

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 633**

BY SENATORS WOODRUM, TRUMP, DEEDS, CAPUTO,

WOELFEL, AND RUCKER

[Originating in the Committee on the Judiciary;

reported on February 25, 2023]



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,  
3 all relating to failure to appear; requiring compliance with the magistrate court criminal  
4 rules; requiring prompt court appearances for persons detained on capiases or warrants  
5 for failure to appear; providing procedures for issuing bench warrants and capiases for  
6 nonappearance at scheduled court hearings or other proceeding; allowing a grace period  
7 after a failure to appear to allow certain defendants to appear except in defined  
8 circumstances; providing procedures following execution of bench warrants for  
9 nonappearance; and requiring courts to ensure that all inactive warrants and capiases for  
10 failure to appear are removed from 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 ~~If the warrant issued, or if the offense is alleged to have been committed, in a county other~~  
2 ~~than the county of arrest, all papers in the proceeding shall be promptly transmitted to a justice of~~  
3 ~~the county having jurisdiction of the offense for preliminary examination or trial. If the defendant~~  
4 ~~is unable to provide bail in the county of arrest, he or she shall be committed to the custody of an~~  
5 ~~officer who shall take him or her without unnecessary delay before a justice of the county wherein~~  
6 ~~the examination or trial is to be held, there to be dealt with as provided by law.~~

7 In all cases where a person is arrested in a county other than where the indictment or  
8 charge is pending, an arraignment shall be held pursuant to the Rules of Criminal Procedure for  
9 Magistrate Courts in West Virginia. If the person remains incarcerated after the arraignment, he  
10 or she shall be transported to the charging county within three days of arrest.

## **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 §62-1-1a of this code 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,  
5 and, 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  
7 or 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  
12 or convicted of a misdemeanor and, shall thereafter be convicted for a violation of the provision  
13 of 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  
15 and 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  
19 not 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  
22 or mandated by this article or by any other provision of law.

23 (f) If any defendant admitted to bail and released in accordance with this article fails to  
24 appear at a scheduled court appearance, the court may issue a capias or bench warrant for failure  
25 to appear if it determines that the defendant was provided effective notice of the court appearance  
26 by the court;

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

28 (1) The notice was transmitted to the person no fewer than 10 days prior to the scheduled  
29 court appearance;

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

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

32 (4) Where counsel is of record, the name and contact information of the counsel of record;

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

34 (6) Proof that the notice was mailed or otherwise transmitted to the address the person  
35 provided to the court.

36 (h) For purposes of capiases for failure to appear after indictment, newspaper publication  
37 alone does not constitute effective notice.

38 (i) Notwithstanding the provisions of subsections (a) through (d) of this section, where the  
39 record does not reflect that the person failing to appear received effective notice to appear from  
40 the court or where he or she has no documented history of failure to appear, a court, absent good  
41 cause shown, may not issue a capias until no fewer than two business days have elapsed since  
42 the failure to appear. If the defendant voluntarily appears within two business days, he or she is  
43 not subject to prosecution under this section.

44 (j) Nothing in subsection (f) of this section may be construed to limit a court's ability to  
45 issue a capias upon credible information of danger to a person or the community, new criminal  
46 conduct or a bail violation other than failure to appear.

47 (k) Upon the arrest of a defendant pursuant to a capias in the county in which the  
48 indictment or charge is pending, a hearing pursuant to §62-1C-1a of this code shall be scheduled  
49 and held within three business days of the arrest.

50 (l) Upon the appearance in the county in which the indictment or charge is pending of a  
51 defendant against whom a capias has been issued the court shall provide written notice to the

52 sheriff for his or her dissemination to all appropriate law-enforcement agencies, that the warrant  
53 or capias is no longer active and order it to be immediately 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  
10 and the recognizance and record thereof, together with any money received therefor, shall be  
11 forthwith 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  
13 not bailable, or for which bail is not given, shall deliver the accused to such court, if sitting, or to  
14 the jailer thereof, who shall receive and imprison him or her.

15           (e) In all cases where a defendant is arrested and held under a capias for failure to appear  
16 in the county wherein the charge or charges is pending, and he or she is entitled to admission to  
17 bail, an initial appearance shall be held as soon as practicable, or within three business days  
18 whichever is sooner, and bail shall be considered pursuant to §62-1C-1a of this code.

19           (f) Upon the appearance of a defendant upon an indictment or complaint upon which a  
20 warrant or capias has been issued, the court shall provide written notice to the sheriff for his or  
21 her dissemination to all appropriate law-enforcement agencies that the warrant or capias is no  
22 longer active and order that it be immediately removed from all databases.