58th Legislature HB0084.02

1	HOUSE BILL NO. 84
2	INTRODUCED BY NEWMAN
3	BY REQUEST OF THE DEPARTMENT OF JUSTICE
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING MITIGATED DELIBERATE HOMICIDE AND
6	PROVIDING THAT IF, AT THE SENTENCING STAGE FOLLOWING A DELIBERATE HOMICIDE
7	CONVICTION, EITHER PARTY PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT THE PERSON
8	COMMITTED THE OFFENSE UNDER THE INFLUENCE OF EXTREME MENTAL OR EMOTIONAL STRESS
9	FOR WHICH THERE IS A REASONABLE EXPLANATION OR EXCUSE, THE PERSON SHALL BE PUNISHED
10	BY IMPRISONMENT IN THE STATE PRISON FOR A TERM OF NOT LESS THAN 2 YEARS OR MORE THAN
11	40 YEARS; AMENDING SECTIONS 40-4-219, 40-15-102, 41-3-423, 41-5-206, 42-2-608, 45-1-205, 45-5-102,
12	<del>46-18-205, 46-18-219, 46-18-231, 46-18-1001, 46-23-502, 50-20-108, 50-20-112, 61-5-405, 61-11-203, AND</del>
13	72-2-813, MCA; REPEALING REVISING AND CLARIFYING THE OFFENSE OF MITIGATED DELIBERATE
14	HOMICIDE TO RESOLVE THE CONFUSION THAT ARISES IN TRYING THE OFFENSE; AMENDING SECTION
15	45-5-103, MCA; AND PROVIDING AN APPLICABILITY DATE."
16	
17	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
18	(Refer to Introduced Bill)
19	Strike everything after the enacting clause and insert:
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21	Section 1. Section 45-5-103, MCA, is amended to read:
22	"45-5-103. Mitigated deliberate homicide. (1) A person commits the offense of mitigated deliberate
23	homicide when the person purposely or knowingly causes the death of another human being but does so under
24	the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The
25	reasonableness of the explanation or excuse must be determined from the viewpoint of a reasonable person
26	in the actor's situation.
27	(2) It is an affirmative defense that the defendant acted under the influence of extreme mental or
28	emotional stress as provided in subsection (1). This defense constitutes a mitigating circumstance reducing
29	deliberate homicide to mitigated deliberate homicide and must be proved by the defendant by a preponderance
30	of the evidence.

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(3)(2) Mitigated deliberate homicide is not an a lesser included offense of deliberate homicide as
defined in 45-5-102(1)(b)(a), but is not a lesser included offense of deliberate homicide as defined in
<u>45-5-102(1)(b)</u> .

(3) Mitigating circumstances that reduce deliberate homicide to mitigated deliberate homicide are not an element of the reduced crime that the state is required to prove or an affirmative defense that the defendant is required to prove. Neither party has the burden of proof as to mitigating circumstances, but either party may present evidence of mitigation.

(4) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222."

<u>NEW SECTION.</u> **Section 2. Applicability.** [This act] applies to offenses committed after [the effective date of this act].

14 - END -

