

Representative Jordan D. Teuscher proposes the following substitute bill:

CONVICTION REDUCTION AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jordan D. Teuscher

Senate Sponsor: Todd D. Weiler

LONG TITLE

General Description:

This bill amends provisions related to the reduction of the degree of an offense for a conviction.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the requirements for reducing the degree of an offense for a conviction after the defendant is sentenced; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-3-402, as last amended by Laws of Utah 2021, Chapter 293

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



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

27 **76-3-402. Conviction of lower degree of offense -- Procedure and limitations.**

28 (1) As used in this section~~["lower~~];

29 (a) "Lower degree of offense" includes an offense for which:

30 [~~(a)~~] (i) a statutory enhancement is charged in the information or indictment that would
31 increase either the maximum or the minimum sentence; and

32 [~~(b)~~] (ii) the court removes the statutory enhancement in accordance with this section.

33 (b) (i) "Rehabilitation program" means a program designed to reduce criminogenic and
34 recidivism risks.

35 (ii) "Rehabilitation program" includes:

36 (A) a domestic violence treatment program, as that term is defined in Section
37 [62A-2-101](#);

38 (B) a residential, vocational, and life skills program, as that term is defined in Section
39 [13-53-102](#);

40 (C) a substance abuse treatment program, as that term is defined in Section [62A-2-101](#);

41 (D) a substance use disorder treatment program, as that term is defined in Section
42 [62A-2-101](#);

43 (E) a youth program, as that term is defined in Section [62A-2-101](#);

44 (F) a program that meets the standards established by the Department of Corrections
45 under Section [64-13-25](#);

46 (G) a drug court, a veterans court, or a mental health court certified by the Judicial
47 Council; or

48 (H) a program that is substantially similar to a program described in Subsections
49 (1)(b)(ii)(A) through (G).

50 (c) "Serious offense" means a felony or misdemeanor offense that is not a traffic
51 offense.

52 (d) "Traffic offense" means the same as that term is defined in Section [77-40a-101](#).

53 (e) (i) Except as provided in Subsection (1)(e)(ii), "violent felony" means the same as
54 that term is defined in Section [76-3-203.5](#).

55 (ii) "Violent felony" does not include an offense, or any attempt, solicitation, or
56 conspiracy to commit an offense, for:

57 (A) the possession, use, or removal of explosive, chemical, or incendiary devices under
58 Subsection 76-10-306(3), (5), or (6); or

59 (B) the purchase or possession of a dangerous weapon or handgun by a restricted
60 person under Section 76-10-503.

61 (2) The court may enter a judgment of conviction for a lower degree of offense than
62 established by statute and impose a sentence at the time of sentencing for the lower degree of
63 offense if the court:

64 (a) takes into account:

65 (i) the nature and circumstances of the offense of which the defendant was found
66 guilty; and

67 (ii) the history and character of the defendant;

68 (b) gives any victim present at the sentencing and the prosecuting attorney an
69 opportunity to be heard; and

70 (c) concludes that the degree of offense established by statute would be unduly harsh to
71 record as a conviction on the record for the defendant.

72 (3) Upon a motion from the prosecuting attorney or the defendant, the court may enter
73 a judgment of conviction for a lower degree of offense than established by statute:

74 (a) after the defendant is successfully discharged from probation or parole for the
75 conviction; and

76 (b) if the court finds that entering a judgment of conviction for a lower degree of
77 offense is in the interest of justice in accordance with Subsection (7).

78 (4) Upon a motion from the prosecuting attorney or the defendant, the court may enter
79 a judgment of conviction for a lower degree of offense than established by statute if:

80 (a) the defendant's probation or parole for the conviction did not result in a successful
81 discharge but the defendant is successfully discharged from probation or parole for a
82 subsequent conviction of an offense;

83 (b) (i) at least five years have passed after the day on which the defendant is sentenced
84 for the subsequent conviction; or

85 (ii) at least three years have passed after the day on which the defendant is sentenced
86 for the subsequent conviction and the prosecuting attorney consents to the reduction;

87 (c) the defendant is not convicted of a serious offense during the time period described

88 in Subsection (4)(b);

89 (d) there are no criminal proceedings pending against the defendant;

90 (e) the defendant is not on probation or parole for any other offense;

91 (f) if the offense for which the reduction is sought is a violent felony, the prosecuting

92 attorney consents to the reduction; and

93 (g) the court finds that entering a judgment of conviction for a lower degree of offense

94 is in the interest of justice in accordance with Subsection (7).

95 (5) Upon a motion from the prosecuting attorney or the defendant, the court may enter

96 a judgment of conviction for a lower degree of offense than established by statute if:

97 (a) the defendant's probation or parole for the conviction did not result in a successful

98 discharge but the defendant is successfully discharged from a rehabilitation program;

99 (b) at least three years have passed after the day on which the defendant is successfully

100 discharged from the rehabilitation program;

101 (c) the defendant is not convicted of a serious offense during the time period described

102 in Subsection (5)(b);

103 (d) there are no criminal proceedings pending against the defendant;

104 (e) the defendant is not on probation or parole for any other offense;

105 (f) if the offense for which the reduction is sought is a violent felony, the prosecuting

106 attorney consents to the reduction; and

107 (g) the court finds that entering a judgment of conviction for a lower degree of offense

108 is in the interest of justice in accordance with Subsection (7).

109 (6) Upon a motion from the prosecuting attorney or the defendant, the court may enter

110 a judgment of conviction for a lower degree of offense than established by statute if:

111 (a) at least five years have passed after the day on which the defendant's probation or

112 parole for the conviction did not result in a successful discharge;

113 (b) the defendant is not convicted of a serious offense during the time period described

114 in Subsection (6)(a);

115 (c) there are no criminal proceedings pending against the defendant;

116 (d) the defendant is not on probation or parole for any other offense;

117 (e) if the offense for which the reduction is sought is a violent felony, the prosecuting

118 attorney consents to the reduction; and

119 (f) the court finds that entering a judgment of conviction for a lower degree of offense
120 is in the interest of justice in accordance with Subsection (7).

121 (7) In determining whether entering a judgment of a conviction for a lower degree of
122 offense is in the interest of justice under Subsection (3), (4), (5), or (6):

123 (a) the court shall consider:

124 (i) the nature, circumstances, and severity of the offense for which a reduction is
125 sought;

126 (ii) the physical, emotional, or other harm that the defendant caused any victim of the
127 offense for which the reduction is sought; and

128 (iii) any input from a victim of the offense; and

129 (b) the court may consider:

130 (i) any special characteristics or circumstances of the defendant, including the
131 defendant's criminogenic risks and needs;

132 (ii) the defendant's criminal history;

133 (iii) the defendant's employment and community service history;

134 (iv) whether the defendant participated in a rehabilitative program and successfully
135 completed the program;

136 (v) any effect that a reduction would have on the defendant's ability to obtain or
137 reapply for a professional license from the Department of Commerce;

138 (vi) whether the level of the offense has been reduced by law after the defendant's
139 conviction;

140 (vii) any potential impact that the reduction would have on public safety; or

141 (viii) any other circumstances that are reasonably related to the defendant or the
142 offense for which the reduction is sought.

143 (8) (a) A court may only enter a judgment of conviction for a lower degree of offense
144 under Subsection (3), (4), (5), or (6) after:

145 (i) notice is provided to the other party;

146 (ii) reasonable efforts have been made by the prosecuting attorney to provide notice to
147 any victims; and

148 (iii) a hearing is held if a hearing is requested by either party.

149 (b) A prosecuting attorney is entitled to a hearing on a motion seeking to reduce a

150 judgment of conviction for a lower degree of offense under Subsection (3), (4), (5), or (6).

151 (c) In a motion under Subsection (3), (4), (5), or (6) and at a requested hearing on the
152 motion, the moving party has the burden to provide evidence sufficient to demonstrate that the
153 requirements under Subsection (3), (4), (5), or (6) are met.

154 (9) A court has jurisdiction to consider and enter a judgment of conviction for a lower
155 degree of offense under Subsection (3), (4), (5), or (6) regardless of whether the defendant is
156 committed to jail as a condition of probation or is sentenced to prison.

157 ~~[(3)(a) Regardless of whether the defendant is committed to jail as a condition of~~
158 ~~probation or sentenced to prison, the court has jurisdiction to consider and enter a judgment of~~
159 ~~conviction for a lower degree of offense:]~~

160 ~~[(i) after the defendant has been successfully discharged from probation or parole;]~~

161 ~~[(ii) upon motion and notice to either party;]~~

162 ~~[(iii) after reasonable effort has been made by the prosecuting attorney to provide~~
163 ~~notice to any victims;]~~

164 ~~[(iv) after a hearing if requested by either party; and]~~

165 ~~[(v) if the court finds entering a judgment of conviction for the lower degree of offense~~
166 ~~is in the interest of justice.]~~

167 ~~[(b) In making the finding in Subsection (3)(a)(v), the court shall consider as a factor in~~
168 ~~favor of granting the reduction, after the defendant's conviction, whether the level of the~~
169 ~~offense has been reduced by law:]~~

170 ~~[(c) In both the initial motion and at a requested hearing described in Subsection (3)(a),~~
171 ~~the moving party has the burden to provide evidence sufficient to demonstrate:]~~

172 ~~[(i) that the defendant has been successfully discharged from probation or parole; and]~~

173 ~~[(ii) that the reduction is in the interest of justice.]~~

174 ~~[(4)]~~ (10) (a) An offense may be reduced only one degree [~~under this section, whether~~
175 ~~the reduction is entered under Subsection (2) or (3)] under this section, unless the prosecuting
176 attorney specifically agrees in writing or on the court record that the offense may be reduced
177 two degrees.~~

178 (b) An offense may not be reduced under this section by more than two degrees.

179 ~~[(5)]~~ (11) This section does not preclude an individual from obtaining or being granted
180 an expungement of the individual's record in accordance with Title 77, Chapter 40a,

181 Expungement.

182 ~~[(6)]~~ (12) The court may not enter a judgment for a conviction for a lower degree of
183 offense under this section if:

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

185 (b) ~~[if]~~ any unpaid balance remains on ~~[court ordered]~~ court-ordered restitution for the
186 offense for which the reduction is sought.

187 ~~[(7)]~~ (13) When the court enters a judgment for a lower degree of offense under this
188 section, the actual title of the offense for which the reduction is made may not be altered.

189 ~~[(8)]~~ (14) (a) An individual may not obtain a reduction under this section of a
190 conviction that requires the individual to register as a sex offender until the registration
191 requirements under Title 77, Chapter 41, Sex and Kidnap Offender Registry, have expired.

192 (b) An individual required to register as a sex offender for the individual's lifetime
193 under Subsection 77-41-105(3)(c) may not be granted a reduction of the conviction for the
194 offense or offenses that require the individual to register as a sex offender.

195 ~~[(9)]~~ (15) (a) An individual may not obtain a reduction under this section of a
196 conviction that requires the individual to register as a child abuse offender until the registration
197 requirements under Title 77, Chapter 43, Child Abuse Offender Registry, have expired.

198 (b) An individual required to register as a child abuse offender for the individual's
199 lifetime under Subsection 77-43-105(3)(c) may not be granted a reduction of the conviction for
200 the offense or offenses that require the individual to register as a child abuse offender.