

DATE 1/25/05
HB 238

Testimony for House Bill 238

Mr. Chairman, members of the committee, I am Jo Ann Walsh Dotson, the Bureau Chief of the Family and Community Health Bureau in the Department of Public Health and Human Services.

On behalf of the Department of Public Health and Human Services, we **oppose HB 238**. The fiscal note implies substantial requirements for DPHHS administration. This bill also implements a waiting period and attempts to control practice of abortion, both found unconstitutional in 1999. This bill may create harm to women seeking abortion by assessing criminal and civil penalties against them if they do not review materials. This is a departure from usual procedure when patients undergo medical procedures.

In terms of implementation, this lay may be very difficult to enforce, due to confidentiality rules and available information. Jim Edgar of Vital Statistics is available as an informational witness.

Issues:

General

Substantial requirements for DPHHS administration. – See Fiscal note

Section 3. Fetal Pain Information

De facto waiting period. Already deemed unconstitutional by *PP of Msla v. State*, 1999.

Section 4. Unborn child pain prevention.

Procedure for administering anesthetic or analgesic to fetus is not available in Montana. It is not known whether the procedure is available anywhere in the U.S.

Medical malpractice concern due to the requirement that a doctor must perform the procedure even if risks are substantial to woman, yet she consents.

Section 9. Criminal Penalties

Criminal penalties may be assessed against a woman seeking abortion if she does not review the materials.

Section 10. Civil Penalties

Civil penalties may be assessed against a woman seeking abortion if she does not review the materials.

Section 12. Control of practice of abortion.

Much of Section 50-20-109 was found unconstitutional. *Armstrong v. State*, 1999.

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