

1 **JUDICIAL DISCRETION IN SENTENCING AMENDMENTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Kirk A. Cullimore**

5 House Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions regarding the minimum term of imprisonment.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ allows a judge to make a finding at a defendant's sentencing that reduces the
- 13 statutory minimum prison sentence under specified circumstances;
- 14 ▶ provides that this bill does not affect the authority of the sentencing judge to grant
- 15 probation;
- 16 ▶ provides that this bill does not modify the authority of the Board of Pardons and
- 17 Parole; and
- 18 ▶ makes technical changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **76-3-406**, as last amended by Laws of Utah 2017, Chapter 397

26 **77-18-4**, as last amended by Laws of Utah 1994, Chapter 13



28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **76-3-406** is amended to read:

30 **76-3-406. Crimes for which probation, suspension of sentence, lower category of**
31 **offense, or hospitalization may not be granted.**

32 (1) Notwithstanding [~~Sections 76-3-201 and~~] Section 77-18-1 and Title 77, Chapter
33 16a, Commitment and Treatment of Persons with a Mental Illness, and, except as provided in
34 Section 76-5-406.5, probation may not be granted, the execution or imposition of sentence may
35 not be suspended, the court may not enter a judgment for a lower category of offense, and
36 hospitalization may not be ordered, the effect of which would in any way shorten the prison
37 sentence for any person who commits a capital felony or a first degree felony involving:

38 (a) Section 76-5-202, aggravated murder;

39 (b) Section 76-5-203, murder;

40 (c) Section 76-5-301.1, child kidnaping;

41 (d) Section 76-5-302, aggravated kidnaping;

42 (e) Section 76-5-402, rape, if the person is sentenced under Subsection 76-5-402(3)(b),
43 (3)(c), or (4);

44 (f) Section 76-5-402.1, rape of a child;

45 (g) Section 76-5-402.2, object rape, if the person is sentenced under Subsection
46 76-5-402.2(1)(b), (1)(c), or (2);

47 (h) Section 76-5-402.3, object rape of a child;

48 (i) Section 76-5-403, forcible sodomy, if the person is sentenced under Subsection
49 76-5-403(4)(b), (4)(c), or (5);

50 (j) Section 76-5-403.1, sodomy on a child;

51 (k) Section 76-5-404, forcible sexual abuse, if the person is sentenced under
52 Subsection 76-5-404(2)(b) or (3);

53 (l) Subsections 76-5-404.1(4) and (5), aggravated sexual abuse of a child;

54 (m) Section 76-5-405, aggravated sexual assault; or

55 (n) any attempt to commit a felony listed in Subsection (1)(f), (h), or (j).

56 (2) The provisions of this section do not apply if the sentencing court finds that the
57 defendant was under the age of 18 at the time of the offense and could have been adjudicated in
58 the juvenile court but for the delayed reporting or delayed filing of the Information, unless the

59 offenses are before the court pursuant to Section [78A-6-701](#), [78A-6-702](#), or [78A-6-703](#).

60 Section 2. Section **77-18-4** is amended to read:

61 **77-18-4. Sentence -- Term -- Construction.**

62 (1) Whenever a person is convicted of a crime and the judgment provides for a
63 commitment to the state prison, the court [~~shall~~] may not fix a definite term of imprisonment
64 unless otherwise provided by law.

65 (2) The sentence and judgment of imprisonment shall be for an indeterminate term [~~of~~
66 ~~not less than the minimum and not to exceed the maximum term provided by law for the~~
67 ~~particular crime.~~] that is:

68 (a) not less than the minimum provided by statute or the minimum ordered by the
69 sentencing judge under Subsection (4); and

70 (b) not greater than the maximum term provided by law for the particular crime.

71 (3) Except as provided in Subsection (4), or as otherwise expressly provided by law,
72 every sentence, regardless of [~~its~~] the form or terms[~~, which~~] of the sentence, that purports to be
73 for a shorter or different period of time, shall be construed to be a sentence for the term
74 between the minimum, as provided by statute or as ordered by the sentencing judge under
75 Subsection (4), and the maximum periods of time provided by law and shall continue until the
76 maximum period has been reached unless [~~sooner~~] earlier terminated or commuted by authority
77 of the Board of Pardons and Parole.

78 (4) (a) At the time of the imposition of the sentence, the sentencing judge may reduce
79 the minimum term by a maximum of 50% of the minimum otherwise provided in law, upon a
80 finding that:

81 (i) the reduction appropriately balances the interests of the public and the defendant;
82 and

83 (ii) justice will be served.

84 (b) The judge shall enter the reasons for the finding described in Subsection (4)(a) on
85 the record.

86 (c) Subsection (4)(a) does not restrict or modify current law regarding the authority of
87 the sentencing judge to grant probation under Section [77-18-1](#).

88 (d) Subsection (4)(a) does not apply to sentencing under:

89 (i) Section [76-5-502](#), aggravated murder;

- 90 (ii) Section [76-5-203](#), murder; or
- 91 (iii) an offense for which the minimum penalty is life in prison without parole.
- 92 (e) Except as provided in Subsection (4)(d), Subsection (4)(a) applies when the
- 93 governing statute imposes a minimum term or authorizes the sentencing judge to select among
- 94 more than one minimum term for the offense.
- 95 (f) Subsection (4)(a) does not restrict or modify the constitutional and statutory
- 96 authority of the Board of Pardons and Parole.