EXHIBIT 2
DATE 2/5/2009
SB SB 103

DEPARTMENT OF JUSTICE
SB 103: Requiring all Sexual Offenders to Comply with Certain Mandatory Conditions of Probation

Existing Law

Montana's criminal sentencing laws require sex offenders who complete a residential sex offender treatment program approved by the Department of Corrections (DOC) to comply with mandatory conditions of probation, which include (Mont. Code Ann. § 46-18-207 (5)):

- restrictions on contact with victims;
- compliance with treatment obligations;
- staying out of bars or casinos;
- no alcohol;
- drug and alcohol testing;
- no pornography; and
- electronic monitoring at the discretion of the offender's probation or parole officer.

Recent Supreme Court Decisions

If the offender has not successfully completed a residential treatment program, the conditions of probation are determined by the sentencing court, subject to the Montana Supreme Court's requirement that the conditions have a connection to the offense or the offender's history. The Court recently invalidated alcohol restrictions involving offenders who sexually abused young girls because the offenders did not have a recent history of substance abuse and there was no evidence alcohol was involved in their offenses. (State v. Smart, 2009 MT 1 and State v. Krueger, 2008 MT 265)

The Court also reversed an alcohol restriction for a repeat offender who had a history of substance abuse, including committing a rape in 1983 while intoxicated, because the offender's history, although significant, was not recent. (State v. Stiles, 2008 MT 390)

Public Safety

Article II, Section 28 of the Montana Constitution requires sentencing laws to be based upon principles of public safety, rehabilitation and preventing recidivism. Sex offenders are a serious threat and research has shown that:

- The victims of sex assault are most often juveniles.
- When convicted sex offenders reenter society, they are much more likely than any other type of offender to be re-arrested for a new rape or sex assault.
- For child molesters, most reoffenses do not occur within the first several years after release, but may occur as late as 20 years following release.

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The disinhibiting effects of alcohol are well known. Even sex offenders without substance abuse histories may use alcohol to groom their victims. Sex offender treatment providers prohibit their clients from consuming alcohol during treatment and commonly recommend that such restrictions remain in place after treatment and during probation – even for offenders with no recent or known history of substance abuse.

Reason for SB 103

Recent decisions of the Montana Supreme Court undermine sentencing court discretion and the State's ability to prevent recidivism by sex offenders. The conditions of probation that are mandatory for offenders who successfully complete residential treatment, should be mandatory for *all* sex offenders. The proposed changes would ensure that sex offenders who serve any portion of their sentence in the community are subject to the mandatory conditions of probation, including alcohol restrictions.

2009 Legislature
February 5, 2009