HOUSE BILL NO. 873

INTRODUCED BY HANNAH, PINSONEAULT

IN THE HOUSE

MARCH 4,	1987	ON MOTION, RULES SUSPENDED TO ALLOW INTRODUCTION OF HB NO. 873.
MARCH 10,	1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 27,	1987	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
MARCH 28,	1987	PRINTING REPORT.
		SECOND READING, DO PASS.
MARCH 30,	1987	ENGROSSING REPORT.
		THIRD READING, PASSED. AYES, 91; NOES, 4.
		TRANSMITTED TO SENATE.
	IN D	THE SENATE
APRIL 2,	1987	ON MOTION, RULES SUSPENDED TO ADMIT TRANSFERENCE OF HB NO. 873.
		INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
APRIL 9,	1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
APRIL 11,	1987	SECOND READING, CONCURRED IN.
APRIL 13,	1987	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

· · · •

APRIL 14, 1987

•

RECEIVED FROM SENATE.

SENT TO ENROLLING.

1	INTRODUCED BY the and the land
2	INTRODUCED BY the and the land
3	•
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
5	CLARIFY THE HOMICIDE LAWS; AMENDING SECTIONS 41-5-305,
6	45-2-103, 45-2-202, 45-5-102 THROUGH 45-5-104, 46-18-201,
7	46-18-231, 50-20-108, AND 50-20-112, MCA; AND REPEALING
ß	SECTION 45-5-101, MCA."
9	
10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11	Section 1. Section 41-5-305, MCA, is amended to read:
12	"41-5-305. Detention and shelter care of youth. (1) A
13	youth taken into custody may not be detained in a jail or
14	other facility for detention purposes unless he has
15	allegedly committed an act which if committed by an adult
16	would constitute a criminal offense, and:
17	(a) the alleged act is one of the following:
18	(i) eriminal homicide as defined in 45-5-101 45-5-102
19	through 45-5-104;
20	(ii) arson as defined in 45-6-103;
21	(iii) aggravated or felony assault as defined in
22	45-5-202;
23	(iv) robbery as defined in 45-5-401;
24	(v) burglary or aggravated burglary as defined in
25	45-6-204;

Montana Legislative Council

1 (vi) sexual intercourse without consent as defined in
2 45-5-503;

3 (vii) aggravated kidnapping as defined in 45-5-303;

4 (viii) possession of explosives as defined in 45-8-335;

5 (ix) criminal sale of dangerous drugs for profit as
6 included in 45-9-101; or

7 (x) attempt as defined in 45-4-103 of any of the acts
8 enumerated in subsections (1)(a)(i) through (1)(a)(ix);

9 (b) he has escaped from a correctional facility;

10 (c) he has violated a valid court order or an 11 aftercare agreement; or

12 (d) he meets the criteria for detention established by13 the youth court.

14 (2) A youth taken into custody may not be sheltered15 prior to the hearing on the petition except when:

16 (a) the youth and his family need shelter care to17 address their problematic situation when it is not possible

18 for the youth to remain at home;

19 (b) the youth needs to be protected from physical or 20 emotional harm;

21 (c) the youth needs to be deterred or prevented from
22 immediate repetition of his troubling behavior;

23 (d) shelter care is necessary to assess the youth and 24 his environment;

25 (e) shelter care is necessary to provide adequate time

-2-

INTRODUCED BILL HB-873

3 situation and provide intensive services or attention that
4 might alleviate the problem and reunite the family."
5 Section 2. Section 45-2-103, MCA, is amended to read:

for case planning and disposition; or

1

2

6 "45-2-103. General requirements of criminal act and mental state. (1) A-person-is--not--guilty--of--an--offense; 7 other--than Except for deliberate homicide as defined in 8 45-5-102(1)(b) or an offense which involves absolute 9 10 liability, a person is not guilty of an offense unless, with 11 respect to each element described by the statute defining 12 the offense, he acts while having one of the mental states 13 described in subsections (33), (37), and (58) of 45-2-101. 14 (2) In deliberate homicide under 45-5-102(1)(b), the 15 offender must act while having the mental state of purposely 16 or knowingly only as to the underlying felony referred to in 17 45-5-102(1)(b).

(f) shelter care is necessary to intervene in a crisis

18 (3) The existence of a mental state may be inferred
19 from the acts of the accused and the facts and circumstances
20 connected with the offense.

21 (2)(4) If the statute defining an offense prescribes a 22 particular mental state with respect to the offense as a 23 whole without distinguishing among the elements thereof, the 24 prescribed mental state applies to each such element.

25 (3)(5) Knowledge that certain conduct constitutes an

offense or knowledge of the existence, meaning, or
 application of the statute defining an offense is not an
 element of the offense unless the statute clearly defines it
 as such.

5 (4)(6) A person's reasonable belief that his conduct
6 does not constitute an offense is a defense if:

7 (a) the offense is defined by an administrative 8 regulation or order which is not known to him and has not 9 been published or otherwise made reasonably available to him 10 and he could not have acquired such knowledge by the 11 exercise of due diligence pursuant to facts known to him;

12 (b) he acts in reliance upon a statute which later is13 determined to be invalid;

14 (c) he acts in reliance upon an order or opinion of
15 the Montana supreme court or a United States appellate court
16 later overruled or reversed; or

17 (d) he acts in reliance upon an official
18 interpretation of the statute, regulation, or order defining
19 the offense made by a public officer or agency legally
20 authorized to interpret such statute.

21 (5)(7) If a person's reasonable belief is a defense 22 under subsection (4) (6), nevertheless he may be convicted 23 of an included offense of which he would be guilty if the 24 law were as he believed it to be.

25 (6)(8) Any defense based upon this section is an

-4-

-3-

1	affirmative defense."
2	Section 3. Section 45-2-202, MCA, is amended to read:
3	"45-2-202. Voluntary act. A material element of every
4	offense is a voluntary act, which includes an omission to
5	perform a duty which the law imposes on the offender and
6	which he is physically capable of performing, except for
7	deliberate homicide under 45-5-102(1)(b) for which there
8	must be a voluntary act only as to the underlying felony.
9	Possession is a voluntary act if the offender knowingly
10	procured or received the thing possessed or was aware of his
11	control thereof for a sufficient time to have been able to
12	terminate his control."
13	Section 4. Section 45-5-102, MCA, is amended to read:
14	"45-5-102. Deliberate homicide. (1) Except-as-provided
15	in45-5-103(1),criminalhomicideconstitutes <u>A person</u>
16	commits the offense of deliberate homicide if:
17	(a) itiscommitted he purposely or knowingly causes
18	the death of another human being; or
19	(b) it-is-committed-while-the-offender-isengagedin
20	orisanaccompliceinthe-commission-of7-an-attempt-to
21	commit, or flight after committing or attempting he attempts
22	to commit, commits, or is legally accountable for the
23	attempt or commission of robbery, sexual intercourse without
24	consent, arson, burglary, kidnapping, aggravated kidnapping,
44	felonious escape, felony assault, aggravated assault, or any

1	other <u>forcible</u> felony which-involves-the-use-or-threat-of
2	physical-force-or-violence-against-any-individual and in the
3	course of the forcible felony or flight thereafter, he or
4	any person legally accountable for the crime causes the
5	death of another human being.
6	(2) A person convicted of the offense of deliberate
_	

homicide shall be punished by death or life imprisonment as 7 8 provided in 46-18-301 through 46-18-310 or by imprisonment in the state prison for a term of not less than 10 years or 9 10 more than 100 years, except as provided in 46-18-222."

Section 5. Section 45-5-103, MCA, is amended to read: 11 12 "45-5-103. Mitigated deliberate homicide. (1) Criminal homicide --- constitutes A person commits the offense of 13 14 mitigated deliberate homicide when a--homicide--which--would otherwise--be--deliberate-homicide-is-committed he purposely 15 16 or knowingly causes the death of another human being but does so under the influence of extreme mental or emotional 17 18 stress for which there is reasonable explanation or excuse. 19 The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the 20 21 actor's situation. 22 (2) It is an affirmative defense that the defendant

23 acted under the influence of extreme mental or emotional 24 stress for which there was reasonable explanation or excuse,

25 the reasonableness of which shall be determined from the

1 viewpoint of a reasonable person in the actor's situation. 2 This defense constitutes a mitigating circumstance reducing deliberate homicide to mitigated deliberate homicide and з 4 must be proved by the defendant by a preponderance of the evidence. 5 6 (3) Mitigated deliberate homicide is not an included 7 offense of deliberate homicide as defined in 45-5-102(1)(b). 8 (2)(4) A person convicted of mitigated deliberate g homicide shall be imprisoned in the state prison for a term 10 of not less than 2 years or more than 40 years and may be 11 fined not more than \$50,000, except as provided in 46-18-222." 12 13 Section 6. Section 45-5-104, MCA, is amended to read: 14 "45-5-104. Negligent homicide. (1) Criminal--homicide 15 constitutes A person commits the offense of negligent 16 homicide when-it-is-committed if he negligently causes the 17 death of another human being. 18 (2) Negligent homicide is not an included offense of 19 deliberate homicide as defined in 45-5-102(1)(b). 20 f2f(3) A person convicted of negligent homicide shall 21 be imprisoned in the state prison for any term not to exceed 22 10 years or be fined an amount not to exceed \$50,000, or 23 both."

Section 7. Section 46-18-201, MCA, is amended to read:
"46-18-201. Sentences that may be imposed. (1)

LC 1826/01

1	Whenever a person has been found guilty of an offense upon a
2	verdict or a plea of guilty, the court may:
3	(a) defer imposition of sentence, excepting sentences
4	for driving under the influence of alcohol or drugs, for a
5	period, except as otherwise provided, not exceeding 1 year
6	for any misdemeanor or for a period not exceeding 3 years
7	for any felony. The sentencing judge may impose upon the
8	defendant any reasonable restrictions or conditions during
9	the period of the deferred imposition. Such reasonable
10	restrictions or conditions may include:

11 (i) jail base release;

12 (ii) jail time not exceeding 180 days;

- 13 (iii) conditions for probation;
- 14 (iv) restitution;
- 15 (v) payment of the costs of confinement;
- 16 (vi) payment of a fine as provided in 46-18-231;
- 17 (vii) payment of costs as provided in 46-18-232 and
- 18 46-18-233;
- 19 (viii) payment of costs of court appointed counsel as
- 20 provided in 46-8-113;
- 21 (ix) community service;

(x) any other reasonable conditions considered
 necessary for rehabilitation or for the protection of
 society; or

25 (xi) any combination of the above.

1 (b) suspend execution of sentence up to the maximum 2 sentence allowed for each particular offense. The sentencing 3 judge may impose on the defendant any reasonable 4 restrictions or conditions during the period of suspended 5 sentence. Such reasonable restrictions or conditions may 6 include any of those listed in subsections (1)(a)(i) through 7 (1)(a)(xi).

8 (c) impose a fine as provided by law for the offense;
9 (d) require payment of costs as provided in 46-18-232
10 or payment of costs of court-appointed counsel as provided
11 in 46-8-113;

12 (e) commit the defendant to a correctional institution
13 with or without a fine as provided by law for the offense;
14 (f) impose any combination of subsections (1)(b)
15 through (1)(e).

16 (2) If any financial obligation is imposed as a
17 condition under subsection (1)(a), sentence may be deferred
18 for a period not exceeding 2 years for any misdemeanor or
19 for a period not exceeding 6 years for any felony,
20 regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under
subsection (1)(a) or (1)(b) are violated, any elapsed time,
except jail time, is not a credit against the sentence
unless the court orders otherwise.

25 (4) Except as provided in 46-18-222, the imposition or

1 execution of the first 2 years of a sentence of imprisonment 2 imposed under the following sections may not be deferred or 3 suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2), 4 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) 5 and (3), 45-9-102(3), and 45-9-103(2).

6 (5) Except as provided in 46-18-222, the imposition or 7 execution of the first 10 years of a sentence of 8 imprisonment imposed under 45-5-102(2) may not be deferred 9 or suspended.

10 (6) Except as provided in 46-18-222, imposition of 11 sentence in a felony case may not be deferred in the case of 12 a defendant who has been convicted of a felony on a prior 13 occasion whether or not the sentence was imposed, imposition 14 of the sentence was deferred, or execution of the sentence 15 was suspended.

16 (7) If the victim was less than 16 years old, the 17 imposition or execution of the first 30 days of a sentence 18 of imprisonment imposed under 45-5-502(3), 45-5-503, 19 45-5-504, 45-5-505, or 45-5-507 may not be deferred or 20 suspended. Section 46-18-222 does not apply to the first 30 21 days of such imprisonment."

Section 8. Section 46-18-231, MCA, is amended to read:
"46-18-231. Fines in felony and misdemeanor cases. (1)
Whenever, upon a verdict or a plea of guilty, a person has
been found guilty of an offense for which a felony penalty

-9-

-10-

1 of imprisonment could be imposed, the court may impose a 2 fine, only in accordance with subsection (3), and in lieu of 3 or in addition to a sentence of imprisonment. For those 4 crimes for which penalties are provided in 45-5-103(2), 5 45-5-202(2). 45-5-302(2), 45 - 5 - 303(2), 45-5-401(2), 6 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2) and (3), 7 45-9-102(3), and 45-9-103(2), a fine may be imposed in accordance with subsection (3) in addition to a sentence of 8 9 imprisonment.

10 (2) Whenever, upon a verdict or plea of guilty, a 11 person has been found guilty of an offense for which a 12 misdemeanor penalty of a fine could be imposed, the court 13 may impose a fine only in accordance with subsection (3).

14 (3) The court may not sentence a defendant to pay a 15 fine unless the defendant is or will be able to pay the 16 fine. In determining the amount and method of payment, the 17 court shall take into account the nature of the crime 18 committed, the financial resources of the defendant, and the 19 nature of the burden that payment of the fine will impose. 20 (4) Any fine levied under this section in a felony.

20 (4) Any fine levied under this section in a felony
21 case shall be in an amount fixed by the court not to exceed
22 \$50,000."

23 Section 9. Section 50-20-108, MCA, is amended to read:
24 "50-20-108. Protection of premature infants born
25 alive. (1) A person commits the an offense of-criminal

homieide, as defined in 45-5-101 45-5-102 through 45-5-104, 1 if he purposely, knowingly, or negligently causes the death 2 of a premature infant born alive, if such infant is viable. 3 (2) Whenever a premature infant which is the subject 4 of abortion is born alive and is viable, it becomes a 5 dependent and neglected child subject to the provisions of 6 state law, unless: . 7 (a) the termination of the pregnancy is necessary to 8

9 preserve the life of the mother; or

10 (b) the mother and her spouse or either of them have 21 agreed in writing in advance of the abortion or within 72 22 hours thereafter to accept the parental rights and 23 responsibilities of the premature infant if it survives the 24 abortion procedure.

15 (3) No person may use any premature infant born alive 16 for any type of scientific research or other kind of 17 experimentation except as necessary to protect or preserve 18 the life and health of such premature infant born alive.

19 (4) Violation of subsection (3) of this section is a 20 felony."

21 Section 10. Section 50-20-112, MCA, is amended to 22 read:

23 "50-20-112. Penalties. (1) A person convicted of
 24 criminal deliberate, mitigated, or negligent homicide under
 25 this chapter is subject to the penalties prescribed by

LC 1826/01

.

1 45-5-101 45-5-102 through 45-5-104.

2 (2) A person convicted of a felony other than criminal
3 deliberate, mitigated, or negligent homicide under this
4 chapter is subject to a fine not to exceed \$1,000,
5 imprisonment in the state prison for a term not to exceed 5
6 years, or both.

7 (3) A person convicted of a misdemeanor under this
8 chapter is subject to a fine not to exceed \$500,
9 imprisonment in the county jail for a term not to exceed 6
10 months, or both."

11 NEW SECTION. Section 11. Repealer. Section 45-5-101,

12 MCA, is repealed.

٠

-End-

· · · ·

APPROVED BY COMMITTEE On Judiciary

1	INTRODUCED BY Car Shu Ch Che
2	INTRODUCED BY
3	·
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
5	CLARIFY THE HOMICIDE LAWS; AMENDING SECTIONS 41-5-305,
6	45-2-103, 45-2-202, 45-5-102 THROUGH 45-5-104, 46-18-201,
7	46-18-231, 50-20-108, AND 50-20-112, MCA; AND REPEALING
8	SECTION 45-5-101, MCA."
9	
10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11	Section 1. Section 41-5-305, MCA, is amended to read:
12	"41-5-305. Detention and shelter care of youth. (1) A
13	youth taken into custody may not be detained in a jail or
14	other facility for detention purposes unless he has
15	allegedly committed an act which if committed by an adult
16	would constitute a criminal offense, and:
17	(a) the alleged act is one of the following:
18	(i) criminal homicide as defined in 45-5-101 45-5-102
19	through 45-5-104;
20	(ii) arson as defined in 45-6-103;
21	(iii) aggravated or felony assault as defined in
22	45-5-202;
23	(iv) robbery as defined in 45-5-401;
24	(v) burglary or aggravated burglary as defined in
25	45-6-204;

ntana Legislative Council

(vi) sexual intercourse without consent as defined in 1 45-5-503; 2 (vii) aggravated kidnapping as defined in 45-5-303; 3 (viii) possession of explosives as defined in 45-8-335; 4 (ix) criminal sale of dangerous drugs for profit as 5 included in 45-9-101; or 6 (x) attempt as defined in 45-4-103 of any of the acts 7 8 enumerated in subsections (1)(a)(i) through (1)(a)(ix); 9 (b) he has escaped from a correctional facility; 10 (c) he has violated a valid court order or an aftercare agreement; or 11 12 (d) he meets the criteria for detention established by 13 the youth court. 14 (2) A youth taken into custody may not be sheltered prior to the hearing on the petition except when: 15 16 (a) the youth and his family need shelter care to address their problematic situation when it is not possible 17 18 for the youth to remain at home; 19 (b) the youth needs to be protected from physical or 20 emotional harm; (c) the youth needs to be deterred or prevented from 21 22 immediate repetition of his troubling behavior; (d) shelter care is necessary to assess the youth and 23 his environment; 24 (e) shelter care is necessary to provide adequate time 25

SECOND READING -2-

1 for case planning and disposition; or

2 (f) shelter care is necessary to intervene in a crisis
3 situation and provide intensive services or attention that
4 might alleviate the problem and reunite the family."

Section 2. Section 45-2-103, MCA, is amended to read: 5 "45-2-103. General requirements of criminal act and 6 mental state. (1) A-person-is--not--guilty--of--an--offense-7 other--than Except for deliberate homicide as defined in 8 45-5-102(1)(b) or an offense which involves absolute 9 10 liability, a person is not guilty of an offense unless, with respect to each element described by the statute defining 11 the offense, he acts while having one of the mental states 12 described in subsections (33), (37), and (58) of 45-2-101. 13 (2) In deliberate homicide under 45-5-102(1)(b), the 14 offender must act while having the mental state of purposely 15

16 <u>or knowingly only as to the underlying felony referred to in</u> 17 45-5-102(1)(b).

18 (3) The existence of a mental state may be inferred
19 from the acts of the accused and the facts and circumstances
20 connected with the offense.

(2) (2)(4) If the statute defining an offense prescribes a
 particular mental state with respect to the offense as a
 whole without distinguishing among the elements thereof, the
 prescribed mental state applies to each such element.

25 (3)(5) Knowledge that certain conduct constitutes an

offense or knowledge of the existence, meaning, or
 application of the statute defining an offense is not an
 element of the offense unless the statute clearly defines it
 as such.

5 (4)(6) A person's reasonable belief that his conduct
6 does not constitute an offense is a defense if:

7 (a) the offense is defined by an administrative 8 regulation or order which is not known to him and has not 9 been published or otherwise made reasonably available to him 10 and he could not have acquired such knowledge by the 11 exercise of due diligence pursuant to facts known to him;

12 (b) he acts in reliance upon a statute which later is13 determined to be invalid;

(c) he acts in reliance upon an order or opinion of
the Montana supreme court or a United States appellate court
later overruled or reversed; or

17 (d) he acts in reliance upon an official
18 interpretation of the statute, regulation, or order defining
19 the offense made by a public officer or agency legally
20 authorized to interpret such statute.

21 (5)(7) If a person's reasonable belief is a defense
22 under subsection (4) (6), nevertheless he may be convicted
23 of an included offense of which he would be guilty if the
24 law were as he believed it to be.

25 (6)(8) Any defense based upon this section is an

-3-

1 affirmative defense."

2 Section 3. Section 45-2-202, MCA, is amended to read: 3 "45-2-202. Voluntary act. A material element of every 4 offense is a voluntary act, which includes an omission to 5 perform a duty which the law imposes on the offender and 6 which he is physically capable of performing, except for deliberate homicide under 45-5-102(1)(b) for which there 7 8 must be a voluntary act only as to the underlying felony. 9 Possession is a voluntary act if the offender knowingly procured or received the thing possessed or was aware of his 10 11 control thereof for a sufficient time to have been able to 12 terminate his control."

Section 4. Section 45-5-102, MCA, is amended to read:
 "45-5+102. Deliberate homicide. (1) Except-as-provided
 in--45-5-103(1),--criminal--homicide--constitutes <u>A person</u>
 commits the offense of deliberate homicide if:

17 (a) it--is--committed he purposely or knowingly causes
18 the death of another human being; or

19 (b) it-is-committed-while-the-offender-is--engaged--in 20 or--is--an--accomplice--in--the-commission-of,-an-attempt-to 21 commit,-or-flight-after-committing-or-attempting he attempts 22 to commit, commits, or is legally accountable for the 23 attempt or commission of robbery, sexual intercourse without 24 consent, arson, burglary, kidnapping, aggravated kidnapping, 25 felonious escape, felony assault, aggravated assault, or any

1 other forcible felony which-involves-the-use-or-threat-of physical-force-or-violence-against-any-individual and in the 2 course of the forcible felony or flight thereafter, he or 3 any person legally accountable for the crime causes the 4 death of another human being. 5 (2) A person convicted of the offense of deliberate 6 homicide shall be punished by death or life imprisonment as 7 8 provided in 46-18-301 through 46-18-310 or by imprisonment in the state prison for a term of not less than 10 years or 9 more than 100 years, except as provided in 46-18-222." 10 Section 5. Section 45-5-103, MCA, is amended to read: 11 12 "45-5-103. Mitigated deliberate homicide. (1) Criminal homicide---constitutes A person commits the offense of 13 mitigated deliberate homicide when a--homicide--which--would 14 otherwise--be--deliberate-homicide is-committed he purposely 15 or knowingly causes the death of another human being but 16 does so under the influence of extreme mental or emotional 17 stress for which there is reasonable explanation or excuse. 18 The reasonableness of such explanation or excuse shall be 19 determined from the viewpoint of a reasonable person in the 20 21 actor's situation. (2) It is an affirmative defense that the defendant 22 23 acted under the influence of extreme mental or emotional 24 stress for which there was reasonable explanation or excuse,

25 the reasonableness of which shall be determined from the

l	viewpoint of a reasonable person in the actor's situation.
2	This defense constitutes a mitigating circumstance reducing
3	deliberate homicide to mitigated deliberate homicide and
4	must be proved by the defendant by a preponderance of the
5	evidence.
6	(3) Mitigated deliberate homicide is not an included
7	offense of deliberate homicide as defined in 45-5-102(1)(b).
8	<pre>+2+(4) A person convicted of mitigated deliberate</pre>
9	homicide shall be imprisoned in the state prison for a term
10	of not less than 2 years or more than 40 years and may be
11	fined not more than \$50,000, except as provided in
1 2	46-18-222."
13	Section 6. Section 45-5-104, MCA, is amended to read:
14	"45-5-104. Negligent homicide. (1) Criminalhomicide
15	constitutes A person commits the offense of negligent
16	homicide when-it-is-committed if he negligently causes the
17	death of another human being.
18	(2) Negligent homicide is not an included offense of
19	deliberate homicide as defined in 45-5-102(1)(b).
20	<pre>t2t(3) A person convicted of negligent homicide shall</pre>
21	be imprisoned in the state prison for any term not to exceed
22	10 years or be fined an amount not to exceed \$50,000, or
23	both."
24	Section 7. Section 46-18-201, MCA, is amended to read:
25	"46-18-201. Sentences that may be imposed. (1)

1	Whenever	a	person	has	been	found	guilty	of	an	offense	upon	a
2	verdict o	or	a plea	of	guilty	, the	court	may	:			

3 (a) defer imposition of sentence, excepting sentences 4 for driving under the influence of alcohol or drugs, for a 5 period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years 6 7 for any felony. The sentencing judge may impose upon the 8 defendant any reasonable restrictions or conditions during 9 the period of the deferred imposition. Such reasonable 10 restrictions or conditions may include:

- 11 (i) jail base release;
- 12 (ii) jail time not exceeding 180 days;
- 13 (iii) conditions for probation;
- 14 (iv) restitution;
- 15 (v) payment of the costs of confinement;
- 16 (vi) payment of a fine as provided in 46-18-231;
- 17 (vii) payment of costs as provided in 46-18-232 and
- 18 46-18-233;

19 (viii) payment of costs of court appointed counsel as 20 provided in 46-8-113;

21 (ix) community service;

(x) any other reasonable conditions considered
 necessary for rehabilitation or for the protection of
 society; or

25 (xi) any combination of the above.

-7-

-8-

LC 1826/01

1 (b) suspend execution of sentence up to the maximum 2 sentence allowed for each particular offense. The sentencing 3 judge may impose on the defendant any reasonable 4 restrictions or conditions during the period of suspended 5 sentence. Such reasonable restrictions or conditions may 6 include any of those listed in subsections (1)(a)(i) through 7 (1)(a)(xi).

8 (c) impose a fine as provided by law for the offense;
9 (d) require payment of costs as provided in 46-18-232
10 or payment of costs of court-appointed counsel as provided
11 in 46-8-113;

12 (e) commit the defendant to a correctional institution
13 with or without a fine as provided by law for the offense;
14 (f) impose any combination of subsections (1)(b)
15 through (1)(e).

16 (2) If any financial obligation is imposed as a 17 condition under subsection (1)(a), sentence may be deferred 18 for a period not exceeding 2 years for any misdemeanor or 19 for a period not exceeding 6 years for any felony, 20 regardless of whether any other conditions are imposed.

21 (3) If any restrictions or conditions imposed under
22 subsection (1)(a) or (1)(b) are violated, any elapsed time,
23 except jail time, is not a credit against the sentence
24 unless the court orders otherwise.

25 (4) Except as provided in 46-18-222, the imposition or

-9-

1 execution of the first 2 years of a sentence of imprisonment 2 imposed under the following sections may not be deferred or 3 suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2), 4 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) 5 and (3), 45-9-102(3), and 45-9-103(2).

6 (5) Except as provided in 46-18-222, the imposition or 7 execution of the first 10 years of a sentence of 8 imprisonment imposed under 45-5-102(2) may not be deferred 9 or suspended.

10 (6) Except as provided in 46-18-222, imposition of 11 sentence in a felony case may not be deferred in the case of 12 a defendant who has been convicted of a felony on a prior 13 occasion whether or not the sentence was imposed, imposition 14 of the sentence was deferred, or execution of the sentence 15 was suspended.

16 (7) If the victim was less than 16 years old, the
17 imposition or execution of the first 30 days of a sentence
18 of imprisonment imposed under 45-5-502(3), 45-5-503,
19 45-5-504, 45-5-505, or 45-5-507 may not be deferred or
20 suspended. Section 46-18-222 does not apply to the first 30
21 days of such imprisonment."

Section 8. Section 46-18-231, MCA, is amended to read:
"46-18-231. Fines in felony and misdemeanor cases. (1)
Whenever, upon a verdict or a plea of guilty, a person has
been found guilty of an offense for which a felony penalty

of imprisonment could be imposed, the court may impose a 1 2 fine, only in accordance with subsection (3), and in lieu of or in addition to a sentence of imprisonment. For those 3 4 crimes for which penalties are provided in 45-5-103+2+, 45 - 5 - 202(2). 45-5-302(2), 45-5-303(2), 45-5-401(2), 5 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2) and (3), 6 45-9-102(3), and 45-9-103(2), a fine may be imposed in 7 accordance with subsection (3) in addition to a sentence of 8 imprisonment. 9

(2) Whenever, upon a verdict or plea of guilty, a
person has been found guilty of an offense for which a
misdemeanor penalty of a fine could be imposed, the court
may impose a fine only in accordance with subsection (3).

(3) The court may not sentence a defendant to pay a 14 fine unless the defendant is or will be able to pay the 15 fine. In determining the amount and method of payment, the 16 court shall take into account the nature of the crime 17 committed, the financial resources of the defendant, and the 18 nature of the burden that payment of the fine will impose. 19 (4) Any fine levied under this section in a felony 20 case shall be in an amount fixed by the court not to exceed 21 22 \$50,000."

23 Section 9. Section 50-20-108, MCA, is amended to read:
24 "50-20-108. Protection of premature infants born
25 alive. (1) A person commits the <u>an</u> offense of-criminal

LC 1826/01

homicide, as defined in 45-5-101 45-5-102 through 45-5-104, if he purposely, knowingly, or negligently causes the death of a premature infant born alive, if such infant is viable. (2) Whenever a premature infant which is the subject of abortion is born alive and is viable, it becomes a dependent and neglected child subject to the provisions of state law, unless:

8 (a) the termination of the pregnancy is necessary to9 preserve the life of the mother; or

10 (b) the mother and her spouse or either of them have 11 agreed in writing in advance of the abortion or within 72 12 hours thereafter to accept the parental rights and 13 responsibilities of the premature infant if it survives the 14 abortion procedure.

15 (3) No person may use any premature infant born alive
16 for any type of scientific research or other kind of
17 experimentation except as necessary to protect or preserve
18 the life and health of such premature infant born alive.

19 (4) Violation of subsection (3) of this section is a 20 felony."

21 Section 10. Section 50-20-112, MCA, is amended to 22 read:

23 "50-20-112. Penalties. (1) A person convicted of
24 criminal deliberate, mitigated, or negligent homicide under
25 this chapter is subject to the penalties prescribed by

-11-

1 45-5-101 45-5-102 through 45-5-104,

.

2 (2) A person convicted of a felony other than eriminal
3 deliberate, mitigated, or negligent homicide under this
4 chapter is subject to a fine not to exceed \$1,000,
5 imprisonment in the state prison for a term not to exceed 5
6 years, or both.

7 (3) A person convicted of a misdemeanor under this
8 chapter is subject to a fine not to exceed \$500,
9 imprisonment in the county jail for a term not to exceed 6
10 months, or both."

NEW SECTION. Section 11. Repealer. Section 45-5-101,
 MCA, is repealed.

-End-

Montana Legislative Council

1

2

3

45-5-503;

House MBILL NO. 873 1 INTRODUCED BY 2 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND 5 CLARIFY THE HOMICIDE LAWS; AMENDING SECTIONS 41-5-305, 45-2-103, 45-2-202, 45-5-102 THROUGH 45-5-104, 46-18-201, б 46-18-231, 50-20-108, AND 50-20-112, MCA; AND REPEALING 7 SECTION 45-5-101, MCA.* 8 9 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: Section 1. Section 41-5-305, MCA, is amended to read: 11 "41-5-305. Detention and shelter care of youth. (1) A 12 13 youth taken into custody may not be detained in a jail or 14 other facility for detention purposes unless he has allegedly committed an act which if committed by an adult 15 16 would constitute a criminal offense, and: 17 (a) the alleged act is one of the following: 18 (i) criminal homicide as defined in 45-5-101 45-5-102 through 45-5-104; 19 20 (ii) arson as defined in 45-6-103; 21 (iii) aggravated or felony assault as defined in 22 45-5-202: 23 (iv) robbery as defined in 45-5-401; (v) burglary or aggravated burglary as defined in 24 25 45-6-204;

17 18 for the youth to remain at home; 19 20 emotional harm; 21 22 23 24 his environment; 25

(vii) aggravated kidnapping as defined in 45-5-303; 4 (viii) possession of explosives as defined in 45-8-335; (ix) criminal sale of dangerous drugs for profit as 5 6 included in 45-9-101; or (x) attempt as defined in 45-4-103 of any of the acts 7 enumerated in subsections (1)(a)(i) through (1)(a)(ix); 8 9 (b) he has escaped from a correctional facility: (c) he has violated a valid court order or an 10

(vi) sexual intercourse without consent as defined in

aftercare agreement; or 11

(d) he meets the criteria for detention established by 12 13 the youth court.

(2) A youth taken into custody may not be sheltered 14 prior to the hearing on the petition except when: 15

16 (a) the youth and his family need shelter care to address their problematic situation when it is not possible

(b) the youth needs to be protected from physical or

(c) the youth needs to be deterred or prevented from immediate repetition of his troubling behavior:

(d) shelter care is necessary to assess the youth and

(e) shelter care is necessary to provide adequate time

-2- THIRD READING HB .873

LC 1826/01

2 (f) shelter care is necessary to intervene in a crisis 3 situation and provide intensive services or attention that might alleviate the problem and reunite the family." 4 5 Section 2. Section 45-2-103, MCA, is amended to read: "45-2-103. General requirements of criminal act and 6 7 mental state. (1) A-person-is--not--quilty--of--an--offense; 8 other--than Except for deliberate homicide as defined in 9 45-5-102(1)(b) or an offense which involves ab-olute 10 liability, a person is not guilty of an offense unless, with 11 respect to each element described by the statute defining 12 the offense, he acts while having one of the mental states 13 described in subsections (33), (37), and (58) of 45-2-101. 14 (2) In deliberate homicide under 45-5-102(1)(b), the 15 offender must act while having the mental state of purposely 16 or knowingly only as to the underlying felony referred to in 17 45-5-102(1)(b).

for case planning and disposition: or

18 (3) The existence of a mental state may be inferred
19 from the acts of the accused and the facts and circumstances
20 connected with the offense.

1 (2)(4) If the statute defining an offense prescribes a
 particular mental state with respect to the offense as a
 whole without distinguishing among the elements thereof, the
 prescribed mental state applies to each such element.

25

1

offense or knowledge of the existence, meaning, or
 application of the statute defining an offense is not an
 element of the offense unless the statute clearly defines it
 as such.

5 (4)(6) A person's reasonable belief that his conduct
6 does not constitute an offense is a defense if:

7 (a) the offense is defined by an administrative 8 regulation or order which is not known to him and has not 9 been published or otherwise made reasonably available to him 10 and he could not have acquired such knowledge by the 11 exercise of due diligence pursuant to facts known to him;

(b) he acts in reliance upon a statute which later isdetermined to be invalid;

14 (c) he acts in reliance upon an order or opinion of
15 the Montana supreme court or a United States appellate court
16 later overruled or reversed; or

17 (d) he acts in reliance upon an official
18 interpretation of the statute, regulation, or order defining
19 the offense made by a public officer or agency legally
20 authorized to interpret such statute.

21 (5)(7) If a person's reasonable belief is a defense
22 under subsection (4) (6), nevertheless he may be convicted
23 of an included offense of which he would be guilty if the
24 law were as he believed it to be.

(6)(8) Any defense based upon this section is an

25

-3-

(3)(5) Knowledge that certain conduct constitutes an

-4-

1	affirmative defense."	1	other forcible felony
2	Section 3. Section 45-2-202, MCA, is amended to read:	2	physical-force-or-viole
3	"45-2-202. Voluntary act. A material element of every	3	course of the forcible
4	offense is a voluntary act, which includes an omission to	4	any person legally a
5	perform a duty which the law imposes on the offender and	5	death of another human
6	which he is physically capable of performing, except for	6	(2) A person conv
7	deliberate homicide under 45-5-102(1)(b) for which there	7	homicide shall be puni
8	must be a voluntary act only as to the underlying felony.	8	provided in 46-18-301 t
9	Possession is a voluntary act if the offender knowingly	9	in the state prison fo
10	procured or received the thing possessed or was aware of his	10	more than 100 years, ex
11	control thereof for a sufficient time to have been able to	11	Section 5. Sectio
12	terminate his control."	12	" 45- 5-10 3. Mitiga
13	Section 4. Section 45-5-102, MCA, is amended to read:	13	homicideconstitutes
14	"45-5-102. Deliberate homicide. (1) Except-as-provided	14	mitigated deliberate ho
15	in45-5-103(1);criminalhomicideconstitutes <u>A person</u>	15	otherwisebedelibera
16	commits the offense of deliberate homicide if:	16	or knowingly causes the
17	(a) itiscommitted he purposely or knowingly causes	17	does so under the inf.
18	the death of another human being; or	18	stress for which there
19	(b) it-is-committed-while-the-offender-isengagedin	19	The reasonableness of
20	orisanaccompliceinthe-commission-of7-an-attempt-to	20	determined from the view
21	commit ₇ -or-flight-after-committing-or-attempting <u>he attempts</u>	21	actor's situation.
22	to commit, commits, or is legally accountable for the	22	(2) It is an at
23	attempt or commission of robbery, sexual intercourse without	23	acted under the influent
24	consent, arson, burglary, kidnapping, aggravated kidnapping,	24	stress for which there
25	felonious escape, felony assault, aggravated assault, or any	25	the reasonableness of

y which-involves-the-use-or-threat-of ence-against-any-individual and in the felony or flight thereafter, he or accountable for the crime causes the being. wicted of the offense of deliberate ished by death or life imprisonment as through 46-18-310 or by imprisonment for a term of not less than 10 years or except as provided in 46-18-222." on 45-5-103, MCA, is amended to read: gated deliberate homicide. (1) Criminal A person commits the offense of nomicide when a--homicide--which--would ate-homicide-is-committed he purposely e death of another human being but fluence of extreme mental or emotional is reasonable explanation or excuse. f such explanation or excuse shall be ewpoint of a reasonable person in the affirmative defense that the defendant ence of extreme mental or emotional

- 24 stress for which there was reasonable explanation or excuse,
- 25 the reasonableness of which shall be determined from the

-5-

viewpoint of a reasonable person in the actor's situation. 1 2 This defense constitutes a mitigating circumstance reducing deliberate homicide to mitigated deliberate homicide and 3 4 must be proved by the defendant by a preponderance of the 5 evidence. 6 (3) Mitigated deliberate homicide is not an included 7 offense of deliberate homicide as defined in 45-5-102(1)(b). 8 +2+(4) A person convicted of mitigated deliberate 9 homicide shall be imprisoned in the state prison for a term 10 of not less than 2 years or more than 40 years and may be 11 fined not more than \$50,000, except as provided in

Section 6. Section 45-5-104, MCA, is amended to read:
"45-5-104. Negligent homicide. (1) Eriminal--homicide
constitutes <u>A person commits the offense of</u> negligent
homicide when-it-is-committed <u>if he</u> negligently <u>causes the</u>
death of another human being.

46-18-222."

12

18 (2) Negligent homicide is not an included offense of
 19 deliberate homicide as defined in 45-5-102(1)(b).

20 (2)(3) A person convicted of negligent homicide shall
21 be imprisoned in the state prison for any term not to exceed
22 10 years or be fined an amount not to exceed \$50,000, or
23 both."

Section 7. Section 46-18-201, MCA, is amended to read:
"46-18-201. Sentences that may be imposed. (1)

Whenever a person has been found guilty of an offense upon a
 verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences 3 for driving under the influence of alcohol or drugs, for a 4 period, except as otherwise provided, not exceeding 1 year 5 for any misdemeanor or for a period not exceeding 3 years 6 for any felony. The sentencing judge may impose upon the 7 defendant any reasonable restrictions or conditions during R the period of the deferred imposition. Such reasonable 9 restrictions or conditions may include: 10

11 (i) jail base release;

12 (ii) jail time not exceeding 180 days;

13 (iii) conditions for probation;

14 (iv) restitution;

15 (v) payment of the costs of confinement;

16 (vi) payment of a fine as provided in 46-18-231;

17 (vii) payment of costs as provided in 46-18-232 and 18 46-18-233;

19 (viii) payment of costs of court appointed counsel as 20 provided in 46-8-113;

21 (ix) community service;

(x) any other reasonable conditions considered
necessary for rehabilitation or for the protection of
society; or

25 (xi) any combination of the above.

-7-

-8-

.

(b) suspend execution of sentence up to the maximum
 sentence allowed for each particular offense. The sentencing
 judge may impose on the defendant any reasonable
 restrictions or conditions during the period of suspended
 sentence. Such reasonable restrictions or conditions may
 include any of those listed in subsections (1)(a)(i) through
 (1)(a)(xi).

8 (c) impose a fine as provided by law for the offense;
9 (d) require payment of costs as provided in 46-18-232
10 or payment of costs of court-appointed counsel as provided
11 in 46-8-113;

12 (e) commit the defendant to a correctional institution
13 with or without a fine as provided by law for the offense;
14 (f) impose any combination of subsections (1)(b)
15 through (1)(e).

16 (2) If any financial obligation is imposed as a 17 condition under subsection (1)(a), sentence may be deferred 18 for a period not exceeding 2 years for any misdemeanor or 19 for a period not exceeding 6 years for any felony, 20 regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under
subsection (1)(a) or (1)(b) are violated, any elapsed time,
except jail time, is not a credit against the sentence
unless the court orders otherwise.

25 (4) Except as provided in 46-18-222, the imposition or

1 execution of the first 2 years of a sentence of imprisonment 2 imposed under the following sections may not be deferred or 3 suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2), 4 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) 5 and (3), 45-9-102(3), and 45-9-103(2).

6 (5) Except as provided in 46-18-222, the imposition or 7 execution of the first 10 years of a sentence of 8 imprisonment imposed under 45-5-102(2) may not be deferred 9 or suspended.

10 (6) Except as provided in 46-18-222, imposition of 11 sentence in a felony case may not be deferred in the case of 12 a defendant who has been convicted of a felony on a prior 13 occasion whether or not the sentence was imposed, imposition 14 of the sentence was deferred, or execution of the sentence 15 was suspended.

16 (7) If the victim was less than 16 years old, the
17 imposition or execution of the first 30 days of a sentence
18 of imprisonment imposed under 45-5-502(3), 45-5-503,
19 45-5-504, 45-5-505, or 45-5-507 may not be deferred or
20 suspended. Section 46-18-222 does not apply to the first 30
21 days of such imprisonment."

Section 8. Section 46-18-231, MCA, is amended to read:
"46-18-231. Fines in felony and misdemeanor cases. (1)
Whenever, upon a verdict or a plea of guilty, a person has
been found guilty of an offense for which a felony penalty

-9-

-10-

1 of imprisonment could be imposed, the court may impose a 2 fine, only in accordance with subsection (3), and in lieu of 3 or in addition to a sentence of imprisonment. For those 4 crimes for which penalties are provided in 45-5-103+2+, 5 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 6 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2) and (3), 7 45-9-102(3), and 45-9-103(2), a fine may be imposed in 8 accordance with subsection (3) in addition to a sentence of imprisonment. 9

10 (2) Whenever, upon a verdict or plea of guilty, a
11 person has been found guilty of an offense for which a
12 misdemeanor penalty of a fine could be imposed, the court
13 may impose a fine only in accordance with subsection (3).

14 (3) The court may not sentence a defendant to pay a 15 fine unless the defendant is or will be able to pay the 16 fine. In determining the amount and method of payment, the 17 court shall take into account the nature of the crime 18 committed, the financial resources of the defendant, and the 19 nature of the burden that payment of the fine will impose. 20 (4) Any fine levied under this section in a felony 21 case shall be in an amount fixed by the court not to exceed \$50,000." 22

23 Section 9. Section 50-20-108, MCA, is amended to read:
24 "50-20-108. Protection of premature infants born
25 alive. (1) A person commits the an offense of-criminal

-11-

homicide, as defined in 45-5-101 45-5-102 through 45-5-104, if he purposely, knowingly, or negligently causes the death of a premature infant born alive, if such infant is viable. (2) Whenever a premature infant which is the subject of abortion is born alive and is viable, it becomes a dependent and neglected child subject to the provisions of state law, unless:

8 (a) the termination of the pregnancy is necessary to
9 preserve the life of the mother; or

10 (b) the mother and her spouse or either of them have 11 agreed in writing in advance of the abortion or within 72 12 hours thereafter to accept the parental rights and 13 responsibilities of the premature infant if it survives the 14 abortion procedure.

15 (3) No person may use any premature infant born alive 16 for any type of scientific research or other kind of 17 experimentation except as necessary to protect or preserve 18 the life and health of such premature infant born alive.

19 (4) Violation of subsection (3) of this section is a 20 felony."

21 Section 10. Section 50-20-112, MCA, is amended to 22 read:

23 "50-20-112. Penalties. (1) A person convicted of
 24 criminal deliberate, mitigated, or negligent homicide under
 25 this chapter is subject to the penalties prescribed by

-12-

1 45-5-101 45-5-102 through 45-5-104.

2 (2) A person convicted of a felony other than eriminal
3 deliberate, mitigated, or negligent homicide under this
4 chapter is subject to a fine not to exceed \$1,000,
5 imprisonment in the state prison for a term not to exceed 5
6 years, or both.

7 (3) A person convicted of a misdemeanor under this
8 chapter is subject to a fine not to exceed \$500,
9 imprisonment in the county jail for a term not to exceed 6
10 months, or both."

11 NEW SECTION. Section 11. Repealer. Section 45-5-101,

12 MCA, is repealed.

-End-

Montana Legislative Council

.

1	HOUSE BILL NO. 873
2	INTRODUCED BY HANNAH, PINSONEAULT
3	
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
5	CLARIFY THE HOMICIDE LAWS; AMENDING SECTIONS 41-5-305,
6	45-2-103, 45-2-202, 45-5-102 THROUGH 45-5-104, 46-18-201,
7	46-18-231, 50-20-108, AND 50-20-112, MCA; AND REPEALING
8	SECTION 45-5-101, MCA."
9	
10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11	Section 1. Section 41-5-305, MCA, is amended to read:
12	"41-5-305. Detention and shelter care of youth. (1) A
13	youth taken into custody may not be detained in a jail or
14	other facility for detention purposes unless he has
15	allegedly committed an act which if committed by an adult
16	would constitute a criminal offense, and:
17	(a) the alleged act is one of the following:
18	(i) criminal homicide as defined in $45-5-101$ $45-5-102$
19	through 45-5-104;
20	(ii) arson as defined in 45-6-103;
21	(iii) aggravated or felony assault as defined in
22	45-5-202;
23	(iv) robbery as defined in 45-5-401;
24	(v) burglary or aggravated burglary as defined in
25	45-6-204;

THERE ARE NO CHANGES ON <u>HB 873</u> AND DUE TO LENGTH WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING (YELLOW) OR THIRD READING (BLUE) FOR COMPLETE TEXT.

REFERENCE BILL