

## HOUSE BILL No. 2140

By Committee on Corrections and Juvenile Justice

1-27

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1 AN ACT concerning criminal procedure; relating to appeals; interlocutory  
2 appeals; transfer of appeals by the prosecution to the supreme court;  
3 amending K.S.A. 2014 Supp. 22-3602 and 22-3603 and repealing the  
4 existing sections.  
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6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2014 Supp. 22-3602 is hereby amended to read as  
8 follows: 22-3602. (a) Except as otherwise provided, an appeal to the  
9 appellate court having jurisdiction of the appeal may be taken by the  
10 defendant as a matter of right from any judgment against the defendant in  
11 the district court and upon appeal any decision of the district court or  
12 intermediate order made in the progress of the case may be reviewed. No  
13 appeal shall be taken by the defendant from a judgment of conviction  
14 before a district judge upon a plea of guilty or nolo contendere, except that  
15 jurisdictional or other grounds going to the legality of the proceedings may  
16 be raised by the defendant as provided in K.S.A. 60-1507, and  
17 amendments thereto.

18 (b) Appeals to the court of appeals may be taken by the prosecution  
19 from cases before a district judge, or a district magistrate judge who is  
20 regularly admitted to practice law in Kansas, as a matter of right in the  
21 following cases, and no others:

22 (1) From an order dismissing a complaint, information or indictment;

23 (2) from an order arresting judgment;

24 (3) upon a question reserved by the prosecution; or

25 (4) upon an order granting a new trial in any case involving a class A  
26 or B felony or for crimes committed on or after July 1, 1993, in any case  
27 involving an off-grid crime.

28 (c) Procedures for appeals by the prosecution enumerated in  
29 subsection (b) shall be as provided in supreme court rules.

30 (d) Appeals to a district judge may be taken by the prosecution from  
31 cases before a district magistrate judge who is not regularly admitted to  
32 practice law in Kansas as a matter of right in the cases enumerated in  
33 subsection (b) and from orders enumerated in K.S.A. 22-3603, and  
34 amendments thereto.

35 (e) Any criminal case on appeal to the court of appeals may be  
36 transferred to the supreme court as provided in K.S.A. 20-3016 and 20-

1 3017, and amendments thereto, and any party to such case may petition the  
2 supreme court for review of any decision of the court of appeals as  
3 provided in ~~subsection (b)~~ of K.S.A. 20-3018(b), and amendments thereto,  
4 except that: (1) Any such party may appeal to the supreme court as a  
5 matter of right in any case in which a question under the constitution of  
6 either the United States or the state of Kansas arises for the first time as a  
7 result of the decision of the court of appeals; and (2) *the prosecution may*  
8 *appeal to the supreme court as a matter of right in any case in which a*  
9 *judgment of conviction for an off-grid crime or a judgment of conviction*  
10 *for an inherently dangerous felony as defined in K.S.A. 2014 Supp. 21-*  
11 *5402(c), and amendments thereto, is reversed either on direct appeal or*  
12 *post-conviction appeal.*

13 (f) For crimes committed on or after July 1, 1993, an appeal by the  
14 prosecution or the defendant relating to sentences imposed pursuant to a  
15 presumptive sentencing guidelines system as provided in K.S.A. 21-4701  
16 et seq., prior to their repeal, or the revised Kansas sentencing guidelines  
17 act, article 68 of chapter 21 of the Kansas Statutes Annotated, and  
18 amendments thereto, shall be as provided in K.S.A. 21-4721, prior to its  
19 repeal, or K.S.A. 2014 Supp. 21-6820, and amendments thereto.

20 (g) *The amendments to this section by this act establish a procedural*  
21 *rule for the conduct of criminal appeals and shall be construed and*  
22 *applied retroactively to all cases currently pending.*

23 Sec. 2. K.S.A. 2014 Supp. 22-3603 is hereby amended to read as  
24 follows: 22-3603. (a) When a judge of the district court, prior to the  
25 commencement of trial of a criminal action, makes an order quashing a  
26 warrant or a search warrant, suppressing evidence or suppressing a  
27 confession or admission an appeal may be taken by the prosecution from  
28 such order if notice of appeal is filed within 14 days after entry of the  
29 order. *If an appeal from such order is taken by the prosecution pursuant to*  
30 *this section, the prosecution shall not be required to demonstrate that its*  
31 *ability to prosecute the criminal action is substantially impaired by the*  
32 *district court's order.* Further proceedings in the trial court shall be stayed  
33 pending determination of the appeal.

34 (b) *The amendments to this section by this act establish a procedural*  
35 *rule for the conduct of criminal appeals and shall be construed and*  
36 *applied retroactively to all cases currently pending.*

37 Sec. 3. K.S.A. 2014 Supp. 22-3602 and 22-3603 are hereby repealed.

38 Sec. 4. This act shall take effect and be in force from and after its  
39 publication in the Kansas register.