

PROSECUTOR APPEALS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel R. Liljenquist

House Sponsor: Curtis Oda

LONG TITLE

General Description:

This bill modifies Justice Court provisions relating to the standards for de novo review in district court for certain orders in specified criminal prosecutions.

Highlighted Provisions:

This bill:

- ▶ provides that the standard for a de novo review in district court on a pretrial order excluding evidence in a justice court for an infraction or class C misdemeanor is that the prosecutor certifies that exclusion of the evidence prevents continued prosecution;

- ▶ provides that the standard for a de novo review in district court on a pretrial order excluding evidence in a justice court for a class B misdemeanor is that the prosecutor certifies that exclusion of the evidence impairs continued prosecution;

- ▶ provides that a notice of appeal for a hearing de novo in the district court on a pretrial order excluding evidence shall be filed within 30 days of the justice court order excluding the evidence; and

- ▶ makes related technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **78A-7-118**, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

33 Section 1. Section **78A-7-118** is amended to read:

34 **78A-7-118. Appeals from justice court -- Trial or hearing de novo in district**
35 **court.**

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

38 (a) sentencing after a bench or jury trial, or a plea of guilty in the justice court resulting
39 in a finding or verdict of guilt; or

40 (b) a plea of guilty in the justice court that is held in abeyance.

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

44 (3) A defendant convicted and sentenced in justice court is entitled to a hearing de
45 novo in the district court on the following matters, if ~~he~~ the defendant files a notice of appeal
46 within 30 days of:

47 (a) an order revoking probation;

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

50 (c) a sentence entered pursuant to Subsection (3)(b); or

51 (d) an order denying a motion to withdraw a plea.

52 (4) The prosecutor is entitled to a hearing de novo in the district court on:

53 (a) a final judgment of dismissal;

54 (b) an order arresting judgment;

55 (c) an order terminating the prosecution because of a finding of double jeopardy or
56 denial of a speedy trial;

57 (d) a judgment holding invalid any part of a statute or ordinance;

58 (e) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of

59 that evidence prevents continued prosecution of an infraction or class C misdemeanor; [~~or~~]
60 (f) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of
61 that evidence impairs continued prosecution of a class B misdemeanor; or
62 [~~(f)~~] (g) an order granting a motion to withdraw a plea of guilty or no contest.
63 (5) A notice of appeal for a hearing de novo in the district court on a pretrial order
64 excluding evidence under Subsection (4)(e) or (f) shall be filed within 30 days of the order
65 excluding the evidence.
66 [~~(5)~~] (6) Upon entering a decision in a hearing de novo, the district court shall remand
67 the case to the justice court unless:
68 (a) the decision results in immediate dismissal of the case;
69 (b) with agreement of the parties, the district court consents to retain jurisdiction; or
70 (c) the defendant enters a plea of guilty in the district court.
71 [~~(6)~~] (7) The district court shall retain jurisdiction over the case on trial de novo.
72 [~~(7)~~] (8) The decision of the district court is final and may not be appealed unless the
73 district court rules on the constitutionality of a statute or ordinance.

Legislative Review Note
as of 1-7-10 3:03 PM

Office of Legislative Research and General Counsel