

CHAPTER 382

S.B. No. 762

AN ACT

relating to the right of the state to appeal in certain criminal cases.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article 44.01, Code of Criminal Procedure, is amended to read as follows:

Art. 44.01. ~~[STATE CANNOT]~~ APPEAL BY STATE. (a) *The state is entitled to appeal an order of a court in a criminal case if the order:*

(1) *dismisses an indictment, information, or complaint or any portion of an indictment, information, or complaint;*

(2) *arrests or modifies a judgment;*

(3) *grants a new trial;*

(4) *sustains a claim of former jeopardy; or*

(5) *grants a motion to suppress evidence, a confession, or an admission, if jeopardy has not attached in the case and if the prosecuting attorney certifies to the trial court that the appeal is not taken for the purpose of delay and that the evidence, confession, or admission is of substantial importance in the case.*

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

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

(d) *The prosecuting attorney may not make an appeal under Subsection (a) or (b) of this article later than the 15th day after the date on which the order, ruling, or sentence to be appealed is entered by the court.*

(e) *The state is entitled to a stay in the proceedings pending the disposition of an appeal under Subsection (a) or (b) of this article.*

(f) *The court of appeals shall give precedence in its docket to an appeal filed under Subsection (a) or (b) of this article. The state shall pay all costs of appeal under Subsection (a) or (b) of this article, other than the cost of attorney's fees for the defendant.*

(g) *If the state appeals pursuant to this article and the defendant is on bail, he shall be permitted to remain at large on the existing bail. If the defendant is in custody, he is entitled to reasonable bail, as provided by law, unless the appeal is from an order which would terminate the prosecution, in which event the defendant is entitled to release on personal bond.*

(h) *The Texas Rules of Appellate Procedure apply to a petition by the state to the Court of Criminal Appeals for review of a decision of a court of appeals in a criminal case.*

(i) *In this article, "prosecuting attorney" means the county attorney, district attorney, or criminal district attorney who has the primary responsibility of prosecuting cases in the court hearing the case and does not include an assistant prosecuting attorney.*

(j) *Nothing in this article is to interfere with the defendant's right to appeal under the procedures of Article 44.02 of this code. The defendant's right to appeal under Article 44.02 may be prosecuted by the defendant where the punishment assessed is in accordance with Subsection (a), Section 3d, Article 42.12 of this code, as well as any other punishment assessed in compliance with Article 44.02 of this code. ~~[The State shall have no right of appeal in criminal actions. However, this statute shall not be construed to prevent the State from petitioning the Court of Criminal Appeals to review a decision of a court of appeals in a criminal case, on its own motion.]~~*

SECTION 2. (a) The change in law made by this Act applies only to the appeal of an order, a ruling of law, or a sentence if the order, ruling, or sentence is entered by a court on or after the effective date of this Act.

(b) The appeal of an order, ruling of law, or sentence entered before the effective date of this Act is covered by the law in effect when the order, ruling, or sentence was entered, and the former law is continued in effect for this purpose.

SECTION 3. This Act takes effect on the adoption of the amendment to the Texas Constitution proposed by S.J.R. No. 34, 70th Legislature, Regular Session, 1987. If that amendment is not approved by the voters, this Act has no effect.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 19, 1987, by a viva-voce vote. Passed the House on May 30, 1987, by a non-record vote.

Approved June 17, 1987.

Effective upon adoption of S.J.R. No. 34.