

## 1 SENATE BILL NO. 61

2 INTRODUCED BY L. MOSS

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE ADMISSION INTO EVIDENCE, IN CERTAIN  
6 CRIMINAL AND CIVIL CASES, OF EVIDENCE OF OTHER CHILD MOLESTATION OFFENSES INVOLVING  
7 THE SAME INDIVIDUAL."

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9 WHEREAS, studies by the Center for Sex Offender Management show different recidivism rates for  
10 different types of sex offenses; for example, child molesters have a higher rate of rearrest than rapists (52%  
11 versus 39% when tracked over 25 years); and

12 WHEREAS, the Center for Sex Offender Management estimates that only 12% of rapes and sexual  
13 assaults are ever reported to law enforcement and that the underreporting of rapes and sexual assaults also  
14 contributes to an underreporting of recidivism rates; and

15 WHEREAS, statistics from the U.S. Department of Justice's Bureau of Justice Statistics studies have  
16 shown that 70% of all men in prison for a sex crime were men whose victim was a child and that in almost half  
17 of the child-victim cases, the child was the prisoner's son, daughter, or other relative; and

18 WHEREAS, holding offenders who commit sex crimes, particularly against child victims, criminally  
19 responsible for their actions is in the best interests of the citizens of this state; and

20 WHEREAS, Rules 413 and 414 of the Federal Rules of Evidence allow admission of similar crimes in  
21 sexual assault cases and child molestation cases; and

22 WHEREAS, the Montana Supreme Court stated in *State v. Aakre*, 2002 MT 101, 309 Mont. 403, 46 P.3d  
23 648 (2002), that the federal exceptions to the other crime rule for sex crimes have not been adopted in Montana;  
24 and

25 WHEREAS, the Montana Supreme Court also stated in *State v. Aakre* that if there is to be an automatic  
26 exception to Rule 404(b) of the Montana Rules of Evidence for sex crimes in Montana, it is appropriate for the  
27 Legislature to address that issue; and

28 WHEREAS, it is the Legislature's desire to create a limited exception to the prohibition against admission  
29 of evidence of other crimes found in Rule 404(b) of the Montana Rules of Evidence for the purposes of criminal  
30 prosecutions involving child molestation and for the purposes of civil actions involving sexual assault or child

1 molestation.

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3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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5 **NEW SECTION. Section 1. Admissibility of evidence of similar crimes in child molestation cases.**

6 (1) In a criminal case in which the defendant is accused of an offense of child molestation, evidence of the  
7 defendant's commission of another offense of child molestation in any state is admissible and may be considered  
8 for its bearing on any matter to which it is relevant unless the evidence is determined to be inadmissible pursuant  
9 to Rule 403, Montana Rules of Evidence.

10 (2) If the prosecution intends to offer evidence pursuant to this section, the prosecution shall disclose  
11 the evidence to the defendant. If the prosecution intends to offer a statement of a witness, the prosecution shall  
12 disclose that statement or a summary of the substance of any statement that is expected to be offered at the time  
13 of the omnibus hearing held pursuant to 46-13-110 or at a later time that the court may for good cause allow.

14 (3) This section does not prohibit or limit the admission or consideration of evidence under any other  
15 statute or rule.

16 (4) As used in this section, the following definitions apply:

17 (a) "Child" means a victim of an offense who is under 16 years of age if the offender was, at the time of  
18 the offense, 3 or more years older than the victim.

19 (b) "Offense of child molestation" means an offense in relation to a child that may be prosecuted:

20 (i) pursuant to 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, or 45-5-627;

21 (ii) under the law of any other state and that involved:

22 (A) conduct prohibited by Title 18, chapter 109A, of the United States Code;

23 (B) conduct prohibited by Title 18, chapter 110, of the United States Code;

24 (C) contact, without consent, between any part of the defendant's body or an object and the genitals or  
25 anus of another person;

26 (D) contact, without consent, between the genitals or anus of the defendant and any part of another  
27 person's body; or

28 (E) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on  
29 another person.

30 (c) "State" means this state, any other state, a territory or possession of the United States, an Indian

1 reservation, the District of Columbia, or any other area under the jurisdiction of the United States.

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3 **NEW SECTION. Section 2. Evidence of similar acts in civil cases of sexual assault or child**  
4 **molestation.** (1) In a civil action in which a claim for damages or other relief is predicated on a party's alleged  
5 commission of conduct constituting the offense of child molestation as defined in [section 1], evidence of that  
6 party's commission of another offense of sexual assault or another offense of child molestation, in any state, is  
7 admissible into evidence and may be considered for its bearing on any matter to which it is relevant unless the  
8 evidence is determined to be inadmissible pursuant to Rule 403 of the Montana Rules of Evidence.

9 (2) A party intending to offer evidence pursuant to this section shall disclose the evidence to the opposing  
10 party. If a party intends to offer a statement of a witness, the party intending to offer the statement shall disclose  
11 the statement or a summary of the substance of the statement that is expected to be offered at least 15 days  
12 before the scheduled date of trial or at a later time that the court may for good cause allow.

13 (3) This section does not prohibit or limit the admission or consideration of evidence under any other  
14 statute or rule.

15 (4) As used in this section, "state" means this state, any other state, a territory or possession of the United  
16 States, an Indian reservation, the District of Columbia, or any other area under the jurisdiction of the United  
17 States.

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19 **NEW SECTION. Section 3. Codification instruction.** (1) [Section 1] is intended to be codified as an  
20 integral part of Title 46, chapter 15, part 4, and the provisions of Title 46, chapter 15, part 4, apply to [section 1].

21 (2) [Section 2] is intended to be codified as an integral part of Title 26, chapter 1, and the provisions of  
22 Title 26, chapter 1, apply to [section 2].

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24 **NEW SECTION. Section 4. Saving clause.** [This act] does not affect rights and duties that matured,  
25 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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27 **NEW SECTION. Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are severable  
28 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part  
29 remains in effect in all valid applications that are severable from the invalid applications.

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