WEST VIRGINIA CODE CHAPTER 62 ARTICLE 2

WV Legislature

§62-2-1. Prosecutions to be by presentment or indictment.

Prosecutions for offenses against the state, unless otherwise provided, shall be by presentment or indictment. The trial of a person on a charge of felony shall always be by indictment; and indictment may be found in the first instance, whether the accused has been examined or committed by a justice or not.

WV Legislature

§62-2-2. When name of prosecutor, etc., to be affixed to indictment, etc.; requiring security for costs from prosecutor.

In a prosecution for a misdemeanor, the name of the prosecutor, if there be one, and the county of his residence, shall be written at the foot of the presentment or indictment, when it is made or found; and, for good cause, the court may require a prosecutor to give security for the costs, and, if he fail to do so, dismiss the prosecution at his costs.

WV Legislature

§62-2-3. When costs assessed against prosecutor.

If any proceeding for an offense, had or moved at the instance of a prosecutor, be dismissed, or the accused discharged from the accusation, the court or justice before whom the proceeding is may give judgment against the prosecutor in favor of the accused for his costs.

WV Legislature

§62-2-4. Indictment for perjury; admissibility of certain records, etc., as evidence.

In an indictment or accusation of perjury or subornation of perjury, it shall be sufficient to state the substance of the offense charged against the accused, and in what court or by whom the oath was administered which is charged to have been falsely taken, and to make an averment that such court or person had competent authority to administer the same, together with the proper averments to falsify the matter wherein the perjury is assigned, without setting forth any part of any record or proceeding at law or equity, or the commission or authority of the court or person before whom the perjury was committed; but nothing herein shall be construed to allow, without the consent of the accused, a part only of the record, proceeding or writing to be given in evidence on the trial of such indictment or accusation.

WV Legislature

§62-2-5. Indictment for embezzlement; description and proof of money in prosecutions for embezzlement and other crimes.

In a prosecution against a person accused of embezzling, or fraudulently converting to his own use, bullion, money, bank notes, or other security for money, it shall be lawful, in the same indictment, to charge and thereon to proceed against the accused, for any number of distinct acts of such embezzlement or fraudulent conversion which may have been committed by him within six months from the first of the last of such acts; and it shall be sufficient to allege the embezzlement or fraudulent conversion to be of money, bullion, bank notes, or security for money without specifying the particular kind of money, bank notes, bullion or security for money, as the case may be; and such allegation, so far as it regards the description of the property, shall be sustained, if the accused be proved to have embezzled or fraudulently converted to his own use, any bullion, money, bank notes, or security for money (although the particular item or thing embezzled or converted be neither alleged nor proved).

And in any indictment, warrant or information in which it is necessary to describe money current in this state, a description of such money as "United States currency" will be sufficient without specifying the number and denomination thereof, and such description shall be construed to mean national bank notes, United States treasury notes, federal reserve notes, certificates for either gold or silver coin, fractional coin, currency, or any other form of money issued by the United States government and current as money in this state.

WV Legislature

§62-2-6. Indictment for forgery.

In a prosecution for forging, or altering, or attempting to employ as true, any forged instrument or other thing, and in a prosecution for any of the offenses mentioned in article four, chapter sixty-one of this code, it shall not be necessary to set forth any copy or facsimile of such instrument or other thing, but it shall be sufficient to describe the same in such manner as would sustain an indictment for stealing such instrument or other thing, supposing it to be the subject of larceny.

WV Legislature

§62-2-7. Proof of possession of or title to property.

In a prosecution for an offense committed upon or relating to or affecting real estate, or for stealing, embezzling, destroying, injuring, or fraudulently receiving or concealing, any personal estate, it shall be sufficient to prove that when the offense was committed, the actual or constructive possession, or a general or special property in the whole or any part of such estate, was in the person or community alleged in the indictment or other accusation to be the owner thereof.

WV Legislature

§62-2-8. Allegations of intent to injure, cheat or defraud.

Where an intent to injure, defraud, or cheat is required to constitute an offense, it shall be sufficient, in an indictment or accusation therefor, to allege generally an intent to injure, defraud, or cheat, without naming the person intended to be injured, defrauded, or cheated, and it shall be sufficient, and not deemed a variance, if there appear to be any intent to injure, defraud, or cheat the United States, or any state, or any county, corporation, officer or person.

WV Legislature

§62-2-9. Unnecessary allegations may be omitted.

All allegations, unnecessary to be proved, may be omitted in any indictment or other accusation.

WV Legislature

§62-2-10. Defects not invalidating indictment.

No indictment or other accusation shall be quashed or deemed invalid for omitting to set forth that it is upon the oaths of the jurors, or upon their oaths and affirmation; or for the insertion of the words "upon their oath," instead of "upon their oaths"; or for not in terms alleging that the offense was committed "within the jurisdiction of the court," when the averments show that the case is one of which the court has jurisdiction; or for the omission or misstatement of the title, occupation, estate or degree of the accused, or of the name or place of his residence; or for omitting the words "with force and arms," or the statement of any particular kind of force and arms; or for omitting to state, or stating imperfectly, the time at which the offense was committed, when time is not of the essence of the offense; or for failing to allege the value of an instrument which caused death, or to allege that it was of no value; or for omitting to charge the offense to be "against the form of the statute," or statutes; or for the omission or insertion of any other words of mere form or surplusage. Nor shall it be abated for any misnomer of the accused; but the court may, in case of misnomer appearing before or in the course of a trial, forthwith cause the indictment or accusation to be amended according to the fact.

WV Legislature

§62-2-11. Defects cured by verdict.

Judgment in any criminal case, after a verdict, shall not be arrested or reversed upon any exception to the indictment or other accusation, if the offense be charged therein with sufficient certainty for judgment to be given thereon, according to the very right of the case.

WV Legislature

§62-2-12. Discharge of imprisoned person upon failure to indict within certain time; person not indicted by reason of insanity.

A person in jail, on a criminal charge, shall be discharged from imprisonment if he be not indicted before the end of the second term of the court, at which he is held to answer, unless it appear to the court that material witnesses for the state have been enticed or kept away, or are prevented from attendance by sickness or inevitable accident, and except also that, when a person in jail, on a charge of having committed an indictable offense, is not indicted by reason of his insanity at the time of committing the act, the grand jury shall certify that fact to the court; whereupon the court may order him to be sent to a state hospital for the insane, or to be discharged.

WV Legislature

§62-2-13. Process, capias and summons in criminal cases.

When an indictment or presentment is found or made, the court shall award process against the accused to answer to the same, if he be not in custody. Such process, if for a felony, may be a capias or a summons, at the discretion of the court; in all misdemeanor cases, it shall be, in the first instance, a summons, but if a summons be returned executed, or be returned not found, and the defendant does not appear, the court may award a capias.

WV Legislature

§62-2-14. Direction and execution of process; several writs against same person.

The fifth and eleventh sections of article three, chapter fifty-six of this code shall apply to process in criminal as well as in civil cases. Any summons to answer an indictment for a misdemeanor may be served as a notice is served under the first section of article two, chapter fifty-six of this code. The court may, in the same case against the same person, award at the same time, or different times, several writs of summons or capias, directed to officers of different counties.

WV Legislature

§62-2-15. Mailing of process by clerk to officer.

The clerk of every court shall forward by mail all process issued for the state, directed to the officer of any county other than his own, and pay the postage thereon, which, on being duly certified by the court, shall be paid out of the county treasury.

WV Legislature

§62-2-16. Execution of process within state.

When process of arrest in a criminal prosecution is issued from a court during its session, either against a party accused or a witness, the officer to whom it is directed or delivered may execute it in any part of the state.

WV Legislature

§62-2-17. Delivery of prisoner to court, magistrate or jailer.

(a) An officer who, under a capias from a court, arrests a person accused of an offense other than murder in the first degree shall deliver the accused to such court, if sitting, and if such court is not sitting, the officer shall deliver the accused to a magistrate who may admit the accused to bail: *Provided*, That any such bail granted by a magistrate shall be conditioned upon the appearance by the accused before the court on the date provided in the capias for such appearance, or, if no such date is provided in the capias, then such bail shall be conditioned upon the appearance of the accused on the next day on which such court is sitting.

(b) No magistrate shall admit to bail any person arrested under an alias capias.

(c) Bail set by a magistrate may be made and posted before the magistrate court clerk and the recognizance and record thereof, together with any money received therefor, shall be forthwith delivered to the clerk of the circuit court.

(d) An officer who, under a capias from a court, arrests a person accused of an offense not bailable, or for which bail is not given, shall deliver the accused to such court, if sitting, or to the jailer thereof, who shall receive and imprison him or her.

(e) In all cases where a defendant is arrested and held under a capias for failure to appear in the county wherein the charge or charges is pending, and he or she is entitled to admission to bail, an initial appearance shall be held as soon as practicable, or within five days whichever is sooner, and bail shall be considered pursuant to §62-1C-1a of this code.

(f) Upon the appearance of a defendant upon an indictment or complaint upon which a warrant or 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 that it be immediately removed from all databases.

WV Legislature

§62-2-18.

Repealed.

Acts, 1965 Reg. Sess., Ch. 38.

WV Legislature

§62-2-19. Prosecutions relating to license taxes, offenses against public policy, etc.

On any indictment or presentment founded on any provision of article twelve, chapter eleven, or article ten, chapter sixty-one of this code, or for any statutory misdemeanor for which no imprisonment may be inflicted, process may be issued immediately, returnable forthwith. If the accused appear and plead to the charge, the trial shall proceed without delay. If, being summoned, he fail to appear and plead, the court may render judgment in the same manner as if he had confessed to the charge in court; and if the offense be punishable by a fine not fixed by law, a jury shall be impaneled to assess the same.

WV Legislature

§62-2-20. Exceptions to indictments relating to license taxes and offenses against public policy.

No exceptions shall be allowed for any defect or want of form in any presentment or indictment founded on any provision of article twelve, chapter eleven, or article ten, chapter sixty-one of this code, but the court shall give judgment thereon according to the very right of the case.

WV Legislature

§62-2-21. Second capias or trial after summons in misdemeanor cases not covered in §62-2-19.

In prosecutions for misdemeanors, in cases not embraced in section nineteen of this article, if a capias be returned not found, after a summons is returned executed, or if the accused was admitted to bail and make default, the court may either award a new capias, or proceed to trial in the same manner as if the accused had appeared and pleaded not guilty.

WV Legislature

§62-2-22. Discontinuance of criminal prosecution for failure to award process or enter continuance.

There shall be no discontinuance of any criminal prosecution by reason of the failure of the court to award process, or to enter a continuance on the record.

WV Legislature

§62-2-23. Prosecutions against corporations; effect of failure of corporation to appear.

On any indictment or presentment against a corporation, if a summons be served according to the provisions of sections thirteen or fourteen, article three, chapter fifty-six of this code, and the defendant fail to appear, the court may proceed to trial and judgment without further process, as if the defendant had appeared and pleaded not guilty. And where, in any such case, the publication of a copy of the process is required according to said section, the expense of such publication may be certified by the court to the Auditor, and shall be paid out of the treasury of the state; but the same shall be taxed with other costs, and collected from the defendant, if judgment be for the state, and be paid into the treasury of the state by the officer collecting the same.

WV Legislature

§62-2-24. Joinder of certain counts.

A count for receiving stolen goods or for embezzlement may be joined with a count for larceny, in the same indictment; and a count for false swearing may be joined with a count for perjury, in the same indictment.

WV Legislature

§62-2-25. Compromise or suppression of indictment or presentment.

If any prosecuting attorney shall compromise or suppress any indictment or presentment without the consent of the court entered of record, he shall be deemed guilty of malfeasance in office, and may be removed therefrom in the mode prescribed by law.

WV Legislature