

**Senate Bill No. 447**

(By Senators Palumbo and Plymale)

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[Introduced February 7, 2011; referred to the Committee on  
Education; and then to the Committee on the Judiciary.]  
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10 A BILL to amend and reenact §18-8-2 of the Code of West Virginia,  
11 1931, as amended; and to amend said code by adding thereto a  
12 new section, designated §18-8-2a, all relating to adding a  
13 possible period of incarceration for a first offense violation  
14 of school attendance requirements for parents, guardians or  
15 custodians of minor children; authorizing county school  
16 superintendents or their designees to request and obtain an  
17 investigation by the Department of Health and Human Resources  
18 of the household of a student with five or more unexcused  
19 absences; authorizing prosecuting attorneys to request and  
20 obtain attendance of Child Protective Services workers at  
21 hearings and meetings related to prosecution of violation of  
22 school attendance laws; and including criminal penalties.

23 *Be it enacted by the Legislature of West Virginia:*

24 That §18-8-2 of the Code of West Virginia, 1931, as amended,  
25 be amended and reenacted; and that said code be amended by adding  
26 thereto a new section, designated §18-8-2a, all to read as follows:

27 **ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

1 **§18-8-2. Offenses; penalties; cost of prosecution.**

2       (a) Any person who, after receiving due notice, ~~shall fail~~  
3 fails to cause a child or children under eighteen years of age in  
4 that person's legal or actual charge to attend school in violation  
5 of the provisions of this article or without just cause, ~~shall be~~  
6 is guilty of a misdemeanor and, shall, upon conviction of a first  
7 offense, be confined in jail for not more than forty-eight hours,  
8 fined not less than \$50 nor more than \$100 together with the costs  
9 of prosecution, or required to accompany the child to school and  
10 remain through the school day for so long as the magistrate or  
11 judge may determine is appropriate, or any combination thereof.  
12 The magistrate or judge, upon conviction and pronouncing sentence,  
13 may delay the sentence for a period of sixty school days provided  
14 the child is in attendance everyday during ~~said~~ the sixty-day  
15 period. Following the sixty-day period, if ~~said~~ the child was  
16 present at school for every school day, the delayed sentence may be  
17 suspended and not enacted. Upon conviction of a second offense, a  
18 fine may be imposed of not less than \$50 dollars nor more than \$100  
19 together with the costs of prosecution and the person may be  
20 required to accompany the child to school and remain throughout the  
21 school day until such time as the magistrate or judge may determine  
22 is appropriate or confined in jail not less than five nor more than  
23 twenty days. Every day a child is out of school contrary to the  
24 provisions of this article shall constitute a separate offense.  
25 Magistrates shall have concurrent jurisdiction with circuit courts  
26 for the trial of offenses arising under this section.

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

23        (c) Upon conviction of a third offense, any person eighteen  
24 years of age or older who is enrolled in school shall be withdrawn  
25 from school during the remainder of that school year. Enrollment  
26 of that person in school during the next school year or years  
27 thereafter shall be conditional upon all absences being excused as

1 defined in law, state board policy and county board of education  
2 policy. More than one unexcused absence of such a student shall be  
3 grounds for the director of attendance to authorize the school to  
4 withdraw the person for the remainder of the school year.  
5 Magistrates shall have concurrent jurisdiction with circuit courts  
6 for the trial of offenses arising under this section.

7 **§18-8-2a. Procedures to assist in assuring attendance of**  
8 **elementary and middle school students.**

9 (a) Whenever a child in kindergarten or grades one through  
10 eight is determined by a county school superintendent or his or her  
11 designee to have more than five unexcused absences from school in  
12 any one school year the superintendent shall inform the Community  
13 Service Manager for the Department of Health and Human Resources  
14 county office who shall cause a child protective services worker to  
15 visit the household of the student and attempt to determine the  
16 cause or causes of the unexcused absences and promulgate a written  
17 report of his or her findings and provide same to the  
18 superintendent of schools or his or her designee and the  
19 prosecuting attorney of the child's county of residence within ten  
20 business days of the visit to the household.

21 (b) Whenever a prosecuting attorney is pursuing a prosecution  
22 pursuant to the provisions of subsection (a), section two of this  
23 article he or she may request the attendance of a child protective  
24 services worker at court proceedings or meetings that are  
25 undertaken to resolve the cause of the unexcused absences. The  
26 community services manager for the child's county of residence  
27 shall ensure the attendance of a child protective services worker

1 at the proceeding or meeting.

NOTE: The purpose of this bill is to add a possible period of incarceration for a first offense violation of school attendance requirements for parents, guardians, or custodians of minor children. The bill would authorize county school superintendents or their designees to request and obtain an investigation by the Department of Health and Human Resources of the household of a student with five or more unexcused absences and authorize prosecuting attorneys to request and obtain attendance of childrens' protective services workers at hearings and meetings related to prosecution of violation of school attendance laws.

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

§18-8-2a is new; therefore, strike-throughs and underscoring have been omitted.