

Chapter 2

Prosecution, Screening, and Diversion

77-2-2 Definitions.

As used in this chapter:

- (1) "Commencement of prosecution" means the filing of an information or an indictment.
- (2) "Diversion" means suspending criminal proceedings before conviction on the condition that a defendant agree to:
 - (a) participate in a rehabilitation program;
 - (b) pay restitution to a victim; or
 - (c) fulfill some other condition.
- (3) "Restitution" means the same as that term is defined in Section 77-38b-102.
- (4) "Screening" means the process used by a prosecuting attorney to:
 - (a) terminate an investigative action;
 - (b) proceed with prosecution;
 - (c) move to dismiss a prosecution that has been commenced; or
 - (d) cause a prosecution to be diverted.

Amended by Chapter 260, 2021 General Session

77-2-2.1 Authorization to file information.

Except as otherwise provided by law, no information may be filed charging the commission of any felony or class A misdemeanor unless authorized by a prosecuting attorney.

Renumbered and Amended by Chapter 260, 2021 General Session

77-2-2.2 Signing and filing of information.

- (1) The prosecuting attorney shall sign all informations.
- (2) The prosecuting attorney may:
 - (a) sign the information in the presence of a magistrate; or
 - (b) present and file the information in the office of the clerk where the prosecution is commenced upon the signature of the prosecuting attorney.
- (3) When reasonably available, the prosecuting attorney shall ensure that the information includes:
 - (a) the defendant's state identification number issued by the Bureau of Criminal Identification;
 - (b) the citation number associated with the case; and
 - (c) the offense tracking number associated with the case.

Amended by Chapter 177, 2023 General Session

77-2-2.3 Reducing the level of an offense.

- (1) Notwithstanding any other provision of law, a prosecuting attorney may:
 - (a) present and file an information charging an individual for an offense under Subsections 76-3-103(1)(b) through (d), Subsection 76-3-103(2), or Section 76-3-104 with a classification of the offense at one degree lower than the classification that is provided in statute if the prosecuting attorney believes that the sentence would be disproportionate to the offense because there are special circumstances relating to the offense; or

- (b) subject to the approval of the court, amend an information, as part of a plea agreement, to charge an individual for an offense under Subsections 76-3-103(1)(b) through (d), Subsection 76-3-103(2), or Section 76-3-104 with a classification of the offense at one degree lower than the classification that is provided in statute.
- (2) A court may:
 - (a) enter a judgment of conviction for an offense filed under Subsection (1) at one degree lower than classified in statute; and
 - (b) impose a sentence for the offense filed under Subsection (1) at one degree lower than classified in statute.
- (3) A conviction of an offense at one degree lower than classified in statute under Subsection (2) does not affect the requirements for registration of the offense under Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, if the elements of the offense for which the defendant is convicted are the same as the elements of an offense described in Section 77-41-102.
- (4) This section does not preclude an individual from obtaining and being granted an expungement for the individual's record in accordance with Title 77, Chapter 40a, Expungement of Criminal Records.

Amended by Chapter 234, 2024 General Session

77-2-3 Termination of investigative action.

Prior to the commencement of prosecution, the prosecutor may, without approval of a magistrate, authorize a termination of investigative action when it appears that further investigative action is not in the public interest.

Enacted by Chapter 15, 1980 General Session

77-2-4 Dismissal of prosecution.

After commencement of a prosecution the prosecutor may, upon reasonable grounds, move the magistrate before whom the prosecution is pending to dismiss the prosecution. If, in the judgment of the magistrate, the prosecution should not continue, he may dismiss the prosecution and enter an order of dismissal stating the reasons for the dismissal in the order.

Enacted by Chapter 15, 1980 General Session

77-2-4.2 Compromise of traffic charges -- Deferred prosecution of traffic infractions -- Limitations.

- (1) As used in this section:
 - (a) "Compromise" means referral of an individual charged with a traffic violation to traffic school or other school, class, or remedial or rehabilitative program.
 - (b) "Deferral period" means the 12-month period following the date on which an individual submits an application for deferred prosecution.
 - (c) "Deferred prosecution" means the deferral of prosecution of an individual charged with a traffic infraction if the individual complies with the requirements described in Subsection (5).
 - (d) "Felony traffic violation" means a violation of Title 41, Chapter 6a, Traffic Code, amounting to a felony.
 - (e) "Moving traffic infraction" means a traffic infraction that occurs when a vehicle is in motion on a highway.

- (f)
 - (i) "Traffic infraction" means a violation of Title 41, Chapter 6a, Traffic Code, or a local traffic ordinance that is an infraction.
 - (ii) "Traffic infraction" does not include an offense that is a misdemeanor or a felony.
- (g) "Traffic school deferred prosecution" means a deferred prosecution for which completion of traffic school is required as a condition of the application.
- (h) "Traffic violation" means any charge for which a fine may be voluntarily remitted in lieu of appearance, by citation or information, of a violation of:
 - (i) Title 41, Chapter 6a, Traffic Code, amounting to:
 - (A) a class B misdemeanor;
 - (B) a class C misdemeanor; or
 - (C) an infraction; or
 - (ii) any local traffic ordinance.
- (2) Any compromise of a traffic violation shall be done pursuant to a plea in abeyance agreement as provided in Title 77, Chapter 2a, Pleas in Abeyance, and Subsection (3), except:
 - (a) when the criminal prosecution is dismissed pursuant to Section 77-2-4;
 - (b) when there is a plea by the defendant to and entry of a judgment by a court for the offense originally charged or for an amended charge; or
 - (c) when there is a deferred plea of no contest as provided in Subsection (5).
- (3) In all cases which are compromised pursuant to a plea in abeyance:
 - (a) the court, taking into consideration the offense charged, shall collect a plea in abeyance fee which shall:
 - (i) be subject to the same surcharge as if imposed on a criminal fine;
 - (ii) be allocated subject to the surcharge as if paid as a criminal fine under Section 78A-5-110 and a surcharge under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation; and
 - (iii) be not more than \$25 greater than the fine designated in the Uniform Fine Schedule; or
 - (b) if no plea in abeyance fee is collected, a surcharge on the fee charged for the traffic school or other school, class, or rehabilitative program shall be collected, which surcharge shall:
 - (i) be computed, assessed, collected, and remitted in the same manner as if the traffic school fee and surcharge had been imposed as a criminal fine and surcharge; and
 - (ii) be subject to the financial requirements contained in Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation.
- (4) If a written plea in abeyance agreement is provided, or the defendant requests a written accounting, an itemized statement of all amounts assessed by the court shall be provided, including:
 - (a) the Uniform Fine Schedule amount;
 - (b) the amount of any surcharges being assessed; and
 - (c) the amount of the plea in abeyance fee.
- (5)
 - (a)
 - (i) Except as provided in Subsection (5)(b), an individual who receives a citation for a moving traffic infraction may apply for deferred prosecution.
 - (ii) A court may not require an individual to appear in-person to apply for a deferred prosecution in accordance with this Subsection (5).
 - (b) The following may not apply for or be granted a deferred prosecution as described in this section:
 - (i) an individual under 21 years old;

- (ii) an individual with a commercial driver license;
 - (iii) an individual who has not been issued a current Utah driver license;
 - (iv) an individual who has been convicted of a felony traffic violation, traffic violation, or traffic infraction within the 24 months immediately preceding the date of the application for deferred prosecution;
 - (v) an individual charged with two or more moving traffic infractions related to the same episode or occurrence;
 - (vi) an individual charged with multiple traffic infractions related to the same episode or occurrence if any of the offenses is a misdemeanor or felony traffic violation;
 - (vii) an individual charged with one or more traffic infractions if none of the traffic infractions are moving traffic violations;
 - (viii) an individual charged with any traffic infraction or traffic violation that is part of an episode or occurrence involving a traffic accident;
 - (ix) an individual charged with a moving traffic violation that is for speeding 20 miles per hour or more above the posted speed limit;
 - (x) an individual charged with a moving violation that is for speeding at a speed of 100 miles per hour or more; or
 - (xi) an individual who is currently within a deferral period related to a separate episode or occurrence.
- (6)
- (a) Except as provided in Subsection (6)(b), and upon availability of the traffic school program described in Subsection (11), if an individual completes a traffic school course as described in Subsection (11) within 28 days after the date the individual applies for traffic school deferred prosecution, an individual may apply for and be granted a traffic school deferred prosecution if:
 - (i) the individual has one or fewer moving traffic infraction convictions in the 24 months immediately preceding the current citation;
 - (ii) the individual received a citation for more than one but less than three moving traffic infractions from the same incident or occurrence;
 - (iii) the individual was involved in an accident during the commission of the traffic infraction, other than an accident resulting in serious bodily injury, as defined in Section 41-6a-401.3, or death; or
 - (iv) the individual received a citation for speeding between 20 and 30 miles per hour over the legal speed limit if the speeding violation is not more than double the legal speed limit.
 - (b) The following may not apply for or be granted a traffic school deferred prosecution in accordance with this Subsection (6):
 - (i) an individual to whom more than one of the conditions in Subsection (6)(a) apply;
 - (ii) an individual under 21 years old;
 - (iii) an individual with a commercial driver license;
 - (iv) an individual who has not been issued a current Utah driver license;
 - (v) an individual who has been convicted of a felony traffic violation or traffic violation within the 24 months immediately preceding the date of the application for deferred prosecution;
 - (vi) an individual charged with three or more moving traffic infractions related to the same episode or occurrence; or
 - (vii) an individual charged with multiple traffic infractions related to the same episode or occurrence if any of the offenses is a misdemeanor or felony traffic violation.
 - (c) A court may not require an individual to appear in-person to apply for traffic school deferred prosecution in accordance with this Subsection (6).

- (7) An individual who applies for deferred prosecution or traffic school deferred prosecution shall:
 - (a) apply through an online application process developed by the Administrative Office of the Courts;
 - (b) pay the relevant fine, as provided by the uniform fine schedule described in Section 76-3-301.5, associated with each traffic infraction for which the individual was charged;
 - (c) pay an administrative fee as established by the judicial council; and
 - (d) enter a deferred plea of no contest as described in Subsection (9).
- (8) An individual who receives a traffic citation shall:
 - (a) comply with Section 77-7-19;
 - (b) apply for deferred prosecution as described in Subsection (7) no sooner than five and no later than 21 days after receiving the citation; or
 - (c) for a traffic school deferred prosecution as described in Subsection (6), apply for deferred prosecution as described in Subsection (7) no later than 28 days after submitting an application into the deferred prosecution system.
- (9) If an eligible individual applies for deferred prosecution, the court shall:
 - (a) record the deferred plea of no contest;
 - (b) not enter the deferred plea of no contest unless the individual fails to comply with the terms of the deferred prosecution; and
 - (c) if the individual fails to comply with the terms of the deferred prosecution, enter a judgment of conviction as described in Subsection (10)(b).
- (10)
 - (a) Except as provided in Subsection (10)(b), if an individual enters a deferred plea of no contest as described in Subsection (7)(d) and is not convicted of another traffic violation, felony traffic violation, or traffic infraction during the deferral period:
 - (i) the prosecutor may not prosecute the individual for the traffic infraction subject to the deferred prosecution;
 - (ii) the court may not enter judgment of conviction against the individual or impose a sentence for the traffic infraction; and
 - (iii) the court shall dismiss each traffic infraction to which the individual entered a deferred plea of no contest.
 - (b) If an individual enters a deferred plea of no contest as described in Subsection (7)(d) and is convicted of another a traffic violation within the deferral period, the court shall enter judgment of conviction against the individual for each traffic infraction to which the individual entered a deferred plea of no contest.
 - (c)
 - (i) A prosecutor may not amend a charge from an infraction to a misdemeanor:
 - (A) if the infraction offense has the same elements as the misdemeanor offense; or
 - (B) for the sole purpose of prohibiting an individual from applying for deferred prosecution.
 - (ii) A deferred prosecution is not a prosecution for purposes of Section 76-1-403.
 - (d)
 - (i) The judicial council shall set and periodically adjust the fee described in Subsection (7)(c) in an amount that the judicial council determines to be necessary to cover the cost to implement, operate, and maintain the deferred prosecution program described in this Subsection (5).
 - (ii) The state treasurer shall deposit the revenue generated from the administrative fee described in Subsection (7)(c) into the Justice Court Technology, Security, and Training Account created in Section 78A-7-301.
- (11)

- (a) The Department of Public Safety may enter into a contract with a traffic school provider to establish a traffic school course as described in this section.
- (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Department of Public Safety may make rules necessary to establish a traffic school program, including:
 - (i) establishing requirements and standards for the curriculum of a traffic school program;
 - (ii) establishing a fee for an individual to enroll and complete the traffic school course; and
 - (iii) creating a method to electronically transmit the completion of the course to the relevant court as required in Subsection (11)(c).
- (c) The Department of Public Safety shall ensure that any traffic school program created under this Subsection (11) includes the ability for the traffic school provider to electronically transmit successful completion of the traffic school course to the relevant court.
- (d) The Department of Public Safety shall ensure that the traffic school program required under this Subsection (11) is established no later than November 1, 2023.
- (e) After the Department of Public Safety enters into a contract with a traffic school provider as described in this Subsection (11), no later than March 1, 2024, the Administrative Office of the Courts shall coordinate with the traffic school provider to ensure the traffic school provider and the Administrative Office of the Courts:
 - (i) establish the traffic school program as described in this Subsection (11); and
 - (ii) establish means by which completion of the traffic school course may be verified electronically.

Amended by Chapter 393, 2023 General Session

77-2-4.3 Compromise of boating violations -- Limitations.

- (1) As used in this section:
 - (a) "Compromise" means referral of a person charged with a boating violation to a boating safety course approved by the Division of Outdoor Recreation.
 - (b) "Boating violation" means any charge for which bail may be forfeited in lieu of appearance, by citation or information, of a violation of Title 73, Chapter 18, State Boating Act, amounting to:
 - (i) a class B misdemeanor;
 - (ii) a class C misdemeanor; or
 - (iii) an infraction.
- (2) Any compromise of a boating violation shall be done pursuant to a plea in abeyance agreement as provided in Title 77, Chapter 2a, Pleas in Abeyance, except:
 - (a) when the criminal prosecution is dismissed pursuant to Section 77-2-4; or
 - (b) when there is a plea by the defendant to and entry of a judgment by a court for the offense originally charged or for an amended charge.
- (3) In a case that is compromised pursuant to Subsection (2):
 - (a) the court, taking into consideration the offense charged, shall collect a plea in abeyance fee which shall:
 - (i) be subject to the same surcharge as if imposed on a criminal fine;
 - (ii) be allocated subject to the surcharge as if paid as a criminal fine under Section 78A-5-110 and a surcharge under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation; and
 - (iii) be not more than \$25 greater than the bail designated in the Uniform Bail Schedule; or
 - (b) if no plea in abeyance fee is collected, a surcharge on the fee charged for the boating safety course shall be collected, which surcharge shall:

- (i) be computed, assessed, collected, and remitted in the same manner as if the boating safety course fee and surcharge had been imposed as a criminal fine and surcharge; and
 - (ii) be subject to the financial requirements contained in Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation.
- (4) If a written plea in abeyance agreement is provided, or the defendant requests a written accounting, an itemized statement of all amounts assessed by the court shall be provided, including:
- (a) the Uniform Bail Schedule amount;
 - (b) the amount of any surcharges being assessed; and
 - (c) the amount of the plea in abeyance fee.

Amended by Chapter 68, 2022 General Session

77-2-4.5 Dismissal by compromise -- Limitations.

- (1) In misdemeanor cases the court may dismiss the case upon motion of the prosecutor if it is compromised by the defendant and the injured party, except under Subsection (2). The injured party shall first acknowledge the compromise before the court or in writing. The reasons for the order shall be set forth and entered in the minutes. The order is a bar to another prosecution for the same offense.
- (2) A dismissal by compromise may not be granted when the misdemeanor is committed by or upon a peace officer while in the performance of his duties, or riotously, or with intent to commit a felony.

Enacted by Chapter 7, 1990 General Session

77-2-5 Diversion agreement -- Negotiation -- Contents.

- (1) At any time after the commencement of prosecution and before conviction, the prosecuting attorney may, by written agreement with the defendant, filed with the court, and upon approval of the court, divert a defendant to a non-criminal diversion program.
- (2) A defendant shall be represented by counsel during negotiations for diversion and at the time of execution of any diversion agreement unless the defendant has knowingly and intelligently waived the defendant's right to counsel.
- (3) The defendant has the right to be represented by counsel at any court hearing relating to a diversion program.
- (4)
 - (a) A diversion agreement, entered into between the prosecuting attorney and the defendant and approved by a court, shall contain a full, detailed statement of the requirements agreed to by the defendant and the reasons for diversion.
 - (b) The diversion agreement described in Subsection (4)(a) shall include an agreement, by the parties, for a specific amount of restitution that the defendant will pay, unless the prosecuting attorney certifies that:
 - (i) the prosecuting attorney has consulted with all victims, including the Utah Office for Victims of Crime; and
 - (ii) the defendant does not owe any restitution.
- (5)
 - (a) If the court approves a diversion agreement that includes an agreement by the parties for the amount of restitution that the defendant will pay, the court shall order the defendant to pay restitution in accordance with the terms of the diversion agreement.

- (b) The court shall collect, receive, process, and distribute payments for restitution to the victim, unless otherwise provided by law or by the diversion agreement.
- (6) A decision by a prosecuting attorney not to divert a defendant is not subject to judicial review.
- (7) A diversion agreement entered into between the prosecution and the defense and approved by a magistrate may contain an order that the defendant pay a nonrefundable diversion fee that:
 - (a) shall be allocated in the same manner as if paid as a fine for a criminal conviction under Section 78A-5-110 or Section 78A-7-120; and
 - (b) may not exceed the suggested fine listed in the Uniform Fine Schedule adopted by the Judicial Council.
- (8) A diversion agreement may not be approved unless the defendant knowingly and intelligently waives the defendant's constitutional right to a speedy trial before a magistrate and in the diversion agreement.
- (9)
 - (a) The court shall, on the defendant's request, consider the defendant's ability to pay a diversion fee before ordering the defendant to pay a diversion fee.
 - (b) The court may:
 - (i) consider any relevant evidence in determining the defendant's ability to pay a diversion fee; and
 - (ii) lower or waive the diversion fee based on that evidence.
- (10) A diversion program longer than two years is not permitted.
- (11) The court may not rely solely on an algorithm or a risk assessment tool score in determining whether the court should approve the defendant's diversion to a non-criminal diversion program.

Amended by Chapter 187, 2024 General Session

77-2-6 Dismissal after compliance with diversion agreement.

The court shall dismiss the information or indictment filed against the defendant who has complied with the requirements of his diversion agreement and the defendant shall not thereafter be subject to further prosecution for the offense involved or for any lesser included offense.

Enacted by Chapter 15, 1980 General Session

77-2-7 Diversion not a conviction.

Diversion is not a conviction and if the case is dismissed the matter shall be treated as if the charge had never been filed.

Enacted by Chapter 15, 1980 General Session

77-2-8 Violation of diversion agreement -- Hearing -- Prosecution resumed.

If, during the course of the diversion of a defendant, information is brought to the attention of a magistrate or the prosecuting attorney that the defendant has violated his diversion agreement and it appears in the best interests of the community to reinstate and proceed with the prosecution, the prosecuting attorney, upon court approval, or the magistrate, on his own motion, shall cause to be served upon the defendant an order to show cause specifying the facts relied upon by the prosecuting attorney or magistrate to terminate diversion and shall set a time and place for a hearing to determine whether or not the defendant has violated his diversion agreement. If, at the hearing, the magistrate finds the defendant has failed to comply with any terms or conditions of

the diversion agreement, he may authorize the prosecuting attorney to proceed with prosecution. The prosecution of a diverted offense shall not bar any independent prosecution arising from any offense that constituted a violation of any term or condition of the diversion agreement by which the original prosecution was diverted.

Enacted by Chapter 15, 1980 General Session

77-2-9 Offenses ineligible for diversion.

- (1) A magistrate may not grant a diversion for:
 - (a) a capital felony;
 - (b) a felony in the first degree;
 - (c) any case involving a sexual offense against a victim who is under 14 years old;
 - (d) any motor vehicle related offense involving alcohol or drugs;
 - (e) any case involving using a motor vehicle in the commission of a felony;
 - (f) driving a motor vehicle or commercial motor vehicle on a revoked or suspended license;
 - (g) any case involving operating a commercial motor vehicle in a negligent manner causing the death of another including the offenses of:
 - (i) manslaughter under Section 76-5-205; or
 - (ii) negligent homicide under Section 76-5-206; or
 - (h) a crime of domestic violence as defined in Section 77-36-1.
- (2) When an individual is alleged to have committed any violation of Title 76, Chapter 5, Part 4, Sexual Offenses, while under 16 years old, the court may enter a diversion in the matter if the court enters on the record the court's findings that:
 - (a) the offenses could have been adjudicated in juvenile court but for the delayed reporting or delayed filing of the information in the district court, unless the offenses are before the court in accordance with Section 80-6-502 or 80-6-504;
 - (b) the individual did not use coercion or force;
 - (c) there is no more than three years' difference between the ages of the participants; and
 - (d) it would be in the best interest of the person to grant diversion.

Amended by Chapter 262, 2021 General Session