



# COMMONWEALTH of VIRGINIA

## *Department of Criminal Justice Services*

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January 16, 2024

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***RE: Report on Best Practices, Model Policies and Procedures, and  
Legislative Recommendations for Campus Threat Assessment Teams***

Dear Sirs and Madam:

During the 2023 General Assembly session, Senate bill 910 and HB 1916 were passed by the legislature and signed into law by Governor Glenn Youngkin. This legislation required the convening of a task force to review and make recommendations to improve threat assessment teams at public colleges and universities in Virginia. The task force was jointly led by the Secretaries of Education and Public Safety and Homeland Security and convened by the Department of Criminal Justice Services (DCJS) at their direction.

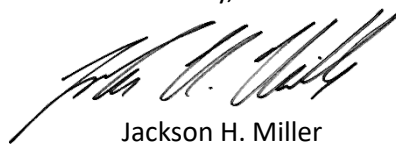
The legislation required that the task force do the following:

*“That the Secretary of Education and Secretary of Public Safety and Homeland Security shall convene a task force (the task force) to determine best practices and develop model policies and procedures for all threat assessment teams at public institutions of higher education. The task force shall also consider and make legislative recommendations on the appropriate qualifications of members of such threat assessment teams. The task force shall include representatives from the Office of the Attorney General, campus police departments and local law enforcement, attorneys for the Commonwealth, mental health and student affairs professionals, university counsel, human resources representatives, one student representative, and one faculty representative. The task force shall submit its findings, including all applicable best practices, model policies and procedures, and legislative recommendations, to the Governor and Chairmen of the House Committee for Courts of Justice, the Senate Committee on the Judiciary, the House Committee on Education, and the Senate Committee on Education and Health no later than December 1, 2023.”*

The task force met in-person on three occasions. During the meetings, the task force members had the opportunity to review a draft document discussing best practices for higher education threat assessment teams. The task force reached a consensus that the draft best practices and model policies and procedures guide was inconsistent with the legislative changes made in HB1916 and SB910. DCJS collected the findings and recommendations identified by the task force and incorporated them into this report. Attached is the “Identified Conflicts” report and a list of task force members who participated in producing this report.

If you have any questions about the information contained in this report, please contact Mr. Marc Dawkins, Law Enforcement and Public Safety Training Manager of DCJS, at [marc.dawkins@dcjs.virginia.gov](mailto:marc.dawkins@dcjs.virginia.gov).

Sincerely,



Jackson H. Miller  
Director

Attachments

# Identified Conflicts Between Threat Assessment Best Practices and Legislation

November 1, 2023

The 2023 General Assembly enacted HB1916 and SB910, which directed the Secretaries of Public Safety and Education to: “convene a task force (the task force) to **determine best practices and develop model policies and procedures** for all threat assessment teams at public institutions of higher education. The task force shall also consider and **make legislative recommendations on the appropriate qualifications of members of such threat assessment teams.**”

The task force convened on July 29, August 30, and October 18, 2023, pursuant to the mandate of the General Assembly. Work of the task force was facilitated by staff of the Department of Criminal Justice Services and by Dr. Gene Deisinger, Ph.D. a subject-matter expert on threat assessment with substantial experience in threat assessments at Virginia Institutions of Higher Education.

During the meeting on August 30, the task force had the opportunity to review a draft document discussing best practices for higher education threat assessment teams. That review led to a consensus that the best practices and model policies and procedures the task force identified and would recommend were, in some ways, inconsistent with the legislative changes made in HB1916 and SB910. The task force does not have the liberty to publish best practices guidance that is inconsistent with mandates in the *Code of Virginia*.

The Task Force considered the issue of minimum qualifications of threat assessment team members. The Task Force concluded it was not appropriate to recommend any new requirements beyond that the members be qualified professionals in their area of practice and that they complete the basic foundational training required by statute. Further requirements may unduly constrain the ability of IHEs to adequately staff and resource threat assessment teams and may intrude into issues of professional qualification that are under authority of other agencies.

*Virginia Code* § 23.1-805.A. provides:

Each public institution of higher education shall establish policies and procedures for the prevention of violence on campus, including assessment of and intervention with individuals whose behavior poses a threat to the safety of the campus community.

This code provision did not change and is not inconsistent with best practices.

*Virginia Code* § 23.1-805.B. provides:

The governing board of each public institution of higher education shall determine a violence prevention committee structure on

campus composed of individuals charged with education on and prevention of violence on campus. Each violence prevention committee shall include representatives from student affairs, law enforcement, human resources, counseling services, residence life, and other constituencies as needed and shall consult with legal counsel as needed. Each violence prevention committee shall develop a clear statement of mission, membership, and leadership. Such statement shall be published and made available to the campus community.

This code provision did not change and is not inconsistent with best practices.

*Virginia Code § 23.1-805.C.* provides:

Each violence prevention committee shall (i) provide guidance to students, faculty, and staff regarding recognition of threatening or aberrant behavior that may represent a physical threat to the community; (ii) identify members of the campus community to whom threatening behavior should be reported; (iii) establish policies and procedures that outline circumstances under which all faculty and staff are required to report behavior that may represent a physical threat to the community, provided that such report is consistent with state and federal law; and (iv) establish policies and procedures for (a) the assessment of individuals whose behavior may present a threat, (b) appropriate means of intervention with such individuals, and (c) sufficient means of action, including interim suspension, referrals to community services boards or health care providers for evaluation or treatment, medical separation to resolve potential physical threats, and notification of family members or guardians, or both, unless such notification would prove harmful to the individual in question, consistent with state and federal law.

This code provision did not change and is not inconsistent with best practices.

*Virginia Code § 23.1-805.D.* as amended provides:

The governing board of each public institution of higher education shall establish a threat assessment team that includes members from law enforcement, mental health professionals, and representatives of student affairs and human resources. College or university counsel shall be invited to provide legal advice. Each such threat assessment team may invite other representatives from campus to participate in individual cases, but no such

representative shall be considered a member of the threat assessment team.

As written, other representatives from campus invited to participate may not be members of the threat assessment team, thus the representatives who are from “law enforcement, mental health professionals, and representatives of student affairs and human resources” are the only members of the threat assessment team.

The potential exclusion of Academic Affairs from membership is a substantial concern, as best practices would involve persons associated with all key functional areas of the organization to facilitate identification, assessment, and management of the cases. The mandate that law enforcement, mental health, student affairs and human resources be participants is not inconsistent with best practices, but best practices would allow university administrations to appoint such other members of the team as are necessary to meet specific institutional needs. The new statutory provision that expressly provides other campus members are not members of the threat assessment team is inconsistent with best practices, as the threat assessment team would be unable to share information with those other representatives, rendering any input from those other representatives uninformed or less-than-fully informed.

As written, this sub-section prohibits the IHE from engaging other persons who are not campus representatives, thus preventing IHEs from drawing upon additional non-university resources that might be needed in a particular case.

The language addressing the role of counsel should be conformed to the language in *Virginia Code* § 23.1-805.B.

The Task Force also became aware that some institutions have erroneously conflated the functions of the Violence Prevention Committee and the Threat Assessment Team. While it is conceivable that there may be some overlap in membership between these bodies, one is a policy making body and the other is involved in managing cases. Conflating these bodies runs the risk of sharing confidential information with those not authorized to have such information. Accordingly, it is necessary to clarify that these are two separate bodies.

It is recommended that *Virginia Code* § 23.1-805. D. be amended as follows:

The governing board of each public institution of higher education shall establish a threat assessment team which shall be separate from the violence prevention committee. The threat assessment team shall have no more than 10 members, shall include members from law enforcement, the mental health profession, student affairs and human resources and shall consult with legal counsel as needed. The limit on membership shall not preclude the appointment of backups to the enumerated representatives. Each such threat assessment team may invite other individuals to

participate in specific cases, but no such individual shall be considered a member of the threat assessment team. Each threat assessment team shall implement the assessment, intervention, and action policies set forth by the violence prevention committee pursuant to subsection C.

*Virginia Code* § 23.1-805.E. provides:

Each threat assessment team shall establish relationships or utilize existing relationships with mental health agencies and local and state law-enforcement agencies to expedite assessment of and intervention with individuals whose behavior may present a threat to safety. Upon a preliminary determination that an individual poses a threat of violence to self or others or exhibits significantly disruptive behavior or a need for assistance, the 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.

This code provision did not change. However, the phrase “in need of assistance” is too vague to provide helpful guidance to threat assessment teams on when they may seek records. If an individual is in need of other “assistance,” e.g., financial assistance, housing assistance, or childcare resources, that would not justify an inquiry into criminal history and mental health records. It is recommended that language referring to a need for assistance be removed from the statute.

The provision without the vague clause is consistent with best practices and provides threat assessment teams sufficient latitude for permissive access to criminal history and mental health records under appropriate circumstances. Also, consideration should be given to aligning this language with the exception permitting disclosure without consent from the Virginia Health Records Privacy Law § 32.1-127.1:03(D)(6), which uses the term “serious threats to health or safety.” The clause therefore should be removed such that the amended provision would state: “Upon a preliminary determination that an individual poses a serious threat to health or safety of self or others or exhibits significantly disruptive behavior, the threat assessment team may obtain . . .”

It is recommended that *Virginia Code* § 23.1-805.E. be rewritten as follows:

Each threat assessment team shall establish relationships or utilize existing relationships with mental health agencies and local and state law-enforcement agencies to expedite assessment of and intervention with individuals whose behavior may present a threat to safety. Upon a preliminary determination that an individual poses a serious threat to the health or safety of self or others or

exhibits significantly disruptive behavior, the 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.

*Virginia Code* § 23.1-805.F. provides:

Upon a preliminary determination that an individual poses an articulable and significant threat of violence to others, the threat assessment team shall:

1. Obtain any available criminal history record information as provided in §§ 19.2-389 and 19.2-389.1 and any available health records as provided in § 32.1-127.1:03;
2. Notify in writing within 24 hours upon making such preliminary determination (i) the campus police department, (ii) local law enforcement for the city or county in which the public institution of higher education is located, local law enforcement for the city or county in which the individual resides, and, if known to the threat assessment team, local law enforcement for the city or county in which the individual is located, and (iii) the local attorney for the Commonwealth in any jurisdiction where the threat assessment team has notified local law enforcement; and
3. Disclose any specific threat of violence posed by the individual as part of such notification.

The requirement that the threat assessment team obtain criminal history record information and health records imposes a mandate that a threat assessment team cannot hope to fulfill, as threat assessment teams lack the authority to obtain such documents through compulsory process. It is recommended that sub-section 1 direct threat assessment teams to “Request” rather than “Obtain” this information.

The notification provisions of sub-section 2 are difficult to interpret. Worth noting is that notification of the campus police department in subsection 2(i) although harmless, should be unnecessary, because the campus police department (to the extent one exists) is a required member of the threat assessment team as stated in *Virginia Code* section 23.1-805.D. It is unclear whether the notification of the place where the subject resides is intended to refer to the subject’s local place of residence, permanent residence, or domicile. Notification where the IHE is located would potentially require statewide notifications in cases where the IHE has numerous campuses. It would make more sense to notify law enforcement in the jurisdiction where the individual, if a student, attends the institution and if an employee, where the employee works for the institution.

It is recommended that *Virginia Code* § 23.1-805.F. be rewritten as follows:

F. Upon a preliminary determination that an individual poses an articulable and significant threat of violence to others, the threat assessment team shall:

1. Request any available criminal history record information as provided in §§ [19.2-389](#) and [19.2-389.1](#) and any available health records as provided in § [32.1-127.1:03](#).

2. Notify in writing within 24 hours upon making such preliminary determination (i) the campus police department, (ii) local law enforcement for the city or county in which the individual attends or is employed by the public institution of higher education, local law enforcement for the city or county in which the individual permanently resides if in the Commonwealth, and, if the location of the individual is known to the threat assessment team and is in the Commonwealth, local law enforcement for the city or county in which the individual is located, and (iii) the local attorney for the Commonwealth in any jurisdiction where the threat assessment team has notified local law enforcement; and

3. Disclose any specific threat of violence posed by the individual as part of such notification.

*Virginia Code* § 23.1-805.G. provides:

The custodians of any criminal history record information or health records shall, upon request from a threat assessment team pursuant to subsections E and F, produce the information or records requested.

Although this provision is not inconsistent with best practices, §§ [19.2-389](#) (subsection 25), [19.2-389.1](#) (subsection x) and § [32.1-127.1:03](#) (subsection 35) were not updated to advise parties covered by those sections of their obligation to provide information to threat assessment teams, creating a potential conflict. Those Code sections therefore should be amended to require entities to provide the requested information and records.

*Virginia Code* § 23.1-805.H. provides:

No member or invited representative 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.



This provision preventing redisclosure is not inconsistent with best practices. However, the provisions of *Virginia Code* § 23.1-805.D. expressly prohibit other “invited representatives” invited to participate in particular cases from being treated as part of the threat assessment team and from receiving criminal history or health information in the first instance. This provision highlights that individuals who are necessary to assist cannot be given access to documents, and that lack of access may be detrimental to the effectiveness of the team’s work. The clarification of *Virginia Code* § 23.1-805.D. so that institutions know teams are not limited to four members attenuates much of this concern.

*Virginia Code* § 23.1-805.I. provides:

Each threat assessment team member shall complete a minimum of eight hours of initial training within 12 months of appointment to the threat assessment team and shall complete a minimum of two hours of threat assessment training each academic year thereafter. Training shall be conducted by the Department of Criminal Justice Services (the Department) or an independent entity approved by the Department.

This is inconsistent with best practices. The current DCJS basic foundational training for threat assessment team members is 13 hours of training delivered over a two-day period. The consensus of the task force is that the current course provides the minimal level of foundational training for threat assessment team members, including a practical exercise.

The provision that discusses training conducted by an independent entity approved by the Department is problematic, because DCJS does not have specific licensing authority for those independent entities, there is no criteria by which DCJS can judge whether to approve those entities and because it gives DCJS no authority over curriculum for those outside entities. DCJS would effectively need to screen and license private vendors who could then deliver 8 hours of whatever content the vendor decided to present.

It is recommended that *Virginia Code* § 23.1-805.I. be rewritten as follows:

Each threat assessment team member shall complete a basic foundational course in threat assessment approved and delivered under the supervision of the Department of Criminal Justice Services within 12 months of appointment to the threat assessment team and shall complete a minimum of two hours of threat assessment training each academic year thereafter.

This would preserve the current 13-hour training course and would allow DCJS to continue to update and develop that training course as the science of threat assessment develops in the future without precluding the possibility that the Department might approve and oversee delivery of another appropriate foundational course if one emerged.

The task force observed that the existing training mandate to the Department has never been funded. Much of this training has been delivered only through the efforts of the Department to secure grant funding. The most recent grant funding supporting this training has expired. Without grant funding, the Department will be unable to deliver mandated training without charging substantial tuition for trainings. The Task Force recommends establishment of a dedicated stream of funding to support threat assessment training for institutions of higher education so that this training may continue to be delivered on a tuition-free basis to employees of institutions of higher education.

*Virginia Code § 23.1-805.J.* provides:

When otherwise consistent with applicable state and federal law, in the event that a public institution of higher education has knowledge that a student or employee who was determined pursuant to an investigation by the institution's threat assessment team to pose an articulable and significant threat of violence to others is transferring to another institution of higher education or place of employment, the public institution of higher education from which the individual is transferring shall notify the institution of higher education or place of employment to which the individual is transferring of such investigation and determination.

This notification provision is inconsistent with best practices in several respects and has practical administration problems.

The phrase “determined pursuant to an investigation” appears to refer to something more than the preliminary determination referenced in § 23.1-805.F. For consistency with best practices, this section should clarify that notification takes place “following a full inquiry and assessment of the subject” by the institution’s threat assessment team.

The statute does not identify who is responsible for making these notifications. In most instances, the threat assessment team has no way of knowing whether a student is seeking employment or transferring to another institution. The registrar may (or may not) know of a potential transfer, but in all likelihood will not know that the individual has been a subject of case management by the threat assessment team because the registrar is not a member of the team, thus creating potential liability for failing to carry out this notification duty. A university placement or alumni affairs office may (or may not) know that a student has applied for or been offered a job, but that office similarly will not know the student has been a subject of case management by the threat assessment team.

Because not time limited, this provision requires notification be made if an individual was a threat at any time in the past, even if the individual no longer poses a threat or the identified threat has been mitigated effectively. Best practice would have the threat assessment team close the case

once the threat has been successfully abated, rather than keep cases open indefinitely to make these notifications.

Because not time limited, this provision exposes the threat assessment team to liability and the burden of defending defamation actions for reporting an individual as a threat even if the team has determined the threat is past and no longer at issue. The work of the threat assessment team may result in a “scarlet letter” more persistent and damaging to the reputation of an individual than some criminal convictions. Moreover, due process rights may be implicated as there may be no formal notification to the subject individual of the determination that the individual posed a threat at some particular moment in time and the individual would not have a formal opportunity to respond. Compare this notice, for example, to the mandated transcript notations in sexual misconduct cases, which follow an administrative process through which a finding of misconduct is made. Finally, consideration should be given to the possibility that compliance with this notice requirement may cause a previously resolved or mitigated threat situation to re-emerge or to escalate an existing situation.

Because not geographically limited, this provision implicitly requires notification to out of state entities where there may not be provisions for immunity for the work of threat assessment teams. It potentially exposes threat assessment teams to liability and the burden of defending against defamation actions brought in far-off forums where there may be no statutory immunity or tort claims act protections provided for the threat assessment team.

To be consistent with best practices, the provision would be amended to require notification to another institution or employer when the threat assessment team is aware that an individual intends to transfer or change employment, and that following a full inquiry and assessment of the subject by the institution's threat assessment team the subject of concern is deemed to currently pose an articulable and significant threat of violence to others at another institution of higher education or place of employment in Virginia and providing such notification is not determined to be reasonably likely to escalate that threat of violence/harm to others.

It is recommended that *Virginia Code* § 23.1-805.J. be rewritten as follows:

J. When otherwise consistent with applicable state and federal law, if a threat assessment team at a public institution of higher education has knowledge that a student or employee who was determined following a full inquiry and assessment by the institution's threat assessment team to pose an articulable and significant threat of violence to others, and whose case is subject to periodic review or is being actively managed by the threat assessment team, is transferring to another institution of higher education in Virginia the threat assessment team at the public institution of higher education from which the individual is transferring shall notify the threat assessment team at the public institution of higher education to which the individual is transferring of such investigation and determination and may share confidential information in its possession

with the threat assessment team of the receiving public institution. If the student or employee is transferring to a private institution of higher education in the Commonwealth the threat assessment team shall notify the dean of students in the case of a student or the vice president or director of human resources in the case of an employee that the threat assessment team has conducted an assessment of the transferring student or employee.



# Campus Threat Assessment Task Force

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