

# WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

SB568

**Enrolled**  
**Committee Substitute**  
**for**  
**Committee Substitute**  
**for**  
**Senate Bill 568**

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

2024 MAR 27 A 10: 04

FILED

BY SENATORS TAYLOR, AZINGER, BOLEY, DEEDS, GRADY,  
HAMILTON, HUNT, JEFFRIES, MAYNARD, OLIVERIO,  
PHILLIPS, ROBERTS, SMITH, STUART, SWOPE, AND  
NELSON

[Passed March 9, 2024; in effect 90 days from  
passage (June 7, 2024)]



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1 AN ACT to amend and reenact §18-8-2 and §18-8-4 of the Code of West Virginia, 1931, as  
2 amended; to amend said code by adding thereto a new article, designated §18-34-1, §18-  
3 34-2, and §18-34-3; and to amend and reenact §49-4-702 of said code, all relating to  
4 student absences; amending criminal penalties imposed for failing to attend school without  
5 good cause; defining terms; requiring the State Board to implement a System of Support  
6 Plan to encourage and promote compulsory school attendance with implementation to be  
7 ensured by the county attendance director; requiring the school to make periodic  
8 meaningful contact with parents, guardians, or custodians of children who fail to attend  
9 school; removing requirement for attendance director and assistant directors to prepare a  
10 report for submission by the county superintendent to the State Superintendent of Schools  
11 on school attendance; providing legislative intent for Jaycie's Law; providing that a  
12 student's absence due to a student's pregnancy or parenting needs is a lawful absence;  
13 requiring the State Board of Education to develop a written attendance policy for pregnant  
14 and parenting students that sets forth minimum requirements therefor; establishing article  
15 effective date; and making referral for the development of a diversion program in truancy  
16 offense matters discretionary.

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

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

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

1 (a) Any parent, guardian, or custodian who fails to cause a child or children under 18 years  
2 of age in that person's legal or actual charge to attend school in violation of this article or without  
3 just cause, is guilty of a misdemeanor and, shall, upon conviction of a first offense, be fined not  
4 less than \$50 nor more than \$100 together with the costs of prosecution. The magistrate or circuit  
5 court judge, upon conviction and pronouncing sentence, may delay the sentence for a period of

6 60 school days provided the child is in attendance every day during said 60-day period. Following  
7 the 60-day period, if the child was present at school for every school day, the delayed sentence  
8 may be suspended and dismissed. Upon conviction of a second offense, a fine may be imposed  
9 of not less than \$50 nor more than \$100 together with the costs of prosecution or confined in jail  
10 not less than five nor more than 20 days. Every day a child is out of school contrary to this article  
11 constitutes a separate offense. Magistrates shall have concurrent jurisdiction with circuit courts  
12 for the trial of offenses arising under this section.

13 (b) Any person 18 years of age or older who is enrolled in school who, after receiving due  
14 notice, fails to attend school in violation of this article or without just cause, is guilty of a  
15 misdemeanor and, shall, upon conviction of a first offense, be fined not less than \$50 nor more  
16 than \$100 together with the costs of prosecution and required to attend school and remain  
17 throughout the school day. The magistrate or circuit court judge, upon conviction and pronouncing  
18 sentence, may delay the imposition of a fine for a period of 60 school days provided the person  
19 is in attendance every day during said 60-day period. Following the 60-day period, if the student  
20 was present at school every day, the delayed sentence may be suspended and dismissed. Upon  
21 conviction of a second offense, a fine may be imposed of not less than \$50 nor more than \$100  
22 together with the costs of prosecution and the person may be required to go to school and remain  
23 throughout the school day until such time as the person graduates or withdraws from school or  
24 confined in jail not less than five nor more than 20 days. Every day a student is out of school  
25 contrary to this article constitutes a separate offense. Magistrates shall have concurrent  
26 jurisdiction with circuit courts for the trial of offenses arising under this section.

27 (c) Upon conviction of a third offense, any person 18 years of age or older who is enrolled  
28 in school shall be withdrawn from school during the remainder of that school year. Enrollment of  
29 that person in school during the next school year or years thereafter is conditional upon all  
30 absences being excused as defined in law, state board policy and county board of education  
31 policy. More than one unexcused absence of such a student shall be grounds for the director of

32 attendance to authorize the school to withdraw the person for the remainder of the school year.  
33 Magistrates shall have concurrent jurisdiction with circuit courts for the trial of offenses arising  
34 under this section.

35 (d) Jurisdiction to enforce compulsory school attendance laws lies in the county in which  
36 a student resides and in the county where the school at which the student is enrolled is located.  
37 When the county of residence and enrollment are different, an action to enforce compulsory  
38 school attendance may be brought in either county and the magistrates and circuit courts of either  
39 county have concurrent jurisdiction for the trial of offenses arising under this section.

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

1 (a) For the purposes of this article, the following definitions apply:

2 (1) "Excused absence" means:

3 (A) A medical or dental appointment with written excuse from physician or dentist;

4 (B) Personal illness or injury of the student accompanied by a timely written excuse from  
5 the student's parent, guardian, or custodian: *Provided:* That the total absences under this section  
6 combined with absences permitted under subdivision (C) of this subsection do not exceed more  
7 than 10 per school year unless supported by a physician's note: *Provided however:* That a  
8 medically documented chronic health condition or disability that adversely impacts in-person  
9 attendance approved by a county school board or the principal is not subject to this limitation, and  
10 that absences of students with disabilities shall be in accordance with the Individuals with  
11 Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in  
12 compliance therewith;

13 (C) Personal illness or injury of the student's parent, guardian, custodian, or family  
14 member: *Provided,* That the excuse must provide a reasonable explanation for why the student's  
15 absence was necessary and caused by the illness or injury in the family, and the total absences

16 under this section in combination with section (1)(B) may not exceed more than ten excuses per  
17 school year;

18 (D) Death in the family;

19 (E) School-approved or county-approved curricular or extra-curricular activities;

20 (F) A judicial obligation or court appearance involving the student; and

21 (G) A military requirement for students enlisted or enlisting in the military.

22 (2) "Meaningful contact" means two-way communication by the school administrator or  
23 other school designee and the student's parent, guardian, or custodian to discuss the student's  
24 attendance record in an effort to prevent subsequent truancy or other legal proceedings relating  
25 to compulsory school attendance, and to minimize additional absences. Methods of meaningful  
26 contact include, but are not limited to, phone calls, video conferencing, home visits, and the use  
27 of digital platforms.

28 (3) "System of Support Plan" ("SOS Plan") refers to a plan to be developed by the State  
29 Board of Education designed to encourage students to attend school. It shall, at a minimum,  
30 require county attendance directors, principals, or other school designees to make periodic  
31 contact with the parent, guardian, or custodian of a student subject to compulsory school  
32 attendance to ascertain the reason or reasons for the student's absence or absences and what  
33 measures the school may employ to assist the student in attending school and not incurring  
34 additional absences. It shall also impart upon the student's parents, guardians, and custodians  
35 the importance of the student's attendance and the seriousness of failing to do so.

36 (4) "Unexcused absence" means any absence not specifically included in the definition of  
37 "excused absence".

38 (b) The county attendance director and his or her assistants shall diligently promote  
39 regular school attendance. The director and assistants shall:

40 (1) Ascertain the reasons for unexcused absences from school of students of compulsory  
41 school age; and students who remain enrolled beyond the compulsory school age



42           (2) Ensure the implementation of the SOS Plan as developed by the State Board, including  
43 encouraging the attendance of students and imparting upon the parents, guardians, and  
44 custodians the important of attendance and the seriousness of failing to do so.

45           (c) All documentation relating to absences shall be provided to the school no later than  
46 three instructional days after the first day the student returns to school. In the event  
47 documentation is not provided to the school within three instructional days after the first day the  
48 student returns to school, the absences are unexcused.

49           (d) In the case of three total unexcused absences of a student during a school year, the  
50 attendance director, his or her assistant, or the principal shall make meaningful contact with the  
51 parent, guardian, or custodian of the student to ascertain the reasons for the unexcused absences  
52 and what measures the school may employ to assist the student in attending and not incurring  
53 any additional unexcused absences.

54           (e) In the case of five total unexcused absences, the attendance director, his or her  
55 assistant or the principal shall again make meaningful contact with the parent, guardian, or  
56 custodian of the student to ascertain the reasons for the unexcused absences and what measures  
57 the school may employ to assist the student in attending school and not incurring any additional  
58 unexcused absences.

59           (f) In the case of 10 total unexcused absences of a student during a school year, the  
60 attendance director or assistant may make a complaint against the parent, guardian, or custodian  
61 before a magistrate of the county. If it appears from the complaint that there is probable cause to  
62 believe that an offense has been committed and that the accused has committed it, a summons  
63 or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the  
64 summons or to arrest persons charged with offenses against the state. More than one parent,  
65 guardian, or custodian may be charged in a complaint. Initial service of a summons or warrant  
66 issued pursuant to the provisions of this section shall be attempted within 10 calendar days of  
67 receipt of the summons or warrant and subsequent attempts at service shall continue until the

68 summons or warrant is executed or until the end of the school term during which the complaint is  
69 made, whichever is later.

70 (g) The magistrate court clerk, or the clerk of the circuit court performing the duties of the  
71 magistrate court as authorized in §50-1-8 of this code, shall assign the case to a magistrate within  
72 10 days of execution of the summons or warrant. The hearing shall be held within 20 days of the  
73 assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the  
74 accused at least 10 days' advance notice of the date, time and place of the hearing.

75 (h) When any doubt exists as to the age of a student absent from school, the attendance  
76 director and his or her assistants may require a properly attested birth certificate or an affidavit  
77 from the parent, guardian, or custodian of the student stating the age of the student. In the  
78 performance of his or her duties, the county attendance director and his or her assistants have  
79 authority to take without warrant any student absent from school in violation of the provisions of  
80 this article and to place the student in the school in which he or she is or should be enrolled.

81 (i) The county attendance director and his or her assistants shall devote as much time as  
82 is required to the duties of attendance director in accordance with this section during the  
83 instructional term and at any other times as the duties of an attendance director are required. All  
84 attendance directors and assistants hired for more than 200 days may be assigned other duties  
85 determined by the superintendent during the period in excess of 200 days. The county attendance  
86 director is responsible under direction of the county superintendent for efficiently administering  
87 school attendance in the county.

88 (j) In addition to those duties directly relating to the administration of attendance, the  
89 county attendance director and his or her assistant directors also shall perform the following  
90 duties:

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

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

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

97           (4) Promote attendance in the county by compiling data for schools and by furnishing  
98 suggestions and recommendations for publication through school bulletins and the press, or in  
99 any manner directed by the county superintendent;

100           (5) Participate in school teachers' conferences with parents and students;

101           (6) Assist in any other ways directed by the county superintendent for improving school  
102 attendance;

103           (7) Make home visits of students who have excessive unexcused absences, as provided  
104 in subsection (a) of this section, or if requested by the chief administrator, principal, or assistant  
105 principal; and

106           (8) Serve as the liaison for homeless children and youth.

#### **ARTICLE 34. JAYCIE'S LAW.**

##### **§18-34-1. Legislative intent.**

1           The West Virginia Legislature finds that parents of children throughout any age in middle  
2 or high school should be given the utmost support, because they face a unique set of challenges  
3 and circumstances on their road to graduation. School systems in West Virginia shall implement  
4 programs to provide educational support to those students with children at any age through  
5 graduation. The goal of this act is to assist these students to stay in school while providing enough  
6 time for proper medical recovery after the birth of the child.

##### **§18-34-2. Policy enacted.**

1           (a) A student's absence due to a student's pregnancy or parenting needs is an excused  
2 absence as provided under this section and for purposed of §18-8-4(a)(1) of this code.

3 (b) The State Board of Education shall develop a written attendance policy for pregnant  
4 and parenting students that, at a minimum, meets the requirements of this article. The policy  
5 developed under this section shall:

6 (1) Excuse all absences due to pregnancy or parenting-related conditions, including  
7 absences for:

8 (A) Labor;

9 (B) Delivery;

10 (C) Recovery; and

11 (D) Prenatal and postnatal medical appointments;

12 (2) Provide at least 8 weeks of excused absences for a mother for the birth of the student's  
13 child, including both natural/vaginal delivery and c-section delivery;

14 (3) Provide excused absences for antenatal care by recommendation of the medical  
15 provider;

16 (4) Provide two weeks excused absence for the father of the child;

17 (A) A doctor's or medical excuse shall be provided up to the initial 8 weeks' absence and  
18 a separate excuse for each period of absence after the initial 8 weeks.

19 (B) County boards shall make reasonable efforts to encourage the parent to remain on  
20 track for graduation by providing academic support options including, but not limited to, work  
21 provided virtually and a homebound instructor for weekly visits to ensure accountability.

22 (5) Provide an excused absence for parenting students whose children are sick: *Provided,*  
23 That they shall provide a doctor's excuse for that child.

24 (6) The schools shall refer the pregnant and parenting student to a "pregnancy help  
25 organization" by providing a list of pregnancy or postpartum assistance organizations within the  
26 county and surrounding counties as defined under §16-66-1 of this code.

**§18-34-3. Effective date.**

27 This article shall become effective on July 1, 2024.

28

## CHAPTER 49. CHILD WELFARE.

### ARTICLE 4. COURT ACTIONS.

#### **§49-4-702. Prepetition diversion to informal resolution; mandatory prepetition diversion program for status offenses and misdemeanor offenses; prepetition review team.**

1 (a) Before a juvenile petition is formally filed with the court, the court may refer the matter  
2 to a case worker, probation officer or truancy diversion specialist for preliminary inquiry to  
3 determine whether the matter can be resolved informally without the formal filing of a petition with  
4 the court.

5 (b)(1) If the matter is for a truancy offense, the prosecutor may refer the matter to a state  
6 department worker, probation officer, or truancy diversion specialist who shall develop a diversion  
7 program pursuant to subsection (d) of this section. If the prosecutor does not refer the matter to  
8 a state department worker, probation officer, or truancy diversion specialist pursuant to this  
9 subdivision, he or she may proceed to file a petition with the court.

10 (2) If the matter is for a status offense other than truancy, the prosecutor shall refer the  
11 juvenile to a case worker or probation officer who shall develop a diversion program pursuant to  
12 subsection (d) of this section.

13 (3) The prosecutor is not required to refer the juvenile for development of a diversion  
14 program pursuant to subdivision (2) of this subsection and may proceed to file a petition with the  
15 court if he or she determines:

16 (A) The juvenile has a prior adjudication for a status or delinquency offense; or

17 (B) There exists a significant and likely risk of harm to the juvenile, a family member, or  
18 the public.

19 (c) If the matter is for a nonviolent misdemeanor offense, the prosecutor shall determine  
20 whether the case can be resolved informally through a diversion program without the filing of a  
21 petition. If the prosecutor determines that a diversion program is appropriate, he or she shall refer

22 the matter to a case worker or probation officer who shall develop a diversion program pursuant  
23 to subsection (d) of this section.

24 (d)(1) When developing a diversion program, the case worker, probation officer, or truancy  
25 diversion specialist shall:

26 (A) Conduct an assessment of the juvenile to develop a diversion agreement;

27 (B) Create a diversion agreement;

28 (C) Obtain consent from the juvenile and his or her parent, guardian, or custodian to the  
29 terms of the diversion agreement;

30 (D) Refer the juvenile and, if necessary, his or her parent, guardian, or custodian to  
31 services in the community pursuant to the diversion agreement.

32 (2) A diversion agreement may include:

33 (A) Referral to community services as defined in §49-1-206 of this code for the juvenile to  
34 address the assessed need;

35 (B) Referral to services for the parent, guardian, or custodian of the juvenile;

36 (C) Referral to one or more community work service programs for the juvenile;

37 (D) A requirement that the juvenile regularly attend school;

38 (E) Community-based sanctions to address noncompliance; or

39 (F) Any other efforts which may reasonably benefit the community, the juvenile, and his  
40 or her parent, guardian, or custodian.

41 (3) When a referral to a service provider occurs, the service provider shall make  
42 reasonable efforts to contact the juvenile and his or her parent, custodian, or guardian within 72  
43 hours of the referral.

44 (4) Upon request by the case worker, probation officer, or truancy diversion specialist, the  
45 court may enter reasonable and relevant orders to the parent, custodian, or guardian of the  
46 juvenile who have consented to the diversion agreement as is necessary and proper to carry out  
47 the agreement.

48 (5) If the juvenile and his or her parent, custodian, or guardian do not consent to the terms  
49 of the diversion agreement created by the case worker, probation officer, or truancy diversion  
50 specialist, the petition may be filed with the court.

51 (6) Referral to a prepetition diversion program shall toll the statute of limitations for status  
52 and delinquency offenses.

53 (7) Probation officers may be authorized by the court to participate in a diversion program.

54 (e) The case worker, probation officer, or truancy diversion specialist shall monitor the  
55 juvenile's compliance with any diversion agreement.

56 (1) If the juvenile successfully completes the terms of the diversion agreement, a petition  
57 shall not be filed with the court and no further action shall be taken.

58 (2) If the juvenile is unsuccessful in or noncompliant with the diversion agreement, the  
59 diversion agreement shall be referred to a prepetition review team convened by the case worker,  
60 probation officer or the truancy diversion specialist: *Provided*, That if a new delinquency offense  
61 occurs, a petition may be filed with the court.

62 (f)(1) The prepetition review team may be a subset of a multidisciplinary team established  
63 pursuant to §49-4-406 of this code.

64 (2) The prepetition review team may consist of:

65 (A) A case worker knowledgeable about community services available and authorized to  
66 facilitate access to services;

67 (B) A service provider;

68 (C) A school superintendent or his or her designee; or

69 (D) Any other person, agency representative, member of the juvenile's family, or a  
70 custodian or guardian who may assist in providing recommendations on community services for  
71 the particular needs of the juvenile and his or her family.

72           (3) The prepetition review team shall review the diversion agreement and the service  
73 referrals completed and determine whether other appropriate services are available to address  
74 the needs of the juvenile and his or her family.

75           (4) The prepetition review shall occur within 14 days of referral from the state department  
76 worker, probation officer, or truancy diversion specialist.

77           (5) After the prepetition review, the prepetition review team may:

78           (A) Refer a modified diversion agreement back to the case worker, probation officer or  
79 truancy diversion specialist;

80           (B) Advise the case worker, probation officer or truancy diversion specialist to file a petition  
81 with the court; or

82           (C) Advise the case worker to open an investigation for child abuse or neglect.

83           (g) The requirements of this section are not mandatory until July 1, 2024: *Provided, That*  
84 nothing in this section prohibits a judicial circuit from continuing to operate a truancy or other  
85 juvenile treatment program that existed as of January 1, 2023: *Provided, however, That any*  
86 judicial circuit desiring to create a diversion program after the effective date of this section, may  
87 only do so pursuant to this section.



The Clerk of the Senate and the Clerk of the House of Delegates hereby certify that the foregoing bill is correctly enrolled.

  
.....  
Clerk of the Senate

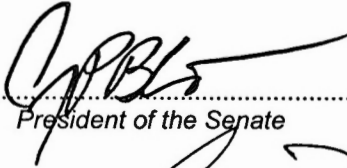
  
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Clerk of the House of Delegates

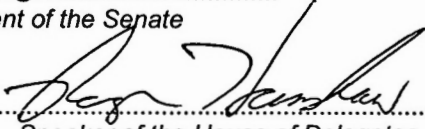
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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

FILED


Originated in the Senate.

In effect 90 days from passage.

  
.....  
President of the Senate

  
.....  
Speaker of the House of Delegates

The within is approved this the 27th  
Day of March, 2024.

  
.....  
Governor



PRESENTED TO THE GOVERNOR

MAR 19 2024

~~Time~~ 3:20 pm