

SENATE BILL NO. 360

INTRODUCED BY A. OLSZEWSKI

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT CONSENT OF THE VICTIM IS NOT A DEFENSE TO THE OFFENSES OF DELIBERATE HOMICIDE AND MITIGATED DELIBERATE HOMICIDE; AMENDING SECTIONS 45-5-102 AND 45-5-103, MCA; AND PROVIDING AN APPLICABILITY 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;
- (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
- (c) the person purposely or knowingly causes the death of a fetus of another with knowledge that the woman is pregnant.

(2) The consent of the victim is not a defense under this section.

~~(2)~~(3) 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 purposely or knowingly causes the death of a fetus of another with knowledge that the woman is pregnant but does so under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The

1 reasonableness of the explanation or excuse must be determined from the viewpoint of a reasonable person in
2 the actor's situation.

3 (2) Mitigated deliberate homicide is a lesser included offense of deliberate homicide as defined in
4 45-5-102(1)(a), but is not a lesser included offense of deliberate homicide as defined in 45-5-102(1)(b).

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

9 (4) The consent of the victim is not a defense under this section.

10 ~~(4)~~(5) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a
11 term of not less than 2 years or more than 40 years and may be fined not more than \$50,000, except as provided
12 in 46-18-219 and 46-18-222."

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14 NEW SECTION. **Section 3. Applicability.** [This act] applies to offenses committed on or after [the
15 effective date of this act].

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