

## **L-130 PROCEDURE IN COURT CASES INITIATED BY ARREST WITHOUT WARRANT**

Pursuant to the authority set forth in Rule 130 of the Rules of Criminal Procedure, an arresting officer, when the officer deems it appropriate, may promptly release from custody a defendant who has been arrested without a warrant, rather than taking the defendant before the issuing authority, when the following conditions have been met:

- a. the most serious offense charged is a misdemeanor of the second degree;
- b. the defendant is a resident of the Commonwealth;
- c. the defendant poses no threat of immediate physical harm to any other person or to himself or herself;
- d. the arresting officer has reasonable grounds to believe that the defendant will appear as required; and
- e. the defendant does not demand to be taken before an issuing authority.

When a defendant is released pursuant to Pa. R. Crim. P. 130 (b) or pursuant to this rule, a complaint shall be filed against the defendant within five (5) days of the defendant's release. Thereafter, a summons, not a warrant or arrest, shall be issued and the case shall proceed as provided by Pa. R. Crim. P. 110.

## **L-141 – AUDIO TAPE OF TESTIMONY FROM PRELIMINARY HEARINGS**

- a. Testimony at preliminary hearing shall be recorded on audio cassette tape by the District Justice when requested by:
  1. District Attorney
  2. Public Defender
  3. Criminal Conflict Attorney
  4. Unrepresented Indigent Defendants
- b. The District Justice shall forward the audio cassette tape to the Court Administrator along with an indigency form. (See Appendix N).
- c. Copies of the audio cassette tape may be obtained, by letter only, through the Court Administrator's Office.
- d. If no request for a duplicate audio cassette tape is received within 60 days of the preliminary hearing, the Court Administrator will erase the audio cassette tape.

e. All tapes, at the time of publication of this rule, in the possession of the Court Administrator will be erased within 30 days of publication of this local rule unless a written request for a duplicate audio cassette is received by the Court Administrator.

#### **L-178 ADMISSIONS AND INELIGIBLE OFENDERS FOR A.R.D. ADMISSIONS**

- a. Admission into the A.R.D. Program for Driving Under the Influence of Alcohol or Controlled Substances.
  1. In addition to the requirement of the Pennsylvania Rules of Criminal Procedure, Rule 175 *et. seq.* applicable to Accelerated Rehabilitative disposition and subject to the prohibitions for A.R.D. Disposition set forth in the Vehicle Code in Section 2731(d), the District Attorney of Washington County may formulate additional internal guidelines for the recommendation of individuals into the A.R.D. Program.
  2. The Court will not consider any persons accused of a D.U.I. offense for admission into the A.R.D. Program unless they have submitted themselves for a C.R.N. (Court Reporting Network) Evaluation as mandated under Section 1548 (a) of the Vehicle Code. Said persons requesting admission into the A.R.D. Program should contact the alcohol highway safety school established in Washington County pursuant to 75 Pa. C.S.. §1549 within twenty (20) days of the preliminary hearing date or waiver date thereof, to schedule a C.R.N. Evaluation appointment.
  3. Each individual admitted into the A.R.D. Program for Driving Under the Influence shall pay to the Clerk of Courts the established fee, to be distributed to the County as reimbursement for the expense incurred in administering the A.R.D. program and the expenses relating to the processing and evaluation of A.R.D. D.U.I. cases.
  4. Tuition assessed for attendance at the alcohol highway safety school will be paid by the defendant directly to the alcohol highway safety school.
  5. The cost of the C.R.N. evaluation will be paid by the defendant directly to the provider of that evaluation.
  6. Costs of prosecution, fines, fees and restitution shall be collected by the Clerk of Courts and distributed in the following order, absent a specific Order of Court to the contrary:

- i. County costs, fines and fees (including supervision fee) shall be fully satisfied;
  - ii. Restitution is to be made to the victim unless the victim has already received compensation from the Crime Victim's Compensation Fund; in which case the allocation shall be made to the Crime Victim's Compensation Fund;
  - iii. Municipal fines shall be paid to each municipality;
  - iv. The Clerk of Courts shall continue to collect State fines pursuant to the appropriate distribution schedules.
7. Each individual admitted into the A.R.D. Program for Driving Under the Influence shall be required to attend and complete the required program at an approved alcohol highway safety school and pay, directly to the provider, the established tuition for enrollment in said program.
8. After a consideration of the individual case circumstances and the recommendation of the District Attorney's Office, the Court may impose a mandatory operating license suspension of more than the minimum suspension allowed by statute as a special requirement or condition of the A.R.D. Program. Said suspension, however, shall not exceed the maximum suspension allowed by statute.
9. Prior to sentencing, every D.U.I. offender who has either plead guilty after trial, shall have a C.R.N. (Court Reporting Network) Evaluation and shall pay the fee for the C.R.N. Evaluation. This C.R.N. Evaluation fee shall be taxed by the Clerk of Courts Office in all non-ARD cases as additional Court costs.
10. Any D.U.I. offender who has a prior D.U.I. conviction or an A.R.D. disposition within two (2) years shall not be required to attend the alcohol highway safety school if said individual has already completed such program. However, such individual shall be required to undergo an alcohol treatment rehabilitation or intervention program as directed by the Court, and shall pay any of the costs of said program.
11. Any D.U.I. offender, who has a D.U.I. conviction or an A.R.D. disposition two (2) or more years prior to the current D.U.I. offense shall be required to attend the alcohol highway safety school and pay its established tuition.

***EXPLANATORY COMMENT TO L-178***

*This comment is made to permit recovery of costs previously paid the State of Pennsylvania by Washington County under the authority of 48 Pa. C.S. §3571 et. seq. which was limited by In re: Lebanon County distribution of Fees or Financial Conditions Imposed in ARD/DUI cases. 552 A.2d 357 (Pa. Cmwlth. 1989).*

## **ALTERNATIVE DISPOSITION PROGRAM (ADP)**

### **00.L-322. Motion for Entry into Alternative Disposition Program**

After criminal proceedings in a court case have been instituted, the attorney for the Commonwealth may move, before a judge empowered to try court cases to whom cases under this program have been assigned, that the case be considered for alternative disposition.

### **00.L-323. Application Process and Notice of Motion by Attorney for the Commonwealth**

Upon application by the defendant or the defendant's attorney for admission into the ADP, the attorney for the Commonwealth shall advise the victim of the application. Information or statements supplied by the defendant to the attorney for the Commonwealth in an ADP application shall not be used against the defendant for any purpose in any criminal proceedings except a prosecution based on the falsity of the information or statement supplied.

### **00.L-324. Deferring Action Upon Admission to the Program**

(A) When a defendant is accepted into the ADP before the filing of an information, the judge shall order that no information shall be filed with the court on the charges during the term of the program.

(B) When a defendant is accepted into the ADP after the filing of an information, the judge shall order that further proceedings on the charges shall be postponed during the term of the program.

### **00.L-325. Conditions of the Program**

The conditions of the ADP may be such as may be imposed with respect to probation after conviction, including restitution, except that a fine may not be imposed. The other conditions of the program include the provisions set forth in the ADP Rules and the Performance Contract, and any other conditions set by the Court that are reasonably designed to best help the defendant and necessary to protect the community. The period of such program for any defendant shall not exceed five years.

### **00.L-326. Other ADP Procedures**

(A) If a defendant refuses to accept the conditions required by the judge, the judge shall deny the application to enter the ADP. In such event, the case shall proceed in the same manner as if these proceedings had not taken place.

(B) If the attorney for the Commonwealth, or the supervising Probation Officer, files a motion or petition alleging that the defendant during the period of the program has violated a condition thereof, or objects to the defendant's request for an order of discharge from the program, the judge who entered the order for entry into the ADP may issue such process as is necessary to bring the defendant before the court. When the defendant is brought before the court, the judge shall afford the defendant an opportunity to be heard. If the judge finds that the defendant has committed a violation of a condition of the program, the judge may order, when appropriate, that the defendant's participation in the program be terminated, and that the attorney for the Commonwealth shall proceed on the charges as provided by law. No appeal shall be allowed from such order.

(C) When the defendant shall have completed satisfactorily the program prescribed and complied with its conditions, the defendant may move the court for an order dismissing the charges. If neither the attorney for the Commonwealth nor the supervising probation officer object to the defendant's motion, the court shall dismiss the charges against the defendant. If either the attorney for the Commonwealth or the supervising probation officer objects to the defendant's motion, the court shall proceed as set forth in paragraph (B) above.

(D) When the judge orders dismissal of the charges against the defendant, the judge shall also order the expungement of the defendant's arrest record unless the attorney for the Commonwealth objects to the expungement. If the attorney for the Commonwealth objects to the expungement, the judge shall hold a hearing on the objections.

### **00.L-327. Diversion for Summary Cases**

In any case wherein only summary offenses are alleged, the Magisterial District Judge, upon the agreement of the District Attorney, defendant, victim, and the prosecuting police officer, may postpone the case for a specified period (usually 90 days) if the defendant agrees to:

- A. Report to a Forensic Case Manager designated by the Washington County Mental Health/Mental Retardation Office at a specified date and time;

- B. Remain in contact with the designated Forensic Case Manager specified in paragraph A above;
- C. Submit to a mental health evaluation and/or drug and alcohol evaluation as deemed necessary by the designated Forensic Case Manager or by a representative of the Washington County Mental Health/Mental Retardation Office;
- D. Attend outpatient mental health and/or drug and alcohol treatment as recommended by the Forensic Case Manager specified in paragraph A above or by a representative of the Washington County Mental Health/Mental Retardation Office;
- E. Reside at a particular location or address, including but not limited to the Crisis Stabilization Unit;
- F. Take all medication currently prescribed by a psychiatrist, and any medication prescribed by a psychiatrist in the future;
- G. Cooperate with Forensic Case Management services if deemed necessary; and
- H. Follow an individualized treatment plan, 50 Pa.C.S.A. §7107, and any other conditions set by the Magisterial District Judge that are reasonably designed to best help the defendant and necessary to protect the community.

If the defendant does not comply with these requirements, the Forensic Case Manager will immediately contact the Magisterial District Judge, and the Magisterial District Judge will schedule the case for disposition. If the Magisterial District Judge determines at the end of the postponement period that the defendant has substantially complied with the above-stated requirements and any other reasonable requirements designed to ensure the defendant's safety and the safety of the public, the charges will be dismissed.

*(effective 03/22/2010)*

#### **L-527. NONMONETARY CONDITIONS OF RELEASE ON BAIL**

(A) (3)

(a) In any court case, wherein the defendant is preliminarily arraigned and the issuing authority determines that nonmonetary conditions of bail are appropriate to ensure that the defendant does not engage in further criminal activity, the issuing authority may set as a condition of bail one or more of the following requirements:

1a. The defendant report to a Forensic Case Manager designated by the Washington County Mental Health/Mental Retardation Office at a specified date and time;

2a. The defendant remain in contact with the designated Forensic Case Manager specified in paragraph 1a above;

3a. The defendant agree to submit to a mental health evaluation and/or drug and alcohol evaluation as deemed necessary by the designated Forensic Case Manager or by a representative of the Washington County Mental Health/Mental Retardation Office;

4a. The defendant attend outpatient mental health and/or drug and alcohol treatment as recommended by the Forensic Case Manager specified in paragraph 1a above or by a representative of the Washington County Mental Health/Mental Retardation Office;

5a. The defendant reside at a particular location or address, including but not limited to the Crisis Stabilization Unit;

6a. The defendant take all medication currently prescribed by a psychiatrist, and any medication prescribed by a psychiatrist in the future; and

7a. The defendant cooperate with Forensic Case Management services if deemed necessary

*(effective 03/22/2010)*

#### **L-709. ADULT PROBATION OFFICE FEES.**

(A) All offenders subject to supervision by the Washington County Adult Probation Office shall be assessed a supervision fee of \$50.00 per month for the length of their probation or parole term.

(B) In addition to the supervision fee found in paragraph (A) above, offenders are subject to the following monitoring fees:

(1) A daily monitoring fee of \$10.00 flat rate per day for any monitoring service which shall include, but not be limited to: Electronic Home Monitoring, Electronic Home Monitoring with cellular service, and Global Positioning Monitoring.

(2) A one-time administrative installation fee of \$50.00 shall be assessed for any monitoring service at the inception of monitoring supervision.

(3) Offenders placed on a monitoring service that claim indigence will be required to complete community service work at a rate of \$6.00 per hour for all fines, fees, and costs associated with their respective cases, including monitoring fees owed. The community work service shall begin within five (5) business days of when the offender was placed on a monitoring service.

(a) Offenders who have a verified and reasonable physical or mental handicap shall be exempt from the payment of the monitoring fee. However, if the offender is receiving disability benefits, the offender shall be responsible for the minimum cost of the monitoring service.

(C) In addition, offenders subject to monitoring via the Secure Continuous Remote Alcohol Monitoring (SCRAM) or similar device are responsible for the costs of such monitoring. These costs are payable directly to the vendor. (08/31/2009)

### **L-1501 POST TRIAL MOTIONS – CRIMINAL**

a. A copy of all post-trial motions in criminal matters shall be served on the trial Judge after the original has been filed with the Clerk of Courts. All post-trial motions in criminal matters shall be heard by the trial Judge unless he orders the matter transferred to the Argument Court, in which case the trial Judge shall be a member of the Court *en banc*.

b. Briefs shall be filed with the trial Judge if the post trial motions are to be heard by him alone.

### **L-4007 - BAIL**

This Rule is intended to implement percentage cash bail as provided by Pa. R. Crim. P. 4007.

a. Bail by approved surety companies, cash, real estate, or bearer bonds, in accordance with Pa. R. Crim. P. 4007 shall remain as heretofore.

If the issuing authority who fines the amount of bond, Judge or District Justice, as the case may be, desires to render paragraph 2 hereof inoperative, he may do so by any language that makes it clear that the full face amount of the bond is to be posted. This of course may be done in any permissible mode: cash, the bond of a good reputable surety company, justification of surety with two owners of, sufficient real estate, bearer bonds, or an acceptable commercial bail bondsman.

b. In substitution for bail of the type specified in Paragraph 1, the issuing authority where he has jurisdiction, or the Court, as the case may be, after setting bail in accordance with the criteria of Rule No. 4002, may admit such person to bail upon compliance with the following conditions:

1. The defendant shall execute an appearance bond in the full amount so determined, and

2. The defendant or any other person, a resident of the Commonwealth of Pennsylvania, shall deposit with the issuing authority or Clerk of Courts an amount in lawful currency of the United States equivalent to ten (10%) percent of the total amount of the appearance bond demanded, provided, however, that the defendant executes a written consent to the disposition of the amount so deposited.

i. In the event the defendant is found not guilty or the charges are dismissed, the amount so deposited shall be refunded to the defendant or other person making the deposit, less a service fee in the amount of \$50.00 for the use of the County of Washington.

ii. In the event the defendant is found guilty, the amount so deposited by the defendant shall be refunded to the defendant, after deduction of the costs of prosecution, the fine, restitution, if any, and a service fee of \$50.00 for the use of the County of Washington. If any other person deposits the bail and the defendant is found guilty, the amount so posted shall be refunded to the other person less the \$50.00 fee.

c. Where the defendant is released under the provision of Paragraph 2 of this rule, he shall keep the issuing authority, and after the case is held for Court, the District Attorney advised of any change of address. All notices or hearing, indictment, arraignment, or trial shall be sent to the defendant and to the person depositing bail. The mailing of notices to defendants' last known address shall constitute sufficient notice.

d. Forfeiture of bail shall be governed by Pa. R. Crim. P. 4016.

e. All service fees collected by any issuing authority in cases that are held for Court shall be transmitted to the Clerk of Courts by check with the papers being filed.

f. Whenever real estate is used as a surety for bail, the defendant or the party placing bail for the defendant shall file a certificate, under oath, which lists the real estate owned anywhere outside of the Commonwealth but within the United States by the person placing the bail. Such certification shall include:

1. A certified copy of the original deed for each tract of real estate being used as bail surety.

2. Attached to the certification shall be an appraisal of the fair market value of the real estate as certified by a licensed real estate broker in the county in which the real estate is located; or a document from the Tax Assessment Office listing owner(s) name and market value and appraised value.

3. A certification by an attorney who practices in the jurisdiction where the real estate is owned, or a certificate of a duly qualified/certified title searcher listing the encumbrances, mortgages, and liens against the real estate, and the unpaid balance of each encumbrance as of the date of the statement, at a minimum, from the date of the deed to the person(s) desiring to become surety.

4. Upon receipt of the above listed items, the Clerk will deduct any mortgages, judgments, or encumbrances from the fair market value of the property, to determine if there is sufficient equity to post bail.

5. Upon approval and execution of the bail undertaking and prior to release from confinement of the defendant, the Clerk will notify the surety that a judgment will be placed in the Office of Prothonotary, for the full face amount of the bail. The Clerk will further notify the surety that the bail and judgment will remain in full force and effect until the full and final disposition of the case, up to an including the appellate process.

6. At the full and final disposition of the case, the Clerk will notify the surety by regular mail that the matter has been resolved and the judgment may be lifted upon payment of the appropriate fee to the Prothonotary of the county in which the judgment was placed.

#### **L-4007 PROFESSIONAL BONDSMEN**

A professional bondsman shall be licensed by the Commonwealth of Pennsylvania as required under Chapter 57, Subchapter B of the Judicial Code, 42 Pa. C.S. Sections 5741-5749, and before acting as a surety in any proceeding pending before any of the Courts of this Judicial District shall provide security of (a) Cash, (b) Real Estate, or (c) a corporate surety, as follows:

a. Cash

1. A professional bondsman may post cash with the Clerk of Courts as security for bail to be written, and the Clerk shall give the bondsman a receipt therefore. The Clerk shall immediately deposit all sums into a federally insured interest bearing account. The Clerk shall pay accrued interest to the bondsman annually, less any amount the Clerk is authorized by law to retain.

2. The professional bondsman may at any time, upon 30 days written notice, and upon presentation and surrender of his receipt, withdraw the whole or any part of the cash deposited that is not required for bail then written and outstanding, less any penalty for early withdrawal charged by the financial institution in which the Clerk has deposited said sum less any amount the Clerk if authorized by law to retain.

3. The professional bondsman may at any time increase the cash on deposit with the Clerk. The Clerk shall keep a proper accounting of all deposits and withdrawals.

b. Real Estate

1. A professional bondsman may use his real estate located in Pennsylvania as collateral for his bonds. He shall annually certify to the Clerk of Courts, under oath, a list of all of the real estate owned by him in Washington County. Such certification shall include:

A. A description of each tract of real estate, its location in the county, and the deed book volume and page where the deed is recorded.

B. Attached to the certification shall be an appraisal of the fair market value of the real estate as certified by a licensed real estate broker in the county.

C. A certification by an attorney who practices in the Commonwealth, or a title insurance policy certifying the encumbrances, mortgages, and liens against the real states, and the unpaid balance of each encumbrance as of the date of the statement.

D. A statement by the bondsman setting forth the net value of each piece of real estate, which shall be the fair market value certified as above, less the encumbrances certified above.

c. Surety

1. The professional bondsman who uses a surety must file annually a surety bond by a bonding company licensed to do business in the Commonwealth of Pennsylvania setting forth the amount for which said surety will undertake on behalf of said bondsman.

2. Within 10 days after any change in ownership, encumbrance, or surety, the professional bondsman shall notify the Clerk of Courts by filing a revised certification as set forth above.

d. Procedure

1. When the professional bondsman files with the Clerk of Courts the above described certification, the Clerk of Courts shall provide to said bondsman a certificate authorizing him to do business in the County of Washington. Said certificate shall be under seal of the Clerk of Courts and shall include a certification of the amount of bond which the professional bondsman is authorized to write. Said certificate may be used by the professional bondsman for presentation to District Justices of this County indicating his authority to do business in this county.

2. When a professional bondsman desires to write bail before a District Justice, he shall provide to said District Justice a copy of the certification described in paragraph d-1 above, and shall further provide an affidavit setting forth the amount of bail offered and accepted for which he is responsible. Further, the statements shall contain the amount or premium the bondsman is charging for the bond about to be written. Neither the Clerk nor any District Justice shall accept bail from any professional bondsman if the fee to be charged exceeds the amount set forth in the Judicial Code, 42 Pa. C.S. §5748.

3. Any District Justice accepting bail from a professional bondsman must forward a copy of said bail to the Clerk of Courts together with the bondsman's sworn affidavit. If the matter is held for Court, the copy of bail and the bondsman's statement shall become part of the record. If the matter is disposed of at the District Justice level, a certificate of disposal shall be sent by the District Justice to the Clerk forthwith.

4. No bail shall be accepted from any professional bondsman at any time when the total amount of bail then written on the security designated, or when added to the bond about to be written, will exceed the cash or market value of the property posted.

5. Whenever any bail written by a professional bondsman has been forfeited, the professional bondsman shall not write any additional bail until he or she has paid the amount of the forfeiture in full. Generally, no bail shall be accepted from any professional bondsman at any time when such bondsman is not in full compliance with the provisions of this Rule.