

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Introduced**

**House Bill 4796**

BY DELEGATE FOSTER

[Introduced February 15, 2022; Referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §62-1-5 of the Code of West Virginia, 1931, as amended, relating  
2 to criminal procedure; preliminary procedure; and when a mug shot of an accused person  
3 may be made public.

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

## **ARTICLE 1. PRELIMINARY PROCEDURE.**

### **§62-1-5. Same -- Delivery of prisoner before magistrate; complaint for person arrested without warrant; return; photographs or mug shots.**

1 (a) (1) An officer making an arrest under a warrant issued upon a complaint, or any person  
2 making an arrest without a warrant for an offense committed in his or her presence or as otherwise  
3 authorized by law, shall take the arrested person without unnecessary delay before a magistrate  
4 of the county where the arrest is made.

5 (2) If a person arrested without a warrant is brought before a magistrate, a complaint shall  
6 be filed forthwith in accordance with the requirements of rules of the Supreme Court of Appeals.

7 (3) An officer executing a warrant shall make return thereof to the magistrate before whom  
8 the defendant is brought.

9 (b)(1) Notwithstanding any other provision of this code to the contrary, if a person arrested  
10 without a warrant is brought before a magistrate prior to the filing of a complaint, a complaint shall  
11 be filed forthwith in accordance with the requirements of rules of the Supreme Court of Appeals,  
12 and the issuance of a warrant or a summons to appear is not required.

13 (2) When a person appears initially before a magistrate either in response to a summons  
14 or pursuant to an arrest with or without a warrant, the magistrate shall proceed in accordance with  
15 the requirements of the applicable provisions of the rules of the Supreme Court of Appeals.

16 (c) Notwithstanding any other provision of this code to the contrary, when a person is  
17 arrested and photographed at a jail, copies of the photograph or mug shot may not be made  
18 available to the public unless that person is subsequently convicted of a crime or confesses to  
19 that crime.

NOTE: The purpose of this bill is to prohibit release mug shots of persons arrested for a crime unless that person is convicted of the crime.

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