MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on February 15, 1991, at 7:10 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

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

EXECUTIVE ACTION ON HB 505

Discussion: Chairman Strizich asked Greg Petesch to explain this bill to the committee and the bills relating to it.

Greg Petesch stated the Legislative Council, in 1980, adopted a rule that directed the staff to flag what the court found to be void or problems in the law or errors and problems people pointed out when discussing these things with staff that could be fixed

through legislation but that were too substantive for the code. At that time, a form was developed to help when finding a problem and suggested staff solution. All these problems used to be given just to the Judiciary Committees. Following that, most people had a great number of bills they were already carrying, the Judiciary committee was very busy and the suggested legislation was largely out in the cold. Beginning last session I got permission from the caucuses to include a list of suggested legislation and material handed out at caucus. That is where we are at now. The legislative council and myself take no position on any of these pieces of legislature. We are responding to a rule that was adopted to raise the attention of the legislature of an apparent problem in law. HB 505 came from a case that dealt with an alleged intentional interference with contractual relationships and intentional infliction of emotional distress. The case went to Montana Supreme Court on two separate occasions and the court struggled with the alleged intentional interference with the contractional relationship because there were no statutes to guide them and the court ended up exhorting to the processor our courts. Because the court had to do that the person who filled out the form for this case thought the legislature should be able to help this issue and this is the bill before you.

Tom Hopgood, Montana Association of Realtors, stated there is an administrative rule that requires a real estate licensee to judicate offers to the seller up until the time of closing. Buyer takes an offer to the seller, the seller accepts that and at that point a real estate buy/sell contract is created. Buyer number 2 comes in and gives a better offer. The real estate licensee is required by administrative rule to adjudicate that offer to the seller. Since it is a better offer, the seller wants to go with buyer number 2. Buyer number 1 is upset and sues the seller for breach of contract and the agent for intentional interference with this contractual relationship for doing something that is required of him under the administrative rule.

Mr. Hopgood offered an amendment if the committee would be interested in it.

REP. STICKNEY asked **Mr. Hopgood** if he would want this in the law? **Mr. Hopgood** said they would rather not have it codified.

Motion/Vote: REP. STICKNEY MOVED HB 505 BE TABLED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 608

Motion: REP. WHALEN MOVED HB 608 DO PASS.

Motion: REP. WHALEN moved to amend HB 608 by striking lines 21,

22, 23 and amending the pertinent portion of the title and inserting the language given to committee. **EXHIBIT 1** Motion passed unanimously.

Discussion: **John MacMaster** stated the amendment will say, when there is a violation the commission can order that the penalty be paid to the community, the state or any other party that violated the commission order. If you look at page 2, lines 1,2,3, talks about common carriers violating any provision of this chapter or doing any other act here prohibited or refusing to conform law and order. Mr. MacMaster said he would like to word the amendment so that it says that the commission can order the money paid to the community, state or other party protected by the law or commission order that was violated.

Motion/Vote: **REP. WHALEN** moved to amend HB 608 explained by John MacMaster and have an immediate effective date. Motion passed unanimously.

Motion/Vote: **REP. WHALEN MOVED HB 608 DO PASS AS AMENDED.** Motion carried unanimously.

EXECUTIVE ACTION ON HB 631

Motion: **REP. MESSMORE MOVED HB 631 DO PASS.**

Discussion: **REP. MEASURE** stated he is concerned about the mandatory sentence of this area. Primarily because the most effective way of dealing with this problem, to prevent repeat offenses, is immediate treatment. A mandatory sentence would prevent that treatment. Rep. Measure stated he opposed the bill.

REP. TOOLE stated this bill is forcing a court to send a person to prison for two years. Current law says the court can send a person to prison as an option. Rep. Toole stated that he did not see the necessity of this particular bill.

Motion/Vote: **REP. TOOLE MOVED HB 631 BE TABLED.** Motion passed 15 to 5 with Rep's: Gould, Boharski, Strizich, Whalen and Clark voting no.

EXECUTIVE ACTION ON HB 439

Motion: **REP. RICE MOVED HB 439 DO PASS.**

Discussion: **REP. RICE** asked **John MacMaster** if SB 51 has a provision for notifying the defendant of this? **John MacMaster** stated that it doesn't. Right now the law in Title 46 has two different sections. Each of which states certain things you must notify the defendant about. One of them states what you have to

notify them of on arraignment the other section what you have to notify them of if there is a plea bargain. SB 51 takes those two sections and combines them so there is only one point in time in which you have to notify them of various rights or things that may happen to them. If SB 51 passes you only need this bill amended into it in one place and that is what this coordination instruction will do.

REP. TOOLE stated he opposes the amendment.

REP. RICE stated if he understands John MacMaster's amendment, if we change this both sections will remain in the law.

John MacMaster said if this bill does pass, both of those sections will still remain in the law and the judges will still have to inform them of their rights at the arraignment and on the plea. The only thing that will happen if we don't pass this is you will not be adding to each of those sections a provision that the judge also has to inform him that if he is not a U.S. citizen a guilty plea might have some dire results.

Motion/Vote: **REP. BROWN** moved John MacMasters amendment. Motion carried 18 to 2 with Rep's: Toole and Measure voting no.

Motion/Vote: **REP. BROWN MOVED HB 439 DO PASS AS AMENDED.** Motion carried.

HEARING ON HB 555
REVISE CRIMINAL PROOF AND PRESUMPTIONS

Presentation and Opening Statement by Sponsor:

REP. HOFFMAN, HOUSE DISTRICT 74, stated that section one of the bill deals with the assault statute that requires presumption of a purpose to cause harm to another. Section two of the bill deals with section 45-6-304 which places the presumption on the defendant.

Proponents' Testimony:

Beth Baker, Department of Justice, stated this bill will remove two provisions which contain unconstitutional language. Section one amends the assault statute, section 45-5-201, by striking language that requires a presumption of a purpose to cause bodily harm to another. This section has not, itself, been declared unconstitutional, as we believe it would be. Section two of the bill addresses a section 45-6-304 of which places the burden on the defendant to explain his possession of stolen property. HB 555 will repeal this section. There are two reason for proposing to repeal this statute. First a significant amount of case law has developed in respect to the juries consideration of possession of stolen property which makes this statute

unnecessary. The second reason is based upon practicality. Presumption is confusing to a jury because it attempts to instruct the jury as to how it should consider certain evidence that is bases on that definition. Repealing the statute would allow the possibility of reading instructions to the jury without requiring a court to have the jury consider all the evidence. Ms. Baker encourage the committee to do pass the bill.

Opponents' Testimony: none

Questions From Committee Members: none

Closing by Sponsor:

REP. HOFFMAN thanked the committee for their consideration of this bill and said he hoped the committee will give it a do pass.

HEARING ON HB 501
INCREASE MINIMUM CIVIL PENALTY FOR SHOPLIFTING

Presentation and Opening Statement by Sponsor:

REP. SCHYE, HOUSE DISTRICT 18, stated that this is a bill to increase the minimum law for civil penalty for shop lifting and was brought to him by a constituent's son who lives in Helena and will explain the bill to you.

Proponents' Testimony:

Lloyd Knutson, Retail Security Operator - Helena, stated shoplifting has gone up 24% in 1982-87. It is estimated over 2.5 million Americans will be arrested for the offense this year. The civil penalty for shoplifting, 21-7-118, is not realistic. To recover the penalty cost of a $15.50 carton of cigarettes a retailer must charge the consumer a $2.00 surcharge. Expenses a retailer cannot recover are wages, time to testify at a hearing, and one half the judgement if the collection agency is even willing to attempt to recover the judgement. HB 501 will allow retailers to collect three times the retail value of what was taken or $50, whichever is greater. The bill is necessary to retailers to recover the costs they lose when their establishment has been a victim of shoplifters.

Charles Brooks, Montana Retail Association, stated that his association supports this bill. The retail industry in Montana is under siege as far as shoplifting is concerned. The industry loses between 30 and 35 million dollars a year just in outside shoplifting, not employee thefts. We need to strengthen our ability to recover. A considerable amount of time is spent trying to keep people from shoplifting and when we do find them shoplifting a lot of time is spent in court. Some laws are needed to help recover costs that are involved.

Opponents' Testimony: none

Questions From Committee Members:

REP. RICE asked **REP. SCHYE** if this is something that the retailer will seek reimbursement for from the person who shoplifted? **REP. SCHYE** deferred the question to **Mr. Knutson. Mr. Knutson** said the retailer is allowed to collect the penalty from the offender in addition to amount of the item stolen. This bill will triple the retail value or $50, whichever is greater. **REP. RICE** then asked if it would be collected by a small claims action? **Mr. Knutson** said yes.

Closing by Sponsor: Closed

HEARING ON HB 473
COURT-ORDERED CONCEALMENT OF PUBLIC HAZARDS PROHIBITED IN DAMAGE SUITS

Presentation and Opening Statement by Sponsor:

REP. WHALEN, HOUSE DISTRICT 93, stated this bill does two things. It creates public policy in two ways, first by prohibiting the concealing of any injunction, or order of the court, verdict of jury, in a law suit in which a public hazard was revealed, and secondly, if the case was settled prior to time of trial the law would provide for exclusion of any provisions in those contracts that provide the sealing of any kind of contractual provision which would say you can't disclose information that relates to public hazard. Those things are against public policy and they are not enforceable because of this provision. Basically, the purpose of the bill is to protect the public.

Proponents' Testimony:

Greg Monroe, Professor - U of M Law School, stated he is here today representing the Montana Trial Lawyers Association. The bill before you is virtually word for word a bill introduced in Florida and passed and became known as the "Sunshine Litigation Statute". Mr. Monroe said he hoped that this act will be passed in Montana and become known as the Sunshine Litigation Statute in Montana. The problem that faces the court system is reflected in the handout. **EXHIBIT 2.** The headlines will show and reflect the fact that in our litigation system, things that are important to life and health are being litigated. They are being buried and stuffed away in court laws under agreements made possible under our rules of civil procedure. Companies are keeping hazard materials or waste product dump sites secret. The purpose behind this bill is to make sure there is a legitimate need for this secrecy before the court locks up information of a life and death nature and throws away the key. This problem is right here in

the state of Montana.

The act does a couple of things. First it provides that the court may not enter orders for judgements making secret that which is a public hazard. Second it provides that an agreement between the parties that they will keep secret something that is public hazard can be void and unenforceable. If these matters were brought out in litigation then they will be made known to the public. One of the most important provisions to this act, is that it is not only the litigants themselves have rights to the information, but the press can come to court and ask the court to review that information and if it is a matter of public hazard, they can ask that it be disclosed. This is a matter of public justice and consumer safety, which speaks to the importance of passage of this bill.

The opponents of this measure are probably going to suggest that there is no standard defining something as a hazard and if there is no standard, how is the court going to decide whether they can release the information or not. Mr. Monroe suggested that this isn't any different than our present system. The bill says that a hazardous act is one which has caused or is likely to cause of injury to members of the public or death to members of the public. There is a standard. Second, it is going to be suggested that this will open up a host of actions to obtain information on products that are hazardous. Products that are not hazardous do not present any harm to the public. But of those which are hazardous, the most hazardous products in our society, are the ones that the manufactures go to the most trouble to keep secret. Those cause the worst deaths and injuries. Those are the ones they spend the most money and effort on to keep totally secret.

It will also be said that this is an infringement on the right of contracts and that people should be able to contract in any way they want. If they want to contract for secrecy we should let them. However, the Montana Codes and Codes throughout the nation are complete with areas with which we don't enforce contracts. We don't enforce contracts that are against public policy that are legal. Basically this bill says that a contract to make secret, buried in a vault somewhere, knowledge about a public hazard is a violation to public policy and we won't enforce it. That is good sound policy of the legislature on behalf of the citizens of Montana.

The Right of Privacy will also be talked about by saying somehow privacy will be invaded if we pass this bill. Mr. Monroe challenged the question as to whether there is any corporate right of privacy that allows corporations to use the court system to bury information regarding hazardous based creations in any court vault somewhere and keeping it from the public when we need to know about it to prevent injury. Our whole point is that this information should not be buried in a vault and one should not have to recreate the wheel over it every time. This bill will

make sure there is a legitimate interest in protecting information and stop this business of locking up matters of life and death and throwing away the key. Mr. Monroe asked the committee to support the bill for the public. He stated that it is a good consumer measure and good for the citizens of Montana.

Jim Jenson, Montana Environmental Information Center, stated that one of the most serious problems we face in Montana is the risk of our ground water that comes from the failure of cyanide heap leach operations in the goldmining industry. Virtually every cyanide processing operation in Montana has failed for one reason or another. One of the most serious of those occurred at Whitehall at the Golden Sunlight Mine. The people whose groundwater was polluted and livelihood was put at risk, sued the Golden Sunlight Mining Company. Much of the information that was gathered by those folks in their suit against the company was subsequently hidden from the public. The company settled that case. Now, the members of Montana's public and other people who are faced with mines coming into their areas have no access to the kind of information that may show them exactly what the risk is. These concerns are more and more serious.

Chuck Walk, Executive Director - Montana Newspaper Association, stated that the association sees this bill as an important piece of legislation, giving greater public disclosure of information that is critically important to the public. Our association believes our ability to obtain and later transmit that information to the public takes on a great significance. The association is particularly supportive of the language in the bill in section 5 which spells out the manner in which the news media and others can respond to an attempt to conceal information. It is essential to ensure the full intent of the legislation can be achieved. Mr. Walk emphasized his support for this bill and hoped the committee will give the bill a do pass.

Lance Lovell, Senior - U of M Law School, stated he is in support of this bill. This issue is only going to arise in a small percentage of litigation. We will not see this in partnership dissolutions, divorces and corporation takeovers. Generally the bulk of litigation today that we will see is in areas where injury or death has occurred and will occur again. This injury is not just life threatening bodily injury, it can be property injury or environmental injury. This bill is needed to help prevent these injuries.

Michael Sherwood, Montana Trial Lawyers Association, stated his association is in support of this bill and that he would be available for questions.

Opponents' Testimony:

John Sullivan, Montana Defense Trial Lawyers Association, stated his group opposes this bill. We believe the bill is unnecessary and unfair. We are not opposed to protecting the public from

public hazards. It is not a question of the object of the bill, it is a question of the method that is adopted by the bill. the problem with the bill is the terms of the protection it is trying to get at and the fact that the problem is already being handled by the court system and a lot better than the way this bill would propose to accomplish it. The bill is unnecessary because we already have regulations in place about how court systems are to deal with a situation in which there is a claim for private information or confidential information.

The rule is called rule 26 of the Montana Rules of Civil Procedure and is adopted in the Federal system as well. What the rule basically says is that the plaintiff in a law suit has a tremendous right of access to information from the defendant. The plaintiff that makes an allegation in the law suite doesn't have to even prove that the information they are trying to get is relevant. All it has to be is information that might lead to the discovery to relevant information.

The point is that plaintiffs' already have a tremendous ability to get information from the defendant any time they bring a law suit. They can do that by asking different questions or by asking for production documents or by taking depositions of the defendant's employees or agents. They don't have to prove that the information they are trying to get is even relevant. Because the plaintiff is given the rules of discovery in law suits they have tremendous access to information. The rules of discovery also provide that in certain situations the defendant may ask for a protective order. In some of these types of cases involving particular products, a plaintiff can ask the defendant to provide that information be made public. At that point, the defendant might as well close its doors. As soon as that information is made public, the defendants competitors are going to have access to it and the business the defendant runs, isn't going to be worth a dime because the secret of making the product is not going to be a secret any more. There are such things as legitimate secrets such as trade secrets. Those legitimate trade secrets need privacy protection and confidential protection.

The way we deal with the situation today is that when a defendant needs that kind of protection they have to go to court and ask for protection. They have to make a showing they are entitled to that protection. That is done on a case by case basis and it is the only way it can be done. You can't rule on this as a legislature and do what you are being asked here. When the courts do that sort of thing, there is a protective order entered and the information the plaintiff is allowed access to cannot be made public.

They call this bill sunshine litigation. The idea behind it seems to be to convince you that litigation for a law suit is something that is done in private. That is not true. Law suits are public. The complaints people file in litigation are made public. The trial is also public. Under this bill, legitimate

privacy concerns of business are totally trashed. Our Association asks the committee to oppose this bill. This bill is s part of a nation wide effort on the part of the plaintiff's bar. If you pass this bill, you are going to encourage blackmail settlements in situations in which a company has a legitimate privacy concern to protect, but decides it can't protect it in the state of Montana and it is better to pay to settle the case.

Gary Spathe, Liability Coalition, stated when he first looked at this bill he thought how could a person oppose a bill like this. How could you oppose a bill whose main purpose deals with keeping information about harmful consumer products and hazards secret? I got by the title of the bill and into section one and looked at the definition of public hazard and noted it involved just about everything. This could apply to every type of litigation one may be involved in. Privacy is important and we cannot forget about privacy. We don't think this bill should be taken lightly because of the extreme intrusion of privacy. The Liability Coalition urges the committee to oppose this bill.

Ward Shanahan, Attorney - Helena, gave written testimony in opposition of HB 473. **EXHIBIT 3**

Jacqueline Terrell, American Insurance Association, stated her association is concerned about legislation of this type on a national basis but in Montana their specific concern is with the insured who are health care practitioners. Section one of this bill defines public hazards to include person or procedure that can refer to doctors. Our Association believes that this legislation, if passed, would encourage blackmail settlements, and increase litigation in all cases. Litigation increases have a direct effect on the availability and affordability of the insurance provided to our insurers. This committee is urged to give this bill a do not pass recommendation.

Questions From Committee Members:

REP. LEE asked **Mr. Monroe** if he would respond to the trade secret argument? **Mr. Monroe** said the bill expressly provides for trade secrets to be protected and the court would have to make a determination as to what is pertinent. Trade secrets, as always, would be fully protected. **REP. LEE** then asked if this bill would have any application in retroactivity? **Mr. Monroe** said this should not be retroactive and would not be.

REP. GOULD asked **Mr. Sullivan** how common these situations are in Montana? **Mr. Sullivan** said the use of protective orders in litigation is not something that is terribly common. The amount of information that is actually protected by protective orders is a very small amount of information. It is a very important amount of information when dealing with businesses.

REP. WYATT asked **Mr. Monroe** to address the terms of personal privacy in dealing with aids? **Mr. Monroe** said the issue is

whether or not the person has a right of privacy. Our constitution clearly recognizes the right of privacy in an individual. The question here is whether the court would manufacture that as a right of privacy. The condition we are looking at here is the hazard which has caused or is likely to cause harm.

REP. RUSSELL asked **Mr. Monroe** if he would respond to blackmail settlements? **Mr. Monroe** said you have heard the opponents say that if you pass this bill litigants won't settle peacefully and you will clog the court system. Mr. Monroe thought that was humorous. What the opponents are saying is that if you have a hazard so bad that it hurts or kills somebody and we don't want anybody to know about it and we will pay alot of money to settle this case. But if you pass this bill saying we can't do this, then we will take it to a jury trial and let the entire press be aware of everything. I don't believe that, they will settle out of court.

Closing by Sponsor:

REP. WHALEN stated that virtually every state in the union has adopted this rule of civil procedure for their state almost identical to the federal rule. Three states have, 1 by court ruled, and 2 by statutory enactment, enacted this type of legislation. This is an unworkable piece of legislation. The issue has been raised as to whether or not the particular provision in the Montana Constitution dealing with the right to privacy might put this in direct conflict with that constitutional provision. I suggest to you that we are talking about products that are manufactured and distributed in interstate commerce including the public. There are absolutely no privacy problems except to the extent that the law might butt up against a federal trade mark or patent law. You need to understand that in this bill the release of information can take the form of an "in camera" inspection by a judge and that judge then makes the decision. It is a matter of saving lives and we would be foolish not to have this bill pass.

HEARING ON HB 567
REVISE ATTORNEY GENERAL DUTIES

Presentation and Opening Statement by Sponsor:

REP. FAGG, HOUSE DISTRICT 89, stated this bill is on request of the Attorney General and reflects what the Attorney General's office does. The language being stricken has been on the books for years and years and are things the Attorney General's office does not do at this time. The bill modernizes the current language. The AG's office has requested to strike the new section on page 5. This was done because, according to Judy Browning, the Attorney General's Office has never done this and

it is unnecessary.

Proponents' Testimony:

Judy Browning, Deputy of the Attorney General, stated she is representing the Department of Justice. The Department didn't have a problem with the statutes that set forth the responsibilities of the Attorney General except during last year the legislature audited the Attorney General's Office. Going through the statutes that set forth the duties, the auditor suggested that we clean up the language because some of these provisions have not been in operation for a long time. It was necessary to delete a lot of the excess language so we could reflect this back to the legislation.

The National Association of Attorney Generals have done a survey of all Attorney Generals and the legal provisions that set forth their responsibilities. The first page of the bill takes out line 17 through 19 which is now going to our states legal business department. On page 2 there is a lot of language taken out which is simply annotated language. On page 3 there is language that is cleaned up and on page 4 there are 3 sections taken out. There is some new language on the first page of the bill that says the Attorney General may bring cases in which the state has interest. That is a reflection of case law. I urge you to approve this bill and give it a do pass.

Opponents' Testimony: none

Questions From Committee Members: none

Closing by Sponsor:

REP. FAGG stated this bill simply modernizes the duties of the Attorney General's office and I would appreciate your support.

HEARING ON HB 559
GENERALLY REVISE AND CLARIFY DUI LAWS

Presentation and Opening Statement by Sponsor:

REP. FAGG, HOUSE DISTRICT 89, stated he is sponsoring this bill at the request of the Department of Justice. This bill was drafted to address certain inconsistencies in the language of Montana DUI laws. It has received the responses of numerous criminal lawyers both from the prosecution and defense side. It will conform the DUI laws to changes which have been made in the law by the Montana Supreme Court. The most significant change in this law changes presumptions to inferences. This is required under State vs. Weber that came out this past year. Previously law said that if a persons BAC was over .1 it was presumed they

were under the influence of alcohol and this presumption was rebuttable. The Montana Supreme Court held that it was unconstitutional and so this says there is an inference that a person was under the influence of alcohol. This is done strictly to conform with the Montana Supreme Court opinion. The most controversial part of the bill is the authorization for drug testing under the implied consent law. This law simply says it is okay for the police if they suspect a person is under the influence of drugs, to test for drugs. It also says there is a maximum of two tests that be given to a person who has been picked up for driving under the influence of drugs or alcohol. It also includes the DUI laws regarding the operation of boats and airplanes. That was not in the original bill drafted by the Department of Justice but was added in by the Legislative Council.

Proponents' Testimony:

Peter Funk, Assistant Attorney General, Department of Justice, stated this bill is brought here for three reasons. Inconsistencies that we perceive within the current DUI statutes, recommendations that we have received from criminal justice agencies throughout the state, and recent Montana Supreme Court decisions dealing with the issues of presumptions vs. inferences. There are certain provisions in the bill that might be construed to be emphasizing the law enforcement aspect of the DUI prosecution process. I think the most significant thing in the bill is the change from presumptions to inferences. That is certainly an amendment to the existing statute which can only be characterized as an effort that will come down on the side of the defendant. We don't put this bill forward in an attempt to enhance punishment or increase penalties for DUI, but to make the statues consistent.

On page one of the bill there is a change with the insertion of dangerous drug for narcotic purpose. The purpose of that change is simply to bring the language of the DUI statutes into conformity with the language of the criminal code. On page 2, line 15, there are some changes to the concentration of alcohol in a person's blood to the concentration of alcohol in the person. As you can see from that definition, the statutory definition did not refer to blood alcohol concentration but to alcohol concentration in general which is obtained by analysis of either the person's blood or urine. That is the point on page 2 in change the language from BAC to AC in the person.

On the bottom of page 2 and top of page 3 is a primary change. That is the shift from presumption to inference under the statutory provisions. The problem with using a presumption, in criminal prosecutions, is that a statutory presumption is something that is mandated for the jury. Under the existing statute, if a person has a BAC of .10 or more is it essentially out of the jury's hands as to what conclusion they reach on the

issue of whether a person was under the influence. The statutory language concerning presumption says if you have a BAC the jury must make the following findings. In two Supreme Court Cases in the last two years, we have variegated decisions concerning the use of presumptions to prove eliminate of criminal defense. The basic problem is the state has the obligation, in all criminal prosecutions, to prove every element in criminal defense beyond a reasonable doubt. When using presumption to do that, the state technically is not proving that issue beyond a reasonable doubt.

Because we are proposing a drug test under the complied consent test, we have to change the standard that is now built into the statute. Most individuals that are placed under arrest for a DUI offense are going to be put on a instrument that measures blood alcohol concentration. If, at that point, there is no indication of a high blood alcohol level, and the arresting officer still has the evidence to him for cause of arrest as far as a person being under the influence of something. The multiple testing built in the complied consent statute is a mechanism for law enforcement to deal with that problem. Then they administer a separate test which is going to have to be a blood test so they can determine what they are under the influence of, if not alcohol. That is the point of multiple testing.

John Conner, Montana County Attorney's Association, stated the association believes that this is good legislation because it clarifies the ambiguities in the law in respect to DUI prosecutions and it does benefit the defense for the same reasons. We are particularly interested in changing the laws relative to mandatory permissive inferences because all too often prosecutors rob their instructions from the language of the statute itself, which is not necessarily appropriate. The DUI statutes need to be changed to comport with existing case law so mistakes are not made by prosecutors in terms of presenting appropriate arguments or offering appropriate legal instructions. We urge your do pass consideration.

Opponents' Testimony: none

Questions From Committee Members: none

Closing by Sponsor:

REP. FAGG stated the Department of Justice is not trying to swing anything by you here. Peter Funk will be here for executive session and if you think there is something you have any questions about, please include him in your deliberations. I do believe this is an important bill to clear up some inconsistencies in the law. I urge your do pass.

HEARING ON HB 788
REVISING MONTANA ABORTION CONTROL STATUTE

Presentation and Opening Statement by Sponsor:

REP. TED SCHYE, HOUSE DISTRICT 18, stated he has some amendments to be offered to the committee. **EXHIBIT 4.** The amendments are mostly clean-up amendments and John MacMaster is aware of them.

"Many people have asked, why a farmer from Eastern Montana would carry a bill like this. I believe strongly in the U.S. Constitution and I believe strongly in the Montana Constitution but I also believe very strongly in a person's individual rights of privacy. Those are the main reasons that I would carry a piece of legislation like this. This bill revises the Montana Abortion Control Act and recommends positive statements of Montana's Right To Privacy guaranteed by our own constitution. Many of the sections of the Montana Abortion Control Act are unconstitutional and others are not in compliance with the existing standards. HB 788 removes the unconstitutional section and reflects the existing high quality standard of current medical practice. Most people agree that parents should be involved in a teenage daughter's decision to carry a pregnancy to term or to have an abortion. The vast majority of young Montana women do involve their parents or an older guardian. However, there is not agreement of mandatory parental notice. We see that in the state of Oregon in November having the parental notice issue on their ballot. This bill is a moderate, reasonable, workable approach to the issue that minor's get the accurate information and the support they need. Emphasizing the counselling of minors, increases that they will have a parent involved in their decision. It puts into the statute the language that will uphold the test of time and uphold what Montanans hold dear; recognition of individual rights to privacy."

The bill is very straight forward and uncomplicated. The first section, protection of reproductive rights, confirms Montana's constitutional right to privacy. It also regulates that it must be consistent with established medical practice. Section two is the informed consent required for an abortion prior to an abortion. This adds a section where minors have the rights to self-consent to terminate a pregnancy or to carry pregnancy to term. Minors in this section are also encouraged to get their parents, guardian, or other responsible family member involved in their decision. The counseling section is probably one of the most important sections in the bill. This comes from the Connecticut and Maine laws that are now in effect. These are counseling of minors prior to an abortion. Again, the bill discusses the importance of involving the minor's parents in the decision. It goes through a lengthy discussion on the counseling issue.

Proponents' Testimony:

SEN. DOROTHY ECK, SENATE DISTRICT 40, stated the people of Montana want a clear, concise, understandable and responsible bill on abortion. This will provide us with that and also speaks to the increasing concern in Montana for protecting our young people and encouraging strong family relationships. One doesn't encourage those relationships on mandate, you encourage them by developing a kind of society where families are strong.

REP. COCCHIARELLA, HOUSE DISTRICT 59, stated as Chair of the Democratic Women's Caucus, the caucus of the House and Senate want to go on record in support of this legislation and encourage you to favor it and pass it out of this committee.

Robert Phillips, Attorney and Member of the Board of Directors Planned Parenthood Federation of America, stated that this committee and the legislature in Montana has a tremendous opportunity to enact a piece of legislation that will be an intelligent and reasonable approach to this sticky issue. The Reproductive Rights Movement has made a statement and the bill on your table today is a reasonable and intelligent response to that opportunity. It recognizes the competing interests involved in all aspects of abortion. It has a balanced approach to all involved. Legislation such as this is necessary because Montana's early abortion law, prior to 1973, was basically a restriction that rendered abortion illegal, except in case of saving the life of the mother. In 1973, immediately following the landmark case of Roe vs. Wade, Judge Russell Smith, Federal District Judge in Missoula, struck down that legislation following Roe vs. Wade in its entirety. Shortly after in 1974, the legislature enacted what has been called the Montana Abortion Control Act and shortly after that, it was struck down by both courts in Montana and the Supreme Court. The main case in Montana that struck down major provisions of law that is currently in our Montana Codes Annotated, was a case of Doe vs. Deschamps. In that case it was decided there were key provisions on that statute that could not pass constitutional muster. All of these challenges, including challenges of other states that struck down other provisions of Montana's Abortion Control Act, have been challenged under the U.S. Constitution. The status quo now is that Montanans don't know where their reproductive rights or reproductive freedom is. The Webster case decided last year by the U.S. Supreme Court has restricted Roe vs. Wade to some extent. The right to privacy, which was originally found by the U.S. Supreme Court in the early case of Griswald vs. Connecticut, has been subject to some interpretation. As we all know, that right to privacy doesn't exist explicitly in the U.S. Constitution, so it is always going to be subject to some interpretation. In short, the U.S. Constitution may no longer provide the protection that Montanans want and have told you they want.

The citizens of Montana told the legislature that they wanted those protections explicitly when they enacted Article 2, Section 10 of the Montana Constitution. That basically guarantees the

right of privacy to all the citizens of Montana. The official comment to that Right of Privacy Provision states "what it accomplishes is the elevation of the judicially announced right of privacy to explicit constitutional status". This right has been guaranteed at the Federal Level. The important thing about this quote from the commission report is that the 1972 Constitutional Convention has stated, yes we want a right to privacy, yes we are going to make it explicit and we are going to tie it to reproductive rights because that is the case they cited. Griswald vs. Connecticut is a case involving access to birth control and other devices.

The bill you have in front of you provides that individual protection. The first thing it does is states the legislature's intent to recognize the right of privacy and contact to reproductive freedom. The next section relates to counseling minors prior to abortion. It requires that you give them even handed counsel on both sides and lets minors know where help is and tells them where help is on both sides of the issue. It encourages family communication through that counseling. All of this is to be done under direction of a physician. The physician being a professional in this area.

The bill defines viability. This is an important provision for letting physicians and their patients in Montana know what their rights are. That definition of viability is a critical one and it says that viability includes both with or without artificial aids and is based on best medical evidence.

The statute goes through and repeals unconstitutional provisions in the Montana Abortion Control Act. Provisions which are now not being enforced at all or enforced in a haphazard manner. This legislation cleans up the law and recognizes the rights of minors under the Montana Constitution. Because of the definition of viability it also codifies the basic rule of Roe vs. Wade. This legislation basically states the law the way it is now.

The right to privacy in the Montana Constitution was stated very broadly. The commission, who recommended it to the Constitutional Convention, told us why they left it broad. The Committee proposed a broad provision to permit flexibility to the courts in resolving the tension between public interest and privacy. It is hoped that the legislature will provide additional protections for the right of privacy in explicit areas where safeguards are required. The simple facts are that safeguards are required. The United States Constitution may no longer provide the kind of protection the people of the state of Montana want and have said they want. The bill before you lets Montanans know what their rights are and defines it so that it won't change if the U.S. Supreme Court interprets the right of privacy differently. The current law is vague, partially unconstitutional, no one knows what their rights are and just basically doesn't let Montanans know where they stand. I urge you to pass the bill, it is a good bill and the citizens of

Montana need this bill.

Lindsay Richards, Doctor, mother and community member - Missoula, stated she is an OB/GYN and has been practicing in Missoula, Montana for nine years. She noted that she is board certified. Planned Parenthood in Missoula is not an abortion provider, yet provides birth control and health care services, primarily for those of low income in our community. My professional practice is a general OB/GYN practice. She stated that she covers the entire range of health issues relating to women's reproductive health. If a patient comes to my office who doesn't want to be pregnant at this time, I help them choose a safe and effective birth control method. If a women comes into my office pregnant and happy to carry the pregnancy to term, I help her safely through her pregnancy and through child birth with the best of my knowledge. If a patient comes into my office unhappy because she is unable to become pregnant and wants badly to have a child, I do my best to help her to keep those goals by working with her to solve the problem. If a women comes into my office with an unwanted pregnancy, which because the time in her life and circumstances of her life she doesn't feel she can have the baby at this time, then I provide abortion services.

Interestingly, through private practice over a series of years, it is common to see the same woman come in during different stages of her life needing different services. When she was sixteen years old and hasn't been to school and her boyfriend has just left town, she feels an abortion is the right choice for her. Some years later she is happily married and is ready to start a family, I am happy to be there to help her in that part of her reproductive life. I provide safe and legal care under all those circumstances. I would like to speak in favor of the proposed provisions of the Montana Abortion Control Act. I think it is a good bill. It is quite simple and seems to validate the legal lines what is now actually current practice of abortion services in Montana. The doctors who are providing these services now are recognizing medical ethics and standards of medical care.

Section one of the proposed bill affirms the patients right to privacy. It also recognizes the medical standard of care at the appropriates lines to guide the provision of the medical service. It gets the legislature out of the doctoring business. It is these medical standards that we have been following for all these years that have made first trimester abortions one of the safest medical procedures that a person ever has, ten to twenty times safer than if continuing the pregnancy.

Section two outlines the standard of informed consent. The informed consent is also a major pillar of medical ethics. So the law here supports our approach in handling patients.

Section three of the law details the way of how to obtain consent for a minor. Its emphasis is the importance of parental

involvement, but very wisely, it does not require parental involvement. In our office, the vast majority of young women who come in for abortions, come in with their parents. Their parents are involved in their decision and are there to support their daughters. If a women calls wanting an abortion and says she doesn't want her parents involved, we have her come in for an extra visit. She comes in and meets me and I get a chance to talk to her separate from the abortion to help her look at her choices and try very hard to have her involve her parents or another responsible adult or family member. I have never been in a situation where that wasn't possible in my private practice. We have always been able to help this person find adult support for this difficult situation in their lives.

The second role in which I would like to speak to about this bill is as a mother. I have been happily married for 14 years and have a daughter who is 9 years old and a son who is 7 years old. As a mother, I hope very much that if either of my children were involved in a teenage pregnancy that they would come to me for support and advice. If they chose not to do that, I would sincerely hope that they would be allowed by the law to turn to professional counselors for safe medical advice.

The third role I would like to speak to about this bill is as a community member. I am an assistant girl scout leader and we have 23 girls in our group. Another volunteer activity I am involved in is an organization called Community Care. This organization is dedicated to preventing alcohol and drug abuse. We have sponsors and support groups in the Missoula Middle schools where adult volunteers come in and meet with small groups of 12-14 year old children to encourage them to learn to express their feelings and their problems with each other and an adult. It is our hope we will help them to resist peer pressure. In these groups I have come to know 12 and 13 year olds who are living in homes where violence and alcohol abuse are enormous and immediate problems to these young people. These are children who may be involved in a pregnancy caused by a member of the family. They might very realistically believe that sharing this situation with their parents could result in their being physically abused. These children should have access to professional counseling support when they cannot turn to their families.

I encourage you to support the proposed provisions that recognize medical standards, regulate medical procedures, and encourages involvement with minors seeking treatment and provides for professional support in counselling of a minor who decides not to involve her family in her decision.

Lynne Bryant, Women's Health Care Nurse Practitioner, gave written testimony in favor of HB 788. **EXHIBIT 5**

Joan McCracken, mother, registered nurse and certified nurse practitioner, gave written testimony in favor of HB 788. **EXHIBIT 6**

Ann Mary Dussalt, self, stated she is a participant in an organization called Catholics for Free Choice. This is a national, educational organization that supports the right to legal reproductive health care especially relative to family planning and abortion. We believe that those women who are Catholic not only have a right to make that decision, but further more, they have a right to a safe and legal procedure. Equally important, Catholics for a Free Choice believe it is time to move forward on the debate on this issue. You know as well as I, the best course to the most natural alternative to abortion is to reduce unintended pregnancy with the development and accessibility to various types of birth control as well as the adoption of public and social policy relating to prenatal care, sex education, day care and housing. I would suggest to you that HB 788 is the beginning of the cornerstone of this new public policy and it is long over due. Section one states that Montana's public policy is that this state may not interfere with the right of a women to carry a pregnancy to term nor may they interfere with the right of a women to terminate her pregnancy. Secondly, it makes Montana Public Policy very clear that a minor needs counselling before terminating her pregnancy. Ladies and Gentlemen this is good public policy and I urge your support.

Marilyn Irey, MT Division - American Association of University Women, gave written testimony in favor of HB 788. **EXHIBIT 7**

Vicki Amundson, Mother - Missoula, gave written testimony in favor of HB 788. **EXHIBIT 8**

Dan Edwards, Member of Board of Directors, ACLU, stated he urges the committees support of HB 788.

Diane Sands, Montana Women's Lobby, gave written testimony in favor of HB 788. **EXHIBIT 9**

Carol J. Farris, Montana Affiliate ACLU, stated she is in support of HB 788.

Nancy O'Neil, Montanans For Choice, stated she is in support of HB 788.

Marty Onishuk, Social Policy Director - Montana League of Women Voters, gave written testimony in favor of HB 788. **EXHIBIT 10**

Willa Craig, Blue Mountain Women's Clinic, stated she is in support of HB 788.

Elizabeth L. Hurley, self - Livingston, gave written testimony in favor of HB 788. **EXHIBIT 11**

Opponents' Testimony:

John Sheehy - Attorney in Helena - Retired Supreme Court Justice, stated he is appearing in his own personal capacity. I oppose

abortion on demand. I oppose it on moral, religious, philosophical and even political grounds. Because of that outlook, if I were sitting in your seats, as I once sat, and voting on this bill, I would vote to give it a quick burial. This bill is in effect a bill for abortion on demand. It recites in section one, in order to affirm Montana's Constitutional Right To Privacy, the state may not interfere with the right of a women to carry a pregnancy to term nor may the state restrict the right of a women to choose to terminate the pregnancy prior to fetal viability. That would be through the first 23 weeks of pregnancy. That flies in the face of Roe vs. Wade which is the civil case that began the abortion controversy to begin with. This bill has no reference at all to the right of the unborn child and viability. The people in the state of Montana are not for abortion on demand. They agree that the right of privacy must subject to state regulation. That is our constitutional provision. It is amazing circumstance that our constitution was before Roe vs. Wade and in that decision we said that the right to privacy existed for every individual subject to how the state interest is regulated, that is our constitution and the Supreme Court reached that same decision. I am saying to you that abortion on demand needs regulation and this bill does away with regulation.

Glenda Cervantez, Montana Post Abortion Counseling, stated, "I had two abortions and I suffered greatly. I have a masters degree in counseling and presently work with other women with post abortion syndrome." It may take years to overcome the guilt and other symptoms of post abortion syndrome. Many successful women have abortions. At the national post abortion conference of June in 1990, the research showed a direct correlation between abortion and increase in child abuse, fertility problems, nightmares, eating disorders, anxiety, out bursts of anger, intimacy with husbands, alcohol and substance abuse is increased, anniversary depression, drinking disorders and avoidance. Women suffering from post abortion syndrome are not able to emotionally contribute to a family. About one third of women coming in for counseling today are women who have had an abortion. It is illogical to attach to a social problem by creating it anymore. Especially a solution that involves the emotional consequences dealing with abortion. We ask you to oppose this bill.

Alana Myers, self, stated as a mother of four daughters it grieves me deeply that this bill would put an abortion counselor, the physician performing the abortion, or even a trained health care worker, in my rightful place as a parent in counseling my own daughters in such a serious matter. In event, that any physical or mental complications following my daughters abortion, as the parent, I would be the one responsible for paying the bills and seeing to my child's post abortion care. Yes, this bill shuts me as a parent out of the decision making process before the abortion. It is not unlike taxation without representation.

The vast majority of Montana parents do have the best interest of their child in mind when she is faced with an unplanned pregnancy, unlike those who stand to profit monetarily from the abortion. Girls from good families are often, according to studies from abortion advocates, hesitant to tell their parents of their pregnancy for fear of disappointing their parents. I love my girls and I want to be included by law in these important decisions. However, in dysfunctional families, on the other hand, in those very few cases of incest resulting in pregnancy, this bill makes no provision to address the problem of incest. When a child, I myself, was a victim of incest in my own home. I know the terror of hearing my father's footsteps coming to my bedroom once again in the middle of the night. This bill, as it is, will allow the abortion counselor or provider to abort the child without the intervention of a judge or appropriate social or child welfare authority. The victim would, without this intervention, then be put back into her old home where the act could possibly be repeated. From my own personal experience, what the child of incest needs, is intervention.

Dr. Robert St. John, OB/GYN, stated he is here to speak in opposition to this House Bill. I want to bring up two points in the bill that I think, as a physician, need clarification. The two points are the threat of viability and the threat of informed consent. Viability is a term that was conjured up by the Supreme Court in their decision in 1973 in Roe vs. Wade. It is not a medical term in any way. It cannot be defined because it is flexible. In 1973, arbitrarily they put viability around 28 weeks of gestation. Montana is now going to say 23 weeks. Viability is really the ability of the caretaker to render care that will make a fetus survive. Our pediatricians are included in this all the time. We send most of our sick babies down to Salt Lake and in Salt Lake it is routinely seen how babies survive below the age of 23 weeks. We know that there are babies of 18 weeks that have survived to adulthood and are perfectly normal.

The second question that bothers me is the division of this informed consent. As a physician and OB/GYN who does surgery and takes care of a lot of patients, about 60 hours a week of patient care, I am obliged by law to give everybody informed consent no matter what I do to them. I have to give them informed consent before I examine them or give them medication and the same thing for each surgery. However, this bill would remove a large amount of that information. If you look at the original Montana Abortion Control Act, it has many more things in the informed consent definition. There is no reason why anyone should not be fully aware, going into a procedure such as abortion, of all the ramifications of that. Including the fact that the one individual that is not going to survive this is the unborn baby. Every abortion results in at least one death.

That woman who is undergoing an abortion has to know that, because if she doesn't, she will probably get the post abortion

syndrome. It takes a while to develop so it may take a number of years to surface. In my office we see a lot of people who had abortions 15 years ago, are now trying to deal with it. If you are going to have an abortion without parental consent, they must know exactly what is happening to them, because they have to live with it the rest of their lives.

On the issue of the parents being removed, I have two daughters who decided to get pregnant without the benefit of a spouse. One daughter was 16 and the other daughter was 20. They both came to my wife and I and we talked extensively. My oldest daughter who is now 31, four years later married the father of her baby and they have 3 children and a very strong family. My second daughter is going to marry the father of her baby tomorrow. Because of this, we have a very strong family. If they went to abortionists, who gave them the kind of counseling that is in this bill and went ahead with something that we found out about later, it would have caused a terrible rift in our family. This is a very bad bill and should not be passed.

Gail Gameron, self, stated she has been through a crisis pregnancy herself. Had she listened to the advise of her peers, teachers and counsellors, she would have murdered her daughter. Ms. Gamerson said her parents gave her full support through her pregnancy.

Judy Chadwick, Whitehall Resident, stated she was here as a concerned parent. As a teenager, she got pregnant. She stated that she could have told her parents and they would have supported her, but she didn't want to hurt them. Roe vs. Wade had not been settled yet, she didn't have the option of abortion or would have done anything under the stars to get one. Ms. Chadwick stated that she had her baby, and this year in July she attended her daughters wedding. She stated that as she sat in the front row at that wedding, she realized in her youth, her ignorance, and her selfishness, she would have killed that child. "I pray to God that I didn't have that opportunity." She stated that she now has four daughters and prays that they will never take the choice for abortion without considering her. "I love them and care for them as every parent does. We have the right to know what is happening in our children's lives. We are the ones who are left to pick up the pieces when they have to face the consequences of what they have done."

Don Garrity, Attorney in Helena, stated, "I am sure all of us have been preoccupied by the war lately. Yesterday I read HB 788 and I was struck by the thought that in politics as in war language is more often used to disguise how we communicate. Wednesday, when I saw the pictures from Baghdad, I had wanted to believe that the lateral damage our bombs had only rattled the windows and disturbed the rest of innocent civilians, but of course we all knew better. I think we all know even if we call it terminating the pregnancy, the subject of HB 788 is a bloody business. This bill states that Montana's Constitutional Right

to Privacy guarantees a child the right to order an abortion. But that cannot be true. We don't sell cigarettes or alcohol to children no matter how bad the child wants these items or how many consent forms the child would sign. If the rights of privacy means that it requires our children to subject their bodies to this invasion without even the knowledge, much less the consent of the parents, where does it stop. I beg you to think long and hard before adopting this particular principle. I was somewhat relieved when I heard Marvin Fitzwater, the president's press secretary, state was I firmly believe to be the truth, he said "It is not American Policy to target innocent citizens.", please do not make it Montana's policy."

Linda Sargent, Executive Director - Montana Right to Life, stated we strongly oppose HB 788. The bill allows abortion with absolutely no restriction, there is not even an attempt to balance any rights in this bill. The language is biased and literally vague.

For example, what does a women's health mean on page one line 24? And the definition of counselor is so broad it can include almost anyone. Who ordains the clergy? Who is a trained health care worker? Could this counsellor be an abortion clinic worker who has a vested interest in every abortion sold? Even if you consider yourself pro-choice you could not support this bill. If you care are a women's health, you could not support this legislation because this bill does not require the same kind of medical standard applied to every other surgery. The physician does not even have to inform the women of the complications she is bringing on herself. The physician does not even have to perform the abortion. Clearly, women's lives are endanger if this measure passes. For a multitude of reasons, we oppose this bill.

John Ortwein, Montana Catholic Conference, stated he has just two thoughts as he was listening to the testimony. It seems when the proponents talk about the fetal development or viability of the fetus, they kind of see the fetus as a potential human life. Those coming in as opponents see a human life as potential. He stated that there is great deal of difference in those two. Secondly, Mr. Ortwein stated that he wanted to go on record stating the position of the Catholic Church in the world, in the nation, and most certainly in this state, is opposition to abortion on demand.

Claire Brisendine, Director - Rodney Street House - Helena, stated the Rodney Street House is a home for women who are experiencing a crisis pregnancy. It offers a 24 hour crisis hotline, support groups and post abortion counseling for women who are experiencing aftermath of their own abortion. She said she would like to establish the fact that she is an American citizen and very definitely pro-choice. Ms. Brisendine stated that when she says pro-choice she means with the exception of when it means the taking of anther innocent human life. She

stated further that as a women who has had an abortion and suffered through post abortion syndrome myself, she vehemently abhors the exploitation of women in America by the multi-billion dollar abortion industry. As a women, she is disgusted by the grand illusion presented by the pro-abortion industry which purposely and intentionally misinform and blatantly lie to us in order to increase their profit through the abortion market. We at Rodney Street House absolutely oppose HB 788 and stand against the sort of injustice which would approve our children being torn limb from limb, while the abortion industry continues to thrive and profit by innocent blood. She stated that as a women, she does not view we as women nor any man should have the proposed right to choose to kill another human being. "I would urge each one of you as intelligent men and women legislators that you would look at pictures which I am not being allowed today to show you but I have a picture of a child's hand taken from a dumpster outside of an abortion clinic in Grand Fork, North Dakota. For any of you who want to see for yourself what an aborted child's hand looks like after it has been torn from it's mothers womb, educate yourself as legislators."

Mike Kecskes, Helena Resident, gave written testimony opposing HB 788. **EXHIBIT 12**

Tom Rasmussen, Montana Family Coalition, stated that we have talked about the word choice today and he felt that is a term dear to all of us and part of the American fabric of freedom. About a little over 100 years ago we had another battle raging similar to this and it was a battle raging in the middle of the 1800's, civil war time, and we had the same terms being flung around. One might go back and recall that the pro-choice people said that slavery owners had the right to have a choice as to whether they would have slaves and what they would do with the slaves. This mentality pervaded though a number of decades through our history. We just celebrated a birthday of a president who finally brought the turn of the thinking of a nation. What he brought to our attention, the fact that there are levels of rights and the rights of the human beings, the black slaves at that time, over balance the rights of the slave owners to make their decision about the rights of the slaves. I would submit to you that sooner or later in this country we are going to come to the realization that we do have a separate being, a being that we can measure its heartbeat and take pictures of it and it moves, from it's mother. The right of that child supersedes the right of any individual to make a decision as to whether it lives or dies. I would urge you to oppose this bill.

Sherry LeVeque, Register Nurse, would like to go on record opposing HB 788.

Tina Lewis, Republican National Coalition For Life, would like to go on record opposing HB 788.

John T. Lewis, Right to Life, gave written testimony opposing HB

788. **EXHIBIT 13**

Charlene Howard, Helena Resident, gave written testimony opposing HB 788. **EXHIBIT 14**

Allison Nistler, Teenager, would like to go on record opposing HB 788.

Carl Hatch, Attorney - Helena, would like to go on record opposing HB 788.

Rep. Barnett, House District 76, would like to go on record opposing HB 788.

Maggie Stuart, would like to go on record opposing HB 788.

Roxie Nistler, Right to Life, would like to go on record opposing HB 788.

Susan Nelson, Certified Registered Nurse, would like to go on record opposing HB 788.

Terri Donaldson, would like to go on record opposing HB 788.

Mary Brown, would like to go on record opposing HB 788.

Questions From Committee Members:

REP. RICE asked **Mr. Phillips** as far as abortions are concerned for adults whether this bill would allow abortions regardless of viability? **Mr. Phillips** stated he couldn't imagine it is intended to read like that. **REP. RICE** said he sees viability in three sections of the bill. In the definition section where it is defined as 23 weeks. **Mr. Phillips** said that is a clause not really a definition. **REP. RICE** said the first section on page one states that the state may not interfere with the right prior to viability and then in the section of counselling minors which begins on page 2 and continues to page 3 says that a minor must be informed that she may have an abortion prior to viability. The bill doesn't say the state will intervene after viability. **Mr. Phillips** stated the bill itself doesn't state that, but I believe that if you look at the sections of the Montana Abortion Control Act they are not intended to be repealed the restriction exists. Additionally, the entire bill requires that according to reasonable medical procedures, and post viability wouldn't comport with the standards of medical practice that violate the provisions of criminal approach regarding homicide.

REP. RICE stated that he had assumed because of the language crossed out in present law on pages 7 and 8 that the viability law as it presently is had been removed, but are you telling me there are other sections of the abortion law that allow or prohibit abortion after viability is reached? **Mr. Phillips** stated he will have to look them up but he can say the Court has

the right to regulate any abortion post viability. In fact it has the right to regulate abortion reasonably related regulations related to the health of the mother anytime. That is in subsection 3, section 1. So post viability, I would assume the state is free to regulate.

REP. RICE asked why the bill is expanded to allows other people than doctors to perform abortion and why are we deleting the present law requiring someone who wants an abortion be informed of the state of the development of the fetus and the physical and psychological effects of abortion? **Mr. Phillips** said the definition of counselling in section four, which amends MCA 50-20-104 sub 2, requires that anyone acting as a counselor in the terms of the bill, do so under the supervision of a physician. So I think that is the state's guard. Relative to people that are authorized under the law to perform this relatively non-intrusive, but none-the-less surgical procedure, I'm not sure about.

REP. RICE stated the he sees a big difference between a statute requiring someone seeking an abortion to know about those things versus the bill as written which just gives them the opportunity to ask questions. Rep. Rice asked, "Would you have any objection to us putting that language back in the bill in terms of the counselling section?" **Mr. Phillips** stated, "it is not my position to say whether I would have any objection to it or not. I would say the physician generally gives that kind of information. I would think that what this bill asks is simply be non-intrusive in the physician patient relationship to treat it like any other medical procedure and we don't list the kinds of things that a physician must tell a patient for other medical procedures and I see no reason why the state should intervene with the physician client relationship in order to mandate what a physician tells a patient with regard to this measure." **Lindsey Richards** stated, "the person knows they are pregnant and what do you say? They come to you because they are pregnant and they want to have the abortion. Are you supposed to say this say the development is so and so and that stage, etc. It is really not appropriate. What each physician would say to their patient would reflect our own values and belief's and not the child views. I don't think you put exact wording in the bill." **Willa Craig** said she could answer the question of **REP. RICE** in regards to nurse practitioners and PA's being allowed to perform abortions. Nationally, states are looking at the scope of practice and nurse practice acts within their states and making a decision about whether or not abortion is included under those practice acts. Two states, Vermont and California, currently employ nurse practitioners and physician assistants to provide abortion services. California has a training facility for this. Pennsylvania and Colorado are currently in the process of doing that. We are also aware that many other states maybe looking at this as an option in order to increase access to abortion in very rural states.

REP. WHALEN stated to **Dr. Robert St. John** that he was also concerned about the fact the provisions of the current Montana Abortion Control Act relating to advising women that are contemplating having an abortion about the possible side effects of an abortion. Rep. Whalen said further that as a doctor during the course of your practice, do you have the opportunity to look at patients prior to abortions and whether or not that effects future pregnancies or not. **Dr. St. John** said about 40% of his present patients are pregnant had abortions before and he would say a lot of patients that had abortions have complications. The complications can go on for years. Probably the one seen the most devastating to a young woman is the infertility problems results. It is fairly common. Some places it is as high as 25% effect their pregnancies from abortions. That is a high infertility rate. The psychological are just starting to surface. **REP. WHALEN** asked whether the doctor sees an increase in complicated pregnancies after having an abortion? **Dr. St. John** said that goes along with the increase of infertility. There is a definite increase nation wide of ectopic pregnancies. **REP. WHALEN** asked him to address the viability issue. **Dr. St. John** said the Supreme Court made a decision and arbitrarily assigned the last 12 weeks of pregnancy as the date being beyond viability and did that to allow the states to make restrictions. What they said was, the first trimester the states have no right to make any restrictions whatsoever about a women's decision about having an abortion. In the second trimester, the states make the laws to protect the women's health only. Those laws can pertain to whether it should be done by a physician or in a medical institution. Then after viability, the 28th week, if the state wants to it can take an interest in the unborn baby and make some laws to protect that unborn baby. There is nothing that says you cannot do an abortion in Montana today, to a full nine months. The day before the baby is going to be born, you can do an abortion legally. **REP. WHALEN** asked **Dr. St. John** if I understood in your testimony that you were involved in a delivery of a baby that was 18 weeks along? **Dr. St. John** said that he said there were two babies that were born at 18 weeks. I personally delivered one at 18 weeks.

REP. WHALEN asked **Dr. St. John** if he was aware of the approximate time a unborn child's heart starts to beat? **Dr. St. John** said from 18 days. **REP. WHALEN** asked at what point does the brain wave begin? **Dr. St. John** said it is measurable at about the same time. With the limitations of our technology, it is probably there before we can measure it.

REP. BROOKE asked **Mr. Phillips** if he would address the "compelling state interest" which you quoted from the commission? **Mr. Phillips** said, "The point I was making was that the Right of Privacy was as quoted by Mr. Sheehy and the state may of course invade the right of privacy under the Montana Constitution, if a compelling state interest can be shown. In the commission's comment to that there is a case that cited as a rational for providing for the right of privacy in the discussion as to why we

have one. That is where the committee cited Griswald vs. Connecticut as saying this is the kind of area where the state doesn't have enough interest in order to give rise to the ability on the part of the state to infringe upon the rights of the citizens."

REP. MESSMORE asked **Dr. St. John** if he performed an abortion who would be liable for a negative outcome? **Dr. St. John** said he would be liable. **REP. MESSMORE** asked what role would the parents play? **Dr. St. John** said morally or legally? **REP. MESSMORE** said legally. **Dr. St. John** said legally they have no role.

REP. MESSMORE asked **Willa Craig** if it is current practice in this state for nurse practitioners and physicians to perform abortions? **Ms. Craig** said that each state can look at their individual practice act and make that decision. In Montana, the practice for physicians assistant does allow some surgeries. So that certainly is in the realm of possibility for a physicians assistants. For nurse practitioners, additional research would have to be done on that. **REP. MESSMORE** asked **Ms. Craig** "Therefore, currently nurse practitioners do not hold the right to perform abortions and you are not sure physicians assistants are either?" **Ms. Craig** said, "It is subject to interpretation of the acts." **REP. MESSMORE** asked what the definition of a trained health care worker who would be given the task of counselling? **Ms. Craig** said there is no definition of trained as it now stands. Health Care Workers are utilized in this practice and the common kind of training they were to receive would be several weeks of educational training, observation and many are chosen because of their background in psychology or individual counselling.

REP. STICKNEY stated to **Dr. St. John** that she respects his stand on abortion, but wanted to clarify because his statistics were very interesting. "You obviously do not perform abortions but would you ever recommend that a patient of yours have one?" **Dr. St. John** said, "If I had a patient that I thought physically was hurt by the pregnancy I would present that opportunity." **REP. STICKNEY** asked if he would assume that women that are sure what your stand is on abortion is the reason they would choose you for their doctor, but she assumed there are physicians in Butte who are also in practice. **Dr. St. John** said, "There are two others." **REP. STICKNEY** asked if that would make any difference to those who choose you as their obstetrician? **Dr. St. John** said he has not been very quiet about his stand on abortion. "I don't think it is something I hide, I don't have a shingle out in front of my office saying what my abortion stand is. I have told people that they have a baby with Down Syndrome and your options are get an abortion or delivering the baby. I give them the option, it is their choice."

REP. WHALEN asked **Mr. Phillips** why there wasn't anything in the bill regarding an abortion that have complications? **Mr. Phillips** said, "Of course this bill isn't intended to delineate civil

liberties and not to address the issue at all. Certainly any provisions in this that could be violated constitution misdemeanors or felonies would need evidence or would constitute negligence for malpractice." He stated that the statue on informed consent would definitely with stand as proof of the standard of care.

REP. WHALEN asked **Mr. Phillips** what the standard of care would be? **Mr. Phillips** said, "The standard of care would be established by standard medical practice for any other kind of surgical procedure. This bill doesn't intend to lay out that standard of care. I think it would be a serious mistake for the legislature to try and describe that." **REP. WHALEN** asked **Mr. Phillips** if it is his understanding that the way this bill has been drafted that a certified nurse practitioner and a physician assistant would be held to the standard of care the same as a doctor? **Mr. Phillips** said, "Absolutely."

REP. BROOKE asked **Dr. Richard** if she has dealt with incest victims? **Dr. Richards** said, "Yes." **REP. BROOKE** then asked if she would characterize the testimony about the band-aid approach to the total problem of a patient who is an incest victim? **Dr. Richards** said, "If a women is a victim or a young women particularly is a victim of incest and becomes pregnant, she certainly has a problem far greater than that particular circumstances. I don't see how mandating a formula to follow here is going to help a girl get out a situation that an incest victim is in. I think having a structure of counselling and response of professional resource that this child that has been abandoned by her family, can turn to and get some help is far more important than a legal requirement that she go to this perpetrator for consent." **REP. BROOKE** stated there was also a lot of testimony on the psychological effects of abortion. She stated that earlier this session there were two bills that dealt with adoption with a lot of testimony in regards to post adoption syndrome. She stated that the committee, as a body, worked on these bills to alleviate some of that choice that a women faces when she chooses to adopt. "Is this another area in your craft that you have women come to you that want to carry pregnancy to term and have chosen adoption?" **Dr. Richards** said, "Absolutely."

REP. WHALEN asked **Dr. Richards** if first trimester abortions are done by dilation and suction? **Dr. Richards** said, "yes." **REP. WHALEN** asked if it is true that in the dilation/suction procedure basically performed inside the mother's womb blind without the benefit of any mechanism to allow them to see exactly where they are cutting? **Dr. Richards** said they are not cutting, but it is true they cannot see. **REP. WHALEN** stated that it was my understanding that in addition to the suction devise there is a device that actually separates the tissue, a knife or whatever type of cutting device. **Dr. Richards** said, "No, that is not true for first trimester abortion. In first trimester abortion you insert a hollow plastic tube to the inside of the uterine cavity

that is attached to a suction machine that removes the pregnancy and then you may or may not use a long slender scraping instrument to check and be sure the tissue is all removed. In a second trimester is after 60 weeks then instruments are inserted into the uterus to remove fetal parts." **REP. WHALEN** asked what type of instrument is used to scrape the uterus. **Dr. Richards** said, "After the suction device you may also take a metal instrument which is much smaller than the plastic hollow tube used for sucking, and you scrape the inside of the uterus to be certain you have removed all the tissue." **REP. WHALEN** asked if that was a blunt instrument? **Dr. Richards** said, "Yes it is." **REP. WHALEN** asked if there is a possibility that there could be scaring in the uterus because you are unable to see where you are scraping? **Dr. Richards** said, "To my knowledge, there isn't any association between first trimester elected abortion and scarring. The uterus has enormous regenerative growth organ and it repairs itself very effectively." **REP. WHALEN** asked about scarring in the second trimester? **Dr. Richards** said, "I am not aware of any association between scarring of the uterus and elective abortion. The situation is classically associated with scarring of the inside of the uterus. It is a situation where an abortion or miscarriage occurred and then perhaps two or three weeks later the person has complication of retaining tissue and a second D and C is done. A second D and C doesn't put a person at any risk for developing scars of the uterus if protective measures are taken."

REP. MESSMORE asked **Dr. St. John** if there is a scientific basis to the complications you referred to in regards to abortions? **Dr. St. John** said that there is a very good scientific basis from the Soviet Doctrine.

REP. LEE asked **Mr. Phillips** if he said in his testimony that this proposed legislation is flexible medically. "In other words, it would add to current changes in medical technology, did I get that right?" **Mr. Phillips** said, "I don't know if I said that but there are a number of arguments in legislation that are flexible medically as technology changes and standards of medical practice. This is tied more to the standard of medical practice than was the Montana Abortion Control Act." **REP. LEE** asked if that flexibility be on page 7, line 2? **Mr. Phillips** said that would be one area where it would be less flexible. He stated that the definition of viability is given a range and has a floor of at 23 weeks and is inflexible.

Closing by Sponsor:

REP. SCHYE stated he thinks one of the people that testified today made the statement that we are not here to decide whether abortion is right or wrong, this legislation is only describing what current law already is and we have to codify the law to do that. He stated that he thought there was a good discussion on whether abortion is right or wrong and not with this bill alone.

One thing that got lost in all of the discussion was the counselling provision for minors. Right now we do not have an informed consent law. Right now we do have teenagers that are getting abortions with out informed consent and this law would make those individuals have counselling of some sort. There are alot of problems with parental consent laws. After people start being educated about parental consent they know the problems and it doesn't sound as good as it once did. If we had a perfect society parental notification would be good. We do not have a perfect society. Parental notification in Oregon came out a month before the pole said that 73% percent of the people favored it. It went down by 52% to 48% because people learned that we do not have a perfect society.

The majority of people in Montana would support this law and would stand behind it very strongly or I wouldn't be carrying it. Rep. Schye stated that he sat on the Judiciary committee at one time during his career and he would be pro-choice and support this bill very strongly and would recommend the rest of the committee do the same.

ADJOURNMENT

Adjournment: 12:15 p.m.

BILL STRIZICH, Chair

JEANNE DOMME, Secretary

BS/jmd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL **DATE** 2-15-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	✓		
REP. ARLENE BECKER	✓		
REP. WILLIAM BOHARSKI	✓		
REP. DAVE BROWN	✓		
REP. ROBERT CLARK	✓		
REP. PAULA DARKO	✓		
REP. BUDD GOULD	✓		
REP. ROYAL JOHNSON	✓		
REP. VERNON KELLER	✓		
REP. THOMAS LEE	✓		
REP. BRUCE MEASURE	✓		
REP. CHARLOTTE MESSMORE	✓		
REP. LINDA NELSON	✓		
REP. JIM RICE	✓		
REP. ANGELA RUSSELL	✓		
REP. JESSICA STICKNEY	✓		
REP. HOWARD TOOLE	✓		
REP. TIM WHALEN	✓		
REP. DIANA WYATT	✓		
REP. BILL STRIZICH, CHAIRMAN	✓		

4:25
2-15-91
JDB

HOUSE STANDING COMMITTEE REPORT

February 15, 1991

Mr. Speaker: We, the committee on Judiciary report that House Bill 608 (first reading copy -- white) do pass as amended .

Signed: _____
Bill Strizich, Chairman

And, that such amendments read:

1. Title, line 4.
Strike: "GRANTING QUASI-JUDICIAL"

2. Title, line 5.
Strike: "POWERS TO"
Insert: "AUTHORIZING"
Following: "COMMISSION"
Insert: "TO ORDER PENALTIES AGAINST RAILROADS AND OTHER COMMON CARRIERS TO BE PAID TO THE STATE, COMMUNITY, OR OTHER PARTY PROTECTED BY A LAW OR ORDER VIOLATED BY THE COMMON CARRIER"

3. Title, line 9.
Following: "CONTINUES;"
Strike: "AND"
Strike: "SECTIONS 69-1-102 AND"
Insert: "SECTION"

4. Title, line 10.
Following: "MCA"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

5. Page 1, lines 13 through 23.
Strike: section 1 in its entirety
Renumber: subsequent section

6. Page 2, line 6.
Strike: "it shall"
Insert: "the commission shall order it to"

7. Page 2, line 7.
Following: "state"
Insert: ", community, or other party protected by the law or commission order that was violated"

4:25
2-15-91
TDB

8. Page 2, line 9.
Following: line 8
Insert:
"NEW SECTION. Section 2. {standard} Effective date. [This act] is effective on passage and approval."

4:25
2-15-91
TDB

HOUSE STANDING COMMITTEE REPORT

February 15, 1991

Mr. Speaker: We, the committee on Judiciary report that House Bill 439 (first reading copy -- white) do pass as amended .

Signed: _____
Bill Strizich, Chairman

And, that such amendments read:

1. Page 4, line 15.
Following: line 14
Insert: "NEW SECTION. Section 3. Coordination instruction. If Senate Bill No. 51 is passed and approved and if it includes a section that amends 46-12-204, then [section 2 of this act], amending 46-12-204, is void."

EXHIBIT 1
DATE 2-15-91
HB 608

Amendments to House Bill No. 608
First Reading Copy

Requested by Rep. Whalen
For the Committee on the Judiciary

Prepared by John MacMaster
February 15, 1991

1. Title, line 4.
Strike: "GRANTING QUASI-JUDICIAL"

2. Title, line 5.
Strike: "POWERS TO"
Insert: "AUTHORIZING"
Following: "COMMISSION"
Insert: "TO ORDER PENALTIES AGAINST RAILROADS AND OTHER COMMON CARRIERS TO BE PAID TO THE STATE, COMMUNITY, OR OTHER PARTY PROTECTED BY A LAW OR ORDER VIOLATED BY THE COMMON CARRIER"

3. Title, line 9.
Following: "CONTINUES;"
Strike: "AND"
Strike: "SECTIONS 69-1-102 AND"
Insert: "SECTION"

4. Title, line 10.
Following: "MCA"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

5. Page 1, lines 13 through 23.
Strike: section 1 in its entirety
Renumber: subsequent section

6. Page 2, line 6.
Strike: "it shall"
Insert: "the commission shall order it to"

7. Page 2, line 7.
Following: "state"
Insert: ", community, or other party protected by the law or commission order that was violated"

8. Page 2, line 9.
Following: line 8
Insert:
"NEW SECTION. **Section 2. {standard} Effective date.** [This act] is effective on passage and approval."

Exhibit 2 contains 42 pages of clippings concerning the issues addressed in HB 473. The original exhibit is available at the Montana Historical Society, 225 North Roberts, Helena, MT 59601. (Phone 406-444-4775)

EXHIBIT 2
DATE 2-15-91
HB 473

STATEMENT IN OPPOSITION TO

HB 473 "PUBLIC HAZARDS"

Mr Chairman and members of the committee on Judiciary. My name is Ward Shanahan, I'm a lawyer in Helena and I have been practicing here for almost 33 years. My practice has included extensive trial experience. The difference between my practice and the that of the sponsors of this bill is that I have represented both claimants and defendants. This bill is seriously skewed in favor of claimants only.

This bill is about "protective orders" which are issued by judges in private litigation to insure the confidentiality of private information, such as trade secrets oryour medical record. Disclosure of these kinds of things might give competitors an unfair advantage or cause a person public embarassment. That is why at present courts have the power to insure confidentiality where the need has been demonstrated. HB 473 would destroy this power.

In addition this bill would give third parties, including the news media the right to intrude in purely private litigation and destroy the defendants rights.

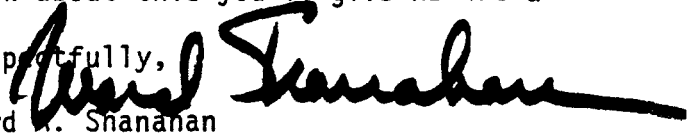
HB 473 has no justification for its passage even though it's styled as a bill to disclose "Public Hazards". This is a sham, because the bill defines "Public Hazard" to be "any intrumentality" that the plaintiff alleges (merely alleges) is "likely to cause injury. This could include a weed spray tank on a farm, a new invention that hasn't yet been patented, a disease which the defendant may have, or a book which the defendant is writing. Disclosure would be required on mere accusation.(See Section 1)

This bill presumes that the Defendant has no rights and forces the court to prejudge a case before the facts are presented regardless of the cause or fault to the accused party. This is a denial of Due Process of Law.

This bill would also force parties to a lawsuit to disclose the settlements they might make, regardless of an agreement to keep them confidential.(See Section 1 sub-section(5)). This power is given to people who weren,t even parties to the case, only curious.

In addition to the loss of substantial rights now held by defendants this bill will enhance rather than reduce the explosion of lawsuits and court congestion we are now experiencing. Remember if you happen to be the Defendant faced with an accusation like this bill would allow you have to pay the bill to defend yourself and prevent your own injury or public embarassment. If you think about this you'll give HB 473 a "DO NOT PASS"

Respectfully,



Ward A. Shanahan
301 First Bank Building
P.O. Box 1715
Helena, Montana 59624 (406) 442-8560

EXHIBIT 7
DATE 2-15-91
HB 788

Amendments to House Bill No. 788
First Reading Copy

Requested by Representative Schye
For the Committee on Judiciary

Prepared by Connie Erickson
February 14, 1991

1. Page 3, line 1.
Following: "shall"
Insert: ", using his professional judgement, explain all or part of the following"

2. Page 3, line 2.
Strike: "discuss"

3. Page 3, line 4.
Following: "and"
Insert: "discuss"

4. Page 3, line 7.
Strike: "explain"

5. Page 3, line 11.
Strike: "explain"

6. Page 3, line 12.
Following: "is"
Insert: "begun;"

7. Page 3.
Strike: line 13 through line 15 in their entirety

8. Page 3, line 16.
Strike: "explain to the minor"

9. Page 3, line 24.
Strike: "explain"

10. Page 4, line 3.
Strike: "explain"

Ex. 7
2-15-91
HB 788

11. Page 4, line 6.
Strike: "; and"
Insert: "."

12. Page 4, line 7.
Strike: "(g)"
Insert: "(2) The physician or counselor shall"
Renumber: subsequent subsections

EXHIBIT D
DATE 2-15-91
HB 788

January 12, 1991

Testimony for HB 788; An act to revise the Montana Abortion Control Act, protecting a woman's right to privacy, amending and repealing sections of the existing Abortion Control Act, and requiring counseling of minors seeking an abortion.

Mr. Chairman and Members of the Committee;

I would like for this testimony to be entered in the hearing record in support of the above HB 788.

My name is Lynne Bryant. I am a Women's Health Care Nurse Practitioner. I have been employed at the Tri-County Family Planning Clinic in Helena, Montana for the last 5 1/2 years. Approximately 35% of our client's are teens.

I feel that requiring parental notification before a minor may seek out an abortion, is a black and white answer to an issue with many gray areas. If there is one thing that I have learned while working with teens, it's that things are never in black and white.

I work under the belief that an unplanned pregnancy is a symptom of a problem. I wish I could say that the parents are always the best ones for the teens to seek out in time of crisis. Unfortunately in a small number of cases it can be an unrealistic or even a dangerous alternative. In too many cases family patterns of dysfunctional behavior, such as drug and alcohol addiction or physical, sexual and emotional abuse, prevent such a disclosure. Teen pregnancy is in fact symptomatic of such family dynamics.

I would estimate that 85% of my teen clients have already involved a parent or do so by their second visit to our clinic. Of the 15% who have not, the majority have involved some other significant adult to use as their support system.

To require that small percentage that have not involved their parents do so will not guarantee that that child will receive the support that they deserve and need. They have lived within their family system for years and are well aware as to how their family responds to crisis.

To mandate counseling offers the teen options. Through counseling we can work together with the teen, identifying and processing their feelings of fear, shame, disappointment and isolation, so that they may seek out the best support system available to them. Meeting their needs is certainly a right I feel they deserve.

I have heard it said that to look at the world in a black and white fashion is easier and less frightening. Requiring parental notification tries to paint the world black and white, counseling for an unplanned pregnancy will reach into the gray areas, which is exactly where our teens are. Doesn't it make sense to be where the teens need us most?!

Thank you
Lynne Bryant CNP

EXHIBIT 6
DATE 2-15-91
HB 788

My name is Joan McCracken. I am a mother of five children, a registered nurse and certified nurse practitioner, and have been involved in family planning and women's health care for 22 years. During this time I have functioned as a clinician, administrator and couselor. I am the Executive Director of Inter-Mountain Planned Parenthood. Before Roe v Wade, I knew of many Montana women of all ages who left Montana to seek medical care in those states where abortions were legal and available.

Today I would like to speak as a nurse and counselor. I can testify that every woman who experiences an unintended pregnancy at any of our five family planning clinics and two abortion clinics is counseled about all of her alternatives. Some women only want information; other women need many hours of individual counseling in order to make the decision that she feels is best for her. Every minor is urged to include a parent in her decision making...and, in fact, most do. For those who feel that they cannot involve a parent, there is usually a responsible adult involved..a teacher, a minister, an aunt, or another adult in whom the young woman has confidence.

As a nurse and counselor I am made cognizant that each individual has unique circumstances...her family is different, her contraceptive experience is different, and her thought processes are different. I am also aware that when a young woman says that there is no way she can discuss her pregnancy with her parents, that she has a very good reason for doing so. I can remember a young woman from Laurel, MT, who said that she could not tell her parents of her pregnancy. When I commented to her that most parents wanted to share in their daughter's experience whether a happy one or a distressing one, she went on to relate what happened when her older sister became pregnant. Her father threw her out of the house saying that he had always promised this consequence. The young woman before me had not seen her sister since...four years later. Another young woman said that she could share the information with her mother, but she feared for her and so chose not to. Her mother had suffered past abuse from her step-father and was at risk for further abuse if he learned that she had kept a secret from him.

Fortunately, these cases are not frequent. But no one sitting here today can predict where or when these cases may occur. When I know of a young woman who has no family involvement, I try to help her contact a caring responsible adult whom she can trust. If she feels very alone, a staff person is there to give her support. We talk about what it would be like to experience a pregnancy, the positive aspects of adoption, the help available to young single mothers, and the finality of abortion. The young woman is urged to think her decision over, to take the time she feels she needs to make a decision that she can live with, and to consider all of the pros and cons of each option. We help her in any way she choses and give her the support she needs whether that support is going with her to tell her parents, going to SRS and applying for welfare benefits, or giving her information about adoption agencies and abortion facilities.

We have looked at our statistics and are aware that a very high percent of the women who come to us for counseling do choose abortion. The health histories that these women fill out before they see a counselor indicate that they have already made the decision to terminate their pregnancies. Most of these women are coming for information only and have self-selected the agency where they felt they could receive the best information. After counseling some women do change their minds; others continue on the course they set for themselves. We are not in the position to persuade women to choose one alternative over another, but to give her the facts and allow her to weigh them.

As I mentioned, I am a mother. All of my children are grown now, but I have been asked frequently whether I would want my daughter to come to me if she had experienced an unintended pregnancy. Of course, I would. I would hope that all of my efforts to communicate with her, to leave the doors open, would make it easy for her to share whatever she wanted to share. However, I know that each of my daughters is an individual and may see things through a different pair of glasses. If any of my daughters felt she could not come to me, I would feel very good that there were caring adults she felt she could go to for information and counseling. And, who knows, this may have happened.

The counselors I work with, psychologists, social service agencies, school counselors, and other health care workers all have the girls'best interests at heart. We know we cannot live her life or bear the consequences for her if she is forced to do something against her best judgment. We respect that women can make good decisions for themselves. It is because we have this respect for Montana women that I am asking for your support of House Bill 788.