

Senator Curtis S. Bramble proposes the following substitute bill:

JUSTICE COURT PROCESS AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: John Dougall

LONG TITLE

General Description:

This bill provides that a sentence imposed by a justice court shall be stayed if a defendant files a proper notice of appeal for a trial de novo in district court.

Highlighted Provisions:

This bill:

► provides that a sentence imposed by a justice court may be stayed if a defendant files a proper notice of appeal for a trial de novo in district court.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-20-10, as last amended by Laws of Utah 2004, Chapter 173

78A-7-118, as last amended by Laws of Utah 2010, Chapter 215

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

Section 1. Section **77-20-10** is amended to read:



26 **77-20-10. Grounds for detaining defendant while appealing the defendant's**
27 **conviction -- Conditions for release while on appeal.**

28 (1) The court shall order that a defendant who has been found guilty of an offense in a
29 court or record and sentenced to a term of imprisonment in jail or prison, and who has filed an
30 appeal or a petition for a writ of certiorari, be detained, unless the court finds:

31 (a) the appeal raises a substantial question of law or fact likely to result in:

32 (i) reversal;

33 (ii) an order for a new trial; or

34 (iii) a sentence that does not include a term of imprisonment in jail or prison;

35 (b) the appeal is not for the purpose of delay; and

36 (c) by clear and convincing evidence presented by the defendant that the defendant is
37 not likely to flee the jurisdiction of the court, and will not pose a danger to the physical,
38 psychological, or financial and economic safety or well-being of any other person or the
39 community if released.

40 (2) If the court makes a finding under Subsection (1) that justifies not detaining the
41 defendant, the court shall order the release of the defendant, subject to conditions that result in
42 the least restrictive condition or combination of conditions that the court determines will
43 reasonably assure the appearance of the person as required and the safety of any other person
44 and the community. The conditions may include that the defendant:

45 (a) post appropriate bail;

46 (b) execute a bail bond with a bail bond surety under Title 31A, Chapter 35, Bail Bond
47 Act, in an amount necessary to assure the appearance of the defendant as required;

48 (c) (i) execute a written agreement to forfeit, upon failing to appear as required,
49 designated property, including money, as is reasonably necessary to assure the appearance of
50 the defendant; and

51 (ii) post with the court indicia of ownership of the property or a percentage of the
52 money as the court may specify;

53 (d) not commit a federal, state, or local crime during the period of release;

54 (e) remain in the custody of a designated person who agrees to assume supervision of
55 the defendant and who agrees to report any violation of a release condition to the court, if the
56 designated person is reasonably able to assure the court that the defendant will appear as

57 required and will not pose a danger to the safety of any other person or the community;

58 (f) maintain employment, or if unemployed, actively seek employment;

59 (g) maintain or commence an educational program;

60 (h) abide by specified restrictions on personal associations, place of abode, or travel;

61 (i) avoid all contact with the victims of the offense and with any witnesses who

62 testified against the defendant or potential witnesses who may testify concerning the offense if

63 the appeal results in a reversal or an order for a new trial;

64 (j) report on a regular basis to a designated law enforcement agency, pretrial services

65 agency, or other designated agency;

66 (k) comply with a specified curfew;

67 (l) not possess a firearm, destructive device, or other dangerous weapon;

68 (m) not use alcohol, or any narcotic drug or other controlled substances except as

69 prescribed by a licensed medical practitioner;

70 (n) undergo available medical, psychological, or psychiatric treatment, including

71 treatment for drug or alcohol dependency, and remain under the supervision of or in a specified

72 institution if required for that purpose;

73 (o) return to custody for specified hours following release for employment, schooling,

74 or other limited purposes;

75 (p) satisfy any other condition that is reasonably necessary to assure the appearance of

76 the defendant as required and to assure the safety of any other person and the community; and

77 (q) if convicted of committing a sexual offense or an assault or other offense involving

78 violence against a child 17 years of age or younger, is limited or denied access to any location

79 or occupation where children are, including but not limited to:

80 (i) any residence where children are on the premises;

81 (ii) activities, including organized activities, in which children are involved; and

82 (iii) locations where children congregate, or where a reasonable person should know

83 that children congregate.

84 (3) The court may, in its discretion, amend an order granting release to impose

85 additional or different conditions of release.

86 (4) If defendant has been found guilty of an offense in a court not of record and files a

87 timely notice of appeal pursuant to Section 78A-7-118(1) for a trial de novo, the court shall

88 stay all terms of a sentence, unless at the time of sentencing the judge finds by a preponderance
 89 of the evidence that the defendant poses a danger to another person or the community.

90 (5) If a stay is ordered, the court may order post-conviction restrictions on the
 91 defendant's conduct as appropriate, including:

92 (a) continuation of any pre-trial restrictions or orders;

93 (b) sentencing protective orders under Section 77-36-5.1;

94 (c) drug and alcohol use; ~~§~~ → [and] ← ~~§~~

95 (d) use of an ignition interlock ~~§~~ → ; and

95a (e) posting appropriate bail ← ~~§~~ .

96 (6) The provisions of Subsections (4) and (5) do not apply to convictions for an offense
 97 under Title 41, Chapter 6a, Part 5 Driving Under the Influence and Reckless Driving.

98 (7) Any stay authorized by Subsection (4) is lifted upon the dismissal of the appeal by
 99 the district court.

100 Section 2. Section **78A-7-118** is amended to read:

101 **78A-7-118. Appeals from justice court -- Trial or hearing de novo in district**
 102 **court.**

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

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

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

108 (2) Upon filing a proper notice of appeal, any term of a sentence imposed by the justice
 109 court shall be stayed as provided for in 77-20-10 and the Rules of Criminal Procedure.

110 [~~(2)~~] (3) If an appeal under Subsection (1) is of a plea entered pursuant to negotiation
 111 with the prosecutor, and the defendant did not reserve the right to appeal as part of the plea
 112 negotiation, the negotiation is voided by the appeal.

113 [~~(3)~~] (4) A defendant convicted and sentenced in justice court is entitled to a hearing de
 114 novo in the district court on the following matters, if the defendant files a notice of appeal
 115 within 30 days of:

116 (a) an order revoking probation;

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

- 119 (c) a sentence entered pursuant to Subsection [~~(3)~~] (4)(b); or
- 120 (d) an order denying a motion to withdraw a plea.
- 121 [~~(4)~~] (5) The prosecutor is entitled to a hearing de novo in the district court on:
- 122 (a) a final judgment of dismissal;
- 123 (b) an order arresting judgment;
- 124 (c) an order terminating the prosecution because of a finding of double jeopardy or
- 125 denial of a speedy trial;
- 126 (d) a judgment holding invalid any part of a statute or ordinance;
- 127 (e) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of
- 128 that evidence prevents continued prosecution of an infraction or class C misdemeanor;
- 129 (f) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of
- 130 that evidence impairs continued prosecution of a class B misdemeanor; or
- 131 (g) an order granting a motion to withdraw a plea of guilty or no contest.
- 132 [~~(5)~~] (6) A notice of appeal for a hearing de novo in the district court on a pretrial order
- 133 excluding evidence under Subsection [~~(4)~~] (5)(e) or (f) shall be filed within 30 days of the
- 134 order excluding the evidence.
- 135 [~~(6)~~] (7) Upon entering a decision in a hearing de novo, the district court shall remand
- 136 the case to the justice court unless:
- 137 (a) the decision results in immediate dismissal of the case;
- 138 (b) with agreement of the parties, the district court consents to retain jurisdiction; or
- 139 (c) the defendant enters a plea of guilty in the district court.
- 140 [~~(7)~~] (8) The district court shall retain jurisdiction over the case on trial de novo.
- 141 [~~(8)~~] (9) The decision of the district court is final and may not be appealed unless the
- 142 district court rules on the constitutionality of a statute or ordinance.