



**BY-LAW 215-2000
A BY-LAW RESPECTING
BAIL AND VIOLENT CRIME
(LE-023)**

1. PREAMBLE

- 1.1 WHEREAS Part XVI of the *Criminal Code of Canada* deals with bail for criminal offenders;
- 1.2 AND whereas subsection 31(1) of the *Police Services Act* provides that a Board is responsible for the provision of police services and for law enforcement and crime prevention in the municipality and shall:
- b. generally determine after consultation with the Chief of Police, objectives and priorities with respect to police service in the municipality;
 - c. establish priorities for the effective management of the police service, and
 - e. direct the Chief of Police and monitor his or her performance;
- 1.3 AND whereas subsection 31(6) of the *Police Services Act* provides that the Board may, by by-law, make rules for the effective management of the police service;
- 1.4 AND whereas O. Reg. 3/99 prescribes standards for adequacy and effectiveness of police services;
- 1.5 AND whereas subsection 13(1)(k) of O.Reg.3/99 prescribes that a Chief of Police shall establish procedures and processes with respect to bail and violent crime;
- 1.6 AND whereas section 29 of O.Reg.3/99 requires that the police services board to have a policy respecting bail and violent crime;
- 1.7 AND whereas Part LE-023 of the Policing Standards Manual (2000), a copy of which is attached hereto as Appendix A, contains guidelines directing police services relative to bail and violent crime.

NOW THEREFORE THE REGIONAL MUNICIPALITY OF NIAGARA POLICE SERVICES BOARD ENACTS AS FOLLOWS:

2 DEFINITIONS

- 2.1 “Act” means *Police Services Act*, R.S.O. 1990, c.P.15, as amended;
- 2.2 “Board” means the Regional Municipality of Niagara Police Services Board;
- 2.3 “Chief” means the Chief of the Niagara Regional Police Service;
- 2.4 “Chief Judge” means the local administrative judge in conjunction with the Regional Senior Justice;
- 2.5 “Crown Attorney” means the Crown Attorney for the Judicial District of Niagara North, the Crown Attorney for the Judicial District of Niagara South and the Federal Prosecutor;

2.6 “Manual” means the Policing Standards Manual published by the Ministry of the Solicitor General;’

2.7 “Member” means a member of the Niagara Regional Police Service;

2.8 “Service” means the Niagara Regional Police Service.

3 BOARD POLICY

3.1 The Board recognizes that issues relating to bail and in particular, bail for persons accused of violent crimes are important components of investigative and preventative policing, and it is therefore the policy of this Board that such issues be dealt with in a professional and thorough manner, and in accordance with procedures established by the Chief as directed in this by-law.

4 DIRECTION TO THE CHIEF

4.1 OPPOSING BAIL ON SECONDARY GROUNDS

4.1.1 The Chief shall develop a procedure on bail and violent crimes that addresses the assessing of whether to recommend opposing bail on the secondary grounds.

4.1.2 The Service’s procedure on assessing whether to oppose bail on secondary grounds shall address the factors set out in Section 1 of Appendix “A”.

4.2 PREPARATION OF THE BAIL HEARING BRIEF

4.2.1 The Chief shall establish procedures on bail and violent crime that address the preparation of the show cause report.

4.2.2 The Service’s procedures on the preparation of the bail hearing brief shall include those criteria identified in Section 2 of Appendix “A”.

4.3 PRE-HEARING NOTIFICATIONS

4.3.1 The Chief shall ensure that the Service’s procedure on bail provides for advance notification of the bail hearing to the appropriate Crown Attorney.

4.4 POST-BAIL HEARING NOTIFICATIONS

4.4.1 The Chief shall establish procedures for post-bail hearing notification.

4.4.2 The Service’s procedure on post-bail hearing notification shall include those matters identified in Section 3 of Appendix “A”.

4.5 BREACH OF BAIL CONDITIONS

4.5.1 The Chief shall ensure that the procedures that deal with breach of bail conditions.

4.5.2 The Service’s procedure on breach of bail conditions shall include those matters identified in Section 5 of Appendix A.

4.6 TRAINING

- 4.6.1 The Chief shall ensure that Members involved with bail have the requisite knowledge, skill and abilities.

5 REPORT TO THE BOARD

- 5.1 The Chief shall make a written report to the Board on or before August 30 of each year. The report shall include:
- a. a summary of the written procedures regarding bail; and
 - b. confirmation of compliance with the procedures regarding bail.

6. IMPLEMENTATION

- 6.1 This By-law shall come into force upon the date of its passage.
- 6.2 The Chief shall implement this By-law, where applicable, through general order.

ENACTED AND PASSED this. 30th day of November, 2000.

THE REGIONAL MUNICIPALITY OF NIAGARA POLICE SERVICES BOARD

(Original on File)
Chairperson

(Original on File)
Vice Chairperson

Legislative/Regulatory Requirements

Section 29 of the Adequacy Standards Regulation requires a police services board to have a policy on bail and violent crime. In addition, section 13(1)(k) requires the Chief of Police to establish procedures and processes with respect to bail and violent crime.

Sample Board Policy

Board Policy # _____

It is the policy of the _____ Police Services Board with respect to bail and violent crime that the Chief of Police will establish procedures on bail and violent crime that address:

- a) assessing opposing bail on the secondary grounds;
- b) preparing the show cause report (bail hearing brief);
- c) post-bail hearing notifications; and
- d) breach of bail conditions.

Police Service Guidelines

Opposing Bail on the Secondary Grounds

1. Every police service's procedures on assessing whether to oppose bail on the secondary grounds in cases involving violence or threatened use of violence should address:
 - a) information to be gathered by officers, including:
 - i) obtaining the accused's criminal record and taking reasonable steps to obtain the underlying facts supporting prior criminal convictions or outstanding charges, including the name of the victim, where they may be of assistance;
 - ii) verifying whether the accused faces outstanding charges, type of release and any conditions of release;
 - iii) making reasonable efforts to obtain general background information on the accused, including any known history of violent behaviour, as well as any information on any known psychiatric, emotional or mental problems that are relevant to the circumstances of the offence, or which may provide grounds for supporting the continued detention of the accused;
 - iv) making reasonable efforts to obtain information on whether the accused has an alcohol or drug abuse history, and assessing whether drugs or alcohol were involved or related to the offence;
 - v) verifying whether any non-restricted, restricted or prohibited firearm, cross-bow, prohibited weapon, ammunition or explosive substance was seized

- from the accused, and whether any specific firearm or other weapon alleged to have been used in the offence has been recovered; and
- vi) obtaining information on whether the accused is legally entitled to possess or acquire, or has access to non-restricted, restricted or prohibited firearms, prohibited weapons, cross-bows, ammunition or explosive substances;
- b) assessing the circumstances of the case in order to determine whether:
- i) the protection or safety of the public and victim can be satisfied if the accused is released by an officer pursuant to Part XVI of the *Criminal Code*;
 - ii) there is a need to impose conditions on the release pursuant to section 515 of the *Criminal Code* in order to protect the safety of the public and victim; or
 - iii) the accused's continued detention is necessary for the protection or safety of the public, victim or victim's children;
- c) the factors to be considered in assessing whether to recommend that bail be opposed in a case, including:
- i) whether the case involves a threat of death or serious bodily harm;
 - ii) whether the victim suffered more than minor injuries in an assault;
 - iii) whether the accused used or threatened to use a weapon or firearm;
 - iv) whether the police have information that there is a history of prior violence or abuse by the accused towards the victim, and the officer believes that the victim may be at continued risk from the accused;
 - v) whether the victim is concerned about his or her safety;
 - vi) whether there was planning and deliberation;
 - vii) whether there is reason to believe that the accused will continue to offend, including in criminal harassment cases, the accused engaged in repetitive harassing behaviour;
 - viii) whether the accused has a history of violent behaviour, or is a repeat offender who has been previously convicted of violent offences, or is engaged in an escalating pattern of violent behaviour;
 - ix) whether the accused is on bail, parole, temporary absence, conditional sentence or probation or has a history of disregarding court orders;
 - x) whether there is reason to believe that the accused has alcohol or drug problems, or may be mentally unstable, and would likely re-offend or be dangerous if released;
 - xi) whether the accused has attempted to obstruct justice;
 - xii) whether the accused's release will impede further investigation;
 - xiii) whether the accused has threatened retaliation against the complainant; or
 - xiv) in cases involving a domestic violence occurrence, other risk indicators set out in the domestic violence supplementary report form;
- d) documenting in any case where one or more of the factors in 1(c) is determined to exist, the reasons if the officer decides not to recommend that bail be opposed; and

- e) the requirement that a review be undertaken in any case where the accused commits a violent crime while awaiting trial for charges relating to a domestic violence occurrence, sexual assault, criminal harassment or firearms, where the officer had not recommended to the Crown that bail be opposed.

*Preparing
the Bail
Hearing
Brief*

2. Every police service's procedures on the preparation of the bail hearing brief should:
 - a) require officers when preparing a bail brief to make every reasonable effort to follow the specified steps for preparing a bail brief, including:
 - i) displaying in the brief, the officer's recommendation that bail be opposed, or that the officer is recommending that the accused be released with conditions;
 - ii) including in the brief, information regarding the alleged offence which clearly sets out those circumstances of the offence which emphasize its seriousness, and those factors which indicate that the accused is a threat to the protection or safety of the public, as well as any evidence known to the officer that demonstrates the strong possibility of conviction that can be disclosed at the bail hearing in a manner that does not jeopardize an on-going investigation;
 - iii) including in the brief, the accused's complete criminal record and underlying facts supporting prior criminal convictions where they may be of assistance in opposing bail;
 - iv) displaying in the brief, whether the accused faces outstanding charges and the underlying facts, and information on any outstanding release orders (including type of release), warrants and conditions of release;
 - v) displaying in the brief, whether the accused is currently on parole, temporary absence or probation, or has been previously convicted of committing offences while on bail, parole, temporary absence, or probation and if so, including relevant information concerning these occurrences and any information on the accused's prior response to community supervision that has been obtained from federal or provincial correctional services, including institution and community-based services;
 - vi) including in the brief, any general background information on the accused, including any known history of violent behaviour, as well as any information on any known psychiatric, emotional or mental problems of the accused that are relevant to the circumstances of the offence, or which may provide grounds for supporting the continued detention of the accused;
 - vii) inserting into the brief, at the earliest opportunity, information on whether the accused has an alcohol or drug abuse history (and victim's concerns), and the involvement of drugs or alcohol in the offence;
 - viii) ensuring that a detailed statement of the victim and other supporting witnesses is available at the earliest opportunity and inserted in the brief,

- including the victim's concerns, if any, as to the accused's dangerousness and threat to the victim's safety;
- ix) include any relevant statements or utterances of the accused within the brief;
 - x) displaying in the brief, any information that the accused may be a suicide risk or have suicidal tendencies;
 - xi) displaying in the brief, whether or not the specific weapon allegedly involved in the offence has been recovered;
 - xii) displaying in the brief, whether the accused is legally entitled to possess or acquire, or has access to non-restricted, restricted or prohibited firearms, prohibited weapons, cross-bows, ammunition or explosive substances;
 - xiii) displaying in the brief, any known criminal associates of the accused;
 - xiv) in cases involving domestic violence occurrences, including information on any breaches of restraining orders if known, or whether there are any outstanding orders relating to custody of or access to children;
 - xv) recording in the brief, any aspects of the bail hearing brief preparation that are as yet incomplete which may assist in opposing bail, and ensure that the Crown is aware of any need for an adjournment to enable the completion of an investigation bearing upon the accused's threat to the protection or safety of the public (including an estimate of how much time will be required);
 - xvi) in cases where bail is opposed, indicating in the brief that bail is opposed but in the event of release, include recommendations for conditions of release that the Crown should request, including in all cases involving domestic violence occurrences, sexual assault and criminal harassment the recommendation that a firearms prohibition order be sought under section 515 of the *Criminal Code*;
 - xvii) flagging when a brief relates to a domestic violence occurrence, child abuse, sexual assault or criminal harassment; and
 - xviii) attaching to the brief, in cases of domestic violence occurrences, the completed domestic violence supplementary report form.
3. Every police service's procedures should:
- a) require supervisors to review bail hearing briefs completed by officers, including monitoring all briefs to ensure that the contents are correct and complete;
 - b) require that the Crown conducting the bail hearing is made aware, as soon as possible, if the officer is recommending that bail be opposed, and if requested by the Crown the officer should attend at the bail hearing; and
 - c) ensure that the victim be informed of the right to attend the bail hearing (the officer preparing the brief should also consider whether it is necessary for the victim to attend the bail hearing to testify regarding any safety fears the victim may have, and if so, should discuss this with the victim).



4. Every police service's procedures on post-bail hearing notifications should address, consistent with local protocols, who is responsible for:
 - a) notifying the victim of the outcome of the bail hearing, including any conditions of release;
 - b) entering the conditions for release on CPIC, within at least 24 hours or as soon as practicable, if the accused is released on bail;
 - c) the steps to be followed for the receipt and storage of information on an accused who is released on bail and is required to reside in or report to the police service; and
 - d) the steps to be taken in the event that an accused fails to report.

*Breach of
Bail
Conditions*

5. Every police service's procedures on the breach of bail conditions should:
 - a) set out the steps to be taken by an officer when an accused is alleged to have breached or is about to breach any condition of his or her release, including:
 - i) promptly investigating the alleged breach;
 - ii) arresting the accused under subsection 524(2) of the *Criminal Code*;
 - iii) obtaining a warrant for the accused's arrest under 524(1) of the *Criminal Code*, if the accused cannot be located;
 - iv) documenting the reasons if the officer does not arrest an accused, or obtain a warrant for the accused's arrest; and
 - v) notifying the victim about the breach;
 - b) set out the steps to be taken by officers when a breach involves an accused whose conditions of release originated in the jurisdiction of another police service, including:
 - i) in all cases notifying the other police service about the alleged breach;
 - ii) requesting that the other police service provide information on the underlying offence, whether bail was opposed, and any reasons for the conditions of release;
 - iii) communicating all relevant information concerning the alleged breach to the other police service, including information on whether the accused has been, or will be, charged with another serious offence; and
 - iv) consulting with the other police service, and, if necessary, the local Crown's office on the options available, including dealing with the breach in the jurisdiction where it occurred or returning the accused to the jurisdiction where the conditions of release originated;
 - c) set out the steps to be taken by officers when a breach involves an accused whose original conditions of release occurred in the officer's home jurisdiction, and the officer is subsequently notified by another police service about an alleged breach of those conditions by the accused, including:
 - i) ensuring that all relevant information is provided to the police service in whose jurisdiction the breach occurred; and
 - ii) informing the duty officer or designate regarding the breach conditions;



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- d) identify the duty officer or designate, as being responsible for determining whether the accused is returned to the jurisdiction where the conditions of release originated, or remain in the jurisdiction where the breach occurred, and that the duty officer should, where practical:
 - i) consult with the local Crown Counsel regarding the breach of conditions;
 - ii) consult with the police service where the breach occurred; and
 - iii) document the reasons for the decision; and
 - e) set out the factors to be considered when determining whether to return an accused to the jurisdiction where the conditions of release originated, including:
 - i) in cases involving domestic violence, sexual assault, criminal harassment, and other serious crime, it is preferable to return the individual to the jurisdiction where the conditions of release originated because the gravity of the breach will be best understood in the context of the original offence;
 - ii) the logistics involved in seeking to cancel the accused's release;
 - iii) whether *Criminal Code* charges are being laid against the accused as a result of the breach; and
 - iv) whether the accused is being charged with another serious substantive offence.