

WEST VIRGINIA CODE: §62-7-3

§62-7-3. Stay of proceedings; removal to penitentiary after reasonable time pending appeal; procedure for bail.

(a) Whenever a stay of proceedings has been granted pursuant to section one or two of this article or any rule of court relating to stays granted under those sections, and the court upon its own motion or after notice and motion by the prosecuting attorney or the defendant shall determine that it is no longer necessary to retain the defendant at a place of confinement near the place of trial in order to permit the defendant to assist in the preparation of his or her appeal to the Supreme Court of Appeals, then unless the defendant shall have posted bail, the sentencing court may vacate the order granting the stay or, in the case of the Supreme Court of Appeals, the Supreme Court of Appeals may vacate its order granting the stay upon the recommendation of the circuit court. Upon the vacation of the order granting the stay, the defendant shall be removed to the penitentiary pursuant to the provisions of section seven of this article: Provided, That the sentencing court of the Supreme Court of Appeals may order incarceration elsewhere for other good cause. In the case of the removal of a defendant from a place of confinement near the place of trial, if at any time during the pendency of the petition for appeal or the appeal the defendant shall post bail or the defendant or the defendant's counsel shall have exhibited the defendant's readiness and ability to post such bail, then the stay shall again be granted or the supersedeas shall be reinstated and the defendant dealt with as hereinafter provided in this section. If a defendant be confined away from the place of trial under the provisions of this subsection, he may nonetheless be returned to a place of confinement near the place of trial at any time his presence is necessary to facilitate preparation for, or access to, proceedings for an appeal.

(b) If a defendant is not released pending disposition of appeal and is removed to the penitentiary or other place of confinement in accordance with the provisions of subsection (a) of this section, then upon the fixing of bail in a proper case, the defendant may be admitted to bail as heretofore provided by law and released from any incarceration in accordance with the terms and conditions of such bail, by the warden of the state penitentiary or other officer having lawful custody, upon the release order of the clerk or judge of the court before whom such bail is to be given. A release order shall be promptly issued by the clerk or judge when the requirements for bail have been complied with or when the defendant or the defendant's counsel has exhibited the defendant's readiness and ability to comply with such requirements. Such release order may be provisional in form indicating that proper arrangements for bail have been made and could be completed upon the personal appearance of the defendant before the clerk or judge. In order to be admitted to bail following the execution by the clerk or judge of the release order or provisional release order the defendant shall be promptly brought before the court or clerk by the officer having custody. If the circumstances under which bail was fixed have changed so that bail is no longer appropriate, bail may be denied: Provided, That nothing in this subsection is

intended to alter the conditions under which an individual may be admitted to bail under other provisions of law.