

Representative Ryan D. Wilcox proposes the following substitute bill:

JOINDER OF CRIMINAL OFFENSES

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ryan D. Wilcox

Senate Sponsor: _____

LONG TITLE

General Description:

This bill concerns the joinder of criminal offenses.

Highlighted Provisions:

This bill:

- ▶ defines and modifies terms;
- ▶ amends provisions concerning the joinder of criminal offenses; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-1-401, as last amended by Laws of Utah 1995, Chapter 20

RENUMBERS AND AMENDS:

77-2-10, (Renumbered from 77-8a-1, as enacted by Laws of Utah 1990, Chapter 201)

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



26 Section 1. Section 76-1-401 is amended to read:

27 **76-1-401. "Single criminal episode" defined -- Joinder of offenses and**
28 **defendants.**

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

32 (2) Nothing in this part shall be construed to limit or modify the effect of Section
33 [~~77-8a-1~~] 77-2-10 in controlling the joinder of offenses and defendants in criminal
34 proceedings.

35 Section 2. Section 77-2-10, which is renumbered from Section 77-8a-1 is renumbered
36 and amended to read:

37 [~~77-8a-1~~]. **77-2-10. Joinder of offenses and of defendants.**

38 (1) As used in this section:

39 (a) Offenses are "based on the same conduct" if the offenses are committed in a
40 factually similar manner, regardless of temporal proximity.

41 (b) Offenses are "connected together in their commission" if the offenses, regardless of
42 factual similarity, are part of a single criminal episode.

43 (c) Offenses are "part of a common scheme or plan" if the offenses involve a similar
44 fact pattern and proximity in time.

45 (d) (i) Offenses are "the same or similar offenses" if the offenses are based on the same
46 or similar criminal offense.

47 (ii) Criminal offenses described in Subsection (1)(d)(i) include:

48 (A) criminal offenses in Title 26, Chapter 20, Utah False Claims Act;

49 (B) criminal homicide offenses in Title 76, Chapter 5, Part 2, Criminal Homicide;

50 (C) kidnapping, trafficking, and smuggling offenses in Title 76, Chapter 5, Part 3,
51 Kidnapping, Trafficking, and Smuggling;

52 (D) sexual offenses in Title 76, Chapter 5, Part 4, Sexual Offenses;

53 (E) burglary and criminal trespass offenses in Title 76, Chapter 6, Part 2, Burglary and
54 Criminal Trespass;

55 (F) robbery offenses in Title 76, Chapter 6, Part 3, Robbery;

56 (G) theft offenses in Title 76, Chapter 6, Part 4, Theft;

57 (H) fraud offenses in Title 61, Chapter 1, Utah Uniform Securities Act, and Title 76,
 58 Chapter 6, Part 5, Fraud;

59 (I) retail theft offenses in Title 76, Chapter 6, Part 6, Retail Theft; and

60 (J) domestic violence offenses described in Subsection 77-36-1(4).

61 (2) Two or more felonies, misdemeanors, or both, may be charged in the same
 62 indictment or information if each offense is a separate count and if the offenses charged are:

63 (a) based on the same conduct or are otherwise connected together in their
 64 commission; [or]

65 (b) alleged to have been part of a common scheme or plan[-]; or

66 (c) the repeated commission of the same or similar offenses, regardless of temporal
 67 proximity.

68 [~~(2)~~] (3) (a) When a felony and misdemeanor are charged together the defendant is
 69 afforded a preliminary hearing with respect to both the misdemeanor and felony offenses.

70 (b) Two or more defendants may be charged in the same indictment or information if
 71 [~~they~~] the defendants are alleged to have participated in the same act or conduct or in the same
 72 criminal episode.

73 (c) The defendants may be charged in one or more counts together or separately and all
 74 of the defendants need not be charged in each count.

75 (d) When two or more defendants are jointly charged with any offense, [~~they~~] the
 76 defendants shall be tried jointly unless the court in its discretion on motion or otherwise orders
 77 separate trials consistent with the interests of justice.

78 [~~(3)~~] (4) (a) The court may order two or more indictments or informations or both to be
 79 tried together if the offenses, and the defendants, if there is more than one, could have been
 80 joined in a single indictment or information.

81 (b) The procedure shall be the same as if the prosecution were under a single
 82 indictment or information.

83 [~~(4)~~] (5) (a) If the court finds a defendant or the prosecution [is prejudiced] would
 84 suffer undue prejudice by a joinder of offenses or defendants in an indictment or information or
 85 by a joinder for trial together, the court shall order an election of separate trials of separate
 86 counts, grant a severance of defendants, or provide other relief as justice requires.

87 (b) (i) A defendant's right to [severance] challenge a joinder of offenses or defendants

88 is waived if the motion is not made at least five days before trial.

89 (ii) In ruling on a motion by a defendant [~~for severance~~] that challenges the joinder of
90 offenses or defendants, the court may order the prosecutor to disclose any statements made by
91 the defendants [~~which he~~] that the prosecutor intends to introduce in evidence at the trial.