SENATE JUDICIARY
EXHIBIT NO. 8
DATE 3/11/09
BILL NO. HB295

MONTANA DEPARTMENT OF JUSTICE
HB 295: Admissibility of Evidence of Similar Crimes in Sexual Assault Prosecution

Background

It is in the best interests of the citizens of Montana to hold offenders who commit sex crimes, particularly against child victims, criminally responsible for their actions.

Rules 413 and 414 of the Federal Rules of Evidence and Section 1108 of the California Evidence Code allow for the admission of similar crimes evidence in sexual assault cases and child molestation cases.

However, in Montana a defendant's prior commission of another sex offense is not admissible in evidence at trial. The Montana Supreme Court stated in State v. Aakre, 309 Mont. 403, 46 P.3d 648 (2002) that, if there is to be an automatic exception in the Montana Rules of Evidence for sex crimes, it is appropriate for the Legislature to address that issue.

Need for HB 295

The need for this evidence is critical given the serious and secretive nature of sex crimes, especially against children. These cases often result in a credibility contest at trial.

This bill is intended to assure that the court would be aware of the defendant's other sex offenses in evaluating the victim's and defendant's credibility.

Provisions of HB 295

HB 295 allows a prosecutor in a criminal case in which the defendant is accused of an offense of sexual assault or child molestation to introduce evidence of the defendant's commission of another offense of sexual assault or child molestation.

Under HB 295, the prosecutor will be required to disclose such evidence to the defendant's attorney. If the prosecutor intends to offer a statement of a witness, the prosecutor must disclose that statement, or a summary of the substance of any statement that is expected to be offered.

Evidence of the defendant's prior commission of sex assault or child molestation is still subject to existing rules of evidence that allow a trial court to exclude evidence of prior misconduct if the usefulness of the evidence to prove the offense is substantially outweighed by its tendency to create unfair prejudice against the defendant.