LEGISLATIVE GENERAL COUNSEL
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1 **JUDICIAL DISCRETION IN SENTENCING AMENDMENTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Kay L. McIff**

5 Senate Sponsor: Todd Weiler

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies Title 77, Utah Code of Criminal Procedure, regarding the minimum
10 term of imprisonment.

11 **Highlighted Provisions:**

12 This bill:

13 ▸ allows the judge to make a finding at the sentencing of an offender that reduces the
14 statutory minimum prison sentence for certain offenses by up to 50% of the
15 minimum sentence provided by law;

16 ▸ requires the judge to state the reasons for the finding on the record;

17 ▸ provides that these amendments do not affect sentences for murder, aggravated
18 murder, or offenses for which the penalty is life without parole;

19 ▸ provides that these amendments do not affect the authority of the sentencing judge
20 to grant probation;

21 ▸ provides that these amendments do not modify the authority of the Board of
22 Pardons and Parole; and

23 ▸ makes technical amendments.

24 **Money Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 None

H.B. 240

28 **Utah Code Sections Affected:**
29 AMENDS:
30 **76-3-406**, as last amended by Laws of Utah 2011, Chapter 366
31 **77-18-4**, as last amended by Laws of Utah 1994, Chapter 13
32
33 *Be it enacted by the Legislature of the state of Utah:*
34 Section 1. Section **76-3-406** is amended to read:
35 **76-3-406. Crimes for which probation, suspension of sentence, lower category of**
36 **offense, or hospitalization may not be granted.**
37 Notwithstanding Sections 76-3-201 [~~and~~], 77-18-1, and Title 77, Chapter 16a,
38 Commitment and Treatment of Persons with a Mental Illness, and except as provided in
39 Section 76-5-406.5 and Subsection 76-18-4(4), probation [~~shall~~] may not be granted, the
40 execution or imposition of sentence [~~shall~~] may not be suspended, the court [~~shall~~] may not
41 enter a judgment for a lower category of offense, and hospitalization [~~shall~~] may not be
42 ordered, the effect of which would in any way shorten the prison sentence for any person who
43 commits a capital felony or a first degree felony involving:
44 (1) Section 76-5-202, aggravated murder;
45 (2) Section 76-5-203, murder;
46 (3) Section 76-5-301.1, child kidnaping;
47 (4) Section 76-5-302, aggravated kidnaping;
48 (5) Section 76-5-402, rape, if the person is sentenced under Subsection 76-5-402(3)(b),
49 (3)(c), or (4);
50 (6) Section 76-5-402.1, rape of a child;
51 (7) Section 76-5-402.2, object rape, if the person is sentenced under Subsection
52 76-5-402.2(1)(b), (1)(c), or (2);
53 (8) Section 76-5-402.3, object rape of a child;
54 (9) Section 76-5-403, forcible sodomy, if the person is sentenced under Subsection
55 76-5-403(4)(b), (4)(c), or (5);
56 (10) Section 76-5-403.1, sodomy on a child;
57 (11) Section 76-5-404, forcible sexual abuse, if the person is sentenced under
58 Subsection 76-5-404(2)(b) or (3);

59 (12) Subsections 76-5-404.1(4) and (5), aggravated sexual abuse of a child;
60 (13) Section 76-5-405, aggravated sexual assault; or
61 (14) any attempt to commit a felony listed in Subsection (6), (8), or (10).
62 Section 2. Section **77-18-4** is amended to read:
63 **77-18-4. Sentence -- Term -- Construction.**
64 (1) Whenever a person is convicted of a crime and the judgment provides for a
65 commitment to the state prison, the court [~~shall~~] may not fix a definite term of imprisonment
66 unless otherwise provided by law.
67 (2) The sentence and judgment of imprisonment shall be for an indeterminate term [~~of~~]
68 that is:
69 (a) not less than the minimum [~~and not to exceed~~] as provided by statute or the
70 minimum as ordered by the sentencing judge under Subsection (4); and
71 (b) not greater than the maximum term provided by law for the particular crime.
72 (3) Except as provided in Subsection (4), or as otherwise expressly provided by law,
73 every sentence, regardless of its form or terms, which purports to be for a shorter or different
74 period of time, shall be construed to be a sentence for the term between the minimum as
75 provided by statute or as ordered by the sentencing judge under Subsection (4) and the
76 maximum periods of time provided by law and shall continue until the maximum period has
77 been reached unless [~~sooner~~] earlier terminated or commuted by authority of the Board of
78 Pardons and Parole.
79 (4) (a) At the time of the imposition of the sentence, the sentencing judge may reduce
80 the minimum term by a maximum of 50% of the minimum otherwise provided in law, upon a
81 finding that the reduction appropriately balances the interests of the public and the defendant
82 and that justice will be served. The judge shall enter the reasons for the finding upon the
83 record.
84 (b) Subsection (4)(a) does not restrict or modify current law regarding the authority of
85 the sentencing judge to grant probation under Section 77-18-1.
86 (c) Subsection (4)(a) does not apply to sentencing for:
87 (i) Section 76-5-202, aggravated murder;
88 (ii) Section 76-5-203, murder; or
89 (iii) an offense for which the minimum penalty is life in prison without parole.

90 (d) Subsection (4)(a) applies when the governing statute imposes a minimum term or
91 authorizes the sentencing judge to select among more than one minimum term for the offense.
92 (e) Subsection (4)(a) does not restrict or modify the constitutional and statutory
93 authority of the Board of Pardons and Parole.

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Office of Legislative Research and General Counsel