

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Committee Substitute

for

Senate Bill 568

BY SENATORS TAYLOR, AZINGER, BOLEY, DEEDS, GRADY,
HAMILTON, HUNT, JEFFRIES, MAYNARD, OLIVERIO,
PHILLIPS, ROBERTS, SMITH, STUART, SWOPE, AND
NELSON

[Originating in the Committee on the Judiciary;
reported February 23, 2024]

1 A BILL to amend and reenact §18-8-2 and §18-8-4 of the Code of West Virginia, 1931, as
2 amended; and to amend and reenact §49-4-702 of said code, all relating to student
3 absences; amending criminal penalties imposed for failing to attend school without good
4 cause; defining terms; requiring the State Board to implement a System of Support Plan
5 to encourage and promote compulsory school attendance with implementation to be
6 ensured by the county attendance director; requiring the school to make periodic
7 meaningful contact with parents, guardians, or custodians of children who fail to attend
8 school; removing requirement for attendance director and assistant directors to prepare a
9 report for submission by the county superintendent to the State Superintendent of Schools
10 on school attendance; referring to existing school personnel reporting requirement
11 applicable in certain cases pertaining to child neglect; and making referral for the
12 development of a diversion program in truancy offense matters discretionary.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-2. Offenses; penalties; cost of prosecution; jurisdiction.

1 (a) Any ~~person~~ parent, guardian, or custodian who, ~~after receiving due notice, shall fail~~
2 fails to cause a child or children under ~~eighteen~~ 18 years of age in that person's legal or actual
3 charge to attend school in violation of this article or without just cause, ~~shall be~~ is guilty of a
4 misdemeanor and, shall, upon conviction of a first offense, be fined not less than ~~fifty~~ \$50 nor
5 more than \$100 together with the costs of prosecution, ~~or required to accompany the child to~~
6 ~~school and remain through the school day for so long as the magistrate or judge may determine~~
7 ~~is appropriate.~~ The magistrate or circuit court judge, upon conviction and pronouncing sentence,
8 may delay the sentence for a period of ~~sixty~~ 60 school days provided the child is in attendance
9 ~~every day~~ every day during said ~~sixty~~ 60-day period. Following the ~~sixty~~ 60-day period, if ~~said~~ the

10 child was present at school for every school day, the delayed sentence may be suspended and
11 dismissed ~~and not enacted~~. Upon conviction of a second offense, a fine may be imposed of not
12 less than \$50 nor more than \$100 together with the costs of prosecution ~~and the person may be~~
13 ~~required to accompany the child to school and remain throughout the school day until such time~~
14 ~~as the magistrate or judge may determine is appropriate~~ or confined in jail not less than five nor
15 more than ~~twenty~~ 20 days. Every day a child is out of school contrary to this article ~~shall~~ constitutes
16 a separate offense. Magistrates shall have concurrent jurisdiction with circuit courts for the trial of
17 offenses arising under this section.

18 (b) Any person ~~eighteen~~ 18 years of age or older who is enrolled in school who, after
19 receiving due notice, fails to attend school in violation of this article or without just cause, ~~shall be~~
20 is guilty of a misdemeanor and, shall, upon conviction of a first offense, be fined not less than \$50
21 nor more than \$100 together with the costs of prosecution and required to attend school and
22 remain throughout the school day. The magistrate or circuit court judge, upon conviction and
23 pronouncing sentence, may delay the imposition of a fine for a period of ~~sixty~~ 60 school days
24 provided the person is in attendance every day during said ~~sixty~~ 60-day period. Following the
25 ~~sixty~~ 60-day period, if ~~said~~ the student was present at school ~~everyday~~ every day, the delayed
26 sentence may be suspended and ~~not enacted~~ dismissed. Upon conviction of a second offense, a
27 fine may be imposed of not less than \$50 nor more than \$100 together with the costs of
28 prosecution and the person may be required to go to school and remain throughout the school
29 day until such time as the person graduates or withdraws from school or confined in jail not less
30 than five nor more than ~~twenty~~ 20 days. Every day a student is out of school contrary to this article
31 ~~shall~~ constitutes a separate offense. Magistrates shall have concurrent jurisdiction with circuit
32 courts for the trial of offenses arising under this section.

33 (c) Upon conviction of a third offense, any person ~~eighteen~~ 18 years of age or older who
34 is enrolled in school shall be withdrawn from school during the remainder of that school year.
35 Enrollment of that person in school during the next school year or years thereafter ~~shall be~~ is

36 conditional upon all absences being excused as defined in law, state board policy and county
37 board of education policy. More than one unexcused absence of such a student shall be grounds
38 for the director of attendance to authorize the school to withdraw the person for the remainder of
39 the school year. Magistrates shall have concurrent jurisdiction with circuit courts for the trial of
40 offenses arising under this section.

41 (d) Jurisdiction to enforce compulsory school attendance laws lies in the county in which
42 a student resides and in the county where the school at which the student is enrolled is located.
43 When the county of residence and enrollment are different, an action to enforce compulsory
44 school attendance may be brought in either county and the magistrates and circuit courts of either
45 county have concurrent jurisdiction for the trial of offenses arising under this section.

**§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and
hearings.**

1 (3a) For the purposes of this article, the following definitions apply:

2 (A1) "Excused absence" ~~includes~~ means:

3 (iA) A medical or dental appointment with written excuse from physician or dentist;

4 (iiB) Personal illness or injury of the student accompanied by a timely written excuse from
5 the student's parent, guardian, or custodian: *Provided:* That the total absences under this section
6 combined with absences permitted under subdivision (C) of this subsection do not exceed more
7 than 10 per school year unless supported by a physician's note: *Provided however:* That a
8 medically documented chronic health condition or disability that adversely impacts in-person
9 attendance approved by a county school board or the principal is not subject to this limitation, and
10 that absences of students with disabilities shall be in accordance with the Individuals with
11 Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in
12 compliance therewith;

13 (iiiC) Personal illness or injury of the student's parent, guardian, custodian, or family
14 member: *Provided,* That the excuse must provide a reasonable explanation for why the student's

15 absence was necessary and caused by the illness or injury in the family, and the total absences
16 under this section in combination with section (1)(B) may not exceed more than ten excuses per
17 school year;

18 ~~Medical or dental appointment with written excuse from physician or dentist;~~

19 ~~(iv) Chronic medical condition or disability that impacts attendance;~~

20 ~~(v) Participation in home or hospital instruction due to an illness or injury or other~~
21 ~~extraordinary circumstance that warrants home or hospital confinement;~~

22 ~~(vi) Calamity, such as a fire or flood;~~

23 ~~(vii) Death in the family;~~

24 ~~(viii) School-approved or county-approved curricular or extra-curricular activities;~~

25 ~~(ix) A Judicial judicial obligation or court appearance involving the student; and~~

26 ~~(x) A Military military requirement for students enlisted or enlisting in the military; and~~

27 ~~(xi) Personal or academic circumstances approved by the principal; and~~

28 ~~(xii) Such Any other situations as may be further determined by the county board;~~

29 ~~*Provided*, That absences of students with disabilities shall be in accordance with the Individuals~~
30 ~~with Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted~~
31 ~~in compliance therewith; and~~

32 (2) "Meaningful contact" means two-way communication by the school administrator or
33 other school designee and the student's parent, guardian, or custodian to discuss the student's
34 attendance record in an effort to prevent subsequent truancy or other legal proceedings relating
35 to compulsory school attendance, and to minimize additional absences. Methods of meaningful
36 contact include, but are not limited to, phone calls, video conferencing, home visits, and the use
37 of digital platforms.

38 (3) "System of Support Plan" ("SOS Plan") refers to a plan to be developed by the State
39 Board of Education designed to encourage students to attend school. It shall, at a minimum,
40 require county attendance directors, principals, or other school designees to make periodic

41 contact with the parent, guardian, or custodian of a student subject to compulsory school
42 attendance to ascertain the reason or reasons for the student's absence or absences and what
43 measures the school may employ to assist the student in attending school and not incurring
44 additional absences. It shall also impart upon the student's parents, guardians, and custodians
45 the importance of the student's attendance and the seriousness of failing to do so.

46 (B4) "Unexcused absence" means any absence not specifically included in the definition
47 of "excused absence"; ~~and.~~

48 (ab) The county attendance director and ~~the~~ his or her assistants shall diligently promote
49 regular school attendance. The director and assistants shall:

50 (1) Ascertain the reasons for unexcused absences from school of students of compulsory
51 school age and students who remain enrolled beyond the compulsory school age ~~as defined~~
52 ~~under section one-a of this article;~~

53 ~~(2) Take such steps as are, in their discretion, best calculated to encourage the~~
54 ~~attendance of students and to impart upon the parents and guardians the importance of~~
55 ~~attendance and the seriousness of failing to do so;~~

56 (2) Ensure the implementation of the SOS Plan as developed by the State Board, including
57 encouraging the attendance of students and imparting upon the parents, guardians, and
58 custodians the important of attendance and the seriousness of failing to do so.

59 ~~(3) For the purposes of this article, the following definitions apply:~~

60 (A) "Excused absence" includes:

61 (i) ~~Personal illness or injury of the student;~~

62 (ii) ~~Personal illness or injury of the student's parent, guardian, custodian, or family~~
63 ~~member: *Provided*, That the excuse must provide a reasonable explanation for why the student's~~
64 ~~absence was necessary and caused by the illness or injury in the family;~~

65 (iii) ~~Medical or dental appointment with written excuse from physician or dentist;~~

66 (iv) ~~Chronic medical condition or disability that impacts attendance;~~

67 ~~(v) Participation in home or hospital instruction due to an illness or injury or other~~
68 ~~extraordinary circumstance that warrants home or hospital confinement;~~

69 ~~(vi) Calamity, such as a fire or flood;~~

70 ~~(vii) Death in the family;~~

71 ~~(viii) School approved or county approved curricular or extra-curricular activities;~~

72 ~~(ix) Judicial obligation or court appearance involving the student;~~

73 ~~(x) Military requirement for students enlisted or enlisting in the military;~~

74 ~~(xi) Personal or academic circumstances approved by the principal; and~~

75 ~~(xii) Such other situations as may be further determined by the county board: *Provided,*~~

76 ~~That absences of students with disabilities shall be in accordance with the Individuals with~~
77 ~~Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in~~
78 ~~compliance therewith; and~~

79 ~~(B) "Unexcused absence" means any absence not specifically included in the definition of~~
80 ~~"excused absence"; and~~

81 ~~(4c) All documentation relating to absences shall be provided to the school no later than~~
82 ~~three instructional days after the first day the student returns to school. In the event~~
83 ~~documentation is not provided to the school within three instructional days after the first day the~~
84 ~~student returns to school, the absences are unexcused.~~

85 ~~(bd) In the case of three total unexcused absences of a student during a school year, the~~
86 ~~attendance director, his or her assistant, or the principal shall make meaningful contact with the~~
87 ~~parent, guardian, or custodian of the student to ascertain the reasons for the unexcused absences~~
88 ~~and what measures the school may employ to assist the student in attending and not incurring~~
89 ~~any additional unexcused absences.~~

90 ~~(ee) In the case of five total unexcused absences, the attendance director, ~~or~~ his or her~~
91 ~~assistant or the principal shall again make meaningful contact with the parent, guardian, or~~
92 ~~custodian of the student to ascertain the reasons for the unexcused absences and what measures~~

93 the school may employ to assist the student in attending school and not incurring any additional
94 unexcused absences.

95 (df) In the case of 10 total unexcused absences of a student during a school year, the
96 attendance director or assistant may make a complaint against the parent, guardian, or custodian
97 before a magistrate of the county. If it appears from the complaint that there is probable cause to
98 believe that an offense has been committed and that the accused has committed it, a summons
99 or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the
100 summons or to arrest persons charged with offenses against the state. More than one parent,
101 guardian, or custodian may be charged in a complaint. Initial service of a summons or warrant
102 issued pursuant to the provisions of this section shall be attempted within ~~ten~~ 10 calendar days
103 of receipt of the summons or warrant and subsequent attempts at service shall continue until the
104 summons or warrant is executed or until the end of the school term during which the complaint is
105 made, whichever is later.

106 (eg) The magistrate court clerk, or the clerk of the circuit court performing the duties of the
107 magistrate court as authorized in §50-1-8 of this code, shall assign the case to a magistrate within
108 10 days of execution of the summons or warrant. The hearing shall be held within 20 days of the
109 assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the
110 accused at least 10 days' advance notice of the date, time and place of the hearing.

111 (fh) When any doubt exists as to the age of a student absent from school, the attendance
112 director and his or her assistants ~~have authority to~~ may require a properly attested birth certificate
113 or an affidavit from the parent, guardian, or custodian of the student, stating the age of the student.
114 In the performance of his or her duties, the county attendance director and his or her assistants
115 have authority to take without warrant any student absent from school in violation of the provisions
116 of this article and to place the student in the school in which he or she is or should be enrolled.

117 (gi) The county attendance director and his or her assistants shall devote ~~such~~ as much
118 time as is required ~~by section three of this article~~ to the duties of attendance director in accordance

119 with this section during the instructional term and at ~~such~~ any other times as the duties of an
120 attendance director are required. All attendance directors and assistants hired for more than 200
121 days may be assigned other duties determined by the superintendent during the period in excess
122 of 200 days. The county attendance director is responsible under direction of the county
123 superintendent for efficiently administering school attendance in the county.

124 (h_j) In addition to those duties directly relating to the administration of attendance, the
125 county attendance director and his or her assistant directors also shall perform the following
126 duties:

127 (1) Assist in directing the taking of the school census to see that it is taken at the time and
128 in the manner provided by law;

129 (2) Confer with principals and teachers on the comparison of the school census and
130 enrollment for the detection of possible nonenrollees;

131 (3) Cooperate with existing state and federal agencies charged with enforcing child labor
132 laws;

133 ~~(4) Prepare a report for submission by the county superintendent to the State~~
134 ~~Superintendent of Schools on school attendance, at such times and in such detail as may be~~
135 ~~required. The state board shall promulgate a legislative rule pursuant to §29A-3B-1 et seq. of this~~
136 ~~code that set forth student absences that are excluded for accountability purposes. The absences~~
137 ~~that are excluded by rule shall include, but are not limited to, excused student absences, students~~
138 ~~not in attendance due to disciplinary measures and absent students for whom the attendance~~
139 ~~director has pursued judicial remedies to compel attendance to the extent of his or her authority.~~
140 ~~The attendance director shall file with the county superintendent and county board at the close of~~
141 ~~each month a report showing activities of the school attendance office and the status of~~
142 ~~attendance in the county at the time;~~

143 (54) Promote attendance in the county by compiling data for schools and by furnishing
144 suggestions and recommendations for publication through school bulletins and the press, or in
145 ~~such any manner as~~ directed by the county superintendent ~~may direct~~;

146 (65) Participate in school teachers' conferences with parents and students;

147 (76) Assist in ~~such any~~ other ways as directed by the county superintendent ~~may direct~~ for
148 improving school attendance;

149 (87) Make home visits of students who have excessive unexcused absences, as provided
150 in subsection-(a) of this section, or if requested by the chief administrator, principal, or assistant
151 principal; and

152 (98) Serve as the liaison for homeless children and youth.

CHAPTER 49. CHILD WELFARE.

ARTICLE 4. COURT ACTIONS.

§49-4-702. Prepetition diversion to informal resolution; mandatory prepetition diversion program for status offenses and misdemeanor offenses; prepetition review team.

1 (a) Before a juvenile petition is formally filed with the court, the court may refer the matter
2 to a case worker, probation officer or truancy diversion specialist for preliminary inquiry to
3 determine whether the matter can be resolved informally without the formal filing of a petition with
4 the court.

5 (b)(1) If the matter is for a truancy offense, the prosecutor ~~shall~~ may refer the matter to a
6 state department worker, probation officer, or truancy diversion specialist who shall develop a
7 diversion program pursuant to subsection (d) of this section. If the prosecutor does not refer the
8 matter to a state department worker, probation officer, or truancy diversion specialist pursuant to
9 this subdivision, he or she may proceed to file a petition with the court.

10 (2) If the matter is for a status offense other than truancy, the prosecutor shall refer the
11 juvenile to a case worker or probation officer who shall develop a diversion program pursuant to
12 subsection (d) of this section.

13 (3) The prosecutor is not required to refer the juvenile for development of a diversion
14 program pursuant to subdivision ~~(4)~~ or (2) of this subsection and may proceed to file a petition
15 with the court if he or she determines:

16 (A) The juvenile has a prior adjudication for a status or delinquency offense; or

17 (B) There exists a significant and likely risk of harm to the juvenile, a family member, or
18 the public.

19 (c) If the matter is for a nonviolent misdemeanor offense, the prosecutor shall determine
20 whether the case can be resolved informally through a diversion program without the filing of a
21 petition. If the prosecutor determines that a diversion program is appropriate, ~~it~~ he or she shall
22 refer the matter to a case worker or probation officer who shall develop a diversion program
23 pursuant to subsection (d) of this section.

24 (d)(1) When developing a diversion program, the case worker, probation officer, or truancy
25 diversion specialist shall:

26 (A) Conduct an assessment of the juvenile to develop a diversion agreement;

27 (B) Create a diversion agreement;

28 (C) Obtain consent from the juvenile and his or her parent, guardian, or custodian to the
29 terms of the diversion agreement;

30 (D) Refer the juvenile and, if necessary, his or her parent, guardian, or custodian to
31 services in the community pursuant to the diversion agreement.

32 (2) A diversion agreement may include:

33 (A) Referral to community services as defined in ~~section two hundred six, article one of~~
34 ~~this chapter~~ §49-1-206 of this code for the juvenile to address the assessed need;

35 (B) Referral to services for the parent, guardian, or custodian of the juvenile;

36 (C) Referral to one or more community work service programs for the juvenile;

37 (D) A requirement that the juvenile regularly attend school;

38 (E) Community-based sanctions to address noncompliance; or

39 (F) Any other efforts which may reasonably benefit the community, the juvenile, and his
40 or her parent, guardian, or custodian.

41 (3) When a referral to a service provider occurs, the service provider shall make
42 reasonable efforts to contact the juvenile and his or her parent, custodian, or guardian within
43 ~~seventy-two~~ 72 hours of the referral.

44 (4) Upon request by the case worker, probation officer, or truancy diversion specialist, the
45 court may enter reasonable and relevant orders to the parent, custodian, or guardian of the
46 juvenile who have consented to the diversion agreement as is necessary and proper to carry out
47 the agreement.

48 (5) If the juvenile and his or her parent, custodian, or guardian do not consent to the terms
49 of the diversion agreement created by the case worker, probation officer, or truancy diversion
50 specialist, the petition may be filed with the court.

51 (6) Referral to a prepetition diversion program shall toll the statute of limitations for status
52 and delinquency offenses.

53 (7) Probation officers may be authorized by the court to participate in a diversion program.

54 (e) The case worker, probation officer, or truancy diversion specialist shall monitor the
55 juvenile's compliance with any diversion agreement.

56 (1) If the juvenile successfully completes the terms of the diversion agreement, a petition
57 shall not be filed with the court and no further action shall be taken.

58 (2) If the juvenile is unsuccessful in or noncompliant with the diversion agreement, the
59 diversion agreement shall be referred to a prepetition review team convened by the case worker,
60 probation officer or the truancy diversion specialist: *Provided*, That if a new delinquency offense
61 occurs, a petition may be filed with the court.

62 (f)(1) The prepetition review team may be a subset of a multidisciplinary team established
63 pursuant to ~~section four hundred six, article four of this chapter~~ §49-4-406 of this code.

64 (2) The prepetition review team may consist of:

65 (A) A case worker knowledgeable about community services available and authorized to
66 facilitate access to services;

67 (B) A service provider;

68 (C) A school superintendent or his or her designee; or

69 (D) Any other person, agency representative, member of the juvenile's family, or a
70 custodian or guardian who may assist in providing recommendations on community services for
71 the particular needs of the juvenile and his or her family.

72 (3) The prepetition review team shall review the diversion agreement and the service
73 referrals completed and determine whether other appropriate services are available to address
74 the needs of the juvenile and his or her family.

75 (4) The prepetition review shall occur within ~~fourteen~~ 14 days of referral from the state
76 department worker, probation officer, or truancy diversion specialist.

77 (5) After the prepetition review, the prepetition review team may:

78 (A) Refer a modified diversion agreement back to the case worker, probation officer or
79 truancy diversion specialist;

80 (B) Advise the case worker, probation officer or truancy diversion specialist to file a petition
81 with the court; or

82 (C) Advise the case worker to open an investigation for child abuse or neglect.

83 (g) The requirements of this section are not mandatory until ~~July 1, 2016~~ July 1, 2024:

84 *Provided*, That nothing in this section prohibits a judicial circuit from continuing to operate a
85 truancy or other juvenile treatment program that existed as of January 1, ~~2015~~ 2023: *Provided*,

86 *however*, That any judicial circuit desiring to create a diversion program after the effective date of
87 this section ~~and prior to July 1, 2016~~, may only do so pursuant to this section.