

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES

Call to Order: By **CHAIRMAN ARLENE BECKER**, on March 30, 2005 at 3:00 P.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Arlene Becker, Chairman (D)
Rep. Tom Facey, Vice Chairman (D)
Rep. Don Roberts, Vice Chairman (R)
Rep. Mary Caferro (D)
Rep. Emelie Eaton (D)
Rep. Gordon R. Hendrick (R)
Rep. Teresa K. Henry (D)
Rep. William J. Jones (R)
Rep. Dave McAlpin (D)
Rep. Tom McGillvray (R)
Rep. Mike Milburn (R)
Rep. Art Noonan (D)
Rep. Ron Stoker (R)
Rep. Pat Wagman (R)
Rep. Bill Warden (R)
Rep. Jonathan Windy Boy (D)

Members Excused: None.

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Mary Gay Wells, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: SJ 18, 3/17/2005
SB 275, 3/17/2005
SB 328, 3/17/2005
SB 86, 3/17/2005

Executive Action:

HEARING ON SJ 18

Sponsor: SEN. KEN TOOLE, SD 41, HELENA

Opening Statement by Sponsor:

SEN. KEN TOOLE opened the hearing on **SJ 18**. The Resolution would urge President Bush and Congress to support stem cell research and lift the ban on funding stem cell research. He gave some background information on why he had initiated the bill. He also wanted to advance research for many diseases by using stem cells. He pointed out that the remaining eleven stem cells that were available for research had been contaminated. He submitted a fact sheet on embryonic stem cells for the Committee members.

EXHIBIT(huh67a01)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 11.6}

Proponents' Testimony:

Barry Molineux, Self, Helena, introduced himself. He had been diagnosed with Parkinson's disease six years ago. He said that it has been estimated about 400,000 embryos will be thrown away. If these embryos could be used there would be strict guidelines to be followed. Donors permission would be required and there would be no monetary incentive. He asked the Committee to support SJ 18. In support of SJ 18, he submitted a letter from Becky Wiehe, National Multiple Sclerosis Society.

EXHIBIT(huh67a02)

{Tape: 1; Side: A; Approx. Time Counter: 11.6 - 14.5}

Margo Kidder, Christopher Reeves Foundation, stood in support of SJ 18. Christopher's brother, Ben, had asked her to convey his family's deepest respect for everyone's religious beliefs but also asked the Committee not to legislate those beliefs in such a way that a powerful tool of help and hope for many in need of stem cell therapy for those who do not share those same beliefs. She spoke about freedom of religion and the founding fathers. She did not want others to impose their views on the rest of the country. She sincerely asked the Committee to pass the Resolution urging the Federal Government to lift the ban on funding stem cell research.

{Tape: 1; Side: A; Approx. Time Counter: 14.5 - 18.7}

Berry Ferst, Chair, Carroll College Philosophy Department, addressed the Committee both as a professor and a Jew. He supported SJ 18 and submitted a packet of information from Hadassah, The Women's Zionist Organization of America, Inc.

He gave his testimony and submitted a written copy.

[EXHIBIT\(huh67a03\)](#)

[EXHIBIT\(huh67a04\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 18.7 - 22.5}

Janet Tatz, Montana Chapter, Hadassah, stood in support of SJ 18.

{Tape: 1; Side: A; Approx. Time Counter: 22.5 - 26.3}

Ann Kuntzweiler, Self, spoke about some of her family who had very debilitating diseases. She wanted everyone to understand that it is important to have Federal, ethical oversight of stem cell research. If it is forced into the private market, both here and in other countries, it is likely to be controlled by the private sector's need for profit rather than the goals of basic science. She felt that people should have the choice to donate their stored embryonic cells.

{Tape: 1; Side: A; Approx. Time Counter: 26.3 - 29.1}

The following stood in support of SJ 18:

Winston Swift, Self, submitted his letter of testimony.

[EXHIBIT\(huh67a05\)](#)

Bob Holmes, Self, submitted his testimony.

[EXHIBIT\(huh67a06\)](#)

Claudia Clifford, Montana AARP.

Beda Lovitt, Montana Medical Association.

Harry Smith, AARP.

Barbara Swehla, Montana Nurses Association.

{Tape: 1; Side: A; Approx. Time Counter: 29.1 - 32}

Opponents' Testimony:

Eric Schiedermayer, Montana Catholic Conference, said that SJ 18 contained several misleading statements in the "Whereas" clauses. He urged the Committee to table the bill. He said that the bill was built on three premises which are false and misleading. This bill is not about science; it is about the cultural war being waged in society. Will there be a culture of life or death? He submitted his written testimony and several informational fact sheets.

[EXHIBIT\(huh67a07\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 0 - 6.5}

Rachel Roberts, Montana Family Foundation affiliate of Focus on the Family, said that a human embryo is a human being. We all started out as a human embryo. This affirmation does not depend on religious belief systems. It depends upon a grasp of basic biology. Adult stem cell research is 20 to 30 years ahead of embryonic stem cell research and holds greater promise. As of July 2004, adult stem cell research has produced more than 40 medical treatments while embryonic stem cell research has produced no medical treatments. The State of Montana should refrain from urging the President and Congress to lift the ban of Federal funding for embryonic stem cell research. She read a statement by President Bush supporting adult stem cell research only and that the end does not justify the means.

{Tape: 1; Side: B; Approx. Time Counter: 6.5 - 8.7}

Greg Ticknor, Self, read and submitted his letter of testimony in opposition to SJ 18.

[EXHIBIT\(huh67a08\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 8.7 - 11.3}

Dallas Erickson, Montana Family Coalition, opposed SJ 18 because it is a death bill and not a life bill. He read his testimony and submitted a written copy.

[EXHIBIT\(huh67a09\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 11.3 - 14.4}

Becky Stockton, Self, Helena, strongly opposed SJ 18. She read her testimony and submitted a written copy. She also submitted an article from "The Business Journal of Kansas City," February 28, 2005 and three articles from the internet.

[EXHIBIT\(huh67a10\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 14.4 - 18.3}

Dana Ticknor, Self, asked the Committee to vote against SJ 18. She submitted her written testimony and a copy of an article from the internet on adult stem cells.

[EXHIBIT\(huh67a11\)](#)

Informational Testimony: None

Questions from Committee Members and Responses:

REP. MCGILLVRAY asked if private dollars can be used for embryonic stem cell research. **Mr. Schiedermayer** said, "Yes."

REP. MILBURN stated that two conflicting reports have been presented to the Committee. He wanted to know why one stem cell

is better than the other. **SEN. TOOLE** directed REP. MILBURN to his handout (Exhibit 1) on Page 2.

REP. MILBURN asked Ms. Roberts the same question. **Ms. Roberts** referred to an article that she had. She explained her understanding about the differences.

{Tape: 1; Side: B; Approx. Time Counter: 18.3 - 23.5}

REP. CAFERRO asked for further clarification of what a stem cell is. **Ms. Tatz** explained that an embryonic stem cell is like a blank piece of paper. It can proliferate indefinitely in culture and form any adult cell. An adult stem cell is already specialized and cannot proliferate in culture.

REP. CAFERRO wondered how the germ cells fit into the analysis. **Ms. Tatz** said that information would be in the Hadassah information (Exhibit 3).

REP. CAFERRO asked why the 11 embryonic stem cells can no longer be used. **SEN. TOOLE** explained that in the last six months those 11 lines that had been allowed to be used for Federally funded research were contaminated and cannot be used.

{Tape: 1; Side: B; Approx. Time Counter: 23.5 - 28.5}

REP. STOKER asked what had contaminated these 11 embryonic stem cells. **SEN. TOOLE** said that his understanding was that these cells are grown on a feeder layer of other kinds of nutrients like from mice. If there are new stem cell lines coming from clinics, the source is being replenished. There is a problem when there are a limited number of lines being reproduced on feeder layers.

REP. STOKER asked if the cells had taken on some genetic attribute of the mice nutrients. **SEN. TOOLE** did not know.

{Tape: 1; Side: B; Approx. Time Counter: 28.5 - 30.6}

Closing by Sponsor:

The Sponsor closed.

{Tape: 1; Side: B; Approx. Time Counter: 30.6 - 32}

HEARING ON SB 275

Sponsor: **SEN. TRUDI SCHMIDT, SD 11, GREAT FALLS**

Opening Statement by Sponsor:

SEN. TRUDI SCHMIDT opened the hearing on **SB 275**. The bill deals with the genetics program that has existed here in Montana since the 1960's. The Shodair Genetics Program has been under contract with DPHHS since 1976. The Program has provided foundation monies for the program. In 1995, DPHHS and Shodair requested HB 430 which provided funding for the statewide program through a fee collected from each insured person covered under an individual or group disability or health insurance policy. The fee was originally set at 35 cents. She explained the types of programs and services offered. The Program has been a real asset for Montana. SB 275 would raise the fee from 70 cents to \$1.00. There is a sunset on the bill so that the insurance people can work on this during the interim. She concluded that it is very important for the Program to have this increase.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 4}

Proponents' Testimony:

Jack Casey, Administrator, Shodair Children's Hospital, gave some background history of Shodair. He submitted his written testimony. He spoke on behalf of John Klink, Montana Hospital Association, who could not be at the hearing. Mr. Klink was in support of SB 275.

EXHIBIT(huh67a12)

{Tape: 2; Side: A; Approx. Time Counter: 4 - 13.3}

Pep Jewell, Self, introduced herself as a former Shodair patient. She spoke of family members who had breast cancer. Her sister had genetic testing done at Shodair and consequently her whole family had genetic testing done. She was thankful that the family did not have to go out-of-state for this testing. She urged support for SB 275.

Maureen Leo, Mother of two sons, told her story and how Shodair had served them so well and was very glad that Shodair was in Montana. She urged support for SB 275.

{Tape: 2; Side: A; Approx. Time Counter: 13.3 - 18.3}

Mona Jamison, Shodair Hospital, submitted her written testimony and exhibits for SB 275. She also handed out a fact sheet for SB 275.

EXHIBIT(huh67a13)

EXHIBIT(huh67a14)

{Tape: 2; Side: A; Approx. Time Counter: 18.3 - 23.2}

Cathy Burwell, President and CEO, Helena Chamber of Commerce, said that she was pleased to rise in support of SB 275. Shodair

is a large employer in Helena and is an important part of the business community in Helena and in Montana. The increase is small for a very valuable program that can save money in medical costs in assisting preventive medicine.

Beda Lovitt, Montana Medical Association (MMA), said that the physicians of MMA stand in strong support of SB 275.

Opponents' Testimony: None

Informational Testimony:

Frank Cote, Blue Cross/Blue Shield of Montana and America's Health Insurance Plans, said that they had proposed amendments in the Senate to broaden the base of the fee that is being placed upon insurers. They had worked with the sponsor and proponents of the bill to sunset the increase and conduct a study, in the interim, to see how many people are covered by third-party administrators, self-insured groups, etc. who currently are not paying this fee. These people might be brought into the base. There are 91 school districts who pay the fee, all the others do not. Some hospitals, mostly rural, pay this fee. Some of the bigger hospitals do not. He hoped that in the next session there would be another bill to address this issue.

{Tape: 2; Side: A; Approx. Time Counter: 23.2 - 27.3}

Questions from Committee Members and Responses:

REP. STOKER asked for comments on some of the new language, "...including but not limited to cytogenetics, DNA, and special chemistry..." on Page 1, Lines 28-29. **Mr. Casey** replied that they did very minimal research. They are a medical service program such as diagnostic work. Research would be secondary to that.

REP. STOKER wondered how extensive is the research in the area of DNA. **Mr. Casey** replied that they have been doing DNA for six or seven years. They do not do any forensic or legal work, only medical work.

REP. ROBERTS inquired how work is referred to Shodair. **Mr. Casey** replied that most of their work is referred by OB/GYN doctors.

REP. ROBERTS asked about retinal blastoma. **Ms. Teresa Boomer, Genetic Counselor at Shodair Hospital**, said that they do have families with retinal blastoma.

REP. ROBERTS inquired how they handle these cases. **Ms. Boomer** said they evaluate the case and advise them about the likelihood of reoccurrences and how it can best be treated. She spoke on other aspects of these cases.

REP. ROBERTS and Ms. Boomer chatted about cases and how the program at Shodair was cost effective.

{Tape: 2; Side: A; Approx. Time Counter: 27.3 - 32}

Closing by Sponsor:

SEN. SCHMIDT closed the hearing by reading a two e-mails from doctors who have used services at Shodair Hospital.

REP. BECKER will carry the bill.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 3.2}

HEARING ON SB 328

Sponsor: SEN. CAROLYN SQUIRES, SD 48, MISSOULA

Opening Statement by Sponsor:

SEN. CAROL WILLIAMS, SD 46, opened the hearing on **SB 328**. She gave some background history on cervical cancer. Fifty years ago cervical cancer was the number one cause of cancer deaths among women in the U.S. Today, cervical cancer is tenth on the list. Screening and early detection is the reason for this decrease. There is a vaccine that may be available in the next two years. The hope is more women will become aware through the Cervical Cancer Prevention Act and will get tested and screened. This bill would create a task force in DPHHS to study prevalence, awareness, and care for cervical cancer.

{Tape: 2; Side: B; Approx. Time Counter: 3.2 - 6.5}

Proponents' Testimony:

Anna Whiting-Sorrel, Family Policy Advisor, Governor's Office, stood in support of SB 328. Women's health issues are important to the Governor.

James Matteucci, Merck and Company, spoke in favor of the bill. Merck is involved in the area of research and development of cancer vaccines principally for cervical cancer. When these vaccines come on the market, they will have a significant impact on this type of cancer. Their experience in Montana is that immunization rates are lower than the national average in many

cases. The adoption of vaccines for preventable diseases is often much slower than the rest of the country. Montana has yet to implement a requirement for the chicken pox vaccine.

{Tape: 2; Side: B; Approx. Time Counter: 6.5 - 8.5}

REP. GAIL GUTSCHE, HD 99, spoke in favor of SB 328. There is a gap that needs to be filled. There is not much in the line of prevention. She spoke of some amendments that she would like to present. In New Section 1, membership on the task force should include a cervical cancer survivor. She would also like to see less direction mandated on the task force. On Line 21, remove "...with a specific expertise...." This would leave it open for the committee to decide how many should be on the task force. On Line 25, remove "...personal risk factors, the value of prevention...and physician education." On Line 28, remove "...including any newly introduced vaccines...." She urged the Committee to pass the bill.

{Tape: 2; Side: B; Approx. Time Counter: 8.5 - 12.7}

Opponents' Testimony:

Clare Urban, Physical Therapist, Lymphedema Specialist and Member of American and Montana Physical Therapy Association, National Lymphedema Network and International Association of Healthcare Practitioners, opposed SB 328. She submitted her written testimony. She also submitted two letters. One is from Dick Paulsen, Executive Director, American Lung Association and one is from Colleen Teberg, Breast Cancer Survivor, Helena.

[EXHIBIT \(huh67a15\)](#)

[EXHIBIT \(huh67a16\)](#)

Dr. Barbara Lloyd, Surgeon, stood in opposition to SB 328. She read her testimony and handed in a written copy with several fact sheets attached.

[EXHIBIT \(huh67a17\)](#)

{Tape: 2; Side: B; Approx. Time Counter: 12.7 - 28.4}

SEN. GREG LIND, SD 50, stood in opposition to SB 328. He, as a physician, believes that this adds further fragments to the well-working program. The fiscal note is zero; but if meaningful work is going to be done in this area, there will be resources taken away from DPHHS. There has been testimony of support by the manufacturers of a vaccine. He had worked in the industry and believes that this is a thinly veiled marketing attempt on a vaccine that they cannot talk about. This does not need the stamp of the Montana State Legislature.

{Tape: 2; Side: B; Approx. Time Counter: 27.8 - 30.1}

Informational Testimony:

Sue Miller, Section Supervisor, Cancer Control Section, DPHHS, explained that it is a new section in the Chronic Disease Bureau. The programs that are included in this section are the Tumor Registry, the Montana Breast and Cervical Health Program and the Comprehensive Cancer Control Planning Program. There is good news about cervical cancer. There has been a public health approach with screenings, early diagnosis, treatment of pre-cancers all at low cost.

{Tape: 2; Side: B; Approx. Time Counter: 30.1 - 32; Comments: Ms. Miller continued her informational testimony on Tape 3, Side A.}

DPHHS had received a grant for \$150,000 from Center for Disease Control (CDC) to do planning. With this grant they convened a statewide, comprehensive group which is made up of people from the public and private sectors. There are 120 members in the group. Legislators are welcome. They meet twice a year and have met four times up to the present. There is a steering committee that is writing a Comprehensive Cancer Control Plan which is in rough draft now. It should be released to the public this summer and be implemented in July, 2006. Her assessment of a cervical cancer task force would be to have them included in the Comprehensive Cancer Control Plan.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 3.6}

Questions from Committee Members and Responses:

REP. STOKER asked about the current status of companies producing a vaccine for cervical cancer. **Mr. Matteucci** responded that there are four companies. Merck and Glaxis-Smith-Kline are the two largest companies.

REP. WINDY BOY questioned the fiscal note on Page 1, Lines 19-21. **Ms. Miller** replied that expenses incurred would be per diem, mileage and lodging. When a task force is convened, honorariums or hourly wages are not normally paid.

REP. WINDY BOY thought that if that is the case, why is there not a dollar amount in the fiscal note. **Ms. Miller** said that when she was asked to give her input on the fiscal note, she estimated that it would be less than \$5,000. She recommended those expenses be absorbed by the Comprehensive Cancer Planning group.

REP. CAFERRO asked SEN. LIND to comment on Mr. Matteucci's answer. **SEN. LIND** replied that he had been confused because phase three testing is not a cancer vaccine. It is a vaccine against an infectious disease, a viral infection, that is related

to the genesis of cervical cancer. He wanted to say that he is all for increased awareness of cervical cancer.

REP. MCALPIN asked if this task force would be a sub-set of the broader group. **Ms. Miller** felt that in the beginning that was her thought. They would be included in the broader group.

REP. MCALPIN inquired if money was diverted to the task force, would that hurt the broader group. **Ms. Miller** responded that was a difficult question to answer, but the task force may enhance the broader group's efforts.

REP. ROBERTS said there were many different concerns about cancer and how they start. He asked Dr. Lloyd that, if people are aware of cancer at all, wouldn't they come in for checks on other types of cancer. **Dr. Lloyd** replied that there are plans to have screening for all cancers. She did not think cervical cancer needed a special note because there have already been several successful programs.

REP. ROBERTS spoke of his time on the tumor board. There was a great deal of accumulated data but not a lot of use was made of that data. He hoped that one screening would lead people to other screenings. **Dr. Lloyd** replied that people need to be aware of particular screenings that are available. Patients need to be knowledgeable consumers.

{Tape: 3; Side: A; Approx. Time Counter: 3.6 - 16.4}

REP. MCALPIN asked if Merck has a foundation for educational grants and if so, would they be available for this type of work. **Mr. Matteucci** said that they do have grants but he was not sure of the restrictions. Those grants would not be available now because they would be talking about a product that may or may not come on the market.

{Tape: 3; Side: A; Approx. Time Counter: 16.4 - 19.2}

Closing by Sponsor:

SEN. WILLIAMS closed.

{Tape: 3; Side: A; Approx. Time Counter: 19.2 - 22.2}

HEARING ON SB 86

Sponsor: SEN. FRANK SMITH, SD 16, POPLAR

Opening Statement by Sponsor:

SEN. FRANK SMITH opened the hearing on **SB 86**. The focus of the bill is on Page 3, Line 7-9 which defines who an Indian child is. On page 5, Line 10, a qualified expert witness is defined and the role is clarified. There are other definitions that were deemed necessary. The Senate did amend the bill on Page 5, Lines 17-18. He spoke about having a problem with the term "Child abuse or neglect" on Page 2, Line 16. He informed the Committee that they might consider an amendment.

Proponents' Testimony:

Kathy Ostrander, Program Bureau Chief, Child and Family Services Division, DPHHS, said that SB 86 was requested by the Department. The Indian Child Welfare Act (ICWA) is Federal legislation that was enacted in 1978. It was enacted because there was much concern about the over-representation of Indian children in foster care. The findings of those hearings indicated that there is not a resource more vital to the continued existence and integrity of Indian tribes than their children and that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children by non-tribal and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster or adopted homes or institutions. It was because of these findings that ICWA was enacted. The expressed policy of ICWA was to protect the best interests of Indian children and to promote stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families. ICWA applies to district court proceedings in child abuse or neglect cases.

She spoke about some of the provisions of the bill. Section 1, Page 2, Lines 28-29 clarifies the term "child abuse or neglect" and says it has the same meaning as "serious emotional or physical damage to the child." The attempt was to meld the two definitions of what child abuse and neglect was in ICWA and then include that in the Montana Act. Page 3, Lines 7-22 incorporates ICWA definitions of the Indian child, Indian tribe, and Indian custodian into Montana statute. Page 5, Lines 10-20 define ICWA's "qualified expert witness." In Section 2, Page 9, Line 6 "a qualified expert witness" was included. This allows that person to have access to the child's records. She further clarified language in Sections 3, 4 and 5. It states that the court must hear testimony from a qualified expert witness if the child is Indian at three critical points in legal proceedings for abuse and neglected children: the show cause hearing, the adjudication hearing and the termination hearing. Section 6,

Page 15, Lines 20-22 states that the Secretary of State shall send a copy of this act to each tribal government in the state of Montana.

{Tape: 3; Side: A; Approx. Time Counter: 20.9 - 32}

Kathy Deserly, Self, said that she has worked in the field of Indian child welfare for about 25 years. She is currently employed as a private consultant in the field of Indian child welfare. From 1996 to 2000 she worked as a State Indian child welfare specialist in DPHHS. She supported SB 86 but with some reservations based on some of the comments of SEN. SMITH. The issue of "qualified expert witness" is an area of ICWA that has been problematic from the beginning. The reason is that it has not been easy to identify who those experts are and how county or state social workers access an expert witness. She told of a case that happened in New York City. What the couple had done was completely acceptable in their home county of Sweden, but the court found them guilty by judging them by American culture. If they had someone who was familiar with their culture accompany them to court, they probably wouldn't have been found guilty. This is how an expert witness could be used for Indian children and their families. They would understand the Indian culture and be able to present a better case.

When she worked in Montana she saw areas where things could have been done better in complying with ICWA. After having worked in other states, Montana actually seems to be ahead of other states in terms of ICWA compliance and the ability to work with tribes. She felt that this bill is another step in complying with ICWA. It will make it stronger and work better for Indian families here in Montana. The Department has done quite a bit of work in identifying expert witnesses. Every tribe has the opportunity to provide names of people who could be an expert witness for Indian children. There are people who oppose ICWA and don't think it is a good law. The fact is that it is here and must be followed. The better Montana does it, the better it is for Indian families.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 5.3}

Opponents' Testimony:

Jon Metropoulos, Attorney, Helena, explained that he represents Lisa Morris, her family and himself. He has represented them for about ten years. They reluctantly oppose SB 86. SEN. SMITH has been very good to work with on this bill. The Department's intentions are also very good. There is one aspect of the bill that he found very troubling. On Page 2, Line 16, in current statute, there is a definition of "child abuse or neglect" with 12 additional lines defining that. On Line 28, the new language says, "In proceedings under this chapter in which the Federal

ICWA is applicable, the term has the same meaning as 'serious emotional or physical damage to the child'." His understanding of that is the term "child abuse or neglect" has to be read and applied when you speak of Indian children as "serious emotional or physical damage to the child." This is not vice versa. At the Senate hearing, he had asked if this means that for the Department to provide protective services to an Indian child, the Department has to surmount a higher standard of proof than for a non-Indian child. The Department responded that was the case. The Department will not be able to render protective services to them as quickly as they could to a non-Indian child. All children should have the same level of care. He opposed the bill for this reason.

He wanted the Committee to recall that ICWA has been on the books since 1978. Montana has been attempting to comply with ICWA since that time. He did not see the need to change those definitions after 27 years. Montana has done a fairly good job of complying with ICWA. He submitted a letter that he had written to SEN. SMITH.

[EXHIBIT\(huh67a18\)](#)

Lisa Morris, gave her testimony and submitted a written copy. Her husband, a Chippewa, had died in 2004. Both she and her husband felt ICWA was not good for Indian children or their families. She submitted a fact sheet and an article written by her husband, Roland Morris, "The Destructive Results of the Indian Child Welfare Act."

[EXHIBIT\(huh67a19\)](#)

[EXHIBIT\(huh67a20\)](#)

[EXHIBIT\(huh67a21\)](#)

{Tape: 3; Side: B; Approx. Time Counter: 5.3 - 17.9}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. WINDY BOY asked Ms. Deserly if she thought that Montana had done a good job in protecting Indian children. **Ms. Deserly** said that there were areas that Montana had done a fine job, but there had been some cases in which she had been involved in that had been problematic for her. Montana does have some very good qualified expert witnesses. The State took training out to the reservations. SB 86 is not about the merits of ICWA; it is about the efforts of DPHHS to strengthen one piece of ICWA.

{Tape: 3; Side: B; Approx. Time Counter: 17.9 - 22.4}

REP. STOKER asked where ICWA authority applies. **Ms. Ostrander** replied that ICWA only applies to the district court.

REP. ROBERTS inquired about the time frame surrounding the removal of a child. On the reservation, is the lawyer replaced by the qualified expert witness. **Ms. Deserly** replied that ICWA is not a law for tribes or on the reservations. Tribes have their own Indian child welfare programs. They respond to notices that they receive from the State about tribal members who may be in foster care. Tribes don't have the same Federal law to follow in terms of placement preferences. Tribes can choose to place their tribal members in foster care in non-Indian foster homes on or off the reservation. The point is the Federal law gives tribes the right to make decisions about their members. In terms of replacing an attorney, that is not what happens. The expert witness doesn't replace an attorney. The expert witness helps in making the decision about the child's placement.

{Tape: 3; Side: B; Approx. Time Counter: 22.4 - 25.4}

REP. ROBERTS wondered if her presentation was to the tribal leadership or to tribal courts when discussing these situations on the reservation. **Ms. Deserly** said if a social worker is involved with an Indian child and not living on the reservation, they will contact the child's tribe. A notice must be sent to the tribe by certified mail. Meanwhile, the social worker is contacting the tribe's social service program. ICWA only applies off the reservation because that is where the problem was identified. So many Indian children were in the State foster care system as a result of families leaving the reservation. Research has shown that many children who have grown up in non-Indian foster homes don't always do so well.

{Tape: 3; Side: B; Approx. Time Counter: 25.4 - 27.5}

REP. NOONAN asked if there were problems with ICWA that the Legislature cannot address. He wondered why there were so many questions concerning the language of "child abuse or neglect" and "serious emotional or physical damage to the child." **Ms. Ostrander** said it was her understanding that this language was only to bring the definition "child abuse or neglect" that exists in ICWA in line with Montana's statute.

REP. NOONAN followed on that this was an attempt to make them the same, not an attempt to make one a higher standard.

REP. NOONAN asked Ms. Fox to comment. **Ms. Fox** said that if there is a higher standard it is because of Federal law. It is to make sure that there is good reason for removing a child. Montana wanted to make sure there was a connection with the ICWA phrase, "serious emotional or physical damage" with Montana's phrase, "child abuse or neglect." It doesn't change ICWA or its

application to Montana and it shouldn't change the meaning provided later on.

{Tape: 3; Side: B; Approx. Time Counter: 27.5 - 32}

REP. NOONAN felt that this isn't so much a higher standard but just a different standard. He couldn't see how it could be drafted any differently. The notion that two separate standards are being set is not true.

Ms. Fox said that she believed that this drafting was as close as they could get to a solution. The difference is between Federal law and State law.

{Tape: 4; Side: A; Approx. Time Counter: 0 - 1.2}

REP. STOKER felt that requiring an expert Indian witness raises it to a higher standard. All other children don't have the same standard. He said that to have a qualified expert witness makes it look like a higher standard has been set.

Ms. Fox explained that Congress at one time believed there needed to be a different standard for Indian children because of past practices. Other children didn't have that same over-representation in the system and didn't have the same relationship of reservations and government.

REP. HENRY said that child abuse or neglect meant actual physical harm or risk of physical or psychological harm or abandonment. If drugs are being used in the home that would put a child at risk of psychological harm. She asked if, on Page 2, Line 28, (c) has to stay in the bill. **Ms. Fox** said that the bill was more concerned about clarifying the role of the qualified expert witness. This other provision could be taken out.

{Tape: 4; Side: A; Approx. Time Counter: 1.2 - 6.1}

CHAIRMAN BECKER asked **SEN. SMITH** if he would object to having that particular language removed on Page 2, Lines 28-29. **SEN. SMITH** said he would have to talk to one of the attorneys first.

{Tape: 4; Side: A; Approx. Time Counter: 6.1 - 7.4}

REP. JOEY JAYNE, HD 15, spoke and said that she could have testified as an informational witness. She felt that the attempt of the bill was to have "serious emotional or physical damage to the child" mean the same as "child abuse or neglect." She didn't believe that language raised it to a higher standard.

REP. WINDY BOY and Ms. Deserly agreed with **REP. JAYNE**.

The conversation was difficult to hear because of the microphones. They discussed situations of transporting Indian

children across state lines. ICWA is a Federal law and applies to all states.

{Tape: 4; Side: A; Approx. Time Counter: 7.4 - 14.4}

Closing by Sponsor:

SEN. SMITH spoke about the tribes having their own court systems. This bill covers situations for Indians living off reservations. He said that last year they had brought two Indian children back from Alaska under ICWA.

{Tape: 4; Side: A; Approx. Time Counter: 13.1 - 15.8}

A letter was submitted to the Committee after the hearing from Shirley K. Brown, M.A., J.D., Administrator, Child and Family Services Division, DPHHS. It explained in greater detail the reasoning behind the language of "child abuse or neglect" and "serious emotional or physical damage to the child."

EXHIBIT (huh67a22)

ADJOURNMENT

Adjournment: 7:00 P.M.

REP. ARLENE BECKER, Chairman

MARY GAY WELLS, Secretary

AB/mw

Additional Exhibits:

EXHIBIT ([huh67aad0.PDF](#))