WEST VIRGINIA CODE CHAPTER 62 ARTICLE 7

WV Legislature

§62-7-1. Stay of proceedings.

Upon the application of any person entitled, under the provisions of article four, chapter fifty-eight of this code, to an appeal or writ of error from a judgment in a prosecution for any offense or crime, the criminal court, intermediate court or other court of record of limited jurisdiction, or the judge of such court in vacation, shall make an order postponing the execution of the sentence for a reasonable time within which to prepare and present bills of exceptions to the trial court and until a reasonable time beyond the first day of the next regular term of the circuit court of the county.

Upon the application of any person entitled, under the provisions of article five, chapter fifty-eight of this code, to an appeal or writ of error from the judgment a circuit court convicting him of any offense or crime, the circuit court or the judge thereof in vacation, shall make an order postponing the execution of the sentence for a reasonable time to enable him to prepare and present bills of exceptions and to secure a transcript of the evidence before the court at the trial, and until a reasonable time beyond the first day of the next term of the Supreme Court of Appeals.

WV Legislature

§62-7-2. Period of stay when writ of error awarded.

A writ of error, awarded under the provisions of article five, chapter fifty-eight of this code to any judgment of a circuit court referred to in the preceding section, shall operate as a stay of proceedings in the case until the decision of the Supreme Court of Appeals therein. A writ of error awarded under the provisions of article four, chapter fifty-eight of this code, to any judgment of a court of record of limited jurisdiction, by a circuit court or the judge thereof, shall operate as a stay of proceedings in the case until the decision of the circuit court therein.

WV Legislature

§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 trail 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.

WV Legislature

§62-7-4.

Repealed.

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

WV Legislature

§62-7-5.

Repealed.

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

WV Legislature

§62-7-6.

Repealed.

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

WV Legislature

§62-7-7. Removal of convicts to penitentiary -- Generally.

Every person sentenced to confinement in the penitentiary shall remain in the custody of the proper officer of the court pronouncing such sentence until he be delivered to a guard sent and duly authorized by the warden of the penitentiary for the removal of such person to the penitentiary. If such officer fail to make such delivery upon the request of such court, he shall forfeit $100. The warden of the penitentiary shall, so far as consistent with the safe conveyance of prisoners to the penitentiary, cause as many prisoners from the same or several counties to be removed to the penitentiary at the same time, and to that end shall send with the guard authorized to receive such prisoners as many additional guards as are necessary for the purpose, having due regard to economy as well as to the safe conveyance of the prisoners. If in the judgment of the officer of the court pronouncing sentence any facts exist making proper the employment of more guards than usual, he shall bring such facts to the attention of the warden of the penitentiary. The necessary expenses of every such prisoner or convict during his removal to the penitentiary, as well as the necessary expenses of the guard sent for that purpose, shall be paid by the Auditor out of the funds appropriated for criminal charges.

WV Legislature

§62-7-8. Same -- Prevention of rescue or escape; additional guards.

If on the way to the penitentiary or other place, in consequence of an attempt made, or reasonably apprehended, to rescue the prisoner, or in consequence of any other unforeseen danger, the guard to whom such prisoner was delivered is satisfied that more guards than accompanying him are necessary, he may summon such additional guards as are necessary, whose expenses shall be paid as provided for in section seven of this article.

WV Legislature

§62-7-9. Same -- Immunity of guards from arrest.

All guards while proceeding to the place where a prisoner is confined for the purpose of removing him to the penitentiary or other place, and while engaged in such removal, shall be privileged from arrest except for felony and, breach of the peace, such privilege to cover one day for each two hundred miles traveled by railroad and one day for each fifty miles traveled by other conveyances.

WV Legislature

§62-7-10. Prison Commitment order.

The clerk of a circuit court in which a person is sentenced to serve a period of incarceration in a state prison shall transmit to the Commissioner of the Division of Corrections and Rehabilitation a certified commitment order in the form provided for in this section. A person may not be committed to a prison unless the commitment order is signed by the circuit judge with jurisdiction over the matter. The amendments to this section enacted during the 2019 regular session of the Legislature are effective July 1, 2019.

IN THE CIRCUIT COURT OF _____COUNTY, WEST VIRGINIA

State of West Virginia

v. circuit court Case No._____

Defendant: _____

DOB: _____ SSN: XXX-XX-_____ Gender: _____Male/_____Female

WEST VIRGINIA DIVISION OF CORRECTIONS AND REHABILITATION CERTIFIED PRISON COMMITMENT ORDER

On the _____day of _____, 20__, the State of West Virginia, by _____, and the defendant appeared in person and with counsel,_____.

The defendant has been convicted of the following offense(s):

_____

The defendant is committed to the custody of the Commissioner of Corrections and Rehabilitation for a period of:

_____.

Conviction Date: _____ Sentence Date: _____

Effective Sentence Date: _____ Resentence Date: _____ Consecutive to: ____ Concurrent with:

_____

Credit for Jail/Prison Time Served: _____days Credit for Home Incarceration: _____days

Credit for Home Incarceration Parole: _____days Other NonPenal Credit: _____days

Additionally, the court finds:

WV Legislature

_____

The defendant shall be transported to and held in a facility under the control of the Commissioner of the Division of Corrections and Rehabilitation. The court further orders that the cost of incarceration in the jail pending transfer shall be paid by the Commissioner consistent with the provisions of §15A-3-16 of this code.

Special Instructions: _____

It is further ordered that the Circuit Clerk shall immediately transmit a certified copy of this commitment order to the Central Office Inmate Records Manager of the Division of Corrections and Rehabilitation by facsimile at (fax number), by email at (email address) or other electronic transmission, or by mail at (street address).

Enter this _____day of _____, 2____.

_____

Circuit Judge

WV Legislature

§62-7-10a. Jail Commitment order.

The clerk of a circuit court or magistrate court in which a person is sentenced to serve a period of incarceration in a jail facility under the control of the Commissioner of Corrections and Rehabilitation shall transmit to the Commissioner of the Division of Corrections and Rehabilitation a certified commitment order in the form provided for in this section. A person may not be committed to a jail unless the commitment order is signed by the circuit court judge or magistrate with jurisdiction over the matter. The amendments to this section enacted during the 2019 regular session of the Legislature are effective on July 1, 2019.

IN THE CIRCUIT/MAGISTRATE COURT OF _____COUNTY, WEST VIRGINIA

State of West Virginia

v. circuit/magistrate court Case No._____

Defendant: _____

DOB: _____ SSN: XXX-XX-_____ Gender: _____Male/_____Female

WEST VIRGINIA DIVISION OF CORRECTIONS AND REHABILITATION CERTIFIED JAIL COMMITMENT ORDER

On the _____day of _____, 20__, the State of West Virginia, by _____, and the defendant appeared in person and with counsel,_____.

The defendant has been convicted of the following offense(s):

_____

The defendant is committed to the custody of the Commissioner of Corrections and Rehabilitation for a period of:

_____.

Conviction Date: _____ Sentence Date: _____

Effective Sentence Date: _____ Resentence Date: _____ Consecutive to: ____ Concurrent with:

_____

Credit for Time Served: _____days Credit for Home Incarceration: _____days

Credit for Home Incarceration Parole: _____days Other NonPenal Credit: _____days

WV Legislature

Additionally, the court finds:

_____

The defendant shall be transported to and held in a jail facility for the prescribed period of confinement in accordance with law. The court further orders that the cost of incarceration of misdemeanants sentenced to confinement in a jail shall be paid in accordance with the provisions of §15A-3-16 of this code.

Special Instructions: _____

It is further ordered that the Circuit Clerk or Magistrate Court Clerk shall immediately transmit a certified copy of this commitment order to the Central Office Inmate Records Manager of the Division of Corrections and Rehabilitation by facsimile at (fax number), by email at (email address) or other electronic transmission, or by mail at (street address).

Enter this _____day of _____, 2____.

_____

Circuit Judge/Magistrate

WV Legislature