

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 725

By Senators Barrett and Deeds

[Originating in the Committee on the Judiciary;

reported February 23, 2024]

1 A BILL to amend and reenact §62-1C-1a and §62-1C-2 of the Code of West Virginia, 1931, as
2 amended, all relating to pretrial release generally; clarifying right to pretrial release;
3 clarifying maximum bail amount for charges for multiple misdemeanor offenses; defining
4 terms; establishing that defendant has right to select method of securing bail; clarifying that
5 personal recognizance bonds shall include an unsecured monetary amount; prohibiting
6 magistrate from setting cash only or property only bail; authorizing judicial officer to impose
7 reasonably necessary conditions to assure defendant will appear as required, including
8 releasing defendant on his or her own recognizance; clarifying that a magistrate may not
9 release a defendant charged with a felony offense on his or her own recognizance on initial
10 appearance; providing circumstances when a bail bond is not appropriate; providing
11 circumstances when a magistrate has discretion to set a cash only bond; and making
12 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.

1 (a) Subject to the provisions of §62-1C-1 of this code when a ~~person~~ defendant charged
2 with a 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~~ defendant
4 charged with a misdemeanor ~~an~~ offense on his or her own recognizance at the initial appearance
5 unless ~~that person~~ he or she is charged with:

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

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

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

11 (D) A misdemeanor ~~offense~~ violation of the Uniform Controlled Substances Act involving a
12 Schedule I or II narcotic drug or methamphetamine as set forth in chapter 60A of this code;

13 (E) A misdemeanor offenses of sexual abuse;

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

15 (G) A misdemeanor offense involving auto tampering; petit larceny; or possession,
16 transfer, or receiving of stolen property when the alleged value ~~on~~ of the property involved exceeds
17 \$250.

18 (2) For the ~~misdemeanor~~-offenses specified listed in this subsection, and all other offenses
19 which that carry a possible penalty of incarceration, ~~the arrested person is entitled to a defendant~~
20 shall be admitted to bail subject to the least restrictive condition or combination of conditions that
21 the judicial officer determines reasonably necessary to assure that person will appear as required,
22 and ~~which that~~ that will not jeopardize the safety of the ~~arrested person~~ defendant, victims, witnesses,
23 or other persons in the community or the safety and maintenance of evidence: Provided, That a
24 magistrate may not release a defendant charged with a felony offense on his or her own
25 recognizance at an initial appearance. Further conditions may include that the ~~person charged~~
26 defendant shall:

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

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

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

34 (D) Participate in an electronic monitoring program if one is available where the person is
35 charged or will reside;

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

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

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

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

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

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

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

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

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

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

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

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

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

67 (G) The character and strength of the evidence which has been presented to the judicial
68 officer;

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

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

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

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

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

79 (b) In all misdemeanors, ~~cash~~ bail may not exceed three times the maximum fine provided
80 for the offense. If the person is charged with more than one misdemeanor, ~~cash~~ bail may not
81 exceed three times the ~~highest~~ combined total maximum fine ~~of the charged offenses for the~~
82 offenses.

83 (c) Notwithstanding any provisions of this article to the contrary, whenever a defendant
84 ~~person not subject to the provisions of §62-1C-1 of this code~~ not released on his or her own
85 recognizance pursuant to subsection (a) of this section remains incarcerated after his or her initial
86 appearance, relating to a misdemeanor, ~~due to the inability to meet the requirements of a secured~~
87 ~~bond~~, a magistrate or judge shall hold a hearing within five days of setting the initial bail to
88 determine if there is a condition or combination of conditions which can meet the considerations

89 set forth in §62-1C-1a(a)(2) of this code.

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

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

95 (f) ~~No~~ A judicial officer may not recommend the services of a surety who is his or her
96 relative as that term is defined in §6B-1-3 of this code.

**§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 defendant from custody upon terms and conditions
2 specified by order of an appropriate judicial officer. Bail shall be set at a monetary amount
3 determined by a judicial officer to provide adequate security for the appearance of a defendant to
4 answer to a specific criminal charge before any court or magistrate at a specific time or at any time
5 to which the case may be continued.

6 (b) ~~It may take any~~ Except as provided in §62-1C-2(e), a defendant is entitled to and may
7 select one of the following forms for making bail:

8 (a) ~~The~~ (1) By the deposit by the defendant or by some other person for him or her of cash,
9 in a manner consistent with rules promulgated by the Supreme Court of Appeals;

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

17 (3) By use of a bail bondsman, as defined in §51-10A-1 of this code, who shall post a cash
18 bond or execute a bail bond with a solvent surety or sureties who will execute an agreement to
19 forfeit an amount reasonably necessary to assure appearance of the defendant as required. If
20 other than an approved surety is used, the surety shall provide the judicial officer with information
21 regarding the value of its assets and liabilities and the nature and extent of encumbrances against
22 the surety's property. The surety shall have a net worth of sufficiently unencumbered value to pay
23 the amount of the bail bond.

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

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

29 (c) All bail shall be received by the clerk of the court, or by the magistrate and, except in
30 case of recognizance, receipts shall be given therefor by him to the surety.

31 (d) Nothing in this article shall be construed as limiting a circuit court at any stage of a
32 proceeding from imposing any condition or combination of conditions that he or she determines
33 are reasonably necessary to assure that the defendant will appear as required, and that will not
34 jeopardize the safety of the defendant, victims, witnesses, or other persons in the community or
35 the safety and maintenance of evidence pursuant to the provisions of §62-1C-1a of this code,
36 including, but not limited to, release of a defendant on his or her own recognizance.

37 (e) A magistrate, in his or her discretion, may set a cash only bail, in a manner consistent
38 with rules promulgated by the Supreme Court of Appeals for the following offenses:

39 (1) Violations of the Uniform Controlled Substances Act for manufacturing, delivering, or
40 possessing with the intent to deliver a Schedule I or II substance as set forth in chapter 60A of this
41 code;

42 (2) Crimes against a person included in §61-2-1 et seq. of this code;

43 (3) Sexual offenses included in §61-8B-1 et seq. of this code;

44 (4) Filming of sexually explicit conduct of minors included in §61-8C-1 et seq. of this code;

45 or

46 (5) Child abuse crimes included in §61-8D-1 et seq. of this code.