

## Chapter 1 General Provisions

### Part 1 Introductory Provisions

#### **76-1-101 Short title.**

This title shall be known and may be cited as the "Utah Criminal Code."

Enacted by Chapter 196, 1973 General Session

#### **76-1-101.5 Definitions.**

Unless otherwise provided, as used in this title:

- (1) "Act" means a voluntary bodily movement and includes speech.
- (2) "Actor" means a person whose criminal responsibility is in issue in a criminal action.
- (3) "Affinity" means a relationship by marriage.
- (4) "Bodily injury" means physical pain, illness, or any impairment of physical condition.
- (5) "Conduct" means an act or omission.
- (6) "Consanguinity" means a relationship by blood to the first or second degree, including an individual's parent, grandparent, sibling, child, aunt, uncle, niece, or nephew.
- (7) "Dangerous weapon" means:
  - (a) any item capable of causing death or serious bodily injury; or
  - (b) a facsimile or representation of the item, if:
    - (i) the actor's use or apparent intended use of the item leads the victim to reasonably believe the item is likely to cause death or serious bodily injury; or
    - (ii) the actor represents to the victim verbally or in any other manner that the actor is in control of such an item.
- (8) "Grievous sexual offense" means:
  - (a) rape, Section 76-5-402;
  - (b) rape of a child, Section 76-5-402.1;
  - (c) object rape, Section 76-5-402.2;
  - (d) object rape of a child, Section 76-5-402.3;
  - (e) forcible sodomy, Subsection 76-5-403(2);
  - (f) sodomy on a child, Section 76-5-403.1;
  - (g) aggravated sexual abuse of a child, Section 76-5-404.3;
  - (h) aggravated sexual assault, Section 76-5-405;
  - (i) any felony attempt to commit an offense described in Subsections (8)(a) through (h); or
  - (j) an offense in another state, territory, or district of the United States that, if committed in Utah, would constitute an offense described in Subsections (8)(a) through (i).
- (9) "Offense" means a violation of any penal statute of this state.
- (10) "Omission" means a failure to act when there is a legal duty to act and the actor is capable of acting.
- (11) "Person" means an individual, public or private corporation, government, partnership, or unincorporated association.
- (12) "Possess" means to have physical possession of or to exercise dominion or control over tangible property.
- (13) "Public entity" means:

- (a) the state, or an agency, bureau, office, department, division, board, commission, institution, laboratory, or other instrumentality of the state;
  - (b) a political subdivision of the state, including a county, municipality, interlocal entity, special district, special service district, school district, or school board;
  - (c) an agency, bureau, office, department, division, board, commission, institution, laboratory, or other instrumentality of a political subdivision of the state; or
  - (d) another entity that:
    - (i) performs a public function; and
    - (ii) is authorized to hold, spend, transfer, disburse, use, or receive public money.
- (14)
- (a) "Public money" or "public funds" means money, funds, or accounts, regardless of the source from which they are derived, that:
    - (i) are owned, held, or administered by an entity described in Subsections (13)(a) through (c); or
    - (ii) are in the possession of an entity described in Subsection (13)(d)(i) for the purpose of performing a public function.
  - (b) "Public money" or "public funds" includes money, funds, or accounts described in Subsection (14)(a) after the money, funds, or accounts are transferred by a public entity to an independent contractor of the public entity.
  - (c) "Public money" or "public funds" remains public money or public funds while in the possession of an independent contractor of a public entity for the purpose of providing a program or service for, or on behalf of, the public entity.
- (15) "Public officer" means:
- (a) an elected official of a public entity;
  - (b) an individual appointed to, or serving an unexpired term of, an elected official of a public entity;
  - (c) a judge of a court of record or not of record, including justice court judges; or
  - (d) a member of the Board of Pardons and Parole.
- (16)
- (a) "Public servant" means:
    - (i) a public officer;
    - (ii) an appointed official, employee, consultant, or independent contractor of a public entity; or
    - (iii) a person hired or paid by a public entity to perform a government function.
  - (b) Public servant includes a person described in Subsection (16)(a) upon the person's election, appointment, contracting, or other selection, regardless of whether the person has begun to officially occupy the position of a public servant.
- (17) "Serious bodily injury" means bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death.
- (18) "Substantial bodily injury" means bodily injury, not amounting to serious bodily injury, that creates or causes protracted physical pain, temporary disfigurement, or temporary loss or impairment of the function of any bodily member or organ.
- (19) "Writing" or "written" includes any handwriting, typewriting, printing, electronic storage or transmission, or any other method of recording information or fixing information in a form capable of being preserved.

Amended by Chapter 16, 2023 General Session

**76-1-101.6 Application of definitions to title.**

- (1) For formatting purposes, sections in this title that contain a criminal offense include an express provision that states that the title definitions in Section 76-1-101.5 apply to that section.
- (2) Although a provision described in Subsection (1) is not included in non-offense sections in Title 76, Utah Criminal Code, or in other titles, title definitions apply to all statutes within a title unless otherwise expressly provided.

Enacted by Chapter 181, 2022 General Session

**76-1-102 Effective date.**

This code shall become effective on July 1, 1973.

Enacted by Chapter 196, 1973 General Session

**76-1-103 Application of code -- Offense prior to effective date.**

- (1) The provisions of this code shall govern the construction of, the punishment for, and defenses against any offense defined in this code or, except where otherwise specifically provided or the context otherwise requires, any offense defined outside this code; provided such offense was committed after the effective date of this code.
- (2) Any offense committed prior to the effective date of this code shall be governed by the law, statutory and non-statutory, existing at the time of commission thereof, except that a defense or limitation on punishment available under this code shall be available to any defendant tried or retried after the effective date. An offense under the laws of this state shall be deemed to have been committed prior to the effective date of this act if any of the elements of the offense occurred prior thereto.

Enacted by Chapter 196, 1973 General Session

**76-1-104 Purposes and principles of construction.**

The provisions of this code shall be construed in accordance with these general purposes.

- (1) Forbid and prevent the commission of offenses.
- (2) Define adequately the conduct and mental state which constitute each offense and safeguard conduct that is without fault from condemnation as criminal.
- (3) Prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition or differences in rehabilitation possibilities among individual offenders.
- (4) Prevent arbitrary or oppressive treatment of persons accused or convicted of offenses.

Enacted by Chapter 196, 1973 General Session

**76-1-105 Common law crimes abolished.**

Common law crimes are abolished and no conduct is a crime unless made so by this code, other applicable statute or ordinance.

Amended by Chapter 32, 1974 General Session

**76-1-106 Strict construction rule not applicable.**

The rule that a penal statute is to be strictly construed shall not apply to this code, any of its provisions, or any offense defined by the laws of this state. All provisions of this code and offenses

defined by the laws of this state shall be construed according to the fair import of their terms to promote justice and to effect the objects of the law and general purposes of Section 76-1-104.

Enacted by Chapter 196, 1973 General Session

**76-1-107 Procedure -- Applicable provisions -- Military codes, enforcement of court orders, and liability for civil damages not affected.**

- (1) Except as otherwise provided, the procedure governing the accusation, prosecution, conviction, and punishment of offenders and offenses is not regulated by this act but by the code of criminal procedure.
- (2) This code does not affect any power conferred by law upon any court-martial or other military authority or officer to impose and inflict punishment upon offenders violating military codes or laws; nor does it affect any power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree.
- (3) This act does not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, impeachment, or other remedy authorized by law to be recovered or enforced in a civil action, administrative proceeding, or otherwise, regardless of whether the conduct involved in the proceeding constitutes an offense defined in this code.

Enacted by Chapter 196, 1973 General Session

**76-1-108 Severability clause.**

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby.

Enacted by Chapter 196, 1973 General Session

**Part 2  
Jurisdiction and Venue**

**76-1-201 Jurisdiction of offenses.**

- (1) A person is subject to prosecution in this state for an offense which he commits, while either within or outside the state, by his own conduct or that of another for which he is legally accountable, if:
  - (a) the offense is committed either wholly or partly within the state;
  - (b) the conduct outside the state constitutes an attempt to commit an offense within the state;
  - (c) the conduct outside the state constitutes a conspiracy to commit an offense within the state and an act in furtherance of the conspiracy occurs in the state; or
  - (d) the conduct within the state constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense under the laws of both this state and the other jurisdiction.
- (2) An offense is committed partly within this state if either the conduct which is any element of the offense, or the result which is an element, occurs within this state.
- (3) In homicide offenses, the "result" is either the physical contact which causes death or the death itself.
  - (a) If the body of a homicide victim is found within the state, the death shall be presumed to have occurred within the state.

- (b) If jurisdiction is based on this presumption, this state retains jurisdiction unless the defendant proves by clear and convincing evidence that:
  - (i) the result of the homicide did not occur in this state; and
  - (ii) the defendant did not engage in any conduct in this state which is any element of the offense.
- (4)
  - (a) An offense which is based on an omission to perform a duty imposed by the law of this state is committed within the state regardless of the location of the offender at the time of the omission.
  - (b) For the purpose of establishing venue for a violation of Subsection 77-41-105(3) concerning sex offender registration or Subsection 77-43-105(3) for child abuse offender registration, the offense is considered to be committed:
    - (i) at the most recent registered primary residence of the offender, if the actual location of the offender at the time of the violation is not known; or
    - (ii) at the location of the offender at the time the offender is apprehended.
- (5)
  - (a) If no jurisdictional issue is raised, the pleadings are sufficient to establish jurisdiction.
  - (b) The defendant may challenge jurisdiction by filing a motion before trial stating which facts exist that deprive the state of jurisdiction.
  - (c) The burden is upon the state to initially establish jurisdiction over the offense by a preponderance of the evidence by showing under the provisions of Subsections (1) through (4) that the offense was committed either wholly or partly within the borders of the state.
  - (d) If after the prosecution has met its burden of proof under Subsection (5)(c) the defendant claims that the state is deprived of jurisdiction or may not exercise jurisdiction, the burden is upon the defendant to prove by a preponderance of the evidence:
    - (i) any facts claimed; and
    - (ii) why those facts deprive the state of jurisdiction.
- (6) Facts that deprive the state of jurisdiction or prohibit the state from exercising jurisdiction include the fact that the:
  - (a) defendant is serving in a position that is entitled to diplomatic immunity from prosecution and that the defendant's country has not waived that diplomatic immunity;
  - (b) defendant is a member of the armed forces of another country and that the crime that he is alleged to have committed is one that due to an international agreement, such as a status of forces agreement between his country and the United States, cedes the exercise of jurisdiction over him for that offense to his country;
  - (c) defendant is an enrolled member of an Indian tribe, as defined in Section 9-9-101, and that the Indian tribe has a legal status with the United States or the state that vests jurisdiction in either tribal or federal courts for certain offenses committed within the exterior boundaries of a tribal reservation, and that the facts establish that the crime is one that vests jurisdiction in tribal or federal court; or
  - (d) offense occurred on land that is exclusively within federal jurisdiction.
- (7)
  - (a) The Legislature finds that identity fraud under Chapter 6, Part 11, Identity Fraud Act, involves the use of personal identifying information which is uniquely personal to the consumer or business victim of that identity fraud and which information is considered to be in lawful possession of the consumer or business victim wherever the consumer or business victim currently resides or is found.

- (b) For purposes of Subsection (1)(a), an offense which is based on a violation of Chapter 6, Part 11, Identity Fraud Act, is committed partly within this state, regardless of the location of the offender at the time of the offense, if the victim of the identity fraud resides or is found in this state.
- (8) The judge shall determine jurisdiction.

Amended by Chapter 282, 2017 General Session

**76-1-202 Venue of actions.**

- (1) Criminal actions shall be tried in the county, district, or precinct where the offense is alleged to have been committed. In determining the proper place of trial, the following provisions shall apply:
  - (a) If the commission of an offense commenced outside the state is consummated within this state, the offender shall be tried in the county where the offense is consummated.
  - (b) When conduct constituting elements of an offense or results that constitute elements, whether the conduct or result constituting elements is in itself unlawful, shall occur in two or more counties, trial of the offense may be held in any of the counties concerned.
  - (c) If a person committing an offense upon the person of another is located in one county and his victim is located in another county at the time of the commission of the offense, trial may be held in either county.
  - (d) If a cause of death is inflicted in one county and death ensues in another county, the offender may be tried in either county.
  - (e) A person who commits an inchoate offense may be tried in any county in which any act that is an element of the offense, including the agreement in conspiracy, is committed.
  - (f) Where a person in one county solicits, aids, abets, agrees, or attempts to aid another in the planning or commission of an offense in another county, he may be tried for the offense in either county.
  - (g) When an offense is committed within this state and it cannot be readily determined in which county or district the offense occurred, the following provisions shall be applicable:
    - (i) When an offense is committed upon any railroad car, vehicle, watercraft, or aircraft passing within this state, the offender may be tried in any county through which such railroad car, vehicle, watercraft, or aircraft has passed.
    - (ii) When an offense is committed on any body of water bordering on or within this state, the offender may be tried in any county adjacent to such body of water. The words "body of water" shall include but not be limited to any stream, river, lake, or reservoir, whether natural or man-made.
    - (iii) A person who commits theft may be tried in any county in which he exerts control over the property affected.
    - (iv) If an offense is committed on or near the boundary of two or more counties, trial of the offense may be held in any of such counties.
    - (v) For any other offense, trial may be held in the county in which the defendant resides, or, if he has no fixed residence, in the county in which he is apprehended or to which he is extradited.
  - (h) A person who commits an offense based on Chapter 6, Part 11, Identity Fraud Act, may be tried in the county:
    - (i) where the victim's personal identifying information was obtained;
    - (ii) where the defendant used or attempted to use the personally identifying information;
    - (iii) where the victim of the identity fraud resides or is found; or

- (iv) if multiple offenses of identity fraud occur in multiple jurisdictions, in any county where the victim's identity was used or obtained, or where the victim resides or is found.
- (i) For the purpose of establishing venue for a violation of Subsection 77-41-105(3) concerning sex offender registration or Subsection 77-43-105(3) for child abuse offender registration, the offense is considered to be committed:
  - (i) at the most recent registered primary residence of the offender, if the actual location of the offender at the time of the violation is not known; or
  - (ii) at the location of the offender at the time the offender is apprehended.
- (2) All objections of improper place of trial are waived by a defendant unless made before trial.

Amended by Chapter 282, 2017 General Session

### **Part 3**

### **Limitations of Actions**

#### **76-1-301 Offenses for which prosecution may be commenced at any time.**

- (1) As used in this section:
  - (a) "Aggravating offense" means any offense incident to which a homicide was committed as described in Subsection 76-5-202(2)(a)(iv) or (v) or Subsection 76-5-202(2)(b).
  - (b) "Predicate offense" means an offense described in Subsection 76-5-203(1)(a) if a person other than a party as defined in Section 76-2-202 was killed in the course of the commission, attempted commission, or immediate flight from the commission or attempted commission of the offense.
- (2) Notwithstanding any other provisions of this code, prosecution for the following offenses may be commenced at any time:
  - (a) capital felony;
  - (b) aggravated murder;
  - (c) murder;
  - (d) manslaughter;
  - (e) child abuse homicide;
  - (f) aggravated kidnapping;
  - (g) child kidnapping;
  - (h) rape;
  - (i) rape of a child;
  - (j) object rape;
  - (k) object rape of a child;
  - (l) forcible sodomy;
  - (m) sodomy on a child;
  - (n) sexual abuse of a child;
  - (o) aggravated sexual abuse of a child;
  - (p) aggravated sexual assault;
  - (q) any predicate offense to a murder or aggravating offense to an aggravated murder;
  - (r) aggravated human trafficking or aggravated human smuggling in violation of Section 76-5-310;
  - (s) aggravated exploitation of prostitution involving a child, under Section 76-10-1306; or
  - (t) human trafficking of a child, under Section 76-5-308.5.

Amended by Chapter 181, 2022 General Session

**76-1-301.1 Statute of limitations for unlawful sexual activity with a minor.**

The statute of limitations for a felony violation of Section 76-5-401 or 76-5-401.2 is 10 years from the time the victim reaches the age of 18.

Enacted by Chapter 194, 2020 General Session

**76-1-301.5 Time limitations for prosecution of misusing public money, falsification or alteration of government records, and bribery.**

- (1) A prosecution for misusing public money, falsification or alteration of government records, or for a bribery offense shall be commenced within two years after facts constituting the offense have been reported to a prosecutor having responsibility and jurisdiction to prosecute the offense.
- (2) This section does not shorten the limitation of actions under Section 76-1-302 or Subsection 76-1-303(3).

Amended by Chapter 208, 2002 General Session

**76-1-302 Time limitations for prosecution of offenses -- Provisions if DNA evidence would identify the defendant -- Commencement of prosecution.**

- (1) Except as otherwise provided, a prosecution for:
  - (a) a felony or negligent homicide shall be commenced within four years after it is committed, except that prosecution for:
    - (i) forcible sexual abuse shall be commenced within eight years after the offense is committed, if within four years after its commission the offense is reported to a law enforcement agency; and
    - (ii) incest shall be commenced within eight years after the offense is committed, if within four years after its commission the offense is reported to a law enforcement agency;
  - (b) a misdemeanor other than negligent homicide shall be commenced within two years after it is committed; and
  - (c) any infraction shall be commenced within one year after it is committed.
- (2)
  - (a) Notwithstanding Subsection (1), prosecution for the offenses listed in Subsections 76-3-203.5(1)(c)(i)(A) through (CC) may be commenced at any time if the identity of the person who committed the crime is unknown but DNA evidence is collected that would identify the person at a later date.
  - (b) Subsection (2)(a) does not apply if the statute of limitations on a crime has run as of May 5, 2003, and no charges have been filed.
- (3) If the statute of limitations would have run but for the provisions of Subsection (2) and identification of a perpetrator is made through DNA, a prosecution shall be commenced within four years of confirmation of the identity of the perpetrator.
- (4) A prosecution is commenced upon:
  - (a) the finding and filing of an indictment by a grand jury;
  - (b) the filing of a complaint or information; or
  - (c) the issuance of a citation.

Amended by Chapter 185, 2022 General Session



**76-1-303 Time limitations for fraud or breach of fiduciary obligation -- Misconduct of public officer or employee.**

- (1) If the period prescribed in Section 76-1-302 has expired, a prosecution may be commenced for any offense a material element of which is either fraud or a breach of fiduciary obligation within one year after a report of the offense has been filed with a law enforcement agency.
- (2) Subsection (1) may not extend the period of limitation as provided in Section 76-1-302 by more than three years.
- (3) If the period prescribed in Section 76-1-301.5 or 76-1-302 has expired, a prosecution may be commenced for:
  - (a) any offense based upon misconduct in office by a public officer or public employee:
    - (i) at any time during which the defendant holds a public office or during the period of his public employment; or
    - (ii) within two years after termination of defendant's public office or public employment.
  - (b) Except as provided in Section 76-1-301.5, Subsection (3) shall not extend the period of limitation otherwise applicable by more than three years.

Amended by Chapter 145, 2009 General Session

**76-1-304 Defendant out of state -- Plea held invalid -- New prosecutions.**

- (1) The period of limitation does not run against any defendant during any period of time in which the defendant is out of the state following the commission of an offense.
- (2) If the defendant has entered into a plea agreement with the prosecution and later successfully moves to invalidate his conviction, the period of limitation is suspended from the time of the entry of the plea pursuant to the plea agreement until the time at which the conviction is determined to be invalid, and that determination becomes final.
- (3) For purposes of this section, "final" means:
  - (a) all appeals have been exhausted;
  - (b) no judicial review is pending; and
  - (c) no application for judicial review is pending.
- (4) When the period of limitation is suspended pursuant to Subsection (2), the suspension includes any charges to which the defendant pleaded guilty pursuant to a plea agreement, charges which were dismissed as a result of a plea agreement, as well as any known charges which were not barred at the time of entry of the plea.
- (5) Notwithstanding any other limitation, a prosecution may be commenced for charges described in Subsection (4) within one year after a plea entered pursuant to a plea agreement has been determined to be invalid, and that determination becomes final.

Amended by Chapter 121, 1998 General Session

**76-1-305 Lesser included offense for which period of limitations has run.**

Whenever a defendant is charged with an offense for which the period of limitations has not run and the defendant should be found guilty of a lesser offense for which the period of limitations has run, the finding of the lesser and included offense against which the statute of limitations has run shall not be a bar to punishment for the lesser offense.

Enacted by Chapter 196, 1973 General Session

**76-1-306 Judge to determine.**

When an issue concerning the statute of limitations is raised, the judge shall determine by a preponderance of the evidence whether the prosecution is barred by the limitations in this part.

Enacted by Chapter 121, 1998 General Session

**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

**Part 5  
Burden of Proof**

**76-1-501 Presumption of innocence -- "Element of the offense" defined.**

- (1) A defendant in a criminal proceeding is presumed to be innocent until each element of the offense charged against him is proved beyond a reasonable doubt. In the absence of this proof, the defendant shall be acquitted.
- (2) As used in this part, "element of the offense" means:
  - (a) the conduct, attendant circumstances, or results of conduct proscribed, prohibited, or forbidden in the definition of the offense; and
  - (b) the culpable mental state required.
- (3) The existence of jurisdiction and venue are not elements of the offense but shall be established by a preponderance of the evidence.

Amended by Chapter 40, 2014 General Session

Amended by Chapter 189, 2014 General Session

**76-1-502 Negating defense by allegation or proof -- When not required.**

Section 76-1-501 does not require negating a defense:

- (1) By allegation in an information, indictment, or other charge; or
- (2) By proof, unless:
  - (a) The defense is in issue in the case as a result of evidence presented at trial, either by the prosecution or the defense; or
  - (b) The defense is an affirmative defense, and the defendant has presented evidence of such affirmative defense.

Enacted by Chapter 196, 1973 General Session

**76-1-503 Presumption of fact.**

An evidentiary presumption established by this code or other penal statute has the following consequences:

- (1) When evidence of facts which support the presumption exist, the issue of the existence of the presumed fact must be submitted to the jury unless the court is satisfied that the evidence as a whole clearly negates the presumed fact;
- (2) In submitting the issue of the existence of a presumed fact to the jury, the court shall charge that while the presumed fact must on all evidence be proved beyond a reasonable doubt, the law regards the facts giving rise to the presumption as evidence of the presumed fact.

Enacted by Chapter 196, 1973 General Session

**76-1-504 Affirmative defense presented by defendant.**

Evidence of an affirmative defense as defined by this code or other statutes shall be presented by the defendant.

Enacted by Chapter 196, 1973 General Session