

# Personal Recognizance & Bail Fees

Clerk-Magistrates MUST Release Indigent Arrestees From The Police Station

excerpted from the 2003 Massachusetts Basic Element Textbook

## Rights of Persons Accused of Crimes

### C. 262 § 24 Personal Recognizance & Bail Fees—*Mandatory Release Where Defendant Has No Cash*

(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.

## Mandatory Release Of Indigents By Clerk-Magistrate

### PERSONS AUTHORIZED TO SET BAIL—RULE 12 (of the rules of the Superior Court)

**MAXIMUM FEE:** 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 forty dollars, regardless of the number of offenses.

**MAXIMUM FEE TO BE RECOGNIZED IN COURT OUTSIDE JURISDICTION:** 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 five dollars for each such extraterritorial recognizance, but in no event shall the total fee for any release exceed fifty dollars.

**FEE LESS THAN FORTY:** This rule does not prevent the taking of bail or releasing on personal recognizance for less than the maximum fee or without charge, but if a charge is to be made, payment shall be in advance.

**NO FEE WHILE WORKING REGULARLY:** Clerk-Magistrates and Assistant Clerks of the Superior and District Courts shall not receive any fee or compensation, in addition to their salaries, for releasing a prisoner on bail or on personal recognizance without sureties during the hours when their offices are required to be open.

**MAGISTRATE SOLE PERSON RECEIVING FEES:** The person authorized to take bail who goes to the place of detention and releases the prisoner is the only person entitled to the compensation provided for in G.L. c. 262, § 24, and fee splitting arrangements are prohibited.

**MANDATORY RELEASE IF INDIGENT:** If a prisoner is being held under circumstances justifying a release and is not able to provide the fee, the magistrate shall authorize the release without charge.