

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**Committee Substitute for**

**House Bill 2419**

BY DELEGATES SHOTT, HOUSEHOLDER AND PORTERFIELD

[Introduced January 8, 2020; Referred  
to the Committee on the Judiciary.]



1 A BILL to amend and reenact §62-1C-1a of the Code of West Virginia, 1931, as amended, relating  
2 to the authorization to release a person charged with a criminal violation when first  
3 appearing before a judicial officer; establishing that a judicial officer shall release a person  
4 charged with a misdemeanor offense on their own recognizance unless charged with  
5 certain offenses; establishes that in certain instances and with certain conditions the  
6 arrested person is entitled to the least restrictive bail conditions determined to be  
7 reasonably necessary to assure appearance as well as ensure safety of persons in the  
8 community and maintenance of evidence; establishing that in certain circumstances the  
9 arrested person is entitled to bail under least restrictive further conditions; identifying least  
10 restrictive further conditions; establishing considerations to determine whether to release  
11 an individual without bail, the reasonable amount of bail, or imposition of other conditions  
12 of release; establishing that in all misdemeanor cases, cash bail cannot exceed the  
13 maximum fine for the offense; and, further providing that a judicial officer may modify the  
14 conditions of release at any time.

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

**ARTICLE 1C. BAIL.**

**§62-1C-1a. ~~Release upon own recognizance authorized~~ Pretrial release; types of release;  
conditions for release; considerations as to conditions of release.**

1 ~~(a) Any other provision of this article to the contrary notwithstanding, when from all the~~  
2 ~~circumstances, the court or magistrate is of the opinion that the defendant or person arrested will~~  
3 ~~appear as may be required of him or her, either before or after conviction, such defendant or~~  
4 ~~person arrested may be released upon his or her own recognizance.~~

1 ~~(b) Except for good cause shown, a court or magistrate shall release a person charged~~  
2 ~~with a misdemeanor offense on his or her own recognizance unless that person is charged with:~~

3 ~~(1) A misdemeanor offense of actual violence or threat of violence against a person;~~

4 ~~(2) A misdemeanor offense where the victim was a minor, as defined in §61-8C-1 of this~~  
5 ~~code;~~

6 ~~(3) A misdemeanor offense involving the use of a deadly weapon, as defined in §61-7-2~~  
7 ~~of this code;~~

8 ~~(4) A misdemeanor offense of the Uniform Controlled Substances Act set forth in chapter~~  
9 ~~60A of this code; or~~

10 ~~(5) A serious misdemeanor traffic offense set forth in §17C-5-1 and §17C-5-2 of this code.~~

11 ~~(a) Subject to the provisions of §62-1C-1 of this code, when a person charged with a~~  
12 ~~violation or violations of the criminal laws of this state first appears before a judicial officer:~~

13 ~~(1) Except for good cause shown, a judicial officer shall release a person charged with a~~  
14 ~~misdemeanor offense on his or her own recognizance unless that person is charged with:~~

15 ~~(A) A misdemeanor offense of actual violence or threat of violence against a person;~~

16 ~~(B) A misdemeanor offense where the victim was a minor, as defined in §61-8C-1 of this~~  
17 ~~code;~~

18 ~~(C) A misdemeanor offense involving the use of a deadly weapon, as defined in §61-7-2~~  
19 ~~of this code;~~

20 ~~(D) A misdemeanor offense of the Uniform Controlled Substances Act set forth in~~  
21 ~~chapter 60A of this code; or~~

22 ~~(E) A serious misdemeanor traffic offense set forth in §17C-5-1 and §17C-5-2 of this~~  
23 ~~code.~~

24 ~~(2) For the misdemeanor offenses specified in subsection (a) of this section and all other~~  
25 ~~offenses which carry a penalty of incarceration, the arrested person is entitled to be admitted to~~  
26 ~~bail subject to the least restrictive further condition or combination of conditions that the judicial~~  
27 ~~officer determines reasonably necessary to assure that person will appear as required, and which~~  
28 ~~will not jeopardize the safety of the arrested person, victims, witnesses, or other persons in the~~

29 community or the safety and maintenance of evidence. Least restrictive further conditions may  
30 include that the person charged shall:

31 (A) Remain in the custody of a person designated by the judicial officer, who agrees to  
32 assume supervision and to report any violation of a release condition to the court, if the designated  
33 person is reasonably able to assure the judicial officer that the person will appear as required and  
34 will not pose a danger to himself or herself or to the safety of any other person or the community;

35 (B) Participate in home incarceration pursuant to §62-11B-1 et seq. of this code;

36 (C) Participate in an electronic monitoring program if one is available where the person is  
37 charged or will reside.

38 (D) Maintain employment, or, if unemployed, actively seek employment;

39 (E) Avoid all contact with an alleged victim of the alleged offense and with potential  
40 witnesses who may testify concerning the offense;

41 (F) Refrain from the use or excessive use of alcohol, or any use of a narcotic drug or other  
42 controlled substance, as defined in §60A-1-1 et seq. of this code without a prescription by a  
43 licensed medical practitioner;

44 (G) Execute an agreement to forfeit, upon failing to appear as required, property of a  
45 sufficient unencumbered value, including money, as is reasonably necessary to assure the  
46 appearance of the person as required. The person charged shall provide the court with proof of  
47 ownership, the value of the property, and information regarding existing encumbrances of the  
48 property as, in the discretion of the judicial officer, is reasonable and necessary collateral to  
49 assure ensure subsequent appearance of the person as required;

50 (H) Post a cash bond, or execute a bail bond with solvent sureties who will execute an  
51 agreement to forfeit an amount reasonably necessary to assure appearance of the person as  
52 required. If other than an approved surety, they shall provide the court with information regarding  
53 the value of their assets and liabilities and the nature and extent of encumbrances against the

54 surety's property. The surety shall have a net worth of sufficiently unencumbered value to pay the  
55 amount of the bail bond; or

56 (I) Satisfy any other condition that is reasonably necessary to assure the appearance of  
57 the person as required and to assure the safety of the arrested person, victims, witnesses, other  
58 persons in the community, or the safety and maintenance of evidence.

59 (3) Proper considerations in determining whether to release the arrested person without  
60 bail, fixing a reasonable amount of bail or imposing other reasonable conditions of release are:

61 (A) The ability of the arrested person to give bail;

62 (B) The nature, number and gravity of the offenses;

63 (C) The potential penalty the arrested person faces;

64 (D) Whether the alleged acts were violent in nature;

65 (E) The arrested person's prior record of criminal convictions and delinquency  
66 adjudications, if any;

67 (F) the character, health, residence, and reputation of the arrested person;

68 (G) the character and strength of the evidence which has been presented to the judicial  
69 officer;

70 (H) whether the arrested person is currently on probation, extended supervision or  
71 parole;

72 (I) whether the arrested person is already on bail or subject to other release conditions in  
73 other pending cases;

74 (J) whether the arrested person has been bound over for trial after a preliminary  
75 examination;

76 (K) whether the arrested person has in the past forfeited bail or violated a condition of  
77 release or was a fugitive from justice at the time of arrest; and,

78 (L) the policy against unnecessary detention of arrested persons pending trial.

79            (b) In all misdemeanors, cash bail shall not exceed the maximum fine provided for the  
80 offense.

81            (c) A judicial officer may modify the conditions of release at any time by imposing  
82 additional or different conditions.

NOTE: The purpose of this bill is to modify bail requirements. The bill requires a court or magistrate to release a person charged with certain misdemeanor offenses on his or her own recognizance except for good cause shown. The bill also sets forth exceptions when a person may not be released on his or her own recognizance. The bill also sets forth conditions that may be attached to release on bail that may be considered by the judicial officer.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.