

HOUSE BILL NO. 638

INTRODUCED BY K. REGIER

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A BILL FOR AN ACT ENTITLED: "AN ACT CRIMINALIZING THE DEATH OF AN UNBORN CHILD; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING SECTIONS 45-5-102 AND 45-5-103, MCA; AND PROVIDING AN EFFECTIVE DATE."

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.** A prosecution for a violation of
13 45-5-102 or 45-5-103 with regard to the death of an unborn child may not be brought against:

- 14 (1) A person for conduct relating to an abortion for which the consent of the pregnant woman or a person
15 authorized by law to act on her behalf has been obtained or for which the consent is implied by law;
16 (2) a person for any medical treatment of the pregnant woman or her unborn child; or
17 (3) a woman with respect to her unborn child.

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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. Submission to electorate.** [This act] shall be submitted to the qualified
24 electors of Montana at the general election to be held in November 2014 by printing on the ballot the full title of
25 [this act] and the following:

- 26 YES to criminalizing the illegal death of an unborn child.
27 NO to criminalizing the illegal death of an unborn child.

28
29 **NEW SECTION. Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are severable
30 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part

1 remains in effect in all valid applications that are severable from the invalid applications.

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3 **NEW SECTION. Section 8. Codification instruction.** [Sections 3 through 5] are intended to be codified
4 as an integral part of Title 45, chapter 5, and the provisions of Title 45, chapter 5, apply to [sections 3 through 5].

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6 **NEW SECTION. Section 9. Effective date.** If approved by the electorate, [sections 1 through 5] are
7 effective January 1, 2015.

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