

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 725

By Senators Barrett and Deeds

[Introduced February 8, 2024; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §62-1C-1a and §62-1C-2 of the Code of West Virginia, 1931, as
 2 amended, all relating to pretrial release; clarifying right to pretrial release; clarifying
 3 maximum bail amount for charges for multiple misdemeanor offenses; revising definition of
 4 "bail"; establishing that defendant has right to select method of securing bail; clarifying that
 5 personal recognizance bonds shall include an unsecured monetary amount; prohibiting
 6 magistrate from setting "cash only" or "property only" bail; authorizing judicial officer to
 7 impose reasonably necessary conditions to assure defendant will appear as required,
 8 including releasing defendant on his or her own recognizance; clarifying that magistrate
 9 may not release defendant charged with felony offense on his or her own recognizance;
 10 and making technical corrections.

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 of
 9 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; or

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

17 (2) For the misdemeanor offenses specified in subsection (a) of this section, felony
18 offenses, and all other offenses ~~which~~ that carry a possible penalty of incarceration, ~~the arrested~~
19 ~~person is entitled to a defendant shall~~ be admitted to bail subject to the least restrictive condition or
20 combination of conditions that the judicial officer determines reasonably necessary to assure that
21 person will appear as required, and ~~which~~ that will not jeopardize the safety of the ~~arrested person~~
22 defendant, victims, witnesses, or other persons in the community or the safety and maintenance of
23 evidence. Further conditions may include that the 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; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

79 (c) Notwithstanding any provisions of this article to the contrary, whenever a person ~~not~~
80 ~~subject to the provisions of §62-1C-1 of this code~~ not released on his or her own recognizance
81 pursuant to subsection (a) of this section remains incarcerated after his or her initial appearance,
82 relating to a misdemeanor, ~~due to the inability to meet the requirements of a secured bond,~~ a
83 magistrate or judge shall hold a hearing within 5 days of setting the initial bail to determine if there
84 is a condition or combination of conditions which can meet the considerations set forth in §62-1C-
85 1a(a)(2) of this code.

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

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

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

§62-1C-2. Bail defined; ~~form~~ selection of form by defendant; receipts; right of judicial officer to impose conditions on release.

1 (a) Bail is the pretrial release of a person from custody upon terms and conditions specified
2 by order of an appropriate judicial officer. Bail shall be set at a monetary amount determined by a
3 judicial officer to provide adequate security for the appearance of a defendant to answer to a
4 specific criminal charge before any court or magistrate at a specific time or at any time to which the
5 case may be continued. A magistrate may not set bail that may be satisfied solely by payment in
6 cash or solely by execution of an agreement to forfeit real property of a specified unencumbered
7 value. A personal recognizance bond shall contain a required monetary amount, which shall be
8 unsecured.

9 (b) ~~It may take any~~ A defendant is entitled to and shall select one of the following forms for
10 making bail:

11 (a) ~~The~~ (1) By the deposit by the defendant or by some other person for him or her of cash,
12 in a manner consistent with rules promulgated by the Supreme Court of Appeals;

13 (2) By executing an agreement to forfeit, upon failing to appear as required, real or
14 personal property of a sufficient unencumbered value, including money, as is reasonably
15 necessary to assure the appearance of the person as required which shall be known as a
16 recognizance. The defendant or person or persons owning the property shall provide the court
17 with proof of ownership, the value of the property, and information regarding existing
18 encumbrances of the property as, in the discretion of the judicial officer, is reasonable and
19 necessary collateral to ensure the subsequent appearance of the person as required; or

20 (3) By use of a bail bondsman, as defined in §51-10A-1 of this code, who shall post a cash
21 bond or execute a bail bond with solvent sureties who will execute an agreement to forfeit an
22 amount reasonably necessary to assure appearance of the defendant as required. If other than an

23 approved surety, the surety shall provide the judicial officer with information regarding the value of
24 its assets and liabilities and the nature and extent of encumbrances against the surety's property.
25 The surety shall have a net worth of sufficiently unencumbered value to pay the amount of the bail
26 bond.

27 ~~(b) The written undertaking by one or more persons to forfeit a sum of money equal to the~~
28 ~~amount of the bail if the defendant is in default for appearance, which shall be known as a~~
29 ~~recognizance;~~

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

32 (c) All bail shall be received by the clerk of the court, or by the magistrate and, except in
33 case of recognizance, receipts shall be given therefor by him or her.

34 (d) Nothing in this article shall be construed as limiting a judicial officer from imposing any
35 condition or combination of conditions that he or she determines are reasonably necessary to
36 assure that the defendant will appear as required, and that will not jeopardize the safety of the
37 defendant, victims, witnesses, or other persons in the community or the safety and maintenance of
38 evidence pursuant to the provisions of §62-1C-1a of this code, including, but not limited to, release
39 of a defendant on his or her own recognizance, except that, pursuant to §62-1C-4 of this code, a
40 magistrate may not release a defendant charged with a felony offense on his or her own
41 recognizance.

NOTE: The purpose of this bill is to clarify the conditions for pretrial release and the maximum bail amount that may be set for individuals charged with multiple misdemeanor offenses. The bill revises the definition of "bail" and establishes that a defendant has the right to select among several methods of securing bail, subject to a judicial officer's authority to impose terms and conditions of bail reasonably necessary to secure defendant's appearance and protect the public. The bill authorizes a judicial officer to release a defendant on his or her own recognizance, but clarifies that a magistrate may not release a defendant charged with a felony offense on his or her own recognizance. It also establishes that a magistrate may not set "cash only" or "property only" bail.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.