

EXHIBIT NO. # 10

DATE: 1-10-05

Welfare Act
BILL NO. SB 86

Testimony on Senate Bill 86
Defining Terms related to the Indian Child
and
Clarifying the Role of the Qualified Expert Witness

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Division's Mission: Keeping Children Safe and Families Strong

- SB 86 has been introduced at the request of the Department of Public Health and Human Services, Child and Family Services Division
- Thanks to Sen. Smith for graciously agreeing to sponsor the legislation.
- The Indian Child Welfare Act (ICWA) is federal legislation with which the states must comply. ICWA establishes procedural safeguards with which the state must comply when a child abuse/neglect proceeding involves an Indian child.
- The Child and Family Services Division has worked to codify specific requirements of ICWA into Montana's Child Abuse and Neglect Statute. A general provision requiring compliance with ICWA was codified in 1997 and additional ICWA references were incorporated into state statute in 2001 and 2003. SB 86 continues that effort.
- Although SB 86 incorporates multiple ICWA definitions, the focus of the bill is on the ICWA qualified expert witness.
- This bill provides guidance to county attorneys and state district court judges as to the nature of the testimony of the ICWA qualified expert witness.
- The reason SB 86 focuses on the ICWA qualified expert witness is that some county attorneys and courts are unclear on the nature of the testimony of the expert. Some courts and county attorneys expect the ICWA qualified expert to be an expert on the federal law.

- The ICWA qualified expert witness is to testify that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
- The testimony of the ICWA qualified expert witness must be provided against the backdrop of tribal culture, tradition, and Native child-rearing practices. Specific behavior patterns, including parenting practices, must be placed in the context of the total culture.
- The ICWA qualified expert places parenting practices in a tribal context. This testimony provides information the court needs to determine if the leaving the child with parents, given the reason the state intervened, would be inconsistent with tribal culture/values.
- In addition to clarifying the role of the ICWA qualified expert witness, SB 86 incorporates ICWA definitions into the child abuse and neglect statute and allows the Division to share confidential information about the case with the qualified expert witness.
- The following provides the rationale for the proposed amendments:
 - **Section 1 - Mont. Code Ann. § 41-3-102 (Definitions):** This section incorporates ICWA terms and definitions into the definitional section of Title 41, chapter 3, as follows:
 - a) Clarify that the term “child abuse or neglect” in Montana’s statute has the same meaning as “serious emotional or physical damage to the child” as used in ICWA;
 - b) Incorporate the ICWA definition of Indian child, Indian child’s tribe, and Indian custodian into Montana’s statute;
 - c) Define ICWA qualified expert witness in accordance with the Bureau of Indian Affairs ICWA guidelines and Montana Supreme Court
 - Somehow in the drafting process the definition of Indian Tribe was deleted from the introduced bill. I have prepared an amendment to put that definition back in and would like to work with a member of the Committee to do so.

- **Section 2** - Mont. Code Ann. § 41-3-205 (Confidentiality): This section allows the ICWA qualified expert witness access to the child's record. The expert must have access to the record and the child, when appropriate.
- **Section 3** - Mont. Code Ann. § 41-3-432 (Show cause hearing): The show cause hearing is the first hearing on the child abuse/neglect petition. This section clarifies that the court must hear testimony from an ICWA qualified expert witness if the child is an Indian child as defined by ICWA. In addition, it provides guidance to the court as to the nature of testimony of the ICWA qualified expert witness.
- **Section 4** - Mont. Code Ann. § 41-3-437 (Adjudication): The adjudication is the point in a child abuse/neglect proceeding during which the court determines if the child is an abused/neglected child. It is at this point that the court determines if the child must remain in foster care. This section clarifies that the court must hear testimony from an ICWA qualified expert witness if the child is an Indian child as defined by ICWA and if the child is to remain in foster care. In addition, it provides guidance to the court as to the nature of testimony of the ICWA qualified expert witness.
- **Section 5** - Mont. Code Ann. § 41-3-609 (Criteria for termination): This section clarifies that the court must hear testimony from an ICWA qualified expert witness if the child is an Indian child as defined by ICWA and the division has petitioned to terminate the parents' rights. In addition, it provides guidance to the court as to the nature of testimony of the ICWA qualified expert witness.
- **Section 6** - Notification to tribal governments: This section requires that the Secretary of State send a copy of this bill to the tribes upon passage.
- Please vote "do pass" on SB 86.