

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 568

By Senators Taylor, Azinger, Boley, Deeds, Grady,
Hamilton, Hunt, Jeffries, Maynard, Oliverio, Phillips,
Roberts, Smith, Stuart, Swope, and Nelson

[Introduced January 26, 2024; referred
to the Committee on Education; and then to the
Committee on the Judiciary]

1 A BILL to amend and reenact §18-8-4 of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §49-4-702 of said code, all relating to student absences; changing
3 focus from truancy and unexcused absences to a multi-tiered system of support in all
4 absences, both excused and unexcused; defining "absence", "absenteeism", and "multi-
5 tiered system of support "; limiting the number of parental excuses that can be accepted
6 each school year as documentation that an absence is excused; requiring county
7 attendance director and assistant to ensure the implementation of the multi-tiered system
8 of support interventions; requiring meaningful contact with parent, guardian, or custodian
9 after three consecutive absences rather than after three unexcused absences; requiring
10 meaningful contact with the parent, guardian, or custodian after five absences of any kind
11 rather than after five unexcused absences; requiring the attendance director or assistants
12 provide notice to parent after 10 absences of any kind, which shall serve as due notice;
13 requiring the principal or designee to ensure student support staff provide intentional
14 interventions; authorizing the attendance director or assistant to make a complaint before
15 a magistrate of the county after 17 total absences of any kind; removing requirement for
16 attendance director and assistant directors to prepare a report for submission by the
17 county superintendent to the State Superintendent of Schools on school attendance;
18 removing requirement for West Virginia Board of Education rule that sets forth absences
19 that are excluded for accountability purposes; removing requirement that attendance
20 director file with the county superintendent and county board at the close of each month
21 showing activities of the school attendance office and the status of attendance in the
22 county; recognizing that the existing definition of "neglected child" includes failure to
23 supply necessary education; referring to existing school personnel reporting requirement
24 applicable in certain cases pertaining to child neglect; and making referral for the
25 development of a diversion program in truancy offense matters discretionary.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

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

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

2 (1) "Absence" means not being physically present in the school facility for any reason or
3 failing to engage in virtual or remote learning in accordance with county attendance policy.

4 (2) "Absenteeism" means a habitual pattern of absence from school;

5 (3) "Multi-Tiered System of Support (MTSS)" means a tiered framework that promotes a
6 well-integrated system providing student/family supports through universal, targeted and intensive
7 interventions.

8 (b) The county attendance director and the assistants shall diligently promote regular
9 school attendance. The director and assistants shall:

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

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

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

17 ~~(A) "Excused absence" includes:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 ~~(4) All documentation relating to absences shall be provided to the school no later than~~
39 ~~three instructional days after the first day the student returns to school.~~

40 ~~(b) In the case of three total unexcused absences of a student during a school year, the~~
41 ~~attendance director, assistant, or principal shall make meaningful contact with the parent,~~
42 ~~guardian, or custodian of the student to ascertain the reasons for the unexcused absences and~~
43 ~~what measures the school may employ to assist the student in attending and not incurring any~~
44 ~~additional unexcused absences.~~

45 (1) Ensure that no more than eight written parent excuses are accepted each school year
46 as documentation that an absence is excused; and

47 (2) Ensure the implementation of MTSS interventions as defined in a system to be adopted
48 by the state board of education and including but not limited to the following:

49 (A) In the case of three absences of a student, the principal or designee shall make

50 meaningful contact with the parent/guardian/custodian of the student to ascertain the reason(s) for
51 the absences and what measures the school may employ to assist the student in attending and not
52 incurring any additional absences;

53 (B) In the case of five total absences, the principal or designee shall again make
54 meaningful contact with the parent/guardian/custodian of the student to ascertain the reasons for
55 the absences and what measures the school may employ to assist the student in attending school
56 and not incurring any additional absences;

57 (C) In the case of eight total absences of a student during a school year the attendance
58 director or assistants shall provide the parent with written notice of their child's absenteeism, which
59 shall serve as due notice;

60 (D) The principal or designee(s) shall ensure student support staff provide intentional
61 interventions including but not limited to engaging with community resources and individualized
62 community-based services that focus on the needs of children and families; and

63 (E) In the case of 10 total absences the attendance director or assistant may make a
64 complaint against the parent, guardian or custodian before a magistrate of the county.

65 ~~(c) In the case of five total unexcused absences, the attendance director or assistant or~~
66 ~~principal shall again make meaningful contact with the parent, guardian, or custodian of the~~
67 ~~student to ascertain the reasons for the unexcused absences and what measures the school may~~
68 ~~employ to assist the student in attending school and not incurring any additional unexcused~~
69 ~~absences.~~

70 If it appears from the complaint that there is probable cause to believe that an offense has
71 been committed and that the accused has committed it, a summons or a warrant for the arrest of
72 the accused shall issue to any officer authorized by law to serve the summons or to arrest persons
73 charged with offenses against the state. More than one parent, guardian or custodian may be
74 charged in a complaint. Initial service of a summons or warrant issued pursuant to the provisions
75 of this section shall be attempted within ten calendar days of receipt of the summons or warrant

76 and subsequent attempts at service shall continue until the summons or warrant is executed or
77 until the end of the school term during which the complaint is made, whichever is later.

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

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

94 (f) (e) When any doubt exists as to the age of a student absent from school, the attendance
95 director and assistants have authority to require a properly attested birth certificate or an affidavit
96 from the parent, guardian or custodian of the student, stating age of the student. In the
97 performance of his or her duties, the county attendance director and assistants have authority to
98 take without warrant any student absent from school in violation of the provisions of this article and
99 to place the student in the school in which he or she is or should be enrolled.

100 (g) (f) The county attendance director and assistants shall devote such time as is required
101 by section three of this article to the duties of attendance director in accordance with this section

102 during the instructional term and at such other times as the duties of an attendance director are
103 required. All attendance directors and assistants hired for more than 200 days may be assigned
104 other duties determined by the superintendent during the period in excess of 200 days. The county
105 attendance director is responsible under direction of the county superintendent for efficiently
106 administering school attendance in the county.

107 ~~(h)~~ (g) In addition to those duties directly relating to the administration of attendance, the
108 county attendance director and assistant directors also shall perform the following duties:

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

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

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

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

125 ~~(5)~~ (4) Promote attendance in the county by compiling data for schools and by furnishing
126 suggestions and recommendations for publication through school bulletins and the press, or in
127 such manner as the county superintendent may direct;

128 (6) (5) Participate in school teachers' conferences with parents and students;

129 (7) (6) Assist in such other ways as the county superintendent may direct for improving
130 school attendance;

131 (8) (7) Make home visits of students who have excessive unexcused absences, as
132 provided in subsection-a of this section, or if requested by the chief administrator, principal or
133 assistant principal; and

134 (9) (8) Serve as the liaison for homeless children and youth.

135 (h) Under the definition of "neglected child" in §49-1-201 of this code, neglected child can
136 include failure to supply necessary education. Pursuant to §49-2-803 of this code, any school
137 personnel who has reasonable cause to suspect that a child is neglected or observes the child
138 being subjected to conditions that are likely to result in neglect shall immediately, and not more
139 than 24 hours after suspecting this neglect, report the circumstances to the Department of Health
140 and Human Resources.

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 to
2 a case worker, probation officer or truancy diversion specialist for preliminary inquiry to determine
3 whether the matter can be resolved informally without the formal filing of a petition with the court.

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

9 (2) If the matter is for a status offense other than truancy, the prosecutor shall refer the
10 juvenile to a case worker or probation officer who shall develop a diversion program pursuant to

11 subsection (d) of this section.

12 (3) The prosecutor is not required to refer the juvenile for development of a diversion
13 program pursuant to subdivision ~~(1)~~ or (2) of this subsection and may proceed to file a petition with
14 the court if he or she determines:

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

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

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

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

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

26 (B) Create a diversion agreement;

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

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

31 (2) A diversion agreement may include:

32 (A) Referral to community services as defined in §49-1-206 of this code for the juvenile to
33 address the assessed need;

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

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

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

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

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

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

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

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

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

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

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

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

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

61 (f)(1) The prepetition review team may be a subset of a multidisciplinary team established
62 pursuant to §49-4-406 of this code.

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

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

66 (B) A service provider;

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

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

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

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

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

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

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

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

82 (g) The requirements of this section are not mandatory until July 1, 2016: *Provided*, That
83 nothing in this section prohibits a judicial circuit from continuing to operate a truancy or other
84 juvenile treatment program that existed as of January 1, 2015: *Provided, however*, That any
85 judicial circuit desiring to create a diversion program after the effective date of this section and
86 prior to July 1, 2016, may only do so pursuant to this section.

NOTE: The purpose of this bill is to change the focus from truancy and unexcused absences to a multi-tiered system of support and all absences, both excused and unexcused; limit the number of parental excuses that can be accepted each school year as

documentation that an absence is excused; require county attendance director and assistant to ensure the implementation of MTSS interventions; recognize that the existing definition of “neglected child” includes failure to supply necessary education; refer to existing school personnel reporting requirement applicable in certain cases pertaining to child neglect; and make referral for the development of a diversion program in truancy offense matters discretionary.

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