WEST virginia Legislature

**FISCAL NOTE**

2021 regular session

Introduced

House Bill 2651

By Delegates Hornbuckle and Lovejoy

[Introduced February 23, 2021; Referred to the Committee on Health and Human Resources then Education

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

(a) As used in this section:

“Expanded school mental health framework” or “ESMHF” means any program authorized and created under the collaboration between the West Virginia Department of Education (WVDE) and the West Virginia Bureau for Behavioral Health and Health Facilities of the Department of Health and Human Resources (DHHR) that is jointly defined by WVDE and DHHR as including school-wide prevention, targeted screening and early intervention, as well as intensive treatment for students with the most serious challenges;

“Mental and behavioral health services” means any individualized or group program designed to provide pharmacological, therapeutic, emotional, behavioral health supports or any combination thereof;

“School-Based Health Center” means a clinic or center providing comprehensive health services on or near school grounds that is operated by a qualified health care organization; and

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

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

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

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

(2) An expanded school mental health framework.

(d) The pilot shall require that participating schools:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Authorize and require data collection of:

(A) The number of students who opt out of the deferral program;

(B) The number of students who are referred to services;

(C) The number of students who undergo initial evaluations;

(D) The length of time between a referral and an initial evaluation;

(E) The number of students referred for additional services: (i) By tier of need; (ii) by type of service offered; and (iii) by location of service offered;

(F) The number of students who entered services: (i) By tier of need; (ii) by type of service offered; and (iii) by location of service offered;

(G) The length of time students stayed in services;

(H) The number of students who did not successfully complete the program;

(I) The number of students who did not enter or complete a program and subsequently were punished under §18A-5-1 of this code;

(J) The number of students who did not enter or complete a program and subsequently had a petition filed in court;

(K) The number of students who successfully completed the program;

(L) The number of students who completed the program and subsequently were punished under §18A-5-1 of this code;

(M) The number of students who completed the program and subsequently had a petition filed in court;

(N) The number of family members who were offered services;

(O) The number of family members who took part in offered services;

(P) The number of community members who were offered services; and

(Q) The number of community members who took part in offered services.

(6) For each category of data collection required by §18A-5-9(d)(5), the data shall be broken down by: (A) age; (B) grade-level; (C) race; (D) sex and gender identity (if it differs from biological sex); (E) special education status; and (F) academic achievement.

(e) This section may not be construed to require additional expenditures by the state.

(f) WVDE and DHHR shall propose rules for legislative approval pursuant to §29A-3-1 *et seq.* of this code in order to effectuate the purpose of this section. The pilot program authorized by this section may not be 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.