# WEST VIRGINIA CODE CHAPTER 53 ARTICLE 7

WV Legislature

## §53-7-1. Order for arrest -- Affidavit; grounds for arrest.

An order for the arrest of a defendant in any action or proceeding at law or suit in equity may be made by the court in which the action, proceeding or suit is pending, or by the judge or clerk thereof in vacation, upon the affidavit of the plaintiff or any credible person showing to the satisfaction of the court, or judge or clerk thereof in vacation, the nature and justice of the plaintiff's claim, the amount which the affiant believes the plaintiff is justly entitled to recover in the action, proceeding or suit, and the existence of some one or more of the following grounds for the arrest of the defendant: (a) That the defendant has removed, or is about to remove, any of his property out of the state with intent to defraud his creditors; or (b) that he has converted or is about to convert his property or any part thereof into money or securities with like intent; or (c) that he has assigned, disposed of or removed his property or any part thereof, or is about to do so, with like intent; or (d) that he has property or rights in action which he fraudulently conceals; or (e) that he fraudulently contracted the debt or incurred the liability for which the action or suit is brought; or (f) that he is about to leave the state and reside permanently in another state or country, without paying the debt or liability for which the action or suit is brought.

WV Legislature

## §53-7-2. Same -- By whom made; plaintiff to give bond.

When sufficient cause shall be shown for the arrest of a defendant as aforesaid such court, judge or clerk shall make an order directing the defendant to be arrested and held to bail for such sum as the said court, judge or clerk shall think fit, and the plaintiff shall thereupon deliver to the clerk of the court in which the action is pending a bond in a penalty double the amount sworn to, executed by himself or some person for him with one or more sufficient securities, approved by the clerk, to the effect that the plaintiff will pay the defendant all damages he may sustain by reason of the arrest, should it thereafter appear that the order was wrongfully obtained.

WV Legislature

**§53-7-3. Same -- Issuance; form.**

Upon the delivery of the bond mentioned in the preceding section, the clerk shall issue an order for the arrest of the defendant in form or in substance as follows:

A..... B....., Plaintiff,

vs .Order of arrest.

C..... D....., Defendant,

To the sheriff of the county of .....: You are hereby required, in the name of the State of West Virginia, to arrest the defendant, C..... D....., and commit him to the jail of the said county of ....., to be there safely kept, unless or until he shall give a bond, with good security, in the penalty of ..... dollars, conditioned according to law, and that you return your proceedings under this order to the next term of the ..... court (naming the court in which the action, proceeding or suit is pending) of said county.

Witness E..... F....., clerk of the said court, this ..... day of .....

E..... F....., Clerk.

WV Legislature

**§53-7-4. Arrest and commitment unless bond given by defendant.**

Under such order, the defendant against whom it issues shall be arrested and committed to jail, unless bond be given in the sum specified therein, with sufficient security, conditioned that, in case there shall in the action, proceeding or suit be any judgment, decree or order on which a writ of fieri facias may issue, and within four months after such judgment, decree or order is rendered or made, interrogatories be filed under sections one, two and three, article five, chapter thirty-eight of this code, with a commissioner of the court wherein such judgment, decree or order is, the defendant will, at the time the commissioner issues a summons to answer such interrogatories, be in the county in which such commissioner resides, and will, within the time prescribed in such summons, file proper answers upon oath to such interrogatories, and make such conveyance and delivery as is required by the said article, or in case of failure to file such answer and make such conveyance and delivery, that the said defendant will perform and satisfy the said judgment, decree or order.

WV Legislature

## §53-7-5. To whom bond of defendant may be given; return and filing thereof.

The defendant arrested under such order may, at any time pending the case, give bond to the officer making the arrest. Such bond shall be taken by such officer and returned by him to the clerk of the court from which the order issued, and the same shall be filed in such clerk's office.

WV Legislature

## §53-7-6. Discharge of defendant or bond.

If the defendant give such bond, or be committed to jail for want of it, the court in which the case is pending, or the judge thereof in vacation, may, after reasonable notice to the plaintiff, or his attorney, quash the order and discharge the defendant from custody, or discharge the bond, on being satisfied that the order was wrongfully obtained; and, whether the order was so obtained or not, may discharge him from custody when the plaintiff is cast in the action, proceeding or suit.

WV Legislature

## §53-7-7. Interrogatories to defendant in custody; discharge of defendant.

While a defendant is in custody, the plaintiff, without having a judgment or decree against the defendant, may file interrogatories to him in like manner as might be done under sections one, two and three, article five, chapter thirty-eight of this code, if such judgment or decree had been obtained and a fieri facias thereon had been delivered to an officer. And the court wherein the case is pending, or a judge or a commissioner thereof, after reasonable notice to the plaintiff, or his attorney may discharge the defendant from custody, unless interrogatories be filed within such time as such court, judge or commissioner may deem reasonable; or, though interrogatories be filed, may discharge him when proper answers thereto are filed and proper conveyance and delivery made.

WV Legislature

**§53-7-8. Conveyance or other disposition of property.**

The officer making the arrest shall be the officer to whom the conveyance shall be made: Provided, That if for any reason it cannot or should not be made to him it shall be made to such other officer as the court or judge may direct. The interrogatories, answers and report of the commissioner shall be returned to the court in which the case is pending and filed in the papers of such case. And such court may make such order as it may deem right as to the sale and proper application of the estate conveyed and delivered under the preceding section.

WV Legislature