

## HB0441S01 compared with HB0441

~~{deleted text}~~ shows text that was in HB0441 but was deleted in HB0441S01.

inserted text shows text that was not in HB0441 but was inserted into HB0441S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: \_\_\_\_\_

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#### 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:

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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

ENACTS:

**77-2-1.2**, Utah Code Annotated 1953

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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.**

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

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

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

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

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

(a) takes into account:

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

(ii) the history and character of the defendant;

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

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

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

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

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

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

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

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

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

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

~~[(6)]~~ (7) When the court enters judgment for a lower degree of offense under this

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section, the actual title of the offense for which the reduction is made may not be altered.

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

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

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

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

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

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

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

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

### **77-2-1.2. Reducing the level of an offense~~{by information}~~.**

(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), ~~and~~ or Section 76-3-104 with a classification of the offense at one degree lower than the classification that is provided in statute ~~for sentencing purposes~~ if the prosecuting attorney believes that the sentence would be disproportionate to the offense because there are special circumstances relating to the offense; or

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(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.