

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

4 COMMITTEE SUBSTITUTE

5 FOR

6 **Senate Bill No. 252**

7 (By Senators Palumbo and Nohe)

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9 [Originating in the Committee on the Judiciary;

10 reported February 18, 2014.]

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13 A BILL to amend and reenact §18A-5-1a of the Code of West Virginia,  
14 1931, as amended; and to amend said code by adding thereto a  
15 new section, designated §18A-5-1d, all relating to allowing  
16 the county board of education and certain other individuals to  
17 refer an expelled pupil to a Juvenile Drug Court; allowing the  
18 Juvenile Drug Court judge to determine if the pupil is an  
19 appropriate candidate for Juvenile Drug Court; granting the  
20 Juvenile Drug Court the same jurisdiction over the pupil as it  
21 has over others participating in Juvenile Drug Court;  
22 providing that a pupil who successfully completes or is  
23 certified as making satisfactory progress toward successful  
24 completion of Juvenile Drug Court shall return to school by a

1 lessening of the period of expulsion; and providing exception  
2 when a pupil brings a firearm to or possesses a firearm in a  
3 school.

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

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

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

10 **§18A-5-1a. Possessing deadly weapons on premises of educational**  
11 **facilities; possessing a controlled substance on**  
12 **premises of educational facilities; assaults and**  
13 **batteries committed by pupils upon teachers or**  
14 **other school personnel; temporary suspension,**  
15 **hearing; procedure, notice and formal hearing;**  
16 **extended suspension; sale of narcotic; expulsion;**  
17 **exception; alternative education.**

18 (a) A principal shall suspend a pupil from school or from  
19 transportation to or from the school on any school bus if the  
20 pupil, in the determination of the principal after an informal  
21 hearing pursuant to subsection (d) of this section, has: (i)  
22 Violated the provisions of subsection (b), section fifteen, article  
23 two, chapter sixty-one of this code; (ii) violated the provisions  
24 of subsection (b), section eleven-a, article seven of said chapter;

1 or (iii) sold a narcotic drug, as defined in section one hundred  
2 one, article one, chapter sixty-a of this code, on the premises of  
3 an educational facility, at a school-sponsored function or on a  
4 school bus. If a student has been suspended pursuant to this  
5 subsection, the principal shall, within twenty-four hours, request  
6 that the county superintendent recommend to the county board that  
7 the student be expelled. Upon such a request by a principal, the  
8 county superintendent shall recommend to the county board that the  
9 student be expelled. Upon such recommendation, the county board  
10 shall conduct a hearing in accordance with subsections (e), (f) and  
11 (g) of this section to determine if the student committed the  
12 alleged violation. If the county board finds that the student did  
13 commit the alleged violation, the county board shall expel the  
14 student.

15       (b) A principal shall suspend a pupil from school, or from  
16 transportation to or from the school on any school bus, if the  
17 pupil, in the determination of the principal after an informal  
18 hearing pursuant to subsection (d) of this section, has: (i)  
19 Committed an act or engaged in conduct that would constitute a  
20 felony under the laws of this state if committed by an adult; or  
21 (ii) unlawfully possessed on the premises of an educational  
22 facility or at a school-sponsored function a controlled substance  
23 governed by the uniform controlled substances act as described in  
24 chapter sixty-a of this code. If a student has been suspended

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

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

1 may hold a hearing in accordance with the provisions of subsections  
2 (e), (f) and (g) of this section to determine if the student  
3 committed the alleged violation. If the county board finds that  
4 the student did commit the alleged violation, the county board may  
5 expel the student.

6       (d) The actions of any pupil which may be grounds for his or  
7 her suspension or expulsion under the provisions of this section  
8 shall be reported immediately to the principal of the school in  
9 which the pupil is enrolled. If the principal determines that the  
10 alleged actions of the pupil would be grounds for suspension, he or  
11 she shall conduct an informal hearing for the pupil immediately  
12 after the alleged actions have occurred. The hearing shall be held  
13 before the pupil is suspended unless the principal believes that  
14 the continued presence of the pupil in the school poses a  
15 continuing danger to persons or property or an ongoing threat of  
16 disrupting the academic process, in which case the pupil shall be  
17 suspended immediately and a hearing held as soon as practicable  
18 after the suspension.

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

23       At the commencement of the informal hearing, the principal  
24 shall inquire of the pupil as to whether he or she admits or denies

1 the charges. If the pupil does not admit the charges, he or she  
2 shall be given an explanation of the evidence possessed by the  
3 principal and an opportunity to present his or her version of the  
4 occurrence. At the conclusion of the hearing or upon the failure  
5 of the noticed student to appear, the principal may suspend the  
6 pupil for a maximum of ten school days, including the time prior to  
7 the hearing, if any, for which the pupil has been excluded from  
8 school.

9       The principal shall report any suspension the same day it has  
10 been decided upon, in writing, to the parent(s), guardian(s) or  
11 custodian(s) of the pupil by regular United States mail. The  
12 suspension also shall be reported to the county superintendent and  
13 to the faculty senate of the school at the next meeting after the  
14 suspension.

15       (e) Prior to a hearing before the county board, the county  
16 board shall cause a written notice which states the charges and the  
17 recommended disposition to be served upon the pupil and his or her  
18 parent(s), guardian(s) or custodian(s), as the case may be. The  
19 notice shall state clearly whether the board will attempt at  
20 hearing to establish the student as a dangerous student, as defined  
21 by section one, article one of this chapter. The notice also shall  
22 include any evidence upon which the board will rely in asserting  
23 its claim that the student is a dangerous student. The notice  
24 shall set forth a date and time at which the hearing shall be held,

1 which date shall be within the ten-day period of suspension imposed  
2 by the principal.

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

23       (g) A county board that did not intend prior to a hearing to  
24 assert a dangerous student claim, that did not notify the student

1 prior to the hearing that a dangerous student determination would  
2 be considered and that determines through the course of the hearing  
3 that the student may be a dangerous student shall schedule a second  
4 hearing within ten days to decide the issue. The hearing may be  
5 postponed for good cause shown by the pupil, but he or she remains  
6 under suspension until after the hearing.

7       A county board that expels a student, and finds that the  
8 student is a dangerous student, may refuse to provide alternative  
9 education. However, after a hearing conducted pursuant to this  
10 section for determining whether a student is a dangerous student,  
11 when the student is found to be a dangerous student, is expelled  
12 and is denied alternative education, a hearing shall be conducted  
13 within three months after the refusal by the board to provide  
14 alternative education to reexamine whether or not the student  
15 remains a dangerous student and whether the student shall be  
16 provided alternative education. Thereafter, a hearing for the  
17 purpose of reexamining whether or not the student remains a  
18 dangerous student and whether the student shall be provided  
19 alternative education shall be conducted every three months for so  
20 long as the student remains a dangerous student and is denied  
21 alternative education. During the initial hearing, or in any  
22 subsequent hearing, the board may consider the history of the  
23 pupil's conduct as well as any improvements made subsequent to the  
24 expulsion. If it is determined during any of the hearings that the

1 student is no longer a dangerous student or should be provided  
2 alternative education, the student shall be provided alternative  
3 education during the remainder of the expulsion period.

4           (h) The superintendent may apply to a circuit judge or  
5 magistrate for authority to subpoena witnesses and documents, upon  
6 his or her own initiative, in a proceeding related to a recommended  
7 student expulsion or dangerous student determination, before a  
8 county board conducted pursuant to the provisions of this section.

9 Upon the written request of any other party, the superintendent  
10 shall apply to a circuit judge or magistrate for the authority to  
11 subpoena witnesses, documents or both on behalf of the other party  
12 in a proceeding related to a recommended student expulsion or  
13 dangerous student determination before a county board. If the  
14 authority to subpoena is granted, the superintendent shall subpoena  
15 the witnesses, documents or both requested by the other party.  
16 Furthermore, if the authority to subpoena is granted, it shall be  
17 exercised in accordance with the provisions of section one, article  
18 five, chapter twenty-nine-a of this code.

19           Any hearing conducted pursuant to this subsection may be  
20 postponed: (1) For good cause shown by the pupil; (2) when  
21 proceedings to compel a subpoenaed witness to appear must be  
22 instituted; or (3) when a delay in service of a subpoena hinders  
23 either party's ability to provide sufficient notice to appear to a  
24 witness. A pupil remains under suspension until after the hearing

1 in any case where a postponement occurs.

2       The county boards are directed to report the number of pupils  
3 determined to be dangerous students to the State Board of  
4 Education. The state board will compile the county boards'  
5 statistics and shall report its findings to the Legislative  
6 Oversight Commission on Education Accountability.

7       (i) Pupils may be expelled pursuant to the provisions of this  
8 section for a period not to exceed one school year, except that if  
9 a pupil is determined to have violated the provisions of subsection  
10 (a) of this section the pupil shall be expelled for a period of not  
11 less than twelve consecutive months, subject to the following:

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

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

24       (3) Upon the reduction of the period of expulsion, the county

1 superintendent shall prepare a written statement setting forth the  
2 circumstances of the pupil's case which warrant the reduction of  
3 the period of expulsion. The county superintendent shall submit  
4 the statement to the county board, the principal, the faculty  
5 Senate and the local school improvement council for the school from  
6 which the pupil was expelled. The Subject to subdivision (2) of  
7 this subsection, the county superintendent may use the following  
8 factors as guidelines in determining whether or not to reduce a  
9 mandatory twelve-month expulsion:

10       (1) (A) The extent of the pupil's malicious intent;  
11       (2) (B) The outcome of the pupil's misconduct;  
12       (3) (C) The pupil's past behavior history; and  
13       (4) (D) The likelihood of the pupil's repeated misconduct; and  
14       (E) If applicable, the successful completion or the making of  
15 satisfactory progress toward the successful completion of Juvenile  
16 Drug Court.

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

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

23       (l) Each suspension or expulsion imposed upon a pupil under  
24 the authority of this section shall be recorded in the uniform

1 integrated regional computer information system (commonly known as  
2 the West Virginia Education Information System) described in  
3 subsection (f), section twenty-six, article two, chapter eighteen  
4 of this code.

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

8       (2) Each record of a suspension or expulsion shall include the  
9 pupil's name and identification number, the reason for the  
10 suspension or expulsion and the beginning and ending dates of the  
11 suspension or expulsion.

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

24       (m) Principals may exercise any other authority and perform

1 any other duties to discipline pupils consistent with state and  
2 federal law, including policies of the State Board of Education.

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

7           (o) For the purpose of this section, "principal" means the  
8 principal, assistant principal, vice principal or the  
9 administrative head of the school or a professional personnel  
10 designee of the principal or the administrative head of the school.

11 §18A-5-1d. Return to school through Juvenile Drug Court for  
12 certain juveniles.

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

23           (b) If the pupil is an appropriate candidate for Juvenile Drug  
24 Court, then the court shall have jurisdiction over the pupil in the

1 same manner as it has jurisdiction over all other persons in  
2 Juvenile Drug Court. The Juvenile Drug Court's jurisdiction over  
3 pupils pursuant to this section shall include the ability to issue  
4 any of the various sanctions available to the Juvenile Drug Court  
5 up to, and including, temporary detention.

6           (c) Successful completion of Juvenile Drug Court or  
7 certification by the Juvenile Drug Court judge that the pupil is  
8 making satisfactory progress toward successful completion of  
9 Juvenile Drug Court warrants reduction of the period of expulsion,  
10 pursuant to subsection (i) of section one-a of this article. Upon  
11 successful completion or satisfactory progress toward successful  
12 completion, the Juvenile Drug Court shall notify the county  
13 superintendent of successful completion or certification of  
14 satisfactory progress and the superintendent shall, in consultation  
15 with the Juvenile Drug Court treatment team and the court, submit  
16 the statement required by subsection (i) of section one-a of this  
17 article and place the pupil in an appropriate school within the  
18 district. The pupil who successfully completes Juvenile Drug Court  
19 or is certified as making satisfactory progress toward successful  
20 completion, as provided in this section, shall be permitted to  
21 return to school no later than the fifth regular school day  
22 following notice to the superintendent of the successful completion  
23 of Juvenile Drug Court or of certification of satisfactory progress  
24 toward successful completion. Notwithstanding any other provision

1 of this subsection to the contrary, a county superintendent is not  
2 required to reduce an expulsion pursuant to this subsection if the  
3 expulsion is the result of bringing a firearm to a school or  
4 possessing a firearm at a school in violation of 20 U. S. C. §7151.