

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 633

By Senators Woodrum, Trump, Deeds, Caputo,

Woelfel, and Rucker

[Introduced February 15, 2023; referred
to the Committee on the Judiciary]

1 A BILL 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 prompt appearances for persons detained on
 4 capiases; providing procedures for issuing bench warrants for nonappearance at
 5 scheduled court hearings; allowing a grace period after a failure to appear to allow a
 6 defendant to appear; providing procedures following execution of bench warrants for
 7 nonappearance; and requiring courts to ensure that inactive capiases are removed from
 8 law-enforcement databases.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PRELIMINARY PROCEDURE.

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

1 (a) If the warrant issued, or if the offense is alleged to have been committed, in a county
 2 other than the county of arrest, all papers in the proceeding shall be promptly transmitted to a
 3 ~~justice~~ magistrate or circuit court judge of the county having jurisdiction of the offense for
 4 preliminary examination or trial.

5 (b) If the defendant is unable to provide bail in the county of arrest, he or she shall be
 6 committed to the custody of an officer who shall take him or her without unnecessary delay before
 7 a ~~justice~~ magistrate or circuit court judge of the county wherein the examination or trial is to be
 8 held, there to be dealt with as provided by law.

9 (c) In all cases where a person is arrested and held under a *capias* and entitled to
 10 admission to bail, an initial appearance must be held within three business days and bail shall be
 11 set pursuant to §62-1C-1a of this code.

ARTICLE 1C. BAIL.

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

1 (a) Any person, who, having been released upon his or her personal recognizance

2 pursuant to section one-a of this article 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 release in accordance with this article fails to
24 appear at a scheduled court appearance, the court may issue a bench warrant for failure to appear
25 if it determines:

26 (1) The defendant was provided effective notice of the court appearance by the court; and

27 (2) No just cause exists for nonappearance.

28 (g) For the purposes of this section, "effective notice of the court appearance" means:

29 (1) The date of the notice is no less than six days and no more than 30 days from the date
30 of the court appearance;

31 (2) The notice plainly describes the date, time, and location of the court appearance;

32 (3) An explanation of the consequences for nonappearance;

33 (4) Where counsel has been appointed, the name and contact information of the counsel of
34 record;

35 (5) The name, contact information, and address of the court with jurisdiction; and

36 (6) Proof that the notice was mailed to the address the person provided to the court.

37 (h) Absent good cause shown, a court may not issue a warrant until the passage of no less
38 than two business days after the missed court appearance. If the defendant appears within two
39 business days, the court may not issue a warrant based solely on the failure to appear and shall
40 reschedule the court appearance for no less than six days and no more than 30 days in the future.

41 (i) Upon arrest for a bench warrant for failure to appear, the magistrate or judge who issued
42 the bench warrant shall hold a hearing with counsel within three days and bail shall be set
43 pursuant to §62-1C-1a of this code.

44 (j) Nothing in this section may be construed to limit a court's ability to issue a bench warrant
45 upon credible evidence of a new criminal offense or credible evidence of a bail violation other than
46 nonappearance.

47 (k) In any case in which a capias has been issued, the court, upon the appearance of the
48 defendant, shall provide notice to law enforcement that the capias is no longer active and should
49 be 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 an accused person is arrested and held under a capias and entitled
16 to admission to bail, an initial appearance must be held within three business days and bail shall
17 be set pursuant to §62-1C-1a of this code.

18 (f) Upon the appearance of a person charged by an indictment of complaint upon which a
19 warrant or capias has been issued, the court shall provide notice to law enforcement that the
20 warrant is no longer active and should be removed from all databases.

NOTE: The purpose of this bill relates to the failure to appear. It requires prompt appearances for persons detained on capiases; provides procedures for issuing bench warrants for nonappearance at scheduled court hearings; allows a grace period after a failure to appear to allow a defendant to appear; provides procedures following execution of bench warrants for nonappearance; and requires courts to ensure that inactive capiases are removed from law enforcement databases.

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