

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

**Introduced**

### **House Bill 3431**

By Delegate Kelly

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

1 A BILL to amend and reenact §62-1C-1, §62-1C-1a, §62-1C-2, and §62-1C-17b of the Code of  
2 West Virginia, 1931, as amended; and to repeal §62-1C-3 and §62-1C-4 of said code, all  
3 relating to bail; defining bail; providing factors to be applied by judicial officer for certain bail  
4 determinations; providing for judicial review of bail determinations; providing for mandatory  
5 or discretionary pretrial release by category of charged offense; providing for discretionary  
6 pretrial release pending appeal from conviction; requiring hearing for defendant who  
7 remains incarcerated after initial appearance relating to misdemeanor; authorizing  
8 defendant to select form of bail unless restricted by judicial officer; providing for cash bail,  
9 recognizance, use of bail bondsman, and other forms of bail pursuant to rules promulgated  
10 by Supreme Court of Appeals; setting maximum cash bail for misdemeanors; requiring  
11 release on recognizance for certain misdemeanors except for good cause shown;  
12 specifying misdemeanors not eligible for recognizance; requiring certain information be  
13 provided to court with respect to recognizance; providing signature requirements for  
14 recognizance; authorizing judicial officer to require justification of surety; providing for  
15 minimum assessed value of real property; providing for pretrial release of indigent  
16 defendants; providing requirements for unapproved surety; providing net worth  
17 requirements of surety; prohibiting judicial officer from recommending relative as surety;  
18 authorizing bail to cover multiple charges; providing for receipts; authorizing additional  
19 conditions of pretrial release; authorizing judicial officer to modify conditions of release;  
20 requiring presence of prosecuting attorney and defense counsel at certain hearings;  
21 repealing provisions regarding fixing amount of bail and bail covering two or more charges;  
22 repealing provisions regarding recognizance, requirements for signers or surety company,  
23 release upon own recognizance, and indigent persons; and making technical corrections.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE**

## **1C.**

## **BAIL.**

**§62-1C-1. Right to bail; exceptions; Bail defined; factors to be applied by judicial officer;**

**review.**

~~(a) A person arrested for an offense not punishable by life imprisonment shall be admitted to bail by the court or magistrate. A person arrested for an offense punishable by life imprisonment may, in the discretion of the court that will have jurisdiction to try the offense, be admitted to bail.~~

~~(b) Bail may be allowed pending appeal from a conviction, except that bail shall not be granted where the offense is punishable by life imprisonment or where the court has determined from the evidence at the trial or upon a plea of guilty or nolo contendere that the offense was committed or attempted to be committed with the use, presentment or brandishing of a firearm or other deadly weapon, or by the use of violence to a person: *Provided*, That the denial of bail under one of these exceptions may be reviewed by summary petition to the Supreme Court of Appeals or any justice thereof, and the petition for bail may be granted where there is a likelihood that the defendant will prevail upon the appeal. The court or judge allowing bail pending appeal may at any time revoke the order admitting the defendant to bail.~~

(a) Bail is security for the appearance of a defendant to answer to a specific criminal charge before any court or magistrate at a specific time or at any time to which the case may be continued.

(b) A judicial officer shall include in an order his or her specific findings setting forth the applicability of the following factors to determine whether to grant pretrial release, set the form and reasonable amount of bail, and impose other reasonable conditions of release under this article:

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

(2) The potential penalty the defendant faces;

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

(4) The defendant's prior record of criminal convictions and delinquency adjudications, if any;

(5) The health and residence of the defendant;

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

officer:

(7) Whether the defendant is currently on probation, extended supervision, or parole;

(8) Whether the defendant is already on bail or subject to other release conditions in other

pending cases;

(9) Whether the defendant has been bound over for trial after a preliminary examination;

(10) Whether the defendant has in the past forfeited bail or violated a condition of release

or was ever a fugitive from justice; and

(11) The ability of the defendant to give bail; and

(12) The policy against unnecessary incarceration of defendants pending trial.

(c) The amount of bail or the discretionary denial of bail at any stage of the proceedings may be reviewed first by the court having jurisdiction to try the matter, and thereafter by summary petition first to the lower appellate court, if any, and thereafter by summary petition to the Supreme Court of Appeals or any judge thereof upon proper filing of a petition for appropriate extraordinary remedy.

**~~§62-1C-1a. Pretrial release; types of release; conditions for release; considerations as to conditions of release. Mandatory or discretionary pretrial release by category of charged offense; bail pending appeal from conviction.~~**

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

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

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

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

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

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

~~(E) Misdemeanor offenses of sexual abuse;~~

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

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

(a) A defendant who is solely charged with an offense or offenses not punishable by life imprisonment is entitled to bail.

(b) A defendant charged with any offense punishable by life imprisonment may, in the discretion of the court that will have jurisdiction to try the offense, be entitled to bail.

(c) Bail may be allowed pending appeal from a conviction, except that bail shall not be granted where the offense is punishable by life imprisonment or where the court has determined from the evidence at the trial or upon a plea of guilty or nolo contendere that the offense was committed or attempted to be committed with the use, presentment or brandishing of a firearm or other deadly weapon, or by the use of violence to a person: *Provided*, That the denial of bail under one of these exceptions may be reviewed by the Supreme Court of Appeals upon proper filing of a petition for appropriate extraordinary remedy, and the petition for bail may be granted where there is a likelihood that the defendant will prevail upon the appeal: *Provided, however*, That the court or judge allowing bail pending appeal may at any time revoke the order admitting the defendant to bail.

~~(2) For the misdemeanor offenses specified in subsection (a) of this section and all other offenses which carry a penalty of incarceration, the arrested person is entitled to be admitted to bail subject to the least restrictive condition or combination of conditions that the judicial officer determines reasonably necessary to assure that person will appear as required, and which will not 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.~~

~~(e) (d)~~ Notwithstanding any provisions of this article to the contrary, whenever a ~~person not~~ defendant 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~~ factors set forth in ~~§62-1C-1a(a)(2)~~ §62-1C-1 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.

**§62-1C-2. Bail defined; form; receipts. Forms of bail; other conditions of release.**

Bail is security for the appearance of a defendant to answer to a specific criminal charge before any court or magistrate at a specific time or at any time to which the case may be continued. It may take any of the following forms:

~~(a)~~ The deposit by the defendant or by some other person for him of cash.

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

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

All bail shall be received by the clerk of the court, or by the magistrate and, except in case



of recognizance, receipts shall be given therefor by him or her.

(a) Unless restricted by the judicial officer in an order containing specific written findings of fact with application of the factors set forth in §62-1C-1 of this code that support the conclusion that restricting of the defendant's choice is necessary to ensure the purposes for which bail is offered, a defendant may select one or more of the following forms for making bail:

(1) The defendant may deposit, or another person may deposit on his or her behalf, cash in a manner consistent with rules promulgated by the Supreme Court of Appeals.

(A) In all misdemeanors, cash bail may not exceed three times the maximum fine provided for the offense.

(B) If the defendant is charged with more than one misdemeanor, cash bail may not exceed three times the combined total of the maximum fines for the offenses;

(2) The defendant may execute an agreement to forfeit, upon failing to appear as required, real or personal property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the defendant as required, which shall be known as a recognizance.

(A) Except for good cause shown and set forth in an order containing specific findings with application of the factors set forth in §62-1C-1 of this code, a defendant charged with a misdemeanor offense or misdemeanor offenses other than the following shall, at first appearance, be released on his or her own recognizance: *Provided*, That a magistrate shall not release a defendant charged with a felony on his or her own recognizance:

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

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

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

(iv) A misdemeanor violation of the Uniform Controlled Substances Act involving a

Schedule I or II narcotic drug or methamphetamine as set forth in §60A-1-1 et seq. of this code;

(v) Misdemeanor offenses of sexual abuse;

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

(vii) A misdemeanor offense involving auto tampering under §17A-8-6 of this code;

(viii) A misdemeanor offense of petit larceny or possession, transfer or receiving of stolen property when the alleged value of the property involved exceeds \$250;

(ix) An offense of conspiracy or attempt to commit any misdemeanor set forth in subparagraphs (i) through (viii) of this paragraph (A); or

(x) An offense of conspiracy or attempt to commit any felony offense.

(B) The defendant or other property owner 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 defendant as ordered.

(C) The recognizance shall be signed by the defendant and one or more adult persons owning real property in the state, or by the defendant and a surety company authorized to do business in this state.

(D) The judicial officer may require that justification of surety be furnished.

(E) The assessed value of the real property as shown on the county land books over and above all liens and encumbrances shall not be less than one half the amount of the bail.

(F) An indigent defendant who the court is satisfied will appear as required shall not be denied bail because of his or her inability to furnish recognizance;

(3) The defendant may use a bail bondsman, as defined in §51-10A-1 of this code, who shall post a cash bond or execute a bail bond with a solvent surety or sureties who will execute an agreement to forfeit the amount of bail.

(A) If other than an approved surety is used, the surety shall provide the judicial officer with information regarding the value of its assets and liabilities and the nature and extent of

63 encumbrances against the surety's property.

64 (B) The surety shall have a net worth of sufficiently unencumbered value to pay the amount  
65 of the bail bond.

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

68 (4) Any other form of bail permitted in rules promulgated by the Supreme Court of Appeals.

69 (b) When two or more charges are filed or are pending against the same person at or about  
70 the same time, the bail given may be made to include all offenses charged against the defendant.

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

73 (d) Subject to application of the factors set forth in §62-1C-1 of this code, the judicial officer  
74 may impose any of the following additional conditions of pretrial release on the defendant:

75 (1) The defendant may not violate any criminal law of this state, another state, or the United  
76 States;

77 (2) The defendant must remain in the custody of a person designated by the judicial officer,  
78 who agrees to assume supervision and to report any violation of a release condition to the court, if  
79 the designated person is reasonably able to assure the judicial officer that the defendant will  
80 appear as required and will not pose a danger to himself or herself or to the safety of any other  
81 person or the community;

82 (3) The defendant must participate in home incarceration pursuant to §62-11B-1 *et seq.* of  
83 this code;

84 (4) The defendant must participate in an electronic monitoring program if one is available  
85 where the defendant is charged or will reside.

86 (5) The defendant must maintain employment, or, if unemployed, actively seek  
87 employment;

88 (6) The defendant must avoid all contact with an alleged victim of the alleged offense and

with potential witnesses and other persons as directed by the court;

(7) The defendant must 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; or

(8) The defendant must satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of the defendant, victims, witnesses, other persons in the community, or the safety and maintenance of evidence.

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

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

**§62-1C-3. Fixing of amount; bail may cover two or more charges.**

[Repealed.]

**§62-1C-4. Recognizance; signing; requirements for signers or surety company; release upon own recognizance; indigent persons.**

[Repealed.]

**§62-1C-17b. Procedures for failure to appear; penalties.**

(a) Any person, who, having been released upon his or her personal recognizance pursuant to §62-1-4a §62-1C-2 of this code or having been otherwise admitted to bail and released in accordance with this article, and who shall willfully and without just cause fail to appear as and when it may be required of him or her, shall be guilty of the offense as hereinafter prescribed, and, upon conviction thereof, shall be punished in the manner hereinafter provided.

(b) If any such person was admitted to bail or released after being arrested for, charged or convicted of a felony and, shall thereafter be convicted for a violation of the provisions of 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 or  
12 convicted of a misdemeanor and, shall thereafter be convicted for a violation of the provision of  
13 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 and  
15 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 not  
19 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 or  
22 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 a  
28 notice stating the date, time, location, and purpose of the hearing, transmitted to the defendant or  
29 defendant's counsel, no fewer than 10 days prior to the scheduled court appearance. The court  
30 may waive the 10 day requirement upon a finding of emergent circumstances.

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

33 (i) Notwithstanding the provisions of subsections (a) through (d) of this section, where the  
34 record does not reflect that the person failing to appear received effective notice to appear from the

35 court or where he or she has no documented history of failure to appear, a court, absent good  
36 cause shown, may not issue a capias until no fewer than 24 hours have elapsed since the failure  
37 to appear. If the defendant voluntarily appears within 24 hours, he or she is not subject to  
38 prosecution under this section.

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

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

45 (l) Upon the appearance in the county in which the indictment or charge is pending of a  
46 defendant against whom a capias has been issued the court shall provide written notice to the  
47 sheriff for his or her dissemination to all appropriate law-enforcement agencies, that the warrant or  
48 capias is no longer active and order it to be immediately removed from all databases.

NOTE: The purpose of this bill is to reorganize several key provisions of the bail statutes with an emphasis on application of factors for certain bail determinations.

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