

Part 4
Multiple Prosecutions and Double Jeopardy

76-1-401 "Single criminal episode" defined -- Joinder of offenses and defendants.

In this part unless the context requires a different definition, "single criminal episode" means all conduct which is closely related in time and is incident to an attempt or an accomplishment of a single criminal objective.

Nothing in this part shall be construed to limit or modify the effect of Section 77-8a-1 in controlling the joinder of offenses and defendants in criminal proceedings.

Amended by Chapter 20, 1995 General Session

76-1-402 Separate offenses arising out of single criminal episode -- Included offenses.

- (1) A defendant may be prosecuted in a single criminal action for all separate offenses arising out of a single criminal episode; however, when the same act of a defendant under a single criminal episode shall establish offenses which may be punished in different ways under different provisions of this code, the act shall be punishable under only one such provision; an acquittal or conviction and sentence under any such provision bars a prosecution under any other such provision.
- (2) Whenever conduct may establish separate offenses under a single criminal episode, unless the court otherwise orders to promote justice, a defendant shall not be subject to separate trials for multiple offenses when:
 - (a) The offenses are within the jurisdiction of a single court; and
 - (b) The offenses are known to the prosecuting attorney at the time the defendant is arraigned on the first information or indictment.
- (3) A defendant may be convicted of an offense included in the offense charged but may not be convicted of both the offense charged and the included offense. An offense is so included when:
 - (a) It is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or
 - (b) It constitutes an attempt, solicitation, conspiracy, or form of preparation to commit the offense charged or an offense otherwise included therein; or
 - (c) It is specifically designated by a statute as a lesser included offense.
- (4) The court shall not be obligated to charge the jury with respect to an included offense unless there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting him of the included offense.
- (5) If the district court on motion after verdict or judgment, or an appellate court on appeal or certiorari, shall determine that there is insufficient evidence to support a conviction for the offense charged but that there is sufficient evidence to support a conviction for an included offense and the trier of fact necessarily found every fact required for conviction of that included offense, the verdict or judgment of conviction may be set aside or reversed and a judgment of conviction entered for the included offense, without necessity of a new trial, if such relief is sought by the defendant.

Amended by Chapter 32, 1974 General Session

76-1-403 Former prosecution barring subsequent prosecution for offense out of same episode.

- (1) If a defendant has been prosecuted for one or more offenses arising out of a single criminal episode, a subsequent prosecution for the same or a different offense arising out of the same criminal episode is barred if:
 - (a) the subsequent prosecution is for an offense that was or should have been tried under Subsection 76-1-402(2) in the former prosecution; and
 - (b) the former prosecution:
 - (i) resulted in acquittal;
 - (ii) resulted in conviction;
 - (iii) was improperly terminated; or
 - (iv) was terminated by a final order or judgment for the defendant that has not been reversed, set aside, or vacated and that necessarily required a determination inconsistent with a fact that must be established to secure conviction in the subsequent prosecution.
- (2) There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of facts or in a determination that there was insufficient evidence to warrant conviction. A finding of guilty of a lesser included offense is an acquittal of the greater offense even though the conviction for the lesser included offense is subsequently reversed, set aside, or vacated.
- (3) There is a conviction if the prosecution resulted in a judgment of guilt that has not been reversed, set aside, or vacated; a verdict of guilty that has not been reversed, set aside, or vacated and that is capable of supporting a judgment; or a plea of guilty accepted by the court.
- (4) There is an improper termination of prosecution if the termination takes place before the verdict, is for reasons not amounting to an acquittal, and takes place after a jury has been impaneled and sworn to try the defendant, or, if the jury trial is waived, after the first witness is sworn. However, termination of prosecution is not improper if:
 - (a) the defendant consents to the termination;
 - (b) the defendant waives his right to object to the termination; or
 - (c) the court finds and states for the record that the termination is necessary because:
 - (i) it is physically impossible to proceed with the trial in conformity with the law;
 - (ii) there is a legal defect in the proceeding not attributable to the state that would make any judgment entered upon a verdict reversible as a matter of law;
 - (iii) prejudicial conduct in or out of the courtroom not attributable to the state makes it impossible to proceed with the trial without injustice to the defendant or the state;
 - (iv) the jury is unable to agree upon a verdict; or
 - (v) false statements of a juror on voir dire prevent a fair trial.

Amended by Chapter 278, 2013 General Session

76-1-404 Concurrent jurisdiction -- Prosecution in other jurisdiction barring prosecution in state.

If a defendant's conduct establishes the commission of one or more offenses within the concurrent jurisdiction of this state and of another jurisdiction, federal or state, the prosecution in the other jurisdiction is a bar to a subsequent prosecution in this state if:

- (1) the former prosecution resulted in an acquittal, conviction, or termination of prosecution, as those terms are defined in Section 76-1-403; and
- (2) the subsequent prosecution is for the same offense or offenses.

Enacted by Chapter 196, 1973 General Session

76-1-405 Subsequent prosecution not barred -- Circumstances.

A subsequent prosecution for an offense shall not be barred under the following circumstances:

- (1) The former prosecution was procured by the defendant without the knowledge of the prosecuting attorney bringing the subsequent prosecution and with intent to avoid the sentence that might otherwise be imposed; or
- (2) The former prosecution resulted in a judgment of guilt held invalid in a subsequent proceeding on writ of habeas corpus, coram nobis, or similar collateral attack.

Enacted by Chapter 196, 1973 General Session