WEST VIRGINIA CODE CHAPTER 62 ARTICLE 1

WV Legislature

§62-1-1. Complaint.

The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a justice of the peace.

WV Legislature

§62-1-2. Warrant -- Issuance.

If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to arrest persons charged with offenses against the state. More than one warrant may issue on the same complaint.

WV Legislature

§62-1-3. Same -- Contents.

The warrant shall be signed by the justice and shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the offense charged in the complaint. It shall command that the defendant be arrested and brought before a justice of the county in which the warrant is executed.

WV Legislature

§62-1-4. Same -- Execution; arrest by officer without warrant in possession; duplicate warrants.

The warrant shall be executed by the arrest of the defendant. It may be executed at any time or place within the state. The officer need not have the warrant in his possession at the time of the arrest, but upon request by the defendant, the officer shall show the warrant to him as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. While the complaint is pending, a warrant returned unexecuted and not cancelled or a duplicate warrant may be delivered to the same or another authorized officer for execution.

WV Legislature

§62-1-5. Same -- Delivery of prisoner before magistrate; complaint for person arrested without warrant; return.

(a) (1) An officer making an arrest under a warrant issued upon a complaint, or any person making an arrest without a warrant for an offense committed in his presence or as otherwise authorized by law, shall take the arrested person without unnecessary delay before a magistrate of the county where the arrest is made.

(2) If a person arrested without a warrant is brought before a magistrate, a complaint shall be filed forthwith in accordance with the requirements of rules of the Supreme Court of Appeals.

(3) An officer executing a warrant shall make return thereof to the magistrate before whom the defendant is brought.

(b)(1) Notwithstanding any other provision of this code to the contrary, if a person arrested without a warrant is brought before a magistrate prior to the filing of a complaint, a complaint shall be filed forthwith in accordance with the requirements of rules of the Supreme Court of Appeals, and the issuance of a warrant or a summons to appear is not required.

(2) When a person appears initially before a magistrate either in response to a summons or pursuant to an arrest with or without a warrant, the magistrate shall proceed in accordance with the requirements of the applicable provisions of the rules of the Supreme Court of Appeals.

WV Legislature

§62-1-5a. Citation in lieu of arrest; failure to appear.

A law-enforcement officer may issue a citation instead of making an arrest for the following offenses, if there are reasonable grounds to believe that the person being cited will appear to answer the charge:

(1) Any misdemeanor, not involving injury to the person, committed in a law-enforcement officer's presence: Provided, That the officer may arrest the person if he has reasonable grounds to believe that the person is likely to cause serious harm to himself or others; and

(2) When any person is being detained for the purpose of investigating whether such person has committed or attempted to commit shoplifting, pursuant to section four, article three-a, chapter sixty-one of this code.

The citation shall provide that the defendant shall appear within a designated time.

If the defendant fails to appear in response to the citation or if there are reasonable grounds to believe that he will not appear, a complaint may be made and a warrant shall issue. When a physical arrest is made and a citation is issued in relation to the same offense the officer shall mark on the citation, in the place specified for court appearance date, the word "arrested" in lieu of the date of court appearance.

WV Legislature

§62-1-6. Informing defendant of nature of complaint and his rights; opportunity to confer with counsel and arrange bail.

The justice shall in plain terms inform the defendant of the nature of the complaint against him of his right to counsel and, if the offense is to be presented for indictment, of his right to have a preliminary examination. He shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him He shall provide the defendant reasonable means to communicate with an attorney or with at least one relative or other person for the purpose of obtaining counsel or arranging bail. The defendant shall not be committed to jail or removed from the county of arrest until he has had a reasonable opportunity to confer with counsel or to arrange bail. He may be detained under such security measures as the circumstances warrant. If the defendant is unable to provide bail or if the offense is unbailable, he shall be committed to jail.

WV Legislature

§62-1-6a. Booking photographs of criminal defendants.

(a) Except as authorized by the provisions of this section, a law enforcement agency may not share on social media the booking photograph of an individual arrested for the alleged commission of a minor offense.

(b) As used in this section, unless context clearly indicates, otherwise:

"Booking photograph" means a photograph or still, non-video image of an individual taken, generated, or otherwise created by a law enforcement agency pursuant to an arrest or while an individual is in the agency's lawful custody.

"Law enforcement agency" means any duly authorized state, county, or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality of the state: *Provided*, That the Division of Corrections and Rehabilitation and its subordinate organizations may not be considered a law enforcement agency for purposes of this section.

"Social media" means a publicly available Internet-based platform that allows a user to produce, post, or curate content and interact with other users via text, images, video, and audio, for the purpose of informing, sharing, promoting, collaborating, or networking.

"Minor offense" means an offense that:

Is a misdemeanor or nonviolent felony eligible for expungement as provided by §61-11-26(a) of this code, and not excepted from eligibility for expungement under §61-11-26(c) of this code: *Provided*, That, for purposes of this section, offenses under §17B-4-3 of this code and misdemeanor offenses under §17C-5-2 of this code, shall be considered minor offenses for purposes of this section.

(c) Exceptions. — A law enforcement agency may share on social media the booking photograph of an individual arrested for the alleged commission a minor offense, if:

(1) The individual is convicted of a criminal offense based upon the conduct for which the individual was in custody for at the time the booking photograph was taken;

(2) A law-enforcement agency has determined that the suspect is a fugitive or an imminent threat to an individual or to public safety and reasonably believes that releasing or disseminating the suspect's booking photograph will assist in locating or apprehending the suspect or reducing or eliminating that threat; or

(3) A court of competent jurisdiction orders the release or dissemination of the booking photograph based upon a finding that doing so is in furtherance of a legitimate interest.

(d) A law-enforcement agency may not be subject to civil action or be held liable when the publication, release, or dissemination of a booking photograph was made by mistake of fact

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or error, and that publication, release, or dissemination was done in good faith.

(e) A law-enforcement agency that shares on social media a booking photograph of an individual arrested for the suspected commission of any crime shall remove the booking photograph from its social media page within 14 days upon the request of the individual who is the subject of the social media post, or that individual's authorized representative, if any of the following have occurred:

(1) The criminal charge for which the booking photograph was taken has been dismissed;

(2) A grand jury has declined to return an indictment on the charge for which the booking photograph was taken; or

(3) A circuit court or jury has entered a judgment of acquittal on the charge for which the booking photograph was taken, or a court of competent jurisdiction has issued an order or opinion reversing, vacating, or otherwise nullifying the conviction for which the booking photograph was taken.

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§62-1-7. Offense arising in other county.

In all cases where a person is arrested in a county other than where the indictment or charge is pending, an arraignment shall be held pursuant to the Rules of Criminal Procedure for Magistrate Courts in West Virginia. If the person remains incarcerated after the arraignment, he or she shall be transported to the regional jail serving the charging county within five days of arrest.

WV Legislature

§62-1-8. Preliminary examination.

If the offense is to be presented for indictment, the preliminary examination shall be conducted by a justice of the county in which the offense was committed within a reasonable time after the defendant is arrested, unless the defendant waives examination. The defendant shall not be called upon to plead. Witnesses shall be examined and evidence introduced for the state under the rules of evidence prevailing in criminal trials generally. The defendant or his attorney may cross-examine witnesses against him and may introduce evidence in his own behalf. On motion of either the state or the defendant, witnesses shall be separated and not permitted in the hearing room except when called to testify. If the defendant waives preliminary examination or if, after hearing, it appears from the evidence that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the justice shall forthwith hold him to answer in the court having jurisdiction to try criminal cases. If the evidence does not establish probable cause, the defendant shall be discharged. After concluding the proceeding the justice shall transmit forthwith to the clerk of the court to which the defendant is held to answer all papers in the proceeding and any bail taken by him

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§62-1-9. Continuance.

The justice shall grant upon request of the defendant one continuance for a period not to exceed ten days. A continuance for a like period shall be granted on request of the state if the defendant has been admitted to bail. No other continuance shall be granted except for good cause or by mutual consent of the state and the defendant.

WV Legislature

§62-1-10. Concurrent powers.

A judge of a court having jurisdiction to try criminal offenses shall have the same power to issue warrants as conferred upon a justice of the peace by this article. A mayor or judge of a police court acting in the capacity of a justice of the peace shall have all the powers and duties conferred upon a justice by this article.

WV Legislature

§62-1-11. Repeal of inconsistent laws.

All provisions of this code which are inconsistent with the provisions of this article are hereby repealed to the extent and only to the extent of such inconsistency: Provided, That under no circumstances shall the foregoing repealer provision or the provisions of this article be construed as repealing, limiting or in any way altering the provisions of article nineteen, chapter seventeen-c of this code.

WV Legislature

§62-1-12. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or its application, and to this end, the provisions of this article are declared to be severable.

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