

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 4606

By Delegates Hornby and Funkhouser

[Originating in the Committee on the Judiciary;

Reported on January 30, 2026]

1 A BILL to amend and reenact §62-1C-1a of the Code of West Virginia, 1931, as amended, relating
2 to requiring that judicial officers consider the residency status of a person charged with a
3 criminal violation in determining bail and conditions of pretrial release; clarifying certain
4 requirements for the a judicial officer in determining good cause under the section;
5 clarifying that a magistrate may not release a defendant charged with a felony offense on
6 his or her own recognizance; and clarifying that the determination of whether to release a
7 person, fix bail or impose reasonable conditions of release requires a judicial officer to
8 consider the person's status as a resident of West Virginia and/or of the United States of
9 America.

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

(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.

(2) In determining good cause for purposes of release under this section, a judicial officer shall consider the residency status of a person charged with a misdemeanor offense, including but not limited to whether the person: (A) Is a resident of West Virginia and/or the United States of America; (B) has ties to the community; and (C) is a risk of flight.

(2)(3) 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: *Provided*, That pursuant to §62-1C-4 of this code, a magistrate may not release a defendant charged with a felony offense on his or her own recognizance. 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:

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;

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

57 (3) (4) Proper considerations in determining whether to release the arrested person on an
58 unsecured bond, fixing a reasonable amount of bail, or imposing other reasonable conditions of
59 release are:

60 (A) The ability of the arrested person to give bail;
61 (B) The nature, number, and gravity of the offenses;
62 (C) The potential penalty the arrested person faces;
63 (D) Whether the alleged acts were violent in nature;

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

66 (F) The character, health, residence, and reputation of the arrested person: Provided,
67 That, in determining whether to release a person, fix bail or impose reasonable conditions of
68 release, a judicial officer shall consider the person's status as a resident of West Virginia and/or of
69 the United States of America;

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

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

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

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

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

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

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

84 (c) Notwithstanding any provisions of this article to the contrary, whenever a person not
85 subject to the provisions of §62-1C-1 of this code 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 5 days of setting the initial bail to determine
88 if there is a condition or combination of conditions which can meet the considerations set forth in
89 §62-1C-1a(a)(2) §62-1C-1a(a)(3) 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 are at issue other than the
94 proceeding at which the conditions of release are initially set.

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