

HOUSE BILL NO. 84
INTRODUCED BY NEWMAN
BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING MITIGATED DELIBERATE HOMICIDE AND PROVIDING THAT IF, AT THE SENTENCING STAGE FOLLOWING A DELIBERATE HOMICIDE CONVICTION, EITHER PARTY PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT THE PERSON COMMITTED THE OFFENSE UNDER THE INFLUENCE OF EXTREME MENTAL OR EMOTIONAL STRESS FOR WHICH THERE IS A REASONABLE EXPLANATION OR EXCUSE, THE PERSON SHALL BE PUNISHED BY IMPRISONMENT IN THE STATE PRISON FOR A TERM OF NOT LESS THAN 2 YEARS OR MORE THAN 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, 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 72-2-813, MCA; REPEALING REVISING AND CLARIFYING THE OFFENSE OF MITIGATED DELIBERATE HOMICIDE TO RESOLVE THE CONFUSION THAT ARISES IN TRYING THE OFFENSE; AMENDING SECTION 45-5-103, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

Section 1. 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) It is an affirmative defense that the defendant acted under the influence of extreme mental or emotional stress as provided in subsection (1). This defense constitutes a mitigating circumstance reducing deliberate homicide to mitigated deliberate homicide and must be proved by the defendant by a preponderance of the evidence.~~

~~(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 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."

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

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