

**Senator Todd D. Weiler** proposes the following substitute bill:

**CONVICTION REDUCTION AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jordan D. Teuscher**

Senate Sponsor: Todd D. Weiler

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**LONG TITLE**

**General Description:**

This bill amends provisions related to the reduction of the degree of an offense for a conviction.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ modifies the requirements for reducing the degree of an offense for a conviction after the defendant is sentenced; 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 2021, Chapter 293

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



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"]~~:

29 (a) "Lower degree of offense" includes an offense for which:

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

32 ~~[(b)]~~ (ii) the court removes the statutory enhancement in accordance with this section.

33 (b) "Minor regulatory offense" means the same as that term is defined in Section

34 [77-40a-101](#).

35 (c) (i) "Rehabilitation program" means a program designed to reduce criminogenic and  
36 recidivism risks.

37 (ii) "Rehabilitation program" includes:

38 (A) a domestic violence treatment program, as that term is defined in Section

39 [62A-2-101](#);

40 (B) a residential, vocational, and life skills program, as that term is defined in Section

41 [13-53-102](#);

42 (C) a substance abuse treatment program, as that term is defined in Section [62A-2-101](#);

43 (D) a substance use disorder treatment program, as that term is defined in Section

44 [62A-2-101](#);

45 (E) a youth program, as that term is defined in Section [62A-2-101](#);

46 (F) a program that meets the standards established by the Department of Corrections  
47 under Section [64-13-25](#);

48 (G) a drug court, a veterans court, or a mental health court certified by the Judicial  
49 Council; or

50 (H) a program that is substantially similar to a program described in Subsections  
51 (1)(c)(ii)(A) through (G).

52 (d) "Serious offense" means a felony or misdemeanor offense that is not a minor  
53 regulatory offense or a traffic offense.

54 (e) "Traffic offense" means the same as that term is defined in Section [77-40a-101](#).

55 (f) (i) Except as provided in Subsection (1)(f)(ii), "violent felony" means the same as  
56 that term is defined in Section [76-3-203.5](#).

57 (ii) "Violent felony" does not include an offense, or any attempt, solicitation, or  
58 conspiracy to commit an offense, for:

59 (A) the possession, use, or removal of explosive, chemical, or incendiary devices under  
60 Subsection 76-10-306(3), (5), or (6); or

61 (B) the purchase or possession of a dangerous weapon or handgun by a restricted  
62 person under Section 76-10-503.

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

66 (a) takes into account:

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

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

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

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

74 (3) Upon a motion from the prosecuting attorney or the defendant, the court may enter  
75 a judgment of conviction for a lower degree of offense than established by statute:

76 (a) after the defendant is successfully discharged from probation or parole for the  
77 conviction; and

78 (b) if the court finds that entering a judgment of conviction for a lower degree of  
79 offense is in the interest of justice in accordance with Subsection (7).

80 (4) Upon a motion from the prosecuting attorney or the defendant, the court may enter  
81 a judgment of conviction for a lower degree of offense than established by statute if:

82 (a) the defendant's probation or parole for the conviction did not result in a successful  
83 discharge but the defendant is successfully discharged from probation or parole for a  
84 subsequent conviction of an offense;

85 (b) (i) at least five years have passed after the day on which the defendant is sentenced  
86 for the subsequent conviction; or

87 (ii) at least three years have passed after the day on which the defendant is sentenced

88 for the subsequent conviction and the prosecuting attorney consents to the reduction;

89 (c) the defendant is not convicted of a serious offense during the time period described  
90 in Subsection (4)(b);

91 (d) there are no criminal proceedings pending against the defendant;

92 (e) the defendant is not on probation, on parole, or currently incarcerated for any other  
93 offense;

94 (f) if the offense for which the reduction is sought is a violent felony, the prosecuting  
95 attorney consents to the reduction; and

96 (g) the court finds that entering a judgment of conviction for a lower degree of offense  
97 is in the interest of justice in accordance with Subsection (7).

98 (5) Upon a motion from the prosecuting attorney or the defendant, the court may enter  
99 a judgment of conviction for a lower degree of offense than established by statute if:

100 (a) the defendant's probation or parole for the conviction did not result in a successful  
101 discharge but the defendant is successfully discharged from a rehabilitation program;

102 (b) at least three years have passed after the day on which the defendant is successfully  
103 discharged from the rehabilitation program;

104 (c) the defendant is not convicted of a serious offense during the time period described  
105 in Subsection (5)(b);

106 (d) there are no criminal proceedings pending against the defendant;

107 (e) the defendant is not on probation, on parole, or currently incarcerated for any other  
108 offense;

109 (f) if the offense for which the reduction is sought is a violent felony, the prosecuting  
110 attorney consents to the reduction; and

111 (g) the court finds that entering a judgment of conviction for a lower degree of offense  
112 is in the interest of justice in accordance with Subsection (7).

113 (6) Upon a motion from the prosecuting attorney or the defendant, the court may enter  
114 a judgment of conviction for a lower degree of offense than established by statute if:

115 (a) at least five years have passed after the day on which the defendant's probation or  
116 parole for the conviction did not result in a successful discharge;

117 (b) the defendant is not convicted of a serious offense during the time period described  
118 in Subsection (6)(a);

- 119 (c) there are no criminal proceedings pending against the defendant;
- 120 (d) the defendant is not on probation, on parole, or currently incarcerated for any other
- 121 offense;
- 122 (e) if the offense for which the reduction is sought is a violent felony, the prosecuting
- 123 attorney consents to the reduction; and
- 124 (f) the court finds that entering a judgment of conviction for a lower degree of offense
- 125 is in the interest of justice in accordance with Subsection (7).
- 126 (7) In determining whether entering a judgment of a conviction for a lower degree of
- 127 offense is in the interest of justice under Subsection (3), (4), (5), or (6):
- 128 (a) the court shall consider:
- 129 (i) the nature, circumstances, and severity of the offense for which a reduction is
- 130 sought;
- 131 (ii) the physical, emotional, or other harm that the defendant caused any victim of the
- 132 offense for which the reduction is sought; and
- 133 (iii) any input from a victim of the offense; and
- 134 (b) the court may consider:
- 135 (i) any special characteristics or circumstances of the defendant, including the
- 136 defendant's criminogenic risks and needs;
- 137 (ii) the defendant's criminal history;
- 138 (iii) the defendant's employment and community service history;
- 139 (iv) whether the defendant participated in a rehabilitative program and successfully
- 140 completed the program;
- 141 (v) any effect that a reduction would have on the defendant's ability to obtain or
- 142 reapply for a professional license from the Department of Commerce;
- 143 (vi) whether the level of the offense has been reduced by law after the defendant's
- 144 conviction;
- 145 (vii) any potential impact that the reduction would have on public safety; or
- 146 (viii) any other circumstances that are reasonably related to the defendant or the
- 147 offense for which the reduction is sought.
- 148 (8) (a) A court may only enter a judgment of conviction for a lower degree of offense
- 149 under Subsection (3), (4), (5), or (6) after:

150 (i) notice is provided to the other party;  
151 (ii) reasonable efforts have been made by the prosecuting attorney to provide notice to  
152 any victims; and

153 (iii) a hearing is held if a hearing is requested by either party.

154 (b) A prosecuting attorney is entitled to a hearing on a motion seeking to reduce a  
155 judgment of conviction for a lower degree of offense under Subsection (3), (4), (5), or (6).

156 (c) In a motion under Subsection (3), (4), (5), or (6) and at a requested hearing on the  
157 motion, the moving party has the burden to provide evidence sufficient to demonstrate that the  
158 requirements under Subsection (3), (4), (5), or (6) are met.

159 (9) A court has jurisdiction to consider and enter a judgment of conviction for a lower  
160 degree of offense under Subsection (3), (4), (5), or (6) regardless of whether the defendant is  
161 committed to jail as a condition of probation or is sentenced to prison.

162 [~~(3)(a) Regardless of whether the defendant is committed to jail as a condition of~~  
163 ~~probation or sentenced to prison, the court has jurisdiction to consider and enter a judgment of~~  
164 ~~conviction for a lower degree of offense:]~~

165 [~~(i) after the defendant has been successfully discharged from probation or parole;]~~

166 [~~(ii) upon motion and notice to either party;]~~

167 [~~(iii) after reasonable effort has been made by the prosecuting attorney to provide~~  
168 ~~notice to any victims;]~~

169 [~~(iv) after a hearing if requested by either party; and]~~

170 [~~(v) if the court finds entering a judgment of conviction for the lower degree of offense~~  
171 ~~is in the interest of justice.]~~

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

175 [~~(c) In both the initial motion and at a requested hearing described in Subsection (3)(a),~~  
176 ~~the moving party has the burden to provide evidence sufficient to demonstrate:]~~

177 [~~(i) that the defendant has been successfully discharged from probation or parole; and]~~

178 [~~(ii) that the reduction is in the interest of justice.]~~

179 [~~(4)~~ (10) (a) An offense may be reduced only one degree [~~under this section, whether~~  
180 ~~the reduction is entered under Subsection (2) or (3)] under this section, unless the prosecuting~~

181 attorney specifically agrees in writing or on the court record that the offense may be reduced  
182 two degrees.

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

184 ~~[(5)]~~ (11) This section does not preclude an individual from obtaining or being granted  
185 an expungement of the individual's record in accordance with Title 77, Chapter 40a,  
186 Expungement.

187 ~~[(6)]~~ (12) The court may not enter a judgment for a conviction for a lower degree of  
188 offense under this section if:

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

190 (b) ~~[if]~~ any unpaid balance remains on ~~[court ordered]~~ court-ordered restitution for the  
191 offense for which the reduction is sought.

192 ~~[(7)]~~ (13) When the court enters a judgment for a lower degree of offense under this  
193 section, the actual title of the offense for which the reduction is made may not be altered.

194 ~~[(8)]~~ (14) (a) An individual may not obtain a reduction under this section of a  
195 conviction that requires the individual to register as a sex offender until the registration  
196 requirements under Title 77, Chapter 41, Sex and Kidnap Offender Registry, have expired.

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

200 ~~[(9)]~~ (15) (a) An individual may not obtain a reduction under this section of a  
201 conviction that requires the individual to register as a child abuse offender until the registration  
202 requirements under Title 77, Chapter 43, Child Abuse Offender Registry, have expired.

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