

## HOUSE BILL NO. 77

INTRODUCED BY J. MANGAN

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN ENHANCED PENALTY FOR THE CRIMINAL SALE  
5 OF DANGEROUS DRUGS ON, OR WITHIN 1,000 FEET OF, THE PREMISES OF A MUNICIPAL HOUSING  
6 AUTHORITY HOUSING PROJECT; PROVIDING THAT IT IS NOT A DEFENSE THAT THE OFFENDER DID  
7 NOT KNOW THAT THE OFFENDER WAS WITHIN 1,000 FEET OF A HOUSING PROJECT; AND AMENDING  
8 SECTIONS 45-2-103, 45-9-101, AND 46-18-205, MCA."

9

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

11

12 **Section 1.** Section 45-2-103, MCA, is amended to read:

13 **"45-2-103. General requirements of criminal act and mental state.** (1) Except for ~~deliberate~~  
14 ~~homicide as defined in 45-5-102(1)(b)~~ or an offense that involves absolute liability or when the statute  
15 defining the offense clearly indicates a legislative purpose to exempt an element of the offense from the  
16 requirements of this subsection, a person is not guilty of an offense unless, with respect to each element  
17 described by the statute defining the offense, a person acts while having one of the mental states of  
18 knowingly, negligently, or purposely.

19 (2) In deliberate homicide under 45-5-102(1)(b), the offender must act while having the mental  
20 state of purposely or knowingly only as to the underlying felony referred to in 45-5-102(1)(b).

21 (3) The existence of a mental state may be inferred from the acts of the accused and the facts  
22 and circumstances connected with the offense.

23 (4) If the statute defining an offense prescribes a particular mental state with respect to the  
24 offense as a whole without distinguishing among the elements of the offense, the prescribed mental state  
25 applies to each element.

26 (5) Knowledge that certain conduct constitutes an offense or knowledge of the existence,  
27 meaning, or application of the statute defining an offense is not an element of the offense unless the  
28 statute clearly defines it as an element.

29 (6) A person's reasonable belief that the person's conduct does not constitute an offense is a  
30 defense if:

1 (a) the offense is defined by an administrative regulation or order that is not known to the person  
2 and has not been published or otherwise made reasonably available to the person and if the person could  
3 not have acquired the knowledge by the exercise of due diligence pursuant to facts known to the person;

4 (b) the person acts in reliance upon a statute that later is determined to be invalid;

5 (c) the person acts in reliance upon an order or opinion of the Montana supreme court or a United  
6 States appellate court later overruled or reversed; or

7 (d) the person acts in reliance upon an official interpretation of the statute, regulation, or order  
8 defining the offense made by a public officer or agency legally authorized to interpret the statute.

9 (7) If a person's reasonable belief is a defense under subsection (6), nevertheless the person may  
10 be convicted of an included offense of which the person would be guilty if the law were as the person  
11 believed it to be.

12 (8) A defense based upon this section is an affirmative defense."  
13

14 **Section 2.** Section 45-9-101, MCA, is amended to read:

15 **"45-9-101. Criminal distribution of dangerous drugs.** (1) A person commits the offense of criminal  
16 distribution of dangerous drugs if the person sells, barter, exchanges, gives away, or offers to sell, barter,  
17 exchange, or give away any dangerous drug, as defined in 50-32-101.

18 (2) A person convicted of criminal distribution of a narcotic drug, as defined in 50-32-101(18)(d),  
19 or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less  
20 than 2 years or more than life and may be fined an amount of not more than \$50,000, except as provided  
21 in 46-18-222.

22 (3) A person convicted of criminal distribution of a dangerous drug included in Schedule I or  
23 Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinol, who has a  
24 prior conviction for criminal distribution of such a drug shall be imprisoned in the state prison for a term  
25 of not less than 10 years or more than life and may be fined an amount of not more than \$50,000, except  
26 as provided in 46-18-222. Upon a third or subsequent conviction for criminal distribution of such a drug,  
27 the person shall be imprisoned in the state prison for a term of not less than 20 years or more than life and  
28 may be fined an amount of not more than \$50,000, except as provided in 46-18-222.

29 (4) A person convicted of criminal distribution of dangerous drugs not otherwise provided for in  
30 subsection (2), (3), ~~or (5)~~, or (6) shall be imprisoned in the state prison for a term of not less than 1 year

1 or more than life or be fined an amount of not more than \$50,000, or both.

2 (5) A person who was an adult at the time of distribution and who is convicted of criminal  
3 distribution of dangerous drugs to a minor shall be sentenced as follows:

4 (a) If convicted pursuant to subsection (2), the person shall be imprisoned in the state prison for  
5 a term of not less than 4 years or more than life and may be fined an amount of not more than \$50,000,  
6 except as provided in 46-18-222.

7 (b) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II  
8 pursuant to 50-32-222 or 50-32-224 and if previously convicted of such a distribution, the person shall  
9 be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined  
10 an amount of not more than \$50,000, except as provided in 46-18-222.

11 (c) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II  
12 pursuant to 50-32-222 or 50-32-224 and if previously convicted of two or more ~~such~~ distributions, the  
13 person shall be imprisoned in the state prison for a term of not less than 40 years or more than life and  
14 may be fined an amount of not more than \$50,000, except as provided in 46-18-222.

15 (d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for  
16 a term of not less than 2 years or more than life and may be fined an amount of not more than \$50,000,  
17 except as provided in 46-18-222.

18 (6) A person convicted of criminal distribution of dangerous drugs on, or within 1,000 feet of, the  
19 premises of a housing project that is owned or operated by a municipal housing authority under 7-15-4454  
20 shall be imprisoned in the state prison for a term of not less than 3 years or more than life and may be  
21 fined an amount of not more than \$50,000, except as provided in 46-18-222. It is not a defense that the  
22 person did not know that the person was within 1,000 feet of a housing project.

23 ~~(6)(7)~~ Practitioners and agents under their supervision acting in the course of a professional  
24 practice, as defined by 50-32-101, are exempt from this section."  
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26 **Section 3.** Section 46-18-205, MCA, is amended to read:

27 **"46-18-205. Mandatory minimum sentences -- restrictions on deferral or suspension.** (1) If the  
28 victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of  
29 imprisonment imposed under the following sections may not be deferred or suspended and the provisions  
30 of 46-18-222 do not apply to the first 30 days of the imprisonment:

- 1 (a) 45-5-503, sexual intercourse without consent;
- 2 (b) 45-5-504, indecent exposure;
- 3 (c) 45-5-505, deviate sexual conduct; or
- 4 (d) 45-5-507, incest.
- 5 (2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
- 6 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
- 7 (a) 45-5-103(4), mitigated deliberate homicide;
- 8 (b) 45-5-202, aggravated assault;
- 9 (c) 45-5-302(2), kidnapping;
- 10 (d) 45-5-303(2), aggravated kidnapping;
- 11 (e) 45-5-401(2), robbery;
- 12 (f) 45-5-502(3), sexual assault;
- 13 (g) 45-5-503(2) and (3), sexual intercourse without consent;
- 14 (h) 45-9-101(2), (3), ~~and~~ (5)(d), and (6) criminal distribution of dangerous drugs;
- 15 (i) 45-9-102(4), criminal possession of dangerous drugs; and
- 16 (j) 45-9-103(2), criminal possession with intent to distribute dangerous drugs.
- 17 (3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a
- 18 sentence of imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or
- 19 suspended."

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