

HOUSE BILL NO. 104

INTRODUCED BY K. REGIER

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A BILL FOR AN ACT ENTITLED: "AN ACT CREATING CRIMINAL OFFENSES INVOLVING THE DEATH OF AN UNBORN CHILD AND PROVIDING EXCEPTIONS; AND AMENDING SECTIONS 45-5-102 AND 45-5-103, MCA."

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

Section 1. 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 unborn child; 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 or unborn child.

(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."

Section 2. 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 or unborn child 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).



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

5 (4) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a term
6 of not less than 2 years or more than 40 years and may be fined not more than \$50,000, except as provided in
7 46-18-219 and 46-18-222."

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9 **NEW SECTION. Section 3. Definition.** As used in 45-5-102, 45-5-103, and [section 4], "unborn child"
10 means a human who is conceived but is not yet born.

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12 **NEW SECTION. Section 4. Harm to unborn child -- exceptions.** The provisions of 45-5-102 and
13 45-5-103 regarding the death of an unborn child do not apply to acts that are committed pursuant to usual and
14 customary standards of medical practice, including but not limited to:

15 (1) emergency medical care; or
16 (2) lawful medical procedures, examinations, diagnostic testing, or therapeutic treatment with the consent
17 of the pregnant woman or with the consent of a person authorized by law to act on the woman's behalf.

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19 **NEW SECTION. Section 5. Other convictions not barred.** A prosecution for or conviction of an
20 offense under 45-5-102 or 45-5-103 is not a bar to conviction of or punishment for any other crime committed by
21 the defendant as part of the same conduct.

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23 **NEW SECTION. Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable
24 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
25 remains in effect in all valid applications that are severable from the invalid applications.

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27 **NEW SECTION. Section 7. Codification instruction.** [Sections 3 through 5] are intended to be codified
28 as an integral part of Title 45, chapter 5, and the provisions of Title 45, chapter 5, apply to [sections 3 through 5].

29 - END -