

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 806

By Senators Deeds, Azinger, Bartlett, Fuller,
Hamilton, and Thorne

[Introduced March 19, 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, relating to bail;
3 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 may 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.~~

(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 may 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 Chapter 60A of this code;

(v) Misdemeanor offenses of sexual abuse;

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

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

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

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

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

44 (B) The defendant or other property owner shall provide the court with proof of ownership,
45 the value of the property, and information regarding existing encumbrances of the property as, in
46 the discretion of the judicial officer, is reasonable and necessary collateral to ensure the
47 subsequent appearance of the defendant as ordered.

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

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

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

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

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

59 (A) If other than an approved surety is used, the surety shall provide the judicial officer with
60 information regarding the value of its assets and liabilities and the nature and extent of
61 encumbrances against the surety's property.

62 (B) The surety shall have a net worth of sufficiently unencumbered value to pay the amount

63 of the bail bond.

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

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

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

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

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

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

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

80 (3) The defendant shall participate in home incarceration pursuant to §62-11B-1 et seq. of
81 this code;

82 (4) The defendant shall participate in an electronic monitoring program if one is available
83 where the defendant is charged or will reside.

84 (5) The defendant shall maintain employment, or, if unemployed, actively seek
85 employment;

86 (6) The defendant shall avoid all contact with an alleged victim of the alleged offense and
87 with potential witnesses and other persons as directed by the court;

88 (7) The defendant shall 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 shall 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~~ is 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~~ is convicted for a violation of the provisions of subsection (a) of this section, ~~such persons shall be~~ that person is guilty of a felony and, shall be fined not more than \$5,000 or imprisoned in a state correctional facility not less than one nor more than five years, or both ~~such fine and imprisonment~~ fined and imprisoned.

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~~ is thereafter ~~be~~ convicted for a violation of the provision of
13 subsection (a) of this section, ~~such persons shall be~~ that person is guilty of a misdemeanor and,
14 shall be fined not more the \$1,000 or confined in ~~the county~~ jail for not more than one year, or both
15 ~~such fine and confinement~~ fined and confined.

16 (d) If any such person was admitted to bail or released pending appearance as a material
17 witness and ~~shall~~ thereafter ~~fail~~ fails to appear when and where it ~~shall have~~ has been required of
18 him or her, ~~such persons shall be~~ that person is guilty of a misdemeanor and, upon conviction
19 thereof, shall be fined not more the \$1,000 or confined in ~~the county~~ jail not more than one year, or
20 both ~~such fine and confinement~~ fined and confined.

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.