

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**Senate Bill 633**

By Senators Woodrum, Trump, Deeds, Caputo,

Woelfel, and Rucker

[Passed March 11, 2023; in effect 90 days from  
passage]

1 AN ACT to amend and reenact §62-1-7 of the Code of West Virginia, 1931, as amended; to amend  
2 and reenact §62-1C-17b of said code; and to amend and reenact §62-2-17 of said code, all  
3 relating to failure to appear; requiring compliance with the magistrate court criminal rules;  
4 requiring transport to the regional jail serving the charging county if an arrest occurs in a  
5 county other than the charging county and the defendant remains incarcerated after the  
6 arraignment; requiring prompt court appearances for persons detained on capiases or  
7 warrants for failure to appear; providing procedures for issuing bench warrants and  
8 capiases for nonappearance at scheduled court hearings or other proceeding; providing  
9 for purposes of capiases for failure to appear after indictment, that newspaper publication  
10 alone does not constitute effective notice; allowing a grace period after a failure to appear  
11 to allow certain defendants to appear except in defined circumstances; providing  
12 procedures following execution of bench warrants for nonappearance; providing that in all  
13 cases where a defendant is arrested and held under a *capias* for failure to appear in the  
14 county wherein the charge or charges is pending, and he or she is entitled to admission to  
15 bail, an initial appearance shall be held as soon as practicable, or within five days  
16 whichever is sooner, and bail shall be considered; and requiring courts to ensure that all  
17 inactive warrants and capiases for failure to appear are removed from law-enforcement  
18 databases.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 1. PRELIMINARY PROCEDURE.**

**§62-1-7. Offense arising in other county.**

1 In all cases where a person is arrested in a county other than where the indictment or  
2 charge is pending, an arraignment shall be held pursuant to the Rules of Criminal Procedure for  
3 Magistrate Courts in West Virginia. If the person remains incarcerated after the arraignment, he or  
4 she shall be transported to the regional jail serving the charging county within five days of arrest.

**ARTICLE 1C. BAIL**

**62-1C-17b. Procedures for failure to appear; penalties.**

1 (a) Any person, who, having been released upon his or her personal recognizance  
2 pursuant to §62-1-1a of this code or having been otherwise admitted to bail and released in  
3 accordance with this article, and who shall willfully and without just cause fail to appear as and  
4 when it may be required of him or her, shall be guilty of the offense as hereinafter prescribed, and,  
5 upon conviction thereof, shall be punished in the manner hereinafter provided.

6 (b) If any such person was admitted to bail or released after being arrested for, charged or  
7 convicted of a felony and, shall thereafter be convicted for a violation of the provisions of  
8 subsection (a) of this section, such persons shall be guilty of a felony and, shall be fined not more  
9 than \$5,000 or imprisoned not less than one nor more than five years, or both such fine and  
10 imprisonment.

11 (c) If any such person was admitted to bail or released after being arrested for, charged or  
12 convicted of a misdemeanor and, shall thereafter be convicted for a violation of the provision of  
13 subsection (a) of this section, such persons shall be guilty of a misdemeanor and, shall be fined  
14 not more the \$1,000 or confined in the county jail for not more than one year, or both such fine and  
15 confinement.

16 (d) If any such person was admitted to bail or released pending appearance as a material  
17 witness and shall thereafter fail to appear when and where it shall have been required of him or  
18 her, such persons shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not  
19 more the \$1,000 or confined in the county jail not more than one year, or both such fine and  
20 confinement.

21 (e) Any penalty authorized by this section shall be in addition to any forfeiture authorized or  
22 mandated by this article or by any other provision of law.

23 (f) If any defendant admitted to bail and released in accordance with this article fails to  
24 appear at a scheduled court appearance, the court may issue a capias or bench warrant for failure

25 to appear if it determines that the defendant was provided effective notice of the court appearance  
26 by the court.

27 (g) For the purposes of this subsection, "effective notice of the court appearance" means a  
28 notice stating the date, time, location, and purpose of the hearing, transmitted to the defendant or  
29 defendant's counsel, no fewer than 10 days prior to the scheduled court appearance. The court  
30 may waive the 10 day requirement upon a finding of emergent circumstances.

31 (h) For purposes of capiases for failure to appear after indictment, newspaper publication  
32 alone does not constitute effective notice.

33 (i) Notwithstanding the provisions of subsections (a) through (d) of this section, where the  
34 record does not reflect that the person failing to appear received effective notice to appear from the  
35 court or where he or she has no documented history of failure to appear, a court, absent good  
36 cause shown, may not issue a capias until no fewer than 24 hours have elapsed since the failure  
37 to appear. If the defendant voluntarily appears within 24 hours, he or she is not subject to  
38 prosecution under this section.

39 (j) Nothing in subsection (f) of this section may be construed to limit a court's ability to issue  
40 a capias upon credible information of danger to a person or the community, new criminal conduct  
41 or a bail violation other than failure to appear.

42 (k) Upon the arrest of a defendant pursuant to a capias in the county in which the  
43 indictment or charge is pending, a hearing pursuant to §62-1C-1a of this code shall be scheduled  
44 and held within five days of the arrest.

45 (l) Upon the appearance in the county in which the indictment or charge is pending of a  
46 defendant against whom a capias has been issued the court shall provide written notice to the  
47 sheriff for his or her dissemination to all appropriate law-enforcement agencies, that the warrant or  
48 capias is no longer active and order it to be immediately removed from all databases.

## **ARTICLE 2. PRESENTMENTS AND INDICTMENTS**

### **§62-2-17. Delivery of prisoner to court, magistrate or jailer.**

1           (a) An officer who, under a *capias* from a court, arrests a person accused of an offense  
2 other than murder in the first degree shall deliver the accused to such court, if sitting, and if such  
3 court is not sitting, the officer shall deliver the accused to a magistrate who may admit the accused  
4 to bail: *Provided*, That any such bail granted by a magistrate shall be conditioned upon the  
5 appearance by the accused before the court on the date provided in the *capias* for such  
6 appearance, or, if no such date is provided in the *capias*, then such bail shall be conditioned upon  
7 the appearance of the accused on the next day on which such court is sitting.

8           (b) No magistrate shall admit to bail any person arrested under an *alias capias*.

9           (c) Bail set by a magistrate may be made and posted before the magistrate court clerk and  
10 the recognizance and record thereof, together with any money received therefor, shall be forthwith  
11 delivered to the clerk of the circuit court.

12           (d) An officer who, under a *capias* from a court, arrests a person accused of an offense not  
13 bailable, or for which bail is not given, shall deliver the accused to such court, if sitting, or to the  
14 jailer thereof, who shall receive and imprison him or her.

15           (e) In all cases where a defendant is arrested and held under a *capias* for failure to appear  
16 in the county wherein the charge or charges is pending, and he or she is entitled to admission to  
17 bail, an initial appearance shall be held as soon as practicable, or within five days whichever is  
18 sooner, and bail shall be considered pursuant to §62-1C-1a of this code.

19           (f) Upon the appearance of a defendant upon an indictment or complaint upon which a  
20 warrant or *capias* has been issued, the court shall provide written notice to the sheriff for his or her  
21 dissemination to all appropriate law-enforcement agencies that the warrant or *capias* is no longer  
22 active and order that it be immediately removed from all databases.