

Representative Eric K. Hutchings proposes the following substitute bill:

CRIMINAL CHARGE REDUCTION AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill amends provisions relating to the degree of a criminal offense.

Highlighted Provisions:

This bill:

- ▶ allows either party to request the court to enter a judgment for conviction to a lower degree of offense;
- ▶ allows a prosecutor to file or amend an information for certain offenses at one degree lower than the offense in the information;
- ▶ provides that the court may enter a conviction and impose a sentence for an offense one degree lower; 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 2017, Chapters 282 and 356



26 ENACTS:

27 77-2-1.2, Utah Code Annotated 1953



29 *Be it enacted by the Legislature of the state of Utah:*

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

31 **76-3-402. Conviction of lower degree of offense -- Procedure and limitations.**

32 ~~[(1) If at the time of sentencing the court, having regard to the nature and~~
33 ~~circumstances of the offense of which the defendant was found guilty and to the history and~~
34 ~~character of the defendant, and after having given any victims present at the sentencing and the~~
35 ~~prosecuting attorney an opportunity to be heard, concludes it would be unduly harsh to record~~
36 ~~the conviction as being for that degree of offense established by statute, the court may enter a~~
37 ~~judgment of conviction for the next lower degree of offense and impose sentence accordingly.]~~

38 (1) As used in this section, "lower degree of offense" includes an offense for which:

39 (a) a statutory enhancement is charged in the information or indictment that would
40 increase either the maximum or the minimum sentence; and

41 (b) the court removes the statutory enhancement in accordance with this section.

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

45 (a) takes into account:

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

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

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

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

53 ~~[(2)]~~ (3) (a) If the court suspends the execution of [the] a defendant's sentence and
54 places the defendant on probation, [whether or not] regardless of whether the defendant is
55 committed to jail as a condition of probation, the court may enter a judgment of conviction for
56 [the next] a lower degree of offense:

- 57 (i) after the defendant has been successfully discharged from probation;
58 (ii) upon motion and notice to [~~the prosecuting attorney~~] either party;
59 (iii) after reasonable effort has been made by the prosecuting attorney to provide notice
60 to any victims;
61 (iv) after a hearing if requested by either party [~~described in Subsection (2)(a)(iii)~~]; and
62 (v) if the court finds entering a judgment of conviction for the [~~next~~] lower degree of
63 offense is in the interest of justice.

64 (b) In making the finding in Subsection [~~(2)~~] (3)(a)(v), the court shall consider as a
65 factor in favor of granting the reduction [~~that, subsequent to~~], after the defendant's conviction,
66 whether the level of the offense has been reduced by law.

67 [~~(3)~~] (4) (a) An offense may be reduced only one degree under this section, whether the
68 reduction is entered under Subsection [~~(1)~~] (2) or [~~(2)~~] (3), unless the [~~prosecutor~~] prosecuting
69 attorney specifically agrees in writing or on the court record that the offense may be reduced
70 two degrees.

71 (b) [~~In no case may an offense~~] An offense may not be reduced under this section by
72 more than two degrees.

73 [~~(4)~~] (5) This section does not preclude [~~any person~~] an individual from obtaining or
74 being granted an expungement of [~~his record as provided by law~~] the individual's record in
75 accordance with Title 77, Chapter 40, Utah Expungement Act.

76 [~~(5)~~] (6) The court may not enter judgment for a conviction for a lower degree of
77 offense if:

- 78 (a) the reduction is specifically precluded by law; or
79 (b) if any unpaid balance remains on court ordered restitution for the offense for which
80 the reduction is sought.

81 [~~(6)~~] (7) When the court enters judgment for a lower degree of offense under this
82 section, the actual title of the offense for which the reduction is made may not be altered.

83 [~~(7)~~] (8) (a) [~~A person~~] An individual may not obtain a reduction under this section of a
84 conviction that requires the [~~person~~] individual to register as a sex offender until the
85 registration requirements under Title 77, Chapter 41, Sex and Kidnap Offender Registry, have
86 expired.

87 (b) [~~A person~~] An individual required to register as a sex offender for the [~~person's~~]

88 individual's lifetime under Subsection 77-41-105(3)(c) may not be granted a reduction of the
89 conviction for the offense or offenses that require the ~~[person]~~ individual to register as a sex
90 offender.

91 ~~[(8)]~~ (9) (a) ~~[A person]~~ An individual may not obtain a reduction under this section of a
92 conviction that requires the ~~[person]~~ individual to register as a child abuse offender until the
93 registration requirements under Title 77, Chapter 43, Child Abuse Offender Registry, have
94 expired.

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

99 ~~[(9) As used in this section, "next lower degree of offense" includes an offense
100 regarding which:]~~

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

103 ~~[(b) the court removes the statutory enhancement pursuant to this section.]~~

104 Section 2. Section 77-2-1.2 is enacted to read:

105 **77-2-1.2. Reducing the level of an offense.**

106 (1) Notwithstanding any other provision of law, a prosecuting attorney may:

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

112 (b) subject to the approval of the court, amend an information, as part of a plea
113 agreement, to charge an individual for an offense under Subsections 76-3-103(1)(b) through
114 (d), Subsection 76-3-103(2), or Section 76-3-104 with a classification of the offense at one
115 degree lower than the classification that is provided in statute.

116 (2) A court may:

117 (a) enter a judgment of conviction for an offense filed under Subsection (1) at one
118 degree lower than classified in statute; and

119 (b) impose a sentence for the offense filed under Subsection (1) at one degree lower
120 than classified in statute.

121 (3) A conviction of an offense at one degree lower than classified in statute under
122 Subsection (2) does not affect the requirements for registration of the offense under Title 77,
123 Chapter 41, Sex and Kidnap Offender Registry, or Title 77, Chapter 43, Child Abuse Offender
124 Registry, if the elements of the offense for which the defendant is convicted are the same as the
125 elements of an offense described in Section [77-41-102](#) or [77-43-102](#).

126 (4) This section does not preclude an individual from obtaining and being granted an
127 expungement for the individual's record in accordance with Title 77, Chapter 40, Utah
128 Expungement Act.