

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### House Bill 2383

FISCAL  
NOTE

BY DELEGATES HORNBUCKLE, ROHRBACH, THOMPSON,

R. AND LOVEJOY

[Introduced January 14, 2019; Referred  
to the Committee on Health and Human Resources  
then Education.]

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 §18A-5-9(d)(5), the data shall be  
89 broken down by: (A) age; (B) grade-level; (C) race; (D) sex and gender identity (if it differs from  
90 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) WVDE and DHHR shall propose rules for legislative approval pursuant to §29A-3-1 et
- 93 seq. of this code in order to effectuate the purpose of this section. The pilot program authorized
- 94 by this section may not be implemented until the legislative rules have been approved by the
- 95 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.