

EXHIBIT 5  
DATE 2/3/05  
HB 231

Amendments to House Bill No. 231  
1st Reading Copy

Requested by Representative Michael Lange

For the House Judiciary Committee

Prepared by John MacMaster

February 1, 2005 (1:43pm)

1. Title, page 1, line 4.

**Strike:** "ADOPTING THE"

**Insert:** "PROVIDING"

**Strike:** "ACT"

2. Title, page 1, line 5 through line 6.

**Strike:** "CREATING" on line 5 through "EXCEPTIONS" on line 6

**Insert:** "PROVIDING THAT, WITH CERTAIN EXCEPTIONS, THE OFFENSES OF DELIBERATE HOMICIDE, MITIGATED DELIBERATE HOMICIDE, ASSAULT, AND AGGRAVATED ASSAULT CAN BE COMMITTED AGAINST AN UNBORN CHILD"

**Strike:** "SECTION" on line 6

**Insert:** "SECTIONS"

**Following:** "41-1-103," on line 6

**Insert:** "45-5-102, 45-5-103, 45-5-201, AND 45-5-202"

3. Page 1, line 10 through page 3, line 10.

**Strike:** section 1 through section 8 in their entirety

**Insert:** "NEW SECTION. Section 1. Definition. As used in 45-5-102 and 45-5-103, the term "another human being" includes a human being who is conceived but is not yet born."

**Insert:** "NEW SECTION. Section 2. Definitions. As used in 45-5-201 and 45-5-202, the terms "another" and "any individual" include a human being who is conceived but is not yet born."

**Renumber:** subsequent sections

4. Page 3, line 13.

**Strike:** "through 8"

**Insert:** "and 2"

5. Page 3, line 16.

**Following:** line 15

**Insert:** "Section 4. Section 45-5-102, MCA, is amended to read:

"45-5-102. Deliberate homicide. (1) A person commits the offense of deliberate homicide if:

(a) the person purposely or knowingly causes the death of another human being; or

(b) the person attempts to commit, commits, or is legally accountable for the attempt or commission of robbery, sexual intercourse without consent, arson, burglary, kidnapping, aggravated kidnapping, felonious escape, assault with a weapon, aggravated assault, or any other forcible felony and in the course of the forcible felony or flight thereafter, the person or any person legally accountable for the crime causes the death of another human being.

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in 46-18-301 through 46-18-310, unless the person is less than 18 years of age at the time of the commission of the offense, by life imprisonment, or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years, except as provided in 46-18-219 and 46-18-222.

(3) The following are not grounds for a charge under this section:

(a) acts that are committed pursuant to usual and customary standards of medical practice, including but not limited to:

(i) emergency medical care; and

(ii) lawful medical procedures, examinations, diagnostic testing, or therapeutic treatment with the consent of a pregnant woman or with the consent of a person authorized by law to act on the woman's behalf; and

(b) acts of a woman with respect to her unborn child."

{Internal References to 45-5-102: x

40-4-219	40-15-102	41-5-206	42-2-608
45-2-103	45-2-103	45-2-103	45-2-202
45-5-103	45-5-103	45-5-104	45-8-405
46-18-205	46-18-219	46-18-303	46-23-502
50-20-108 *	50-20-112 *	72-2-813 }	"

**Insert: "Section 5. Section 45-5-103, MCA, is amended to read:**

**"45-5-103. Mitigated deliberate homicide.** (1) A person commits the offense of mitigated deliberate homicide when the person purposely or knowingly causes the death of another human being but does so under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of the explanation or excuse must be determined from the viewpoint of a reasonable person in the actor's situation.

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

(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.

(5) The following are not grounds for a charge under this section:

(a) acts that are committed pursuant to usual and customary standards of medical practice, including but not limited to:

(i) emergency medical care; and

(ii) lawful medical procedures, examinations, diagnostic testing, or therapeutic treatment with the consent of a pregnant woman or with the consent of a person authorized by law to act on the woman's behalf; and

(b) acts of a woman with respect to her unborn child."

{ Internal References to 45-5-103: x

40-4-219	40-15-102	41-5-206	42-2-608
46-18-205	46-18-219	46-18-231	46-23-502
50-20-108 *	50-20-112 *	61-5-405	72-2-813 }

**Insert: "Section 6. Section 45-5-201, MCA, is amended to read:**

**"45-5-201. Assault. (1) A person commits the offense of assault if the person:**

**(a) purposely or knowingly causes bodily injury to another;**

**(b) negligently causes bodily injury to another with a weapon;**

**(c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or**

**(d) purposely or knowingly causes reasonable apprehension of bodily injury in another.**

**(2) A person convicted of assault shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.**

**(3) The following are not grounds for a charge under this section:**

**(a) acts that are committed pursuant to usual and customary standards of medical practice, including but not limited to:**

**(i) emergency medical care; and**

**(ii) lawful medical procedures, examinations, diagnostic testing, or therapeutic treatment with the consent of a pregnant woman or with the consent of a person authorized by law to act on the woman's behalf; and**

**(b) acts of a woman with respect to her unborn child."**

{ Internal References to 45-5-201: x

40-15-102	45-5-210	45-5-212 }
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**Insert: "Section 7. Section 45-5-202, MCA, is amended to read:**

**"45-5-202. Aggravated assault. (1) A person commits the offense of aggravated assault if the person purposely or**

knowingly causes serious bodily injury to another.

(2) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

(3) The following are not grounds for a charge under this section:

(a) acts that are committed pursuant to usual and customary standards of medical practice, including but not limited to:

(i) emergency medical care; and

(ii) lawful medical procedures, examinations, diagnostic testing, or therapeutic treatment with the consent of a pregnant woman or with the consent of a person authorized by law to act on the woman's behalf; and

(b) acts of a woman with respect to her unborn child."

{ Internal References to 45-5-202: x

40-15-102      41-5-206      42-2-608      46-18-205

46-18-219      46-18-231      46-23-502 }"

6. Page 3, lines 21 through 23.

**Strike:** "[Sections" on line 21 through end of line 23

**Insert:** "(1) [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 1, and the provisions of Title 45 apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 45, chapter 5, part 2, and the provisions of Title 45 apply to [section 2]."

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