





1 child is out of school contrary to the provisions of this article  
2 shall constitute a separate offense. Magistrates shall have  
3 concurrent jurisdiction with circuit courts for the trial of  
4 offenses arising under this section.

5       (b)(1) Any person eighteen years of age or older who is  
6 enrolled in school who, after receiving due notice, fails to attend  
7 school in violation of the provisions of this article or without  
8 just cause, shall be guilty of a misdemeanor and shall, upon  
9 conviction of a first offense, be fined not less than \$50 nor more  
10 than \$100 together with the costs of prosecution and required to  
11 attend school and remain throughout the school day. The magistrate  
12 or judge, upon conviction and pronouncing sentence, may delay the  
13 imposition of a fine for a period of sixty school days provided the  
14 person is in attendance every day during said sixty-day period.  
15 Following the sixty-day period, if said student was present at  
16 school every day, the delayed sentence may be suspended and not  
17 enacted.

18       (2) Upon conviction of a second offense, a fine may be imposed  
19 of not less than \$50 nor more than \$100 together with the costs of  
20 prosecution and the person may be required to go to school and  
21 remain throughout the school day until such time as the person  
22 graduates or withdraws from school or confined in jail not less  
23 than five nor more than twenty days. Every day a student is out of  
24 school contrary to the provisions of this article shall constitute

1 a separate offense. Magistrates shall have concurrent jurisdiction  
2 with circuit courts for the trial of offenses arising under this  
3 section.

4 (3) Upon conviction of a third offense, any person eighteen  
5 years of age or older who is enrolled in school shall be withdrawn  
6 from school during the remainder of that school year. Enrollment of  
7 that person in school during the next school year or years  
8 thereafter shall be conditional upon all absences being excused as  
9 defined in law, state board policy and county board of education  
10 policy. More than one unexcused absence of such a student shall be  
11 grounds for the director of attendance to authorize the school to  
12 withdraw the person for the remainder of the school year.  
13 Magistrates shall have concurrent jurisdiction with circuit courts  
14 for the trial of offenses arising under this section.

15 (c) If a student is suspended from school and must be absent  
16 due to the terms of the suspension, the days the student is absent  
17 due to the suspension may not be counted as days absent from school  
18 for the purposes of subsections (a) and (b) of this section.

19 **§18-8-4. Duties of attendance director and assistant directors;**  
20 **complaints, warrants and hearings.**

21 (a) The county attendance director and the assistants shall  
22 diligently promote regular school attendance. The director and  
23 assistants shall:

24 (1) Ascertain reasons for inexcusable absences from school of

1 students of compulsory school age and students who remain enrolled  
2 beyond the compulsory school age as defined under section one-a of  
3 this article: Provided, That if a student is suspended from school  
4 and must be absent due to the terms of the suspension, the days the  
5 student is absent due to the suspension may not be counted as  
6 inexcusable or unexcused absences for the purposes of this section;  
7 and

8 (2) Take such steps as are, in their discretion, best  
9 calculated to encourage the attendance of students and to impart  
10 upon the parents and guardians the importance of attendance and the  
11 seriousness of failing to do so.

12 (b) In the case of five total unexcused absences of a student  
13 during a school year, the attendance director or assistant shall:

14 Serve written notice to the parent, guardian or custodian of  
15 the student that the attendance of the student at school is  
16 required and that within ten days of receipt of the notice the  
17 parent, guardian or custodian, accompanied by the student, shall  
18 report in person to the school the student attends for a conference  
19 with the principal or other designated representative of the school  
20 in order to discuss and correct the circumstances causing the  
21 inexcusable absences of the student; and if the parent, guardian or  
22 custodian does not comply with the provisions of this article, then  
23 the attendance director or assistant shall make complaint against  
24 the parent, guardian or custodian before a magistrate of the

1 county. If it appears from the complaint that there is probable  
2 cause to believe that an offense has been committed and that the  
3 accused has committed it, a summons or a warrant for the arrest of  
4 the accused shall issue to any officer authorized by law to serve  
5 the summons or to arrest persons charged with offenses against the  
6 state. More than one parent, guardian or custodian may be charged  
7 in a complaint. Initial service of a summons or warrant issued  
8 pursuant to the provisions of this section shall be attempted  
9 within ten calendar days of receipt of the summons or warrant and  
10 subsequent attempts at service shall continue until the summons or  
11 warrant is executed or until the end of the school term during  
12 which the complaint is made, whichever is later.

13 (c) The magistrate court clerk, or the clerk of the circuit  
14 court performing the duties of the magistrate court as authorized  
15 in section eight, article one, chapter fifty of this code, shall  
16 assign the case to a magistrate within ten days of execution of the  
17 summons or warrant. The hearing shall be held within twenty days of  
18 the assignment to the magistrate, subject to lawful continuance.  
19 The magistrate shall provide to the accused at least ten-days'  
20 advance notice of the date, time and place of the hearing.

21 (d) When any doubt exists as to the age of a student absent  
22 from school, the attendance director and assistants have authority  
23 to require a properly attested birth certificate or an affidavit  
24 from the parent, guardian or custodian of the student, stating age

1 of the student. In the performance of his or her duties, the county  
2 attendance director and assistants have authority to take without  
3 warrant any student absent from school in violation of the  
4 provisions of this article and to place the student in the school  
5 in which he or she is or should be enrolled.

6 (e) The county attendance director and assistants shall devote  
7 such time as is required by section three of this article to the  
8 duties of attendance director in accordance with this section  
9 during the instructional term and at such other times as the duties  
10 of an attendance director are required. All attendance directors  
11 and assistants hired for more than two hundred days may be assigned  
12 other duties determined by the superintendent during the period in  
13 excess of two hundred days. The county attendance director is  
14 responsible under direction of the county superintendent for  
15 efficiently administering school attendance in the county.

16 (f) In addition to those duties directly relating to the  
17 administration of attendance, the county attendance director and  
18 assistant directors also shall perform the following duties:

19 (1) Assist in directing the taking of the school census to see  
20 that it is taken at the time and in the manner provided by law;

21 (2) Confer with principals and teachers on the comparison of  
22 school census and enrollment for the detection of possible  
23 nonenrollees;

24 (3) Cooperate with existing state and federal agencies charged

1 with enforcing child labor laws;

2       (4) Prepare a report for submission by the county  
3 superintendent to the State Superintendent of Schools on school  
4 attendance, at such times and in such detail as may be required.  
5 The state board shall promulgate a legislative rule pursuant to  
6 article three-b, chapter twenty-nine-a of this code that sets forth  
7 student absences that are excluded for accountability purposes. The  
8 absences that are excluded by the rule include, but are not to be  
9 limited to, excused student absences, students not in attendance  
10 due to disciplinary measures and absent students for whom the  
11 attendance director has pursued judicial remedies to compel  
12 attendance to the extent of his or her authority. The attendance  
13 director shall file with the county superintendent and county board  
14 at the close of each month a report showing activities of the  
15 school attendance office and the status of attendance in the county  
16 at the time;

17       (5) Promote attendance in the county by compiling data for  
18 schools and by furnishing suggestions and recommendations for  
19 publication through school bulletins and the press, or in such  
20 manner as the county superintendent may direct;

21       (6) Participate in school teachers' conferences with parents  
22 and students;

23       (7) Assist in such other ways as the county superintendent may  
24 direct for improving school attendance;

1 (8) Make home visits of students who have excessive unexcused  
2 absences, as provided above, or if requested by the chief  
3 administrator, principal or assistant principal; and

4 (9) Serve as the liaison for homeless children and youth.

5 **CHAPTER 49. CHILD WELFARE.**

6 **ARTICLE 1. PURPOSES; DEFINITIONS.**

7 **§49-1-4. Other definitions.**

8 As used in this chapter:

9 (1) "Child welfare agency" means any agency or facility  
10 maintained by the state or any county or municipality thereof or  
11 any agency or facility maintained by an individual, firm,  
12 corporation, association or organization, public or private, to  
13 receive children for care and maintenance or for placement in  
14 residential care facilities or any facility that provides care for  
15 unmarried mothers and their children;

16 (2) "Child advocacy center" means a community-based  
17 organization that is a member in good standing with the West  
18 Virginia Child Abuse Network, Inc., and is working to implement the  
19 following program components:

20 (A) Child-appropriate/child-friendly facility: A child  
21 advocacy center provides a comfortable, private, child-friendly  
22 setting that is both physically and psychologically safe for  
23 clients;

24 (B) Multi disciplinary team (MDT): A Multidisciplinary team

1 for response to child abuse allegations includes representation  
2 from the following: law enforcement; child protective services;  
3 prosecution; mental health; medical; victim advocacy; child  
4 advocacy center;

5 (C) Organizational capacity: A designated legal entity  
6 responsible for program and fiscal operations has been established  
7 and implements basic sound administrative practices;

8 (D) Cultural competency and diversity: The child advocacy  
9 center promotes policies, practices and procedures that are  
10 culturally competent. Cultural competency is defined as the  
11 capacity to function in more than one culture, requiring the  
12 ability to appreciate, understand and interact with members of  
13 diverse populations within the local community;

14 (E) Forensic interviews: Forensic interviews are conducted in  
15 a manner which is of a neutral, fact-finding nature and coordinated  
16 to avoid duplicative interviewing;

17 (F) Medical evaluation: Specialized medical evaluation and  
18 treatment are to be made available to child advocacy center clients  
19 as part of the team response, either at the child advocacy center  
20 or through coordination and referral with other specialized medical  
21 providers;

22 (G) Therapeutic intervention: Specialized mental health  
23 services are to be made available as part of the team response,  
24 either at the child advocacy center or through coordination and

1 referral with other appropriate treatment providers;

2 (H) Victim support/advocacy: Victim support and advocacy are  
3 to be made available as part of the team response, either at the  
4 child advocacy center or through coordination with other providers,  
5 throughout the investigation and subsequent legal proceedings;

6 (I) Case review: Team discussion and information sharing  
7 regarding the investigation, case status and services needed by the  
8 child and family are to occur on a routine basis;

9 (J) Case tracking: Child advocacy centers must develop and  
10 implement a system for monitoring case progress and tracking case  
11 outcomes for team components: *Provided*, That a child advocacy  
12 center may establish a safe exchange location for children and  
13 families who have a parenting agreement or an order providing for  
14 visitation or custody of the children that require a safe exchange  
15 location;

16 (3) "Community based", when referring to a facility, program,  
17 or service, means located near the juvenile's home or family and  
18 involving community participation in planning, operation and  
19 evaluation and which may include, but is not limited to, medical,  
20 educational, vocational, social and psychological guidance,  
21 training, special education, counseling, alcoholism and any  
22 treatment and other rehabilitation services;

23 (4) "Court" means the circuit court of the county with  
24 jurisdiction of the case or the judge thereof in vacation unless

1 otherwise specifically provided;

2 (5) "Custodian" means a person who has or shares actual  
3 physical possession or care and custody of a child, regardless of  
4 whether such person has been granted custody of the child by any  
5 contract, agreement or legal proceedings;

6 (6) "Department" or "state department" means the State  
7 Department of Health and Human Resources;

8 (7) "Division of Juvenile Services" means the division within  
9 the Department of Military Affairs and Public Safety pursuant to  
10 article five-e of this chapter;

11 (8) "Guardian" means a person who has care and custody of a  
12 child as a result of any contract, agreement or legal proceeding;

13 (9) "Juvenile delinquent" means a juvenile who has been  
14 adjudicated as one who commits an act which would be a crime under  
15 state law or a municipal ordinance if committed by an adult;

16 (10) "Nonsecure facility" means any public or private  
17 residential facility not characterized by construction fixtures  
18 designed to physically restrict the movements and activities of  
19 individuals held in lawful custody in such facility and which  
20 provides its residents access to the surrounding community with  
21 supervision;

22 (11) "Referee" means a juvenile referee appointed pursuant to  
23 section one, article five-a of this chapter, except that in any  
24 county which does not have a juvenile referee, the judge or judges

1 of the circuit court may designate one or more magistrates of the  
2 county to perform the functions and duties which may be performed  
3 by a referee under this chapter;

4 (12) "Secretary" means the Secretary of Health and Human  
5 Resources;

6 (13) "Secure facility" means any public or private residential  
7 facility which includes construction fixtures designed to  
8 physically restrict the movements and activities of juveniles or  
9 other individuals held in lawful custody in such facility;

10 (14) "Staff-secure facility" means any public or private  
11 residential facility characterized by staff restrictions of the  
12 movements and activities of individuals held in lawful custody in  
13 such facility and which limits its residents' access to the  
14 surrounding community, but is not characterized by construction  
15 fixtures designed to physically restrict the movements and  
16 activities of residents;

17 (15) "Status offender" means a juvenile who has been  
18 adjudicated as one:

19 (A) Who habitually and continually refuses to respond to the  
20 lawful supervision by his or her parents, guardian or legal  
21 custodian such that the child's behavior substantially endangers  
22 the health, safety or welfare of the juvenile or any other person;

23 (B) Who has left the care of his or her parents, guardian or  
24 custodian without the consent of such person or without good cause;

1 or

2 (C) Who is habitually absent from school without good cause:  
3 Provided, That if a student is suspended from school and must be  
4 absent due to the terms of the suspension, the days the student is  
5 absent due to the suspension may not be counted toward the  
6 determination of being habitually absent unless the court  
7 determines by clear and convincing evidence that the action causing  
8 suspension was taken solely due to the student's desire to be out  
9 of school;

10 (16) "Valid court order" means a court order given to a  
11 juvenile who was brought before the court and made subject to such  
12 order and who received, before the issuance of such order, the full  
13 due process rights guaranteed to such juvenile by the Constitutions  
14 of the United States and the State of West Virginia.

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(NOTE: The purpose of this bill is to ensure that suspension days are not counted as days absent from school when assessing whether a juvenile is a status offender or when prosecuting an adult for their child's failure to attend school.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)

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EDUCATION COMMITTEE AMENDMENT

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill No. 493**--A BILL to amend and reenact §18-8-2

and §18-8-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-1-4 of said code, all relating to excluding certain days a student is suspended from school from being counted as days absent for the purpose of prosecuting a person for failing to cause a child under eighteen years of age to attend school, for the purpose of prosecuting a person eighteen years of age or older and enrolled in school for failing to attend school and for the purpose of adjudicating a juvenile habitually absent from school.