

SENATE JUDICIARY
AMENDMENT NO. 5
DATE 1/25/13
SB 113

Amendments to Senate Bill No. 113
1st Reading Copy

Requested by Senator Anders Blewett

For the Senate Judiciary Committee

Prepared by Julianne Burkhardt
January 24, 2013 (2:38pm)

1. Title, page 1, line 5.

Strike: "SEXUAL ASSAULT OR"

2. Page 1, line 10

Strike: everything after the enacting clause

Insert: "NEW SECTION. **Section 1. Admissibility of evidence of**

similar crimes in child molestation cases. (1) In a criminal case in which the defendant is accused of an offense of child molestation, evidence of the defendant's commission of another offense of child molestation in any state may be admissible, notwithstanding Rule 404 of the Montana Rules of Evidence, except as otherwise provided by the United States constitution, the Montana constitution, statute, the Montana Rules of Evidence, or other rules applicable in the courts of Montana.

(2) The court may admit evidence of the other offense under this section only if it first finds each of the following:

(a) The evidence is sufficient to permit the trier of fact to find that the defendant committed the other offense.

(b) The commission of the other offense provides a reasonable basis to infer that the defendant had a character trait giving rise to an aberrant sexual propensity to commit the offense charged.

(c) The evidentiary value of proof of the other offense is not substantially outweighed by danger of unfair prejudice, confusion of issues, misleading the jury, considerations of undue delay, waste of time, or needless presentation of cumulative evidence as provided in Rule 403 of the Montana Rules of Evidence. In making that determination under Rule 403, the court shall also take into consideration the following factors, among others:

(i) the closeness in time of the other offense to the offense charged;

(ii) the similarity or dissimilarity of the other offense to the offense charged;

(iii) the strength of the evidence that the defendant committed the other offense;

(iv) the frequency of other offenses;

(v) the presence or lack of intervening circumstances;

(vi) the necessity of the evidence of the other offense

beyond the testimony already offered at trial;

(vii) whether the other offense resulted in a criminal conviction; and

(viii) other facts and circumstances.

(d) The court shall make specific findings with respect to subsections (2) (a), (2) (b), and (2) (c).

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

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

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

(a) "Child" means a victim of an offense who is under 14 years of age if the offender was, at the time of the offense, 18 years of age or older.

(b) "Offense of child molestation" means an offense that was committed in relation to a child that may be prosecuted pursuant to 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-625, or 45-5-627 or any similar law of any other state.

(c) "State" means this state, any other state, a territory or possession of the United States, an Indian reservation, the District of Columbia, or any other area under the jurisdiction of the United States.

Insert: "NEW SECTION. Section 2. Admissibility of similar acts in civil cases involving child molestation. (1) In a civil action in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting the offense of child molestation as defined in [section 1], evidence of that party's commission of another offense of child molestation in any state may be admissible, notwithstanding Rule 404 of the Montana Rules of Evidence, except as otherwise provided by the United States constitution, the Montana constitution, statute, the Montana Rules of Evidence, or other rules applicable in the courts of Montana.

(2) The court may admit evidence of another offense under this section only if it first finds each of the following:

(a) The evidence is sufficient to permit the trier of fact to find that the party committed the other offense.

(b) The commission of the other offense provides a reasonable basis to infer that the party had a character trait giving rise to an aberrant sexual propensity to commit the crime charged.

(c) The evidentiary value of proof of the other offense is

not substantially outweighed by danger of unfair prejudice, confusion of issues, misleading the jury, considerations of undue delay, waste of time, or needless presentation of cumulative evidence as provided in Rule 403 of the Montana Rules of Evidence. In making that determination under Rule 403, the court shall also take into consideration the following factors, among others:

- (i) the closeness in time of the other offense to the offense charged;
 - (ii) the similarity or dissimilarity of the other offense to the offense charged;
 - (iii) the strength of the evidence that the defendant committed the other offense;
 - (iv) the frequency of the other offenses;
 - (v) the presence or lack of intervening circumstances;
 - (vi) the necessity of the evidence of the other offense beyond the testimony already offered at trial;
 - (vii) whether the other offense was a criminal conviction;
- and
- (viii) other facts and circumstances.

(d) the court shall make specific findings with respect to subsections (2)(a), (2)(b), and (2)(c).

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

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

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

Insert: "NEW SECTION. Section 3. {standard} Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 46, chapter 15, part 4, and the provisions of Title 46, chapter 15, part 4, apply to [section 1].

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

Insert: "NEW SECTION. Section 4. {standard} Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."