

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:



28 AMENDS:

29 77-18a-1, as last amended by Chapter 137, Laws of Utah 2004

30 ENACTS:

31 78-3a-604, Utah Code Annotated 1953



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

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

35 **77-18a-1. Appeals -- When proper.**

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

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

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

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

40 [~~(c) an interlocutory order when upon petition for review the appellate court decides~~

41 ~~the appeal would be in the interest of justice; or]~~

42 [~~(d) any order of the court judging the defendant by reason of a mental disease or~~

43 ~~defect incompetent to proceed further in a pending prosecution.]~~

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

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

46 prosecution; or

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

48 (2) In addition to any appeal permitted by Subsection (1), a defendant may seek

49 discretionary appellate review of any interlocutory order.

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

51 (a) a final judgment of dismissal, including a dismissal of a felony information

52 following a refusal to bind the defendant over for trial;

53 (b) a pretrial order dismissing a felony charge on the ground that the court's

54 suppression of evidence has substantially impaired the prosecution's case;

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

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

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

58 or denial of a speedy trial;

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

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

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

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

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

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

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

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

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

78 (j) an illegal sentence.

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

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

82 **78-3a-604. Appeals from serious youth offender and certification proceedings.**

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

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

86 (b) an order of the juvenile court, after certification proceedings pursuant to Section
87 78-3a-603, directing that the minor be held for criminal proceedings in the district court.

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

89 (a) an order of the juvenile court that a minor charged as a serious youth offender

90 pursuant to Section 78-3a-602 be held for trial in the juvenile court; or
91 (b) a refusal by the juvenile court, after certification proceedings pursuant to Section
92 78-3a-603, to order that a minor be held for criminal proceedings in the district court.

Legislative Review Note
as of 12-13-04 7:12 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0054

Criminal Appeal Amendments

18-Jan-05

8:55 AM

State Impact

The provisions of this bill can be handled within existing budgets.

Individual and Business Impact

Any fiscal impact to the individual will depend on the circumstances of the appeals involved.

Office of the Legislative Fiscal Analyst