

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY

Call to Order: By **CHAIRMAN STEVE BENEDICT**, on March 26, 1997, at 3:18 PM, in Room 325.

ROLL CALL

Members Present:

Sen. Steve Benedict, Chairman (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Sharon Estrada (R)
Sen. Eve Franklin (D)

Members Excused: Sen. Fred Thomas (R)

Members Absent: None

Staff Present: Susan Fox, Legislative Services Division
Karolyn Simpson, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 365, 3/7/95
Executive Action: HB 365

{Tape: 1; Side: A; Approx. Time Count: 3:18 PM}

SENATOR SHARON ESTRADA made a statement of apology to **Jim Kembell** who testified at the hearing on HB 558.

HEARING ON HB 365

Sponsor: REP. DAN MCGEE, HD 21, Laurel

Proponents: Dr. Robert St.John, OB/GYN, Butte
Christine Helvik, self
Luke Keating, self
Sharon Hoff, MT Catholic Conference
Diane Denney, self, Kalispell
Tim Denney, self, Kalispell
Jo Ellen Zeigler, self, Kila
Walt Dupea, self, Big Fork

Charles Lorentzen, Flathead Pro-life, Kalispell
Jason Jordt, self, Kalispell
Verdell Jackson, self, Kalispell
Michelle Strickland, Kalispell
Susan Good, MT Assn. Right to Life
Arlette Randash, Eagle Forum
Laurie Koutnik, MT Christian Coalition

Opponents: Mark Miles, OB/GYN and Family Practitioner
Devon Hartman, Intermountain Planned Parenthood
Gayle Gutche, Missoula
Kirk Bond, American Civil Liberties Union
Kate Cholewa, MT Womens Lobby
Janet Crepps, Center for Reproductive Law & Policy
Christine Phillips, MT NARAL
Dakota Pritchett, self, Great Falls
Tara Mele, self
REP. DIANE SANDS, HD 66, Missoula
Sheena Wilson, self
Wade Sikorski, self
Madeline Aagenes, self, Helena
Christie Schwaitur, self
Roxanne Cole, self
Kagan Owens, self,

Opening Statement by Sponsor:

(EXHIBITS 1-12)

REP. DAN MCGEE, HD 21, Laurel, said HB 365 defines partial birth abortion and specifies that it is the doctor, not the woman, who is offender and outlines the penalties for performing the procedure. Referring to an illustration, he said this is what partial birth abortion is all about (see exhibit 3). He addressed the 12 issues listed on his testimony (see exhibit 1). Dr. Martin Haskell, who has performed thousands of these procedures, said that 80% of the abortions he has performed are elective, and 20% are for genetic reasons. The group of physicians known as Physicians' Ad Hoc Coalition for Truth (PHACT) (see exhibit 7), said there is no peer review safety data published and the procedure is not taught in medical schools. Dr. Warren Hern, who has authored a book called "Abortion Practice," has stated he has serious reservations about this procedure and he will not do them. Referring to page 2, line 8 of HB 365, abortions are not legal in Montana after the first 3 months of pregnancy, except necessary to preserve the life or health of the mother. The "health of the mother" is a problem because it includes a broad range of conditions. Under the guise of "health of the mother" abortions can be performed at eight and one-half to nine months because of the emotional or mental health of the mother. This is a dangerous procedure for the mother. They claim that only a few procedures are done each year, but reports from various medical facilities indicate the number of partial-birth abortions performed is in the thousands each year, and the majority of these procedures are elective.

Proponents' Testimony:

Dr. Robert St. John, Obstetrician/Gynecologist, Butte, said during his training in Oakland-Kaiser Hospital, he had contact with many women who had had abortions. He referred to steps 1-5 of a partial-birth abortion (see exhibits 2 and 3) and said a partial-birth abortion has no legitimate medical need to be done. In fact, it is a renegade procedure that has never been researched and there are no statistics about the safety, side effects or risks. Lies are being perpetuated about this issue. The procedure includes things that would never be done during a normal delivery. He described the procedure from dilating the cervix to killing the baby just before the head is delivered. Forced dilation of the cervix will cause trouble carrying a baby in subsequent pregnancies due to an incompetent uterus, which is a cervix that cannot hold the weight of the baby. The argument that the procedure will save a woman's fertility is false.

Christine Helvik, self, said she is a mother of seven, but only three are alive because the others died during the second trimester. She showed the picture of her son who died at 16 weeks of pregnancy. (EXHIBIT 13)

Luke Keating, self, said partial-birth abortion takes the life of a child for the life of the mother. (EXHIBIT 14)

Sharon Hoff, Montana Catholic Conference, said they support the bill and the points made by REP. McGEE and Dr. St. John are in her written testimony. (EXHIBIT 15) She discussed Roe v. Bolton from a brochure (EXHIBIT 16) and encouraged the committee to pass HB 365 as it stands and not to include the "health of the mother" because it can include so much. Also included is an article from the Washington Post. (EXHIBIT 17)

Diane Denney, self, Kalispell, said she is a teacher and mother of four boys. She urged the committee to pass HB 365.

Tim Denney, self, Kalispell, said he recommends the committee approve this bill.

Jo Ellen Zeigler, self, Kila, said she is the mother of five, miscarried one, and recommends passage of this bill.

Walt Dupea, self, Big Fork, said wants to see this bill passed. There is a mis-justice in law because if an eagle egg is destroyed, a person can be fined, and there are other protected things, but there has been a failure to protect the infant. How can it be justified to say an eagle egg is valuable and a child isn't? He urged passage of the bill.

Charles Lorentzen, representing Flathead Pro-life, Kalispell, said after the Congress took action on partial-birth abortions, they collected signatures of many people to urge President Clinton to reconsider his veto of the bill. He submitted written testimony and petitions. (EXHIBITS 18 & 19)

Jason Jordt, self, Kalispell, presented written testimony in support of HB 365. (EXHIBIT 20)

Verdell Jackson, self, Kalispell, said as a country, we need to take more responsibility. He said many people have not taken responsibility for what they do and are using abortion as a means of birth control. There is such a thing as abstinence.

Michelle Strickland, Kalispell, said she supports this bill because there is no way anyone can say this is a blob of tissue. It is a baby and could be a viable baby. She urged passage of the bill. (EXHIBIT 21)

Susan Good, representing Montana Association, Right to Life, said partial-birth abortions are a real bad idea. (EXHIBITS 22-31)

Arlette Randash, Eagle Forum, said many mothers have introduced her to their children, who were recommended to be aborted. One of the joys of her life is to partake in an advocacy to save lives. The people that we're trying to save are only inches from life.

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Laurie Koutnik, Executive Director, Montana Christian Coalition, said every baby born has value. When this issue came before the U.S. Congress, Senator Max Baucus and Representative Pat Williams voted against it, but Senator Conrad Burns supported it, and Representative Rick Hill supported it. She submitted written testimony, signed petitions, and a brochure. (EXHIBITS 32-34)

Opponents' Testimony:

Mark Miles, OB/GYN and Family Practitioner, Great Falls, said his concerns about this bill come from a personal nature because he practices a wide range of medicine including obstetrics, gynecology, infertility, family practice, and first and second trimester terminations. The wording of the bill is vague. It is contradictory regarding the so-called after viability which is referred to in previous standing statutes and HB 365 which refers to the living fetus. Provision is made for saving the life of the mother but there are gray issues involving fetuses that have no capability for life out of the womb, either from overwhelming chromosomal abnormalities or anomalies. There is no provision in this bill to give the mother the choice of this being her means of terminating what will not be a viable life out of the womb. This is not a new or renegade procedure and has been done safely in later term pregnancies since the late 1970's. There has been mention that this is an elective procedure. He has done hundreds of terminations and questions the term "elective" because none of these people approach this flippantly or as a means of birth control. He takes issue with the statement that women will terminate a pregnancy, especially term pregnancies, with anything but an incredible amount of soul-searching. The general spirit in the Nation and in Montana is wanting less government intrusion into people's lives, yet this is something that will amplify

government intrusion. He said he hopes the committee will not take this stand against the women of Montana.

Devon Hartman, women's health nurse practitioner, Intermountain Planned Parenthood, Helena, said the testimony by the proponents focused mainly on the fetus and she wants to focus on the woman. She read a letter from a woman who represents the women who are counselled in their clinics. **(EXHIBIT 35)** Legislators should not be making medical decisions. This law jeopardizes women's health by undermining a physician's ability to determine the best course of treatment for a patient. Many major medical organizations oppose bans on this procedure, including the American Public Health Association, American Nurses Association, American Medical Womens Association, and American College of Gynecologists and Obstetricians. Intermountain Planned Parenthood has worked for almost 30 years to promote and protect women's health care in Montana.

Gayle Gutche, self, Missoula, said she opposes this bill because the legislature has no business legislating medical procedures. She read a statement for **Debra Franzen** from the Planned Parenthood clinic in Missoula. They strongly oppose this bill. Intact D & E (dilatation and evacuation) abortions are done at two different points in pregnancy. They are performed in the third trimester after fetal viability only in cases where it is necessary to save the life and health of the woman or in cases of severe fetal anomaly. There are, at most, 600 abortions done at this late stage and there is no evidence the women in the nation or Montana are obtaining abortions, after viability, except in cases to save the life and health of the woman or severe fetal anomaly. Intact D & E's are also used earlier in pregnancy, before fetal viability, when the doctor thinks this is the best, most appropriate method for some patients. Planned Parenthood of Missoula is opposed to HB 365 because these deeply personal decisions need to be left to the families, not to politicians. It would be wrong to deny to women what may be the safest procedure for them. Abortions after viability are rare and are only done in extreme cases, and in Montana, it is already illegal to perform an abortion on a healthy woman carrying a healthy, viable fetus. Doctors, not politicians should be making medical decisions, and a ban would undermine a physician's ability to determine the best course of treatment for a patient.

Kirk Bond, Helena attorney, representing ACLU, spoke about the constitutional deficiencies of HB 365. He disagreed with **REP. McGEE's** statements about court cases, saying states can completely prohibit abortions after the point of viability, unless, in the judgement of a doctor, it is medically necessary to preserve the mother's life or woman's health. Because this bill does not contain a health exception, it is blatantly constitutional. In Montana, the doctor has to certify, in writing, detailing the reasons why the procedure is necessary, and two other doctors have to certify they agree with the judgement. This procedure is not being done legally on healthy

women carrying healthy fetuses. There are many other constitutional defects in this bill, one of which is the definition of partial-birth abortion. Passing this bill will fly in the face of Supreme Court decisions that, in cases where the fetus is not viable, the state cannot unduly burden a woman's choice to get an abortion. This bill does not protect a woman's life or health or potential life, does not abolish abortions during the last trimester of pregnancy, but only makes abortion riskier for women who choose to have it. Groups are ready to challenge this legislation if it does pass and will be struck down as unconstitutional. The taxpayers of Montana deserve better than to have the legislature spend thousand of dollars to make a religious or social statement just to have the legislation immediately struck down by the judiciary. For those reasons, the American Civil Liberties Union urge the committee to vote no on HB 365.

Kate Cholewa, Montana Womens Lobby, testified in opposition to HB 365. The proponents have talked about women's health and caring about infants, but with the exception of the Catholic Conference, the proponents do not show up at those hearings talking about women's health and infant's health. What they oppose is a women's bodily self-governance in regard to her reproductive life, which impacts all aspects of her life. They testify against a particular procedure, but in reality, are opposed all procedures. (EXHIBIT 36 & 37)

Janet Crepps, Staff Attorney, Center for Reproductive Law & Policy, said HB 365 is unconstitutional because it limits the ability of physicians to perform an abortion if they believe that is the safest and most appropriate medical care for the patient. (EXHIBIT 38)

Christine Phillips, Executive Director, Montana NARAL, an affiliate of the National Abortion and Reproductive Rights Action League, said their mission is to make abortion less necessary, not more dangerous, or less accessible. They oppose HB 365 in its current form because they believe it jeopardizes the health, fertility, and lives of the women of Montana. (EXHIBIT 39)

Dakota Pritchett, self, Great Falls, said she is a Carroll College student and is seven and one-half months pregnant. It is women, like her, who, if something went horribly wrong with the pregnancy, will be affected by what the legislature decides. She asked the committee if any one wants to be responsible for infertility within her or any other woman. She said she is an example of a person who could be affected by this legislation, between now and her due date. This is not about religion, it's about health.

Tara Mele, self, said this discussion upsets her because those who oppose these kinds of bills are demonized to be Godless and without conscience, and she would argue against that. Bills like this does not protect the health or reproductive health of women

and, to her, that is offensive. It is also offensive to suggest that women would carry a baby to term to kill it for sport. She has never met a women who does not respect her ability to give birth and carry a child as an unbelievable gift. She would never carry a child to term to kill it. The proponents often describe this procedure with a sense of glee. She urged the committee to oppose this bill.

REP. DIANE SANDS, HD 66, Missoula, said as she was thinking about the principle in medicine to do no harm and maybe that's the principle legislators should adopt. This bill will endanger the health of women and does do harm. She urged the committee to reject the bill on behalf of herself, women, and families in her community.

Sheena Wilson, self, testified against HB 365. (EXHIBIT 40)

Wade Sikorski, self, south eastern Montana, said he is opposed to the bill for the reasons previously stated.

Madeline Aagenes, self, Helena, said she is opposed to this bill.

Christie Schwaitur, self, she opposes this legislation.

Roxanne Cole, self, said she is representing herself as a future mother, and asked the committee to protect her.

Kagan Owens, self, said she opposes this bill.

{Tape: 2; Side: A; Approx. Time Count: 4:45 PM}

Questions From Committee Members and Responses:

SENATOR EVE FRANKLIN said what concerns her about this bill is it would put a physician in an untenable position if he/she had to make a medical judgement how to protect the health of the woman, her future fertility, or her life. She then asked **Dr. Mark Miles** to talk about that because this bill would criminalize physicians and about medical decisions that need to be made.

Dr. Mark Miles said the bill is straight forward in its punitive nature toward physicians and is self-evident as to how it would be a problem. The issue that has been belittled by some, but is important, and is vague in this bill is viability. It is not mentioned in this bill and the procedure, dilatation and evacuation, done during the second trimester which is a pre-viability, but still later in pregnancy, procedure of choice for termination, has many features which are identical to what has been described as partial-birth abortion. He is concerned he will be held under this law for what has been, to date, a legal procedure in Montana.

SENATOR DOROTHY ECK asked if most of these procedures are done at a pre-viability stage, which are legal and protected by the

Constitution, and if this is more brutal than other procedures done at that stage.

Dr. Mark Miles said no and he takes issue that this is a rogue procedure. It has been done for years and is called a dilatation and evacuation, and has a proven safety record and will not endanger the life of the woman. Termination during the second trimester is a state of the art procedure and is a matter of choice for women.

SENATOR ECK said she is concerned that every session bills are brought in that are unconstitutional and they try to fix them and then ask why not make this bill constitutional. It is obvious to her, it will be thrown out.

Susan Good said when she decided to work on this bill, she asked the Right to Life if this bill will pass constitutional muster. If she thought this bill was unconstitutional, she would be testifying at this hearing.

SENATOR ECK said she thought there were two bills last session from the Right to Life and they were unconstitutional, and asked **Susan Good** if she thought they were constitutional with the legislature passed them.

CHAIRMAN BENEDICT said they need to stay on the issue.

SENATOR ECK withdrew her question.

SENATOR SHARON ESTRADA said it was stated more than once by the opponents that this procedure is "state of the art" and asked **Dr. St. John** what that means.

Dr. Robert St. John said "state of the art" refers to its being a good, up-to-date and researched procedure. Partial-birth abortions have never been researched. As far as viability, the neonatologists are moving the number of weeks back all the time.

SENATOR BOB DePRATU asked **Dr. Mark Miles** about the procedure and if it's true that after the baby's body is delivered scissors are inserted into the baby's brain.

Dr. Mark Miles said procedure is extraction of the fetus. The body comes out easily and the head needs to be compressed so it will come out.

SENATOR DePRATU asked if it is necessary to suction out the brain to deliver the baby.

Dr. Mark Miles said the head has to be decompressed and there are several ways to do that, one of which is inserting an instrument into the head.

SENATOR DePRATU asked about other ways to decompress the head.

Dr. Mark Miles said another way is to crush the entire skull with forceps.

SENATOR CHRISTIAENS asked **Dr. St. John** whether a 25-week gestation baby is viable or could live.

Dr. Robert St. John said yes.

SENATOR CHRISTIAENS asked about the testimony that a 3-month fetus that survived.

Dr. Robert St. John said he was not aware of that case, but does know many babies born at 25-weeks and are surviving at a rate over 30%. Ninety-nine percent of them survive normally, without any neurological or cerebral palsy.

SENATOR CHRISTIAENS asked **Dr. St. John** if he believes there are occasions when abortions are appropriate and if he has done any or recommended any?

Dr. Robert St. John said he has not performed any abortions and hasn't found any reason to do so.

SENATOR FRANKLIN asked **Dr. St. John** to clarify his position. He opposes this procedure and asked if he opposes abortion, in general.

Dr. Robert St. John said yes.

SENATOR CHRISTIAENS asked **Dr. St. John** if he sees patients for consultation before they go for an abortion.

Dr. Robert St. John said no. When he was at Kaiser Foundation Hospital, prior to Roe v. Wade, there was an abortion committee. He was not permitted to serve on that committee. During the three years he was at Kaiser Foundation Hospital, 3,000 abortions were done. They didn't deny any. When he came to Montana, it was required to have another physician consulted before a tubal ligation was performed. In abortion clinics where there are several doctors performing abortions, the doctors use one another as consultants.

SENATOR CHRISTIAENS said he has difficulty believing three physicians would jeopardize their licenses, then asked **Dr. Miles**, where these patients went before seeing him.

Dr. Mark Miles said that is something with respect to this law which is not in effect. At present, they counsel patients.

SENATOR CHRISTIAENS asked **REP. McGEE** to clarify an issue regarding the amendment during his closing.

SENATOR FRANKLIN said **Dr. St. John** had talked about not ever seeing any reason for this procedure to be performed and asked if

medical students are trained to do this procedure and if he questions medical training.

Dr. Robert St. John said the Allen Gutmacher Institute, which is the research arm of Planned Parenthood, only shows about two to two and one-half percent of abortions being performed for women's health reasons. When health is added, the percentage goes down. There are very few physical reasons why an abortion would be indicated. The health reason can even include economic health, which was decided in Doe v. Bolton. The question is what are the true reasons for an abortion to save a woman's physical life.

SENATOR FRANKLIN asked **REP. MCGEE** if an exception were proposed in cases of health, the 3 elements being a full-life exception, not a narrow life exception, health of the mother, and ban it completely in post-viability, would he consider those amendments.

REP. MCGEE said no. This bill was carefully drafted to conform with all the Supreme Court decisions that have been handed down over the last 20 plus years. The issue of health is addressed in abortion situations which do not involve the partial-birth of the baby. The Supreme Court's decisions talks clearly about the state's legitimate interest in the protection of the woman and her health and potential of human life. What we're talking about is a specific procedure that requires the baby to be four-fifths born before being terminated.

SENATOR FRANKLIN asked if the current language protects the health of the mother and in this bill the exception is very narrow to protect the life of the mother if no other procedure could be used. It seems contradictory because this bill doesn't have life exception at all, it only has a narrow life exception.

REP. MCGEE said the health issue presented by Doe v. Bolton is very broad. The life issue from the Supreme Court varies. The point is, there are two lives at stake, a baby and a mother. When a child is still in the womb, the health of the mother carries the weight. If the exception is included, the viability for human life is refused.

Closing by Sponsor:

REP. DAN MCGEE said he mis-spoke about the 3-month fetus, it was a 3-month premature baby that survived. Vagueness, viability and health were the main arguments stated against this bill. The Supreme Court said there is no rigid line between viability and post-viability. It is not a defined line and keeps moving back. This is about a particular procedure and not about abortion, per se. He takes exception to those opponents who said this is about religion or politics. He read a statement from the American College of Obstetricians and Gynecologists, "a select panel convened by ACOG identified no circumstances under which this procedure would be the only option to save the life or preserve the health of the mother." Politicians should not make these decisions, but the courts have. The Montana law will be amended

and it is proper for the State of Montana to establish the policy. The Supreme Court has not ruled on the validity of a four-fifths born baby. Regarding the second opinion issue, most insurance companies require a second opinion. He read from "A Second trimester Abortion From Every Angle" where Dr. Martin Haskell laid out the procedure.

{Tape: 2; Side: B; Approx. Time Count: 5:38 PM; Comments: break taken from 5:25 PM to 5:38 PM.}

EXECUTIVE ACTION ON HB 365

Motion: SENATOR JIM BURNETT moved HB 365 BE CONCURRED IN.

Discussion: SENATOR FRANKLIN said she is going to vote against this bill because she cannot make a medical or constitutional judgement. If rogue physicians are performing this procedure when it isn't medically necessary, it's suggesting U.S. medical schools are turning out graduates who have no conscience or reasonable medical judgement, but she thinks it is the opposite case. There are lots of mitigating factors and she doesn't want to be put in a position where women are given no exception for health. In the rare instances where the procedure may be necessary, she doesn't want to remove that medical judgement between and physician an patient. This bill doesn't demand that someone have a partial-birth abortion or intact D & E. She doesn't know if this is appropriate or not, but thinks the judgement should remain with a medical doctor.

SENATOR CHRISTIAENS said this is one of those bills that comes up session after session that gives him more heart burn than anything else. He recalled while in college, he worked in a hospital and spent two or three nights trying to save the life of women who had had clothes hanger abortions. In some cases, this bill will drive the issue underground. Medical people, working with the family, need to be making those decisions. He thinks this bill will be government intrusion into people's lives. With amendments, he could vote for the bill, and a lot of people in the Senate would vote for it, if amendments were included.

SENATOR DePRATU said these are difficult issues. He looks at this little being who is four-fifths born, who can react to stimuli, yet the head has not come into the world. To him this is a baby and he is going to vote for the bill.

SENATOR ECK said she would vote against the bill even if it were amended. This doesn't seem to have as much to do with abortions that occur and if this method of abortion is eliminated, abortions will still occur. There may be a few cases of late term abortions where the life of the mother could be saved. At 23 weeks, we're talking about a fetus that isn't going to live and doesn't think one method of abortion is better than another. She doesn't think it's an issue that will decrease the number of abortions.

SENATOR ESTRADA said she has faith and confidence that **REP. MCGEE** would not bring a bill that was not constitutional. She asked if we're really talking about a woman's health. She said we're not talking about abortion, we're talking about partial-birth abortions which is a cruel and heinous thing. At this stage of a pregnancy, she didn't think it would be driven underground.

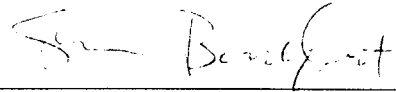
SENATOR LARRY BAER said we're not talking about outlawing abortions, but instead outlawing a brutal and unconscienceable procedure that doesn't fit in a civilized society. It's not a matter of being pro-life or pro-choice. This procedure is unconscienceable the way it's being done and is one method of abortion that even many pro-choice think is intolerable.

CHAIRMAN BENEDICT said when he and his wife found out their daughter would be born with a rare genetic disease, they did a lot of soul searching and did not choose to abort her. She is a 24-year old student at the University of Montana and is an honor student. She is disabled and in a wheel chair, but she doesn't know she is disabled because, as far as she is concerned, she can do anything she wants to do. Had they listened to the doctors, the world would be a sad place without her. For that reason he is going to vote for this bill.

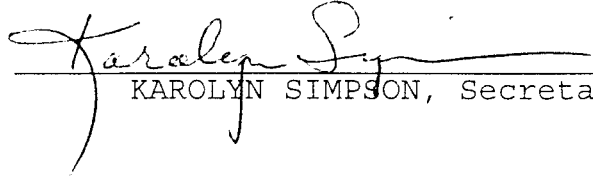
Vote: The BE CONCURRED IN motion CARRIED by a ROLL CALL VOTE.

ADJOURNMENT

Adjournment: 5:59 PM



SEN. STEVE BENEDICT, Chairman



KAROLYN SIMPSON, Secretary

SB/ks