

## **MINUTES**

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

#### **COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY**

**Call to Order:** By **CHAIRMAN STEVE BENEDICT**, on March 19, 1997, at 3:10 PM, in Room 325.

#### **ROLL CALL**

##### **Members Present:**

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

**Members Excused:** None

**Members Absent:** None

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

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

##### **Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 453, HB 558, 3/7/97  
Executive Action: None

#### **HEARING ON HB 453**

**Sponsor:** REP. PEGGY ARNOTT, HD 20, Billings

**Proponents:** Janet Larue, National Law Center  
REP. CHRIS AHNER, HD 51, Helena  
REP. BOB KEENAN, HD 75, Big Fork  
Roger Lonnquist, Broadcaster  
Steve Atkins, University of Montana  
Robin Jensen Bartlett, self  
Stan Lynde, Professional Artist  
Phil House, Yellowstone  
Barry Baker, Lake County Commissioner  
Arlette Randash, Eagle Forum  
Mark Mozer, Helena Psychologist

Mary St. John, Shodair Hospital  
 Ron Gates, Great Falls  
 Fr. Ray Nyquist, Blessed Sacrament Chrch, Black Eagle  
 Joseph P. Malin, Knights of Columbus  
 Margaret Bartschi, Attorney  
 Kathleen Holmer, volunteer, Boy Scouts  
 Charles Lorentzen, self  
 Nick Turner, Pastor  
 Susan Durovey, self  
 Terry Crooks, self  
 Fredrick N. DeMato, Liberty Baptist Church  
 Joanne Scherer, self  
 Wilma Wortman, self, Helmsville  
 Sharon Turner, self, Helena  
 Jill Guthrie, self, Helena  
 Linda Darelus self, Helena  
 Verner Bertlesen, self  
 Rich Bloom, self, Helena  
 Bob Jones, self, Billings  
 Helen Hackett, self, Great Falls  
 Georgia Branscome, self, Kalispell  
 Verdell Jackson, self, Kalispell  
 Linda Jackson, self, Kalispell  
 Carol Smith, self, Billings  
 Gladys Anderson, self, Stevensville  
 Denice Cofer, self, Kalispell  
 Dallas Erickson, MT Citizens for Decency Through Law  
 Betty Babcock, self  
 Bonnie Parrett, retired nurse, Helena  
 Laurie Koutnik, Christian Coalition

Opponents: Jacqueline Lenmark, Coalition for Free Expression  
 Dorothy Laird, Montana Library Commission  
 Don Schiltz, Flathead County Library  
 Henry McLernan, MT Tech Library  
 Jim Henkle, MT Library Assn.  
 Christopher Miller, Powell Co. Attorney  
 Russ Lawrence, Chapter 1 Bookstore, Hamilton  
 Bill Warfield, ACLU  
 Jerry Skillman, video store, Helena  
 Jeffrey Renz, self  
 Barbara Theroux, Bookstore owner, Missoula  
 Deb Wolfe, parent  
 Matthew Quinn, self, Carroll College  
 Gary Dupree, Polson Theaters  
 Ron Silver, out patient  
 Pat Blade, Western MT College Board  
 Dale Johnson, discount grocery store  
 Stan Smith, theater owner  
 Stan Kaleczyc, Attorney, Helena  
 Jerry Hudspeth, Libby  
 Bonnie Steele, Video Excitement  
 Mike Blakesley, theater owner  
 Ian Steele, Video Excitement, Helena

Anthony Sacco, Tape King Video, Bozeman  
Don Bratton, Montana Cable Telecommunications Assn.  
Mike Voeller, Lee Newspapers of Montana  
Riley Johnson, Montana Broadcasters Association  
Debbie Sporich, Dillon  
Jim Kembell, Billings  
Marcel Surfer, Dillon video  
Celeste Gerin, Center Cinema & Video, Hardin  
Karen Chepalis, Center Cinema & Video, Hardin  
Bob Brigham, University of Montana  
Jeremy Fritz, Montana State University  
Robert Wilson, Butte  
Doug Aita, Tape King Video, Bozeman  
Gordon Nielsen, theater owner  
Dan Cederberg, self, Missoula  
Jonet Doyle, video store employee  
Ursula Franko, video store owner  
Mike Fellows, Libertarian Party  
Virginia Cook Compton, Shortline Theater Co.  
Dan Compton, Blue Moon Technologies, Dillon  
Julie Loeschla, business owner, Dillon  
Cynthia Smith, Missoula attorney  
Tom Glendenning, TCI Cable  
Scott Crighton, ACLU  
Arnie Malina, Myrna Loy Center

Opening Statement by Sponsor:

REP. PEGGY ARNOTT, HD 20, Billings, said HB 453, the harmful to minors statute is to clarify and strengthen the current law. It protects Montana youth from the display and dissemination of harmful materials. Montana has placed protection factors in place by making gambling illegal to youth under the age of 18, restricting the sale of tobacco to youth, and it is illegal for minors to possess alcohol. There have been no outcries these laws are harmful to business. The courts have said the state has interest in preventing distribution of objectionable materials to children. The HB 453 changes in statutes will bring Montana law in line with the Supreme Court ruling on the Harmful to Minors laws. HB 453 was patterned after that law and has withstood Supreme Court challenges. This bill is necessary because of the high impact of such materials on youth during their impressionable years. The highest consumers of pornography are boys between the ages of 12 and 17. In Michigan, the police found, of 38,000 cases of sexual assault on file, 41% involved the use of pornography just prior or during the act. A 1985 FBI study, in which convicted serial killers in prison were interviewed, 81% reported their greatest sexual interest was reading pornography. The conclusion of a 1970 presidential commission on pornography was that exposure to pornography is the strongest predictor of sexual deviancy. A University of New Hampshire study found a strong statistical correlation between the circulation rate of pornographic magazines and rape. In states with high circulation rates, the rape rates were high, as opposed to states with low circulation rates having low rape

rates. Most sex offenders used pornography to arouse themselves before assault. Twenty four percent of prostitutes who had been raped said their attacker had specifically mentioned his use of pornography as he raped them. It is difficult to prove a cause-and-effect between pornography and violence, but parents in Salt Lake City are convinced that, Gary Bishop killed five boys to cover up his sexual abuse of them. Bishop confessed he went into sex shops, viewed the magazines and videos of nude boys, fanaticize about having sex with them, but soon that was not enough, which is common in the cycle of pornography. He desired more sexually arousing pictures, and to satisfy his growing obsession, he began abducting little boys, using them, then killing them. He said he was a pedophile and pornography was the determining factor in his downfall. Referring to a newspaper article, (EXHIBIT 1) she said "Tell the parents of those four boys in Billings, who were forced to have intercourse, the pornography materials found in the molester's home had no relationship." T.R. Halvorsen, an attorney in Sydney, said scientific evidence linking pornography to crime is difficult to obtain. (EXHIBIT 2) Department of Corrections, October 1996 statistics, showed there were 1,739 prison inmates who were on the sexual offenders list, and May 1997, 564 on probation for sex crimes, 35 on parole for sex crimes, and 611 prison inmates who have sex offender records. Forty percent of the prison population are sexual offenders. The price of prevention is far less than incarceration and this legislation has no fiscal note attached to it. Sex crimes of children on other children are increasing and over half the rapists are teenagers. The legislature needs to look at the risk factors to communities and add a protection factor, and not put our youth in harms way.

Most of HB 453 is current statute. This bill would make it illegal for people to knowingly or purposely display materials that meet Supreme Court guidelines for pornography. The bill adds the words "nudity" and "sexual excitement" and their definitions to current statute. The person must knowingly or purposely disseminate materials that meet the Ginsberg test, which is defined on page 1, section 1. The guidelines consists of a 3-part test and are not vague, have met Supreme Court scrutiny and are clear. (EXHIBIT 3) This bill is not censorship and does not violate first amendment rights, because the first amendment does not give the right to anyone to disseminate this kind of material to minors. The Supreme Court has ruled the state has the right to protect the health, welfare, safety, and morals of its community by barring the distribution, to children, of books recognized to be suitable to adults. This bill has no negative impact on breast feeding, and there will be no chilling effect on business, but this argument will be offered by the opponents. HB 453 gives the message that Montana wants standards set for youth.

#### Proponents' Testimony:

Janet Larue, Senior Council, National Law Center for Children and Families, (EXHIBITS 4-5) said their focus is to reduce the sexual violence in America that has been demonstrated to be tied to

illegal pornography. She suggested the committee require the opponents to support their allegations with Supreme Court decisions. The 11th Circuit Court said it is constitutional to judge the serious value of materials for minors by a single standard as applies to all minors. The bill does not grant exemptions to libraries from Harmful to Minors statutes and Motion Picture Association of American (MPAA) films are not exempt because they probably wouldn't come under the definition of Harmful to Minors, but are rated by the MPAA. Using that rating, theater owner or video distributor knows the rating of videos. The statute does not require store clerks or book sellers to screen all of the material in the store, because the only knowledge required is the general knowledge of the character of the material.

**REP. CHRIS AHNER, HD 51, Helena,** said they heard this bill in the House Judiciary Committee and she was very disturbed by the topic. Because her father was into pornography, she grew up with that in the home and thinks that resulted in her being molested as a child. She has total memory loss of her childhood at home, and the only times she can remember are when she was with her grandparents. The only reason she knows she was molested is from flashbacks and because of doctor's confirmations and examinations. Because she couldn't sleep, her parents would have to drive her around and the doctor prescribed wine to help her sleep, because nights were very fearful for her. She still has a sleeping disorder and has to take something to sleep at night.

**REP. BOB KEENAN, HD 75, Big Fork,** submitted two letters from people in his district regarding pornography and hurting families. One is a letter from a sex offender and the other from a wife whose husband used pornography. **(EXHIBITS 6-7)** He said county attorneys have the prosecutorial discretion, and that is an important part of this bill. This law does not mandate locking up someone for something that may be in a gray area.

**Roger Lonnquist, Broadcaster,** testified in support of HB 453 and said he was testifying because of the perception that this bill could have a negative impact on the broadcasting industry. **(EXHIBIT 8)**

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**Steven Atkins, Librarian, University of Montana of Technology, Missoula,** testified in support of HB 453. **(EXHIBIT 9)**

**Robin Jeppesen Bartlett, self,** said in the past 50 years, half of her family members have been raped, molested or sexually abused, and during the last 40 years, 5 out of 6 siblings have been subjected to these atrocities. FBI statistics are, one in three girls and one in four boys will be raped, sexually abused, or molested before their 18th birthday, and she thinks those statistics are correct. She was raped at knife point at age 5, in Montana, and pornography was used prior to the rape. Her sister

was raped, sodomized, and left for dead, after her throat was cut, and pornography was used prior to these violent acts. Her youngest sister was molested, then raped, and prior to these acts pornography was used. Her 24-year old daughter was molested from age 8 to 18, in their home, by her step-father. Currently, her 10-year old daughter is required to go with her father every other weekend, alternating holidays, and six weeks in the summer, on unsupervised visits where there is porn on the walls of her bedroom. Sexual abuse just like murder because it takes the life from the victim. (EXHIBIT 10)

**Stan Lynde, Professional Artist, writer and cartoonist,** testified in support of HB 453. He said it is designed to protect minors from sexually explicit material that the average adult would consider harmful to minors. (EXHIBIT 11)

**Phil House, Psychologist, Yellowstone Treatment Center,** said he evaluates and treats teens who have been deemed to be sexual offenders and said he supports HB 453. Exposure to pornography at an early age can be a contributing factor to becoming a sex offender. (EXHIBIT 12)

**Barry Baker, Lake County Commissioner,** submitted a letter from the Flathead County Commissioners in support of HB 453. (EXHIBIT 13) He said Lake County is currently prosecuting a case of a 14-year old, middle school boy, for raping a 14-year old girl, a 15-year old girl, and the attempted rape of 25-year old woman, and they need some tools to try to prevent these actions. House testimony on this bill said it would create a black hole in which to pour enforcement dollars, but he submits, we are living in a black hole created by a \$12 billion pornography industry and this legislation will help to dig ourselves out. This 14-year old accused rapist is costing the taxpayers more than \$150.00 per day for his detention, counseling, and education, and this does not include the emotional and monetary cost to his victims.

**Arlette Randash, Eagle Forum,** submitted her written testimony in support of HB 453 and two magazines to show what kinds of materials are legally available for sale or display to children. She said the smut industry knows just how far they can go with pictures in their publications because they know what the legal limits are. (EXHIBITS 14-16)

**Mark Mozer, Clinical Psychologist, Helena,** testified in support of HB 453, saying pornography played a role in the sexual deviancy of approximately 90% of inmates at the Montana State Prison. (EXHIBIT 17)

**Mary St. John, Shodair Hospital,** said she supports HB 453. (EXHIBIT 18)

**Ron Yates, Great Falls,** submitted letters of support of HB 453 from the Great Falls Chief of Police and the Great Falls City Attorney. (EXHIBIT 19)

Fr. Ray Nyquist, Catholic Priest, Blessed Sacrament Church, Black Eagle, and a member of Montana Citizens for Decency Through Law, said he enthusiastically support HB 453. (EXHIBIT 20)

Joseph P. Malin, State Deputy, Knights of Columbus, said they support HB 453.

Margaret Bartschi, Attorney, urged the adoption of this bill for her children and all of the children in the State of Montana. (EXHIBIT 21)

Kathleen Holmer, volunteer leader, Boy Scouts of America, and womens group of the Church of Jesus Christ of Latter Day Saints, urged the passage of HB 453 for the children of the State. (EXHIBIT 22)

Charles Lorentzen, self, Kalispell, urged the passage of HB 453. (EXHIBIT 23)

Nick Turner, Pastor, Helena, urged the passage of HB 453. (EXHIBIT 24)

Susan Durovey, self, said she was introduced to pornography at age 9 and sexually molested for about three years. (EXHIBIT 25)

Terry Crooks, self, Libby, submitted written testimony in support of HB 453. (EXHIBIT 26)

Fredrick N. DeMato, Pastor, Liberty Baptist Church, submitted written testimony in support of HB 453. (EXHIBIT 27)

Joanne Scherer, self, said she is representing her family and they have three teenage children and they support passage of HB 453.

Wilma Wortman, self, Helmsville, said she is representing her self and her family, and urged passage of HB 453 for the protection of the children in Montana.

Sharon Turner, teacher, self, Helena, urged the passage of HB 453.

Jill Guthrie, self, Helena, asked the committee to support HB 453.

Linda Darelus, self, Helena, said she, her husband, and children urged the passage of HB 453.

Verner Bertlesen, self, urged the passage of HB 453.

Rich Bloom, self, Helena, said he has two teenage daughters, and for their sake and the other children in Montana, urged the committee to support HB 453.

**Bob Jones, self, Billings,** said he had sent a fax of testimony and urged the passage of HB 453. (EXHIBIT 28)

**Helen Hackett, self, Great Falls,** said she is a member of Montana Citizens for Decency, and urged the committee to support HB 453. (EXHIBIT 29)

**Georgia Branscome, self, Kalispell,** said she has material from a sex predator and submitted petitions. (EXHIBITS 30 & 31)

**Verdell Jackson,** said he is representing himself and the three Flathead County Commissioners. (EXHIBIT 32)

**Linda Jackson, self, Kalispell,** urged the committee to support HB 453. (EXHIBIT 33)

**Caroll Smith, self, Billings,** urged the committee's support of HB 453.

**Gladys Anderson, self, Stevensville,** said she is a member of Montana Citizens for Decency Through Law and is a mother and grandmother, and urged the committee to support HB 453.

**Denice Cofer, self, Kalispell, Christian Coalition of the Flathead,** urged the committee to support HB 453.

**Dallas Erickson, self, Stevensville,** said he is a lobbyist for Montana Citizens for Decency Through Law, and is representing **Jerry Nordstrom, Billings, the Granite County Attorney, and Missoula County Undersheriff, Larry Weatherman,** asked the committee to pass HB 453.

**Betty Babcock, self,** said, as a mother, grandmother, and great grandmother, she respectfully request the committee support HB 453.

**Bonnie Parrett, retired nurse, Helena,** said she has seen pornography's impact on patients and urged passage of HB 453.

**Laurie Koutnik, Executive Director, Christian Coalition of Montana,** urged the passage of HB 453.

**Opponents' Testimony:**

**Jacqueline Lenmark, representing Coalition for Free Expression,** said she represents a number of small businesses and her clients don't think this bill will achieve the stated goal and will not protect women and children from abuse, but will put another class of individuals at legal risk. Current law protects minors from the distribution of obscenity and the law acknowledges the difficulty of precisely defining the character of that material. She urged the committee not to be seduced by the sad stories from some of the proponents because those cases were a tragic result of the use of hard core pornography. HB 453 is attempting to expand the reach of Montana law to deal with soft core



pornography, which is more difficult to define than hard core pornography. The bill deletes most of the protections in the 1989 law to protect citizens from over zealous prosecution, protections for innocent or ignorant sales persons, libraries, schools and universities, eliminates limits placed in the law for commercial establishments and news stands, and makes the law apply to all persons, while removing the court's ability to differentiate material based on the age of the minor. The definition of nudity is imprecise, adds a definition of sexual excitement, and adds conditions to the definitions of prurient sexual interest to minors. It will be difficult or impossible to define some terms. It will turn our law, which was directed at newsstands and commercial establishments, into a law that can be used against any person who allows a minor to view material deemed to be harmful. Currently all states have some sort of statutes to protect minors from this harmful material, but this bill is aimed at soft porn. This bill is not about child abuse and will not protect women and children, because Montana already has law to protect women, children, the disabled, men, and people because of gender and age. We do not need this additional law to protect our children. She presented testimony from the Dawson County Attorney (**EXHIBIT 34**) and the Carbon County Attorney, (**EXHIBIT 35**) who oppose this bill based on the difficulty and cost of enforcement. HB 453 makes the business owner the law enforcement authority, when it is parent's right to choose what is appropriate. She submitted signed petitions in opposition to HB 453 and urged the committee to table the bill. (**EXHIBIT 36**)

**Dorothy Laird, White Fish, Vice Chairman, Montana Library Commission**, said they oppose HB 453 because they are concerned about the detrimental effects of this bill, in its current form, could have on library staff members and trustees. Library trustees are local volunteers who write, approve, and enforce collection development policies and questioned and challenged material policies, which reflect the values of their individual communities. Local control works well in Montana's libraries and the laws in neighboring states exempt libraries, library employees and trustees from their obscenity or harmful to minors statutes.

**Don Schiltz, farmer in the Flathead Valley, and Flathead County Library Trustee**, said he opposes HB 453. This bill does not provide for the protection of library employees or trustees from prosecution for violation of the statute. The current Montana code does protect librarians and trustees. HB 453 has deleted these protections from current law. HB 453 only protects library employees in the case of an exhibition, which the bill does not define. Most library holdings are in the form of materials instead of exhibitions, and HB 453 provides no protection for such holdings.

**Henry McLernan, Library Director, Montana Tech Library, Butte**, said he is concerned with the definitions in the bill, the implementation of the provision in this bill, and thinks there

may be materials contained in libraries that will violate the provisions of HB 453. Community standards vary from community to community and he wondered if they would meet Butte community standards. If this bill passes, a sign will need to be posted on the library door saying no one under age 18 is allowed, then materials that would violate the law would then be removed from the library collection.

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He said there should be a fiscal note because his library would need two additional FTE's to go through all of the library materials to make sure there is nothing that would violate the law.

**Jim Henkle, President, Montana Library Association,** said he represents many libraries and their major concern is the exemption of libraries from protected status in HB 453 from the current law. The laws in six states contain projections for libraries. Currently, libraries do not have pornography in their collection and will not. The current law works very well for libraries.

**Christopher Miller, Powell County Attorney,** said he is representing himself, his wife and children. He cares about his children's moral and ethical welfare and also cares about the liberties and rights purchased with the blood of our forefathers. He is looking at HB 453 from a prosecutor's perspective and thinks this bill invites prosecutors to impose their own moral standards and opinions on the community, and could decide who would be prosecuted based on his standards. There is potential for the systemic abuse of personal liberties and would interfere with parental rights to decide what is appropriate for their own children to read or write. Current law prohibits the display of overtly pornographic material to minors, and works well for prosecution when the law is broken. This bill broadens the definition of pornography beyond recognition and would put the prosecutor in the middle of every moral and artistic disagreement in Powell County.

**Russ Lawrence, Chapter 1 Bookstore, Hamilton,** said he wondered why the supporters would push for passage of this extreme bill because it removes reasonable safeguards contained in current law and thinks it will be easier for certain people to harass and threaten their political enemies. Existing law protects the children of Montana. (EXHIBIT 37)

**Bill Warfield, retired rancher, Livingston, ACLU,** spoke in opposition of HB 453. Laws are already on the books to protect minors and HB 453 is vague. (EXHIBIT 38)

**Jerry Skillman, video store owner, Helena,** said video store owners are very concerned about the passage of HB 453. They cannot see much in the bill that helps convict child molesters

and pedophiles, but they do see a lot of projections for businesses eliminated. (EXHIBIT 39)

**Jeffrey Renz, University of Montana Law School**, said he is testifying at the request of the ACLU. He is the last lawyer who represented anyone accused of an alleged obscenity violation, and that individual's name is Rob Uithof. He understands the proponents concerns and desires with this bill, and no one wants their children to be able to purchase pornographic magazines or rent a pornographic video, but HB 453 is too broad. His client was prosecuted in Libby, MT on six counts of obscenity, facing three years in jail, but was acquitted by a jury of his peers from Libby who represented the standards of that community. This bill will not put the hard core pornographers at risk, but will put your neighbors at risk. (EXHIBITS 40 & 41)

**Barbara Theroux, Bookstore owner, Missoula**, urged the committee to vote against HB 354. She said main street businesses in Montana are under attack from within and from outside the State. (EXHIBIT 42)

**Deb Wolfe, parent**, said she is a parent concerned about first amendment rights. She and her husband have two children, consider themselves to be competent parents, and they convey to their children the social evils of the portrayal of gratuitous sex and violence. They belong to a Christian faith community and have worked to instill their values in their children and try to live their lives adhering to these values. She does not approve of pornographic material and will not allow it in their house, but this bill employees vague and subjective standards and attempts to restrict the materials ordinary, reasonable citizens would disagree about. She urged the committee to vote no on this bill.

**Matthew Quinn, self, President, Carroll College**, said many of the concerns from the proponents were heart-rendering and all of us have the obligation to protect our minor children from harm, but the bill does not work against any of the crimes or any of the difficulties or situations experienced by the proponents. The current law is adequate and works, but this bill is over-broad, vague, and over-reaching. He urged the committee to oppose HB 453.

**Gary Dupree, General Manager, Polson Theaters, President, Association of Theater Owners**, said they oppose HB 453. They have and enforce the rating system for films, and censor the films they play. In smaller communities, they don't play NC-17 films so they don't have to worry about anyone getting into the theater who shouldn't be. For R-rated movies, children must be with their parents or have a note from their parents to see these films. Being a small business, he is worried that someone will come in and accuse him of showing something that would be harmful to a minor. They could not afford the attorneys and court costs to prove they are in the right, because they would lose because of the costs to defend themselves. (EXHIBIT 43) He submitted written

testimony from Ron Silver, Director, the out-patient, sex offender treatment program, which services Helena and Great Falls. (EXHIBIT 44)

Pat Blade, self, Executive Board, Western Montana College Board, urged the committee to vote no on HB 453. (EXHIBIT 45)

Dale Johnson, self, said he operates discount video stores in Dillon, Deer Lodge, Hamilton, Lolo, Missoula, and Bozeman, and said he opposes this bill.

Stan Smith, theater owner, Dillon, said he is a father of two and opposes this bill. He submitted written testimony and petitions. (EXHIBIT 46)

Stan Kaleczyc, Attorney, Helena, said he represents the Motion Picture Association of America, which is the trade association for the leading producers of motion pictures in the United States. His written testimony addresses internet access and the problems with HB 453 as it relates to the internet. (EXHIBIT 47)

Jerry Hudspeth, self, Libby, said he is a taxpayer who had to pay for the malicious prosecution of Rob Uitothf.

Bonnie Steele, Co-owner, Video Excitement, said she agrees with all of the things the opponents have said about this bill.

Mike Blakesley, theater owner, Forsyth, said is a member of the Montana Association of Theater Owners and opposes HB 453.

Ian Steele, Co-owner, Video Excitement, Helena, urged the committee to oppose HB 453.

Anthony Sacco, Manager, Tape King Video, Bozeman, said he opposes this bill.

Don Bratton, representing Montana Cable Telecommunication Association, said they oppose HB 453.

Mike Voeller, representing Lee Newspapers of Montana, requested the committee table HB 453. (EXHIBIT 48)

Riley Johnson, representing Montana Broadcasters Association, said they oppose the bill.

Debbie Sporich, bookstore owner, Dillon, asked the committee to vote no on Hb 453. (EXHIBIT 49)

Jim Kembell, representing City of Billings, said they oppose HB 453.

Marcel Surfer, owner, Dillon video, urged the committee to vote no on HB 453.

Celeste Gerin, Center Cinema & Video, Hardin, urged the committee to vote no on HB 453.

Karen Chepalis, Center Cinema & Video, Hardin, said she opposes this bill.

Bob Brigham, representing students at University of Montana, said they oppose this bill.

Jeremy Fritz, ASMSU, said they oppose this bill and submitted written testimony from Maggie Farrell and Jane Howell. (EXHIBIT 50)

Robert Wilson, self, Butte, said he opposes this bill.

Doug Aita, Tape King Video, Bozeman, asked the committee to kill this bill.

Gordon Nielsen, owner and operator, Orphium Theater and Sunset Drivein, Plentywood, said he opposes this bill.

Dan Cederberg, self, Missoula said he opposes this bill and has written testimony to submit. (EXHIBIT 51)

Jonet Doyle, video store employee, said she opposes this bill.

Ursula Franco, video store owner, said she opposes this bill.

Mike Fellows, representing Libertarian Party, said they oppose this bill. (EXHIBITS 52 & 53)

Virginia Cook Compton, Executive Director, Shortline Theater Co. and member of Actors Equity Association, said she opposes this bill.

Dan Compton, owner, Blue Moon Technologies and Internet service provider, Dillon, urged the committee to vote no on this bill.

Julie Loeschla, business owner, Dillon, said she is a mother of sons aged 12 and 17, and urged the committee to oppose this bill.

Cynthia Smith, attorney, Missoula, said she represents several small businesses and urged the committee to table this bill. (EXHIBIT 54)

Tom Glendenning, TCI Cable, said due to the vagueness and broadness of this bill, he urged the committee to table this bill.

Scott Crighton, ACLU, said he has testimony from Pamela Miller, representing 2,000 retail store employees, who oppose this bill, (EXHIBIT 55), and a copy of the Lewistown Op-ed page. (EXHIBIT 56)

**Arnie Malina, President, Helena Presents, Myrna Loy Center,** said they present films and performances, and get calls daily from parents asking if a film is appropriate for their children. He asked the committee to defeat this bill.

**Questions From Committee Members and Responses:**

**SENATOR FRED THOMAS** said **Stan Kaleczyc** mentioned motion pictures during his testimony, then asked him to explain and clarify his opposition to the bill.

**Stan Kaleczyc** said the motion picture association is concerned about this bill because it is common for motion pictures, before they are released, to have internet access. There are all kinds of activities on the internet, over which the motion picture industry and the studios have no control. There are three problems related to internet access: no technology to control all internet access but some technology can be put on a home computer that is blind, that is it does not distinguish between a child and an adult accessing the internet, which has a potential chilling effect on first amendment rights, and there is no way to control the points of web site so anything can be put on a web site.

**SENATOR THOMAS** asked about pictures shown in theaters.

**Scott Crichton** said the Motion Picture Association has a rating system for movies, but there is a concern about the rebroadcast of Schindlers List, where some people complained about some scenes showing nude prisoners in the concentration camp.

**SENATOR THOMAS** asked about the of renting movies and video tapes..

**Stan Kaleczyc** said those videos have the ratings marked on them. Video store owners do respect those ratings in the rental of those pictures.

**SENATOR THOMAS** asked **Jacqueline Lenmark** to address the video rental issue. She requested to direct that question to **Jerry Skillman** who said, the problem with the bill is some of the protections in law have been removed, The protection for materials that are rated G, PG, PG-13, or R have been removed from the current law. Experience in other states has been, people who want to impose their moral values and views on the community have used this as an opportunity to harass video stores. The only people who can determine what the community standards are is a jury, and once the accusation is made and a county attorney found to prosecute the case, the video store has no option except to get rid of the material or go to court.

**SENATOR THOMAS** asked if this means there is a problem with community standards.

**Jerry Skillman** said the problem with community standards is, once someone is accused, it is difficult to defend yourself in court. It's very expensive and there is opportunity for continual harassment by persons or groups who don't approve of the materials in the video stores.

**SENATOR EVE FRANKLIN** asked **Jacqueline Lenmark** to elaborate on the application of the Miller test in HB 453.

**Jacqueline Lenmark** said the test, as it was being recited, is not the test that is in the bill. Parts of the test in the bill were being omitted in the testimony, then deferred to **Jeffrey Renz**.

**Jeffrey Renz** said he is not sure what **Jacqueline Lenmark** was referring to, but it is probably a fair restatement of the Miller test, but it adds a few elements to it. It's a merger of the Ginsberg case and the Miller. The 3-part test is: community standards, patently offensive, and literary value.

**SENATOR FRANKLIN** asked **Jeffrey Renz** about his experience with law enforcement and the application of laws.

**Jeffrey Renz** said Rob Uitof sold magazines in his convenience store. Certain citizens in Libby repeatedly complained to the county attorney until the county attorney agreed to prosecute him. Sheriff's deputies went to the store and decided for themselves some of the magazines violated the county ordinance, which was a general obscenity ordinance not a minors ordinance, then they took all copies of every title to the courthouse as evidence and he never saw them again. They only needed to take one copy of each for evidence, but the real objective was to shut down the sales of any magazine for the month.

**SENATOR SHARON ESTRADA** asked **Janet Larue** if there was anything she could add about the Miller test.

**Janet Larue** said she made it clear in her brief that the bill language follows the Supreme court decision in Ginsberg, as modified by Miller vs. California, specifically to the third prong of the test. A court decision said that obscenity is without first amendment protection and it is without redeeming social value, but a subsequent court decision said it was a burden no prosecutor could meet, so the a substitution was made, that a reasonable person viewing the material as a whole, would have to find the material lacked serious political, artistic, or scientific value.

**SENATOR ESTRADA** said she thought it was stated that 48 other states have this law and **Jacqueline Lenmark** said there is a difference between soft porn, then asked **Janet Larue** to explain that.

{Tape: 2; Side: B; Approx. Time Count: 5:30 PM}

**Janet Larue** said, she recalled **Jacqueline Lenmark** said 48 other states have harmful to minors statutes, but did not say there were identical to HB 453. Material harmful to minors does not have to fall to the level of hard core pornography to be illegal to minors. In the industry, hard core pornography shows penetration that is clearly visible. The courts have said material that may be legal for adults, such as soft pornography, can be illegal when disseminated or displayed to minors. The definition is not soft core pornography but the definition must meet the Ginsberg-Miller test, and if it meets those 3-prongs, it is illegal to disseminate or display to minors.

**SENATOR CHRIS CHRISTIAENS** asked if, under this law, would Schindlers List meet the community standards, redeeming literary value, and redeeming social values, be allowed to be shown.

**Janet Larue** said some people would complain about it, but that is not the standard. Schindlers List would not meet the criteria of harmful to minors. There isn't any reasonable person who could say that movie depicted sexual conduct in a patently offensive manner, appealed to a prurient interest in sex, or lacked serious value.

**SENATOR CHRISTIAENS** asked, under that same test, if there are complaints to the County Attorney about Schindlers List, would they have to defend that and whose community standards are being used.

**Jeffrey Renz** said he didn't think NBC or anyone would be prosecuted for Schindlers List, but it's not a matter of nose counting because all it takes is for one person to be offended. If that person happens to be the prosecutor, there will be a prosecution, then if the six jury members are offended, there will be a conviction.

**SENATOR CHRISTIAENS** said **Jacqueline Lenmark's** made a statement the Montana Constitution grants greater freedom than does the federal Constitution, then he asked **Jeffrey Renz** to comment on that and how it pertains to this bill.

**Jeffrey Renz** said there are two provisions, our free speech provision, which is phrased differently than the first amendment, then we have a privacy provision. The Supreme Court addressed nude dancing in a Billings bar, under a Billings ordinance, saying they didn't think our constitution expression provision provides that much more protection. It's a question whether our free speech provision would apply in such a way as to find this statute vague. The privacy provision is another matter and he doubts it would apply to a bill that prohibits sales and distribution to minors because the courts consider privacy provisions as a person's right to possess and view certain kinds of things.



**SENATOR BOB DePRATU** asked **Terry Crooks** if he was aware of problems the library in Libby is having with books having to be removed or video stores, or even the theaters being restricted from showing a general run of movies.

**Terry Crooks** said this law has been enforced in Lincoln County and the Libby area for 10 years. **Sheriff Ray Nixon** stated there have not been many problems with false prosecutions in either the library or video stores.

**SENATOR DePRATU** asked **Ron Yates** if he was aware of any ordinances in Great Falls that were the same as this, and asked if there was an enforcement problem.

**Ron Yates** said the law was written in 1990 and there are probably some variances with the law, as presented today. The chief of police and city attorney in Great Falls have said there have been no problems with enforcement because the costs have been minimal and businesses know the law abided by the law so was self-policing.

**SENATOR DePRATU** asked if he was aware of any problems the library in Great Falls may have had.

**Ron Yates** said he could not answer for the library because the only information he had was from the newspaper.

**SENATOR DePRATU** asked **REP. PEGGY ARNOTT** why the exemptions for schools and libraries was removed.

**REP. ARNOTT** said she had taught in Billings schools and then related some instances that had happened in the school where teachers and coaches were having sex with high school students. She said she didn't think, if a librarian were knowingly and purposefully displaying to minors materials that was patently offensive, had no scientific, artistic or literary value, or material, taken as a whole, appealed to the minors prurient interest in sex, they should be exempt.

**SENATOR THOMAS** asked **REP. ARNOTT** about the rental of videos and movies, and showing of movies in theaters, and why this bill is not a problem.

**REP. ARNOTT** deferred the question to **Janet Larue**, who said, look at the test in the bill. There isn't a movie or video rated by the MPAA that would meet that test. With the rating system, most state legislatures have asked video stores to require children to have a card from the family stating what they can and cannot rent. Giving an exemption from prosecution for movies rated by the MPAA would be the basis for an equal protection challenge. Giving an exemption of an entire private industry raises serious constitutional problems.

**SENATOR FRANKLIN** said she had received a letter from Glendive that is disturbing about a book store having gone out of business. She then asked **Dallas Erickson** if he had gone to Glendive and organized some activities against a particular bookstore.

**Dallas Erickson** said we have gone to several communities in Montana and tried to determine if stores were displaying harmful materials where children can see them, if they carry obscene material, and if they sell these materials. They put together and circulate a list to people in the community so they can choose where to shop. To his knowledge, no place as gone out of business as a result of their activities.

**SENATOR FRANKLIN** said she just re-read the letter, and he is correct, the bookstore did not go out of business. There was a new bookstore and he had circulated some titles of publications they felt were offensive in the bookstore.

**Dallas Erickson** said he didn't recall the offensive titles, but the bookstore had said they had some materials that had nudity and some sexual excitement in them, displayed where children could see them.

**SENATOR FRANKLIN** asked if he discouraged people from shopping at that store.

**Dallas Erickson** said they circulate a list telling what the stores carry and encourages people not to shop at stores that carry that material.

**CHAIRMAN BENEDICT** said **Dallas Erickson** had said he was a lobbyist for the Montana Citizens for Decency Through Law, and asked him if he was a registered lobbyist, January 4 through March 18, with the Commissioner of Political Practices.

**Dallas Erickson** said he did not think he needed to register, had discussed it with **Ed Argenbright**, and he did register.

**CHAIRMAN BENEDICT** said his testimony could be examined that he had said he was a lobbyist.

**Dallas Erickson** said there are some monetary limits there and he didn't think he would exceed those.

**SENATOR DOROTHY ECK** asked about the written testimony from **Ron Silver**, director of out-patient sex offender treatment program.

**Jacqueline Lenmark** said he was not at the hearing but she had handed out his testimony and she is somewhat familiar with his testimony in the House.

**SENATOR ECK** asked about his testimony regarding sexual abuse of children is compelling, yet he doesn't feel pornography was

really a cause. There was testimony given where 50% of the family was abused and some that has gone back generations, before there were any girly magazines, then asked if there was testimony of what causes of sex abuse of children is.

**Jacqueline Lenmark** said, referring to **Ron Silvers** House testimony, pedophiles and those who prey upon children and others are just as likely to be stimulated by things that no one would consider pornographic, such as the Penny's catalog, Barbie dolls, and other sorts of publications. A person who is going to prey on other individuals is going to commit violent acts on others and is not necessarily stimulated to that violent act by pornography. There is no demonstrated proof between any kind of pornography and violent acts.

**SENATOR ECK** said, referring to testimony from **Ron Silvers**, that treatment does work for sex offenders if they go through the whole range of treatment. She wondered if **REP. ARNOTT** is concerned enough about this issue to provide funding for the treatment for child abuse.

**SENATOR FRANKLIN** asked **REP. ARNOTT** if she had considered enhanced penalties for sex molesters and people who commit crimes against children, and wondered why she had taken this tactic rather than penalties.

**REP. ARNOTT** said legislation dealing with sex offenders has been passed during this legislative session. She thinks we should start with prevention and does think legislation should be passed that does add more penalties, but the first step should be in prevention, asking, why do we let it get to the stage that a young girl's throat is slit or where a 5-year old is raped. She said HB 453 is a preventative measure.

**Closing by Sponsor:**

**REP. PEGGY ARNOTT** thanked the committee for the hearing and courtesy shown. She can obtain a letter from **Ron Silvers** saying he won't allow his patients to use any kind of pornography. It was mentioned, "please don't be seduced by the compelling arguments" made by the proponents, but she suggests it's the great seduction of money that drives the opponents. Soft core porn was used in **Robin Bartlett's** case. Lawyers are told to read the law, but they are also told to read the Supreme Court cases, and this law is upheld by the Supreme Court. Law enforcement is represented by the petitions submitted, and they do care about this bill. **(EXHIBIT 57)** This law should not supersede parent's rights and the state has an interest in protecting youth. There are exemptions for libraries in 26 states, but 22 don't have exemptions, so why should Montana? If they don't have any pornography in their libraries and they don't want to buy it with tax dollars, why do they object to this bill. Congress is addressing the issue of the internet. The statute says, a librarian would have to knowingly and purposefully, take the minor to the internet and find material that would appeal to the

minor's prurient interest in sex, that had not literary, scientific, or artistic value, and it was patently offensive. She submitted testimony from **Tanya Flint** who testified during the House hearing on HB 453. (EXHIBIT 58) She asked, "Isn't there enough evidence that key and sensitive relationships of human existence and central to family life and community welfare can be debased and distorted by crass commercial exploitation of sex." Aristotle said, "Before a criminal act is doable, first it must be made thinkable. Pornography makes sexual crimes thinkable in the minds of youth."

Hearing closed 6:05 PM then resumed at 6:20 PM

HEARING ON HB 558

Sponsor: REP. LIZ SMITH, HD 56, Deer Lodge

Proponents: Bill Wise, MD, Helena  
Joanne Scherer, self  
SEN. TOM KEATING, SD 5, Billings  
Bonnie Parrett, self  
Laurie Koutnik, Christian Coalition of Montana  
Arlette Randash, Eagle Forum  
Jerry Loendorf, MT Medical Assn.

Opponents: REP. JOHN BOHLINGER, HD 14, Billings  
Sally Klein, DPPHS  
Dr. Doug Kuntzweiler, Helena  
Ken Freemont-Smith, MD.  
Barbara Booher, MT Nurses Assn.  
Gan Cossel, Public Health Nurse, Butte  
Joyce Galster, Butte  
Mary Noel, L & C County Aids Project  
Sandra Hale, PRIDE  
Les Childers, self  
Francis Gary, self  
Ellen Noble, self  
Gary Stallings, self  
Tom Galster, self, Butte  
Bill Malek, self  
Marcus Wister, self

Opening Statement by Sponsor:

REP. LIZ SMITH, HD 56, Deer Lodge, said HB 558 directs the Department of Public Health and Human Services to treat HIV infection as a communicable disease. This bill was requested by the general public and some health care providers who wish to look at this disease more normally, and may affect us, our family, and community. There is a change in the definition of contact (page 1) because this is not necessarily a sexually transmitted disease and reaches others through other means. She referred to page 3, saying, there is a deletion of written informed consent, but testing, counseling, and consent is

retained. Referring to page 6, line 7, consent means an agreement that is freely executed, either oral or written. Presently, this is the only test requiring written consent before it can be performed, but permission is always needed for diagnostic testing. This bill does not change that nor is the intent of the bill to change that. The confidentiality will still be maintained (page 6, lines 12-13).

*{Tape: 3; Side: A; Approx. Time Count: 6:35 PM}*

This bill would allow medical providers to asked for consent, orally, for permission to do HIV testing, and if it is positive, for the appropriate counseling and treatment to be done. AIDS is definitely in Montana (**EXHIBIT 59**) and the introduction of universal precautions was a great breakthrough in immediately addressing HIV prevention. She is not asking just for AIDS to be treated as a communicable disease but to treat HIV as a communicable disease, and there be some sort of tracking. She is concerned that private sector testing is not being done because people must ask to be tested for HIV then they are asked many questions about their risk level and lifestyle. She submitted amendments. (**EXHIBITS 60 & 61**)

**Proponents' Testimony:**

**Bill Wise, retired physician, Helena,** said the purpose of HB 558 is to place HIV/AIDS detection on the same level as all other sexually transmitted diseases. (**EXHIBITS 62-64**)

**Joanne Scherer, self,** testified in support of HB 558. She said the current law places the burden of diagnosis and detection on the infected person, who 50% of the time doesn't know they carry the virus. Early detection and public health followup is the result of public health agencies and medicine, and we should not leave that up to the individual. For those reasons, we need HB 558. (**EXHIBIT 65**)

**SEN. TOM KEATING, SD 5, Billings,** said there is a large medical community in Billings, and over the years, a number of surgeons, dentists, and doctors wanted to streamline the process for AIDS testing. The informed, written consent is cumbersome and time-consuming, and most doctors avoid it, as a part of their practice. The surgeons are particularly interested and emergency room nurses have the same fears. With HB 558, consent would still required for testing but allows physicians and surgeons to protect themselves and provide for the patient.

**Bonnie Parrett, self,** said she is a retired nurse and at one time her job was HIV testing and counseling. She read her testimony, giving examples of how the present system does not work. (**EXHIBIT 66**)

**Laurie Koutnik, Executive Director, Christian Coalition of Montana,** said she supports HB 558. It removes the barrier from

testing while still reporting those who test positive, but testing will be done with the consent of the patient. (EXHIBITS 67 & 68)

**Arlette Randash, Eagle Forum**, said they support HB 558 and submitted testimony from **Carol Allison**. (EXHIBIT 69)

**Jerry Loendorf, representing Montana Medical Association**, said they support HB 558 and encourage the Legislature to recognize and treat AIDS as a communicable and sexually transmitted disease. They generally concur with previous testimony by **Dr. Wise and Joanne Scherer**, and ask the committee to recognize that AIDS is a deadly disease that kills, a disease we need to take seriously, and do everything possible to prevent its spread.

**Opponents' Testimony:**

**REP. JOHN BOHLINGER, HD 14, Billings**, said 76% of all the states in the United States require informed consent before an AIDS test can be administered. Because Montana still sees AIDS as a disease of "those" people, not me, barriers should not be put up for those people who are at risk for HIV/AIDS. The people who are at risk will not be tested for fear of discrimination and we need to keep informed consent in place. He urged the committee to vote no on HB 558. He then read portions of testimony from **David Herrera**. (EXHIBIT 70)

**Sally Klein, Department of Public Health and Human Services**, read testimony of **Kathleen Martin** in opposition to HB 558 (EXHIBIT 71) and submitted a consent form for HIV testing. (EXHIBIT 72)

**Dr. Doug Kuntzweiler, Helena**, said he works in the Emergency Department at St. Peters Hospital. Medical practice depends on trust. If a patient doesn't think the physician has his best interests at heart, he will listen to anything the physician says, have prescriptions filled, or follow the advise given. He said written, informed consent is a vital part of that trust. If a patient is being treated for a minor illness, he will talk to the patient about possible tests that are needed, such as a blood count. If the patient agrees to that, there is oral consent for the test to be done, and if the patient does not trust the physician, consent will probably not be given. For more serious conditions, such as a lumbar puncture, he will explain the reasons for the procedure and he obtains written, informed consent before performing the test. The same is true for surgical procedures. In the case of HIV, there are such dramatic implications for their lives, he thinks written, informed consent is necessary before performing the tests. The implications affect their health, and if the test is positive, they risk losing jobs, housing, and insurance. If written, informed consent is removed, people are going to be drawing blood on patients with or without their consent, and after the blood is drawn, it is easy to say, "they said it was OK." Informed consent is needed to develop that bond of trust because if patients don't trust you, they won't come forward to be tested. With the present system, people are

coming in for testing and there are many negative tests. There is a small pool of HIV positive people in Montana and there is a larger pool of people who participate in behaviors that put them at risk. The surgeons and emergency room personnel who want to test everyone for HIV so they can take precautions against it, have a false hope because there is a sero-negative window, that is the time period from being infected with the virus until it shows up on a test can be months or years. If someone is tested and the results are negative that will not assure you that the disease can't be contracted from them.

**Ken Freemont-Smith, MD.**, said he is a retired internist and is a volunteer at the Missoula County Health Department. He thinks many of the individuals who came for testing would not have done so had anonymity not been offered. (EXHIBIT 73)

**Barbara Booher, Executive Director, Montana Nurses Association**, said they oppose HB 558. Previous opponents have stated the need for continued written, informed consent and the need to treat HIV and AIDS differently than the current communicable and sexually transmitted diseases. The major reason for their opposition is potential for discrimination against people with this illness. (EXHIBITS 74 & 75)

**Gan Cossel, Public Health Nurse, Butte**, said HB 558, as it stands, means the end to anonymous HIV/AIDS testing and counseling. Without anonymous testing, individuals who are at the greatest risk for HIV infection, and who choose to test, will stop testing anywhere, no matter how available testing may be. (EXHIBIT 76)

**Joyce Galster, self, Butte**, said she has been actively involved in AIDS education and working with people with AIDS. AIDS is not like other sexually transmitted diseases because it is transmitted through blood, semen, vaginal fluids and mother's milk. The present system works well and doing away with informed consent would drive people away from being tested because of fear. (EXHIBIT 77)

**Mary Noel, Executive Director, Lewis & Clark AIDS Project, Helena**, said she has written testimony (EXHIBIT 78) and testimony from a mother of a 4-year old adopted daughter with HIV. (EXHIBIT 79)

**Sandra Hale, Executive Director, PRIDE**, urged the committee to kill HB 558. (EXHIBIT 80)

**Les Childers, self**, said he wished he had more time to talk because he came to Helena from the High Line. He is opposed to HB 558 because informed consent is a legacy of the Nuremberg Trials of the post-Nazi era.

**CHAIRMAN BENEDICT** apologized to those who did not get the opportunity to testify because there were some speakers who took up other peoples time.

**Francis Gary, Director, AIDS Support Services**, introduced himself. (EXHIBIT 81)

**Ellen Noble, Montana State-wide AIDS Network**, said she opposes this bill.

**Gary Stallings, self**, said he opposes this bill to do away with anonymous testing.

**Tom Galster, Butte**, said he opposes HB 558.

**Bill Malek, self**, said he is HIV positive and asked the committee to listen to the education, not the ignorant.

**Marcus Wister, self**, said he opposes this bill.

**Questions From Committee Members and Responses:**

**SENATOR SHARON ESTRADA** said they see some of the people who testified, on the last couple of bills, everyday. They're in the halls lobbying and that gentlemen who came from the High Line did not get a chance to testify because the committee has been sitting for quite a long time on two lengthy bills. It would be nice if the lobbyists and the departments would be considerate of people who come from out-of-town, especially on important bills like this. She said she would have liked to have heard his testimony.

**SENATOR FRED THOMAS** asked **Dr. Bill Wise** if records are open to the public.

**Dr. Wise** said no. He doesn't know why the opponents are bringing this up because nothing has been said about changing anonymity. Anybody can go, anonymously, to any testing center or doctor, and not give their name, but request an HIV test. If the individual is HIV positive, then good public health practice needs to be done and identify the individual's contacts.

**SENATOR THOMAS** asked about the confidentiality of records as any other medical records are.

**Dr. Wise** said there is no change in confidentiality of records.

**SENATOR THOMAS** asked about nurses or doctors right to know, at present, when working with a patient who might have HIV or AIDS.

**Dr. Wise** said that already exists in every emergency or EMT run. They can have the body fluids tested, of patients they care for, to protect themselves. Before surgery is performed, it would be wise to know if the patient has HIV infection or not, because frequently doctors cut themselves during surgery.



**SENATOR THOMAS** asked if nurses have the right to know if a patient has AIDS before treating him.

**Dr. Wise** deferred to **REP. LIZ SMITH** who said, if the patient is diagnosed with AIDS, it will be on their medical records. If they were HIV positive, then the medical personnel would not know, because HIV is the early stage of AIDS.

**SENATOR THOMAS** asked, if they have HIV, medical personnel has no right to know, but if it has developed into AIDS, medical personnel would know by asking.

**REP. SMITH** said it would be recorded in their medical record.

**SENATOR EVE FRANKLIN** asked **Jim Murphy**, Department of Health, about **Dr. Wise's** concern about written informed consent affecting the followup and what the present Department of Health's policy of notification and followup.

**Jim Murphy** said, regardless where HIV tests are performed, all results are sent to the Department of Health and they followup. They call the health care provider or will call the County Health Department and ask whether an AIDS diagnosis has been made. If so a report, which includes the individual's name, is sent to the State Department of Health and County Health Department. If an AIDS diagnosis was not made, they do not ask for the name of that person. When there is a positive test, the State Health Department will work with the county or the health care provider for followup and contact of partners.

**SENATOR LARRY BAER** said he is trying to conceptualize the good this bill will do compared to the potential chilling effect it will have on those desiring to be tested for HIV, and asked **Dr. Wise** what good will this bill does by taking away written informed consent.

**Dr. Bill Wise** said every time blood is drawn, the patient must be told why it is being done. If the patient refuses, then the blood will not be drawn. Written informed consent is obtained for serious tests because they may have potential side effects, as opposed to a simple blood test where the individual may get a black and blue spot. That's about the worst thing you can get from that, so why worry about writing a consent, for a simple blood test. The individual is asked if he will consent to be tested for HIV, and if the answer is no, no test will be done, but if the answer is yes, the test is done and the results are recorded in the medical chart.

**SENATOR BAER** asked how the patient is going to feel secure that the test results will be confidential, with or without written informed consent.

**Dr. Bill Wise** said, with written informed consent, if the results are positive there is no change in confidentiality or anonymity. That is not affected by writing it down.

**SENATOR BAER** asked **REP. SMITH** about the amendments. HB558-5 was submitted at the request of the Department of Public Health and Human Services, and there is no indication who requested the other amendment.

**REP. SMITH** said the amendments clarify the intent of the bill for the Department of Health because there was confusion whether they could continue anonymous testing. Amendment, HB558-4, is the one she had worked on with the Department of Health. Number 3 would assure the Department they would not have to track by name.

**SENATOR BAER** asked **REP. SMITH** if she was familiar with amendment HB558-5.

**REP. SMITH** said that amendment is inappropriate and not necessary (HB558.5 AMD). Striking all the informed consent would be lengthy in its acquisition and was not necessary for the intent of the bill. It still contains the ability for clinics or doctors to use written, informed consent, if they choose to do so, or oral consent may be obtained.

**SENATOR BAER** said it appears the amendment is to re-insert "informed consent," but does not insert "written informed consent." He then asked if she would object to reinserting informed consent, even though it's not written.

**REP. SMITH** said she thinks it's not necessary. For those who have a trusting relationship with their doctor for their regular health care, there is no reason to go into great detail to have HIV testing done. Oral consent would be necessary.

**SENATOR BAER** said we are dealing with afflicted people who are treated differently by society and they may avoid testing.

**REP. SMITH** said AIDS patients should be treated as any other patient is treated. This will not change for those who choose to be tested, and all of society is going to be affected by this disease. This bill makes a simple change.

**SENATOR BAER** said he is still unconvinced.

**SENATOR CHRIS CHRISTIAENS** said **Joanne Scherer** had stated in her testimony she was in favor of this bill because she was not able to make appropriate intervention with contacts, and asked what kind of contacts was she talking about.

**Joanne Scherer** said under current law, The AIDS Control Act does not mandate reporting by name to the Health Department. The Health Department makes an effort to do followup, but there is a

concern about those people who are diagnosed in the private sector.

**SENATOR CHRISTIAENS** asked for an explanation of the appropriate intervention with the contact.

**Joanne Scherer** said appropriate intervention by the Health Department would be obtaining the names of the contacts, then help get people to the appropriate health care.

**SENATOR CHRISTIAENS** asked if she was talking about partner notification.

**Joanne Scherer** said yes.

**SENATOR CHRISTIAENS** said he would like **Les Childers** had to say.

**Les Childers** said Hawaii has a policy that if an individual is HIV positive, there is followup to ask about sexual partners. A friend in Hawaii told him that of those who go for HIV testing, 60% don't return for their results. He is concerned about informed consent because it is a legacy of Nuremberg trials in post-Nazi Germany. There seems to be a trend here.

*{Tape: 4; Side: A; Approx. Time Count: 8:08 PM; Comments: lost a few comments while new tape put into machine.}*

He said there is a potential for some abuse.

**SENATOR CHRISTIAENS** asked about the consent form for HIV testing, if this is the form generally used and if it is signed by the individual.

**SENATOR DOROTHY ECK** asked **REP. SMITH** why she does not want informed consent and couldn't a doctor run an AIDS test on a regular sample of blood without consent from the patient.

**REP. SMITH** said the doctor would have to have oral consent from the patient for the HIV test.

**SENATOR ECK** asked **Kathleen Martin** if most people are cooperating in this education and counselling program.

**Kathleen Martin** said yes, the present system is working.

**SENATOR ECK** said she is concerned about the mail-in testing where there would be no followup if HIV positive.

**Kathleen Martin** said that is would be true, and there is some home testing available and if there is no report to the Department of Health, there will be no followup of that test.

**SENATOR ECK** asked about the cost of testing and if that is a deterrent.

**Kathleen Martin** said the Department of Health does testing and charges practitioners \$5.00 per test.

**SENATOR EVE FRANKLIN** asked **Dr. Fremont-Smith** if there is any problem with taking away written informed consent.

**Dr. Fremont-Smith** said no.

**SENATOR FRED THOMAS** asked **Jim Murphy** what the reporting requirements for the HIV test are, and if private clinics are required to send the results to the Department of Health.

**Jim Murphy** said all HIV positive tests are reportable to the Department of Health. Every health care provider and laboratory submits data to the Department of Health so they can do followups on HIV positive test results.

**SENATOR THOMAS** asked about the difference between HIV test results and other communicable diseases.

**Jim Murphy** said names are not reported for HIV positive test results, but names are given for all other diseases reported.

**SENATOR THOMAS** asked about the difference between HIV cases and other diseases, and what happens next.

**Jim Murphy** said after the initial anonymous report, they try to talk to the test subject, no matter what the disease is. There is a Department policy, but no law is on the books.

**SENATOR THOMAS** asked if the HIV positive individual may not be in the Department of Health's file, but if they tested positive for AIDs, that would be in the doctors file, and when does that crossover.

**Jim Murphy** said the difference between HIV and AIDS is, HIV is the beginning and AIDS is the end, and it is easier to track AIDS because they have entered the health care system. It is hard to track HIV because they don't have any symptoms and don't seek medical care. In a doctor's office, if the doctor orders an HIV test, that information is contained in the patient's medical record, which is the same for an AIDS test. There is no real "right to know," but if the health care worker is exposed to the patient's blood or body fluids, they have the right to see the records to see the status of that patient.

**SENATOR THOMAS** asked if the ability to infect is different in HIV and AIDS.

**Jim Murphy** said the level of the virus is high at the HIV beginning stage, and therefore their ability to infect someone else is high. Then, it levels off and is lower until it rises to a high level at the end stage as AIDS. At both ends of the spectrum, they are highly infectious.

**SENATOR FRANKLIN** asked **Gan Cossel** how health care professionals protect themselves.

**Jan Cossel** said they are trained and knowledgeable about universal precautions for any blood-borne illness, so they take the necessary precautions. For herself, she doesn't need to know the status because she takes precautions for all.

**SENATOR FRANKLIN** asked if that is contemporary health care standards.

**Jan Cossel** said yes, they are universal precautions.

**SENATOR DOROTHY ECK** said there have been a lot of changes in the treatment of AIDS, and asked if there increase of those who have tested HIV positive getting into treatment.

**Jim Murphy** said every year more people are being tested and there are new treatments. With early detection, a lot more can be done.

**SENATOR ECK** asked where test results are obtained the quickest.

**Jim Murphy** said there is a minimum of one week from the time the blood is drawn to get the results back to the individual. Some doctor's offices are using a test that will give a preliminary result in about 10 minutes, but if positive, it must be followed up by a blood test.

**SENATOR ECK** asked if that was the saliva test for HIV.

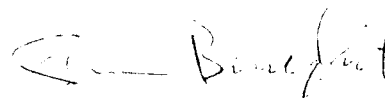
**Jim Murphy** said no, the quick test is a blood-based test. The saliva test has to be sent to a laboratory and takes time, which is the same for the home HIV test.

**Closing by Sponsor:**

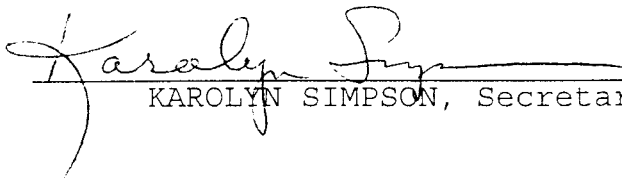
**REP. LIZ SMITH** thanked the committee and those who testified. She did not support this bill in the last session because it removed anonymity, but thinks people are now more ready and willing to deal with this disease in our society. She would like to reduce the stigma and negativity about this disease. If there is a trusting relationship between patient and doctor, then the test could be done without a great deal of detail. The Public Health Department has done a fairly reasonable job of tracking and followup. With early detection, there is a possibility of keeping HIV from developing into AIDS. HB 558 will continue for consent and confidentiality for HIV testing. By removing written informed consent, HB 558 does allow oral consent for testing, which will offer more opportunity for more people to give their consent for testing. Confidentiality of medical information remains intact, which includes the tracking of all communicable diseases. This is a public health issue affecting children, heterosexuals, homosexuals, IV drug users, and the general public, with the IV drug users being the fastest growing segment.

ADJOURNMENT

Adjournment: 8:35 PM



SEN. STEVE BENEDICT, Chairman



KAROLYN SIMPSON, Secretary

SB/ks

MONTANA SENATE  
1997 LEGISLATURE  
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

## ROLL CALL

DATE \_\_\_\_\_

3/19/97

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