Chapter 2a
Pleas in Abeyance

77-2a-1 Definitions.

As used in this chapter:

(1) "Criminal conduct" means the same as that term is defined in Section 77-38b-102.

(2) "Pecuniary damages" means the same as that term is defined in Section 77-38b-102.

(3) "Plea in abeyance" means an order by a court, upon motion of the prosecuting attorney and the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that time, entering judgment of conviction against the defendant nor imposing sentence upon the defendant on condition that the defendant comply with specific conditions as set forth in a plea in abeyance agreement.

(4) "Plea in abeyance agreement" means an agreement entered into between the prosecuting attorney and the defendant setting forth the specific terms and conditions upon which, following acceptance of the agreement by the court, a plea may be held in abeyance.

(5) "Restitution" means the same as that term is defined in Section 77-38b-102.

(6) "Victim" means the same as that term is defined in Section 77-38b-102.

Amended by Chapter 113, 2023 General Session

77-2a-2 Plea in abeyance agreement -- Negotiation -- Contents -- Terms of agreement -- Waiver of time for sentencing.

(1) At any time after acceptance of a plea of guilty or no contest but before entry of judgment of conviction and imposition of sentence, the court may, upon motion of both the prosecuting attorney and the defendant, hold the plea in abeyance and not enter judgment of conviction against the defendant nor impose sentence upon the defendant within the time periods contained in Rule 22(a), Utah Rules of Criminal Procedure.

(2) A defendant shall be represented by counsel during negotiations for a plea in abeyance and at the time of acknowledgment and affirmation of any plea in abeyance agreement unless the defendant knowingly and intelligently waives the defendant's right to counsel.

(3) A defendant has the right to be represented by counsel at any court hearing relating to a plea in abeyance agreement.

(4)

(a) Any plea in abeyance agreement entered into between the prosecution and the defendant and approved by the court shall, subject to Subsection (7), include a full, detailed recitation of the requirements and conditions agreed to by the defendant and the reason for requesting the court to hold the plea in abeyance.

(b) If the plea is to a felony or any combination of misdemeanors and felonies, the agreement shall be in writing and shall, before acceptance by the court, be executed by the prosecuting attorney, the defendant, and the defendant's counsel in the presence of the court.

(5)

(a) Except as provided in Subsection (5)(b), a plea may not be held in abeyance for a period longer than 18 months if the plea is to any class of misdemeanor or longer than three years if the plea is to any degree of felony or to any combination of misdemeanors and felonies.

(b)

(i) For a plea in abeyance agreement that the Division of Adult Probation and Parole created in Section 64-14-202 supervises, the plea may not be held in abeyance for a period longer

than the initial term of probation required under the adult sentencing and supervision length guidelines, as defined in Section 75E-4-101, if the initial term of probation is shorter than the period required under Subsection (5)(a).

(ii) Subsection (5)(b)(i) does not:

(A) apply to a plea that is held in abeyance in a drug court created under Title 78A, Chapter 5, Part 2, Drug Court, or a problem solving court approved by the Judicial Council; or

(B) prohibit court supervision of a plea in abeyance agreement after the day on which the Division of Adult Probation and Parole supervision described in Subsection (5)(b)(i) ends and before the day on which the plea in abeyance agreement ends.

(6) Notwithstanding Subsection (5), a plea may be held in abeyance for up to two years if the plea is to any class of misdemeanor and the plea in abeyance agreement includes a condition that the defendant participate in a problem solving court approved by the Judicial Council.

(7) A plea in abeyance agreement may not:

(a) be approved unless the defendant, before the court, and any written agreement, knowingly and intelligently waives time for sentencing as designated in Rule 22(a), Utah Rules of Criminal Procedure; or

(b) notwithstanding any other provision of law, include as part of the requirements and conditions agreed to by the defendant that the defendant will forfeit a firearm owned by the defendant if the offense the defendant will plea to is not an offense that would make the defendant a restricted person under Section 76-11-302, Section 76-11-303, or federal law.

Amended by Chapter 291, 2026 General Session

77-2a-3 Manner of entry of plea -- Powers of court -- Expungement.

(1)

(a) Acceptance of any plea in anticipation of a plea in abeyance agreement shall be done in full compliance with the Utah Rules of Criminal Procedure, Rule 11.

(b) In a case charging an offense for which a defendant may voluntarily pay the recommended fine amount without a personal appearance under Section 77-7-21, a defendant may enter into a plea in abeyance agreement without a personal appearance before a magistrate.

(2) A plea in abeyance agreement may provide that the court may, upon finding that the defendant has successfully completed the terms of the agreement:

(a) reduce the degree of the offense, enter a judgment of conviction for the lower degree of the offense, and impose a sentence for the lower degree of the offense;

(b) allow withdrawal of the defendant's plea and order the dismissal of the case; or

(c) issue an order of expungement for all records of the offense if:

(i) the defendant successfully completes a problem solving court program that is certified by the Judicial Council; and

(ii) the court allows the withdrawal of the defendant's plea and orders the dismissal of the case.

(3)

(a) Upon finding that a defendant has successfully completed the terms of a plea in abeyance agreement and only as provided in the plea in abeyance agreement or as agreed to by all parties, the court may:

(i) reduce the degree of the offense, enter a judgment of conviction for the lower degree of the offense, and impose a sentence for the lower degree of the offense;

(ii) allow withdrawal of the defendant's plea and order the dismissal of the case; or

(iii) issue an order of expungement for all records of the offense if:

(A) the defendant successfully completes a problem solving court program that is certified by the Judicial Council; and
(B) the court allows the withdrawal of the defendant's plea and orders the dismissal of the case.
(b) Upon sentencing a defendant for any lesser offense in accordance with a plea in abeyance agreement, the court may not invoke Section 76-3-402 to further reduce the degree of the offense.
(4) The court may require the Division of Adult Probation and Parole created in Section 64-14-202 to assist in the administration of the plea in abeyance agreement as if the defendant were placed on probation under Section 77-18-105.
(5) The terms of a plea in abeyance agreement may include:
(a) an order that the defendant pay a nonrefundable plea in abeyance fee, with a surcharge based on the amount of the plea in abeyance fee, both of which shall be allocated in the same manner as if paid as a fine for a criminal conviction under Section 78A-5-110 and a surcharge under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation, and which may not exceed in amount the maximum fine and surcharge which could have been imposed upon conviction and sentencing for the same offense;
(b) an order that the defendant pay the costs of any remedial or rehabilitative program required by the terms of the agreement; and
(c) an order that the defendant comply with any other conditions that could have been imposed as conditions of probation upon conviction and sentencing for the same offense.
(6)
(a) The terms of a plea in abeyance shall include:
(i) a specific amount of restitution that the defendant will pay, as agreed to by the defendant and the prosecuting attorney;
(ii) a certification from the prosecuting attorney that:
(A) the prosecuting attorney has consulted with all victims, including the Office for Victims of Crime; and
(B) all victims, including the Office for Victims of Crime, are not seeking restitution; or
(iii) an agreement between the parties that restitution will be determined by the court at a subsequent hearing in accordance with Section 77-38b-205.
(b) At a subsequent hearing described in Subsection (6)(a)(iii), the court shall order the defendant, as a modified term of the plea in abeyance, to pay restitution to all victims for the entire amount of pecuniary damages that are proximately caused by the criminal conduct of the defendant.
(c) The court shall collect, receive, process, and distribute payments for restitution to the victim, unless otherwise provided by law or by the plea in abeyance agreement.
(d) If the defendant does not successfully complete the terms of the plea in abeyance, the court shall enter an order for restitution, in accordance with Chapter 38b, Crime Victims Restitution Act, upon entering a sentence for the defendant.
(7)
(a) A court may not hold a plea in abeyance without the consent of both the prosecuting attorney and the defendant.
(b) A decision by a prosecuting attorney not to agree to a plea in abeyance is final.
(8) No plea may be held in abeyance in any case involving:
(a) a sexual offense against an individual who is under 14 years old; or
(b) a driving under the influence violation under Section 41-6a-502, 41-6a-502.5, 41-6a-517, 41-6a-520, 41-6a-520.1, 41-6a-521.1, 76-5-102.1, or 76-5-207.

(9)
(a) If the terms of a plea in abeyance agreement allow a court to issue an order of expungement as described in Subsection (2)(c), the prosecuting attorney shall make a reasonable effort to provide notice to any victim of the offense of the terms of the plea in abeyance agreement.
(b) The notice under Subsection (9)(a) shall:
(i) state that the victim has a right to object to the expungement; and
(ii) provide instructions for registering an objection with the court.
(c) If there is a victim of the offense, the victim may file an objection with the court before the court makes a finding as to whether the defendant successfully completed the terms of the plea in abeyance agreement as described in Subsection (3).
(d) The defendant may respond, in writing, to any objection filed by the victim within 14 days after the day on which the objection is received by the court.
(10) If the court issues an order of expungement under Subsection (3)(a)(iii), the court shall:
(a) expunge all records of the case as described in Section 77-40a-401; and
(b) notify the Bureau of Criminal Identification of the order of expungement.
(11)
(a) Upon receiving notice from the court of an expungement order as described in Subsection (10), the Bureau of Criminal Identification shall notify any agency, as defined in Section 77-40a-101, affected by the expungement order.
(b) For purposes of Subsection (11)(a), the Bureau of Criminal Identification may not notify the Board of Pardons and Parole of an expungement order if the individual has never been:
(i) sentenced to prison in this state; or
(ii) under the jurisdiction of the Board of Pardons and Parole.
(c) The Bureau of Criminal Identification shall forward a copy of the expungement order to the Federal Bureau of Investigation.
(12) The defendant may deliver copies of the expungement to any agency, as defined in Section 77-40a-101, affected by the order of expungement.
(13) If an agency receives an expungement order under this part, the agency shall expunge all records for the case in accordance with Section 77-40a-401.

Amended by Chapter 291, 2026 General Session

77-2a-4 Violation of plea in abeyance agreement -- Hearing -- Entry of judgment and imposition of sentence -- Subsequent prosecutions.

(1) If, at any time during the term of the plea in abeyance agreement, information comes to the attention of the prosecuting attorney or the court that the defendant has violated any condition of the agreement, the court, at the request of the prosecuting attorney, made by appropriate motion and affidavit, or upon its own motion, may issue an order requiring the defendant to appear before the court at a designated time and place to show cause why the court should not find the terms of the agreement to have been violated and why the agreement should not be terminated. If, following an evidentiary hearing, the court finds that the defendant has failed to substantially comply with any term or condition of the plea in abeyance agreement, it may terminate the agreement and enter judgment of conviction and impose sentence against the defendant for the offense to which the original plea was entered. Upon entry of judgment of conviction and imposition of sentence, any amounts paid by the defendant as a plea in abeyance fee prior to termination of the agreement shall be credited against any fine imposed by the court.

(2) The termination of a plea in abeyance agreement and subsequent entry of judgment of conviction and imposition of sentence shall not bar any independent prosecution arising from any offense that constituted a violation of any term or condition of an agreement whereby the original plea was placed in abeyance.

Enacted by Chapter 82, 1993 General Session