

**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:**

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



26 ENACTS:

27 77-2-1.2, Utah Code Annotated 1953



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

30 Section 1. Section **76-3-402** is amended to read:

31 **76-3-402. Conviction of lower degree of offense -- Procedure and limitations.**

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

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

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

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

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

45 (a) takes into account:

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

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

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

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

53 ~~[(2)]~~ (3) (a) If the court suspends the execution of [the] a defendant's sentence and  
54 places the defendant on probation, [whether or not] regardless of whether the defendant is  
55 committed to jail as a condition of probation, the court may enter a judgment of conviction for  
56 [the next] a lower degree of offense:

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

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

67 [~~(3)~~] (4) (a) An offense may be reduced only one degree under this section, whether the  
68 reduction is entered under Subsection [~~(1)~~] (2) or [~~(2)~~] (3), unless the [~~prosecutor~~] prosecuting  
69 attorney specifically agrees in writing or on the court record that the offense may be reduced  
70 two degrees.

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

73 [~~(4)~~] (5) This section does not preclude [~~any person~~] an individual from obtaining or  
74 being granted an expungement of [~~his record as provided by law~~] the individual's record in  
75 accordance with Title 77, Chapter 40, Utah Expungement Act.

76 [~~(5)~~] (6) The court may not enter judgment for a conviction for a lower degree of  
77 offense if:

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

81 [~~(6)~~] (7) When the court enters judgment for a lower degree of offense under this  
82 section, the actual title of the offense for which the reduction is made may not be altered.

83 [~~(7)~~] (8) (a) [~~A person~~] An individual may not obtain a reduction under this section of a  
84 conviction that requires the [~~person~~] individual to register as a sex offender until the  
85 registration requirements under Title 77, Chapter 41, Sex and Kidnap Offender Registry, have  
86 expired.

87 (b) [~~A person~~] An individual required to register as a sex offender for the [~~person's~~]

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

91 ~~[(8)]~~ (9) (a) ~~[A person]~~ An individual may not obtain a reduction under this section of a  
92 conviction that requires the ~~[person]~~ individual to register as a child abuse offender until the  
93 registration requirements under Title 77, Chapter 43, Child Abuse Offender Registry, have  
94 expired.

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

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

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

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

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

105 **77-2-1.2. Reducing the level of an offense.**

106 (1) Notwithstanding any other provision of law, a prosecuting attorney may:

107 (a) present and file an information charging an individual for an offense under  
108 Subsections 76-3-103(1)(b) through (d), Subsection 76-3-103(2), or Section 76-3-104 with a  
109 classification of the offense at one degree lower than the classification that is provided in  
110 statute if the prosecuting attorney believes that the sentence would be disproportionate to the  
111 offense because there are special circumstances relating to the offense; or

112 (b) subject to the approval of the court, amend an information, as part of a plea  
113 agreement, to charge an individual for an offense under Subsections 76-3-103(1)(b) through  
114 (d), Subsection 76-3-103(2), or Section 76-3-104 with a classification of the offense at one  
115 degree lower than the classification that is provided in statute.

116 (2) A court may:

117 (a) enter a judgment of conviction for an offense filed under Subsection (1) at one  
118 degree lower than classified in statute; and

119           (b) impose a sentence for the offense filed under Subsection (1) at one degree lower  
120 than classified in statute.

121           (3) A conviction of an offense at one degree lower than classified in statute under  
122 Subsection (2) does not affect the requirements for registration of the offense under Title 77,  
123 Chapter 41, Sex and Kidnap Offender Registry, or Title 77, Chapter 43, Child Abuse Offender  
124 Registry, if the elements of the offense for which the defendant is convicted are the same as the  
125 elements of an offense described in Section [77-41-102](#) or [77-43-102](#).

126           (4) This section does not preclude an individual from obtaining and being granted an  
127 expungement for the individual's record in accordance with Title 77, Chapter 40, Utah  
128 Expungement Act.