

**CONVICTION REDUCTION AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jordan D. Teuscher**

Senate Sponsor: Todd D. Weiler

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**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

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*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.**



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) "Rehabilitation program" means a substantial course of counseling, treatment, or

34 programming that is intended to reduce the recidivism of a defendant regardless of whether the

35 course is staffed by licensed or unlicensed individuals.

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

37 offense.

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

39 (2) The court may enter a judgment of conviction for a lower degree of offense than

40 established by statute and impose a sentence at the time of sentencing for the lower degree of

41 offense if the court:

42 (a) takes into account:

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

44 guilty; and

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

46 (b) gives any victim present at the sentencing and the prosecuting attorney an

47 opportunity to be heard; and

48 (c) concludes that the degree of offense established by statute would be unduly harsh to

49 record as a conviction on the record for the defendant.

50 (3) (a) Upon a motion from the prosecuting attorney or the defendant, the court may

51 enter a judgment of conviction for a lower degree of offense than established by statute:

52 (i) after the defendant is successfully discharged from probation or parole for the

53 conviction; and

54 (ii) if the court finds that entering a judgment of conviction for a lower degree of

55 offense is in the interest of justice in accordance with Subsection (3)(b).

56 (b) In making the finding under Subsection (3)(a)(ii), the court shall consider, as a

57 factor in favor of granting the reduction, whether the level of the offense has been reduced by

58 law after the defendant's conviction.

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

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

64 (ii) at least three years have passed after the day on which the defendant is successfully  
65 discharged from probation or parole for the subsequent conviction;

66 (iii) the defendant is not convicted of a serious offense during the time period  
67 described in Subsection (4)(a)(ii);

68 (iv) there are no criminal proceedings pending against the defendant;

69 (v) the defendant is not on probation or parole for any other offense; and

70 (vi) the court finds that entering a judgment of conviction for a lower degree of offense  
71 is in the interest of justice in accordance with Subsection (4)(b).

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

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

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

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

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

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

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

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

88 (ii) at least three years have passed after the day on which the defendant is successfully  
89 discharged from the rehabilitation program;

90 (iii) the defendant is not convicted of a serious offense during the time period  
91 described in Subsection (5)(a)(ii);  
92 (iv) there are no criminal proceedings pending against the defendant;  
93 (v) the defendant is not on probation or parole for any other offense; and  
94 (vi) the court finds that entering a judgment of conviction for a lower degree of offense  
95 is in the interest of justice in accordance with Subsection (5)(b).

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

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

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

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

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

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

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

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

111 (ii) the defendant is not convicted of a serious offense during the time period described  
112 in Subsection (6)(a)(i);

113 (iii) there are no criminal proceedings pending against the defendant;

114 (iv) the defendant is not on probation or parole for any other offense; and

115 (v) the court finds that entering a judgment of conviction for a lower degree of offense  
116 is in the interest of justice in accordance with Subsection (6)(b).

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

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

121 (ii) whether the defendant's actions subsequent to the conviction demonstrate to the  
122 court that the defendant is rehabilitated;

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

124 (iv) as a factor in favor of granting the reduction, whether the level of the offense has  
125 been reduced by law after the defendant's conviction.

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

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

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

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

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

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

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

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

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

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

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

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

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

150 ~~[(b) In making the finding in Subsection (3)(a)(v), the court shall consider as a factor in~~  
151 ~~favor of granting the reduction, after the defendant's conviction, whether the level of the~~

152 offense has been reduced by law.]

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

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

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

157 [~~(4)~~ (9) (a) An offense may be reduced only one degree [~~under this section, whether~~  
158 ~~the reduction is entered under Subsection (2) or (3)] under this section, unless the prosecuting  
159 attorney specifically agrees in writing or on the court record that the offense may be reduced  
160 two degrees.~~

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

162 [~~(5)~~ (10) This section does not preclude an individual from obtaining or being granted  
163 an expungement of the individual's record in accordance with Title 77, Chapter 40a,  
164 Expungement.

165 [~~(6)~~ (11) The court may not enter a judgment for a conviction for a lower degree of  
166 offense under this section if:

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

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

170 [~~(7)~~ (12) When the court enters a judgment for a lower degree of offense under this  
171 section, the actual title of the offense for which the reduction is made may not be altered.

172 [~~(8)~~ (13) (a) An individual may not obtain a reduction under this section of a  
173 conviction that requires the individual to register as a sex offender until the registration  
174 requirements under Title 77, Chapter 41, Sex and Kidnap Offender Registry, have expired.

175 (b) An individual required to register as a sex offender for the individual's lifetime  
176 under Subsection [77-41-105\(3\)\(c\)](#) may not be granted a reduction of the conviction for the  
177 offense or offenses that require the individual to register as a sex offender.

178 [~~(9)~~ (14) (a) An individual may not obtain a reduction under this section of a  
179 conviction that requires the individual to register as a child abuse offender until the registration  
180 requirements under Title 77, Chapter 43, Child Abuse Offender Registry, have expired.

181 (b) An individual required to register as a child abuse offender for the individual's  
182 lifetime under Subsection [77-43-105\(3\)\(c\)](#) may not be granted a reduction of the conviction for

183 the offense or offenses that require the individual to register as a child abuse offender.