

PROSECUTION JURISDICTION AMENDMENT

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Beverly Ann Evans

LONG TITLE

General Description:

This bill provides additional procedures to facilitate determination of whether the state has jurisdiction over an offense.

Highlighted Provisions:

This bill:

- ▶ clarifies procedures for challenging the state's jurisdiction to prosecute an offense;
- ▶ specifies burdens of proof and the level of proof required to demonstrate the state

does or does not have jurisdiction; and

- ▶ clarifies additional facts that, if proven, would deprive the state of jurisdiction,

including diplomatic immunity and occurrence of the offense on federal land.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-1-201, as last amended by Chapter 54, Laws of Utah 1996

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

Section 1. Section **76-1-201** is amended to read:

76-1-201. Jurisdiction of offenses.



28 (1) A person is subject to prosecution in this state for an offense which he commits,
29 while either within or outside the state, by his own conduct or that of another for which he is
30 legally accountable, if:

31 (a) the offense is committed either wholly or partly within the state;

32 (b) the conduct outside the state constitutes an attempt to commit an offense within the
33 state;

34 (c) the conduct outside the state constitutes a conspiracy to commit an offense within
35 the state and an act in furtherance of the conspiracy occurs in the state; or

36 (d) the conduct within the state constitutes an attempt, solicitation, or conspiracy to
37 commit in another jurisdiction an offense under the laws of both this state and ~~[such]~~ the other
38 jurisdiction.

39 (2) An offense is committed partly within this state if either the conduct which is any
40 element of the offense, or the result which is ~~[such]~~ an element, occurs within this state.

41 (3) In homicide offenses, the "result" is either the physical contact which causes death
42 or the death itself.

43 (a) If the body of a homicide victim is found within the state, the death shall be
44 presumed to have occurred within the state.

45 (b) If jurisdiction is based on ~~[such a]~~ this presumption, this state ~~[shall retain]~~ retains
46 jurisdiction unless the defendant proves by clear and convincing evidence that:

47 (i) the result of the homicide did not occur in this state; and

48 (ii) the defendant did not engage in any conduct in this state which is any element of
49 the offense.

50 (4) An offense which is based on an omission to perform a duty imposed by the law of
51 this state is committed within the state regardless of the location of the offender at the time of
52 the omission.

53 (5) (a) If no jurisdictional issue is raised, the pleadings are sufficient to establish
54 jurisdiction.

55 (b) The defendant may challenge jurisdiction by filing a motion before trial stating
56 which facts exist that deprive the state of jurisdiction.

57 (c) The burden is upon the state to initially establish jurisdiction over the offense by a
58 preponderance of the evidence by showing under the provisions of Subsections (1) through (4)

59 that the offense was committed either wholly or partly within the borders of the state.
60 (d) If after the prosecution has met its burden of proof under Subsection (5)(c) the
61 defendant claims that the state is deprived of jurisdiction or may not exercise jurisdiction, the
62 burden is upon the defendant to prove by a preponderance of the evidence:
63 (i) any facts claimed; and
64 (ii) why those facts deprive the state of jurisdiction.
65 (6) Facts that deprive the state of jurisdiction or prohibit the state from exercising
66 jurisdiction include the fact that the:
67 (a) defendant is serving in a position that is entitled to diplomatic immunity from
68 prosecution and that the defendant's country has not waived that diplomatic immunity;
69 (b) defendant is a member of the armed forces of another country and that the crime
70 that he is alleged to have committed is one that due to an international agreement, such as a
71 status of forces agreement between his country and the United States, cedes the exercise of
72 jurisdiction over him for that offense to his country;
73 (c) defendant is an enrolled member of an Indian tribe, as defined in Section 9-9-101,
74 and that the Indian tribe has a legal status with the United States or the state that vests
75 jurisdiction in either tribal or federal courts for certain offenses committed within the exterior
76 boundaries of a tribal reservation, and that the facts establish that the crime is one that vests
77 jurisdiction in tribal or federal court; or
78 (d) offense occurred on land that is exclusively within federal jurisdiction.
79 [~~5~~] (7) The judge shall determine jurisdiction.

Legislative Review Note
as of 1-20-04 12:20 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

State Impact

Provisions of this bill can be handled within existing resources.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst