

Representative Jordan D. Teuscher proposes the following substitute bill:

TRAFFIC VIOLATION AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jordan D. Teuscher

Senate Sponsor: Kirk A. Cullimore

LONG TITLE

General Description:

This bill expands the availability of a deferred prosecution for certain traffic infractions.

Highlighted Provisions:

This bill:

- ▶ expands the availability of a deferred prosecution for certain traffic infractions to certain individuals if the individual completes a traffic school course as part of the deferred prosecution agreement;
- ▶ requires an applicant for deferred prosecution to complete a traffic school course in certain circumstances;
- ▶ requires the Department of Public Safety to contract with one or more traffic school providers to create a traffic school program;
- ▶ grants rulemaking authority to the Department of Public Safety to make rules related to the establishment of a traffic school program;
- ▶ requires a traffic citation include information about the individual's possible eligibility for deferred prosecution; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **77-2-4.2**, as last amended by Laws of Utah 2022, Chapter 136

31 **77-7-20**, as last amended by Laws of Utah 2021, Chapter 431

32 **78A-7-301**, as last amended by Laws of Utah 2022, Chapters 136, 276

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

35 Section 1. Section **77-2-4.2** is amended to read:

36 **77-2-4.2. Compromise of traffic charges -- Deferred prosecution of traffic**
37 **infractions -- Limitations.**

38 (1) As used in this section:

39 (a) "Compromise" means referral of an individual charged with a traffic violation to
40 traffic school or other school, class, or remedial or rehabilitative program.

41 (b) "Deferral period" means the 12-month period following the date on which an
42 individual submits an application for deferred prosecution.

43 (c) "Deferred prosecution" means the deferral of prosecution of an individual charged
44 with a traffic infraction if the individual complies with the requirements described in
45 Subsection (5).

46 (d) "Felony traffic violation" means a violation of Title 41, Chapter 6a, Traffic Code,
47 amounting to a felony.

48 (e) "Moving traffic infraction" means a traffic infraction that occurs when a vehicle is
49 in motion on a highway.

50 (f) (i) "Traffic infraction" means a violation of Title 41, Chapter 6a, Traffic Code, or a
51 local traffic ordinance that is an infraction.

52 (ii) "Traffic infraction" does not include an offense that is a misdemeanor or a felony.

53 (g) "Traffic school deferred prosecution" means a deferred prosecution for which
54 completion of traffic school is required as a condition of the application.

55 [~~g~~] (h) "Traffic violation" means any charge for which a fine may be voluntarily
56 remitted in lieu of appearance, by citation or information, of a violation of:

- 57 (i) Title 41, Chapter 6a, Traffic Code, amounting to:
- 58 (A) a class B misdemeanor;
- 59 (B) a class C misdemeanor; or
- 60 (C) an infraction; or
- 61 (ii) any local traffic ordinance.
- 62 (2) Any compromise of a traffic violation shall be done pursuant to a plea in abeyance
- 63 agreement as provided in Title 77, Chapter 2a, Pleas in Abeyance, and Subsection (3), except:
- 64 (a) when the criminal prosecution is dismissed pursuant to Section 77-2-4;
- 65 (b) when there is a plea by the defendant to and entry of a judgment by a court for the
- 66 offense originally charged or for an amended charge; or
- 67 (c) when there is a deferred plea of no contest as provided in Subsection (5).
- 68 (3) In all cases which are compromised pursuant to a plea in abeyance:
- 69 (a) the court, taking into consideration the offense charged, shall collect a plea in
- 70 abeyance fee which shall:
- 71 (i) be subject to the same surcharge as if imposed on a criminal fine;
- 72 (ii) be allocated subject to the surcharge as if paid as a criminal fine under Section
- 73 78A-5-110 and a surcharge under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge
- 74 Allocation; and
- 75 (iii) be not more than \$25 greater than the fine designated in the Uniform Fine
- 76 Schedule; or
- 77 (b) if no plea in abeyance fee is collected, a surcharge on the fee charged for the traffic
- 78 school or other school, class, or rehabilitative program shall be collected, which surcharge
- 79 shall:
- 80 (i) be computed, assessed, collected, and remitted in the same manner as if the traffic
- 81 school fee and surcharge had been imposed as a criminal fine and surcharge; and
- 82 (ii) be subject to the financial requirements contained in Title 51, Chapter 9, Part 4,
- 83 Criminal Conviction Surcharge Allocation.
- 84 (4) If a written plea in abeyance agreement is provided, or the defendant requests a
- 85 written accounting, an itemized statement of all amounts assessed by the court shall be
- 86 provided, including:
- 87 (a) the Uniform Fine Schedule amount;

88 (b) the amount of any surcharges being assessed; and

89 (c) the amount of the plea in abeyance fee.

90 (5) (a) (i) Except as provided in Subsection (5)(b), an individual who receives a
91 citation for a moving traffic infraction may apply for deferred prosecution.

92 (ii) A court may not require an individual to appear in-person to apply for a deferred
93 prosecution in accordance with this Subsection (5).

94 (b) The following may not apply for or be granted a deferred prosecution as described
95 in this section:

96 (i) an individual under 21 years old;

97 (ii) an individual with a commercial driver license;

98 (iii) an individual who has not been issued a current Utah driver license;

99 (iv) an individual who has been convicted of a felony traffic violation, traffic violation,
100 or traffic infraction within the 24 months immediately preceding the date of the application for
101 deferred prosecution;

102 (v) an individual charged with two or more moving traffic infractions related to the
103 same episode or occurrence;

104 (vi) an individual charged with multiple traffic infractions related to the same episode
105 or occurrence if any of the offenses is a misdemeanor or felony traffic violation;

106 (vii) an individual charged with one or more traffic infractions if none of the traffic
107 infractions are moving traffic violations;

108 (viii) an individual charged with any traffic infraction or traffic violation that is part of
109 an episode or occurrence involving a traffic accident;

110 (ix) an individual charged with a moving traffic violation that is for speeding 20 miles
111 per hour or more above the posted speed limit;

112 (x) an individual charged with a moving violation that is for speeding at a speed of 100
113 miles per hour or more; or

114 (xi) an individual who is currently within a deferral period related to a separate episode
115 or occurrence.

116 (6) (a) Except as provided in Subsection (6)(b), and upon availability of the traffic
117 school program described in Subsection (11), if an individual completes a traffic school course
118 as described in Subsection (11) within 28 days after the date the individual applies for traffic

119 school deferred prosecution, an individual may apply for and be granted a traffic school
 120 deferred prosecution if:

121 (i) the individual has one or fewer moving traffic infraction convictions in the 24
 122 months immediately preceding the current citation;

123 (ii) the individual received a citation for more than one but less than three moving
 124 traffic infraction from the same incident or occurrence;

125 (iii) ~~H~~→ ~~[the individual caused an accident, excluding an accident resulting in a serious~~
 126 ~~injury or fatality, during the commission of the traffic infraction]~~ the individual was involved in an
 126a accident during the commission of the traffic infraction, other than an accident resulting in
 126b serious bodily injury, as defined in Section 41-6a-401.3, or death ←~~H~~ ; or

127 (iv) the individual received a citation for speeding between 20 and 30 miles per hour
 128 over the legal speed limit if the speeding violation is not more than double the legal speed
 129 limit.

130 (b) The following may not apply for or be granted a traffic school deferred prosecution
 131 in accordance with this Subsection (6):

132 (i) an individual to whom more than one of the conditions in Subsection (6)(a) apply;

133 (ii) an individual under 21 years old;

134 (iii) an individual with a commercial driver license;

135 (iv) an individual who has not been issued a current Utah driver license;

136 (v) an individual who has been convicted of a felony traffic violation or traffic

137 violation within the 24 months immediately preceding the date of the application for deferred
 138 prosecution;

139 (vi) an individual charged with three or more moving traffic infractions related to the
 140 same episode or occurrence; or

141 (vii) an individual charged with multiple traffic infractions related to the same episode
 142 or occurrence if any of the offenses is a misdemeanor or felony traffic violation.

143 (c) A court may not require an individual to appear in-person to apply for traffic school
 144 deferred prosecution in accordance with this Subsection (6).

145 [(e)] (7) An individual who applies for deferred prosecution or traffic school deferred
 146 prosecution shall:

147 [(i)] (a) apply through an online application process developed by the Administrative
 148 Office of the Courts;

149 [(ii)] (b) pay the relevant fine, as provided by the uniform fine schedule described in

150 Section [76-3-301.5](#), associated with each traffic infraction for which the individual was
151 charged;

152 ~~[(iii)]~~ (c) pay an administrative fee as established by the judicial council; and
153 ~~[(iv)]~~ (d) enter a deferred plea of no contest as described in Subsection ~~[(5)(e)]~~ (9).

154 ~~[(4)]~~ (8) An individual who receives a traffic citation shall:

155 ~~[(i)]~~ (a) comply with Section [77-7-19](#); ~~[or]~~

156 ~~[(ii)]~~ (b) apply for deferred prosecution as described in Subsection ~~[(5)(e)]~~ (7) no
157 sooner than five and no later than 21 days after receiving the citation[-]; or

158 (c) for a traffic school deferred prosecution as described in Subsection (6), apply for
159 deferred prosecution as described in Subsection (7) no later than 28 days after submitting an
160 application into the deferred prosecution system.

161 ~~[(e)]~~ (9) If an eligible individual applies for deferred prosecution, the court shall:

162 ~~[(i)]~~ (a) record the deferred plea of no contest;

163 ~~[(ii)]~~ (b) not enter the deferred plea of no contest unless the individual fails to comply
164 with the terms of the deferred prosecution; and

165 ~~[(iii)]~~ (c) if the individual fails to comply with the terms of the deferred prosecution,
166 enter a judgment of conviction as described in Subsection ~~[(5)(f)(ii)]~~ (10)(b).

167 ~~[(f)]~~ (10) ~~[(i)]~~ (a) Except as provided in Subsection ~~[(5)(f)(ii)]~~ (10)(b), if an individual
168 enters a deferred plea of no contest as described in Subsection ~~[(5)(c)(iv)]~~ (7)(d) and is not
169 convicted of another traffic violation, felony traffic violation, or traffic infraction during the
170 deferral period:

171 ~~[(A)]~~ (i) the prosecutor may not prosecute the individual for the traffic infraction
172 subject to the deferred prosecution;

173 ~~[(B)]~~ (ii) the court may not enter judgment of conviction against the individual or
174 impose a sentence for the traffic infraction; and

175 ~~[(C)]~~ (iii) the court shall dismiss each traffic infraction to which the individual entered
176 a deferred plea of no contest.

177 ~~[(i)]~~ (b) If an individual enters a deferred plea of no contest as described in Subsection
178 ~~[(5)(c)(iv)]~~ (7)(d) and is convicted of another a traffic violation within the deferral period, the
179 court shall enter judgment of conviction against the individual for each traffic infraction to
180 which the individual entered a deferred plea of no contest.

181 ~~[(g)]~~ (c) (i) A prosecutor may not amend a charge from an infraction to a misdemeanor:
182 (A) if the infraction offense has the same elements as the misdemeanor offense; or
183 (B) for the sole purpose of prohibiting an individual from applying for deferred
184 prosecution.

185 (ii) A deferred prosecution is not a prosecution for purposes of Section 76-1-403.

186 ~~[(h)]~~ (d) (i) The judicial council shall set and periodically adjust the fee described in
187 Subsection ~~[(5)(e)(iii)]~~ (7)(c) in an amount that the judicial council determines to be necessary
188 to cover the cost to implement, operate, and maintain the deferred prosecution program
189 described in this Subsection (5).

190 (ii) The state treasurer shall deposit the revenue generated from the administrative fee
191 described in Subsection ~~[(5)(e)(iii)]~~ (7)(c) into the Justice Court Technology, Security, and
192 Training Account created in Section 78A-7-301.

193 (11) (a) The Department of Public Safety may enter into a contract with a traffic school
194 provider to establish a traffic school course as described in this section.

195 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
196 Department of Public Safety may make rules necessary to establish a traffic school program,
197 including:

198 (i) establishing requirements and standards for the curriculum of a traffic school
199 program;

200 (ii) establishing a fee for an individual to enroll and complete the traffic school course;

201 and

202 (iii) creating a method to electronically transmit the completion of the course to the
203 relevant court as required in Subsection (11)(c).

204 (c) The Department of Public Safety shall ensure that any traffic school program
205 created under this Subsection (11) includes the ability for the traffic school provider to
206 electronically transmit successful completion of the traffic school course to the relevant court.

207 (d) The Department of Public Safety shall ensure that the traffic school program
208 required under this Subsection (11) is established no later than November 1, 2023.

209 (e) After the Department of Public Safety enters into a contract with a traffic school
210 provider as described in this Subsection (11), no later than March 1, 2024, the Administrative
211 Office of the Courts shall coordinate with the traffic school provider to ensure the traffic school

212 provider and the Administrative Office of the Courts:

213 (i) establish the traffic school program as described in this Subsection (11); and

214 (ii) establish means by which completion of the traffic school course may be verified
215 electronically.

216 Section 2. Section 77-7-20 is amended to read:

217 **77-7-20. Service of citation on defendant -- Filing in court -- Electronic filing --**
218 **Contents of citations.**

219 (1) Except as provided in Subsection (4), a peace officer or other authorized official
220 who issues a citation pursuant to Section 77-7-18 shall give the citation to the individual cited
221 and shall, within five business days, electronically file the data from Subsections (2)(a) through
222 (2)(h) with the court specified in the citation. The data transmission shall use the court's
223 electronic filing interface. A nonconforming filing is not effective.

224 (2) The citation issued under authority of this chapter shall contain the following data:

225 (a) the name, address, and phone number of the court before which the individual is to
226 appear;

227 (b) the name and date of birth of the individual cited;

228 (c) a brief description of the offense charged;

229 (d) the date, time, and place at which the offense is alleged to have occurred;

230 (e) the date on which the citation was issued;

231 (f) the name of the peace officer or official who issued the citation, and the name of the
232 arresting individual if a private party made the arrest and the citation was issued in lieu of
233 taking the arrested individual before a magistrate;

234 (g) the time and date on or date range during which the individual is to appear or a
235 statement that the court will notify the individual of the time to appear;

236 (h) whether the offense is a domestic violence offense; [~~and~~]

237 (i) language informing the individual that the individual may be eligible for deferred
238 prosecution under Section 77-2-4.2, including a link to a website with information regarding
239 deferred prosecution; and

240 [~~(i)~~] (j) a notice containing substantially the following language:

241 READ CAREFULLY

242 This citation is not an information and will not be used as an information without your

243 consent. If an information is filed you will be provided a copy by the court. You MUST
244 appear in court on or before the time set in this citation or as directed by the court. IF YOU
245 FAIL TO APPEAR, THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST.

246 (3) By electronically filing the data with the court, the peace officer or official affirms
247 to the court that:

248 (a) the citation or information, including the summons and complaint, was served upon
249 the defendant in accordance with the law;

250 (b) the defendant committed the offense described in the served documents; and

251 (c) the court to which the defendant was directed to appear has jurisdiction over the
252 offense charged.

253 (4) (a) If a citing law enforcement officer is not reasonably able to access the efileing
254 system, the citation need not be filed electronically if being filed with a justice court.

255 (b) The court may accept an electronic filing received after five business days if:

256 (i) the defendant consents to the filing; and

257 (ii) the court finds the interests of justice would be best served by accepting the filing.

258 Section 3. Section **78A-7-301** is amended to read:

259 **78A-7-301. Justice Court Technology, Security, and Training Account**
260 **established -- Funding -- Uses.**

261 (1) There is created a restricted account in the General Fund known as the Justice
262 Court Technology, Security, and Training Account.

263 (2) The state treasurer shall deposit in the account:

264 (a) money collected from the surcharge established in Subsection [78A-7-122\(4\)\(b\)\(iii\)](#);
265 and

266 (b) the administrative fee from a deferred prosecution or traffic school deferred
267 prosecution under Subsection [77-2-4.2\(5\)](#) or [\(6\)](#).

268 (3) Money shall be appropriated from the account to the Administrative Office of the
269 Courts to be used for:

270 (a) audit, technology, security, and training needs in justice courts throughout the state;

271 (b) additional compensation for presiding judges and associate presiding judges for
272 justice courts under Section [78A-7-209.5](#); and

273 (c) costs to implement, operate, and maintain deferred prosecution and traffic school

274 deferred prosecution pursuant to [~~Subsection 77-2-4.2(5)~~] Subsections 77-2-4.2(5) and (6).