

## 1 HOUSE BILL NO. 250

2 INTRODUCED BY M. MENAHAN

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING THE STATUTE CODIFYING THE CRIMINAL JUSTICE  
5 PROCEDURE REQUIRING A PROSECUTOR TO NOTIFY A DEFENDANT OF AN INTENT TO INTRODUCE  
6 EVIDENCE OF PREVIOUS CRIMES; AMENDING SECTION 46-13-110, MCA; REPEALING SECTION  
7 46-13-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

8

9 WHEREAS, in *State v. Just*, 184 Mont. 262, 602 P.2d 957 (1979), the Montana Supreme Court ordered  
10 that notice be given to a criminal defendant by the prosecution that the prosecution intended to introduce  
11 evidence of the commission of previous crimes by the defendant and further specified what was to be contained  
12 in that notice to the defendant; and

13 WHEREAS, on December 14, 2010, the Montana Supreme Court issued its opinion in *State v. District*  
14 *Court of the 18th Judicial District*, 2010 MT 263, 358 Mont. 325 (2010), holding that *State v. Just* was wrongly  
15 decided and overruling its previous opinion in that case; and

16 WHEREAS, in its opinion in *State v. District Court of the 18th Judicial District*, the Supreme Court  
17 recommended that the Legislature repeal section 46-13-109, MCA, which codified its opinion in *State v. Just*.

18

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

20

21 **Section 1.** Section 46-13-110, MCA, is amended to read:

22 **"46-13-110. Omnibus hearing.** (1) Within a reasonable time following the entry of a not guilty plea but  
23 not less than 30 days before trial, the court shall hold an omnibus hearing.

24 (2) The purpose of the hearing is to expedite the procedures leading up to the trial of the defendant.

25 (3) The presence of the defendant is not required, unless ordered by the court. The prosecutor and the  
26 defendant's counsel shall attend the hearing and must be prepared to discuss any pretrial matter appropriate to  
27 the case, including but not limited to:

28 (a) joinder and severance of offenses or defendants, 46-11-404, 46-13-210, and 46-13-211;

29 (b) double jeopardy, 46-11-410, 46-11-503, and 46-11-504;

30 (c) the need for exclusion of the public and for sealing records of any pretrial proceedings, 46-11-701;

- 1 (d) notification of the existence of a plea agreement, 46-12-211;  
2 (e) disclosure and discovery motions, Title 46, chapter 15, part 3;  
3 (f) notice of reliance on certain defenses, 46-15-323;  
4 (g) notice of seeking persistent felony offender status, 46-13-108;  
5 ~~(h) notice of other crimes, wrongs, or acts, 46-13-109;~~  
6 ~~(h)~~(h) motion to suppress, 46-13-301 and 46-13-302;  
7 ~~(i)~~(i) motion to dismiss, 46-13-401 and 46-13-402;  
8 ~~(j)~~(j) motion for change of place of trial, 46-13-203 through 46-13-205;  
9 ~~(k)~~(k) reasonableness of bail, Title 46, chapter 9; and  
10 ~~(m)~~(l) stipulations.

11 (4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be  
12 signed by the court and counsel and filed with the court.

13 (5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the time  
14 of the hearing, where appropriate, or may be scheduled for briefing and further hearing as the court considers  
15 necessary."

16  
17 **NEW SECTION. Section 2. Repealer.** The following section of the Montana Code Annotated is  
18 repealed:

19 46-13-109. Notice by prosecutor of other crimes, wrongs, or acts.

20

21 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

22

- END -