

CRIMINAL APPEAL AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Scott L Wyatt

LONG TITLE

General Description:

This bill clarifies the appeal process in certain criminal and juvenile cases.

Highlighted Provisions:

This bill:

- ▶ clarifies that the following appeals are a matter of right for the defendant:
 - denial of bail;
 - final judgment of conviction; or
 - orders made after judgment that affect the defendant's rights;
- ▶ clarifies that the following appeals are a matter of right for the prosecutor:
 - pretrial dismissal of felony charge when evidence has been suppressed;
 - an order granting a motion to withdraw a plea;
 - an order arresting judgment or granting a motion for merger;
 - an order of dismissal based on double jeopardy; or
 - an order holding a statute invalid; and
- ▶ creates guidelines for appeals from serious youth offender and certification

proceedings.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-18a-1, as last amended by Chapter 137, Laws of Utah 2004

ENACTS:

78-3a-604, Utah Code Annotated 1953

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

Section 1. Section **77-18a-1** is amended to read:

77-18a-1. Appeals -- When proper.

~~[(1) An appeal may be taken by the defendant from:]~~

(1) A defendant may, as a matter of right, appeal from:

(a) ~~[the]~~ a final judgment of conviction, whether by verdict or plea;

(b) an order made after judgment that affects the substantial rights of the defendant;

~~[(c) an interlocutory order when upon petition for review the appellate court decides the appeal would be in the interest of justice; or]~~

~~[(d) any order of the court judging the defendant by reason of a mental disease or defect incompetent to proceed further in a pending prosecution.]~~

~~[(2) An appeal may be taken by the prosecution from:]~~

(c) an order adjudicating the defendant's competency to proceed further in a pending prosecution; or

(d) an order denying bail, as provided in Subsection 77-20-1(7).

(2) In addition to any appeal permitted by Subsection (1), a defendant may seek discretionary appellate review of any interlocutory order.

(3) The prosecution may, as a matter of right, appeal from:

(a) a final judgment of dismissal, including a dismissal of a felony information following a refusal to bind the defendant over for trial;

(b) a pretrial order dismissing a felony charge on the ground that the court's suppression of evidence has substantially impaired the prosecution's case;

(c) an order granting a motion to withdraw a plea of guilty or no contest;

~~[(b)]~~ (d) an order arresting judgment or granting a motion for merger;

~~[(c)]~~ (e) an order terminating the prosecution because of a finding of double jeopardy or

denial of a speedy trial;

~~[(d) a judgment of the court]~~

(f) an order holding a statute or any part of it invalid;

~~[(e) an order of the court granting a pretrial motion to suppress evidence when upon a petition for review the appellate court decides that the appeal would be in the interest of justice;]~~

~~[(f) under circumstances not amounting to a final order under Subsection (2)(a), a refusal to bind the defendant over for trial on a felony as charged or a pretrial order dismissing or quashing in part a felony information, when upon a petition for review the appellate court decides that the appeal would be in the interest of justice;]~~

~~[(g) an order of the court granting a motion to withdraw a plea of guilty or no contest;]~~

~~[(h) a finding pursuant to Title 77, Chapter 15a, Exemptions from Death Penalty in Capital Cases, that a capital defendant is exempt from a sentence of death, when upon a petition for review the appellate court decides that the appeal would be in the interest of justice; or]~~

(g) an order adjudicating the defendant's competency to proceed further in a pending prosecution;

~~[(i) a]~~ (h) an order finding, pursuant to Title 77, Chapter 19, Part 2, Competency for Execution, that an inmate sentenced to death is incompetent to be executed[-];

(i) an order reducing the degree of offense pursuant to Section 76-3-402; or

(j) an illegal sentence.

(4) In addition to any appeal permitted by Subsection (3), the prosecution may seek discretionary appellate review of any interlocutory order entered before jeopardy attaches.

Section 2. Section **78-3a-604** is enacted to read:

78-3a-604. Appeals from serious youth offender and certification proceedings.

(1) A minor may, as a matter of right, appeal from:

(a) an order of the juvenile court binding the minor over to the district court as a serious youth offender pursuant to Section 78-3a-602; or

(b) an order of the juvenile court, after certification proceedings pursuant to Section 78-3a-603, directing that the minor be held for criminal proceedings in the district court.

(2) The prosecution may, as a matter of right, appeal from:

(a) an order of the juvenile court that a minor charged as a serious youth offender pursuant to Section 78-3a-602 be held for trial in the juvenile court; or

(b) a refusal by the juvenile court, after certification proceedings pursuant to Section 78-3a-603, to order that a minor be held for criminal proceedings in the district court.