

Final
STAFF SUMMARY OF MEETING
SCHOOL SAFETY AND YOUTH IN CRISIS

Date: 10/27/2015

Time: **10:10 AM to 01:47 PM**

Place: RM 271

This Meeting was called to order by
Senator Scheffel

This Report was prepared by
Kerry White

ATTENDANCE

Cadman	X
Crews	X
Ganahl	*
Harms	X
Kerr	X
Lawson	X
McDonald	X
Moreno	X
Newell	X
O'Donnell	X
Silvia	E
Weinerman	X
Willett	X
Wilson	X
Duran	X
Scheffel	X

X = Present, E = Excused, A = Absent, * = Present after roll call

Bills Addressed:	Action Taken:
Panel on Student Privacy	Witness Testimony and/or Committee Discussion Only
Teacher Panel	Witness Testimony and/or Committee Discussion Only
Public Testimony	Witness Testimony
Student Safety: Title IX and Sexual and Gender-based Harassment	Witness Testimony and/or Committee Discussion Only
Student Safety: St. Vrain Valley School District	Witness Testimony and/or Committee Discussion Only
Discussion and voting on bills	Recommendation(s) not Approved
Discussion about next steps	Committee Discussion Only

10:11 AM -- Panel on Student Privacy

Senator Scheffel, Chair, called the meeting to order and introduced the panel participants, including:

- Dale King, Director, Family Policy Compliance Office, U.S. Department of Education (ED);
- Ilana Spiegel, Parent Advocate, Seeking Equity and Excellence for Kids (SEEK);
- Callan Clark, Director of Student Services, Englewood School District;
- Stuart Stuller, Attorney, Caplan and Earnest, LLC; and
- Michael Roche, Partner, Lathrop & Gage, LLP and counsel to the Davis Family.

Dale King, representing ED, introduced himself and discussed his office's role in investigating complaints and providing technical assistance to schools with respect to the Family Educational Rights and Privacy Act (FERPA). Mr. King stated that FERPA was enacted in 1974 to protect the privacy rights of students and that schools are required to notify parents of their rights and when a student turns 18, those rights transfer to the student.

Mr. King reviewed how and when disclosures about a student may be made. He said that specific exceptions allow for the release of information in order to protect the health and safety of the student or others and noted that although information can be disclosed to first responders in an emergency situation, it cannot be released for emergency preparedness or training activities unless parental consent is provided. He reviewed the options for enforcement of FERPA, which may include notice, cease and desist orders, withholding funding, or lawsuits.

10:24 AM

Senator Scheffel asked for clarification about whether students are tagged as posing a threat to others and how that information may be disclosed. Mr. King responded that student information is confidential unless there is a health and safety risk to the student or others and that disciplinary records may only be shared with school officials and only when the school administrator needs it for a legitimate educational purpose.

Representative Moreno asked about exceptions to FERPA as a result of a subpoena and for clarification on the health, safety, and emergency exception. Mr. King said there must be an imminent threat and without action, the event is likely to happen. Representative Moreno asked for clarification about whether the exception depends on who is the subject of an imminent threat. Mr. King responded that it is not dependent on the subject of the threat.

Senator Newell asked for clarification on whether the school or the ED is making determinations about when to release information. Mr. King responded that schools make these determinations. Senator Newell asked whether school officials can share information within the school on a need-to-know basis. Mr. King said that if there is a health or safety emergency, then the school can disclose to anyone that needs to know, such as law enforcement or health officials. Senator Newell followed up by asking how the disclosure requirements may differ for students in foster care. Mr. King responded that there is a section in FERPA that allows for additional disclosures to be made to a case worker in that situation.

Senator Scheffel asked whether the ED has a database with a list of troubled youth and who has threat assessments. Mr. King responded not that he is aware of the ED maintaining a database with individual student data. He noted that there may be some records of which schools and school districts have threat assessment teams. Senator Scheffel asked how the ED is involved in specific situations at individual schools. Mr. King replied that the ED does not participate in threat assessments or other situations in specific schools unless there is a complaint and they are required to investigate.

10:38 AM

Linda Weinerman commented that the disclosure standard may be subjective and that different schools may judge the same situation differently. Ms. Weinerman asked whether the ED provides threat assessment training to schools. Mr. King said the ED has issued guidance to schools regarding threat assessment teams, but they don't set standards or require standardization within schools.

Representative Moreno asked how the ED defines school officials. Mr. King said a school official is an employee of the school or someone who is outsourced or contracted by the school.

Senator Scheffel asked about training provided by the ED. Mr. King said that they try to accommodate requests from schools, most of which is conducted by webinar and through technical assistance.

Gregory McDonald asked about the intersection between FERPA and Colorado's Senate Bill 15-213. Mr. King responded that he is not familiar with Colorado's law.

Representative Duran asked about the rational basis standard, noting that most of the time schools will have a basis for releasing information. Representative Duran asked if there was data on the number of times or percentage of cases where this standard was not met. Mr. King said complaints are rare and that in his experience as director, schools are cautious about how they set up threat assessment teams.

10:46 AM

Callan Clark introduced herself to the committee. Staff distributed a packet of school threat assessment materials (Attachment A). Ms. Clark said that there are themes, but not predictors about which students may be dangerous. She said school districts have very real limitations for intervention because a school can't require mental health treatment or arrest a juvenile. Absent outside interventions, Ms. Clark said that a school can only use disciplinary tools or its own limited mental health services. She said that schools rely on parents to share information, however they can't compel medical records be released unless a parent consents or the student consents if he or she is over the age of 18. Ms. Clark said schools are concerned that students with disabilities, especially those with emotional or social communication challenges, will be forced into alternative schools and that there is a need to clarify the threat assessment process. Ms. Clark recommended that the School Safety Resource Center be designated as the lead agency for threat assessments and training. She said options for different threat assessment models should be made available to account for differences in geography, resources, and staffing. She continued by noting that school districts may need clarity about informational sharing -- i.e. what FERPA protects; who should get threat assessment information; guidance on sharing information with students and school safety personnel; searches of student property; and interacting with students with disabilities. Ms. Clark recommends that a local anonymous tip line be implemented and stated that school districts will need increased resource support and sufficient funds to adequately staff mental health supports.

10:57 AM

Ilana Spiegel introduced herself as a parent of four children and reviewed her professional and personal background. She said that despite threat assessments, lives are still being lost. Ms. Spiegel said threat assessments don't predict or prevent harm because they capture a slice in time. She said students with disabilities may be subject to more assessments, causing labeling, mislabeling, and segregation of students. She said that there is an expectation of foreseeability with threat assessments, which is problematic because the test instruments are not designed to be diagnostic or predictive. She said that privacy is compromised for students as a result of these expectations, which is a major concern for parents.

11:05 AM

Stuart Stuller introduced himself as an attorney that represents school districts and reviewed his background as a professor. Mr. Stuller said that his clients include the Jefferson County and Platte Canyon School Districts. He briefly commented on the interaction between the ED and school districts, noting that the ED defers to school districts. He cautioned the committee about legislating decision-making concerning discretion to release student data.

11:10 AM

Michael Roche introduced himself as a partner with Lathrop & Gage and as the Davis family attorney. Mr. Roche said that he agreed with Mr. King and that FERPA was never intended to be an impediment to school safety. He stated his belief that in cases where it is such, that has happened as a result of misinterpreting FERPA, which does not create liabilities for schools. Mr. Roche said that the U.S. Supreme Court has ruled that schools cannot be sued for damages under FERPA. He reviewed disclosures of information and concluded that, due to the language about legitimate educational interest, schools should be disclosing information about students who appear to be in crisis to teachers. Mr. Roche said that he believes teachers are very committed to students and are capable of exercising good judgment. Mr. Roche said that one way FERPA is implemented is through the code of federal regulations, which makes clear that records of a school's law enforcement unit (school resource officers and campus security) are not school records and are not protected. He said that another category of information is what teachers, administrators, and security personally observe. Mr. Roche said that information is not protected -- it can and should be shared because its not educational.

Mr. Roche said he thinks it is important to ask the forthcoming teacher panel about their role in conducting threat assessments. He said the point is not to predict school violence, it is to prevent it. Mr. Roche opined that there is no useful profile for a school shooter, but that there are useful behaviors that can help prevent targeted school violence. Mr. Roche reviewed threat assessments, noting that often the rational basis standard is used, which is the lowest legal standard and essentially says that if a school can explain what it is doing, it is fine. Mr. King said he was not aware of any complaints being asserted under that standard because it is so low and that FERPA has not been used to defund schools.

Mr. Roche continued by saying that Colorado's stated policy in interpreting FERPA is to facilitate the exchange and sharing of student information to the greatest extent possible, but that this is not happening. He said that Littleton Public School's policy demonstrates a core misunderstanding of what FERPA permits. According to Mr. Roche, this school district's policies say that, even in the case of an emergency, it can only disclose information to specific authorities, which is not what FERPA says. He provided an example of how the Arapahoe County sheriff released data, but the school district would not. He expressed the concern that FERPA is being used as a shield behind which schools can hide when they are uncomfortable. Mr. Roche commented that he believes a central clearinghouse is needed and the information sharing must support the threat assessment process. He complimented the School Safety Resource Center's work. Staff distributed a federal report that was issued in 2007 following the incident on the campus of Virginia Tech (Attachment B), which Mr. Roche discussed, noting that generally schools undershare information versus overshare information.

11:28 AM

Senator Scheffel asked Ms. Clark about the effectiveness of the Safe2Tell program. Ms. Clark responded that it is used and is effective.

Senator Newell asked Ms. Clark about other programs within the Englewood School District. Ms. Clark discussed a program called Public Schoolworks, which is connected to their website and operates like Safe2Tell, but is connected to the district's administration.

David Crews asked whether the School Safety Resource Center can support school districts with threat assessments. Chris Harms responded that the center has been providing this support and will continue to help train schools.

Staff distributed a packet of information about school-based health care (Attachment C). Senator Newell asked about the Health Insurance Portability and Accountability Act (HIPAA). Mr. Stuller responded that HIPAA does not necessarily pose a concern for schools because if the school is in possession of a student record, the governing law is FERPA. Ms. Spiegel said there are concerns when outside personnel are involved. Senator Kerr reviewed information in Attachment C, which discusses the intersection of FERPA and HIPAA on page 3. Ms. Clark said HIPAA stops entities from sharing information with schools unless the parent consents. Senator Newell asked how schools balance these laws and whether schools encourage parents to share HIPAA data. Ms. Clark said it is a fine balance and depends on the individual student, but a school's goal is to partner with the family to support the student.

Representative Willett asked about FERPA and discovery issues. Mr. Roche responded that discovery is limited by law. Mr. Roche said that he has reviewed the legislation that the committee is considering, and that in his view, none of the proposed bills will conflict with FERPA. Representative Willett commented that he applauds Bill 3 because it requires full compliance with federal law. Representative Willett asked whether the attorneys on the panel believe that schools can meet that standard. Mr. Stuller responded that having done teacher dismissal hearings which have similar requirements, the answer is yes. According to Mr. Stuller, school officials are more worried about school shootings than they are about being sued.

Sharyl Kay Lawson thanked the panelists for their participation and commented that as a special education teacher, it can be difficult to help kids when parents don't share information.

11:46 AM

The committee recessed for lunch.

12:41 PM -- Teacher Panel

Senator Scheffel called the meeting back to order and convened the teacher panel.

Kiki Leyba introduced himself as an English Teacher at Columbine High School. He noted that on April 20, 1999, he was in his first year as a teacher at Columbine and detailed his experiences supporting staff in other schools that have experienced acts of school violence, including Platte Canyon, Sandy Hook, and Arapahoe High School.

Christian Adams introduced himself as a special education teacher at Broomfield Heights Middle School. He reviewed the composition of this school, which has about 500 students. He said that they have a lot of structures available to hear from students, including an annual student climate survey.

Jonathan Ail introduced himself as a teacher and math department chair at Skyview Academy. He said charter schools have limited resources and budgets and, as such, that can be a challenge for school safety purposes. He reviewed his school's resources, including learning specialists; an on-site school psychologist, social worker, and therapy dog; training; two counselors; student programs; and an active shooter training.

Todd Churchwell introduced himself as a social studies teacher in Wray. He spoke about his school's lack of resources and told the committee it just recently acquired cameras and door locks. Mr. Churchwell reviewed his district's protocols, which include using materials from the I Love U Guys Foundation. He said an advantage in Wray is that the community is small and therefore teachers and kids have relationships outside of school, which may facilitate identifying students who are struggling.

Imogene Higgins introduced herself as a first grade teacher in the Genoa-Hugo School District. She reviewed the school district composition and resource sharing that occurs as a result of its small size and budget. She discussed the value of building relationships and how a smaller community helps to facilitate that. She reviewed the roles of faculty and staff and the overlap in functions as a result of having no dedicated school safety personnel. Ms. Higgins said small schools need clarity and guidance on how to perform duties of threat assessment and as safety coordinators. She said the Genoa-Hugo School District also uses the I Love U Guys Foundation protocols, and reviewed its implementation. She suggested that the committee consider developing a model protocol so that students who move between school districts know what to do in an emergency.

01:31 PM

Representative Duran thanked the panel members for their participation and asked them to comment on the training they receive, as teachers, on FERPA. Mr. Ail reviewed the in-service training at his school and said that teachers are not familiar with FERPA and its requirements per se, but if a threat has been communicated, teachers know to communicate it to school administration.

Mr. Crews thanked the panel for their participation and asked if the I Love U Guys Foundation protocol is working well. Mr. Leyba and Ms. Higgins each responded affirmatively.

Ms. Harms asked about mental health professionals, professional development days, and threat assessment protocols in small, rural school districts. Ms. Higgins said there are no mental health professionals in her school, but they have a threat assessment team that consists of the principal, superintendent, and sheriff. She said they have to go to Limon or another area for mental health services, so it can take many days to get an assessment done. Mr. Churchwell said his district has a counselor for middle and high school students and there is a mental health center in town. He said that their threat assessment team includes a counselor, the principal, and others as needed, including law enforcement or mental health professionals.

Ms. Weinerman thanked the panel and asked if bigger districts are able to identify and assist students struggling with mental health issues, like suicide. She asked about training students to identify needs among their peers. Mr. Adams responded that he is in agreement.

Representative Wilson thanked the panelists and asked how student relationships with teachers can happen in a school where there are 1,000 or 2,000 students. Mr. Leyba responded that there are many similarities; he feels like he knows the name of 800 students every school year and as such, they have been able to identify students who are struggling. Mr. Leyba said it would be easier if class sizes were smaller.

Senator Scheffel asked if any of the panelists have participated in the threat assessment process. Mr. Leyba said threat assessments happen at the administrator level and he is not aware of any teachers being involved. Mr. Adams said he was involved when one of his students was threatened and he was brought in to assess communication issues. Ms. Higgins said she had a first grader who was making threats and displaying violent behavior and was able to work with her school administrators. Mr. Ail said he has been asked for input on students, but never formally as part of a threat assessment. Mr. Churchwell said he has been asked for input and participated in student reentry plans.

Mr. McDonald thanked the panel for their emphasis on relationships. He said there were concerns over threat assessments and students receiving special education might be at a higher risk for a threat assessment. Mr. Adams responded that each threat assessment is different.

Senator Newell thanked the panel. She asked about the lessons learned from a teacher perspective. Mr. Leyba responded that schools should put programs and resources in place prior to a tragedy. He said some schools don't have school resource officers or mental health workers and that the limited resources of trauma workers is crippling.

Kate O'Donnell also thanked the panel. She asked whether the teachers felt supported by school administration, to which Mr. Churchwell and Mr. Adams each replied affirmatively.

02:01 PM -- Public Testimony

Senator Scheffel invited public testimony to begin.

Carol Meredith, Executive Director of the Arapahoe Douglas County ARC and a parent of an adult child with disabilities, discussed the stigma facing people with disabilities and discrimination experienced by parents. She encouraged the committee to approve Bill 5.

Cheri Kiesecker, representing herself, said parents resist sharing information because it is not clear where that data is going, who has it, and in what form. She noted that there are many bills being considered at the federal level and that how and by whom a school official is defined poses a problem for parents because that can include contractors. Ms. Kiesecker recommends that legislation clarify what a legitimate educational need is.

Kristin Melton, Education Program Director at Rocky Mountain Childrens Law Center, said that the passage of the Claire Davis Act has resulted in more discipline and threat assessments and that schools are acting out of a fear of what reasonable care means.

John Simmons, representing School Safety Partners, spoke about the relationship between school district immunity and the Claire Davis Act. He suggested that schools be provided immunity in exchange for demonstrating proof of a variety of protective acts, such as providing written communication plans, safety drill evaluations, FEMA training certifications, testing reports on communications equipment, emergency operations plans, and other related items.

02:26 PM

Ms. Weinerman asked Ms. Melton whether some school districts do a better job than others in terms of using threat assessments. Ms. Melton said she does not have examples of a good threat assessment tool and that is part of the difficulty. Ms. Melton stated that, to her knowledge, no evidence based tool is being used.

Senator Newell asked Ms. Meredith if she has seen or experienced more fear for parents sharing information. Ms. Meredith said she has not seen a huge uptick in that fear; she is proactive about telling parents to share their information.

02:30 PM -- Student Safety: Title IX and Sexual and Gender-Based Harassment

Kimberly Hult introduced herself and began her remarks by defining sexual harassment. She said 48 percent of students surveyed recently felt that they had been harassed and that one out of ten girls will have been physically forced to engage in sexual intercourse. She spoke about court decisions relating to Title IX and what constitutes actual notice and deliberate indifference and a school's obligation to investigate claims of harassment and assault. Ms. Hult said that under federal law, there are no caps on damages and victims can be entitled to attorney and other fees. She said that the statute of limitations does not start until the child turns 18 and then it is two years. Ms. Hult said many Colorado policies do not meet Title IX requirements.

02:52 PM

Representative Duran asked about situations where an allegation is made and there is no follow up. Ms. Hult responded that she is not at liberty to discuss current cases.

Mr. Crews asked whether rural school districts can have the Title IX coordinator located in the BOCES. Ms. Hult responded that there would be concerns about having adequate time to perform the functions of that role and that in fact some districts may require more than one coordinator.

Senator Newell asked about sexting, its prevalence in schools, and how Title IX applies. Ms. Hult responded that about 30 percent of students experience sexual harassment through social media, but that Title IX guidelines do not specifically address sexting. She said that depending on the content of the message, child pornography statutes may apply.

02:58 PM -- Student Safety: St. Vrain Valley School District

Former Senate President Brandon Shaffer introduced himself and staff distributed a proposal titled the School Safety Confidential Information Act (Attachment D). According to Senator Shaffer, there are very few exceptions under state law where a mental health professional can share information, and he wants to carve out an exception. Senator Newell expressed support for the proposal. Ms. O'Donnell asked for clarification about the reporting process. Senator Shaffer responded that communication would be restricted to within the school. He said that his policy would not be proscriptive about identifying specific people within the school and instead to allow the schools to decide that for themselves.

Ms. Weinerman asked for clarification about what would occur when a patient makes a direct threat. She asked whether having an exception would create a dampening effect on the therapeutic relationship. Senator Shaffer replied that it might, but said that under HIPAA, there are already some restrictions. He said it depends on professional judgment and this is the policy issue he is asking for the committee to discuss.

Ms. Harms asked for clarification between the proposal and a therapist's duty to warn in current law. Senator Shaffer reviewed the disclosure of confidential communications found in Section 12-43-218, C.R.S. and said that he wants to add a direct threat against a school or occupants, rather than specific persons.

03:17 PM

Representative Willett discussed an expulsion in the St. Vrain School District following a threat assessment. President Cadman and Senator Shaffer discussed the proposal and the accountability mechanism for protecting confidentiality.

03:24 PM

The committee took a brief recess.

03:47 PM -- Discussion and voting on bills

The committee came back to order. Senator Scheffel talked about the report that will be issued at the end of the year examining the Arapahoe High School shooting. He explained Bills 2, 3 and 7, and stated that he would be withdrawing the bills until further work can be done with stakeholders. Senator Newell stated that she would be withdrawing Bill 6 for the same reasons. Representative Willett explained Bill 3 and discussed the possibility of withdrawing the bill as well. Senator Newell explained Bill 5 and distributed prepared amendment 1 (Attachment E) and explained the amendment. She discussed the bill's fiscal note.

BILL:	Bill 5
TIME:	04:03:51 PM
Moved:	Newell
MOTION:	Moved amendment 1 (Attachment E). The motion passed without objection.
SECONDED:	
	VOTE
Cadman	
Crews	
Ganahl	
Harms	
Kerr	
Lawson	
McDonald	
Moreno	
Newell	
O'Donnell	
Silvia	
Weinerman	
Willett	
Wilson	
Duran	
Scheffel	
YES: 0 NO: 0 EXC: 0 ABS: 0 FINAL ACTION:	Pass Without Objection

04:05 PM

The committee discussed the merits of the bill.

04:20 PM -- Former State Senator Moe Keller, representing Mental Health America of Colorado, came to the table to testify in support of Bill 5.

BILL:	Bill 5	
TIME:	04:04:13 PM	
MOVED:	Newell	
MOTION:	Move that Bill 5 be included as one of the bills forwarded by the School Safety and Youth in Crisis Committee to Legislative Council. The motion failed on a vote of 2-6.	
SECONDED:		
		VOTE
	Cadman	No
	Crews	
	Ganahl	
	Harms	
	Kerr	Yes
	Lawson	
	McDonald	
	Moreno	No
	Newell	Yes
	O'Donnell	
	Silvia	
	Weinerman	
	Willet	No
	Wilson	No
	Duran	No
	Scheffel	No
Final YES: 2 NO: 6 EXC: 0 ABS: 0 FINAL ACTION: FAIL		

04:23 PM

Representative Willett explained Bill 8 which expands the duty to exercise reasonable care to protect students, faculty, and staff from harm within school facilities or while participating in school-sponsored activities to include all public entities and employees. He answered questions from the committee members.

BILL:	Bill 8	
TIME:	04:27:33 PM	
MOVED:	Willett	
MOTION:	Move that Bill 8 be included as one of the bills forwarded by the School Safety and Youth in Crisis Committee to Legislative Council. The motion failed on a vote of 3-5.	
SECONDED:		
		VOTE
Cadman		No
Crews		
Ganahl		
Harms		
Kerr		Yes
Lawson		
McDonald		
Moreno		No
Newell		Yes
O'Donnell		
Silvia		
Weinerman		
Willett		Yes
Wilson		No
Duran		No
Scheffel		No
Final YES: 3 NO: 5 EXC: 0 ABS: 0 FINAL ACTION: FAIL		

04:30 PM

Representative Willett explained Bill 1, which clarifies that nothing in the "Claire Davis School Safety Act" of 2015 is intended to contradict or alter court precedent or the applicability of jury instructions in Colorado courts.

04:33 PM -- Michael Roche, representing himself and the Davis family, came to the table to express his concerns about the bill and answer questions from the committee members.

BILL:	Bill 1	
TIME:	04:44:14 PM	
MOVED:	Willett	
MOTION:	Move that Bill 1 be included as one of the bills forwarded by the School Safety and Youth in Crisis Committee to Legislative Council. The motion failed on a vote of 3-5.	
SECONDED:		
		VOTE
Cadman		No
Crews		
Ganahl		
Harms		
Kerr		Yes
Lawson		
McDonald		
Moreno		No
Newell		Yes
O'Donnell		
Silvia		
Weinerman		
Willett		Yes
Wilson		No
Duran		No
Scheffel		No
Final YES: 3 NO: 5 EXC: 0 ABS: 0 FINAL ACTION: FAIL		

BILL:	Bill 5	
TIME:	04:03:51 PM	
MOVED:	Newell	
MOTION:	Moved Amendment 1 (Attachment E). The motion passed without objection. The motion passed without objection.	
SECONDED:		
		VOTE
Cadman		
Crews		
Ganahl		
Harms		
Kerr		
Lawson		
McDonald		
Moreno		
Newell		
O'Donnell		
Silvia		
Weinerman		
Willett		
Wilson		
Duran		
Scheffel		
YES: 0 NO: 0 EXC: 0 ABS: 0		FINAL ACTION: Pass Without Objection

04:45 PM -- Discussion about next steps

Senator Scheffel told the committee that the next meeting is tentatively planned for Friday, January 22, 2016, at 1:30 pm. He explained that at this meeting, the committee will discuss next steps and the possible formation of subcommittees.

04:47 PM

The committee adjourned.

COLORADO SCHOOL SAFETY RESOURCE CENTER



ESSENTIALS OF SCHOOL THREAT ASSESSMENT: PREVENTING TARGETED SCHOOL VIOLENCE

Sections:

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January 2015

This document is intended as guidance to Colorado schools and was created with collaboration from the Threat Assessment Work Group of the Colorado School Safety Resource Center. Consultation with district legal counsel and local law enforcement is recommended. Additional consultation and template formats may also be obtained from the Colorado School Safety Resource Center, Department of Public Safety.

With Thanks to Participating Threat Assessment Work Group Agencies

Academy School District 20

Adams 12 Five Star Schools

Aurora Public Schools

Center for the Study and Prevention of Violence, CU-Boulder

Cherry Creek School District

Colorado Department of Education

Colorado School Safety Resource Center, Department of Public Safety

Denver Public Schools

Jefferson County School District

Jefferson County Juvenile Assessment Center

Mapleton School District

John Nicoletti, Ph.D., Nicoletti-Flater and Associates, Inc.

Safe2Tell



I. Elements of a School Threat Assessment Process

I: Elements of a School Threat Assessment Process

Information about the behavior and communications of the student of concern should be gathered and analyzed by the authorities involved in a threat assessment inquiry or investigation. This information will permit reasonable judgments about whether the student of concern is moving along a path toward attack on an identifiable target.

The following four elements are essential to the development and operation of an effective school safety threat assessment process:

- 1. ESTABLISH AUTHORITY AND LEADERSHIP TO CONDUCT AN INQUIRY.**
 - 2. DEVELOP A MULTIDISCIPLINARY THREAT ASSESSMENT TEAM THAT IS BASED IN THE SCHOOL OR DISTRICT AND PROVIDE ONGOING TRAINING.**
 - 3. ESTABLISH INTEGRATED AND INTERAGENCY SYSTEMS RELATIONSHIPS AND PARTNERSHIPS TO RESPOND TO PUBLIC SAFETY CONCERNS.**
 - 4. PROVIDE AWARENESS TRAINING FOR STAFF, STUDENTS, PARENTS AND COMMUNITY PARTNERS IN WARNING SIGNS OF VIOLENCE AND REPORTING PROCEDURES.**
-



I. Elements of a School Threat Assessment Process

Explanation of Elements of a School Threat Assessment Process

1. ESTABLISH AUTHORITY AND LEADERSHIP TO CONDUCT AN INQUIRY

- a. Formal policy and procedures are recommended to authorize school officials to conduct a threat assessment inquiry when any behavior of a student deviates from the norm and may pose a threat.
- b. Building and district leadership should support, create, and designate the threat assessment team(s). The building/district team also acts as an information “vortex” for student concerns and for record-keeping.
- c. Information sharing must support the school threat assessment process.
 - (1) Information must be gathered from various sources during the inquiry.
 - (2) Consider options for storing the information in an accessible format and keep information in a central location.
- d. Legal issues regarding information sharing requires advance consideration. Consult with legal counsel and create appropriate memorandums of understanding. Training must be provided to involved school staff and agency personnel.
 - (1) FERPA allows for various exceptions to privacy protection that have relevance to threat assessment inquiries: Section 99.36 (December, 2008) makes clear that educational agencies and institutions may disclose information from educational records to appropriate parties, including parents, whose knowledge of the information is necessary to protect the health or safety of a student or another individuals if there is a significant and articulable threat to the health or safety of a student or other individual, considering the totality of the circumstances.
 - (2) Colorado statutes (HB 00-1119 and SB 00-133) provide schools, and other agencies working with juveniles, encouragement for open communication among appropriate agencies, including criminal justice agencies, assessment centers for children, school districts, and schools in order to assist disruptive children and to maintain safe schools. C.R.S. 22-32-109.1(3)
 - (3) Colorado law mandates that each board of education cooperate, and to the extent possible, develop written agreements with law enforcement officials, the juvenile justice system, and social services to identify the public safety concerns for information sharing. The Colorado Office of the Attorney General has developed guidance, in the form of a Model Interagency Agreement for the effective implementation of HB 00-1119 and SB 00-133.

Model Interagency Agreement can be found at

http://www.coloradoattorneygeneral.gov/initiatives/youth_violence_prevention/interagency_cooperation



I. Elements of a School Threat Assessment Process

2. DEVELOP A MULTIDISCIPLINARY THREAT ASSESSMENT TEAM THAT IS BASED IN THE SCHOOL OR DISTRICT AND PROVIDE ONGOING TRAINING

- a. Multidisciplinary and interagency teams may already exist and respond or intervene in a wide variety of situations.
- b. Roles and responsibilities should be clearly defined for threat assessment, including the leadership of the team.
 - (1) An information “vortex” should be identified as a central clearinghouse for student concerns and record-keeping.
- c. Teams should be trained together in the use of best practices and lessons learned.
 - (1) Tabletops or experiential exercises are recommended.
- d. The primary role of the team is to guide the assessment and management of the situation of concern, and to provide ongoing monitoring.
- e. Suggested membership of a trained multi-disciplinary team includes no less than three members with whom to counsel, with at least two being onsite, including:
 - (1) A senior, respected, and trained member of the administration who chairs the team, or designee who is trained and chairs the team
 - (2) School disciplinary or safety personnel assigned to school (or faculty member with training)
 - (3) A mental health professional, such as a school psychologist, social worker, or counselor with training in threat assessment (may also facilitate the team)
 - (4) Local law enforcement contact
 - (5) Others who may be able to contribute to the process, such as:
 - 1. *guidance counselors*
 - 2. *teachers, coaches who know the student well*
 - 3. *nurses*
 - 4. *transportation bus drivers*
 - 5. *custodial and cafeteria staff*
 - 6. *representative from IEP team, if applicable*
 - 7. *community members with information, such as:*
 - a) probation officers
 - b) social service workers
 - c) experts and consultants or
 - d) others providing service or knowledge of the student (i.e. therapists)

****Note:** Suicide assessments must be conducted by a trained professional.

I. Elements of a School Threat Assessment Process

3. ESTABLISH INTEGRATED AND INTERAGENCY SYSTEMS RELATIONSHIPS AND PARTNERSHIPS TO RESPOND TO PUBLIC SAFETY CONCERNS

- a. Community system relationships and relationships between individuals are required.
- b. Individuals who can serve as “boundary spanners” are critical to interagency relationships, developing written protocols, facilitating meetings, and resolution of any conflicts.
- c. Interagency Information Sharing Agreements are suggested by Colorado law to identify public safety concerns for each community (HB 00-1119).
- d. Identify Interagency Team support and clarify roles.
 - Interagency Social Support Teams (ISST) or other integrated services teams (Collaborative Management Program, HB 04-1451) may help to develop Action and Support Plans or to provide needed community services.
 - The Collaborative Management Program is the voluntary development of multi-agency services provided to children and families by county departments of human / social services and other mandatory agencies including local judicial districts, including probation; the local health department, the local school districts(s), each community mental health center and each Mental Health Assessment and Service Agency (BHO).

<http://collaboration.omni.org/sites/1451/SitePages/Home.aspx>

4. PROVIDE AWARENESS TRAINING FOR STAFF, STUDENTS, PARENTS AND COMMUNITY PARTNERS IN WARNING SIGNS OF VIOLENCE AND REPORTING PROCEDURES

- a. Behavior of concern or threat to public safety, the safety and welfare of a student, the school or community must be reported to school officials in a timely manner.
- b. Reporting procedure must be clear and use a common language.
- c. Multiple means of reporting should be encouraged (i.e. tiplines, calling, texting, tell a trusted adult).
- d. Use of Safe2Tell Anonymous Reporting Line is strongly encouraged.
- e. Breaking the Code of Silence must be reinforced: Telling keeps people safe.
- f. Training should be updated and repeated yearly.

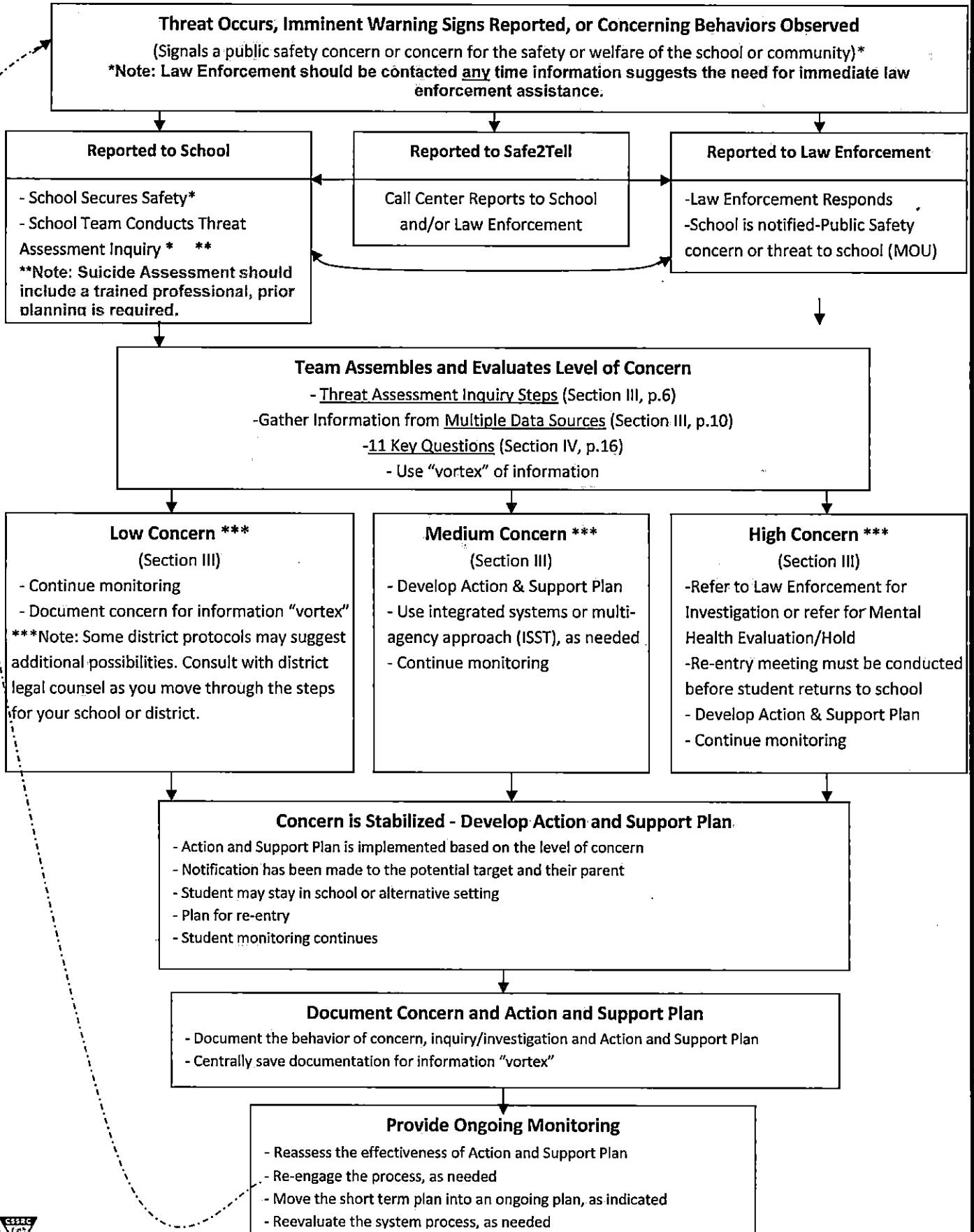
Adapted from:

Fein, R., Vossekuil, B., Pollack, W., Borum, R., Modzeleski, W., & Reddy, M. (2002). *Threat Assessment in Schools: A Guide to Managing Threatening Situations and to Creating Safe School Climates*. Washington, DC: United States Department of Education, Office of Safe and Drug Free Schools Program and U.S. Secret Service, National Threat Assessment Center. A complete copy of the guide is available online at <http://www2.ed.gov/admins/lead/safety/threatassessmentguide.pdf>.



II. The Cycle of Threat Assessment

These are general guidelines offered by CSSRC. Please consult with school district legal counsel as needed.



III. Threat Assessment Inquiry Steps

III. Threat Assessment Inquiry Steps

An inquiry should be initiated immediately in any situation of concern. The threat assessment team should also consider: "How much time do we have?" If at any time information suggests the need for law enforcement assistance, that assistance should be requested immediately.

When a student's behavior or report of behavior and communications deviates from normal behavior for student's peers, and indicates concern to this student's safety or the safety of others, school officials should initiate a threat assessment inquiry for prevention of targeted school violence. The safety of the school, the student and the community is a priority consideration. The student of concern should be immediately and safely contained, based on the severity of the concern, until safety procedures are initiated and assessment process is activated.

Care should be exercised to ensure that a student of concern is treated appropriately, since any allegations regarding the behavior or perceived dangerousness of the student may be unfounded.

The Six Principles of Threat Assessment (Fein, et al., 2002)

1. Targeted violence is the end result of an understandable process of thinking and behavior.
2. Targeted violence stems from an interaction between the individual, the situation, the setting, and the target.
3. *An investigative, skeptical, inquisitive mindset is needed.*
4. Effective threat assessment is based on facts, rather than characteristics or "traits."
5. An "integrated systems approach" is best.
6. Investigate whether or not a student *poses* a threat, not whether a student has *made* a threat.

Basic threat assessment inquiry steps include:

1. ASSEMBLE THE THREAT ASSESSMENT TEAM.
2. GATHER A VARIETY OF INFORMATION.
3. USE MULTIPLE DATA SOURCES.
4. ORGANIZE AND ANALYZE THE INFORMATION.
5. DETERMINE THE LEVEL OF CONCERN LEADING TO AN ACTION PLAN.
6. DEVELOP AN ACTION AND SUPPORT PLAN.
7. DOCUMENT THE THREAT ASSESSMENT AND KEEP RECORDS FOR THE INFORMATION "VORTEX".
8. CONTINUE MONITORING OF THE STUDENT AND THE EFFECTIVENESS OF THE PLAN.



III. Threat Assessment Inquiry Steps

Explanation of Threat Assessment Inquiry Steps

1. ASSEMBLE THE THREAT ASSESSMENT TEAM

a. **Suggested membership of a trained multi-disciplinary team includes no less than three members with whom to counsel, with at least two being onsite, including:**

- (1) A senior, respected, and trained member of the administration who chairs the team, or designee who is trained and chairs the team
- (2) School disciplinary or safety personnel assigned to school (or faculty member with training)
- (3) A mental health professional, such as a school psychologist, social worker, or counselor with training in threat assessment (may also facilitate the team)
- (4) Local Law Enforcement contact
- (5) Others who may be able to contribute to the process, such as:
 1. *guidance counselors*
 2. *teachers, coaches who know the student well*
 3. *nurses*
 4. *transportation bus drivers*
 5. *custodial and cafeteria staff*
 6. *representative from IEP team, if applicable*
 7. *community members with information, such as:*
 - a) probation officers
 - b) social service workers
 - c) experts and consultants or
 - d) others providing service or knowledge of the student (i.e. therapists)

****Note:** Suicide assessments must be conducted by a trained professional.



III. Threat Assessment Inquiry Steps

2. GATHER A VARIETY OF INFORMATION

a. The facts that drew attention to the student, the situation and the targets

- (1) How did the student come to the attention of school officials?
- (2) What were the triggering events and possible targets?
- (3) What behaviors and/or communications were reported, and by whom?
- (4) What was the situation?
- (5) Who, if anyone, witnessed the reported behavior of concern?
- (6) What was the context for the reported behavior, i.e. what else was going on at the time of the reported behavior?

b. Information about the student

(1) Identifying Information:

1. *Name*
2. *Physical description (hair color, scars, clothes, etc.)*
3. *Date of birth*
4. *Identification numbers: student ID, etc.*

(2) Background Information:

- | | |
|--|---|
| 1. <i>Residences</i> | 9. <i>History of having been a victim of violence or bullying</i> |
| 2. <i>Family/home situation</i> | 10. <i>Known attitudes toward violence</i> |
| 3. <i>Academic performance</i> | 11. <i>Triggering events</i> |
| 4. <i>Criminal behavior and law enforcement history</i> | 12. <i>Possible targets</i> |
| 5. <i>Social networks</i> | 13. <i>Mental Health/substance abuse history</i> |
| 6. <i>History of relationships and conflicts</i> | 14. <i>Access to and use of weapons</i> |
| 7. <i>History of harassing others or of being harassed by others</i> | 15. <i>History or grievances and grudges</i> |
| 8. <i>History of violence toward self and others</i> | 16. <i>History of response to interventions</i> |
| | 17. <i>History of inhibitors to aggression</i> |

(3) Current Life Information:

1. *Present stability of living and home situations*
2. *Nature and quality of current relationships and personal support*
3. *Recent losses or losses of status (shame, humiliation, recent breakup or loss of significant relationship)*
4. *Current grievances or grudges*
5. *Perceptions of being treated unfairly*
6. *Known difficulty coping with a stressful event*
7. *Any progression in social, academic, behavioral, or psychological functioning*
8. *Recent hopelessness, desperation, and/or despair, including suicidal thoughts, gestures, actions, or attempts*
9. *Pending crises or change in circumstances*
10. *Note whether the student has any trusting relationships with adults who are emotionally available to him or her*
11. *If there is an adult who is "connected" to the student, that adult may have useful information about the student's thinking and behavior and may also have the ability to disrupt the negative behavior patterns of the student*



III. Threat Assessment Inquiry Steps

c. Information about boundary probing and “attack-related” behaviors

Examination of the thinking and behaviors of school shooters suggests that most attacks are preceded by discernible behaviors, as the student plans or prepares for the attack. These behaviors are referred to as boundary probing or attack-related behaviors.

Behaviors that should raise concern about potential violence include:

- (1) Ideas or plans about injuring him/herself or attacking a school or persons at school
- (2) Communications (including via any technological means) or writings that suggest that the student has an unusual or worrisome interest in school attacks
- (3) Comments that express or imply the student is considering mounting an attack at school, or has made a threat, written or verbal, to his safety or the safety of others
- (4) Recent weapon-seeking behavior, especially if weapon-seeking is linked to ideas about attack or expressions about interest in attack
- (5) Communications or writings suggesting the student condones or is considering violence to redress a grievance or solve a problem
- (6) Rehearsals of attacks or ambushes

d. Motives

Communicated motives for attack behaviors to self or others have included:

- (1) Revenge for a perceived injury or grievance
- (2) Yearning for attention, recognition, or notoriety
- (3) A wish to solve a problem otherwise seen as unbearable
- (4) A desire to die or be killed

Knowledge of the communications or writings of a student of concern may help the threat assessment team in evaluating the risk of targeted violence. Understanding the circumstances that may have prompted a student to consider attacking others may permit authorities to direct the student away from violence.

e. Target Selection

Information about a student’s targets may provide clues to the student’s motives, planning and attack-related behaviors.

III. Threat Assessment Inquiry Steps

3. USE MULTIPLE DATA SOURCES

a. Obtain School Information

A school threat assessment inquiry should begin with what is known about the student from school records, teacher interviews, classmates and other information such as history from previous schools. Out of school information, including technology sources, parents/families' information, law enforcement, and mental health records, if available, are also important. In utilizing information from school records in a threat assessment inquiry, the threat assessment team should follow school policies and relevant laws regarding information-sharing.

Answers to the following questions may be drawn from information at school:

- (1) Is the student well known to any adult at the school?
- (2) Has the student come to attention for any behavior of concern? If so, what? (Email, texting, website, posters, papers, class assignments, rule-breaking, violence, harassment, adjustment problems, depression or despair, acting-out behavior, etc.)
- (3) Has the student experienced serious difficulties or been in distress?
- (4) Is there anyone with whom the student shares worries frustrations and/or sorrows?
- (5) Is there information that the student has considered ending his or her life?
- (6) Has the student been a victim and/or initiator of hostile, harassing or bullying behavior directed toward other students, teachers, or other staff?
- (7) Is the student known to have an interest in weapons? If so, has he or she made efforts to acquire or use weapons? Does the student live in a home where there are weapons (whether or not the weapons are secured)?

b. Interview the Student of Concern

Interviews with a student of concern oftentimes are critical in a threat assessment inquiry. School administrators and law enforcement officials and their respective legal counsels should follow existing policies, or develop policies regarding interviews with students of concern.

The primary purpose of a student interview is to learn about the student's thinking, motives, and behavior. The tone of the interview should be professional, neutral, and non-confrontational, rather than accusatory or judgmental. Student safety should be maintained as a priority while waiting for or during the interview.

Issues that should be considered include:

- (1) When and who to notify parents/guardians of an interview
- (2) Whether or when to invite parents/guardians to be present during an interview
- (3) Whether and how to use information from an interview for criminal justice proceedings
- (4) Whether and when legal representation should be allowed, offered or provided
- (5) The search of a student in any context is a sensitive and complex issue that should be examined thoroughly by school administrators and their legal counsel and should be addressed in school policies and in accordance with law

Conducting an interview with a student of concern, the threat assessment team should:

- (1) Be well acquainted with the facts that brought the student to the attention of school administrators and others
- (2) Have reviewed available information concerning the student's background, interests, and behaviors. Knowledge of background information concerning the student prior to the interview may help the threat assessment team judge whether the student is forthcoming and straightforward. Generally, a student should be asked directly about his or her intentions. An interview can also send the message to the student that his or her behavior has been noticed and has caused concern.



III. Threat Assessment Inquiry Steps

Additional resource for interview guidance: Cornell, D. & Sheras, P. (2006). Guidelines for responding to student threats of violence. Longmont, CO: Sopris West.

c. Interview Others Who Know the Student of Concern

Students and adults who know the student who is the subject of the threat assessment inquiry should be asked about communications or other behaviors that may indicate the student of concern's ideas or intent.

The focus of these interviews should be factual:

- (1) What was said? To whom?
- (2) What was written? To whom?
- (3) What was done?
- (4) When and where did this occur?
- (5) Who else observed this behavior?
- (6) Did the student say who he or she acted as they did?

d. Interview the Parent/Guardian

The parents or guardians of the student of concern should be interviewed in most cases. Parents may be protective of their children, frightened and/or embarrassed about the inquiry and the possibility that their child may be contemplating a violent act. The threat assessment team therefore should make it clear to the student's parent or guardians that the objective of the threat assessment inquiry is not only to help prevent targeted school violence and diminish the chance that the student and possibly others would be harmed, but also to *help their child* and protect the safety of others. The threat assessment team should seek the help of the student's parents in understanding the student's actions and interests, recognizing that parents may or may not know much about their child's thinking and behavior.

- (1) Questions for parents should focus on the student's behaviors and communications, especially those that might be attack-related.
- (2) Parents should be encouraged to explore all methods of their child's communications including internet messaging, cell phone communications, and postings on social network sites such as Facebook and MySpace.
- (3) The students' interest in weapons should be explored, as well as his or her access to weapons at home.

e. Obtain Outside Sources of Information

Information may come to the attention of schools through outside sources such as community organizations, clubs, other schools, and anonymous reporting lines, such as Safe2Tell.

f. Interview the Potential Target

Individuals who have been identified as potential targets of the student of concern should also be interviewed. The primary purpose of that interview is to gather information about any possible situation of concern.



III. Threat Assessment Inquiry Steps

4. ORGANIZE AND ANALYZE THE INFORMATION– ALSO SEE THREAT ASSESSMENT INQUIRY: SECRET SERVICE ELEVEN KEY QUESTIONS (SECTION IV)

- a. Information gathered should be examined for evidence of behavior and conditions that suggest the student of concern is planning for an attack. Is the behavior of the student consistent with movement on a path toward attack?
- b. Do the student's current situation and setting incline him or her toward or away from targeted violence?
- c. Consider if the student behavior is:
 - (1) normal behavior,
 - (2) boundary probing behavior,
 - (3) attack-related behavior, or
 - (4) attack behavior
- d. Other assessment tools may also be used to help organize the information (See Selected Threat Assessment Resource List)

****Note:** Suicide Assessments must be conducted by trained professionals

Threat Assessment Inquiry: Secret Service Eleven Key Questions (See Section IV)

1. What are the student's motives and goals?
2. Have there been any communications suggesting ideas or intent to attack?
3. Has the subject shown inappropriate interest in school attacks or attackers, weapons, incidents of mass violence?
4. Has the student engaged in attack-related behaviors?
5. Does the student have the capacity to carry out the act?
6. Is the student experiencing hopelessness, desperation or despair?
7. Does the student have a trusting relationship with at least one responsible adult?
8. Does the student see violence as an acceptable or desirable way to solve problems?
9. Is the student's conversation and "story" consistent with their actions?
10. Are other people concerned about the student's potential for violence?
11. What circumstances might affect the likelihood of violence?



III. Threat Assessment Inquiry Steps

5. DETERMINE THE LEVEL OF CONCERN LEADING TO AN ACTION PLAN – THREE BASIC POSSIBILITIES*

a. Low Concern –

- (1) If there is enough reliable information to answer the 11 Key Questions, and
- (2) The weight of the information is convincing that the student does not pose a threat of targeted school violence nor display any indicators of proactive violence, then
- (3) The threat assessment team may conclude the threat assessment inquiry at this time, and continue monitoring.

b. Medium Concern: Referral and Planning of Support Services and Monitoring –

- (1) The Threat Assessment team may decide to close the assessment process, but conclude that the student is still in need of assistance with problems or behaviors. An Action and Support Plan needs to be developed and documented. In this case, the team should work with school and district administrators, school and district services, community partners, and others to ensure that these individuals receive assistance, continued support, and monitoring. Please note that an IEP process is separate from both the threat assessment and an Action and Support Plan. The plan should be reviewed periodically and monitoring should continue while the student remains in the system.

c. High Concern: Referral to Law Enforcement for Investigation or to Mental/Behavioral Health Professionals for Immediate Evaluation and/or Hold – when information suggests that a crime has occurred or there is cause for a mandatory reporting.

- (1) If there is sufficient information for the threat assessment team to be reasonably certain that the student poses a threat to self or others, or
- (2) The student appears to be on a path to attack, then
- (3) The team should immediately refer to the appropriate law enforcement agency for a threat assessment investigation or mental/behavioral professionals for evaluation and/or hold.
- (4) A re-entry meeting must be conducted before the student returns to school to develop a school and community based Action and Support Plan. The plan should establish review dates, provide connection to district and community mental health professionals and provide monitoring measures.

As the Threat Assessment Inquiry moves to an Investigation Status, and law enforcement has been notified, the team might continue to ask themselves the following questions:

- (1) Does the information collected prompt more concern or less concern about the possibility that a student is moving on a path of attack?
- (2) What information might prompt less concern?
- (3) What information might heighten concern?
- (4) What options exist for intervening in the behavior of or redirecting the student away from ideas of or plans for a school attack?
- (5) How should potential targets be contacted, warned, and protected?
- (6) It is suggested that you consult with your school district's attorney about the "duty to warn and/or protect."

***Note: Some district protocols may suggest additional possibilities. Consult with school district legal counsel as you move through the steps for your school or district.**



III. Threat Assessment Inquiry Steps

6. DEVELOP AN ACTION AND SUPPORT PLAN

An Action and Support Plan can be developed for any situation, but should be developed if evaluation indicates medium level concern and/or upon re-entry of student of high concern. The purpose is to provide management of the situation, to protect and aid possible targets, and to provide support and guidance to help the student deal successfully with his or her problems. The plan also aids in monitoring of the student in the short-term and long-term. Strategies selected should have the best potential for long-term preventative power. The focus of the process is to connect the student to services and support systems that reduce the likelihood of future threatening behavior.

- a. Select actions and interventions related to the level of concern.
- b. Notify the potential target and their parents.
- c. Consider the history of previous actions, consequences, and interventions and evaluate their effectiveness.
- d. Start with as intense of a plan as needed, and then adjust based on progress. Timelines for review of progress can be short, if needed.
- e. Specify consequences, monitoring and supervision strategies, support for skill development and relationship building.
- f. Maximize the resources of the student, family, community agencies, other intervention providers, etc.
- g. Use community collaborative teams for intervention planning or further assessment, as indicated. (See Part I)
- h. If additional formal assessment is part of the plan, obtain parent permission as necessary.
- i. Build-in formal follow-up meetings to review progress and response to the plan.
- j. Adjust plans as necessary.

7. DOCUMENT THE THREAT ASSESSMENT AND KEEP RECORDS

Regardless of the outcome of the Threat Assessment Inquiry, the Threat Assessment Team should document the behavior of concern, the inquiry process, and any actions taken. The school and/or district should have a central "vortex" for the information record-keeping, such as an administrator and/or team who would have previous records and information if future concerns are raised.

- a. This should be carried out in compliance with any applicable school or other relevant policies and/or legal considerations and should include a record of sources and content for all key information considered in the threat assessment, as well as the date that the information was acquired.
- b. It also is important to document the reasoning that led the threat assessment team to its decision.
- c. A well-documented record provides baseline information and can be useful if the student comes to authorities' attention again, or if at some point in the future, investigators or school personnel need to determine whether the subject has changed patterns of thinking and behavior.
- d. This documentation can also be an asset in demonstration that a threat assessment process was conducted properly and in compliance with applicable laws, policies, and procedures.

8. CONTINUE MONITORING OF THE STUDENT AND THE EFFECTIVENESS OF ACTION AND SUPPORT PLAN

- a. Transition the short-term plan to a longer-term plan, as indicated.
- b. Reevaluate the plan and the system process, as needed.



III. Threat Assessment Inquiry Steps

Adapted from:

Fein, R., Vossekuil, B., Pollack, W., Borum, R., Modzeleski, W., & Reddy, M. (2002). *Threat Assessment in Schools: A Guide to Managing Threatening Situations and to Creating Safe School Climates*. Washington, DC: United States Department of Education, Office of Safe and Drug Free Schools Program and U.S. Secret Service, National Threat Assessment Center. A complete copy of the guide is available online at <http://www2.ed.gov/admins/lead/safety/threatassessmentguide.pdf>.

O'Toole, M.E. (2000). *The school shooter: A threat assessment perspective*. Quantico, VA: National Center for the Analysis of Violent Crime, Federal Bureau of Investigation.

For Additional Resources:

See Section V: Selected Threat Assessment Resources.

The **Adams County Threat Assessment Protocol**, created by the Adams County Youth Initiative and five Adams County school districts, is an example of a school threat assessment protocol. Included in the tool are: Full Team Threat Assessment; Threat Assessment Screen; Sample Interview Forms; Response, Management, and Support Plan; Threat Assessment Summary Form; and Threat Assessment Protocol. Available at <http://acvi.org/content/adams-county-threat-assessment-protocol>.

For samples of threat assessment documentation forms, consultation or technical assistance, please contact the Colorado School Safety Resource Center, Department of Public Safety.



IV. Secret Service Eleven Key Questions

IV. Threat Assessment Inquiry:

A Summary of the Secret Service Eleven Key Questions

How should the information from a threat assessment inquiry be organized and analyzed?
Information from research and interviews conducted during a threat assessment inquiry can be guided by the following eleven key questions:

1. WHAT ARE THE STUDENT'S MOTIVES AND GOALS?
2. HAVE THERE BEEN ANY COMMUNICATIONS SUGGESTING IDEAS OR INTENT TO ATTACK?
3. HAS THE SUBJECT SHOWN INAPPROPRIATE INTEREST IN SCHOOL ATTACKS OR ATTACKERS, WEAPONS, INCIDENTS OF MASS VIOLENCE?
4. HAS THE STUDENT ENGAGED IN ATTACK-RELATED BEHAVIORS?
5. DOES THE STUDENT HAVE THE CAPACITY TO CARRY OUT THE ACT?
6. IS THE STUDENT EXPERIENCING HOPELESSNESS, DESPERATION OR DESPAIR?
7. DOES THE STUDENT HAVE A TRUSTING RELATIONSHIP WITH AT LEAST ONE RESPONSIBLE ADULT?
8. DOES THE STUDENT SEE VIOLENCE AS AN ACCEPTABLE OR DESIRABLE WAY TO SOLVE PROBLEMS?
9. IS THE STUDENT'S CONVERSATION AND "STORY" CONSISTENT WITH THEIR ACTIONS?
10. ARE OTHER PEOPLE CONCERNED ABOUT THE STUDENT'S POTENTIAL FOR VIOLENCE?
11. WHAT CIRCUMSTANCES MIGHT AFFECT THE LIKELIHOOD OF VIOLENCE?

Use the information gathered to help determine the seriousness of the concern and to develop the Action and Support Plan.



IV. Secret Service Eleven Key Questions

Explanation of the Secret Service Eleven Key Questions

1. WHAT ARE THE STUDENT'S MOTIVE(S) AND GOALS?

- a. What motivated the student to make the statements or take the actions that caused him or her to come to attention?
- b. Does the situation or circumstance that led to these statements or actions still exist?
- c. Does the student have a major grievance or grudge? Against whom?
- d. What efforts have been made to resolve the problem and what has been the result? Does the potential attacker feel that any part of the problem is resolved or see any alternative?

2. HAVE THERE BEEN ANY COMMUNICATIONS SUGGESTING IDEAS OR INTENT TO ATTACK?

- a. What, if anything, has the student communicated to someone else (targets, friends, other students, teachers, family, others) or written in a diary, journal, or website concerning his or her ideas and/or intentions?

3. HAS THE SUBJECT SHOWN INAPPROPRIATE INTEREST IN ANY OF THE FOLLOWING?

- a. School attacks or attackers
- b. Weapons (including recent acquisition of any relevant weapon)
- c. Incidents of mass violence (terrorism, workplace violence, mass murderers)

4. HAS THE STUDENT ENGAGED IN ATTACK-RELATED BEHAVIORS? THESE BEHAVIORS MIGHT INCLUDE:

- a. Developing an attack idea or plan
- b. Making efforts to acquire or practice with weapons
- c. Casing or checking out possible sites and areas for attack
- d. Rehearsing attacks or ambushes

5. DOES THE STUDENT HAVE THE CAPACITY TO CARRY OUT AN ACT OF TARGETED VIOLENCE?

- a. How organized is the student's thinking and behavior?
- b. Does the student have the means, e.g., access to a weapon, to carry out an attack?

6. IS THE STUDENT EXPERIENCING HOPELESSNESS, DESPERATION AND/OR DESPAIR?

- a. Is there information to suggest that the student is experiencing desperation and/or despair?
- b. Has the student experienced a recent failure, loss and/or loss of status?
- c. Is the student known to be having difficulty coping with a stressful event?
- d. Is the student now, or has the student ever been, suicidal or "accident-prone"?
- e. Has the student engaged in behavior that suggests that he or she has considered ending their life?

7. DOES THE STUDENT HAVE A TRUSTING RELATIONSHIP WITH AT LEAST ONE RESPONSIBLE ADULT?

- a. Does this student have at least one relationship with an adult where the student feels that he or she can confide in the adult and believes that the adult will listen without judging or jumping to conclusions? (Students with trusting relationships with adults may be directed away from violence and despair and toward hope.)
- b. Is the student emotionally connected to – or disconnected from – other students?
- c. Has the student previously come to someone's attention or raised concern in a way that suggested he or she needs intervention or supportive services?



IV. Secret Service Eleven Key Questions

8. DOES THE STUDENT SEE VIOLENCE AS ACCEPTABLE – OR DESIRABLE – OR THE ONLY WAY TO SOLVE PROBLEMS?

- a. Does the setting around the student (friends, fellow students, parents, teachers, adults) explicitly or implicitly support or endorse violence as a way of resolving problems or disputes?
- b. Has the student been “dared” by others to engage in an act of violence?

9. IS THE STUDENT’S CONVERSATION AND “STORY” CONSISTENT WITH HIS OR HER ACTIONS?

- a. Does information from collateral interviews and from the student’s own behavior confirm or dispute what the student says is going on?

10. ARE OTHER PEOPLE CONCERNED ABOUT THE STUDENT’S POTENTIAL FOR VIOLENCE?

- a. Are those who know the student concerned that he or she might take action based on violent ideas or plans?
- b. Are those who know the student concerned about a specific target?
- c. Have those who know the student witnessed recent changes or escalations in mood and behavior?

11. WHAT CIRCUMSTANCES MIGHT AFFECT THE LIKELIHOOD OF AN ATTACK?

- a. What factors in the student’s life and/or environment might increase or decrease the likelihood that the student will attempt to mount an attack at school?
- b. What is the response of other persons who know about the student’s ideas or plan to mount an attack? (Do those who know about the student’s ideas actively discourage the student from acting violently, encourage the student to attack, deny the possibility of violence, passively collude with attack, etc.?)

Adapted from: Fein, R., Vossekuil, B., Pollack, W., Borum, R., Modzeleski, W., & Reddy, M. (2002). *Threat Assessment in Schools: A Guide to Managing Threatening Situations and to Creating Safe School Climates*. Washington, DC: United States Department of Education, Office of Safe and Drug Free Schools Program and U.S. Secret Service, National Threat Assessment Center. A complete copy of the guide is available online at <http://www2.ed.gov/admins/lead/safety/threatassessmentguide.pdf>.

V. Selected Threat Assessment Resources

V. Selected Threat Assessment Resources June 2014

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V. Selected Threat Assessment Resources

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Additional Related Resources

Prior Knowledge of Potential School-Based Violence: Information Students Learn May Prevent A Targeted Attack. This study aimed to further prevent attacks by exploring how students with prior knowledge of attacks made decisions regarding what steps, if any, to take after learning of the information. The study sought to identify what might be done to encourage more students to share information they learn about potential targeted school-based violence with one or more adults. The report is accessible at http://rems.ed.gov/docs/DOE_BystanderStudy.pdf.

Campus Attacks: Targeted Violence Affecting Institutions of Higher Education, developed by the U.S. Secret Service (USS), the U.S. Department of Education (ED), and the Federal Bureau of Investigation (FBI) explores the issue of violence at institutions of higher education (IHEs) in response to the tragic shooting at Virginia Polytechnic Institute and State University ("Virginia Tech") on April 16, 2007. ED/USS/FBI initiated a collaborative effort to understand the nature of this violence and identify ways of preventing future attacks that would affect our nation's colleges and universities. In total, 272 incidents were identified through a comprehensive search of more than 115,000 results in open-source reporting from 1900 to 2008. The findings are pertinent and far-reaching, and the incidents studied include all forms of targeted violence, ranging from domestic violence to serial killers. The report is available electronically on the REMS TA Center Web site at http://rems.ed.gov/docs/CampusAttacks_201004.pdf.

In November 2009, Virginia Tech published an additional resource document on threat assessment. This document, ***Implementing Behavioral Threat Assessment on Campus***, was produced by Virginia Tech with the support of a grant from the U.S. Department of Education. In this publication, Virginia Tech documented their experience in developing and implementing a behavioral threat assessment process in the time following the campus shootings on April 16, 2007. Starting a campus behavioral threat assessment process included creating a multi-disciplinary threat assessment team; strengthening and developing necessary policies and procedures to enhance and support the team's efforts; training the team; identifying and harnessing key resources on and off campus to intervene where necessary; securing case management personnel to implement and monitor intervention efforts; and raising awareness on campus regarding the team's existence, its purpose, and the role that everyone on campus shares in reporting troubling behavior to the team. The report and numerous resources collected during the course of developing this book can serve as a starting point for institutions to consider in crafting their own policies, mission statement, public awareness message, and other relevant materials. Accessible at http://rems.ed.gov/docs/VT_ThreatAssessment09.pdf.



V. Selected Threat Assessment Resources

The National Association of School Psychologists (NASP) provides a succinct one-page fact sheet that includes an overview of the Secret Service and FBI findings, a list of policies that should be addressed district-wide, information on building an interdisciplinary team, and threat types and levels of risk. Access the Fact Sheet, ***Threat Assessments: Predicting and Preventing School Violence***, online at http://www.nasponline.org/resources/factsheets/threatassess_fs.aspx.

The **Adams County Threat Assessment Protocol**, created by the Adams County Youth Initiative and five Adams County school districts, is an example of a school threat assessment protocol. Included in the tool are: Full Team Threat Assessment; Threat Assessment Screen; Sample Interview Forms; Response, Management, and Support Plan; Threat Assessment Summary Form; and Threat Assessment Protocol. Available at <http://acyi.org/content/adams-county-threat-assessment-protocol>.



VI. Response, Management and Support Plan (RMS Plan)

Use this form after your team's threat assessment to develop a plan to respond to and manage the threat and to support the student.

School: _____

Name of Student: _____ Date: _____

With the input of all Threat Assessment Team members, decide on a course of action. Please check boxes that apply and provide detailed information for each box checked in the Record of Assigned Responsibilities on the back side.

Immediate Considerations:

Prior to developing a plan the team should immediately consider the following:

☐ Parent(s)/Guardian(s) contacted. Please record parent/guardian names and phone numbers and notes taken.

☐ Intended victim warned and parent(s)/guardian(s) notified. Please record parent/guardian names and phone numbers and notes taken.

☐ Alerted staff members on a need-to-know basis.

☐ Law enforcement involvement.

☐ Disciplinary action taken. Please describe the action taken (i.e. suspension, expulsion, other)

☐ Obtain or maintain permission to share information with community partners such as counselors and therapists.

☐ Other:

Intervention Considerations:

For each item checked, please include specific information in the Record of Assigned Responsibilities portion regarding what steps will be taken, who is responsible, and the time frame for completion.

☐ Daily or Weekly check-in

☐ Travel card to hold accountable for whereabouts and on-time arrival to destinations

☐ Backpack, coat, and other belongings checked in/out

☐ Late arrival and/or early dismissal

☐ Increased supervision in specific settings. Please identify settings.

☐ Modify daily schedule

☐ Safety plan (please attach)

☐ Behavior plan (please attach)

☐ Containment plan (please attach)

☐ Intervention by support staff (Psychologist, Social Worker, Counselor)

☐ Behavioral assessment

☐ Positive reinforcements for positive behavior (please attach list of positive behaviors and agreed-upon reinforcements)

☐ Peer or affective needs support group

☐ Peer support

☐ Intervention by community agency

☐ Identify precipitating/aggravating circumstances and create intervention to alleviate tension. Please describe:

☐ Drug and/or alcohol intervention

☐ Referral to intervention team

☐ If receiving Special Education services or on a 504, review goals and placement options

☐ Review community-based resources and interventions with parents or caretakers

☐ Pro-social discipline (Restorative Justice, community service, adult mentor, etc.)

☐ Other:



VI. Response, Management and Support Plan (RMS Plan)

Record of Assigned Responsibilities

Intervention	Duration	Frequency	Person Responsible	How will you know if the intervention is successful?	Completion Date

Additional Comments:

Pre-Schedule *REVIEW* of Response, Management and Support Plan:

Review Date	Progress Notes

Signatures:

Parent/Guardian

Date

Student Signature

Date

Threat Assessment Team Designee

Date

Please print, obtain signatures and keep on file according to district guidelines.

This form was adapted with permission from the Adams County Youth Initiative's Threat Assessment documents.
We appreciate all of their hard work and willingness to share.



REPORT TO THE PRESIDENT

ON ISSUES RAISED BY THE VIRGINIA TECH TRAGEDY

June 13, 2007



"We reflect on what has been lost and comfort those enduring a profound grief. And somehow we know that a brighter morning will come. We know this because together Americans have overcome many evils and found strength through many storms."

—President George W. Bush



June 13, 2007

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

In the wake of the Virginia Tech tragedy, you charged us to travel to communities across our Nation to meet with a wide range of leaders on the broader issues raised by this tragedy, and to report back to you what we learned, together with our recommendations for how the Federal government can help avoid such tragedies in the future. The enclosed report summarizes our findings and provides our recommendations developed through discussions with educators, mental health experts, law enforcement and other key state and local officials from more than a dozen states.

We found great commonality in the themes that emerged from our meetings. Following the Virginia Tech tragedy and similar incidents of violence that have occurred in recent years, states and local communities are carefully considering whether they have properly addressed and balanced the fundamental interests of privacy and individual freedom, safety and security, and assisting those with mental health needs in getting appropriate care. Although state and local leaders recognized and underscored that these issues primarily must be resolved at the state and local level, these events make all of us ask whether there is more we can and should be doing.

As we note in our report, our recommendations are not a panacea. Rather, along with identifying steps that we can take, the report serves to focus our attention on the issues that must be part of the ongoing national dialogue as we continue to protect the freedoms we enjoy in our society, while appropriately minimizing risks to public safety.

We look forward to continuing our collaboration on the Federal level, as well as with states and localities, in our ongoing efforts to address these fundamental issues and take concrete steps to promote the well being and safety of all Americans.

Sincerely,

Michael O. Leavitt
Secretary
Department of Health and
Human Services

Alberto R. Gonzales
Attorney General
Department of Justice

Margaret Spellings
Secretary
Department of Education

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INTRODUCTION

On April 21, 2007, in response to the tragic shootings at Virginia Tech, President George W. Bush directed Secretaries Michael Leavitt and Margaret Spellings and Attorney General Alberto Gonzales to travel to communities across our nation and to meet with educators, mental health experts, law enforcement and state and local officials to discuss the broader issues raised by this tragedy. The President instructed Secretary Leavitt to summarize what they learned from these meetings and report back with recommendations about how the federal government can help avoid such tragedies in the future.

The Virginia Tech tragedy was deeply felt throughout America. People everywhere we traveled extended their hearts and prayers to the families and friends of the victims. The tragedy also raised issues with which our society has long grappled. Questions were raised about the proper balance between providing for the safety and security of our communities, while protecting privacy and liberty, and helping people with mental illness get the care they need. Our meetings and this report were not, and could not be, an attempt to resolve or reset the balance of all these interests. Nor did people with whom we met feel we could eliminate all risk, and at the same time maintain a free and open society. But there was a shared sense that we must not miss the opportunity to learn from this event and do what we can to make our communities safer.

This report does not seek to investigate the specifics of the Virginia Tech tragedy itself. That work is currently being done by the Virginia Tech Review Panel appointed by Governor Kaine. Instead, this report summarizes the major recurring themes we heard in our visits across the country. It includes critical steps state and local leaders identified to address school violence and mental illness at the community level.

The report includes recommended actions the federal government can take to support state and local communities and ensure that the federal government and federal law are not obstacles to achieving these goals. The recommended action items are not, individually or together, a panacea for the many complex issues our society confronts in trying to prevent another tragedy. Rather, they are an attempt to frame the issues and identify tangible steps we can take over time to help prevent events like the Virginia Tech tragedy.

KEY FINDINGS

- ❖ **Critical Information Sharing Faces Substantial Obstacles:**
Education officials, healthcare providers, law enforcement personnel, and others are not fully informed about when they can share critical information on persons who are likely to be a danger to self or others, and the resulting confusion may chill legitimate information sharing.
- ❖ **Accurate and Complete Information on Individuals Prohibited from Possessing Firearms is Essential to Keep Guns Out of the Wrong Hands:**
State laws and practices do not uniformly ensure that information on persons restricted from possessing firearms is appropriately captured and available to the National Instant Criminal Background Check System (NICS).
- ❖ **Improved Awareness and Communication are Key to Prevention:**
It is important that parents, students, and teachers learn to recognize warning signs and encourage those who need help to seek it, so that people receive the care they need and our communities are safe.
- ❖ **It is Critical to Get People with Mental Illness the Services They Need:**
Meeting the challenge of adequate and appropriate community integration of people with mental illness requires effective coordination of community service providers who are sensitive to the interests of safety, privacy, and provision of care.
- ❖ **Where We Know What to Do, We Have to be Better at Doing It:**
For the many states and communities that have already adopted programs, including emergency preparedness and violence prevention plans, to address school and community violence, the challenge is fully implementing these programs through practice and effective communication.

CANVASSING THE NATION

To carry out the President's charge promptly, Secretary Leavitt, Secretary Spellings and Attorney General Gonzales led federal delegations to meet with leaders in a dozen states between April 26, and May 4, 2007. Secretary Leavitt traveled to Colorado, Florida, Minnesota, Tennessee, Texas, Utah, and West Virginia; Secretary Spellings traveled to California and New Mexico, and Attorney General Gonzales traveled to Indiana, Oklahoma, and Mississippi. On May 16, 2007, the Secretaries and the Attorney General also participated in a phone conference with high-ranking Virginia officials convened by Governor Kaine. At each session, the Secretaries and the Attorney General were accompanied by high-ranking officials and experts from each of the other two federal Departments.

Governors and state officials responded quickly to our requests to convene key leadership. State and local leaders from a wide range of sectors actively participated and provided their individual input in each of the sessions. In most states, the Governors' offices hosted the events, which were typically attended by senior state leadership, including Governors, Lieutenant Governors, Attorneys General, and state legislators. They were joined by state officials and experts from across the spectrum of the mental health, education, and law enforcement communities. The number of participants at each session ranged from 20 to 90. Sessions often included separate "breakout" discussions among mental health, education, and law enforcement experts, followed by a concluding plenary session to share and further discuss issues raised.

From the mental health community, participants typically included commissioners of state departments of health and/or mental health, counselors, psychiatrists, and other mental health professionals at schools and institutions of higher education, community mental health providers, and mental health advocates. From the education community, numerous college presidents participated, along with superintendents of public and higher education, school security officers, university officials, parents, and students. From the law enforcement community, the chiefs of numerous campus police forces participated, along with state and local law enforcement leaders, state departments of homeland security, local United States Attorneys, and representatives from the local Federal Bureau of Investigation (FBI), the United States Secret Service, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) offices.

The meetings took place at universities, community colleges, libraries, state capitols, state agencies, and other sites throughout the country. They focused on practices that have worked and obstacles that state and local leaders continue to face, as well as possible solutions to these obstacles. In each state, there were rich and informed discussions among educators, mental health professionals, law enforcement officials, and community representatives

and advocates. In some instances, our visits complemented continuing statewide attention to these issues; in others, our visits served to launch state initiatives. For example, in Colorado, our visit coincided with a conference sponsored by the Colorado Attorney General's Office and Governor Ritter on school safety; in Oklahoma, Governor Henry had already established a task force to evaluate similar issues; and in Florida, Governor Crist issued an executive order at the outset of our meeting establishing a workgroup to look at these issues, which issued a comprehensive report on May 24, 2007. In Virginia, Governor Kaine appointed a panel that is thoroughly reviewing the specific circumstances that occurred at Virginia Tech.

COMMON THEMES AND OBSERVATIONS

There was universal recognition that the issues are complex and that they represent critical, sensitive, and long-standing societal questions of balancing individual liberty and privacy with safety and security. All agreed that in a country of more than 300 million people, it is impossible to eliminate all risks. We can not maintain a free and open society and eliminate the possibility that violence in schools, offices, or malls will happen again. The focus of the meetings, therefore, was on how to minimize appropriately the possibility that these situations may occur in the future.

States, which have long sought to address the difficult balance among privacy, security and ensuring that people in need receive appropriate care, also report that they may be revisiting their approach in coming months, as tragic events such as Virginia Tech sharpen their focus on whether the balances that have been struck are correctly calibrated or whether there is a need to implement more effectively decisions that have already been made.

The meetings served to underscore that universal, "one-size-fits-all" solutions are unlikely to be helpful. Rather, appropriate responses to the issues must be tailored to a wide range of circumstances, depending, for example, on whether the context is a college or university, elementary or secondary school, whether the area is rural or urban, whether the setting is a single building, an expansive campus, or integrated in a city setting, or whether the threat being addressed is from a person who is familiar to the setting, or is a stranger to it. While most discussions focused on school violence, both at the K-12 and post-secondary level, there also were discussions about preventing violence in other public or community settings.

In each state, mental health experts were quick to point out that most people who are violent do not have a mental illness, and most people who have mental illness are not violent. Meeting participants expressed hope that the work being done at the federal and state levels continues to de-stigmatize mental illness, thereby normalizing requests for help.

Throughout these discussions, participants shared concerns about the increasing number of people with serious mental illness in schools, jails, and prisons. With respect to higher education, the perceived increase in students with mental illness was attributed to two factors: advances in treatment and supports enable more people with mental illness to attend college and many serious mental illnesses develop or manifest themselves at the age at which people typically enroll in and attend institutions of higher education. Many states are evaluating how their mental health systems provide services, including emergency services, to persons with mental illness, as they pursue the important goal of community integration.

FINDINGS AND RECOMMENDATIONS

Our meetings across the country produced comments on issues that spanned a wide range of topics from individuals from many disciplines and backgrounds. However, we heard and discussed several recurring and interconnected themes that are highlighted as key findings at the outset of this report:

- ❖ Critical Information Sharing Faces Substantial Obstacles
- ❖ Accurate and Complete Information on Individuals Prohibited from Possessing Firearms is Essential to Keep Guns Out of the Wrong Hands
- ❖ Improved Awareness and Communication are Key to Prevention
- ❖ It is Critical to Get People with Mental Illness the Services They Need
- ❖ Where We Know What to Do, We Have to be Better at Doing It

This report summarizes the recurring major themes that led to each finding, along with critical steps state and local leaders identified as being taken, or needing to be taken, to address school violence and mental illness. Though state and local leaders pointed out that these issues reside primarily with states and localities, we have concluded there are several things the federal government also can and should do to help. Thus, this report also identifies steps our three federal agencies can take to ensure federal law and activities support, rather than impede, state and local efforts to deal with the complex issues raised by the Virginia Tech tragedy. It adds to a significant array of efforts that the federal and state governments have already undertaken to address these types of issues.¹

In addition, participants also cited the important role that the U.S. Department of Homeland Security plays in assisting the states and localities in conducting threat assessments and risk preparedness. A number of the federal recommendations we identify in the report suggest opportunities for our agencies and Homeland Security to work together to better assist states and localities in these functions.

❖ **Critical Information Sharing Faces Substantial Obstacles**

We repeatedly heard reports of "information silos" within educational institutions and among educational staff, mental health providers, and public safety officials that impede appropriate information sharing. These concerns are heightened by confusion about the laws that govern the sharing of information. Throughout our meetings and in every breakout session, we heard differing interpretations and confusion about legal restrictions on the ability to share information about a person who may be a threat to self or to others. In addition to federal laws that may affect information sharing practices, such as the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule and the Family Educational Rights and Privacy Act (FERPA), a broad patchwork of state laws and regulations also impact how information is shared on the state level. In some situations, these state laws and regulations are more restrictive than federal laws.

A consistent theme and broad perception in our meetings was that this confusion and differing interpretations about state and federal privacy laws and regulations impede appropriate information sharing. In some sessions, there were concerns and confusion about the potential liability of teachers, administrators, or institutions that could arise from sharing information, or from not sharing information, under privacy laws, as well as laws designed to protect individuals from discrimination on the basis of mental illness. It was almost universally observed that these fears and misunderstandings likely limit the transfer of information in more significant ways than is required by law. Particularly, although participants in each state meeting were aware of both HIPAA and FERPA, there was significant misunderstanding about the scope and application of these laws and their interrelation with state laws. In a number of discussions, participants reported circumstances in which they incorrectly believed that they were subject to liability or foreclosed from sharing information under federal law. Other participants were unsure whether and how HIPAA and FERPA actually limit or allow information to be shared and unaware of exceptions that could allow relevant information to be shared.

Of course, a predicate to sharing information is recognizing when individuals pose a threat to themselves or others, and when intervention to pre-empt the threat is appropriate. In this regard, participants flagged the need for effective, evidence-based, inter-disciplinary tools to conduct a reliable assessment of the degree, type, and immediacy of safety risk the individual poses.

State and Local Recommendations

- *Increase information sharing and collaboration among state and local communities, educators, mental health officials, and law enforcement to better provide care and detect, intervene, and respond to potential incidents of violence in schools and other venues.*
- *Provide accurate information to help ensure that family members, educational administrators, mental health providers, and other appropriate persons understand when and how they are legally entitled to share and receive information about mental illness, and appropriately do so, particularly where college and school-age children and youth are involved, for the protection and well-being of the student and the community.*
- *Along with reviewing federal laws that may apply, clarify and promote wider understanding about how state law limits or allows the sharing of information about individuals who may pose a danger to themselves or others, and examine state law to determine if legislative or regulatory changes are needed to achieve the appropriate balance of privacy and security.*

Recommended Federal Action

- *The U.S. Departments of Health and Human Services and Education should develop additional guidance that clarifies how information can be shared legally under HIPAA and FERPA and disseminate it widely to the mental health, education, and law enforcement communities. The U.S. Department of Education should ensure that parents and school officials understand how and when post-secondary institutions can share information on college students with parents. In addition, the U.S. Departments of Education and Health and Human Services should consider whether further actions are needed to balance more appropriately the interests of safety, privacy, and treatment implicated by FERPA and HIPAA.*
- *The U.S. Department of Education should ensure that its emergency management grantees and state and local communities receiving training through the program have clear guidance on the sharing of information as it relates to educational records and FERPA.*

- *Federal agencies should continue to work together, and with states and appropriate partners, to improve, expand, coordinate, and disseminate information and best practices in behavioral analysis, threat assessments, and emergency preparedness, for colleges and universities.²*
- *The U.S. Department of Education, in collaboration with the U.S. Secret Service and the Department of Justice, should explore research of targeted violence in institutions of higher education³ and continue to share existing threat assessment methodology with interested institutions.⁴*

❖ **Accurate and Complete Information on Individuals Prohibited from Possessing Firearms is Essential to Keep Guns Out of the Wrong Hands**

At the majority of our meetings, participants focused on the imperative to ensure the effectiveness of existing federal firearms laws, and facilitate better cooperation and communication between states and the federal government to ensure that firearms background checks are thorough and complete.

At some of our sessions, participants also commented about other aspects of the enduring debate over gun control. For example, participants addressed the issue of firearms on campus, some in favor and some against. Campus law enforcement participants also discussed their enforcement practices and the need for education about existing campus policies on the possession of firearms on campus. But the focus of discussions related to gun policy was on increasing the effectiveness of current federal firearms regulation, which is limited by divergent state practice.

Only 23 states currently provide any information to the NICS on persons disqualified from possessing firearms under federal law for reasons related to mental health, and many of those that do provide information provide very few records. For the NICS to be maximally effective in keeping firearms out of the hands of persons prohibited by federal law, including those prohibited by virtue of reportable and qualifying mental health history, all states need to understand the full scope of the existing federal laws and submit, or make accessible, appropriate information to the NICS.

Some states reported that state privacy laws prevented them from sharing information with the NICS. Other concerns centered on limited resources to submit or make available required information.⁵ Many participants suggested the need to evaluate the existing approach in their state to sharing mental health information and how their state regulates access to firearms by persons with mental illness who are at risk of injury to themselves or others.

State and Local Recommendations

- *Prioritize and address legal and financial barriers to submitting all relevant disqualifying information to the NICS and other crucial inter-agency information sharing systems to prevent individuals who are prohibited from possessing firearms by federal or state law from acquiring firearms from federally licensed firearms dealers.*

Recommended Federal Action

- *The U.S. Department of Justice, through the FBI and ATF, should reiterate the scope and requirements of federal firearms laws, including guidance on the federal firearms prohibitions in the Gun Control Act of 1968 and how to provide information to the NICS on persons whose receipt of a firearm would violate state or federal law.⁶*
- *The U.S. Department of Justice, through the FBI and ATF, should continue to encourage state and federal agencies to provide all appropriate information to the NICS so that required background checks are thorough and complete.⁷*
- *Some states may need to evaluate whether changes or modifications to state law are necessary to make more relevant information available to NICS. The U.S. Department of Justice should work with states to provide appropriate guidance on policies and procedures that would ensure that relevant and complete information is available for background checks.*

❖ **Improved Awareness and Communication are Key to Prevention**

Recognizing that there were warning signs that preceded many school violence incidents, participants in our meetings discussed ways to address school cultures, including tacit "codes of silence," that may impede identifying and responding to those in crisis. Students may know of someone in need or someone who has made a threat, but frequently they do not share that information with individuals who can take appropriate action. Participants stressed the need to promote cultures of trust, respect, and open communication, to reduce student isolation, to normalize the act of seeking help by and for those who pose a threat to self or others, and to de-stigmatize mental illness. Underscoring the theme that information sharing is key, participants repeatedly identified the need for communication strategies that build bridges between education and mental health systems.

Participants in our meetings also focused on promoting prevention and early intervention for children with, or at risk for, mental illness through early detection, referral, and treatment. They additionally highlighted the importance of ensuring that parents, teachers and students understand and are sensitive to warning signs and know what to do if they encounter someone exhibiting these signs. Effective practices shared during our meetings included identifying responsible and appropriate individuals with whom to share concerns, and creating interdisciplinary teams to evaluate the information, assess the degree of threat, and intervene to pre-empt the threat. State practices vary from using toll-free call centers to "risk assessment" teams in schools to receive, evaluate, and act on threat information.

State and Local Recommendations

- *Develop cultures within schools and institutions of higher education that promote safety, trust, respect, and open communication. Create environments conducive to seeking help and develop culturally appropriate messages to de-stigmatize mental illness and mental health treatment.*
- *Educate and train parents, teachers, and students to recognize warning signs and known indicators of violence and mental illness and to alert those who can provide for safety and treatment.*
- *Establish and publicize widely a mechanism to report and respond to reported threats of violence.*

Recommended Federal Action

- *The U.S. Department of Health and Human Services should work through the Centers for Disease Control and Prevention's (CDC) 10 Academic Centers of Excellence on Youth Violence Prevention and collaborate with the U.S. Department of Education to identify opportunities to expand CDC's "Choose Respect" initiative so that it includes efforts to develop healthy school climates and prevent violence in schools.⁸*
- *The U.S. Department of Health and Human Services should include a focus on college students in its mental health public education campaign to encourage young people to support their friends who are experiencing mental health problems.⁹*
- *The U.S. Departments of Education, Health and Human Services, and Justice should continue to work together and with states and local communities to improve and expand their collaboration on their "Safe Schools/Healthy Students" program.¹⁰*

❖ **It is Critical to Get People with Mental Illness the Services They Need**

In each state meeting, concerns were raised about the capacity of the state and local mental health delivery systems to meet the full range of mental health needs. Participants voiced concerns about the availability of resources to provide timely and appropriate treatment and services and an insufficient number of skilled mental health workers, which result in waiting lists for services. A number of participants also shared their perception of an increasing number of students with serious mental health issues and the lack of adequate services to support them, particularly at college and university settings. In some state meetings, issues were raised about the particular challenges of providing mental health services in rural and underserved areas. In this area, participants stressed the need to expand their use of telemedicine and other innovative technologies, including electronic health records. All agreed that greater emphasis is needed on creating a coordinated system of community mental health services.

Throughout our discussions, participants talked about the importance of community integration and federal efforts to work with states to facilitate transformation of their mental health systems, which are hallmarks of the President's New Freedom Initiative. De-stigmatizing and raising awareness of mental illness and the need for services that are evidence-based, recovery focused, and consumer and family-driven were also common themes. In this regard, the importance of family-centered care and support were repeatedly mentioned, along with the need to gear services and treatments in ways that give consumers and families meaningful choices among treatment options.

Meeting the challenge of adequate and appropriate community integration of people with mental illness requires effective coordination of community service providers who are sensitive to the interests of safety, privacy, and provision of care. Many states are evaluating how their systems provide services to persons with mental illness, including emergency services and commitment procedures, as they pursue the important goal of community integration. Participants also recognized that to ensure that those individuals who need mental health services are receiving them, it is critical that states have adequate systems for monitoring and following up, particularly where a legal ruling mandates a course of treatment.

To maximize early detection and intervention to address mental health issues, participants discussed the importance of integration between primary care and mental health services and between primary and specialty care for persons with mental illnesses, including specialized services for children and young adults. In this area, training primary health care providers in basic detection techniques and ensuring they are connected with the mental health delivery system are key to getting support and help to those who are in need at an early stage.

State and Local Recommendations

- *Evaluate state and local community mental health systems to ensure their adequacy in providing a full array and continuum of services, including mental health services for students, and in providing meaningful choices among treatment options.*
- *Integrate mental health screening, treatment, and referral with primary health care.*
- *Review emergency services and commitment laws to ensure the standards are clear, appropriate, and strike the proper balance among liberty and safety for the individual and the community, and appropriate treatment.*
- *Where a legal ruling mandates a course of treatment, make sure that systems are in place to ensure thorough follow-up.*

Recommended Federal Action

- *The U.S. Department of Health and Human Services should convene the directors of state mental health, substance abuse, and Medicaid agencies and constituent organizations to explore ways to expand and better coordinate delivery of evidence-based practices and community-based care to adults and children with mental and substance use disorders.*
- *The U.S. Department of Health and Human Services should examine current strategies for implementing innovative technologies in the mental health field to enhance service capacity, through such means as telemedicine, electronic health records, health information technology, and electronic decision support tools in health care.*
- *The interagency Federal Executive Steering Committee on Mental Health led by the U.S. Department of Health and Human Services¹¹ should promote federal agency collaboration to support innovations in mental health services and supports for school aged children and young adults in primary care and specialty mental health settings using evidence-based programs and innovative technologies. The Committee should also examine ways of disseminating more widely state and local grant opportunities that focus on detecting and treating behavioral health and violence issues with children and youth.*

❖ **Where We Know What to Do, We Have to be Better at Doing It**

It is a sad fact that many states have had experiences with school violence; but as a result, many have already thought critically and extensively about the issue. State and local governments often have prevention and response plans and, in the aftermath of the Virginia Tech tragedy, many states have established task forces or are otherwise evaluating whether and how to adapt existing school violence strategies to the unique environment of higher education.

Many states reported that they have emergency management plans in place and that many schools, including institutions of higher education, have developed protocols and strategies for preventing and responding to emergencies. These plans and strategies are the product of previous experience with natural disasters and school violence, as well as more general emergency preparedness in a post-September 11th world. In some states, state and local community preparedness grants from the U.S. Departments of Homeland Security and Health and Human Services include emergency preparedness planning that extends beyond natural disasters and terrorist attacks to school violence and other violent episodes in public places. The U.S. Department of Justice similarly makes grants to states that can be used for such purposes. In other states, participants observed that existing plans might not contemplate evolving threats to public safety. Promising practices and examples of comprehensive emergency management planning efforts currently exist and are being used across the country, but participants acknowledged that more could be done to disseminate best practices.

The U.S. Department of Education has created guidance on emergency management planning for the K-12 school community, but institutions of higher education face some unique challenges, including the age of students, size of student body, and physical layout of campuses. Some participants noted that emergency preparedness plans crafted for the smaller and more contained environment of K-12 education might not be easily applied to more porous, larger, and diverse college campuses or other settings. Others observed that some K-12 policies may not apply to higher education, where the student population consists of young adults and adults. Some participants noted that having a plan was not a guarantee that it will be effective or used when needed. In this regard, many noted the importance of, and challenges to, practicing the plan and making sure that everyone in the relevant community (students, faculty, staff, and parents, as well as local law enforcement) is aware of appropriate steps to take in an emergency. Participants especially highlighted the need for continuous and ongoing education of students, given the constantly changing student body. Finally, many schools are using or evaluating new forms of technology to communicate with students in an emergency. However, they report that they often face challenges in establishing and maintaining these systems.

Campus police are often the first responders to campus violence, and may have the initial interactions with students or others whose behavior may indicate a potential for violence. Despite this, and perhaps because campuses are widely seen as safe environments, some campus law enforcement participants indicated that they are, in some cases, understaffed or lack resources for training, which may leave them less than ideally prepared for crisis incidents on campus. Some participants indicated that students, campus officials, and external law enforcement counterparts do not view campus police forces as full law enforcement officers. By contrast, some campus police forces reported that they work very effectively and cooperatively with local police forces, have agreements in place for joint assistance and training, and engage in such joint exercises. Whatever the local practice, joint training of first responders was seen as vital, as was increased resources. There was a consensus that campus police forces, which are on the front lines in keeping campuses safe, need adequate resources, training, and respect to do their jobs effectively.

State meeting participants who have experience with violence in schools and other public settings also discussed the importance of appropriately responding to victims and others impacted by the event, and that outsiders desiring to provide assistance must be sensitive to the particular needs of the local community. In addition, many participants stressed the need to provide longer-term follow up and mental health support to reduce the residual impact of tragic situations. States that have experienced violence in schools and other public settings further identified the importance of convening cross-cutting teams to evaluate the events and formulate and implement plans based on lessons learned.

State and Local Recommendations

- *Integrate comprehensive all-hazards emergency management planning for schools into overall local and state emergency planning.*
- *Institute regular practice of emergency management response plans and revise them as issues arise and circumstances change.*
- *Communicate emergency management plans to all school officials, school service workers, parents, students, and first responders.*
- *Develop a clear communication plan and tools to communicate rapidly with students and parents to alert them when an emergency occurs. Utilize technology to improve notification, communication, and security systems.*

- *Ensure the actual and perceived effectiveness of campus law enforcement through enhanced professionalism of campus police forces and joint training with federal, state, and local law enforcement.*
- *Be prepared to provide both immediate and longer-term mental health support following an event, and evaluate events and the response to them in order to gather lessons learned and implement corrective measures.*

Recommended Federal Action

- *The U.S. Department of Education should review its information regarding emergency management planning¹² to ensure it addresses the needs of institutions of higher education and then disseminate it widely.*
- *The U.S. Departments of Education, Homeland Security, and Justice should collaborate and be proactive in helping state, local, and campus law enforcement receive desired training and making them aware of federal resources on behavioral analysis, active shooter training, and other research and analysis relevant to preparedness and response.¹³*
- *The U.S. Departments of Homeland Security and Justice, jointly and separately, and in collaboration with the U.S. Department of Education, should consider allowing existing grant programs to be used to facilitate joint training exercises for state, local, and campus law enforcement.¹⁴*
- *The U.S. Departments of Health and Human Services and Homeland Security should examine their community preparedness grants to state and local communities, which include an emphasis on early detection of hazards through information sharing, to clarify the grants that are available for the prevention of and preparedness for violence in schools, offices, and public places.*

CONCLUSION

The Virginia Tech tragedy and similar violent events that have occurred in recent years throughout our country raise deep-seated issues. They rightly make all of us ask whether the complex balancing of fundamental interests in our communities – interests of protecting privacy and civil liberties, ensuring that our communities are safe, and helping people get the care they need – is appropriately calibrated. Carrying out the President's charge, we have met with Governors, legislators, state officials, and experts from the spectrum of mental health, education, and law enforcement communities, who have identified obstacles they face and steps they believe should be taken to address school violence and mental illness at the community level. Based on what we heard, we offer recommendations for actions the federal government can take in each of five major issue areas to address these concerns.

This report is not, and should not be, an attempt to answer these fundamental questions once and for all, or to set the balancing of these critical interests at the national level. Instead, along with identifying how the federal government can help, it serves to focus the issues that must be part of the ongoing dialogue – in communities, states, and at the federal level – that will continue to calibrate the balance of these important rights, as we protect our freedoms and provide for our safety.

ENDNOTES

¹For instance, in October 2006 the White House convened a Conference on School Safety, bringing together federal, state and community leaders to focus on these issues. Information about the White House Conference on School Safety may be found at <http://www.whitehouse.gov/infocus/education/schoolsafety/>. Information about the broad range of other federal activities and resources is posted on the Departments of Education, Health and Human Services, and Justice websites, respectively at: <http://www.ed.gov/admins/lead/safety/schoolsafety/index.html>, <http://www.hhs.gov/secretary/violence.html>, <http://www.cops.usdoj.gov/Default.asp?Item=588> and <http://www.ojp.gov/ovc/publications/bulletins/schoolcrisis/welcome.html>, among other sites.

²In 2004, the U.S. Department of Justice's Office of Community Oriented Policing (COPS) sponsored a national summit on campus safety issues which included campus law enforcement practitioners, local, state, and federal government officials, and representatives from the International Association of Campus Law Enforcement Administrators (IACLEA) and other law enforcement and higher education organizations. The results of this summit are contained in a report entitled *National Summit on Campus Public Safety: Strategies for Colleges and Universities in a Homeland Security Environment*, which can be found at <http://www.cops.usdoj.gov/files/ric/Publications/NationalSummitonCampusPublicSafety.pdf>. The report's primary recommendation was the creation of a National Center for Campus Law Enforcement that will develop and disseminate training, best practices, model policies, and other resources to enhance public safety on campus. To further this recommendation, the COPS Office provided funding to IACLEA to further explore the creation of a national center and more clearly define the campus public safety needs that a national center would seek to address. This project is on-going.

³Participants in a number of state sessions cited as a model tool for effective threat assessments, the May 2002 guidance published jointly by the U.S. Secret Service and the U.S. Department of Education, entitled *Threat Assessment in Schools: A Guide to Managing Threatening Situations and to Creating Safe School Climates*. The guide is based upon research conducted by the Department of Education and the Secret Service on forty-one shooters and thirty-seven targeted school shootings that occurred between 1974 and 2000. The guide and interactive CD-ROM were distributed in April 2007 to Safe School Centers, School Security Chiefs, key education associations, and Chief State School Officers and can be found at <http://www.ed.gov/admins/lead/safety/threatassessmentguide.pdf>.

⁴The FBI's National Center for Analysis of Violent Crime Behavioral Analysis Unit-1 (BAU) (<http://www.fbi.gov/hq/isd/cirg/ncavc.htm>) provides federal, state, local, and foreign law enforcement agencies with various behavioral analysis services, with a specialty relating to issues involving threat assessment and school violence. The BAU works with requesting agencies in an attempt to provide a threat management strategy after gathering and evaluating all available information regarding various facets of the student's life. The BAU also provides training programs on this topic to various law enforcement agencies, school administration personnel, and mental health professionals who are regularly tasked with responding to threatening situations in school environments.

⁵The U.S. Department of Justice recently submitted a crime bill to Congress. Among other things, the proposed legislation recognizes the importance of state efforts to improve information about mental health records, and criminal dispositions in ensuring the effectiveness of federal firearms laws. The bill prioritizes NCHIP grant applications that aim to improve the quantity and quality of records included in the NICS.

⁶The NICS Section of the FBI's Criminal Justice Information Services (CJIS) Division has been working for the past eight years to promote the submission of information identifying all qualifying prohibited individuals to the NICS Index through a national outreach initiative focused on sharing information with stakeholders about the NICS' operations. The NICS Section of CJIS has promoted the submission of mental health records and sought to further understanding of the scope of federal law and the need to make information available to the NICS through outreach to state and local officials. The NICS Section's efforts have included a wide array of stakeholders, including law enforcement, mental health professionals, and court personnel. The NICS Section has previously sent letters to states reminding them of the scope of federal law and the need to make information available to the NICS. In addition, the ATF has been proactive in educating law enforcement and the firearms dealer community on federal firearms laws, and will continue to do so. After the Virginia Tech tragedy, ATF communicated to all state Attorneys General and federal firearms licensees explaining the federal firearms prohibition relating to "mental defectives" in the Gun Control Act of 1968 and encouraging states to make relevant information available to the NICS. These letters are available on the ATF's website at <http://www.atf.gov/press/2007press/050907open-letter-to-states-attorneys-general.htm> and <http://www.atf.gov/press/2007press/050907open-letter-to-ffls.htm>.

¹⁷ By law, federal agencies are required to provide certain information to the NICS. Section 103(e) (1) of the Brady Act (Pub. L. 103-159) provides the Attorney General the authority to secure directly from any department or agency of the United States information on persons whose receipt of a firearm would violate federal or state law. The provision provides that the heads of such agencies shall provide the information to the NICS. To that end, the Department of Justice will continue its efforts to ensure that all federal agencies with relevant information forward that information to the NICS. Neither the Brady Act nor other federal laws require states to submit information on prohibited persons to the NICS, and thus to the extent that States submit information on prohibited persons to the NICS, they do so voluntarily. The Brady Act established the NCHIP Federal funding program, administered by BJS, as the primary means to improve the automation and accessibility of state criminal records at the national level. The President, through his FY 2008 budget, makes grant funding available, for which states can apply to improve the information provided to the NICS. In addition to providing funding to states, DOJ has been working to encourage the States to submit information on prohibited persons to the NICS. However, significant shortcomings remain in the completeness of the records in the system and the availability of relevant information for NICS checks.

⁸ CDC's Academic Centers of Excellence on Youth Violence Prevention focus on assessing the problem of youth violence in targeted communities; mobilizing those communities to prevent youth violence; researching the development, evaluation, and dissemination of effective interventions; integrating the research and community mobilization components; and emphasizing interdisciplinary and participatory research to prevent youth violence. <http://www.safeyouth.org/scripts/index.asp>.

CDC's Choose Respect initiative is a national effort to help youth form healthy relationships to prevent dating abuse before it starts. The initiative targets 11-14 year olds and the caring adults in their lives with the message that dating abuse is not just unacceptable, but also preventable by choosing respect. Based on social marketing principles and models of behavior change, the overall aim of the initiative is to move the target audience through the various stages of change by increasing knowledge and awareness; influencing beliefs; changing attitudes; and changing and sustaining behavior.

⁹ The U.S. Department of Health and Human Services, through its Substance Abuse and Mental Health Services Administration, recently launched the Mental Health National Anti Stigma Campaign to encourage young people between 18 and 25 to support their friends who are experiencing mental health problems. The prevalence of serious psychological distress in this age group is high, more than 50% higher than the general population, yet this age group is the least likely to receive treatment. The Web site for the program is <http://www.stopstigma.samhsa.gov>.

¹⁰ The Safe Schools/Healthy Students program provides grants to school districts for comprehensive, community-wide drug and violence prevention projects. School districts are required to partner with local law enforcement, public mental health, and juvenile justice agencies/entities. This program is jointly funded by the U.S. Departments of Education and Health and Human Services and jointly administered by the U.S. Departments of Education, Health and Human Services, and Justice. Information can be found at <http://www.sshs.samhsa.gov>.

¹¹ The inter-agency Federal Executive Steering Committee consists of high-level representatives from agencies within the U.S. Department of Health and Human Services and from nine other federal departments that serve children, adults, and older adults who have mental disorders. The Committee oversees implementation of the Interagency Federal Action Agenda on Mental Health under the President's New Freedom Initiative. The Interagency Federal Action Agenda on Mental Health includes public education campaigns to de-stigmatize and raise awareness about mental illness and grants to states to transform their mental health system (including focused grants for children and adolescents) and foster the development of a mental health system that is evidence based, recovery focused, and consumer and family driven. http://www.samhsa.gov/Federalactionagenda/NFC_execsum.aspx.

¹² In September 2004, the Department of Education published *Practical Information on Crisis Planning: A Guide for Schools and Communities*. The guide gives schools, districts, and communities the critical concepts and components of good crisis planning, stimulates thinking about the crisis preparedness process, and provides examples of promising practices. The guide can be found at: <http://www.ed.gov/admins/lead/safety/crisisplanning.html>.

¹³ The U.S. Department of Justice, through the Bureau of Justice Assistance (BJA), has several relevant training courses that are available and currently scheduled for implementation across the country. Examples include the Advanced Law Enforcement Rapid Response Training (ALERRT) Program, developed in partnership with Texas State University. In addition, BJA has planned, in partnership with the International Association of Campus Law Enforcement Administrators (IACLEA) to facilitate a summit in the summer of 2007 to invite federal agencies, law enforcement, security, and education executives for high level discussions on campus safety and security needs, resources, and promising practices. BJA's Campus Crime Prevention-Training Program covers relevant topics over several days, in partnership with the National Crime

Prevention Council and the IACLEA. The FBI and ATF also provide training courses as needed and desired. Specifically, as noted in footnote 4, above, the BAU is expert in behavioral analysis and works with state and local government to provide expertise and training.

¹⁴ The U.S. Department of Justice will continue to work with colleges and universities on training initiatives and will continue to make funds available to states. The Department of Justice urges states to consider how to make federal funds available to colleges and universities. In this regard, the Department of Justice should consider whether additional education and outreach to potentially eligible college and university participants, either directly or through state grant recipients, is warranted. Information about the grant program is located at <http://www.ojp.usdoj.gov/BJA/grant/byrne.html>.



The Impact of Federal Privacy Laws on the School-Based Health Center

Research studies have documented that students will forgo health care due to doubts over privacy.^{1,2} When children, especially adolescents, have concerns about the confidentiality of their health issues, they may avoid care, stop seeking care, or be less than forthcoming with clinicians about their health behaviors, symptoms, and concerns.³ From a health care provider's point of view, protecting confidentiality is critical to building trust so that the patient will seek needed care and divulge all necessary information to develop an accurate diagnosis and appropriate treatment options.

Beyond the practical benefits of confidentiality, there are many federal laws that protect an individual's health information. Well known are those that apply to health care providers including the privacy regulations issued under the Health Insurance Portability and Accountability Act (HIPAA), the Title X Family Planning Program of the Public Health Service Act, and the laws governing drug and alcohol treatment. There are also federal laws that obligate educators to protect health information that becomes part of a student's educational record, including the Family Educational Rights and Privacy Act (FERPA), the Individuals with Disabilities Education Act (IDEA), and Section 504 of the Americans with Disabilities Act. Because school-based health center providers and educators interact frequently, it is important to understand the basic provisions of these laws.

State laws (such as minor consent laws, medical records laws, and other provisions) also regulate the privacy of personal health information. In addition, there may be policies of the school-based health center's medical sponsor and/or the host school district concerning record keeping or release of information. These policies may be designed as guidance in the implementation of federal and state laws, but may also be more stringent than those laws.

The focus of this paper is to examine the intersection of the two major federal privacy laws that regulate the interactions between school-based health center staff and personnel of the host school or school district. These two federal laws are HIPAA and FERPA. This paper provides general information about the scope of these laws and is not intended as legal advice. When developing policies, forms, or procedures for a school-based health center, it is best to consult legal counsel.

The Health Insurance Portability and Accountability Act

The Health Insurance Portability and Accountability Act (HIPAA) was enacted by Congress in 1996. Its intent was to ensure continued health insurance coverage to those who change jobs and to establish security and privacy in the exchange of health information. In 2002, final privacy regulations were issued pursuant to HIPAA by the U.S. Department of Health and Human Services (HHS). Implementation and interpretation of these privacy regulations

(referred to throughout this paper as the HIPAA Privacy Rule) are the responsibility of the HHS Office of Civil Rights.

The HIPAA Privacy Rule protects all "individually identifiable health information" held or transmitted by a "covered entity" or its "business associate", in any form or medium, whether electronic, paper, or oral.^{4,5} The HIPAA Privacy Rule calls this information "protected health information" (PHI). PHI includes demographic data that relates to the patient's past, present or future physical or mental health as well as information about any care provided to the patient.⁴ "Covered entities" who are required to comply with the HIPAA Privacy Rule include health care providers (hospitals, clinics, individual practitioners), health plans, and health information clearinghouses.

Generally, authorization from a patient ("the individual") or a patient's personal representative is required for disclosure of PHI. However, PHI can be disclosed to a third party without authorization in specific circumstances. These include sharing of information for the purpose of treatment (providing health care, consultations, coordinating care and making referrals); payment or health care operations; reporting of diseases to public health authorities; reporting of injuries and suspected child abuse; disclosing information in emergencies to lessen or prevent a serious and imminent threat to the health or safety of a person or the public; and for compliance with a court order. Patients are made aware of these instances of potential sharing of information when they acknowledge that they have received and read a copy of the provider's privacy notice.

Under the HIPAA Privacy Rule, a parent is usually the personal representative of a patient who is a minor. Therefore, parents generally have the right to make health care decisions for their minor children. Parents also have the right to view the health records of their minor children, and a parent's authorization is generally required for disclosure of PHI to another person. Under the HIPAA Privacy Rule, however, when a minor legally consents to health care – under state minor consent laws, for example – the minor is considered "the individual" and has access to and control over disclosure of his or her own PHI. There is one exception to this: whether a parent has access to a minor's PHI *when the minor has legally consented to the care* depends on "state or other applicable law,"^{5,6} so if state or other law either requires or prohibits disclosure to parents, that requirement controls. If state or other law permits disclosure or is silent, then the health care provider has discretion whether to give the parent access to the minor's PHI.^{5,6}

In Colorado, it is clear that minors may consent for contraceptive services, sexually transmitted infection services, drug or alcohol treatment, and mental health treatment. It is also clear that there is no requirement to notify parents when minors consent for these services. However, in the case of mental health treatment, Colorado law provides that a professional person providing services to a minor age 15 or older who has given his or her own consent for the services *may*, with or without the minor's consent, advise the parent or legal guardian of the services given or needed.⁷ Therefore, if a parent asks for access to PHI about mental health care for which a minor has legally given consent, the provider may make a determination regarding release based on the particular case.⁸

Finally, the HIPAA Privacy Rule discusses whether “incidental disclosures” of protected health information violate HIPAA. An example of an incidental disclosure is when a third party overhears a clinician reviewing a patient’s case. It has been decided that if “reasonable safeguards” have been implemented to reduce the likelihood of inappropriate sharing of PHI, then no violation has occurred.⁹

The Family Educational Rights and Privacy Act

The Family Educational Rights and Privacy Act (FERPA) was enacted by Congress in 1974 and has been amended nine times.¹⁰ The intent of the law is to protect the privacy of parents and students by controlling access to, and release of, information held in students’ “educational records.” The term “educational record” is broadly defined as information which is directly related to a student and is maintained by a public school, educational agency, or any person acting on behalf of a public school or agency.¹¹ These records include student health records and records maintained on special education students in accordance with the Individuals with Disabilities Education Act or Section 504 of the Americans with Disabilities Act.¹¹ Unlike HIPAA, FERPA applies only to official student information and does not cover casual communication or personal notes.

FERPA applies to all educational agencies and institutions which receive money from any program administered by the U.S. Department of Education. This includes virtually every public school, public school district and all state Departments of Education. Most private and religious schools are exempt from FERPA because they do not receive U.S. Department of Education funding. State education record laws may still apply to nonpublic schools and provide privacy protection.

The main provisions of FERPA are: 1) a parent, legal guardian, or eligible student has the right to inspect and review the student’s educational records and seek to have them amended in certain circumstances; 2) a student’s educational records cannot be released to any party without a parent’s, legal guardian’s or eligible student’s written consent, but 3) a student’s educational records can be released to school personnel who have a “legitimate educational interest”, without parental or student consent and 4) records can be released in an emergency when the information is necessary to protect the health or safety of the student or others and also when requested during an investigation of an act of terrorism. An eligible student is a student who is at least 18 years of age. School districts must establish policies to determine “legitimate educational interest” to prevent the casual exchange of student information.

The Intersection of HIPAA and FERPA and School-Based Health Centers

A school-based health center (SBHC) is a health care facility located in a school or on school grounds and operated through a partnership between a school district and a licensed health care provider. Given this, SBHC personnel need to know whether the records of patients seen in the SBHC are considered educational records governed by FERPA, or health records governed

by HIPAA, or both. The answer to this question is determined by who “owns” the records. In most cases, the SBHC is operated under a binding contract which specifies that the school district owns the facility in which the SBHC operates, but the health care provider owns the medical practice and the records. When the health care provider owns the records, the records are generally subject to HIPAA.

If, alternatively, a school district directly employs a health care provider to operate the SBHC, the records belong to the district and are governed by FERPA. This is not unlike the situation with school nurses. School nurses are employed by the school district and any records developed by the school nurse are part of the educational record and fall under the purview of FERPA. FERPA does not allow schools to protect student health information differently from academic information, making it available to parents and legal guardians regardless of state minor consent laws, and to school personnel with a “legitimate educational interest”.

While FERPA permits disclosure of educational records, including health information contained in them, to parents and persons with a legitimate educational interest, it does not allow release to outside parties without parental consent, or consent of a student who is age 18 or older. This creates barriers to the exchange of health information between the school and the SBHC. For example, a school nurse cannot release information contained in the educational record, such as a student’s health history, an individualized health care plan, medications administered during school hours, or recommendations related to screenings, to a SBHC provider unless parental consent is obtained. For this reason, at the beginning of each school year, SBHCs generally ask parents to sign a form allowing the school to release health information contained in the educational record to the SBHC and also allowing the SBHC to release health information to the student’s primary care physician, to specialists or community-based programs to coordinate care or to effect a referral, and to public or private third party payers for billing purposes. Finally, the SBHC should require the parent to acknowledge that he/she has received, read and understood the SBHC’s statement of HIPAA privacy protections and rights. Several samples of consent forms used by Colorado SBHCs are posted on the CASBHC website at www.casbhc.org.

To conclude, provider-patient confidentiality is paramount in the SBHC to ensure that students seek care and that providers have sufficient information from the patient for proper diagnosis and treatment. Providers, parents and patients should all have a clear understanding about whether health information acquired by a SBHC is covered by FERPA or HIPAA, and accordingly, who may have access to it. The important differences in the two laws related to access to health information are outlined below:

Issue	FERPA	HIPAA
Parental access to information	Parents have the right to access their child’s health information maintained by the school in the child’s educational record unless the child is an “eligible student” age 18 or older.	Parents have the right to access their minor child’s PHI maintained by a health care provider in the child’s medical record, except for information pertaining to services covered by Colorado’s minor

Issue	FERPA	HIPAA
		consent laws. Information about mental health treatment to which a minor has consented is generally confidential, but in some circumstances may be disclosed to parents based on the discretion of the health care provider. Once the child turns 18 years of age, consent of the child is required for parental access to PHI.
Access to protected health information by other persons (not the patient or parent)	Health information can be released to school personnel without parental consent when a legitimate educational interest exists	A minor child's PHI cannot be released without parental consent except when necessary to coordinate treatment, meet legal or billing requirements, avoid harm to the patient or others, insure public health, and a few other specific circumstances.

Those working in SBHCs should be especially aware of the possibility of incidental disclosures because of their small facilities. Clearly, conducting interviews with students in an open cubicle where conversations can be easily overheard will not qualify as a "reasonable safeguard" as required under HIPAA.¹² Similar considerations for discretion or restriction of access must be taken into account for written and electronic notes or files.

Although HIPAA does allow limited disclosure of PHI for coordination of care between providers, questions concerning the appropriateness of communicating about a patient can arise, especially when providing integrated care. In the SBHC, for example, a pediatric nurse practitioner employed by one covered entity may work alongside a behavioral health specialist employed by a different covered entity. In this case, the SBHC should obtain a release signed by a parent or legal guardian so that information critical to patient care can be exchanged between the two providers.

To make integrated care easier and more efficient, SBHCs can create a structure called an Organized Health Care Arrangement (OHCA) under HIPAA.¹³ In order to qualify as an OHCA, the SBHC must be:

1. "A clinically integrated care setting in which individuals typically receive health care from more than one health care provider; and
2. "An organized system of health care in which more than one covered entity participates, and in which the participating covered entities (a) hold themselves out to the public as participating in a joint arrangement; and (b) participate in joint activities that include at least one of the following:¹⁴ utilization review, quality assessment and improvement activities, or payment activities."¹⁵

Salud Family Health Centers in northern Colorado operate as an OHCA. Their presentation to the public as an OHCA is seen, in part, through a joint notice of privacy practices. Viewing Salud's privacy notice may be helpful to better understand how OHCA's might be organized. The privacy notice can be found at: www.saludclinic.org/policy2.html.

Because health information maintained by a SBHC can be subject to HIPAA or FERPA depending upon how the SBHC is legally structured, it is important for both school administrators and health care providers to thoroughly understand both federal laws as well as their relationship to state minor consent laws. In addition to the important confidentiality protections contained in both federal and state laws, all personnel should understand the exceptions which prevail in situations such as emergencies, threats of harm to self or others, and suspected child abuse. It is recommended that SBHCs review their operating documents (including any memoranda of understanding between the school district and medical providers) to insure that ownership of PHI is explicit. SBHCs should also periodically review their patient registration materials to make sure the Notice of Privacy Policy is current and clear, and consent forms are appropriate given the controlling law. Finally, it is critical that SBHCs provide training to both SBHC personnel and educators working in the school to ensure all parties understand the "ground rules" for communicating with each other for the benefit of students.

Useful Websites for Further Information and Examples

- Additional information on HIPAA may be found at the website of the US Office of Civil Rights at: www.hhs.gov/ocr/hipaa
- Additional information on FERPA may be found at the website of the US Dept. of Education at: www.ed.gov/policy/gen/guid/fpco/ferpa/index
- FAQs on the HIPAA-FERPA intersection compiled by both the U.S. DHHS and the U.S. DOE at: www.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf
- For general information about the HIPAA Privacy Rule, go to: www.healthprivacy.org.
- For information about the HIPAA Privacy Rule and public health, go to: www.cdc.gov/privacyrule/
- For an overview of patient rights and responsibilities under HIPAA, go to: hcpf.cdhs.state.co.us/HCPF/HIPAA/hipPrivacy.asp
- For a concise privacy notice, a statement of patient rights and responsibilities, go to: hcpf.cdhs.state.co.us/HCPF/HIPAA/UpdatedHIPAANotice0208.pdf
- For a copy of the University of Colorado Health Sciences Center's HIPAA Policy, go to: www.uchsc.edu/hipaa/internal/docs/3.1.pdf
- For summaries of the Protection of Pupil Rights Amendment (PPRA), go to: www.ed.gov/policy/gen/guid/fpco/ppra/index.html, or www.ed.gov/policy/gen/guid/fpco/ppra/modelnotification.html

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- (11) U.S. Department of Health and Human Services and U.S. Department of Education. Joint Guidance on the Application of the *Family Educational Rights and Privacy Act (FERPA)* and the *Health Insurance Portability and Accountability Act of 1996 (HIPAA)* to Student Health Records. URL = <http://www.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf>
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School Safety Confidential Information Act

Summary: Allow a mental health professional to disclose limited information about a client to school district personnel if, in the professional's opinion, there is a threat to a school or the occupants of a school.

1. Revision necessary to C.R.S. 12-43-218, Disclosure of Confidential Communications. Under the existing statute there is a broad prohibition against sharing confidential information without client consent:

"(1) A licensee, registrant, or certificate holder shall not disclose, without the consent of the client, any confidential communications made by the client, or advice given to the client, in the course of professional employment. ..."

2. Subsection (2) of the statute allows for exceptions. The School Safety Confidential Information Act would add an exception for school safety.

Draft language in italics:

(2) Subsection (1) of this section does not apply when: ...

(d) A client, regardless of the client's age:

(I) Makes a direct threat against a school or the occupants thereof; or

(II) Makes statements or exhibits behaviors that, in the reasonable judgement of the licensee, registrant, or certificate holder, creates a dangerous environment in a school that may jeopardize the safety or wellbeing of children, students, teachers, administrators, parents, or other members of the school faculty or the general public; provided, however, that any such disclosure under this subsection (d) (II) be made to school district personnel on a strict need-to-know basis, and that such disclosure be kept confidential by the licensee, registrant, or certificate holder and applicable school district personnel.

3. Considerations:

- a. Intentionally does not invoke C.R.S. 13-21-117, Duty to Warn. Not intended to expand professional liability.
- b. Information shared on a "need-to-know" basis. Need-to-know would be determined by the professional and school district personnel.
- c. Professional and school district personnel would be required to keep information confidential.

C.R.S. 12-43-218

COLORADO REVISED STATUTES

*** This document reflects changes current through all laws passed at the First
Regular Session
of the Seventieth General Assembly of the State of Colorado (2015) ***

TITLE 12. PROFESSIONS AND OCCUPATIONS
HEALTH CARE
ARTICLE 43. MENTAL HEALTH
PART 2. GENERAL PROVISIONS

C.R.S. 12-43-218 (2015)

12-43-218. Disclosure of confidential communications

(1) A licensee, registrant, or certificate holder shall not disclose, without the consent of the client, any confidential communications made by the client, or advice given to the client, in the course of professional employment. A licensee's, registrant's, or certificate holder's employee or associate, whether clerical or professional, shall not disclose any knowledge of said communications acquired in such capacity. Any person who has participated in any therapy conducted under the supervision of a licensee, registrant, or certificate holder, including group therapy sessions, shall not disclose any knowledge gained during the course of such therapy without the consent of the person to whom the knowledge relates.

(2) Subsection (1) of this section does not apply when:

(a) A client or the heirs, executors, or administrators of a client file suit or a complaint against a licensee, registrant, or certificate holder on any cause of action arising out of or connected with the care or treatment of the client by the licensee, registrant, or certificate holder;

(b) A licensee, registrant, or certificate holder was in consultation with a physician, registered professional nurse, licensee, registrant, or certificate holder against whom a suit or complaint was filed based on the case out of which said suit or complaint arises;

(c) A review of services of a licensee, registrant, or certificate holder is conducted by any of the following:

(I) A board or a person or group authorized by the board to make an investigation on its behalf;

(II) The governing board of a hospital licensed pursuant to part 1 of article 3 of title 25, C.R.S., where the licensee, registrant, or certificate holder practices or the medical staff of such hospital if the medical staff operates pursuant to written bylaws approved by the governing board of the hospital; or

(III) A professional review committee established pursuant to section 12-43-203 (11) if said person has signed a release authorizing such review;

(d) A client, regardless of the client's age:

(I) Makes a direct threat against a school or the occupants thereof; or

(II) Makes statements or exhibits behaviors that, in the reasonable judgement of the licensee, registrant, or certificate holder, creates a dangerous environment in a school that may jeopardize the safety or wellbeing of children, students, teachers, administrators, parents, or other members of the school faculty or the general public; provided, however, that any such disclosure under this subsection (d) (II) be made to school district personnel on a strict need-to-know basis, and that such disclosure be kept confidential by the licensee, registrant, or certificate holder and applicable school district personnel.

(3) The records and information produced and used in the review provided for in paragraph (c) of subsection (2) of this section do not become public records solely by virtue of the use of the records and information. The identity of a client whose records are reviewed shall not be disclosed to any person not directly involved in the review process, and procedures shall be adopted by a board, hospital, association, or society to ensure that the identity of the client is concealed during the review process itself and to comply with section 12-43-224 (4).

(4) Subsection (1) of this section shall not apply to any delinquency or criminal proceeding, except as provided in section 13-90-107, C.R.S., regarding any delinquency or criminal proceeding involving a licensed psychologist.

(5) Nothing in this section shall be deemed to prohibit any other disclosures required by law.

(6) This section does not apply to covered entities, their business associates, or health oversight agencies, as each is defined in the federal "Health Insurance Portability and Accountability Act of 1996", as amended by the federal "Health Information Technology for Economic and Clinical Health Act", and the respective implementing regulations.

HISTORY: Source: L. 88: Entire article R&RE, p. 544, § 1, effective July 1. L. 89: (4) amended, p. 699, § 5, effective July 7. L. 98: (1), (2)(a), (2)(b), IP(2)(c), (2)(c)(I), (2)(c)(II), and (3) amended, p. 1114, § 16, effective July 7. L. 2000: (1), (2)(a), (2)(b), IP(2)(c), and (2)(c)(II) amended, p. 1842, § 19, effective August 2. L. 2008: (1), (2), and (3) amended, p. 422, § 17, effective August 5. L. 2011: (1), IP(2), (2)(a), (2)(b), IP(2)(c), (2)(c)(I), (2)(c)(II), and (3) amended and (6) added, (SB 11-187), ch. 285, p. 1302, § 32, effective July 1.

ANNOTATION

Law reviews. For article, "New Definitions of Therapist Confidentiality", see 18 Colo. Law. 251 (1989). For article, "Admissibility of Mental and Physical Health Records and Testimony", see 29 Colo. Law. 61 (December 2000).

The prohibition against revealing confidential information absent consent established

by subsection (1) is inapplicable when a grievance is filed against a psychologist and the board, in the interest of public health and safety, investigates the conduct of the psychologist. *Colo. Bd. of Psychologist Exam'rs v. I.W.*, 140 P.3d 186 (Colo. App. 2006).

This section does not create a private cause of action for damages for violation of a patient's right to confidentiality. *Dauwe v. Musante*, 122 P.3d 15 (Colo. App. 2004).

Communication between social worker and client may be compelled in the case of a sexual assault of a child under age 16. Court should make a determination after an in-camera review of the records. *People v. Ross*, 745 P.2d 277 (Colo. App. 1987) (decided under § 12-63.5-115 prior to its repeal in 1988).

Making it a criminal act for a social worker to reveal a privileged communication from a client was irreconcilable with § 19-3-304. *Human Servs. Inc. v. Woodward*, 765 P.2d 1052 (Colo. App. 1988) (decided under § 12-63.5-115 prior to its repeal in 1988).

When a psychotherapist reveals opinions to third parties without the client's consent, the psychotherapist is negligent. A divorced mother of two children was seeking therapy concerning allegations that the ex-husband and father of the children had abused the children. The mother was dissatisfied with treatment and ended the therapeutic relationship. The psychotherapist sent a letter to the father of the children and the new therapist for the mother and children opining that the mother's actions were alienating the father from the children. Such letter prompted the father to modify his custody arrangement with the mother. By sending the letter to the father, the psychotherapist was negligent and breached the duty of care to the mother. *Mitchell v. Ryder*, 20 P.3d 1229 (Colo. App. 2000).

Threatening communications made to a mental health provider that trigger the "duty to warn" statute are not confidential as a matter of law. Therefore, when the mental health provider discharges his or her duty to warn based on those communications, the threatening communications are not protected by the psychologist-patient privilege, and the therapist may testify to those threatening communications. *People v. Kailey*, 2014 CO 50, 333 P.3d 89.



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C.R.S. 13-21-117

COLORADO REVISED STATUTES

*** This document reflects changes current through all laws passed at the First
Regular Session
of the Seventieth General Assembly of the State of Colorado (2015) ***

TITLE 13. COURTS AND COURT PROCEDURE
DAMAGES AND LIMITATIONS ON ACTIONS
ARTICLE 21.DAMAGES
PART 1. GENERAL PROVISIONS

C.R.S. **13-21-117** (2015)

13-21-117. Civil liability - mental health providers - duty to warn - definitions

(1) As used in this section, unless the context otherwise requires:

(a) "Mental health provider" means a physician, social worker, psychiatric nurse, psychologist, or other mental health professional, or a mental health hospital, community mental health center or clinic, institution, or their staff.

(b) "Psychiatric nurse" means a registered professional nurse as defined in section 12-38-103 (11), C.R.S., who by virtue of postgraduate education and additional nursing preparation has gained knowledge, judgment, and skill in psychiatric or mental health nursing.

(2) (a) A mental health provider is not liable for damages in any civil action for failure to warn or protect a specific person or persons, including those identifiable by their association with a specific location or entity, against the violent behavior of a person receiving treatment from the mental health provider, and any such mental health provider must not be held civilly liable for failure to predict such violent behavior except where the patient has communicated to the mental health provider a serious threat of imminent physical violence against a specific person or persons, including those identifiable by their association with a specific location or entity.

(b) When there is a duty to warn and protect under the provisions of paragraph (a) of this subsection (2), the mental health provider shall make reasonable and timely efforts to notify the person or persons, or the person or persons responsible for a specific location or entity, that is specifically threatened, as well as to notify an appropriate law enforcement agency or to take other appropriate action, including but not limited to hospitalizing the patient. A mental health provider is not liable for damages in any civil action for warning a specific person or persons, or a person or persons responsible for a specific location or entity, against or predicting the violent behavior of a person receiving treatment from the mental health provider.

(c) A mental health provider must not be subject to professional discipline when there is a duty to warn and protect pursuant to this section.

(3) The provisions of this section do not apply to the negligent release of a patient from any mental health hospital or ward or to the negligent failure to initiate involuntary seventy-two-hour treatment and evaluation after a personal patient evaluation determining that the person appears to have a mental illness and, as a result of the mental illness, appears to be an imminent danger to others.

HISTORY: Source: L. 86: Entire section added, p. 687, § 1, effective May 22.L. 2006: Entire section amended, p. 1396, § 37, effective August 7.L. 2014: Entire section R&RE, (HB 14-1271), ch. 109, p. 398, § 1, effective April 7.

ANNOTATION

Law reviews. For article, "The Duty to Warn and the Liability of Mental Health Care Providers", see 16 Colo. Law. 70 (1987). For article, "New Definitions of Therapist Confidentiality", see 18 Colo. Law. 251 (1989). For article, "Perreira v. Colorado -- A Psychiatrist's Duty to Protect Others", see 18 Colo. Law. 2323 (1989). For comment, "A Proposal to Adopt a Professional Judgment Standard of Care in Determining the Duty of a Psychiatrist to Third Persons", see 62 U. Colo. L. Rev. 237 (1991).

Annotator's note. The following annotations include cases decided under this section as it existed prior to the 2014 repeal and reenactment.

The language of the statute is broad and all-encompassing. It applies to "any civil action" for "failure to warn", and nothing in the statute supports plaintiff's claim that it focuses only on duties to take affirmative action. *Marcellot v. Exempla, Inc.*, 2012 COA 200, 317 P.3d 1275.

Limits on liability not confined to context of confidential, therapeutic relationship. Section applies to psychologist who evaluated individual even though psychologist did not treat the individual. *Fredericks v. Jonsson*, 609 F.3d 1096 (10th Cir. 2010).

The statute applies to inpatients. If the general assembly had intended the statute to apply only to outpatients, it could have used the words "a mental health outpatient's" instead of "a mental health patient's". *Marcellot v. Exempla, Inc.*, 2012 COA 200, 317 P.3d 1275.

Victim rights statute (§ § 24-4.1-301 to 24-4.1-304) does not support any expansion of liability of mental health providers because it imposes no duty on those providers or liability for damages. *Fredericks v. Jonsson*, 609 F.3d 1096 (10th Cir. 2010).

Exception to immunity for acts of hospitalized patients. Although immunity is expressly extended to mental health hospitals and their staff members who fail to warn or protect others against a mental health patient's violent propensities, tendencies, or generalized threats of potential violence, there is an exception where hospital is aware of hospitalized patient's aggressive behavior towards plaintiff. *Halverson v. Pikes Peak Fam. Counseling*, 795 P.2d 1352 (Colo. App. 1990).

Exception does not only apply when attacked victim communicates violent threat to hospital and is broad enough to apply when the violent patient's threats have been communicated to the health care provider. *Halverson v. Pikes Peak Fam. Counseling*, 851 P.2d 233 (Colo. App. 1992).

Mental health provider has a duty to warn a person or persons of patient's violent behavior only when patient himself predicts his violent behavior by communicating or expressing his threat to the mental health provider. *Fredericks v. Jonsson*, 609 F.3d 1096 (10th Cir. 2010).

A psychologist's immunity for warning a possible victim is not dependent upon a subsequent determination that the patient was in fact a threat. Otherwise, the immunity would have little value if the psychologist would be exposed to liability after the threat failed to manifest harm, which may be the result of such a warning. In addition, immunity is not discharged by hospitalization. *McCarty v. Kaiser-Hill Co., L.L.C.*, 15 P.3d 1122 (Colo. App. 2000).

Section inapplicable to wrongful death action based upon alleged negligence in the treatment of a suicidal patient who later does commit suicide; instead, section contemplates and describes the duty to protect third persons from a mental health patient's behavior. *Sheron v. Lutheran Med. Center*, 18 P.3d 796 (Colo. App. 2000).

Threatening communications made to a mental health provider that trigger the "duty to warn" statute are not confidential as a matter of law. Therefore, when the mental health provider discharges his or her duty to warn based on those communications, the threatening communications are not protected by the psychologist-patient privilege, and the therapist may testify to those threatening communications. *People v. Kailey*, 2014 CO 50, 333 P.3d 89.



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LLS NO. 16-0321_AMENDMENT # 1

INTERIM COMMITTEE AMENDMENT

School Safety and Youth In Crisis Committee

BY SENATOR NEWELL

LLS No. 16-0321 be amended as follows:

- 1 Amend LLS No. 16-0321, page 3, line 1, strike "**Training to**" and
2 substitute "**Education and awareness to help**".
- 3 Page 3, line 3, strike "TRAINING" and substitute "EDUCATION AND
4 AWARENESS".
- 5 Page 3, line 6, strike "TRAINING" and substitute "EDUCATION AND
6 AWARENESS".
- 7 Page 3, line 8, strike "TRAINING" and substitute "EDUCATION AND
8 AWARENESS".
- 9 Page 3, line 10, strike "AND" and substitute "OR".
- 10 Page 3, line 12, strike "TRAINING," and substitute "EDUCATION AND
11 AWARENESS,".
- 12 Page 4, line 8, strike "TRAINING," and substitute "EDUCATION AND
13 AWARENESS,".
- 14 Page 4, strike lines 10 through 19 and substitute:
15 "**SECTION 3. Safety clause.** The general assembly hereby finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, and safety.".
- 18 Page 1, line 101, strike "**TRAINING FOR CERTAIN PERSONS TO**" and
19 substitute "**EDUCATION AND AWARENESS TO HELP CERTAIN PERSONS**".

** ** ** ** **