

Representative Ty McCartney proposes the following substitute bill:

CONSECUTIVE SENTENCING

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Ty McCartney

This act modifies the Criminal Code by stating procedures and considerations for the court to apply when determining whether a defendant convicted of more than one felony offense is to serve the terms consecutively or concurrently. The act requires the Board of Pardons to send sentencing commitments that do not state if multiple terms are to be served concurrently or consecutively back to the judge for clarification. The act also provides that when a defendant currently serving a term for a prior felony is sentenced to a concurrent term for a subsequent felony, the longer remaining sentence of the two is the period of time to be served. This act has an effective date of July 1, 2002.

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

AMENDS:

76-3-401, as last amended by Chapter 275, Laws of Utah 1999

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

Section 1. Section **76-3-401** is amended to read:

76-3-401. Concurrent or consecutive sentences -- Limitations -- Definition.

(1) A court shall determine, if a defendant has been adjudged guilty of more than one felony offense, whether to impose concurrent or consecutive sentences for the offenses. The court shall state on the record and shall indicate in the order of judgment and commitment:

(a) if the sentences imposed are to run concurrently or consecutively to each other; and

(b) if the sentences before the court are to run concurrently or consecutively with any other sentences the defendant is already serving.

(2) [~~Sentences for~~] In determining whether state offenses [~~shall~~] are to run concurrently



26 ~~[unless] or consecutively,~~ the court ~~[states in the sentence that they shall run consecutively]~~ shall
27 consider the gravity and circumstances of the offenses, the number of victims, and the history,
28 character, and rehabilitative needs of the defendant.

29 ~~[(2)]~~ (3) The court shall order that sentences for state offenses run consecutively if the later
30 offense is committed while the defendant is imprisoned or on parole, unless the court finds and
31 states on the record that consecutive sentencing would be inappropriate.

32 ~~[(3)]~~ (4) If ~~[an]~~ a written order of commitment does not clearly state whether the sentences
33 ~~[shall] are to~~ run consecutively or concurrently, ~~[and]~~ the Board of Pardons and Parole ~~[has reason~~
34 ~~to believe that the later offense occurred while the person was imprisoned or on parole for the~~
35 ~~earlier offense, the board]~~ shall request clarification from the court. Upon receipt of the request,
36 the court shall enter ~~[an amended]~~ a clarified order of commitment stating whether the sentences
37 are to run consecutively or concurrently.

38 ~~[(4) A court shall consider the gravity and circumstances of the offenses and the history,~~
39 ~~character, and rehabilitative needs of the defendant in determining whether to impose consecutive~~
40 ~~sentences.]~~

41 (5) A court may impose consecutive sentences for offenses arising out of a single criminal
42 episode as defined in Section 76-1-401.

43 (6) (a) If a court imposes consecutive sentences, the aggregate maximum of all sentences
44 imposed may not exceed 30 years imprisonment, except as provided under Subsection (6)(b).

45 (b) The limitation under Subsection (6)(a) does not apply if:

46 (i) an offense for which the defendant is sentenced authorizes the death penalty or a
47 maximum sentence of life imprisonment; or

48 (ii) the defendant is convicted of an additional offense based on conduct which occurs after
49 his initial sentence or sentences are imposed.

50 (7) The limitation in Subsection (6)(a) applies if a defendant:

51 (a) is sentenced at the same time for more than one offense;

52 (b) is sentenced at different times for one or more offenses, all of which were committed
53 prior to imposition of the defendant's initial sentence; or

54 (c) has already been sentenced by a court of this state other than the present sentencing
55 court or by a court of another state or federal jurisdiction, and the conduct giving rise to the present
56 offense did not occur after his initial sentencing by any other court.

57 (8) When the limitation of Subsection (6)(a) applies, determining the effect of consecutive
58 sentences and the manner in which they shall be served, the Board of Pardons and Parole shall treat
59 the defendant as though he has been committed for a single term that ~~[shall consist]~~ consists of the
60 aggregate of the validly imposed prison terms as follows:

61 (a) if the aggregate maximum term exceeds the 30-year limitation, the maximum sentence
62 is considered to be 30 years; and

63 (b) when indeterminate sentences run consecutively, the minimum term, if any, constitutes
64 the aggregate of the validly imposed minimum terms.

65 (9) When a sentence is imposed or sentences are imposed to run concurrently with the
66 other or with a sentence presently being served, ~~[the lesser sentence shall merge into the greater
67 and the greater shall be the term to be served. If] the [sentences are equal and concurrent, they
68 shall merge into one sentence with the most recent conviction constituting]~~ term that provides the
69 longer remaining imprisonment constitutes the time to be served.

70 (10) This section may not be construed to restrict the number or length of individual
71 consecutive sentences that may be imposed or to affect the validity of any sentence so imposed,
72 but only to limit the length of sentences actually served under the commitments.

73 (11) This section may not be construed to limit the authority of a court to impose
74 consecutive sentences in misdemeanor cases.

75 (12) As used in this section, "imprisoned" means sentenced and committed to a secure
76 correctional facility as defined in Section 64-13-1, the sentence has not been terminated or voided,
77 and the person is not on parole, regardless of where the person is located.

78 Section 2. **Effective date.**

79 This act takes effect on July 1, 2002.