

**IC 35-38-4 Chapter 4. Appeals**

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**IC 35-38-4-1 Appeals by defendant as matter of right and according to this chapter; decisions and orders reviewable**

Sec. 1. (a) An appeal to the supreme court or the court of appeals may be taken by the defendant:

- (1) as a matter of right from any judgment in a criminal action; and
- (2) in accordance with this chapter.

(b) Any decision of the court or intermediate order made during the proceedings may be reviewed.

*As added by P.L.311-1983, SEC.3.*

**IC 35-38-4-2 Appeals by state as provided by court rules for certain cases**

Sec. 2. Appeals to the supreme court or to the court of appeals, if the court rules so provide, may be taken by the state in the following cases:

- (1) From an order granting a motion to dismiss one (1) or more counts of an indictment or information.
- (2) From an order or judgment for the defendant, upon the defendant's motion for discharge because of delay of the defendant's trial not caused by the defendant's act, or upon the defendant's plea of former jeopardy, presented and ruled upon prior to trial.
- (3) From an order granting a motion to correct errors.
- (4) Upon a question reserved by the state, if the defendant is acquitted.
- (5) From an order granting a motion to suppress evidence, if the ultimate effect of the order is to preclude further prosecution of one (1) or more counts of an information or indictment.
- (6) From any interlocutory order if the trial court certifies and the court on appeal or a judge thereof finds on petition that:
  - (A) the appellant will suffer substantial expense, damage, or injury if the order is erroneous and the determination thereof is withheld until after judgment;
  - (B) the order involves a substantial question of law, the early determination of which will promote a more orderly disposition of the case; or
  - (C) the remedy by appeal after judgment is otherwise inadequate.

*As added by P.L.311-1983, SEC.3. Amended by P.L.110-2015, SEC.2.*

**IC 35-38-4-3 Appeals from question reserved on part of state**

Sec. 3. In case of an appeal from a question reserved on the part of the state, it is not necessary for the clerk of the court to certify in the transcript any part of the proceedings and record except the pleadings, the motion to correct errors, and the judgment of acquittal. When the question reserved is defectively stated, the supreme court or the court of appeals may direct any part of the proceedings and record to be certified to such court.

*As added by P.L.311-1983, SEC.3.*

**IC 35-38-4-4 Effect of appeal taken by state**

Sec. 4. An appeal taken by the state does not stay, or affect the operation of, the judgment in favor of the defendant until the judgment is reversed. However, if an appeal is taken by

the state from an order or judgment by which the defendant is discharged before trial, the order or judgment does not constitute a bar to further prosecution of the defendant.  
*As added by P.L.311-1983, SEC.3.*

**IC 35-38-4-5 Defendants tried jointly; appeal by one or more**

Sec. 5. When defendants are tried jointly, any one (1) or more of them may take an appeal. However, those who do not join in the appeal are not affected by it.  
*As added by P.L.311-1983, SEC.3.*

**IC 35-38-4-6 Stay of execution of sentence**

Sec. 6. (a) An appeal to the supreme court or to the court of appeals from a judgment of conviction does not stay the execution of the sentence, unless:

- (1) the punishment is to be death; or
- (2) the judgment is for a fine and costs (including fees) only, in which case the execution of the sentence may be stayed by an order of the court.

(b) If the punishment is to be imprisonment and a fine and costs (including fees), the execution of the sentence as to the fine and costs (including fees) only may be stayed by the court.

(c) In the case of an appeal from a judgment in a capital case, the order of suspension must specify the day until which the execution of the sentence is stayed.

*As added by P.L.311-1983, SEC.3. Amended by P.L.106-2010, SEC.13.*

**IC 35-38-4-7 Reimbursement of retrial expenses**

Sec. 7. (a) This section applies to state reimbursement of expenses for conducting a new trial if:

- (1) a defendant is convicted of an offense in a criminal proceeding conducted in a trial court;
- (2) the defendant appeals the defendant's conviction to the Indiana court of appeals or Indiana supreme court; and
- (3) the court of appeals or supreme court remands the case to the trial court for a new trial.

(b) Subject to subsection (d), the state shall reimburse the trial court, the prosecuting attorney, and, if the defendant is represented by a public defender, the public defender for expenses:

- (1) incurred by the trial court, prosecuting attorney, and public defender in conducting a new trial described in subsection (a); and
- (2) that would ordinarily be paid by the county in which the trial court is located.

(c) The expenses of a trial court, prosecuting attorney, and public defender reimbursed under this section:

- (1) may not include any salary or other remuneration paid to a trial court judge, prosecuting attorney, deputy prosecuting attorney, or public defender; and
- (2) must be paid from money in the state general fund.

(d) The office of judicial administration (IC 33-24-6-1) shall administer a program to pay claims for reimbursement under this section. The maximum amount that may be reimbursed for all proceedings and all offenses arising out of the same facts is fifty thousand dollars (\$50,000). The maximum amount that may be paid in any particular year for all expenses otherwise eligible for reimbursement under this section is one million dollars (\$1,000,000). If the total of all claims that would otherwise be eligible for reimbursement under this section exceeds the maximum amount that may be reimbursed under this subsection, the office of judicial administration shall prorate reimbursement of eligible expenses, as determined by the office of judicial administration.

*As added by P.L.234-2007, SEC.71. Amended by P.L.3-2008, SEC.250; P.L.161-2018, SEC.124.*