

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.

Renumbered and Amended by Chapter 260, 2021 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 and Kidnap Offender Registry, or Title 77, Chapter 43, 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 or 77-43-102.
- (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 40, Utah Expungement Act.

Renumbered and Amended by Chapter 260, 2021 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 -- Limitations.

- (1) As used in this section:
- (a) "Compromise" means referral of a person charged with a traffic violation to traffic school or other school, class, or remedial or rehabilitative program.
 - (b) "Traffic violation" means any charge for which bail may be forfeited 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, 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 all cases which are compromised pursuant to the provisions of 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 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 Bail Schedule amount;
 - (b) the amount of any surcharges being assessed; and
 - (c) the amount of the plea in abeyance fee.

Amended by Chapter 3, 2008 General Session

Amended by Chapter 339, 2008 General Session

Amended by Chapter 382, 2008 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 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 all cases which are compromised pursuant to the provisions of 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 280, 2021 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 magistrate, 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.

Amended by Chapter 43, 2021 General Session
Amended by Chapter 260, 2021 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