

# Senate Bill No. 493

(By Senators Palumbo, Tucker and Barnes)

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[Introduced February 5, 2014; referred to the Committee on Education; and then to the Committee on the Judiciary.]

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A BILL to amend and reenact §18-8-2 and §18-8-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-1-4 of said code, all relating to excluding days a student is suspended from school from the days required to prove a student as a status offender and for prosecuting a parent for their child's truancy.

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

That §18-8-2 and §18-8-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-1-4 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

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

1        (a)(1) Any person who, after receiving due notice, shall  
2 fail to cause a child or children under eighteen years of age  
3 in that person's legal or actual charge to attend school in  
4 violation of the provisions of this article or without just  
5 cause, shall be guilty of a misdemeanor and shall, upon  
6 conviction of a first offense, be fined not less than \$50 nor  
7 more than \$100 together with the costs of prosecution, or  
8 required to accompany the child to school and remain  
9 through the school day for so long as the magistrate or judge  
10 may determine is appropriate. The magistrate or judge, upon  
11 conviction and pronouncing sentence, may delay the sentence  
12 for a period of sixty school days provided the child is in  
13 attendance everyday during said sixty-day period. Following  
14 the sixty-day period, if said child was present at school for  
15 every school day, the delayed sentence may be suspended  
16 and not enacted.

17        (2) Upon conviction of a second offense, a fine may be  
18 imposed of not less than \$50 nor more than \$100 together

19 with the costs of prosecution and the person may be required  
20 to accompany the child to school and remain throughout the  
21 school day until such time as the magistrate or judge may  
22 determine is appropriate or confined in jail not less than five  
23 nor more than twenty days. Every day a child is out of school  
24 contrary to the provisions of this article shall constitute a  
25 separate offense. Magistrates shall have concurrent  
26 jurisdiction with circuit courts for the trial of offenses arising  
27 under this section.

28 (b)(1) Any person eighteen years of age or older who is  
29 enrolled in school who, after receiving due notice, fails to  
30 attend school in violation of the provisions of this article or  
31 without just cause, shall be guilty of a misdemeanor and  
32 shall, upon conviction of a first offense, be fined not less than  
33 \$50 nor more than \$100 together with the costs of  
34 prosecution and required to attend school and remain  
35 throughout the school day. The magistrate or judge, upon  
36 conviction and pronouncing sentence, may delay the  
37 imposition of a fine for a period of sixty school days

38 provided the person is in attendance every day during said  
39 sixty-day period. Following the sixty-day period, if said  
40 student was present at school every day, the delayed sentence  
41 may be suspended and not enacted.

42 (2) Upon conviction of a second offense, a fine may be  
43 imposed of not less than \$50 nor more than \$100 together  
44 with the costs of prosecution and the person may be required  
45 to go to school and remain throughout the school day until  
46 such time as the person graduates or withdraws from school  
47 or confined in jail not less than five nor more than twenty  
48 days. Every day a student is out of school contrary to the  
49 provisions of this article shall constitute a separate offense.  
50 Magistrates shall have concurrent jurisdiction with circuit  
51 courts for the trial of offenses arising under this section.

52 (3) Upon conviction of a third offense, any person  
53 eighteen years of age or older who is enrolled in school shall  
54 be withdrawn from school during the remainder of that  
55 school year. Enrollment of that person in school during the  
56 next school year or years thereafter shall be conditional upon

57 all absences being excused as defined in law, state board  
58 policy and county board of education policy. More than one  
59 unexcused absence of such a student shall be grounds for the  
60 director of attendance to authorize the school to withdraw the  
61 person for the remainder of the school year. Magistrates shall  
62 have concurrent jurisdiction with circuit courts for the trial of  
63 offenses arising under this section.

64 (c) If a student is suspended from school and must be  
65 absent due to the terms of the suspension, the days the  
66 student is absent due to the suspension may not be counted as  
67 days absent from school for the purposes of subsections (a)  
68 and (b) of this section.

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

1 (a) The county attendance director and the assistants shall  
2 diligently promote regular school attendance. The director  
3 and assistants shall:

4 (1) Ascertain reasons for inexcusable absences from  
5 school of students of compulsory school age and students

6 who remain enrolled beyond the compulsory school age as  
7 defined under section one-a of this article: Provided, That if  
8 a student is suspended from school and must be absent due to  
9 the terms of the suspension, the days the student is absent due  
10 to the suspension may not be counted as inexcusable or  
11 unexcused absences for the purposes of this section; and

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

16 (b) In the case of five total unexcused absences of a  
17 student during a school year, the attendance director or  
18 assistant shall:

19 Serve written notice to the parent, guardian or custodian  
20 of the student that the attendance of the student at school is  
21 required and that within ten days of receipt of the notice the  
22 parent, guardian or custodian, accompanied by the student,  
23 shall report in person to the school the student attends for a  
24 conference with the principal or other designated

25 representative of the school in order to discuss and correct  
26 the circumstances causing the inexcusable absences of the  
27 student; and if the parent, guardian or custodian does not  
28 comply with the provisions of this article, then the attendance  
29 director or assistant shall make complaint against the parent,  
30 guardian or custodian before a magistrate of the county. If it  
31 appears from the complaint that there is probable cause to  
32 believe that an offense has been committed and that the  
33 accused has committed it, a summons or a warrant for the  
34 arrest of the accused shall issue to any officer authorized by  
35 law to serve the summons or to arrest persons charged with  
36 offenses against the state. More than one parent, guardian or  
37 custodian may be charged in a complaint. Initial service of  
38 a summons or warrant issued pursuant to the provisions of  
39 this section shall be attempted within ten calendar days of  
40 receipt of the summons or warrant and subsequent attempts  
41 at service shall continue until the summons or warrant is  
42 executed or until the end of the school term during which the  
43 complaint is made, whichever is later.

44 (c) The magistrate court clerk, or the clerk of the circuit  
45 court performing the duties of the magistrate court as  
46 authorized in section eight, article one, chapter fifty of this  
47 code, shall assign the case to a magistrate within ten days of  
48 execution of the summons or warrant. The hearing shall be  
49 held within twenty days of the assignment to the magistrate,  
50 subject to lawful continuance. The magistrate shall provide  
51 to the accused at least ten-days' advance notice of the date,  
52 time and place of the hearing.

53 (d) When any doubt exists as to the age of a student  
54 absent from school, the attendance director and assistants  
55 have authority to require a properly attested birth certificate  
56 or an affidavit from the parent, guardian or custodian of the  
57 student, stating age of the student. In the performance of his  
58 or her duties, the county attendance director and assistants  
59 have authority to take without warrant any student absent  
60 from school in violation of the provisions of this article and  
61 to place the student in the school in which he or she is or  
62 should be enrolled.



63 (e) The county attendance director and assistants shall  
64 devote such time as is required by section three of this article  
65 to the duties of attendance director in accordance with this  
66 section during the instructional term and at such other times  
67 as the duties of an attendance director are required. All  
68 attendance directors and assistants hired for more than two  
69 hundred days may be assigned other duties determined by the  
70 superintendent during the period in excess of two hundred  
71 days. The county attendance director is responsible under  
72 direction of the county superintendent for efficiently  
73 administering school attendance in the county.

74 (f) In addition to those duties directly relating to the  
75 administration of attendance, the county attendance director  
76 and assistant directors also shall perform the following  
77 duties:

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

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

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

86 (4) Prepare a report for submission by the county  
87 superintendent to the State Superintendent of Schools on  
88 school attendance, at such times and in such detail as may be  
89 required. The state board shall promulgate a legislative rule  
90 pursuant to article three-b, chapter twenty-nine-a of this code  
91 that sets forth student absences that are excluded for  
92 accountability purposes. The absences that are excluded by  
93 the rule include, but are not be limited to, excused student  
94 absences, students not in attendance due to disciplinary  
95 measures and absent students for whom the attendance  
96 director has pursued judicial remedies to compel attendance  
97 to the extent of his or her authority. The attendance director  
98 shall file with the county superintendent and county board at  
99 the close of each month a report showing activities of the

100 school attendance office and the status of attendance in the  
101 county at the time;

102 (5) Promote attendance in the county by compiling data  
103 for schools and by furnishing suggestions and  
104 recommendations for publication through school bulletins  
105 and the press, or in such manner as the county superintendent  
106 may direct;

107 (6) Participate in school teachers' conferences with  
108 parents and students;

109 (7) Assist in such other ways as the county  
110 superintendent may direct for improving school attendance;

111 (8) Make home visits of students who have excessive  
112 unexcused absences, as provided above, or if requested by  
113 the chief administrator, principal or assistant principal; and

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

## **CHAPTER 49. CHILD WELFARE.**

### **ARTICLE 1. PURPOSES; DEFINITIONS.**

#### **§49-1-4. Other definitions.**

1 As used in this chapter:

2 (1) “Child welfare agency” means any agency or facility  
3 maintained by the state or any county or municipality thereof  
4 or any agency or facility maintained by an individual, firm,  
5 corporation, association or organization, public or private, to  
6 receive children for care and maintenance or for placement  
7 in residential care facilities or any facility that provides care  
8 for unmarried mothers and their children;

9 (2) “Child advocacy center” means a community-based  
10 organization that is a member in good standing with the West  
11 Virginia Child Abuse Network, Inc., and is working to  
12 implement the following program components:

13 (A) Child-appropriate/child-friendly facility: A child  
14 advocacy center provides a comfortable, private,  
15 child-friendly setting that is both physically and  
16 psychologically safe for clients;

17 (B) Multi disciplinary team (MDT): A Multi disciplinary  
18 team for response to child abuse allegations includes  
19 representation from the following: law enforcement; child  
20 protective services; prosecution; mental health; medical;  
21 victim advocacy; child advocacy center;

22 (C) Organizational capacity: A designated legal entity  
23 responsible for program and fiscal operations has been  
24 established and implements basic sound administrative  
25 practices;

26 (D) Cultural competency and diversity: The child  
27 advocacy center promotes policies, practices and procedures  
28 that are culturally competent. Cultural competency is defined  
29 as the capacity to function in more than one culture, requiring  
30 the ability to appreciate, understand and interact with  
31 members of diverse populations within the local community;

32 (E) Forensic interviews: Forensic interviews are  
33 conducted in a manner which is of a neutral, fact-finding  
34 nature and coordinated to avoid duplicative interviewing;

35 (F) Medical evaluation: Specialized medical evaluation  
36 and treatment are to be made available to child advocacy  
37 center clients as part of the team response, either at the child  
38 advocacy center or through coordination and referral with  
39 other specialized medical providers;

40 (G) Therapeutic intervention: Specialized mental health  
41 services are to be made available as part of the team  
42 response, either at the child advocacy center or through  
43 coordination and referral with other appropriate treatment  
44 providers;

45 (H) Victim support/advocacy: Victim support and  
46 advocacy are to be made available as part of the team  
47 response, either at the child advocacy center or through  
48 coordination with other providers, throughout the  
49 investigation and subsequent legal proceedings;

50 (I) Case review: Team discussion and information sharing  
51 regarding the investigation, case status and services needed  
52 by the child and family are to occur on a routine basis;

53 (J) Case tracking: Child advocacy centers must develop  
54 and implement a system for monitoring case progress and  
55 tracking case outcomes for team components: *Provided*, That  
56 a child advocacy center may establish a safe exchange  
57 location for children and families who have a parenting

58 agreement or an order providing for visitation or custody of  
59 the children that require a safe exchange location;

60 (3) “Community based”, when referring to a facility,  
61 program, or service, means located near the juvenile’s home  
62 or family and involving community participation in planning,  
63 operation and evaluation and which may include, but is not  
64 limited to, medical, educational, vocational, social and  
65 psychological guidance, training, special education,  
66 counseling, alcoholism and any treatment and other  
67 rehabilitation services;

68 (4) “Court” means the circuit court of the county with  
69 jurisdiction of the case or the judge thereof in vacation unless  
70 otherwise specifically provided;

71 (5) “Custodian” means a person who has or shares actual  
72 physical possession or care and custody of a child, regardless  
73 of whether such person has been granted custody of the child  
74 by any contract, agreement or legal proceedings;

75 (6) “Department” or “state department” means the State  
76 Department of Health and Human Resources;

77 (7) “Division of Juvenile Services” means the division  
78 within the Department of Military Affairs and Public Safety  
79 pursuant to article five-e of this chapter;

80 (8) “Guardian” means a person who has care and custody  
81 of a child as a result of any contract, agreement or legal  
82 proceeding;

83 (9) “Juvenile delinquent” means a juvenile who has been  
84 adjudicated as one who commits an act which would be a  
85 crime under state law or a municipal ordinance if committed  
86 by an adult;

87 (10) “Nonsecure facility” means any public or private  
88 residential facility not characterized by construction fixtures  
89 designed to physically restrict the movements and activities  
90 of individuals held in lawful custody in such facility and  
91 which provides its residents access to the surrounding  
92 community with supervision;

93 (11) “Referee” means a juvenile referee appointed  
94 pursuant to section one, article five-a of this chapter, except  
95 that in any county which does not have a juvenile referee, the



96 judge or judges of the circuit court may designate one or  
97 more magistrates of the county to perform the functions and  
98 duties which may be performed by a referee under this  
99 chapter;

100 (12) "Secretary" means the Secretary of Health and  
101 Human Resources;

102 (13) "Secure facility" means any public or private  
103 residential facility which includes construction fixtures  
104 designed to physically restrict the movements and activities  
105 of juveniles or other individuals held in lawful custody in  
106 such facility;

107 (14) "Staff-secure facility" means any public or private  
108 residential facility characterized by staff restrictions of the  
109 movements and activities of individuals held in lawful  
110 custody in such facility and which limits its residents' access  
111 to the surrounding community, but is not characterized by  
112 construction fixtures designed to physically restrict the  
113 movements and activities of residents;

114 (15) “Status offender” means a juvenile who has been  
115 adjudicated as one:

116 (A) Who habitually and continually refuses to respond to  
117 the lawful supervision by his or her parents, guardian or legal  
118 custodian such that the child’s behavior substantially  
119 endangers the health, safety or welfare of the juvenile or any  
120 other person;

121 (B) Who has left the care of his or her parents, guardian  
122 or custodian without the consent of such person or without  
123 good cause; or

124 (C) Who is habitually absent from school without good  
125 cause: Provided, That if a student is suspended from school  
126 and must be absent due to the terms of the suspension, the  
127 days the student is absent due to the suspension may not be  
128 counted toward the determination of being habitually absent  
129 unless the court determines by clear and convincing evidence  
130 that the action causing suspension was taken solely due to the  
131 student’s desire to be out of school;

132 (16) “Valid court order” means a court order given to a  
133 juvenile who was brought before the court and made subject  
134 to such order and who received, before the issuance of such  
135 order, the full due process rights guaranteed to such juvenile  
136 by the Constitutions of the United States and the State of  
137 West Virginia.

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(NOTE: The purpose of this bill is to ensure that suspension days are not counted as days absent from school when assessing whether a juvenile is a status offender or when prosecuting an adult for their child’s failure to attend school.

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

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#### EDUCATION COMMITTEE AMENDMENT

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill No. 493**—A BILL to amend and reenact §18-8-2 and §18-8-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-1-4 of said code, all relating to excluding certain days a student is suspended from school from being counted as days absent for the purpose of prosecuting a person for failing to cause a child under eighteen years of age to attend school, for the purpose of prosecuting a person eighteen years of age or older and enrolled in school for failing to attend school and for the purpose of adjudicating a juvenile habitually absent from school.