

**76-3-402 Conviction of lower degree of offense -- Procedure and limitations.**

- (1) If at the time of sentencing the court, having regard to the nature and circumstances of the offense of which the defendant was found guilty and to the history and character of the defendant, and after having given any victims present at the sentencing and the prosecuting attorney an opportunity to be heard, concludes it would be unduly harsh to record the conviction as being for that degree of offense established by statute, the court may enter a judgment of conviction for the next lower degree of offense and impose sentence accordingly.
- (2) If the court suspends the execution of the sentence and places the defendant on probation, whether or not the defendant is committed to jail as a condition of probation, the court may enter a judgment of conviction for the next lower degree of offense:
  - (a) after the defendant has been successfully discharged from probation;
  - (b) upon motion and notice to the prosecuting attorney;
  - (c) after reasonable effort has been made by the prosecuting attorney to provide notice to any victims;
  - (d) after a hearing if requested by either party under Subsection (2)(c); and
  - (e) if the court finds entering a judgment of conviction for the next lower degree of offense is in the interest of justice.
- (3)
  - (a) An offense may be reduced only one degree under this section, whether the reduction is entered under Subsection (1) or (2), unless the prosecutor specifically agrees in writing or on the court record that the offense may be reduced two degrees.
  - (b) In no case may an offense be reduced under this section by more than two degrees.
- (4) This section does not preclude any person from obtaining or being granted an expungement of his record as provided by law.
- (5) The court may not enter judgment for a conviction for a lower degree of offense if:
  - (a) the reduction is specifically precluded by law; or
  - (b) if any unpaid balance remains on court ordered restitution for the offense for which the reduction is sought.
- (6) When the court enters judgment for a lower degree of offense under this section, the actual title of the offense for which the reduction is made may not be altered.
- (7)
  - (a) A person may not obtain a reduction under this section of a conviction that requires the person to register as a sex offender until the registration requirements under Title 77, Chapter 41, Sex and Kidnap Offender Registry, have expired.
  - (b) A person required to register as a sex offender for the person's lifetime under Subsection 77-41-105(3)(c) may not be granted a reduction of the conviction for the offense or offenses that require the person to register as a sex offender.
- (8) As used in this section, "next lower degree of offense" includes an offense regarding which:
  - (a) a statutory enhancement is charged in the information or indictment that would increase either the maximum or the minimum sentence; and
  - (b) the court removes the statutory enhancement pursuant to this section.

Amended by Chapter 145, 2012 General Session