

Threat Assessment in Virginia Schools

Updates to the Code of Virginia

On July 1, 2016, the Virginia General Assembly enacted several updates and additions to the Code of Virginia related to threat assessment teams in Virginia K-12 schools. This document provides a summary of those updates, as well as references to the relevant Code sections for members of school threat assessment teams. This summary is intended to serve as a resource and as a guide for members of school threat assessment teams. School threat assessment team members are strongly encouraged to seek and obtain advice from legal counsel regarding any legal issues.

Scope of K-12 Threat Assessment Teams in Virginia

For the past 3 years, public K-12 schools in Virginia were required to establish threat assessment teams whose functions included the assessment of and intervention with students whose behavior may pose a threat to the safety of the school. Effective July 1, 2016, public K-12 schools in Virginia are required to establish threat assessment teams whose functions include the assessment of and intervention with individuals whose behavior may pose a threat to the safety of the school. This change makes the K-12 threat assessment team statute more consistent with the similar statute for threat assessment teams in institutions of higher education. The change reflects the understanding that it is not only students who may pose a threat of harm to a school, but a range of individuals including (but not limited to):

- Students- Current and Former;
- Employees- Current and Former;
- Parents/Guardians of Students;
- Persons in relationships with faculty, staff, or students;
- Contractors or Vendors;
- Visitors to the School; or
- Unaffiliated Persons.

School threat assessment teams should adopt policies and practices to enhance awareness of potential or developing threats from this broad range of individuals who might convey or indicate the intent to pose a danger to the school.

The following is the relevant section of the Code of Virginia:

§ 22.1-79.4. Threat assessment teams and oversight committees.

A. Each local school board shall adopt policies for the establishment of threat assessment teams, including the assessment of and intervention with individuals whose behavior may pose a threat to the safety of school staff or students consistent with the model policies developed by the Virginia Center for School and Campus Safety in accordance with § 9.1-184. Such policies shall include procedures for referrals to community services boards or health care providers for evaluation or treatment, when appropriate.

School Threat Assessment Teams: Access to Information

To enhance consistency between K-12 threat assessment teams and those operating in public institutions of higher education, Virginia added language to the K-12 threat assessment code that broadens the authority of school threat assessment team members to request information from otherwise protected or restricted sources.

The updated statute allows members of a school threat assessment team to obtain criminal history and health record information regarding adult or juvenile subjects. In order to make a lawful request for those records under this statute, the requesting party must be a member of a public school threat assessment team established by a school board.

In addition, the school threat assessment team must have made a preliminary determination that an individual poses a threat of violence to self or others, exhibits significant disruptive behaviors, and/or displays a need for assistance.

Members of the school threat assessment team may then request and obtain the relevant records for the purpose of the threat assessment team, i.e., to assess and manage the potential threat to the school.

It should be noted that no team member may re-disclose any information obtained under this section, nor may they use it for any purpose other than the purpose and role of the threat assessment team. Criminal history record information or health information may not be shared with any other persons not on the team, nor used for any other purposes (e.g., discipline, student conduct, etc.).

In regard to criminal history information obtained via the Virginia State Police Central Criminal Records Exchange (CCRE) or the Juvenile Virginia Criminal Information System (JVCIN), any information/records printed from a terminal (having access to the system) must be destroyed after the information is obtained. The threat assessment team may not maintain the record printed from the system access terminal, nor may they make copies of it. It is a violation of the Code of Virginia (see § 18.2-152 computer invasion of privacy and § 18.2-152.7 personal trespass by computer) to disseminate such records/information. Criminal history information may not be placed in a student's educational file.

The following are the relevant sections of the Code of Virginia regarding school threat assessment team access to protected or restricted information:

§ 22.1-79.4. Threat assessment teams and oversight committees.

F. Upon a preliminary determination by the threat assessment team that an individual poses a threat of violence to self or others or exhibits significantly disruptive behavior or need for assistance, a threat assessment team may obtain criminal history record information, as provided in §§ 19.2-389 and 19.2-389.1, and health records, as provided in § 32.1-127.1:03. No member of a threat assessment team shall redisclose any criminal history record information or health information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose for which such disclosure was made to the threat assessment team.

§ 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:

25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4, by a public institution of higher education pursuant to § 23-9.2:10, or by a private nonprofit institution of higher education, for the purpose of assessing or intervening with an individual whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal history record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team;

§ 19.2-389.1. Dissemination of juvenile record information.

Record information maintained in the Central Criminal Records Exchange pursuant to the provisions of § 16.1-299 shall be disseminated only

(x) to members of a threat assessment team established by a school board pursuant to § 22.1-79.4, by a public institution of higher education pursuant to § 23-9.2:10, or by a private nonprofit institution of higher education, to aid in the assessment or intervention with individuals whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any juvenile record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team;

§ 32.1-127.1:03. Health records privacy.

D. Health care entities may, and, when required by other provisions of state law, shall, disclose health records:

35. To a threat assessment team established by a local school board pursuant to § 22.1-79.4, by a public institution of higher education pursuant to § 23-9.2:10, or by a private nonprofit institution of higher education;

Exclusion of Certain Records from the Virginia Freedom of Information Act

Recognizing the sensitivity of information provided through school safety audits and/or obtained through the efforts of threat assessment teams, the Virginia General Assembly enacted statutes that exclude certain related records from required disclosure under the Virginia Freedom of Information Act. Records that meet the criteria for the statute are excluded from required disclosure. Such records include

- school security plans,
- assessment components of school safety audits, and
- records received by the Virginia Department of Criminal Justice Services for the purposes of evaluating threat assessment teams

The custodian of the relevant record retains discretion and may release such records if they so decide.

The Code of Virginia also specifies limitations to the exclusion (from disclosure) in certain situations such as a request for records regarding:

- 1) the effectiveness of security plans after someone on school property has experienced or been threatened with personal injury, or
- 2) records of a threat assessment team where an individual (who has been under assessment) commits an act that causes the death or serious bodily injury (including felony sexual assault) to another.

In circumstances such as those, schools and their threat assessment teams may be compelled to provide records relevant to the circumstances.

Even in cases where there may be required disclosure of certain records, the statutes also limit disclosure of a subset of those records, such as criminal history or health information. Those sensitive and otherwise protected records (and information from them) may not be re-disclosed.

Regarding the threat assessment team, when disclosure of records may be required (or released at the discretion of the custodian of the record), the party releasing the record must remove any information identifying a person who provided information to the threat assessment team under a promise of confidentiality.

The following are the relevant sections of the Code of Virginia regarding school threat assessment team access to protected or restricted information:

§ 2.2-3705.2. Exclusions to application of chapter; records relating to public safety.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

7. Security plans and specific assessment components of school safety audits, as provided in § 22.1-279.8.

Nothing in this subdivision shall be construed to prohibit the disclosure of records relating to the effectiveness of security plans after (i) any school building or property has been subjected to fire, explosion, natural disaster or other catastrophic event, or (ii) any person on school property has suffered or been threatened with any personal injury.

17. Records received by the Department of Criminal Justice Services pursuant to §§ 9.1-184, 22.1-79.4, and 22.1-279.8 or for purposes of evaluating threat assessment teams established by a public institution of higher education pursuant to § 23-9.2:10 or by a private nonprofit institution of higher education, to the extent such records reveal security plans, walk-through checklists, or vulnerability and threat assessment components.

§ 2.2-3705.4. Exclusions to application of chapter; educational records and certain records of educational institutions.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

8. Records of a threat assessment team established by a local school board pursuant to § 22.1-79.4 or by a public institution of higher education pursuant to § 23-9.2:10 relating to the assessment or intervention with a specific individual. However, in the event an individual who has been under assessment commits an act, or is prosecuted for the commission of an act that has caused the death of, or caused serious bodily injury, including any felony sexual assault, to another person, the records of such threat assessment team concerning the individual under assessment shall be made available as provided by this chapter, with the exception of any criminal history records obtained pursuant to § 19.2-389 or 19.2-389.1, health records obtained pursuant to § 32.1-127.1:03, or scholastic records as defined in § 22.1-289. The public body providing such records shall remove information identifying any person who provided information to the threat assessment team under a promise of confidentiality.

Resources:

For more information regarding threat assessment in Virginia, please visit the Department of Criminal Justice Services' Virginia Center for School and Campus Safety website at <https://www.dcjs.virginia.gov/virginia-center-school-and-campus-safety>. Find additional resources on threat assessment in Virginia at <https://www.dcjs.virginia.gov/virginia-center-school-and-campus-safety/k-12/resources>. Please contact staff at the Virginia Center for School & Campus Safety with any questions:

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