

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 633

BY SENATORS WOODRUM, TRUMP, DEEDS, CAPUTO,

WOELFEL, AND RUCKER

[Passed March 11, 2023; in effect 90 days from

passage (June 9, 2023)]

FILED

2023 MAR 29 P 1:22

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SB 633

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1 AN ACT to amend and reenact §62-1-7 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §62-1C-17b of said code; and to amend and reenact §62-2-17 of said code,
3 all relating to failure to appear; requiring compliance with the magistrate court criminal
4 rules; requiring transport to the regional jail serving the charging county if an arrest occurs
5 in a county other than the charging county and the defendant remains incarcerated after
6 the arraignment; requiring prompt court appearances for persons detained on capiases or
7 warrants for failure to appear; providing procedures for issuing bench warrants and
8 capiases for nonappearance at scheduled court hearings or other proceeding; providing
9 for purposes of capiases for failure to appear after indictment, that newspaper publication
10 alone does not constitute effective notice; allowing a grace period after a failure to appear
11 to allow certain defendants to appear except in defined circumstances; providing
12 procedures following execution of bench warrants for nonappearance; providing that in all
13 cases where a defendant is arrested and held under a capias for failure to appear in the
14 county wherein the charge or charges is pending, and he or she is entitled to admission
15 to bail, an initial appearance shall be held as soon as practicable, or within five days
16 whichever is sooner, and bail shall be considered; and requiring courts to ensure that all
17 inactive warrants and capiases for failure to appear are removed from law-enforcement
18 databases.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PRELIMINARY PROCEDURE.

§62-1-7. Offense arising in other county.

1 In all cases where a person is arrested in a county other than where the indictment or
2 charge is pending, an arraignment shall be held pursuant to the Rules of Criminal Procedure for
3 Magistrate Courts in West Virginia. If the person remains incarcerated after the arraignment, he
4 or she shall be transported to the regional jail serving the charging county within five days of
5 arrest.

ARTICLE 1C. BAIL

62-1C-17b. Procedures for failure to appear; penalties.

1 (a) Any person, who, having been released upon his or her personal recognizance
2 pursuant to §62-1-1a of this code or having been otherwise admitted to bail and released in
3 accordance with this article, and who shall willfully and without just cause fail to appear as and
4 when it may be required of him or her, shall be guilty of the offense as hereinafter prescribed,
5 and, upon conviction thereof, shall be punished in the manner hereinafter provided.

6 (b) If any such person was admitted to bail or released after being arrested for, charged
7 or convicted of a felony and, shall thereafter be convicted for a violation of the provisions of
8 subsection (a) of this section, such persons shall be guilty of a felony and, shall be fined not more
9 than \$5,000 or imprisoned not less than one nor more than five years, or both such fine and
10 imprisonment.

11 (c) If any such person was admitted to bail or released after being arrested for, charged
12 or convicted of a misdemeanor and, shall thereafter be convicted for a violation of the provision
13 of subsection (a) of this section, such persons shall be guilty of a misdemeanor and, shall be fined
14 not more the \$1,000 or confined in the county jail for not more than one year, or both such fine
15 and confinement.

16 (d) If any such person was admitted to bail or released pending appearance as a material
17 witness and shall thereafter fail to appear when and where it shall have been required of him or
18 her, such persons shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined
19 not more the \$1,000 or confined in the county jail not more than one year, or both such fine and
20 confinement.

21 (e) Any penalty authorized by this section shall be in addition to any forfeiture authorized
22 or mandated by this article or by any other provision of law.

23 (f) If any defendant admitted to bail and released in accordance with this article fails to
24 appear at a scheduled court appearance, the court may issue a capias or bench warrant for failure

25 to appear if it determines that the defendant was provided effective notice of the court appearance
26 by the court.

27 (g) For the purposes of this subsection, "effective notice of the court appearance" means
28 a notice stating the date, time, location, and purpose of the hearing, transmitted to the defendant
29 or defendant's counsel, no fewer than 10 days prior to the scheduled court appearance. The court
30 may waive the 10 day requirement upon a finding of emergent circumstances.

31 (h) For purposes of capiases for failure to appear after indictment, newspaper publication
32 alone does not constitute effective notice.

33 (i) Notwithstanding the provisions of subsections (a) through (d) of this section, where the
34 record does not reflect that the person failing to appear received effective notice to appear from
35 the court or where he or she has no documented history of failure to appear, a court, absent good
36 cause shown, may not issue a *capias* until no fewer than 24 hours have elapsed since the failure
37 to appear. If the defendant voluntarily appears within 24 hours, he or she is not subject to
38 prosecution under this section.

39 (j) Nothing in subsection (f) of this section may be construed to limit a court's ability to
40 issue a *capias* upon credible information of danger to a person or the community, new criminal
41 conduct or a bail violation other than failure to appear.

42 (k) Upon the arrest of a defendant pursuant to a *capias* in the county in which the
43 indictment or charge is pending, a hearing pursuant to §62-1C-1a of this code shall be scheduled
44 and held within five days of the arrest.

45 (l) Upon the appearance in the county in which the indictment or charge is pending of a
46 defendant against whom a *capias* has been issued the court shall provide written notice to the
47 sheriff for his or her dissemination to all appropriate law-enforcement agencies, that the warrant
48 or *capias* is no longer active and order it to be immediately removed from all databases.

ARTICLE 2. PRESENTMENTS AND INDICTMENTS

§62-2-17. Delivery of prisoner to court, magistrate or jailer.

1 (a) An officer who, under a capias from a court, arrests a person accused of an offense
2 other than murder in the first degree shall deliver the accused to such court, if sitting, and if such
3 court is not sitting, the officer shall deliver the accused to a magistrate who may admit the accused
4 to bail: *Provided*, That any such bail granted by a magistrate shall be conditioned upon the
5 appearance by the accused before the court on the date provided in the capias for such
6 appearance, or, if no such date is provided in the capias, then such bail shall be conditioned upon
7 the appearance of the accused on the next day on which such court is sitting.

8 (b) No magistrate shall admit to bail any person arrested under an alias capias.

9 (c) Bail set by a magistrate may be made and posted before the magistrate court clerk
10 and the recognizance and record thereof, together with any money received therefor, shall be
11 forthwith delivered to the clerk of the circuit court.

12 (d) An officer who, under a capias from a court, arrests a person accused of an offense
13 notailable, or for which bail is not given, shall deliver the accused to such court, if sitting, or to
14 the jailer thereof, who shall receive and imprison him or her.

15 (e) In all cases where a defendant is arrested and held under a capias for failure to appear
16 in the county wherein the charge or charges is pending, and he or she is entitled to admission to
17 bail, an initial appearance shall be held as soon as practicable, or within five days whichever is
18 sooner, and bail shall be considered pursuant to §62-1C-1a of this code.

19 (f) Upon the appearance of a defendant upon an indictment or complaint upon which a
20 warrant or capias has been issued, the court shall provide written notice to the sheriff for his or
21 her dissemination to all appropriate law-enforcement agencies that the warrant or capias is no
22 longer active and order that it be immediately removed from all databases.

The Clerk of the Senate and the Clerk of the House of Delegates hereby certify that the foregoing bill is correctly enrolled.

Joe Levin
Clerk of the Senate

Steve Harris
Clerk of the House of Delegates

Originated in the Senate.

In effect 90 days from passage.

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

2023 MAR 29 P 1:22

FILED

G. P. B. S.
President of the Senate

Ben Haskin
Speaker of the House of Delegates

The within is approved this the 29th
Day of March, 2023.

James Justice
Governor

PRESENTED TO THE GOVERNOR

MAR 17 2023

Time 2:54 pm