

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

### **Committee Substitute**

**for**

### **Senate Bill 901**

By Senators Smith (Mr. President) and Woelfel

(By Request The Executive)

[Reported February 25 2026, from 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 pre-trial 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 the truancy; requiring sentencing of truant  
8 parents, guardians, and custodians to be delayed to allow for additional opportunities to  
9 address the truancy; and allowing magistrate and circuit court judges to require the  
10 Department of Human Services to offer home-based family preservation services for  
11 families of truant 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~~ A parent, guardian, or custodian convicted of a  
9 second offense, ~~a fine may be imposed of~~ may be fined not less than \$50 nor more than \$100  
10 together with the costs of prosecution or confined in jail not less than five nor more than 20 days.

11 Every day a child is out of school contrary to this article constitutes a separate offense. Magistrates  
12 shall have concurrent jurisdiction with circuit courts for the trial of offenses arising under this  
13 section. Eligibility for the truancy pretrial diversion program and required prerequisites to  
14 sentencing shall be governed by §61-11-22b of this code.

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

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

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

## CHAPTER 49. CHILD WELFARE.

### PART II.

#### HOME-BASED FAMILY PRESERVATION ACT.

#### ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

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

1           (a) Truancy or chronic absenteeism from school can be a symptom of deeper problems,  
2 including the mental health and substance abuse of the child or his or her 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 in this section should be interpreted as precluding or limiting other  
19 actions the department, or the courts, may take to provide children and their families with better  
20 tools to address the root causes of truancy, and to improve school attendance.

21 (e) When the department initiates short-term home-based family preservation intervention  
22 pursuant to this section, then a contractor employee of the department may provide services to  
23 more than three families during any period of time, as long as the department can determine that  
24 the caseload will not impact the efficacy of the services. Except as explicitly set forth, this  
25 subsection does not otherwise alter the 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, may enter  
3 into pretrial diversion agreement, pursuant to the terms and procedure set forth in this subsection.

4 (1) The prosecuting attorney and the person charged may enter into a written pretrial  
5 diversion agreement. The written agreement shall be executed in the presence of the person's  
6 attorney, or, if the person does not have counsel, in the presence of the presiding magistrate or  
7 circuit court judge.

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

10 (B) The pretrial diversion agreement shall include the condition that the person must  
11 improve the school attendance of any child named in the criminal complaint. The pretrial diversion

12 agreement may include other children under the care, custody, and control of the person charged,  
13 even if the other children are not alleged in the criminal complaint. The agreement should include  
14 a goal or metric for determining whether sufficient improvement has been made.

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

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

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

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

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

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

38 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 the 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. A charged person is not 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 a pretrial diversion agreement 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 agreement 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 pursuant to §61-11-22 of this code.  
66 Nothing contained in this section shall prevent the prosecuting attorney from filing new charges  
67 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 shall have the same requirements and shall 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 Guilty Plea or Conviction. – Upon the entry of a guilty  
75 plea to any offense or offenses set forth in §18-8-2 of this code, the magistrate or circuit court  
76 judge shall schedule sentencing for at least 90 days after the plea hearing. If the conviction is  
77 obtained in June, July, or in August prior to the beginning of the school year, the sentencing  
78 hearing shall be extended so that there is a continuous 90-day period which begins with the start of  
79 the next school year.

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

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

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

90 or circuit court judge may order the defendant to participate in an assessment through the day  
91 report center to determine whether substance use is a contributing factor.

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

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

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

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

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

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

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

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

121 (1) "County truancy officer" shall include any county truancy officer, specialist, probation  
122 officer, or other person designated by the school, board of education, or the court as the most  
123 appropriate person capable of providing the court with school attendance records.

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