

Montana v. Federal Evidence Rules 2013¹

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The Montana Rules of Evidence (M.R.E.) were adopted by the Montana Supreme Court on December 29, 1976, effective for all Montana state court trials beginning July 1, 1977. The M.R.E. are largely based on the Federal Rules of Evidence (F.R.E.) which became effective two years earlier. However, in several important respects, the Montana Evidence Commission felt that the existing Montana jurisprudence on a particular issue made more sense than the federal counterpart, and chose to depart from the federal model. The Montana Commission Comments to each rule state whether that rule was drafted to mirror, or deviate from, the corresponding federal rule.

Only one of the M.R.E. (Rule 407) has been modified in any significant way since they were adopted. By contrast, the F.R.E. have been amended multiple times, and just recently (2011) were systematically “restylized.” Thus, even if the particular M.R.E. originally reflected the federal version, subsequent federal amendments may have caused a diversion if those amendments were substantive. A careful lawyer will, in this order, read:

1. the text of the Montana rule in question;
2. the Montana Commission Comment to the rule;
3. Montana Supreme Court cases, if any, applying the rule;
3. the text of the corresponding federal rule.

If and only if you conclude that the Montana rule was meant to be the same as the federal rule, and that the federal rule is still substantively the same as it was in 1976, continue on for persuasive though not binding federal authority:

4. the federal Advisory Committee Note;
5. a federal treatise such as Wright and Miller or McCormick (these obviously are secondary sources, but will save you a lot of work in finding the pertinent cases);
6. U.S. Supreme Court cases, if any, applying the rule;
7. 9th Circuit cases, if any, applying the rule;
8. Other Circuits’ cases applying the rule.

MAJOR DIFFERENCES² FROM F.R.E.

Judicial Notice, Article II: Montana much more detailed

M.R.E. 201 explicitly covers judicial notice of “all facts,” whereas F.R.E. 201 is much messier, governing judicial notice “of an adjudicative fact only, not a legislative fact” without providing any definition of either term.

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² Of course, this outline is for initial research only, and I specifically disclaim any warranties as to its accuracy and thoroughness. Furthermore, it does not include any amendments made to either set of rules—Montana and federal—after June 2013.

The F.R.E. Article II on Judicial Notice has only one rule, Rule 201. By contrast, Montana adds M.R.E. 202, "Judicial notice of law." It requires a trial court to take judicial notice of the laws (common law, constitutions and statutes) of the United States, of Montana, and of every other state, territory and jurisdiction of the United States. Additionally, Rule 202 lists many other types of law which a court may judicially notice of its own accord or on request of a party.

Presumptions, Article III: Montana much more detailed

F.R.E. 301 is very short and vague, and does not even define "presumption." Montana's version is quite a bit longer, defining presumptions in general and then differentiating between conclusive (M.R.E. 301(b)(1) and disputable presumptions (M.R.E. 301(b)(2)). The Montana version also details the effect of presumptions, the burden of evidence necessary to overcome a disputable presumption, and how a judge should cope with inconsistent presumptions.

Relevancy, Article IV

Rule 404(a) Character Evidence

Under F.R.E. 404(a)(2), a federal criminal defendant may choose to offer evidence of a pertinent trait of character of the victim. However, the federal price for doing so is that the prosecutor is now free to do two things: rebut that evidence about the victim AND adduce evidence of the same trait of character of the defendant. Under M.R.E. 404(a)(2), the state criminal defendant may offer evidence of a pertinent trait of character of the accused, but the prosecutor may only rebut that evidence. The Montana prosecutor is not thereby freed to put on evidence about the defendant's character.

In both state and federal court, in certain types of cases even if the defendant does not attempt to prove anything about the victim's character but does put on evidence to show that the victim was the first aggressor in the incident, the prosecutor can offer evidence about the victim's character trait of peacefulness. The difference is that in federal court, this can occur only in homicide cases. In Montana state court, the prosecutor may use this tool in both homicide and assault cases "where the victim is incapable of testifying."

Rule 406 Habit Evidence: Montana more specific

In both state and federal courts, the general rule is that character evidence is not admissible, but habit evidence is admissible as proof of conduct on a particular occasion. However, the F.R.E. do not contain any definition of either "character" or "habit" in the rules, although there is some guidance in the CAN. The Montana version of Rule 406 does define "habit" and furthermore specifies two methods of proving habit, opinion or specific instances of conduct "sufficient in number to warrant a finding that the habit existed..."

Rule 408 Settlement Offers and Conduct: Federal more specific

In both sets of rules, the general concept is the same, and is based on the public policy in favor of settlement of cases. Both prohibit evidence of settlement offers and of conduct and statements made during settlement negotiations. However, Montana's ban applies only when the evidence is intended to prove liability for or the invalidity of the

claim. An amendment to FRE 408 now additionally prohibits use of such evidence for impeachment purposes. Montana has not yet followed suit.

Rule 409 Medical Expenses

The exact titles of this rule differ, and that difference indicates the substantive difference in the Montana and federal rules. FRE 409 is “Offers to Pay Medical and Similar Expenses,” and prohibits evidence of either offers to pay or actual payment of medical, hospital or similar expenses as evidence of liability. MRE 409 is “Payment of Expenses.” By its terms, evidence that payment of “expenses occasioned by an injury or occurrence” (so not necessarily limited to medical-type expenses) was actually made is banned, but there is no prohibition about evidence that an offer to do so was made.

Sex Offense Cases: FRE contain several specific rules which are not in the MRE

Federal Rule 412: “Rape Shield”—no MRE 412

FRE 412 applies to all federal civil and criminal cases involving alleged sexual misconduct, and as a general rule prohibits evidence of the victim’s sexual behavior or sexual predisposition. There are several exceptions outlined in Rule 412. Montana has a similar provision (for criminal cases only), but it is statutory rather than a rule of evidence:

M.C.A. § 45-5-511: Provisions generally applicable to sexual crimes

(2) Evidence concerning the sexual conduct of the victim is inadmissible in prosecutions under this part except evidence of the victim's past sexual conduct with the offender or evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease that is at issue in the prosecution.

Federal Rules 413-415: Similar Crimes Admissible in Civil and Criminal Sexual Assault and Child Molestation Cases—no Montana counterpart

The FRE have three specific rules by which Congress meant to ensure that the jury would hear evidence that the person accused (civilly or criminally) of sexual assault or child molestation had performed other similar acts, whether or not those earlier acts had resulted in charging or conviction. There has been much academic criticism of those rules. Montana, like many other states, has never adopted any of them. Thus, in sexual assault and child molestation cases in Montana state courts, MRE 403 and 404 will govern the admissibility of prior acts by the defendant.

Privileges, Article V: Huge Differences

In Montana, privileges are statutory only. M.R.E. 501 states that there is no privilege of a witness about any matter unless the constitution, statute or court rule provides such a privilege. Numerous Montana Supreme Court cases discuss the public policy in favor of full disclosure of information helpful to a jury, and the resulting narrow construction of even those privileges which are provided by statute. (The Montana privilege statutes are located in M.C.A. Title 26, Chapter 1, Part 8).

By contrast, FRE 501 rejects a statutory list of privileged communications approach. Instead, it provides that federal evidentiary privileges are to be decided by the federal courts on a case-by-case basis: “The common law—as interpreted by United States courts

in the light of reason and experience — governs a claim of privilege unless any of the following provides otherwise:

- the United States Constitution;
- a federal statute; or
- rules prescribed by the Supreme Court.”

N.B.: F.R.E. 501 specifically provides that in federal diversity of citizenship cases, state privilege law governs for those claims on which state law provides the rule of decision.

In addition to this striking difference in approach, Montana and the federal system do not recognize the same privileges as a substantive matter. Montana statutes provide privileges for communications between: spouses (criminal only); attorney-client; parishioner-clergy; speech pathologist/audiologist-patient; psychologist-patient; student-educational employee; domestic violence/sexual assault advocate-victim. There also are privileges for confidential communications made to a public employee, and for communications made in the course of mediation. For civil medical malpractice actions only, any apology or expression of sympathy is privileged. Montana has a specific “Media Confidentiality Act” which statutorily provides a privilege to protect media sources. M.C.A. 26-1-901 to 903. Montana also privileges law enforcement officials from disclosing the identity of informants.

Without doing an in-depth review of the federal case law, as a general proposition, federal courts recognize: both testimonial and communications privileges for spouses in criminal actions; attorney-client privilege; parishioner-clergy privilege; and a psychotherapist-patient privilege (which covers licensed clinical social workers as well as psychologists). There is no doctor-patient privilege. The Supreme Court has not decided any cases about speech pathologist/audiologist privilege, student-teacher privilege, advocate-victim privilege, public employee privilege, mediation privilege or apology privilege. Federal protection of the reporter-source communication has been declined.

The M.R.E. has specific rules, 503 and 504, dealing with the waiver of privilege, if the holder voluntarily discloses any significant part of the privileged matter, unless that disclosure was erroneously compelled. M.R.E. 505 prohibits court and counsel from commenting on any claim of privilege.

The F.R.E. contains only one other privilege rule after 501. F.R.E. 502, relatively recently adopted, deals with the effect of disclosures of information which is protected by either the attorney-client privilege or the “work product” doctrine. This rule is specific and complex. Ironically, Montana does not have a counterpart, so that disclosures of this sort are dealt with by Montana case law rather than rule or statute.

Witnesses, Article VI

Rule 606—Competency of Juror as Witness—one difference

The general rule in both the federal and state versions of Rule 606 is that it is very hard to introduce a juror’s testimony about what happened in the jury in order to attack the validity of the verdict. The federal and Montana versions of Rule 606 both except (and thus allow) juror testimony about extraneous information improperly brought to the attention of the jury, and about outside influences brought to bear on any juror. FRE 606(b)(3) also allows juror testimony that a mistake was made in entering the verdict on the form (for instance, that they agreed on \$100,000.00 but the foreperson wrote

\$10,000.00). MRE 606(b)(3) instead allows juror testimony about whether there was any resort to the determination of chance (such as rolling a dice or a coin toss).

Rule 609—Impeachment by Conviction of Crime—huge difference

F.R.E. 609 allows the opponent of a witness to present evidence that the witness has previously been convicted of a crime. The overall concept is that criminality impacts credibility. The federal rule is specific and complex about what type of crime, and how long ago the conviction, in deciding whether the evidence is admissible.

The Montana approach is exactly the opposite, plain and sweet: “For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime is not admissible.”

Opinions and Expert Testimony, Article VII

Rule 702 Testimony by experts—very different.

FRE 702 was amended to codify the reliability requirements for expert testimony imposed by the U.S. Supreme Court in the Daubert and Kumho Tire cases, which rejected the pre-Rules “Frye general acceptance test.” MRE 702 has not followed suit, and does not contain in the language of the rule anything about reliability of the expert’s method or application of that method in the case at hand.

Furthermore, the Montana Supreme Court cases do not mirror those of the federal court system. Like the U.S. Supreme Court, the Montana Supreme Court has rejected the pre-Rules “general acceptance” test in favor of a more liberal admissibility. However, Montana does not apply Daubert and its progeny to all forms of expert testimony. Montana does use a Daubert-like analyses when the expert testimony involves “novel scientific evidence:”

Expert testimony regarding novel scientific evidence must be reliable. *Hulse*, ¶ 52 (citing *Daubert v. Merrell Dow Pharm.*, 509 U.S. 579, 589, 113 S.Ct. 2786, 2795, 125 L.Ed.2d 469 (1993)). We have adopted non-exclusive factors to consider when determining whether novel scientific evidence is reliable, including testing, peer review, technique rate of error, standards of operation and general acceptance.

Wheaton v. Bradford, 2013 MT 121, 370 Mont. 93, 300 P.3d 1162, 1166, footnote 3.

However, when the testimony does not involve a “novel” scientific method, Montana does not require a Daubert analysis. “[A]ll scientific expert testimony is not subject to the *Daubert* standard and the *Daubert* test should only be used to determine the admissibility of novel scientific evidence.” Hulse v. State, Dep't of Justice, Motor Vehicle Div., 1998 MT 108, 289 Mont. 1, 28, 961 P.2d 75, 91.

Certainly, if a court is presented with an issue concerning the admissibility of novel scientific evidence, ... the court must apply the guidelines set forth in *Daubert*, while adhering to the principle set forth in *Barmeyer*. However, if a court is presented with an issue concerning the admissibility of scientific evidence in general, the court must employ a conventional analysis under Rule 702, M.R.Evid.

Hulse v. State, Dep't of Justice, Motor Vehicle Div., 1998 MT 108, 289 Mont. 1, 31, 961 P.2d 75, 93.

[T]he district court's gatekeeper role in applying the *Daubert* factors, which guide trial courts in their assessment of the reliability of proffered scientific expert testimony, applies only to the admission of novel scientific evidence in Montana.

Damon, ¶ 18. Novelty in Montana is assessed from a very narrow perspective.

Harris v. Hanson, 2009 MT 13, 349 Mont. 29, 37, 201 P.3d 151, 158.

Rule 703—Basis of Expert Opinion—looks but is not different in effect

Both the state and federal rules 703 allow an expert to base her opinion upon inadmissible evidence, so long as that evidence is of a type reasonably relied upon by experts in her field. The federal version has been amended to add that the otherwise-inadmissible information is usually not allowed into evidence on direct examination of the expert. The Montana version does not contain this stricture, but the Montana Supreme Court has held similarly: “Rule 703, M.R.Evid., anticipates that experts form opinions and inferences based upon first-hand observations, facts presented at trial and information obtained outside of the courtroom prior to trial. The rule recognizes that an expert witness may rely upon inadmissible evidence when forming an opinion. ... However, **Rule 703, M.R.Evid., does not give a witness permission to repeat inadmissible out-of-court statements to bolster his or her expert opinions before the jury.** (Citations omitted; emphasis added). Perdue v. Gagnon Farms, Inc., 314 Mont. 303, 313, 65 P.3d 570, 576 (2003).

FRE 706—Court-Appointed Experts: Montana does not have any such rule

In the federal system, Rule 706 allows a court to appoint its own expert, and sets out the procedure for doing so. Montana does not have any such rule.

Hearsay, Article VIII

Rule 801(d)(1)(A): Nonhearsay by definition: Prior Inconsistent Statement of Witness

Montana's version of this rule treats all prior statements which are inconsistent with the witness' testimony at trial as nonhearsay, regardless of when, how, or to whom the statements were made. Thus, a bartender could recount what the witness said to him late on a Friday night. The federal version is much more conservative. In order for a prior inconsistent statement to qualify as nonhearsay, it must have been made in a specific way (under penalty of perjury) and in a specific setting (at a trial, deposition, hearing or “other proceeding”).

Rule 803(3): Exception for Then-Existing Condition

Montana does not extend this exception to statements of memory or belief which are offered to prove the fact remembered or believed. Thus, such statements of memory or belief are subject to the hearsay rule. FRE 803(3) does extend the exception to statements of memory or belief, but only if the statement relates to the terms or validity of the declarant's will.

Rule 803(6): “Business Records” Exception

There are two differences here. First, the FRE version allows a proponent of a business record to satisfy this exception’s foundation either by calling a foundation witness (the custodian of the record or “other qualified witness”) or by submitting a certification which conforms to the self-authentication provisions in FRE 902(11) or (12). Montana requires a foundation witness; the MRE do not have any corollary to 902(11) or (12).

The second difference is that Montana’s version of 803(6) adds language not present in the federal rule. That language purports to allow admission of Montana state crime lab reports without calling the person(s) who compiled the report, if the requisite pretrial notice is provided to the opponent. (Note that the same language used to be found in M.R.E. 803(8), the public records exception, but was removed after the Montana Supreme Court found that it unconstitutionally violated defendants’ Confrontation rights under the 6th Amendment. So far, there has not been a similar holding re: 803(6), but recent U.S. Supreme Court Confrontation Clause cases put this language in jeopardy.)

Rule 803(8): Public Records Exception

The two versions of this rule are very different in their length and complexity. The federal rule was greatly simplified and shortened in the recent stylistic amendments to the FRE. The Montana version still suffers from the stylistic difficulties of the first draft, after which it was modeled. In addition, it seems to exempt from the exception (thus prohibiting as hearsay) a greater list than the revised federal rule, but more case law is necessary to show whether this is really true.

MRE 803(24) and MRE 804(b)(5)=FRE: Other exceptions to the hearsay rule (the “residual exception”).

The FRE no longer contain these subsections to the rules providing exceptions to the hearsay prohibition. Instead, the “residual exception” has been consolidated, and expanded, into FRE 807. Montana does not have a rule 807.

FRE 807 imposes several requirements for an out-of-court statement to be excepted from Rule 802 which do not appear in either of the separate MRE residual exception clauses. Montana’s only requirement is that the proffered hearsay bears “equivalent circumstantial guarantees of trustworthiness” as the enumerated exceptions. The federal rule has additional procedural (pretrial notice) and substantive requirements (that the evidence is more probative than other admissible evidence, and that the interests of justice will be served by its admission) which make the residual exception more difficult to meet.

Rule 804(a):

Difference 1: Montana is more liberal about when a witness is “unavailable,” thus potentially allowing more use of the Rule 804 exceptions.

The Montana version of Rule 804 (a)(1) says that “unavailability,” the prerequisite to use of the 804(b) exceptions, “includes” the 5 listed specific situations, thus potentially allowing a proponent to expand on that list. The federal version appears to be limited to the five listed situations.

Difference 2: FRE 804(a)(5) requires the proponent to have tried to obtain testimony OR attendance by the declarant if the statement is offered as a statement

under belief of imminent death, a statement against interest, or a statement of personal/family history. Montana simply requires the attempt to have been to obtain the declarant's attendance at trial.

Rule 804(b)(2) Statements under Belief of Imminent Death: FRE version is more restrictive

Montana allows the use of this exception in all types of cases. The FRE version restricts it to homicide and civil cases, excluding other types of criminal cases.

Rule 804(b)(3): Statements against Interest: Montana is more liberal

The FRE version recognizes statements which are against only certain types of interests: proprietary, pecuniary or civil or criminal consequences. The MRE version also includes statements which would "make the declarant an object of hatred, ridicule or disgrace."

Rule 804(b)(6): No such Montana exception

The FRE allow an exception to the hearsay prohibition for statements which are offered against a party that wrongfully obtained the declarant's unavailability. This is an added penalty for wrongfully causing a potential witness to be unavailable: the wrongdoer both loses his/her/its own ability to profit from the absence by invoking a hearsay exception, and may be harmed by admission against that party of what would otherwise be barred as hearsay.

Authentication, Article IX

The federal version contains two rules which Montana does not have, which make a substantial difference in how a proponent obtains admission of certain documents. The federal method dispenses with the need for live testimony from the custodian, if the record in question has been certified by its custodian.

FRE 902(11): Certified domestic business records: no Montana counterpart.

FRE 902(12): Certified foreign business records: no Montana counterpart.

Together, these two rules allow a proponent of a business record in federal court to meet the authentication requirement by submitting a document certified by its custodian, instead of having to present live testimony from that custodian that the document is indeed a business record. If it is a document from a U.S. organization, the certification must meet federal standards. If the document is from another country, the certification should match the standards of that country. For both rules, the proponent must provide advance notice so that the opponent has time to investigate and object.

Best Evidence, Article X

The two articles are basically the same. Montana's version is slightly more liberal, in allowing admission of not just a duplicate but also "a copy of an entry in the regular course of business" in lieu of an original in most circumstances.

Rule 1003: Admissibility of Duplicates: Montana adds “[and] copies of certain entries.” This is where Montana says that if you can admit either duplicates or copies of entries in the regular course of business” in lieu of an original, unless there is some question about the authenticity of the original or other circumstances make this unfair. The federal rule sticks to “duplicates,” which are defined as “accurately reproducing the original.”

Rule 1008: Functions of court and jury: FRE gives the jury a role in some circumstances; MRE makes the judge the sole decision-maker.

The FRE recognizes, as does the MRE, that the judge ordinarily decides whether the proponent has fulfilled the factual conditions for admission of “other evidence” (not the original) of the contents of a writing, recording, or photograph. However, the FRE specifically assigns to the jury factual decisions about: whether the asserted item ever existed; whether another one produced is the original; and whether the “other evidence” accurately reflects the content. MRE 1008 says the court is to decide all these issues.

FEDERAL/MONTANA RULES OF EVIDENCE COMPARISON CHART

Prepared by Prof. Cynthia Ford and UMSL 2L student Michelle Vanisko

FEDERAL/MONTANA RULES OF EVIDENCE COMPARISON CHART

Blue: Text in FRE but not MRE

Red: Text in MRE but not FRE

Federal Rules of Evidence	Montana Rules of Evidence
Article I – General Provisions	Article I – General Provisions
<p>Rule 101. Scope; Definitions</p> <p>(a) Scope. These rules apply to proceedings in US courts. The specific courts and proceedings to which the rules apply, along with exceptions, are set out in Rule 1101.</p> <p>(b) Definitions. In these rules:</p> <p>(1) “civil case” means a civil action or proceeding;</p> <p>(2) “criminal case” includes a criminal proceeding;</p> <p>(3) “public office” includes a public agency;</p> <p>(4) “record” includes a memorandum, report, or data compilation;</p> <p>(5) a “rule prescribed by the Supreme Court” means a rule adopted by the Supreme Court under statutory authority; and</p> <p>(6) a reference to any kind of written material or any other medium includes electronically stored information.</p>	<p>Rule 101. Scope.</p> <p>(a) Proceedings generally. These rules govern all proceedings in all courts in the state of Montana with the exceptions stated in this rule. [see also, comparison to FRE Article XI, below]</p>
<p>Rule 102. Purpose</p> <p>These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.</p>	<p>Rule 102. Purpose and construction.</p> <p>These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.</p>
<p>Rule 103. Ruling on Evidence</p> <p>(a) Preserving a Claim of Error. A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:</p> <p>(1) if the ruling admits evidence, a party, on the record:</p> <p style="padding-left: 20px;">(A) timely objects or moves to strike; and</p> <p style="padding-left: 20px;">(B) states the specific ground, unless it was apparent from the context; or</p> <p>(2) if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.</p> <p>(b) Not Needing to Renew an Objection or Offer of Proof. Once the court rules definitively on the record — either before or at trial — a party need not renew an objection or offer of proof to preserve a claim of error for appeal.</p> <p>(c) Court’s Statement About the Ruling; Directing an Offer of Proof. The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court may direct that an offer of proof be made in question-and-answer form.</p>	<p>Rule 103. Rulings on evidence.</p> <p>(a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and</p> <p>(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or</p> <p>(2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.</p> <p>(b) Record of offer and ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.</p>

FEDERAL/MONTANA RULES OF EVIDENCE COMPARISON CHART

<p>(d) Preventing the Jury from Hearing Inadmissible Evidence. To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.</p> <p>(e) Taking Notice of Plain Error. A court may take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved.</p>	<p>(c) Hearing of the jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.</p> <p>(d) Plain error. Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.</p>
<p>Rule 104. Preliminary Questions.</p> <p>(a) In General. The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.</p> <p>(b) Relevance That Depends on a Fact. When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.</p> <p>(c) Conducting a Hearing So That the Jury Cannot Hear It. The court must conduct any hearing on a preliminary question so that the jury cannot hear it if:</p> <ol style="list-style-type: none"> (1) the hearing involves the admissibility of a confession; (2) a defendant in a criminal case is a witness and so requests; or (3) justice so requires. <p>(d) Cross-Examining a Defendant in a Criminal Case. By testifying on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other issues in the case.</p> <p>(e) Evidence Relevant to Weight and Credibility. This rule does not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.</p>	<p>Rule 104. Preliminary questions of admissibility.</p> <p>(a) Questions of admissibility generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court. In making its determination it is not bound by the rules of evidence except those with respect to privileges.</p> <p>(b) Admissibility subject to a condition. Except as otherwise provided by law, when the admissibility of evidence depends upon proof of other connecting facts, the court may admit such evidence subject to the condition that further evidence be introduced sufficient to support a finding of those connecting facts. The order of proof may be regulated by the sound discretion of the court.</p> <p>(c) Hearing of jury. Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require or, when an accused is a witness and so requests.</p> <p>(d) Testimony by accused. The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.</p> <p>(e) Weight and credibility. This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.</p>
<p>Rule 105. Limiting Evidence That Is Not Admissible Against Other Parties or for Other Purposes. If the court admits evidence that is admissible against a party or for a purpose — but not against another party or for another purpose — the court, on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly.</p>	<p>Rule 105. Limited admissibility.</p> <p>When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.</p>
<p>Rule 106. Remainder of or Related Writings or Recorded Statements.</p>	<p>Rule 106. Remainder of or related acts, writings, or statements.</p>

FEDERAL/MONTANA RULES OF EVIDENCE COMPARISON CHART

<p>If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part — or any other writing or recorded statement — that in fairness ought to be considered at the same time.</p>	<p>(a) When part of an act, declaration, conversation, writing or recorded statement or series thereof is introduced by a party:</p> <p>(1) an adverse party may require the introduction at that time of any other part of such item or series thereof which ought in fairness to be considered at that time; or</p> <p>(2) an adverse party may inquire into or introduce any other part of such item of evidence or series thereof.</p> <p>(b) This rule does not limit the right of any party to cross-examine or further develop as part of the case matters covered by this rule.</p>
<p>Article II – Judicial Notice</p>	<p>Article II – Judicial Notice</p>
<p>Rule 201. Judicial Notice of Adjudicative Facts</p> <p>(a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.</p> <p>(b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:</p> <p>(1) is generally known within the trial court’s territorial jurisdiction; or</p> <p>(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.</p> <p>(c) Taking Notice. The court:</p> <p>(1) may take judicial notice on its own; or</p> <p>(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.</p> <p>(d) Timing. The court may take judicial notice at any stage of the proceeding.</p> <p>(e) Opportunity to Be Heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.</p> <p>(f) Instructing the Jury. In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.</p>	<p>Rule 201. Judicial notice of facts.</p> <p>(a) Scope of rule. This rule governs judicial notice of all facts.</p> <p>(b) Kinds of facts. A fact to be judicially noticed must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned.</p> <p>(c) When discretionary. A court may take judicial notice, whether requested or not.</p> <p>(d) When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.</p> <p>(e) Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.</p> <p>(f) Time of taking notice. Judicial notice may be taken at any stage of the proceeding.</p> <p>(g) Instructing the jury. In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.</p>
<p>NO FEDERAL EQUIVALENT</p>	<p>Rule 202. Judicial notice of law.</p> <p>(a) Scope of Rule. This rule governs judicial notice of law.</p> <p>(b) Kinds of law. Law includes but is not limited to the following:</p> <p>(1) The common law, constitutions and statutes of the US and of this and every other state, territory and jurisdiction of the US;</p> <p>(2) Duly enacted ordinances and regulations of</p>

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	<p>governmental divisions of this state, including their charters;</p> <p>(3) Regulations and legislative enactments issued by or under authority of the US and of this and any state of the US by or for their agencies or administrations;</p> <p>(4) Official acts of the legislative, executive, and judicial departments of the US and of this and any state of the US;</p> <p>(5) Private acts and resolutions of the Congress of the United States and of the legislature of this state;</p> <p>(6) Records of any court of this state or of any court of record of the United States or any court of record of any state of the United States;</p> <p>(7) Rules of practice and procedure of any court of this state or of any court of record of the United States or any court of record of any state of the United States;</p> <p>(8) The law of foreign nations;</p> <p>(9) International law;</p> <p>(10) Maritime law;</p> <p>(11) The seals of office of the officers of government in the legislative, executive, and judicial departments of government of the US and of this and every other state, territory and jurisdiction of the United States, of any foreign jurisdiction recognized by the executive power of the United States, and of notaries public.</p> <p>(c) When discretionary. A court may take judicial notice of the law listed in parts 2-10 of Rule 202(b) or other law, whether requested or not. The court may inform itself of any law in such manner as it may deem proper and the court may call upon counsel to aid it in obtaining such information.</p> <p>(d) When mandatory. A court shall take judicial notice:</p> <p>(1) of the common law, constitutions and statutes of the United States and of this and every other state, territory and jurisdiction of the United States; and</p> <p>(2) of any other law when requested by a party and supplied with the necessary information.</p> <p>(e) Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the law noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.</p> <p>(f) Time of taking notice.</p> <p>(1) Judicial notice of the laws of this state and of the United States may be taken at any stage of the proceedings.</p> <p>(2) Any party may present to the judge or court</p>
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	<p>any admissible evidence of law. To enable a party to offer evidence of the law other than of this state and of the United States or to ask that judicial notice be taken thereof, reasonable notice shall be given to the adverse party either in the pleadings or otherwise.</p> <p>(g) Question for the court. Except as otherwise provided by law, the determination of law shall be made by the court.</p>
<p>Article III – Presumptions in Civil Cases</p>	<p>Article III – Presumptions</p>
<p>Rule 301. Presumptions in Civil Cases Generally.</p> <p>In a civil case, unless a federal statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on the party who had it originally.</p>	<p>Rule 301. Presumptions in general.</p> <p>(a) Presumption defined. A presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action or proceeding.</p> <p>(b) Classification and effect of presumptions.</p> <p>(1) Conclusive presumptions are presumptions that are specifically declared conclusive by statute. Conclusive presumptions may not be controverted.</p> <p>(2) All presumptions, other than conclusive presumptions, are disputable presumptions and may be controverted. A disputable presumption may be overcome by a preponderance of evidence contrary to the presumption. Unless the presumption is overcome, the trier of fact must find the assumed fact in accordance with the presumption.</p> <p>(c) Inconsistent presumptions. If presumptions are inconsistent the court shall apply the presumption that is founded upon weightier considerations of public policy. If considerations of public policy are of equal weight the court shall disregard both presumptions.</p>
<p>Rule 302. Applying State Law to Presumptions in Civil Cases</p> <p>In a civil case, state law governs the effect of a presumption regarding a claim or defense for which state law supplies the rule of decision.</p>	<p>Rule 302. Applicability of federal law in civil cases.</p> <p>In civil actions and proceedings, the effect of a presumption respecting a fact which is an element of a claim or defense as to which federal law supplies the rule of decision is determined in accordance with federal law.</p>
<p>Article IV – Relevancy and its Limits</p>	<p>Article IV – Relevancy and its Limits</p>
<p>Rule 401. Test for Relevant Evidence.</p>	<p>Rule 401. Definition of Relevant Evidence.</p>

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<p>Evidence is relevant if:</p> <p>(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and</p> <p>(b) the fact is of consequence in determining the action.</p>	<p>Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.</p> <p>Relevant evidence may include evidence bearing upon the credibility of a witness or hearsay declarant.</p>
<p>Rule 402. General Admissibility of Relevant Evidence.</p> <p>Relevant evidence is admissible unless any of the following provides otherwise:</p> <ul style="list-style-type: none"> • the United States Constitution; • a federal statute; • these rules; or • other rules prescribed by the Supreme Court. <p>Irrelevant evidence is not admissible.</p>	<p>Rule 402. Relevant evidence generally admissible; irrelevant evidence inadmissible.</p> <p>All relevant evidence is admissible, except as otherwise provided by constitution, statute, these rules, or other rules applicable in the courts of this state. Evidence which is not relevant is not admissible.</p>
<p>Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reason</p> <p>The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.</p>	<p>Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.</p> <p>Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.</p>
<p>Rule 404. Character Evidence; Crimes or Other Acts</p> <p>(a) Character Evidence.</p> <p>(1) <i>Prohibited Uses.</i> Evidence of a person’s character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.</p> <p>(2) <i>Exceptions for a Defendant or Victim in a Criminal Case.</i> The following exceptions apply in a criminal case:</p> <p>(A) a defendant may offer evidence of the defendant’s pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;</p> <p>(B) subject to the limitations in Rule 412, a defendant may offer evidence of an alleged victim’s pertinent trait, and if the evidence is admitted, the prosecutor may:</p> <ul style="list-style-type: none"> (i) offer evidence to rebut it; and (ii) offer evidence of the defendant’s same trait; and <p>(C) in a homicide case, the prosecutor may offer evidence of the alleged victim’s trait of peacefulness to rebut evidence that the victim was the first aggressor.</p> <p>(3) <i>Exceptions for a Witness.</i> Evidence of a witness’s character may be admitted under Rules 607, 608, and 609.</p> <p>(b) Crimes, Wrongs, or Other Acts.</p> <p>(1) <i>Prohibited Uses.</i> Evidence of a crime, wrong, or other act is not admissible to prove a person’s character in</p>	<p>Rule 404. Character evidence not admissible to prove conduct, exceptions; other crimes; character in issue.</p> <p>(a) Character evidence generally. Evidence of a person’s character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:</p> <ul style="list-style-type: none"> (1) Character of accused. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same. (2) Character of victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case or in an assault case where the victim is incapable of testifying to rebut evidence that the victim was the first aggressor. <p>(3) Character of witness. Evidence of the character of a witness, as provided in Article VI.</p> <p>(b) Other crimes, wrongs, acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in</p>

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<p>order to show that on a particular occasion the person acted in accordance with the character.</p> <p>(2) Permitted Uses; Notice in a Criminal Case. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On request by a defendant in a criminal case, the prosecutor must:</p> <p>(A) provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; and</p> <p>(B) do so before trial — or during trial if the court, for good cause, excuses lack of pretrial notice.</p>	<p>conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.</p> <p>(c) Character in issue. Evidence of a person's character or a trait of character is admissible in cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense.</p>
<p>Rule 405. Methods of Proving Character</p> <p>(a) By Reputation or Opinion. When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person's conduct.</p> <p>(b) By Specific Instances of Conduct. When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.</p>	<p>Rule 405. Methods of Proving Character.</p> <p>(a) Reputation or opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.</p> <p>(b) Specific instances of conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, or where the character of the victim relates to the reasonableness of force used by the accused in self defense, proof may also be made of specific instances of that person's conduct.</p>
<p>Rule 406. Habit; Routine Practice</p> <p>Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.</p>	<p>Rule 406. Habit; Routine Practice.</p> <p>(a) Habit and routine practice defined. A habit is a person's regular response to a repeated specific situation. A routine practice is a regular course of conduct of a group of persons or an organization.</p> <p>(b) Admissibility. Evidence of habit or of routine practice, whether corroborated or not, and regardless of the presence of eyewitnesses, is relevant to prove that conduct on a particular occasion was in conformity with the habit or routine practice.</p> <p>(c) Method of proof. Habit or routine practice may be proved by testimony in the form of an opinion or by specific instances of conduct sufficient in number to warrant a finding that the habit existed or that the practice was routine.</p>
<p>Rule 407. Subsequent remedial measures</p> <p>When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:</p> <ul style="list-style-type: none"> • negligence; • culpable conduct; • a defect in a product or its design; or • a need for a warning or instruction. <p>But the court may admit this evidence for another purpose, such as impeachment or — if disputed — proving</p>	<p>Rule 407. Subsequent remedial measures.</p> <p>When, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product's design, or a need for a warning instruction. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership,</p>

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<p>ownership, control, or the feasibility of precautionary measures.</p>	<p>control, or feasibility of precautionary measures, if controverted, or impeachment.</p>
<p>Rule 408. Compromise Offers and Negotiations</p> <p>(a) Prohibited Uses. Evidence of the following is not admissible — on behalf of any party — either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:</p> <p>(1) furnishing, promising, or offering — or accepting, promising to accept, or offering to accept — a valuable consideration in compromising or attempting to compromise the claim; and</p> <p>(2) conduct or a statement made during compromise negotiations about the claim — except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.</p> <p>(b) Exceptions. The court may admit this evidence for another purpose, such as proving a witness’s bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.</p>	<p>Rule 408. Compromise and Offers to Compromise</p> <p>Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.</p>
<p>Rule 409. Offers to Pay Medical and Similar Expenses</p> <p>Evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury is not admissible to prove liability for the injury.</p>	<p>Rule 409. Payment of Expenses.</p> <p>Evidence of payment of expenses occasioned by an injury or occurrence is not admissible to prove liability.</p>
<p>Rule 410. Pleas, Plea Discussions, and Related Statements.</p> <p>(a) Prohibited Uses. In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:</p> <p>(1) a guilty plea that was later withdrawn;</p> <p>(2) a nolo contendere plea;</p> <p>(3) a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or</p> <p>(4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.</p> <p>(b) Exceptions. The court may admit a statement described in Rule 410(a)(3) or (4):</p> <p>(1) in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or</p>	<p>Rule 410. Offer to plead guilty; nolo contendere; withdrawn plea of guilty.</p> <p>Evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal action, case, or proceeding against the person who made the plea or offer. This rule shall not apply to the introduction of voluntary and reliable statements made in court on the record in connection with any of the foregoing pleas or offers where offered for impeachment purposes or in a subsequent prosecution of the declarant for perjury or false statement.</p>

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<p>(2) in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.</p>	
<p>Rule 411. Liability Insurance Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness’s bias or prejudice or proving agency, ownership, or control.</p>	<p>Rule 411. Liability Insurance. Evidence that a person was or was not insured against liability is not admissible upon the issue of whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.</p>
<p>Rule 412. Sex-Offense Cases: The Victim’s Sexual Behavior or Predisposition (a) Prohibited Uses. The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual misconduct: (1) evidence offered to prove that a victim engaged in other sexual behavior; or (2) evidence offered to prove a victim’s sexual predisposition. (b) Exceptions. (1) <i>Criminal Cases.</i> The court may admit the following evidence in a criminal case: (A) evidence of specific instances of a victim’s sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence; (B) evidence of specific instances of a victim’s sexual behavior with respect to the person accused of the sexual misconduct, if offered by the defendant to prove consent or if offered by the prosecutor; and (C) evidence whose exclusion would violate the defendant’s constitutional rights. (2) <i>Civil Cases.</i> In a civil case, the court may admit evidence offered to prove a victim’s sexual behavior or sexual predisposition if its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. The court may admit evidence of a victim’s reputation only if the victim has placed it in controversy. (c) Procedure to Determine Admissibility. (1) <i>Motion.</i> If a party intends to offer evidence under Rule 412(b), the party must: (A) file a motion that specifically describes the evidence and states the purpose for which it is to be offered; (B) do so at least 14 days before trial unless the court, for good cause, sets a different time; (C) serve the motion on all parties; and (D) notify the victim or, when appropriate, the victim’s guardian or representative. (2) <i>Hearing.</i> Before admitting evidence under this rule,</p>	<p>No Montana Counterpart.</p>

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<p>the court must conduct an in camera hearing and give the victim and parties a right to attend and be heard. Unless the court orders otherwise, the motion, related materials, and the record of the hearing must be and remain sealed.</p> <p>(d) Definition of “Victim.” In this rule, “victim” includes an alleged victim.</p>	
<p>Rule 413. Similar Crimes in Sexual-Assault Cases</p> <p>(a) Permitted Uses. In a criminal case in which a defendant is accused of a sexual assault, the court may admit evidence that the defendant committed any other sexual assault. The evidence may be considered on any matter to which it is relevant.</p> <p>(b) Disclosure to the Defendant. If the prosecutor intends to offer this evidence, the prosecutor must disclose it to the defendant, including witnesses’ statements or a summary of the expected testimony. The prosecutor must do so at least 15 days before trial or at a later time that the court allows for good cause.</p> <p>(c) Effect on Other Rules. This rule does not limit the admission or consideration of evidence under any other rule.</p> <p>(d) Definition of “Sexual Assault.” In this rule and Rule 415, “sexual assault” means a crime under federal law or under state law (as “state” is defined in 18 U.S.C. § 513) involving:</p> <ul style="list-style-type: none"> (1) any conduct prohibited by 18 U.S.C. chapter 109A; (2) contact, without consent, between any part of the defendant’s body — or an object — and another person’s genitals or anus; (3) contact, without consent, between the defendant’s genitals or anus and any part of another person’s body; (4) deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on another person; or (5) an attempt or conspiracy to engage in conduct described in subparagraphs (1)–(4). 	<p style="text-align: center;">No Montana Counterpart</p>
<p>Rule 414. Similar Crimes in Child Molestation Cases</p> <p>(a) Permitted Uses. In a criminal case in which a defendant is accused of child molestation, the court may admit evidence that the defendant committed any other child molestation. The evidence may be considered on any matter to which it is relevant.</p> <p>(b) Disclosure to the Defendant. If the prosecutor intends to offer this evidence, the prosecutor must disclose it to the defendant, including witnesses’ statements or a summary of the expected testimony. The prosecutor must do so at least 15 days before trial or at a later time that the court allows for good cause.</p> <p>(c) Effect on Other Rules. This rule does not limit the</p>	<p style="text-align: center;">No Montana Counterpart</p>

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<p>admission or consideration of evidence under any other rule.</p> <p>(d) Definition of “Child” and “Child Molestation.” In this rule and Rule 415:</p> <p>(1) “child” means a person below the age of 14; and</p> <p>(2) “child molestation” means a crime under federal law or under state law (as “state” is defined in 18 U.S.C. § 513) involving:</p> <p>(A) any conduct prohibited by 18 U.S.C. chapter 109A and committed with a child;</p> <p>(B) any conduct prohibited by 18 U.S.C. chapter 110;</p> <p>(C) contact between any part of the defendant’s body — or an object — and a child’s genitals or anus;</p> <p>(D) contact between the defendant’s genitals or anus and any part of a child’s body;</p> <p>(E) deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on a child; or</p> <p>(F) an attempt or conspiracy to engage in conduct described in subparagraphs (A)–(E).</p>	
<p>Rule 415. Similar Acts in Civil Cases Involving Sexual Assault or Child Molestation</p> <p>(a) Permitted Uses. In a civil case involving a claim for relief based on a party’s alleged sexual assault or child molestation, the court may admit evidence that the party committed any other sexual assault or child molestation. The evidence may be considered as provided in Rules 413 and 414.</p> <p>(b) Disclosure to the Opponent. If a party intends to offer this evidence, the party must disclose it to the party against whom it will be offered, including witnesses’ statements or a summary of the expected testimony. The party must do so at least 15 days before trial or at a later time that the court allows for good cause.</p> <p>(c) Effect on Other Rules. This rule does not limit the admission or consideration of evidence under any other rule.</p>	<p>No Montana Counterpart</p>
<p>Article V - Privileges</p>	<p>Article V – Privileges</p>
<p>Rule 501. Privileges in General</p> <p>The common law — as interpreted by United States courts in the light of reason and experience — governs a claim of privilege unless any of the following provides otherwise:</p> <ul style="list-style-type: none"> • the United States Constitution; • a federal statute; or • rules prescribed by the Supreme Court. <p>But in a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of</p>	<p>Rule 501. Privileges recognized only as provided.</p> <p>Except as otherwise provided by constitution, statute, these rules, or other rules applicable in the courts of this state, no person has a privilege to:</p> <ol style="list-style-type: none"> (1) refuse to be a witness; (2) refuse to disclose any matter; (3) refuse to produce any object or writing; or (4) prevent another from being a witness or disclosing any matter or producing any object or

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<p>decision.</p> <p>Rule 502. Attorney-Client Privilege and Work Product; Limitations on Waiver</p> <p>The following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the attorney-client privilege or work-product protection.</p> <p>(a) Disclosure Made in a Federal Proceeding or to a Federal Office or Agency; Scope of a Waiver. When the disclosure is made in a federal proceeding or to a federal office or agency and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in a federal or state proceeding only if:</p> <ol style="list-style-type: none"> (1) the waiver is intentional; (2) the disclosed and undisclosed communications or information concern the same subject matter; and (3) they ought in fairness to be considered together. <p>(b) Inadvertent Disclosure. When made in a federal proceeding or to a federal office or agency, the disclosure does not operate as a waiver in a federal or state proceeding if:</p> <ol style="list-style-type: none"> (1) the disclosure is inadvertent; (2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and (3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following Federal Rule of Civil Procedure 26 (b)(5)(B). <p>(c) Disclosure Made in a State Proceeding. When the disclosure is made in a state proceeding and is not the subject of a state-court order concerning waiver, the disclosure does not operate as a waiver in a federal proceeding if the disclosure:</p> <ol style="list-style-type: none"> (1) would not be a waiver under this rule if it had been made in a federal proceeding; or (2) is not a waiver under the law of the state where the disclosure occurred. <p>(d) Controlling Effect of a Court Order. A federal court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court — in which event the disclosure is also not a waiver in any other federal or state proceeding.</p> <p>(e) Controlling Effect of a Party Agreement. An agreement on the effect of disclosure in a federal proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.</p> <p>(f) Controlling Effect of this Rule. Notwithstanding Rules 101 and 1101, this rule applies to state proceedings and to federal court-annexed and federal court-mandated arbitration proceedings, in the circumstances set out in the rule. And notwithstanding Rule 501, this rule applies even if state law provides the rule of decision.</p>	<p>writing.</p> <p>Rule 502. Identity of informer.</p> <p>(a) Rule of privilege. The United States or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law.</p> <p>(b) Who may claim the privilege. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished.</p> <p>(c) Exceptions and limitations.</p> <ol style="list-style-type: none"> (1) Voluntary disclosure; informer a witness. No privilege exists under this rule if the identity of the informer or the informer's interest in the subject matter of the informer's communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the public entity. (2) Testimony on relevant issue. If it appears in the case that an informer may be able to give testimony relevant to any issue in a criminal case or to a fair determination of a material issue on the merits in a civil case to which a public entity is a party, and the public entity invokes the privilege, the court shall give the public entity an opportunity to show facts relevant to determining whether the informer can, in fact, supply that testimony. <p>If the Court finds that the informer should be required to give the testimony, and the public entity elects not to disclose the informer's identity, the court on motion of the defendant in a criminal case shall dismiss the charges to which the testimony would relate, and the court may do so on its own motion. In civil cases, the court may make any order that justice requires.</p>
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<p>(g) Definitions. In this rule:</p> <p>(1) “attorney-client privilege” means the protection that applicable law provides for confidential attorney-client communications; and</p> <p>(2) “work-product protection” means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.</p>	
<p>No Federal Counterpart</p>	<p>Rule 503. Waiver of Privilege by voluntary disclosure.</p> <p>(a) General rule. A person upon whom these rules confer a privilege against disclosure waives the privilege if the person or the person's predecessor while the holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter. This rule does not apply if the disclosure itself is privileged.</p> <p>(b) Joint holders. Where two or more persons are joint holders of a privilege, a waiver of the right of a particular joint holder to claim the privilege does not affect the right of another joint holder to claim the privilege.</p>
<p>No Federal Counterpart</p>	<p>Rule 504. Privileged matter disclosed under compulsion or without opportunity to claim the privilege.</p> <p>A claim of privilege is not defeated by a disclosure which was (a) compelled erroneously or (b) made without opportunity to claim the privilege.</p>
<p>No Federal Counterpart</p>	<p>Rule 505. Comment upon or inference from claim of privilege.</p> <p>The claim of a privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by the court or counsel. No inference may be drawn therefrom.</p>
<p>Article VI - Witnesses</p>	<p>Article VI - Witnesses</p>
<p>Rule 601. Competency to Testify in General</p> <p>Every person is competent to be a witness unless these rules provide otherwise. But in a civil case, state law governs the witness’s competency regarding a claim or defense for which state law supplies the rule of decision.</p>	<p>Rule 601. Competency in general; disqualification.</p> <p>(a) General rule competency. Every person is competent to be a witness except as otherwise provided in these rules.</p> <p>(b) Disqualification of witnesses. A person is disqualified to be a witness if the court finds that (1) the witness is incapable of expression concerning the matter so as to be understood by the judge and jury either directly or through interpretation by one who can understand the witness or (2) the witness is incapable of understanding the duty of a witness to tell the truth.</p>
<p>Rule 602. Need for Personal Knowledge</p> <p>A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove</p>	<p>Rule 602. Lack of personal knowledge.</p> <p>A witness may not testify as to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.</p>

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<p>personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.</p>	<p>Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.</p>
<p>Rule 603. Oath or Affirmation to Testify Truthfully Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness's conscience.</p>	<p>Rule 603. Oath or affirmation. Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.</p>
<p>Rule 604. Interpreter An interpreter must be qualified and must give an oath or affirmation to make a true translation.</p>	<p>Rule 604. Interpreters. An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.</p>
<p>Rule 605. Judge's Competency as a Witness The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.</p>	<p>Rule 605. Competency of judge as witness. The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.</p>
<p>Rule 606. Juror's Competency as a Witness (a) At the Trial. A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the court must give a party an opportunity to object outside the jury's presence. (b) During an Inquiry into the Validity of a Verdict or Indictment. (1) Prohibited Testimony or Other Evidence. During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters. (2) Exceptions. A juror may testify about whether: (A) extraneous prejudicial information was improperly brought to the jury's attention; (B) an outside influence was improperly brought to bear on any juror; or (C) a mistake was made in entering the verdict on the verdict form.</p>	<p>Rule 606. Competency of juror as witness. (a) At the trial. A member of the jury may not be called or testify as a witness before that jury in the trial of the case in which the juror is sitting. If the juror is called to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury. (b) Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes. However, as an exception to this subdivision, a juror may testify and an affidavit or evidence of any kind be received as to any matter or statement concerning only the following questions, whether occurring during the course of the jury's deliberations or not: (1) whether extraneous prejudicial information was improperly brought to the jury's attention; or (2) whether any outside influence was brought to bear upon any juror; or (3) whether any juror has been induced to assent to any general or special verdict, or finding on any question submitted to them by the court, by a resort to the determination of chance.</p>
<p>Rule 607. Who May Impeach a Witness</p>	<p>Rule 607. Who may impeach; party not bound by testimony.</p>

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<p>Any party, including the party that called the witness, may attack the witness's credibility.</p>	<p>(a) The credibility of a witness may be attacked by any party, including the party calling the witness. (b) No party is bound by the testimony of any witness.</p>
<p>Rule 608. A Witness's Character for Truthfulness or Untruthfulness</p> <p>(a) Reputation or Opinion Evidence. A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.</p> <p>(b) Specific Instances of Conduct. Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:</p> <ol style="list-style-type: none"> (1) the witness; or (2) another witness whose character the witness being cross-examined has testified about. <p>By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.</p>	<p>Rule 608. Evidence of character and conduct of witness.</p> <p>(a) Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.</p> <p>(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.</p> <p>The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the witness' privilege against self-incrimination when examined with respect to matters which relate only to credibility.</p>
<p>Rule 609. Impeachment by Evidence of a Criminal Conviction</p> <p>(a) In General. The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:</p> <ol style="list-style-type: none"> (1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence: <ol style="list-style-type: none"> (A) must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and (B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and (2) for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving — or the witness's admitting — a dishonest act or false statement. 	<p>Rule 609. Impeachment by evidence of conviction of crime.</p> <p>For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime is not admissible.</p>

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<p>(b) Limit on Using the Evidence After 10 Years. This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:</p> <p>(1) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and</p> <p>(2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.</p> <p>(c) Effect of a Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible if:</p> <p>(1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or</p> <p>(2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.</p> <p>(d) Juvenile Adjudications. Evidence of a juvenile adjudication is admissible under this rule only if:</p> <p>(1) it is offered in a criminal case;</p> <p>(2) the adjudication was of a witness other than the defendant;</p> <p>(3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and</p> <p>(4) admitting the evidence is necessary to fairly determine guilt or innocence.</p> <p>(e) Pendency of an Appeal. A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.</p>	
<p>Rule 610. Religious Beliefs or Opinions Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.</p>	<p>Rule 610. Religious beliefs or opinions. Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by their nature the witness' credibility is impaired or enhanced.</p>
<p>Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence</p> <p>(a) Control by the Court; Purposes. The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:</p> <p>(1) make those procedures effective for determining the truth;</p> <p>(2) avoid wasting time; and</p> <p>(3) protect witnesses from harassment or undue embarrassment.</p> <p>(b) Scope of Cross-Examination. Cross-examination</p>	<p>Rule 611. Mode and order of interrogation and presentation; re-examination and recall; confrontation.</p> <p>(a) Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.</p> <p>(b) Scope of cross-examination.</p>

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<p>should not go beyond the subject matter of the direct examination and matters affecting the witness's credibility. The court may allow inquiry into additional matters as if on direct examination.</p> <p>(c) Leading Questions. Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:</p> <ul style="list-style-type: none"> (1) on cross-examination; and (2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party. 	<p>(1) Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.</p> <p>(2) Evidence developed on cross-examination may be considered by the trier of fact as proof of any fact in issue in the case.</p> <p>(c) Leading questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.</p> <p>(d) Re-examination and recall. A witness may be re-examined as to the same matters to which the witness testified only in the discretion of the court, but without exception the witness may be re-examined as to any new matter brought out during cross-examination. After the examination of the witness has been concluded by all the parties to the action, that witness may be recalled only in the discretion of the court. This rule shall not limit the right of any party to recall a witness in rebuttal.</p> <p>(e) Confrontation. Except as otherwise provided by constitution, statute, these rules, or other rules applicable to the courts of this state, at the trial of an action, a witness can be heard only in the presence and subject to the examination of all the parties to the action, if they choose to attend and examine.</p>
<p>Rule 612. Writing Used to Refresh a Witness's Memory</p> <p>(a) Scope. This rule gives an adverse party certain options when a witness uses a writing to refresh memory:</p> <ul style="list-style-type: none"> (1) while testifying; or (2) before testifying, if the court decides that justice requires the party to have those options. <p>(b) Adverse Party's Options; Deleting Unrelated Matter. Unless 18 U.S.C. § 3500 provides otherwise in a criminal case, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony. If the producing party claims that the writing includes unrelated matter, the court must examine the writing in camera, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record.</p> <p>(c) Failure to Produce or Deliver the Writing. If a writing is not produced or is not delivered as ordered, the court may issue any appropriate order. But if the prosecution does not comply in a criminal case, the court</p>	<p>Rule 612. Writings used to refresh memory.</p> <p>If a witness uses a writing to refresh memory for the purpose of testifying, either</p> <ul style="list-style-type: none"> (1) while testifying, or (2) before testifying, if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce into evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objection shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the

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<p>must strike the witness’s testimony or — if justice so requires — declare a mistrial.</p>	<p>testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.</p>
<p>Rule 613. Witness’s Prior Statement (a) Showing or Disclosing the Statement During Examination. When examining a witness about the witness’s prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party’s attorney. (b) Extrinsic Evidence of a Prior Inconsistent Statement. Extrinsic evidence of a witness’s prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party’s statement under Rule 801(d)(2).</p>	<p>Rule 613. Prior statements of witnesses. (a) Examining witness concerning prior statement. In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel. (b) Extrinsic evidence of prior inconsistent statement of witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).</p>
<p>Rule 614. Court’s Calling or Examining a Witness (a) Calling. The court may call a witness on its own or at a party’s request. Each party is entitled to cross-examine the witness. (b) Examining. The court may examine a witness regardless of who calls the witness. (c) Objections. A party may object to the court’s calling or examining a witness either at that time or at the next opportunity when the jury is not present.</p>	<p>Rule 614. Calling and interrogation of witnesses by court. (a) Calling by court. The court may, on its own motion or at the suggestion of a party, call witnesses and all parties are entitled to cross-examine witnesses thus called. (b) Interrogation by court. The court may interrogate witnesses, whether called by itself or a party; provided, however, that in trials before a jury, the court’s questioning must be cautiously guarded so as not to constitute express or implied comment. (c) Objections. Objections to the calling of a witness by the court or to the interrogation by it may be made at the time or at the next available opportunity when the jury is not present.</p>
<p>Rule 615. Excluding Witnesses At a party’s request, the court must order witnesses excluded so that they cannot hear other witnesses’ testimony. Or the court may do so on its own. But this rule does not authorize excluding: (a) a party who is a natural person; (b) an officer or employee of a party that is not a natural person, after being designated as the party’s representative by its attorney; (c) a person whose presence a party shows to be essential to presenting the party’s claim or defense; or (d) a person authorized by statute to be present.</p>	<p>Rule 615. Exclusion of witnesses. At the request of a party, the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the party’s cause.</p>
<p>Article VII-Opinions and Expert Testimony</p>	<p>Article VII-Opinions and expert testimony</p>
<p>Rule 701. Opinion Testimony by Lay Witnesses</p>	<p>Rule 701. Opinion testimony by lay witnesses</p>

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<p>If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:</p> <p>(a) rationally based on the witness’s perception;</p> <p>(b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue; and</p> <p>(c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.</p>	<p>If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.</p>
<p>Rule 702. Testimony by Expert Witnesses</p> <p>A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:</p> <p>(a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;</p> <p>(b) the testimony is based on sufficient facts or data;</p> <p>(c) the testimony is the product of reliable principles and methods; and</p> <p>(d) the expert has reliably applied the principles and methods to the facts of the case.</p>	<p>Rule 702. Testimony by experts.</p> <p>If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.</p>
<p>Rule 703. Bases of an Expert’s Opinion Testimony</p> <p>An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.</p>	<p>Rule 703. Basis of opinion testimony by experts.</p> <p>The facts or data in a particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in a particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.</p>
<p>Rule 704. Opinion on an Ultimate Issue</p> <p>(a) In General — Not Automatically Objectionable.</p> <p>An opinion is not objectionable just because it embraces an ultimate issue.</p> <p>(b) Exception. In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.</p>	<p>Rule 704. Opinions on ultimate issue.</p> <p>Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.</p> <p>But see, MCA 46-14-213 (2) - ... [w]hen a psychiatrist, licensed clinical psychologist, or advanced practice registered nurse who has examined the defendant testifies concerning the defendant's mental condition . . . [he or she] may not offer an opinion to the jury on the ultimate issue of whether the defendant did or did not have a particular state of mind that is an element of the offense charged.</p>
<p>Rule 705. Disclosing the Facts or Data Underlying an Expert’s Opinion</p> <p>Unless the court orders otherwise, an expert may state an opinion — and give the reasons for it — without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-</p>	<p>Rule 705. Disclosure of facts or data underlying expert opinion.</p> <p>The expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event</p>

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<p>examination.</p>	<p>be required to disclose the underlying facts or data on cross-examination.</p>
<p>Rule 706. Court-Appointed Expert Witnesses</p> <p>(a) Appointment Process. On a party’s motion or on its own, the court may order the parties to show cause why expert witnesses should not be appointed and may ask the parties to submit nominations. The court may appoint any expert that the parties agree on and any of its own choosing. But the court may only appoint someone who consents to act.</p> <p>(b) Expert’s Role. The court must inform the expert of the expert’s duties. The court may do so in writing and have a copy filed with the clerk or may do so orally at a conference in which the parties have an opportunity to participate. The expert:</p> <ul style="list-style-type: none"> (1) must advise the parties of any findings the expert makes; (2) may be deposed by any party; (3) may be called to testify by the court or any party; and (4) may be cross-examined by any party, including the party that called the expert. <p>(c) Compensation. The expert is entitled to a reasonable compensation, as set by the court. The compensation is payable as follows:</p> <ul style="list-style-type: none"> (1) in a criminal case or in a civil case involving just compensation under the Fifth Amendment, from any funds that are provided by law; and (2) in any other civil case, by the parties in the proportion and at the time that the court directs — and the compensation is then charged like other costs. <p>(d) Disclosing the Appointment to the Jury. The court may authorize disclosure to the jury that the court appointed the expert.</p> <p>(e) Parties’ Choice of Their Own Experts. This rule does not limit a party in calling its own experts.</p>	<p>No Montana Counterpart</p>
<p>Article VIII - Hearsay</p>	<p>Article VIII - Hearsay</p>
<p>Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay</p> <p>The following definitions apply under this article:</p> <p>(a) Statement. “Statement” means a person’s oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.</p> <p>(b) Declarant. “Declarant” means the person who made the statement.</p> <p>(c) Hearsay. “Hearsay” means a statement that:</p> <ul style="list-style-type: none"> (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the 	<p>Rule 801. Definitions.</p> <p>The following definitions apply under this article:</p> <p>(a) Statement. A statement is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.</p> <p>(b) Declarant. A declarant is a person who makes a statement.</p> <p>(c) Hearsay. Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.</p>

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<p>matter asserted in the statement.</p> <p>(d) Statements That Are Not Hearsay. A statement that meets the following conditions is not hearsay:</p> <p style="padding-left: 20px;">(1) A Declarant-Witness's Prior Statement. The declarant testifies and is subject to cross-examination about a prior statement, and the statement:</p> <p style="padding-left: 40px;">(A) is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;</p> <p style="padding-left: 40px;">(B) is consistent with the declarant's testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or</p> <p style="padding-left: 40px;">(C) identifies a person as someone the declarant perceived earlier.</p> <p style="padding-left: 20px;">(2) An Opposing Party's Statement. The statement is offered against an opposing party and:</p> <p style="padding-left: 40px;">(A) was made by the party in an individual or representative capacity;</p> <p style="padding-left: 40px;">(B) is one the party manifested that it adopted or believed to be true;</p> <p style="padding-left: 40px;">(C) was made by a person whom the party authorized to make a statement on the subject;</p> <p style="padding-left: 40px;">(D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or</p> <p style="padding-left: 40px;">(E) was made by the party's coconspirator during and in furtherance of the conspiracy.</p> <p style="padding-left: 20px;">The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).</p>	<p>(d) Statements which are not hearsay. A statement is not hearsay if:</p> <p style="padding-left: 20px;">(1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of subsequent fabrication, improper influence or motive, or (C) one of identification of a person made after perceiving the person; or</p> <p style="padding-left: 20px;">(2) Admission by party-opponent. The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of that relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.</p>
<p>Rule 802. The Rule Against Hearsay</p> <p>Hearsay is not admissible unless any of the following provides otherwise:</p> <ul style="list-style-type: none"> • a federal statute; • these rules; or • other rules prescribed by the Supreme Court. 	<p>Rule 802. Hearsay rule.</p> <p>Hearsay is not admissible except as otherwise provided by statute, these rules, or other rules applicable in the courts of this state.</p>
<p>Rule 803. Exceptions to the Rule Against Hearsay — Regardless of Whether the Declarant Is Available as a Witness</p> <p>The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:</p> <p style="padding-left: 20px;">(1) Present Sense Impression. A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.</p> <p style="padding-left: 20px;">(2) Excited Utterance. A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.</p> <p style="padding-left: 20px;">(3) Then-Existing Mental, Emotional, or Physical</p>	<p>Rule 803. Hearsay exceptions: availability of declarant immaterial.</p> <p>The following are not excluded by the hearsay rule, even though the declarant is available as a witness:</p> <p style="padding-left: 20px;">(1) Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.</p> <p style="padding-left: 20px;">(2) Excited utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.</p> <p style="padding-left: 20px;">(3) Then-existing mental, emotional, or physical</p>

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<p>Condition. A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.</p>	<p>condition. A statement of the declarant's then-existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed.</p>
<p>(4) Statement Made for Medical Diagnosis or Treatment. A statement that:</p> <p>(A) is made for — and is reasonably pertinent to — medical diagnosis or treatment; and</p> <p>(B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.</p>	<p>(4) Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.</p>
<p>(5) Recorded Recollection. A record that:</p> <p>(A) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;</p> <p>(B) was made or adopted by the witness when the matter was fresh in the witness's memory; and</p> <p>(C) accurately reflects the witness's knowledge.</p> <p>If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.</p>	<p>(5) Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.</p>
<p>(6) Records of a Regularly Conducted Activity. A record of an act, event, condition, opinion, or diagnosis if:</p> <p>(A) the record was made at or near the time by — or from information transmitted by — someone with knowledge;</p> <p>(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;</p> <p>(C) making the record was a regular practice of that activity;</p> <p>(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and</p> <p>(E) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.</p>	<p>(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnosis, made at or near the time of the acts, events, conditions, opinions, or diagnosis, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. However, written reports from the Montana state crime laboratory are within this exception to the hearsay rule when the state has notified the court and opposing parties in writing of its intention to offer such report or reports in evidence at trial in sufficient time for the party not offering the report or reports (1) to obtain the depositions before trial of the person or persons responsible for compiling such reports, or (2) to subpoena the attendance of said persons at trial. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.</p>
<p>(7) Absence of a Record of a Regularly Conducted Activity. Evidence that a matter is not included in a record described in paragraph (6) if:</p> <p>(A) the evidence is admitted to prove that the matter did not occur or exist;</p>	<p>(7) Absence of entry in records kept in accordance with the provisions of paragraph (6). Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to</p>

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<p>(B) a record was regularly kept for a matter of that kind; and</p> <p>(C) neither the possible source of the information nor other circumstances indicate a lack of trustworthiness.</p>	<p>prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.</p>
<p>8) Public Records. A record or statement of a public office if:</p> <p>(A) it sets out:</p> <p style="padding-left: 20px;">(i) the office’s activities;</p> <p style="padding-left: 20px;">(ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or</p> <p style="padding-left: 20px;">(iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and</p> <p>(B) neither the source of information nor other circumstances indicate a lack of trustworthiness.</p>	<p>(8) Public records and reports. To the extent not otherwise provided in this paragraph, records, reports, statements, or data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law. The following are not within this exception to the hearsay rule: (i) investigative reports by police and other law enforcement personnel; (ii) investigative reports prepared by or for a government, a public office, or an agency when offered by it in a case in which it is a party; (iii) factual findings offered by the government in criminal cases; (iv) factual findings resulting from special investigation of a particular complaint, case, or incident; and (v) any matter as to which the sources of information or other circumstances indicate lack of trustworthiness.</p>
<p>(9) Public Records of Vital Statistics. A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.</p>	<p>(9) Records of vital statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.</p>
<p>(10) Absence of a Public Record. Testimony — or a certification under Rule 902 — that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:</p> <p>(A) the record or statement does not exist; or</p> <p>(B) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.</p>	<p>(10) Absence of public record or entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement or data compilation, or entry.</p>
<p>(11) Records of Religious Organizations Concerning Personal or Family History. A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.</p>	<p>(11) Records of religious organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.</p>
<p>(12) Certificates of Marriage, Baptism, and Similar Ceremonies. A statement of fact contained in a certificate:</p> <p>(A) made by a person who is authorized by a religious organization or by law to perform the act certified;</p> <p>(B) attesting that the person performed a marriage or similar ceremony or administered a sacrament; and</p> <p>(C) purporting to have been issued at the time of the act</p>	<p>(12) Marriage, baptismal, and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a member of the clergy, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been</p>

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<p>or within a reasonable time after it.</p>	<p>issued at the time of the act or within a reasonable time thereafter.</p>
<p>(13) Family Records. A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.</p>	<p>(13) Family records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.</p>
<p>(14) Records of Documents That Affect an Interest in Property. The record of a document that purports to establish or affect an interest in property if:</p> <p>(A) the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;</p> <p>(B) the record is kept in a public office; and</p> <p>(C) a statute authorizes recording documents of that kind in that office.</p>	<p>(14) Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.</p>
<p>(15) Statements in Documents That Affect an Interest in Property. A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document’s purpose — unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.</p>	<p>(15) Statements in documents affecting an interest in property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.</p>
<p>(16) Statements in Ancient Documents. A statement in a document that is at least 20 years old and whose authenticity is established.</p>	<p>(16) Statements in ancient documents. Statements in a document in existence twenty years or more, the authenticity of which is established.</p>
<p>(17) Market Reports and Similar Commercial Publications. Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.</p>	<p>(17) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.</p>
<p>(18) Statements in Learned Treatises, Periodicals, or Pamphlets. A statement contained in a treatise, periodical, or pamphlet if:</p> <p>(A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and</p> <p>(B) the publication is established as a reliable authority by the expert’s admission or testimony, by another expert’s testimony, or by judicial notice.</p> <p>If admitted, the statement may be read into evidence but not received as an exhibit.</p>	<p>(18) Learned treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.</p>
<p>(19) Reputation Concerning Personal or Family History. A reputation among a person’s family by blood, adoption, or marriage — or among a person’s associates or in the community — concerning the person’s birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.</p>	<p>(19) Reputation concerning personal or family history. Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce or dissolution of marriage, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.</p>

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<p>(20) Reputation Concerning Boundaries or General History. A reputation in a community — arising before the controversy — concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation.</p>	<p>(20) Reputation concerning boundaries or general history. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.</p>
<p>(21) Reputation Concerning Character. A reputation among a person’s associates or in the community concerning the person’s character.</p>	<p>(21) Reputation as to character. Reputation of a person’s character among associates or in the community.</p>
<p>(22) Judgment of a Previous Conviction. Evidence of a final judgment of conviction if:</p> <p>(A) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;</p> <p>(B) the conviction was for a crime punishable by death or by imprisonment for more than a year;</p> <p>(C) the evidence is admitted to prove any fact essential to the judgment; and</p> <p>(D) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.</p> <p>The pendency of an appeal may be shown but does not affect admissibility.</p>	<p>(22) Judgment of previous conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the prosecution in a criminal prosecution, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.</p>
<p>(23) Judgments Involving Personal, Family, or General History, or a Boundary. A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:</p> <p>(A) was essential to the judgment; and</p> <p>(B) could be proved by evidence of reputation.</p>	<p>(23) Judgment as to personal, family, or general history, or boundaries. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.</p>
<p>(24) [Other Exceptions .] [Transferred to Rule 807.]</p>	<p>(24) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having comparable circumstantial guarantees of trustworthiness.</p>
<p>Rule 804. Hearsay Exceptions; Declarant Unavailable</p> <p>(a) Criteria for Being Unavailable. A declarant is considered to be unavailable as a witness if the declarant:</p> <p>(1) is exempted from testifying about the subject matter of the declarant’s statement because the court rules that a privilege applies;</p> <p>(2) refuses to testify about the subject matter despite a court order to do so;</p> <p>(3) testifies to not remembering the subject matter;</p> <p>(4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or</p> <p>(5) is absent from the trial or hearing and the statement’s proponent has not been able, by process or other reasonable means, to procure:</p> <p>(A) the declarant’s attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or</p> <p>(B) the declarant’s attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or</p>	<p>Rule 804. Hearsay exceptions: declarant unavailable.</p> <p>(a) Definition of unavailability. Unavailability as a witness includes situations in which the declarant:</p> <p>(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant’s statement; or</p> <p>(2) persists in refusing to testify concerning the subject matter of the declarant’s statement despite an order of the court to do so; or</p> <p>(3) testifies to a lack of memory of the subject matter of the declarant’s statement; or</p> <p>(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or</p> <p>(5) is absent from the hearing and the proponent of the declarant’s statement has been unable to procure the declarant’s attendance by process or other reasonable means.</p>

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<p>(4). But this subdivision (a) does not apply if the statement’s proponent procured or wrongfully caused the declarant’s unavailability as a witness in order to prevent the declarant from attending or testifying.</p>	<p>A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.</p>
<p>(b) The Exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:</p>	<p>(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:</p>
<p>(1) Former Testimony. Testimony that: (A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and (B) is now offered against a party who had — or, in a civil case, whose predecessor in interest had — an opportunity and similar motive to develop it by direct, cross-, or redirect examination.</p>	<p>(1) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, (A) in civil actions and proceedings, at the instance of or against a party with an opportunity to develop the testimony by direct, cross, or redirect examination, with motive and interest similar to those of the party against whom now offered; and (B) in criminal actions and proceedings, if the party against whom the testimony is now offered had an opportunity and similar motive to develop the testimony by direct, cross, and redirect examination</p>
<p>(2) Statement Under the Belief of Imminent Death. In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant’s death to be imminent, made about its cause or circumstances.</p>	<p>(2) Statement under belief of impending death. A statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstance of what the declarant believed to be impending death.</p>
<p>(3) Statement Against Interest. A statement that: (A) a reasonable person in the declarant’s position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant’s proprietary or pecuniary interest or had so great a tendency to invalidate the declarant’s claim against someone else or to expose the declarant to civil or criminal liability; and (B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.</p>	<p>(3) Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another or to make the declarant an object of hatred, ridicule, or disgrace, that a reasonable person in the declarant's position would not have made the statement unless the declarant believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.</p>
<p>(4) Statement of Personal or Family History. A statement about: (A) the declarant’s own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage [sic], or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or (B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person’s family that the declarant’s information is likely to be accurate.</p>	<p>(4) Statement of personal or family history. (A) A statement concerning the declarant's own birth, adoption, marriage, divorce or dissolution of marriage, legitimacy, relationship by blood, or family history, even though the declarant had no means of acquiring the personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption or marriage or was so intimately associated with the other's family as to be likely to</p>

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	<p>have accurate information concerning the matter declared.</p>
<p>(5) <i>[Other Exceptions .]</i> [Transferred to Rule 807.]</p>	<p>(5) <i>Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having comparable circumstantial guarantees of trustworthiness.</i></p>
<p>(6) <i>Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability.</i> A statement offered against a party that wrongfully caused — or acquiesced in wrongfully causing — the declarant's unavailability as a witness, and did so intending that result.</p>	<p>No Montana Counterpart, but see MRE 804(a).</p>
<p>Rule 805. Hearsay Within Hearsay Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.</p>	<p>Rule 805. Hearsay within hearsay. Hearsay included within hearsay is not excluded under the hearsay rule if each part of a combined statement conforms with an exception to the hearsay rule provided in these rules.</p>
<p>Rule 806. Attacking and Supporting the Declarant's Credibility When a hearsay statement — or a statement described in Rule 801(d)(2)(C), (D), or (E) — has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.</p>	<p>Rule 806. Attacking and supporting the credibility of declarant. When a hearsay statement, or a statement defined by Rule 801(d)(2)(C), (D), or (E) has been admitted in evidence, the credibility of the declarant may be attacked and, if attacked, may be supported by any evidence which would be admissible for those purposes if the declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.</p>
<p>Rule 807. Residual Exception (a) In General. Under the following circumstances, a hearsay statement is not excluded by the rule against hearsay even if the statement is not specifically covered by a hearsay exception in Rule 803 or 804: (1) the statement has equivalent circumstantial guarantees of trustworthiness; (2) it is offered as evidence of a material fact; (3) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and (4) admitting it will best serve the purposes of these rules and the interests of justice. (b) Notice. The statement is admissible only if, before the trial or hearing, the proponent gives an adverse party reasonable notice of the intent to offer the statement and its particulars, including the declarant's name and address, so that the party has a fair opportunity to meet it.</p>	<p><i>See</i> MRE 803(24 and 804(b)(5))</p>

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Article IX – Authentication and Identification	Article IX – Authentication and Identification
Rule 901. Authenticating or Identifying Evidence	Rule 901. Requirement of authentication or identification.
<p>(a) In General. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.</p>	<p>(a) General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.</p>
<p>(b) Examples. The following are examples only — not a complete list — of evidence that satisfies the requirement:</p>	<p>(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:</p>
<p>(1) Testimony of a Witness with Knowledge. Testimony that an item is what it is claimed to be.</p>	<p>(1) Testimony of witness with knowledge. Testimony that a matter is what it is claimed to be.</p>
<p>(2) Nonexpert Opinion About Handwriting. A nonexpert’s opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.</p>	<p>(2) Nonexpert opinion on handwriting. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.</p>
<p>(3) Comparison by an Expert Witness or the Trier of Fact. A comparison with an authenticated specimen by an expert witness or the trier of fact.</p>	<p>(3) Comparison by trier or expert witness. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.</p>
<p>(4) Distinctive Characteristics and the Like. The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.</p>	<p>(4) Distinctive characteristics and the like. Appearance, contents, substance, internal patterns or other distinctive characteristics, taken in conjunction with circumstances.</p>
<p>(5) Opinion About a Voice. An opinion identifying a person’s voice — whether heard firsthand or through mechanical or electronic transmission or recording — based on hearing the voice at any time under circumstances that connect it with the alleged speaker.</p>	<p>(5) Voice identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.</p>
<p>(6) Evidence About a Telephone Conversation. For a telephone conversation, evidence that a call was made to the number assigned at the time to:</p> <p style="padding-left: 20px;">(A) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or</p> <p style="padding-left: 20px;">(B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.</p>	<p>(6) Telephone conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.</p>
<p>(7) Evidence About Public Records. Evidence that:</p> <p style="padding-left: 20px;">(A) a document was recorded or filed in a public office as authorized by law; or</p> <p style="padding-left: 20px;">(B) a purported public record or statement is from</p>	<p>(7) Public records or reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data</p>

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<p>the office where items of this kind are kept.</p>	<p>compilation, in any form, is from the public office where items of this nature are kept.</p>
<p>(8) Evidence About Ancient Documents or Data Compilations. For a document or data compilation, evidence that it: (A) is in a condition that creates no suspicion about its authenticity; (B) was in a place where, if authentic, it would likely be; and (C) is at least 20 years old when offered.</p>	<p>(8) Ancient documents or data compilation. Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 20 years or more at the time it is offered.</p>
<p>(9) Evidence About a Process or System. Evidence describing a process or system and showing that it produces an accurate result.</p>	<p>(9) Process or system. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.</p>
<p>(10) Methods Provided by a Statute or Rule. Any method of authentication or identification allowed by a federal statute or a rule prescribed by the Supreme Court.</p>	<p>(10) Method provided by statute or rule. Any method of authentication or identification provided by statute, these rules, or other rules applicable in the courts of this state.</p>
<p>Rule 902. Evidence That Is Self-Authenticating The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:</p>	<p>Rule 902. Self-authentication. Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:</p>
<p>(1) Domestic Public Documents That Are Sealed and Signed. A document that bears: (A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and (B) a signature purporting to be an execution or attestation.</p>	<p>(1) Domestic public documents under seal. A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.</p>
<p>(2) Domestic Public Documents That Are Not Sealed but Are Signed and Certified. A document that bears no seal if: (A) it bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and (B) another public officer who has a seal and official duties within that same entity certifies under seal — or its equivalent — that the signer has the official capacity and that the signature is genuine.</p>	<p>(2) Domestic public documents not under seal. Except as otherwise provided by statute, a document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.</p>
<p>(3) Foreign Public Documents. A document that purports to be signed or attested by a person who is authorized by a foreign country’s law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester — or of any foreign official whose certificate of genuineness relates to the signature or</p>	<p>(3) Foreign public documents. A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign</p>

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<p>attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either:</p> <p>(A) order that it be treated as presumptively authentic without final certification; or</p> <p>(B) allow it to be evidenced by an attested summary with or without final certification.</p>	<p>official whose certificate of genuineness of signature and official position relates to the execution of attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If a reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.</p>
<p>(4) <i>Certified Copies of Public Records.</i> A copy of an official record — or a copy of a document that was recorded or filed in a public office as authorized by law — if the copy is certified as correct by:</p> <p>(A) the custodian or another person authorized to make the certification; or</p> <p>(B) a certificate that complies with Rule 902(1), (2), or (3), a federal statute, or a rule prescribed by the Supreme Court.</p>	<p>(4) Certified copies of public records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) or complying with any law of the United States or of this state.</p>
<p>(5) <i>Official Publications.</i> A book, pamphlet, or other publication purporting to be issued by a public authority.</p>	<p>(5) Official publications. Books, pamphlets, or other publications purporting to be issued by public authority.</p>
<p>(6) <i>Newspapers and Periodicals.</i> Printed material purporting to be a newspaper or periodical.</p>	<p>(6) Newspapers and periodicals. Printed materials purporting to be newspapers or periodicals.</p>
<p>(7) <i>Trade Inscriptions and the Like.</i> An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.</p>	<p>(7) Trade inscriptions and the like. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.</p>
<p>(8) <i>Acknowledged Documents.</i> A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.</p>	<p>(8) Acknowledged documents. Documents accompanied by a certificate of acknowledgement executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgements.</p>
<p>(9) <i>Commercial Paper and Related Documents.</i> Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.</p>	<p>(9) Commercial paper and related documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.</p>
<p>(10) <i>Presumptions Under a Federal Statute.</i> A signature, document, or anything else that a federal statute declares to be presumptively or prima facie genuine or authentic.</p>	<p>(10) Presumptions created by law. Any signature, document, or other matter declared by any law of the United States or of this state to be presumptively or prima facie genuine or authentic.</p>
<p>(11) <i>Certified Domestic Records of a Regularly Conducted Activity.</i> The original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person that complies with a federal statute or a rule prescribed by the Supreme Court. Before the trial or hearing, the</p>	<p>No Montana Counterpart.</p>

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<p>proponent must give an adverse party reasonable written notice of the intent to offer the record — and must make the record and certification available for inspection — so that the party has a fair opportunity to challenge them.</p>	
<p>(12) Certified Foreign Records of a Regularly Conducted Activity. In a civil case, the original or a copy of a foreign record that meets the requirements of Rule 902(11), modified as follows: the certification, rather than complying with a federal statute or Supreme Court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Rule 902(11).</p>	<p>No Montana Counterpart.</p>
<p>Rule 903. Subscribing Witness’s Testimony A subscribing witness’s testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity.</p>	<p>Rule 903. Subscribing witness' testimony unnecessary. The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.</p>
<p>Article X – Contents of Writings, Recordings and Photographs</p>	<p>Article X – Contents of Writings, Recordings and Photographs</p>
<p>Rule 1001. Definitions That Apply to This Article In this article: (a) A “writing” consists of letters, words, numbers, or their equivalent set down in any form. (b) A “recording” consists of letters, words, numbers, or their equivalent recorded in any manner. (c) A “photograph” means a photographic image or its equivalent stored in any form. (d) An “original” of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, “original” means any printout — or other output readable by sight — if it accurately reflects the information. An “original” of a photograph includes the negative or a print from it. (e) A “duplicate” means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.</p>	<p>Rule 1001. Definitions. For purposes of this article the following definitions are applicable: (1) Writings and recordings. Writings and recordings consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation. (2) Photographs. Photographs include still photographs, x-ray films, video tapes, and motion pictures. (3) Original. An original of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An original of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an original. (4) Duplicate. A duplicate is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original. (5) Copies of entries in the regular course of</p>

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	<p style="color: red;">business. A copy of an entry in the regular course of business consists of an entry in a writing kept in the regular course of business copied from another such writing by manual or mechanical means at or near the time of the transaction.</p>
<p>Rule 1002. Requirement of the Original An original writing, recording, or photograph is required in order to prove its content unless these rules or a federal statute provides otherwise.</p>	<p>Rule 1002. Requirement of original. To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided by statute, these rules, or other rules applicable in the courts of this state.</p>
<p>Rule 1003. Admissibility of Duplicates A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.</p>	<p>Rule 1003. Admissibility of duplicates, copies of certain entries. A duplicate, or copy of an entry in the regular course of business as defined in Rule 1001(5), is admissible to the same extent as an original unless: (1) a genuine question is raised as to the authenticity of the original; or (2) in the circumstances it would be unfair to admit the duplicate or copy of an entry in the regular course of business in lieu of the original; or (3) otherwise provided by statute.</p>
<p>Rule 1004. Admissibility of Other Evidence of Content An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if: (a) all the originals are lost or destroyed, and not by the proponent acting in bad faith; (b) an original cannot be obtained by any available judicial process; (c) the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or (d) the writing, recording, or photograph is not closely related to a controlling issue.</p>	<p>Rule 1004. Admissibility of other evidence of contents. The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if: (1) Originals lost or destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or (2) Original not obtainable. No original can be obtained by any available judicial process or procedure; or (3) Original in possession of opponent. At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing; or (4) Collateral matters. The writing, recording, or photograph is not closely related to a controlling issue.</p>
<p>Rule 1005. Copies of Public Records to Prove Content The proponent may use a copy to prove the content of an official record — or of a document that was recorded or filed in a public office as authorized by law — if these conditions are met: the record or document is otherwise admissible; and the copy is certified as correct in accordance with Rule 902(4) or is testified to be correct by a witness who has compared it with the original. If no such</p>	<p>Rule 1005. Public records. The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable</p>

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<p>copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.</p>	<p>diligence, then other evidence of the contents may be given</p>
<p>Rule 1006. Summaries to Prove Content The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.</p>	<p>Rule 1006. Summaries. The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.</p>
<p>Rule 1007. Testimony or Statement of a Party to Prove Content The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.</p>	<p>Rule 1007. Testimony or written admission of party. Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original.</p>
<p>Rule 1008. Functions of the Court and Jury Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. But in a jury trial, the jury determines — in accordance with Rule 104(b) — any issue about whether: (a) an asserted writing, recording, or photograph ever existed; (b) another one produced at the trial or hearing is the original; or (c) other evidence of content accurately reflects the content.</p>	<p>Rule 1008. Functions of court and jury. When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is for the court to determine in accordance with the provisions of Rule 104.</p>
<p>Article XI – Miscellaneous Rules</p>	<p>MRE has no Article XI. The appropriate comparison is to MRE 101.</p>
<p>Rule 1101. Applicability of the Rules (a) To Courts and Judges. These rules apply to proceedings before: · United States district courts; · United States bankruptcy and magistrate judges; · United States courts of appeals; · the United States Court of Federal Claims; and · the district courts of Guam, the Virgin Islands, and the Northern Mariana Islands. (b) To Cases and Proceedings. These rules apply in: · civil cases and proceedings, including bankruptcy, admiralty, and maritime cases; · criminal cases and proceedings; and · contempt proceedings, except those in which the court may act summarily. (c) Rules on Privilege. The rules on privilege apply to all</p>	<p>Rule 101. Scope (a) Proceedings generally. These rules govern all proceedings in all courts in the state of Montana with the exceptions stated in this rule. (b) Rules of privilege. The rules with respect to</p>

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<p>stages of a case or proceeding.</p> <p>(d) Exceptions. These rules — except for those on privilege — do not apply to the following:</p> <p>(1) the court’s determination, under Rule 104(a), on a preliminary question of fact governing admissibility;</p> <p>(2) grand-jury proceedings; and</p> <p>(3) miscellaneous proceedings such as:</p> <ul style="list-style-type: none"> · extradition or rendition; · issuing an arrest warrant, criminal summons, or search warrant; · a preliminary examination in a criminal case; · sentencing; · granting or revoking probation or supervised release; and · considering whether to release on bail or otherwise. <p>(e) Other Statutes and Rules. A federal statute or a rule prescribed by the Supreme Court may provide for admitting or excluding evidence independently from these rules.</p>	<p>privileges found in Article V apply at all stages of all actions, cases and proceedings.</p> <p>(c) Rules inapplicable. The rules (other than those with respect to privileges) do not apply in the following situations:</p> <p>(1) Preliminary questions of fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).</p> <p>(2) Grand jury. Proceedings before grand juries.</p> <p>(3) Miscellaneous proceedings. Proceedings for extradition or rendition; preliminary examinations and proceedings on applications for leave to file informations in criminal cases; sentencing; dispositional hearings in youth court proceedings; granting or revoking probation or parole; issuance of warrants for arrest, criminal summonses and notices to appear, and search warrants; and proceedings with respect to release on bail or otherwise.</p> <p>(4) Summary proceedings. Proceedings, other than motions for summary judgment, where the court is authorized by law to act summarily.</p> <p>(5) Other miscellaneous proceedings. Ex parte matters; and proceedings, when authorized by law, which are uncontested or nonadversary.</p>
<p>Rule 1102. Amendments</p> <p>These rules may be amended as provided in 28 U.S.C. § 2072.</p>	<p>No Montana Counterpart</p>
<p>Rule 1103. Title</p> <p>These rules may be cited as the Federal Rules of Evidence.</p>	<p>Rule 100. Short title.</p> <p>These rules may be known and cited as the Montana Rules of Evidence.</p>