

FILED

2002 APR -3 P 7:22

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2002*

---

**ENROLLED**

*Committee Substitute for*

**SENATE BILL NO. 4**

(By Senator JACKSON, et al)

---

**PASSED March 9, 2002**

**In Effect ninety days from Passage**

FILED

2002 APR -3 P 7:23

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

## ENROLLED

COMMITTEE SUBSTITUTE

FOR

### Senate Bill No. 4

(SENATORS JACKSON, MINEAR, REDD, HUNTER,  
MCKENZIE, EDGELL, BOLEY, BOWMAN, PLYMALE,  
UNGER, SNYDER, KESSLER, MINARD, OLIVERIO  
AND CALDWELL, *original sponsors*)

---

[Passed March 9, 2002; in effect ninety days from passage.]

---

AN ACT to amend and reenact section one, article one, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one-a, article five of said chapter; and to amend and reenact section two, article seven, chapter sixty-one of said code, all relating to education; defining terms; expanding defined terms to include definitions for alternative education and dangerous student; sale of narcotics and possession of deadly weapons and controlled substances on educational facility premises, vehicles and at school-sponsored functions; assault and battery committed by pupil; suspension and

expulsion, and exceptions; hearing; notice and procedure of hearing; notification by regular mail; postponement of hearing; allowing county boards to determine whether a student is a dangerous student; allowing county boards to refuse to provide alternative education to dangerous students who have been expelled; reexamination of dangerous student status; reporting requirements; authority to request subpoena in certain circumstances; establishing guidelines for permitting a reduction in mandatory twelve-month suspension; removing provisions applying to students with disabilities and maintaining that application to students with disabilities must be consistent with federal law; and expanding and redefining deadly weapon as the phrase applies to schools.

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

That section one, article one, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section one-a, article five of said chapter be amended and reenacted; and that section two, article seven, chapter sixty-one of said code be amended and reenacted, all to read as follows:

## **CHAPTER 18A. SCHOOL PERSONNEL.**

### **ARTICLE 1. GENERAL PROVISIONS.**

#### **§18A-1-1. Definitions.**

1 The definitions contained in section one, article one,  
2 chapter eighteen of this code apply to this chapter. In  
3 addition, the following words used in this chapter and in  
4 any proceedings pursuant thereto shall, unless the context  
5 clearly indicates a different meaning, be construed as  
6 follows:

7 (a) "School personnel" means all personnel employed by  
8 a county board of education whether employed on a  
9 regular full-time basis, an hourly basis or otherwise.  
10 School personnel shall be comprised of two categories:  
11 Professional personnel and service personnel.

12 (b) "Professional personnel" means persons who meet  
13 the certification and/or licensing requirements of the state  
14 and includes the professional educator and other profes-  
15 sional employees.

16 (c) "Professional educator" is synonymous with and has  
17 the same meaning as "teacher" as defined in section one,  
18 article one, chapter eighteen of this code. Professional  
19 educators shall be classified as:

20 (1) "*Classroom teacher*". – The professional educator  
21 who has direct instructional or counseling relationship  
22 with pupils, spending the majority of his or her time in this  
23 capacity.

24 (2) "*Principal*". – The professional educator who, as  
25 agent of the board, has responsibility for the supervision,  
26 management and control of a school or schools within the  
27 guidelines established by said board. The major area of  
28 such responsibility shall be the general supervision of all  
29 the schools and all school activities involving pupils,  
30 teachers and other school personnel.

31 (3) "*Supervisor*". – The professional educator who,  
32 whether by this or other appropriate title, is responsible  
33 for working primarily in the field with professional and  
34 other personnel in instructional and other school improve-  
35 ment.

36 (4) "*Central office administrator*". – The superintendent,  
37 associate superintendent, assistant superintendent and  
38 other professional educators, whether by these or other  
39 appropriate titles, who are charged with the administering  
40 and supervising of the whole or some assigned part of the  
41 total program of the countywide school system.

42 (d) "Other professional employee" means that person  
43 from another profession who is properly licensed and is  
44 employed to serve the public schools and includes a  
45 registered professional nurse, licensed by the West Vir-  
46 ginia board of examiners for registered professional nurses

47 and employed by a county board of education, who has  
48 completed either a two-year (sixty-four semester hours) or  
49 a three-year (ninety-six semester hours) nursing program.

50 (e) "Service personnel" means those who serve the school  
51 or schools as a whole, in a nonprofessional capacity,  
52 including such areas as secretarial, custodial, mainte-  
53 nance, transportation, school lunch and as aides.

54 (f) "Principals academy" or "academy" means the  
55 academy created pursuant to section two-b, article three-a  
56 of this chapter.

57 (g) "Center for professional development" means the  
58 center created pursuant to section one, article three-a of  
59 this chapter.

60 (h) "Job-sharing arrangement" means a formal, written  
61 agreement voluntarily entered into by a county board with  
62 two or more of its professional employees who wish to  
63 divide between them the duties and responsibilities of one  
64 authorized full-time position.

65 (i) "Prospective employable professional personnel"  
66 means certified professional educators who:

67 (1) Have been recruited on a reserve list of a county  
68 board;

69 (2) Have been recruited at a job fair or as a result of  
70 contact made at a job fair;

71 (3) Have not obtained regular employee status through  
72 the job posting process provided for in section seven-a,  
73 article four of this chapter; and

74 (4) Have obtained a baccalaureate degree from an  
75 accredited institution of higher education within the past  
76 year.

77 (j) "Dangerous student" means a pupil who is substan-  
78 tially likely to cause serious bodily injury to himself,

79 herself or another individual within that pupil's educa-  
80 tional environment, which may include any alternative  
81 education environment, as evidenced by a pattern or series  
82 of violent behavior exhibited by the pupil, and docu-  
83 mented in writing by the school, with the documentation  
84 provided to the student and parent or guardian at the time  
85 of any offense.

86 (k) "Alternative education" means an authorized depart-  
87 ure from the regular school program designed to provide  
88 educational and social development for students whose  
89 disruptive behavior places them at risk of not succeeding  
90 in the traditional school structures and in adult life  
91 without positive interventions.

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

**§18A-5-1a. Possessing deadly weapons on premises of educa-  
tional facilities; possessing a controlled sub-  
stance on premises of educational facilities;  
assaults and batteries committed by pupils upon  
teachers or other school personnel; temporary  
suspension, hearing; procedure, notice and  
formal hearing; extended suspension; sale of  
narcotic; expulsion; exception; alternative  
education.**

1 (a) A principal shall suspend a pupil from school or from  
2 transportation to or from the school on any school bus if  
3 the pupil, in the determination of the principal after an  
4 informal hearing pursuant to subsection (d) of this section,  
5 has: (i) Violated the provisions of subsection (b), section  
6 fifteen, article two, chapter sixty-one of this code; (ii)  
7 violated the provisions of subsection (b), section eleven-a,  
8 article seven of said chapter; or (iii) sold a narcotic drug,  
9 as defined in section one hundred one, article one, chapter  
10 sixty-a of this code, on the premises of an educational  
11 facility, at a school-sponsored function or on a school bus.  
12 If a student has been suspended pursuant to this subsec-  
13 tion, the principal shall, within twenty-four hours, request

14 that the county superintendent recommend to the county  
15 board that the student be expelled. Upon such a request  
16 by a principal, the county superintendent shall recommend  
17 to the county board that the student be expelled. Upon  
18 such recommendation, the county board shall conduct a  
19 hearing in accordance with subsections (e), (f) and (g) of  
20 this section to determine if the student committed the  
21 alleged violation. If the county board finds that the  
22 student did commit the alleged violation, the county board  
23 shall expel the student.

24 (b) A principal shall suspend a pupil from school, or from  
25 transportation to or from the school on any school bus, if  
26 the pupil, in the determination of the principal after an  
27 informal hearing pursuant to subsection (d) of this section,  
28 has: (i) Committed an act or engaged in conduct that  
29 would constitute a felony under the laws of this state if  
30 committed by an adult; or (ii) unlawfully possessed on the  
31 premises of an educational facility or at a school-spon-  
32 sored function a controlled substance governed by the  
33 uniform controlled substances act as described in chapter  
34 sixty-a of this code. If a student has been suspended  
35 pursuant to this subsection, the principal may request that  
36 the superintendent recommend to the county board that  
37 the student be expelled. Upon such recommendation by  
38 the county superintendent, the county board may hold a  
39 hearing in accordance with the provisions of subsections  
40 (e), (f) and (g) of this section to determine if the student  
41 committed the alleged violation. If the county board finds  
42 that the student did commit the alleged violation, the  
43 county board may expel the student.

44 (c) A principal may suspend a pupil from school, or  
45 transportation to or from the school on any school bus, if  
46 the pupil, in the determination of the principal after an  
47 informal hearing pursuant to subsection (d) of this section:  
48 (i) Threatened to injure, or in any manner injured, a pupil,  
49 teacher, administrator or other school personnel; (ii)  
50 willfully disobeyed a teacher; (iii) possessed alcohol in an

51 educational facility, on school grounds, a school bus or at  
52 any school-sponsored function; (iv) used profane language  
53 directed at a school employee or pupil; (v) intentionally  
54 defaced any school property; (vi) participated in any  
55 physical altercation with another person while under the  
56 authority of school personnel; or (vii) habitually violated  
57 school rules or policies. If a student has been suspended  
58 pursuant to this subsection, the principal may request that  
59 the superintendent recommend to the county board that  
60 the student be expelled. Upon such recommendation by  
61 the county superintendent, the county board may hold a  
62 hearing in accordance with the provisions of subsections  
63 (e), (f) and (g) of this section to determine if the student  
64 committed the alleged violation. If the county board finds  
65 that the student did commit the alleged violation, the  
66 county board may expel the student.

67 (d) The actions of any pupil which may be grounds for  
68 his or her suspension or expulsion under the provisions of  
69 this section shall be reported immediately to the principal  
70 of the school in which the pupil is enrolled. If the princi-  
71 pal determines that the alleged actions of the pupil would  
72 be grounds for suspension, he or she shall conduct an  
73 informal hearing for the pupil immediately after the  
74 alleged actions have occurred. The hearing shall be held  
75 before the pupil is suspended unless the principal believes  
76 that the continued presence of the pupil in the school poses  
77 a continuing danger to persons or property or an ongoing  
78 threat of disrupting the academic process, in which case  
79 the pupil shall be suspended immediately and a hearing  
80 held as soon as practicable after the suspension.

81 The pupil and his or her parent(s), guardian(s) or custo-  
82 dian(s), as the case may be, shall be given telephonic  
83 notice, if possible, of this informal hearing, which notice  
84 shall briefly state the grounds for suspension.

85 At the commencement of the informal hearing, the  
86 principal shall inquire of the pupil as to whether he or she  
87 admits or denies the charges. If the pupil does not admit



88 the charges, he or she shall be given an explanation of the  
89 evidence possessed by the principal and an opportunity to  
90 present his or her version of the occurrence. At the  
91 conclusion of the hearing or upon the failure of the noticed  
92 student to appear, the principal may suspend the pupil for  
93 a maximum of ten school days, including the time prior to  
94 the hearing, if any, for which the pupil has been excluded  
95 from school.

96 The principal shall report any suspension the same day  
97 it has been decided upon, in writing, to the parent(s),  
98 guardian(s) or custodian(s) of the pupil by regular United  
99 States mail. The suspension also shall be reported to the  
100 county superintendent and to the faculty senate of the  
101 school at the next meeting after the suspension.

102 (e) Prior to a hearing before the county board, the county  
103 board shall cause a written notice which states the charges  
104 and the recommended disposition to be served upon the  
105 pupil and his or her parent(s), guardian(s) or custodian(s),  
106 as the case may be. The notice shall state clearly whether  
107 the board will attempt at hearing to establish the student  
108 as a dangerous student, as defined by section one, article  
109 one of this chapter. The notice also shall include any  
110 evidence upon which the board will rely in asserting its  
111 claim that the student is a dangerous student. The notice  
112 shall set forth a date and time at which the hearing shall  
113 be held, which date shall be within the ten-day period of  
114 suspension imposed by the principal.

115 (f) The county board shall hold the scheduled hearing to  
116 determine if the pupil should be reinstated or should or,  
117 under the provisions of this section, must be expelled from  
118 school. If the county board determines that the student  
119 should or must be expelled from school, it may also  
120 determine whether the student is a dangerous student  
121 pursuant to subsection (g) of this section. At this or any  
122 hearing before a county board conducted pursuant to this  
123 section, the pupil may be represented by counsel, may call  
124 his or her own witnesses to verify his or her version of the

125 incident and may confront and cross-examine witnesses  
126 supporting the charge against him or her. Such a hearing  
127 shall be recorded by mechanical means unless recorded by  
128 a certified court reporter. Any such hearing may be  
129 postponed for good cause shown by the pupil but he or she  
130 shall remain under suspension until after the hearing. The  
131 state board may adopt other supplementary rules of  
132 procedure to be followed in these hearings. At the conclu-  
133 sion of the hearing the county board shall either: (1) Order  
134 the pupil reinstated immediately or at the end of his or her  
135 initial suspension; (2) suspend the pupil for a further  
136 designated number of days; or (3) expel the pupil from the  
137 public schools of the county.

138 (g) A county board that did not intend prior to a hearing  
139 to assert a dangerous student claim, that did not notify the  
140 student prior to the hearing that such a determination  
141 would be considered and that determines through the  
142 course of the hearing that the student may be a dangerous  
143 student shall schedule a second hearing within ten days to  
144 decide the issue. The hearing may be postponed for good  
145 cause shown by the pupil, but he or she remains under  
146 suspension until after the hearing.

147 A county board that expels a student, and finds that the  
148 student is a dangerous student, may refuse to provide  
149 alternative education. However, after a hearing conducted  
150 pursuant to this section for determining whether a student  
151 is a dangerous student, when the student is found to be a  
152 dangerous student, is expelled and is denied alternative  
153 education, a hearing shall be conducted within three  
154 months after the refusal by the board to provide alterna-  
155 tive education to reexamine whether or not the student  
156 remains a dangerous student and whether the student shall  
157 be provided alternative education. Thereafter, a hearing  
158 for the purpose of reexamining whether or not the student  
159 remains a dangerous student and whether the student shall  
160 be provided alternative education shall be conducted every  
161 three months for so long as the student remains a danger-

162 ous student and is denied alternative education. During  
163 the initial hearing, or in any subsequent hearing, the board  
164 may consider the history of the pupil's conduct as well as  
165 any improvements made subsequent to the expulsion. If it  
166 is determined during any of the hearings that the student  
167 is no longer a dangerous student or should be provided  
168 alternative education, the student shall be provided  
169 alternative education during the remainder of the expul-  
170 sion period.

171 (h) The superintendent may apply to a circuit judge or  
172 magistrate for authority to subpoena witnesses and  
173 documents, upon his or her own initiative, in a proceeding  
174 related to a recommended student expulsion or dangerous  
175 student determination, before a county board conducted  
176 pursuant to the provisions of this section. Upon the  
177 written request of any other party, the superintendent  
178 shall apply to a circuit judge or magistrate for the author-  
179 ity to subpoena witnesses, documents or both on behalf of  
180 the other party in a proceeding related to a recommended  
181 student expulsion or dangerous student determination  
182 before a county board. If the authority to subpoena is  
183 granted, the superintendent shall subpoena the witnesses,  
184 documents or both requested by the other party. Further-  
185 more, if the authority to subpoena is granted, it shall be  
186 exercised in accordance with the provisions of section one,  
187 article five, chapter twenty-nine-a of this code.

188 Any hearing conducted pursuant to this subsection may  
189 be postponed: (1) For good cause shown by the pupil; (2)  
190 when proceedings to compel a subpoenaed witness to  
191 appear must be instituted; or (3) when a delay in service of  
192 a subpoena hinders either party's ability to provide  
193 sufficient notice to appear to a witness. A pupil remains  
194 under suspension until after the hearing in any case where  
195 a postponement occurs.

196 The county boards are directed to report the number of  
197 pupils determined to be dangerous students to the state  
198 board of education. The state board will compile the

199 county boards' statistics and shall report its findings to the  
200 legislative oversight commission on educational account-  
201 ability.

202 (i) Pupils may be expelled pursuant to the provisions of  
203 this section for a period not to exceed one school year,  
204 except that if a pupil is determined to have violated the  
205 provisions of subsection (a) of this section the pupil shall  
206 be expelled for a period of not less than twelve consecutive  
207 months: *Provided*, That the county superintendent may  
208 lessen the mandatory period of twelve consecutive months  
209 for the expulsion of the pupil if the circumstances of the  
210 pupil's case demonstrably warrant. Upon the reduction of  
211 the period of expulsion, the county superintendent shall  
212 prepare a written statement setting forth the circum-  
213 stances of the pupil's case which warrant the reduction of  
214 the period of expulsion. The county superintendent shall  
215 submit the statement to the county board, the principal,  
216 the faculty senate and the local school improvement  
217 council for the school from which the pupil was expelled.  
218 The county superintendent may use the following factors  
219 as guidelines in determining whether or not to reduce a  
220 mandatory twelve-month expulsion:

221 (1) The extent of the pupil's malicious intent;

222 (2) The outcome of the pupil's misconduct;

223 (3) The pupil's past behavior history; and

224 (4) The likelihood of the pupil's repeated misconduct.

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

227 (k) For purposes of this section, nothing herein may be  
228 construed to be in conflict with the federal provisions of  
229 the Individuals with Disabilities Education Act of 1990  
230 (PL 101-476).

231 (l) If a pupil transfers to another school in West Virginia,  
232 the principal of the school from which the pupil transfers

233 shall provide a written record of any disciplinary action  
234 taken against the pupil to the principal of the school to  
235 which the pupil transfers.

236 (m) Principals may exercise any other authority and  
237 perform any other duties to discipline pupils consistent  
238 with state and federal law, including policies of the state  
239 board of education.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 7. DANGEROUS WEAPONS.**

#### **§61-7-2. Definitions.**

1 As used in this article, unless the context otherwise  
2 requires:

3 (1) "Blackjack" means a short bludgeon consisting, at  
4 the striking end, of an encased piece of lead or some other  
5 heavy substance and, at the handle end, a strap or springy  
6 shaft which increases the force of impact when a person or  
7 object is struck. The term "blackjack" shall include, but  
8 not be limited to, a billy, billy club, sand club, sandbag or  
9 slapjack.

10 (2) "Gravity knife" means any knife that has a blade  
11 released from the handle by the force of gravity or the  
12 application of centrifugal force and when so released is  
13 locked in place by means of a button, spring, lever or other  
14 locking or catching device.

15 (3) "Knife" means an instrument, intended to be used or  
16 readily adaptable to be used as a weapon, consisting of a  
17 sharp-edged or sharp-pointed blade, usually made of steel,  
18 attached to a handle which is capable of inflicting cutting,  
19 stabbing or tearing wounds. The term "knife" shall  
20 include, but not be limited to, any dagger, dirk, poniard or  
21 stiletto, with a blade over three and one-half inches in  
22 length, any switchblade knife or gravity knife and any  
23 other instrument capable of inflicting cutting, stabbing or  
24 tearing wounds. A pocket knife with a blade three and

25 one-half inches or less in length, a hunting or fishing knife  
26 carried for hunting, fishing, sports or other recreational  
27 uses, or a knife designed for use as a tool or household  
28 implement shall not be included within the term "knife"  
29 as defined herein unless such knife is knowingly used or  
30 intended to be used to produce serious bodily injury or  
31 death.

32 (4) "Switchblade knife" means any knife having a  
33 spring-operated blade which opens automatically upon  
34 pressure being applied to a button, catch or other releasing  
35 device in its handle.

36 (5) "Nunchuka" means a flailing instrument consisting  
37 of two or more rigid parts, connected by a chain, cable,  
38 rope or other nonrigid, flexible or springy material,  
39 constructed in such a manner as to allow the rigid parts to  
40 swing freely so that one rigid part may be used as a handle  
41 and the other rigid part may be used as the striking end.

42 (6) "Metallic or false knuckles" means a set of finger  
43 rings attached to a transverse piece to be worn over the  
44 front of the hand for use as a weapon and constructed in  
45 such a manner that, when striking another person with the  
46 fist or closed hand, considerable physical damage may be  
47 inflicted upon the person struck. The terms "metallic or  
48 false knuckles" shall include any such instrument without  
49 reference to the metal or other substance or substances  
50 from which the metallic or false knuckles are made.

51 (7) "Pistol" means a short firearm having a chamber  
52 which is integral with the barrel, designed to be aimed and  
53 fired by the use of a single hand.

54 (8) "Revolver" means a short firearm having a cylinder  
55 of several chambers that are brought successively into line  
56 with the barrel to be discharged, designed to be aimed and  
57 fired by the use of a single hand.

58 (9) "Deadly weapon" means an instrument which is  
59 designed to be used to produce serious bodily injury or

60 death or is readily adaptable to such use. The term  
61 "deadly weapon" shall include, but not be limited to, the  
62 instruments defined in subdivisions (1) through (8),  
63 inclusive, of this section or other deadly weapons of like  
64 kind or character which may be easily concealed on or  
65 about the person. For the purposes of section one-a,  
66 article five, chapter eighteen-a of this code and section  
67 eleven-a, article seven of this chapter, in addition to the  
68 definition of "knife" set forth in subdivision (3) of this  
69 section, the term "deadly weapon" also includes any  
70 instrument included within the definition of "knife" with  
71 a blade of three and one-half inches or less in length.  
72 Additionally, for the purposes of section one-a, article five,  
73 chapter eighteen-a of this code and section eleven-a,  
74 article seven of this chapter, the term "deadly weapon"  
75 includes explosive, chemical, biological and radiological  
76 materials. Notwithstanding any other provision of this  
77 section, the term "deadly weapon" does not include any  
78 item or material owned by the school or county board,  
79 intended for curricular use, and used by the student at the  
80 time of the alleged offense solely for curricular purposes.

81 (10) "Concealed" means hidden from ordinary observa-  
82 tion so as to prevent disclosure or recognition. A deadly  
83 weapon is concealed when it is carried on or about the  
84 person in such a manner that another person in the  
85 ordinary course of events would not be placed on notice  
86 that the deadly weapon was being carried.

87 (11) "Firearm" means any weapon which will expel a  
88 projectile by action of an explosion.

89 (12) "Controlled substance" has the same meaning as is  
90 ascribed to that term in subsection (d), section one hun-  
91 dred one, article one, chapter sixty-a of this code.

92 (13) "Drug" has the same meaning as is ascribed to that  
93 term in subsection (l), section one hundred one, article one,  
94 chapter sixty-a of this code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within is approved this the 2nd  
Day of April, 2002.

*[Signature]*  
.....  
Governor



PRESENTED TO THE

GOVERNOR

Date: 3/26/02

Time: 3:00 pm