS.

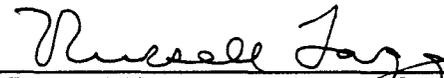
Motion/Vote: REP. BROWN MOVED HB 554 BE TABLED. Motion carried 10-8. Those voting to table were CHAIRMAN FAGG, REPS. BROWN, BIRD BROOKE, MCCULLOCH, RUSSELL, SAYLES, TOOLE, WHALEN, and WYATT.

EXECUTIVE ACTION ON HB 603

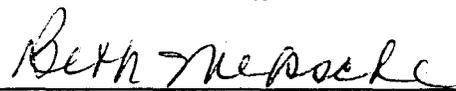
Motion/Vote: REP. BROWN MOVED HB 603 BE TABLED. Motion carried unanimously.

ADJOURNMENT

Adjournment: 12:00 p.m.



REP. RUSSELL FAGG, Chairman



BETH MIKSCHKE, Secretary

RF/bcm

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

2/17/93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Savles			✓
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HOUSE STANDING COMMITTEE REPORT

February 17, 1993

Page 1 of X

Mr. Speaker: We, the committee on Judiciary report that House Bill 416 (first reading copy -- white) do pass as amended.

Signed: [Signature]
Russ Fagg, Chair

And, that such amendments read:

1. Title, line 6.
Strike: "ACTUAL OR PERCEIVED"
2. Title, line 7.
Strike: "SEXUAL ORIENTATION,"
3. Page 1, line 23.
Strike: "cooperate with"
Insert: "seek the cooperation of"
4. Page 2, line 6.
Following: "analysis of"
Insert: "statistical"
5. Page 2, line 7.
Strike: "are apparently"
Insert: "manifest evidence of having been"
6. Page 2, line 9.
Strike: "actual or perceived"
7. Page 2, line 10,
Page 3, line 10.
Strike: "sexual orientation,"
8. Page 2, line 24 through line 3 of page 3.
Strike: section 3 in its entirety
Renumber: subsequent sections
9. Page 3, lines 11 through 15.
Strike: "The" on line 11 through end of line 15
10. Page 3, lines 17 and 19.
Strike: "4"
Insert: "3"

Committee Vote:
Yes 4, No 7.

09162930.Hss

HOUSE STANDING COMMITTEE REPORT

February 17, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 562 (first reading copy -- white) do pass as amended .

Signed: 
Russ Fagg, Chair

And, that such amendments read:

1. Page 2, line 1.

Strike: ", receives, purchases"

Insert: "with intent to sell"

2. Page 3, line 4.

Following: line 3

Insert: "(3) An offense is not committed under subsections (1)(d) through (1)(f) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if such an activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections and human services."

Committee Vote:
Yes 18, No 2.

391556SC.Hss

HOUSE STANDING COMMITTEE REPORT

February 17, 1993

Page 1 of 4

Mr. Speaker: We, the committee on Judiciary report that 157
(first reading copy -- white) do pass as amended .

Signed: _____
Russ Fagg, Chair

And, that such amendments read:

1. Title, line 5.

Following: "DRUGS"

Insert: "AND FOR DRIVING WITH A BLOOD ALCOHOL CONCENTRATION OF
0.10 OR MORE"

2. Title, line 8.

Following: "DRUGS"

Insert: "OR DRIVING WITH A BLOOD ALCOHOL CONCENTRATION OF 0.10 OR
MORE"

Strike: "SECTION"

Insert: "SECTIONS"

3. Title, line 9.

Following: "61-8-714"

Insert: "AND 61-8-722"

4. Page 4, line 9.

Strike: "sections 2 through 9"

Insert: "section 3"

5. Page 7, line 16, through page 14, line 22.

Strike: sections 2 through 9 of the bill in their entirety

Insert: "Section 2. Section 61-8-722, MCA, is amended to read:

"61-8-722. Penalty for driving with excessive alcohol
concentration. (1) Except as provided in subsection (7), a person
convicted of a violation of 61-8-406 shall be punished by
imprisonment for not more than 10 days and shall be punished by a
fine of not less than \$100 or more than \$500.

(2) Except as provided in subsection (7), on a second
conviction of a violation of 61-8-406, he shall be punished by
imprisonment for not less than 48 consecutive hours or more than
30 days and by a fine of not less than \$300 or more than \$500.

(3) (a) Except as provided in subsection (7), on a third or
subsequent conviction of a violation of 61-8-406, he shall be
punished by imprisonment for not less than 48 consecutive hours

Committee Vote:

Yes 11, No 7.

0916153C.Hsc

or more than 6 months and by a fine of not less than \$500 or more than \$1,000.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be forfeited as provided under [section 3].

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) The provisions of 61-5-205(2), 61-5-203(2), and 61-11-203(2) (d), relating to revocation and suspension of driver's licenses, apply to any conviction under 61-8-406.

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then the prior offense must be expunged from the defendant's record.

(7) The court may order that a term of imprisonment imposed

under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 13, part 10."

NEW SECTION. Section 3. Forfeiture procedure. (1) A motor vehicle forfeited under 61-8-714 or 61-8-722 must be seized by the county sheriff within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicable.

(2) Forfeiture proceedings under 44-12-201(1) must be instituted by the county sheriff within 20 days after the seizure of the motor vehicle.

(3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The owner of the motor vehicle may rebut the presumption by proving a defense under 61-3-714(3)(b)(ii) or 61-8-722(3)(b)(ii) or by proving that the owner was not convicted of a third or subsequent offense under 61-8-401 or 61-8-406. It is not a defense that the convicted person owns the motor vehicle jointly with another person.

(4) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be distributed first to the holders of security interests who have presented proper proof of their claims, up to the amount of the interests, and next to the sheriff in the amount of the costs of the forfeiture proceedings, and the remainder to the department of corrections and human services to fund alcohol information courses and treatment programs referred to in 61-8-714 and 61-8-722.

(5) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons include return of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this section, but is found by the court to be without fault."

Strike: "Sections 2 through 9] are"
Insert: "Section 3] is"

7. Page 15, line 2.
Strike: "sections 2 through 9"
Insert: "section 3"

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2/17/93 BILL NO. HB 416 NUMBER 18

MOTION: HB 416 DO Pass, Motion carried 11-7

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird		✓
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark		✓
Rep. Duane Grimes		✓
Rep. Scott McCulloch		✓
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith		✓
Rep. Bill Tash		✓
Rep. Howard Toole	✓	
Rep. Tim Whalen		✓
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	11	7

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 2/17/93 BILL NO. HB 157 NUMBER 18

MOTION: HB 157 Be reconsidered off Table
Motion Carried 11-7

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird		✓
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke		✓
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch		✓
Rep. Jim Rice	✓	
Rep. Angela Russell		✓
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole		✓
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt		✓
	11	7

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2/17/93 BILL NO. HB 157 NUMBER 18

MOTION: HB 157 DO Pass 11-7

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird		✓
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke		✓
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch		✓
Rep. Jim Rice	✓	
Rep. Angela Russell		✓
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole		✓
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt		✓
	11	7

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2/17/93 BILL NO. HB 582 NUMBER 17

MOTION: HB 582 Tabled 9-8

NAME	AYE	NO
Rep. Russ Fagg, Chairman		✓
Rep. Randy Vogel, Vice-Chair		✓
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman		✓
Rep. Vivian Brooke		✓
Rep. Bob Clark	✓	
Rep. Duane Grimes		✓
Rep. Scott McCulloch	✓	
Rep. Jim Rice		✓
Rep. Angela Russell		✓
Rep. Tim Sayles	NO	Vote
Rep. Liz Smith		✓
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow		✓
Rep. Diana Wyatt	✓	
	8	9

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2/17/93 BILL NO. #5597 NUMBER 18

MOTION: HB 597 Tabled 11-7

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird		✓
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch		✓
Rep. Jim Rice	✓	
Rep. Angela Russell		✓
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole		✓
Rep. Tim Whalen		✓
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt		✓
	11	7

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2/17/93 BILL NO. HB 554 NUMBER 18

MOTION: HB 554 Tabled 10-8

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair		✓
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman		✓
Rep. Vivian Brooke	✓	
Rep. Bob Clark		✓
Rep. Duane Grimes		✓
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Savles		✓
Rep. Liz Smith		✓
Rep. Bill Tash		✓
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow		✓
Rep. Diana Wyatt	✓	
	10	8

House Judiciary Committee
February 17, 1993
Bob Ream Testimony on House Bill 547

I was born and raised on my grandfather's farm in Wisconsin and went to a 3 room school there. My father worked for the Soil Conservation Service and when I was 13 he transferred to Washington D.C. In a matter of days I transferred from the 3 room school of less than 100 students to a junior high in suburban Maryland with 2,000 students of very diverse backgrounds. However, despite the big black population in that area, there were no black students in my school and if you rode the buses in the D.C. area, blacks rode in the back and whites in the front. That was 1950 and it was my first exposure to the kind of hatred and intolerance that exist in humans that cannot accept those who are different than they are. The next year my father started working in agricultural programs in southeast Asia and I subsequently lived in Thailand, India, and the Philippines. Thailand was 95% Buddhist, Philippines 95% Catholic, and India largely a Hindu population. Again, at a very early age, I learned to live with and among people who were very different than I, and in places where I was a very obvious minority. At no time during those years did I feel discriminated against. I might add that in those countries homosexuals were openly part of the scene and to my knowledge there was little if any discrimination against them.

Against this background, it is very, very hard for me to understand how or why some individuals in our society discriminate against fellow human beings simply because they are different. It simply astounds me that some of my fellow Montanans are in such fear of somebody different than they that they develop such deep-rooted hatred for other fellow Montanans. Such hatred is built on fear of the unknown and some sort of a perceived threat to their well-being, no matter how ill-founded that fear and perception is. This is the stuff that wars are made of, and down through the pages of history war after war after war after war has been fought "in the name of God", not because God wanted war but because one group of humans viewed another as different and therefore a threat. When will we ever learn?

Last February, when I visited Washington D.C. there were blacks riding in the front of buses, so change is possible. This bill, members of the committee, is about that kind of change. It is a very simple matter and a very simple bill. It provides that fellow Montanans will not be discriminated against not only based on race, religion, marital status, or age, but also based on their sexual orientation. It not only prevents discrimination against homosexuals, but also protects heterosexuals from discrimination and even people who may have celibacy as their sexual orientation. Who are we as individuals to judge our fellow Montanans as bad or unacceptable because they are different than us, whether by choice or biology. All individuals have a right to be judged on their merits rather than stereotypic assumptions about them because of their sexual

orientation. There should be no right for people doing business with the public to deny individuals employment, housing, or other services simply because they don't like them as a group.

The committee should recognize that there already are homosexuals in our society. The issue is not whether they are there, the issue is do they have a right to be judged on their merits. The great American poet Walt Whitman, was quite openly homosexual. Not only did he serve America as one of its most famous poets, he also served his nation in the Civil War, as a nurse ministering to fellow humans who were enduring intense suffering, in order to abolish slavery. How shall we judge him more than a century later, and how shall we judge that war?

Members of the committee please put away your stereotypes and your biases and help assure that all Montanans are treated fairly, equitably, and openly, and help assure that they are treated with love and compassion rather than fear and hatred. You have the opportunity today to do what is right. Don't make fellow Montanans stay at the back of the bus. There is no reason not to be tolerant. Sooner or later change will come - please make it sooner rather than later.

Mr. Chairman, members of the committee. My name is Ken Toole. I am the President of the Montana Human Rights Network. The Network is a state wide organization dedicated to responding to white supremacist activity in Montana. The Network carries out its mission by analyzing and exposing the activities of hate groups in Montana and by promoting activities designed to enhance the human and civil rights of all Montanans.

I am here today to urge you to support HB 547. Montana's current system of laws, rules and regulations serves to isolate homosexuals in our communities. We believe that this isolation sets them up as targets for organized hate groups. Numerous individuals have testified in this session, before this committee about the victimization of gay men and lesbians in Montana so I will not belabor the point in this testimony.

The bill before you would make discrimination against an individual because of sexual orientation illegal in Montana. It is a simple matter. We believe that it should be illegal to discriminate against someone solely because of their sexual orientation. We believe that all individuals in Montana should have the right to be judged on the basis of merit. An individual's sexual orientation has nothing to do with ability to perform a job, rent a house, qualify for a loan, or receive government services.

This bill does not provide special rights to anyone. There is a myth that discrimination laws set up special rights for certain groups in our society. This simply is not true. Discrimination law prohibits discriminating against individuals because of characteristics they have. Characteristics like race, religion, and sex. These laws do not require individuals receive preferential treatment because of their membership in a specific group.

This bill does not provide special protection to homosexuals. In this committee's hearing held on the malicious harassment statute an individual expressed his concern that heterosexuals are discriminated against by homosexuals. This bill would prohibit discrimination against an individual because of sexual orientation that would include heterosexuals as well as homosexuals.

In other hearings before this committee individuals have argued that it is not appropriate to designate sexual orientation as a basis for illegal discrimination because it is a lifestyle choice rather than an immutable characteristic. There is considerable scientific evidence that there are genetic and physiological causes of homosexuality. That aside, it is pure poppycock to say that discrimination law only protects people because of immutable characteristics individuals have. Numerous lifestyle choices are protected under current Montana law. Discrimination on the basis of religious beliefs, marital status and political ideas is currently illegal under Montana law. We all choose our

religion, whether to marry and we form our own political ideas. These are not immutable characteristics.

This bill does not seek to condone or condemn homosexuality. It does not ask you make a judgement on whether homosexuality is morally right or morally wrong. This bill is a simple one. It seeks to make it illegal to discriminate against an individual because the person's sexual orientation, nothing more nothing less. We urge you to recognize the concept that all people deserve to be judged on individual merit, not on preconceived notions others have of what a person is.

Chairman Fagg and members of the committee,

For the record my name is Steve Simpson and I am here today to voice my support for House Bill 547.

I was asked to testify because I have been discriminated against on several occasions. I have spent a great deal of time and money on events only to have businesses cancel reservations at the last minute; I have been asked to leave establishments; I have been physically assaulted, verbally attacked, and mentally tortured simply for being a gay man.

But I am not here to tell you that this type of discrimination exists. Every one of you know that it exists. I came here today, not because I think I can change your minds, but because I can't sit back and listen to any more of these "so-called experts" talk about homosexuality.

I'm an expert on being gay. I have 28 years of experience, so let me tell you some facts. I don't molest children, I don't practice bestiality, I don't convert others to my lifestyle, and I am not an emaculate housekeeper. Also for the record, I was not molested as a child and I did not suffer a terrible childhood.

My fear is not that I will continue to see discrimination in my life, even when it is directed at me. My fear is that there are too many people who continue to stand by and allow it to continue. It is time for you to take a risk and do what you know is right. Pass House Bill 547.

A handwritten signature in cursive script that reads "Steve Simpson". The signature is written in black ink and is positioned at the bottom left of the page.

DATE 2-17-93SB. HB 547

Shepherd of the Plains Metropolitan Community Church

P.O. Box 2162 Great Falls, Montana 59403 (406) 452-7862

Gina L. Hartung, Pastor

TO THE CHAIR-PERSON AND MEMBERS OF THE COMMITTEE:

My name is Pastor Gina Hartung, and I am the Pastor of Metropolitan Community Church in Great Falls, Montana. Metropolitan Community Church has a special outreach to the gay, lesbian and bi-sexual communities of Montana. My full time work with this oppressed community has required many hours trying to bring self-worth, freedom and dignity.

On May 15, 1984 I lived in Billings, Montana and was seeking to rent a two bedroom apartment. Upon finding an apartment closer to work and the downtown area I reviewed the lease agreement, fulfilled the requirements, and moved in. I had introduced the landlord to my partner and had discussed the rent amount change that would happen if we both rented. We were in agreement to change the rent amount upon both moving in, but did not expect that change until mid June. On June 13, 1984 I received an eviction notice giving me until June 15, 1984 to vacate the apartment. Upon receiving the notice of eviction I went to see my landlord to find out the reason for eviction beings none of the agreements had been violated. My landlords response was, "I am willing to write you a letter of recommendation stating we had a difference of opinion." That was the end of the conversation. During my short stay in this apartment he had entered the apartment several times when I was at work to do repairs without permission. I was unaware at that time that this was not ethical, but I do remember the feelings of being victimized.

I am not a dishonest person, but I was aware that if I took this case to court and was asked about the relationship between my partner and I, that I would not lie. I was also aware that there was a Montana law punishing homosexuals, and that there was no law in place to protect me from this kind of discrimination, therefore I packed and left feeling cheated, abused and my rights not worth anything.

I stand with these folks who are presenting this bill, and am hopeful that we will find some recourse in one of the laws in Montana. At this point of the legislature if feels quite powerless to have protection under any law. The feeling is one of victimizing a victim as all of the bills have been defeated, and it appears to send the message that it is ok to discriminate, bash, harass, and harm the residents of Montana if they happen to be from the homosexual culture.

I encourage you to consider the message that is being sent to over 10% of the Montana Population, and I also thank you for listening to my story, knowing that there are many others who don't want to be harmed just for living.

With Honor and Respect,

Pastor Gina L. Hartung
Pastor Gina L. Hartung

A Shepherd for All People, A Sanctuary for Lost Sheep, Where Formation of Family Happens

DATE 2-17-12
SB- HB 547

Re: HB 547

Written testimony in opposition of HB 547.

Testimony of Rev. Rick DeMato.

Mr. Chairman, committee members, my name is Rev. Rick DeMato. My residence for the last 19 years has been Helena, Mt.

I am representing the position of the membership of the Liberty Baptist Church, along with 10 other independent Baptist churches with a combined membership of 1080 here in Montana.

We the above are opposed to HB 547 for the following reasons:

1. Because of the phrase "sexual orientation", we feel that this is another attempt by the sodomites and lesbians to further their agenda, which as HB 215 clearly stated was to decriminalize the act of homosexuality in Montana.
2. Under Section 49-1-102 MCA, p.1, lines 15-18, freedom from discrimination is guaranteed to all Montana's citizens. It is fact that a man has no control over his race, color, sex, physical or mental handicap, age, or national origin. We as a free people have chosen not to discriminate against a man for his chosen religious beliefs. However as a free people in Montana we have chosen to classify deviate sexual conduct, i.e., sodomy and lesbianism as a crime (un-enforceable, yes, but still a crime). We believe that it is a violation against the dignity of man to classify a crime such as sodomy and lesbianism as a declared civil right.
3. Because of the 37 time usage of the phrase "sexual orientation" we feel another attempt by the Human Rights Commission to de-sensitize a chosen deviate lifestyle.
4. We as opponents of HB 547 do not discriminate against the homosexual, we discriminate against the **ACT** due to the consequence of the **ACT** which threatens the health of every man, woman, boy, and girl in the state of Montana. Much as we discriminate against the violent act of rape.
5. We do not feel it is a crime to discriminate against what is illegal in the State of Montana.

6. For too long the gay-rights movement has found refuge in a set of out-dated population figures dating back to the 40's and 50's. These figures claim that 10% of the population are homosexual. Current figures as per Newsweek, Feb. 15, 1993, p.46 put this figure closer to 2.5%. Because of our rural location this figure may be as low as 2/10's of 1%. If this figure is even remotely close then we have a very small percentage of Montanas wanting civil right status for an illegal action.
7. We feel that the majority of Montanas ought to maintain the right to keep their state free from illegal activities. To this end we have employed a large governmental department called The Montana Department of Justice.

In closing we want to encourage this committee to **NOT PASS** HB 547.

Sincerely,

Rev. Rick DeMato

Rev. Rick DeMato

Feb. 17, 1993

February 16, 1993

RE: HB 547 "an act including sexual orientation in the human rights laws prohibiting discrimination based on sexual orientation: clarifying that the human rights laws apply whether or not the victim is an actual member of a protected class..."

Position: Opponent of HB 547

My name is Jeri Snell, I am from Miles City. I am a registered nurse. Currently I am an intern in a Hospital Chaplains program. however, I speak as a private citizen.

I have had a personal experience with a physical disability. I am also a Native American. I was born on one reservation and raised in a mission school on another. I have personally experienced discrimination for my heritage, physical disability and the combination of the two.

We have all known some form of discrimination in our lives. We have the choice of response. We can get defensive, angry, try to make the other guy pay or rise above the injustice, consider the source and get on with life. To include even perceived discrimination in this bill opens a Pandora's Box that will ignite a plethora of litigation. Can our nation afford more opportunities for divisiveness? We are losing ground in the glue that once held this nation together.

Those currently covered by the present anti-discrimination statute with the exception of creed and religion which are constitutional rights under the First Amendment to the US Constitution are those with immutable, inherent, non-behavioral characteristics that of age, gender, handicap race or national origin. Gen. Colin Powell, chairman of the Joint Chiefs of Staff who opposes homosexuals in the military has stated, "Skin color is a benign, non-behavioral characteristic. Sexual orientation is perhaps the most profound of human characteristics. Comparison of the two is a convenient but invalid argument."

Historically, courts and civil rights authorities have employed three "touchstones" in awarding special protected status to disadvantaged classes.

Criterion 1: A history of discrimination evidenced by lack of ability to obtain economic mean income, adequate education, or cultural opportunity.

Homosexuals have an average income of four times greater than disadvantaged African-American households. More than three times as many homosexuals as average Americans are college graduates and hold professional or managerial positions.

Criterion 2: Specially protected classes should exhibit obvious, immutable, or distinguishing characteristics, like race, color, gender or national origin, that define them as a discrete group.

There is no credible scientific evidence to support homosexual claims that "gayness" is either genetically determined or immutable.

The brain node study by Simon LeVay a professed homosexual was given coverage by Newsweek and a major t.v. network. His conclusions linking genetics and homosexuality were purported as valid scientific conclusions. What the media did not report is that later his conclusions were invalidated by the scientific community.

Masters and Johnson renowned sexologist report a 79.1 % success rate for their clients who attempt to discontinue their homosexual practices. Immutable characteristics cannot be reversed.

Criterion 3: "Protected classes" should clearly demonstrate political powerlessness."

The National Gay and Lesbian Lobby is one of the most powerful lobby groups in the nation. They gave several million to elect the current president.

They have secured political office both in the U.S. Congress and on numerous major U.S. City councils.

Pressured the medical community to discard well-established public health measures and treat AIDS as history's first "politically correct" fatal plague.

Before we entertain special rights status solely on the basis of sexual orientation, we would be less than responsible not to first consider the health and safety consequences of such legislation.

Another argument used by the gay community is the 10% of the population myth. This has been refuted by scientific data as well. See enclosure "Family Policy".

Ladies and gentlemen giving special legal protection to homosexual behavior will seriously undermine the existing law. For the above reason I respectfully request you to vote against HB 547.



HALEBIAN—GAMMA-LIAISON

Safety in numbers? AIDS activists stage a 'die-in' last summer in New York

IDEAS

How Many Gays Are There?

A new debate about the numbers of homosexuals

For years, the gay-rights movement has fought safety in numbers. Its leaders have long claimed that homosexuals constitute 10 percent of the American population. They cited Alfred Kinsey, who interviewed thousands of men and women for landmark studies on human sexuality in the 1940s and 1950s. Activists seized on the double digits to strengthen their political message—that millions of citizens are excluded from the mainstream by anti-gay discrimination. Policymakers and the press (including *Newsweek*) adopted the estimate—despite protests from skeptical conservatives—citing it time and again.

But new evidence suggests that ideology, not sound science, has perpetuated a 1-in-10 myth. In the nearly half century since Kinsey, no survey has come close to duplicating his findings. Most recent studies place gays and lesbians at somewhere between 1 and 6 percent of the population. While experts say these survey results are biased by underreporting from reticent participants, the gap is still significant. Some gay activists now concede that they exploited the Kinsey estimate for its tactical value, not its accuracy. "We used that figure when most gay people were entirely hidden to try to create an impression of our numerosness," says Tom Stoddard, former head of the Lambda Legal Defense Fund.

So how many gays and lesbians are

there? No one knows for sure. Kinsey, who interviewed 12,000 male volunteers between 1938 and 1947, rocked post-World War II culture with an unprecedented peek into the American bedroom, featuring data on sexual habits, adultery and homosexuality. But experts say his sampling—weighted toward institutional populations like schools, prisons and hospitals—is unscientific and can't be meaningfully extrapolated to the general population. The 10 percent—which represents adult males who said they were predominantly homosexual for at least three years—suggests that a significant part of Kinsey's sample was gay, but nothing more. "It's just not a real number," says University of Washington sociologist Pepper Schwartz.

There are compelling reasons to develop a reliable gay census. One of them is AIDS. "Simple facts about the size of the homosexual population . . . give you the scientific basis for understanding what's driving the epidemic," says Charles Turner, former director of the National Academy of Science's committee on AIDS research. Scientists have tried unsuccessfully to get federal underwriting. In the late 1980s, Congress approved two national surveys of sexual behavior, one for adults, the other for teens. But conservatives, led by Sen. Jesse Helms and Rep. William Danne-meyer, killed the measures. They argued

that the studies would confer unwarranted legitimacy on homosexuality.

With no prospect of public funding, scientists have turned to private sources. Between 1989 and 1992, the National Opinion Research Center (NORC) at the University of Chicago added two sex questions to its annual General Social Survey. The results have been consistent. Among men, 2.8 percent reported exclusively homosexual activity in the preceding year; women registered 2.5 percent. NORC is still tabulating the results of a full-scale, 3,000-person sexual behavior study, but experts don't expect the numbers to be appreciably different.

Upfront bias: The anti-gay right has used its own studies to

challenge the 10 percent claim. Child-pornography researcher Judith Reisman argues in her 1990 book, "Kinsey, Sex and Fraud," that homosexuals constitute perhaps as little as 1 percent of the population. Her findings were used by anti-gay activists in Oregon last year in their unsuccessful campaign to exclude homosexuals from state civil-rights protections. In sponsoring a 1992 constitutional amendment overturning gay rights in three Colorado cities, Coloradans for Family Values claimed that the figure was closer to 3 percent, citing estimates by the Washington-based Family Research Institute. Its founder, psychologist Paul Cameron, is upfront about his bias. "It's hard to find anyone who writes in this field who is not driven by ideological concerns," he says.

Many gay activists refuse to back off from the 10 percent, as if a lower estimate somehow makes violence and discrimination against them less of an outrage. "Until I see a different number, 10 percent is the number," says Donna Redwing, a Portland lesbian organizer. But others see a risk in defending a questionable claim. "If you say a number that you can't prove, there's always the chance that by disproving one part of your argument, your opponents weaken you overall. I think that's dangerous," says Tim McFeeley, executive director of the Human Rights Campaign Fund, a gay political-action committee. The truth is that growing gay political clout—more openly elected officials, a larger voice in the Democratic Party and \$3.5 million in contributions to Bill Clinton's presidential campaign last year—makes reliance on Kinsey less important. In the long run, gays may discover that a maturing political movement is best served by credibility, not numbers games.

PATRICK ROGERS

CITIZEN[®]

Vol.6 No.4

April 20, 1992



AP/Wide World Photos

Oppressed Minority, or Counterfeits?

Homosexuals demand the same legal privileges as legitimate disadvantaged minorities. Here's why they don't qualify.

by Tomu Marco

One of the most ambitious public image campaigns in American history is under way, with the mass media's generous help. Its message: Homosexuals are an oppressed, disadvantaged minority, much like African-Americans and Hispanics, and they deserve special legal status and privileges.

Two marketing experts outlined this campaign's goals in a homosexual magazine article, "The Overhauling of Straight America."

"Portray gays as victims, not as aggressive challengers. In any campaign to win over the public, gays must be cast as victims in need of protection so that straights will be inclined by

reflex action to assume the role of protector . . . Straight viewers must be able to identify with gays as victims. Mr. and Mrs. Public must be given no extra excuses to say 'they are not like us' . . . Our campaign should not demand direct support for homosexual practices, but should instead take anti-discrimination as its theme."

Homosexuals claim they need special legal privileges that, among other things, would permit them to silence or punish their critics, coerce businesses to pay spousal benefits to their all-too-temporary partners, and express

(continued on page 2)

IN THIS ISSUE

5. Tom Minnery's commentary: Without God, you get Auschwitz and the Gulag.

10. An Episcopalian pro-abortion Bible study makes some outrageous claims, but correct interpretation proves that God is pro-life.

13. Pro-family activists tend to emphasize politics, but National Day of Prayer coordinators say prayer will transform America.

14. Q&A: Whether it's in front of an abortion clinic or inside a public high school, attorney Jay Sekulow defends religious speech.

Homosexuals want special legal privileges that would permit them to silence or punish their critics.

Homosexuals have an average household income of \$55,430, four times greater than disadvantaged African-American households.

COUNTERFEITS? (continued from page 1)

their sexuality whenever, wherever and with whomever they choose.

Do homosexuals warrant the special legal status they seek? Historically, courts and civil rights authorities have employed three "touchstones," in awarding special protected status to disadvantaged minority classes.²

*Criterion 1: A history of discrimination evidenced by lack of ability to obtain economic means, adequate education, or cultural opportunity.*³

Homosexuals claim they are economically, educationally and culturally disadvantaged. Marketing studies refute those claims.⁴

- Homosexuals have an average annual household income of \$55,430, versus \$32,144 for the general population and \$12,166 for disadvantaged African American households.⁵

- More than three times as many homosexuals as average Americans are college graduates (59.6 percent v. 18 percent)—a percentage dwarfing that of truly disadvantaged African-Americans and Hispanics.

- More than three times as many homosexuals as average Americans hold professional or managerial positions (19 percent v. 15.9 percent) — again, making homosexuals embarrassingly more advantaged than true minorities in the job market.

- 65.8 percent of homosexuals are overseas travelers — more than four times the percentage (14 percent) of average Americans. More than 13 times as many homosexuals as

the gay and lesbian community is a virtual mother lode of untapped sales."

Editor and Publisher estimates that there are more than 125 homosexual newspapers in the United States with a combined circulation of more than one million.

*Criterion 2: Specially protected classes should exhibit obvious, immutable, or distinguishing characteristics, like race, color, gender or national origin, that define them as a discrete group.*⁶

There is no credible scientific evidence to support homosexual claims that "gayness" is either genetically determined or immutable.

"The genetic theory of homosexuality has been generally discarded today . . . Despite the interest in possible hormone mechanisms in the origin of homosexuality, no serious scientist today suggests that a simple cause-effect relationship applies," according to *Human Sexuality*, a 1984 textbook written by Masters, Johnson and Kolodny.

It is unclear how sexual orientation evolves, but a study by the controversial Kinsey Institute found that 81 percent of homosexuals and 29 percent of heterosexuals shifted or changed their "sexual orientation" at least once; 32 percent of homosexuals and 4 percent of "straights" reported a second shift; and 13 percent of homosexuals and 1 percent of heterosexuals claimed at least five changes in sexual orientation.⁷

Studies of prison inmate behavior, both male and female, clearly demonstrate that, behind bars, for a variety of reasons, homosexual behavior is practiced by inmates who have not previously engaged in homosexual behavior—and who do not practice "gay" behavior after their release from prison.

About lesbianism in women's prisons, one authority on inmate sociology remarked:

"Graphic excerpts from interviews seemed to suggest that [homosexual] social organization among the women prisoners had an institutional origin, since most of the participants had not been involved in homosexual liaisons prior to the prison experience and were evidently unlikely to continue homosexuality after leaving prison."⁸

The same author discovered, about male homosexuality in prisons:

"For males [behind bars], homosexual activity seemed to focus primarily on physical gratification; in many instances it represented a commodity for economic exchange; and it was likely a transitory act."⁹

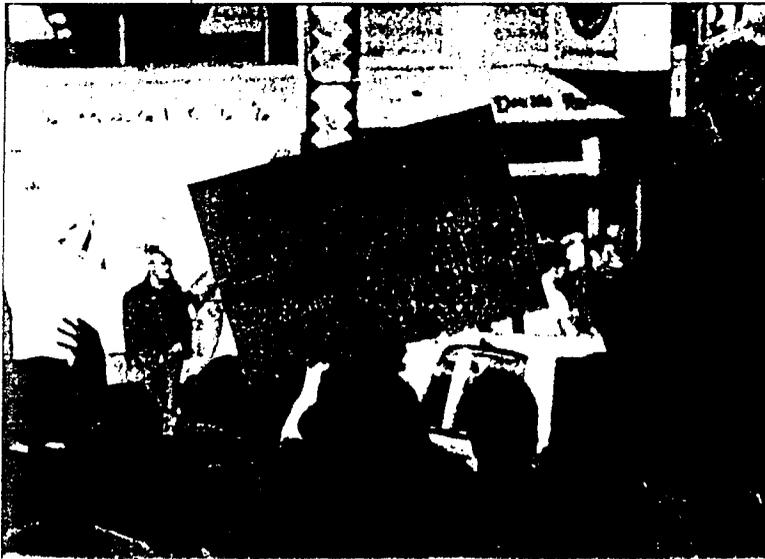
A study by an avowed homosexual, publicized in a cover article in the Feb. 24, 1992, edition of *Newsweek*, purported to discover "homosexual brains."¹⁰ But on closer examination, the study doesn't hold up.

Simon LeVay's study of the brains of 19 homosexual male corpses (all died of AIDS complications) noted a difference in the size of a specific neuron group, INAH3, compared with that of a group comprised of 16 presumably heterosexual male and six female corpses.

One problem with LeVay's study is that the researcher presumed that the control group of 16 corpses had been heterosexual.

"It turns out that LeVay doesn't know anything about the sexual orientation of his control

EXHIBIT #6
DATE 2-17-93
HB-547



UPI/Wide World Photos

average Americans (26.5 percent v. 1.9 percent) are frequent flyers.

"America's gay and lesbian community is emerging as one of the nation's most educated and affluent, and Madison Avenue is beginning to explore the potential for a market that may be worth hundreds of billions of dollars . . . It's a market that screams opportunity," said Eric Miller, editor of *Research Alert*, a consumer research newsletter based in New York."

Robert Bray, a spokesman for the National Gay and Lesbian Task Force, concurs as quoted in a recent article in the *P Rocky Mountain News*.

"Gay greenbacks are very powerful and



AP/Wide World Photos

group, the 16 corpses 'presumed heterosexual.' A sloppy control like this is . . . enough by itself to invalidate the study," wrote homosexual reporter Michael Botkin in the *Bay Area Reporter*.¹¹ "LeVay's defense? He knows his controls are het[erosexual] because their brains are different from the HIVer corpses. Sorry, doctor; this is circular logic. You can use the sample to prove the theory or vice versa, but not both at the same time."

The homosexual community cannot claim the study as proof of a genetic source for sexual orientation because the study was not designed to consider why the INAH3 neuron groups vary in size. (Based on the size of their INAH3s, a third of LeVay's subjects should have had the opposite sexual orientation than what he reported.) More study is required, but LeVay won't conduct it; he has left science to become a full-time gay activist.

*Criterion 3: "Protected classes" should clearly demonstrate political powerlessness.*¹²

Far from being politically powerless, homosexual activists have in recent years demonstrated enormous political clout far beyond their numbers. Combining economic and educational advantage with high-pressure lobbying tactics, homosexual activists have ridden waves of tolerance emanating from the sexual revolution to a position of almost irresistible influence in today's America. They have:

- Won passage of legislation granting homosexuals protected class status in five states and 90 cities across America.
- Secured political office both in the U.S. Congress and on numerous major U.S. city councils.
- Pressured the medical community to discard well-established public health measures and treat AIDS as history's first "politically protected" fatal plague.
- Received benefits for "domestic partners" identical to those of married couples, and other kinds of preferential treatment in several major U.S. corporations.
- Implemented homosexual created curricula presenting homosexual sex as a valid, healthy alternative to heterosexuality, despite overwhelming evidence to the contrary.
- Gained ordination in mainline church

denominations. Case in point: On April 1, a prominent Marin County, Calif., lesbian minister became a co-pastor of the Downtown United Presbyterian Church of Rochester, N.Y.

- Won National Endowment for the Arts (NEA) grants for "works of art" that graphically portray homosexual sex and savagely ridicule traditional religious and family values.

- Avoided prosecution for acts of violence and vandalism. Case in point:

Homosexuals vandalized California State office buildings, burned state flags and California's governor in effigy after his veto last year of a special rights for-gays bill, and pelted Gov. Pete Wilson himself with garbage at a speaking engagement following his veto. There were no arrests.

In 1989, "AIDS activists" invaded a Roman Catholic mass at New York City's St. Patrick's Cathedral, shouting obscenities and defiling Communion elements. A few participants in this blatant desecration incurred slight legal penalties.

No arrests were made and no charges were filed at San Francisco's 1990 and 1991 Gay and Lesbian Pride Parades. Videotape from one such parade depicts public nudity, both male and female; lewd and lascivious acts, including public fondling of genitalia and several acts of what appears to be public anal sex between homosexuals; and open promotion of pedophilia.

In Madison, Wis., on Sept. 8, 1991, homosexuals defaced the state Capitol and threatened the governor. *The Capital Times* gave this report:

"About 100 ACT UP protesters charged the Capitol today, defacing the hallway leading to the governor's office with food and stickers and staging a 'die-in' in the rotunda. They were protesting what they call 'criminal' state policies against prison inmates with AIDS."

"The protesters were met by Capitol police and security officers, who closed the governor's office and blocked the group's entry. The protesters then tossed sandwiches and towels toward the door, and left numerous ACT UP stickers on the walls that portray [Wisconsin's governor Tommy] Thompson as a public health menace . . . Other protesters used some type of black marker to write on the marble floor."

No arrests were reported in this incident.

Too Many Questions

According to John N. Franklin, past chairman of the Colorado Civil Rights Commission,

(continued on page 4)

Homosexuals generally avoid prosecution for acts of vandalism and violence. Just ask the governors in California and Wisconsin.



AP/Wide World Photos

COUNTERFEITS? (continued from page 3)

granting special legal privileges to homosexuals invites a number of questions:

How would homosexual class status be determined? Simply on the word of an applicant? After a homosexual performed homosexual acts before a panel of civil rights authorities? The first time someone engaged in sex with a member of the same gender—even accidentally, as in a drunken or drugged encounter? After someone became exclusively homosexual? For how long?

Once gayness was confirmed (whatever the confirmation process), would protected class status and all accompanying entitlements then become retroactive to birth?

In light of the extreme affluence of homosexuals relative to the general population, what would prevent opportunistic individuals from becoming closet heterosexuals, claiming homosexual status in order to secure benefits only available to legitimate minorities?

Under legislation granting special minority status to homosexuals, we can expect a plethora of nuisance suits and test cases to clog our legal system and bleed taxpayers and defendants dry financially.

From Selma to Sodom

Noted African-American civil rights leaders recognize the difference between their movement and the counterfeit of civil rights that homosexual activists have raised in their own interest:

"The equation of homosexuality with the noble history of civil rights in this country serves only to dilute, distort and denigrate true civil rights," says Dr. Anthony Evans, executive director of The Urban Alternative, America's

largest ministry to African-American families.

"'Gay rights' cannot be likened in any fashion to the black struggle for civil rights. 'Gay rights' is not, nor will it ever be, a civil rights issue, but rather a question of morality and individual values," says the Rev. Gill Ford, pastor of Salem Baptist Church in Denver, Colo.

An African-American church pastor in Kansas City, Mo., put it no less accurately, if a bit more colorfully: "The Freedom Bus that



went to Selma was never intended to go on to Sodom."

If having "divergent" sex becomes all it takes to be considered "ethnic," with special protection and privileges, the concept of ethnicity will soon lose all traces of meaning or value, these civil rights leaders say.

Tony Marco is founder of Colorado for Family Values. He has led a campaign to qualify a Colorado initiative that would prevent the state from granting special legal status to homosexuals. This article was excerpted from Special Class Protection for Gays: A Question of Behavior and Consequences, copyright 1991, Tony Marco.

END NOTES

1. Kirk, M., and Pill, E., Guide (a homosexual magazine in the Pacific Northwest), November 1987.

2. The U.S. Supreme Court established these three criteria through a number of decisions familiar to civil rights authorities: San Antonio Independent School District v. Rodriguez, 93 S.Ct. 1278, 1293, 36LED 2D16, 1973. Massachusetts Board of Retirement v. Murgia, 96 S.Ct. 2562, 2566, 49LED 2D520, 1976; Plyler v. Doe, 457 US202, 216, N14, p. 219-223, 102 S.Ct. 2382, 2394, N14, 2395-2397, 1982. City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 440-441, 105 S. Ct., 3249, 3254-55, 87LED1P21 313, 1985. The criteria have been affirmed by a federal district case: Jantz v. Mucci, March 29, 1991, 759 Fed.

Supp.1543. Also, *Frontiero v. Richardson*, 411 U.S. 677, 684-687, 93 S. Ct. 1764, 1769-1770, 36 L. Ed. 2d Ed. 583 (1973).

3. *Ibid.*

4. A July 18, 1991, Wall Street Journal article, entitled "Overcoming a Deep-Rooted Reluctance, More Firms Advertise to Gay Community," reported findings by the Simmons Market Research Bureau and the U.S. Census Bureau.

Other market research studies have been reported in recent issues of *The San Francisco Chronicle* ("Gay Market a Potential Gold Mine", August 27, 1991), *Travel Weekly* magazine ("For Gays, Ship Charters Are a Boon, Say Two Travel Companies", August 5, 1991), and a homosexual newspaper, *The Bay Area Reporter* ("Where the Money Is: Travel Indus-

try Eying Gay/Lesbian Tourism", September 19, 1991).

5. Statistical Abstract of the United States, 1990.

6. See endnote 1.

7. Bell and Weinberg, *Homosexualities: A Study of Diversity Among Men and Women*; op. cit.; Hammersmith, S.K., *Sexual Preference: Its Development in Men and Women*, Bloomington: Indiana University Press, 1981.

8. *Society of Subordinates*, Charles Tittle, Indiana University Press, Bloomington, IN, 1972, pp. 17.

9. *Ibid.*, p. 71.

10. LeVay, S., *Science*, 253 (1991): 1034.

11. Botkin, M., "Salk and Pepper," *Bay Area Reporter*, Sept. 5, 1991, pp. 21, 24.

12. See endnote 1.

Hidden Agendas

Biased Interpretations

Editor's Note:
This article was prepared by our staff, in conjunction with several medical researchers.

The nature-versus-nurture debate on the origins of homosexuality was front-page news following the 1991 publication of two articles on the subject. Simon LeVay, then a neuroscientist with the Salk Institute in La Jolla, Calif., noted differences in size of certain sex-related brain structures in homosexual men as compared to heterosexual men.¹

A second article, by Michael Bailey and Richard Pillard,² used a behavioral genetics approach, studying twins and other siblings of homosexuals. Although neither article was conclusive, and both studies had problems with methodology, perhaps the most salient factor was the authors' interpretation of their own data, which they biased toward the biological hypothesis.

Good science or bad fiction?

After LeVay's homosexual partner of 21 years died of AIDS, LeVay committed his career toward confirming his belief that homosexuality is biological destiny. His study was sparked by the earlier work of Roger Gorski, which identified two regions ("nuclei") in the anterior hypothalamus that were more than twice as large in men as in women.³ LeVay decided to compare brains from homosexual males with those of male heterosexuals to see if these nuclei differed in size in the two groups.

LeVay studied 41 subjects:

- 18 homosexual men and one bisexual man, all of whom had died of AIDS.
- 16 men, presumed heterosexuals, six of whom had died of AIDS, 10 of other causes.
- six women, presumed heterosexuals, one of whom died of AIDS, five of other causes.

LeVay chose not to count the number of cells, but to measure the volume of four cell groups in the interstitial nuclei of the anterior hypothalamus (INAH), thought to regulate male-typical sexual behavior. He found that the INAH 3 cell group was twice as

Recent studies show homosexuality is genetic, if you believe the media. But what does the data really say?

large in the presumed heterosexual as in the homosexual men or presumed heterosexual women.

In his *Science* study, "A Difference in Hypothalamus Structure Between Heterosexual and Homosexual Men," LeVay concluded: "This finding indicates that INAH 3 is dimorphic with sexual orientation, at least in men, and suggests that sexual orientation has a biological substrate."

In this report, the researcher pointed out that the data might not substantiate his conclusion because the smaller cell size could have been one effect of AIDS, or possibly a consequence of homosexuality rather than its cause. But news stories typically presented his study as proof that these apparent brain differences showed that sexual preference is biologically determined. LeVay, himself, in magazine articles and talk shows, did little to discourage such use of his findings, choosing instead to affirm that homosexuality has a biological basis. Further dedicating himself to his own agenda, LeVay has since left Salk to become co-director of the West Hollywood Institute for Gay and Lesbian Education, which when it opens this fall will be one of the first schools in history devoted to homosexual studies.⁴

LeVay's study had numerous potential flaws:

1. Method of measurement—volume instead of cell count—leaves the study findings open to future contradiction. Researchers

differ over which is the most reliable measure.³

2. Hypothalamus sizes were somewhat relative—generally smaller among homosexuals—but not all equally small.⁴

3. Unreliable subject history data—sexual orientation was presumed, although sexual histories were not available.

4. AIDS patients' brains—AIDS might have caused cell abnormality.

5. Cause or consequence—even if INAH 3 sizes truly differ between homosexual and heterosexual males, there is no way to know whether this difference was a cause or effect.

6. Replication—no single study can ever be called definitive.

7. Uncertain implications—If homosexuality is biologically determined: Is it a third gender? Is it "natural," or a deficiency in need of treatment, as with other biological aberrations such as diabetes?

8. No animal precedent. The study of the relationship between brain structures and sexual behavior in humans is based on experiments with rats. If homosexuality were biologically determined, at least some animals would exhibit this behavior. Instead, it is an entirely human phenomenon.⁷

Axe-grinding inquiry

Researchers Bailey and Pillard also set off in search of the genetic factor in homosexuality. They recruited homosexual males through ads in homosexual publications, seeking those who were one of a pair of twins or who had either biological non-twin brothers or adopted brothers. By comparing the rates of homosexuality among these male siblings, they hoped to demonstrate a biological link in terms of sexual preference.

The results told a different tale. Of the identical twins, only 52 percent were both homosexual, effectively disproving a complete genetic determinative factor. In fraternal twins, only 22 percent were both homosexual.

But the most telling statistics found only 9.2 percent of the non-twin biological brothers were also homosexual, even though they shared the same degree of genetic likeness as fraternal twins. Further threatening the idea of a genetic link, an even higher number (11 percent) of the adopted siblings were homosexuals.

Undeterred by the facts (and their own caveats in their research), Bailey and Pillard interpreted their findings as conclusive for a genetic determinant in an article they wrote for *The New York Times*.⁸ They argued that since more of the identical twins were gay than were fraternal twins, there must be a genetic link. They ignored the caveats in their original research study, perhaps because their real agenda was to proclaim that homosexuals should not be "oppressed."

"Science is rapidly converging on the conclusion that sexual orientation is innate," they wrote. "If true, a biological explanation is good news for homosexuals and their advocates. Our own research has shown that male sexual orientation is substantially genetic. Homophobes sometimes justify their prejudice against homosexuals by alleging that homosexuality is . . . a social corruption. . . . If homosexuality is largely innate, this would prove these claims are groundless."

Ever consistent in their inconsistency, after defending homosexuality as innate, Bailey and Pillard plead for more acceptance even if it is not: "Should a benevolent view of homosexuality depend on the assumption it is innate?" they ask. "Are gays and lesbians to be tolerated only if they are born that way?"

Defects in the Bailey-Pillard study:

1. Sampling error. Subjects were found through homosexual publications. Participants volunteering as a result of these ads might be more likely to be activist, if not militant, than are those

who never saw the ads.

2. Study was not blind. Subjects were probably not blind to the study's objective. They could have observed how the study was investigating rates of different types of sexual orientation among their male relatives, thus providing further opportunity for skewed findings.

3. Design. The study was inadequate for making biological interpretations. Anne F. Stirling, a developmental biologist at Brown University, noted that more valid and valuable data on the heredity versus environment debate would have been garnered by studying twins raised apart. "It's such badly interpreted genetics," she commented.⁹

4. Further lack of expected evidence. Questionnaires designed to measure childhood gender non-conformity (CGN) also failed to predict a genetic predisposition to homosexuality. The authors hypothesized that biological male siblings, constitutionally similar to the homosexual subjects, would share a similar CGN. Yet this was true only in the case of identical twins. Bailey and Pillard admitted they found "no evidence that the presence of gender nonconformity increases the likelihood of finding homosexual relatives."¹⁰

Media hype-overly

Despite the fact that the study data can lead to several different conclusions—including the lack of a genetic link and the importance of environmental factors—the media had a heyday with these reports. *The Washington Post* presented Bailey and Pillard's study as conclusive for a biological determinant. The front page headline proclaimed: "Genes Tied to Sexual Orientation: Study of Gay Men Bolsters Theory."¹¹

Time magazine's Jan. 20, 1992 cover story "Sizing Up The Sexes," ran the subhead: "Scientists are discovering that gender differences have as much to do with the biology of the brain as with the way we are raised." A month later, *Newsweek* ran this title superimposed on the full-page face of an unidentified toddler: "Is this Child Gay?"¹²

Both of these articles featured the studies in question. Co-author Pillard is quoted, "A genetic component in sexual orientation says. 'This is not a fault, and it's not your fault'"¹³.

LeVay's prejudice is clear enough when he admits, "I felt if I didn't find anything, I would give up a scientific career altogether"¹⁴.

The bias of the authors of the *Newsweek* article is also clear when they say, "Yet the intimation that an actual gene for gayness might be found causes some forboding. If there is a single, identifiable cause, how long before some nerdy genius finds a 'cure'"¹⁵.

Whether or not a genetic basis for homosexuality is ever discovered, one thing will prove true over time regarding the two studies we've evaluated in this article: misinterpreted science will backfire. Biased utilization of data by agenda-driven journalists, politicians, special interest groups and even researchers may achieve some short-term triumphs, but truth will conquer distortion when the dust settles from this area of research, or any other. ■

□ ○ | { §

1. Simon LeVay (1991) A Difference in hypothalamic structure between heterosexual and homosexual men. *Science*, 253, 1036

2. J. Michael Bailey and Richard C. Pillard (1991) A genetic study of male sexual orientation. *Archives of General Psychiatry*, 48, 1093

3. David Gehman, Donna Foote, Todd Barrett and Mary Talbot. (Feb. 24, 1992). Born or bred? *Newsweek*, 50

4. *Ibid.*, 49

5. News & Comment. Is Homosexuality Biological? (1991) *Science*, 253, 957.

6. *Ibid.*

7. *Ibid.*

8. Michael Bailey and Richard Pillard (Dec. 17, 1991). Are some people born gay? *The New York Times*, editorial section

9. *Newsweek*, op. cit., 40

10. *Ibid.*

11. *Ibid.*, 49

12. *Ibid.*, 40

Family

Sexual Disorientation

Faulty Research in the Homosexual Debate



s homosexual activists seek to gain acceptance of their lifestyle, the public debate has been

clouded by flawed research, surveys taken out of context, and suspicion on both sides. Homosexual activists have presented long-discredited data and questionable studies as "fact." They have been given wide coverage by various media outlets, which often appear embarrassingly unfamiliar with (or openly hostile to) valid scientific criticism of major claims made by homosexual activists. These include:

- The assertion that 10 percent of the population is homosexual;
- The argument that homosexuality is an immutable, genetically-based sexual orientation; and
- The portrayal of the homosexual lifestyle as indistinguishable from traditional lifestyles based on family-centered, monogamous, heterosexual marriage.

The 10 Percent Myth

It is routinely reported that 10 percent of the population is homosexual. But such a statement ignores a number of recent studies which show that the incidence of homosexual behavior in the general population is less than three percent and may be as little as one percent.

The 10 percent figure is derived entirely from the

The incidence of homosexual behavior is less than three percent and may be as little as one percent.

studies of pioneer sex researcher Alfred C. Kinsey, an Indiana University zoologist, who authored *Sexual Behavior in the Human Male* in 1948,¹ and *Sexual Behavior in the Human Female* in 1953.² Based on 12,000 individual interviews conducted by Kinsey and his

staff, Kinsey estimated that 10 percent of males are homosexual for at least three years during a portion of their lives. For females, Kinsey said, the figure was less than five percent.

Despite a number of questions about Kinsey's methods and ethics (see sidebar on page 3), Kinsey's findings have taken on a life of their own. They have been quoted approvingly by cultural architects such as *Playboy* publisher Hugh Hefner, and repeated without qualification by dozens of mainstream publications.

To cite a few recent examples using the 10 percent figure:

- *Newsweek* magazine, in a recent article on gays in the military, reports that "like the population at large, the armed forces are 10 percent gay;"³
- In his book, What You Can Do to Avoid AIDS, Magic Johnson writes, "Many experts believe that 10 percent of the population is gay and lesbian."⁴
- *Parade* magazine, which has a weekly circulation of 36 million, recently ran a story which cited "the estimate of 10

TESTIMONY OF R. STEPHEN WHITE
IN OPPOSITION TO
HB 547

My name is Steve White. I am a fifth generation Montanan, and am speaking in opposition to HB 547.

The contention by proponents of HB 547 that Montana's Human Rights Laws need to include "perceived sexual orientation" as a civil right is inapplicable. In order for equal protection to attach there must be first, an identifiable "suspect class", and two, that the "suspect class" must be treated dissimilarly by the statute in question.

A "suspect class" is a group of people who share common, recognizable "immutable characteristics" and because of such distinctive traits, are given special treatment by law. Examples of such traits are race, gender, and national origin. Neither homosexuality nor sexual preference is considered a suspect class by any U.S. or Montana Supreme Court decisions. See, *Palmer v. Sodoti* (1984), *Craig v. Boren* (1976), *Graham v. Richardson* (1971), *Mathews v. Diaz* (1976). Homosexuals do not constitute a constitutionally recognizable class as required by law, because they are not distinguishable from the rest of society by certain objective "immutable characteristics" such as race, gender, or national origin. Shared attitudes of preferences of any kind does not establish a recognizable class, because they are subject to change. (*Buchanan v. Kentucky* (1987)).

Recently when HB 215 was introduced, the citizens of Montana made their voices heard here in Helena. To consider the addition of "perceived sexual orientation" to our present Human Rights Laws, a behavior which is presently illegal, makes no sense.

As a business owner I have employed a homosexual, maybe even more than one. This individual was a good worker, and I treated him no differently than any other employee. But I am sure I would be at risk if he were to have discovered that I was morally opposed to his sexual behavior. I would fear that if after a fair analysis of his work, he had to be dismissed, it could be perceived that he was terminated because of perceived reasons. Working with an over zealous lawyer wishing to prove his point using this proposed law change, I would find myself in an expensive court battle.

Homosexuals have the same legal rights that all individuals currently have under law, (i.e. the right to vote, freedom of the press, freedom from unlawful arrest, the right to make contracts,

etc.) It is wrong for homosexuals to imply that they lack adequate civil rights without the special provisions which are in this bill.

This is the fourth piece of legislation introduced in this session. I have attended every hearing. We were told in HB 215, that there was no agenda involving that bill. SB 236, the sexual harrasement bill, the same thing was stated. And more recently, testimony regarding the hate crimes bill, HB 416, assured us that there was no agenda. These four bills together address every element of the gay agenda.

This bill, HB 547, grants special civil rights to individuals which have elected to conduct themselves in a way which is contrary to current Montana statute. I urge you to oppose the modification of our current human rights law, by voting against HB 547.



ANOTHER VOICE: INTOLERANCE IN THE NAME OF TOLERANCE

If the Boy Scouts can't live by their traditional values, who can?

We Americans are litigious, to be sure, but there really ought to be a limit.

In court rooms in Illinois and California, the Boy Scouts of America have been fighting off lawsuits designed to force them to drop their "Boy Scout Oath" and to admit an openly homosexual man as a troop leader.

Founded in 1910, the Boy Scouts are a pervasive feature of the landscape of American youth. This year is the 75th anniversary of the Scouts' congressional charter. Membership now runs over 5 million, including the present writer.

For the members, their families and the many others that they have helped, the Scouts are devoted to values as grate-sold as Pinckham North in the White Mountains of New Hampshire or the Grand Tetons in the Wyoming Rockies.

But now, there are those who want to change all that.
What is Scouting's offense? Well, look at the Boy Scout Oath: a simple declaration of what has passed for centuries as basic civic virtue, a 40-word commitment: "To do my best to do my duty to God and my country."



GARY L. BAUER

Gary L. Bauer is president of the Family Research Council. He was formerly a domestic policy adviser to President Ronald Reagan.

"to help other people at all times," and "to keep myself physically strong, mentally awake, and morally straight."

Two of the suits have been brought on behalf of would-be Scouts who refuse to pledge "duty to God." The other involves a homosexual adult who charges that the Scouts have declined to make him a troop leader because his lifestyle violates the rule that members be "morally straight" and "clean." Each of the suits alleges various

statutory bases, including the California "human rights" law and the Federal Civil Rights Act of 1964.

While the courtroom combat turns on such issues as whether the Scouts are a "private volunteer movement," a "public accommodation" or a "business establishment," the underlying issues are more profound. If a voluntary, traditional, nonprofit organization like the Boy Scouts of America cannot set its own standards and guidelines, then arguably no private association can.

The litigants claim that Scouting will be no less a good thing if it just adjusts to a lower common denominator. Supporters of the suits (the American Civil Liberties Union prominent among them) argue that Scouting virtues like honesty, kindness and reverence will endure no matter who says the oath or leads the troops on hikes and field trips.
So they may — but what about certain other values? Two in particular — belief in God, and belief that homosexuality is out of keeping with the order of nature that God



SUNG SCOUTS: Vietnam and Michael Faraday, 9, don't want to swear to God.

ordained for mankind — will have been dealt deadly blows if these lawsuits succeed. The less controversial values — honesty, kindness and an unfocused, undefined "reverence" — will survive, because the ACLU and its allied litigants are willing to let them survive. But values that smack of moral and/or religious tradition will be branded with something like outlaw status.
The law need not necessarily prefer traditional values over liberal values, but it

ought to protect the rights of groups like the Scouts to live by traditional values if they so choose. The right to associate with others for the furtherance of shared values is anchored in the First Amendment. Yet these litigants wish to limit that right in the name of tolerance.

Tolerance used to mean living and letting live. But for a certain type of activist today, it means making lists of "intolerant" attitudes, views and opinions — and stamping them out. That's the modern idea of "diversity": everyone gets to be a liberal!

One by one, activist attorneys are tracking down the hideouts of traditional values and suing them for "discrimination." This time the Boy Scouts' number came up.
Fortunately, Judge Sally G. Disco in California, ruling in one of the cases, recognized the Scouts' right to define themselves.
But until our society and our law learn to respect the right of group self-definition the way Judge Disco did, every organization or association that is not already in lockstep with the social-liberal agenda will have to ask itself: Are we next?

EXHIBIT 1
DATE 2-17-93
SR HB 547

Jan.-Feb. 1992

nambla

Vol. 13 No. 1

BULLETIN

VOICE OF THE NORTH AMERICAN MAN/BOY LOVE ASSOCIATION

\$3.95



*Why does the "No Special Rights" initiative include Pedophilia
Because the "Gay Rights" movement includes Pedophiles.*
The North American Man/Boy Love Association

CONSTITUTION AND POSITION PAPERS

The Constitution was adopted by the membership in December, 1980.

The North American Man/Boy Love Association (NAMBLA) is an organization founded in response to the extreme oppression of men and boys involved in consensual sexual and other relationships with each other. Its membership is open to all individuals sympathetic to man/boy love in particular and sexual freedom in general. NAMBLA is strongly opposed to age-of-consent laws and other restrictions which deny adults and youth the full enjoyment of their bodies and control over their lives. NAMBLA's goal is to end the long-standing oppression of men and boys involved in any mutually consensual relationship by:

- 1) building a support network for such men and boys;
 - 2) educating the public on the benevolent nature of man/boy love;
- ...with the lesbian, gay, and other movements for sexual liberation;

*Copyright © 1992 NAMBLA
No membership section*

The Cavender Network

Oregon's Lesbian and Gay Newsmagazine

PERSONALS

Unlike the Marines, I am not looking for a few good men to send them off to the war in the Gulf. Rather, I like men

GWF 46 touch, share wumminly warmth and wit with me. Intelligence and loyalty are the Goddess gifts that bond us. We'll seek simple and sophisticated adventures, reveling in the joyous appreciation of us. Pen/TIN Box #245

27 y/o GWM 5'8", 140 lbs, brown hair, green eyes...looking to meet someone interested in life outside the bars. I am romantic, handsome, honest, seeking new friends...possible lover. TP#19001A

Oregonian April 18, 1992

Portland man jailed in molestation case

By DAVE HOGAN
of The Oregonian staff

Portland Police have arrested a former Boy Scout leader on accusations that he fondled and sodomized two boys in his Southeast Portland apartment.

Dennis E. Payne, 40, was being held in the Justice Center jail Friday on four counts of third-degree sodomy and two counts of endangering the welfare of a minor.



PAYNE

Payne was an assistant leader for a Boy Scout troop in Newberg from 1984 to 1986, but he has not been involved in the organization since that time, said Douglas S. Smith Jr., scout executive for the Boy Scouts of America Columbia Pacific Council.

Police arrested Payne Thursday after searching his apartment and two storage lockers at 1910 S.E. Ash St., said Sgt. Derrick Foxworth, spokesman for the Portland Police Bureau.

In the search, investigators seized several items, including a note to Payne from the North American Man/Boy Love Association and a blue binder with "a manuscript to Jim Regier," Foxworth said.

James Regier was a Gresham

middle school teacher who jumped to his death from Portland's Vista Bridge three days after he was arrested in March 1991 on charges of sex abuse and dealing in child pornography.

Two boys, ages 11 and 15, told police earlier this month that Payne had fondled or orally sodomized them at his apartment on several occasions since meeting him in early 1991 at a Southeast Portland game arcade. The boys said they sometimes ran away from home and stayed overnight with Payne, Foxworth said.

After serving as assistant leader for a Boy Scout troop in Newberg from 1984 to 1986, Payne moved to California, said Smith of the Boy Scouts of America.

Payne returned to Oregon in 1988, but scout officials denied his request to resume scouting activities, Smith said.

"We heard some information that made us believe he did not meet our standards as a leader, so in the spring of 1988 we denied his application to return to scouting," Smith said.

Smith said that he could not discuss details of the information about Payne, but he said "it wasn't sexual in nature" and it had nothing to do with anything he did while he was involved in scouting.

"I don't have on record any allegations of a sexual nature (regarding Payne) nor do I have any allegations of misconduct as a scout leader," Smith said.

GWM; 40, 6', 165#, good body, young hearted, fun, dancer, talented, masculine, serious relationship minded replies only, from ages + or - 30-38, good looking men only, no phones please. I have a lot to offer to the right person. TP#19002A

\$F Dominant; attractive, petite, brunette, sexually experienced, non-butch-seeks health-conscious Femme for relationship. We make it how we want it. (Eugene Area) TP# 19003A

Lesbian, young 46, honest, good sense of humor, enjoys life, love and the pursuit of happiness. Looking for friends and someone special to share these things. TP# 19004A

GWM, 60, 6'+, 180# wants a dance partner in Eugene area. Other sensual and enjoyable life experiences are also possibilities. TP# 19005A

SERVICES

Colon Cleaning & Delox sessions available in PDX - Write, CM, PO Box 6415, Portland, OR 97228-6415.

TRAVEL

Male seek same to vacation with: long-week ends and week-long vacations desired. Must be playful, fun, good sense of humor, and spontaneous. Call 503-796-1592

ORGANIZATIONS

Man/Boy love. NAMBLA seeks justice for men and boys interested in consensual relationships. Our monthly Bulletin features news, fiction, letters, pictures. Mailed discreetly. Subscribe! \$25/year NAMBLA, Dept. LN, POB 174, NY, NY 10018.

Continued On Page 70

EXHIBIT 10
DATE 2-17-93
SB HB 547

Testimony of John T. Lewis
To HOUSE COMMITTEE
Montana State Legislature
Capitol Building
Helena, Montana

February 17, 1993

Re: H.B. 547
Special Rights for
Special Interests
(Amendments to Civil
Rights)

Mr. Chairman: Members of Committee: Opponents and Proponents:

This is my testimony as an OPPONENT of House Bill 547.

As I understand it, the homosexuals and other life stylists of the same persuasion are pushing hard to obtain special rights for themselves.

It didn't work in Colorado, according to the vote of the People, except by the citizens being overridden by a corrupt judge.

Special rights for special interest groups, or individuals, is a concept we left behind in Europe. Such privileges were reserved for nobility and royalty.

I think I am not alone in believing God's Word, the Bible, and the original intent of our Founding Fathers, as spelled out in the United States Constitution. These must be the guiding light for any lawmaking that is accomplished here.

Homosexuals are citizens; straight people are citizens: We all have the same rights.

The Preamble of the Constitution does not say: "We" the People of the United States, in order to (dissolve) a more perfect union, (subvert or pervert) justice, (destroy) domestic tranquility, (tear down) the common defense, promote the general welfare (for just a few), and (throw) the blessings of liberty . . . (out the window). "

We will have taken one more of many, many steps in that direction if this bill is approved.

Article I, Section 9 of the Constitution prohibits the granting by the United States (or any State) a Title of Nobility. I think the intent of the founders is that no person be granted rights or immunities superlative to those of other citizens.

The Bible is clear on God's original intent: In Genesis he made man and then woman. To quote Dr. Ken Ham of the Institute for Creation Research God didn't make "Adam and Steve".

We are thankful that we have legislators who will use their common sense, when special interests wish to do, what could be fatal surgery on our Constitution and our codes.

Respectfully submitted,

John T. Lewis
Bozeman, Montana



AMENDMENTS TO HOUSE BILL 487

1. Page 1, lines 8
Following: "SET"
Strike: ACTUARIALLY SOUND

2. Page 1, line 9
Following: ";"
Insert: "PROVIDING FOR SUBROGATION;"

3. Page 1, line 24
Following: "benefits"
Strike: "and"
Insert: ", "

4. Page 1, line 24
Following: "set"
Strike: "actuarially sound"

5. Page 1, line 25
Following: "benefits"
Strike: "and services"
Insert: "and authorize subrogation by a workers' compensation insurer, without regard to full legal redress, where an injured worker recovers against a third party responsible for the worker's injury."

6. Page 2, lines 11 through 14
Following: "FOR"
Strike: the remainder of line 11 through line 14 in their entirety.
Insert: "for allowing the legislature to set eligibility criteria for workers' compensation benefits, set limits on the duration and level of benefits and authorize subrogation by a workers' compensation insurer, without regard to full legal redress, where an injured worker recovers against a third party responsible for the worker's injury."

7. Page 2, lines 15 through 18
Following: "AGAINST"
Strike: the remainder of line 15 through 18 in their entirety.
Insert: "for allowing the legislature to set eligibility criteria for workers' compensation benefits, set limits on the duration and level of benefits and authorize subrogation by a workers' compensation insurer, without regard to full legal redress, where an injured worker recovers against a third party responsible for the worker's injury."

Homebuilders Assoc. of Billings
252-7533

S.W. Montana Home Builders Assoc.
585-8181

Falls Homebuilders Assoc.
IOME



Flathead Home Builders Assoc.
752-2522

Missoula Chapter of NAHB
273-0314

Helena Chapter of NAHB
449-7275

EXHIBIT 12
DATE 2-17-93
SB HB 487

Nancy Lien Griffin, Executive Director
Suite 4D Power Block Building • Helena, Montana 59601 • (406) 442-4479

HB 487

Submitting to Voters Constitutional Amendment Allowing Legislature to Set Worker's
Compensation Benefits and Eligibility Criteria

Recommend:
Do Pass

Mr. Chairman: Ladies & Gentlemen of the Committee:

I am Harlee Thompson, manager of Intermountain Truss in Helena, and a delegate from the Montana Building Industry Association to the Coalition for Worker Compensation System Improvement (CWCSI).

HB 487 is a critical component of this committee's efforts to implement real change in Montana's Work Comp system. We have seen in previous legislative sessions attempts to control the number of injury cases which find their way to Montana's court system. These attempts have virtually all met with failure, because of court rulings which are counter to legislative and public intent.

This proposed constitutional amendment allows the people of Montana to determine which political entity should hold authority for the determination of worker's compensation benefits and eligibility criteria. You have seen the voters of Montana in a near state of rebellion concerning the amount of public debt created, in part, by a high number of court settlements in excess of scheduled benefit payments. It is the Legislature, and the Montana voters who elect them,--not the court system-- that has responsibility for this liability.

It has become impossible for insurer's to predict in a sound actuarial manner rates and benefit liabilities when the establishment of those criteria is subject to the whims of the court system, where the party with the best attorney is most likely to prevail.

It is not the intent of this legislation to limit the rights of workers to full compensation for the full extent of their injury. It is an attempt to let the people of Montana give to the Legislature authority to set benefit criteria which are in realistic proportion to revenues received. This legislation does not limit the rights of the worker to sue for negligence or any other civil tort action, it only prevents the court from legislating Work Comp benefits and eligibility criteria.

Montana Trial Lawyers ASSOCIATION

- Directors:
Wade Dahood
Director Emeritus
Monte D. Beck
Thomas J. Beers
Michael D. Cok
Michael W. Cotter
Karl J. Englund
Robert S. Fain, Jr.
Victor R. Halverson, Jr.
Gene R. Jarussi
Peter M. Meloy
John M. Morrison
Gregory S. Munro
David R. Paoli
Paul M. Warren
Michael E. Wheat

Executive Office
#1 Last Chance Gulch
Helena, Montana 59601
Tel: 443-3124

- Officers:
Thomas J. Beers
President
Monte D. Beck
President-Elect
Gregory S. Munro
Vice President
Michael E. Wheat
Secretary-Treasurer
William A. Rossbach
Governor
Paul M. Warren
Governor

February 17, 1993

Rep. Russell Fagg, Chair
House Judiciary Committee
Room 325, State Capitol
Helena, MT 59620

RE: HB 487

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to HB 487, which asks voters in the next general election to approve constitutional amendments regarding workers compensation. MTLA opposes the bill for several reasons:

1. The bill as drafted means what it says and nothing more. Attorneys are often accused, and often justly, of reading into law meaning that was never intended. In this case, however, MTLA believes that the new language at page 1, lines 23-25 of the bill adds virtually nothing to current workers compensation law. Of course "[t]he legislature may set eligibility criteria for workers' compensation benefits"--it's been doing precisely that for decades. And of course the legislature has the authority--if not the capability--to "set actuarially sound limits on the duration and level of benefits and services," at least for the State Fund if not for private insurers and self-insurers. (Note, though, that even benefits capped at \$1 per year can be "actuarially sound.")
2. If proponents of HB 487 assume that the amendment on page 1, lines 23-25, will prevent the Montana Supreme Court from reviewing workers' compensation statutes enacted by the Legislature, they are mistaken. Nothing in the new language operates to do so. Nothing in the new language conflicts with existing constitutional principles of equal protection, due process, or the essential nature of workers compensation as a broad bargain between employers and employees. If proponents of HB 487 want to insulate legislation from court review, they should say so directly to this committee and to the voters who must consider a constitutional amendment:

TESTIMONY IN SUPPORT OF HB624
ANNE L. MACINTYRE, ADMINISTRATOR
HUMAN RIGHTS COMMISSION
February 17, 1993

Bill Title

An act revising the procedural provisions of the human rights laws to extend the period for filing of complaints concerning discrimination in employment, public accommodations, housing, financing and credit, education, state services, insurance, and retirement plans; revising procedures for pursuing complaints in court; amending sections 49-2-501, 49-2-504, 49-2-509, 49-3-304, 49-3-307, and 49-3-312, MCA; and providing an effective date and an applicability date.

Purpose

The purpose of this legislation is to revise the procedures for pursuing human rights complaints both before the Commission and in court to provide for more consistent procedures between the different types of cases. Specifically, the bill allows the complainant to file a complaint directly in district court rather than being required to file with the Commission and waiting for 12 months before a court complaint can be filed. The bill also extends the time for a complainant to file a complaint from 180 days to one year.

Background and Rationale

Representative Cobb has introduced HB624 at the request of the Human Rights Commission. The bill is a technical procedural bill which does three things:

1. First and foremost, it eliminates the requirement that complainants file discrimination complaints with the Human Rights Commission before the complaints can proceed to court. This is primary reason Representative Cobb is carrying this bill. The growth in the number of cases being filed with the Commission exceeds the capacity of the agency to handle the cases without increased resources and Rep. Cobb is particularly sensitive to this problem because he has served on the subcommittee which considers the Commission's budget for several years. Section 3 of the bill allows direct court filing of complaints arising under Title 49, chapter 2, MCA, by eliminating the existing requirements for filing a complaint in district court at page 5, line 3 through page 7, line 4. Section 3 then inserts new language concerning the filing of complaints in court at page 7, line 5, through page 8, line 9. Section 7

of the bill makes the same set of changes for complaints arising under Title 49, chapter 3, MCA.

2. Second, HB624 modifies the statute of limitations for filing discrimination complaints to make it consistent with other laws. This change occurs on page 3, line 8 of the bill for complaints arising under Title 49, chapter 2 and at page 9, lines 23-24 for complaints arising under chapter 3. When the human rights laws were enacted in the mid-1970s and continuing until 1991, the statute of limitations for filing all types of complaints with the Commission was 180 days. In 1991, the legislature substantially amended the housing discrimination provisions of these laws to attain conformity with changes in the federal law. One change required for federal conformity was to extend the length of time allowed to file housing discrimination complaints to one year. In the opinion of the Commission staff, it is difficult to justify a difference in the length of time allowed to file different types of complaints arising under the same law against an equal protection claim. It also makes administration of the laws more difficult. Since we cannot shorten the period of limitation for housing complaints, we are requesting that the period be increased for other complaints.

HB624 also makes the court filing provisions for housing and non-housing complaints consistent.

The statute of limitations for non-housing complaints under the human rights laws is the shortest in any statutes I am aware of. The statute of limitations for wrongful discharge complaints, for example, is 1 year, the same as the limitation period would be to file with the Commission under HB624.

3. HB624 eliminates the concept of removal to court, commonly referred to as issuance of a "right to sue letter" from the procedural provisions of the human rights laws. This is accomplished by striking the language at page 5, line 3 through page 6, line 1 and similar language at pages 11-12. The concept of obtaining a right to sue makes sense only if the complainant is required to file with the Commission in the first instance.

The Human Rights Commission is a neutral adjudicative agency for discrimination complaints filed under the Montana laws prohibiting discrimination in employment, housing, public accommodations, and other areas based on race, color, national origin, sex, marital status, familial status, age, physical or mental handicap, creed, religion, and political beliefs. The legislature has assigned enforcement of these important rights to an administrative agency for several reasons:

1. The legislature believes it is important to have an administrative agency involved in adjudication of these important rights because the public interest in eliminating discrimination is very important. The agency is charged with the elimination of discrimination in the cases in which it finds that the law was broken.
2. The legislature believes it is important to assign adjudication of these matters to a body with expertise in the particular area of law.
3. The legislature wants a speedy, efficient remedy for discrimination cases.

The existing law requires that discrimination complaints be filed with the Commission and establishes a two step process for the Commission to handle the complaints. In the first step, the Commission staff investigates the complaints and attempts to resolve them through mediation. If the case is not resolved at the informal stage, the Commission, acting as a quasi-judicial body, holds a hearing. A court alternative to the administrative hearing exists if the complaint has been filed with the Commission for more than 12 months and the Commission has not yet held a hearing and in certain other circumstances.

The Commission would not be requesting this legislation were the system working as the legislature intended. Over the past 5 years, however, the system for handling discrimination complaints has become overloaded. The number of new complaints filed annually with the Commission has increased from 294 in FY88 to 551 in FY92, an 87% increase. We are expecting an even larger number of new filings in the current fiscal year. As of January 31, we had 347 cases which could not even be assigned for investigation. We have 4 investigators who can process approximately 100 cases per year. Despite this very high level of productivity for agencies like ours, the system needs a mechanism to address the workload overload.

Obviously, this bill will not eliminate all of the problems associated with the growth in workload. It will, however, eliminate a particularly unfair aspect of the system for those complainants who would prefer to take their complaints to court in the first instance. It makes no sense to have them be required to file with the Commission, wait for 12 months, then go to court if the Commission has no chance of completing its processing in that time. It will also remove some of the inconsistencies which now exist between housing cases and non-housing cases, and I respectfully request that the Committee give it a do pass recommendation.

I also want to call the Committee's attention to a problem with the bill. At page 8, lines 20-21, the bill allows for a court to

EXHIBIT #14
DATE 2-17-93
HB-624

award punitive damages in a discrimination case brought in court under Title 49, chapter 2. In preparing my testimony last night, I was surprised to see this provision, even though my office drafted this bill. My recollection is that the Commission staff had decided not to include this provision in the final draft of HB624. The fact that it is not included in the similar section at page 15, line 6 bolsters my recollection that we had decided not to include that provision. Punitive damages are required in the housing procedures as a federal conformity issue and are included at § 49-2-510(6), MCA. The decision whether to include them in this bill is a policy question for the legislature. My only concern is that we maintain consistency between chapters 2 and 3 on this point, so an amendment is required to either the language on page 8 or the language on page 15.

I also have several very minor amendments for clarification. The bill does not amend the procedures for complaints of housing discrimination, but somehow the word "housing" was included in the title. Since we are attempting to make the procedures for all other types of complaints consistent with the procedures for housing, the word "housing" should be stricken from the title. My second amendment amends the catchline of § 49-2-501, MCA.

EXHIBIT 15

DATE 2-17-93

SB. HB 624

Amendments to House Bill 624 (introduced copy)
Prepared by Anne L. MacIntyre
February 16, 1993

1. Title, line 8.

Strike: "HOUSING,"

2. Page 2, line 20.

Following: "Filing complaints" (catchline)

Insert: "with commission"

Amendments to House Bill 610 (Whalen)

1. Page 10, line 2.
After: "penalties"
insert: ", costs, and fees"
2. Page 15, line 6.
After: "~~not~~"
insert: "not"
3. Page 16, line 15.
After: "patient's"
insert: "or resident's"
4. Page 17, line 5.
After: "board"
insert: "or appropriate court of law"

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. HJR 72
DATE Feb. 17, 1993 SPONSOR(S) W. Brown

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Dave Brown	Sponsor - HD #72	X	
Don Hutchinson	Paul Clark Home Paul Clark Home Treasurer	X	
Gretchen Leppheimer	V.P. - Paul Clark Home	X	
Lowell Boretels	Paul Clark/McDonald home	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. HB 487
DATE Feb. 17, 1993 SPONSOR(S) R. Brandewie
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Harlee Thompson 1532 Concord Helena	CWCSI MBIA	X	
Charles R. Brooks	MT Retail Assoc	✓	
Don Allen	CWCSF	✓	
JAMES TWILGER	MT CHAMBER	✓	
Steve Turkiewicz	MT Auto Dealers Assn	✓	
Nancy Butte	State Fund	✓	
Oliver Co	MMA, MACE MSEA	✓	
Jacqueline Denmark	AIA	✓	
Russ ORBILLO	MTLA		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. HB 547
 DATE Feb. 17, 1993 SPONSOR(S) Ream

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
MAXINE HOMER	Christian Church Disciples of Christ Women in MT	X	
Laurie Kottick	Christian Coalition of MT		X
Michael T. Swanson	Self		X
Ann Brodsky	self	X	
J.P. Crowley	self	X	
Walt Dupes	self		X
Scott Crook	NCIU	X	
E. Daniel Mills	Self & Daughter	X	
Al Kurki	self	X	
SHARON HOFF	MT CATH CONF	X	
Linda Sandman	Self	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary

COMMITTEE

BILL NO. HB 547

DATE Feb. 17, 1993 SPONSOR(S) Ream

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
HARLE WARRER	ASSN OF CHURCHES	X	
Ken Toole	Human Rights Net	X	
7 Donors			X
Russ McCurdy	Citizen		X
Bill McCurdy	Self		X
Hove Simpson	Montana Gay Health Proj	X	
Pat McCurdy	Repent (2)		X
Linda Croozan	self	X	
Cari Snell	self - Yacovatskian	X	X
John Hunt	self (American)		X
Phyllis Kefohn	self	X	
Tookie Walker	MPPF / self	X	
Ad Jones	self		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. HB 603
DATE Feb. 17, 1993 SPONSOR(S) J. J. Herron

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Chas. W. ...	The Newspaper ...		✓
TERRY SKILLMAN	Census Bureau		✓
MICHAEL McDonald Missoula	Montana USAA		✓
Al Kierki	self		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

