

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN DIANE RICE**, on January 25, 2005 at 8:00 A.M., in Room 137 Capitol.

#### **ROLL CALL**

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

Rep. Diane Rice, Chairman (R)  
Rep. Paul Clark, Vice Chairman (D)  
Rep. Ron Stoker, Vice Chairman (R)  
Rep. Arlene Becker (D)  
Rep. Robyn Driscoll (D)  
Rep. George Everett (R)  
Rep. Gail Gutsche (D)  
Rep. Christopher Harris (D)  
Rep. Roger Koopman (R)  
Rep. Michael Lange (R)  
Rep. Tom McGillvray (R)  
Rep. Mark E. Noennig (R)  
Rep. Art Noonan (D)  
Rep. John Parker (D)  
Rep. Jon Sonju (R)  
Rep. John Ward (R)  
Rep. Bill Wilson (D)  
Rep. Jeanne Windham (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** John MacMaster, Legislative Branch  
Pam Schindler, Committee Secretary

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

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

Hearing & Date Posted: HB 238, HB 333, HB 356, 1/19/2005  
Executive Action: None

HEARING ON HB 333

Sponsor: REP. JOHN MUSGROVE, HD 34, HAVRE

Opening Statement by Sponsor:

REP. JOHN MUSGROVE (D), HD 34, opened the hearing on HB 333, Eliminate sign requirement for arrest without warrant for speeding.

*{Tape: 1; Side: A; Approx. Time Counter: 0 - 40}*

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NOENNIG inquired of the sponsor, "Why(are you)do(ing) this bill?" REP. MUSGROVE stated that the signs are no longer required; it is public knowledge radar speed checks are no longer in use. He continued and said that there are signs that give the speed limits.

*{Tape: 1; Side: A; Approx. Time Counter: 40 - 109}*

Closing by Sponsor:

REP. MUSGROVE closed the hearing on HB 333.

*{Tape: 1; Side: A; Approx. Time Counter: 109 - 113}*

HEARING ON HB 238

Sponsor: REP. PENNY MORGAN, HD 57, BILLINGS

Opening Statement by Sponsor:

REP. PENNY MORGAN (R), HD 57, opened the hearing on HB 238, Unborn child pain prevention act. During her opening statements, REP. MORGAN presented a video called, "The Silent Scream," that depicts an abortion procedure. THE REPRESENTATIVE also read to the committee members excerpts of Dr. Bernard N. Nattenson, OB/GYN, about his observations on his studies of fetology.

[EXHIBIT\(juh19a01\)](#)

*{Tape: 1; Side: A; Approx. Time Counter: 113 - 500}*

*{Tape: 1; Side: B; Approx. Time Counter: 0 - 18}*

**Proponents' Testimony:**

**Jane Beaver, self**, informed the committee that more than 45 million abortions performed each year. **Ms. Beaver** continued to inform the committee members from materials she had researched that in the Peoples Republic of China, "...aborted fetuses are not wasted...they are washed with clear water until they look transparent white and then steam them, making soup is best..."

She further stated that according to the Eastern Express, a Hong Kong newspaper, "...are now selling aborted fetuses at about \$1.25 each as a food that can cure a range of maladies and promote healthy skin and organs."

Ms. Beaver continued and asked the committee that if we can kill babies, "...will the elderly be far behind?"

**EXHIBIT(juh19a02)**

***{Tape: 1; Side: B; Approx. Time Counter: 18 - 70}***

**Greg Trude, Right to Life of Montana**, rose in support of HB 238 and stated, "Fetuses have less (fewer) rights than cattle at the slaughterhouse...."

**EXHIBIT(juh19a03)**

***{Tape: 1; Side: B; Approx. Time Counter: 70 - 93}***

**Charles Lorentzen, self**, rose in support of HB 238, and commented to the committee members that abortions would be rarer if babies were given anesthesia.

**EXHIBIT(juh19a04)**

***{Tape: 1; Side: B; Approx. Time Counter: 93 - 125}***

**Steven Zelinsky, physician**, rose in strong support of HB 238. **Dr. Zelinsky** proceeded to inform the committee members that he had written articles regarding fetal pain. He opines that fetal pain can be felt at eight weeks or sooner. Further, he stated that ultra sounds are more much advanced and can show every grimace of pain a fetus experiences.

**Dr. Zelinsky** continued his testimony to the committee by reading excerpts from books regarding the fetal pain issue. In his recitations, he referred to the cortex and thalamus present in fetuses and that even though adults can suppress their feelings of pain, fetuses cannot.

***{Tape: 1; Side: B; Approx. Time Counter: 125 - 312}***

**Audrey Mendenhall, ultrasound technician**, rose in strong support of HB 238. **Ms. Mendenhall**, spoke to the committee of the second trimester of a fetus and in her opinion how that fetus feels pain.

**EXHIBIT(juh19a05)**

**{Tape: 1; Side: B; Approx. Time Counter: 312 - 366}**

**Julie Milam, Montana Family Coalition**, rose in support of this bill and stated, "...the opposite side does not want to believe this is a human being...."

**{Tape: 1; Side: B; Approx. Time Counter: 366 - 410}**

**Becky Stockton, self**, related the story of her pregnancy and birth of a child to the committee members.

**{Tape: 1; Side: B; Approx. Time Counter: 410 - 442}**

**Eric Scheidermeyer, Montana Catholic Conference**, spoke to the committee about the teachings of the Catholic Church and then stated, "...we are their voice...." He further stated that this bill would only mandate the dissemination of information.

**{Tape: 1; Side: B; Approx. Time Counter: 442 - 500}**

**REP. MENDENHALL, HD 77**, rose in support of HB 238 and stated to the committee, "...the Nazis were big on propaganda and the denial of information...."

**{Tape: 2; Side: A; Approx. Time Counter: 0 - 15}**

**Kandi Matthews-Jenkins, self**, rose in support of HB 238 and spoke to the committee members about the article referencing tissue. She further stated that this bill is ludicrous and that the 45,000 "killed" are Montanans.

**{Tape: 2; Side: A; Approx. Time Counter: 15 - 42}**

**Rachel Roberts, Montana Family Foundation**, rose in support of HB 238.

**{Tape: 2; Side: A; Approx. Time Counter: 42 - 49}**

**Phyllis Lamping, Montana Family Coalition**, rose in support of HB 238 for herself and also on the behalf of: Harris Himes, Bonnie Benjamin and Gwendolyn Coon.

**{Tape: 2; Side: A; Approx. Time Counter: 49 - 64}**

**Opponents' Testimony:**

**Jan VanRiper, ACLU**, rose in opposition to HB 238 and stated to the committee that in her opinion this bill would be unconstitutional referring to the case of *Planned Parenthood v. Casey*.

**EXHIBIT(juh19a06)**

***{Tape: 2; Side: A; Approx. Time Counter: 64 - 162}***

**Joanne Dodson, Department of Health and Human Services**, spoke in opposition to this bill. Her main area of concern was in relation to the fiscal note and the implementation of HB 238.

**EXHIBIT(juh19a07)**

***{Tape: 2; Side: A; Approx. Time Counter: 162 - 197}***

**Beda Lovitt, Montana Medical Association**, rose in opposition for the reason of confidentiality that would be at the heart of this bill.

**EXHIBIT(juh19a08)**

***{Tape: 2; Side: A; Approx. Time Counter: 197 - 223}***

**SEN. GREG LIND, SD 50, anesthesiologist**, rose in opposition and referred to Section 4, Page 2, Line 17 as a basis for his opposition. He stated that as an anesthesiologist, he would not be able to comply with the language in HB 238. **SEN. LIND** stated, "...this bill is trying to legislate medical practice...."

***{Tape: 2; Side: A; Approx. Time Counter: 223 - 262}***

**Julie Danaher, OB/GYN physician**, rose in opposition to HB 238. She reported to the committee members that in the scientific community the theory of fetuses feeling pain is not an accepted fact.

**Dr. Danaher** continued to state that for a fetus to feel pain they must have a developed cortex which does not happen until approximately 24-26 weeks; whereas, this bill would apply to fetuses at 12 weeks. She further reported that with HB 238 there is no direction or procedure on how to anesthetize a fetus, it is not possible in current medical procedure. Finally, **Dr. Danaher** finished her testimony with the statement, "Doctors do not want the government telling them how to practice medicine."

***{Tape: 2; Side: A; Approx. Time Counter: 262 - 339}***

**Rebecca Howell, Planned Parenthood of Montana (PPMT)**, rose in opposition to HB 238 and stated to the committee that the video shown is not current. She explained to the committee the medical protocol that women receive when an abortion is performed.

***{Tape: 2; Side: A; Approx. Time Counter: 339 - 409}***

**Kate Cholewa, NARAL**, rose to oppose HB 238. **Ms. Cholewa** referred to the various sections that she and the organization she represents is particularly opposed to.

**{Tape: 2; Side: A; Approx. Time Counter: 409 - 453}**

**Jacqueline Lenmark, American Insurance Association (AIA)**, rose in opposition to HB 238. From an insurance standpoint, **Ms. Lenmark** explained to the committee how this bill would negatively impact malpractice insurance rates physicians currently pay. She also spoke of the confidentiality and privacy factor that would be affected by HB 238.

**{Tape: 2; Side: A; Approx. Time Counter: 453 - 500}**

**{Tape: 2; Side: B; Approx. Time Counter: 0 - 65}**

**Stacy James, Planned Parenthood**, rose in opposition to HB 238.

**{Tape: 2; Side: B; Approx. Time Counter: 65 - 71}**

**Brad Martin, Montana Democratic Party**, rose in opposition to HB 238.

**{Tape: 2; Side: B; Approx. Time Counter: 71 - 75}**

**David Jersey, self**, rose in opposition to HB 238

**{Tape: 2; Side: B; Approx. Time Counter: 75 - 82}**

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. DRISCOLL** inquired of the sponsor if there are any other medical procedures in statutes that have criminal penalty application. **REP. MORGAN** stated that she did not know.

**REP. STOKER** posed numerous questions to Dr. Zelinsky regarding the accuracy of the medications given to the mother and then "passed" on to the fetus. **Dr. Zelinsky** opined the various ways that transference of medication could be accomplished from the mother to the fetus which is sometimes called, "crossover."

**REP. CLARK** queried Ms. VanRiper about other states that may have a statute similar to HB 238. **Ms. VanRiper** stated that she was not aware of any other states with a similar statute.

**REP. GUTSCHE** questioned Dr. Danaher in her opinion of what Dr. Zelinsky had proposed as to the methods of anesthetizing a fetus. The REPRESENTATIVE also inquired of Dr. Danaher if she is licensed and where she is licensed. **Dr. Danaher** replied that she is licensed in the State of Montana.

**REP. GUTSCHE** then turned her questions to Dr. Zelinsky. She asked Dr. Zelinsky where he was licensed and if he was an OB/GYN physician. **Dr. Zelinsky** replied, "...I am licensed in Illinois and Oregon and I practice Internal Medicine...."

**REP. HARRIS** began his questioning with Mr. Himes. **REP. HARRIS** was interested in Section 10, Page 5, Lines 18 and 22. He entreated Mr. Himes to explain how this language would apply to grandparents and the actual damages that could be awarded. **Mr. Himes** presented to the committee that the grandparents would be awarded damages based on "on behalf of the child." **REP. HARRIS** continued with this line of questions by again appealing to Mr. Himes to explain to the committee how the grandparents could receive damages. **Mr. Himes** indicated that if the grandparents were to be witnesses to any procedure, they could be awarded damages based on psychological damages.

**REP. MCGILLVRAY** began his questions by posing to Dr. Danaher whether or not HB 238, if passed, would have an effect on her personal finances; i.e., less abortions, less income. **Dr. Danaher** replied, "No," emphatically. At this point **REP. CLARK** intervened in this line of questioning stating that the physician's personal income is not an appropriate question to ask. **CHAIRMAN RICE** ruled **REP. CLARK** out of order.

**REP. KOOPMAN** continued with this genre' of questions for Dr. Zelinsky. **Dr. Zelinsky** spoke of the fetus and whether or not reflex actions were an indication of pain. He explained that the thalamus is at the base of the pain and it is his contention the thalamus is, in fact, developed in the fetus.

**REP. KOOPMAN** posed the next questions to Ms. VanRiper. **REP. KOOPMAN** asked Ms. VanRiper about the waiting period, "...is there a waiting period in other states?" **Ms. VanRiper** stated, "...there may be in other states; however, the waiting period in Montana was found to be unconstitutional according to specific statutes in the Montana constitution that guarantee the right to privacy."

**REP. KOOPMAN** then turned to Ms. Howell and asked, "What is the position of Planned Parenthood and would PPMT project fewer abortions if this bill were to pass?" **Ms. Howell** responded that the first objective of PPMT is education in birth control matters, and she couldn't estimate if abortions would go down.

**REP. KOOPMAN** proceeded to query Ms. Lenmark, AIA, about malpractice insurance and whether there is a negative affect on all physicians when abortions are performed or just on the physicians who perform abortions. **Ms. Lenmark** replied that all physicians whether it is ER physicians, family practice physicians, hospitals, labs, or OB/GYN physicians have to face the increasing costs of malpractice insurance whether abortions are performed or not.

**REP. BECKER** began her questioning session of Dr. Zelinsky by explaining to him and the committee that she had worked in an intensive care unit(ICU)as a nurse and in her experience the procedures that Dr. Zelinsky had spoken of are highly experimental. She asked, "...have you done any of these procedures yourself and can any physician do these procedures..." **Dr. Zelinsky** responded by stating, "...yes, he had assisted in these procedures and yes, any physician can do these procedures."

**REP. NOONAN** took a moment of personal privilege to inform the committee that what REP. MENDENHALL had stated in his testimony regarding Nazis was an inappropriate comment.

The REPRESENTATIVE then continued with questions to Ms. Lovitt and Ms. Lenmark regarding litigation and the language in current statutes. **Ms. Lovitt** stated that HB 238 in its present language does not give good guidance in relation to the communication between the physician and woman and in fact interferes with that communication.

**REP. EVERETT** posed questions to Mr. Himes regarding his opinion of whether HB 238 was unconstitutional. **Mr. Himes** stated that in his opinion this laws would be constitutional and that these types of conversations are commonplace; i.e., informed consent. **Mr. Himes** also stated that it is his opinion that physicians have always been advised on how to practice medicine.

**REP. GUTSCHE** queried Ms. Lovitt with respect to the comment that Mr. Himes just made regarding physicians and their practice of medicine and if it is common practice to inform physicians on how to practice medicine. **Ms. Lovitt** stated that the language in the bill is very broad and as to the private relationship between physician and patient, "...no, in her opinion physicians are not advised on how to practice medicine."

**{Tape: 2; Side: B; Approx. Time Counter: 82 - 500}**

**{Tape: 3; Side: A; Approx. Time Counter: 0 - 464}**

**Closing by Sponsor:**

REP. MORGAN closed the hearing on HB 238. She read statements and articles that supported HB 238.

[EXHIBIT\(juh19a09\)](#)

[EXHIBIT\(juh19a10\)](#)

[EXHIBIT\(juh19a11\)](#)

*{Tape: 3; Side: A; Approx. Time Counter: 464 - 500}*

*{Tape: 3; Side: B; Approx. Time Counter: 0 - 88}*

**HEARING ON HB 356**

**Sponsor:** REP. ART NOONAN, HD 73, BUTTE

**Opening Statement by Sponsor:**

REP. ART NOONAN (D), HD 73, opened the hearing on HB 356, Background information for law enforcement. REP. NOONAN stated that this bill will allow law enforcement to solicit and acquire information on prospective employees.

*{Tape: 3; Side: B; Approx. Time Counter: 88 - 109}*

**Proponents' Testimony:**

Frank Garner, Montana Chiefs of Police, spoke to the committee about how the badge law enforcement personnel wears is a badge that symbolizes "sacred trust." Law enforcement can restrict a person's freedom and can also protect a person's freedom. Therefore, those officers must adhere to the highest code of ethics and character. He stated that, "...character and leadership are doing the right thing when no one is watching." Therefore, a prospective employee's future behavior is based on past performance and background information is vital to hiring the best person.

*{Tape: 3; Side: B; Approx. Time Counter: 109 - 157}*

Jim Kembel, Montana Police Protective Association, spoke to the committee members about amendments that his organization would like to insert in HB 356.

*{Tape: 3; Side: B; Approx. Time Counter: 157 - 182}*

**Bill Dove, Montana Peace Officers' Association, Deputy Chief of Police-Bozeman**, informed the committee that currently there is difficulty in obtaining vital information in the hiring process. Former employers may only inform you of the "good" attributes of an employee, but, be afraid to inform you of anything "bad" in fear of ligation.

**{Tape: 3; Side: B; Approx. Time Counter: 182 - 200}**

**Jim Smith, Montana Sheriffs and Peace Officers' Association, Montana County Attorneys' Association**, stated that there is a heightened importance when hiring law enforcement officers.

**{Tape: 3; Side: B; Approx. Time Counter: 200 - 224}**

**Pam Bucy, Assistant Attorney General**, explained to the committee that this language is in statutes in many states. HB 356 is derived from language in a Nevada statute that has been in law for four years. **Ms. Bucy** stated that this bill is an important first step toward securing appropriate information. She further explained to the committee "the workings" of HB 356.

**{Tape: 3; Side: B; Approx. Time Counter: 224 - 275}**

**Bob Worthington, Montana Municipal Insurance Authority**, rose in support of HB 356. He informed the members of the committee how his organization represents the law enforcement entities in litigation.

**{Tape: 3; Side: B; Approx. Time Counter: 275 - 309}**

**Al Smith, Montana Trial Lawyers' Association**, rose in support of HB 356; however, **Mr. Smith** explained two amendments his organization would like to be inserted into the bill referencing Page 1, Line 30 and Page 2, Line 9.

**{Tape: 3; Side: B; Approx. Time Counter: 309 - 384}**

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. NOENNIG** questioned Mr. Smith regarding the amendments his organization has proposed.

**REP. HARRIS** then questioned Ms. Bucy regarding the same amendments and the changes that would be made regarding negligent disclosure from employers releasing false information.

**REP. WARD** posed a question to Ms. Bucy in reference to the Fifth Amendment and HB 356.

***{Tape: 3; Side: B; Approx. Time Counter: 384 - 500}***

***{Tape: 4; Side: A; Approx. Time Counter: 0 - 21}***

**Closing by Sponsor:**

**REP. NOONAN** closed the hearing on HB 356 and stated, "...this bill is a minimalist step forward."

***{Tape: 4; Side: A; Approx. Time Counter: 21 - 30}***

**ADJOURNMENT**

Adjournment: 12:10 P.M.

---

REP. DIANE RICE, Chairman

---

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

**EXHIBIT ([juh19aad0.PDF](#))**