

Effective 10/1/2019

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77-20-1 Right to bail -- Denial of bail -- Hearing.

- (1) As used in this chapter:
 - (a) "Bail bond agency" means the same as that term is defined in Section 31A-35-102.
 - (b) "Surety" and "sureties" mean a surety insurer or a bail bond agency.
 - (c) "Surety insurer" means the same as that term is defined in Section 31A-35-102.
- (2) An individual charged with or arrested for a criminal offense shall be admitted to bail as a matter of right, except if the individual is charged with a:
 - (a) capital felony, when the court finds there is substantial evidence to support the charge;
 - (b) felony committed while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when the court finds there is substantial evidence to support the current felony charge;
 - (c) felony when there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the individual would constitute a substantial danger to any other individual or to the community, or is likely to flee the jurisdiction of the court, if released on bail;
 - (d) felony when the court finds there is substantial evidence to support the charge and it finds by clear and convincing evidence that the individual violated a material condition of release while previously on bail; or
 - (e) domestic violence offense if the court finds:
 - (i) that there is substantial evidence to support the charge; and
 - (ii) by clear and convincing evidence, that the individual would constitute a substantial danger to an alleged victim of domestic violence if released on bail.
- (3) Any individual who may be admitted to bail may be released by posting bail in the form and manner provided in Section 77-20-4, or on the individual's own recognizance, on condition that the individual appear in court for future court proceedings in the case, and on any other conditions imposed in the discretion of the magistrate or court that will reasonably:
 - (a) ensure the appearance of the accused;
 - (b) ensure the integrity of the court process;
 - (c) prevent direct or indirect contact with witnesses or victims by the accused, if appropriate; and
 - (d) ensure the safety of the public.
- (4)
 - (a) Except as otherwise provided, the initial order denying or fixing the amount of bail shall be issued by the magistrate or court issuing the warrant of arrest.
 - (b) A magistrate may set bail upon determining that there was probable cause for a warrantless arrest.
 - (c) A bail commissioner may set bail in a misdemeanor case in accordance with Sections 10-3-920 and 17-32-1.
 - (d) An individual arrested for a violation of a jail release agreement or jail release court order issued in accordance with Section 77-20-3.5:
 - (i) may not be released before the accused's first judicial appearance; and
 - (ii) may be denied bail by the court under Subsection (2).
- (5) The magistrate or court may rely upon information contained in:
 - (a) the indictment or information;
 - (b) any sworn probable cause statement;
 - (c) information provided by any pretrial services agency; or
 - (d) any other reliable record or source.

- (6)
 - (a) A motion to modify the initial order may be made by a party at any time upon notice to the opposing party sufficient to permit the opposing party to prepare for hearing and to permit any victim to be notified and be present.
 - (b) Hearing on a motion to modify may be held in conjunction with a preliminary hearing or any other pretrial hearing.
 - (c) The magistrate or court may rely on information as provided in Subsection (5) and may base its ruling on evidence provided at the hearing so long as each party is provided an opportunity to present additional evidence or information relevant to bail.
- (7) Subsequent motions to modify bail orders may be made only upon a showing that there has been a material change in circumstances.
- (8) An appeal may be taken from an order of any court denying bail to the Supreme Court, which shall review the determination under Subsection (2).
- (9) For purposes of this section, any arrest or charge for a violation of Section 76-5-202, Aggravated murder, is a capital felony unless:
 - (a) the prosecutor files a notice of intent to not seek the death penalty; or
 - (b) the time for filing a notice to seek the death penalty has expired and the prosecutor has not filed a notice to seek the death penalty.