WEST VIRGINIA CODE: §62-14A-4

§62-14A-4. Hearing after arrest; application for writ of habeas corpus; arrest and confinement of fugitives from another state; bail; persons involved in criminal or civil actions in this state.

(a) No person arrested upon a warrant shall be delivered over to the agent whom the executive authority demanding him or her appointed to receive him or her unless he or she shall first be taken forthwith before a judge of a court of record in this state, who shall inform him or her of the demand made for his or her surrender and of the crime with which he or she is charged, and that he or she has the right to demand and procure legal counsel and if the prisoner or his or her counsel shall state that he, she, or they desire to test the legality of his or her arrest, the judge of the court of record shall fix a reasonable time to be allowed him or her within which to apply for a writ of habeas corpus. When a writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting attorney of the county in which the arrest is made and in which the accused is in custody, and to the agent of the demanding state.

(b) Any officer who delivers to the agent for extradition of the demanding state a person in his or her custody under the Governor's warrant, in willful disobedience to subsection (a) of this section, shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not more than $1,000 or be imprisoned not more than six months, or both.

(c) The officer or persons executing the Governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in any city, county, or regional jail; and the keeper of the jail shall receive and safely keep the prisoner until the officer or person having charge of him or her is ready to proceed on his or her route, the officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in the other state, and who is passing through this state with such a prisoner for the purpose of immediately returning the prisoner to the demanding state may, when necessary, confine the prisoner in any city, county, or regional jail; and the keeper of the jail shall receive and safely keep the prisoner until the officer or agent having charge of him or her is ready to proceed on his or her route, the officer or agent, however, being chargeable with the expense of keeping: Provided, That the officer or agent shall produce and show to the keeper of the jail satisfactory written evidence of the fact that he or she is actually transporting a prisoner to the demanding state after a requisition by the executive authority of the demanding state. The prisoner may not be entitled to demand a new requisition while in this state.

(d) Whenever any person within this state shall be charged on the oath of any credible

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person before any judge or magistrate of this state with the commission of any crime in any other state and, except in cases arising under §62-14A-2(g) of this code, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his or her bail, probation, or parole, or whenever complaint has been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in the state and that the accused has been charged in the state with the commission of the crime, and, except in cases arising under §62-14A-2(g) of this code, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his or her bail, probation, or parole, and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him or her to apprehend the person named therein, wherever he or she may be found in this state, and to bring him or her before the same or any other judge, magistrate, or court who or which may be available in, or convenient of access to, the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

(e) The arrest of a person may be lawfully made also by any peace officer, or a private person, without a warrant, upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or by imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed, and complaint must be made against him or her under oath setting forth the ground for the arrest as in the preceding section and thereafter his or her answer shall be heard as if he or she had been arrested on a warrant. Correctional officers may, additionally, make complaint against persons in their custody for whom, they have a reasonable belief, stand accused of crimes, punishable by death or confinement for a term exceeding one year, in the courts of another state.

(f) If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under §62-14A-2(g) of this code, that he or she has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him or her to the county or regional jail for a time not exceeding 30 days, and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in subsection (g) of this section, or until he or she shall be legally discharged.

(g) Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in a sum as he or she considers proper, conditioned for his or her appearance before him or her at a time specified in the bond, and for his or her surrender, to be arrested upon the warrant of the Governor of this state.

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(h) If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or her or may recommit him or her for a further period not to exceed 60 days, or a judge or magistrate may again take bail for his or her appearance and surrender as provided in subsection (g) of this section, but within a period not to exceed 60 days after the date of the new bond.

(i) If the prisoner is admitted to bail, and fails to appear and surrender himself or herself according to the conditions of his or her bond, the judge, or magistrate, by proper order, shall declare the bond forfeited and order his or her immediate arrest without warrant if he or she is within this state. Recovery may be had on a bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

(j) If a criminal prosecution has been instituted against the person under the laws of this state and is still pending, the Governor, in his or her discretion, either may surrender him or her on demand of the executive authority of another state or hold him or her until he or she has been tried and discharged or convicted and punished in this state: Provided, That any person under recognizance to appear as a witness in any criminal proceeding pending in this state may in the discretion of the Governor be surrendered on demand of the executive authority of another state or be held until criminal proceeding pending in this state has been determined: Provided, however, That any person who was in custody upon any execution, or upon process in any suit, at the time of being apprehended for a crime charged to have been committed without the jurisdiction of this state, may not be delivered up without the consent of the plaintiff in an execution or suit, until the amount of the execution has been paid, or until the person shall be otherwise discharged from the execution or process.

(k) The guilt or innocence of the accused as to the crime for which he or she is charged may not be inquired into by the Governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as provided in this article has been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime.

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