WEST VIRGINIA CODE CHAPTER 62 ARTICLE 1C

WV Legislature

§62-1C-1. Right to bail; exceptions; 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.

(c) The amount of bail or the discretionary denial of bail at any stage of the proceedings may be reviewed 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.

WV Legislature

§62-1C-1a. Pretrial release; types of release; conditions for release; considerations as to conditions of release.

(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.

(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.

(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 crime of violence against the person as defined in §61-11-26(p)(3) of this code; with a felony offense in which the victim was a minor as defined in §61-11-26(p)(4) of this code; with a felony offense of arson or burglary set forth in §61-3-1 *et seq*. of this code; or with a felony drug offense set forth in chapter 60A of this code; 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;

WV Legislature

(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.

(4) 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;

WV Legislature

(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: *Provided*, That, in determining whether to release a person, fix bail or impose reasonable conditions of release, a judicial officer shall consider the person's status as a resident of West Virginia and/or of the United States of America;

(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.

(c) Notwithstanding any provisions of this article to the contrary, whenever a person not 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 five days of setting the initial bail to determine if there is a condition or combination of conditions which can meet the considerations set forth in §62-1C-1a(a)(3) 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

WV Legislature

that term is defined in §6B-1-3 of this code.

WV Legislature

§62-1C-2. Bail defined; form; receipts.

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.

All bail shall be received by the clerk of the court, or by the magistrate and, except in case of recognizance, receipts shall be given therefor by him

WV Legislature

§62-1C-3. Fixing of amount; bail may cover two or more charges.

The amount of bail shall be fixed by the court or justice with consideration given to the seriousness of the offense charged, the previous criminal record of the defendant, his financial ability, and the probability of his appearance. When two or more charges are filed or are pending against the same person at or about the same time, the bail given may be made to include all offenses charged against the defendant.

WV Legislature

§62-1C-4. Recognizance; signing; requirements for signers or surety company; release upon own recognizance; indigent persons.

The recognizance shall be signed by the defendant. It shall also be signed by one or more adult persons owning real property in the state. The court or justice may require that justification of surety be furnished. The assessed value of the real property as shown on the county land books over and above all liens and encumbrances shall not be less than one half the amount of the bail. Or, the recognizance may be signed by the defendant and a surety company authorized to do business in this state. If the offense is a felony, the magistrate or circuit judge of the court that will have jurisdiction to try the offense may release the defendant on his or her own recognizance consistent with the provisions of §62-1C-1a(a)(3) of this code. If the offense is a misdemeanor, either the court or justice may release the defendant on his or her own recognizance. An indigent person who the court is satisfied will appear as required shall not be denied bail because of his or her inability to furnish recognizance.

WV Legislature

§62-1C-5. Recognizance and deposits subject to order of court or magistrate.

The recognizance shall be returnable to and all deposits shall be held by the court before whom the defendant is to appear or does appear, and upon the transfer of the case to any other court the recognizance shall be returnable to and transmitted together with any deposits to such other court.

WV Legislature

§62-1C-6. Continuing bail.

The bail as initially given may continue in effect pending indictment, arraignment, continuance, trial and appeal after conviction, as the court may direct.

WV Legislature

§62-1C-7. Forfeiture of bail; basis therefor.

(1) Whenever a person under bail serves as his or her own surety and he or she willfully and without just cause fails to appear as and when required or violates any other term or condition of bail, the circuit court or magistrate shall declare the bail forfeited.

(2) Whenever a person or entity other than the person under bail serves as surety, forfeiture of bail shall be declared only when the person under bail willfully and without just cause fails to appear as and when required.

WV Legislature

§62-1C-8. Same -- Setting aside.

The court or justice may direct that a forfeiture be set aside, upon such conditions as may be imposed, if it appears that justice does not require the enforcement of the forfeiture.

WV Legislature

§62-1C-9. Same -- Enforcement.

When a forfeiture has not been set aside, the court or justice, upon motion of the state, shall enter a judgment of default and execution may issue thereon: Provided, That if the forfeiture is declared in a court of record, the order taking judgment shall be entered at the same term of court in which the forfeiture was declared: And provided further, That if the deposit for bail be by a person other than the defendant, or if the bail be in the form of recognizance, such person making the deposit or the surety on the recognizance shall be given ten days' notice by certified mail at his last-known address to appear and show cause why a judgment of default should not be entered. Execution shall issue in the name of the state and shall proceed in the manner provided by law in civil actions. If the bail be in the form of bonds or stocks, the judgment order may direct that all or part thereof be sold through a state or national bank or through a brokers exchange registered with the federal securities and exchange commission.

WV Legislature

§62-1C-10. Same -- Bail in excess of jurisdictional limit of justice or of particular court.

Where the forfeiture has been declared by a justice or by a court of limited jurisdiction of bail in excess of the jurisdictional limit of justice or of the particular court, such forfeiture shall be certified to a court of the county having sufficient jurisdiction, which court shall thereupon proceed as if the forfeiture were originally declared in such court.

WV Legislature

§62-1C-11. Same -- Remission.

After entry of such judgment, the court or justice may remit the penalty in whole or in part under the conditions applying to the setting aside of forfeiture in section eight of this article.

WV Legislature

§62-1C-12. Same -- Exoneration; return of deposit.

(a) When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court or magistrate shall exonerate the surety and release any bail and, if the bail be in a form other than a recognizance, the deposit shall be returned to the person who made the same. The surety may be exonerated by a deposit of cash in the amount of the bail or by a timely surrender of the defendant into custody.

(b) Notwithstanding any provision of this code to the contrary, when a bail bondsman, as defined in article ten, chapter fifty-one of this code, has a surety bond forfeited because of the failure of a defendant to appear before a court or magistrate, that bail bondsman shall be reimbursed the full amount of the bond forfeiture, be it cash or surety, if the bail bondsman returns the defendant to the custody of the court or magistrate, within two years of the forfeiture of the bond.

(c) The Administrator of the West Virginia Supreme Court of Appeals shall, ex officio, be empowered to audit, review and suspend any bail bondsman whose surety on bonds is or becomes insufficient or whose assets are below the amount of bonds he or she has in existence.

WV Legislature

§62-1C-13. Same -- Defects in form of bail.

No action or judgment for forfeiture of bail shall be defeated or arrested by the neglect or omission to record the declaration of forfeiture or by reason of any defect in the form of the bail, if it appear to have been taken by a court or justice authorized to take it, and be substantially sufficient.

WV Legislature

§62-1C-14. Bailpiece; issuance to surety; taking accused into custody.

(a) A bailpiece is a certificate stating that the bail became such for the accused in a particular case and the amount thereof. Upon demand therefor, the court, magistrate, or clerk shall issue to the bail bondsperson a bailpiece. Any officer having authority to execute a warrant of arrest shall assist the bail bondsperson holding such bailpiece to take the accused into custody and produce him or her before the court or magistrate. The bail bondsperson may take the accused into custody and surrender him or her to the court or magistrate without such bailpiece.

(b) If bailpiece is inaccessible due to unavailability of the court's circuit clerk or magistrate, the bail bondsperson, or his or her designee, can take an offender to a regional jail without bailpiece, and the jail must accept the offender, provided:

(1) The bail bondsperson, or his or her designee, delivering an offender to a jail without a bailpiece issued by the court's circuit clerk or magistrate appears on the registered list maintained at the jails and approved by the court of original jurisdiction;

(2) The bail bondsperson signs an agreement provided by the jail indicating that the offender has been booked in lieu of bailpiece. Such agreement shall contain a clause indicating the incarceration of such offender is lawful and that the jail accepting the offender shall be held harmless from any claims of illegal incarceration or other relative charges; thereby, such bail bondsperson assumes the risk and liability of such incarceration; and

(3) Bailpiece must be applied for by the bail bondsperson or his or her designee from the court's circuit clerk or magistrate and hand-delivered by the bail bondsperson or his or her designee to the jail housing such offender on the next judicial day following the initial intake.

(c) Any bail bondsperson who willfully fails to attempt to obtain the appropriate bailpiece within the allotted time period provided in subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be prohibited from continuing to conduct business in this state and shall be fined not more than $1,000 and confined in the regional jail not more than one year.

(d) No officer, jailer, or other person having authority to accept offenders in a regional jail is required to accept such offenders being housed in lieu of bailpiece except as set forth in §15A-5-9 of this code.

(e) The Division of Corrections and Rehabilitation, the county sheriff, county commission, or any of their agents or employees, shall be immune from liability for any claims of illegal incarceration or other relative charges for any offender accepted into a facility under this section.

WV Legislature

§62-1C-15. Bail for witness.

The bail for a witness for or against the accused shall be conditioned upon his appearance at such time and place as the court or justice shall direct.

WV Legislature

§62-1C-16. Guaranteed arrest bond certificate.

For a misdemeanor violation of any motor vehicle law of the state or any municipality, except reckless driving or driving while intoxicated, the guaranteed arrest bond certificate of any surety company licensed to do business by the Insurance Commissioner, when presented by the person whose signature appears thereon shall be accepted as bail in lieu of cash or recognizance in an amount not to exceed $500. A "guaranteed arrest bond certificate" shall mean any printed card or certificate issued by an automobile club or association to its members in good standing bearing the signature of the member and containing a printed statement that such club or association and a surety company will guarantee the payment of any fine or forfeiture imposed on the member in an amount not to exceed $500 if the member fails to appear in court as required.

WV Legislature

§62-1C-17. Offenses against municipalities.

Bail for a person accused of an offense against a municipality shall be governed by the provisions of this article applicable to a justice, except that the bail may be deposited with the mayor or with such other officer of the municipality as may be designated by the mayor or other chief executive officer of the municipality, and proceedings for forfeiture shall be prosecuted in the name and for the benefit of the municipality.

WV Legislature

§62-1C-17a. Bail in situations of alleged child abuse.

(a) When the offense charged is an offense defined in article eight-d, chapter sixty-one of this code, it shall be a condition of bond that the defendant shall not live in the same residence as and shall have no contact with the victim of the alleged offense and the court may make such other conditions of bond with respect to contact with the victim as it deems necessary under the circumstances to protect the child: Provided, That the requirement of no contact with the victim of the alleged offense and all other conditions of bond may be reviewed by summary petition from the magistrate court to the circuit court or from the circuit court to the Supreme Court of Appeals or any justice thereof.

(b) In cases where the charge is a sexual offense, as defined in chapter sixty-one of this code, against any person, the court, upon a showing of cause, may make such conditions of bond on the defendant or on any witness bond issued under section fifteen of this article as it deems necessary with respect to contact with the victim.

WV Legislature

§62-1C-17b. Procedures for failure to appear; penalties.

(a) Any person, who, having been released upon his or her personal recognizance pursuant to §62-1-1a 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 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 convicted for a violation of the provisions of subsection (a) of this section, such persons shall be guilty of a felony and, shall be fined not more than $5,000 or imprisoned not less than one nor more than five years, or both such fine and imprisonment.

(c) If any such person was admitted to bail or released after being arrested for, charged or convicted of a misdemeanor and, shall thereafter be convicted for a violation of the provision of subsection (a) of this section, such persons shall be guilty of a misdemeanor and, shall be fined not more the $1,000 or confined in the county jail for not more than one year, or both such fine and confinement.

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

(e) Any penalty authorized by this section shall be in addition to any forfeiture authorized or mandated by this article or by any other provision of law.

(f) If any defendant admitted to bail and released in accordance with this article fails to appear at a scheduled court appearance, the court may issue a capias or bench warrant for failure to appear if it determines that the defendant was provided effective notice of the court appearance by the court.

(g) For the purposes of this subsection, "effective notice of the court appearance" means a notice stating the date, time, location, and purpose of the hearing, transmitted to the defendant or defendant’s counsel, no fewer than 10 days prior to the scheduled court appearance. The court may waive the 10 day requirement upon a finding of emergent circumstances.

(h) For purposes of capiases for failure to appear after indictment, newspaper publication alone does not constitute effective notice.

(i) Notwithstanding the provisions of subsections (a) through (d) of this section, where the

WV Legislature

record does not reflect that the person failing to appear received effective notice to appear from the court or where he or she has no documented history of failure to appear, a court, absent good cause shown, may not issue a capias until no fewer than 24 hours have elapsed since the failure to appear. If the defendant voluntarily appears within 24 hours, he or she is not subject to prosecution under this section.

(j) Nothing in subsection (f) of this section may be construed to limit a court's ability to issue a capias upon credible information of danger to a person or the community, new criminal conduct or a bail violation other than failure to appear.

(k) Upon the arrest of a defendant pursuant to a capias in the county in which the indictment or charge is pending, a hearing pursuant to §62-1C-1a of this code shall be scheduled and held within five days of the arrest.

(l) Upon the appearance in the county in which the indictment or charge is pending of a defendant against whom a capias has been issued the court shall provide written notice to the sheriff for his or her dissemination to all appropriate law-enforcement agencies, that the warrant or capias is no longer active and order it to be immediately removed from all databases.

WV Legislature

§62-1C-17c. Bail in cases of crimes between family or household members.

(a) When the offense charged is a crime against a family or household member, it may be a condition of bond that the defendant shall not have any contact whatsoever, direct or indirect, verbal or physical, with the victim or complainant.

(b) In determining conditions of release, the issuing authority shall consider whether the defendant poses a threat or danger to the victim or other family or household member. If the issuing authority makes such a determination, it shall require as a condition of bail that the defendant refrain from entering the residence or household of the victim, the victim's school, and the victim's place of employment or otherwise contacting the victim and/or minor child or household member in any manner whatsoever, and shall refrain from having any further contact with the victim. A violation of this condition may be punishable by the forfeiture of bail and the issuance of a bench warrant for the defendant's arrest or remanding the defendant to custody or a modification of the terms of bail.

(c) The clerk of the court issuing an order pursuant to this section shall issue certified copies of the conditions of bail to the victim upon request without cost.

(d) Where a law-enforcement officer observes any violation of bail condition, including the presence of the defendant or at the home of the victim, the officer shall immediately arrest the defendant, and detain the defendant pending a hearing for revocation of bail.

WV Legislature

§62-1C-18. 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.

WV Legislature

§62-1C-19. 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.

WV Legislature