

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

State's right of appeal in criminal cases.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to criminal procedure; establishing a right
2 of appeal for the state in criminal cases as specified;
3 providing requirements and limitations for the state to
4 appeal in criminal cases; and providing for an effective
5 date.

6

7 *Be It Enacted by the Legislature of the State of Wyoming:*

8

9 **Section 1.** W.S. 7-12-105 is created to read:

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11 **7-12-105. Appeals by the state in criminal cases.**

12

1 (a) The state may, as a matter of right, appeal from
2 the following orders and judgments:

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4 (i) A final judgment of dismissal of an
5 indictment or information or any count thereof, including a
6 dismissal of a felony information following a decision not
7 to bind the defendant over for trial;

8

9 (ii) A pretrial order dismissing a charge on the
10 ground that the court's suppression of evidence has
11 substantially impaired the state's case. For appeals taken
12 under this paragraph, the matter shall be stayed pending
13 the outcome of the appeal;

14

15 (iii) An order granting a motion to withdraw a
16 plea of guilty or no contest;

17

18 (iv) An order arresting or modifying a judgment
19 of conviction;

20

21 (v) An order terminating the prosecution because
22 of a finding of double jeopardy or the denial of a speedy
23 trial;

1

2 (vi) An order granting a new trial;

3

4 (vii) An order holding a statute or any part of a
5 statute invalid;

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7 (viii) An order adjudicating that a defendant is
8 incompetent or has a mental illness or deficiency that
9 makes the defendant unfit to proceed;

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11 (ix) An order adjudicating that a defendant lacks
12 the requisite mental capacity for the execution of the
13 defendant under W.S. 7-13-902;

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15 (x) An order finding that a sentence is illegal
16 or that corrects an illegal sentence;

17

18 (xi) An order dismissing a charge under W.S. 6-2-
19 602.

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21 (b) In addition to any appeal permitted under
22 subsection (a) of this section, the state may seek

1 discretionary appellate review of any interlocutory order
2 entered before jeopardy attaches.

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4 *****
5 *****

6 **STAFF COMMENT**

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8 The language above (per the Committee's direction) is based
9 on Utah law. Below in this staff comment are alternate
10 versions of the new section based on Maine law and Texas
11 law. For clarity, the structure of the alternate language
12 below has been changed.

13

14 **Maine Version:**

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16 **7-12-105. Appeals by the state in criminal cases.**

17

18 (a) An appeal may be taken by the state in criminal
19 cases on questions of law and from orders as follows:

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21 (i) An order before trial that suppresses any
22 evidence, including physical or identification evidence or
23 evidence of a confession or admission;

24

25 (ii) An order that prevents the state from
26 obtaining evidence;

27

28 (iii) A pretrial dismissal of an indictment,
29 information or complaint;

30

31 (iv) Any other order of the court made before
32 trial that, either under the particular circumstances of
33 the case or generally for the type of order in question,
34 has a reasonable likelihood of causing either serious
35 impairment to or termination of the prosecution.

36

37 (b) An appeal may be taken by the state in criminal
38 cases after trial and after a finding of guilty by a jury
39 or the court from:

40

41 (i) The granting of a motion for a new trial;

42

1 (ii) Arrest of judgment;

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3 (iii) Dismissal; or

4

5 (iv) Other orders requiring a new trial or
6 resulting in termination of the prosecution in favor of the
7 defendant, when an appeal of the order would be permitted
8 by the double jeopardy provisions of the United States
9 constitution and the Wyoming constitution.

10

11 (c) If a motion for correction or reduction of
12 sentence brought by the state is denied in whole or in
13 part, an appeal may be taken by the state from the adverse
14 order.

15

16 **The Committee may wish to consider whether the following**
17 **provisions from Maine's law should be included here:**

18

- 19 • Whether the written approval of the Attorney General
20 is needed in any appeal taken under this section. See
21 15 Me. Rev. Stat. § 2115-A(5).
- 22 • Whether a "liberal construction" clause should be
23 expressly provided (i.e., "The provisions of this
24 section shall be liberally construed to effectuate its
25 purposes.") See 15 Me. Rev. Stat. § 2115-A(6).
- 26 • Whether rulemaking authority for the Supreme Court
27 should be expressly provided. See 15 Me. Rev. Stat. §
28 2115-A(7).

29

30 **Below is Texas's version:**

31

32 **7-12-105. Appeals by the state in criminal cases.**

33

34 (a) The state is entitled to appeal an order of a
35 court in a criminal case if the order:

36

37 (i) Dismisses an indictment, information or
38 complaint or any portion thereof;

39

40 (ii) Arrests or modifies a judgment;

41

42 (iii) Grants a new trial;

43

44 (iv) Sustains a claim of former jeopardy;

1
2 (v) Grants a motion to suppress evidence, a
3 confession or an admission, if jeopardy has not attached in
4 the case and if the state certifies to the trial court that
5 the appeal is not taken for the purpose of delay and that
6 the evidence, confession or admission is of substantial
7 importance in the case; or

8
9 (vi) Is issued under the Post-Conviction
10 Determination of Factual Innocence Act. [**Note: W.S. 7-12-**
11 **407 already provides this right to both parties.**]

12
13 (b) The state is entitled to appeal a sentence in a
14 case on the ground that the sentence is illegal.

15
16 (c) The state is entitled to appeal a ruling on a
17 question of law if the defendant is convicted in the case
18 and appeals the judgment.

19
20 (d) The state is entitled to a stay in the proceedings
21 pending the disposition of an appeal brought under
22 subsection (a) or (b) of this section.

23
24 (e) The state is entitled to appeal an order entered
25 under W.S. 7-19-304 that terminates the duty of a person to
26 register as a sex offender.

27
28 **The Committee may wish to consider whether the following**
29 **provisions of Texas's law should be included in this**
30 **alternate version (see Tex. Crim. Pro. Code art. 44.01):**

- 31
- 32 • Whether the state must appeal within 20 days of the
33 applicable order.
 - 34 • Whether the Supreme Court must "give precedence" to an
35 appeal brought under this section.
 - 36 • Whether this section should specify whether a
37 defendant may remain on bail pending the state's
38 appeal.
 - 39 • Whether this section should expressly provide that the
40 Rules of Appellate Procedure apply to these appeals.
 - 41 • Whether language is needed to specify that nothing in
42 this section affects a defendant's right to appeal.
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2 *****
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4 **Section 2.** This act is effective July 1, 2025.

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(END)