

No: 1044

RECEIVED

MAR 13 11 31 AM '84

OFFICE OF THE GOVERNOR

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1984



ENROLLED

Com. Sub. for
HOUSE BILL No. 1044

(By Mr. Delegate Love)



Passed March 9, 1984

In Effect Ninety Days From Passage



ENROLLED
COMMITTEE SUBSTITUTE

FOR

H. B. 1044

(By DELEGATE LOVE)

[Passed March 9, 1984; in effect ninety days from passage.]

AN ACT to amend article seven, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three, relating to stay of execution of sentence pending appeal generally; providing for removal to the penitentiary or other place of incarceration; authorizing the return of a defendant to a place of confinement near the place of trial if necessary; and establishing a procedure for bail in cases where a defendant is removed to the penitentiary or confined elsewhere pending disposition of appeal.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three, to read as follows:

ARTICLE 7. EXECUTION OF SENTENCES; STAYS.

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

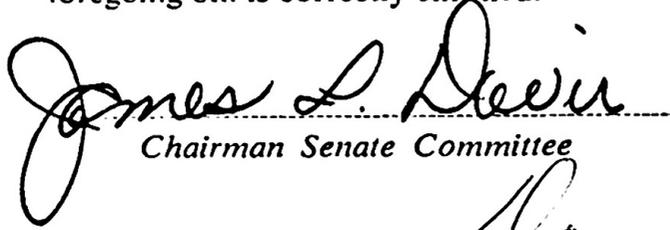
1 (a) Whenever a stay of proceedings has been granted
2 pursuant to section one or two of this article or any rule of

3 court relating to stays granted under those sections, and
4 the court upon its own motion or after notice and motion by
5 the prosecuting attorney or the defendant shall determine that
6 it is no longer necessary to retain the defendant at a place
7 of confinement near the place of trial in order to permit the
8. defendant to assist in the preparation of his or her appeal to
9 the supreme court of appeals, then unless the defendant shall
10 have posted bail, the sentencing court may vacate the order
11 granting the stay or, in the case of the supreme court of
12 appeals, the supreme court of appeals may vacate its order
13 granting the stay upon the recommendation of the circuit
14 court. Upon the vacation of the order granting the stay, the
15 defendant shall be removed to the penitentiary pursuant to
16 the provisions of section seven of this article: *Provided*, That
17 the sentencing court or the supreme court of appeals may
18 order incarceration elsewhere for other good cause. In the
19 case of the removal of a defendant from a place of confine-
20 ment near the place of trial, if at any time during the pendency
21 of the petition for appeal or the appeal the defendant shall
22 post bail or the defendant or the defendant's counsel shall
23 have exhibited the defendant's readiness and ability to post
24 such bail, then the stay shall again be granted or the super-
25 sedeas shall be reinstated and the defendant dealt with as
26 hereinafter provided in this section. If a defendant be con-
27 fined away from the place of trial under the provisions of
28 this subsection, he may nonetheless be returned to a place
29 of confinement near the place of trial at any time his presence
30 is necessary to facilitate preparation for, or access to, pro-
31 ceedings for an appeal.

32 (b) If a defendant is not released pending disposition of
33 appeal and is removed to the penitentiary or other place of
34 confinement in accordance with the provisions of subsection
35 (a) of this section, then upon the fixing of bail in a proper
36 case, the defendant may be admitted to bail as heretofore pro-
37 vided by law and released from any incarceration in accord-
38 ance with the terms and conditions of such bail, by the
39 warden of the state penitentiary or other officer having lawful
40 custody, upon the release order of the clerk or judge of the
41 court before whom such bail is to be given. A release order

42 shall be promptly issued by the clerk or judge when the
43 requirements for bail have been complied with or when the
44 defendant or the defendant's counsel has exhibited the de-
45 fendant's readiness and ability to comply with such require-
46 ments. Such release order may be provisional in form indi-
47 cating that proper arrangements for bail have been made and
48 could be completed upon the personal appearance of the
49 defendant before the clerk or judge. In order to be admitted
50 to bail following the execution by the clerk or judge of the
51 release order or provisional release order the defendant shall
52 be promptly brought before the court or clerk by the officer
53 having custody. If the circumstances under which bail was
54 fixed have changed so that bail is no longer appropriate, bail
55 may be denied: *Provided*, That nothing in this subsection is
56 intended to alter the conditions under which an individual may
57 be admitted to bail under other provisions of law.

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


Chairman Senate Committee


Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within is approved this the 30
day of March, 1984.


Governor

RECEIVED

84 APR 4 P 3 : 48

OFFICE
SECY. OF STATE