

30 appeal or a petition for a writ of certiorari, be detained, unless the court finds:

31 (a) the appeal raises a substantial question of law or fact likely to result in:

32 (i) reversal;

33 (ii) an order for a new trial; or

34 (iii) a sentence that does not include a term of imprisonment in jail or prison;

35 (b) the appeal is not for the purpose of delay; and

36 (c) by clear and convincing evidence presented by the defendant that the defendant is

37 not likely to flee the jurisdiction of the court, and will not pose a danger to the physical,

38 psychological, or financial and economic safety or well-being of any other person or the

39 community if released.

40 (2) If the court makes a finding under Subsection (1) that justifies not detaining the

41 defendant, the court shall order the release of the defendant, subject to conditions that result in

42 the least restrictive condition or combination of conditions that the court determines will

43 reasonably assure the appearance of the person as required and the safety of any other person

44 and the community. The conditions may include that the defendant:

45 (a) post appropriate bail;

46 (b) execute a bail bond with a bail bond surety under Title 31A, Chapter 35, Bail Bond

47 Act, in an amount necessary to assure the appearance of the defendant as required;

48 (c) (i) execute a written agreement to forfeit, upon failing to appear as required,

49 designated property, including money, as is reasonably necessary to assure the appearance of

50 the defendant; and

51 (ii) post with the court indicia of ownership of the property or a percentage of the

52 money as the court may specify;

53 (d) not commit a federal, state, or local crime during the period of release;

54 (e) remain in the custody of a designated person who agrees to assume supervision of

55 the defendant and who agrees to report any violation of a release condition to the court, if the

56 designated person is reasonably able to assure the court that the defendant will appear as

57 required and will not pose a danger to the safety of any other person or the community;

- 58 (f) maintain employment, or if unemployed, actively seek employment;
- 59 (g) maintain or commence an educational program;
- 60 (h) abide by specified restrictions on personal associations, place of abode, or travel;
- 61 (i) avoid all contact with the victims of the offense and with any witnesses who
62 testified against the defendant or potential witnesses who may testify concerning the offense if
63 the appeal results in a reversal or an order for a new trial;
- 64 (j) report on a regular basis to a designated law enforcement agency, pretrial services
65 agency, or other designated agency;
- 66 (k) comply with a specified curfew;
- 67 (l) not possess a firearm, destructive device, or other dangerous weapon;
- 68 (m) not use alcohol, or any narcotic drug or other controlled substances except as
69 prescribed by a licensed medical practitioner;
- 70 (n) undergo available medical, psychological, or psychiatric treatment, including
71 treatment for drug or alcohol dependency, and remain under the supervision of or in a specified
72 institution if required for that purpose;
- 73 (o) return to custody for specified hours following release for employment, schooling,
74 or other limited purposes;
- 75 (p) satisfy any other condition that is reasonably necessary to assure the appearance of
76 the defendant as required and to assure the safety of any other person and the community; and
- 77 (q) if convicted of committing a sexual offense or an assault or other offense involving
78 violence against a child 17 years of age or younger, is limited or denied access to any location
79 or occupation where children are, including but not limited to:
 - 80 (i) any residence where children are on the premises;
 - 81 (ii) activities, including organized activities, in which children are involved; and
 - 82 (iii) locations where children congregate, or where a reasonable person should know
83 that children congregate.
- 84 (3) The court may, in its discretion, amend an order granting release to impose
85 additional or different conditions of release.

86 (4) If defendant has been found guilty of an offense in a court not of record and files a
87 timely notice of appeal pursuant to Subsection 78A-7-118(1) for a trial de novo, the court shall
88 stay all terms of a sentence, unless at the time of sentencing the judge finds by a preponderance
89 of the evidence that the defendant poses a danger to another person or the community.

90 (5) If a stay is ordered, the court may order post-conviction restrictions on the
91 defendant's conduct as appropriate, including:

92 (a) continuation of any pre-trial restrictions or orders;

93 (b) sentencing protective orders under Section 77-36-5.1;

94 (c) drug and alcohol use;

95 (d) use of an ignition interlock; and

96 (e) posting appropriate bail.

97 (6) The provisions of Subsections (4) and (5) do not apply to convictions for an offense
98 under Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.

99 (7) Any stay authorized by Subsection (4) is lifted upon the dismissal of the appeal by
100 the district court.

101 Section 2. Section **78A-7-118** is amended to read:

102 **78A-7-118. Appeals from justice court -- Trial or hearing de novo in district**
103 **court.**

104 (1) In a criminal case, a defendant is entitled to a trial de novo in the district court only
105 if the defendant files a notice of appeal within 30 days of:

106 (a) sentencing after a bench or jury trial, or a plea of guilty in the justice court resulting
107 in a finding or verdict of guilt; or

108 (b) a plea of guilty in the justice court that is held in abeyance.

109 (2) Upon filing a proper notice of appeal, any term of a sentence imposed by the justice
110 court shall be stayed as provided for in Section 77-20-10 and the Rules of Criminal Procedure.

111 [~~2~~] (3) If an appeal under Subsection (1) is of a plea entered pursuant to negotiation
112 with the prosecutor, and the defendant did not reserve the right to appeal as part of the plea
113 negotiation, the negotiation is voided by the appeal.

114 ~~[(3)]~~ (4) A defendant convicted and sentenced in justice court is entitled to a hearing de
115 novo in the district court on the following matters, if the defendant files a notice of appeal
116 within 30 days of:

- 117 (a) an order revoking probation;
- 118 (b) an order entering a judgment of guilt pursuant to the person's failure to fulfil the
119 terms of a plea in abeyance agreement;
- 120 (c) a sentence entered pursuant to Subsection ~~[(3)]~~ (4)(b); or
- 121 (d) an order denying a motion to withdraw a plea.

122 ~~[(4)]~~ (5) The prosecutor is entitled to a hearing de novo in the district court on:

- 123 (a) a final judgment of dismissal;
- 124 (b) an order arresting judgment;
- 125 (c) an order terminating the prosecution because of a finding of double jeopardy or
126 denial of a speedy trial;
- 127 (d) a judgment holding invalid any part of a statute or ordinance;
- 128 (e) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of
129 that evidence prevents continued prosecution of an infraction or class C misdemeanor;
- 130 (f) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of
131 that evidence impairs continued prosecution of a class B misdemeanor; or
- 132 (g) an order granting a motion to withdraw a plea of guilty or no contest.

133 ~~[(5)]~~ (6) A notice of appeal for a hearing de novo in the district court on a pretrial order
134 excluding evidence under Subsection ~~[(4)]~~ (5)(e) or (f) shall be filed within 30 days of the
135 order excluding the evidence.

136 ~~[(6)]~~ (7) Upon entering a decision in a hearing de novo, the district court shall remand
137 the case to the justice court unless:

- 138 (a) the decision results in immediate dismissal of the case;
- 139 (b) with agreement of the parties, the district court consents to retain jurisdiction; or
- 140 (c) the defendant enters a plea of guilty in the district court.

141 ~~[(7)]~~ (8) The district court shall retain jurisdiction over the case on trial de novo.

142 [~~8~~] 9 The decision of the district court is final and may not be appealed unless the
143 district court rules on the constitutionality of a statute or ordinance.