



Recommended Practices for Virginia College Threat Assessment



*Prepared for the Virginia Department of Criminal Justice Services' School Safety Center
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This document was prepared for the Commonwealth of Virginia's Center for School Safety in the Department of Criminal Justice Services by Dewey Cornell, Ph.D. of the University of Virginia. These recommendations are intended as a guide for threat assessment teams at Virginia public institutions of higher education in response to Virginia Code §23-9.2:10.

§23-9.2:10. Violence prevention committee; threat assessment team

- A. Each public college or university shall have in place policies and procedures for the prevention of violence on campus, including assessment and intervention with individuals whose behavior poses a threat to the safety of the campus community.
- B. The board of visitors or other governing body of each public institution of higher education shall determine a committee structure on campus of individuals charged with education and prevention of violence on campus. Each committee shall include representatives from student affairs, law enforcement, human resources, counseling services, residence life, and other constituencies as needed. Such committee shall also consult with legal counsel as needed. Once formed, each committee shall develop a clear statement of: (i) mission, (ii) membership, and (iii) leadership. Such statement shall be published and available to the campus community.
- C. Each committee shall be charged with: (i) providing guidance to students, faculty, and staff regarding recognition of threatening or aberrant behavior that may represent a threat to the community; (ii) identification of members of the campus community to whom threatening behavior should be reported; and (iii) policies and procedures for the assessment of individuals whose behavior may present a threat, appropriate means of intervention with such individuals, and sufficient means of action, including interim suspension or medical separation to resolve potential threats.
- D. The board of visitors or other governing body of each public institution of higher education shall establish a specific threat assessment team that shall include members from law enforcement, mental health professionals, representatives of student affairs and human resources, and, if available, college or university counsel. Such team shall implement the assessment, intervention and action policies set forth by the committee pursuant to subsection C.
- E. Each threat assessment team shall establish relationships or utilize existing relationships with local and state law enforcement agencies as well as mental health agencies to expedite assessment and intervention with *individuals whose behavior may present a threat to safety.* (2008, cc. 450, 533.)

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The recommendations in this document are not intended to substitute, replace, or augment an independent, individualized assessment of threat in any specific case or threatening situation. There is no assumption of responsibility or liability for any personal injury, property damage, or any other outcome that directly or indirectly might be linked to the use of this document. Any persons or organizations using this document must rely on their own professional judgment in any specific case or threatening situation.

I. Threat Assessment Is a Means of Violence Prevention.

A. Purpose of this document

1. The 2008 General Assembly enacted a new law (§23-9.2) requiring each public institution of higher education in Virginia to establish a violence prevention committee and a threat assessment team. In order to assist Virginia colleges and universities with these requirements, the Office of Campus Policing and Security in the Virginia Center for School Safety, Department of Criminal Justice Services, held a College Threat Assessment Forum on July 29, 2008 at John Tyler Community College. Surveys and focus groups conducted with 73 representatives from 38 Virginia institutions indicated a nearly unanimous need for guidance and training. This document was prepared in response to that need. The term “college” is used in this document to refer generally to colleges and universities.
2. The guidelines presented in this document are intended as recommendations rather than regulations or requirements. They are based on a synthesis of the professional literature on threat assessment, the author’s research and experience in developing threat assessment guidelines for K-12 schools, and consultation from experts in college law enforcement, college administration, mental health, student services, and related fields.

B. The concept of threat assessment

1. Threat assessment is a strategy for preventing violence through identification and evaluation of individuals or groups that pose a threat to harm someone, followed by intervention designed to reduce the risk of violence. Based on this definition, threat assessment involves both assessment and intervention, and might be described more accurately as a threat management approach to violence prevention.
2. As a form of prevention, threat assessment should be distinguished from crisis response planning, because prevention takes place before a violent event is under way. Both prevention and crisis planning are important, but this document is concerned only with threat assessment. Threat assessment can also be distinguished from security analysis, target hardening, crime prevention education, mental health screening, or other useful preventive measures.
3. Threat assessment should also be distinguished from criminal profiling, which is a procedure focused on the identification of likely perpetrators through correspondence with a set of characteristics theorized to represent violent individuals. Threat assessment more explicitly recognizes the diversity of individuals who may engage in a violent act and focuses on behavioral indications of preparation to carry out a violent act. Threat assessment is also concerned with interventions to resolve the threat and thereby prevent violence.
4. Threat assessment is best known as a law enforcement strategy to prevent violence, but is not strictly a law enforcement endeavor and is not conducted solely by law enforcement officers. Threat assessments are often undertaken by a multidisciplinary team that includes mental health and law enforcement perspectives, as well as other disciplinary perspectives that may be relevant to the individual case.
5. Threat assessment is an investigative procedure involving a possible or potential criminal act, but the goal of threat assessment is the prevention of violence, and not necessarily identification and arrest of a perpetrator. Often violence can be prevented most effectively through the resolution of

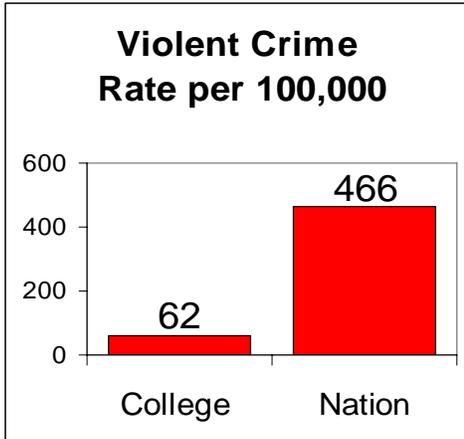
a problem or conflict that prompted someone to engage in threatening behavior. A threat can be regarded as an indication of another problem that demands attention, ranging from an interpersonal dispute to emerging mental illness.

C. Identification of threats

1. For purposes of threat assessment, the definition of a threat should be broad and inclusive so that potential sources of violence are not overlooked. As a result, there may be investigation of possible threats that do not turn out to be genuine or serious threats.
2. Threats are communications of intent to harm someone. Threats can be communicated directly to the intended target or indirectly to third parties. Threats also may be expressed in private statements, such as journal entries or written plans, which have no third party audience.
3. Threats can be explicit (“I am going to kill him”) or veiled (“Wait and see what happens, now”).
4. Threats can be expressed through any media (e.g., cell phones, radio, Internet).
5. Threats can express through drawings or other visual representations.
6. Threats can be expressed behaviorally, such as through gestures.
7. Possession of a weapon, concealed or unconcealed, can indicate a threat and merits investigation.
8. In some cases, threat assessments may be indicated when no explicit threat has been communicated, but is strongly suspected, for example, when someone has been highly angry and verbally abusive in a manner that suggests violent intentions.
9. Threats must be identified and reported in order to be investigated. Therefore, organizations should train their staff to identify and report threats. When in doubt, possible threats should be reported so that they can be investigated. There should be clearly established and publicized means of reporting persons who have made threats or engaged in threatening behavior. Multiple reporting methods are desirable.

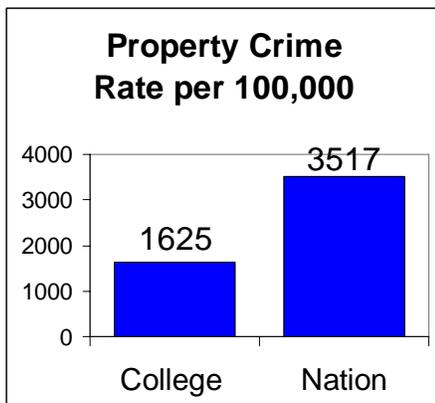
II. Threat Assessment in a College Setting

A. Colleges are comparatively safe environments with a low rate of crime.



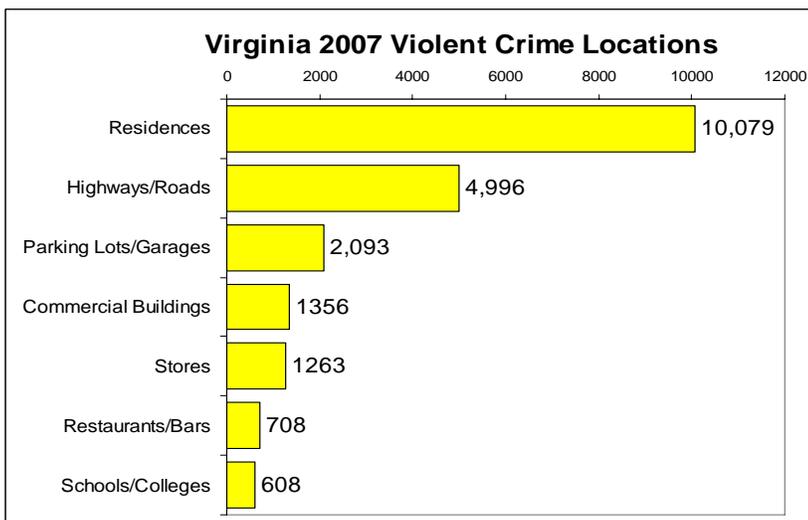
The rate of violent crime is approximately 7 times higher in the general community than on college campuses. Source: *Campus Law Enforcement, 2004-05* (Feb 2008)

<http://www.ojp.usdoj.gov/bjs/pub/pdf/cle0405.pdf>



The rate of property crime on college campuses is less than half the rate in the general community. Source: *Campus Law Enforcement, 2004-05* (Feb 2008)

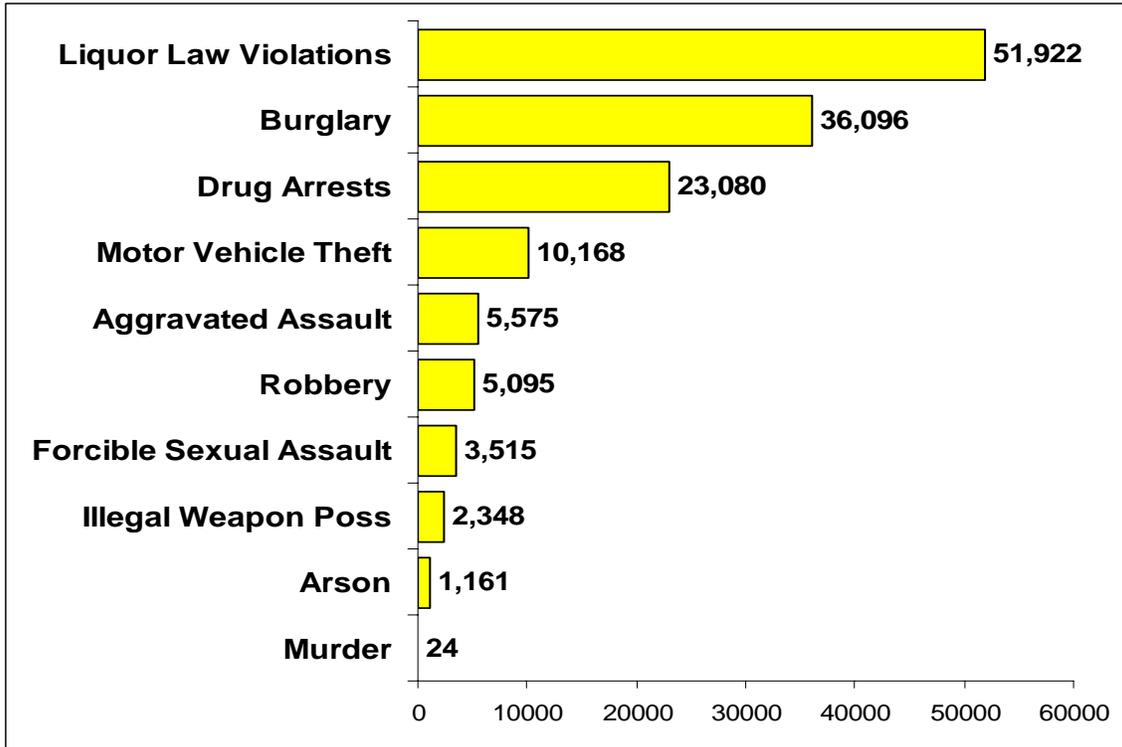
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Virginia crime data show that most violent crime takes place in residences or on public roads and highways, and much less often on the grounds of schools or colleges.

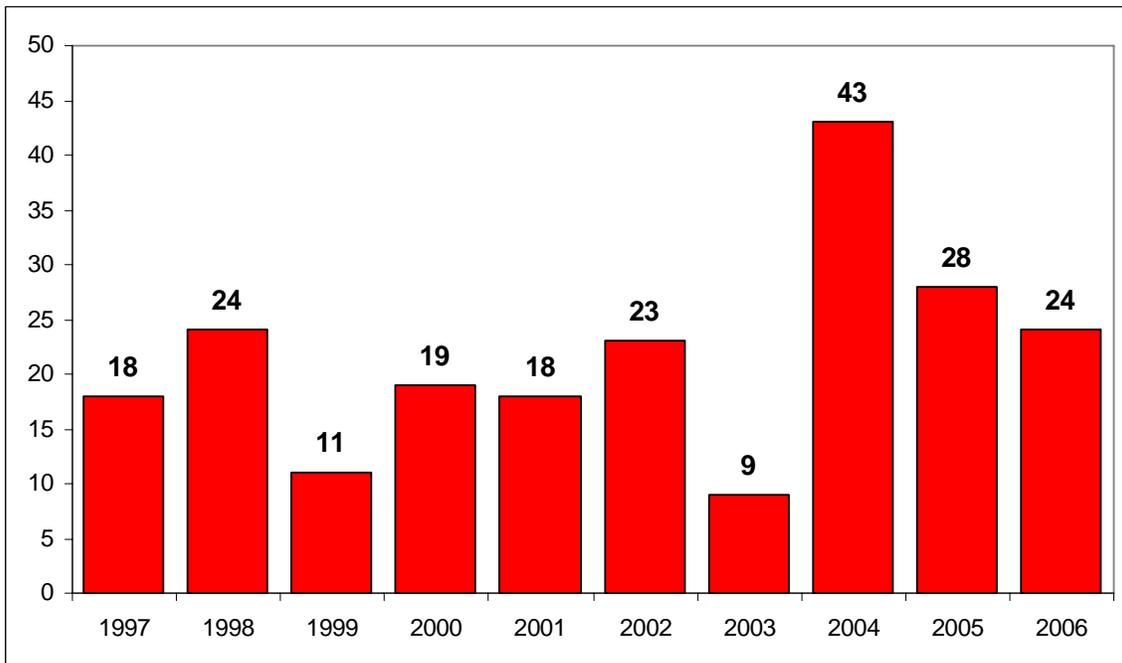
Source: *Crime in Virginia 2007*. Virginia State Police. http://www.vsp.state.va.us/Crime_in_Virginia.shtm

1. The most common arrests on college campuses are for liquor law violations and burglary.



Source: 2006 Clery Act data from <http://www.ed.gov/admins/lead/safety/campus.html>

2. The murder arrest rate on college campuses is low and shows no specific trend.



Sources: (1) U.S. Dept of Education (2004). Summary of Campus Crime and Security Statistics 2002-2004 and (2) Summary Crime Statistics for 2004-06. <http://www.ed.gov/admins/lead/safety/campus.html>

B. College settings pose some special challenges for threat assessment.

1. Students, staff, faculty, and community members have different legal standing and raise different legal and practical issues in conducting threat assessments. Teams require different expertise and have different options available to them depending on the subject of the assessment.
2. Colleges are more complex settings than K-12 schools or workplace settings. They are open communities that are not easily secured or monitored.
3. Colleges have multiple administrative units that may have little communication with one another. Lines of authority are not always clearly defined.
4. Community colleges have unique needs and concerns:
 - Commuting students
 - Part-time and short-term student enrollment
 - Older students, often juggling jobs and families
 - Less likely to have law enforcement on campus
 - Less likely to have counseling and student health services
 - Many part-time staff
 - Multiple campuses
5. Institutions such as community colleges may need to make modifications to these guidelines that recognize the limitations in their resources and capabilities. However, safety must remain the top priority and it may be necessary to enhance institutional resources for threat assessment and violence prevention purposes.
6. Threat assessment should be distinguished from other institutional programs, such as counseling services, student judiciary boards, and student services teams designed to assist students who are experiencing difficulties with academic, social, or emotional adjustment. All of these programs continue to function, but should refer cases involving threats of violence to the threat assessment team.

C. Virginia requires both a violence prevention committee and a threat assessment team in §23-9.2:10.

1. Each institution is required to have a violence prevention committee concerned with education and prevention of violence on campus.
 - The committee must have representatives from student affairs, law enforcement, human resources, counseling services, residence life and other constituencies as needed, including legal counsel.
 - The committee must develop a clear statement of mission, membership, and leadership that is made available to the campus community.
 - The committee must provide guidance to the campus community regarding the recognition of behavior that may represent a threat to the community, how such behavior should be

reported, as well as policies and procedures for assessment, intervention, and other actions to resolve potential threats.

2. Each institution is required to have a threat assessment team.
 - The team must have members from law enforcement, mental health professionals, representatives from student affairs and human resources, and if available, legal counsel.
 - The team will implement the assessment, intervention, and action policies of the violence prevention committee.
3. It is recommended that one or more members of the threat assessment team serve on the violence prevention committee in order to facilitate coordination and communication.
4. The prevention committee has a broader mission than the threat assessment team. This mission includes establishment of educational and prevention programs and determination of policies and procedures. Education and prevention programs should be implemented by the most appropriate administrative unit or organization available to the institution. For example, a counseling center could have a program to prevent dating violence.
5. In contrast to the prevention committee, the threat assessment team is concerned primarily with case management.

D. College threat assessment teams

1. Teams must comply with Virginia law for membership; however, the law does not require that all team members are engaged in every case. There may be a smaller number of team members who serve as the action group for each individual case.
2. In all or nearly all cases, the team will want to use at least four team members, representing law enforcement, administration, mental health, and legal counsel. Nevertheless, all team members should be aware of all active cases, in the event that a team member has information relevant to another team member's case.
3. Cases involving student threats will require involvement by representatives from relevant units such as the dean of students. Members from student services, counseling services, or residence life also may be appropriate.
4. Cases involving staff threats will ordinarily include involvement by Human Resources.
5. All cases should have active involvement of a law enforcement or campus safety representative.
6. In special cases, the team can draw upon the expertise of consultants who are not team members. Consultants will be expected to maintain case confidentiality.
7. The team can interview persons who are not team members but who have knowledge of a case (e.g., dormitory counselor, course instructor, coach).

E. Threat assessment investigations should be distinguished from other institutional procedures.

1. Threat assessment teams should be distinguished from specific administrative units or other groups that may be concerned with student welfare or judiciary matters, counseling services, employee rights and services, or other functions. Threat assessment teams may advise or consult with these units, but are not intended to replace their functions.
2. Threat assessment teams should meet as frequently as necessary to manage their caseload and maintain safety. In large institutions, it is not unusual for threat assessment teams to meet more than once per week.
3. Threat assessment investigations and internal deliberations should be confidential in order to protect potential victims as well as the privacy of the subject of the investigation. Additional recommendations on record-keeping are presented below.

F. Team leadership

1. The full assessment team should have a single designated leader with decision-making authority. Team members serve as advisors to the team leader. The team leader (or designee) should work toward a consensus approach in most cases, but in situations that require immediate or decisive action, should retain sole authority to make decisions or initiate actions on behalf of the team.
2. The leader will usually be a high ranking law enforcement officer or college administrator appointed by the president.
3. The team leader or designee should be on-call for any case that arises.
4. There should be a designated hierarchy of substitute team leaders to handle cases when the leader is not available or to distribute the workload.
5. There may be different substitute team leaders for different types of cases. For example, a representative from Human Resources may be the leader for cases involving staff members.

G. Team scope of authority

1. Threat assessment teams should be referred all cases that involve threats of violence by students, faculty, staff, community members, or anyone else that would affect the campus community.
2. Cases may be referred by any administrative unit of the institution or may be reported directly by a student, faculty or staff member, or any other person.
3. University academic departments, human resources, mental health and counseling agencies, offices for student affairs or academic matters, residence life, and law enforcement have a special responsibility to refer to the threat assessment team any case that raises reasonable concern that someone has communicated a threat or engaged in threatening behavior. Medical, mental health, and counseling agencies must follow state and federal laws for release of patient/client information, and should have policies and training that recognize the conditions and situations in which reporting is permitted, including mandatory reporting in emergency circumstances.

4. If there is any doubt whether a case should be referred to the threat assessment team, the case should be referred and the team will determine what action, if any, is appropriate.
5. When the threat assessment team determines that a case is appropriate for their involvement, the referring administrative unit and all other units of the institution that may have a relationship with the case should coordinate their actions with the threat assessment team. The threat assessment team should not usurp the authority or role of other organizations, but should function in coordination with them so that the overall institutional response to the individual addresses safety concerns.

Because safety is the top priority, major decisions and actions involving the subject of an active threat assessment should be reviewed by the threat assessment team. *Ordinarily, this means that no institutional actions, such as disciplinary actions, or other actions that alter the academic, employment, or residential status of the subject, will be taken without prior review by the threat assessment team.* Decisions to take disciplinary actions or to suspend or terminate a subject who is under active investigation for a threat of violence should be undertaken with considerable caution. In the event that there is disagreement between the administrative unit and the threat assessment team on the decision of the administrative unit to take disciplinary actions or other administrative actions affecting the academic, employment, or residential status of the subject, the decision should be made by the president (or designee) of the institution.

6. The team must document the status of each case as active or inactive. A case has active status from the time it has been referred to the team through the period of investigation and any intervention efforts to resolve the problem or concern underlying the threat. When the team has determined that a case is no longer in need of active investigation or intervention, it can be changed to inactive status.
 - A case is inactive when there is no longer concern that the subject poses a threat (e.g., the case was found to be a transient threat or the problem or concern underlying the threat was satisfactorily resolved.)
 - Even when a case is no longer in need of active intervention, there may be cases when the team wants to monitor the situation in the event that there is a change in circumstances or in the subject that warrants renewed concern.
7. After the threat assessment team has determined a case to be inactive, the case should be referred again to the team should there be indication of a change in the situation that raises reasonable concern for the safety of the subject or others.

III. The Four Steps in Threat Assessment.

STEP 1

Step 1. Identify threats

The institution should have multiple ways for reporting threatening situations to the threat assessment team. Ordinarily, a concerned individual will contact student services, law enforcement, a counselor, or some other institution authority to seek help. The institution authority must recognize when a request for help involves a threatening situation. To encourage threat identification, institutions should provide regular and ongoing training:

- A. Threat education for the general community (students, parents, faculty, staff) to:
 - Encourage help-seeking.
 - Teach distinction between seeking help and snitching.
 - Provide simple, safe, direct ways to seek help.
- B. Education for key contacts (administrators, health care providers, law enforcement, student services, etc.) with these objectives:
 - Appreciate the necessity of reporting a threatening situation.
 - Understand the basic concepts of threat assessment as a problem-solving approach to violence prevention.
 - Recognize when a request for help involves a threatening situation.
 - Know how to report threats to the team.

STEP 2

Step 2. Evaluate the seriousness of the threat.

- A. Gather all available information relevant to the reported threat (or threatening behavior).
 - Preserve all evidence of the threat
 - Contact law enforcement immediately if there is apparent criminal activity or an emergency situation.
 - Interview witnesses and record the conversation or take verbatim notes.
 - Evaluate the context and situation as well as the subject.
 - Gather background information from additional sources.
- B. Attempt to resolve the threat as a transient threat.
 - Transient threats can include figures of speech or comments made in jest that do not convey a genuine intent to harm anyone.
 - Transient threats can include statements made in anger or frustration that dissipates, leaving no continuing intent to harm anyone.
 - The subject should be able to explain his or her behavior, retract the threat, and apologize or make amends to others.
 - It may be appropriate to mediate a dispute or resolve a conflict that stimulated the transient threat. Such actions will be undertaken by appropriate institutional authorities or other sources in cooperation with the threat assessment team.
 - It may be appropriate to discipline the subject for inappropriate behavior. Sanctions are imposed by appropriate institutional authorities in cooperation with the team.
 - It may be appropriate to refer the subject for counseling or some other intervention to address a problem linked to the threatening behavior.
 - If the case is resolved, make sure there is sufficient documentation of the case in the event that the subject merits monitoring or arouses concern again.

STEP 3

Step 3. Intervene to reduce the risk of violence.

If unable to resolve the threat as transient, treat it as a substantive threat.

- A. Substantive threats require some form of protective action to prevent the threat from being carried out.
- Notification of law enforcement. (This may be accomplished through the law enforcement member of the team.)
 - If immediate action is not needed, some provision for monitoring or checking on the status of the subject at reasonable intervals should be initiated.
 - If there are identifiable potential victims or targets of attack, they should be notified and provided with information appropriate to protecting themselves, including the name of the subject.
 - Consider whether it is appropriate to contact parents of subject or potential victims, depending on nature of threat and legal status of the individuals.
- B. Develop a safety plan to resolve the conflict or problem generating the threat.
- The team should conduct a thorough evaluation of the subject using multiple sources of information (see Section IV below).
 - A more comprehensive law enforcement investigation should be included in the evaluation. See details below.
 - A mental health assessment should be considered if clinically indicated and the subject is willing or can be required to participate. See details below.
 - The principal goal of every safety plan is safety. One important means of achieving safety is to resolve the problem or conflict that stimulated the threat.
 - Interventions such as conflict resolution or mediation, counseling, or other efforts can be considered. Such efforts may be conducted by appropriate institutional authorities (e.g., counseling center) or other sources in communication with the team.
 - The team should strive to develop a respectful and constructive relationship with the subject.
 - A negotiated resolution of the subject's concerns can often be the most effective and efficient means of resolving a threatening situation.
 - Actions that intimidate, threaten, or humiliate the subject can provoke the individual and lead to undesirable consequences.
 - Forced separation of the subject from the institution (e.g., suspension, expulsion, firing) does not necessarily reduce the risk of violence and can be provocative.

STEP 4

Step 4 . Follow-up to monitor and re-evaluate effectiveness of the safety plan.

- All plans should have a provision for monitoring and follow-up.
- Monitoring should include amelioration of fears or concerns of threatened individuals.
- Plans should be revised when there is a continuing threat or increased risk of violence.
- Full documentation of threat cases should be maintained as part of the institution's law enforcement unit records.

IV. The Threat Assessment Process

A. Threat Assessment Information

1. Although each case will differ in the information required, threat assessment teams should conduct a thorough investigation using multiple sources.
2. For students, the following potential sources of information should be considered:
 - Student academic records
 - Observations of faculty, advisor, and other staff who know the subject
 - Observations of classmates, roommates, and friends of the subject
 - Parents
 - Online communications that used the institution's email and Internet system
 - Institution counseling, medical, and mental health records
 - Residence hall records
 - Student services and disciplinary records
 - Information from previous academic institutions
3. For staff and faculty, the following potential sources of information should be considered:
 - Employment records
 - Observations of supervisors and co-workers
 - Institution employee assistance records
 - Observations of others familiar with the subject
 - Online communications that used the institution's email and Internet system
 - Information from previous employers
4. Information from outside the institution should be collected when possible:
 - Mental health and community service board records
 - Law enforcement records
 - Employer records and observations of employers and co-workers
5. There should be standing policies that facilitate access to these sources of information by threat assessment teams. Students and staff should be advised of these policies. Institutions should have memoranda of understanding with external agencies that permit access to information with subject consent or under conditions that permit breach of confidentiality. (See Section V on FERPA and HIPAA Section VII on recommended policies.)

B. Guiding observations to consider in conducting threat assessments

1. Most violent attacks are not spontaneous events, but the result of a process that includes premeditation, planning, and preparation. This makes them detectable and preventable.
2. Although most attackers do not directly communicate a threat to the intended victim, they often communicate their violent intentions to others.
3. Even after preparations have begun, the decision to act may be contingent upon other situational events that provoke or disturb the subject into action.

4. One reason that there is no single profile that identifies a violent individual is that violence is the end result of a dynamic process that includes situational factors and actions by others who intentionally or unintentionally frustrate, provoke, or somehow stimulate the subject to act. It follows that the team must assess the complete situation as well as the individual subject.
5. There is no psychological profile or set of traits that identifies an attacker. Instead, teams should look for behavior that indicates progress toward carrying out a violent act.
6. The primary question is not whether the subject has made a threat, but whether the subject poses a threat. A person poses a threat when he or she has the capability and intention of carrying out a threat.

C. General indications that a threat is substantive

1. Every case will have unique features that make it impossible to apply a simple decision rule or formula to determine whether the threat is substantive. Each case will require some degree of informed judgment by the team.
2. Efforts to resolve a threat are an important indication of how serious it is. A threat that cannot be explained or resolved as a transient threat should be considered substantive.
3. Consider whether there is behavioral evidence that the subject is planning or preparing to carry out the threat. This includes:
 - Detailed plans or evidence of planning
 - Acquisition of weapons, ammunition, or other materials needed to carry out the threat
 - Practice of skills or procedures that would be used in an attack
 - Surveillance of the scene for an attack
 - Attempt to recruit accomplices or assistance for an attack
 - Attempt to invite an audience for the attack
 - Behavioral evidence of suicidality, such as a letter or communication to others that suggests an impending suicide
4. A previous history of violence can be regarded as an indication that the threat is substantive; however, the absence of previous violence should not be regarded as an indication that the threat is not substantive.
5. Evidence that the subject is on a pathway toward violence, with behavioral evidence of motives consistent with one of the three pathways described in Section D below.

D. Pathways to violence that should be considered in conducting threat investigations

An important reason why there is no single profile of a violent individual is that violence can be the result of different psychological processes and motives. Research has identified at least three main pathways to violence.

1. The Antisocial pathway is followed by individuals who use violence for predatory or instrumental purposes such as obtaining money or valuables. This pathway includes crimes of robbery, rape, extortion, and drug dealing. Such individuals usually have a history of antisocial behavior and affiliations with antisocial peers. Although these individuals are not typically associated with the high-profile rampage shootings that receive massive press attention, they account for the vast majority of violent crimes.

2. The Conflict pathway is followed by individuals motivated by revenge for perceived mistreatment by others. They may have a genuine grievance based on unfair or abusive treatment, they may magnify a smaller problem or conflict, or they may project blame onto others for problems they have brought upon themselves. Common examples can range from a student who is being bullied to an employee who over-reacts to being reprimanded. Another common example is a person who has had a previous romantic relationship (or frustrated fantasies of such a relationship) with the individual who is threatened. Individuals following this pathway may not have a history of antisocial or violent behavior, but may have violent fantasies and a preoccupation with violence that precedes their decision to attack.
3. The Psychotic pathway involves individuals who suffer from a severe mental illness such as paranoid schizophrenia or bipolar disorder. Persons suffering from these conditions have periods of psychosis when they have delusional ideas and/or hallucinations that motivate their behavior. For example, they may have delusions of persecution that justify an act of self-defense or hear the voice of God commanding them to carry out a violent act. These periods of psychosis can be sustained or intermittent, making them difficult to identify.

E. Alternative forms of threats to be considered in conducting threat assessments

Threats can be a form of coercion and expression of anger intended to intimidate the victim or a genuine prelude to an attack. Two law enforcement experts on threat assessment, Calhoun and Weston, (2009) distinguish two kinds of persons who make threats: howlers and hunters. Although there is not a body of scientific research supporting this typology, their observations are based on extensive experience and are worth considering in the course of an investigation.

1. Howlers are the more common type. They make emotionally charged, ominous threats that often arouse great concern. They make threats at a distance, satisfied to frighten others while keeping themselves safe. They may threaten individuals because of a dispute or perceived injustice, or because they have an irrational motive, such as an unreciprocated romantic obsession. They may threaten persons they know or persons they do not know who are subjects of their fantasies. One cannot assume that a howler will never attack anyone; Calhoun and Weston recognize that sometimes a howler experiences a “final straw” event and decides to take action, becoming a hunter. Nevertheless, there is a recognizable pattern of persons who are motivated by the desire to threaten and intimidate others, and many of these persons do not escalate their threats into a violent act.
2. Hunters are less common, but more dangerous. They are harder to identify because they may not overtly communicate threats of violence, but engage in quiet preparation for carrying out a violent attack. Hunters typically have a grievance based on real or imagined wrongs. They may express their grievance early in their preparations or communicate it to third parties. Otherwise, they are detected primarily by their extensive planning and preparation for an attack.

F. Law enforcement investigations

1. Threat assessment is a form of criminal investigation undertaken by the threat assessment team, but most members of the team are not sworn officers and the team has limited legal authority or capability. In cases deemed to be sufficiently serious, the law enforcement representative may initiate a more comprehensive criminal investigation involving the full law enforcement unit or agency that has jurisdiction for the identified or suspected criminal behavior. In such cases, the

actions and records of the threat assessment team can be distinguished from those of the law enforcement agency. The criminal investigation by the law enforcement agency should follow all rules and requirements of any other criminal investigation that the agency conducts. To the extent possible and permitted by law, the law enforcement agency and the threat assessment team should work cooperatively and in consultation.

2. Law enforcement must be notified any time criminal activity is observed or anticipated.
3. There should be background checks of the subject.
4. There should be efforts to determine whether the subject has access to firearms, explosives, or other weapons, as well as the capability to use them.
5. There should be a standing policy and notification of all students and staff regarding searches of institutional property, including dormitory rooms. The policy should permit members of the threat assessment team who are not law enforcement officers to conduct administrative searches of institutional property whenever there is a reasonable safety concern. Law enforcement officers can conduct searches only within the bounds of state and federal law. However, law enforcement officers may be available to protect administrators engaged in an administrative search and they can be prepared to take immediate action or apply for a search warrant if an administrative search identifies evidence of criminal behavior.
6. Law enforcement officers who serve on threat assessment teams should be authorized to share law enforcement investigative information with the threat assessment team within the bounds of state and federal law. According to Virginia Code 19.2-389, paragraph 3, "Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data." Therefore, these guidelines recommend that institutions of higher education enter into a memorandum of understanding (specific agreement) with their local or affiliated law enforcement agency that authorizes release of information to the threat assessment team for the administration of criminal justice, with assurance that the data will be maintained in a secure and confidential manner and used only for threat assessment purposes. The Virginia Office of the Attorney General has provided consultation with the Department of Criminal Justice Services on this issue.

G. Mental health assessment purpose and standards

1. Mental health assessments should be undertaken whenever there is substantial concern about the mental status of the subject and are not limited to situations in which civil commitment for psychiatric treatment is a consideration. Mental health assessments are especially appropriate when there are mental health concerns about a subject who has made a substantive threat involving a threat to kill or commit some other felonious act of violence.
2. A mental health assessment conducted as part of a threat assessment should be less concerned with the *prediction* of violence than identifying strategies for the *prevention* of violence.
3. The risk of violence can change over time according to changing situations and events. As a result, statements about the likelihood that a person will commit a violent act can be speculative and unreliable. Such statements, if made at all, should be framed with caution and used only when necessary, such as when circumstances indicate a need for civil commitment.

4. The mental health assessment should be aimed at identifying what problem or conflict stimulated the subject to engage in threatening behavior and then recommending practical interventions designed to address that underlying problem or conflict. Such recommendations might range from mediation of a dispute to psychiatric hospitalization for paranoid delusions.
5. Threat assessment teams may require a mental health assessment of subjects as a condition for determining whether it is safe for the individual to continue employment, school enrollment, or some other status.
6. Mental health assessments should be conducted or supervised by a psychiatrist or clinical psychologist with substantial experience in the assessment of violent individuals.
7. The mental health professional conducting this evaluation should not have a treatment relationship with the subject.
8. The mental health professional conducting this evaluation may be a member of the threat assessment team or someone contracted to provide an evaluation for the team, depending on the judgment of the team concerning the circumstances of the case and the most appropriate source for the evaluation.
9. The subject should provide permission for the results of the mental health assessment to be released to the threat assessment team.
10. Subjects participating in a mental health assessment should be asked to sign a release permitting the mental health professional access to any records or sources of information that are not otherwise available, if they are deemed relevant to completion of the evaluation. In the absence of this consent, the mental health professionals must make a judgment whether it is appropriate to conduct the evaluation. A decision not to conduct the evaluation can have implications for the subject's continued employment, school enrollment, or other status relevant to the safety of others.
11. Evaluation reports should acknowledge the absence of any information that could not be obtained, including witnesses who refused to be interviewed or records that were not available. Conclusions must be qualified by the absence of this information or any other limitations in the evaluation.
12. The mental health assessment should not be based solely on information obtained from the subject, but should include review of all available information about the subject's mental health history as well as information obtained from collateral sources such as parents, spouses or partners, and others who have firsthand knowledge of the subject that is relevant to the threat.
13. The mental health professional should make it clear to the subject and any collateral sources that the evaluation is being conducted as part of a threat assessment and that information obtained in the course of the evaluation will be shared with the threat assessment team.
14. Mental health assessments should not be considered the sole basis for making a decision about the management of a threatening situation.

H. Mental health assessment topics

1. The assessment should begin with an explanation of the purpose of the evaluation and limits on confidentiality.
2. The assessment should include a thorough review of any alleged threat incidents or threatening behavior, including the subject's behavior at the time of the alleged threat, motives for making a threat, state of mind at the time, and future intentions.
3. There should be a history of the subject's relationship with the person(s) who was threatened.
4. There should be a broader examination of the subject's level of functioning, social and familial relationships, and any stressful circumstances preceding the threat.
5. There should be a mental status evaluation and examination for signs of mental disorder, including depression and suicidality; psychotic symptoms; feelings of resentment, jealousy or mistreatment; and personality disorder.
6. There should be a review of alcohol and other substance use.
7. The mental health expert should obtain a history of the subject's involvement in aggressive or violent behavior, including physical fights, intense or protracted arguments and disputes, and previous use of weapons as well as current access to weapons.
8. There should be a history of previous criminal or antisocial behavior, delinquency, and disciplinary problems at school or work.
9. Psychological testing is an option that may be useful to corroborate clinical observations, including signs of personality maladjustment or mental disorder.
10. Structured instruments to assess risk for violence may be appropriate in some cases, but the emphasis of this evaluation is on risk reduction and violence prevention rather than determination of a static level of risk.
11. There should be an attempt to engage the subject in a review of his or her grievances or concerns associated with the alleged threat, and discussion of possible solutions.

I. Anonymous threats

1. Threat assessment is designed primarily to evaluate individuals who have been identified as making a threat or engaging in threatening behavior. Examples of threats made by an anonymous source include bomb threats, false fire alarms, letters and graffiti with threatening language.
2. There is no single best protocol for responding to an anonymous threat, but some basic observations can be made.
 - Nearly all anonymous threats are intended to be disruptive, and do not involve an actual bomb, fire, or other impending act of violence.

- All threats must be taken seriously and examined carefully. The circumstances of each threat are unique, and no single course of action can be prescribed for all cases. The team must consider the nature and quality of the threat, the context in which it occurs, and the possible motives for the threat.
- There should be careful efforts to preserve all evidence of the threat. Oral threats should be written down verbatim, if not electronically recorded. Letters or graffiti should be protected and examined for fingerprints or other evidence of identity.
- There should be a protocol for persons who routinely answer phone calls from the public. These individuals should be trained to listen carefully to threat calls and to ask specific questions (e.g., When is the bomb going to explode? Where is the bomb? What does it look like? What kind of bomb is it?). They should take note of the caller's voice and the presence of any background noises.
- For additional information, see the recommendations of the U.S. Department of Justice <www.cops.usdoj.gov/files/RIC/Publications/e07063413.pdf>

V. Confidentiality and Information Sharing

A. Threat assessment record-keeping

1. Information obtained in the course of a threat assessment should be recorded in the subject's threat assessment file.
2. Each threat assessment file should contain a standard form that charts the investigation process, actions taken, and provisions for follow-up. The amount of information contained in such forms will vary according to the seriousness and complexity of the case.
3. Access to the threat assessment file should be limited to members of the threat assessment team.
4. Threat assessment files should be maintained in the law enforcement or security records of the institution rather than in the subject's educational records or employment records.
5. Threat assessment files should be protected for security purposes as investigations of possible criminal behavior. The release of threat assessment information could jeopardize efforts to prevent an act of violence and it could disclose practices that nullify or reduce the effectiveness of threat assessments in future cases.

Because threat assessments are essentially investigations of criminal behavior, most, if not all, of the records created by a threat assessment should not be eligible for release under the Freedom of Information Act (FOIA). Reports generated by the threat assessment team may be exempt under Va. Code §§2.2-3705.2(4), 3706(F)(1)(3), and 3706(G)(1). A response by the team that includes a criminal arrest and prosecution may be exempt from release pursuant to Va. Code §§2.2-3706(F)(1) and (3). This protection from disclosure applies to records generated by the threat assessment team for threat assessment purposes.

Records obtained from other sources, such as student academic reports, employee records, or medical records, should be protected under existing laws and regulations regarding redisclosure of protected information. For example, student scholastic records maintained by a university may

be exempt under Va. Code §2.2-3705.4. Employee personnel records may be exempt under Va. Code §2.2-3705.1.

The Office of the Virginia Attorney General has provided guidance to the Department of Criminal Justice Services on the exemptions from FOIA that apply to threat assessment records, but recommends that each threat assessment team consult with its own institutional legal authorities. It would be desirable if the General Assembly would pass legislation that specifically excluded the records of threat assessment teams from FOIA release.

6. Institutions that do not have an internal law enforcement agency may designate a particular office or school official to maintain threat assessment records. In all cases, threat assessment records should be regarded as law enforcement/security related records, even if the person in charge of maintaining the records is not a sworn law enforcement officer. The person designated as the campus safety official for the purpose of fulfilling Clery Act requirements may be appropriate.
7. The creation of a threat assessment file will not prevent use of other records according to existing practices. For example, disciplinary actions that would ordinarily be included in the subject's educational or employment record should continue to be placed in those records. Incidents of threatening behavior that would ordinarily be recorded in an institutional file, such as an employment record, should continue to be placed in those locations.

B. Family Educational Records Privacy Act (FERPA)

1. The purpose of FERPA is to protect the privacy of students and parents by restricting the disclosure of educational records. This federal law has been cited as a barrier to the exchange of information in the course of a threat assessment. There are also questions whether the records from a threat assessment of a student should be placed in the students' educational record, making them subject to FERPA restrictions.
 - An electronic copy of FERPA is available online: <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=b02149c532a42dbc3aaf861eee218d95;rgn=div5;view=text;node=34%3A1.1.1.1.33;idno=34;cc=ecfr>
 - There are many misconceptions about the restrictions imposed by FERPA. In October 2007, the U.S. Department of Education released a series of documents clarifying the limitations of FERPA, available at: <http://www.ed.gov/policy/gen/guid/fpco/ferpa/safeschools/index.html>
 - In December 2008, the U.S. Department of Education issued new regulations regarding FERPA. These new regulations reaffirm that an institution is permitted to release information from a student's educational records when it determines that there is an articulable and significant threat to the health or safety of a student or other individual, and that the information can be disclosed to any person, including parents, whose knowledge of the information is considered necessary to protect someone's health or safety. This clarification applies to all public schools, including primary and secondary schools. The regulations are available at: <http://www.ed.gov/legislation/FedRegister/finrule/2008-4/120908a.pdf>
2. FERPA only applies to a student's educational records. Institutional records not covered by FERPA include the following:
 - Personal observations and knowledge that is not based on student records;
 - Personal notes by a staff member that are used for personal memory and are not accessible to others except as a temporary substitute for the person who made them;

- Records created and maintained by law enforcement or security offices for law enforcement or campus security purposes;
 - Records made by a professional or paraprofessional concerning the medical or psychological treatment (excluding remedial education) of a student age 18 or older who is attending a postsecondary institution;
 - Records that only contain information about an individual after he or she is no longer a student at the institution.
3. There are many conditions in which information in a student's educational record can be disclosed without the student's consent as described below.

C. FERPA does not prohibit a postsecondary institution from contacting parents.

1. According to the U. S. Department of Education, "schools may release any and all information to parents, without the consent of the eligible student, if the student is a dependent for tax purposes under the IRS rules." <<http://www.ed.gov/policy/gen/guid/fpco/hottopics/ht-parents-postsecstudents.html>>
2. In a health or safety emergency involving a student, schools can disclose information from education records to the student's parents.
3. A postsecondary institution can inform parents of students under age 21 when their son or daughter has violated any law or policy concerning the use or possession of alcohol or any other controlled substance.
4. "Nothing in FERPA prohibits a school official from sharing with parents information that is based on that official's personal knowledge or observation and that is not based on information contained in an education record." <<http://www.ed.gov/policy/gen/guid/fpco/hottopics/ht-parents-postsecstudents.html>>

D. Virginia law (§23-9.2:3 C) provides for parent notification.

1. Every public institution of higher education in Virginia is required to establish policies and procedures that clarify the circumstances under which parental notification will occur when a dependent student receives mental health treatment at the institution's student health or counseling center.
2. Parental notification is required by Virginia law only if it is determined that there is a substantial likelihood that, as a result of mental illness, the student will in the near future cause serious physical harm to self or others, or suffer serious physical harm due to lack of capacity to protect himself or herself or provide for his or her basic human needs.
3. Notification can be withheld if the student's treating physician or clinical psychologist has stated in writing that the notification would be reasonably likely to cause substantial harm to the student or another person.
4. No institution or staff member can be held civilly liable for harm resulting from parental notification unless the disclosure constitutes gross negligence or willful misconduct.
5. In all cases, the decision to contact parents must be based on a judgment about the most appropriate course of action to maintain safety.

E. It is important to warn potential victims.

1. Safety takes priority over confidentiality. In a dangerous situation, it is preferable to violate confidentiality rather than fail to take appropriate safety precautions.
2. Legal cases since the Tarasoff decision (Herbert & Young, 2002) support the opinion that confidential information should be disclosed to potential victims of violence for safety purposes, including the identity of the subject who poses a threat. Failure to warn potential victims, or take appropriate protective action, can be grounds for liability law suits.
3. According to the U.S. Department of Education (2007), the Clery Act “requires postsecondary institutions to provide timely warnings of crimes that represent a threat to the safety of students or employees.”
4. Virginia law (§54.1-2400.1) states that mental health service providers have a duty to take precautions to protect third parties from violence threatened by their clients. One of the options that providers are permitted to choose is warning potential victims and notifying law enforcement (see below).
5. According to the U.S. Department of Education, in an emergency, FERPA permits school officials to disclose information from a student’s education records without the student’s consent in order to protect the health and safety of others. Information can be disclosed to law enforcement officials, public health officials, and trained medical personnel.

F. Virginia law (§54.1-2400.1) guides the response of mental health service providers to client threats.

1. The law applies only to mental health service providers, including counselors, nurses, psychologists, psychiatrists, and social workers.
2. According to the statute, “A mental health service provider has a duty to take precautions to protect third parties from violent behavior or other serious harm only when the client has orally, in writing, or via sign language, communicated to the provider a specific and immediate threat to cause serious bodily injury or death to an identified or readily identifiable person or persons, if the provider reasonably believes, or should believe according to the standards of his profession, that the client has the intent and ability to carry out that threat immediately or imminently. If the third party is a child, in addition to taking precautions to protect the child from the behaviors in the above types of threats, the provider also has a duty to take precautions to protect the child if the client threatens to engage in behaviors that would constitute physical abuse or sexual abuse as defined in §18.2-67.10. The duty to protect does not attach unless the threat has been communicated to the provider by the threatening client while the provider is engaged in his professional duties.”
3. The duty of the mental health service provider is discharged by one or more of the following actions:
 - “1. Seeks involuntary admission of the client under Chapter 8 (§37.2-800 et seq.) of Title 37.2.
 2. Makes reasonable attempts to warn the potential victims or the parent or guardian of the potential victim if the potential victim is under the age of 18.

3. Makes reasonable efforts to notify a law-enforcement official having jurisdiction in the client's or potential victim's place of residence or place of work, or place of work of the parent or guardian if the potential victim is under age 18, or both.
4. Takes steps reasonably available to the provider to prevent the client from using physical violence or other means of harm to others until the appropriate law-enforcement agency can be summoned and takes custody of the client.
5. Provides therapy or counseling to the client or patient in the session in which the threat has been communicated until the mental health service provider reasonably believes that the client no longer has the intent or the ability to carry out the threat."
4. By law, the mental health service provider cannot be held civilly liable for breaching confidentiality in meeting the obligations of this statute.
5. By law, the mental health service provider cannot be held civilly liable for failing to predict violence in a client who did not communicate a threat.
4. This statute does not provide guidance for persons who are not mental health professionals, but similar practices by threat assessment team members should be considered.
5. This statute only applies to immediate threats communicated to the mental health service providers, but in the absence of explicit legal guidance elsewhere in the code, its directions suggest good practice to use in situations where there is a substantive threat that is judged to be imminent.

G. Health Insurance Portability and Accountability Act (HIPAA)

1. According to the U.S. Department of Education, HIPAA does not apply to education records: "The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a law passed by Congress intended to establish transaction, security, privacy, and other standards to address concerns about the electronic exchange of health information. However, the HIPAA Privacy Rule excludes from its coverage those records that are protected by FERPA at school districts and postsecondary institutions that provide health or medical services to students. This is because Congress specifically addressed how education records should be protected under FERPA. For this reason, records that are protected by FERPA are not subject to the HIPAA Privacy Rule and may be shared with parents under the circumstances described above." (<http://www.ed.gov/policy/gen/guid/fpco/hottopics/ht-parents-postsecstudents.html>)
2. HIPAA allows disclosure of protected health information, including psychotherapy notes, concerning a patient when it is considered necessary to prevent a serious and imminent threat to others. This can include disclosure to law enforcement, family members, potential victims and others if the disclosure can be justified as reducing the risk of violence. See CFR §164.512(j).
3. If a patient is both a student and an employee of the institution, the health records are considered "education records" covered by FERPA rather than by HIPAA.
4. A postsecondary institution that is covered by HIPAA may have health information concerning nonstudents in its law enforcement unit. In these cases, the institution should become a "hybrid entity" and designate its health unit as its health care component, so that records outside the health care component (e.g., in its law enforcement unit) are not covered by HIPAA. See CFR §105.

H. Relationship between HIPAA and FERPA

1. The U.S. Department of Education and Department of Health and Human Services issued a document clarifying FERPA and HIPAA in November 2008. There is a complex relationship between FERPA and HIPAA and the status of records can change depending on how the records are used or disclosed. <http://www.ed.gov/policy/gen/guid/fpco/doc/ferpa-hippa-guidance.pdf>
2. If an institution provides health care or mental health services to someone who is not a student, those records are covered by HIPAA. An institution with both student and nonstudent patients must follow FERPA regarding the health records of students, but HIPAA regarding health records of nonstudents.
3. "Treatment records" are not included in the definition of "education records" under FERPA. Treatment records are records made by a physician, psychologist, or other professional or paraprofessional in connection with the provision of treatment, and are not available to anyone other than treatment providers.
4. If a school discloses a student's treatment records for purposes other than treatment (such as a threat assessment), the treatment records are now considered "education records" and must be subject to all FERPA requirements, including the right of the student to review them.
5. Under FERPA, treatment records are not available to anyone other than professionals providing treatment to the student and so the student does not have access to them. However, if the institution chooses to give the student access to the records, they must be considered "education records" and subject to all other FERPA requirements.
6. Billing records of an institution's health clinic are considered "education records" under FERPA.
7. Treatment records that are shared with persons other than professionals providing treatment to the student are considered "education records" and are subject to FERPA requirements.
8. Patient records maintained by a university-affiliated hospital are subject to HIPAA, even if the patient is a student.
9. If the university-affiliated hospital operates the student health clinic, the clinic records on students are subject to FERPA as "education records" or "treatment records" and are not subject to HIPAA.

I. Information-sharing with mental health treatment providers

1. It is important to distinguish between mental health professionals who are in a treatment role as therapists from those whose role is to provide an evaluation for a third party such as a threat assessment team. There is a potential for role conflict when the same professional is both an evaluator with obligations to a third party and a treatment provider in a therapeutic relationship with obligations to the patient or client. As a result, treating professionals are often unwilling to provide information to third parties that would jeopardize their treatment relationship.
2. Mental health professionals ordinarily explain to their patients/clients that there are exceptions to the confidentiality of their treatment relationship, such as when the professional is required by law to report suspected child abuse or neglect and when there is an imminent danger to self or others. Mental health professionals in institutions of higher education should advise new or

prospective patients/clients of the institution's policy regarding the reporting of threats of violence and the sharing of information with threat assessment teams.

3. When a mental health professional is asked to provide treatment to a person who is already the subject of a threat assessment, the treating professional should clarify the nature of this role to the subject and obtain consent for sharing information with the team.
 - This consent should indicate that information about the subject will be limited to information that is relevant to the needs of the threat assessment team. The description of this limitation may vary according to the case, but typically should include provision for the mental health professional to notify the threat assessment team of the subject's attendance, and perhaps, compliance with any prescribed medications.
 - The mental health professional should also indicate that more detailed information about the subject may be revealed in an emergency or in a situation where there is urgent concern about the safety of the subject or others. Examples of such situations could be statements by the subject that indicate plans or intentions to carry out a violent act, or a change in the subject's mental state that raises concern about his or her perception of reality, such as the onset of psychosis.
 - The threat assessment team and treating mental health professional should come to agreement on the kind of information that will be disclosed on a routine basis so that the team can monitor the subject's attendance or compliance with treatment. The team and treating professional should also acknowledge the possibility of disclosing additional information in a crisis or emergency situation. This agreement between the team and the therapist should be in writing and should be disclosed to the subject at the outset of treatment.

VI. Community Resources

A. Civil commitment

1. Threat assessment teams should become familiar with the 2008 revision to Virginia's laws regarding civil commitment (§37.2-817). The new criteria for involuntary hospitalization include a finding that *"as a result of mental illness, the person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs...."*
2. The law continues to require that persons cannot be committed unless they have a "mental illness."
3. The revised statute replaces the condition "imminent danger to himself or others" with the condition "substantial likelihood that... he or she will cause serious physical harm to himself or others"
 - The time period for concern is no longer "imminent," but "in the near future." The previous term "imminent" was often interpreted to mean immediate danger or within the next 24 hours. This time period was considered too restrictive by many authorities and was replaced with a less restrictive term, "in the near future." It has been recommended that "in the near future" means about one week, but this is a judgment to be made in each case considering the total circumstances and not an absolute timeframe (see Cohen, Bonnie, & Monahan, 2008).

- The relatively ambiguous term “danger” has been replaced with the term “substantial likelihood.” The term “substantial likelihood” is subject to interpretation, but suggests that the risk of harm must be more than trivial and can be regarded as probable rather than simply possible (see Cohen, Bonnie, & Monahan, 2008).
 - The new statute indicates that the harm to self or others must be “serious physical harm” which presumably can include injury that is not life threatening, but excludes injury that is trivial. It also excludes emotional injury or financial injury.
4. The new statute requires that a determination that someone has a substantial likelihood of causing serious physical harm to self or others must be based on evidence of “recent behavior causing, attempting, or threatening harm and other relevant information, if any.”
- A person cannot be committed based on behavior that was not recent, but recent is not defined.
 - Statements that threaten harm appear to be included as evidence supporting commitment.
 - The statute permits consideration of a wide range of factors (“other relevant information”) along with evidence of recent behavior that causes, attempts, or threatens harm.
5. The statute replaced the phrase “substantially unable to care for self” with the new phrase, “suffer serious harm due to his lack of capacity to protect himself from harm or provide for this basic human needs.”
- This phrase refers to “serious harm” rather than serious physical harm. This was a deliberate decision to make the kind of harm that a person might inflict on himself or herself broader than the physical harm that he or she might cause to others. Some of the kinds of harm that might be considered as a basis for commitment include: financial harm, medical harm, eviction, loss of custody of one’s children, loss of employment, and arrest and incarceration (Cohen, Bonnie, & Monahan, 2008).
 - The term “basic human needs” is subject to interpretation, and so it remains an open question whether a homeless person suffering from mental illness should in all cases be considered committable.

B. Community agencies

1. Institutions of higher education should establish memoranda of understanding to facilitate information sharing with community agencies.
- Medical and psychiatric facilities in the surrounding community should agree to ask their newly admitted patients permission to notify the institution when that patient is a student, faculty member, or staff member of the institution. The purpose of this request is to enable mental health services at the institution to reach out to these individuals for service purposes. (The mental health services agency would contact the threat assessment team only if there is information suggesting the presence of a threat.)
 - Medical, psychiatric, and mental health agencies in the surrounding community should be advised of their legal and professional responsibilities to take protective action when they are aware of a patient or client who has communicated a threat. They should be advised of the means by which they can notify institution authorities if appropriate.

- Law enforcement agencies should agree to inform the institution's law enforcement agency when a person has been arrested who is a student, faculty member, or staff member of the institution.
2. Institutions of higher education, such as some community colleges, which do not have mental health professionals who can serve on a threat assessment team should contract with a mental health agency or independent practitioner in the community who can serve as a team member.
 3. Institutions of higher education, such as some community colleges, which do not have an institution-based law enforcement staff that can serve on a threat assessment team should contract with a local law enforcement agency to obtain a team member.
 4. Campus-wide violence education and prevention strategies
 - All appropriate campus agencies should be educated regarding threat identification and referral to the threat assessment team, including student services, health services, career planning and placement, residence life, academic departments, human resources and employee assistance, law enforcement and security.
 - Institutions of higher education should have an online educational program to encourage help-seeking for troubled individuals.
 - The program should be available to students, parents, staff, and faculty.
 - The program should cover the overall safety of the institution, information on how to seek help in various troubling situations, kinds of help that are available, and encouragement to seek help for self or others.
 - The most effective form of prevention of interpersonal violence is to address interpersonal conflicts and mental health problems before they escalate into potentially violent situations. This includes programs to mediate disputes and to treat mental health problems such as substance abuse and depression.
 - The prevention of crime-related violence requires an effective security and law enforcement system, education of the public to identify and report suspicious or criminal activity, and aggressive investigation of criminal activity involving gangs, drug dealing, and sexual assault.

VII. Recommended Institutional Policies

Institutions should enact written policies that facilitate the efforts of the threat assessment team. The nature and extent of these policies may vary across institutions and depend on the kind of policies already in place. This section contains some policies that are especially important.

A. Prohibition of threatening behavior

1. All staff, faculty, students, and others who are contracted with the institution in any way should be advised that the institution prohibits the use of language or behavior that threatens unlawful physical violence and has the effect of intimidating, frightening, coercing, or provoking others. Threats can be verbal or nonverbal, and may be communicated orally, in writing, through gestures, or by any other means, including electronic transmission. Threats may be communicated directly to an intended victim or to third parties.
2. Threats may be subject to disciplinary action by the institution, including criminal prosecution if the behavior constitutes a violation of Virginia law.

3. Persons identified as engaging in threatening language or behavior are subject to suspension or removal from the institution.
4. Employees, faculty, and contracted individuals who are identified as engaging in threatening language or behavior may be required, as a condition of continued employment, to participate in a mental health evaluation as part of a threat assessment process. Students who are identified as engaging in threatening language or behavior may be required, as a condition of continued enrollment, to participate in a mental health evaluation as part of a threat assessment process.
5. The mental health evaluation will be completed by a clinical psychologist or psychiatrist with training or experience in risk assessment that is acceptable to the institution. The report of this evaluation will be made to the institution's threat assessment team.

B. Threat reporting policy

1. All administrative units and administrators must report threats (or threatening behavior) to the threat assessment team as soon as the threat is identified. Judgments about the seriousness of a threat should be made by the threat assessment team rather than the administrative unit, because the threat assessment team may have additional information that alters the seriousness of the situation. The threat assessment team will determine the seriousness of the threatening situation and what actions, if any, are appropriate to resolve the threat.
2. In emergency situations, an immediate call should be made to 911. In all other situations, reports should be made by calling the threat assessment office and making an oral report and/or scheduling a meeting to make a timely oral report. The team member taking the report will complete a standard intake form identifying an active case for investigation. The team may require additional written information from the administrator or others making the report.
3. Persons communicating with the threat assessment team should provide all available information concerning the subject of the threat assessment and the nature of the threatening situation. In a health or safety emergency, no information that is necessary to protect the health or safety of others should be withheld as confidential. In a situation that is not a health or safety emergency, medical, mental health, employment, and academic records that are ordinarily regarded as confidential may be released under conditions determined by relevant federal and state law.

C. Threat assessment cooperation and coordination of effort

1. All administrative units and administrators are expected to cooperate with the threat assessment team in its response to a threat or threatening situation.
2. Administrative units and administrators should consult with the threat assessment team prior to taking disciplinary actions or other actions altering the academic, residential, or employment status of the subject of a threat assessment. In the event that the threat assessment team disapproves of the proposed disciplinary action or other administrative action because it interferes with efforts to reduce the risk of violence, the action should be deferred. Disagreements between the administrative unit and the threat assessment team on the decision of the administrative unit to take disciplinary actions or other administrative actions affecting the academic, residential, or employment status of the subject will be resolved by the president of the institution.

D. Threat assessment records

Threat assessment teams should maintain confidential records of all cases for legal and security purposes. The records will not be part of a subject's academic, medical, mental health, or employment records, if any exist at the institution. This policy does not alter any other policy regarding the placement of information in a subject's academic, medical, mental health, or employment records.

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Appendices

I. Virginia laws

A. Civil commitment

<https://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+37.2-817>

i. §37.2-817. Involuntary admission and mandatory outpatient treatment orders.

- A. The district court judge or special justice shall render a decision on the petition for involuntary admission after the appointed examiner has presented the report required by §37.2-815, and after the community services board that serves the county or city where the person resides or, if impractical, where the person is located has presented a preadmission screening report with recommendations for that person's placement, care, and treatment pursuant to §37.2-816. These reports, if not contested, may constitute sufficient evidence upon which the district court judge or special justice may base his decision. The examiner, if not physically present at the hearing, and the treating physician at the facility of temporary detention shall be available whenever possible for questioning during the hearing through a two-way electronic video and audio or telephonic communication system as authorized in §37.2-804.1.
- B. An employee or a designee of the local community services board, as defined in §37.2-809, that prepared the preadmission screening report shall attend the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a two-way electronic video and audio or telephonic communication system as authorized in §37.2-804.1. Where a hearing is held outside of the service area of the community services board that prepared the preadmission screening report, and it is not practicable for a representative of the board to attend or participate in the hearing, arrangements shall be made by the board for an employee or designee of the board serving the area in which the hearing is held to attend or participate on behalf of the board that prepared the preadmission screening report. The community services board that prepared the preadmission screening report shall remain responsible for the person subject to the hearing and, prior to the hearing, shall send the preadmission screening report through certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means to the community services board attending the hearing. Where a community services board attends the hearing on behalf of the community services board that prepared the preadmission screening report, the attending community services board shall inform the community services board that prepared the preadmission screening report of the disposition of the matter upon the conclusion of the hearing. In addition, the attending community services board shall transmit the disposition through certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means.

At least 12 hours prior to the hearing, the court shall provide to the community services board that prepared the preadmission screening report the time and location of the hearing. If the representative of the community services board will be present by telephonic means, the court shall provide the telephone number to the board.

- C. After observing the person and considering (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any examiner's certification, (v) any health records available, (vi) the preadmission screening report, and

(vii) any other relevant evidence that may have been admitted, if the judge or special justice finds by clear and convincing evidence that (a) the person has a mental illness and there is a substantial likelihood that, as a result of mental illness, the person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, and (b) all available less restrictive treatment alternatives to involuntary inpatient treatment, pursuant to subsection D, that would offer an opportunity for the improvement of the person's condition have been investigated and determined to be inappropriate, the judge or special justice shall by written order and specific findings so certify and order that the person be admitted involuntarily to a facility for a period of treatment not to exceed 30 days from the date of the court order. Such involuntary admission shall be to a facility designated by the community services board that serves the city or county in which the person was examined as provided in §37.2-816. If the community services board does not designate a facility at the commitment hearing, the person shall be involuntarily admitted to a facility designated by the Commissioner. Upon the expiration of an order for involuntary admission, the person shall be released unless he is involuntarily admitted by further petition and order of a court, which shall be for a period not to exceed 180 days from the date of the subsequent court order, or such person makes application for treatment on a voluntary basis as provided for in §37.2-805 or is ordered to mandatory outpatient treatment pursuant to subsection D.

- D. After observing the person and considering (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any examiner's certification, (v) any health records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have been admitted, if the judge or special justice finds by clear and convincing evidence that (a) the person has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs; (b) less restrictive alternatives to involuntary inpatient treatment that would offer an opportunity for improvement of his condition have been investigated and are determined to be appropriate; and (c) the person (A) has sufficient capacity to understand the stipulations of his treatment, (B) has expressed an interest in living in the community and has agreed to abide by his treatment plan, and (C) is deemed to have the capacity to comply with the treatment plan and understand and adhere to conditions and requirements of the treatment and services; and (d) the ordered treatment can be delivered on an outpatient basis by the community services board or designated provider, the judge or special justice shall by written order and specific findings so certify and order that the person be admitted involuntarily to mandatory outpatient treatment. Less restrictive alternatives shall not be determined to be appropriate unless the services are actually available in the community and providers of the services have actually agreed to deliver the services.
- E. Mandatory outpatient treatment may include day treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11 (§37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of the person. The community services board that serves the city or county in which the person resides shall recommend a specific course of treatment and programs for the provision of mandatory outpatient treatment. The duration of mandatory outpatient

treatment shall be determined by the court based on recommendations of the community services board, but shall not exceed 90 days. Upon expiration of an order for mandatory outpatient treatment, the person shall be released from the requirements of the order unless the order is continued in accordance with §37.2-817.4.

- F. Any order for mandatory outpatient treatment shall include an initial mandatory outpatient treatment plan developed by the community services board that completed the preadmission screening report. The plan shall, at a minimum, (i) identify the specific services to be provided, (ii) identify the provider who has agreed to provide each service, (iii) describe the arrangements made for the initial in-person appointment or contact with each service provider, and (iv) include any other relevant information that may be available regarding the mandatory outpatient treatment ordered. The order shall require the community services board to monitor the implementation of the mandatory outpatient treatment plan and report any material noncompliance to the court.
- G. No later than five days, excluding Saturdays, Sundays, or legal holidays, after an order for mandatory outpatient treatment has been entered pursuant to this section, the community services board where the person resides that is responsible for monitoring compliance with the order shall file a comprehensive mandatory outpatient treatment plan. The comprehensive mandatory outpatient treatment plan shall (i) identify the specific type, amount, duration, and frequency of each service to be provided to the person, (ii) identify the provider that has agreed to provide each service included in the plan, (iii) certify that the services are the most appropriate and least restrictive treatment available for the person, (iv) certify that each provider has complied and continues to comply with applicable provisions of the Department's licensing regulations, (v) be developed with the fullest possible involvement and participation of the person and reflect his preferences to the greatest extent possible to support his recovery and self-determination, (vi) specify the particular conditions with which the person shall be required to comply, and (vii) describe how the community services board shall monitor the person's compliance with the plan and report any material noncompliance with the plan. The community services board shall submit the comprehensive mandatory outpatient treatment plan to the court for approval. Upon approval by the court, the comprehensive mandatory outpatient treatment plan shall be filed with the court and incorporated into the order of mandatory outpatient treatment. Any subsequent substantive modifications to the plan shall be filed with the court for review and attached to any order for mandatory outpatient treatment.
- H. If the community services board responsible for developing the comprehensive mandatory outpatient treatment plan determines that the services necessary for the treatment of the person's mental illness are not available or cannot be provided to the person in accordance with the order for mandatory outpatient treatment, it shall notify the court within five business days of the entry of the order for mandatory outpatient treatment. Within two business days of receiving such notice, the judge or special justice, after notice to the person, the person's attorney, and the community services board responsible for developing the comprehensive mandatory outpatient treatment plan shall hold a hearing pursuant to §37.2-817.2.
- I. Upon entry of any order for mandatory outpatient treatment, the clerk of the court shall provide a copy of the order to the person who is the subject of the order, to his attorney, and to the community services board required to monitor compliance with the plan. The community services board shall acknowledge receipt of the order to the clerk of the court on a form established by the Office of the Executive Secretary of the Supreme Court and provided by the court for this purpose.

- J. The court may transfer jurisdiction of the case to the district court where the person resides at any time after the entry of the mandatory outpatient treatment order. The community services board responsible for monitoring compliance with the mandatory outpatient treatment plan shall remain responsible for monitoring the person's compliance with the plan until the community services board serving the locality to which jurisdiction of the case has been transferred acknowledges the transfer and receipt of the order to the clerk of the court on a form established by the Office of the Executive Secretary of the Supreme Court and provided by the court for this purpose.
- K. Any order entered pursuant to this section shall provide for the disclosure of medical records pursuant to §37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

(1976, c. 671, §37.1-67.3; 1979, c. 426; 1980, cc. 166, 582; 1982, c. 471; 1984, c. 277; 1985, c. 261; 1986, cc. 349, 609; 1988, c. 225; 1989, c. 716; 1990, cc. 59, 60, 728, 798; 1991, c. 636; 1992, c. 752; 1994, cc. 736, 907; 1995, cc. 489, 668, 844; 1996, cc. 343, 893; 1997, cc. 558, 921; 1998, c. 446; 2001, cc. 478, 479, 507, 658, 837; 2004, cc. 66, 1014; 2005, cc. 458, 716; 2008, cc. 779, 780, 782, 793, 850, 870.)

<http://law.justia.com/virginia/codes/toc3702000/37.2-808.html>

ii. §37.2-808. Emergency custody; issuance and execution of order.

- A. Any magistrate may issue, upon the sworn petition of any responsible person or upon his own motion, an emergency custody order when he has probable cause to believe that any person within his judicial district (i) has mental illness, (ii) presents an imminent danger to himself or others as a result of mental illness or is so seriously mentally ill as to be substantially unable to care for himself, (iii) is in need of hospitalization or treatment, and (iv) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.
- B. Any person for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board or behavioral health authority who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department.
- C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. Transportation under this section shall include transportation to a medical facility as may be necessary to obtain emergency medical evaluation or treatment. This evaluation or treatment shall be conducted immediately in accordance with state and federal law.
- D. The magistrate shall order the primary law-enforcement agency from the jurisdiction served by the community services board or behavioral health authority that designated the person to perform the evaluation required in subsection B to execute the order and provide transportation. If the community services board or behavioral health authority serves more than one jurisdiction, the magistrate shall designate the primary law-enforcement agency from the particular jurisdiction within the community services board's or behavioral health authority's service area where the person who is the subject of the emergency custody order was taken into custody or, if the person has not yet been taken into custody, the

primary law-enforcement agency from the jurisdiction where the person is presently located to execute the order and provide transportation.

- E. A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing an emergency custody order pursuant to this section.
- F. A law-enforcement officer who, based upon his observation or the reliable reports of others, has probable cause to believe that a person meets the criteria for emergency custody as stated in this section may take that person into custody and transport that person to an appropriate location to assess the need for hospitalization or treatment without prior authorization. Such evaluation shall be conducted immediately.
- G. Nothing herein shall preclude a law-enforcement officer from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section.
- H. The person shall remain in custody until a temporary detention order is issued or until the person is released, but in no event shall the period of custody exceed four hours.
- I. If an emergency custody order is not executed within four hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any magistrate thereof.

(1995, c. 844, §37.1-67.01; 1996, c. 893; 1998, c. 611; 2004, c. 737; 2005, c. 716.)

B. Crimes related to stalking

<http://law.justia.com/virginia/codes/toc1902000/19.2-152.8.html>

i. §19.2-152.8. Emergency protective orders authorized in cases of stalking and acts of violence.

- A. Any judge of a circuit court, general district court, juvenile and domestic relations district court or magistrate may issue a written or oral ex parte emergency protective order pursuant to this section in order to protect the health or safety of any person.
- B. When a law-enforcement officer, an allegedly stalked person or an alleged victim of a criminal offense resulting in a serious bodily injury to the alleged victim asserts under oath to a judge or magistrate that such person is being or has been subjected to stalking or a criminal offense resulting in a serious bodily injury to the alleged victim and on that assertion or other evidence the judge or magistrate finds that (i) there is probable danger of a further such offense being committed by the respondent against the alleged victim and (ii) a warrant for the arrest of the respondent has been issued, the judge or magistrate shall issue an ex parte emergency protective order imposing one or more of the following conditions on the respondent:
 - 1. Prohibiting acts of violence or acts of stalking in violation of §18.2-60.3;
 - 2. Prohibiting such contacts by the respondent with the alleged victim of such crime or such person's family or household members as the judge or magistrate deems necessary to protect the safety of such persons; and

3. Such other conditions as the judge or magistrate deems necessary to prevent acts of stalking, or criminal offenses resulting in injury to person or property, or communication or other contact of any kind by the respondent.
- C. An emergency protective order issued pursuant to this section shall expire 72 hours after issuance. If the expiration of the 72-hour period occurs at a time that the court is not in session, the emergency protective order shall be extended until 5 p.m. of the next business day that the court which issued the order is in session. The respondent may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court.
 - D. A law-enforcement officer may request an emergency protective order pursuant to this section orally, in person or by electronic means, and the judge of a circuit court, general district court, or juvenile and domestic relations district court or a magistrate may issue an oral emergency protective order. An oral emergency protective order issued pursuant to this section shall be reduced to writing, by the law-enforcement officer requesting the order or the magistrate, on a preprinted form approved and provided by the Supreme Court of Virginia. The completed form shall include a statement of the grounds for the order asserted by the officer or the alleged victim of such crime.
 - E. Upon receipt of the order by a local law-enforcement agency for service, the agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network system established and maintained by the Department pursuant to Chapter 2 (§52-12 et seq.) of Title 52. Where practical, the court or magistrate may transfer information electronically to the Virginia Criminal Information Network system. A copy of an emergency protective order issued pursuant to this section shall be served upon the respondent as soon as possible, and upon service, the agency making service shall enter the date and time of service into the Virginia Criminal Information Network system. One copy of the order shall be given to the alleged victim of such crime. The judge or magistrate who issues an oral order pursuant to an electronic request by a law-enforcement officer shall verify the written order to determine whether the officer who reduced it to writing accurately transcribed the contents of the oral order. The original copy shall be filed with the clerk of the appropriate district court within five business days of the issuance of the order. If the order is later dissolved or modified, a copy of the dissolution or modification order shall be forwarded and entered in the system as described above. Upon request, the clerk shall provide the alleged victim of such crime with information regarding the date and time of service.
 - F. The issuance of an emergency protective order shall not be considered evidence of any wrongdoing by the respondent.
 - G. As used in this section, a "law-enforcement officer" means any (i) person who is a full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth and (ii) member of an auxiliary police force established pursuant to subsection B of §15.2-1731. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

- H. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.
- I. As used in this section, "copy" includes a facsimile copy.
- J. No fee shall be charged for filing or serving any petition pursuant to this section.

(1997, c. 831; 1998, cc. 569, 684; 1999, c. 371; 2001, c. 474; 2002, cc. 507, 706, 810, 818; 2003, c. 730.)

ii. §19.2-152.9. Preliminary protective orders in cases of stalking and acts of violence.

- A. Upon the filing of a petition alleging that (i) the petitioner is or has been, within a reasonable period of time, subjected to stalking or a criminal offense resulting in a serious bodily injury to the petitioner, and (ii) a warrant has been issued for the arrest of the alleged perpetrator of such act or acts, the court may issue a preliminary protective order against the alleged perpetrator in order to protect the health and safety of the petitioner or any family or household member of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown when the petition is supported by an affidavit or sworn testimony before the judge or intake officer. Immediate and present danger of stalking or another criminal offense that may result in a serious bodily injury to the petitioner or evidence sufficient to establish probable cause that stalking or a criminal offense resulting in a serious bodily injury to the petitioner has recently occurred shall constitute good cause.

A preliminary protective order may include any one or more of the following conditions to be imposed on the respondent:

1. Prohibiting criminal offenses that may result in injury to person or property or acts of stalking in violation of §18.2-60.3;
 2. Prohibiting such other contacts by the respondent with the petitioner or the petitioner's family or household members as the court deems necessary for the health and safety of such persons; and
 3. Such other conditions as the court deems necessary to prevent acts of stalking, criminal offenses that may result in injury to person or property, or communication or other contact of any kind by the respondent.
- B. Upon receipt of the order by a local law-enforcement agency for service, the agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network system established and maintained by the Department pursuant to Chapter 2 (§52-12 et seq.) of Title 52. Where practical, the court may transfer information electronically to the Virginia Criminal Information Network system. A copy of a preliminary protective order shall be served as soon as possible on the alleged stalker in person as provided in §16.1-264, and upon service, the agency making service shall enter the date and time of service into the Virginia criminal information network system. The preliminary order shall specify a date for

the full hearing. The hearing shall be held within 15 days of the issuance of the preliminary order. However, upon motion of the respondent and for good cause shown, the court may continue the hearing. The preliminary order shall remain in effect until the hearing. Upon request after the order is issued, the clerk shall provide the petitioner with a copy of the order and information regarding the date and time of service. The order shall further specify that either party may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court.

Upon receipt of the return of service or other proof of service pursuant to subsection C of §16.1-264, the clerk shall forward forthwith an attested copy of the preliminary protective order to the local police department or sheriff's office which shall, upon receipt, enter into the Virginia Criminal Information Network system any other information required by the State Police which was not previously entered. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded and entered into the Virginia Criminal Information Network system as described above.

- C. The preliminary order is effective upon personal service on the alleged perpetrator. Except as otherwise provided in §16.1-253.2, a violation of the order shall constitute contempt of court.
- D. At a full hearing on the petition, the court may issue a protective order pursuant to §19.2-152.10 if the court finds that the petitioner has proven the allegation of a criminal offense resulting in a serious bodily injury to the petitioner or stalking by a preponderance of the evidence.
- E. No fees shall be charged for filing or serving petitions pursuant to this section.
- F. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.
- G. As used in this section, "copy" includes a facsimile copy.

(1997, c. 831; 1998, cc. 569, 684; 1999, c. 371; 2001, c. 101; 2002, cc. 507, 810, 818; 2003, c. 730.)

iii. §19.2-152.10. Protective order in cases of stalking and acts of violence.

- A. The court may issue a protective order pursuant to this chapter to protect the health and safety of the petitioner and family or household members of a petitioner upon (i) the issuance of a warrant for a criminal offense resulting in a serious bodily injury to the petitioner, or a violation of §18.2-60.3, (ii) a hearing held pursuant to subsection D of §19.2-152.9, or (iii) a conviction for a criminal offense resulting in a serious bodily injury to the petitioner, or a violation of §18.2-60.3. A protective order issued under this section may include any one or more of the following conditions to be imposed on the respondent:

1. Prohibiting criminal offenses that may result in injury to person or property, or acts of stalking in violation of §18.2-60.3;
 2. Prohibiting such contacts by the respondent with the petitioner or family or household members of the petitioner as the court deems necessary for the health or safety of such persons; and
 3. Any other relief necessary to prevent criminal offenses that may result in injury to person or property, or acts of stalking, communication or other contact of any kind by the respondent.
- B. The protective order may be issued for a specified period; however, unless otherwise authorized by law, a protective order may not be issued under this section for a period longer than two years. A copy of the protective order shall be served on the respondent and provided to the petitioner as soon as possible. The clerk shall upon receipt forward forthwith an attested copy of the order to the local police department or sheriff's office which shall, upon receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network system established and maintained by the Department pursuant to Chapter 2 (§52-12 et seq.) of Title 52. Where practical, the court may transfer information electronically to the Virginia Criminal Information Network system. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded and entered into the system as described above.
- C. Except as otherwise provided, a violation of a protective order issued under this section shall constitute contempt of court.
- D. The court may assess costs and attorneys' fees against either party regardless of whether an order of protection has been issued as a result of a full hearing.
- E. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths, the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing violent or threatening acts or harassment against or contact or communication with or physical proximity to another person, including any of the conditions specified in subsection A, shall be accorded full faith and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person against whom the order is sought to be enforced sufficient to protect such person's due process rights and consistent with federal law. A person entitled to protection under such a foreign order may file the order in any appropriate district court by filing with the court, an attested or exemplified copy of the order. Upon such a filing, the clerk shall forward forthwith an attested copy of the order to the local police department or sheriff's office which shall, upon receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network system established and maintained by the Department pursuant to Chapter 2 (§52-12 et seq.) of Title 52.

Upon inquiry by any law-enforcement agency of the Commonwealth, the clerk shall make a copy available of any foreign order filed with that court. A law-enforcement officer may, in the performance of his duties, rely upon a copy of a foreign protective order or other suitable

evidence which has been provided to him by any source and may also rely upon the statement of any person protected by the order that the order remains in effect.

- F. Either party may at any time file a written motion with the court requesting a hearing to dissolve or modify the order. Proceedings to modify or dissolve a protective order shall be given precedence on the docket of the court.
- G. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.
- H. No fees shall be charged for filing or serving petitions pursuant to this section.
- I. As used in this section, "copy" includes a facsimile copy.

(1997, c. 831; 1998, cc. 569, 684; 1999, c. 371; 2002, cc. 507, 810, 818; 2003, c. 730.)

iv. §18.2-60.3. Stalking; penalty.

- A. Any person, except a law-enforcement officer, as defined in §9.1-101, and acting in the performance of his official duties, and a registered private investigator, as defined in §9.1-138, who is regulated in accordance with §9.1-139 and acting in the course of his legitimate business, who on more than one occasion engages in conduct directed at another person with the intent to place, or when he knows or reasonably should know that the conduct places that other person in reasonable fear of death, criminal sexual assault, or bodily injury to that other person or to that other person's family or household member is guilty of a Class 1 misdemeanor.
- B. A third or subsequent conviction occurring within five years of a conviction for an offense under this section or for a similar offense under the law of any other jurisdiction shall be a Class 6 felony.
- C. A person may be convicted under this section irrespective of the jurisdiction or jurisdictions within the Commonwealth wherein the conduct described in subsection A occurred, if the person engaged in that conduct on at least one occasion in the jurisdiction where the person is tried. Evidence of any such conduct that occurred outside the Commonwealth may be admissible, if relevant, in any prosecution under this section provided that the prosecution is based upon conduct occurring within the Commonwealth.
- D. Upon finding a person guilty under this section, the court shall, in addition to the sentence imposed, issue an order prohibiting contact between the defendant and the victim or the victim's family or household member.
- E. The Department of Corrections, sheriff or regional jail director shall give notice prior to the release from a state correctional facility or a local or regional jail of any person incarcerated upon conviction of a violation of this section, to any victim of the offense who, in writing, requests notice, or to any person designated in writing by the victim. The notice shall be given at least fifteen days prior to release of a person sentenced to a term of incarceration

of more than thirty days or, if the person was sentenced to a term of incarceration of at least forty-eight hours but no more than thirty days, twenty-four hours prior to release. If the person escapes, notice shall be given as soon as practicable following the escape. The victim shall keep the Department of Corrections, sheriff or regional jail director informed of the current mailing address and telephone number of the person named in the writing submitted to receive notice.

All information relating to any person who receives or may receive notice under this subsection shall remain confidential and shall not be made available to the person convicted of violating this section.

For purposes of this subsection, "release" includes a release of the offender from a state correctional facility or a local or regional jail (i) upon completion of his term of incarceration or (ii) on probation or parole.

No civil liability shall attach to the Department of Corrections nor to any sheriff or regional jail director or their deputies or employees for a failure to comply with the requirements of this subsection.

F. For purposes of this section:

"Family or household member" has the same meaning as provided in §16.1-228.

(1992, c. 888; 1994, cc. 360, 521, 739; 1995, c. 824; 1996, cc. 540, 866; 1998, c. 570; 2001, c. 197; 2002, c. 377.)

C. Crimes related to threats

<http://law.justia.com/virginia/codes/toc1802000/18.2-57.html>

i. §18.2-57. Assault and battery.

- A. Any person who commits a simple assault or assault and battery shall be guilty of a Class 1 misdemeanor, and if the person intentionally selects the person against whom a simple assault is committed because of his race, religious conviction, color or national origin, the penalty upon conviction shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.
- B. However, if a person intentionally selects the person against whom an assault and battery resulting in bodily injury is committed because of his race, religious conviction, color or national origin, the person shall be guilty of a Class 6 felony, and the penalty upon conviction shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.
- C. In addition, if any person commits an assault or an assault and battery against another knowing or having reason to know that such other person is a judge, a law-enforcement officer as defined hereinafter, a correctional officer as defined in §53.1-1, a person employed by the Department of Corrections directly involved in the care, treatment or supervision of inmates in the custody of the Department, a firefighter as defined in §65.2-102, or a volunteer firefighter or lifesaving or rescue squad member who is a member of a bona fide volunteer fire department or volunteer rescue or emergency medical squad regardless of whether a resolution has been adopted by the governing body of a political

subdivision recognizing such firefighters or members as employees, engaged in the performance of his public duties, such person is guilty of a Class 6 felony, and, upon conviction, the sentence of such person shall include a mandatory minimum term of confinement of six months.

Nothing in this subsection shall be construed to affect the right of any person charged with a violation of this section from asserting and presenting evidence in support of any defenses to the charge that may be available under common law.

- D. In addition, if any person commits a battery against another knowing or having reason to know that such other person is a full-time or part-time teacher, principal, assistant principal, or guidance counselor of any public or private elementary or secondary school and is engaged in the performance of his duties as such, he shall be guilty of a Class 1 misdemeanor and the sentence of such person upon conviction shall include a sentence of 15 days in jail, two days of which shall be a mandatory minimum term of confinement. However, if the offense is committed by use of a firearm or other weapon prohibited on school property pursuant to §18.2-308.1, the person shall serve a mandatory minimum sentence of confinement of six months.
- E. As used in this section:

"Judge" means any justice or judge of a court of record of the Commonwealth including a judge designated under §17.1-105, a judge under temporary recall under §17.1-106, or a judge pro tempore under §17.1-109, any member of the State Corporation Commission, or of the Virginia Workers' Compensation Commission, and any judge of a district court of the Commonwealth or any substitute judge of such district court.

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof, who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of this Commonwealth, and any conservation officer of the Department of Conservation and Recreation commissioned pursuant to §10.1-115, and game wardens appointed pursuant to §29.1-200, and such officer also includes jail officers in local and regional correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court services or local jail responsibilities, auxiliary police officers appointed or provided for pursuant to §§15.2-1731 and 15.2-1733 and auxiliary deputy sheriffs appointed pursuant to §15.2-1603.

"School security officer" means an individual who is employed by the local school board for the purpose of maintaining order and discipline, preventing crime, investigating violations of school board policies and detaining persons violating the law or school board policies on school property, a school bus or at a school-sponsored activity and who is responsible solely for ensuring the safety, security and welfare of all students, faculty and staff in the assigned school.

- F. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any teacher, teacher aide, principal, assistant principal, guidance counselor, school security officer, school bus driver or school bus aide, while acting in the course and scope of his official capacity, any of the following: (i) incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens

physical injury to persons or damage to property; (iii) reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) reasonable and necessary force for self-defense or the defense of others; or (v) reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or associated paraphernalia that are upon the person of the student or within his control.

In determining whether a person was acting within the exceptions provided in this subsection, due deference shall be given to reasonable judgments that were made by a teacher, teacher aide, principal, assistant principal, guidance counselor, school security officer, school bus driver, or school bus aide at the time of the event.

(1975, cc. 14, 15; 1994, c. 658; 1997, c. 833; 1999, cc. 771, 1036; 2000, cc. 288, 682; 2001, c. 129; 2002, c. 817; 2004, cc. 420, 461; 2006, cc. 270, 709, 829.)

<http://law.justia.com/virginia/codes/toc1802000/18.2-416.html>

ii. §18.2-416. Punishment for using abusive language to another

If any person shall, in the presence or hearing of another, curse or abuse such other person, or use any violent abusive language to such person concerning himself or any of his relations, or otherwise use such language, under circumstances reasonably calculated to provoke a breach of the peace, he shall be guilty of a Class 3 misdemeanor.

iii. §18.2-429. Causing telephone to ring with intent to annoy

Any person who, with or without intent to communicate but with intent to annoy any other person, causes any telephone or digital pager, not his own, to ring or to otherwise signal, and any person who permits or condones the use of any telephone under his control for such purpose shall be guilty of a Class 3 misdemeanor.

Any person who, with or without intent to converse, but with intent to annoy, harass, hinder or delay emergency personnel in the performance of their duties as such, causes a telephone to ring, which is owned or leased for the purpose of receiving emergency calls by a public or private entity providing fire, police or emergency medical service, and any person who knowingly permits the use of a telephone under his control for such purpose, shall be guilty of a Class 1 misdemeanor.

iv. §18.2-59. Extorting money, etc., by threats.

If any person threaten injury to the character, person, or property of another person or accuse him of any offense or threaten to report him as being illegally present in the United States and thereby extort money, property, or pecuniary benefit or any note, bond, or other evidence of debt from him or any other person, he shall be guilty of a Class 5 felony.

(Code 1950, §18.1-184; 1960, c. 358; 1975, cc. 14, 15; 2006, c. 313.)

legis.state.va.us/codecomm/digest/2003/dig0337.htm

v. §22.1-279.3:1. Reports of certain acts to school authorities.

A. Reports shall be made to the division superintendent and to the principal or his designee on all incidents involving (i) the assault or assault and battery, without bodily injury, of any

person on a school bus, on school property, or at a school-sponsored activity; (ii) the assault and battery which that results in bodily injury, sexual assault, death, shooting, stabbing, cutting, or wounding of any person, or stalking of any person as described in §18.2-60.3, on a school bus, on school property, or at a school-sponsored activity; (This section satisfies point 3 on the grading scale at www.bullypolice.org/grade.html) (iii) any conduct involving alcohol, marijuana, a controlled substance, imitation controlled substance, or an anabolic steroid on a school bus, on school property, or at a school-sponsored activity, including the theft or attempted theft of student prescription medications; (iv) any threats against school personnel while on a school bus, on school property or at a school-sponsored activity; (v) the illegal carrying of a firearm, as defined in §22.1-277.07, onto school property; (vi) any illegal conduct involving firebombs, explosive materials or devices, or hoax explosive devices, as defined in §18.2-85, or explosive or incendiary devices, as defined in §18.2-433.1, or chemical bombs, as described in §18.2-87.1, on a school bus, on school property, or at a school-sponsored activity; (vii) any threats or false threats to bomb, as described in §18.2-83, made against school personnel or involving school property or school buses; or (viii) the arrest of any student for an incident occurring on a school bus, on school property, or at a school-sponsored activity, including the charge therefor.

- B. Notwithstanding the provisions of Article 12 (§16.1-299 et seq.) of Chapter 11 of Title 16.1, local law-enforcement authorities shall report, and the principal or his designee and the division superintendent shall receive such reports, on offenses, wherever committed, by students enrolled at the school if the offense would be a felony if committed by an adult or would be a violation of the Drug Control Act (§54.1-3400 et seq.) and occurred on a school bus, on school property, or at a school-sponsored activity, or would be an adult misdemeanor involving any incidents described in clauses (i) through (viii) of subsection A.
- C. The principal or his designee shall submit a report of all incidents required to be reported pursuant to this section to the superintendent of the school division. The division superintendent shall annually report all such incidents to the Department of Education for the purpose of recording the frequency of such incidents on forms that shall be provided by the Department and shall make such information available to the public. A division superintendent who knowingly fails to comply or secure compliance with the reporting requirements of this subsection shall be subject to the sanctions authorized in §22.1-65. A principal who knowingly fails to comply or secure compliance with the reporting requirements of this section shall be subject to sanctions prescribed by the local school board, which may include, but need not be limited to, demotion or dismissal.

The principal or his designee shall also notify the parent of any student involved in an incident required pursuant to this section to be reported, regardless of whether disciplinary action is taken against such student or the nature of the disciplinary action. Such notice shall relate to only the relevant student's involvement and shall not include information concerning other students.

Whenever any student commits any reportable incident as set forth in this section, such student shall be required to participate in such prevention and intervention activities as deemed appropriate by the superintendent or his designee. Prevention and intervention activities shall be identified in the local school division's drug and violence prevention plans developed pursuant to the federal Improving America's Schools Act of 1994 (Title IV - Safe and Drug-Free Schools and Communities Act).

- D. Except as may otherwise be required by federal law, regulation, or jurisprudence, the principal shall immediately report to the local law-enforcement agency any act enumerated in clauses (ii) through (vii) of subsection A that may constitute a criminal offense and may report to the local law-enforcement agency any incident described in clause (i) of subsection A.

Further, except as may be prohibited by federal law, regulation, or jurisprudence, the principal shall also immediately report any act enumerated in clauses (ii) through (v) of subsection A that may constitute a criminal offense to the parents of any minor student who is the specific object of such act. Further, the principal shall report that the incident has been reported to local law enforcement as required by law and that the parents may contact local law enforcement for further information, if they so desire.

- E. A statement providing a procedure and the purpose for the requirements of this section shall be included in school board policies required by §22.1-253.13:7.

The Board of Education shall promulgate regulations to implement this section, including, but not limited to, establishing reporting dates and report formats.

- F. For the purposes of this section, "parent" or "parents" means any parent, guardian or other person having control or charge of a child.

- G. This section shall not be construed to diminish the authority of the Board of Education or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.

<http://law.justia.com/virginia/codes/toc1902000/19.2-81.3.html>

vi. §19.2-81.3. Arrest without a warrant authorized in cases of assault and battery against a family or household member and stalking and for violations of protective orders; procedure, etc.

- A. Any law-enforcement officer, as defined in §19.2-81, may arrest without a warrant for an alleged violation of §§18.2-57.2, 18.2-60.4 or §16.1-253.2 regardless of whether such violation was committed in his presence, if such arrest is based on probable cause or upon personal observations or the reasonable complaint of a person who observed the alleged offense or upon personal investigation.

- B. A law-enforcement officer having probable cause to believe that a violation of §18.2-57.2 or §16.1-253.2 has occurred shall arrest and take into custody the person he has probable cause to believe, based on the totality of the circumstances, was the predominant physical aggressor unless there are special circumstances which would dictate a course of action other than an arrest. The standards for determining who is the predominant physical aggressor shall be based on the following considerations: (i) who was the first aggressor, (ii) the protection of the health and safety of family and household members, (iii) prior complaints of family abuse by the allegedly abusing person involving the family or household members, (iv) the relative severity of the injuries inflicted on persons involved in the incident, (v) whether any injuries were inflicted in self-defense, (vi) witness statements, and (vii) other observations.

- C. Regardless of whether an arrest is made, the officer shall file a written report with his department, which shall state whether any arrests were made, and if so, the number of

arrests, specifically including any incident in which he has probable cause to believe family abuse has occurred, and, where required, including a complete statement in writing that there are special circumstances that would dictate a course of action other than an arrest. The officer shall provide the allegedly abused person, both orally and in writing, information regarding the legal and community resources available to the allegedly abused person. Upon request of the allegedly abused person, the department shall make a summary of the report available to the allegedly abused person.

- D. In every case in which a law-enforcement officer makes an arrest under this section, he shall petition for an emergency protective order as authorized in §16.1-253.4 when the person arrested and taken into custody is brought before the magistrate, except if the person arrested is a minor, a petition for an emergency protective order shall not be required. Regardless of whether an arrest is made, if the officer has probable cause to believe that a danger of acts of family abuse exists, the law-enforcement officer shall seek an emergency protective order under §16.1-253.4, except if the suspected abuser is a minor, a petition for an emergency protective order shall not be required.
- E. A law-enforcement officer investigating any complaint of family abuse, including but not limited to assault and battery against a family or household member shall, upon request, transport, or arrange for the transportation of an abused person to a hospital, safe shelter, or magistrate. Any local law-enforcement agency may adopt a policy requiring an officer to transport or arrange for transportation of an abused person as provided in this subsection.
- F. The definition of "family or household member" in §16.1-228 applies to this section.
- G. As used in this section, a "law-enforcement officer" means (i) any full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this Commonwealth and (ii) any member of an auxiliary police force established pursuant to subsection B of §15.2-1731. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

(1991, c. 715; 1992, c. 886; 1995, cc. 413, 433; 1996, c. 866; 1997, c. 603; 1998, c. 569; 1999, cc. 697, 721, 807; 2002, cc. 810, 818; 2004, c. 1016.)

<http://law.justia.com/virginia/codes/toc1802000/18.2-152.7c1.html>

vii. §18.2-152.7:1. Harassment by computer; penalty.

If any person, with the intent to coerce, intimidate, or harass any person, shall use a computer or computer network to communicate obscene, vulgar, profane, lewd, lascivious, or indecent language, or make any suggestion or proposal of an obscene nature, or threaten any illegal or immoral act, he shall be guilty of a Class 1 misdemeanor.

(2000, c. 849.)

<http://www.policylibrary.tax.virginia.gov/OTP/policy.nsf/803d7a64c617f9f8852569520038e932/39574b207f7d8d1685256ad400781b80?OpenDocument>

viii. §2.2-3700. Virginia Freedom of Information Act.

- A. This chapter may be cited as "The Virginia Freedom of Information Act."
- B. By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked.

The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law. This chapter shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth.

All public bodies and their officers and employees shall make reasonable efforts to reach an agreement with a requester concerning the production of the records requested.

Any ordinance adopted by a local governing body that conflicts with the provisions of this chapter shall be void.

(1968, c. 479, §2.1-340; 1976, c. 467, §2.1-340.1; 1989, c. 358; 1990, c. 538; 1999, cc. 703, 726; 2001, c. 844; 2002, c. 393.)

D. Information Sharing

law.justia.com/virginia/codes/toc1902000/19.2-389.html

i. §19.2-389. Dissemination of criminal history record information.

- A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:
 - 1. Authorized officers or employees of criminal justice agencies, as defined by §9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of §53.1-136 shall include collective dissemination by electronic means every 30 days;
 - 2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements

or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;
4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;
5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;
6. Individuals and agencies where authorized by court order or court rule;
7. Agencies of any political subdivision of the Commonwealth for the conduct of investigations of applicants for public employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;
8. Public or private agencies when and as required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual with whom the agency is considering placing a child on an emergency, temporary or permanent basis pursuant to §63.2-901.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;
9. To the extent permitted by federal law or regulation, public service companies as defined in §56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;
10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including but not limited to, issuing visas and passports;
11. A person requesting a copy of his own criminal history record information as defined in §9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company or volunteer rescue squad; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child

Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in §15.2-1713.1;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in §63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to §63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes approved by family day-care systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§63.2-1719 through 63.2-1721, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;
13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to §19.2-83.1;
14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery Law (§58.1-4000 et seq.), and the Department of Charitable Gaming for the conduct of investigations as set forth in Article 1.1:1 (§18.2-340.15 et seq.) of Chapter 8 of Title 18.2;
15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to §32.1-126.01, hospital pharmacies pursuant to §32.1-126.02, and home care organizations pursuant to §32.1-162.9:1, subject to the limitations set out in subsection E;
16. Licensed homes for adults, licensed district homes for adults, and licensed adult day-care centers for the conduct of investigations of applicants for compensated employment in licensed homes for adults pursuant to §63.2-1720, in licensed district homes for adults pursuant to §63.1-189.1, and in licensed adult day-care centers pursuant to §63.2-1720, subject to the limitations set out in subsection F;
17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in §4.1-103.1;
18. The State Board of Elections and authorized officers and employees thereof in the course of conducting necessary investigations with respect to registered voters, limited to any record of felony convictions;
19. The Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services for those individuals who are committed to the custody of the Commissioner pursuant to §§19.2-169.2, 19.2-169.6, 19.2-176, 19.2-177.1, 19.2-182.2, 19.2-182.3, 19.2-182.8 and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under §46.2-360, (ii) interventions with first offenders under §18.2-251, or (iii) services to offenders under §18.2-51.4, 18.2-266 or 18.2-266.1;
21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Mental Health, Mental Retardation and Substance Abuse Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;
22. The Department of Mental Health, Mental Retardation and Substance Abuse Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;
23. Pursuant to §22.1-296.3, the governing boards or administrators of private or religious elementary or secondary schools which are accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;
24. Public and nonprofit private colleges and universities for the purpose of screening individuals who are offered or accept employment;
25. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment pursuant to §§37.2-506 and 37.2-607;
26. Executive directors of behavioral health authorities as defined in §37.2-600 for the purpose of determining an individual's fitness for employment pursuant to §§37.2-506 and 37.2-607;
27. The Commissioner of the Department of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;
28. Authorized officers or directors of agencies licensed pursuant to Article 2 (§37.2-403 et seq.) of Chapter 4 of Title 37.2 by the Department of Mental Health, Mental Retardation and Substance Abuse Services for the purpose of determining if any applicant who accepts employment in any direct consumer care position has been convicted of a crime that affects their fitness to have responsibility for the safety and well-being of persons with mental illness, mental retardation and substance abuse pursuant to §§37.2-416, 37.2-506 and 37.2-607;
29. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for a motor carrier certificate or license subject to the provisions of Chapters 20 (§46.2-2000 et seq.) and 21 (§46.2-2100 et seq.) of Title 46.2;

30. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;
31. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to §2.2-1201.1. Dissemination of criminal history record information to the agencies shall be limited to those positions generally described as directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures;
32. The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§37.2-900 et seq.);
33. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary companies, for the conduct of investigations of applications for employment or for access to facilities, by contractors, leased laborers, and other visitors;
34. Any employer of individuals whose employment requires that they enter the homes of others, for the purpose of screening individuals who apply for, are offered, or have accepted such employment; and
35. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

- B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.
- C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

- D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by §15.2-1722.
- E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision 15 of subsection A shall be limited to the convictions on file with the Exchange for any offense specified in §§32.1-126.01, 32.1-126.02 and 32.1-162.9:1.
- F. Criminal history information provided to licensed assisted living facilities, licensed district homes for adults, and licensed adult day-care centers pursuant to subdivision 16 of subsection A shall be limited to the convictions on file with the Exchange for any offense specified in §63.1-189.1 or 63.2-1720.

(Code 1950, §19.1-19.2; 1966, c. 669; 1968, c. 537; 1970, c. 118; 1975, c. 495; 1976, c. 771; 1977, c. 626; 1978, c. 350; 1979, c. 480; 1981, c. 207; 1985, c. 360; 1987, cc. 130, 131; 1988, c. 851; 1989, c. 544; 1990, c. 766; 1991, c. 342; 1992, cc. 422, 641, 718, 746, 791, 844; 1993, cc. 48, 313, 348; 1994, cc. 34, 670, 700, 830; 1995, cc. 409, 645, 731, 781, 809; 1996, cc. 428, 432, 747, 881, 927, 944; 1997, cc. 169, 177, 606, 691, 721, 743, 796, 895; 1998, cc. 113, 405, 445, 882; 1999, cc. 383, 685; 2001, cc. 552, 582; 2002, cc. 370, 587, 606; 2003, c. 731; 2005, cc. 149, 914, 928; 2006, cc. 257, 277, 644.)

E. Parent notification

<https://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+23-9.2C3>

- i. **§23-9.2:3. Power of governing body of educational institution to establish rules and regulations; offenses occurring on property of institution; state direct student financial assistance; release of educational records.**
- A. In addition to the powers now enjoyed by it, the board of visitors or other governing body of every educational institution shall have the power:
1. To establish rules and regulations for the acceptance and assistance of students except that (i) individuals who have failed to meet the federal requirement to register for the selective service shall not be eligible to receive any state direct student assistance; (ii) the accreditation status of a Virginia public high school shall not be considered in making admissions determinations for students who have earned a diploma pursuant to the requirements established by the Board of Education; and (iii) the governing boards of the four-year institutions shall establish policies providing for the admission of certain graduates of Virginia community colleges as set forth in §23-9.2:3.02.

2. To establish rules and regulations for the conduct of students while attending such institution.
 3. To establish programs, in cooperation with the State Council of Higher Education and the Office of the Attorney General, to promote compliance among students with the Commonwealth's laws relating to the use of alcoholic beverages.
 4. To establish rules and regulations for the rescission or restriction of financial aid, within the discretionary authority provided to the institution by federal or state law and regulations, and the suspension and dismissal of students who fail or refuse to abide by such rules and regulations for the conduct of students.
 5. To establish rules and regulations for the employment of professors, teachers, instructors and all other employees and provide for their dismissal for failure to abide by such rules and regulations.
 6. To provide parking and traffic rules and regulations on property owned by such institution.
 7. To establish guidelines for the initiation or induction into any social fraternity or sorority in accordance with §18.2-56.
 8. To establish programs, in cooperation with the State Council of Higher Education for Virginia and the Office of the Attorney General, to promote the awareness and prevention of sexual crimes committed upon students.
- B. Upon receipt of an appropriate resolution of the board of visitors or other governing body of an educational institution, the governing body of a political subdivision which is contiguous to the institution shall enforce state statutes and local ordinances with respect to offenses occurring on the property of the institution.

The governing bodies of the public institutions of higher education shall assist the State Council of Higher Education in enforcing the provisions related to eligibility for financial aid.

- C. Notwithstanding any other provision of state law, the board of visitors or other governing body of every public institution of higher education in Virginia shall establish policies and procedures requiring the notification of the parent of a dependent student when such student receives mental health treatment at the institution's student health or counseling center and such treatment becomes part of the student's educational record in accordance with the federal Health Insurance Portability and Accountability Act (42 U.S.C. §1320d et seq.) and may be disclosed without prior consent as authorized by the federal Family Educational Rights and Privacy Act (20 U.S.C. §1232g) and related regulations (34 C.F.R. Part 99). Such notification shall only be required if it is determined that there exists a substantial likelihood that, as a result of mental illness the student will, in the near future, (i) cause serious physical harm to himself or others as evidenced by recent behavior or any other relevant information or (ii) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs. However, notification may be withheld if the student's treating physician or treating clinical psychologist has made a part of the student's record a written statement that, in the exercise of his professional judgment, the notification would be reasonably likely to cause substantial harm to the student or another person. No public institution of higher education or employee of a public institution

of higher education making a disclosure pursuant to this subsection shall be civilly liable for any harm resulting from such disclosure unless such disclosure constitutes gross negligence or willful misconduct by the institution or its employees.

- D. The board of visitors or other governing body of every public institution of higher education in Virginia shall establish policies and procedures requiring the release of the educational record of a dependent student, as defined by 20 U.S.C. §1232g, to a parent at his request.
- E. In order to improve the quality of the Commonwealth's work force and educational programs, the governing bodies of the public institutions of higher education shall establish programs to seek to ensure that all graduates have the technology skills necessary to compete in the 21st Century and, particularly, that all students matriculating in teacher-training programs receive instruction in the effective use of educational technology.

(1970, c. 197; 1985, c. 520; 1987, c. 109; 1992, c. 630; 1997, c. 827; 1998, cc. 39, 362, 483, 784; 2001, cc. 664, 673; 2005, c. 818; 2006, c. 121; 2008, cc. 441, 495.)

F. Protection of potential victims

<http://law.justia.com/virginia/codes/toc5401000/54.1-2400.1.html>

i. §54.1-2400.1. Mental health service providers; duty to protect third parties; immunity.

A. As used in this section:

"Certified substance abuse counselor" means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program or facility.

"Client" or "patient" means any person who is voluntarily or involuntarily receiving mental health services or substance abuse services from any mental health service provider.

"Clinical psychologist" means a person who practices clinical psychology as defined in §54.1-3600.

"Clinical social worker" means a person who practices social work as defined in §54.1-3700.

"Licensed practical nurse" means a person licensed to practice practical nursing as defined in §54.1-3000.

"Licensed substance abuse treatment practitioner" means any person licensed to engage in the practice of substance abuse treatment as defined in §54.1-3500.

"Marriage and family therapist" means a person licensed to engage in the practice of marriage and family therapy as defined in §54.1-3500.

"Mental health professional" means a person who by education and experience is professionally qualified and licensed in Virginia to provide counseling interventions designed to facilitate an individual's achievement of human development goals and remediate mental, emotional, or behavioral disorders and associated distresses which interfere with mental health and development.

"Mental health service provider" or "provider" refers to any of the following: (i) a person who provides professional services as a certified substance abuse counselor, clinical

psychologist, clinical social worker, licensed substance abuse treatment practitioner, licensed practical nurse, marriage and family therapist, mental health professional, physician, professional counselor, psychologist, registered nurse, school psychologist, or social worker; (ii) a professional corporation, all of whose shareholders or members are so licensed; or (iii) a partnership, all of whose partners are so licensed.

"Professional counselor" means a person who practices counseling as defined in §54.1-3500.

"Psychologist" means a person who practices psychology as defined in §54.1-3600.

"Registered nurse" means a person licensed to practice professional nursing as defined in §54.1-3000.

"School psychologist" means a person who practices school psychology as defined in §54.1-3600.

"Social worker" means a person who practices social work as defined in §54.1-3700.

- B. A mental health service provider has a duty to take precautions to protect third parties from violent behavior or other serious harm only when the client has orally, in writing, or via sign language, communicated to the provider a specific and immediate threat to cause serious bodily injury or death to an identified or readily identifiable person or persons, if the provider reasonably believes, or should believe according to the standards of his profession, that the client has the intent and ability to carry out that threat immediately or imminently. If the third party is a child, in addition to taking precautions to protect the child from the behaviors in the above types of threats, the provider also has a duty to take precautions to protect the child if the client threatens to engage in behaviors that would constitute physical abuse or sexual abuse as defined in §18.2-67.10. The duty to protect does not attach unless the threat has been communicated to the provider by the threatening client while the provider is engaged in his professional duties.
- C. The duty set forth in subsection B is discharged by a mental health service provider who takes one or more of the following actions:
1. Seeks involuntary admission of the client under Chapter 8 (§37.2-800 et seq.) of Title 37.2.
 2. Makes reasonable attempts to warn the potential victims or the parent or guardian of the potential victim if the potential victim is under the age of 18.
 3. Makes reasonable efforts to notify a law-enforcement official having jurisdiction in the client's or potential victim's place of residence or place of work, or place of work of the parent or guardian if the potential victim is under age 18, or both.
 4. Takes steps reasonably available to the provider to prevent the client from using physical violence or other means of harm to others until the appropriate law-enforcement agency can be summoned and takes custody of the client.

5. Provides therapy or counseling to the client or patient in the session in which the threat has been communicated until the mental health service provider reasonably believes that the client no longer has the intent or the ability to carry out the threat.
- D. A mental health service provider shall not be held civilly liable to any person for:
1. Breaching confidentiality with the limited purpose of protecting third parties by communicating the threats described in subsection B made by his clients to potential third party victims or law-enforcement agencies or by taking any of the actions specified in subsection C.
 2. Failing to predict, in the absence of a threat described in subsection B, that the client would cause the third party serious physical harm.
 3. Failing to take precautions other than those enumerated in subsection C to protect a potential third party victim from the client's violent behavior.

(1994, c. 958; 1997, c. 901; 2005, c. 716.)

G. Threat assessment

<http://leg1.state.va.us/000/cod/23-9.2C10.HTM>

i. §23-9.2:10. Violence prevention committee; threat assessment team.

- A. Each public college or university shall have in place policies and procedures for the prevention of violence on campus, including assessment and intervention with individuals whose behavior poses a threat to the safety of the campus community.
- B. The board of visitors or other governing body of each public institution of higher education shall determine a committee structure on campus of individuals charged with education and prevention of violence on campus. Each committee shall include representatives from student affairs, law enforcement, human resources, counseling services, residence life, and other constituencies as needed. Such committee shall also consult with legal counsel as needed. Once formed, each committee shall develop a clear statement of: (i) mission, (ii) membership, and (iii) leadership. Such statement shall be published and available to the campus community.
- C. Each committee shall be charged with: (i) providing guidance to students, faculty, and staff regarding recognition of threatening or aberrant behavior that may represent a threat to the community; (ii) identification of members of the campus community to whom threatening behavior should be reported; and (iii) policies and procedures for the assessment of individuals whose behavior may present a threat, appropriate means of intervention with such individuals, and sufficient means of action, including interim suspension or medical separation to resolve potential threats.
- D. The board of visitors or other governing body of each public institution of higher education shall establish a specific threat assessment team that shall include members from law enforcement, mental health professionals, representatives of student affairs and human resources, and, if available, college or university counsel. Such team shall implement the assessment, intervention and action policies set forth by the committee pursuant to subsection C.

- E. Each threat assessment team shall establish relationships or utilize existing relationships with local and state law enforcement agencies as well as mental health agencies to expedite assessment and intervention with individuals whose behavior may present a threat to safety.

(2008, cc. 450, 533.)

II. Federal laws

A. Clery Act

www.ed.gov/admins/lead/safety/handbook

- (f) Disclosure of campus security policy and campus crime statistics
- (1) Each eligible institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 shall on August 1, 1991, begin to collect the following information with respect to campus crime statistics and campus security policies of that institution, and beginning September 1, 1992, and each year thereafter, prepare, publish, and distribute, through appropriate publications or mailings, to all current students and employees, and to any applicant for enrollment or employment upon request, an annual security report containing at least the following information with respect to the campus security policies and campus crime statistics of that institution:
- (A) A statement of current campus policies regarding procedures and facilities for students and others to report criminal actions or other emergencies occurring on campus and policies concerning the institution's response to such reports.
 - (B) A statement of current policies concerning security and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.
 - (C) A statement of current policies concerning campus law enforcement, including—
 - (i) the enforcement authority of security personnel, including their working relationship with State and local police agencies; and
 - (ii) policies which encourage accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies.
 - (D) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.
 - (E) A description of programs designed to inform students and employees about the prevention of crimes.
 - (F) Statistics concerning the occurrence on campus, in or on noncampus buildings or property, and on public property during the most recent calendar year, and during the 2 preceding calendar years for which data are available—

- (i) of the following criminal offenses reported to campus security authorities or local police agencies:
 - (I) murder;
 - (II) sex offenses, forcible or nonforcible;
 - (III) robbery;
 - (IV) aggravated assault;
 - (V) burglary;
 - (VI) motor vehicle theft;
 - (VII) manslaughter;
 - (VIII) arson; and
 - (IX) arrests or persons referred for campus disciplinary action for liquor law violations, drug-related violations, and weapons possession; and
 - (ii) of the crimes described in subclauses (I) through (VIII) of clause (i), and other crimes involving bodily injury to any person in which the victim is intentionally selected because of the actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability of the victim that are reported to campus security authorities or local police agencies, which data shall be collected and reported according to category of prejudice.
- (G) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity at off-campus student organizations which are recognized by the institution and that are engaged in by students attending the institution, including those student organizations with off-campus housing facilities.
- (H) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws and a statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws and a description of any drug or alcohol abuse education programs as required under section 1011i of this title.
- (I) A statement advising the campus community where law enforcement agency information provided by a State under section 14071 (j) of title 42, concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address.
- (2) Nothing in this subsection shall be construed to authorize the Secretary to require particular policies, procedures, or practices by institutions of higher education with respect to campus crimes or campus security.

- (3) Each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 shall make timely reports to the campus community on crimes considered to be a threat to other students and employees described in paragraph (1)(F) that are reported to campus security or local law police agencies. Such reports shall be provided to students and employees in a manner that is timely and that will aid in the prevention of similar occurrences.
- (4)
- (A) Each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 that maintains a police or security department of any kind shall make, keep, and maintain a daily log, written in a form that can be easily understood, recording all crimes reported to such police or security department, including—
- (i) the nature, date, time, and general location of each crime; and
- (ii) the disposition of the complaint, if known.
- (B)
- (i) All entries that are required pursuant to this paragraph shall, except where disclosure of such information is prohibited by law or such disclosure would jeopardize the confidentiality of the victim, be open to public inspection within two business days of the initial report being made to the department or a campus security authority.
- (ii) If new information about an entry into a log becomes available to a police or security department, then the new information shall be recorded in the log not later than two business days after the information becomes available to the police or security department.
- (iii) If there is clear and convincing evidence that the release of such information would jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until that damage is no longer likely to occur from the release of such information.
- (5) On an annual basis, each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 shall submit to the Secretary a copy of the statistics required to be made available under paragraph (1)(F). The Secretary shall—
- (A) review such statistics and report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on campus crime statistics by September 1, 2000;
- (B) make copies of the statistics submitted to the Secretary available to the public; and
- (C) in coordination with representatives of institutions of higher education, identify exemplary campus security policies, procedures, and practices and disseminate information concerning those policies, procedures, and practices that have proven effective in the reduction of campus crime.

(6)

(A) In this subsection:

(i) The term “campus” means—

(I) any building or property owned or controlled by an institution of higher education within the same reasonably contiguous geographic area of the institution and used by the institution in direct support of, or in a manner related to, the institution’s educational purposes, including residence halls; and

(II) property within the same reasonably contiguous geographic area of the institution that is owned by the institution but controlled by another person, is used by students, and supports institutional purposes (such as a food or other retail vendor).

(ii) The term “noncampus building or property” means—

(I) any building or property owned or controlled by a student organization recognized by the institution; and

(II) any building or property (other than a branch campus) owned or controlled by an institution of higher education that is used in direct support of, or in relation to, the institution’s educational purposes, is used by students, and is not within the same reasonably contiguous geographic area of the institution.

(iii) The term “public property” means all public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adjacent to a facility owned or controlled by the institution if the facility is used by the institution in direct support of, or in a manner related to the institution’s educational purposes.

(B) In cases where branch campuses of an institution of higher education, schools within an institution of higher education, or administrative divisions within an institution are not within a reasonably contiguous geographic area, such entities shall be considered separate campuses for purposes of the reporting requirements of this section.

(7) The statistics described in paragraph (1)(F) shall be compiled in accordance with the definitions used in the uniform crime reporting system of the Department of Justice, Federal Bureau of Investigation, and the modifications in such definitions as implemented pursuant to the Hate Crime Statistics Act. Such statistics shall not identify victims of crimes or persons accused of crimes.

(8)

(A) Each institution of higher education participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 shall develop and distribute as part of the report described in paragraph (1) a statement of policy regarding—

- (i) such institution's campus sexual assault programs, which shall be aimed at prevention of sex offenses; and
 - (ii) the procedures followed once a sex offense has occurred.
- (B) The policy described in subparagraph (A) shall address the following areas:
- (i) Education programs to promote the awareness of rape, acquaintance rape, and other sex offenses.
 - (ii) Possible sanctions to be imposed following the final determination of an on-campus disciplinary procedure regarding rape, acquaintance rape, or other sex offenses, forcible or nonforcible.
 - (iii) Procedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported.
 - (iv) Procedures for on-campus disciplinary action in cases of alleged sexual assault, which shall include a clear statement that—
 - (I) the accuser and the accused are entitled to the same opportunities to have others present during a campus disciplinary proceeding; and
 - (II) both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault.
 - (v) Informing students of their options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses.
 - (vi) Notification of students of existing counseling, mental health or student services for victims of sexual assault, both on campus and in the community.
 - (vii) Notification of students of options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available.
- (C) Nothing in this paragraph shall be construed to confer a private right of action upon any person to enforce the provisions of this paragraph.
- (9) The Secretary shall provide technical assistance in complying with the provisions of this section to an institution of higher education who requests such assistance.
- (10) Nothing in this section shall be construed to require the reporting or disclosure of privileged information.
- (11) The Secretary shall report to the appropriate committees of Congress each institution of higher education that the Secretary determines is not in compliance with the reporting requirements of this subsection.

(12) For purposes of reporting the statistics with respect to crimes described in paragraph (1)(F), an institution of higher education shall distinguish, by means of separate categories, any criminal offenses that occur—

- (A) on campus;
- (B) in or on a noncampus building or property;
- (C) on public property; and
- (D) in dormitories or other residential facilities for students on campus.

(13) Upon a determination pursuant to section 1094 (c)(3)(B) of this title that an institution of higher education has substantially misrepresented the number, location, or nature of the crimes required to be reported under this subsection, the Secretary shall impose a civil penalty upon the institution in the same amount and pursuant to the same procedures as a civil penalty is imposed under section 1094 (c)(3)(B) of this title.

(14)

- (A) Nothing in this subsection may be construed to—
 - (i) create a cause of action against any institution of higher education or any employee of such an institution for any civil liability; or
 - (ii) establish any standard of care.
- (B) Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with this subsection shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action to enforce this subsection.

(15) This subsection may be cited as the “Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act”.

B. FERPA (1232g. Family educational and privacy rights)

<http://www.ed.gov/policy/gen/guid/fpco/index.html>

(a) Conditions for availability of funds to educational agencies or institutions; inspection and review of education records; specific information to be made available; procedure for access to education records; reasonableness of time for such access; hearings; written explanations by parents; definitions

(1)

- (A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or

document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

- (B) No funds under any applicable program shall be made available to any State educational agency (whether or not that agency is an educational agency or institution under this section) that has a policy of denying, or effectively prevents, the parents of students the right to inspect and review the education records maintained by the State educational agency on their children who are or have been in attendance at any school of an educational agency or institution that is subject to the provisions of this section.
 - (C) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:
 - (i) financial records of the parents of the student or any information contained therein;
 - (ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended; (iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (D), confidential recommendations—
 - (I) respecting admission to any educational agency or institution,
 - (II) respecting an application for employment, and
 - (III) respecting the receipt of an honor or honorary recognition.
 - (D) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (C), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.
- (2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term “educational agency or institution” means any public or private agency or institution which is the recipient of funds under any applicable program.

(4)

(A) For the purposes of this section, the term “education records” means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which—

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

(B) The term “education records” does not include—

- (i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;
- (ii) records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement;
- (iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person’s capacity as an employee and are not available for use for any other purpose; or
- (iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student’s choice.

(5)

(A) For the purposes of this section the term “directory information” relating to a student includes the following: the student’s name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

- (B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.
- (6) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.
- (b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping
- (1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—
- (A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required;
- (B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;
- (C)
- (i) authorized representatives of
- (I) the Comptroller General of the United States,
- (II) the Secretary, or
- (III) State educational authorities, under the conditions set forth in paragraph (3), or (ii) authorized representatives of the Attorney General for law enforcement purposes under the same conditions as apply to the Secretary under paragraph (3);
- (D) in connection with a student's application for, or receipt of, financial aid;
- (E) State and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to State statute adopted—

- (i) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve the student whose records are released, or
- (ii) after November 19, 1974, if—
 - (I) the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve, prior to adjudication, the student whose records are released; and
 - (II) the officials and authorities to whom such information is disclosed certify in writing to the educational agency or institution that the information will not be disclosed to any other party except as provided under State law without the prior written consent of the parent of the student.
- (F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;
- (G) accrediting organizations in order to carry out their accrediting functions;
- (H) parents of a dependent student of such parents, as defined in section 152 of title 26;
- (I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons; and
- (J)
 - (i) the entity or persons designated in a Federal grand jury subpoena, in which case the court shall order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished to the grand jury in response to the subpoena; and
 - (ii) the entity or persons designated in any other subpoena issued for a law enforcement purpose, in which case the court or other issuing agency may order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished in response to the subpoena.

Nothing in subparagraph (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

- (2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection, unless—
 - (A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or
 - (B) except as provided in paragraph (1)(J), such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.
- (3) Nothing contained in this section shall preclude authorized representatives of
 - (A) the Comptroller General of the United States,
 - (B) the Secretary, or
 - (C) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs: Provided, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.
- (4)
 - (A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

- (B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student. If a third party outside the educational agency or institution permits access to information in violation of paragraph (2)(A), or fails to destroy information in violation of paragraph (1)(F), the educational agency or institution shall be prohibited from permitting access to information from education records to that third party for a period of not less than five years.
- (5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (3).
- (6)
- (A) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing, to an alleged victim of any crime of violence (as that term is defined in section 16 of title 18), or a nonforcible sex offense, the final results of any disciplinary proceeding conducted by such institution against the alleged perpetrator of such crime or offense with respect to such crime or offense.
- (B) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing the final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence (as that term is defined in section 16 of title 18), or a nonforcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution's rules or policies with respect to such crime or offense.
- (C) For the purpose of this paragraph, the final results of any disciplinary proceeding—
- (i) shall include only the name of the student, the violation committed, and any sanction imposed by the institution on that student; and
- (ii) may include the name of any other student, such as a victim or witness, only with the written consent of that other student.
- (7)
- (A) Nothing in this section may be construed to prohibit an educational institution from disclosing information provided to the institution under section 14071 of title 42 concerning registered sex offenders who are required to register under such section.

- (B) The Secretary shall take appropriate steps to notify educational institutions that disclosure of information described in subparagraph (A) is permitted.

(c) Surveys or data-gathering activities; regulations

Not later than 240 days after October 20, 1994, the Secretary shall adopt appropriate regulations or procedures, or identify existing regulations or procedures, which protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(d) Students' rather than parents' permission or consent

For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) Informing parents or students of rights under this section

No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution effectively informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) Enforcement; termination of assistance

The Secretary shall take appropriate actions to enforce this section and to deal with violations of this section, in accordance with this chapter, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with this section, and he has determined that compliance cannot be secured by voluntary means.

(g) Office and review board; creation; functions

The Secretary shall establish or designate an office and review board within the Department for the purpose of investigating, processing, reviewing, and adjudicating violations of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

(h) Disciplinary records; disclosure

Nothing in this section shall prohibit an educational agency or institution from—

- (1) including appropriate information in the education record of any student concerning disciplinary action taken against such student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community; or
- (2) disclosing such information to teachers and school officials, including teachers and school officials in other schools, who have legitimate educational interests in the behavior of the student.

(i) Drug and alcohol violation disclosures

(1) In general nothing in this Act or the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.] shall be construed to prohibit an institution of higher education from disclosing, to a parent or legal guardian of a student, information regarding any violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance, regardless of whether that information is contained in the student's education records, if—

(A) the student is under the age of 21; and

(B) the institution determines that the student has committed a disciplinary violation with respect to such use or possession.

(2) State law regarding disclosure

Nothing in paragraph (1) shall be construed to supersede any provision of State law that prohibits an institution of higher education from making the disclosure described in subsection (a) of this section.

(j) Investigation and prosecution of terrorism

(1) In general notwithstanding subsections (a) through (i) of this section or any provision of State law, the Attorney General (or any Federal officer or employee, in a position not lower than an Assistant Attorney General, designated by the Attorney General) may submit a written application to a court of competent jurisdiction for an ex parte order requiring an educational agency or institution to permit the Attorney General (or his designee) to—

- (A) collect education records in the possession of the educational agency or institution that are relevant to an authorized investigation or prosecution of an offense listed in section 2332b (g)(5)(B) of title 18, or an act of domestic or international terrorism as defined in section 2331 of that title; and
- (B) for official purposes related to the investigation or prosecution of an offense described in paragraph (1)(A), retain, disseminate, and use (including as evidence at trial or in other administrative or judicial proceedings) such records, consistent with such guidelines as the Attorney General, after consultation with the Secretary, shall issue to protect confidentiality.

(2) Application and approval

- (A) In general.— An application under paragraph (1) shall certify that there are specific and articulable facts giving reason to believe that the education records are likely to contain information described in paragraph (1)(A).
- (B) The court shall issue an order described in paragraph (1) if the court finds that the application for the order includes the certification described in subparagraph (A).

(3) Protection of educational agency or institution

An educational agency or institution that, in good faith, produces education records in accordance with an order issued under this subsection shall not be liable to any person for that production.

(4) Record-keeping

Subsection (b)(4) of this section does not apply to education records subject to a court order under this subsection.

C. FERPA clarification documents

<http://www.ed.gov/policy/gen/guid/fpc0/index.html>

Family Educational Rights and Privacy Act (FERPA), Final Rule, 34 CFR Part 99 Section-by-Section Analysis, December 2008

Under FERPA, 20 U.S.C. §1232g, a parent or eligible student has a right to inspect and review the student's education records and to seek to have them amended in certain circumstances. A parent or eligible student must also provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from education records. Exceptions to this requirement are set forth in §99.31(a).

FERPA applies to any “educational agency or institution” that receives funds under any program administered by the Department. See 34 CFR §99.1(a). This includes all public K-12 school districts and virtually all postsecondary institutions, public or private. For ease of reference, this document uses the terms school or institution, school district or district, college, institution of higher education, and postsecondary institution, as appropriate, in place of “educational agencies and institutions.” We have noted all changes from the Notice of Proposed Rulemaking (NPRM) that was published in the *Federal Register* on March 24, 2008 (73 FR 15574). For the purposes of this document, when we refer to “current” regulations we mean the FERPA regulations that are in effect until January 8, 2009.

§99.3 Definitions

Attendance is defined currently to include attendance in person or by correspondence. (A “student” is defined as an individual who is or has been “in attendance” at an educational agency or institution and regarding whom the agency or institution maintains education records.) The final regulations add other situations in which students “attend” classes but are not physically present, including attendance by videoconference, satellite, Internet, or other electronic information and telecommunications technologies. This change will ensure that individuals who receive instruction through distance learning and other contemporary modalities are covered as “students” and, therefore, that their records are protected under FERPA. No changes from the NPRM.

Directory information is defined currently as information that would not generally be considered harmful or an invasion of privacy if disclosed. School districts and postsecondary institutions may disclose directory information without consent if they have given the parent or eligible student notice of the kinds of information they designate as directory information and an opportunity to opt out of directory information disclosures. The statute and current regulations specifically list some items as directory information, including a student’s name; address; telephone number; email address; photograph; date and place of birth; enrollment status; and major field of study. Neither the statute nor current regulations lists any items that may not be designated and disclosed as directory information.

Electronic personal identifiers. Schools have indicated that the directories that support electronic information systems used to deliver certain student services, such as Web-based class registration, access to academic records and library resources, etc., require disclosure of the user name or other personal identifier, used by a student to gain access to these systems. Public key infrastructure (PKI) technology for encryption and digital signatures also requires wide dissemination of the sender’s public key, which is an identifier. The final regulations allow school districts and postsecondary institutions to designate these electronic personal identifiers as directory information, including student ID numbers, but only if the identifier functions essentially as a name, i.e., it is not used by itself to authenticate identity and cannot be used by itself to gain access to education records. A unique electronic identifier disclosed as directory information may be used to provide access to education records, but only when the identifier is combined with other authentication factors known only to the user, such as a secret password or personal identification number (PIN), or some other method or combination of methods to authenticate the user’s identity and ensure that the user is, in fact, a person authorized to access the records. This change will ensure that institutions can use advanced technologies to deliver student services and access to education records. As noted above, parents and eligible students can opt out of directory information disclosures; those that do will not be able to participate in student services that are delivered in this manner.

Disclosure is defined currently to mean permitting access to or the release, transfer, or other communication of personally identifiable information from education records to any party by any means. The final regulations exclude from “disclosure” returning an education record, or information from an education record, to the party identified as the provider or creator of the record. This will accomplish two things. First, a State consolidated record system can allow a school district or postsecondary institution to have access to information that that district or institution provided to the system without violating the statutory prohibition on redisclosure, 20 U.S.C. 1232g(b)(3). Second, it will help schools deal with falsified transcripts, letters of recommendation, and other documents they receive by allowing an institution that has received a questionable document to return it to the ostensible sender for verification. (This second problem is also addressed in changes to §99.31(a)(2), discussed below.) In response to public comments, we clarify in the preamble to the final regulations that we have no authority to exclude from the term “disclosure” a school district’s or institution’s release or transfer of personally identifiable information from education records to its State longitudinal data system or to parties that agree to keep the information confidential, and that the final regulations do not authorize the release or transfer of education records to a student’s previous institution that is not identified as the source of those records. No changes from the NPRM.

Education records are currently defined as records that are directly related to a “student” and maintained by an “educational agency or institution” or by a party acting for the agency or institution. (The term “student” excludes individuals who have not been in attendance at the agency or institution.)

Post-enrollment records. Current regulations exclude records that only contain information about an individual after he or she is no longer a student at that school. This was intended to apply to fundraising and similar types of records related to alumni. Some schools, however, have mistakenly interpreted this provision to mean that any record created or received by the institution after a student is no longer enrolled, regardless of the subject matter, is not an “education record” under FERPA. For example, under this interpretation a settlement agreement maintained by a school district related to a discrimination, wrongful death, or other lawsuit brought by a parent after the student is no longer enrolled is not an “education record” under FERPA and, therefore, could be subject to mandatory disclosure under an open records law or otherwise released without consent to anyone. The final regulations clarify that records that pertain to an individual’s previous attendance as a student are “education records” under FERPA regardless of when they were created or received by the institution. No changes from the NPRM.

Peer-grading (Owasso Indep. Sch. Dist. No. I-011 v. Falvo, 534 U.S. 426 (2002)). Under FERPA a school may not disclose a student’s grades to another student without the prior written consent of the parent or eligible student. “Peer-grading” is a common educational practice in which teachers require students to exchange homework assignments, tests, and other papers, grade one another’s work, and then either call out the grade or turn in the work to the teacher for recordation. Even though peer-grading results in students finding out each other’s grades, the U.S. Supreme Court in 2002 issued a narrow holding in Owasso that this practice does not violate FERPA because grades on students’ papers are not “maintained” under the definition of “education records” and, therefore, would not be covered under FERPA at least until the teacher has collected and recorded them in the teacher’s grade book, a decision consistent with the Department’s longstanding position on peer-grading. The Court rejected assertions that students were “parties acting for” an institution when they scored each other’s work and that the student papers were, at that stage, “maintained” within the meaning of FERPA. Among other considerations, the Court expressed doubt that Congress intended to intervene in such a drastic fashion with traditional State functions or that the “federal power would exercise minute control

over specific teaching methods and instructional dynamics in classrooms throughout the country.” The final regulations create a new exception to the definition of “education records” that excludes grades on peer-graded papers before they are collected and recorded by a teacher. This change clarifies that peer-grading does not violate FERPA. No changes from the NPRM.

Personally identifiable information. This is discussed below under §99.31(b).

State auditor is not defined in current regulations. Sections 99.31(a)(3) and 99.35 of the current regulations allow disclosure of education records to “State and local educational authorities” for audit and evaluation of State and Federally funded education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs. Legislative history for Pub. L. 96-46 (1979), which added 20 U.S.C. §1232g(b)(5) to FERPA, indicates that Congress intended to include State auditors within the statutory exception for “audits or evaluations.” H.R. Report 96-338 at 10, 14 (1979) and 125 Cong. Record S20327 (July 24, 1979) (statement of Sen. Pell). The amendment is ambiguous, however, because the statutory language does not actually mention “auditors” and refers only to “State and local educational officials.” We have been concerned about the potential breadth of these disclosures given the ambiguity of the statutory term and the lack of detail in the legislative history regarding which among many possible entities should be considered “State auditors.”

The proposed regulations addressed the issue by defining “State auditor” (§99.3) as a party under any branch of government with authority and responsibility under State law for conducting audits, and limited disclosures to “audits,” defined as “testing compliance with applicable laws, regulations, and standards” (§99.35(a)(3)). We proposed this narrow definition of “audit,” which would limit which entities would gain access to personally identifiable information in education records, in order to honor congressional intent without opening the door to potential abuses by a multitude of agencies seeking that information for their own purposes.

We received many comments opposing the proposed definition of “audits” because it would prevent auditors from conducting “performance audits” (i.e., evaluations of program efficiency and effectiveness), which are specifically included as professional services under the U.S. Comptroller’s Generally Accepted Government Auditing Standards (GAGAS). Simply expanding the definition of “audit” in the final regulations, however, would leave unaddressed our concern about the potential breadth of the term “State auditor,” which our research has shown could include a large number and variety of State officials and offices that perform a range of functions, depending on how the term is defined or interpreted. In addition to the range of possible offices, titles, and functions, we identified a number of important issues that would need to be addressed, such as whether a new definition should include only auditors who follow GAGAS and the consequences of excluding certain officials. Given these unresolved policy issues for which we do not have the benefit of public comment, and our legal concern over making a substantive change without public comment, we decided to remove the State auditor provisions from the final rule, continue to study the matter, and issue guidance or new regulations, as appropriate.

§99.5 Disclosures to parents and rights of students.

Under current regulations, all rights of parents under FERPA, including the right to inspect and review education records, to seek to have education records amended in certain circumstances, and to consent to the disclosure of education records, transfer to the student once the student has reached 18 years of age or attends a postsecondary institution and thereby becomes an “eligible student.” Current regulations also provide that even after a student has become an “eligible student” under FERPA, postsecondary institutions (and high schools, for students over

18 years of age) may allow parents to have access to their child's education records, without the student's consent, in the following circumstances: the student is a dependent for Federal income tax purposes (§99.31(a)(8)); the disclosure is in connection with a health or safety emergency under the conditions specified in §99.36 (i.e., if knowledge of the information is necessary to protect the health or safety of the student or other individuals (§99.31(a)(10))); and for postsecondary students, the student has violated any Federal, State or local law, or any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance, if the institution determines that the student has committed a disciplinary violation regarding that use or possession and the student is under 21 at the time of the disclosure (§99.31(a)(15)).

The Department has been concerned that some colleges and other postsecondary institutions do not fully understand their options with regard to disclosing education records (or personally identifiable information from education records) of eligible students to their parents and continue to believe mistakenly that FERPA prevents them from releasing this information to parents under any circumstances, including a health or safety emergency. The final regulations clarify that disclosures to parents are permissible without the student's consent under any of these three exceptions. That is, a school may disclose education records to a parent of a dependent student under any circumstance; this exception to the consent requirement is likely to cover the vast majority of traditional college students. Even if a student is not a dependent, a postsecondary institution may disclose education records to a student's parent under the alcohol or controlled substance exception (§99.31(a)(15)) or in connection with a health or safety emergency (§99.31(a)(10)) under the circumstances set forth in §99.36, discussed below. The change will help these institutions understand that while they may choose to follow a policy of not disclosing information to the parents of eligible students, FERPA does not prevent them from doing so in most circumstances. No changes from the NPRM.

§99.31 (a)(1) School officials.

Under current regulations, school districts and postsecondary institutions may allow "school officials, including teachers, within the agency or institution" to have access to students' education records, without consent, if they have determined that the official has "legitimate educational interests" in the information. Under §99.7, a district or postsecondary institution that discloses information under this exception must include in its annual FERPA notification for parents and students a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest. Disclosures to school officials with legitimate educational interests are not subject to the recordation requirements in §99.32.

§99.31 (a)(1)(i)(B) Outsourcing.

Neither the statute nor current regulations addresses disclosure of education records without consent to non-employees retained to perform institutional services and functions. The final regulations expand the "school officials" exception to include contractors, consultants, volunteers, and other outside service providers used by a school district or postsecondary institution to perform institutional services and functions. A contractor (or other outside service provider) that is given access to education records under this provision must be under the direct control of the disclosing institution and subject to the same conditions on use and redisclosure of education records that govern other school officials (see §99.33). In particular, the contractor must ensure that only individuals with legitimate educational interests (as determined by the district or institution, as appropriate) obtain access to personally identifiable information from education records it maintains (or creates) on behalf of the district or institution. Further, in accordance with §99.33(a) and (b), the contractor may not redisclose personally identifiable information without

consent unless the district or institution has authorized the redisclosure under a FERPA exception and the district or institution records the subsequent disclosure. A district or institution may not disclose education records to an outside service provider under this exception unless it has specified in its annual FERPA notification that it uses contractors, consultants, volunteers, etc. as school officials to provide certain institutional services and functions. A district's or institution's recordation of a disclosure to an outside service provider will not waive its failure to comply with the annual notification requirements for outside service providers.

This change is consistent with the Department's longstanding guidance that FERPA does not require school districts and postsecondary institutions to provide all institutional services and functions on an in-house basis. As institutions have expanded the range of services they outsource, from traditional legal and debt collection services to fundraising, enrollment and degree verification, transcript distribution, and information technology (IT) services and more, the need to establish in regulations the conditions for these non-consensual disclosures has become critical. In addition to requiring the disclosing institution to have direct control over its outside service providers' maintenance and use of education records, the regulations explain that disclosure is permitted under this exception only if the district or institution is outsourcing a service it would otherwise provide using employees. For example, postsecondary institutions may not use this exception to disclose education records, without consent, to a financial institution or insurance company that provides a good student discount on services that the institution would not otherwise provide. This will prevent uncontrolled designation of outside parties as "school officials" for marketing and other purposes for which non-consensual disclosure of education records is not authorized by statute.

In response to public comments, the preamble to the final regulations explains that State educational authorities that operate State longitudinal data systems are not "school officials" under this exception and that disclosures to these State systems generally fall under the "audit or evaluation" exception. The preamble also explains how a district or institution may disclose education records without consent to its own law enforcement unit under the school officials' exception but not to outside police officers. We revised the regulations to clarify that the "direct control" requirement means control of the outside service provider's maintenance and use of information from education records and is not intended to affect the outside party's status as an independent contractor or render that party an employee under State or Federal law.

§99.31 (a)(1)(ii) Controlling access to education records by school officials.

Current regulations do not specify what steps, if any, a school district or postsecondary institution must take to enforce the "legitimate educational interests" requirement in the school officials' exception. Parents and students have complained that school officials have unrestricted access to the education records of all students in a district's or institution's system, particularly in districts and institutions where records are maintained electronically. Institutions themselves have expressed uncertainty about what methods they should use to comply with this requirement when establishing or upgrading their recordkeeping systems.

The final regulations require school districts and postsecondary institutions to use "reasonable methods" to ensure that teachers and other school officials (including outside service providers) obtain access to only those education records -- paper or electronic -- in which they have legitimate educational interests. Many districts and postsecondary institutions already use physical or technological controls to protect education records against unauthorized access, such as locks on filing cabinets for paper records and software applications with role-based access controls for electronic records. Under the final regulations, districts and institutions may forego

physical or technological controls and rely instead on administrative policies for controlling access to education records by school officials. Those that choose this method must ensure that their administrative policy is effective and that they remain in compliance with the legitimate educational interest requirement for accessing records. In particular, if a parent or eligible student alleges that a school official obtained access to the student's records without a legitimate educational interest, the burden is on the district or institution to show that the school official had a legitimate educational interest in the information. In response to public comments, the preamble to the final regulations explains that the requirement for using "reasonable methods" applies whether an agency or institution uses physical, technological, or administrative controls to restrict access to education records by school officials.

The preamble to the NPRM suggested that districts and institutions should consider restricting or tracking access to education records by school officials to ensure that they remain in compliance with this requirement. (Recommendations for safeguarding education records from unauthorized access and disclosure outside the institution itself are discussed below.)

In terms of assessing the reasonableness of methods used to control access to education records by school officials, the preamble to the final regulations explains that the risk of unauthorized access means the likelihood that records may be targeted for compromise and the harm that could result. Methods are considered reasonable if they reduce the risk to a level commensurate with the likely threat and potential harm. The greater the harm that would result, the more protections a school or district must use to ensure that its methods are reasonable. For example, high-risk records, such as SSNs and other information that could be used for identity theft, should generally receive greater and more immediate protection than medium- or low-risk records, such as those containing only publicly available directory information. We note also that reasonableness depends ultimately on what are the usual and customary good business practices of similarly situated institutions, which, in turn, requires ongoing review and modification of methods and procedures as standards and technologies change.

Many institutions use software with role-based security features that limit an individual's access to electronic records based on their professional responsibilities and, therefore, already comply with the final regulations. Those that do not will now have specific guidance for updating or upgrading the security of their recordkeeping systems as appropriate. No changes from the NPRM.

§99.31 (a)(2) Student's new school.

Under current regulations, a school district or postsecondary institution may disclose education records, without consent, to officials of another school, school system, or postsecondary institution where a student "seeks or intends to enroll." There has been uncertainty in the education community about whether the "seeks or intends to enroll" language in the statute and current regulations authorizes a district or institution to send, or continue sending, education records to a student's new school once the student has actually enrolled. The final regulations clarify that the authority to disclose or transfer education records to a student's new school does not cease automatically the moment a student has enrolled and continues to any future point in time so long as the disclosure is for purposes related to the student's enrollment or transfer. In response to public comments, we explain in the preamble to the final regulations that this means that a school may disclose any records or information, including health and disciplinary records, that the school could have disclosed when the student was seeking or intending to enroll in the new school.

We also explain in the preamble to the final regulations that there are other Federal laws, such as the Individuals with Disabilities Education Act (IDEA), §504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act of 1990 (ADA), with different requirements that may affect the release of student information. For example, §504 generally prohibits postsecondary institutions from making pre-admission inquiries about an applicant's disability status. However, after admission, §504 and Title II of the ADA do not prohibit institutions from obtaining information concerning a current student, including those with disabilities, from any school previously attended by the student in connection with an emergency and if necessary to protect the health or safety of a student or other persons under FERPA.

The clarification regarding the nature of the disclosure authority under this section will allow a student's previous school to supplement, update, or correct any records it sent during the student's application or transfer period. Combined with the changes to the definition of "disclosure" (described earlier) that allow a student's new school to return a transcript or other document to the purported sender or creator of the record, this change will also allow a student's previous school to identify any falsified or fraudulent records and explain the meaning of any records disclosed previously to the new school. No changes from the NPRM.

§99.31 (a)(6) Organizations conducting studies.

Current regulations restate the statutory provision that allows a school district or postsecondary institution to disclose personally identifiable information from education records, without consent, to organizations conducting studies "for, or on behalf of" the disclosing institution for purposes of developing, validating, or administering predictive tests; administering student aid programs; or improving instruction. (Note that under changes to §99.35(b), discussed below, this exception now applies also to State educational agencies (SEAs) and State higher education authorities that receive education records without consent from school districts and postsecondary institutions under §99.31(a)(3) for audit, evaluation, or enforcement purposes.) Under current regulations, information disclosed under this exception must be protected so that students and their parents cannot be personally identified by anyone other than representatives of the organization conducting the study, and must be destroyed when no longer needed for the study. Failure to destroy information in accordance with this requirement could lead to a five-year ban on the disclosure of information to that organization.

Current regulations do not explain what "for, or on behalf of" means. Organizations seeking to conduct independent research have asked for clarification about the circumstances in which personally identifiable information from education records may be disclosed without consent under this exception, and districts and institutions have asked whether they may use this exception even if they have no particular interest in the proposed study.

The final regulations require a school district or postsecondary institution that uses this exception to enter into a written agreement with the recipient organization that specifies the purposes of the study. The written agreement must specify that information from education records may only be used to meet the purposes of the study stated in the written agreement and must contain the current requirements in §99.31(a)(6) on redisclosure and destruction of information, as described above. In response to public comments, we revised the regulations to require that the written agreement must require the organization to conduct the study in a manner that does not permit personal identification of parents and students by anyone other than representatives of the organization with legitimate interests. The final regulations also require that the written agreement must specify the purpose, scope, and duration of the study and the information to be disclosed; require the organization to destroy or return all personally identifiable information when no longer

needed for the purposes of the study; and specify the time period during which the organization must either destroy or return the information.

In response to public comments we added a new provision in the regulations stating that an agency or institution is not required to initiate research requests or agree with or endorse the conclusions or results of the study when disclosing information under this exception. However, the statutory language “for, or on behalf of” indicates that the disclosing district or institution agrees with the purposes of the study and retains control over the information from education records that is disclosed. The written agreement required under the regulations will help ensure that information disclosed under this exception is used only to meet the purposes of the study as stated in the agreement and that all redisclosure and destruction requirements are met.

We also explain in the preamble to the final regulations that although disclosure of personally identifiable information without consent is allowed for studies under this exception, we recommend that whenever possible agencies and institutions either release de-identified information or remove students’ names and SSNs to reduce the risk of unauthorized disclosure of personally identifiable information.

Applicability of this provision to SEAs and State higher educational authorities that redisclose personally identifiable information from education records on behalf of school districts and postsecondary institutions is discussed below under §99.35(b).

§99.31 (a)(9)(ii) Ex parte court orders under USA Patriot Act.

Current regulations do not address amendments to FERPA under the USA Patriot Act, Pub. L. 107-56, which authorizes the U.S. Attorney General (or designee) to apply for an *ex parte* court order that allows the Attorney General to collect education records from an educational agency or institution, without the consent or knowledge of the student or parent, that are relevant to an investigation or prosecution of an offense listed in 18 U.S.C. 2332b(g)(5)(B) or an act of domestic or international terrorism specified in 18 U.S.C. 2331. Under the statutory amendment and final regulations, school districts and postsecondary institutions are allowed to make these disclosures without consent or notice to the parent or student that would otherwise be required under §99.31(a)(9) of the regulations and without recording the disclosure under §99.32(a). Note that the court order itself may instruct the district or institution not to notify the parent or student or record the disclosure of education records, or disclose the existence of the *ex parte* order to any party.

The district or institution that is served by the Attorney General with an *ex parte* court order under this exception should ensure that the order is facially valid, just as it does when determining whether to comply with other judicial orders and subpoenas under §99.31(a)(9). It is not, however, required or authorized to examine the underlying certification of facts that the Attorney General is required to present to the court in the Attorney General’s application for the order. No changes from the NPRM.

§99.31 (a)(16) Registered sex offenders.

The Campus Sex Crimes Prevention Act (CSCPA), which is §1601(d) of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386, created a new exception to the consent requirement in FERPA that allows school districts and postsecondary institutions to disclose information concerning registered sex offenders provided under State sex offender registration and campus community notification programs for institutions of higher education required under

the Wetterling Act, 42 U.S.C. 14071. Under the Wetterling Act, States must require certain sex offenders to register their name and address with the State authority where the offender lives, works, or is enrolled as a student. States are also required to release relevant information necessary to protect the public concerning persons required to register under what are known as “community notification programs.”

CSCPA contains registration and notice requirements designed specifically for higher education campus communities, including a requirement that States collect information about a registered offender’s enrollment or employment at an institution of higher education, along with any change in enrollment or employment status at the institution, and make this information available promptly to a campus police department or other appropriate law enforcement agency. CSCPA also amended the Higher Education Act of 1965 (HEA) by requiring institutions of higher education to advise the campus community where it can obtain information about registered sex offenders provided by the State under the Wetterling Act, such as a campus law enforcement office, a local law enforcement agency, or a computer network address. While the FERPA amendment was made in the context of CSCPA’s amendments applicable to the higher education community, the Department determined that all agencies and institutions, including elementary and secondary schools and school districts, are covered by the amendment.

The regulations add a new exception that allows a school district or postsecondary institution to disclose without consent information it has received from a State under the Wetterling Act about a student who is required to register as a sex offender in the State. In response to comments, we removed the sentence stating that nothing in FERPA requires or encourages a school district or institution to collect or maintain information about registered sex offenders because it could be confusing and could discourage schools from disclosing relevant information about a registered sex offender in appropriate circumstances. Note that disclosures under this exception are required to comply with guidelines issued by the U.S. Attorney General for State community notification programs, which were published in the *Federal Register* on Jan. 5, 1999 (64 FR 572) and Oct. 25, 2002 (67 FR 65598).

§99.31 (b) De-identification of information.

Education records may be released without consent under FERPA if all personally identifiable information has been removed. The final regulations provide objective standards under which school districts, postsecondary institutions, SEAs, State higher education authorities, and any other party may release, without consent, education records, or information from education records, that has been de-identified through the removal of all “personally identifiable information” taking into account unique patterns of information about the student, whether through single or multiple releases, and other reasonably available information. The new standards apply to both individual, redacted records and statistical information from education records in both student level or microdata and aggregate form.

Under current regulations, **personally identifiable information** (PII) includes a student’s name and other direct personal identifiers, such as the student’s SSN or student number. PII also includes indirect identifiers, such as the name of the student’s parent or other family members; the student’s or family’s address, and personal characteristics or other information that would make the student’s identity easily traceable. The final regulations add biometric records to the list of personal identifiers that constitute PII, and add other indirect identifiers, such as date and place of birth and mother’s maiden name, as examples of identifiers that should be considered in determining whether information is personally identifiable. In response to public comments, the final regulations define “biometric record” to mean a record of one or more measurable biological

or behavioral characteristics that can be used for automated recognition of an individual, including fingerprints, retina and iris patterns, voiceprints, DNA sequence, facial characteristics, and handwriting. The definition is based on National Security Presidential Directive 59 and Homeland Security Presidential Directive 24.

The final regulations remove from the definition of PII the reference to “other information that would make the student’s identity easily traceable” because the phrase lacked specificity and clarity, and possibly suggested a fairly low standard for protecting education records. In its place, the regulations add that PII includes “other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.” This change brings the definition more in line with recent Office of Management and Budget (OMB) guidance to Federal agencies, with modifications tailored to the educational community. (See OMB M-07-16, “Safeguarding Against and Responding to the Breach of Personally Identifiable Information” at footnote 1: <http://www.whitehouse.gov/omb/memoranda/fy2007/m07-16.pdf>.) Under the final regulations, PII also includes “information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.”

The definition of PII provides objective standards for districts, institutions, SEAs, State higher education authorities, and other parties that release information, either at will or in response to an open records request, to use in determining whether they may release information, including in special cases such as those involving well-known students or records that concern highly publicized incidents. In response to public comments, we clarify in the preamble to the final regulations that the disclosing party must look to local news, events, and media coverage in the “school community” in determining whether “other information” (i.e., information other than direct and indirect identifiers listed in the definition of PII), would make a particular record personally identifiable even after all direct identifiers have been removed. In regard to so-called targeted requests, the final regulations clarify that a party may not release information from education records if the requester asks for the record of a particular student, or if the party has reason to believe that the requester knows the identity of the student to whom the requested records relate. These standards for determining whether records contain PII also apply to the release of statistical information from education records, in particular small data cells that may identify students.

Under the final regulations a party that releases either redacted records or statistical information should also consider other information that is linked or linkable to a student, such as law enforcement records, published directories, and other publicly available records that could be used to identify a student, and the cumulative effect of disclosure of student data. In all cases, the disclosing party must determine whether the other information that is linked or linkable to an education record would allow a “reasonable person in the school community” to identify the student “with reasonable certainty.” (In response to public comment, we changed “school or its community” to “school community” to avoid confusion.) The regulations recognize that the risk of avoiding the disclosure of PII cannot be completely eliminated and is always a matter of analyzing and balancing risk so that the risk of disclosure is very low. The reasonable certainty standard in the new definition of PII requires such a balancing test.

In regard to statistical information from education records, the final regulations recognize that it is not possible to prescribe a single disclosure limitation method to apply in every circumstance to minimize the risk of disclosing PII. The preamble to the final regulations does, however, provide several examples of the kinds of statistical, scientific, and technological concepts used by the

Federal statistical agencies that can assist parties in developing a sound approach to de-identifying information for release depending on what information has already been released and what other information is publicly available.

The final regulations also codify the Department's November 18, 2004, guidance to the Tennessee Department of Education by allowing a disclosing party to attach a code to properly de-identified student level information for education research, which would allow the recipient to match information received from the same source. (The recipient may not have access to any information about how the disclosing party generates and assigns a record code, or that would allow the recipient to identify a student based on the record code; certain other conditions apply.) A party that releases data under this provision must ensure that the identity of any student cannot be determined with reasonable certainty in this "coded data," including assurances of sufficient cell and subgroup size, and the linking key that connects the code to student information cannot be shared with the requesting party. The Department believes that these standards establish an appropriate balance that facilitates educational research and accountability while preserving the privacy protections in FERPA. As noted above, the Department cannot specify in general which disclosure limitation methods should be used in any particular case. However, parties are directed to monitor releases of coded microdata to ensure that overlapping or successive releases do not result in data sets in which PII is disclosed.

§99.31 (c) Identification and authentication of identity.

The final regulations require a school district or postsecondary institution to use reasonable methods to identify and authenticate the identity of parents, students, school officials, and any other parties to whom they disclose education records. Current regulations do not address this issue. Authentication of identity is more complex for disclosure of electronic records as new methods and technologies are developed. Under the final regulations, districts and institutions may use PINs, passwords, personal security questions; "smart cards" and tokens; biometric indicators; or other factors known or possessed only by the user, as appropriate. No changes from the NPRM.

§99.33 Redisclosure of education records.

Current regulations prohibit recipients of education records, without prior written consent, from redisclosing personally identifiable information from the records unless the agency or institution disclosed the information with the understanding that the recipient may make further disclosures on its behalf under one of the exceptions in §99.31 and the agency or institution records the redisclosure.

§99.35 (b)(1) By Federal and State officials.

Current regulations do not permit Federal and State officials that receive education records under §§99.31(a)(3) and 99.35 for audit, evaluation, and compliance and enforcement purposes to redisclose education records under the conditions of §99.33(b). The final regulations permit these officials to redisclose education records under the same conditions that apply currently to other recipients of education records. For example, an SEA that has obtained education records for audit, evaluation, or compliance and enforcement purposes may redisclose the records for other qualifying purposes under §99.31. These include forwarding records to a student's new school district and to another official listed in §99.31(a)(3) (such as the Secretary, or an SEA or State higher education authority) for another qualifying audit, evaluation, or compliance and enforcement purpose. This will facilitate the development of consolidated State data systems

used for accountability and research purposes. The final regulations also allow State and Federal officials to redisclose education records under other exceptions listed in §99.31(a), including disclosures to an accrediting agency; in connection with a health or safety emergency; and in compliance with a court order or subpoena. No changes from the NPRM.

§99.33 (b)(2) Under court order or subpoena.

The final regulations require an SEA or other party that rediscloses education records on behalf of an educational agency or institution in compliance with a court order or subpoena to comply with the parental notification requirements in §99.31(a)(9)(ii) before it responds to the order or subpoena. We also revised the five-year penalty rule in §99.33(e) so that if the Department determines that a third party, such as an SEA, does not notify the parent as required, the agency or institution may not allow that third party access to education records for at least five years.

§99.33 (c) Clery Act.

Under current regulations implementing the Jeanne Clery Disclosure of Campus Security Policy and Campus Crimes Statistics Act (Clery Act) in the HEA, postsecondary institutions are required to inform both the accuser and accused of the outcome of any institutional disciplinary proceeding brought alleging a sex offense. Current FERPA regulations permit a postsecondary institution to disclose the outcome of a disciplinary proceeding to a victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense, regardless of the outcome, but only on the condition that the institution notify the recipient that he or she may not redisclose the information without the student-perpetrator's consent. Some postsecondary institutions have required the victim to execute a non-disclosure agreement before they release the information required under the Clery Act. The Department has determined that the statutory prohibition on redisclosure of information from education records in FERPA does not apply to information that a postsecondary institution is required to release to students under the Clery Act. The final regulations provide that disclosures under the Clery Act are not subject to the prohibition on redisclosure in §99.33(a) and that postsecondary institutions may not require the victim to execute a non-disclosure or confidentiality agreement in order to receive information that the institution is required to disclose under the Clery Act. No changes from the NPRM.

§99.32 Recordkeeping requirements.

Current regulations require an educational agency or institution to maintain a record of redisclosures it has authorized under §99.33(b), including the names of the additional parties to which the receiving party may further disclose the information on behalf of the agency or institution and their legitimate interests under §99.31 in receiving the information. In response to public comments on this issue, and in order to ease the administrative burdens of recordkeeping, we revised the regulations to require a State or Federal official that rediscloses education records on behalf of an agency or institution to comply with these recordation requirements if the agency or institution does not do so, and to make the record available to an educational agency or institution upon request within a reasonable period of time not exceeding 30 days. An educational agency or institution is required to obtain a copy of the State or Federal official's record of further disclosures and make it available in response to a parent's or eligible student's request to review the student's record of disclosures. The regulations also allow a State or Federal official to maintain the record by the student's class, school, district, or other grouping rather than by the name of the student.

§99.36 Health and safety emergencies.

Current regulations state, in part, that an educational agency or institution may disclose personally identifiable information from education records to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. The current regulations also state that the health and safety emergencies provisions must be “strictly construed.”

The final regulations remove the language requiring strict construction of this exception and add a provision that says that, in making a determination under §99.36, an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the safety or health of the student or other individuals. If the school determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to appropriate parties whose knowledge of the information is necessary to protect the health and safety of the student or other individuals. In response to public comments, we revised the recordkeeping requirements in §99.32(a)(5) by requiring an educational agency or institution to record the articulable and significant threat that formed the basis for the disclosure and the parties to whom the information was disclosed. If there is a rational basis for the determination, the Department will not substitute its judgment for that of the educational agency or institution in deciding to release the information. Section 99.36 also provides that “appropriate parties” include “parents of an eligible student.” In response to public comments, the preamble to the final regulations clarifies the circumstances under which an educational agency or institution may release without consent an eligible student’s “treatment records” for purposes other than treatment.

These changes were made as a result of issues that were raised after the Virginia Tech tragedy in April 2007. In the first instance, the Secretary determined that greater flexibility and deference should be afforded to administrators so that they can bring appropriate resources to bear on circumstances that threaten the health or safety of individuals. With regard to the second amendment adding “parents” to those considered an “appropriate party,” this change will clarify to colleges and universities that parents may be notified when there is a health or safety emergency involving their son or daughter, notwithstanding any FERPA provision that might otherwise prevent such a disclosure.

§99.37 Directory information.

Current regulations permit the disclosure of properly designated directory information without meeting FERPA’s written consent requirement. A school must designate the categories to be disclosed and permit students the opportunity to opt out before making such disclosures.

§99.37 (b) Former students.

Current regulations permit schools to disclose directory information on former students without providing notice as otherwise required or an additional opt-out opportunity. The final regulations require schools to honor a former student’s opt-out request made while in attendance unless it has been specifically rescinded by the former student. This will make clear that schools may not disclose the directory information of a former student if the student opted out of the disclosure while the student was in attendance. No changes from the NPRM.

§99.37 (c) Student identification and communication in class.

Current regulations do not address whether a student who opts out of directory information disclosures may prevent school officials from identifying the student by name or from disclosing the student's electronic identifier or institutional email address in class. The final regulations provide specifically that an opt out of directory information disclosures does not prevent a school from identifying a student by name or from disclosing a student's electronic identifier or institutional email address in class. This change clarifies that a right to opt out of directory information disclosures does not include a right to remain anonymous in class, and may not be used to impede routine classroom communications and interactions, whether class is held in a specified physical location or on-line through electronic communications. No changes from the NPRM.

§99.37 (d) Use of SSNs.

Current regulations do not specifically prohibit the use of SSNs to identify students when disclosing or confirming directory information. The final regulations prohibit the use of an SSN as an identification element when disclosing or confirming directory information unless the student has provided written consent for the disclosure. Some institutions and vendors providing services such as degree verifications on behalf of the institution currently use a student's SSN as a means of confirming identity. Unless the student has provided prior written consent to confirm the SSN, this implicit confirmation of the SSN is improper under FERPA. No changes from the NPRM.

§99.62, §99.64, §99.65, §99.66, §99.67 Enforcement Provisions.

Current regulations contain a number of provisions that address the Department's authority, through the Family Policy Compliance Office (FPCO), to investigate a school district or postsecondary institution when a parent or eligible student files a complaint. The final regulations enhance and clarify the Department's enforcement responsibilities as described in Gonzaga University v. Doe, 536 U.S. 273 (2002). In particular, the regulations clarify that FPCO may investigate allegations that FERPA has been violated made by a school official or some other party that is not a parent or eligible student, including information that has been brought to the attention of the Department by media reports. The regulations also clarify that a complaint does not have to allege that an institution has a policy or practice of violating FERPA in order for the Department to initiate an investigation or find the institution in violation. In response to public comments, we removed a provision in the proposed rules that would have required FPCO to find that an educational agency or institution has a policy or practice in violation of FERPA in order to take any enforcement action because it unnecessarily limited the Department's enforcement authority.

Safeguarding recommendations.

The preambles to the NPRM and final regulations contain non-binding recommendations to help agencies and institutions face significant challenges in safeguarding education records from unauthorized access and disclosure. These challenges include inadvertent posting of students' grades or financial information on publicly available Web servers; theft or loss of laptops and other portable devices that contain education records; computer hacking; and failure to retrieve education records at termination of employment. Agencies and institutions are encouraged to review the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-100, "Information Security Handbook: A Guide for Managers," and NIST SP 800-53, "Recommended Security Controls for Federal Information Systems" for guidance and to use any

methods or technologies they determine are reasonable to mitigate the risk of unauthorized access and disclosure taking into account the likely harm that would result. The recommendations also include suggested responses to data breaches and other unauthorized disclosures, such as reporting the incident to law enforcement authorities; taking steps to retrieve data and prevent further disclosures; identifying all affected records and students; determining how the incident occurred; determining whether institutional policies and procedures were breached; and conducting a risk assessment. Notification of students is not required but recommended.

D. Higher Education Act (changes to Clery Act)

http://www.naicu.edu/special_initiatives/hea101/news_room/campus-emergency-procedures

http://www.naicu.edu/special_initiatives/heaguide/news_room/missing-person-procedures

Section 485 (j)

(f) Disclosure of campus security policy and campus crime statistics.

(1) Each eligible institution participating in any program under this title . . . shall. . .prepare, publish, and distribute, through appropriate publications or mailings, to all current students and employees, and to any applicant for enrollment or employment upon request, an annual security report containing at least the following information with respect to the campus security policies and campus crime statistics of that institution: . . .

(J) A statement of current campus policies regarding immediate emergency response and evacuation procedures, including the use of electronic and cellular communication (if appropriate), which policies shall include procedures to—

(i) immediately notify the campus community upon confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or staff, occurring on the campus, as defined in paragraph (6), unless issuing a notification will compromise efforts to contain the emergency;

(ii) publicize emergency response and evacuation procedures on an annual basis in a manner designed to reach students and staff; and

(iii) test emergency response and evacuation procedures on an annual basis.

(1) Each eligible institution participating in any program under this title . . . shall. . .prepare, publish, and distribute, through appropriate publications or mailings, to all current students and employees, and to any applicant for enrollment or employment upon request, an annual security report containing at least the following information with respect to the campus security policies and campus crime statistics of that institution: . . .

Campus Safety Report Policies

(C) A statement of current policies concerning campus law enforcement, including—

(i) the law enforcement authority of campus security personnel;

(ii) the working relationship of campus security personnel with State and local law enforcement agencies, including whether the institution has agreements with such

agencies, such as written memoranda of understanding, for the investigation of alleged criminal offenses; and

- (iii) policies which encourage accurate and prompt reporting of all crimes to the campus police and the appropriate law enforcement agencies.

Hate Crime Reporting

(F) Statistics concerning the occurrence on campus, in or on noncampus buildings or property, and on public property during the most recent calendar year, and during the 2 preceding calendar years for which data are available—

- (i) of the following criminal offenses reported to campus security authorities or local police agencies:

- (I) murder;

- (II) sex offenses, forcible or nonforcible;

- (III) robbery;

- (IV) aggravated assault;

- (V) burglary;

- (VI) motor vehicle theft;

- (VII) manslaughter;

- (VIII) arson; and

- (IX) arrests or persons referred for campus disciplinary action for liquor law violations, drug-related violations, and weapons possession; and

- (ii) of the crimes described in subclauses (I) through (VIII) of clause (i), of larceny-theft, simple assault, intimidation, and destruction, damage, or vandalism of property, and of other crimes involving bodily injury to any person, in which the victim is intentionally selected because of the actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability of the victim that are reported to campus security authorities or local police agencies, which data shall be collected and reported according to category of prejudice.

Crime Reporting Compliance/Best Practices/Retaliation

Section 485(f) . . .

(15) The Secretary shall annually report to the authorizing committees regarding compliance with this subsection by institutions of higher education, including an up-to-date report on the Secretary's monitoring of such compliance.

(16) The Secretary may seek the advice and counsel of the Attorney General concerning the development, and dissemination to institutions of higher education, of best practices information about campus safety and emergencies.

(17) Nothing in this subsection shall be construed to permit an institution, or an officer, employee, or agent of the institution, participating in any program under this title to retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual with respect to the implementation of any provision of this subsection.

Missing person procedures.

- (1) Option and Procedures.—Each institution of higher education that provides on-campus housing and participates in any program under this title shall—
- (A) establish a missing student notification policy for students who reside in on-campus housing that—
 - (i) informs each student that such student has the option to identify an individual to be contacted by the institution not later than 24 hours after the time that the student is determined missing in accordance with official notification procedures established by the institution under subparagraph (B);
 - (ii) provides each such student a means to register confidential contact information in the event that the student is determined to be missing for a period of more than 24 hours;
 - (iii) advises each such student who is under 18 years of age, and not an emancipated individual, that the institution is required to notify a custodial parent or guardian not later 24 hours after the time that the student is determined to be missing in accordance with such procedures;
 - (iv) informs each such residing student that the institution will notify the appropriate law enforcement agency not later than 24 hours after the time that the student is determined missing in accordance with such procedures; and
 - (v) requires, if the campus security or law enforcement personnel has been notified and makes a determination that a student who is the subject of a missing person report has been missing for more than 24 hours and has not returned to the campus, the institution to initiate the emergency contact procedures in accordance with the student's designation; and
 - (B) establish official notification procedures for a missing student who resides in on-campus housing that—
 - (i) includes procedures for official notification of appropriate individuals at the institution that such student has been missing for more than 24 hours;
 - (ii) requires any official missing person report relating to such student be referred immediately to the institution's police or campus security department; and
 - (iii) if, on investigation of the official report, such department determines that the missing student has been missing for more than 24 hours, requires—
 - (I) such department to contact the individual identified by such student under subparagraph (A)(i);
 - (II) if such student is under 18 years of age, and not an emancipated individual, the institution to immediately contact the custodial parent or legal guardian of such student; and

(III) if subclauses (I) or (II) do not apply to a student determined to be a missing person, inform the appropriate law enforcement agency.

(2) Rule of construction.—Nothing in this subsection shall be construed--

(A) to provide a private right of action to any person to enforce any provision of this subsection; or

(B) to create a cause of action against any institution of higher education or any employee of the institution for any civil liability.

E. HIPAA clarification documents

<http://www.hhs.gov/ocr/hipaa/>

