

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 252**

4 (By Senators Palumbo and Nohe)

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6 [Originating in the Committee on Education;  
7 reported February 5, 2014.]

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11 A BILL to amend and reenact §18A-5-1a of the Code of West Virginia,  
12 1931, as amended; and to amend said code by adding thereto a  
13 new section, designated §18A-5-1d, all relating to allowing  
14 the county board of education and certain other individuals to  
15 refer an expelled pupil to a Juvenile Drug Court; providing  
16 for pupil who successfully completes or is certified as making  
17 satisfactory progress toward successful completion of Juvenile  
18 Drug Court to return to school by a lessening of the period of  
19 expulsion; and providing exception when a pupil brings a  
20 firearm to or possesses a firearm in a school.

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

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

1 follows:

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

3 **§18A-5-1a. Possessing deadly weapons on premises of educational**  
4 **facilities; possessing a controlled substance on**  
5 **premises of educational facilities; assaults and**  
6 **batteries committed by pupils upon teachers or**  
7 **other school personnel; temporary suspension,**  
8 **hearing; procedure, notice and formal hearing;**  
9 **extended suspension; sale of narcotic; expulsion;**  
10 **exception; alternative education.**

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

1 county superintendent shall recommend to the county board that the  
2 student be expelled. Upon such recommendation, the county board  
3 shall conduct a hearing in accordance with subsections (e), (f) and  
4 (g) of this section to determine if the student committed the  
5 alleged violation. If the county board finds that the student did  
6 commit the alleged violation, the county board shall expel the  
7 student.

8 (b) A principal shall suspend a pupil from school, or from  
9 transportation to or from the school on any school bus, if the  
10 pupil, in the determination of the principal after an informal  
11 hearing pursuant to subsection (d) of this section, has: (I)  
12 Committed an act or engaged in conduct that would constitute a  
13 felony under the laws of this state if committed by an adult; or  
14 (ii) unlawfully possessed on the premises of an educational  
15 facility or at a school-sponsored function a controlled substance  
16 governed by the uniform controlled substances act as described in  
17 chapter sixty-a of this code. If a student has been suspended  
18 pursuant to this subsection, the principal may request that the  
19 superintendent recommend to the county board that the student be  
20 expelled. Upon such recommendation by the county superintendent,  
21 the county board may hold a hearing in accordance with the  
22 provisions of subsections (e), (f) and (g) of this section to  
23 determine if the student committed the alleged violation. If the  
24 county board finds that the student did commit the alleged

1 violation, the county board may expel the student.

2 (c) A principal may suspend a pupil from school, or  
3 transportation to or from the school on any school bus, if the  
4 pupil, in the determination of the principal after an informal  
5 hearing pursuant to subsection (d) of this section: (i)Threatened  
6 to injure, or in any manner injured, a pupil, teacher,  
7 administrator or other school personnel; (ii) willfully disobeyed  
8 a teacher; (iii) possessed alcohol in an educational facility, on  
9 school grounds, a school bus or at any school-sponsored function;  
10 (iv) used profane language directed at a school employee or pupil;  
11 (v) intentionally defaced any school property; (vi) participated in  
12 any physical altercation with another person while under the  
13 authority of school personnel; or (vii) habitually violated school  
14 rules or policies. If a student has been suspended pursuant to  
15 this subsection, the principal may request that the superintendent  
16 recommend to the county board that the student be expelled. Upon  
17 such recommendation by the county superintendent, the county board  
18 may hold a hearing in accordance with the provisions of subsections  
19 (e), (f) and (g) of this section to determine if the student  
20 committed the alleged violation. If the county board finds that  
21 the student did commit the alleged violation, the county board may  
22 expel the student.

23 (d) The actions of any pupil which may be grounds for his or  
24 her suspension or expulsion under the provisions of this section

1 shall be reported immediately to the principal of the school in  
2 which the pupil is enrolled. If the principal determines that the  
3 alleged actions of the pupil would be grounds for suspension, he or  
4 she shall conduct an informal hearing for the pupil immediately  
5 after the alleged actions have occurred. The hearing shall be held  
6 before the pupil is suspended unless the principal believes that  
7 the continued presence of the pupil in the school poses a  
8 continuing danger to persons or property or an ongoing threat of  
9 disrupting the academic process, in which case the pupil shall be  
10 suspended immediately and a hearing held as soon as practicable  
11 after the suspension.

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

16       At the commencement of the informal hearing, the principal  
17 shall inquire of the pupil as to whether he or she admits or denies  
18 the charges. If the pupil does not admit the charges, he or she  
19 shall be given an explanation of the evidence possessed by the  
20 principal and an opportunity to present his or her version of the  
21 occurrence. At the conclusion of the hearing or upon the failure  
22 of the noticed student to appear, the principal may suspend the  
23 pupil for a maximum of ten school days, including the time prior to  
24 the hearing, if any, for which the pupil has been excluded from

1 school.

2       The principal shall report any suspension the same day it has  
3 been decided upon, in writing, to the parent(s), guardian(s) or  
4 custodian(s) of the pupil by regular United States mail. The  
5 suspension also shall be reported to the county superintendent and  
6 to the faculty senate of the school at the next meeting after the  
7 suspension.

8       (e) Prior to a hearing before the county board, the county  
9 board shall cause a written notice which states the charges and the  
10 recommended disposition to be served upon the pupil and his or her  
11 parent(s), guardian(s) or custodian(s), as the case may be. The  
12 notice shall state clearly whether the board will attempt at  
13 hearing to establish the student as a dangerous student, as defined  
14 by section one, article one of this chapter. The notice also shall  
15 include any evidence upon which the board will rely in asserting  
16 its claim that the student is a dangerous student. The notice  
17 shall set forth a date and time at which the hearing shall be held,  
18 which date shall be within the ten-day period of suspension imposed  
19 by the principal.

20       (f) The county board shall hold the scheduled hearing to  
21 determine if the pupil should be reinstated or should or, under the  
22 provisions of this section, must be expelled from school. If the  
23 county board determines that the student should or must be expelled  
24 from school, it also may determine whether the student is a

1 dangerous student pursuant to subsection (g) of this section. At  
2 this, or any hearing before a county board conducted pursuant to  
3 this section, the pupil may be represented by counsel, may call his  
4 or her own witnesses to verify his or her version of the incident  
5 and may confront and cross-examine witnesses supporting the charge  
6 against him or her. The hearing shall be recorded by mechanical  
7 means unless recorded by a certified court reporter. The hearing  
8 may be postponed for good cause shown by the pupil but he or she  
9 shall remain under suspension until after the hearing. The state  
10 board may adopt other supplementary rules of procedure to be  
11 followed in these hearings. At the conclusion of the hearing the  
12 county board shall either: (1) Order the pupil reinstated  
13 immediately at the end of his or her initial suspension; (2)  
14 suspend the pupil for a further designated number of days; or (3)  
15 expel the pupil from the public schools of the county.

16 (g) A county board that did not intend prior to a hearing to  
17 assert a dangerous student claim, that did not notify the student  
18 prior to the hearing that a dangerous student determination would  
19 be considered and that determines through the course of the hearing  
20 that the student may be a dangerous student shall schedule a second  
21 hearing within ten days to decide the issue. The hearing may be  
22 postponed for good cause shown by the pupil, but he or she remains  
23 under suspension until after the hearing.

24 A county board that expels a student, and finds that the

1 student is a dangerous student, may refuse to provide alternative  
2 education. However, after a hearing conducted pursuant to this  
3 section for determining whether a student is a dangerous student,  
4 when the student is found to be a dangerous student, is expelled  
5 and is denied alternative education, a hearing shall be conducted  
6 within three months after the refusal by the board to provide  
7 alternative education to reexamine whether or not the student  
8 remains a dangerous student and whether the student shall be  
9 provided alternative education. Thereafter, a hearing for the  
10 purpose of reexamining whether or not the student remains a  
11 dangerous student and whether the student shall be provided  
12 alternative education shall be conducted every three months for so  
13 long as the student remains a dangerous student and is denied  
14 alternative education. During the initial hearing, or in any  
15 subsequent hearing, the board may consider the history of the  
16 pupil's conduct as well as any improvements made subsequent to the  
17 expulsion. If it is determined during any of the hearings that the  
18 student is no longer a dangerous student or should be provided  
19 alternative education, the student shall be provided alternative  
20 education during the remainder of the expulsion period.

21 (h) The superintendent may apply to a circuit judge or  
22 magistrate for authority to subpoena witnesses and documents, upon  
23 his or her own initiative, in a proceeding related to a recommended  
24 student expulsion or dangerous student determination, before a



1 county board conducted pursuant to the provisions of this section.  
2 Upon the written request of any other party, the superintendent  
3 shall apply to a circuit judge or magistrate for the authority to  
4 subpoena witnesses, documents or both on behalf of the other party  
5 in a proceeding related to a recommended student expulsion or  
6 dangerous student determination before a county board. If the  
7 authority to subpoena is granted, the superintendent shall subpoena  
8 the witnesses, documents or both requested by the other party.  
9 Furthermore, if the authority to subpoena is granted, it shall be  
10 exercised in accordance with the provisions of section one, article  
11 five, chapter twenty-nine-a of this code.

12 Any hearing conducted pursuant to this subsection may be  
13 postponed: (1) For good cause shown by the pupil; (2) when  
14 proceedings to compel a subpoenaed witness to appear must be  
15 instituted; or (3) when a delay in service of a subpoena hinders  
16 either party's ability to provide sufficient notice to appear to a  
17 witness. A pupil remains under suspension until after the hearing  
18 in any case where a postponement occurs.

19 The county boards are directed to report the number of pupils  
20 determined to be dangerous students to the state Board of  
21 Education. The state board will compile the county boards'  
22 statistics and shall report its findings to the Legislative  
23 Oversight Commission on Education Accountability.

24 (i) Pupils may be expelled pursuant to the provisions of this

1 section for a period not to exceed one school year, except that if  
2 a pupil is determined to have violated the provisions of subsection  
3 (a) of this section the pupil shall be expelled for a period of not  
4 less than twelve consecutive months, subject to the following:

5 (1) ~~Provided, That the~~ The county superintendent may lessen  
6 the mandatory period of twelve consecutive months for the expulsion  
7 of the pupil if the circumstances of the pupil's case demonstrably  
8 warrant except as provided in subdivision (2) of this subsection;

9 (2) If a Juvenile Drug Court notifies the county  
10 superintendent of successful completion of or certification of  
11 making satisfactory progress toward successful completion of  
12 Juvenile Drug Court pursuant to section one-d of this article and  
13 the expulsion did not result from bringing a firearm to a school or  
14 possessing a firearm at a school in violation of 20 U.S.C. §7151,  
15 the county superintendent shall lessen the period of expulsion  
16 pursuant to section one-d of this article;

17 (3) Upon the reduction of the period of expulsion, the county  
18 superintendent shall prepare a written statement setting forth the  
19 circumstances of the pupil's case which warrant the reduction of  
20 the period of expulsion. The county superintendent shall submit  
21 the statement to the county board, the principal, the faculty  
22 Senate and the local school improvement council for the school from  
23 which the pupil was expelled. ~~The~~ Subject to subdivision (2) of  
24 this subsection, the county superintendent may use the following

1 factors as guidelines in determining whether or not to reduce a  
2 mandatory twelve-month expulsion:

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

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

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

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

7 (E) If applicable, the successful completion or the making of  
8 satisfactory progress toward the successful completion of Juvenile  
9 Drug Court.

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

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

16 (l) Each suspension or expulsion imposed upon a pupil under  
17 the authority of this section shall be recorded in the uniform  
18 integrated regional computer information system (commonly known as  
19 the West Virginia Education Information System) described in  
20 subsection (f), section twenty-six, article two, chapter eighteen  
21 of this code.

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

1           (2) Each record of a suspension or expulsion shall include the  
2 pupil's name and identification number, the reason for the  
3 suspension or expulsion, and the beginning and ending dates of the  
4 suspension or expulsion.

5           (3) The State Board of Education shall collect and disseminate  
6 data so that any principal of a public school in West Virginia can  
7 review the complete history of disciplinary actions taken by West  
8 Virginia public schools against any pupil enrolled or seeking to  
9 enroll at that principal's school. The purposes of this provision  
10 are to allow every principal to fulfill his or her duty under  
11 subsection (b), section fifteen-f, article five, chapter eighteen  
12 of this code to determine whether a pupil requesting to enroll at  
13 a public school in West Virginia is currently serving a suspension  
14 or expulsion from another public school in West Virginia and to  
15 allow principals to obtain general information about pupils'  
16 disciplinary histories.

17           (m) Principals may exercise any other authority and perform  
18 any other duties to discipline pupils consistent with state and  
19 federal law, including policies of the state Board of Education.

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

24           (o) For the purpose of this section, "principal" means the

1 principal, assistant principal, vice principal or the  
2 administrative head of the school or a professional personnel  
3 designee of the principal or the administrative head of the school.

4 **§18A-5-1d. Return to school through Juvenile Drug Court for**  
5 **certain juveniles.**

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

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

23 (c) Successful completion of Juvenile Drug Court or  
24 certification by the Juvenile Drug Court judge that the pupil is

1 making satisfactory progress toward successful completion of  
2 Juvenile Drug Court, warrants reduction of the period of  
3 expulsion, pursuant to subsection (i) of section one-a of this  
4 article. Upon successful completion or satisfactory progress  
5 toward successful completion, the Juvenile Drug Court shall notify  
6 the county superintendent of successful completion or certification  
7 of satisfactory progress and the superintendent shall promptly  
8 submit the statement required by subsection (i) of section one-a of  
9 this article. The pupil who successfully completes Juvenile Drug  
10 Court or is certified as making satisfactory progress toward  
11 successful completion, as provided in this section, shall be  
12 permitted to return to school no later than the third regular  
13 school day following notice to the superintendent of the successful  
14 completion of Juvenile Drug Court or of certification of  
15 satisfactory progress toward successful completion.  
16 Notwithstanding any other provision of this subsection to the  
17 contrary, a county superintendent is not required to reduce an  
18 expulsion pursuant to this subsection if the expulsion is the  
19 result of bringing a firearm to a school or possessing a firearm at  
20 a school in violation of 20 U.S.C. §7151.