

SB 568 -- Redline

sb568 sfa trump _2 3-9 adopted.htm to Enrolled -- Creating multi-tiered system for school absenteeism

Deletions ~~struck~~ · Insertions underlined

~~SB568 WEST SFA VIRGINIA Trump LEGISLATURE #2 REGULAR 3-0 MOWEN SESSION -7888 Senator Enrolled Trump Committee moved Substitute to for amend Committee the Substitute amendment for on Senate page Bill 1, 568 section By 2, Senators by Taylor, striking Azinger, out Boley, the Deeds, entirety Grady, of Hamilton, subsection Hunt, (a) Jeffries, and Maynard, inserting Oliverio, a Phillips, new Roberts, subsection Smith, (a), Stuart, to Swope, read and as Nelson follows:~~ [Passed March 2, 2024;

~~"(a) in A effect student's 90 absence days due from to passage] a Enr student's CS pregnancy for or CS parenting for needs SB is 568 an A excused BILL absence to as amend provided and under reenact this Sec. 18-8-2 section, and for Sec. 18-8-4 purposes of Sec. 18-8-4(a)(1) of this code." On page 1, section 2, line 3, by striking out the words Code "Each of county West board" Virginia, and 1931, inserting as in amended; lieu thereof the words "The State Board of Education";~~

~~And, to On amend pages said 2, code section 2, line 10, by striking adding the thereto words a "ensure new that article, the designated parent Sec. 18-34-1, remains" Sec. 18- 34-2, and inserting Sec. 18-34-3; in lieu thereof the words "make reasonable efforts to encourage the parent remain". Adopted Rejected~~

and to amend and reenact Sec. 49-4-702 of said code, all relating to student absences;
amending criminal penalties imposed for failing to attend school without good cause;
defining terms;

requiring the State Board to implement a System of Support Plan to encourage and promote compulsory school attendance with implementation to be ensured by the county attendance director;

requiring the school to make periodic meaningful contact with parents, guardians, or custodians of children who fail to attend school;

removing requirement for attendance director and assistant directors to prepare a report for submission by the county superintendent to the State Superintendent of Schools on school attendance;

providing legislative intent for Jaycie's Law;

providing that a student's absence due to a student's pregnancy or parenting needs is a lawful absence;

requiring the State Board of Education to develop a written attendance policy for pregnant and parenting students that sets forth minimum requirements therefor;

establishing article effective date;

and making referral for the development of a diversion program in truancy offense matters discretionary.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18.

EDUCATION.

ARTICLE 8.

COMPULSORY SCHOOL ATTENDANCE.

Sec. 18-8-2.

Offenses;

penalties;

cost of prosecution;

jurisdiction.

(a) Any parent, guardian, or custodian who fails to cause a child or children under 18 years of age in that person's legal or actual charge to attend school in violation of this article or without just cause, is guilty of a misdemeanor and, shall, upon conviction of a first offense, be fined not less than \$50 nor more than \$100 together with the costs of prosecution.

The magistrate or circuit court judge, upon conviction and pronouncing sentence, may delay the sentence for a period of 60 1 Enr CS for CS for SB 568 school days provided the child is in attendance every day during said 60-day period.

Following the 60-day period, if the child was present at school for every school day, the delayed sentence may be suspended and dismissed.

Upon conviction of a second offense, a fine may be imposed of not less than \$50 nor more than \$100 together with the costs of prosecution or confined in jail not less than five nor more than 20 days.

Every day a child is out of school contrary to this article constitutes a separate offense.

Magistrates shall have concurrent jurisdiction with circuit courts for the trial of offenses arising under this section.

(b) Any person 18 years of age or older who is enrolled in school who, after receiving due notice, fails to attend school in violation of this article or without just cause, is guilty of a misdemeanor and,

shall, upon conviction of a first offense, be fined not less than \$50 nor more than \$100 together with the costs of prosecution and required to attend school and remain throughout the school day.

The magistrate or circuit court judge, upon conviction and pronouncing sentence, may delay the imposition of a fine for a period of 60 school days provided the person is in attendance every day during said 60-day period.

Following the 60-day period, if the student was present at school every day, the delayed sentence may be suspended and dismissed.

Upon conviction of a second offense, a fine may be imposed of not less than \$50 nor more than \$100 together with the costs of prosecution and the person may be required to go to school and remain throughout the school day until such time as the person graduates or withdraws from school or confined in jail not less than five nor more than 20 days.

Every day a student is out of school contrary to this article constitutes a separate offense.

Magistrates shall have concurrent jurisdiction with circuit courts for the trial of offenses arising under this section.

(c) Upon conviction of a third offense, any person 18 years of age or older who is enrolled in school shall be withdrawn from school during the remainder of that school year.

Enrollment of that person in school during the next school year or years thereafter is conditional upon all absences being excused as defined in law, state board policy and county board of education 2 Enr CS for CS for SB 568 policy.

More than one unexcused absence of such a student shall be grounds for the director of attendance to authorize the school to withdraw the person for the remainder of the school year.

Magistrates shall have concurrent jurisdiction with circuit courts for the trial of offenses arising under this section.

(d) Jurisdiction to enforce compulsory school attendance laws lies in the county in which a student resides and in the county where the school at which the student is enrolled is located.

When the county of residence and enrollment are different, an action to enforce compulsory school attendance may be brought in either county and the magistrates and circuit courts of either county have concurrent jurisdiction for the trial of offenses arising under this section.

Sec.18-8-4.

Duties of attendance director and assistant directors;

complaints, warrants and hearings.

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

(1) "Excused absence" means:

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

(B) Personal illness or injury of the student accompanied by a timely written excuse from the student's parent, guardian, or custodian;

Provided:

That the total absences under this section combined with absences permitted under subdivision (C) of this subsection do not exceed more than 10 per school year unless supported by a physician's note;

Provided however:

That a medically documented chronic health condition or disability that adversely impacts in-person attendance approved by a county school board or the principal is not subject to this limitation, and that absences of students with disabilities shall be in accordance with the Individuals with Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in compliance therewith;

(C) Personal illness or injury of the student's parent, guardian, custodian, or family member:

Provided, That the excuse must provide a reasonable explanation for why the student's 3 Enr CS for CS for SB 568 absence was necessary and caused by the illness or injury in the family, and the total absences under this section in combination with section (1)(B) may not exceed more than ten excuses per school year;

(D) Death in the family;

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

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

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

(2) "Meaningful contact" means two-way communication by the school administrator or other school designee and the student's parent, guardian, or custodian to discuss the student's attendance record in an effort to prevent subsequent truancy or other legal proceedings relating to compulsory school attendance, and to minimize additional absences.

Methods of meaningful contact include, but are not limited to, phone calls, video conferencing, home visits, and the use of digital platforms.

(3) "System of Support Plan" ("SOS Plan") refers to a plan to be developed by the State Board of Education designed to encourage students to attend school.

It shall, at a minimum, require county attendance directors, principals, or other school designees to make periodic contact with the parent, guardian, or custodian of a student subject to compulsory school attendance to ascertain the reason or reasons for the student's absence or absences and what measures the school may employ to assist the student in attending school and not incurring additional absences.

It shall also impart upon the student's parents, guardians, and custodians the importance of the student's attendance and the seriousness of failing to do so.

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

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

The director and assistants shall:

4 Enr CS for CS for SB 568 (1) Ascertain the reasons for unexcused absences from school of students of compulsory school age and students who remain enrolled beyond the compulsory school age (2) Ensure the implementation of the SOS Plan as developed by the State Board, including encouraging the attendance of students and imparting upon the parents, guardians, and custodians the importance of attendance and the seriousness of failing to do so.

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

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

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

(f) In the case of 10 total unexcused absences of a student during a school year, the attendance director or assistant may make a complaint against the parent, guardian, or custodian before a magistrate of the county.

If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the accused has committed it, a summons or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the summons or to arrest persons charged with offenses against the state.

More than one parent, guardian, or custodian may be charged in a complaint.

Initial service of a summons or warrant 5 Enr CS for CS for SB 568 issued pursuant to the provisions of this section shall be attempted within 10 calendar days of receipt of the summons or warrant and subsequent attempts at service shall continue until the summons or warrant is executed or until the end of the school term during which the complaint is made, whichever is later.

(g) The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court as authorized in Sec.50-1-8 of this code, shall assign the case to a magistrate within 10 days of execution of the summons or warrant.

The hearing shall be held within 20 days of the assignment to the magistrate, subject to lawful continuance.

The magistrate shall provide to the accused at least 10 days' advance notice of the date, time and place of the hearing.

(h) When any doubt exists as to the age of a student absent from school, the attendance director and his or her assistants may require a properly attested birth certificate or an affidavit from the parent, guardian, or custodian of the student stating the age of the student.

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

(i) The county attendance director and his or her assistants shall devote as much time as is required to the duties of attendance director in accordance with this section during the instructional term and at any other times as the duties of an attendance director are required.

All attendance directors and assistants hired for more than 200 days may be assigned other duties determined by the superintendent during the period in excess of 200 days.

The county attendance director is responsible under direction of the county superintendent for efficiently administering school attendance in the county.

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

6 Enr CS for CS for SB 568 (1) Assist in directing the taking of the school census to see that it is taken at the time and in the manner provided by law;

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

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

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

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

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

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

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

ARTICLE 34.

JAYCIE'S LAW. Sec.18-34-1.

Legislative intent.

The West Virginia Legislature finds that parents of children throughout any age in middle or high school should be given the utmost support, because they face a unique set of challenges and circumstances on their road to graduation.

School systems in West Virginia shall implement programs to provide educational support to those students with children at any age through graduation.

The goal of this act is to assist these students to stay in school while providing enough time for proper medical recovery after the birth of the child. Sec.18-34-2.

Policy enacted.

(a) A student's absence due to a student's pregnancy or parenting needs is an excused 7 Enr CS for CS for SB 568 absence as provided under this section and for purposed of Sec.18-8-4(a)(1) of this code.

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

The policy developed under this section shall:

(1) Excuse all absences due to pregnancy or parenting-related conditions, including absences for: (A) Labor; (B) Delivery;

(C) Recovery;

and (D) Prenatal and postnatal medical appointments; (2) Provide at least 8 weeks of excused absences for a mother for the birth of the student's child, including both natural/vaginal delivery and c-section delivery; (3) Provide excused absences for antenatal care by recommendation of the medical provider;

(4) Provide two weeks excused absence for the father of the child; (A) A doctor's or medical excuse shall be provided up to the initial 8 weeks' absence and a separate excuse for each period of absence after the initial 8 weeks. (B) County boards shall make reasonable efforts to encourage the parent to remain on track for graduation by providing academic support options including, but not limited to, work provided virtually and a homebound instructor for weekly visits to ensure accountability. (5) Provide an excused absence for parenting students whose children are sick;

Provided, That they shall provide a doctor's excuse for that child.

(6) The schools shall refer the pregnant and parenting student to a "pregnancy help organization" by providing a list of pregnancy or postpartum assistance organizations within the county and surrounding counties as defined under Sec.16-66-1 of this code. Sec.18-34-3.

Effective date.

8 CS for SB 451 This article shall become effective on July 1, 2024.

CHAPTER 49.

CHILD WELFARE.

ARTICLE 4.

COURT ACTIONS.

Sec.49-4-702.

Prepetition diversion to informal resolution;

mandatory prepetition diversion program for status offenses and misdemeanor offenses;

prepetition review team.

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

(b)(1) If the matter is for a truancy offense, the prosecutor may refer the matter to a state department worker, probation officer, or truancy diversion specialist who shall develop a diversion program pursuant to subsection (d) of this section.

If the prosecutor does not refer the matter to a state department worker, probation officer, or truancy diversion specialist pursuant to this subdivision, he or she may proceed to file a petition with the court.

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

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

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

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

(c) If the matter is for a nonviolent misdemeanor offense, the prosecutor shall determine whether the case can be resolved informally through a diversion program without the filing of a petition.

If the prosecutor determines that a diversion program is appropriate, he or she shall refer Enr CS for CS for SB 568 the matter to a case worker or probation officer who shall develop a diversion program pursuant to subsection (d) of this section.

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

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

(B) Create a diversion agreement;

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

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

(2) A diversion agreement may include:

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

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

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

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

(E) Community-based sanctions to address noncompliance;

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

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

(4) Upon request by the case worker, probation officer, or truancy diversion specialist, the court may enter reasonable and relevant orders to the parent, custodian, or guardian of the juvenile who have consented to the diversion agreement as is necessary and proper to carry out 10 Enr CS for CS for SB 568 the agreement.

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

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

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

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

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

(2) If the juvenile is unsuccessful in or noncompliant with the diversion agreement, the diversion agreement shall be referred to a prepetition review team convened by the case worker, probation officer or the truancy diversion specialist:

Provided, That if a new delinquency offense occurs, a petition may be filed with the court.

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

(2) The prepetition review team may consist of:

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

(B) A service provider;

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

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

11 Enr CS for CS for SB 568 (3) The prepetition review team shall review the diversion agreement and the service referrals completed and determine whether other appropriate services are available to address the needs of the juvenile and his or her family.

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

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

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

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

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

(g) The requirements of this section are not mandatory until July 1, 2024:

Provided, That nothing in this section prohibits a judicial circuit from continuing to operate a truancy or other juvenile treatment program that existed as of January 1, 2023:

Provided, however, That any judicial circuit desiring to create a diversion program after the effective date of this section, may only do so pursuant to this section.

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