

WEST VIRGINIA LEGISLATURE
2023 FIRST EXTRAORDINARY SESSION

Introduced

House Bill 108

By Delegates Kelly and Skaff

[By Request of the Executive]

[Introduced August 06, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §62-1C-1a and §62-1C-2 of said Code, all relating to pretrial release;
2 clarifying right to pretrial release; clarifying maximum bail amount for charges for multiple
3 misdemeanor offenses; requiring prosecuting attorneys to report on persons held in
4 custody for certain period; requesting reports from Supreme Court of Appeals; revising
5 definition of "bail"; establishing that defendant has right to select method of securing bail;
6 clarifying that personal recognizance bonds shall include an unsecured monetary amount;
7 authorizing judicial officer to impose reasonably necessary conditions to assure defendant
8 will appear as required, including releasing defendant on his or her own recognizance; and
9 making technical corrections.

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; prosecuting attorneys' reports; annual report of Supreme Court of Appeals.

- 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 of
9 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; or

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

16 (2) For the misdemeanor offenses specified in subsection (a) of this section, felony
17 offenses, and all other offenses ~~which~~ that carry a possible penalty of incarceration, ~~the arrested~~
18 ~~person is entitled to a defendant shall~~ be admitted to bail subject to the least restrictive condition or
19 combination of conditions that the judicial officer determines reasonably necessary to assure that
20 person will appear as required, and ~~which~~ that will not jeopardize the safety of the ~~arrested person~~
21 defendant, victims, witnesses, or other persons in the community or the safety and maintenance of
22 evidence. Further conditions may include that the person charged shall:

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

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

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

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

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

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

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

37 ~~(H) Execute an agreement to forfeit, upon failing to appear as required, property of a~~

38 ~~sufficient unencumbered value, including money, as is reasonably necessary to assure the~~
39 ~~appearance of the person as required. The person charged shall provide the court with proof of~~
40 ~~ownership, the value of the property, and information regarding existing encumbrances of the~~
41 ~~property as, in the discretion of the judicial officer, is reasonable and necessary collateral to ensure~~
42 ~~the subsequent appearance of the person as required;~~

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

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

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

55 (A) The ability of the ~~arrested person~~ defendant to give bail;

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

57 (C) The potential penalty the ~~arrested person~~ defendant faces;

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

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

61 (F) The character, health, residence, and reputation of the ~~arrested person~~ defendant;

62 (G) The character and strength of the evidence which has been presented to the judicial

63 officer:

64 (H) Whether the ~~arrested person~~ defendant is currently on probation, extended
65 supervision, or parole;

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

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

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

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

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

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~~ not released on his or her own recognizance
80 pursuant to subsection (a) of this section remains incarcerated after his or her initial appearance,
81 relating to a misdemeanor, ~~due to the inability to meet the requirements of a secured bond,~~ a
82 magistrate or judge shall hold a hearing within 5 days of setting the initial bail to determine if there
83 is a condition or combination of conditions which can meet the considerations set forth in §62-1C-
84 1a(a)(2) of this code.

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

87 (e) A prosecuting attorney and defense counsel, unless expressly waived by the

88 defendant, shall appear at all hearings in which bail or bond conditions are at issue other than the
89 proceeding at which the conditions of release are initially set.

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

92 (g) The prosecuting attorney shall make a report twice monthly to the county commission
93 and to the court having jurisdiction over the criminal proceeding that lists each person who has
94 been held in custody pending indictment, arraignment, or trial for a period in excess of 10 days. As
95 to each person held in custody, the prosecuting attorney shall provide a statement of the reasons
96 why the person is still held in custody.

97 (h) After the effective date of the amendments to this section, the Supreme Court of
98 Appeals is hereby requested to provide annual reports to the President of the Senate and the
99 Speaker of the House of Delegates regarding the efficacy of this section as it relates to the policy
100 of the Legislature to reduce regional jail populations while ensuring the safety of law-abiding
101 citizens.

**§62-1C-2. Bail defined; ~~form~~ selection of form by defendant; receipts; right of judicial
officer to impose conditions on release.**

1 (a) Bail is the pretrial release of a person from custody upon terms and conditions specified
2 by order of an appropriate judicial officer. Bail shall be set at a monetary amount determined by a
3 judicial officer to provide adequate security for the appearance of a defendant to answer to a
4 specific criminal charge before any court or magistrate at a specific time or at any time to which the
5 case may be continued. A personal recognizance bond shall contain a required monetary amount,
6 which shall be unsecured.

7 (b) ~~It may take any~~ A defendant is entitled to and shall select one of the following forms for
8 making bail:

9 (a) The (1) By the deposit by the defendant or by some other person for him or her of cash,

10 in a manner consistent with rules promulgated by the Supreme Court of Appeals;

11 (2) By executing an agreement to forfeit, upon failing to appear as required, real or
12 personal property of a sufficient unencumbered value, including money, as is reasonably
13 necessary to assure the appearance of the person as required which shall be known as a
14 recognizance. The defendant or person or persons owning the property shall provide the court
15 with proof of ownership, the value of the property, and information regarding existing
16 encumbrances of the property as, in the discretion of the judicial officer, is reasonable and
17 necessary collateral to ensure the subsequent appearance of the person as required; or

18 (3) By use of a bail bondsman, as defined in §51-10A-1 of this code.

19 ~~(b) The written undertaking by one or more persons to forfeit a sum of money equal to the~~
20 ~~amount of the bail if the defendant is in default for appearance, which shall be known as a~~
21 ~~recognizance;_~~

22 ~~(c) Such other form as the judge of the court that will have jurisdiction to try the offense may~~
23 ~~determine.~~

24 (c) All bail shall be received by the clerk of the court, or by the magistrate and, except in
25 case of recognizance, receipts shall be given therefor by him or her.

26 (d) Nothing in this article shall be construed as limiting a judicial officer from imposing any
27 condition or combination of conditions that he or she determines are reasonably necessary to
28 assure that the defendant will appear as required, and that will not jeopardize the safety of the
29 defendant, victims, witnesses, or other persons in the community or the safety and maintenance of
30 evidence pursuant to the provisions of §62-1C-1a of this code, including, but not limited to, release
31 of a defendant on his or her own recognizance.

NOTE: The purpose of this bill is to clarify the conditions upon which a person charged with certain offenses shall be released on his or her own recognizance and to clarify release on bail. The bill also requires a county prosecutor to report twice monthly to the county

commission and the court having jurisdiction over a criminal proceeding each person who has been incarcerated for more than 10 days and the reasons why the person is still in custody.

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