

COMMITTEE SUBSTITUTE

FOR

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FOR

## **Senate Bill No. 252**

(By Senators Palumbo and Nohe)

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[Originating in the Committee on the Judiciary;  
reported February 18, 2014.]

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A BILL to amend and reenact §18A-5-1a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18A-5-1d, all relating to allowing the county board of education and certain other individuals to refer an expelled pupil to a Juvenile Drug Court; allowing the Juvenile Drug Court judge to determine if the pupil is an appropriate candidate for Juvenile Drug Court; granting the Juvenile Drug Court the same jurisdiction over the

pupil as it has over others participating in Juvenile Drug Court; providing that a pupil who successfully completes or is certified as making satisfactory progress toward successful completion of Juvenile Drug Court shall return to school by a lessening of the period of expulsion; and providing exception when a pupil brings a firearm to or possesses a firearm in a school.

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

That §18A-5-1a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18A-5-1d, all to read as follows:

**ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.**

**§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by pupils upon teachers or other school personnel; temporary suspension, hearing; procedure,**

**notice and formal hearing; extended  
suspension; sale of narcotic; expulsion;  
exception; alternative education.**

1       (a) A principal shall suspend a pupil from school or from  
2       transportation to or from the school on any school bus if the  
3       pupil, in the determination of the principal after an informal  
4       hearing pursuant to subsection (d) of this section, has: (i)  
5       Violated the provisions of subsection (b), section fifteen,  
6       article two, chapter sixty-one of this code; (ii) violated the  
7       provisions of subsection (b), section eleven-a, article seven  
8       of said chapter; or (iii) sold a narcotic drug, as defined in  
9       section one hundred one, article one, chapter sixty-a of this  
10      code, on the premises of an educational facility, at a school-  
11      sponsored function or on a school bus. If a student has been  
12      suspended pursuant to this subsection, the principal shall,  
13      within twenty-four hours, request that the county  
14      superintendent recommend to the county board that the  
15      student be expelled. Upon such a request by a principal, the  
16      county superintendent shall recommend to the county board

17     that the student be expelled. Upon such recommendation, the  
18     county board shall conduct a hearing in accordance with  
19     subsections (e), (f) and (g) of this section to determine if the  
20     student committed the alleged violation. If the county board  
21     finds that the student did commit the alleged violation, the  
22     county board shall expel the student.

23                 (b) A principal shall suspend a pupil from school, or from  
24     transportation to or from the school on any school bus, if the  
25     pupil, in the determination of the principal after an informal  
26     hearing pursuant to subsection (d) of this section, has: (i)  
27     Committed an act or engaged in conduct that would  
28     constitute a felony under the laws of this state if committed  
29     by an adult; or (ii) unlawfully possessed on the premises of  
30     an educational facility or at a school-sponsored function a  
31     controlled substance governed by the uniform controlled  
32     substances act as described in chapter sixty-a of this code. If  
33     a student has been suspended pursuant to this subsection, the  
34     principal may request that the superintendent recommend to  
35     the county board that the student be expelled. Upon such

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36 recommendation by the county superintendent, the county  
37 board may hold a hearing in accordance with the provisions  
38 of subsections (e), (f) and (g) of this section to determine if  
39 the student committed the alleged violation. If the county  
40 board finds that the student did commit the alleged violation,  
41 the county board may expel the student.

42 (c) A principal may suspend a pupil from school, or  
43 transportation to or from the school on any school bus, if the  
44 pupil, in the determination of the principal after an informal  
45 hearing pursuant to subsection (d) of this section: (i)  
46 Threatened to injure, or in any manner injured, a pupil,  
47 teacher, administrator or other school personnel; (ii) willfully  
48 disobeyed a teacher; (iii) possessed alcohol in an educational  
49 facility, on school grounds, a school bus or at any school-  
50 sponsored function; (iv) used profane language directed at a  
51 school employee or pupil; (v) intentionally defaced any  
52 school property; (vi) participated in any physical altercation  
53 with another person while under the authority of school  
54 personnel; or (vii) habitually violated school rules or policies.

55     If a student has been suspended pursuant to this subsection,  
56     the principal may request that the superintendent recommend  
57     to the county board that the student be expelled. Upon such  
58     recommendation by the county superintendent, the county  
59     board may hold a hearing in accordance with the provisions  
60     of subsections (e), (f) and (g) of this section to determine if  
61     the student committed the alleged violation. If the county  
62     board finds that the student did commit the alleged violation,  
63     the county board may expel the student.

64        (d) The actions of any pupil which may be grounds for  
65     his or her suspension or expulsion under the provisions of  
66     this section shall be reported immediately to the principal of  
67     the school in which the pupil is enrolled. If the principal  
68     determines that the alleged actions of the pupil would be  
69     grounds for suspension, he or she shall conduct an informal  
70     hearing for the pupil immediately after the alleged actions  
71     have occurred. The hearing shall be held before the pupil is  
72     suspended unless the principal believes that the continued  
73     presence of the pupil in the school poses a continuing danger

74 to persons or property or an ongoing threat of disrupting the  
75 academic process, in which case the pupil shall be suspended  
76 immediately and a hearing held as soon as practicable after  
77 the suspension.

78       The pupil and his or her parent(s), guardian(s) or  
79 custodian(s), as the case may be, shall be given telephonic  
80 notice, if possible, of this informal hearing, which notice  
81 shall briefly state the grounds for suspension.

82       At the commencement of the informal hearing, the  
83 principal shall inquire of the pupil as to whether he or she  
84 admits or denies the charges. If the pupil does not admit the  
85 charges, he or she shall be given an explanation of the  
86 evidence possessed by the principal and an opportunity to  
87 present his or her version of the occurrence. At the  
88 conclusion of the hearing or upon the failure of the noticed  
89 student to appear, the principal may suspend the pupil for a  
90 maximum of ten school days, including the time prior to the  
91 hearing, if any, for which the pupil has been excluded from  
92 school.

93       The principal shall report any suspension the same day  
94      it has been decided upon, in writing, to the parent(s),  
95      guardian(s) or custodian(s) of the pupil by regular United  
96      States mail. The suspension also shall be reported to the  
97      county superintendent and to the faculty senate of the  
98      school at the next meeting after the suspension.

99           (e) Prior to a hearing before the county board, the  
100        county board shall cause a written notice which states the  
101        charges and the recommended disposition to be served upon  
102        the pupil and his or her parent(s), guardian(s) or  
103        custodian(s), as the case may be. The notice shall state  
104        clearly whether the board will attempt at hearing to  
105        establish the student as a dangerous student, as defined by  
106        section one, article one of this chapter. The notice also  
107        shall include any evidence upon which the board will rely  
108        in asserting its claim that the student is a dangerous student.  
109        The notice shall set forth a date and time at which the  
110        hearing shall be held, which date shall be within the ten-day  
111        period of suspension imposed by the principal.

112       (f) The county board shall hold the scheduled hearing to  
113       determine if the pupil should be reinstated or should or, under  
114       the provisions of this section, must be expelled from school.  
115       If the county board determines that the student should or  
116       must be expelled from school, it also may determine whether  
117       the student is a dangerous student pursuant to subsection (g)  
118       of this section. At this, or any hearing before a county board  
119       conducted pursuant to this section, the pupil may be  
120       represented by counsel, may call his or her own witnesses to  
121       verify his or her version of the incident and may confront and  
122       cross examine witnesses supporting the charge against him or  
123       her. The hearing shall be recorded by mechanical means  
124       unless recorded by a certified court reporter. The hearing  
125       may be postponed for good cause shown by the pupil but he  
126       or she shall remain under suspension until after the hearing.  
127       The state board may adopt other supplementary rules of  
128       procedure to be followed in these hearings. At the  
129       conclusion of the hearing the county board shall either: (1)  
130       Order the pupil reinstated immediately at the end of his or her

131 initial suspension; (2) suspend the pupil for a further  
132 designated number of days; or (3) expel the pupil from the  
133 public schools of the county.

134 (g) A county board that did not intend prior to a hearing  
135 to assert a dangerous student claim, that did not notify the  
136 student prior to the hearing that a dangerous student  
137 determination would be considered and that determines  
138 through the course of the hearing that the student may be a  
139 dangerous student shall schedule a second hearing within ten  
140 days to decide the issue. The hearing may be postponed for  
141 good cause shown by the pupil, but he or she remains under  
142 suspension until after the hearing.

143 A county board that expels a student, and finds that the  
144 student is a dangerous student, may refuse to provide  
145 alternative education. However, after a hearing conducted  
146 pursuant to this section for determining whether a student is  
147 a dangerous student, when the student is found to be a  
148 dangerous student, is expelled and is denied alternative  
149 education, a hearing shall be conducted within three months

150 after the refusal by the board to provide alternative education  
151 to reexamine whether or not the student remains a dangerous  
152 student and whether the student shall be provided alternative  
153 education. Thereafter, a hearing for the purpose of  
154 reexamining whether or not the student remains a dangerous  
155 student and whether the student shall be provided alternative  
156 education shall be conducted every three months for so long  
157 as the student remains a dangerous student and is denied  
158 alternative education. During the initial hearing, or in any  
159 subsequent hearing, the board may consider the history of the  
160 pupil's conduct as well as any improvements made  
161 subsequent to the expulsion. If it is determined during any of  
162 the hearings that the student is no longer a dangerous student  
163 or should be provided alternative education, the student shall  
164 be provided alternative education during the remainder of the  
165 expulsion period.

166 (h) The superintendent may apply to a circuit judge or  
167 magistrate for authority to subpoena witnesses and  
168 documents, upon his or her own initiative, in a proceeding

169 related to a recommended student expulsion or dangerous  
170 student determination, before a county board conducted  
171 pursuant to the provisions of this section. Upon the written  
172 request of any other party, the superintendent shall apply to a  
173 circuit judge or magistrate for the authority to subpoena  
174 witnesses, documents or both on behalf of the other party in a  
175 proceeding related to a recommended student expulsion or  
176 dangerous student determination before a county board. If the  
177 authority to subpoena is granted, the superintendent shall  
178 subpoena the witnesses, documents or both requested by the  
179 other party. Furthermore, if the authority to subpoena is  
180 granted, it shall be exercised in accordance with the provisions  
181 of section one, article five, chapter twenty-nine-a of this code.

182 Any hearing conducted pursuant to this subsection may  
183 be postponed: (1) For good cause shown by the pupil; (2)  
184 when proceedings to compel a subpoenaed witness to appear  
185 must be instituted; or (3) when a delay in service of a  
186 subpoena hinders either party's ability to provide sufficient  
187 notice to appear to a witness. A pupil remains under

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188 suspension until after the hearing in any case where a  
189 postponement occurs.

190 The county boards are directed to report the number of  
191 pupils determined to be dangerous students to the State Board  
192 of Education. The state board will compile the county  
193 boards' statistics and shall report its findings to the  
194 Legislative Oversight Commission on Education  
195 Accountability.

196 (i) Pupils may be expelled pursuant to the provisions of  
197 this section for a period not to exceed one school year, except  
198 that if a pupil is determined to have violated the provisions of  
199 subsection (a) of this section the pupil shall be expelled for  
200 a period of not less than twelve consecutive months, subject  
201 to the following:

202 (1) Provided, That the The county superintendent may  
203 lessen the mandatory period of twelve consecutive months  
204 for the expulsion of the pupil if the circumstances of the  
205 pupil's case demonstrably warrant, except as provided in  
206 subdivision (2) of this subsection;

207       (2) If a Juvenile Drug Court notifies the county  
208       superintendent of successful completion of or certification of  
209       making satisfactory progress toward successful completion of  
210       Juvenile Drug Court pursuant to section one-d of this article and  
211       the expulsion did not result from bringing a firearm to a school  
212       or possessing a firearm at a school in violation of 20 U. S. C.  
213       §7151, the county superintendent shall lessen the period of  
214       expulsion pursuant to section one-d of this article;

215       (3) Upon the reduction of the period of expulsion, the  
216       county superintendent shall prepare a written statement setting  
217       forth the circumstances of the pupil's case which warrant the  
218       reduction of the period of expulsion. The county  
219       superintendent shall submit the statement to the county board,  
220       the principal, the faculty Senate and the local school  
221       improvement council for the school from which the pupil was  
222       expelled. ~~The Subject to subdivision (2) of this subsection, the~~  
223       county superintendent may use the following factors as  
224       guidelines in determining whether or not to reduce a mandatory  
225       twelve-month expulsion:

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226        (1) (A) The extent of the pupil's malicious intent;

227        (2) (B) The outcome of the pupil's misconduct;

228        (3) (C) The pupil's past behavior history; ~~and~~

229        (4) (D) The likelihood of the pupil's repeated  
230        misconduct; ~~and~~

231        (E) If applicable, the successful completion or the making  
232        of satisfactory progress toward the successful completion of  
233        Juvenile Drug Court.

234        (j) In all hearings under this section, facts shall be found  
235        by a preponderance of the evidence.

236        (k) For purposes of this section, nothing herein may be  
237        construed to be in conflict with the federal provisions of the  
238        Individuals with Disabilities Education Act, 20 U. S. C.  
239        §1400 *et seq.*

240        (l) Each suspension or expulsion imposed upon a pupil  
241        under the authority of this section shall be recorded in the  
242        uniform integrated regional computer information system  
243        (commonly known as the West Virginia Education

244 Information System) described in subsection (f), section  
245 twenty-six, article two, chapter eighteen of this code.

246 (1) The principal of the school at which the pupil is  
247 enrolled shall create an electronic record within twenty-four  
248 hours of the imposition of the suspension or expulsion.

249 (2) Each record of a suspension or expulsion shall include  
250 the pupil's name and identification number, the reason for the  
251 suspension or expulsion and the beginning and ending dates  
252 of the suspension or expulsion.

253 (3) The State Board of Education shall collect and  
254 disseminate data so that any principal of a public school in  
255 West Virginia can review the complete history of disciplinary  
256 actions taken by West Virginia public schools against any  
257 pupil enrolled or seeking to enroll at that principal's school.

258 The purposes of this provision are to allow every principal to  
259 fulfill his or her duty under subsection (b), section fifteen-f,  
260 article five, chapter eighteen of this code to determine  
261 whether a pupil requesting to enroll at a public school in  
262 West Virginia is currently serving a suspension or expulsion

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263 from another public school in West Virginia and to allow  
264 principals to obtain general information about pupils'  
265 disciplinary histories.

266 (m) Principals may exercise any other authority and  
267 perform any other duties to discipline pupils consistent with  
268 state and federal law, including policies of the State Board of  
269 Education.

270 (n) Each county board is solely responsible for the  
271 administration of proper discipline in the public schools of the  
272 county and shall adopt policies consistent with the provisions of  
273 this section to govern disciplinary actions.

274 (o) For the purpose of this section, "principal" means the  
275 principal, assistant principal, vice principal or the administrative  
276 head of the school or a professional personnel designee of the  
277 principal or the administrative head of the school.

**§18A-5-1d. Return to school through Juvenile Drug Court for  
certain juveniles.**

1 (a) When a pupil is expelled from school pursuant to the  
2 provisions of section one-a of this article, the county board

3 for that county, the county superintendent of schools, the  
4 principal of the school from which the pupil was expelled or  
5 the parent, guardian or custodian may refer the pupil to a  
6 Juvenile Drug Court, operated pursuant to section two-b,  
7 article five, chapter forty-nine of this code. Upon a referral  
8 to Juvenile Drug Court under the provisions of this section,  
9 the judge assigned to Juvenile Drug Court shall determine if  
10 the pupil is an appropriate candidate for Juvenile Drug Court.

11 (b) If the pupil is an appropriate candidate for Juvenile  
12 Drug Court, then the court shall have jurisdiction over the  
13 pupil in the same manner as it has jurisdiction over all other  
14 persons in Juvenile Drug Court. The Juvenile Drug Court's  
15 jurisdiction over pupils pursuant to this section shall include  
16 the ability to issue any of the various sanctions available to  
17 the Juvenile Drug Court up to, and including, temporary  
18 detention.

19 (c) Successful completion of Juvenile Drug Court or  
20 certification by the Juvenile Drug Court judge that the pupil  
21 is making satisfactory progress toward successful completion

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22 of Juvenile Drug Court warrants reduction of the period of  
23 expulsion, pursuant to subsection (i) of section one-a of this  
24 article. Upon successful completion or satisfactory progress  
25 toward successful completion, the Juvenile Drug Court shall  
26 notify the county superintendent of successful completion or  
27 certification of satisfactory progress and the superintendent  
28 shall, in consultation with the multidisciplinary team (MDT)  
29 and the court, submit the statement required by subsection (i)  
30 of section one-a of this article and place the pupil in an  
31 appropriate school within the district. The pupil who  
32 successfully completes Juvenile Drug Court or is certified as  
33 making satisfactory progress toward successful completion,  
34 as provided in this section, shall be permitted to return to  
35 school no later than the fifth regular school day following  
36 notice to the superintendent of the successful completion of  
37 Juvenile Drug Court or of certification of satisfactory  
38 progress toward successful completion. Notwithstanding any  
39 other provision of this subsection to the contrary, a county  
40 superintendent is not required to reduce an expulsion

41 pursuant to this subsection if the expulsion is the result of  
42 bringing a firearm to a school or possessing a firearm at a  
43 school in violation of 20 U. S. C. §7151.