

CHELSEA POLICE DEPARTMENT		Department Manual: Policy No. 4.38
Subject: Release on Bail Policy		
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 72.5.7, 72.7.1		GENERAL ORDER 06-10
Effective Date September 27, 2006 References: MGL.Chap 276 §58 Amends:	Issuing Authority _____ Brian A. Kyes Chief of Police	

Please Note: In the event that this order is in conflict with any previously issued order, rule, regulation, directive (email or otherwise), policy or procedure, then this order shall take precedence.

I. Release on Bail Generally:

There is a statutory presumption that a defendant be released on personal recognizance (meaning he or she need not post any bail money other than the statutory \$40 bail fee).¹ In general, bail should only be set to ensure the defendant’s appearance in court. The principal exception to this rule is G.L. c. 276 §58A, which permits a defendant to be held without bail if the defendant is found to be *dangerous* (pursuant to a 58A “*Dangerous Hearing*”). **72.7.1 a, b**

¹ **Chapter 262: Section 24. Bail Fees; Persons authorized to take bail; Restrictions**

(a) The maximum fee to be charged by any person authorized to take bail or release on personal recognizance in the case of a person arrested for any misdemeanor or felony **shall be \$40.**

(b) If, in addition to recognizing for a court within the territorial jurisdiction of the magistrate authorizing the release, the arrested person is being required to recognize for a court outside of such territorial jurisdiction, the person, so authorized, may charge an additional \$5 for each such extraterritorial recognizance, but in no event shall the total fee for any release exceed \$50.

(c) The person authorized to take bail who goes to the place of detention where the prisoner is held shall receive the fee before completing the determination of the terms of release, regardless of whether the prisoner ultimately recognizes out-of-court, and is the only person entitled to the compensation provided for in this section. Fee splitting arrangements are prohibited. No person authorized to take bail shall administer by telephone, or otherwise than in the physical presence of the affiant, any oath or affirmation required in the course of taking bail or releasing on personal recognizance. No person authorized to take bail shall delegate the setting or taking of bail or the setting or taking of release on personal recognizance to any other person.

II. Bail Consideration Factors (for Clerk Magistrate):

Where a defendant is held in custody at Chelsea Police Headquarters:

- Under arrest or committed with or without a warrant for an offense not punishable by death
- On motion of the Commonwealth
- For an offense enumerated under G.L. c. 276 §58A or
- For an offense on which an arrest warrant has been issued by the Superior Court,

A Justice, Clerk Magistrate or Assistant Clerk Magistrate of the District Court, or a Bail Commissioner or Master in Chancery, shall release the defendant on personal recognizance without surety unless said judicial officer determines that such release will not reasonably ensure the defendant's later appearance before the court.

Note: If a defendant's own egregious conduct in refusing to answer questions prevents the completion of the booking process, he/she will not be entitled to a bail hearing (usually conducted by the Clerk at HQ). See Commonwealth v. Maylott, 43 Mass.App.Ct. 516, 520-21, 684 N.E. 2d 10, 13 *review denied*, 426 Mass. 1107 (1997).

The judicial officer referred to above must consider the following factors in making a determination as to release on personal recognizance or ordering a monetary Bail Amount.

- The nature and circumstances of the offense charged;
- The potential penalty faced by the defendant;
- The defendant's family ties and financial resources;
- The defendant's employment and mental health records;
- The defendant's reputation and length of residence in the community;
- The defendant's convictions records (if any);
- Any illegal drug distribution or present drug dependency;
- Any flight to avoid prosecution;
- Any fraudulent use of an alias or false identification; **72.5.7**
- Any failure to appear before a court proceeding to answer to an offense;
- Whether the defendant is then on bail pending adjudication of a prior charge;
- Whether the acts alleged involve abuse as defined in section one of chapter two hundred and nine A, or violation of a temporary or permanent order issued pursuant to sections eighteen or thirty-four B of chapter two hundred and eight, section thirty-two of chapter two hundred and nine, sections three, four or five of chapter two hundred and nine A, or sections fifteen or twenty of chapter two hundred and nine C;
- Whether the defendant has any history of such restraining orders issued against him pursuant to the aforesaid sections;
- Whether the defendant is on probation, parole, or other release pending completion of sentence for any conviction, and
- Whether the defendant is on release pending sentence or appeal for any conviction.

Note: The judicial officer must provide as an explicit condition of release as possible for any person admitted to bail pursuant to Section fifty eight or section fifty-seven that, should said person be charged with a crime during the period of his release, his/her bail may be revoked and they may be held without bail.

III Court In-Session Bail Procedure:

The following procedure shall be adhered to whenever an individual is placed in custody and charged with an arrestable offense when court is then in-session. For purposes of this section, the procedure outlined below shall be applied whenever the booking process is substantially completed on an arrested individual **PRIOR to 2:00pm** Monday through Friday (exclusive of Legal Holidays).

1. **BOP CHECK:** Upon completion of the department booking process (e.g., obtaining biographical information, arrest data, fingerprints & photographs), the Prisoner Control Officer (“PCO”) shall ensure that a Board of Probation (“BOP”) Check is completed via the Criminal Justice Information System (“CJIS”).
2. **ARREST ENVELOPE:** The Arrest Envelope shall be completed containing five (5) copies of the arrest report, a signed copy of the criminal complaint application, a copy of the arrest warrant (if applicable) and a copy of the BOP.
3. **PRISONER TRANSPORT:** The arrested individual along with the Arrest envelope shall be transported without unreasonable delay to the Chelsea District Court to be arraigned and participate in an in-court Bail Hearing.

IV After Court Hours Bail Procedure:

The following procedure shall be adhered to whenever an individual is placed in custody and charged with an arrestable offense when court is *not in-session*. For purposes of this section, the procedure outlined below shall be applied whenever the booking process is substantially completed on an detained individual **AFTER 2:00pm** Monday through Friday and at *any time* when court is closed (i.e., Saturday, Sunday or Legal Holiday).

1. **BOP CHECK:** Upon completion of the department booking process (e.g., obtaining biographical information, arrest data, fingerprints & photographs), the Prisoner Control Officer (“PCO”) shall ensure that a Board of Probation (“BOP”) Check is completed via the Criminal Justice Information System (“CJIS”).
2. **ARREST ENVELOPE:** The Arrest Envelope shall be completed containing five (5) copies of the arrest report, a signed copy of the criminal complaint application, a copy of the arrest warrant (if applicable) and a copy of the BOP.
3. **CLERK NOTIFICATION:** The Clerk Magistrate / Assistant Clerk Magistrate (“Clerk”) shall be notified by the PCO as soon as is reasonably possible once the BOP check and booking process are completed. The Clerk shall be informed of the detainees name, arrest charges, BOP history, whether arrest was made pursuant to a warrant (default or straight) as well as any extenuating circumstances

related to the arrest (i.e., 209A Order Violation). A current "on-call list" shall be posted at the Front Desk of Police Headquarters listing the Clerk and the corresponding availability dates.

4. **DETAINEE ENVELOPE NOTATION:** Once notified and upon receiving the pertinent information from the PCO, the Clerk will inform the PCO as to the Bail Amount (if any). A notation as to the Bail Amount shall be made on the Detainees Arrest Envelope. If no bail is ordered by the Clerk the Arrest Envelope shall be marked as "*Personal*" indicating personal recognizance.
5. **DETAINEE NOTIFICATION (Personal):** If the Clerk orders that the detainee is eligible to be released on personal recognizance ("Personal"), the detainee shall be informed of the applicable statutory fee of forty (\$40) dollars as well as the requirement of verifiable identification (i.e., license, passport, work/school photograph identification). **72.5.7**
6. **DETAINEE NOTIFICATION (Ordered Bail):** If the Clerk orders a specific Bail Amount based on the nature and severity of the charges, arrest history as well as the existence of any other applicable factors listed in Section (II) supra, the detainee shall be informed without unreasonable delay of the stated bail amount.
7. **PHONE CALL(S):** Pursuant to G.L Chapter 276 §33A², the detainee shall be notified *forthwith* upon arrival at Chelsea Police Headquarters of the statutory right to a phone call and allowed to exercise that right *within one hour after such arrival*. Pursuant to this section, in addition to the possibility of communicating with an attorney, the detainee (if he/she so desires) shall be allowed to communicate with family and/or friends for the purpose of assisting in the posting of bail if necessary.
8. **THIRD PARTY POSTING BAIL:** If an interested third party (i.e., attorney, family, friend) responds to Police Headquarters to **post bail** for the detained individual after an applicable Bail Amount has been ordered by the Clerk, the following procedure shall be followed:
 - If a Bail Amount has been ordered by the Clerk (not including the Bail Fee), the interested third party shall be instructed to stand by in the police lobby (or close proximity) until the arrival of the Clerk. The third party may be required to sign the Bail Release Form as a surety. Officers are not required or authorized to accept *any* Clerk ordered Bail Amount in excess of the forty (\$40) dollar Bail Fee. The Officer in Charge ("OIC") is authorized to forego this procedure (not accepting Bail Money) if extenuating circumstances exist. If such a situation applies, the OIC shall make a notation in the arrest report narrative under their applicable employee identification number outlining the actions that he/she has taken.

² **Chapter 276: Section 33A. Use of telephone in places of detention**

" The police official in charge of the station or other place of detention having a telephone wherein a person is held in custody, shall permit the use of the telephone, at the expense of the arrested person, for the purpose of allowing the arrested person to communicate with his family or friends, or to arrange for release on bail, or to engage the services of an attorney. Any such person shall be informed forthwith upon his arrival at such station or place of detention, of his right to so use the telephone, and such use shall be permitted within one hour thereafter. "

9. **THIRD PARTY POSTING BAIL FEE:** If an interested third party (i.e., attorney, family, friend) responds to Police Headquarters to **post only the Bail Fee** for the detained individual after the Clerk has ordered the detainee released on Personal, the following procedure shall be followed:

- If the Clerk orders that the detainee be released on Personal, the PCO is **authorized to accept** from the interested third party the **forty (\$40) dollar Bail Fee** on behalf of the detainee held in police custody. The PCO shall complete a **Receipt Form** indicating:

- the amount received (i.e., \$40);
 - date/time received,;
 - the name of the person posting the Bail Fee; and
 - the Officers name/signature and applicable employee identification number;

- The PCO shall then give the third party posting the Bail Fee the original copy of the receipt with the duplicate receipt copy stapled to the original arrest report to be filed in the Central Records Bureau as a permanent record.
- The PCO shall then, without unreasonable delay, place the Bail Fee in a clear plastic evidence bag noted with the name and the arrest number of the detainee. The PCO shall heat-seal the evidence bag containing the Bail Fee and staple it to the detainees original property bag (if one exists) and place both items in the applicable Prisoner Property Locker located in the Booking Room.