
WEST VIRGINIA CODE CHAPTER 62
ARTICLE 3

WV Legislature

§62-3-1. Time for trial; depositions of witnesses for accused; counsel, copy of indictment, and list of jurors for accused; remuneration of appointed counsel.

When an indictment is found in any county, against a person for a felony or misdemeanor, the accused, if in custody, or if he appear in discharge of his recognizance, or voluntarily, shall, unless good cause be shown for a continuance, be tried at the same term. If any witness for the accused be a nonresident of the state, or absent therefrom in any service or employment, so that service of a subpoena cannot be had upon him in this state, or is aged or infirm so that he cannot attend upon the court at the trial, the accused may present to the court in which the case is pending, or to the judge thereof in vacation, an affidavit showing such facts, and stating therein what he expects to prove by any such witness, his name, residence, or place of service or employment; and if such court or judge be of the opinion that the evidence of any such witness, as stated in such affidavit, is necessary and material to the defense of the accused on his trial, an order may be made by such court or judge for the taking of the deposition of any such witness upon such notice to the prosecuting attorney, of the time and place of taking the same, as the court or judge may prescribe; and in such order the court or judge may authorize the employment of counsel, practicing at or near the place where the deposition is to be taken, to cross-examine the witness on behalf of the state, the reasonable expense whereof shall be paid out of the treasury of the state, upon certificate of the court wherein the case is pending. Every deposition so taken may, on the motion of the defendant, so far as the evidence therein contained is competent and proper, be read to the jury on the trial of the case as evidence therein. A court of record may appoint counsel to assist an accused in criminal cases at any time upon request. A copy of the indictment and of the list of the jurors selected or summoned for his trial, as provided in section three of this article, shall be furnished him upon his request, at any time before the jury is impaneled. In every case where the court appoints counsel for the accused and the accused presents an affidavit showing that he cannot pay therefor, the attorney so appointed shall be paid for his services and expenses in accordance with the provisions of article twenty-one, chapter twenty-nine of this code.

§62-3-1a. Written guilty plea; form; right to counsel; effect of plea; failure of plea to be signed or witnessed.

When a person under indictment for a crime indicates that he desires to plead guilty, he may be called upon to sign in open court a form acknowledging his plea to the indictment or to such count or counts thereof as he shall designate. Before accepting a plea of guilty, the court shall satisfy itself by interrogation of the defendant or his counsel that the defendant has received a copy of the indictment and understands the nature of the charges. If the defendant is without counsel, the court shall advise him of his Constitutional right to the assistance of counsel before pleading to the indictment. If the defendant is an indigent, the court shall offer to appoint counsel for him. The plea when signed and witnessed shall become a part of the record of the case. The plea shall be sufficient if it is substantially in the following form:

A. If the defendant is represented by counsel:

STATE OF WEST VIRGINIA

vs. Indictment No.....

.....

(Defendant)

In the presence of, my counsel, who has fully explained the charges contained in the indictment against me and having received a copy of the indictment before being called upon to plead, I hereby plead guilty to said indictment and each count thereof.

Date:

Witness:

.....

(Defendant)

.....

(Counsel for Defendant)

B. If the defendant has waived counsel:

STATE OF WEST VIRGINIA

vs. Indictment No.....

.....
(Defendant)

I certify that I have been advised of my Constitutional right to the assistance of counsel; that I have no money to employ counsel; that I have been offered counsel at no cost to me; and that I have given up my right to have counsel provided to assist me.

I have received a copy of the indictment before being called upon to plead. It has been read or explained to me and I fully understand the nature of the charges against me, including the penalties that the court may impose.

I hereby plead guilty to said indictment and each count thereof.

Date:

Witness:

.....

(Defendant)

.....

(Clerk)

The plea when signed and witnessed shall constitute prima facie evidence that the defendant was fully advised of his rights as herein provided, and that his plea was properly entered. The neglect or failure to cause a plea to be signed or witnessed shall not invalidate the plea or any judgment rendered thereon, provided the record otherwise discloses that the defendant was advised of his rights and that the plea was otherwise properly entered.

§62-3-2. Presence of accused during trial; arraignment; plea.

A person indicted for felony shall be personally present during the trial therefor. If he refuse to plead or answer, and do not confess his guilt, the court shall have the plea of not guilty entered, and the trial shall proceed as if the accused had entered that plea, and judgment upon the verdict in any such trial shall be entered up as in cases of misdemeanor. The formal arraignment of the prisoner, the proclamation by the sheriff, and the charge of the clerk to the jury, as heretofore practiced, shall be dispensed with.

§62-3-3. Selection of jury in felony cases; striking jurors; alternate jurors.

In a case of felony, twenty jurors shall be drawn from those in attendance for the trial of the accused. If a sufficient number of jurors for such panel cannot be procured in this way, the court shall order others to be forthwith summoned and selected, until a panel of twenty jurors, free from exception, be completed, from which panel the accused may strike off six jurors and the prosecuting attorney may strike off two jurors. The prosecuting attorney shall first strike off two jurors, and then the accused six. If the accused failed to strike from such panel the number of jurors this section allows him to strike, the number not stricken off by him shall be stricken off by the prosecuting attorney, so as to reduce the panel to twelve, who shall compose the jury for the trial of the case.

Whenever, in the opinion of the court the trial is likely to be a protracted one, the court may direct that not more than four jurors, in addition to the regular jury, be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impanelled, and two peremptory challenges if three or four alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by this section may not be used against an alternate juror.

§62-3-4. Challenge of jurors.

No challenge of a juror other than that provided for in the preceding section shall be allowed the state or the accused, except for cause, and all challenges shall be tried by the court in which they are made.

WV Legislature

§62-3-5.

Repealed.

Acts, 1965 Reg. Sess., Ch. 40.

WV Legislature

§62-3-6. Custody of jury; board and lodging of jurors; conversation with jurors.

After a jury in a case of felony is impaneled and sworn, the court, in its discretion, may order the jury to be placed in the custody of the sheriff or other officer or officers designated by the court until the jury agree upon a verdict or are discharged by the court. While a jury is in the custody of the sheriff or other officer or officers as herein provided, they shall be furnished with suitable board and lodgings by the sheriff or other officer. After a jury has been impaneled no sheriff or other officer shall converse with, or permit anyone else to converse with, a juror unless by leave of the court. When the court orders a jury to be placed in the custody of the sheriff or other officer or officers, the court shall, in its discretion, determine the manner in which such jury shall be kept in custody by the sheriff or other officer or officers until the jury agree upon a verdict or are discharged by the court.

§62-3-7. Filling vacancy in jury; discharge of jury.

If a juror, after he is sworn, be unable, from any cause, to perform his duty, the court may, in its discretion, cause another qualified juror to be sworn in his place. And in any criminal case the court may discharge the jury, when it appears that they cannot agree in a verdict, or that there is manifest necessity for such discharge.

WV Legislature

§62-3-8. Jury for defendants indicted and tried jointly; jury for separate trials of persons jointly indicted.

Persons indicted and tried jointly, for a felony, shall be allowed to strike from the panel of jurors not more than six thereof, and only such as they all agree upon shall be stricken therefrom; and if they cannot agree upon the names to be so stricken off, the prosecuting attorney shall strike therefrom a sufficient number of names to reduce the panel to twelve. If persons jointly indicted elect to be, or are, tried separately, the panel in the case of each shall be made up as provided in the third section of this article.

§62-3-9.

Repealed.

Acts, 1974 Reg. Sess., Ch. 66.

WV Legislature

§62-3-10.

Repealed.

Acts, 1947 Reg. Sess., Ch. 62.

WV Legislature

§62-3-11.

Repealed.

Acts, 1947 Reg. Sess., Ch. 62.

WV Legislature

§62-3-12.

Repealed.

Acts, 1947 Reg. Sess., Ch. 62.

WV Legislature

§62-3-13. Change of venue.

A court may, on the petition of the accused and for good cause shown, order the venue of the trial of a criminal case in such court to be removed to some other county. When the venue is so changed, the court making the order shall recognize the witnesses and the accused (if the offense be bailable and bail be given) to appear on some certain day before the court to which the case is removed; if the offense be not bailable, or the bail required be not given, the court shall remand him to its own jail, and order its officer to remove him thence to the jail of the court to which the case is so removed, so that he shall be there before the day for the appearance of the witnesses. The clerk of the court that orders a change of venue shall certify copies of such recognizance, and of the record of the case, to the clerk of the court to which the case is removed; and such court shall proceed with the case as if the prosecution had been originally therein, and for that purpose the certified copies aforesaid shall be sufficient.

§62-3-14. Conviction of part of offense charged in indictment.

If a person indicted for a felony be by the jury acquitted of part and convicted of part of the offense charged, he shall be sentenced by the court for such part as he is so convicted of, if the same be substantially charged in the indictment, whether it be felony or misdemeanor.

WV Legislature

§62-3-15. Verdict and sentence in murder cases.

If a person indicted for murder be found by the jury guilty thereof, they shall in their verdict find whether he or she is guilty of murder of the first degree or second degree. If the person indicted for murder is found by the jury guilty thereof, and if the jury find in their verdict that he or she is guilty of murder of the first degree, or if a person indicted for murder pleads guilty of murder of the first degree, he or she shall be punished by imprisonment in the penitentiary for life, and he or she, notwithstanding the provisions of article twelve, chapter sixty-two of this code, shall not be eligible for parole: Provided, That the jury may, in their discretion, recommend mercy, and if such recommendation is added to their verdict, such person shall be eligible for parole in accordance with the provisions of said article twelve, except that, notwithstanding any other provision of this code to the contrary, such person shall not be eligible for parole until he or she has served fifteen years: Provided, however, That if the accused pleads guilty of murder of the first degree, the court may, in its discretion, provide that such person shall be eligible for parole in accordance with the provisions of said article twelve, and, if the court so provides, such person shall be eligible for parole in accordance with the provisions of said article twelve in the same manner and with like effect as if such person had been found guilty by the verdict of a jury and the jury had recommended mercy, except that, notwithstanding any provision of said article twelve or any other provision of this code to the contrary, such person shall not be eligible for parole until he or she has served fifteen years.

§62-3-16. Verdicts jury may find on indictments for homicide or assault.

On an indictment for felonious homicide, the jury may find the accused not guilty of the felony, but guilty of involuntary manslaughter. And on any indictment for maliciously shooting, stabbing, cutting, or wounding a person, or by any means causing him bodily injury, with intent to kill him the jury may find the accused not guilty of the offense charged, but guilty of maliciously doing such act with intent to maim, disfigure, or disable, or of unlawfully doing it, with intent to maim, disfigure, disable, or kill, such person.

§62-3-17. Verdicts jury may find in prosecution for larceny.

In a prosecution for grand larceny, if it be found that the thing stolen is of less value than \$50, the jury may find the accused guilty of petit larceny, except in cases where it is otherwise provided; and in a prosecution for petit larceny, though the thing stolen be of the value of \$50 or more, the jury may find the accused guilty; and in either case he shall be sentenced for petit larceny.

WV Legislature

§62-3-18. Conviction of attempt on trial for felony; effect of general verdict of not guilty.

On an indictment for felony, the jury may find the accused not guilty of the felony, but guilty of an attempt to commit such felony; and a general verdict of not guilty upon such indictment shall be a bar to a subsequent prosecution for an attempt to commit such felony.

WV Legislature

§62-3-19. Faulty counts in indictment.

Where there are several counts in an indictment, and a general verdict of guilty is found, judgment shall be entered against the accused, if any count be good, though others be faulty. But on the trial, the court may, on motion of the accused, instruct the jury to disregard any count that is faulty.

WV Legislature

§62-3-20. Verdict and judgment in joint trial.

Where two or more persons are charged and tried jointly, the jury may render a verdict as to any of them as to whom they may agree; whereupon judgment shall be entered according to the verdict; and as to the others the case shall be tried by another jury.

WV Legislature

§62-3-21. Discharge for failure to try within certain time.

Every person charged by presentment or indictment with a felony or misdemeanor and, remanded to a court of competent jurisdiction for trial, shall be forever discharged from prosecution for the offense, if there be three regular terms of such court, after the presentment is made or the indictment is found against him without a trial, unless the failure to try him was caused by his insanity; or by the witnesses for the state being enticed or kept away, or prevented from attending by sickness or inevitable accident; or by a continuance granted on the motion of the accused; or by reason of his escaping from jail, or failing to appear according to his recognizance, or of the inability of the jury to agree in their verdict; and every person charged with a misdemeanor before a justice of the peace, city police judge, or any other inferior tribunal, and who has therein been found guilty and has appealed his conviction of guilt and sentence to a court of record, shall be forever discharged from further prosecution for the offense set forth in the warrant against him if after his having appealed such conviction and sentence, there be three regular terms of such court without a trial, unless the failure to try him was for one of the causes hereinabove set forth relating to proceedings on indictment.