

VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4160

**FISCAL
NOTE**

BY DELEGATES SPONAUGLE, MILEY, CAPUTO, FLUHARTY,
LOVEJOY, FLEISCHAUER, LYNCH, PUSHKIN, MCGEEHAN,
MILLER, R., AND WILLIAMS

[Introduced January 16, 2018; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §62-1C-1 of the Code of West Virginia, 1931, as amended; and to
 2 amend said code by adding thereto a new section, designated §62-1C-1b, all relating to
 3 establishing an alternative methodology for pretrial release of persons charged with
 4 crimes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1C. BAIL.

§62-1C-1. Right to bail; exceptions; review.

1 (a) A person arrested for an offense not punishable by life imprisonment shall be admitted
 2 to bail by the court or magistrate. A person arrested for an offense punishable by life imprisonment
 3 may, in the discretion of the court that will have jurisdiction to try the offense, be admitted to bail:
 4 Provided, That upon promulgation of a rule by the Supreme Court pursuant to §62-1C-1a, bail or
 5 other financial condition shall not be imposed for pretrial detention, unless the court or magistrate
 6 determines, pursuant to criteria promulgated by rule, that a serious risk exists that the defendant
 7 will flee, or, there is a serious risk that the defendant will obstruct or attempt to obstruct justice, or
 8 threaten, injure, or intimidate, or attempt to threaten, injure or intimidate, a prospective witness or
 9 juror.

10 (b) Pretrial release with or without bail may be allowed pending appeal from a conviction,
 11 except that pretrial release with or without bail shall not be granted where the offense is
 12 punishable by life imprisonment or where the court has determined from the evidence at the trial
 13 or upon a plea of guilty or nolo contendere that the offense was committed or attempted to be
 14 committed with the use, presentment or brandishing of a firearm or other deadly weapon, or by
 15 the use of violence to a person: *Provided, That the denial of bail under one of these exceptions*
 16 *may be reviewed by summary petition to the Supreme Court of Appeals or any justice thereof,*
 17 *and the petition for bail may be granted where there is a likelihood that the defendant will prevail*
 18 *upon the appeal. The court or judge allowing bail pending appeal may at any time revoke the*
 19 *order admitting the defendant to bail.*

20 (c) The amount of bail or the discretionary denial of ~~bail~~ pretrial release at any stage of the
21 proceedings may be reviewed by summary petition first to the lower appellate court, if any, and
22 thereafter by summary petition to the Supreme Court of Appeals or any judge thereof.

**§62-1C-1b. Removal of presumption of bail requirement for pretrial release upon
promulgation of rule by the Supreme Court; alternative requirements for bail once
rule promulgated;**

1 (a) Legislative intent.-- Pretrial detention of defendants is a costly expense to county
2 governments, and pretrial bail is often not posted because low income defendants have no access
3 to money or assets. This results in a disproportionate percentage of low income persons being
4 held in pretrial release that would otherwise be released. Further, for low level felony offenses,
5 when a defendant is subsequently found or pleads guilty, in many cases the time served in jail
6 pretrial is the only or a majority of the time served for the crime, and in effect results in counties
7 paying the entire cost of the defendant's incarceration, and not the state, as the law requires for
8 those so convicted. An alternative system for determining eligibility for pretrial release for persons
9 charged with crimes that is less costly and still protects the public can be achieved by changing
10 the process of evaluation for pretrial release. In certain instances, providing an opportunity for
11 persons agreeing to pretrial drug dependency counselling and other treatments and services not
12 available in jail can be achieved, also furthering better outcomes and reduction of recidivation.
13 Therefore, the purpose of this section is to eliminate requirements for posting of bail prior to trial
14 as the primary method of assuring appearance of defendants in court, in favor of a broader
15 analysis and assessment, weighing other relevant factors to assure compliance with court
16 directives other than conditioning release on access to financial resources.

17 (b) Authorizing promulgation of rule.-- The Supreme Court is authorized to promulgate a
18 court rule regulating the release of pretrial defendants without conditioning the release upon
19 posting of bail. Prior to promulgation of a rule, the court shall conduct a study and receive input
20 from state law enforcement organizations, county prosecutors, parole and probation officers,

21 circuit judges, magistrates, prosecutors and lawyers specializing in criminal defense, and other
22 appropriate persons. The use of bail may not be precluded but its use as a primary way of assuring
23 compliance with release shall not be required. The rule may also include the following:

24 (1) Fees as necessary and provide all necessary limitations and conditions on the program
25 to provide for its successful operation and the protection of the public; and

26 (2) An alternative means for posting bail may be provided by the rule that provides that a
27 percentage of bail be posted with the state in lieu of being done for a fee by a third-party, to assure
28 appearance, and allowing other alternative conditions in lieu of bail, as the court deems
29 appropriate.

30 (c) Upon promulgation of a rule as provided by this section, the provisions of this article
31 inconsistent with the provisions of this section and the rule so promulgated are superseded and
32 have no lawful force or effect.

NOTE: The purpose of this bill is to remove posting bail as the primary way of establishing conditions of release for pretrial defendants.

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