

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 3106**

BY DELEGATES BARRETT, STEELE, FAST AND

FLEISCHAUER

[Passed April 10, 2021; in effect ninety days from passage.]



1 AN ACT to amend and reenact §62-1C-1a of the Code of West Virginia, 1931, as amended,  
2 relating to bail; increasing the time for a secured bond hearing to 5 days; allowing a bond  
3 hearing to be held by any magistrate or judge; and clarifying the bond hearing procedure  
4 applies only to misdemeanors.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 1C. BAIL.**

**§62-1C-1a. Pretrial release; types of release; conditions for release; considerations as to  
conditions of release.**

1 (a) Subject to the provisions of §62-1C-1 of this code, when a person charged with a  
2 violation or violations of the criminal laws of this state first appears before a judicial officer:

3 (1) Except for good cause shown, a judicial officer shall release a person charged with a  
4 misdemeanor offense on his or her own recognizance unless that person is charged with:

5 (A) A misdemeanor offense of actual violence or threat of violence against a person;

6 (B) A misdemeanor offense where the victim was a minor, as defined in §61-8C-1 of this  
7 code;

8 (C) A misdemeanor offense involving the use of a deadly weapon, as defined in §61-7-2  
9 of this code;

10 (D) A misdemeanor offense of the Uniform Controlled Substances Act as set forth in  
11 chapter 60A of this code;

12 (E) Misdemeanor offenses of sexual abuse;

13 (F) A serious misdemeanor traffic offense set forth in §17C-5-1 or §17C-5-2 of this code;

14 or

15 (G) A misdemeanor offense involving auto tampering, petit larceny or possession, transfer  
16 or receiving of stolen property when alleged value on the property involved exceeds \$250.

17 (2) For the misdemeanor offenses specified in subsection (a) of this section and all other  
18 offenses which carry a penalty of incarceration, the arrested person is entitled to be admitted to

19 bail subject to the least restrictive condition or combination of conditions that the judicial officer  
20 determines reasonably necessary to assure that person will appear as required, and which will  
21 not jeopardize the safety of the arrested person, victims, witnesses, or other persons in the  
22 community or the safety and maintenance of evidence. Further conditions may include that the  
23 person charged shall:

24 (A) Not violate any criminal law of this state, another state, or the United States;

25 (B) Remain in the custody of a person designated by the judicial officer, who agrees to  
26 assume supervision and to report any violation of a release condition to the court, if the designated  
27 person is reasonably able to assure the judicial officer that the person will appear as required and  
28 will not pose a danger to himself or herself or to the safety of any other person or the community;

29 (C) Participate in home incarceration pursuant to §62-11B-1 *et seq.* of this code;

30 (D) Participate in an electronic monitoring program if one is available where the person is  
31 charged or will reside.

32 (E) Maintain employment, or, if unemployed, actively seek employment;

33 (F) Avoid all contact with an alleged victim of the alleged offense and with potential  
34 witnesses and other persons as directed by the court;

35 (G) Refrain from the use or excessive use of alcohol, or any use of a narcotic drug or other  
36 controlled substance, as defined in §60A-1-1 *et seq.* of this code without a prescription from a  
37 licensed medical practitioner;

38 (H) Execute an agreement to forfeit, upon failing to appear as required, property of a  
39 sufficient unencumbered value, including money, as is reasonably necessary to assure the  
40 appearance of the person as required. The person charged shall provide the court with proof of  
41 ownership, the value of the property, and information regarding existing encumbrances of the  
42 property as, in the discretion of the judicial officer, is reasonable and necessary collateral to  
43 ensure the subsequent appearance of the person as required;

44 (I) Post a cash bond, or execute a bail bond with solvent sureties who will execute an  
45 agreement to forfeit an amount reasonably necessary to assure appearance of the person as  
46 required. If other than an approved surety, the surety shall provide the court with information  
47 regarding the value of its assets and liabilities and the nature and extent of encumbrances against  
48 the surety's property. The surety shall have a net worth of sufficiently unencumbered value to pay  
49 the amount of the bail bond; or

50 (J) Satisfy any other condition that is reasonably necessary to assure the appearance of  
51 the person as required and to assure the safety of the arrested person, victims, witnesses, other  
52 persons in the community, or the safety and maintenance of evidence.

53 (3) Proper considerations in determining whether to release the arrested person on an  
54 unsecured bond, fixing a reasonable amount of bail, or imposing other reasonable conditions of  
55 release are:

56 (A) The ability of the arrested person to give bail;

57 (B) The nature, number, and gravity of the offenses;

58 (C) The potential penalty the arrested person faces;

59 (D) Whether the alleged acts were violent in nature;

60 (E) The arrested person's prior record of criminal convictions and delinquency  
61 adjudications, if any;

62 (F) The character, health, residence, and reputation of the arrested person;

63 (G) The character and strength of the evidence which has been presented to the judicial  
64 officer:

65 (H) Whether the arrested person is currently on probation, extended supervision, or  
66 parole;

67 (I) Whether the arrested person is already on bail or subject to other release conditions in  
68 other pending cases;

69 (J) Whether the arrested person has been bound over for trial after a preliminary  
70 examination;

71 (K) Whether the arrested person has in the past forfeited bail or violated a condition of  
72 release or was ever a fugitive from justice; and

73 (L) The policy against unnecessary incarceration of arrested persons pending trial set forth  
74 in this section.

75 (b) In all misdemeanors, cash bail may not exceed three times the maximum fine provided  
76 for the offense. If the person is charged with more than one misdemeanor, cash bail may not  
77 exceed three times the highest maximum fine of the charged offenses.

78 (c) Notwithstanding any provisions of this article to the contrary, whenever a person not  
79 subject to the provisions of §62-1C-1 of this code remains incarcerated after his or her initial  
80 appearance, relating to a misdemeanor, due to the inability to meet the requirements of a secured  
81 bond, a magistrate or judge shall hold a hearing within 5 days of setting the initial bail to determine  
82 if there is a condition or combination of conditions which can meet the considerations set forth in  
83 §62-1C-1a(a)(2) of this code.

84 (d) A judicial officer may upon notice and hearing modify the conditions of release at any  
85 time by imposing additional or different conditions.

86 (e) A prosecuting attorney and defense counsel, unless expressly waived by the  
87 defendant, shall appear at all hearings in which bail or bond conditions are at issue other than the  
88 proceeding at which the conditions of release are initially set.

89 (f) No judicial officer may recommend the services of a surety who is his or her relative as  
90 that term is defined in §6B-1-3 of this code.

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

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2021.

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*Governor*