

Alabama Rules of Criminal Procedure

Rule 7. Release.

Rule 7.2. Right to release on one's personal recognizance or on bond.

(a) BEFORE CONVICTION.

(1) In accordance with § 15-13-3(a), Ala. Code 1975, a defendant charged with capital murder is not eligible for bail if the court is of the opinion, on the evidence adduced, that he or she is guilty of the offense. If the court sets bail for a defendant charged with capital murder, it may impose the least onerous condition or conditions contained in Rule 7.3(b) that will reasonably assure the defendant's appearance or that will eliminate or minimize the risk of harm to others or to the public.

(2) In accordance with § 15-13-3(b), Ala. Code 1975, a defendant charged with an offense listed in § 15-13-3(b)(1) may be denied bail. Before determining whether bail is to be set, the court must hold a pretrial detention hearing and consider the factors enumerated in § 15-13-3(b)(5). If the court sets bail for a defendant charged with an offense listed in § 15-13-3(b)(1), it may impose the least onerous condition or conditions contained in Rule 7.3(b) that will reasonably assure the defendant's appearance or that will eliminate or minimize the risk of harm to others or to the public at large.

(3) Any defendant charged with an offense bailable as a matter of right (i.e., offenses other than those listed in § 15-13-3(a) and § 15-13-3(b)(1)) may be released pending or during trial on his or her personal recognizance or on an appearance bond unless the court or magistrate determines that such a release will not reasonably assure the defendant's appearance as required, or that the defendant's being at large will pose a real and present danger to others or to the public at large. If such a determination is made, the court may impose the least onerous condition or conditions contained in Rule 7.3(b) that will reasonably assure the defendant's appearance or that will eliminate or minimize the risk of harm to others or to the public at large. In making such a determination, the court may take into account the following:

(i) The age, background and family ties, relationships and circumstances of the defendant.

(ii) The defendant's reputation, character, and health.

(iii) The defendant's prior criminal record, including prior releases on recognizance or on secured appearance bonds, and other pending cases.

(iv) The identity of responsible members of the community who will vouch for the defendant's reliability.

(v) Violence or lack of violence in the alleged commission of the offense.

(vi) The nature of the offense charged, the apparent probability of conviction, and the likely sentence, insofar as these factors are relevant to the risk of nonappearance.

(vii) The type of weapon used, e.g., knife, pistol, shotgun, sawed-off shotgun.

(viii) Threats made against victims and/or witnesses.

(ix) The value of property taken during the alleged commission of the offense.

(x) Whether the property allegedly taken was recovered or not; damage or lack of damage to property allegedly taken.

(xi) Residence of the defendant, including consideration of real property ownership, and length of residence in his or her place of domicile.

(xii) In cases where the defendant is charged with a drug offense, evidence of selling or pusher activity should indicate a substantial increase in the amount of bond.

(xiii) Consideration of the defendant's employment status and history, the location of the defendant's employment, e.g., whether employed in the county where the alleged offense occurred, and the defendant's financial condition.

(xiv) Any enhancement statutes related to the charged offense.

(b) BAIL SCHEDULE. The following schedule is established as a general rule for circuit, district, and municipal courts in setting bail for persons charged with bailable offenses. Except where release is required in the minimum schedule amount pursuant to the Rules of Criminal Procedure, courts should exercise discretion in setting bail above or below the scheduled amounts.

BAIL SCHEDULE

Recommended Range

Felonies:

Capital murder	\$50,000	to	No Bail Allowed
Murder	\$15,000	to	No Bail Allowed
Offenses listed in § 15-13-3(b)(1) (other than murder)	\$10,000	to	No Bail Allowed
Drug manufacturing and trafficking	\$5,000	to	\$1,500,000
Class A felony	\$10,000	to	\$60,000
Class B felony	\$5,000	to	\$30,000
Class C felony	\$2,500	to	\$15,000
Class D felony	\$1,000	to	\$10,000

Misdemeanors (not included elsewhere in schedule):

Class A misdemeanor	\$300	to	\$6,000
Class B misdemeanor	\$300	to	\$3,000
Class C misdemeanor	\$300	to	\$1,000
Violation	\$300	to	\$500

Municipal-Ordinance Violations: \$300 to \$1,000

Traffic-Related Offenses:

DUI	\$1,000	to	\$7,500
Reckless driving	\$300	to	\$1,000
Speeding	\$300	to	\$500
Other traffic violations	\$300	to	\$500

*\$300 was set as the lower limit in compliance with Ala. Code 1975, § 15-13-105, providing that "in violation and misdemeanor cases the minimum amount of bail shall be \$300 for each offense charged."

(c) AFTER CONVICTION AND SENTENCING.

- (1) A defendant who has been convicted of an offense and who for that offense has been sentenced to punishment by death, by life imprisonment, or by imprisonment for a term in excess of twenty (20) years, shall not be released.
- (2) Any defendant who has been convicted of an offense for which the defendant has been sentenced to a term of imprisonment for twenty (20) years or less may be released on a secured appearance bond or on the defendant's personal recognizance,
 - (i) Upon application for release made concurrently with the filing of a notice of appeal, or
 - (ii) If the application for probation is made, upon application for release made at any time before probation has been granted or denied.

(d) DENIAL OF RELEASE. Release shall be denied after conviction and sentencing if the trial court has reason to believe that an appearance bond or conditions of release will not reasonably assure that the defendant will not flee, or that the defendant's being at large poses a real and present danger of harm to any other person or to the public at large, or if at the time the sentence was rendered, the defendant filed a notice of appeal and elected to waive release and to begin serving the sentence.

[Amended 11-30-93, eff 4-1-95; Amended eff. 5-17-95; Amended eff. 8-1-97; Amended 6-21-2007, eff 9-1-2007; Amended 11-22-2016. eff. 1-1-2017; Amended eff. 1-14-2022.; Amended eff. 3-16-2023]

Committee Comments

The Eighth Amendment to the United States Constitution provides:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Art. 1, § 16, Alabama Constitution of 1901, provides:

“That all persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great; and that excessive bail shall not in any case be required.”

See also Ala.Code 1975, § 15-13-2, and -3, for right to bail as a matter of right.

Assuming that the offense is bailable, Rule 7.2 is based on the presumption of innocence of the accused and the policy that a defendant should be released pending trial whenever possible. The defendant is eligible for a recognizance release unless the judge determines that the defendant's presence would not thereby be reasonably assured or that the defendant poses a real and present danger of harm to others. The list of factors to be considered is taken from the ABA, Standards for Criminal Justice, Pretrial Release 10-5.1 (2d ed. 1986).

Section (b) recognizes that after conviction the defendant is no longer presumed innocent and is not entitled admission to bail as a matter of right. If the defendant's sentence is for twenty (20) years or less, he can be admitted to bail, in the judge's discretion, unless the judge has reason to believe that bail will not reasonably assure that the defendant will not flee, or that there is a real and present danger to others posed by the defendant's being at large, thereby modifying Ala.Code 1975, § 12-22-170, which unconditionally allows bail if the sentence does not exceed twenty (20) years.

Under Rule 7.2(b)(2)(i), a convicted defendant may apply for release on an appearance bond or on his personal recognizance at the time of filing a notice of appeal. This changes former practice whereby application for release had to be made with the filing of notice of appeal at the time sentence was rendered (i.e., at the time sentence was pronounced), an unduly restrictive, unfair, and technical trap for the unwary practitioner. See *Ex parte Downer*, 44 Ala.App. 77, 203 So.2d 132 (1967); *Ex parte Rogers*, 53 Ala.App. 245, 298 So.2d 665 (1974); *Ex parte Pennington*, 57 Ala.App. 128, 326 So.2d 656 (1976). For “Appeal as of Right—When Taken,” see A.R.App.P., Rule 4(b). Cf. Fed.R.Crim.P., Rule 46(c).

Rule 7.2(b)(2) allows some discretion to the trial judge in releasing the defendant on bail or on the defendant's personal recognizance. If the defendant has initially filed a notice of appeal at the time sentence was pronounced but elected to waive release and to begin serving the sentence, and thereafter requests that the sentence be suspended, whether to grant bail is left to the discretion of the trial court. There are no cases on this point, and there has been some question whether the trial court retains jurisdiction over the defendant, because the defendant will have already begun serving sentence. However, it is preferable that the trial court make the release decision, because that court is more familiar with the case, because the record is usually still with the trial court, and because any witnesses would be more readily available to that court.

Rule 7.2(b)(2) conforms with the Alabama Rules of Appellate Procedure. Rule 9(b) of the appellate rules provides: "Release after judgment of conviction shall be governed by Title 15, §§ 368 and 372 [Ala.Code 1975, § 12-22-170]."

Committee Comments to Amendment to Rule 7.2
Effective April 1, 1995

Rule 7.2(a) applies to pretrial release and is based on the presumption of innocence of the accused and the constitutional and statutory right of a defendant charged with a noncapital offense to be released on bail pending trial.

The 8th Amendment to the United States Constitution provides, "Excessive bails shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The Constitution of Alabama includes the additional guaranty that all defendants charged with noncapital offenses have an absolute right to bail prior to conviction. Article 1, Section 16, Alabama Constitution of 1901, provides:

"That all persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great; and that excessive bail shall not in any case be required."

The allowance of bail as a matter of right prior to conviction is also recognized in Ala.Code 1975, § 15-13-2, and has been held to apply to defendants charged with noncapital offenses who are subsequently arrested for failure to appear on their scheduled court dates.

The provisions of Rule 7.2(a) authorizing judges and magistrates to release defendants charged with bailable offenses on their personal recognizance or an unsecured appearance bond are based on the presumption of innocence of the accused and the policy that a defendant should be released pending trial whenever possible. A defendant charged with an offense that is bailable as a matter of right is eligible for a recognizance release unless the judge or magistrate determines that the defendant's presence would not thereby be reasonably assured or that the defendant poses a real and present danger of harm to others. As used in this rule, "personal recognizance" means a release of the defendant without any condition of an undertaking relating to, or deposit of, security. Such release is distinguishable from release conditioned on the posting of bond or other security.

Subdivision (a) lists certain factors the court may consider when setting bail. This list incorporates the factors previously included in Rule 2, Alabama Rules of Judicial Administration, and is taken from the ABA Standards for Criminal Justice, Pretrial Release, 10-5.1 (2d ed. 1968), written to ensure that judicial officers not give inordinate weight to the nature of the present charge.

The term “community” as used in subsection (a)(4) shall be liberally construed and not limited to the court’s jurisdiction.

Section (b) of the rule provides a bail schedule for trial courts and magistrates to use in setting bail for persons charged with bailable offenses as set forth in this rule and Rule 18, Alabama Rules of Judicial Administration. The bail schedule, previously contained in Rule 2, Alabama Rules of Judicial Administration, has been revised to reflect legislative changes in the maximum amount of bail for municipal ordinance violations and the incorporation of drug offenses into the Criminal Code and, in some instances, to recognize the increased penalties now authorized for the certain enumerated offenses.

Upon recommendation of the Supreme Court’s Advisory Committee on Rules of Judicial Administration, the Advisory Committee on Criminal Procedure recommended this amendment to Rule 7, Alabama Rules of Criminal Procedure, to incorporate the bail schedule (as amended), which was previously included in Rule 2, Rules of Judicial Administration. It was the consensus of both committees that, with the adoption of the Rules of Criminal Procedure, the bail schedule should be included in Rule 7 of the criminal rules rather than continued in a rule of judicial administration.

Except where release in the minimum scheduled amount is required by law, see, e.g., Rule 4, Alabama Rules of Criminal Procedure, the bail schedule should be regarded only as a discretionary guide.

The bail schedule is based, in part, on the offense classification system established under the Alabama Criminal Code. The “capital felony” category is intended to cover those offenses provided in Article 2 of Chapter 5 of Title 13A, Code of Alabama 1975 (“Alabama Criminal Code”), and amendments thereto. Municipal ordinance infractions are included within the discretionary bail schedule to assist municipal courts and district courts having jurisdiction over municipal ordinance cases in setting bail for persons not released from custody and comports with § 12-14-5, Ala.Code 1975, establishing the maximum bail authorized for municipal ordinance violations. Because drug-related offenses are now included in the Alabama Criminal Code, these offenses are not itemized separately.

Although custodial arrest is not authorized for most traffic offenses, see Ala.Code 1975, § 32-1-4, these offenses are listed within recommended ranges for bail, to serve as a guide in instances where the defendant refuses to sign the promise-to-appear portion of the Uniform Traffic Ticket and Complaint.

Section (c) recognizes that after conviction the defendant is no longer presumed innocent and is not entitled to admission to bail as a matter of right. If a defendant’s sentence is for twenty (20) years or less, the defendant can be admitted to bail, in the judge’s discretion, unless the judge has reason to believe

that bail will not reasonably assure that the defendant will not flee, or has reason to believe that there is a real and present danger to others posed by the defendant's being at large. Thus, Section (c) modifies Ala.Code 1975, § 12-22-170, which unconditionally allowed bail if the sentence did not exceed twenty (20) years.

Under Rule 7.2(c)(2)(i), a convicted defendant may apply for release on an appearance bond or on the defendant's personal recognizance at the time of filing a notice of appeal. This changes former practice, whereby application for release had to be made with the filing of a notice of appeal at the time the sentence was rendered (i.e., when the sentence was pronounced); that former practice presented an unduly restrictive, unfair, and technical trap for the unwary practitioner. See *Ex parte Downer*, 44 Ala.App. 77, 203 So.2d 132 (1967); *Ex parte Rogers*, 53 Ala.App. 245, 298 So.2d 665 (1974); *Ex parte Pennington*, 57 Ala.App. 128, 326 So.2d 656 (1976). For "Appeal as of Right—When Taken," see A.R.App.P., Rule 4(b). Cf. Fed.R.Crim.P., Rule 46(c).

Rule 7.2(c)(2) allows some discretion to the trial judge in releasing the defendant on bail or on the defendant's personal recognizance. If the defendant initially files a notice of appeal when the sentence is pronounced, but elects to waive release and to begin serving the sentence, and thereafter requests that the sentence be suspended, whether to grant bail is left to the discretion of the trial court. There are no cases on this point, and there has been some question whether the trial court retains jurisdiction over the defendant, since the defendant will have already begun serving the sentence. However, it is preferable that the trial court make the release decision, since that court is more familiar with the case, the record is usually still with the trial court, and any witnesses would be more readily available to that court.

Committee Comments to Amendment to Rule 7.2 Effective March 16, 2023

Rule 7.2 has been amended to reflect changes effected by recent amendments to Art. I, § 16, Ala. Const. 2022, and § 15-13-3, Ala. Code 1975. Rule 7.2(a) has been expanded to address offenses that are not "bailable as a matter of right." The first sentence of Rule 7.2(a)(1) tracks the language of § 15-13-3(a), and Rule 7.2(a)(2) references the procedures applicable under § 15-13-3(b) before a trial court can make a determination as to whether to set bail for a defendant who has been charged with an offense listed in § 15-13-3(b)(1).

The "Bail Schedule" contained in Rule 7.2(b) has been amended to reflect that, in addition to capital murder, murder and the other offenses listed in § 15-13-3(b)(1) are now offenses for which bail is no longer available "as a matter of right." The minimum bail amount for "Offenses listed in § 15-13-3(b)(1) (other than murder)" has been set at \$10,000.

Finally, the footnote to the "Bail Schedule" has been removed from the rule. The minimum bail amount reflected in the schedule for "violation and misdemeanor cases" is \$300, in accordance with § 15-13-105, Ala. Code 1975.

Note from the reporter of decisions: The order amending Rule 7.2(b), effective September 1, 2007, is published in that volume of *Alabama Reporter* that contains Alabama cases from 957 So. 2d.

Note from the reporter of decisions: The order amending Rule 7.2(b), effective January 1, 2017, is published in that volume of *Alabama Reporter* that contains Alabama cases from 222 So. 3d.

Note from the reporter of decisions: The order amending Rule 7.2(b), effective January 14, 2022, is published in that volume of *Alabama Reporter* that contains Alabama cases from ___ So. 3d.

Note from the reporter of decisions: The order amending Rule 7.2(a) and Rule 7.2(b), Alabama Rules of Criminal Procedure, and adopting the Committee Comments thereto, effective March 16, 2023, is published in that volume of *Alabama Reporter* that contains Alabama cases from __ So. 3d.