

## **Administrative and Legislative Responses to the Tragedy at Virginia Tech**

The Commonwealth of Virginia has kept a sustained focus on how to respond appropriately to the loss of lives and injuries suffered at Virginia Tech on April 16, 2007. A reflection of that focus is a meeting held weekly to discuss the Commonwealth's ongoing response that is attended by representatives of the Governor's Office, the Office of the Attorney General, Virginia Tech, and the Education, Health Care, Public Safety and Commonwealth Preparedness cabinet secretariats. Other officials from areas such as Human Resources and Planning & Budget attend on an as needed basis. In addition, the Virginia Liaison Office (which represents state government interests on Capitol Hill in Washington, DC) is involved in the ongoing response.

The following information is offered pursuant to the terms of the recent settlement agreement. It is intended to provide an overview of many of the reforms and amendments to both administrative procedures and to the Virginia Code that will provide better security, awareness, communication, and preparedness throughout the Commonwealth, helping to protect students, faculty, administrators, employees and visitors to our college and university campuses.

### **Administrative Responses:**

#### **Executive Order 50**

Issued by Governor Kaine on April 30, 2007, Executive Order 50 addresses the cataloging and sharing of mental health records, particularly in law enforcement contexts, that are pertinent in determining whether individuals are threats either to themselves or individuals surrounding them.

The Executive Order requires that all state agencies report any involuntary court-ordered admission of an executive branch employee to a mental health facility to the Central Criminal Records Exchange. Furthermore, the order mandates that state police, when requesting information on involuntary court-ordered admission to a mental health facility, (a) request the order from appropriate district courts and (b) report any orders identified to the Central Criminal Records Exchange. The police must also share this information with firearms dealers requesting background information, as well as with federal law enforcement agencies when appropriate. Finally, the Department of Mental Health, Mental Retardation and Substance Abuse Services must report to the Central Criminal Records Exchange any order of inpatient or outpatient involuntary care.

#### **Executive Order 53**

Issued by Governor Kaine on June 18, 2007, Executive Order 53 established the Virginia Tech Review Panel to provide an independent, thorough, and objective incident

review of this tragic event, including a review of educational laws, policies and institutions, the public safety and health care procedures and responses, and the mental health delivery system.

### **Executive Order 62**

Issued by Governor Kaine on January 1, 2008, Executive Order 62 established the Commonwealth Consortium for Mental Health, chaired by the Secretary of Health and Human Resources and the Secretary of Public Safety, with the intent to (a) investigate and assess the viability of jail diversion models and make recommendations to improve mental health treatment for inmates who cannot be diverted from arrest and incarceration; and to (b) establish a Criminal Justice/Mental Health Training Academy for the Commonwealth. The Academy will provide a locus for integration of currently disparate organizations in an attempt to provide a comprehensive cross-training in criminal justice and mental health.

### **Governor's Campus Preparedness Conferences**

The Commonwealth has hosted campus preparedness conferences each of the past two years. The second annual Governor's Campus Preparedness Conference was held at Virginia Commonwealth University on August 4 and focused on all hazard preparedness on Virginia's campuses. There were 520 attendees from 69 two and four year degree granting colleges and universities from throughout Virginia, as well as participants from several state agencies. Evaluations from participants indicate the program was well received and that there is strong interest in this continuing as an annual event.

Welcoming remarks were provided by John Bennett on behalf of VCU and, on behalf of the Governor, by Secretary of Education Tom Morris and Assistant to the Governor for Commonwealth Preparedness Bob Crouch. The opening general session included a panel with presentations from representatives of Union University of Jackson, Tennessee, regarding that school's recent F4 tornado event; Northern Illinois University regarding its shooter incident; the University of New Orleans regarding its Katrina experience; and Delaware State University regarding its shooter event. Dr. Marcus Martin, a member of the Secure Commonwealth Panel and vice chair of the Governor's Virginia Tech Task Force, presided as facilitator.

The general session panel included three breakout session tracks with a total of fourteen separate panels on communications preparedness, campus lockdown (the most popular of the sessions), communicating during a crisis, emergency operations planning, the Virginia Tech Task Force Report, grants, campus threat assessments, campus volunteer recruitment and training, campus safety legislation compliance, developing a campus emergency operations center, emergency response planning, mental health on campus, pandemic influenza planning, and public-private partnerships for campus preparedness.

Nineteen vendors displayed their technology in campus alerting systems and other resources.

A conference summary will be posted on the website of the Virginia Higher Education Preparedness Consortium at [www.ocp.virginia.gov/vhepc](http://www.ocp.virginia.gov/vhepc). Feedback from participants will be reviewed for follow up action as appropriate by the Higher Education Preparedness Consortium when it next meets in late September or early October. A tentative date of August 3, 2009, has been set for next year's Governor's Campus Preparedness Conference with the location to be determined.

### **Public Safety**

In response to a Virginia Tech Review Panel recommendation, the Department of Criminal Justice Services formed a committee to revise the Family Assistance Plan in the state's Emergency Operations Plan. These revisions were completed in consultation with the Virginia Department of Emergency Management.

Public Safety officials also have been working with federal, state, and local agencies to develop a management framework for operating Family Assistance Centers in response to tragedies in Virginia. Such Centers would provide assistance to victims and families of victims of natural disasters or man-made tragedies. This framework will provide a state wide blueprint for establishing Centers as needed to offer both victims and their families an organized, calm, professional, and coordinated method of assistance delivery in a safe and secure environment following a tragedy, disaster or accident. The framework will also spell out coordination mechanisms that agencies will use to provide services and delineates the types of services to be offered.

The Governor's Office and Public Safety Officials worked closely with officials from the State of Illinois and Northern Illinois University in response to the campus shooting at the university. The Department of Criminal Justice Services provided contact information for the federal Office of Victims of Crime, DCJS Victims' Services Section staff and staff at Virginia Tech. DCJS also provided information related to its work on the Virginia Tech response to its counterpart agency in Illinois.

Public Safety officials also worked with the Virginia Liaison Office to provide detailed information for the section on "Campus Safety" in the Democratic Governors' Association Handbook on Best Practices.

### **Virginia Department of Health**

The Virginia Department of Health has taken the recommendations of the Virginia Tech panel and has begun more vigorously recruiting board-certified forensic pathologists. The agency has also trained public information officers well versed in the duties and responsibilities of the Office of the Chief Medical Examiner, who have the responsibility to responding to the needs of victim's families and relatives. Furthermore, the Virginia Department of Health has established a website designed to help educators, parents, and students prepare for, identify, and address potential for school violence.

Also, on September 18 through 29, the Virginia Department of Health is co-sponsoring an informational event with James Madison University school safety staff entitled "Campus Mental Health in the Commonwealth."

### **Office of the Chief Medical Examiner**

The Office of the Chief Medical Examiner has increased its efforts toward collaboration with other parties and agencies including law enforcement, Virginia Department of Criminal Justice Services, chaplains, Department of Homeland Security, as well as others, to help ensure that Family Assistance Centers are responsive to the needs of victims and families.

### **Institutions of Higher Education**

Virginia Tech has instituted a variety of responses to the events of April 16 with the encouragement and cooperation of the Commonwealth.

Institutions of higher education in the Commonwealth have reassessed their abilities to handle emergency situations and have amended emergency procedures. They have also identified best practices and means to assist fellow universities in times of emergency.

Colleges and universities in the Commonwealth have increased partnerships and communication both internally and externally. Many schools have established internal threat assessment teams and also strengthened local relations with law enforcement agencies, mental health organizations, and victim assistance groups.

Higher education institutions have also augmented their capabilities to communicate quickly with students, faculty, and staff in times of emergency. These involve both low-tech and high-tech—including cell phone text messages—to reach the greatest number of people as quickly as possible.

Additionally, most higher education institutions have conducted risk analyses, and have both reviewed and updated their security management plans. Furthermore, many schools have appointed a director of emergency planning and management.

### **Department of Mental Health, Mental Retardation and Substance Abuse Services**

In light of the recent administrative and legislative changes regarding the policies and procedures for mental health commitment and treatment, DMHMRSAS has released a new website intended to help professionals and citizens both understand the reforms and access pertinent mental health and law enforcement resources. The address is: <http://www.dmhmsas.virginia.gov/omh-mhreform.htm>.

The DMHMRSAS Commissioner has urged Community Services Boards to reach out to court leadership and other key stakeholders to develop an active relationship and ongoing partnership in support of making the various changes in the civil commitment process work effectively. The responses received through July 31, 2008, indicate that 34 CSBs have initiated collaboration with local key stakeholders.

### **Work with Federal Officials**

The Governor's Office and state cabinet secretaries cooperated with U.S. Secretary of Health and Human Services Michael Leavitt, U.S. Secretary of Education Margaret Spellings and U.S. Attorney General Alberto Gonzalez in the preparation of their "Report to the President on Issues Raised by the Virginia Tech Tragedy" as well as providing information to the U.S. Department of Education with respect to its Policy Guidance report titled "Balancing Student Privacy and School Safety: A Guide to the Family Educational Rights and Privacy Act for Colleges and Universities."

The Commonwealth also supported efforts that led to a grant by the U.S. Department of Education's Office of Safe and Drug-Free Schools to help develop a model for assessing and responding to at-risk behaviors in a higher education setting.

### **Resolution and Reconciliation**

The Commonwealth, with the assistance of victims, family members of victims, counsel to victims and family members, and mediation professionals developed a process for attempting to reach a resolution without resort to the difficult and painful process of litigation. Through the offices of the McCammon Group and the Virginia State Bar, representatives of the Governor's Office, the Office of the Attorney General and Virginia Tech were able to work with counsel for represented victims and family members and directly with unrepresented victims and family members to achieve settlement agreements that provide a framework for resolution and ongoing assistance.

## **Legislative Responses:**

### **Federal Taxation**

The Commonwealth worked to secure passage and signing by President Bush of the “Prevent Taxation of Payments to Virginia Tech Victims and Families Act” that eliminated federal taxation of the distributions from the Hokie Spirit Memorial Fund. This was a cooperative effort among family members and representatives, Virginia Tech, the Virginia Liaison Office, our Congressional delegation, Congressional leadership, the IRS, and the White House.

The new federal law did not automatically apply to state tax obligations. However, the General Assembly later passed legislation conforming Virginia’s tax code to the federal tax code. That legislation had the effect of eliminating taxation by Virginia of the distributions from the Hokie Spirit Memorial Fund.

### **Education**

House Bill 1005 (*Sponsored by Del. Bell, signed by Gov. Kaine on March 7, 2008, in effect on July 1, 2008*) requires the board of visitors or other governing board of any public institution of higher education to establish policies and procedures requiring the notification of a parent of a dependent student when the student receives mental health treatment at the institution's student health or counseling center. The notification applies when there exists a substantial likelihood that the student will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior or any other relevant information or suffer serious harm due to his lack of capacity to protect himself or to provide for his basic human needs.

House Bill 1058 (*Sponsored by Del. Amundson, Gov. Kaine’s recommendation adopted by the House on March 8, 2008, in effect on July 1, 2008*) requires the board of visitors or other governing board of any public institution of higher education to establish policies and procedures requiring the release of a student's educational record if the parent requesting the record claims the student as a dependent.

Senate Bill 538 (*Sponsored by Sen. Obenshain, signed by Gov. Kaine on March 5, 2008, in effect on July 1, 2008*) mandates that by January 1, 2009, each public institution of higher education establish a comprehensive, prompt, and reliable first warning and emergency notification system for students, staff, and faculty.

Senate Bill 539 (*Sponsored by Sen. Obenshain, signed by Gov. Kaine on March 10, 2008, in effect on July 1, 2008*) requires that the board of visitors or other governing body of every public institution of higher education establish a threat assessment team. The bill also requires the team to adopt a campus-wide committee charged with education and prevention of violence on campus.

Senate Bill 636 (*Sponsored by Sen. Cuccinelli, signed by Gov. Kaine on March 11, 2008, in effect on July 1, 2008*) allows each public and private institution of higher education to request from its students complete student records, including any mental health records held by the originating school. These records shall be kept confidential as required by state and federal law.

House Bill 1449 (*Sponsored by Del. Crockett-Stark and Del. Shuler, signed by Gov. Kaine on March 7, 2008, in effect on July 1, 2008*) and Senate Bill 256 (*Sponsored by Sen. Deeds, signed by Gov. Kaine on March 10, 2008, in effect on July 1, 2008*) require the board of visitors or other governing body of each public institution of higher education to develop and keep current a written crisis and emergency management plan.

### **Mental Health**

**[See also the attached list of Virginia Tech Review Panel Recommendations Related to Mental Health, which details the legislative responses to specific Panel Recommendations]**

#### *A) Bills Addressing Inadequacies in the Sharing and Disclosure of Relevant Mental Health Information*

House Bill 576 (*Sponsored by Del. Watts, signed by Gov. Kaine on April 2, 2008, in effect on July 1, 2008*) provides that any health care provider or other provider rendering services to a person subject to involuntary commitment proceedings shall disclose to magistrates, juvenile officers, courts, attorneys, independent evaluators and community service board all information necessary and appropriate for them to perform their duties related to the commitment proceedings. The bill also provides that any health care provider shall be immune for any harm resulting from the disclosure of health records unless he intended the harm or acted in bad faith.

Senate Bill 336 (*Sponsored by Sen. Cuccinelli, signed by Gov. Kaine on April 11, 2008, in effect on July 1, 2008*) provides that a health care provider or designee of a local community services board or behavioral health authority shall not be required to encrypt email containing information or medical records provided to a magistrate unless there is reason to believe that a third party will attempt to intercept the email.

#### *B) Bills Addressing the Mental Health Evaluation and Treatment of Minors*

House Bill 400 (*Sponsored by Del. Hamilton, signed by Gov. Kaine on April 2, 2008, in effect on July 1, 2008*) and Senate Bill 67 (*Sponsored by Sen. Howell, signed by Gov. Kaine on March 2, 2008, in effect on July 1, 2008*) provides that minors 14 years of age or older who are incapable of making an informed decision may be admitted to inpatient treatment upon the application of a parent.

House Bill 402 (*Sponsored by Del. Hamilton, signed by Gov. Kaine on April 2, 2008, in effect on July 1, 2008*) and Senate Bill 68 (*Sponsored by Sen. Howell, signed by Gov. Kaine on March 2, 2008, in effect on July 1, 2008*) provide that a petition for the involuntary commitment of a minor shall be served upon the minor and the minor's parents unless the petition has been withdrawn or dismissed.

House Bill 582 (*Sponsored by Del. Marsden, signed by Gov. Kaine on April 2, 2008, in effect on July 1, 2008*) increases from 72 hours to 96 hours the length of time to hold a hearing for the involuntary commitment of a minor or the emergency admission of a minor for inpatient treatment, and that a minor may be admitted by his parents to a facility over his objections.

Senate Bill 247 (*Sponsored by Sen. Howell, signed by Gov. Kaine on April 2, 2008, in effect on July 1, 2008*) provides that a court shall appoint a guardian ad litem and counsel for a minor for involuntary commitment hearings and proceedings for the judicial approval of the admission for inpatient treatment of a minor 14 years of age or older over his objections.

*C) Bill Relaxing the Commitment Criteria for Juveniles with Mental Health Issues*

House Bill 559 (*Sponsored by Del. Bell, signed by Gov. Kaine on April 2, 2008, in effect on July 1, 2008*) changes the criteria for Emergency Commitment Orders, Temporary Detention Orders, juveniles and involuntary commitment. It includes how that criteria is applied to prisoners and juveniles, so that a person may be taken into custody, temporarily detained, or involuntarily committed if the person is mentally ill and there exists a exists “a substantial likelihood that, as a result of mental illness, the defendant will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any.”

*D) Bills Addressing the Transfer of Custody for Mental Health Evaluation*

House Bill 401 (*Sponsored by Del. Hamilton, signed by Gov. Kaine on April 2, 2008, in effect on July 1, 2008*) and Senate Bill 81 (*Sponsored by Sen. Cuccinelli, signed by Gov. Kaine on March 3, 2008, in effect on July 1, 2008*) allow the law-enforcement agency providing transportation to a person pursuant to an Emergency Commitment Order to transfer custody of the person to the facility or location to which the person is transported for evaluation. This bill provides that the facility or location which accepts custody of a person may not require the law-enforcement agency to pay any fees or costs for the transfer of custody.

House Bill 583 (*Sponsored by Del. Marsden, signed by Gov. Kaine on April 2, 2008, in effect on July 1, 2008*) allows the magistrate to extend the time of Emergency Commitment Orders for two hours if good cause exists to grant the extension.

*E) Bills Addressing the Participation of Independent Examiners and Community Service Board Reports*

House Bill 560 (*Sponsored by Del. Bell, signed by Gov. Kaine on April 2, 2008, in effect on July 1, 2008*) requires the independent examiner and the community services board employee or designee who prepared the prescreening report to attend the commitment hearing.

Senate Bill 141 (*Sponsored by Sen. Edwards, signed by Gov. Kaine on March 4, 2008, in effect on July 1, 2008*) clarifies that a discharge plan prepared by the community services board for persons discharged from a state hospital or training facility shall identify the services that the person discharged will require upon release and the public or private entities that will provide the services.

**Firearms**

House Bill 709 (*Sponsored by Del. Janis, signed by Gov. Kaine on April 23, 2008, in effect on July 1, 2008*) and Senate Bill 226 (*Sponsored by Sen. McDougle, signed by Gov. Kaine on April 23, 2008, in effect on July 1, 2008*) require that a person seeking to purchase a firearm from a firearms dealer answer questions on the state background check consent form concerning whether the applicant has ever been acquitted by reason of insanity, been adjudicated legally incompetent or mentally incapacitated, or been involuntarily admitted to a facility or involuntarily ordered to out-patient mental health treatment.

House Bill 815 (*Sponsored by Del. Albo, signed by Gov. Kaine on April 2, 2008, in effect on July 1, 2008*) Central Criminal Records Exchange; requires reporting of involuntary commitment of persons who were the subject of a Temporary Detention Order and who subsequently agreed to voluntary commitment.

Senate Bill 216 (*Sponsored by Del. Edwards, signed by Gov. Kaine on March 27, 2008, in effect on July 1, 2008*) clarifies that orders for both involuntary inpatient and outpatient mental health treatment must be forwarded by the clerk of court to the Central Criminal Records Exchange, and that persons ordered to either involuntary inpatient or outpatient treatment are prohibited from purchasing, possessing, or transporting a firearm. This portion of the bill codifies Executive Order 50 (2007).

**Court Procedures**

House Bill 708 (*Sponsored by Del. Janis, signed by Gov. Kaine on April 2, 2008, in effect on July 1, 2008*) clarifies that Temporary Detention Orders and the records pertaining to them are admissible as evidence because they are considered judicial records.

House Bill 1144 (*Sponsored by Del. Fralin, signed by Gov. Kaine on April 2, 2008, in effect on July 1, 2008*) allows the magistrate, when considering whether to issue an Emergency Commitment Order or a Temporary Detention Order, to consider: the recommendations of any treating or examining physician; any past actions of the person; any past mental health treatment of the person; any relevant hearsay evidence; any medical records available and any affidavits submitted, if the witness is unavailable; any other information available that the magistrate deems relevant to the determination of whether to issue a Temporary Detention Order.

House Bill 1323 (*Sponsored by Del. Toscano, signed by Gov. Kaine on March 4, 2008, in effect on July 1, 2008*) requires a magistrate to issue Temporary Detention Orders upon the recommendation of any responsible person, any treating physician or upon his own motion after an in-person evaluation by an employee or designee of the local community services board.

Senate Bill 142 (*Sponsored by Sen. Edwards, signed by Gov. Kaine on April 2, 2008, in effect on July 1, 2008*) requires that each involuntary commitment hearing be recorded separately, so that no more than one hearing is recorded per tape or other recording.

### **Further Study**

The General Assembly has acknowledged the value in continuing to study the issue of Mental Health Reform. Senate Joint Resolution 42 (*Sponsored by Sen. Lucas*) requests the Joint Commission on Health Care to study mental health reform.

### **Budget**

The General Assembly included flexibility for the Department of Mental Health, Mental Retardation, and Substance Abuse to work with system stakeholders to determine how funds can best be allocated to meet the pressing need for improved care surrounding the civil commitment process.

The biennium budget includes \$28.3 million to be allocated in key areas, including:

- *Emergency Services* – Helps increase emergency services capacity by: (1) Improving access to emergency psychiatric care, (2) Increasing emergency staff to provide crisis response, participate in commitment hearings, etc. and (3) Expanding the number of residential crisis stabilization programs. Expanded emergency services would provide intensive services, rapid access and peer-provided services as part of the civil commitment process.

- *Outpatient Services* – Expands and improves outpatient services by adding new outpatient clinicians as part of the civil commitment process.
- *Case Management* – Increases case management throughout the Commonwealth to provide coordination and linkage services with a focus on helping individuals adhere to a treatment plan as part of the civil commitment process.

In addition, over the biennium, the mental health budget includes:

- \$6 million to expand a pilot program for jail diversion services funded in the 2006-08 biennial budget that will provide diversion and wrap-around services for an estimated 300-500 people.
- \$5.8 million to hire clinicians specializing in children's mental health to help serve children who are not eligible for services through the Comprehensive Services Act.
- \$600,000 to create positions in DMHMRSAS to expand monitoring of CSBs and to develop core service standards and service improvement plans. These positions will allow for better oversight of community-based services expansion.
- \$600,000 to establish a training program for crisis intervention to enable law enforcement to respond to crisis situations involving individuals with mental illness.
- \$345,000 to expand licensing staff to help monitor and ensure program quality.