

WEST VIRGINIA LEGISLATURE
2019 FIRST EXTRAORDINARY SESSION

Introduced
House Bill 177

BY DELEGATE HORNBUCKLE

[Introduced June 17, 2019; Referred
to the Select Committee on Education Reform B]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §18A-5-9, relating to creating a pilot program for expansion of school-based
 3 mental health and school-based diversion; defining terms; detailing eligibility for schools
 4 to take part in the pilot program; setting requirements for schools that participate in the
 5 pilot program; authorizing mental health providers to provide certain services; requiring
 6 notice to parents and students of the pilot project; authorizing parents to opt-out in certain
 7 circumstances; requiring the collection of certain data in relation to the pilot project;
 8 explicitly stating that the pilot project does not require additional expenditures; authorizing
 9 rule making; and requiring that the pilot project may not begin until the Legislature
 10 approves the relevant rules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-9. Pilot program for expansion of school-based mental health and school-based diversion.

1 (a) As used in this section:
 2 “Expanded school mental health framework” or “ESMHF” means any program authorized
 3 and created under the collaboration between the West Virginia Department of Education (WVDE)
 4 and the West Virginia Bureau for Behavioral Health and Health Facilities of the Department of
 5 Health and Human Resources (DHHR) that is jointly defined by WVDE and DHHR as including
 6 school-wide prevention, targeted screening, and early intervention, as well as intensive treatment
 7 for students with the most serious challenges;
 8 “Mental and behavioral health services” means any individualized or group program
 9 designed to provide pharmacological, therapeutic, emotional, behavioral health supports or any
 10 combination thereof;
 11 “School-Based Health Center” means a clinic or center providing comprehensive health
 12 services on or near school grounds that is operated by a qualified health care organization; and

13 “Tier of need” means the level of services required in mental or behavioral health
14 intervention where “Tier I” refers to universal services, “Tier II” refers to targeted services, and
15 “Tier III” refers to intensive services.

16 (b) The department of education shall develop a three-year pilot program to establish
17 school-based mental and behavioral health services for students and families as an alternative to
18 the disciplinary measures authorized in §18A-5-1 of this code.

19 (c) The pilot will be available to schools who have implemented:

20 (1) A school-based health center providing mental and behavioral health services; or

21 (2) An expanded school mental health framework.

22 (d) The pilot shall require that participating schools:

23 (1) Through direct employment or contractual relationship, provide mental or behavioral
24 health services, or both.

25 (2) Through direct employment or contractual relationship, have services available for all
26 tiers of need.

27 (3) Authorize employees or contractors who provide mental or behavioral health services
28 to:

29 (A) Receive referrals for students who violate the disciplinary code;

30 (B) Receive referrals from judges or magistrates for treatment as part of a diversion or
31 disposition;

32 (C) Provide a mental or behavioral health assessment to the student;

33 (D) Provide ongoing services to the student if merited by the assessment;

34 (E) Contact the family and household members of the students to: (i) Obtain additional
35 information about the student’s case; or (ii) offer services to family or household members;

36 (F) Provide services to the student’s family members and household members;

37 (G) Provide services to community members: *Provided*, That all students and student
38 family members can be provided services first;

39 (H) Bill and collect payment for services rendered from the insurance of families and
40 community members, from the school, in the case of referral for behavior, or from DHHR, in the
41 case of court order.

42 (4) Provide notice of the pilot in the school and give parents, guardians or custodians the
43 opportunity to opt out of the diversion program: *Provided*, That any student referred to the program
44 by court order may not opt out of the program. The notification shall state the relationship between
45 the school and the providers. The notification shall state that instead of disciplinary measures,
46 students will be referred for a mental and behavioral health evaluation and may be required to
47 participate in treatment. The notification shall inform parents, guardians, or custodians that failure
48 to comply with the assessment or to follow up with treatment may result in disciplinary action. The
49 notification shall inform parents, guardians, and custodians that services may be made available
50 to family members and individuals in the student's household. The notification shall provide
51 parents and guardians with the opportunity to opt out of the program and explain that students
52 who opt out will be subject to discipline under the school's existing rules. The notification shall
53 explain that treatment records will remain confidential between the student and the counselor,
54 except:

55 (A) The parent or guardian may request the treatment records: *Provided*, That the provider
56 may, at their judgment, contact parents or guardians as they deem appropriate to best serve the
57 child: *Provided, however*, That the provider is subject to the mandatory reporting requirements
58 of §49-2-803 of this code, and if such a report is necessary the provider may withhold relevant
59 records from a parent or guardian that is suspected of the conduct causing the mandatory report;

60 (B) The records shall be available to other medical providers treating the student;

61 (C) The records may be provided to the courts; and

62 (D) That Child Protective Services or law enforcement, or both, may be contacted, but
63 such circumstances will be limited to active situations of abuse or neglect;

64 (5) Authorize and require data collection of:

- 65 (A) The number of students who opt out of the deferral program;
- 66 (B) The number of students who are referred to services;
- 67 (C) The number of students who undergo initial evaluations;
- 68 (D) The length of time between a referral and an initial evaluation;
- 69 (E) The number of students referred for additional services: (i) By tier of need; (ii) by type
70 of service offered; and (iii) by location of service offered;
- 71 (F) The number of students who entered services: (i) By tier of need; (ii) by type of service
72 offered; and (iii) by location of service offered;
- 73 (G) The length of time students stayed in services;
- 74 (H) The number of students who did not successfully complete the program;
- 75 (I) The number of students who did not enter or complete a program and subsequently
76 were punished under §18A-5-1 of this code;
- 77 (J) The number of students who did not enter or complete a program and subsequently
78 had a petition filed in court;
- 79 (K) The number of students who successfully completed the program;
- 80 (L) The number of students who completed the program and subsequently were punished
81 under §18A-5-1 of this code;
- 82 (M) The number of students who completed the program and subsequently had a petition
83 filed in court;
- 84 (N) The number of family members who were offered services;
- 85 (O) The number of family members who took part in offered services;
- 86 (P) The number of community members who were offered services; and
- 87 (Q) The number of community members who took part in offered services.
- 88 (6) For each category of data collection required by subdivision (5) of this subsection, the
89 data shall be broken down by: (A) age; (B) grade-level; (C) race; (D) sex and gender identity (if it
90 differs from biological sex); (E) special education status; and (F) academic achievement.

91 (e) This section may not be construed to require additional expenditures by the state.
92 (f) West Virginia Department of Education shall promulgate rules for legislative approval
93 pursuant to §29A-3B-1 et seq. of this code and the Department of Health and Human Resources
94 shall propose rules for legislative approval pursuant to §29A-3-1 et seq. of this code in order to
95 effectuate the purpose of this section. The pilot program authorized by this section may not be
96 implemented until the legislative rules have been approved by the Legislature.

NOTE: The purpose of this bill is to create a pilot program to establish school-based mental and behavioral health services for students and families as an alternative to the standard disciplinary measures.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.