

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 5375

FISCAL
NOTE

By Delegates Hanshaw (Mr. Speaker) and Hornbuckle

(By Request The Executive)

[Introduced February 09, 2026; referred to the Committee
on the Judiciary]

1 A BILL to amend and reenact §18-8-2 of the Code of West Virginia, 1931, as amended, and to
 2 amend the code by adding two new sections, designated §49-2-202a and §61-11-22b,
 3 relating to affording parents, guardians, and custodians of truant children with additional
 4 resources and assistance prior to conviction; removing criminal penalties for students who
 5 have reached the age of majority; creating a truancy pretrial diversion program which
 6 allows parents, guardians, and custodians of truant children to avoid conviction if they
 7 remedy the truancy and the causes that led to truancy; requiring sentencing of truant
 8 parents, guardians, and custodians to be delayed to allow for additional opportunities to
 9 address the truancy; allowing magistrate and circuit court judges to require the Department
 10 of Human Services to offer home-based family preservation services for families of truant
 11 children, when the courts are involved.

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. Eligibility for the truancy pretrial diversion program
13 and required prerequisites to sentencing shall be governed by §61-11-22b of this code.

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

28 ~~(c) Upon conviction of a third offense, any person 18 years of age or older who is enrolled~~
29 ~~in school shall be withdrawn from school during the remainder of that school year. Enrollment of~~
30 ~~that person in school during the next school year or years thereafter is conditional upon all~~
31 ~~absences being excused as defined in law, state board policy and county board of education~~
32 ~~policy. More than one unexcused absence of such a student shall be grounds for the director of~~
33 ~~attendance to authorize the school to withdraw the person for the remainder of the school year.~~
34 ~~Magistrates shall have concurrent jurisdiction with circuit courts for the trial of offenses arising~~
35 ~~under this section.~~

36 ~~(d) (b)~~ Jurisdiction to enforce compulsory school attendance laws lies in the county in
37 which a student resides and in the county where the school at which the student is enrolled is

38 located. When the county of residence and enrollment are different, an action to enforce
39 compulsory school attendance may be brought in either county and the magistrates and circuit
40 courts of either county have concurrent jurisdiction for the trial of offenses arising under this
41 section.

CHAPTER 49. CHILD WELFARE.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-202a. Family preservation services for truancy.

1 (a) Oftentimes, truancy or chronic absenteeism can be a symptom of deeper problems,
2 including the mental health and substance abuse of the child or their parents, undiagnosed
3 learning disorders of the child, deficient parenting skills of the parents, or complex family
4 dynamics. In order to adequately remedy truancy, it may be necessary to work with the family, as a
5 whole, to identify the underlying cause and to overcome barriers to improvement. Further it is
6 presumed that when a matter of truancy has resulted in criminal charges, pursuant to §18-8-2 of
7 this code, or any court involvement pursuant to §49-4-702 or §49-4-702a of this code, it is
8 significantly more likely that a child in the home will be removed from the custody of the parent,
9 guardian, or custodian. Therefore, intervention by the department may be necessary to preserve
10 the family.

11 (b) Accordingly, when a magistrate or circuit court judge refers a matter to the department
12 due to court involvement pursuant to §18-8-2a, §49-4-702, or §49-4-702a of this code, the
13 department shall initiate home-based family preservation services. Except as otherwise allowed,
14 the home-based family preservation services required by this section shall be provided consistent
15 with the home-based family preservation services required by §49-2-202 of this code.

16 (c) Home-based family preservation services may continue after resolution of the
17 underlying matter pursuant to §18-8-2a, §49-4-702, or §49-4-702 of this code.

18 (d) Nothing contained herein should be interpreted as precluding or limiting other actions
19 the department, or the courts, may take to provide children and their families with better tools to

20 address the root causes of truancy, and to improve school attendance.

21 (e) When short-term home-based family preservation intervention is initiated pursuant to
22 this section, then a contractor employee of the department may engage in more than three families
23 during any period of time, so long as the department can determine that such will not impact the
24 efficacy of the services. Except as explicitly set forth, this subsection does not otherwise alter the
25 requirements of §49-2-203 of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-22b. Pretrial Diversion for Truancy Offenses; Delayed Sentencing for Truancy.

1 (a) Entitlement to Truancy Pretrial Diversion. – Any person charged with committing a first
2 offense in violation of §18-8-2 of this code, who has no other pending criminal charges, shall be
3 entitled to an offer to enter into pretrial diversion agreement, pursuant to the terms and procedure
4 set forth in this subsection.

5 (1) The prosecuting attorney and the person charged may enter into a pretrial diversion. A
6 pretrial diversion will not be valid unless it is reduced to writing. The written agreement must be
7 executed in the presence of the person’s attorney, or, if the person does not have counsel, in the
8 presence of the presiding magistrate or circuit court judge.

9 (A) The pretrial diversion agreement must set forth the duration of the agreement, which
10 must be at least six months, but may not exceed 18 months.

11 (B) The pretrial diversion agreement must include the condition that the person must
12 improve the school attendance of any child named in the criminal complaint. The pretrial diversion
13 agreement may include other children under the care, custody, and control of the person charged,
14 even if the other child is not alleged in the criminal complaint. The agreement should include a
15 goal or metric for determining whether sufficient improvement has been made.

16 (C) The pretrial diversion agreement may include terms and conditions similar to those set
17 forth in §62-12-9 of this code relating to conditions of probation, including supervision by a

18 probation officer.

19 (D) The pretrial diversion agreement may include drug and alcohol treatment, counseling,
20 and participation in programs offered under §62-11A-1 et seq., §62-11C-1 et seq., §62-15-1 et
21 seq., §62-15A-1 et seq., §62-15B-1 et seq., and §62-16-1 et seq.

22 (E) The pretrial diversion agreement must include a waiver of confidentiality, which allows
23 the county truancy officer to provide the magistrate or circuit court judge, the prosecuting attorney,
24 and the probation officer, if any, with the school attendance records of the subject child or children.
25 The county truancy officer must submit school attendance records to the parties prior to the final
26 hearing on the pretrial diversion, but the county truancy officer may be required to submit records
27 more frequently, upon the direction of the magistrate or circuit court judge.

28 (F) Unless explicitly prohibited by any other provision of law, the pretrial diversion
29 agreement may include any other terms and conditions upon which the person charged and the
30 prosecuting attorney agree.

31 (2) The magistrate or circuit court judge may impose additional terms and conditions,
32 which do not have to be set forth in the agreement. A person entering a pretrial diversion
33 agreement should be advised that these terms and conditions may be ordered as a part of the
34 pretrial diversion.

35 (A) The magistrate or circuit court judge may require status hearings, at which time the
36 court shall be provided with an update as to the progress of the person charged. The magistrate or
37 circuit court judge may order the county truancy officer, or his or her designee, to appear in court to
38 provide the school attendance for the person charged or the children of the person charged.

39 (B) The magistrate or circuit court judge may refer the person to the Department of Human
40 Services to receive home-based family preservation services, pursuant to §49-2-202a of this
41 code. The magistrate or circuit court judge may order the department to provide monthly or
42 quarterly status reports on the home-based family preservation services. It is presumed that if a
43 parent, guardian, or custodian is charged pursuant to §18-8-2 of this code, then it is significantly

44 more likely that a child in the home will be removed from the custody of said parent, guardian, or
45 custodian, and, as such, home-based family preservation services may be appropriate. If a
46 magistrate or circuit court judge refers a person to the department for home-based family
47 preservation services, then the department shall offer those services.

48 (3) A person entitled to a pretrial diversion is entitled to the offer of a pretrial diversion
49 agreement, but the terms and conditions of the agreement must be mutually agreeable to both the
50 person and the prosecuting attorney. No charged person is obligated to enter into a pretrial
51 diversion agreement. A magistrate or circuit court judge may deny a pretrial diversion, in
52 accordance with Rule 11 of the West Virginia Rules of Criminal Procedure.

53 (4) A person who has entered into an agreement for a pretrial diversion with a prosecuting
54 attorney and who has successfully complied with the terms of the pretrial diversion is not subject to
55 prosecution for the offense or offenses described in the agreement, or for the underlying conduct
56 or transaction constituting the offense or offenses described in the agreement, unless the
57 agreement includes a provision that upon compliance the person agrees to plead guilty or nolo
58 contendere to a specific related offense, with or without a specific sentencing recommendation by
59 the prosecuting attorney.

60 (5) Upon the determination of the magistrate or circuit court judge that the person who has
61 entered into an agreement for a pretrial diversion has not successfully complied with the terms of
62 the pretrial diversion, the prosecuting attorney may proceed to prosecute the person for the
63 charged offenses, as if the pretrial diversion was never entered.

64 (6) A person who enters into a pretrial diversion agreement pursuant to this section may
65 also be entitled to a pretrial diversion for other charges, insomuch as permissible pursuant to §61-
66 11-22 of this code. Nothing contained herein shall prevent the prosecuting attorney from filing new
67 charges which arise after the entry of the pretrial diversion agreement.

68 (b) Eligibility for Truancy Pretrial Diversion. – The prosecuting attorney may offer a pretrial
69 diversion to any person charged with committing a first offense in violation of §18-8-2 even if the

70 person has other pending criminal charges, or if the person it charged with a second offense in
71 violation of §18-8-2 of this code. The agreement will have the same requirements and will have
72 the same procedure as set forth in subsection (a) of this section, except that the duration of the
73 agreement must be for a minimum of 12 months, but may not exceed 24 months.

74 (c) *Delayed Sentencing for Truancy Conviction.* – Upon the entry of a guilty plea to any
75 offense or offenses set forth in §18-8-2 of this code, the magistrate or circuit court judge shall
76 schedule sentencing for at least 90 days after the plea hearing. If the conviction is obtained in
77 June, July, or the beginning of August, the sentencing hearing shall be extended such that there is
78 a continuous 90-day period which begins with the start of the next school year.

79 (1) The magistrate or circuit court judge shall set terms which the defendant is required to
80 meet during the 90-day period.

81 (A) The magistrate or circuit court judge shall require the defendant to ensure that any child
82 or children within the care, custody, or control of the defendant shall maintain good school
83 attendance for the 90 days, regardless of whether the child was named in the criminal complaint
84 which resulted in the conviction. The magistrate or circuit court judge will identify what would be
85 considered good or adequate attendance for the purposes of this subsection.

86 (B) When the defendant's substance use is a contributing factor to the truancy, the
87 magistrate or circuit court judge may order the defendant to participate in family treatment court,
88 enroll in the day report center, or enroll in another out-patient treatment program. The magistrate
89 or circuit court judge may order the defendant to participate in an assessment through the day
90 report center to determine whether substance use is a contributing factor.

91 (C) The magistrate or circuit court judge may order additional requirements which may
92 allow the magistrate or circuit court judge to determine whether the defendant is seriously and
93 effectively addressing the matter of truancy.

94 (2) The magistrate or circuit court judge will determine if the defendant substantially
95 complied with the terms of the 90-day delay.

96 (A) Upon a finding of substantial compliance, then the statutory fine for a first offense or
97 second offense shall become not less than \$5 nor more than \$50 together with the costs of
98 prosecution.

99 (B) Upon a finding of substantial compliance, the magistrate or circuit court judge may not
100 impose a jail term for a conviction for a second offense, unless the execution of confinement is
101 suspended for unsupervised probation.

102 (C) If the magistrate or circuit court judge determines that all children under the care,
103 custody, or control maintained school attendance during the 90-day period, and that the defendant
104 substantially complied with any term or condition of the delay period, then the magistrate or circuit
105 court judge shall order the defendant to pay court costs, but will not impose a fine, jail term, or
106 probation. Upon agreement by the parties, the magistrate or circuit court judge may allow the
107 defendant to withdraw his or her guilty plea, and will entertain a motion of the prosecuting attorney
108 to dismiss the charge, with prejudice. The magistrate or circuit court judge may consider the child
109 or children to have maintained the required attendance if the magistrate or circuit court judge
110 determines that the child or children only had excused absences. The magistrate or circuit court
111 judge may also determine that the child or children did not have the required attendance if the child
112 or children were habitually tardy.

113 (3) If the magistrate or circuit court judge determines that the defendant did not
114 substantially comply with the 90-day delay, then the matter shall proceed to sentencing.

115 (4) The magistrate or circuit court judge may allow for a 90-day delay in sentencing,
116 pursuant to the requirements of this subsection, if the defendant is convicted at trial and if the
117 parties agree to the delay. A person convicted by trial who receives a 90-day delay in sentencing
118 will not be eligible for the dismissal of charges.

119 (d) Definitions. – For purposes of this section,

120 (1) "County truancy officer" shall include any county truancy officer, specialist, probation
121 officer, or other person designated by the school or the court as the most appropriate person

122 capable of providing the court with school attendance records.
123 (2) "Excused absences" shall have the same definition as set forth in §18-8-4 of this code.
124 However, a magistrate or circuit court judge may requests a doctor's excuse, even if not required
125 by §18-8-4 of this code, and, further, a magistrate or circuit court judge find that an absence
126 excused by the school is not excused for purposes of this section if the excuse provided cannot be
127 confirmed as authenticate, or if the magistrate or circuit court judge determines that the excused
128 absences did not justify the child from missing school. A magistrate or circuit court judge may
129 disregard any absence excused by the defendant.

NOTE: This bill creates a Truancy Pretrial Diversion Program that allows parents, guardians, and custodians of truant children an opportunity to remedy the truancy prior to conviction, allows for additional delays in sentencing to address the underlying truancy, and requires the Department of Human Services to provide home-based family preservation services when ordered by a magistrate or circuit court judge.

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