

1 **Senate Bill No. 493**

2 (By Senators Palumbo, Tucker and Barnes)

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4 [Introduced February 5, 2014; referred to the Committee on
5 Education; and then to the Committee on the Judiciary.]

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10 A BILL to amend and reenact §18-8-2 and §18-8-4 of the Code of West
11 Virginia, 1931, as amended; and to amend and reenact §49-1-4
12 of said code, all relating to excluding days a student is
13 suspended from school from the days required to prove a
14 student as a status offender and for prosecuting a parent for
15 their child's truancy.

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

17 That §18-8-2 and §18-8-4 of the Code of West Virginia, 1931,
18 as amended, be amended and reenacted; and that §49-1-4 of said code
19 be amended and reenacted, all to read as follows:

20 **CHAPTER 18. EDUCATION.**

21 **ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

22 **§18-8-2. Offenses; penalties; cost of prosecution.**

23 (a) (1) Any person who, after receiving due notice, shall fail

1 to cause a child or children under eighteen years of age in that
2 person's legal or actual charge to attend school in violation of
3 the provisions of this article or without just cause, shall be
4 guilty of a misdemeanor and shall, upon conviction of a first
5 offense, be fined not less than \$50 nor more than \$100 together
6 with the costs of prosecution, or required to accompany the child
7 to school and remain through the school day for so long as the
8 magistrate or judge may determine is appropriate. The magistrate or
9 judge, upon conviction and pronouncing sentence, may delay the
10 sentence for a period of sixty school days provided the child is in
11 attendance everyday during said sixty-day period. Following the
12 sixty-day period, if said child was present at school for every
13 school day, the delayed sentence may be suspended and not enacted.

14 (2) Upon conviction of a second offense, a fine may be imposed
15 of not less than \$50 nor more than \$100 together with the costs of
16 prosecution and the person may be required to accompany the child
17 to school and remain throughout the school day until such time as
18 the magistrate or judge may determine is appropriate or confined in
19 jail not less than five nor more than twenty days. Every day a
20 child is out of school contrary to the provisions of this article
21 shall constitute a separate offense. Magistrates shall have
22 concurrent jurisdiction with circuit courts for the trial of
23 offenses arising under this section.

24 (b) (1) Any person eighteen years of age or older who is

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

13 (2) Upon conviction of a second offense, a fine may be imposed
14 of not less than \$50 nor more than \$100 together with the costs of
15 prosecution and the person may be required to go to school and
16 remain throughout the school day until such time as the person
17 graduates or withdraws from school or confined in jail not less
18 than five nor more than twenty days. Every day a student is out of
19 school contrary to the provisions of this article shall constitute
20 a separate offense. Magistrates shall have concurrent jurisdiction
21 with circuit courts for the trial of offenses arising under this
22 section.

23 (3) Upon conviction of a third offense, any person eighteen
24 years of age or older who is enrolled in school shall be withdrawn

1 from school during the remainder of that school year. Enrollment of
2 that person in school during the next school year or years
3 thereafter shall be conditional upon all absences being excused as
4 defined in law, state board policy and county board of education
5 policy. More than one unexcused absence of such a student shall be
6 grounds for the director of attendance to authorize the school to
7 withdraw the person for the remainder of the school year.
8 Magistrates shall have concurrent jurisdiction with circuit courts
9 for the trial of offenses arising under this section.

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

14 **§18-8-4. Duties of attendance director and assistant directors;**
15 **complaints, warrants and hearings.**

16 (a) The county attendance director and the assistants shall
17 diligently promote regular school attendance. The director and
18 assistants shall:

19 (1) Ascertain reasons for inexcusable absences from school of
20 students of compulsory school age and students who remain enrolled
21 beyond the compulsory school age as defined under section one-a of
22 this article: Provided, That if a student is suspended from school
23 and must be absent due to the terms of the suspension, the days the
24 student is absent due to the suspension may not be counted as

1 inexcusable or unexcused absences for the purposes of this section;

2 and

3 (2) Take such steps as are, in their discretion, best
4 calculated to encourage the attendance of students and to impart
5 upon the parents and guardians the importance of attendance and the
6 seriousness of failing to do so.

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

9 Serve written notice to the parent, guardian or custodian of
10 the student that the attendance of the student at school is
11 required and that within ten days of receipt of the notice the
12 parent, guardian or custodian, accompanied by the student, shall
13 report in person to the school the student attends for a conference
14 with the principal or other designated representative of the school
15 in order to discuss and correct the circumstances causing the
16 inexcusable absences of the student; and if the parent, guardian or
17 custodian does not comply with the provisions of this article, then
18 the attendance director or assistant shall make complaint against
19 the parent, guardian or custodian before a magistrate of the
20 county. If it appears from the complaint that there is probable
21 cause to believe that an offense has been committed and that the
22 accused has committed it, a summons or a warrant for the arrest of
23 the accused shall issue to any officer authorized by law to serve
24 the summons or to arrest persons charged with offenses against the

1 state. More than one parent, guardian or custodian may be charged
2 in a complaint. Initial service of a summons or warrant issued
3 pursuant to the provisions of this section shall be attempted
4 within ten calendar days of receipt of the summons or warrant and
5 subsequent attempts at service shall continue until the summons or
6 warrant is executed or until the end of the school term during
7 which the complaint is made, whichever is later.

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

16 (d) When any doubt exists as to the age of a student absent
17 from school, the attendance director and assistants have authority
18 to require a properly attested birth certificate or an affidavit
19 from the parent, guardian or custodian of the student, stating age
20 of the student. In the performance of his or her duties, the county
21 attendance director and assistants have authority to take without
22 warrant any student absent from school in violation of the
23 provisions of this article and to place the student in the school
24 in which he or she is or should be enrolled.

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

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

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

16 (2) Confer with principals and teachers on the comparison of
17 school census and enrollment for the detection of possible
18 nonenrollees;

19 (3) Cooperate with existing state and federal agencies charged
20 with enforcing child labor laws;

21 (4) Prepare a report for submission by the county
22 superintendent to the State Superintendent of Schools on school
23 attendance, at such times and in such detail as may be required.

24 The state board shall promulgate a legislative rule pursuant to

1 article three-b, chapter twenty-nine-a of this code that sets forth
2 student absences that are excluded for accountability purposes. The
3 absences that are excluded by the rule include, but are not to be
4 limited to, excused student absences, students not in attendance
5 due to disciplinary measures and absent students for whom the
6 attendance director has pursued judicial remedies to compel
7 attendance to the extent of his or her authority. The attendance
8 director shall file with the county superintendent and county board
9 at the close of each month a report showing activities of the
10 school attendance office and the status of attendance in the county
11 at the time;

12 (5) Promote attendance in the county by compiling data for
13 schools and by furnishing suggestions and recommendations for
14 publication through school bulletins and the press, or in such
15 manner as the county superintendent may direct;

16 (6) Participate in school teachers' conferences with parents
17 and students;

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

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

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

24

CHAPTER 49. CHILD WELFARE.

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

2 **§49-1-4. Other definitions.**

3 As used in this chapter:

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

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

15 (A) Child-appropriate/child-friendly facility: A child
16 advocacy center provides a comfortable, private, child-friendly
17 setting that is both physically and psychologically safe for
18 clients;

19 (B) Multi disciplinary team (MDT): A Multidisciplinary team
20 for response to child abuse allegations includes representation
21 from the following: law enforcement; child protective services;
22 prosecution; mental health; medical; victim advocacy; child
23 advocacy center;

24 (C) Organizational capacity: A designated legal entity

1 responsible for program and fiscal operations has been established
2 and implements basic sound administrative practices;

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

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

12 (F) Medical evaluation: Specialized medical evaluation and
13 treatment are to be made available to child advocacy center clients
14 as part of the team response, either at the child advocacy center
15 or through coordination and referral with other specialized medical
16 providers;

17 (G) Therapeutic intervention: Specialized mental health
18 services are to be made available as part of the team response,
19 either at the child advocacy center or through coordination and
20 referral with other appropriate treatment providers;

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

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

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

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

18 (4) "Court" means the circuit court of the county with
19 jurisdiction of the case or the judge thereof in vacation unless
20 otherwise specifically provided;

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

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

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

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

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

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

17 (11) "Referee" means a juvenile referee appointed pursuant to
18 section one, article five-a of this chapter, except that in any
19 county which does not have a juvenile referee, the judge or judges
20 of the circuit court may designate one or more magistrates of the
21 county to perform the functions and duties which may be performed
22 by a referee under this chapter;

23 (12) "Secretary" means the Secretary of Health and Human
24 Resources;

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

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

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

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

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

21 (C) Who is habitually absent from school without good cause:
22 Provided, That if a student is suspended from school and must be
23 absent due to the terms of the suspension, the days the student is
24 absent due to the suspension may not be counted toward the

1 determination of being habitually absent unless the court
2 determines by clear and convincing evidence that the action causing
3 suspension was taken solely due to the student's desire to be out
4 of school;

5 (16) "Valid court order" means a court order given to a
6 juvenile who was brought before the court and made subject to such
7 order and who received, before the issuance of such order, the full
8 due process rights guaranteed to such juvenile by the Constitutions
9 of the United States and the State of West Virginia.

(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.)

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.

