

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

House Bill 3106

BY DELEGATES BARRETT, STEELE AND FAST

[Introduced on March 12, 2021; referred to the
Committee of the Judiciary]

1 A BILL to amend and reenact §62-1C-1a of the Code of West Virginia, 1931, as amended, relating
2 to bail; increasing the time for a secured bond hearing to 5 days; and allowing for release
3 of a defendant on a personal recognizance bond if the hearing is not held unless the
4 defendant is charged with a crime against the person.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1C. BAIL.

§62-1C-1a. Pretrial release; types of release; conditions for release; considerations as to conditions of release.

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

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

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

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

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

10 (D) A misdemeanor offense of the Uniform Controlled Substances Act as set forth in
11 chapter 60A of this code;

12 (E) Misdemeanor offenses of sexual abuse;

13 (F) A serious misdemeanor traffic offense set forth in §17C-5-1 or §17C-5-2 of this code;

14 or

15 (G) A misdemeanor offense involving auto tampering, petit larceny or possession, transfer
16 or receiving of stolen property when alleged value on the property involved exceeds \$250.

17 (2) For the misdemeanor offenses specified in subsection (a) of this section and all other
18 offenses which carry a penalty of incarceration, the arrested person is entitled to be admitted to

19 bail subject to the least restrictive condition or combination of conditions that the judicial officer
20 determines reasonably necessary to assure that person will appear as required, and which will
21 not jeopardize the safety of the arrested person, victims, witnesses, or other persons in the
22 community or the safety and maintenance of evidence. Further conditions may include that the
23 person charged shall:

24 (A) Not violate any criminal law of this state, another state, or the United States;

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

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

30 (D) Participate in an electronic monitoring program if one is available where the person is
31 charged or will reside.

32 (E) Maintain employment, or, if unemployed, actively seek employment;

33 (F) Avoid all contact with an alleged victim of the alleged offense and with potential
34 witnesses and other persons as directed by the court;

35 (G) Refrain from the use or excessive use of alcohol, or any use of a narcotic drug or other
36 controlled substance, as defined in §60A-1-1 *et seq.* of this code without a prescription from a
37 licensed medical practitioner;

38 (H) Execute an agreement to forfeit, upon failing to appear as required, property of a
39 sufficient unencumbered value, including money, as is reasonably necessary to assure the
40 appearance of the person as required. The person charged shall provide the court with proof of
41 ownership, the value of the property, and information regarding existing encumbrances of the
42 property as, in the discretion of the judicial officer, is reasonable and necessary collateral to
43 ensure the subsequent appearance of the person as required;

44 (I) Post a cash bond, or execute a bail bond with solvent sureties who will execute an
45 agreement to forfeit an amount reasonably necessary to assure appearance of the person as
46 required. If other than an approved surety, the surety shall provide the court with information
47 regarding the value of its assets and liabilities and the nature and extent of encumbrances against
48 the surety's property. The surety shall have a net worth of sufficiently unencumbered value to pay
49 the amount of the bail bond; or

50 (J) Satisfy any other condition that is reasonably necessary to assure the appearance of
51 the person as required and to assure the safety of the arrested person, victims, witnesses, other
52 persons in the community, or the safety and maintenance of evidence.

53 (3) Proper considerations in determining whether to release the arrested person on an
54 unsecured bond, fixing a reasonable amount of bail, or imposing other reasonable conditions of
55 release are:

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

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

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

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

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

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

63 (G) The character and strength of the evidence which has been presented to the judicial
64 officer:

65 (H) Whether the arrested person is currently on probation, extended supervision, or
66 parole:

67 (I) Whether the arrested person is already on bail or subject to other release conditions in
68 other pending cases;

69 (J) Whether the arrested person has been bound over for trial after a preliminary
70 examination;

71 (K) Whether the arrested person has in the past forfeited bail or violated a condition of
72 release or was ever a fugitive from justice; and

73 (L) The policy against unnecessary incarceration of arrested persons pending trial set forth
74 in this section.

75 (b) In all misdemeanors, cash bail may not exceed three times the maximum fine provided
76 for the offense. If the person is charged with more than one misdemeanor, cash bail may not
77 exceed three times the highest maximum fine of the charged offenses.

78 (c) Notwithstanding any provisions of this article to the contrary, whenever a person not
79 subject to the provisions of §62-1C-1 of this code remains incarcerated after his or her initial
80 appearance, relating to a misdemeanor, due to the inability to meet the requirements of a secured
81 bond, ~~the a~~ magistrate or judge who set the secured bond shall hold a hearing within ~~72 hours~~ 5
82 days of setting the initial bail to determine if there is a condition or combination of conditions which
83 can meet the considerations set forth in subdivision (2), subsection (a) of this section: Provided,
84 That failure to hold the hearing contemplated by this subsection within 5 days, the court shall
85 forthwith release the person from incarceration pursuant to a personal recognizance bond in an
86 amount to be determined by the court; so long as the misdemeanor crime is not a crime defined
87 in Chapter 61, Article 2 of this code. In the event that the individual is entitled to a personal
88 recognizance bail pursuant to the subsection, the magistrate or court shall transmit the personal
89 recognizance bail order, together with a jail release order, to the facility where the individual is
90 incarcerated without motion by the individual or their counsel.

91 (d) A judicial officer may upon notice and hearing modify the conditions of release at any
92 time by imposing additional or different conditions.

93 (e) A prosecuting attorney and defense counsel, unless expressly waived by the
94 defendant, shall appear at all hearings in which bail or bond conditions are at issue other than the
95 proceeding at which the conditions of release are initially set.

96 (f) No judicial officer may recommend the services of a surety who is his or her relative as
97 that term is defined in §6B-1-3 of this code.

NOTE: The purpose of this bill is to increase the time for a bond hearing to 5 days. Furthermore, this bill allows for a defendant to be released from jail if the bond hearing is not held unless the defendant is incarcerated for a crime against the person.

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