

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 590

By Senator Deeds

[Introduced February 25, 2025; referred
to the Select Committee on Substance Use Disorder
and Mental Health; and then to the Committee on the
Judiciary]

1 A BILL amend and reenact §62-1C-1a and §62-1C-2 of the Code of West Virginia, 1931, as
2 amended, relating to pretrial release generally; clarifying right to pretrial release; clarifying
3 maximum bail amount for charges for multiple misdemeanor offenses; defining terms;
4 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
7 impose reasonably necessary conditions to assure defendant will appear as required,
8 including releasing defendant on his or her own recognizance; clarifying that a magistrate
9 may not release a defendant charged with a felony offense on his or her own recognizance
10 on initial appearance; providing circumstances when a bail bond is not appropriate;
11 providing circumstances when a magistrate has discretion to set a cash only-bond; and
12 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.

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;

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

(E) A 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 the alleged value ~~on~~ of the property involved exceeds \$250.

(2) For the ~~misdemeanor~~-offenses ~~specified~~ listed in this subsection, and all other offenses which ~~that~~ carry a possible penalty of incarceration, ~~the arrested person is entitled to a defendant shall~~ 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 that~~ will not jeopardize the safety of the ~~arrested person~~ defendant, victims, witnesses, or other persons in the community or the safety and maintenance of evidence: Provided, That a magistrate may not release a defendant charged with a felony offense on his or her own recognizance at an initial appearance. Further conditions may include that the ~~person charged~~ defendant 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~~ defendant 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; or

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

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

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

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

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

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

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

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

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

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

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

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

(K) Whether the ~~arrested person~~ defendant 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~~ defendants 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~~ combined total maximum fine ~~of the charged offenses for the~~ offenses.

(c) Notwithstanding any provisions of this article to the contrary, whenever a defendant ~~person not subject to the provisions of §62-1C-1 of this code~~ not released on his or her own recognizance pursuant to subsection (a) of this section 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 five 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 condition is or are at issue other than the proceeding at which the conditions of release are initially set.

(f) ~~No~~ A judicial officer may not 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~~ selection of form by defendant; receipts; right of judicial officer to impose conditions on release.

(a) Bail is the pretrial release of a defendant from custody upon terms and conditions specified by order of an appropriate judicial officer. Bail shall be set at a monetary amount determined by a judicial officer to provide adequate 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) ~~It may take any~~ Except as provided in §62-1C-2(e) of this code, a defendant is entitled to and may select one of the following forms for making bail:

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

(2) By executing 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 person as required which shall be known as a recognizance. The defendant or person or persons owning the property 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; or

(3) By use of 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 an amount reasonably necessary to assure appearance of the defendant as required. 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 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.

~~(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.~~

(c) 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 to the surety.

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

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

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

(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.

NOTE: The purpose of this bill relates to pretrial release generally. The bill clarifies the right to pretrial release; clarifies maximum bail amount for charges for multiple misdemeanor offenses; defines terms; establishes that defendant has right to select method of securing bail; clarifies that personal recognizance bonds shall include an unsecured monetary amount; prohibits magistrate from setting cash only or property only bail; authorizes judicial officer to impose reasonably necessary conditions to assure defendant will appear as required, including releasing defendant on his or her own recognizance; clarifies that a magistrate may not release a defendant charged with a felony offense on his or her own recognizance on initial appearance; provides circumstances when a bail bond is not appropriate; provides circumstances when a magistrate has discretion to set a cash only bond; and makes technical corrections.

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