

1                                   **SENTENCE REDUCTION CLARIFICATION**

2   2007 GENERAL SESSION

3   STATE OF UTAH

4   **Chief Sponsor: Scott L Wyatt**

5   Senate Sponsor: Gregory S. Bell

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7 **LONG TITLE**

8 **General Description:**

9                   This bill modifies the Criminal Code regarding the procedure for reducing an offense  
10 by one or two degrees during the sentencing process.

11 **Highlighted Provisions:**

12                   This bill:

- 13                   ▶ clarifies that "next lower degree of offense" includes removal of a statutory  
14 enhancement;
- 15                   ▶ provides the opportunity for the prosecutor and victim to be heard regarding the  
16 reduction of the offense;
- 17                   ▶ imposes conditions on reducing the offense if the defendant has been placed on  
18 probation;
- 19                   ▶ provides that if a sentence is reduced, the actual title of the offense may not be  
20 changed; and
- 21                   ▶ clarifies that sex offenders may not obtain an offense reduction if the sex offender is  
22 subject to registration regarding the offense.

23 **Monies Appropriated in this Bill:**

24                   None

25 **Other Special Clauses:**

26                   None

27 **Utah Code Sections Affected:**



28 AMENDS:

29 **76-3-402**, as last amended by Chapters 50 and 189, Laws of Utah 2006

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

32 Section 1. Section **76-3-402** is amended to read:

33 **76-3-402. Conviction of lower degree of offense -- Procedure and limitations.**

34 (1) If ~~Ĥ~~ **at the time of sentencing** ~~←Ĥ~~ the court, having regard to the nature and  
 35a circumstances of the offense of which  
 35 the defendant was found guilty and to the history and character of the defendant, and after  
 36 having given any victims ~~Ĥ~~ **present at the sentencing** ~~←Ĥ~~ and the prosecuting attorney an  
 36a opportunity to be heard, concludes it  
 37 would be unduly harsh to record the conviction as being for that degree of offense established  
 38 by statute [~~and to sentence the defendant to an alternative normally applicable to that offense~~],  
 39 the court may [~~unless otherwise specifically provided by law~~] enter a judgment of conviction  
 40 for the next lower degree of offense and impose sentence accordingly.

41 [~~(2) If a conviction is for a third degree felony the conviction is considered to be for a~~  
 42 ~~class A misdemeanor if:]~~

43 [~~(a) the judge designates the sentence to be for a class A misdemeanor and the sentence~~  
 44 ~~imposed is within the limits provided by law for a class A misdemeanor; or]~~

45 [~~(b) (i) the imposition of the sentence is stayed and the defendant is placed on~~  
 46 ~~probation, whether committed to jail as a condition of probation or not;]~~

47 [~~(ii) the defendant is subsequently discharged without violating his probation; and]~~

48 [~~(iii) the judge upon motion and notice to the prosecuting attorney, and a hearing if~~  
 49 ~~requested by either party or the court, finds it is in the interest of justice that the conviction be~~  
 50 ~~considered to be for a class A misdemeanor.;~~

51 (2) If the court ~~Ĥ~~ **[stays the imposition] suspends the execution** ~~←Ĥ~~ of  
 51a Ĥ ~~the~~ ~~←Ĥ~~ sentence and places the defendant on probation,  
 52 whether or not the defendant is committed to jail as a condition of probation, the court may  
 53 enter a judgment of conviction for the next lower degree of offense:

54 (a) after the defendant has been successfully discharged from probation;

55 (b) upon motion ~~Ĥ~~ **[by the defendant] and notice to the prosecuting attorney** ~~←Ĥ~~ ;

56 (c) after ~~Ĥ~~ **[notice] reasonable effort** ~~←Ĥ~~ has been ~~Ĥ~~ **made by the prosecuting**  
 56a **attorney** **[provided] to provide notice** ~~←Ĥ~~ to any victims ~~Ĥ~~ **[and the prosecuting**  
 56b **attorney]** ~~←Ĥ~~ ;

57 (d) after a hearing if requested by either party under Subsection (2)(c); and

58 (e) if the court finds entering a judgment of conviction for the next lower degree of

59 offense is in the interest of justice.

60 (3) (a) An offense may be reduced only ~~to~~ **one degree** ~~once~~ under this  
60a section, whether

61 the reduction is entered under Subsection (1) or (2), unless the prosecutor specifically agrees in  
62 writing or on the court record that the offense may be reduced two degrees.

63 (b) In no case may an offense be reduced under this section by more than two degrees.

64 (4) This section ~~may not be construed to~~ does not preclude any person from obtaining  
65 or being granted an expungement of his record as provided by law.

66 (5) ~~Judgment~~ The court may not enter judgment for a conviction for a lower degree of  
67 offense ~~may not be entered if there remains~~ if:

68 (a) the reduction is specifically precluded by law; or

69 (b) if any unpaid balance remains on court ordered restitution for the offense for which  
70 the reduction is sought.

71 ~~[(6) Notwithstanding the provisions of this section:]~~

72 ~~[(a) a person required to register as a sex offender under Section 77-27-21.5 is not~~  
73 ~~eligible to]~~

74 (6) When the court enters judgment for a lower degree of offense under this section,  
75 the actual title of the offense for which the reduction is made may not be altered.

76 (7) (a) A person may not obtain a reduction [of the] under this section of a conviction  
77 that requires the person to register as a sex offender[:] until the registration requirements under  
78 Section 77-27-21.5 have expired.

79 ~~[(i) while under the jurisdiction of the Department of Corrections; or]~~

80 ~~[(ii) until the registration requirements under Section 77-27-21.5 have expired; and]~~

81 (b) A person required to register as a sex offender for the person's lifetime under  
82 Subsection 77-27-21.5(10)(c) may not be granted a reduction of the conviction for the offense  
83 or offenses that require the person to register as a sex offender.

84 (8) As used in this section, "next lower degree of offense" includes an offense  
85 regarding which:

86 (a) a statutory enhancement is charged in the information or indictment that would  
87 increase either the maximum or the minimum sentence; and

88 (b) the court removes the statutory enhancement pursuant to this section.

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**Legislative Review Note**  
as of 12-21-06 2:42 PM

**Office of Legislative Research and General Counsel**

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**H.B. 85 - Sentence Reduction Clarification**

**Fiscal Note**

2007 General Session  
State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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*1/16/2007, 3:50:54 PM, Lead Analyst: Byrne, D.*

**Office of the Legislative Fiscal Analyst**