

HB0174S01 compared with HB0174

~~deleted text~~ shows text that was in HB0174 but was deleted in HB0174S01.

inserted text shows text that was not in HB0174 but was inserted into HB0174S01.

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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:

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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:

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

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

(1) As used in this section [~~,"lower"~~]:

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

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

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

(b) (i) "Rehabilitation program" means a ~~{substantial course of counseling, treatment, or programming that is intended to reduce the recidivism of a defendant regardless of whether the course is staffed by licensed or unlicensed individuals}~~ program designed to reduce criminogenic and recidivism risks.

(ii) "Rehabilitation program" includes:

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

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

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

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

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

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

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

(H) a program that is substantially similar to a program described in Subsections

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(1)(b)(ii)(A) through (G).

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

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

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

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

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

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

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

(a) takes into account:

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

(ii) the history and character of the defendant;

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

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

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

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

~~(ii)~~b if the court finds that entering a judgment of conviction for a lower degree of offense is in the interest of justice in accordance with Subsection ~~(3)(b)~~.

~~(b) In making the finding under Subsection (3)(a)(ii), the court shall consider, as a factor in favor of granting the reduction, whether the level of the offense has been reduced by~~

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~~law after the defendant's conviction:~~

~~———— (4) (a) } 7).~~

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

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

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

(ii) at least three years have passed after the day on which the defendant is ~~{successfully discharged from probation or parole}~~ sentenced for the subsequent conviction and the prosecuting attorney consents to the reduction;

(~~fi~~iii)c) the defendant is not convicted of a serious offense during the time period described in Subsection (4)(~~f~~a)(~~ii~~b);

(~~fi~~iv)d) there are no criminal proceedings pending against the defendant;

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

(f) if the offense for which the reduction is sought is a violent felony, the prosecuting attorney consents to the reduction; and

(~~fi~~vi)g) the court finds that entering a judgment of conviction for a lower degree of offense is in the interest of justice in accordance with Subsection (~~f~~4)(b);

~~———— (b) In making the finding under Subsection (4)(a)(vi), the court shall consider the following factors:~~

~~———— (i) the nature and seriousness of the criminal conduct underlying the conviction for which a lower degree of offense is sought;~~

~~———— (ii) the nature and seriousness of the criminal conduct underlying the subsequent conviction for which the defendant is successfully discharged from probation or parole;~~

~~———— (iii) whether the successful discharge from probation and parole and the actions of the defendant subsequent to the conviction for which a lower degree of offense is sought demonstrate to the court that the defendant is rehabilitated;~~

~~———— (iv) the history and character of the defendant; and~~

~~———— (v) as a factor in favor of granting the reduction, whether the level of offense has been~~

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~~reduced by law after the defendant's conviction for which a lower degree of offense is sought.~~

~~(5)(a)}7).~~

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

(~~fi~~a) the defendant's probation or parole for the conviction did not result in a successful discharge but the defendant is successfully discharged from a rehabilitation program;

(~~fi~~b) at least three years have passed after the day on which the defendant is successfully discharged from the rehabilitation program;

(~~fi~~c) the defendant is not convicted of a serious offense during the time period described in Subsection (5)(~~fa~~(~~ii~~b));

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

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

(f) if the offense for which the reduction is sought is a violent felony, the prosecuting attorney consents to the reduction; and

(~~fi~~g) the court finds that entering a judgment of conviction for a lower degree of offense is in the interest of justice in accordance with Subsection (~~f~~5)(b).

~~(b) In making the finding under Subsection (5)(a)(vi), the court shall consider the following factors:~~

~~(i) the nature and seriousness of the criminal conduct underlying the conviction for which a lower degree of offense is sought;~~

~~(ii) whether the successful discharge from a rehabilitation program is likely to reduce the recidivism of the defendant to the satisfaction of the court;~~

~~(iii) whether the actions of the defendant subsequent to the conviction demonstrate to the court that the defendant is rehabilitated;~~

~~(iv) the history and character of the defendant; and~~

~~(v) as a factor in favor of granting the reduction, whether the level of offense has been reduced by law after the defendant's conviction for which a lower degree of offense is sought.~~

~~(6)(a)}7).~~

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

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~~(fi)a~~ at least five years have passed after the day on which the defendant's probation or parole for the conviction did not result in a successful discharge;

~~(fii)b~~ the defendant is not convicted of a serious offense during the time period described in Subsection (6)(a)~~(f)(i)~~;

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

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

~~(e) if the offense for which the reduction is sought is a violent felony, the prosecuting attorney consents to the reduction; and~~

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

~~(b) In making a finding under Subsection (6)(a)(v), the court shall consider the following factors:~~

~~(i) the nature and seriousness of the criminal conduct underlying the conviction for which~~ ~~7) In determining whether entering a judgment of a conviction for~~ a lower degree of offense is ~~sought;~~

~~(ii) in the interest of justice under Subsection (3), (4), (5), or (6):~~

~~(a) the court shall consider:~~

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

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

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

~~(b) the court may consider:~~

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

~~(ii) the defendant's criminal history;~~

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

~~(iv) whether the ~~defendant's actions subsequent to the conviction demonstrate to the court that the defendant is rehabilitated;~~~~

~~(iii) the history and character of the defendant; and~~

~~(iv) as a factor in favor of granting the reduction,} defendant participated in a~~

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rehabilitative program and successfully completed the program;

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

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

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

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

(~~7~~8) (a) A court may only enter a judgment of conviction for a lower degree of offense under Subsection (3), (4), (5), or (6) after:

(i) notice is provided to the other party;

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

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

(b) A prosecuting attorney is entitled to a hearing on a motion seeking to reduce a judgment of conviction for a lower degree of offense under Subsection (3), (4), (5), or (6).

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

(~~8~~9) A court has jurisdiction to consider and enter a judgment of conviction for a lower degree of offense under Subsection (3), (4), (5), or (6) regardless of whether the defendant is committed to jail as a condition of probation or is sentenced to prison.

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

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

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

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

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

~~[(v) if the court finds entering a judgment of conviction for the lower degree of offense]~~

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is in the interest of justice.]

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

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

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

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

~~[(4)]~~ ~~(~~9~~; ~~10~~)~~ (a) An offense may be reduced only one degree ~~[under this section; whether the reduction is entered under Subsection (2) or (3)]~~ under this section, unless the prosecuting attorney specifically agrees in writing or on the court record that the offense may be reduced two degrees.

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

~~[(5)]~~ ~~(~~10~~; ~~11~~)~~ This section does not preclude an individual from obtaining or being granted an expungement of the individual's record in accordance with Title 77, Chapter 40a, Expungement.

~~[(6)]~~ ~~(~~11~~; ~~12~~)~~ The court may not enter a judgment for a conviction for a lower degree of offense under this section if:

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

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

~~[(7)]~~ ~~(~~12~~; ~~13~~)~~ When the court enters a 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.

~~[(8)]~~ ~~(~~13~~; ~~14~~)~~ (a) An individual may not obtain a reduction under this section of a conviction that requires the individual to register as a sex offender until the registration requirements under Title 77, Chapter 41, Sex and Kidnap Offender Registry, have expired.

(b) An individual required to register as a sex offender for the individual'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 individual to register as a sex offender.

~~[(9)]~~ ~~(~~14~~; ~~15~~)~~ (a) An individual may not obtain a reduction under this section of a conviction that requires the individual to register as a child abuse offender until the registration

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requirements under Title 77, Chapter 43, Child Abuse Offender Registry, have expired.

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