

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Enrolled

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

[Passed March 2, 2024; in effect 90 days from
passage]

1 A BILL to amend and reenact §18-8-2 and §18-8-4 of the Code of West Virginia, 1931, as
2 amended; to amend said code by adding thereto a new article, designated §18-34-1, §18-
3 34-2, and §18-34-3; and to amend and reenact §49-4-702 of said code, all relating to
4 student absences; amending criminal penalties imposed for failing to attend school without
5 good cause; defining terms; requiring the State Board to implement a System of Support
6 Plan to encourage and promote compulsory school attendance with implementation to be
7 ensured by the county attendance director; requiring the school to make periodic
8 meaningful contact with parents, guardians, or custodians of children who fail to attend
9 school; removing requirement for attendance director and assistant directors to prepare a
10 report for submission by the county superintendent to the State Superintendent of Schools
11 on school attendance; providing legislative intent for Jaycie's Law; providing that a
12 student's absence due to a student's pregnancy or parenting needs is a lawful absence;
13 requiring the State Board of Education to develop a written attendance policy for pregnant
14 and parenting students that sets forth minimum requirements therefor; establishing article
15 effective date; and making referral for the development of a diversion program in truancy
16 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 parent, guardian, or custodian who fails to cause a child or children under 18 years
2 of age in that person's legal or actual charge to attend school in violation of this article or without
3 just cause, is guilty of a misdemeanor and, shall, upon conviction of a first offense, be fined not
4 less than \$50 nor more than \$100 together with the costs of prosecution. The magistrate or circuit
5 court judge, upon conviction and pronouncing sentence, may delay the sentence for a period of 60

6 school days provided the child is in attendance every day during said 60-day period. Following the
7 60-day period, if the child was present at school for every school day, the delayed sentence may
8 be suspended and dismissed. Upon conviction of a second offense, a fine may be imposed of not
9 less than \$50 nor more than \$100 together with the costs of prosecution or confined in jail not less
10 than five nor more than 20 days. Every day a child is out of school contrary to this article
11 constitutes a separate offense. Magistrates shall have concurrent jurisdiction with circuit courts for
12 the trial of offenses arising under this section.

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

27 (c) Upon conviction of a third offense, any person 18 years of age or older who is enrolled
28 in school shall be withdrawn from school during the remainder of that school year. Enrollment of
29 that person in school during the next school year or years thereafter is conditional upon all
30 absences being excused as defined in law, state board policy and county board of education

31 policy. More than one unexcused absence of such a student shall be grounds for the director of
32 attendance to authorize the school to withdraw the person for the remainder of the school year.
33 Magistrates shall have concurrent jurisdiction with circuit courts for the trial of offenses arising
34 under this section.

35 (d) Jurisdiction to enforce compulsory school attendance laws lies in the county in which a
36 student resides and in the county where the school at which the student is enrolled is located.
37 When the county of residence and enrollment are different, an action to enforce compulsory
38 school attendance may be brought in either county and the magistrates and circuit courts of either
39 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 (a) For the purposes of this article, the following definitions apply:

2 (1) "Excused absence" means:

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

4 (B) 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 (C) 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 (D) Death in the family;

19 (E) School-approved or county-approved curricular or extra-curricular activities;

20 (F) A judicial obligation or court appearance involving the student; and

21 (G) A military requirement for students enlisted or enlisting in the military.

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

28 (3) "System of Support Plan" ("SOS Plan") refers to a plan to be developed by the State
29 Board of Education designed to encourage students to attend school. It shall, at a minimum,
30 require county attendance directors, principals, or other school designees to make periodic
31 contact with the parent, guardian, or custodian of a student subject to compulsory school
32 attendance to ascertain the reason or reasons for the student's absence or absences and what
33 measures the school may employ to assist the student in attending school and not incurring
34 additional absences. It shall also impart upon the student's parents, guardians, and custodians the
35 importance of the student's attendance and the seriousness of failing to do so.

36 (4) "Unexcused absence" means any absence not specifically included in the definition of
37 "excused absence".

38 (b) The county attendance director and his or her assistants shall diligently promote regular
39 school attendance. The director and assistants shall:

40 (1) Ascertain the reasons for unexcused absences from school of students of compulsory
41 school age and students who remain enrolled beyond the compulsory school age

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

45 (c) All documentation relating to absences shall be provided to the school no later than
46 three instructional days after the first day the student returns to school. In the event
47 documentation is not provided to the school within three instructional days after the first day the
48 student returns to school, the absences are unexcused.

49 (d) In the case of three total unexcused absences of a student during a school year, the
50 attendance director, his or her assistant, or the principal shall make meaningful contact with the
51 parent, guardian, or custodian of the student to ascertain the reasons for the unexcused absences
52 and what measures the school may employ to assist the student in attending and not incurring any
53 additional unexcused absences.

54 (e) In the case of five total unexcused absences, the attendance director, his or her
55 assistant or the principal shall again make meaningful contact with the parent, guardian, or
56 custodian of the student to ascertain the reasons for the unexcused absences and what measures
57 the school may employ to assist the student in attending school and not incurring any additional
58 unexcused absences.

59 (f) In the case of 10 total unexcused absences of a student during a school year, the
60 attendance director or assistant may make a complaint against the parent, guardian, or custodian
61 before a magistrate of the county. If it appears from the complaint that there is probable cause to
62 believe that an offense has been committed and that the accused has committed it, a summons or
63 a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the
64 summons or to arrest persons charged with offenses against the state. More than one parent,
65 guardian, or custodian may be charged in a complaint. Initial service of a summons or warrant

66 issued pursuant to the provisions of this section shall be attempted within 10 calendar days of
67 receipt of the summons or warrant and subsequent attempts at service shall continue until the
68 summons or warrant is executed or until the end of the school term during which the complaint is
69 made, whichever is later.

70 (g) The magistrate court clerk, or the clerk of the circuit court performing the duties of the
71 magistrate court as authorized in §50-1-8 of this code, shall assign the case to a magistrate within
72 10 days of execution of the summons or warrant. The hearing shall be held within 20 days of the
73 assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the
74 accused at least 10 days' advance notice of the date, time and place of the hearing.

75 (h) When any doubt exists as to the age of a student absent from school, the attendance
76 director and his or her assistants may require a properly attested birth certificate or an affidavit
77 from the parent, guardian, or custodian of the student stating the age of the student. In the
78 performance of his or her duties, the county attendance director and his or her assistants have
79 authority to take without warrant any student absent from school in violation of the provisions of
80 this article and to place the student in the school in which he or she is or should be enrolled.

81 (i) The county attendance director and his or her assistants shall devote as much time as is
82 required to the duties of attendance director in accordance with this section during the instructional
83 term and at any other times as the duties of an attendance director are required. All attendance
84 directors and assistants hired for more than 200 days may be assigned other duties determined by
85 the superintendent during the period in excess of 200 days. The county attendance director is
86 responsible under direction of the county superintendent for efficiently administering school
87 attendance in the county.

88 (j) In addition to those duties directly relating to the administration of attendance, the
89 county attendance director and his or her assistant directors also shall perform the following
90 duties:

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

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

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

97 (4) Promote attendance in the county by compiling data for schools and by furnishing
98 suggestions and recommendations for publication through school bulletins and the press, or in
99 any manner directed by the county superintendent;

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

101 (6) Assist in any other ways directed by the county superintendent for improving school
102 attendance;

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

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

ARTICLE 34. JAYCIE'S LAW.

§18-34-1. Legislative intent.

1 The West Virginia Legislature finds that parents of children throughout any age in middle or
2 high school should be given the utmost support, because they face a unique set of challenges and
3 circumstances on their road to graduation. School systems in West Virginia shall implement
4 programs to provide educational support to those students with children at any age through
5 graduation. The goal of this act is to assist these students to stay in school while providing enough
6 time for proper medical recovery after the birth of the child.

§18-34-2. Policy enacted.

1 (a) A student's absence due to a student's pregnancy or parenting needs is an excused

2 absence as provided under this section and for purposed of §18-8-4(a)(1) of this code.

3 (b) The State Board of Education shall develop a written attendance policy for pregnant
4 and parenting students that, at a minimum, meets the requirements of this article. The policy
5 developed under this section shall:

6 (1) Excuse all absences due to pregnancy or parenting-related conditions, including
7 absences for:

8 (A) Labor;

9 (B) Delivery;

10 (C) Recovery; and

11 (D) Prenatal and postnatal medical appointments;

12 (2) Provide at least 8 weeks of excused absences for a mother for the birth of the student's
13 child, including both natural/vaginal delivery and c-section delivery;

14 (3) Provide excused absences for antenatal care by recommendation of the medical
15 provider;

16 (4) Provide two weeks excused absence for the father of the child;

17 (A) A doctor's or medical excuse shall be provided up to the initial 8 weeks' absence and a
18 separate excuse for each period of absence after the initial 8 weeks.

19 (B) County boards shall make reasonable efforts to encourage the parent to remain on
20 track for graduation by providing academic support options including, but not limited to, work
21 provided virtually and a homebound instructor for weekly visits to ensure accountability.

22 (5) Provide an excused absence for parenting students whose children are sick: Provided,
23 That they shall provide a doctor's excuse for that child.

24 (6) The schools shall refer the pregnant and parenting student to a "pregnancy help
25 organization" by providing a list of pregnancy or postpartum assistance organizations within the
26 county and surrounding counties as defined under §16-66-1 of this code.

§18-34-3.

Effective

date.

27 This article shall become effective on July 1, 2024.

28

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 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 may refer the matter to a state
5 department worker, probation officer, or truancy diversion specialist who shall develop a diversion
6 program pursuant to subsection (d) of this section. If the prosecutor does not refer the matter to a
7 state department worker, probation officer, or truancy diversion specialist pursuant to this
8 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 (2) of this subsection and may proceed to file a petition with the
14 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, he or she shall refer

21 the 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
30 services 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 72
42 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
45 juvenile who have consented to the diversion agreement as is necessary and proper to carry out

46 the agreement.

47 (5) If the juvenile and his or her parent, custodian, or guardian do not consent to the terms
48 of 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 14 days of referral from the state department
75 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, 2024: *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, 2023: *Provided, however*, That any
85 judicial circuit desiring to create a diversion program after the effective date of this section, may
86 only do so pursuant to this section.