

DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES

EXHIBIT 22
DATE 3-30-05
SB 86



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GOVERNOR

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To: Rep. Arlene Becker, Chair
House Human Services Committee

From: Shirley K. Brown, M.A., J.D.
Administrator, Child and Family Services Division

A handwritten signature in cursive script that reads "Shirley K. Brown".

Re: SB 86

Date: March 31, 2005

I understand that a question arose during the hearing on SB 86 yesterday which may require some clarification. As Ms. Kathy Ostrander said yesterday, the Indian Child Welfare Act (ICWA) is federal law with which states must comply. The purpose of SB 86 is to provide guidance to county attorneys and district court judges on the Act.

This memo is written to provide additional information showing that the proposed amendment to the definition of "child abuse or neglect" in Mont. Code Ann. § 41-3-102 (7) (c) which states "In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable, the term has the same meaning as 'serious emotional or physical damage to the child' as used in 25 U.S.C. 1912 (f)" does not impose a higher definitional standard for an Indian Child before agency intervention.

The term "serious emotional or physical damage" was taken directly from the Indian Child Welfare Act. The Indian Child Welfare Act defines neither "child abuse and neglect" nor "serious emotional or physical damage." The amendment clarifies that "serious emotional or physical damage" under ICWA means the same thing as "child abuse and neglect" under Montana statute. This proposed amendment is an attempt to reconcile language contained in ICWA with current language in Title 41, chapter 3.

Mont. Code Ann. § 41-3-102 (19) as amended, defines physical abuse as "an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function or death." This definition clearly implies serious injury. The inclusion of "serious emotional or physical damage" in the definition of "child abuse or neglect" specific to an Indian child does not impose a higher standard of intervention for an Indian child as it relates to the definition of "child abuse or neglect."

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I also would like to clarify a statement in the letter addressed to Sen. Smith from Jon Metropoulos in which he says I admitted during the hearing in the Senate that the change to the statute would impose a higher standard of proof to bring protective services to Native children. Mr. Metropoulos took my comments during the Senate hearing out of context. When I made the statement I was not addressing SB 86 directly but was referring to separate ICWA provisions with which Montana must comply that are not contained in SB 86.

I have attached copies of written comments to SB 86. I hope these comments, in addition to the information contained in this memorandum, assist the members of the House Human Services during deliberations on SB 86. I hope to be present when the Committee takes Executive Action on SB 86 and can answer any questions the Committee members may have at that time.

Xc: Sen. Frank Smith