

Representative Jordan D. Teuscher proposes the following substitute bill:

CONVICTION REDUCTION AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jordan D. Teuscher

Senate Sponsor: Todd D. Weiler

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ allows for the reduction of the degree of a criminal offense for a defendant who has been successfully discharged from parole;
- ▶ provides for the court's jurisdiction to consider a motion for reduction;
- ▶ establishes the burden of proof; 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 2020, Chapter 151

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

1st Sub. H.B. 373



26 Section 1. Section ~~76-3-402~~ is amended to read:

27 **76-3-402. Conviction of lower degree of offense -- Procedure and limitations.**

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

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

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

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

35 (a) takes into account:

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

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

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

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

43 (3) (a) [~~If the court suspends the execution of a defendant's sentence and places the~~
44 ~~defendant on probation, regardless~~] Regardless of whether the defendant is committed to jail as
45 a condition of probation or sentenced to prison, the court [~~may~~] has jurisdiction to consider and
46 enter a judgment of conviction for a lower degree of offense:

47 (i) after the defendant has been successfully discharged from probation or parole;

48 (ii) upon motion and notice to either party;

49 (iii) after reasonable effort has been made by the prosecuting attorney to provide notice
50 to any victims;

51 (iv) after a hearing if requested by either party; and

52 (v) if the court finds entering a judgment of conviction for the lower degree of offense
53 is in the interest of justice.

54 (b) In making the finding in Subsection (3)(a)(v), the court shall consider as a factor in
55 favor of granting the reduction, after the defendant's conviction, whether the level of the
56 offense has been reduced by law.

57 (c) In a proceeding described in Subsection (3)(a), the moving party has the burden to
58 provide evidence sufficient to demonstrate:

- 59 (i) that the defendant has been successfully discharged from probation or parole; and
60 (ii) that the reduction is in the interest of justice.

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

64 (b) An offense may not be reduced under this section by more than two degrees.

65 (5) This section does not preclude an individual from obtaining or being granted an
66 expungement of the individual's record in accordance with Title 77, Chapter 40, Utah
67 Expungement Act.

68 (6) The court may not enter judgment for a conviction for a lower degree of offense if:

69 (a) the reduction is specifically precluded by law; or

70 (b) if any unpaid balance remains on court ordered restitution for the offense for which
71 the reduction is sought.

72 (7) When the court enters judgment for a lower degree of offense under this section,
73 the actual title of the offense for which the reduction is made may not be altered.

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

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

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

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