

BEHAVIORAL INTERVENTION GUIDELINES ACT OF 2020

SEPTEMBER 29, 2020.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PALLONE, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 3539]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3539) to amend the Public Health Service Act to direct the Secretary of Health and Human Services to develop best practices for the establishment and use of behavioral intervention teams at schools, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:
 Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Behavioral Intervention Guidelines Act of 2020”.

SEC. 2. BEST PRACTICES FOR BEHAVIORAL INTERVENTION TEAMS.

The Public Health Service Act is amended by inserting after section 520G of such Act (42 U.S.C. 290bb–38) the following new section:

“SEC. 520H. BEST PRACTICES FOR BEHAVIORAL INTERVENTION TEAMS.

“(a) IN GENERAL.—The Secretary, acting through the Assistant Secretary, shall develop and periodically update—

“(1) best practices to assist elementary schools, secondary schools, and institutions of higher education in establishing and using behavioral intervention teams; and

“(2) a list of evidence-based threat assessment training providers to assist personnel in elementary schools, secondary schools, and institutions of higher education in implementing such best practices, including with respect to training behavioral intervention teams.

“(b) ELEMENTS.—The best practices under subsection (a)(1) shall include guidance on the following:

“(1) How behavioral intervention teams can operate effectively from an evidence-based, objective perspective while protecting the constitutional and civil rights of individuals, including any individual of concern.

“(2) The use of behavioral intervention teams to identify individuals of concern, implement interventions, and manage risk through the framework of the school’s or institution’s rules or code of conduct, as applicable.

“(3) How behavioral intervention teams can, when assessing an individual of concern—

“(A) seek training on evidence-based, threat-assessment rubrics;

“(B) ensure that such teams—

“(i) have adequately trained, diverse stakeholders with varied expertise; and

“(ii) use cross validation by a wide-range of individual perspectives on the team; and

“(C) use violence risk assessment.

“(4) How behavioral intervention teams can avoid—

“(A) attempting to predict future behavior by the concept of pre-crime;

“(B) inappropriately using a mental health assessment;

“(C) inappropriately limiting or restricting law enforcement’s jurisdiction over criminal matters;

“(D) attempting to substitute the behavioral intervention process in place of a criminal process, or impede a criminal process, when an individual of concern’s behavior has potential criminal implications;

“(E) endangering an individual’s privacy by failing to ensure that all applicable Federal and State privacy laws are fully complied with; or

“(F) creating school-to-prison pipelines.

“(c) CONSULTATION.—In carrying out subsection (a)(1), the Secretary shall consult with—

“(1) the Secretary of Education;

“(2) the Director of the National Threat Assessment Center of the Department of Homeland Security;

“(3) the Attorney General of the United States; and

“(4) as appropriate, relevant stakeholders including—

“(A) teachers and other educators, principals, school administrators, school board members, school psychologists, mental health professionals, and parents of elementary school and secondary school students;

“(B) local law enforcement agencies and campus law enforcement administrators;

“(C) mental health mobile crisis providers;

“(D) child and adolescent psychiatrists; and

“(E) other education and mental health professionals.

“(d) PUBLICATION.—Not later than 2 years after the date of enactment of this section, the Secretary shall publish the best practices under subsection (a)(1) and the list under subsection (a)(2) on a publicly accessible website of the Department of Health and Human Services.

“(e) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to institutions of higher education, elementary schools, and secondary schools to assist such institutions and schools in implementing the best practices under subsection (a).

“(f) DEFINITIONS.—In this section:

“(1) The term ‘behavioral intervention team’ means a team of qualified individuals who—

“(A) are responsible for identifying and assessing individuals of concern; and

“(B) develop and facilitate implementation of evidence-based interventions to mitigate the threat of harm to self or others posed by individuals of concern and address the mental and behavioral health needs of individuals of concern to reduce such threat.

“(2) The terms ‘elementary school’, ‘parent’, and ‘secondary school’ have the meanings given to such terms in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

“(3) The term ‘individual of concern’ means an individual whose behavior indicates a potential threat to self or others.

“(4) The term ‘institution of higher education’ has the meaning given to such term in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002).

“(5) The term ‘mental health assessment’ means an evaluation, primarily focused on diagnosis, determining the need for involuntary commitment, medication management, and on-going treatment recommendations.

“(6) The term ‘pre-crime’ means law-enforcement efforts and strategies to deter crime by predicting when and where criminal activity will occur.

“(7) The term ‘violence risk assessment’ refers to a broad determination of the potential risk of violence based on evidence-based literature.”.

I. PURPOSE AND SUMMARY

H.R. 3539, the “Behavioral Intervention Guidelines Act of 2020”, introduced by Representatives A. Drew Ferguson IV (R-GA), Michael C. Burgess (R-TX), Joseph P. Kennedy III (D-MA), and Jimmy Panetta (D-CA) on June 27, 2019, requires the Substance Abuse and Mental Health Administration (SAMHSA) to develop best practices for schools to establish behavioral intervention teams and properly train them on how to intervene and avoid inappropriate use of mental health assessments and law enforcement. Not later than one year after enactment, those best practices shall be made publicly available on a website at the Department of Health and Human Services (HHS). The HHS Secretary (the Secretary) is also instructed to provide technical assistance to educational entities to assist in implementing such best practices.

II. BACKGROUND AND NEED FOR THE LEGISLATION

According to the Centers for Disease Control and Prevention (CDC), about three in four children aged three to 17 years with depression also have anxiety and almost half have behavioral problems.¹ Additionally, suicide is the second leading cause of death for young Americans between the age of 10 and 34.² Recent data also show that among young people with mental health needs, more than 80 percent did not receive needed care.³ For those who did receive services, just 15 percent say they received mental health services in a school setting.⁴

The need to address mental health services and prevent suicide or other self-harm was raised in the testimony before the Committee of Arriana Gross, a high school student from Covington, Georgia, who said, “[i]n our school, a year doesn’t go by without a student dying by suicide. I’ve even known of elementary kids who died by suicide. I am concerned that youth suicide has become so

¹Centers for Disease Control and Prevention, *Children’s Mental Health Data & Statistics* (www.cdc.gov/childrensmentalhealth/data.html) (accessed September 18, 2020).

²National Center for Health Statistics, *Leading Causes of Death Reports, 1981–2018* (accessed September 19, 2020).

³Substance Abuse and Mental Health Services Administration. *Key substance use and mental health indicators in the United States: Results from the 2019 National Survey on Drug Use and Health* (2020).

⁴*Id.*

common that my school community and our Nation is stuck in a pattern of mourning and accepting these deaths as something that is normal, instead of seeing them as preventable and tragic.”⁵ In addition to elementary and secondary school students, those in higher education are also experiencing high levels of emotional distress. The American College Health Association found in 2019 that over the past year, 87 percent of college students felt overwhelmed by all they had to do, 66 percent experienced severe anxiety, 56 percent experienced feelings of hopelessness and 13 percent seriously considered suicide.⁶

This bill would help schools address mental health issues or self-harm of students by making available best practices for the proper use and implementation of behavioral intervention programs to support students and schools across the country. Behavioral intervention teams are multi-disciplinary teams that support students’ mental health and emotional well-being by detecting patterns, trends, and disturbances in behavior, and by conducting outreach to students who are unable to manage distress in healthy and constructive ways. These teams are already active in some educational settings, such as at the University of California, Los Angeles,⁷ Texas A&M University,⁸ and Virginia Tech.⁹

III. COMMITTEE HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress, the following hearing was used to develop or consider H.R. 3539:

The Subcommittee on Health held a virtual legislative hearing on June 30, 2020, entitled, “High Anxiety and Stress: Legislation to Improve Mental Health During Crisis.” The hearing focused on H.R. 3539 and 21 other bills. The Subcommittee received testimony from the following witnesses:

- The Honorable Patrick J. Kennedy, Founder of the Kennedy Forum and former Member of Congress
- Arthur C. Evans, Jr., Ph.D., Chief Executive Officer, American Psychological Association;
- Jeffrey L. Geller, M.D., M.P.H., President, American Psychiatric Association, Professor of Psychiatry and Director of Public Sector Psychiatry at the University of Massachusetts Medical School Worcester Recovery Center and Hospital
- Arriana Gross, National Youth Advisory Board Member, Sandy Hook Promise Students Against Violence Everywhere (SAVE) Promise Club

⁵House Committee on Energy and Commerce, Testimony of Arriana Gross, National Youth Advisory Board Member, Sandy Hook Promise Students Against Violence Everywhere (SAVE) Promise Club, *Hearing on High Anxiety and Stress: Legislation to Improve Mental Health During Crisis*, 116th Cong. (June 30, 2020).

⁶American College Health Association, *National College Health Assessment II* (2019) (www.acha.org/documents/ncha/NCHA-II_SPRING_2019_US_REFERENCE_GROUP_EXECUTIVE_SUMMARY.pdf).

⁷UCLA Campus Human Resources, *Behavioral Intervention Team*, (www.chr.ucla.edu/behavioral-intervention-team) (accessed Sep. 28, 2020).

⁸Texas A&M University, *Special Situations Team* (tellsomebody.tamu.edu/sst/?_ga=2.152478009.1448536522.1600872225-426169545.1600872225&_ga=2.152478009.1448536522.1600872225-426169545.1600872225) (accessed Sep. 28, 2020).

⁹Virginia Tech, *Threat Assessment Team* (threatassessment.vt.edu/) (accessed Sep. 28, 2020).

IV. COMMITTEE CONSIDERATION

Representatives Ferguson (R–GA), Burgess (R–TX), Kennedy (D–MA), and Panetta (D–CA) introduced H.R. 3539, the “Behavioral Intervention Guidelines Act of 2020”, on June 27, 2019 and the bill was referred to the Committee on Energy and Commerce. The bill was then referred to the Subcommittee on Health on June 28, 2019. A legislative hearing was held on the bill on June 30, 2020.

On September 9, 2020, H.R. 3539 was discharged from further consideration by the Subcommittee on Health as the bill was called up for markup by the full Committee on Energy and Commerce. The full Committee met in virtual open markup session on September 9, 2020, pursuant to notice, to consider H.R. 3539. During consideration of the bill, a manager’s amendment offered by Mr. Bilirakis of Florida was agreed to by a voice vote. Upon conclusion of consideration of the bill, the full Committee agreed to a motion on final passage by Mr. Pallone, Chairman of the committee, to order H.R. 3539 reported favorably to the House, amended, by a voice vote, a quorum being present.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. The Committee advises that there were no record votes taken on H.R. 3539, including the motion for final passage of the bill.

VI. OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee are reflected in the descriptive portion of the report.

VII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

VIII. FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

IX. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to direct the Secretary of Health and Human Services to develop best practices for the establishment and use of behavioral intervention teams at schools, and for other purposes.

X. DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 3539 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

XI. COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

XII. EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 3539 contains no earmarks, limited tax benefits, or limited tariff benefits.

XIII. ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

XIV. APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

XV. SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 designates that the short title may be cited as the “Behavioral Intervention Guidelines Act of 2020”.

Sec. 2. Best practice for behavioral intervention teams

Section 2 amends the Public Health Service Act to create a new section 520H. In the new section, the Secretary of Health and Human Services, acting through the Assistant Secretary of Mental Health and Substance Use, must develop and periodically update best practices for establishing and using behavioral intervention teams in elementary schools, secondary schools, and institutions of higher education. The Secretary must also develop and periodically update a list of evidence-based threat assessment training providers to assist personnel in implementing such best practices and training of behavioral health intervention teams.

The best practices developed by the Secretary must include: how behavioral intervention teams can operate effectively; how behavioral intervention teams can be appropriately utilized to identify individuals of concern, intervene, and manage risk; evidence-based training and threat assessment rubrics; and how behavioral intervention teams can avoid predicting future behavior, inappropriately using a mental health assessment or restricting law enforcement's jurisdiction over criminal matters, endangering an individual's privacy, or creating school-to-prison pipelines.

The Secretary must consult with the Secretary of Education, the Director of the National Threat Assessment Center of the Department of Homeland Security, the Attorney General, and relevant stakeholders from education, mental health, and law enforcement backgrounds. Best practices developed under this section must be published not later than two years after enactment of this Act on a publicly accessible website. The Secretary of HHS is also instructed to provide technical assistance to educational entities to assist in implementing such best practices.

The definition of a "behavioral intervention team" in this section means a team of qualified individuals who are responsible for identifying and assessing individuals of concern and who develop and facilitate the implementation of evidence-based interventions. The terms "elementary school", "parent", and "secondary school" have the same meanings as under section 8101 of the Elementary and Secondary Education Act of 1965. The term "individual of concern" means an individual whose behavior indicates a potential threat to self or others. The term "institution of higher education" is consistent with the meaning under the Higher Education Act of 1965. The term "mental health assessment" means an evaluation, primarily focused on diagnosis, determining the need for involuntary commitment, medication management, and on-going treatment recommendations. The term "pre-crime" means law-enforcement efforts and strategies to deter crime by predicting when and where criminal activity will occur. The term "violence risk assessment" refers to a broad determination of the potential risk of violence based on evidence-based literature."

XVI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

PUBLIC HEALTH SERVICE ACT

* * * * *

TITLE V—SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION

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PART B—CENTERS AND PROGRAMS

* * * * *

Subpart 3—Center for Mental Health Services

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SEC. 520H. BEST PRACTICES FOR BEHAVIORAL INTERVENTION TEAMS.

(a) *IN GENERAL.*—*The Secretary, acting through the Assistant Secretary, shall develop and periodically update—*

(1) *best practices to assist elementary schools, secondary schools, and institutions of higher education in establishing and using behavioral intervention teams; and*

(2) *a list of evidence-based threat assessment training providers to assist personnel in elementary schools, secondary schools, and institutions of higher education in implementing such best practices, including with respect to training behavioral intervention teams.*

(b) *ELEMENTS.*—*The best practices under subsection (a)(1) shall include guidance on the following:*

(1) *How behavioral intervention teams can operate effectively from an evidence-based, objective perspective while protecting the constitutional and civil rights of individuals, including any individual of concern.*

(2) *The use of behavioral intervention teams to identify individuals of concern, implement interventions, and manage risk through the framework of the school's or institution's rules or code of conduct, as applicable.*

(3) *How behavioral intervention teams can, when assessing an individual of concern—*

(A) *seek training on evidence-based, threat-assessment rubrics;*

(B) *ensure that such teams—*

(i) *have adequately trained, diverse stakeholders with varied expertise; and*

(ii) *use cross validation by a wide-range of individual perspectives on the team; and*

(C) *use violence risk assessment.*

(4) *How behavioral intervention teams can avoid—*

(A) *attempting to predict future behavior by the concept of pre-crime;*

(B) *inappropriately using a mental health assessment;*

(C) *inappropriately limiting or restricting law enforcement's jurisdiction over criminal matters;*

(D) *attempting to substitute the behavioral intervention process in place of a criminal process, or impede a criminal process, when an individual of concern's behavior has potential criminal implications;*

(E) *endangering an individual's privacy by failing to ensure that all applicable Federal and State privacy laws are fully complied with; or*

(F) *creating school-to-prison pipelines.*

(c) *CONSULTATION.*—*In carrying out subsection (a)(1), the Secretary shall consult with—*

(1) *the Secretary of Education;*

(2) *the Director of the National Threat Assessment Center of the Department of Homeland Security;*

(3) *the Attorney General of the United States; and*

(4) *as appropriate, relevant stakeholders including—*

(A) teachers and other educators, principals, school administrators, school board members, school psychologists, mental health professionals, and parents of elementary school and secondary school students;

(B) local law enforcement agencies and campus law enforcement administrators;

(C) mental health mobile crisis providers;

(D) child and adolescent psychiatrists; and

(E) other education and mental health professionals.

(d) PUBLICATION.—Not later than 2 years after the date of enactment of this section, the Secretary shall publish the best practices under subsection (a)(1) and the list under subsection (a)(2) on a publicly accessible website of the Department of Health and Human Services.

(e) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to institutions of higher education, elementary schools, and secondary schools to assist such institutions and schools in implementing the best practices under subsection (a).

(f) DEFINITIONS.—In this section:

(1) The term “behavioral intervention team” means a team of qualified individuals who—

(A) are responsible for identifying and assessing individuals of concern; and

(B) develop and facilitate implementation of evidence-based interventions to mitigate the threat of harm to self or others posed by individuals of concern and address the mental and behavioral health needs of individuals of concern to reduce such threat.

(2) The terms “elementary school”, “parent”, and “secondary school” have the meanings given to such terms in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(3) The term “individual of concern” means an individual whose behavior indicates a potential threat to self or others.

(4) The term “institution of higher education” has the meaning given to such term in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002).

(5) The term “mental health assessment” means an evaluation, primarily focused on diagnosis, determining the need for involuntary commitment, medication management, and ongoing treatment recommendations.

(6) The term “pre-crime” means law-enforcement efforts and strategies to deter crime by predicting when and where criminal activity will occur.

(7) The term “violence risk assessment” refers to a broad determination of the potential risk of violence based on evidence-based literature.

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