

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 COMMITTEE SUBSTITUTE

5 FOR

6 **Senate Bill No. 252**

7 (SENATORS PALUMBO AND NOHE, *original sponsors*)

8 \_\_\_\_\_  
9 [Passed March 8, 2014; in effect ninety days from passage.]  
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11  
12 AN ACT to amend and reenact §18A-5-1a of the Code of West Virginia,  
13 1931, as amended; and to amend said code by adding thereto a  
14 new section, designated §18A-5-1d, all relating to allowing a  
15 school expulsion period to be reduced for certain student  
16 participants in Juvenile Drug Court; specifying individuals  
17 who may refer an expelled student to Juvenile Drug Court;  
18 designating responsibilities of Juvenile Drug Court, judge and  
19 treatment team of Juvenile Drug Court, county superintendent  
20 and student assistance team; granting Juvenile Drug Court  
21 jurisdiction over certain students; providing that successful  
22 completion or satisfactory progress toward successful  
23 completion of Juvenile Drug Court warrants consideration for  
24 reduced expulsion period; recommendations and determinations

1 regarding expulsion period reduction; and providing for  
2 reinstatement of students in school, subject to approval of  
3 the superintendent.

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 students 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 student from school or from  
19 transportation to or from the school on any school bus if the  
20 student, 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 student from school, or from  
16 transportation to or from the school on any school bus, if the  
17 student, 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 student from school, or  
10 transportation to or from the school on any school bus, if the  
11 student, 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 student, 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  
18 student; (v) intentionally defaced any school property; (vi)  
19 participated in any physical altercation with another person while  
20 under the authority of school personnel; or (vii) habitually  
21 violated school rules or policies. If a student has been suspended  
22 pursuant to this subsection, the principal may request that the  
23 superintendent recommend to the county board that the student be  
24 expelled. Upon such recommendation by the county superintendent,

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

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

19 The student 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 student as to whether he or she admits or

1 denies the charges. If the student does not admit the charges, he  
2 or she shall be given an explanation of the evidence possessed by  
3 the principal and an opportunity to present his or her version of  
4 the occurrence. At the conclusion of the hearing or upon the  
5 failure of the noticed student to appear, the principal may suspend  
6 the student for a maximum of ten school days, including the time  
7 prior to the hearing, if any, for which the student has been  
8 excluded from 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 student 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 student and his or  
18 her parent(s), guardian(s) or custodian(s), as the case may be.  
19 The 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 student should be reinstated or should or, under  
5 the provisions of this section, must be expelled from school. If  
6 the county board determines that the student should or must be  
7 expelled from school, it also may determine whether the student is  
8 a 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 student may be represented by counsel, may call  
11 his or her own witnesses to verify his or her version of the  
12 incident and may confront and cross examine witnesses supporting  
13 the charge against him or her. The hearing shall be recorded by  
14 mechanical means unless recorded by a certified court reporter.  
15 The hearing may be postponed for good cause shown by the student  
16 but he or she shall remain under suspension until after the  
17 hearing. The state board may adopt other supplementary rules of  
18 procedure to be followed in these hearings. At the conclusion of  
19 the hearing the county board shall either: (1) Order the student  
20 reinstated immediately at the end of his or her initial suspension;  
21 (2) suspend the student for a further designated number of days; or  
22 (3) expel the student 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 student, but he or she  
6 remains 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 student's conduct as well as any improvements made subsequent to  
24 the expulsion. If it is determined during any of the hearings that

1 the 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 student; (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 student remains under suspension until after the

1 hearing in any case where a postponement occurs.

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

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

12       (1) The county superintendent may lessen the mandatory period  
13 of twelve consecutive months for the expulsion of the student if  
14 the circumstances of the student's case demonstrably warrant;

15       (2) Upon the reduction of the period of expulsion, the county  
16 superintendent shall prepare a written statement setting forth the  
17 circumstances of the student's case which warrant the reduction of  
18 the period of expulsion. The county superintendent shall submit  
19 the statement to the county board, the principal, the faculty  
20 senate and the local school improvement council for the school from  
21 which the student was expelled. The county superintendent may use  
22 the following factors as guidelines in determining whether or not  
23 to reduce a mandatory twelve-month expulsion:

24       (A) The extent of the student's malicious intent;

1 (B) The outcome of the student's misconduct;  
2 (C) The student's past behavior history;  
3 (D) The likelihood of the student's repeated misconduct; and  
4 (E) If applicable, successful completion or making  
5 satisfactory progress toward successful completion of Juvenile Drug  
6 Court pursuant to section one-d of this section.

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

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

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

19 (1) The principal of the school at which the student is  
20 enrolled shall create an electronic record within twenty-four hours  
21 of the imposition of the suspension or expulsion.

22 (2) Each record of a suspension or expulsion shall include the  
23 student's name and identification number, the reason for the  
24 suspension or expulsion and the beginning and ending dates of the

1 suspension or expulsion.

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

14       (m) Principals may exercise any other authority and perform  
15 any other duties to discipline students consistent with state and  
16 federal law, including policies of the state board.

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

21       (o) For the purpose of this section, "principal" means the  
22 principal, assistant principal, vice principal or the  
23 administrative head of the school or a professional personnel  
24 designee of the principal or the administrative head of the school.

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

3 (a) When a student is expelled from school pursuant to section  
4 one-a of this article, the county board, county superintendent or  
5 principal for the school from which the student was expelled or the  
6 parent, guardian or custodian may refer the student to a Juvenile  
7 Drug Court, operated pursuant to section two-b, article five,  
8 chapter forty-nine of this code. Upon such referral, the judge  
9 assigned to Juvenile Drug Court shall determine whether the student  
10 is an appropriate candidate for Juvenile Drug Court.

11 (b) If the judge determines the student is an appropriate  
12 candidate for Juvenile Drug Court, then the court has jurisdiction  
13 over the student in the same manner as it has jurisdiction over all  
14 other persons in Juvenile Drug Court. Such jurisdiction over  
15 students includes the ability to issue any of the various sanctions  
16 available to the Juvenile Drug Court, including temporary  
17 detention.

18 (c) (1) Successful completion of Juvenile Drug Court or  
19 certification by the Juvenile Drug Court judge that the student is  
20 making satisfactory progress toward successful completion of  
21 Juvenile Drug Court warrants consideration for reduction of the  
22 expulsion period, pursuant to section one-a of this article.

23 (2) The Juvenile Drug Court shall notify the county  
24 superintendent of such completion or certification. The county

1 superintendent shall arrange a meeting with the Juvenile Drug Court  
2 treatment team, the court and the student assistance team of the  
3 school from which the student was expelled to discuss the student's  
4 history, progress and potential for improvement.

5 (3) The student assistance team shall evaluate and recommend  
6 whether the student's expulsion period should be reduced and the  
7 student reinstated in school.

8 (4) The student assistance team's recommendation shall be  
9 presented to the superintendent, who shall make the final  
10 determination. The superintendent shall prepare a statement  
11 detailing reasons for or against school reinstatement and submit  
12 the statement to the county board. If the superintendent  
13 determines to reduce the expulsion period, he or she shall submit  
14 the statement required by subsection (i), section one-a of this  
15 article and place the student in an appropriate school within the  
16 district.

17 (5) A student to be reinstated shall be permitted to return to  
18 school no later than the tenth regular school day following notice  
19 by the court to the superintendent regarding the student's  
20 successful completion or satisfactory progress toward successful  
21 completion of Juvenile Drug Court.