MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES & AGING

Call to Order: By **Rep. Angela Russell, Chair** on January 25, 1991, at 3:20 p.m.

ROLL CALL

Members Present:

Angela Russell, Chair (D)
Tim Whalen, Vice-Chairman (D)
Arlene Becker (D)
William Boharski (R)
Jan Brown (D)
Patrick Galvin (D)
Stella Jean Hansen (D)
Royal Johnson (R)
Betty Lou Kasten (R)
Thomas Lee (R)
Charlotte Messmore (R)
Jim Rice (R)
Sheila Rice (D)
Wilbur Spring (R)
Carolyn Squires (D)
Jessica Stickney (D)
Bill Strizich (D)
Rolph Tunby (R)

Members Excused: Rep. Brent Cromley and Rep. Tim Dowell

Staff Present: David Niss, Legislative Council
Jeanne Krumm, Committee Secretary

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

HEARING ON HB 325

Presentation and Opening Statement by Sponsor:

REP. DICK SIMPKINS, House District 39, Great Falls, stated that HB 325 addresses the rural medical situation in Montana today. There is growing concern in the rural communities that they are losing their doctors. There is not an intern program for doctors in Montana and so future doctors need to go out-of-state to school. A doctor cannot come to rural Montana right out of medical school because they cannot make the money to pay off the school loans they incurred. There is a federal program that subsidizes a doctor by paying back student loans as long as they practice in a rural health program. Giving authority to those hospital districts to utilize money for this in addition to just equipment, buildings, and payroll to provide educational benefits

to qualified individuals. Which would include tuition, room, board, educational, materials and repayment for student loans in return for an agreement by those persons to provide services to the district.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members:

REP. KASTEN asked if the members were aware that people within a hospital district can easily withdraw from that district by getting the signatures of 50% of people in the area and presenting this petition to the commissioners. **REP. SIMPKINS** stated that all we are doing is giving an opportunity if they want to turn around and put the money in and train someone then there is the opportunity. If they want to pull out, it is up to the people in the area.

REP. S. RICE asked how many hospital districts are in Montana. **Steve Browning, Montana Hospital Association,** said there are eight hospital districts.

Closing by Sponsor:

REP. SIMPKINS stated that this bill gives local control and allows people to choose their own destiny. Once people start looking at this bill, instead of seeing government services lost on the federal level, they should consider the option being given to the local community that if this is what they want then they will get it.

HEARING ON HB 281

Presentation and Opening Statement by Sponsor:

REP. JESSICA STICKNEY, House District 26, Miles City stated the bill is an amendment to the AIDS Education and Prevention Act. There will be confidentially of the testing and of the records. The Act was aimed at the person who may or may not have AIDS but needed the testing and needed to give consent and be educated about the test. After the Act became effective, medical personnel in the state realized that the Act did not allow for any type of testing in a situation where a patient would be unconscious or be unable to give an informed consent. It is necessary to update the Act. This bill primarily addresses the situation in which a person is unable to give informed consent for the test.

Proponents' Testimony:

Beth Sirr, Critical Care Registered Nurse, submitted written testimony. **EXHIBIT 1**

Lorette Meske, MD, Lewis and Clark County Medical Association, submitted written testimony. **EXHIBIT 2**

Anita Masters, Registered Nurse Great Falls, submitted written testimony. **EXHIBIT 3**

Dr. Cheryl Reichert, Director of Laboratory, Columbus Hospital, submitted written testimony. **EXHIBIT 4**

Kenneth Eden, MD, Montana Society for Internal Medicine, stated that this test is not really necessary in order to provide the patient with appropriate counseling. Sometimes the test can be falsely negative when a patient has AIDS. There are many circumstances where that test would be efficient to the clinical information that the physician has in order to counsel his patient. To withdraw that information would be a mistake. There will be additional drugs to treat AIDS and there are tests that can detect the presence of a viral DNA. This bill corrects these deficiencies and should be approved as written.

Arlene Reickert stated support of HB 281.

Jerome Loendorf, Montana Medical Association, stated that the bill does not include a provision in which the health care provider should make the suggestion to the patient of when he may pass the HIV infection to someone else. The risks to the health care provider are an imposition on a patient's liberty or privacy.

Steve Browning, Montana Hospital Association, stated that the Association did not list this as a primary issue in the last legislature, but the issue was raised repeatedly after the last legislature.

Dale Talifarro, Department of Health and Environmental Sciences, submitted written testimony. **EXHIBIT 5**

Opponents' Testimony:

Ellen Leahy, Health Officer in Missoula County, stated that she is opposed to the bill's language. If a patient is impaired or unable to give consent, the doctor can get consent through a proxy and through the patient's family. If the testing is needed for treatment, the doctor can order the test. That section in the bill is agreeable. The language on page 2, section (8) (b) is of concern to her. This language has nothing to do with the purpose of treatment, the language does test for purposes of exposure and it has nothing to do with whether the patient is conscious, unconscious, able to give consent or not. The bill seeks the blood of a patient, even a conscious fully capable patient, without their consent and without notification that the test is being conducted unless the test is a positive test.

Scott Crichton, Executive Director, American Civil Liberties

Union of Montana, submitted written testimony. **EXHIBIT 5**

MaryBeth Frideres submitted written testimony. **EXHIBIT 6**

Carly Tuss, Registered Nurse, stated she has never had a patient refuse to give a blood sample. She has serious questions about the enforceability of mandatory blood testing. It takes six months before the antibodies show up in the blood system. Most health care people that she has spoken with who were exposed to the antibodies said that it wouldn't have mattered if they knew for sure if the patient had tested HIV positive or not. You still have to wait the six months.

Steve Simpson, Out In Montana, Inc., stated that Out in Montana, Inc. is a gay organization that her developed an AIDS education program for Montana. The gay community has a voice in individual rights: they do not want to support this bill because it is unfair. Many people in Montana will be threatened by the policies in the bill and will refrain from getting needed medical attention.

Carl Donovan stated that he opposes HB 281.

Dianne Sands, Executive Director, Montana Women's Lobby, stated that the new provisions of this bill are too broad. She objected to the first section providing who may give consent if a patient is unable to, gives consent to. This section allows the spouse, parent and adult child or legal guardian to consent. It is important to recognize that in the case of a lesbian, a patient's most significant other person is not a legal spouse but is a life partner. This particular provision needs to be redrafted to allow that person to give consent in the cases of an impaired patient. **EXHIBIT 7**

Mike Stephen, Montana Nurses Association, stated there are definite problems with the logic of this bill.

<u>Questions From Committee Members:</u>

REP. GALVIN asked is there a length of time which must pass after exposure to HIV before the virus can be detected. **Dr. Reichert** stated that period can be weeks, months, and maybe several years. We shouldn't be limited in our discussion of this bill by shortcomings in the testing process.

REP. BECKER asked how long does it take to get the results and how soon do you have to start AZT therapy for the therapy to be effective. **Dr. Reichert** stated that it usually takes about two weeks for test results. The health care provider wants the opportunity to test for the active antibody twice. **REP. BECKER** asked if all laboratories in Montana test for HIV and is AZT available. **Dr. Reichert** stated that most community hospitals do not do the HIV testing. Some do the antibody testing because it is an easier test. Most AZT is available through hospital

pharmacies and if it isn't, it could be made available.

REP. LEE asked if there have been enough cases and data assembled to indicate if prophylactic use of AZT is beneficial as opposed to waiting any length of time. **Dr. Reichert** stated that many people put on the AZT program are put on the program to acquire data on AIDS. Because there is a possibility that AZT therapy would work we offer that choice to the health care worker.

REP. BOHARSKI asked if there are situations where an individual who is unconscious and has no legal guardian, spouse or adult child to make the decision of testing, and treatment appears beneficial, and AIDS is suspected, can you still test for AIDS. **Dr. Reichert** stated that some other tests can be ordered, but not any direct HIV test.

Closing by Sponsor:

REP. STICKNEY stated the title will have to be amended.

ADJOURNMENT

Adjournment: 5:30 p.m.

Angela Russell
ANGELA RUSSELL, Chair

Jeanne Krumm
Jeanne Krumm, Secretary

AR/jck

HOUSE OF REPRESENTATIVES

HUMAN SERVICES AND AGING COMMITTEE

ROLL CALL **DATE** 1-25-91

NAME	PRESENT	ABSENT	EXCUSED
REP. ANGELA RUSSELL, CHAIR	✓		
REP. TIM WHALEN, VICE-CHAIR	✓		
REP. ARLENE BECKER	✓		
REP. WILLIAM BOHARSKI	✓		
REP. JAN BROWN	✓		
REP. BRENT CROMLEY			✓
REP. TIM DOWELL			✓
REP. PATRICK GALVIN	✓		
REP. STELLA JEAN HANSEN	✓		
REP. ROYAL JOHNSON	✓		
REP. BETTY LOU KASTEN	✓		
REP. THOMAS LEE	✓		
REP. CHARLOTTE MESSMORE	✓		
REP. JIM RICE	✓		
REP. SHEILA RICE	✓		
REP. WILBUR SPRING	✓		
REP. CAROLYN SQUIRES	✓		
REP. JESSICA STICKNEY	✓		
REP. BILL STRIZICH	✓		
REP. ROLPH TUNBY	✓		

CS05HUMSER.MAN

EXHIBIT 1
DATE 1-25-91
HB 281

WITNESS STATEMENT

NAME Beth Sirr BILL NO. 281

ADDRESS 1145 Lolo St Missoula MT 59802

WHOM DO YOU REPRESENT? myself

SUPPORT ✓ OPPOSE _____ AMEND _____

COMMENTS: Current CDC recommendations advise beginning AZT prophylactically at the time of a "significant" exposure. Since AZT can affect both mother and baby in the three months of "significance" life is the last test.

I believe health care workers who are exposed to secretions which might carry HIV need to know whether or not these secretions carry the infection & potentially deadly virus. Only with this knowledge can they make an intelligent decision regarding beginning AZT & what precautions to take in regards to their families & future.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-34A
Rev. 1985

EXHIBIT 2
DATE 1-25-91
HB 281

LORETTE I. MESKE, M.D.
INTERNAL MEDICINE
1 MEDICAL PARK DRIVE
HELENA MONTANA 59601

406-442-6977

January 24, 1991

I am testifying in support of the modifications to the AIDS Prevention Act. I believe that the basic intent of the original bill was to protect the confidentiality of persons wishing to be tested, and also to educate people regarding their risks of contracting AIDS. These are admirable goals and I find no major fault with these concerns. Many physicians, however, feel that there are some serious flaws in the original bill which have been discovered in practice.

The first modification that the Montana Medical Association and other physician groups are recommending would permit testing of a mentally or physically incompetent patient when the diagnosis of AIDS is suspected. Currently there is no such provision, and if an incompetent patient presents to the hospital for treatment, that treatment cannot be delivered. There are many new treatments available that have been shown to be beneficial, but if we can't even diagnose the disease, these patients will be denied potentially effective care. Physicians certainly respect the right of patients to refuse even lifesaving treatment, but in the case of an incompetent patient, particularly in emergency situations, some arrangement needs to be made for treatment.

The second vital modification that needs to be made in this law is to provide for involuntary testing in the case of a laboratory or hospital accident. Currently, hospital practice in the case of an employee accident involving exposure to blood products recommends testing of the patient involved for the presence of Hepatitis B virus and the HIV or AIDS virus. The current bill requires that a patient's consent be obtained first, and this is not routinely a problem. However, if the patient involved were to refuse testing for this important and potentially life-saving reason, the injured employee would be forced to just sit and wait to see if he or she developed the disease. There is good evidence coming from several treatment centers that early treatment with the antiviral drug AZT following HIV exposure may prevent infection. While this is by no means universally accepted, many centers are at least offering this option when there is a known exposure to AIDS. This treatment is not without some risk, and certainly not without expense, and many would not recommend it without knowing if it is needed or not. In addition, in the future there will certainly be new treatments available for this

situation, possibly even a vaccine such as is available for Hepatitis B, and I think to hamstring infection control personnel in this manner is misguided.

I would like to talk to you about three separate incidents that illustrate the problems involved with the current bill. Two of these are actual incidents that have happened in Helena, the third is a theoretical example, but quite conceivable. The first case involved a patient who arrived at St. Peter's Hospital emergency room in a coma not too long ago. After initial evaluation by the emergency room doctor, a consultation was obtained from an internal medicine specialist. After discussing their examination and some of the preliminary testing, it was clear that the diagnosis of AIDS was a distinct possibility. The patient was unable to be tested because of his inability to consent to the test. After being stabilized here in Helena, he was eventually transferred to a medical center in another state where testing could be done. While this wasn't the only reason for his transfer to a university medical setting, it would have expedited his medical care if the testing could have been done here first.

The second instance involved a patient that I was attending. This patient had a known diagnosis of AIDS and was receiving treatment. His treatment included periodic blood tests to evaluate his immune status, and these tests were sent to a reference laboratory in another state to be performed. The test involved is called a helper-suppressor profile, and would rarely if ever be performed on a patient without AIDS, so a laboratory worker seeing this test would have a good idea that this blood sample could be infectious. I received a telephone call one afternoon from the laboratory director informing me that there had been a lab accident involving this patient's blood, and that they would like to perform an HIV test on the blood sample in order to appropriately counsel the worker involved. Fortunately this was consented to by the patient, but it raises the ethical issue of what to do if he had refused.

The third case is hypothetical. It involves a busy ward nurse at St. Peter's Hospital. She changes or starts intravenous lines several times a day, as well as giving intravenous and intramuscular injections to many patients, most of whom have never had an AIDS test. Some of these patients, however, might well be in an AIDS high risk group. If she were to stick herself with a needle in the process of doing one of these procedures, and the patient for whatever reason decided that he or she didn't want to be tested, that nurse would have to just sit and wait. By many estimates, antibody conversion may not take place for months or even years, so she is essentially in limbo, and possibly at risk of in turn transmitting the disease to someone else, for example her spouse or an unborn child.

The medical profession is aware that the confidentiality of patients needs to be respected. Indeed this is not a new concept for us and is something we practice on a daily basis regarding any

DATE 1-25-91
HB 281

type of illness or procedure. I think that the modifications that are being proposed to this bill adequately ensure that the patient's rights would be respected to whatever degree possible. I think it is ethically and morally offensive to make it impossible to protect health care workers in an adequate fashion, and also to prohibit the proper emergency medical care of patients who have no voice in the matter. This situation does not exist for any other disease process, and I believe that we first need to treat this as a disease, and secondarily, if at all, as a political issue.

Lorette I. Meske, M.D.
President, Lewis & Clark Medical Society

EXHIBIT 3
DATE 1-25-91
HB 281

Testimony before Montana State Legislature
House and Human Services Committee
Rep. Angela Russell, Chair, Rm. 312-2
Friday, January 25, 1991 at 3:00 p.m.

HB 281 introduced by Jessica Stickney to allow HIV testing for injured health care workers.

Members of the Committee, I am Anita Masters a Registered Nurse, from Great Falls and I am here to speak in favor of this legislation.

I am the Infection Control Nurse for Columbus Hospital. I also serve as Chairman for the Cascade County Aids Network. My current job requires that I do counseling and obtain informed consent for HIV testing, from healthcare workers, patients and physicians. I am actively involved in education, as well, about HIV infection.

I am in favor of amending the current Montana law, the "Aids Prevention Act", because of several problems I have found while doing my work.

1. The current law has two narrow of a requirement regarding the authorization of consent for HIV testing. Patients may not be mentally able to sign for consent due to illness or injury. I am in favor of allowing close family members to sign for consent, as is allowed for other medical testing, procedures and treatments.

2. The rights of Health Care Workers and Emergency Service Providers needs to be addressed. When Healthcare workers and Emergency Service Providers are exposed to blood or body fluids the HIV status of the source directs the treatment options for the exposed person. Without knowledge of the HIV status, the exposed person must consider taking AZT, and be faced with decisions regarding their sexual practices to protect their loved ones. The anxiety of not knowing the HIV status of the exposure is not short lived. The exposed Healthcare worker/Emergency Service Providers must be tested for HIV infection on a regular basis for a years time before we can reassure them that they have not contracted this disease.

   If the source patients blood is negative for HIV, the Healthcare worker and Emergency Service Provider can be reassured immediately if that knowledge is known.

3. The requirement for uninformed consent should have exceptions. HIV testing is done many times for the treatment of the

EX. 3
1-25-91
HB 281

Healthcare worker and not for the diagnosis of the patient. Yet, the testing of the source patient can cause them anxiety.

The following example shows some of the problems we face. A 35 year old male RN had massive amounts of blood sprayed into his eyes, nose and mouth while attempting to intubate a critically ill accident victim in the field. The accident victim was unconscious and sent to surgery. The victims sister was available and distraught knowing her brother was critical. Under the current law, we could not approach her for consent for HIV testing to determine the care of the Healthcare worker. Under the amended law we could request consent, but I ask you whether having her worry about HIV infection at this time is an compassionate act.

In summary, I ask that you amend the current Montana Law the "Aids Prevention Act". The requirements for who can sign consent will be broadened. It will be easier to obtain HIV testing when needed to direct the care of Healthcare workers and Emergency Service Providers. I ask that you allow hospitals or physicians under special circumstances to waive the need for informed consent when testing is being done for the treatment of Healthcare workers and not for diagnosis of the source patients. This can be done in a completely confidential manner without the results being linked to source patient. I believe that this amendment can provide for protection the rights of the patient as well as the Healthcare worker and Emergency Service Provider.

Respectfully submitted,

Anita Masters

Anita Masters

Testimony before Montana State Legislature, House and Human Services Committee, Rep. Angela Russell, Chair, Rm. 312-2
Friday, January 25, 1991 at 3:00 p.m.

EXHIBIT 4
DATE 1-25-91
HB 281

H.B. 281 Introduced by Rep. Jessica Stickney, to allow HIV testing for inured health care workers

Members of the Committee, I am Dr. Cheryl Reichert from Great Falls and I also speak in support of this legislation.

I am a medical doctor, a scientist, a pathologist, and Director of the Laboratory at the Columbus Hospital, where I also sit on the Infection Control Committee. My interest in HIV infection and AIDS dates back nearly a decade to the time when I was a medical scientist/pathologist at the National Institutes of Health. In 1982 I wrote the first paper on the pathology of AIDS, and I have published several chapters and manuscripts (exhibit A) on various facets of this tragic disease. In 1983 I presented my findings to then President Reagan's Lay Advisory Council of the NIH. Since returning to my home State of MT, I served for 2 yrs as the MMA representative to the Mt State Dept. HHS AIDS Advisory Panel. Input of hospital administration/exec com./nurses/drs.

I am here to tell you that there are significant problems with the present 1989 Montana "AIDS Prevention Act", which we are seeking to amend. I have three points to make:

1. Failure to protect the rights of the injured healthcare worker and allied personnel. Let me illustrate this problem with several examples drawn from my own experience.

a. 35 year old male paramedic injured by a sharp metallic fragment while extricating a bloody victim from a motor vehicle accident. The injured motorist is the sole occupant and is unconscious. He is from out of State. Currently, there is no mechanism for testing his blood in order to guide the decision of whether or not to administer AZT to the paramedic.

b. 20 year old student nurse suffered a needlestick injury when inserting an intravenous line into an elderly female patient with gallbladder disease. The patient was approached about the problem and the patient gave consent for testing of her blood. This process caused the elderly patient and her family a great deal of consternation, since she thought that she was suspected of having AIDS. Needless to say, it changed the entire focus of the hospitalization.

c. 42 year old medical technologist stuck her finger when

she transferred blood from one culture bottle to another. The physician caring for the source patient refused to approach the patient about having her blood tested, and the physician also stated that he didn't want anyone else approaching his patient either.

If the source patient's blood were positive for HIV in any of these circumstances, the healthcare worker/paramedic/medical technologist would be offered AZT treatment, a treatment that is not without significant side-effects/risks and one that is expensive. The healthcare worker would be advised to take appropriate precautions regarding sexual behavior, as well.

2. Failure to protect the rights of the victim of rape or assault. The law should be amended to allow for automatic determination of the HIV status of the person inflicting the injury at the same time that it provides for collection of blood for other forensic evidence.

3. Removal of the requirement to report negative HIV test results in person. Such a requirement prevents testing, not AIDS. To require that a patient return to a physician's office to personally receive a negative report is anxiety-provoking, disruptive to both the patient and the physician, and oftentimes impractical in a rural State like Montana.

In summary, I am asking your assistance in amending the 1989 AIDS Prevention Act in order to provide for a balance of individual rights and to conduct testing in a fashion that will not discourage citizens from obtaining the test. Testing without written informed consent will take place only under the exceptional circumstances outlined above or as previously provided for by law. In order to protect the privacy of the source, testing will be conducted on an anonymous basis and will not be linked to the source patient by any written document. In this manner the source's right to privacy has been assured while the injured "victim" can be treated in a rational fashion.

Respectfully submitted,

Thomas M. Reichert M.D., Ph.D.

The written testimony submitted by Dale Taliaferro was not submitted with the minutes.

EXHIBIT 5
DATE 1-25-91
HB 281

January 25, 1991

Madame Chair, Members of the Committee:

For the record, my name is Scott Crichton, Executive Director of the the American Civil Liberties Union of Montana. Our organization has more than 800 dues paying members across the state who unite behind the mission of defending the U.S. Constitution and the Bill of Rights and in defending the Montana Constitution and it Declaration of Rights. I am here to go on record as strongly opposing House Bill 281.

I'd like to begin by reminding you of Article II of our State Constitution, the Declaration of Rights. Specifically focusing on Section 10. RIGHT OF PRIVACY. "The right of privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest." A majority of the states do not have a specific provision protecting privacy. Law scholars have described Montana's Privacy Right as "the most elegant and the most uncompromising of the various privacy statements". So throughout this discussion, I hope you will keep this constitutional criteria in mind. You must be convinced of a compelling state interest if you are going to accept this proposed legislation.

The temptation is always to make suggestions as to how to make a bad bill like this better. I will resist that temptation since I believe there is no demonstrated need for this bill. However, I do want to offer these ideas for your consideration.

To begin with, the fear of the health care workers is understandable. But informed public health experts understand that the HIV test does not identify HIV-infected persons who have not yet developed the antibodies to the virus, individuals who are still in the window period of infection. They also understand that the test sometimes errantly identifies certain people who are infected as uninfected ("false negatives"). In either case, reliance on test results by health care workers could have tragic consequences.

We've talked about negative and false neagatives, but what happens if the patient tests positive? This still does not mean that the health care worker has been exposed to the virus. For example, OSHA says the risk of acquiring HIV infection following puncture with a needle contaminated by an HIV carrier is estimated to be less than 1%. The point is, testing the patient when a health care worker is exposed to bodily fluids will <u>not</u> tell whether the health care worker has been exposed to the virus. In any case, it is the health care worker, not the patient, who will need to be tested for several monthly intervalsto determine whether he or she seroconverted.

Because patient testing cannot achieve its goal of allaying fears of health care workers, it has little positive benefit. In addition to to the fact that it ultimately cannot achieve its purpose, patient tetsing, both widespread and selective, has at least five serious negative ramifications.

First, patient testing would create a false sense of security in health care workers about patients who tested negative and consequently workers might not take appropriate cautions in all instances. Given this possibility, patient testing could lead to an increase in unprotected exposure to infected patients.

Second, despite assurances to the contrary, patient testing compromises highly sensitive medical information and these breaches of confidentiality will inevitably lead to discrimination.

Indeed, third, patient testing creates a strong possibility of discriminatory treatment within the hospital setting itself, certainly if the result is positive and possibly even if the patient simply becomes known as someone for whom an "AIDS test" was required, and/ or a two tiered system of health care provision.

Fourth, in addition to discrimination in the provision of health care, there is a substantial likelihood that selective testing will amount to selective discrimination. Specifically, selective testing will mean that certain classes of patients -- primarily minorities or those suspected of being gay men or intravenous drug users -- will be the only persons forced to undergo HIV antibody tests and thus that selective testing programs will institutionalize the prejudices of frightened health care providers.

Fifth, selective testing exposes hospitals to liability for harm to the patient caused by inadequate counseling, unauthorized disclousres, or compromised care.

To wrap up: Health care workers have strong legitimate concerns about their exposure to HIV. But calls for testing of patients are a misguided substitute for enforcing infection control procedures which could prevent most risks of exposure before they occur. We in Montana recognized that when we passed the AIDS Prevention Act. In addition, the ACLU believes the appropriate approach to patient testing after a needle stick or accidental exposure involves insuring that no patient testing is done unless: (1) the patient is apprised of the situation and voluntary consent to the test is requested; (2) before agreeing to the test, the patient is given full informed consent about who will know the test results, about whether those people will know his or her identity, and about all other hazards commonly associated with testing; (3) there is no entry on the patient's chart of the fact that the test was done; and (4) if the patient declines to be tested, the testing may be done only if the health care worker obtains a court order with full procedural protections accorded to the patient and a judcial determination that the testing is necessary.

I'd like to close by reminding you again of Article II of our State Declaration of Rights. "The right of privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest." I would think that to vote for HB 138 you must be convinced there is a real unaddressed problem with existing law and that

EXHIBIT 6
DATE 1-25-91
HB 281

UCSF
University of California, San Francisco . . . A Health Sciences Campus

The Medical Service
San Francisco General Hospital
Room 5 H 22
1001 Potrero Avenue
San Francisco, CA 94110

Mailing Address:
University of California, San Francisco
Box 0862
3rd and Parnassus Avenues
San Francisco, CA 94143-0862
415/821-8317
415/476-3049
FAX: 09/1/415/821-8965

January 24, 1991

Ms. Maribeth Frideres
Lewis and Clarke City and County
Health Department
316 North Park
Helena, MT 59624

Dear Ms. Frideres

I am writing in response to your request for information regarding the source patient testing policy at San Francisco General Hospital. As we discussed, our policy encourages source patient testing for HIV when deemed appropriate, but requires voluntary informed consent.

Annually, we treat approximately 275 occupational exposures judged to be of sufficient severity to pose a potential risk of bloodborne infection. Approximately 15-20% of these are known to involve HIV-infected patients at the time they occur. In about 15%, the source patient is not known.

The remaining source patients are evaluated clinically and epidemiologically by a patient counselor within 2 days of the exposure. If HIV infection is not deemed extraordinarily unlikely, the source patient is asked to consent to HIV testing. If the source is unable to consent due to medical or psychiatric conditions, proxy consent is requested from next of kin or other legal proxy. If none is available, then 2 medical staff physicians may consent on behalf of the patient, providing that neither was involved in the exposure.

Using this approach, we have successfully obtained permission to test on all but 2 source patients approached in the past year. In one of these, permission was granted when we agreed to make an exception to the policy that required including the patient's test results in his medical record. The second patient left the hospital AMA before permission was obtained.

Ex. 6
1-25-91
HB 281

We feel that our program of voluntary testing and proxy consent for incompetent patients optimizes management of both health care workers and source patients. Because this approach maximizes the pre- and post-test counseling aspects of HIV testing, it allows most patients to participate in the decision and provides them with the advantage of an educational intervention. We see no need for a program mandating source patient HIV testing.

If I can be of further assistance, please contact me at (415) 821-8257.

Sincerely,

Julie Louise Gerberding, M.D. M.P.H.
Assistant Professor of Medicine & Infectious Diseases
University of California, San Francisco
Director, Occupational Infectious Disease Program
San Francisco General Hospital

DATE 1-25-91
HB 281

TO: Members of the House Committee on Human Services

FROM: Donna K. Davis, Attorney & member of DHES AIDS Council

DATE: January 24, 1991

RE: House Bill 281

I urge the Members of this Committee to vote "No" on HB 281. These proposed amendments to the AIDS Prevention Act of 1989 are flawed, inasmuch as they are, in some places, inconsistent with other provisions of the Act[1] and they offer an avenue to violate the human and civil rights of patients who present themselves for compassionate and confidential care in a health care facility.

Despite what might be offered as caring and inspired reasons for the proposed changes--testing people without their consent in order to monitor and protect their health and/or the health of a health care facility worker--the potential for human and civil rights violations is too overwhelming. The goals may be noble; the means are inappropriate.

Even more problematic and dangerous is the false sense of assurance a health care worker may assume when s/he learns that the result of the subject's HIV-related test is negative. Let's say a health care worker suffers a needle stick or aspirates blood from a patient and the infection control committee--not the affected employee--decides that an HIV-related test should be done on the patient, without her/his consent, without even being required first to try to obtain her/his consent. If the test results are negative, the exposed health care worker may presume, perhaps quite erroneously, that s/he has not been exposed and therefore is safe.

As you all know, there is a period during which an HIV-related test will not show the presence of antibodies--even if the subject of the test has been exposed to HIV and may her/himself be infected and therefore capable of transmitting the virus to others. A negative result may not necessarily be negative. The false assurances of a negative result might be adopted not only by the exposed health care worker, but by others in the health care facility, who might neglect to take universal precautions consistently, because the subject tested negative.

---

[1] For example, the Act requires that results--whether positive or negative--be given to the subject of an HIV-related test in person. These proposed amendments provide that the nonconsenting subject be told only of a positive result.

EX 7
1-25-91
HB 281

In no way should my opposition to this Bill be construed as not supporting the health care workers or being mindful of their fears and concerns. Their concerns regarding exposure to this virus are real and their fears should be addressed by education and by assuming appropriate behaviors--which is to say, always using universal precautions--in the health care facility.

The Committee once again is urged to vote "No" on HB 281 and instead consider the proposed changes to the Act advanced by the Department of Health and Environmental Sciences, among which is one pertaining to performing an HIV-related test on a subject without her/his consent.

DK Davis

Donna K. Davis
3110 Radcliff
Billings, Montana 59102
(406) 252-5500

Attorney & Member of
the State AIDS Council

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Human Services & Aging COMMITTEE BILL NO. HB 325

DATE 1-25-91 SPONSOR(S) Rep. Simpkins

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Judith Gedrose	MDHES	Neither	
Bruce Desonia	MDHES	Neither	
Dale Taliaferro	Montana Dept. of Health		

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

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Human Services & Aging COMMITTEE BILL NO. HB 281

DATE 1-25-91 SPONSOR(S) Rep. Stickney

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Mary Beth Frideres Lewis + Clark Health Dept 316 N. Park, Helena	Lfc Health Dept + Board of Health		X
Steve Simpson Oat In Montana, Inc. P.O. Box 951, Helena	Oat In Montana, Inc		X
Bill Hunter 1420 Jeane Dr. Helena			
Anita Masters R.N. 2204 1st Ave. S. Gt Falls Mt	Columbus Hospital	X	
Dr. Cheryl Reichert Columbus Hospital, Great Falls	Columbus Hospital	X	
ARLYNE REICHERT 1409 4th Ave. S. GT FALLS	SELF	X	
JOHN DELANO P.O. Box 1172 - Helena	MMA	X	
Bein SIRR 1145 LOLO St Missoula	self	X	
ELLEN LEAHY MISSOULA CITY - CO. HEALTH	MISSOULA CITY-CO. HEALTH		X
LORETTE MESKE 1 MEDICAL PARK DR Helena	Lewis & Clark County Medical Assoc.	X	
Diane Sands	MT Women's Lobby		X
Scott Crichton	ACLU		X
Carley Tuss	Self		X
Carol Donovan	SELF		X

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

2062

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Human Services COMMITTEE BILL NO. HB 281

DATE 1-25-91 SPONSOR(S) Rep. Stickney

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jerome T Quenbert	MH Med-Assn	✓	
Kenneth Eden MD	MT Soc. Int Med	✓	
Mike Steph	MT Nurses Assn		X
Steve Browning	MH Hosp Assn	✓	

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