

Stephanie Pitcher proposes the following substitute bill:

Post-Conviction Offense Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Pitcher

House Sponsor: Ryan D. Wilcox

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:

- provides that a court may enter a judgment of conviction for a lower degree of offense than established by statute if a defendant, within one year after sentencing, provides substantial assistance in the criminal investigation, arrest, or prosecution of another individual; 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 2025, Chapters 51, 173, 208, and 291

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

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

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

(1) As used in this section:

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

- (i) a statutory enhancement is charged in the information or indictment that would increase either the maximum or the minimum sentence; and
- (ii) the court removes the statutory enhancement in accordance with this section.

- 30 (b) "Minor regulatory offense" means the same as that term is defined in Section
31 77-40a-101.
- 32 (c)(i) "Rehabilitation program" means a program designed to reduce criminogenic
33 and recidivism risks.
- 34 (ii) "Rehabilitation program" includes:
- 35 (A) a domestic violence treatment program, as that term is defined in Section
36 26B-2-101;
- 37 (B) a residential vocational or life skills program, as that term is defined in
38 Section 13-53-102;
- 39 (C) a substance abuse treatment program, as that term is defined in Section
40 26B-2-101;
- 41 (D) a substance use disorder treatment program, as that term is defined in Section
42 26B-2-101;
- 43 (E) a youth program, as that term is defined in Section 26B-2-101;
- 44 (F) a program that meets the standards established by the Department of
45 Corrections under Section 64-13-25;
- 46 (G) a drug court, a veterans court, or a mental health court certified by the Judicial
47 Council; or
- 48 (H) a program that is substantially similar to a program described in Subsections
49 (1)(c)(ii)(A) through (G).
- 50 (d) "Serious offense" means a felony or misdemeanor offense that is not a minor
51 regulatory offense or a traffic offense.
- 52 (e) "Traffic offense" means the same as that term is defined in Section 77-40a-101.
- 53 (f)(i) [~~Except as provided in Subsection (1)(f)(ii), "violent felony" means~~] "Violent
54 felony" means, ~~except as provided in Subsection (1)(f)(ii),~~ the same as that term is
55 defined in Section 76-3-203.5.
- 56 (ii) "Violent felony" does not include an offense, or any attempt, solicitation, or
57 conspiracy to commit an offense, for:
- 58 (A) the purchase or possession of a dangerous weapon or firearm by a restricted
59 person under Section 76-11-305 or 76-11-306;
- 60 (B) unlawful conduct involving an explosive, chemical, or incendiary device
61 under Subsection 76-15-210(2)(a); or
- 62 (C) unlawful conduct involving an explosive, chemical, or incendiary part under
63 Section 76-15-211.

- 64 (2) The court may enter a judgment of conviction for a lower degree of offense than
65 established by statute and impose a sentence at the time of sentencing for the lower
66 degree of offense if the court:
- 67 (a) takes into account:
- 68 (i) the nature and circumstances of the offense of which the defendant was found
69 guilty; and
- 70 (ii) the history and character of the defendant;
- 71 (b) gives any victim present at the sentencing and the prosecuting attorney an
72 opportunity to be heard; and
- 73 (c) concludes that the degree of offense established by statute would be unduly harsh to
74 record as a conviction on the record for the defendant.
- 75 (3) Upon a motion from the prosecuting attorney or the defendant, the court may enter a
76 judgment of conviction for a lower degree of offense than established by statute:
- 77 (a) after the defendant is successfully discharged from probation or parole for the
78 conviction; and
- 79 (b) if the court finds, in accordance with Subsection (8), that entering a judgment of
80 conviction for a lower degree of offense is in the interest of justice[~~in accordance~~
81 ~~with Subsection (7)~~].
- 82 (4) Upon a motion from the prosecuting attorney or the defendant, the court may enter a
83 judgment of conviction for a lower degree of offense than established by statute if:
- 84 (a) the defendant's probation or parole for the conviction did not result in a successful
85 discharge but the defendant is successfully discharged from probation or parole for a
86 subsequent conviction of an offense;
- 87 (b)(i) at least five years have passed after the day on which the defendant is sentenced
88 for the subsequent conviction; or
- 89 (ii) at least three years have passed after the day on which the defendant is sentenced
90 for the subsequent conviction and the prosecuting attorney consents to the
91 reduction;
- 92 (c) the defendant is not convicted of a serious offense during the time period described
93 in Subsection (4)(b);
- 94 (d) there are no criminal proceedings pending against the defendant;
- 95 (e) the defendant is not on probation, on parole, or currently incarcerated for any other
96 offense;
- 97 (f) if the offense for which the reduction is sought is a violent felony, the prosecuting

98 attorney consents to the reduction; and

99 (g) the court finds, in accordance with Subsection (8), that entering a judgment of
100 conviction for a lower degree of offense is in the interest of justice[~~in accordance~~
101 ~~with Subsection (7)~~].

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

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

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

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

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

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

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

115 (g) the court finds, in accordance with Subsection (8), that entering a judgment of
116 conviction for a lower degree of offense is in the interest of justice[~~in accordance~~
117 ~~with Subsection (7)~~].

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

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

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

124 (c) there are no criminal proceedings pending against the defendant;

125 (d) the defendant is not on probation, on parole, or currently incarcerated for any other
126 offense;

127 (e) if the offense for which the reduction is sought is a violent felony, the prosecuting
128 attorney consents to the reduction; and

129 (f) the court finds, in accordance with Subsection (8), that entering a judgment of
130 conviction for a lower degree of offense is in the interest of justice[~~in accordance~~
131 ~~with Subsection (7)~~].

- 132 (7)(a) Upon a ~~hat~~ **joint** ~~hat~~ motion from the prosecuting attorney ~~hat~~ **[or] and** ~~hat~~
 132a the defendant, the court may
 133 enter a judgment of conviction for a lower degree of offense than established by
 134 statute if:
- 135 (i) the defendant, within one year after sentencing, provides substantial assistance in
 136 the criminal investigation, arrest, or prosecution of another individual; ~~hat~~ **and**
 137 **[~~ii~~ the prosecuting attorney consents to the reduction; and]**
 138 **[~~iii~~] (ii)** ~~hat~~ the court finds, in accordance with Subsection (8), that entering a
 138a judgment of
 139 conviction for a lower degree of offense is in the interest of justice ~~hat~~ **and public**
 139a **safety** ~~hat~~ .
 - 140 (b) In determining whether the defendant has provided substantial assistance under
 141 Subsection (7)(a)(i), the court shall consider:
 - 142 (i) the significance and usefulness of the defendant's assistance, taking into account
 143 the prosecuting attorney's evaluation of the assistance rendered;
 - 144 (ii) the truthfulness, completeness, and reliability of information or testimony
 145 provided by the defendant;
 - 146 (iii) the nature and extent of the defendant's assistance;
 - 147 (iv) any injury suffered or any danger or risk of injury to the defendant or the
 148 defendant's family resulting from the defendant's assistance;
 - 149 (v) the timeliness of the defendant's assistance; and
 - 150 (vi) any other factor the court considers relevant.
- 151 ~~(7)~~ (8) In determining whether entering a judgment of a conviction for a lower degree of
 152 offense is in the interest of justice under Subsection (3), (4), (5), ~~(6)~~, or (7):
- 153 (a) the court shall consider:
 - 154 (i) the nature, circumstances, and severity of the offense for which a reduction is
 155 sought;
 - 156 (ii) the physical, emotional, or other harm that the defendant caused any victim of the
 157 offense for which the reduction is sought; and
 - 158 (iii) any input from a victim of the offense; and
 - 159 (b) the court may consider:
 - 160 (i) any special characteristics or circumstances of the defendant, including the
 161 defendant's criminogenic risks and needs;
 - 162 (ii) the defendant's criminal history;

- 163 (iii) the defendant's employment and community service history;
- 164 (iv) whether the defendant participated in a rehabilitative program and successfully
- 165 completed the program;
- 166 (v) any effect that a reduction would have on the defendant's ability to obtain or
- 167 reapply for a professional license from the Department of Commerce;
- 168 (vi) whether the level of the offense has been reduced by law after the defendant's
- 169 conviction;
- 170 (vii) any potential impact that the reduction would have on public safety; or
- 171 (viii) any other circumstances that are reasonably related to the defendant or the
- 172 offense for which the reduction is sought.

173 ~~[(8)]~~ (9)(a) A court may only enter a judgment of conviction for a lower degree of

174 offense under Subsection (3), (4), (5), ~~[(6), or (7)]~~ after:

- 175 (i) notice is provided to the other party;
- 176 (ii) reasonable efforts have been made by the prosecuting attorney to provide notice
- 177 to any victims; and
- 178 (iii) a hearing is held if a hearing is requested by either party.
- 179 (b) A prosecuting attorney is entitled to a hearing on a motion seeking to reduce a
- 180 judgment of conviction for a lower degree of offense under Subsection (3), (4), (5), [~~6), or (7)~~.
- 181
- 182 (c) In a motion under Subsection (3), (4), (5), ~~[(6), or (7)]~~ and at a requested hearing
- 183 on the motion, the moving party has the burden to provide evidence sufficient to
- 184 demonstrate that the requirements under Subsection (3), (4), (5), ~~[(6), or (7)]~~ are
- 185 met.
- 186 (d) If a defendant files a motion under this section, the prosecuting attorney shall
- 187 respond to the motion within 35 days after the day on which the motion is filed with
- 188 the court.

189 ~~[(9)]~~ (10) A court has jurisdiction to consider and enter a judgment of conviction for a lower

190 degree of offense under Subsection (3), (4), (5), ~~[(6), or (7)]~~ regardless of whether the

191 defendant is committed to jail as a condition of probation or is sentenced to prison.

192 ~~[(10)]~~ (11)(a) An offense may be reduced only one degree under this section, unless the

193 prosecuting attorney specifically agrees in writing or on the court record that the

194 offense may be reduced two degrees.

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

196 ~~[(11)]~~ (12) This section does not preclude an individual from obtaining or being granted an

197 expungement of the individual's record in accordance with Title 77, Chapter 40a,
198 Expungement of Criminal Records.

199 ~~[(12)]~~ (13) The court may not enter a judgment for a conviction for a lower degree of
200 offense under this section if:

201 (a) the reduction is specifically precluded by law; or
202 (b) any unpaid balance remains on court-ordered restitution for the offense for which the
203 reduction is sought.

204 ~~[(13)]~~ (14) When the court enters a judgment for a lower degree of offense under this
205 section, the actual title of the offense for which the reduction is made may not be altered.

206 ~~[(14)]~~ (15)(a) An individual may not obtain a reduction under this section of a conviction
207 that requires the individual to register as a sex offender, kidnap offender, or child
208 abuse offender under Section 53-29-202 until the registration requirements under
209 Title 53, Chapter 29, Sex, Kidnap, and Child Abuse Offender Registry, have expired.

210 (b) An individual required to register as a sex offender, kidnap offender, or child abuse
211 offender under Section 53-29-202 and required to register for the individual's lifetime
212 as described in Subsection 53-29-203(1)(b), may not be granted a reduction of the
213 conviction for the offense or offenses that require the individual to register as a sex
214 offender, kidnap offender, or child abuse offender.

215 Section 2. **Effective Date.**

216 This bill takes effect on May 6, 2026.