

STATUTE OF LIMITATIONS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Perry Buckner

AN ACT RELATING TO THE CRIMINAL CODE; CLARIFYING THAT THE STATUTE OF LIMITATIONS DOES NOT RUN WHILE A DEFENDANT IS CHALLENGING A GUILTY PLEA ENTERED PURSUANT TO A PLEA AGREEMENT; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

76-1-304, as enacted by Chapter 196, Laws of Utah 1973

ENACTS:

76-1-306, Utah Code Annotated 1953

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

Section 1. Section **76-1-304** is amended to read:

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 [he is] 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.

Section 2. Section **76-1-306** is enacted to read:

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.