

# HB0192S01 compared with HB0192

~~text~~ shows text that was in HB0192 but was deleted in HB0192S01.

text shows text that was not in HB0192 but was inserted into HB0192S01.

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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: \_\_\_\_\_

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### 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

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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

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

(1) As used in this section:

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

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

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

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

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

(f) (i) "Traffic infraction" means a violation of Title 41, Chapter 6a, Traffic Code, or a

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local traffic ordinance that is an infraction.

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

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

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

(i) Title 41, Chapter 6a, Traffic Code, amounting to:

(A) a class B misdemeanor;

(B) a class C misdemeanor; or

(C) an infraction; or

(ii) any local traffic ordinance.

(2) Any compromise of a traffic violation shall be done pursuant to a plea in abeyance agreement as provided in Title 77, Chapter 2a, Pleas in Abeyance, and Subsection (3), except:

(a) when the criminal prosecution is dismissed pursuant to Section 77-2-4;

(b) when there is a plea by the defendant to and entry of a judgment by a court for the offense originally charged or for an amended charge; or

(c) when there is a deferred plea of no contest as provided in Subsection (5).

(3) In all cases which are compromised pursuant to a plea in abeyance:

(a) the court, taking into consideration the offense charged, shall collect a plea in abeyance fee which shall:

(i) be subject to the same surcharge as if imposed on a criminal fine;

(ii) be allocated subject to the surcharge as if paid as a criminal fine under Section 78A-5-110 and a surcharge under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation; and

(iii) be not more than \$25 greater than the fine designated in the Uniform Fine Schedule; or

(b) if no plea in abeyance fee is collected, a surcharge on the fee charged for the traffic school or other school, class, or rehabilitative program shall be collected, which surcharge shall:

(i) be computed, assessed, collected, and remitted in the same manner as if the traffic school fee and surcharge had been imposed as a criminal fine and surcharge; and

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(ii) be subject to the financial requirements contained in Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation.

(4) If a written plea in abeyance agreement is provided, or the defendant requests a written accounting, an itemized statement of all amounts assessed by the court shall be provided, including:

- (a) the Uniform Fine Schedule amount;
- (b) the amount of any surcharges being assessed; and
- (c) the amount of the plea in abeyance fee.

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

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

(b) ~~{}~~The ~~{}~~Except as provided in Subsection (5)(c), the following may not apply for or be granted a deferred prosecution as described in this section:

- (i) an individual under 21 years old;
- (ii) an individual with a commercial driver license;
- (iii) an individual who has not been issued a current Utah driver license;
- (iv) an individual who has been convicted of a felony traffic violation, traffic violation, or traffic infraction within the 24 months immediately preceding the date of the application for deferred prosecution;
- (v) an individual charged with two or more moving traffic infractions related to the same episode or occurrence;
- (vi) an individual charged with multiple traffic infractions related to the same episode or occurrence if any of the offenses is a misdemeanor or felony traffic violation;
- (vii) an individual charged with one or more traffic infractions if none of the traffic infractions are moving traffic violations;
- (viii) an individual charged with any traffic infraction or traffic violation that is part of an episode or occurrence involving a traffic accident;
- (ix) an individual charged with a moving traffic violation that is for speeding 20 miles per hour or more above the posted speed limit;
- (x) an individual charged with a moving violation that is for speeding at a speed of 100

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miles per hour or more; ~~{or}~~

~~— (xi) an individual charged with reckless driving under Section 41-6a-528 or a motor vehicle speed contest or exhibition of speed on a highway as described in Section 41-6a-606; or~~

~~— [(xi)] (xii) or~~

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

~~(c)6) (i) Notwithstanding Subsection (5)(b), the following may apply for and be granted a deferred prosecution as described in this section if the~~ a) Except as provided in Subsection (6)(b), and upon availability of the traffic school program described in Subsection (11), if an individual completes a traffic school course approved by the Department of Public Safety as a condition of the ~~as described in Subsection (11) within 28 days after the date the individual applies for traffic school deferred prosecution~~.

~~— (A) , an individual older than 16 years old but younger than 21 years old;~~

~~— (B) an individual with~~ may apply for and be granted a traffic school deferred prosecution if:

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

~~(C)ii) an~~ the individual that receives received a citation for more than one but less than three moving traffic infraction from the same incident or occurrence;

~~(D)iii) an~~ the individual who caused an accident, excluding an accident resulting in a serious injury or fatality, during the commission of the traffic infraction; or

~~(E)iv) an~~ the individual that receives received a citation for speeding between 20 and 30 miles per hour over the legal speed limit if the speeding violation is not over more than double the legal speed limit.

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

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

(ii) an individual under 21 years old;

(iii) an individual with a commercial driver license;

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

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

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violation within the 24 months immediately preceding the date of the application for deferred prosecution ~~under Subsection (5)(c)(i) shall complete the traffic school course within 3 months of the date on which the individual applies for the~~;

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

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

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

~~[(c)]~~ ~~(f)(7)~~ An individual who applies for deferred prosecution or traffic school deferred prosecution shall:

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

[(ii)] (b) pay the relevant fine, as provided by the uniform fine schedule described in Section 76-3-301.5, associated with each traffic infraction for which the individual was charged;

[(iii)] (c) pay an administrative fee as established by the judicial council; and

[(iv)] (d) enter a deferred plea of no contest as described in Subsection ~~[(5)(c)]~~ ~~(f)(9)~~.

~~[(d)]~~ ~~(f)(8)~~ An individual who receives a traffic citation shall:

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

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

~~[(c)] (f) [-]; or~~

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

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

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

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

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

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

(A) (i) the prosecutor may not prosecute the individual for the traffic infraction subject to the deferred prosecution;

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

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

(ii) (b) If an individual enters a deferred plea of no contest as described in Subsection ~~[(5)(c)(iv)]~~ (7)(d)(iv) and is convicted of another a traffic violation within the deferral period, ~~{ or if an individual that applies for deferred prosecution pursuant to Subsection (5)(c) fails to complete the traffic school course as required in Subsection (5)(c)(ii). }~~ the court shall enter judgment of conviction against the individual for each traffic infraction to which the individual entered a deferred plea of no contest.

~~[(g)]~~ (h) (c) (i) A prosecutor may not amend a charge from an infraction to a misdemeanor:

(A) if the infraction offense has the same elements as the misdemeanor offense; or

(B) for the sole purpose of prohibiting an individual from applying for deferred prosecution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Contents of citations.**

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



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

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

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

(c) a brief description of the offense charged;

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

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

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

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

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

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

[†] (j) a notice containing substantially the following language:

### READ CAREFULLY

This citation is not an information and will not be used as an information without your consent. If an information is filed you will be provided a copy by the court. You MUST appear in court on or before the time set in this citation or as directed by the court. IF YOU FAIL TO APPEAR, THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST.

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

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

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

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

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

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- (b) The court may accept an electronic filing received after five business days if:
- (i) the defendant consents to the filing; and
- (ii) the court finds the interests of justice would be best served by accepting the filing.

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

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

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

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

(a) money collected from the surcharge established in Subsection 78A-7-122(4)(b)(iii);  
and

(b) the administrative fee from a deferred prosecution or traffic school deferred prosecution under Subsection 77-2-4.2(5) or (6).

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

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

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

(c) costs to implement, operate, and maintain deferred prosecution and traffic school deferred prosecution pursuant to [Subsection 77-2-4.2(5)] Subsections 77-2-4.2(5) and (6).