

HB0486S01 compared with HB0486

~~text~~ shows text that was in HB0486 but was deleted in HB0486S01.

text shows text that was not in HB0486 but was inserted into HB0486S01.

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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:

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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:

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

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

(1) 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.

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

(~~B~~)C) kidnapping, trafficking, and smuggling offenses in Title 76, Chapter 5, Part 3,

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Kidnapping, Trafficking, and Smuggling:

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

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

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

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

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

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

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

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

(a) based on the same conduct or are otherwise connected together in their commission; ~~or~~

(b) alleged to have been part of a common scheme or plan~~;~~ or

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

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

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

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

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

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

(b) The procedure shall be the same as if the prosecution were under a single

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indictment or information.

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

(b) (i) A defendant's right to [severance] ~~challenge~~ ~~[severance]~~ a joinder of offenses or defendants is waived if the motion is not made at least five days before trial.

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