

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.]
10 _____

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.