

JUSTICE COURT APPEALS REVISION

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Terry R. Spencer

This act modifies provisions providing for appeals from justice court convictions. The act clarifies the circumstances under which a person or the prosecutor may appeal and provides for trial de novo in the district court.

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

REPEALS AND REENACTS:

78-5-120, as last amended by Chapter 215, Laws of Utah 1997

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

Section 1. Section **78-5-120** is repealed and reenacted to read:

78-5-120. Appeals from justice court -- Trial or hearing de novo in district court.

(1) In a criminal case, a defendant is entitled to a trial de novo in the district court only if the defendant files a notice of appeal within 30 days of:

(a) sentencing after a bench or jury trial in the justice court resulting in a finding or verdict of guilt; or

(b) a plea of guilty in the justice court whether the plea is entered or held in abeyance.

(2) If an appeal under Subsection (1)(b) is of a plea entered pursuant to negotiation with the prosecutor, and the defendant did not reserve the right to appeal as part of the plea negotiation, the negotiation is voided by the appeal.

(3) A defendant convicted and sentenced in justice court is entitled to a hearing de novo in the district court on the following matters:

(a) an order revoking probation;

(b) an order entering a judgment of guilt pursuant to the person's failure to fulfil the terms of a plea in abeyance agreement;

(c) a sentence claimed to be illegal or excessive; or

- 28 (d) an order denying a motion to withdraw a plea.
- 29 (4) The prosecutor is entitled to a hearing de novo in the district court on:
- 30 (a) a final judgment of dismissal;
- 31 (b) an order arresting judgment;
- 32 (c) an order terminating the prosecution because of a finding of double jeopardy or denial
- 33 of a speedy trial;
- 34 (d) a judgment holding invalid any part of a statute or ordinance;
- 35 (e) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of that
- 36 evidence prevents continued prosecution; or
- 37 (f) an order granting a motion to withdraw a plea of guilty or no contest.
- 38 (5) Upon entering a decision in a hearing de novo, the district court shall remand the case
- 39 to the justice court unless:
- 40 (a) the decision results in immediate dismissal of the case;
- 41 (b) with agreement of the parties, the district court consents to retain jurisdiction; or
- 42 (c) the defendant enters a plea of guilty in the district court.
- 43 (6) The district court shall retain jurisdiction over the case on trial de novo.
- 44 (7) The decision of the district court is final and may not be appealed unless the district
- 45 court rules on the constitutionality of a statute or ordinance.

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

Office of Legislative Research and General Counsel