HB

303

FISCAL NOTE

(S. 3

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: CSHB 303(FIN)
(H) Publish Date: 3-13-92

Revision Date:
Title: An Act relating to the state's right to appeal in criminal cases
Sponsor: House Judiciary
Requestor:

Department Affected: Alaska Court System
BRU: Trial Courts
Components:

COMPONENT SERIAL NO. 000 | 000 | 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel
Phone: 264-8228
Division: Alaska Court System
Date: 03/04/92

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System
Date: 03/04/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 1/92

COMMITTEE COPY

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

No. 1
Version: CSHB 303(JUD)
(H) Publish Date: 2/7/92

Revision Date:
Title: "An Act relating to the State's right to appeal in criminal cases . . ."
Sponsor: House Judiciary
Requestor: House Judiciary

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency

COMPONENT SERIAL NO. 1 6 3 1

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)
The fiscal impact of this bill depends entirely on the numbers of cases where review was previously denied, which now must be heard by the appellate courts. It is doubtful that there are any such cases. The appellate courts rarely have denied discretionary review to the State.

Prepared by: John Salemi, Public Defender
Division: Public Defender Agency
Phone: 279-7541
Date: February 3, 1992

Approved by Commissioner: Nancy Bear Usera
Agency: Administration
Date: 2/7/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/07/91
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FISCAL NOTE

No. 2

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: CSHB 303(JUD)
(H) Publish Date: 2/7/92

Revision Date: _____ Department Affected: Department of Law

Title: "An Act relating to the state's right to appeal in criminal cases..." BRU: Prosecution

Component: All

Sponsor: House Judiciary Committee

Requestor: House Judiciary Committee COMPONENT SERIAL NO. [ ][ ][ ][ ]

85 through 91

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672

Division: Administrative Services Date: January 21, 1992

Approved by Commissioner: Charles E. Cole, Attorney General

Agency: Department of Law Date: January 21, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/OBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/7/91

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CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 303(JUD) #2
2-7-92

This bill amends AS 22.07, AS 22.10, AS 22.15, and repeals Rule 202(c), Alaska Rules of Appellate Procedure, to provide that the state's right to appeal in criminal cases is limited by the prohibition against double jeopardy contained in the United States Constitution and the Alaska Constitution. Existing law limits this right except to test the sufficiency of the indictment or information or to appeal a sentence on the ground it is too lenient. The effect of granting broadened appeals rights to the state will be to permit it to test evidentiary rulings that are adverse to the state's case at the outset. Currently, the state's only opportunity to test evidentiary rulings is when a defendant appeals a ruling adverse to the defense and the state gets to respond.

Although there will be some incremental cost when the state elects to affirmatively bring an evidentiary appeal, it will certainly be more efficient than the current system where we must wait for a defense appeal before evidence issues are finally resolved.

 COMMITTEE COPY

Alaska State Legislature

House of Representatives

House Judiciary Committee

State Capitol
Juneau, Alaska 99801-1182
(907) 465-4990

M E M O R A N D U M

TO: Senator Rick Halford, Chair
Senate Judiciary Committee

FROM: Representative Dave Donley, Chair
House Judiciary Committee

RE: HB 303 - State's Right to Appeal

DATE: April 21, 1992

I respectfully request that a committee hearing be scheduled for HB 303 at the earliest possible opportunity. This Judiciary Committee bill gives the state the right to appeal in criminal cases, and is based on testimony from prosecutors about the problems caused by the state not having this right. The primary effect of the legislation is to save state resources by changing the time frame for preparing appeals that are already considered by the courts. As a result, the bill is noncontroversial.

Under current statutes, if a trial judge commits error that hurts a defendant, the defendant can file an "appeal." The state, however, can only file a "petition for review" if the trial judge commits error that hurts the state. There are two main differences between an "appeal" and a "petition for review":

1. The court must consider the merits of an "appeal." In contrast, the court can exercise its discretion and refuse to consider a "petition for review."

2. A "petition for review" must be filed 10 days after entry of a final trial court order. With an "appeal," a notice of appeal must be filed 30 days after the final order, next a record on appeal must be completed, and then an additional 30 days is allowed to file the first appellate brief.

Giving the state the right to appeal in criminal cases balances the criminal justice system more fairly, and will assist the courts by allowing them to base decisions on more thorough legal briefing.

Thank you for considering this request to calendar HB 303.

DD:lc

Alaska State Legislature

House of Representatives
House Judiciary Committee
Chairman Dave Donley

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

ALLOWING STATE TO APPEAL IN CRIMINAL CASES

HB 303 enlarges the state's right to appeal in criminal cases by giving state prosecutors the same right to appeal as have federal prosecutors. Unlike Alaska law where the right of the prosecution to appeal is limited by statute (AS 22.07.020 and AS 22.10.020), the right of federal prosecutors to appeal erroneous decisions is limited only by constitutional double jeopardy provisions. A copy of the federal statute is attached.

Like all human institutions, our criminal justice system is not perfect and judges sometimes make mistakes. If a mistake is made in favor of the state, the defendant can appeal. A conviction that was wrongfully obtained will be reversed on appeal. That is as it should be; basic justice requires no less. But, if a judge makes a mistake in favor of a defendant, the state may not be able to obtain appellate review of the erroneous decisions. Constitutional prohibitions against double jeopardy do not require that these erroneous decisions stand uncorrected. The proposed amendment changes the statutes to allow the state to appeal in circumstances where an error has been made.

Under current state statutes, if a trial judge dismisses a case erroneously, the state must file a "petition for review", not an "appeal", with the court of appeals. The difference is two-fold.

First, the right to "appeal" means the right to have the court hear a case and consider it on the merits; the court cannot refuse to hear the case. But a "petition for review" is addressed to the court's discretionary power to review decisions of the trial court; the petitioner must convince the court that there is some good reason to take the case, aside from the fact that the judge may have made a mistake. The court can deny the petition because the legal issue raised is unusual, or because the issue is not likely to recur, or because the court is too busy, or for any other discretionary reason, without ever reaching the merits of the trial judge's decision. That is, the trial judge could be clearly wrong to have dismissed charges in a criminal case, but the court of appeals is not required to do anything to correct that wrong, even if it completely agrees with the state's legal argument.

Second, a petition for review must be drafted on very short notice. In the normal appeal process, a person has 30 days from the date of the trial judge's decision to file a simple pleading stating the person intends to appeal. The record on appeal is then prepared. After the record is completed, the person has an additional 30 days to file a brief. This means that, as a

practical matter, the person has several months to research and draft a brief before it must be filed with the court.

The petition for review process is quite different. The state has only 10 days from the trial judge's order to draft a petition that includes a sufficiently convincing argument on the merits of the case to convince the court of appeals that they should take the case and reverse the trial judge's decision. This 10-day period was designed with interlocutory -- mid-trial -- appeals in mind. However, with mid-trial appeals the parties and the judicial system cannot afford the luxury of leisurely briefing because everyone needs to know quickly whether the court of appeals is going to interrupt the trial to decide the legal issue involved. This frantic pace does not make a lot of sense when the state appeals a final order in a case; by definition, a final order adverse to the state ends the case. There is no reason to rush the briefing schedule after a final order has been entered.

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

P.O. BOX 111200
JUNEAU, ALASKA 99811-1200
PHONE: (907) 465-4322

April 28, 1992

The Honorable Rick Halford
Senate Judiciary Committee
Alaska State Senate
State Capitol
Juneau, Alaska 99801

Re: CSHB 303(FIN), State's
Right to Appeal in Criminal Cases

Dear Senator Halford:

I am writing to ask you to consider scheduling CSHB 303(FIN), an Act relating to the State's right to appeal in criminal cases, for a hearing in the Senate Judiciary Committee. CSHB 303(FIN) is a good bill, and one which has been sought by prosecutors and law enforcement agencies for several years.

The bill would give state prosecutors the same right to appeal from adverse rulings in criminal cases that federal prosecutors now have. Appeals would be allowed unless prohibited by the "double jeopardy" clauses of the United States or Alaska Constitutions.

Like all human institutions, our criminal justice system is not perfect. Judges sometimes make mistakes. If a mistake is made in favor of the State, the defendant can appeal. A conviction that was wrongfully obtained will be reversed on appeal. But if a judge makes a mistake in favor of a defendant, under present law, the State has no right to appeal these erroneous decisions.

Under current state law, if a trial judge dismisses a case erroneously, the state must file a "petition for review", not an "appeal", with the Court of Appeals. The right to "appeal" means that the court must hear a case and rule on its merits. But it is entirely within the court's discretion whether to accept a "petition for review". The court can deny the petition because the legal issue raised is unusual, because the issue is not likely to recur, because the court feels it is too busy, or for any other discretionary reason, without ever reaching the merits of the trial judge's decision.

Constitutional prohibitions against double jeopardy do not require that erroneous decisions stand uncorrected. CSHB 303(FIN) amends State statutes to allow the State, as well as the defense, to appeal in circumstances where an error has been made.

I know that the Judiciary Committee is busy, and there are several important bills demanding attention. CSHB 303(FIN) is a relatively simple bill, however; I do not believe that it would take a lot of the committee's time to review it and, we hope, pass it out. I urge you not to allow this important bill to get lost in the press of business at the session's end. I would be glad to discuss the need for this bill with you personally, if you would like.

Thank you for your courtesy in considering this request.

Sincerely,

Richard L. Burton
Commissioner

cc: Paul Fuhs
Governor's Legislative Liaison

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

☐ *CRIMINAL DIVISION CENTRAL OFFICE*
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

XX ☐ *OFFICE OF SPECIAL PROSECUTIONS AND APPEALS*
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

March 5, 1992

Representative Dave Donley
3111 C St., Suite 450
Anchorage, AK 99503

Ref: House Bill No. 303

Dear Representative Donley:

This letter is in response to your request for information regarding how House Bill No. 303, which broadens the state's right to appeal, would affect the Criminal Division of the Department of Law. The bill would eliminate the need to file petitions for discretionary review of adverse dispositive rulings by trial courts, thereby reducing the workload of the appellate office.

The Office of Special Prosecutions and Appeals represents the State of Alaska in all felony merit appeals, in all criminal cases in the Alaska supreme court, and in all federal actions challenging state convictions. Under existing law, the state's right to appeal in most cases is limited by the court of appeals' discretion. OSPA must file petitions for review, seeking discretionary appellate review of adverse dispositive rulings by the trial court. For example, the state cannot currently appeal a trial court's dismissal of charges based upon an alleged violation of the defendant's right to a speedy trial; it must file a petition for review. Though in practice the court of appeals nearly always decides to grant the state's petitions in these cases, OSPA must nevertheless devote a significant amount of time to draft the petition.

Under existing law, the state has thirty days from the certification of the record or the filing of the appellant's brief to file its brief, but only ten days from the adverse ruling to file a petition for review. This ten-day time frame for filing a

petition for review puts a strain on OSPA. Because the appellate attorney is new to the case, he must review the trial court pleadings and listen to cassette tapes of any relevant hearing. The attorney must then research the law because the petition must contain a "[d]iscussion of the reasons why the decision below is alleged to be erroneous." This is often as time consuming as filing a brief on direct appeal, and usually takes several days. If the petition is granted, the case proceeds as if an appeal had been filed: the parties designate a record, the clerk prepares the record, and the parties file briefs.

Under House Bill No. 303, the state would be permitted to appeal adverse decisions as a matter of right. A state attorney could initiate an appeal by filing a notice of appeal, a statement of points on appeal, and a designation of record. Preparation of these documents ordinarily would occupy at most a few hours. Once the record is certified, the state would have thirty days to file a brief.

At the current time, OSPA has seven appellate attorneys, two trial attorneys and a supervising attorney. Thirty-eight briefs and other responsive pleadings are due within the next thirty days. Two of the cases in the office involve extremely long trials, requiring the assigned attorneys to read 4000 and 5800 pages of transcripts. It would be difficult today for an appellate attorney to drop everything and devote the necessary time to filing a petition for review. An appellate attorney can more easily juggle an appeal into his caseload than he can a petition for review.

I strongly urge you to support the passage of the bill for it will greatly assist OSPA in providing effective representation in all appellate proceedings.

Yours truly,

CHARLES E. COLE
ATTORNEY GENERAL

By: Cynthia M. Hora
Cynthia M. Hora
Assistant Attorney General

The provisions of this section shall be liberally construed to effectuate its purposes.

(As amended Jan. 2, 1971, Pub.L. 91-644, Title III, § 14(a), 84 Stat. 1890.)

1971 Amendment. First par. Pub.L. 91-644, § 14(a)(1), enacted provision for appeal to a court of appeals from decision, judgment, or order of district court dismissing an indictment or information as to any one or more counts, except that no appeal shall lie where double jeopardy prohibits further prosecution.

Second par. Pub.L. 91-644, § 14(a)(1), enacted provision for appeal to a court of appeals from decision or order of district court suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.

Such first and second pars. superseded former first eight pars. Pars. one through four had provided for appeal from district courts to Supreme Court from decision or judgment setting aside, or dismissing any indictment or information, or any count thereof and from decision arresting judgment of conviction for insufficiency of indictment or information, where such decision or judgment was based upon invalidity or construction of the statute upon which the indictment or information was founded and for an appeal from decision or judgment sustaining a motion in bar, where defendant had not been put in jeopardy. Pars. five through eight provided for appeal from district courts to a court of appeals where there were no provisions for direct appeal to Supreme Court from decision or judgment setting aside, or dismissing any indictment or information, or any count thereof and from decision arresting a judgment of conviction, and from an order, granting a motion for return of seized property or a motion to suppress evidence, made before trial of a person charged with violation of a Federal law, if the United States attorney certified to the judge who granted the motion that the appeal was not taken for purpose of delay and that the evidence was a substantial proof of the charge pending against the defendant.

Third par. Pub.L. 91-644, § 14(a)(2), authorized within third par., formerly ninth, an appeal within thirty days after order has been rendered.

Fourth par. Pub.L. 91-644, § 14(a), in revising the provisions, had the effect of designating former tenth par. as fourth par.

Fifth par. Pub.L. 91-644, § 14(a)(3), substituted as a fifth par. provision for liberal construction of this section for prior eleventh par. provision respecting remand of case by Supreme Court to court of appeals that should have been taken to such court and treatment of the court's jurisdiction to hear and determine the case as if the appeal were so taken in the first instance and for prior twelfth par. provision respecting certification of case to Supreme Court that should have been taken directly to such Court and treatment of the Court's jurisdiction to hear and determine the case as if the appeal were taken directly to such Court.

Savings Provision. Section 14(b) of Pub.L. 91-644 provided that: "The amendments made by this section [to this section] shall not apply with respect to any criminal case begun in any district court before the effective date of this section [Jan. 2, 1971]."

Legislative History. For legislative history and purpose of Pub.L. 91-644, see 1970 U.S. Code Cong. and Adm. News, p. 5804.

Federal Practice and Procedure

Appellate review
- Arrest of judgment, see Wright: Criminal 2d § 574.
- Criminal contempt proceedings, see Wright: Criminal 2d § 715.
- Decision setting aside or dismissing indictment or information, see Wright: Criminal 2d § 191.
- Dismissal for unnecessary delay, see Wright: Criminal 2d § 814.
- Motion for judgment of acquittal, see Wright: Criminal 2d § 469.
- Search and seizure, see Wright: Criminal 2d § 678.

Government's right to appeal, see Wright: Criminal 2d § 874.

Mandatory release of defendant on his own recognizance upon dismissal of indictment, arrest of judgment and appeal by government, see Wright: Criminal 2d § 767.

Review of federal courts, see Wright, Miller & Cooper: Jurisdiction § 4034 et seq.

Writ applications, see Wright, Miller, Cooper & Gressman: Jurisdiction §§ 3932, 3934.

Notes of Decisions

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1. Constitutionality

Where there was a general finding of guilt rendered by court in a bench trial, and thereafter district court granted defendant's motion to suppress, double jeopardy did not bar an appeal by the government. U.S. v. Rose, 1976, 97 S.Ct. 26, 429 U.S. 5, 50 L.Ed.2d 5.

Where district court, following a nonjury trial, found defendant guilty of charge of possessing marijuana with intent to distribute and thereafter

Note 4

ing out of violation of injunction issued pursuant to section 160 of Title 29 in a case involving an unfair labor practice. In re Union Nacional de Trabajadores, C.A. Puerto Rico 1974, 502 F.2d 113.

5. —— Right to jury trial

District court, which stated that it would not impose a sentence in excess of six months, properly denied the jury trial motion of defendants, Professional Air Traffic Controllers Organization officers who were charged with criminal contempt for failing to honor temporary restraining orders. U.S. v. Martinez, C.A.La.1982, 686 F.2d 334.

This section giving an accused a right to a speedy and public trial by an impartial jury in all cases of contempt arising under laws of United States governing issuance of injunction or restraining orders in any case involving or growing out of a labor dispute do not apply to contempt proceedings to enforce injunctions issued under section 141 et seq. of Title 29. Pabst Brewing Co. v. Brewery Workers Local Union No. 77, AFL-CIO, C.A.Ill.1977, 555 F.2d 146.

Failure to at least accord defendants statutory right to "demand" trial by jury in criminal contempt proceeding violated due process. Richmond Black Police Officers Ass'n v. City of Richmond, Va., C.A.Va.1977, 548 F.2d 123.

Writ of mandamus requiring jury trial in criminal contempt proceedings instituted by National Labor Relations Board was recalled, following United States Supreme Court decision that jury trials were not required in such cases, since withdrawal of mandate would not substantially prejudice rights of the union defendants and although defendants had spent considerable time and effort preparing for their challenge to jury selection procedure there was no vested interest in bringing such challenge in instant case and such work, which has been done by public interest legal group, presumably would be available in other cases. In re Union Nacional de Trabajadores, C.A.1, 1975, 527 F.2d 602.

Business agent for union local did not have constitutional or statutory right to jury trial on charge of contempt for violation of a "Boys Markets" temporary restraining order which enjoined the local and its officers, agents, members, and all persons in active concert and participation with them from in any manner engaging in a strike, work stoppage or picketing against employer. U.S. v. Partin, C.A.La.1975, 526 F.2d 992, certiorari denied 96 S.Ct. 1493, 425 U.S. 904, 47 L.Ed.2d 753.

Under this section providing that an accused is entitled to a jury trial in all cases of contempt arising under laws of the United States governing issuance of injunctions in any case involving or growing out of a labor dispute, union and officers cited for contempt arising out of their alleged violation of court order enjoining union from striking without complying with notice and waiting requirements of section 160 of Title 29, were entitled to jury trial. In re Union Nacional de Trabajadores, C.A. Puerto Rico 1974, 502 F.2d 113.

Section 160 of Title 29 stating that in granting or enforcing injunctive relief requested by National Labor Relations Board in connection with alleged unfair labor practice the jurisdiction of court sitting in equity shall not be limited by Norris-LaGuardia Act, section 101 et seq. of Title 29, does not insulate criminal contempt proceedings following issuance of Board-requested injunction from requirement of jury trial under this section giving an accused right to jury in all cases of contempt arising under laws of United States governing issuance of injunctions in a case involving a labor dispute. Id.

Air traffic controller's charged with contempt in violating preliminary injunction requiring them to refrain from concerted effort directed to work slow down or stoppage and to notify their supervisor of their medical and physical condition with supporting medical data were not entitled to jury trial. U.S. v. Robinson, C.A. Alaska 1971, 449 F.2d 925.

CHAPTER 235—APPEAL

§ 3731. Appeal by United States

In a criminal case an appeal by the United States shall lie to a court of appeals from a decision, judgment, or order of a district court dismissing an indictment or information as to any one or more counts, except that no appeal shall lie where the double jeopardy clause of the United States Constitution prohibits further prosecution.

An appeal by the United States shall lie to a court of appeals from a decision or order of a district courts suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.

The appeal in all such cases shall be taken within thirty days after the decision, judgment or order has been rendered and shall be diligently prosecuted.

Pending the prosecution and determination of the appeal in the foregoing instances, the defendant shall be released in accordance with chapter 207 of this title.