

Superseded 5/10/2016

**77-20-10 Grounds for detaining defendant while appealing the defendant's conviction --
Conditions for release while on appeal.**

- (1) The court shall order that a defendant who has been found guilty of an offense in a court of record and sentenced to a term of imprisonment in jail or prison, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the court finds:
 - (a) the appeal raises a substantial question of law or fact likely to result in:
 - (i) reversal;
 - (ii) an order for a new trial; or
 - (iii) a sentence that does not include a term of imprisonment in jail or prison;
 - (b) the appeal is not for the purpose of delay; and
 - (c) by clear and convincing evidence presented by the defendant that the defendant is not likely to flee the jurisdiction of the court, and will not pose a danger to the physical, psychological, or financial and economic safety or well-being of any other person or the community if released.
- (2) If the court makes a finding under Subsection (1) that justifies not detaining the defendant, the court shall order the release of the defendant, subject to conditions that result in the least restrictive condition or combination of conditions that the court determines will reasonably assure the appearance of the person as required and the safety of any other person and the community. The conditions may include that the defendant:
 - (a) post appropriate bail;
 - (b) execute a bail bond with a bail bond surety under Title 31A, Chapter 35, Bail Bond Act, in an amount necessary to assure the appearance of the defendant as required;
 - (c)
 - (i) execute a written agreement to forfeit, upon failing to appear as required, designated property, including money, as is reasonably necessary to assure the appearance of the defendant; and
 - (ii) post with the court indicia of ownership of the property or a percentage of the money as the court may specify;
 - (d) not commit a federal, state, or local crime during the period of release;
 - (e) remain in the custody of a designated person who agrees to assume supervision of the defendant and who agrees to report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any other person or the community;
 - (f) maintain employment, or if unemployed, actively seek employment;
 - (g) maintain or commence an educational program;
 - (h) abide by specified restrictions on personal associations, place of abode, or travel;
 - (i) avoid all contact with the victims of the offense and with any witnesses who testified against the defendant or potential witnesses who may testify concerning the offense if the appeal results in a reversal or an order for a new trial;
 - (j) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other designated agency;
 - (k) comply with a specified curfew;
 - (l) not possess a firearm, destructive device, or other dangerous weapon;
 - (m) not use alcohol, or any narcotic drug or other controlled substances except as prescribed by a licensed medical practitioner;

- (n) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain under the supervision of or in a specified institution if required for that purpose;
 - (o) return to custody for specified hours following release for employment, schooling, or other limited purposes;
 - (p) satisfy any other condition that is reasonably necessary to assure the appearance of the defendant as required and to assure the safety of any other person and the community; and
 - (q) if convicted of committing a sexual offense or an assault or other offense involving violence against a child 17 years of age or younger, is limited or denied access to any location or occupation where children are, including but not limited to:
 - (i) any residence where children are on the premises;
 - (ii) activities, including organized activities, in which children are involved; and
 - (iii) locations where children congregate, or where a reasonable person should know that children congregate.
- (3) The court may, in its discretion, amend an order granting release to impose additional or different conditions of release.
- (4) If defendant has been found guilty of an offense in a court not of record and files a timely notice of appeal pursuant to Subsection 78A-7-118(1) for a trial de novo, the court shall stay all terms of a sentence, unless at the time of sentencing the judge finds by a preponderance of the evidence that the defendant poses a danger to another person or the community.
- (5) If a stay is ordered, the court may order post-conviction restrictions on the defendant's conduct as appropriate, including:
- (a) continuation of any pre-trial restrictions or orders;
 - (b) sentencing protective orders under Section 77-36-5.1;
 - (c) drug and alcohol use;
 - (d) use of an ignition interlock; and
 - (e) posting appropriate bail.
- (6) The provisions of Subsections (4) and (5) do not apply to convictions for an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.
- (7) Any stay authorized by Subsection (4) is lifted upon the dismissal of the appeal by the district court.