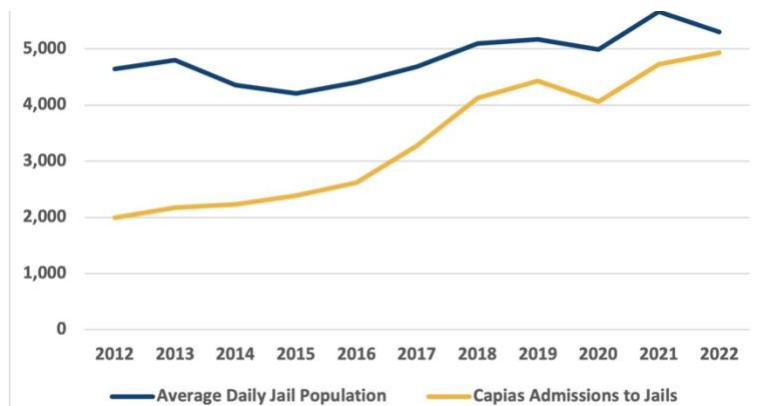


New West Virginia Capias Law – Effective June 9, 2023

In March 2023, lawmakers passed legislation to address a growing reason why people are taken to West Virginia jails: capiases. A capias – or bench warrant – is an arrest order issued by a magistrate or judge. The number of people brought to jail on a capias arrest in West Virginia increased from 1,990 in 2012 to 4,936 in 2022.ⁱ Today, one in eight people enter jail because of a capias. Capiases are one reason why West Virginia’s jail population has continued to grow over the last decade – despite declining crime rates and fewer criminal cases filed over that time.ⁱⁱ

Capias Admissions Have Kept West Virginia Jails Overcrowded



Source: WVCBP analysis of Division of Corrections and Rehabilitations Annual Reports (Fiscal Years 2012 – 2022).

Senate Bill 633 provides Magistrate and Circuit courts a uniform standard for addressing capiases with three key provisions:

1. A Hearing Within Five Days of a Capias Arrest

Under the new law, when a person is arrested on a capias, the magistrate or judge who issued the capias must hold a hearing within five days of the arrest and set a bond. *New Code: §§ 62-1C-17b(k), 62-2-17(e).*

Also, if a person is arrested in another county, they must be transferred within five days of their arrest to the regional jail serving the county that issued the capias. *New Code: § 62-1-7.*

2. A Standard for Issuing a Capias due to Nonappearance

Before a court may issue a capias for failing to appear at a hearing, the court must determine the person received effective notice of the court hearing. A notice is “effective” if it provides the date, time, location, and purpose of the hearing to the defendant or defendant’s counsel no fewer than 10 days prior to the scheduled court hearing. Publication in a newspaper is not effective notice. *New Code: §§ 62-1C-17b(f)-(h).*

If a person receives effective notice, but has no documented history of nonappearance, the court may not issue a capias until 24 hours after the scheduled hearing. Further, a person who voluntarily appears within 24 hours of the scheduled hearing may not be charged with the criminal offense of failure to appear. *New Code: § 62-1C-17b(i).*

3. Removal from Law Enforcement Databases After a Capias is Served

When a person appears in court following a capias arrest, the court must notify the sheriff in writing that the capias is no longer active and should be removed immediately from all law enforcement databases. *New Code: §§ 62-1C-17b(l), 62-2-17(f).*

Questions? Contact Sara Whitaker, (304)-610-6391, swhitaker@wvpolicy.org.

ⁱ “Annual Report FY 2012” (Charleston, WV: WV Regional Jail and Correctional Facility Authority), 31; “FY 2022 Annual Report” (Charleston, WV: WV Division of Corrections and Rehabilitation, December 2022), 38.

ⁱⁱ FBI Crime Data Explorer, National Incident-Based Reporting System (NIBRS) details reported in West Virginia, 2012 through 2021. WVCBP analysis of “Annual Statistics Report on Circuit, Family, and Magistrate Courts” for Fiscal Years 2014 through 2021 and “Annual Report” for Fiscal Years 2012 and 2013 (Charleston, WV: Supreme Court of Appeals of West Virginia Administrative Office).