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## SENATE BILL NO. 1133

Offered January 13, 2021

Prefiled December 31, 2020

*A BILL to amend and reenact §§ 2.2-5211 and 2.2-5212 of the Code of Virginia, relating to Children's Services Act; eligibility for state pool of funds; pilot program related to educational placement transition for certain students with disabilities.*

Patrons—Suetterlein and Edwards; Delegates: Fowler and Head

Referred to Committee on Education and Health

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-5211 and 2.2-5212 of the Code of Virginia are amended and reenacted as follows:**

**§ 2.2-5211. State pool of funds for community policy and management teams.**

A. There is established a state pool of funds to be allocated to community policy and management teams in accordance with the appropriation act and appropriate state regulations. These funds, as made available by the General Assembly, shall be expended for public or private nonresidential or residential services for troubled youths and families.

The purposes of this system of funding are to:

1. Place authority for making program and funding decisions at the community level;  
2. Consolidate categorical agency funding and institute community responsibility for the provision of services;

3. Provide greater flexibility in the use of funds to purchase services based on the strengths and needs of children, youths, and families; and

4. Reduce disparity in accessing services and to reduce inadvertent fiscal incentives for serving children and youth according to differing required local match rates for funding streams.

B. The state pool shall consist of funds that serve the target populations identified in subdivisions 1 through 5 of this subsection in the purchase of residential and nonresidential services for children and youth. *Nothing herein shall prohibit the use of such funds for services that are provided in a public school setting.* References to funding sources and current placement authority for the targeted populations of children and youth are for the purpose of accounting for the funds in the pool. It is not intended that children and youth be categorized by individual funding streams in order to access services. The target population shall be the following:

1. Children and youth placed for purposes of special education in approved private school educational programs; *that are licensed by the Department of Education or an equivalent out-of-state licensing agency and previously funded by the Department of Education through private tuition assistance, or those placed for purposes of special education in approved public school educational programs;*

2. Children and youth with disabilities placed by local social services agencies or the Department of Juvenile Justice in private residential facilities or across jurisdictional lines in private, special education day schools, if the individualized education program indicates such school is the appropriate placement while living in foster homes or child-caring facilities, previously funded by the Department of Education through the Interagency Assistance Fund for Noneducational Placements of Handicapped Children;

3. Children and youth for whom foster care services, as defined by § 63.2-905, are being provided;

4. Children and youth placed by a juvenile and domestic relations district court, in accordance with the provisions of § 16.1-286, in a private or locally operated public facility or nonresidential program, or in a community or facility-based treatment program in accordance with the provisions of subsections B or C of § 16.1-284.1; and

5. Children and youth committed to the Department of Juvenile Justice and placed by it in a private home or in a public or private facility in accordance with § 66-14.

C. The General Assembly and the governing body of each county and city shall annually appropriate such sums of money as shall be sufficient to (i) provide special education services and foster care services for children and youth identified in subdivisions B 1, B 2, and B 3 and (ii) meet relevant federal mandates for the provision of these services. The community policy and management team shall anticipate to the best of its ability the number of children and youth for whom such services will be required and reserve funds from its state pool allocation to meet these needs. Nothing in this section prohibits local governments from requiring parental or legal financial contributions, where not specifically prohibited by federal or state law or regulation, utilizing a standard sliding fee scale based upon ability to pay, as provided in the appropriation act.

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59 D. When a community services board established pursuant to § 37.2-501, local school division, local  
60 social service agency, court service unit, or the Department of Juvenile Justice has referred a child and  
61 family to a family assessment and planning team and that team has recommended the proper level of  
62 treatment and services needed by that child and family and has determined the child's eligibility for  
63 funding for services through the state pool of funds, then the community services board, the local school  
64 division, local social services agency, court service unit, or Department of Juvenile Justice has met its  
65 fiscal responsibility for that child for the services funded through the pool. However, the community  
66 services board, the local school division, local social services agency, court service unit, or Department  
67 of Juvenile Justice shall continue to be responsible for providing services identified in individual family  
68 service plans that are within the agency's scope of responsibility and that are funded separately from the  
69 state pool.

70 Further, in any instance that an individual 18 through 21 years of age, inclusive, who is eligible for  
71 funding from the state pool and is properly defined as a school-aged child with disabilities pursuant to  
72 § 22.1-213 is placed by a local social services agency that has custody across jurisdictional lines in a  
73 group home in the Commonwealth and the individual's individualized education program (IEP), as  
74 prepared by the placing jurisdiction, indicates that a private day school placement is the appropriate  
75 educational program for such individual, the financial and legal responsibility for the individual's special  
76 education services and IEP shall remain, in compliance with the provisions of federal law, Article 2  
77 (§ 22.1-213) of Chapter 13 of Title 22.1, and Board of Education regulations, the responsibility of the  
78 placing jurisdiction until the individual reaches the age of 21, inclusive, or is no longer eligible for  
79 special education services. The financial and legal responsibility for such special education services shall  
80 remain with the placing jurisdiction, unless the placing jurisdiction has transitioned all appropriate  
81 services with the individual.

82 E. In any matter properly before a court for which state pool funds are to be accessed, the court  
83 shall, prior to final disposition, and pursuant to §§ 2.2-5209 and 2.2-5212, refer the matter to the  
84 community policy and management team for assessment by a local family assessment and planning team  
85 authorized by policies of the community policy and management team for assessment to determine the  
86 recommended level of treatment and services needed by the child and family. The family assessment  
87 and planning team making the assessment shall make a report of the case or forward a copy of the  
88 individual family services plan to the court within 30 days of the court's written referral to the  
89 community policy and management team. The court shall consider the recommendations of the family  
90 assessment and planning team and the community policy and management team. If, prior to a final  
91 disposition by the court, the court is requested to consider a level of service not identified or  
92 recommended in the report submitted by the family assessment and planning team, the court shall  
93 request the community policy and management team to submit a second report characterizing  
94 comparable levels of service to the requested level of service. Notwithstanding the provisions of this  
95 subsection, the court may make any disposition as is authorized or required by law. Services ordered  
96 pursuant to a disposition rendered by the court pursuant to this section shall qualify for funding as  
97 appropriated under this section.

98 **§ 2.2-5212. Eligibility for state pool of funds.**

99 A. In order to be eligible for funding for services through the state pool of funds, a youth, or family  
100 with a child, shall meet one or more of the criteria specified in subdivisions 1 through 4 and shall be  
101 determined through the use of a uniform assessment instrument and process and by policies of the  
102 community policy and management team to have access to these funds:–

103 1. The child or youth has emotional or behavior problems that:

104 a. Have persisted over a significant period of time or, though only in evidence for a short period of  
105 time, are of such a critical nature that intervention is warranted;

106 b. Are significantly disabling and are present in several community settings, such as at home, in  
107 school, or with peers; and

108 c. Require services or resources that are unavailable or inaccessible, or that are beyond the normal  
109 agency services or routine collaborative processes across agencies, or require coordinated interventions  
110 by at least two agencies.

111 2. The child or youth has emotional or behavior problems, or both, and currently is in, or is at  
112 imminent risk of entering, purchased residential care. In addition, the child or youth requires services or  
113 resources that are beyond normal agency services or routine collaborative processes across agencies, and  
114 requires coordinated services by at least two agencies.

115 3. The child or youth requires placement for purposes of special education in approved private or  
116 public school educational programs.

117 4. The child or youth requires foster care services as defined in § 63.2-905.

118 B. *Nothing herein shall prohibit the use of such state pool of funds for services that are provided in*  
119 *the public school setting.*

120 C. For purposes of determining eligibility for the state pool of funds, "child" or "youth" means (i) a

121 person younger than 18 years of age or (ii) any individual through 21 years of age who is otherwise  
122 eligible for mandated services of the participating state agencies including special education and foster  
123 care services.

124 2. That the Department of Education (the Department) and the relevant local school boards shall  
125 develop and implement a pilot program for up to four years in two to eight local school divisions  
126 in the Commonwealth. In developing the pilot, the Department shall partner with the appropriate  
127 school board employees in each such local school division to (i) identify the resources, services, and  
128 supports required by each student who resides in each such local school division and who is  
129 educated in a private school setting pursuant to his Individualized Education Program; (ii) study  
130 the feasibility of transitioning each such student from his private school setting to an appropriate  
131 public school setting in the local school division and providing the identified resources, services,  
132 and supports in such public school setting; and (iii) recommend a process for redirecting federal,  
133 state, and local funds, including funds provided pursuant to the Children's Services Act (§ 2.2-5200  
134 et seq. of the Code of Virginia), provided for the education of each such student to the local school  
135 division for the purpose of providing the identified resources, services, and supports in the  
136 appropriate public school setting. The Department of Education shall report to the Governor, the  
137 Senate Committees on Education and Health and Finance and Appropriations, and the House  
138 Committees on Education and Appropriations on the findings of each pilot program after two and  
139 four years. Each report shall include (a) the number of children enrolled in the pilot during the  
140 period of the report; (b) the school divisions' costs by year with the sources of funding identified;  
141 (c) the aggregate diagnosis of the children enrolled in the pilot;(d) the successes or failures of the  
142 programs to meet the children's Individualized Education Programs; and (e) a description of the  
143 challenges encountered during the pilot, with steps taken to overcome each challenge.