

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 2436

By Delegates Horst, Masters, Worrell, W. Clark,
Crouse, White, Funkhouser, Leavitt, Bridges,
Zatezalo, and Moore

[Introduced February 17, 2025; referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §62-1C-1a of the Code of West Virginia, 1931, as amended, relating
2 to providing for mental health evaluations prior to setting bonds for certain crimes.

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 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 and all other
17 offenses which carry a penalty of incarceration, the arrested person is entitled to be admitted to
18 bail subject to the least restrictive condition or combination of conditions that the judicial officer
19 determines reasonably necessary to assure that person will appear as required, and which will not
20 jeopardize the safety of the arrested person, victims, witnesses, or other persons in the community

or the safety and maintenance of evidence. Further conditions may include that the person charged shall:

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

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

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

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

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

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

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

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

(I) Post a cash bond, or execute a bail bond with solvent sureties who will execute an agreement to forfeit an amount reasonably necessary to assure appearance of the person as required. If other than an approved surety, the surety shall provide the court with information regarding the value of its assets and liabilities and the nature and extent of encumbrances against

the surety's property. The surety shall have a net worth of sufficiently unencumbered value to pay the amount of the bail bond; or

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

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

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

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

(C) The potential penalty the arrested person faces;

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

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

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

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

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

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

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

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

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

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

(c) Notwithstanding any provisions of this article to the contrary, whenever a person not subject to the provisions of §62-1C-1 of this code remains incarcerated after his or her initial appearance, relating to a misdemeanor, due to the inability to meet the requirements of a secured bond, a magistrate or judge shall hold a hearing within 5 days of setting the initial bail to determine if there is a condition or combination of conditions which can meet the considerations set forth in §62-1C-1a(a)(2) of this code.

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

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

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

(g) Prior to setting bail, a magistrate or judge may order a defendant charged with §48-27-903 (b) or §48-270-903(c) (violation of domestic violence protective order second or third offense) or §53-8-11(a)(2) (violation of personal safety order) or §61-2-28(d) (domestic violence third or subsequent offense) or §61-6-24 (threats of terroristic acts) to undergo a mental health evaluation performed by a mental health provider licensed by the state. The purpose of this evaluation is to determine if the defendant needs mental health treatment or counseling as a condition of bond. The evaluation must be scheduled within 10 days of the order's issuance. Once the evaluation is completed, the examiner must, within 48 hours, issue a report to the magistrate.

A magistrate or judge shall hold a bond hearing within five days of receiving the report.

NOTE: The purpose of this bill is to permit magistrates to order mental health evaluations prior to setting bonds for certain crimes.

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