



2021 South Dakota Legislature  
**Senate Bill 62**  
**ENROLLED**

AN ACT

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

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

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

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

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

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

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

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

An appeal by a prosecuting attorney may be taken to the Supreme Court from:

- (1) An order of a circuit court or a magistrate suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding;
- (2) An order of a circuit court or a magistrate sustaining a motion to dismiss a complaint on statutory grounds or otherwise.

An appeal under this section may not be taken after a defendant has been put in risk of double jeopardy and is not a matter of right but of sound judicial discretion. Appeals

from such orders shall be taken in the same manner as intermediate appeals in subdivision § 15-26A-3(6). No appeal taken under this section shall delay any trial unless a stay be granted in the discretion of the Supreme Court.

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

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I certify that the attached Act originated in the:

Received at this Executive Office this \_\_\_\_\_ day of \_\_\_\_\_,

Senate as Bill No. 62

2021 at \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of the Senate

By \_\_\_\_\_  
for the Governor

\_\_\_\_\_  
President of the Senate

The attached Act is hereby approved this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2021

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Governor

**STATE OF SOUTH DAKOTA,**

ss.

Office of the Secretary of State

\_\_\_\_\_  
Speaker of the House

Attest:

Filed \_\_\_\_\_, 2021  
at \_\_\_\_\_ o'clock \_\_\_ M.

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
Secretary of State

Senate Bill No. 62  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

By \_\_\_\_\_  
Asst. Secretary of State