

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1965

ENROLLED

HOUSE BILL No. 505

(By Mr. Speaker, Mr. White)

PASSED March 5 1965

In Effect ninety days from Passage



FILED IN THE OFFICE OF
JOE P. DUNST
SECRETARY OF STATE
THIS DATE 3-19-65

#505#

ENROLLED

House Bill No. 505

(By MR. SPEAKER, MR. WHITE)

[Passed March 5, 1965; in effect ninety days from passage.]

AN ACT to repeal articles one and six, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof new articles one and six; to repeal section eighteen, article two of said chapter sixty-two; to amend said chapter sixty-two by adding thereto three new articles designated articles one-a, one-b and one-c; to amend article eighteen, chapter fifty of said code by adding thereto a new section, designated section eleven-a; to amend article three of said chapter sixty-two by adding thereto a new section, designated section one-a; to amend and reenact sections two, three, four, six and ten, article eighteen of said chapter fifty; and to

amend and reenact section fourteen, article two of said chapter sixty-two, relating to criminal procedure generally and specifically to complaints; the issuance, form, execution and return of arrest warrants; arrests without warrants; continuances generally; certain provisions with respect to appeals from justices of the peace in criminal cases; the construction of chapter fifty and chapter sixty-two of said code; the rights of defendant following arrest; offenses arising in another county; preliminary examinations; concurrent powers of officers and courts; the authority to issue search and seizure warrants and the grounds therefor; the definition of "property" which may be searched for and seized under a search and seizure warrant; the issuance, contents, execution and return of search and seizure warrants; the right to break into or out of and/or enter in execution of search and seizure warrants; motion for return of property and to suppress evidence obtained by an unlawful search and seizure and the grounds therefor; the disposition of property seized pursuant to search and seizure warrants; the scope of and legislative intent concerning said article one-a; discovery; requiring a bill

of particulars; motion for the production for examination, copying or photographing of statements or confessions of a defendant, the results or reports of examinations and tests or experiments, books, papers or tangible objects and the time for such motion; cases in which bail is mandatory; cases in which bail is discretionary; revocation of order admitting person to bail pending appeal from conviction in certain cases; review by summary petition of amount of or discretionary denial of bail; forms of bail permitted; receipt of bail; factors to be considered by court or justice in fixing amount of bail for one or more charges; the giving, execution, form and requirements of a recognizance; bail and indigent persons; holding of bail deposits and return of recognizance; the furnishing of reports by justices of the peace as to all cash deposited as bail and the disposition of all bail; the continuing in effect of bail; forfeiture of bail and the setting aside of such forfeiture; enforcement of forfeiture by judgment and execution; procedure for such enforcement; remission of penalty upon forfeiture; exoneration of surety on recognizance, release

of bail and return of bail deposit; saving action or judgment for forfeiture in spite of failure to record declaration of forfeiture or defects in the form of bail; bailpieces; aid to surety on recognizance; bail for witnesses; guaranteed arrest bond certificates in lieu of cash or recognizance in certain cases; application to municipalities of provisions of said article one-c relating to justices of the peace; the direction and execution of process; guilty pleas in writing of persons under indictment; ascertaining that accused has received copy of indictment and understands charges against him before accepting guilty plea; advising accused of his right to counsel; offering to appoint counsel for indigent accused; form of writing entering guilty plea and, where counsel is waived, acknowledging such waiver; written guilty plea as prima facie evidence that accused was fully advised of his rights and that guilty plea was properly entered; effect of failure to have written guilty plea signed or witnessed; recognizance to keep the peace and the condition thereof; failure to give recognizance to keep the peace, the effect thereof and release from custody; recognizance for insane person or minor; witnesses in crim-

inal cases; failure of juror to attend inquest out of court and the effect thereof; proceedings for fines for contempt or disobedience of process; providing numerous severability clauses; providing general repealer provisions; and providing certain criminal penalties.

Be it enacted by the Legislature of West Virginia:

That articles one and six, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and that new articles one and six be enacted in lieu thereof; that section eighteen, article two of said chapter sixty-two be repealed; that said chapter sixty-two be amended by adding thereto three new articles, designated articles one-a, one-b and one-c; that article eighteen, chapter fifty of said code be amended by adding thereto a new section, designated section eleven-a; that article three of said chapter sixty-two be amended by adding thereto a new section, designated section one-a; that sections two, three, four, six and ten, article eighteen of said chapter fifty be amended and reenacted; and that section fourteen, article two of said chapter sixty-two be amended and reenacted, all to read as follows:

CHAPTER 50. JUSTICES AND CONSTABLES.**Article 18. Criminal Jurisdiction and Procedure; Appeals.****Section 2. Warrant; When Not Required.—**Proceed-

ings before a justice shall be by warrant of arrest in the
name of the state, except that when an offense of which
the justice has jurisdiction is committed in his presence,
or in that of a constable, either of them may forthwith
apprehend the offender or cause him to be apprehended,
and in such case the offender may be tried before the jus-
tice and dealt with according to law. Following such ar-
rest, the provisions of section five, article one, chapter
sixty-two of this code shall apply with like effect as if set
forth herein.

Sec. 3. Direction and Execution of Warrant.—If the

justice have jurisdiction, the warrant of arrest may be
directed to and executed by any officer authorized by law
to arrest persons charged with offenses against the state:
Provided, That a constable, sheriff or deputy sheriff of a
particular county may execute the same anywhere within
his county, or on any river or creek adjoining thereto.

8 Such warrant may be directed to the officer by name or
9 official designation.

Sec. 4. Issuance of Warrant.—Following issuance of
2 the warrant of arrest, the provisions of article one, chap-
3 ter sixty-two of this code shall apply with like effect as
4 if set forth herein.

Sec. 6. Trial; Continuance; Bail.—Upon appearance of
2 the accused, the justice may proceed to try the case. How-
3 ever, if a continuance is requested, the provisions of sec-
4 tion nine, article one, chapter sixty-two of this code shall
5 apply. When a continuance is granted at the instance of
6 the accused and the justice determines not to release the
7 accused from custody unless bail is furnished, the pro-
8 visions of article one-c, chapter sixty-two of this code
9 shall apply. In the event of such a continuance, and if
10 the justice determines not to release the accused without
11 bail and the same is not furnished, the justice may com-
12 mit the accused to jail until the time appointed for trial,
13 but such imprisonment shall not exceed five days. The
14 justice may render judgment on bail taken by him pur-

15 suant to this section, in accordance with the provisions
16 of said article one-c.

Sec. 10. Appeals; Criminal Cases; Bail; Procedure in
2 **Appellate Court.**—Every person sentenced to imprison-
3 ment by the judgment of a justice, or to the payment of
4 a fine of ten dollars or more (and in no case shall a judg-
5 ment for a fine of less than ten dollars be given by a jus-
6 tice if the defendant, his agent or attorney object thereto),
7 shall be allowed an appeal to the court of the county hav-
8 ing jurisdiction thereof upon application therefor within
9 a reasonable time after such judgment is entered. The
10 provisions of article one-c, chapter sixty-two of this code
11 shall apply with respect to bail. If such appeal be taken,
12 the warrant of arrest, the transcript of the judgment, any
13 bail and other papers of the case shall be forthwith de-
14 livered by the justice to the clerk of the court, and the
15 court shall proceed to try the case as upon indictment or
16 presentment, and render such judgment, without remand-
17 ing the case, as the law and the evidence may require. If
18 the judgment be against the accused, it shall include the
19 costs incurred in the proceedings before the justice as

20 well as in such court, including a fee of ten dollars to the
21 prosecuting attorney, and the jailer's fee, if any.

Sec. 11-a. Provisions of This Chapter Shall Be Construed to Be Consistent with Certain Provisions of Chapter Sixty-two.—Any inconsistent provisions of this chapter shall be construed so as to conform to and be consistent with the pertinent provisions of articles one, one-a, one-b and one-c, chapter sixty-two of this code.

CHAPTER 62. CRIMINAL PROCEDURE

Article 1. Preliminary Procedure.

Section 1. Complaint.—The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a justice of the peace.

Sec. 2. Warrant; Issuance.—If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to arrest persons charged with offenses against the state. More than one warrant may issue on the same complaint.

Sec. 3. Same; Form.—The warrant shall be signed by
2 the justice and shall contain the name of the defendant
3 or, if his name is unknown, any name or description by
4 which he can be identified with reasonable certainty. It
5 shall describe the offense charged in the complaint. It
6 shall command that the defendant be arrested and
7 brought before a justice of the county in which the war-
8 rant is executed.

Sec. 4. Same; Execution.—The warrant shall be exe-
2 cuted by the arrest of the defendant. It may be executed
3 at any time or place within the state. The officer need
4 not have the warrant in his possession at the time of
5 the arrest, but upon request by the defendant, the officer
6 shall show the warrant to him as soon as possible. If
7 the officer does not have the warrant in his possession
8 at the time of the arrest, he shall then inform the de-
9 fendant of the offense charged and of the fact that a
10 warrant has been issued. While the complaint is pending,
11 a warrant returned unexecuted and not cancelled or a
12 duplicate warrant may be delivered to the same or an-
13 other authorized officer for execution.

Sec. 5. Same; Return.—An officer making an arrest
2 under a warrant issued upon a complaint, or any person
3 making an arrest without a warrant for an offense com-
4 mitted in his presence, shall take the arrested person
5 without unnecessary delay before a justice of the county
6 in which the arrest is made. When a person arrested
7 without a warrant is brought before a justice, a complaint
8 shall be filed and a warrant issued forthwith. The officer
9 executing the warrant shall make return thereof to the
10 justice before whom the defendant is brought.

Sec. 6. Rights of Defendant.—The justice shall in
2 plain terms inform the defendant of the nature of the
3 complaint against him, of his right to counsel, and,
4 if the offense is to be presented for indictment, of his
5 right to have a preliminary examination. He shall also
6 inform the defendant that he is not required to make a
7 statement and that any statement made by him may be
8 used against him. He shall provide the defendant reason-
9 able means to communicate with an attorney or with at
10 least one relative or other person for the purpose of ob-
11 taining counsel or arranging bail. The defendant shall

OK
6-13
29
COP

12 not be committed to jail or removed from the county of
13 arrest until he has had a reasonable opportunity to confer
14 with counsel or to arrange bail. He may be detained under
15 such security measures as the circumstances warrant. If
16 the defendant is unable to provide bail or if the offense is
17 unbailable, he shall be committed to jail.

Sec. 7. Offense Arising in Other County.—If the war-
2 rant issued, or if the offense is alleged to have been com-
3 mitted, in a county other than the county of arrest, all
4 papers in the proceeding shall be promptly transmitted
5 to a justice of the county having jurisdiction of the offense
6 for preliminary examination or trial. If the defendant is
7 unable to provide bail in the county of arrest, he shall be
8 committed to the custody of an officer who shall take him
9 without unnecessary delay before a justice of the county
10 wherein the examination or trial is to be held, there to
11 be dealt with as provided by law.

Sec. 8. Preliminary Examination.—If the offense is
2 to be presented for indictment, the preliminary examina-
3 tion shall be conducted by a justice of the county in which
4 the offense was committed within a reasonable time after

5 the defendant is arrested, unless the defendant waives
6 examination. The defendant shall not be called upon to
7 plead. Witnesses shall be examined and evidence intro-
8 duced for the state under the rules of evidence prevailing
9 in criminal trials generally. The defendant or his attorney
10 may cross-examine witnesses against him and may intro-
11 duce evidence in his own behalf. On motion of either the
12 state or the defendant, witnesses shall be separated and
13 not permitted in the hearing room except when called to
14 testify. If the defendant waives preliminary examination
15 or if, after hearing, it appears from the evidence that
16 there is probable cause to believe that an offense has been
17 committed and that the defendant has committed it, the
18 justice shall forthwith hold him to answer in the court
19 having jurisdiction to try criminal cases. If the evidence
20 does not establish probable cause, the defendant shall be
21 discharged. After concluding the proceeding the justice
22 shall transmit forthwith to the clerk of the court to
23 which the defendant is held to answer all papers in the
24 proceeding and any bail taken by him.

Sec. 9. Continuance.—The justice shall grant upon re-
2 quest of the defendant one continuance for a period not

3 to exceed ten days. A continuance for a like period shall
4 be granted on request of the state if the defendant has
5 been admitted to bail. No other continuance shall be
6 granted except for good cause or by mutual consent of
7 the state and the defendant.

Sec. 10. Concurrent Powers.—A judge of a court hav-
2 ing jurisdiction to try criminal offenses shall have the
3 same power to issue warrants as conferred upon a justice
4 of the peace by this article. A mayor or judge of a
5 police court acting in the capacity of a justice of the
6 peace shall have all the powers and duties conferred upon
7 a justice by this article.

Sec. 11. Repeal.—All provisions of this code which
2 are inconsistent with the provisions of this article are
3 hereby repealed to the extent and only to the extent of
4 such inconsistency: *Provided*, That under no circum-
5 stances shall the foregoing repealer provision or the pro-
6 visions of this article be construed as repealing, limiting
7 or in any way altering the provisions of article nineteen,
8 chapter seventeen-c of this code.

Sec. 12. Severability.—If any provision of this article
2 or the application thereof to any person or circumstance
3 is held invalid, such invalidity shall not affect other pro-
4 visions or applications of the article which can be given
5 effect without the invalid provision or its application, and
6 to this end, the provisions of this article are declared to
7 be severable.

Article 1-a. Search and Seizure.

Section 1. Authority to Issue Warrant.—A search war-
2 rant authorized by this article may be issued by a judge
3 of a court having jurisdiction to try criminal cases in the
4 county, or by a justice of the county, or by the mayor
5 or judge of the police court of the municipality, wherein
6 the property sought is located.

Sec. 2. Grounds for Issuance; Definition.—A warrant
2 may be issued under this article to search for and seize
3 any property
4 (a) Stolen, embezzled or obtained by false pretenses;
5 or
6 (b) Designed or intended for use or which is or has
7 been used as a means of committing a criminal offense; or

8 (c) Manufactured, sold, kept, concealed, possessed,
9 controlled, or designed or intended for use or which is or
10 has been used, in violation of the criminal laws of this
11 state heretofore or hereinafter enacted.

12 The term "property" shall include documents, books
13 and papers and any other tangible objects.

Sec. 3. Issuance and Contents.—A warrant shall issue
2 only upon complaint on oath or affirmation supported by
3 affidavit sworn to or affirmed before the judge or magis-
4 trate setting forth the facts establishing the grounds for
5 issuing the warrant. If the judge or magistrate is satis-
6 fied that there is probable cause to believe that grounds
7 therefor exist, he shall issue a warrant identifying the
8 property and particularly describing the place, or naming
9 or particularly describing the person, to be searched. The
10 warrant shall be directed to the sheriff or any deputy
11 sheriff or constable of the county, to any member of the
12 department of public safety or to any police officer of
13 the municipality wherein the property sought is located,
14 or to any other officer authorized by law to execute
15 search warrants. It shall state the grounds or probable

16 cause for its issuance and the names of the persons whose
17 affidavits have been taken in support thereof. It shall
18 command the officer to search forthwith the person or
19 place named for the property specified, to seize such
20 property and bring the same before the judge or magis-
21 trate issuing the warrant. Such warrant may be executed
22 either in the day or night.

Sec. 4. Execution and Return with Inventory.—The
2 warrant may be executed and returned only within ten
3 days after its date. The officer taking property under the
4 warrant shall give to the person from whom or from
5 whose premises the property is taken a copy of the war-
6 rant and a receipt for the property taken; or if the person
7 from whose premises the property is taken is not present
8 at the time, the officer shall leave the copy and receipt
9 at the place from which the property is taken. The return
10 shall be made promptly and shall be accompanied by a
11 written inventory of any property taken. The judge or
12 magistrate shall upon request deliver a copy of the in-
13 ventory to the person from whom or from whose premises
14 the property was taken.

Sec. 5. Breaking and Entering Premises.—The officer
2 may break into a house, building or structure, or any
3 part thereof, or anything therein, or any vehicle, vessel
4 or other conveyance, to execute a search warrant, or
5 commit such breaking as may be necessary to liberate
6 himself or a person aiding him in the execution of the
7 warrant. If the place to be searched is a dwelling he shall
8 not attempt a forcible entry until he shall have given
9 notice of his authority and purpose and shall have been
10 refused admittance.

Sec. 6. Motion for Return of Property and to Suppress
2 **Evidence.**—A person aggrieved by an unlawful search
3 and seizure may move for the return of the property and
4 to suppress for use as evidence anything so seized on the
5 ground that (1) the property was illegally seized without
6 a warrant, or (2) the warrant is insufficient on its face,
7 or (3) the property seized is not that described in the
8 warrant, or (4) there was not probable cause for be-
9 lieving the existence of the grounds on which the war-
10 rant was issued, or (5) the warrant was illegally executed.
11 If the offense giving rise to the issuance of the warrant

12 be one which a magistrate has jurisdiction to hear and
13 determine, the motion may be made to him. If the offense
14 is cognizable only before a court of record the motion
15 shall be made to the court having jurisdiction. The judge
16 or magistrate shall receive evidence on any issue of fact
17 necessary to the decision of the motion. If the motion is
18 granted the property shall be returned unless otherwise
19 subject to lawful detention and it shall not be admissible
20 in evidence at any hearing or trial. The motion may be
21 made before trial or hearing upon three days' notice, or,
22 the motion may be made or renewed at the trial or
23 hearing.

Sec. 7. Disposition of Seized Property.—Property taken
2 pursuant to the warrant shall be preserved as directed
3 by the court or magistrate for use as evidence and there-
4 after shall be returned, destroyed or otherwise disposed
5 of as the court or magistrate may direct.

Sec. 8. Scope; Legislative Intent; Repeal.—It is in-
2 tended that this article govern the issuance and execu-
3 tion of all search warrants, and no subsequent legislation
4 shall be held to supersede or modify the provisions of this

5 article except to the extent that such legislation shall do
6 so specifically and expressly. It is recognized that
7 throughout this code there are many provisions dealing
8 with the issuance and execution of search warrants, and
9 it is not possible at this time to amend and reenact or to
10 specifically repeal those provisions. Accordingly, all such
11 provisions shall be construed so as to conform to and be
12 consistent with the pertinent provisions of this article. In
13 the event that there are provisions in this code so incon-
14 sistent with the provisions of this article as to preclude
15 such construction, such other provisions are hereby re-
16 pealed to the extent of such inconsistency.

Sec. 9. Severability.—If any provision of this article
2 or the application thereof to any person or circumstance
3 is held invalid, such invalidity shall not affect other pro-
4 visions or applications of the article which can be given
5 effect without the invalid provision or its application, and
6 to this end, the provisions of this article are declared to
7 be severable.

Article 1-b. Discovery.

Section 1. Bill of Particulars.—The court for cause

2 may direct the prosecuting attorney to file a bill of par-
3 ticulars. A bill of particulars may be amended at any
4 time subject to such conditions as justice requires.

Sec. 2. Defendant's Statements; Reports of Exami-
nations and Tests; Defendant's Books, Papers and Tan-
gible Objects.—Upon motion of a defendant the court
4 may order the prosecuting attorney to permit the de-
5 fendant to examine and copy or photograph any relevant
6 (1) written or recorded statements or confessions made
7 by the defendant, or copies thereof, which are known by
8 the prosecuting attorney to be within the possession,
9 custody or control of the state, (2) results or reports of
10 physical or mental examinations, and of scientific tests
11 or experiments made in connection with the particular
12 case, or copies thereof, which are known by the prose-
13 cuting attorney to be within the possession, custody or
14 control of the state, and (3) books, papers or tangible
15 objects belonging to or seized from the defendant which
16 are known by the prosecuting attorney to be within the
17 possession, custody or control of the state.

Sec. 3. Time of Motion.—A motion under this article
2 may be made at any time not later than ten days before
3 trial, or at such reasonable later time as the court may
4 permit.

Sec. 4. Severability.—If any provision of this article
2 or the application thereof to any person or circumstance
3 is held invalid, such invalidity shall not affect other pro-
4 visions or applications of the article which can be given
5 effect without the invalid provision or its application, and
6 to this end, the provisions of this article are declared to
7 be severable.

Article 1-c. Bail.

Section 1. Bail; Right to; Review.—(a) A person
2 arrested for an offense not punishable by death or life
3 imprisonment shall be admitted to bail by the court or
4 justice. A person arrested for an offense punishable by
5 death or life imprisonment may, in the discretion of the
6 court that will have jurisdiction to try the offense, be ad-
7 mitted to bail.

8 (b) Bail may be allowed pending appeal from a con-
9 viction for an offense not punishable by death or life im-

10 imprisonment. The court or judge allowing bail pending
11 appeal may at any time revoke the order admitting the
12 defendant to bail.

13 (c) The amount of bail or the discretionary denial of
14 bail at any stage of the proceedings may be reviewed by
15 summary petition first to the lower appellate court, if
16 any, and thereafter by summary petition to the supreme
17 court of appeals or any judge thereof.

Sec. 2. Same; Form.—Bail is security for the appear-
2 ance of a defendant to answer to a specific criminal
3 charge before any court or justice at a specific time or
4 at any time to which the case may be continued. It may
5 take any of the following forms:

6 (a) The deposit by the defendant or by some other
7 person for him of cash, provided, if cash totaling more
8 than five hundred dollars for one or more offenses is
9 tendered as bail to a justice by or on behalf of any de-
10 fendant, the justice shall not receive same but shall direct
11 that the sum be forthwith deposited with the clerk of the
12 court having jurisdiction to try criminal cases.

13 (b) The written undertaking by one or more persons
14 to forfeit a sum of money equal to the amount of the

15 bail if the defendant is in default for appearance, which
16 shall be known as a recognizance.

17 (c) Such other form as the judge of the court that
18 will have jurisdiction to try the offense may determine.

19 All bail shall be received by the clerk of the court, or
20 by the justice and, except in case of recognizance, re-
21 ceipts shall be given therefor by him.

Sec. 3. Same; Amount.—The amount of bail shall be
2 fixed by the court or justice with consideration given to
3 the seriousness of the offense charged, the previous crim-
4 inal record of the defendant, his financial ability, and
5 the probability of his appearance. When two or more
6 charges are filed or are pending against the same person
7 at or about the same time, the bail given may be made
8 to include all offenses charged against the defendant.

Sec. 4. Recognizance.—The recognizance shall be
2 signed by the defendant. It shall also be signed by one
3 or more adult persons owning real property in the state.
4 The court or justice may require that justification of
5 surety be furnished. The assessed value of the real prop-
6 erty as shown on the county land books over and above

7 all liens and encumbrances shall not be less than one
8 half the amount of the bail. Or, the recognizance may
9 be signed by the defendant and a surety company au-
10 thorized to do business in this state. If the offense is a
11 felony, the judge of the court that will have jurisdiction
12 to try the offense may release the defendant on his own
13 recognizance. If the offense is a misdemeanor, either the
14 court or justice may release the defendant on his own
15 recognizance. An indigent person who the court is satis-
16 fied will appear as required shall not be denied bail be-
17 cause of his inability to furnish recognizance.

Sec. 5. Same; Return; Report from Justice.—The

2 recognizance shall be returnable to and all deposits shall
3 be held by or subject to the order of the court or justice
4 before whom the defendant is to appear initially, and
5 upon the transfer of the case to any other court or justice
6 shall be returnable to and transmitted to such other court
7 or justice. Each justice of the peace shall during the first
8 week of each month render under oath to the prosecuting
9 attorney of his county a true and complete statement of

10 all cash deposited as bail with such justice during the pre-
11 ceding calendar month and of all cash deposited as bail
12 which is, on the date of the report, in his possession. Such
13 statement shall also set forth the name of each defend-
14 ant, the amount of the bail deposited during the preced-
15 ing month and the disposition of the same. The failure
16 to render such report complete in all respects as to the
17 details required herein shall be deemed a breach of the
18 justice's official duty.

Sec. 6. Continuing Bail.—The bail as initially given
2 may continue in effect pending indictment, arraignment,
3 continuance, trial and appeal after conviction, as the court
4 may direct.

Sec. 7. Forfeiture; Declaration.—If there is a breach
2 of condition of the bail, the court or justice shall declare
3 the bail forfeited.

Sec. 8. Same; Setting Aside.—The court or justice
2 may direct that a forfeiture be set aside, upon such con-
3 ditions as may be imposed, if it appears that justice does
4 not require the enforcement of the forfeiture.

Sec. 9. Same; Enforcement.—When a forfeiture has
2 not been set aside, the court or justice, upon motion of
3 the state, shall enter a judgment of default and execu-
4 tion may issue thereon: *Provided*, That if the forfeiture
5 is declared in a court of record, the order taking judg-
6 ment shall be entered at the same term of court in which
7 the forfeiture was declared: *And provided further*, That
8 if the deposit for bail be by a person other than the de-
9 fendant, or if the bail be in the form of recognizance, such
10 person making the deposit or the surety on the recogniz-
11 ance shall be given ten days' notice by certified mail at
12 his last known address to appear and show cause why a
13 judgment of default should not be entered. Execution
14 shall issue in the name of the state and shall proceed in
15 the manner provided by law in civil actions. If the bail
16 be in the form of bonds or stocks, the judgment order
17 may direct that all or part thereof be sold through a state
18 or national bank or through a brokers exchange regis-
19 tered with the Federal Securities and Exchange Commis-
20 sion.

Sec. 10. Same; Limited Jurisdiction.—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.

Sec. 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.

Sec. 12. Same; Exoneration, Return of Deposit.—When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court or justice 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.

Sec. 13. Same; Defects in Form.—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.

Sec. 14. Bailpiece.—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, justice or clerk shall issue to the surety a bailpiece. Any officer having authority to execute a warrant of arrest shall assist the surety holding such bailpiece to take the accused into custody and produce him before the court or justice. The surety may take the accused into custody and surrender him to the court or justice without such bailpiece.

Sec. 15. Bail for Witness.—The bail for a witness for or against the accused shall be condition upon his appearance at such time and place as the court or justice shall direct.

Sec. 16. Guaranteed Arrest Bond Certificate.—For a misdemeanor violation of any motor vehicle law of the

3 state or any municipality, except reckless driving or driv-
4 ing while intoxicated, the guaranteed arrest bond cer-
5 tificate of any surety company licensed to do business by
6 the insurance commissioner, when presented by the per-
7 son whose signature appears thereon shall be accepted as
8 bail in lieu of cash or recognizance in an amount not to
9 exceed five hundred dollars. A "guaranteed arrest bond
10 certificate" shall mean any printed card or certificate
11 issued by an automobile club or association to its mem-
12 bers in good standing bearing the signature of the mem-
13 ber and containing a printed statement that such club
14 or association and a surety company will guarantee the
15 payment of any fine or forfeiture imposed on the member
16 in an amount not to exceed five hundred dollars if the
17 member fails to appear in court as required.

Sec. 17. Municipalities.—Bail for a person accused of
2 an offense against a municipality shall be governed by
3 the provisions of this article applicable to a justice, ex-
4 cept that the bail may be deposited with the mayor or
5 with such other officer of the municipality as may be
6 designated by the mayor or other chief executive officer

7 of the municipality, and proceedings for forfeiture shall
8 be prosecuted in the name and for the benefit of the
9 municipality.

Sec. 18. Repeal.—All provisions of this code which are
2 inconsistent with the provisions of this article are hereby
3 repealed to the extent and only to the extent of such in-
4 consistency.

Sec. 19. Severability.—If any provision of this article
2 or the application thereof to any person or circumstance
3 is held invalid, such invalidity shall not affect other pro-
4 visions or applications of the article which can be given
5 effect without the invalid provision or its application, and
6 to this end, the provisions of this article are declared to
7 be severable.

Article 2. Presentments and Indictments.

Section 14. Direction and Execution of Process; Sev-
2 **eral Writs.**—The fifth and eleventh sections of article
3 three, chapter fifty-six of this code shall apply to process
4 in criminal as well as in civil cases. Any summons to
5 answer an indictment for a misdemeanor may be served
6 as a notice is served under the first section of article two,

7 chapter fifty-six of this code. The court may, in the same
8 case against the same person, award at the same time, or
9 different times, several writs of summons or capias, di-
10 rected to officers of different counties.

Article 3. Trial of Criminal Cases.

Section 1-a. Written Guilty Plea; Form; Right to
2 **Counsel.**—When a person under indictment for a crime
3 indicates that he desires to plead guilty, he may be called
4 upon to sign in open court a form acknowledging his
5 plea to the indictment or to such count or counts thereof
6 as he shall designate. Before accepting a plea of guilty,
7 the court shall satisfy itself by interrogation of the de-
8 fendant or his counsel that the defendant has received
9 a copy of the indictment and understands the nature of
10 the charges. If the defendant is without counsel, the
11 court shall advise him of his constitutional right to the
12 assistance of counsel before pleading to the indictment.
13 If the defendant is an indigent, the court shall offer to
14 appoint counsel for him. The plea when signed and wit-
15 nessed shall become a part of the record of the case. The

16 plea shall be sufficient if it is substantially in the follow-
17 ing form:

18 A. If the defendant is represented by counsel:

19 STATE OF WEST VIRGINIA

20 vs. Indictment No. _____

21 _____

22 (Defendant)

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

28 Date: _____

29 Witness:

30 _____

31 (Defendant)

32 _____

33 (Counsel for Defendant)

34 B. If the defendant has waived counsel:

35 STATE OF WEST VIRGINIA

36 vs. Indictment No. _____

37 _____

38 (Defendant)

39 I certify that I have been advised of my constitutional
40 right to the assistance of counsel; that I have no money
41 to employ counsel; that I have been offered counsel at
42 no cost to me; and that I have given up my right to have
43 counsel provided to assist me.

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

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

51 Date: _____

52 Witness:

53 _____

54 (Defendant)

55 _____

56 (Clerk)

57 The plea when signed and witnessed shall constitute
58 prima facie evidence that the defendant was fully ad-
59 vised of his rights as herein provided, and that his plea

60 was properly entered. The neglect or failure to cause
61 a plea to be signed or witnessed shall not invalidate the
62 plea or any judgment rendered thereon, provided the
63 record otherwise discloses that the defendant was ad-
64 vised of his rights and that the plea was otherwise prop-
65 erly entered.

**Article 6. Miscellaneous Provisions Concerning Criminal Pro-
cedure.**

Section 1. Recognizance to Keep the Peace; Condition.

2 —Every recognizance to keep the peace shall be condi-
3 tioned to the effect that the person of whom it is taken
4 shall keep the peace and be of good behavior for such
5 time, not exceeding one year, as the court or justice re-
6 quiring it may direct; and if such court or justice directs,
7 it may, when taken of a person charged with an offense,
8 be with condition for so keeping the peace and being of
9 good behavior, in addition to the other conditions of his
10 recognizance imposed in accordance with the provisions
11 of article one-c of this chapter.

**Sec. 2. Failure to Give Recognizance to Keep the
2 Peace; Commitment to Jail; Release.**—A person not giving

3 and for whom no other person gives, a recognizance to
4 keep the peace shall be committed to jail. He shall be
5 discharged therefrom when such recognizance is given
6 before the court or justice, or when the period for which
7 it was required has elapsed, or when the discharge of such
8 person is directed by the court or justice having jurisdic-
9 tion thereof.

Sec. 3. Recognizance of Insane Person or Minor.—A
2 recognizance which would be taken of a person but for
3 his being insane or a minor, may be taken of another per-
4 son, and without further surety, if such other person be
5 deemed sufficient.

Sec. 4. Witnesses in Criminal Cases; Forced Attend-
2 **ance.**—In a criminal case, a summons for a witness may be
3 issued by the prosecuting attorney. Sections one, four,
4 five, six and eight, article five, chapter fifty-seven of this
5 code shall, in other respects, apply to a criminal as well
6 as a civil case, except that a witness in a criminal case
7 shall be obliged to attend and may be proceeded against
8 for failing to do so, although there may not previously
9 have been any payment, or tender to him, of anything for
10 attendance, mileage or tolls.

Sec. 5. Failure of Juror to Attend Inquest Out of Court.

2 —The name of any person summoned by an officer, in
3 failing to attend as a juror upon an inquest out of court,
4 shall be returned by such officer at the next term of the
5 circuit court of such officer's county. Such court shall fine
6 such person, unless he have a reasonable excuse for his
7 failure, ten dollars.

Sec. 6. Proceedings for Fines for Contempt or Disobe-

2 **dience of Process.**—No court shall impose a fine upon a
3 juror, witness or other person, for disobedience of its pro-
4 cess or any contempt, unless he be present in a court at
5 the time, or shall have been served with a rule of the
6 court, returnable to a time certain, requiring him to show
7 cause why the fine should not be imposed, and shall have
8 failed to appear and show cause.

Sec. 7. Severability.—If any provision of this article

2 or the application thereof to any person or circumstance
3 is held invalid, such invalidity shall not affect other pro-
4 visions or applications of ~~this~~ ^{the} article which can be given
5 effect without the invalid provision or its application, and
6 to this end, the provisions of this article are declared to
7 be severable.

Enr. H. B. No. 505
by
0-01

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

A. Ray Parker
Chairman Senate Committee

James W. Loop
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard Myers
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard Hanson
President of the Senate

H. Robert White
Speaker House of Delegates

The within approved this the 19
day of March, 1965.

Frederic C. Smith
Governor

