



2021 South Dakota Legislature

Senate Bill 62

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney General

1 **An Act to revise certain provisions regarding appeals by the prosecution.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1.** That § 23A-32-4 be AMENDED.

4 **23A-32-4. Appeal by prosecution from judgment setting aside verdict,**
 5 **dismissal, arrest of judgment, new trial, or deviation from mandatory sentence.**

6 An appeal by a prosecuting attorney in a criminal case may be taken to the
 7 Supreme Court, as a matter of right, from a judgment, or order of a circuit court ~~setting~~
 8 that:

- 9 (1) Sets aside a verdict and entering judgment of acquittal, ~~sustaining;~~
 10 (2) Sustains a motion to dismiss an indictment or information, as to any one or more
 11 counts, or any part thereof, on statutory grounds or otherwise, ~~or granting;~~
 12 (3) Grants a motion for arrest of judgment or a motion for a new trial, ~~or an order~~
 13 finding; or
 14 (4) Finds mitigating circumstances to exist in deviating from the mandatory sentencing
 15 provisions of § 22-42-2. However, any appeal does not bar or preclude another
 16 prosecution of the defendant for the same offense, unless the dismissal is affirmed
 17 by the Supreme Court.

18 **Section 2.** That § 23A-32-5 be AMENDED.

19 **23A-32-5. Appeal by prosecution--Suppression order--Dismissal of**
 20 **complaint--Procedure--Double jeopardy.**

- 21 An appeal by a prosecuting attorney may be taken to the Supreme Court from:
 22 (1) An order of a circuit court or a magistrate suppressing or excluding evidence or
 23 requiring the return of seized property in a criminal proceeding;
 24 (2) An order of a circuit court or a magistrate sustaining a motion to dismiss a complaint
 25 on statutory grounds or otherwise.

1 An appeal under this section may not be taken after a defendant has been put in risk
2 of double jeopardy and is not a matter of right but of sound judicial discretion. Appeals
3 from such orders shall be taken in the same manner as intermediate appeals in subdivision
4 § 15-26A-3(6). No appeal taken under this section shall delay any trial unless a stay be
5 granted in the discretion of the Supreme Court.