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VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact §§ 2.2-3705.4, 19.2-389, 19.2-389.1, 23-9.2:10, and 32.1-127.1:03 of the Code of Virginia, relating to records of threat assessment teams.*

[S 207]

Approved

**Be it enacted by the General Assembly of Virginia:**  
**1. That §§ 2.2-3705.4, 19.2-389, 19.2-389.1, 23-9.2:10, and 32.1-127.1:03 of the Code of Virginia are amended and reenacted as follows:**

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

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

1. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. However, no student shall have access to (i) financial records of a parent or guardian or (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, that are in the sole possession of the maker thereof and that are not accessible or revealed to any other person except a substitute.

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of 18 years. For scholastic records of students under the age of 18 years, the right of access may be asserted only by his legal guardian or parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic records of students who are emancipated or attending a state-supported institution of higher education, the right of access may be asserted by the student.

Any person who is the subject of any scholastic record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

2. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment, or (iii) receipt of an honor or honorary recognition.

3. Records of the Brown v. Board of Education Scholarship Awards Committee relating to personally identifiable information, including scholarship applications, personal financial information, and confidential correspondence and letters of recommendation.

4. Data, records or information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such data, records or information has not been publicly released, published, copyrighted or patented.

5. All records of the University of Virginia or the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, that contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would be harmful to the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

6. Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College Savings Plan or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure or publication of information in a statistical or other form that does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

7. Records maintained in connection with fundraising activities by or for a public institution of higher education to the extent that such records reveal (i) personal fundraising strategies relating to

57 identifiable donors or prospective donors or (ii) wealth assessments; estate, financial, or tax planning  
 58 information; health-related information; employment, familial, or marital status information; electronic  
 59 mail addresses, facsimile or telephone numbers; birth dates or social security numbers of identifiable  
 60 donors or prospective donors. Nothing in this subdivision, however, shall be construed to authorize the  
 61 withholding of records relating to the amount, date, purpose, and terms of the pledge or donation, or the  
 62 identity of the donor unless the donor has requested anonymity in connection with or as a condition of  
 63 making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from  
 64 disclosure (i) the identities of sponsors providing grants to or contracting with the institution for the  
 65 performance of research services or other work or (ii) the terms and conditions of such grants or  
 66 contracts.

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

77 § 19.2-389. Dissemination of criminal history record information.

78 A. Criminal history record information shall be disseminated, whether directly or through an  
 79 intermediary, only to:

80 1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for  
 81 purposes of the administration of criminal justice and the screening of an employment application or  
 82 review of employment by a criminal justice agency with respect to its own employees or applicants, and  
 83 dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all  
 84 state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2,  
 85 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days;

86 2. Such other individuals and agencies that require criminal history record information to implement  
 87 a state or federal statute or executive order of the President of the United States or Governor that  
 88 expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such  
 89 conduct, except that information concerning the arrest of an individual may not be disseminated to a  
 90 noncriminal justice agency or individual if an interval of one year has elapsed from the date of the  
 91 arrest and no disposition of the charge has been recorded and no active prosecution of the charge is  
 92 pending;

93 3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide  
 94 services required for the administration of criminal justice pursuant to that agreement which shall  
 95 specifically authorize access to data, limit the use of data to purposes for which given, and ensure the  
 96 security and confidentiality of the data;

97 4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities  
 98 pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data,  
 99 limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and  
 100 security of the data;

101 5. Agencies of state or federal government that are authorized by state or federal statute or executive  
 102 order of the President of the United States or Governor to conduct investigations determining  
 103 employment suitability or eligibility for security clearances allowing access to classified information;

104 6. Individuals and agencies where authorized by court order or court rule;

105 7. Agencies of any political subdivision of the Commonwealth for the conduct of investigations of  
 106 applicants for public employment, permit, or license whenever, in the interest of public welfare or  
 107 safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a  
 108 person with a conviction record would be compatible with the nature of the employment, permit, or  
 109 license under consideration;

110 8. Public or private agencies when authorized or required by federal or state law or interstate  
 111 compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the  
 112 adult members of that individual's household, with whom the agency is considering placing a child or  
 113 from whom the agency is considering removing a child due to abuse or neglect, on an emergency,  
 114 temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that  
 115 the data shall not be further disseminated to any party other than a federal or state authority or court as  
 116 may be required to comply with an express requirement of law;

117 9. To the extent permitted by federal law or regulation, public service companies as defined in

118 § 56-1, for the conduct of investigations of applicants for employment when such employment involves  
119 personal contact with the public or when past criminal conduct of an applicant would be incompatible  
120 with the nature of the employment under consideration;

121 10. The appropriate authority for purposes of granting citizenship and for purposes of international  
122 travel, including but not limited to, issuing visas and passports;

123 11. A person requesting a copy of his own criminal history record information as defined in  
124 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a  
125 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of  
126 America; (ii) a volunteer fire company or volunteer rescue squad; (iii) the Volunteer Emergency  
127 Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of  
128 Compeer; or (vi) any board member or any individual who has been offered membership on the board  
129 of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

130 12. Administrators and board presidents of and applicants for licensure or registration as a child  
131 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'  
132 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and  
133 volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes  
134 approved by family day-care systems, and foster and adoptive parent applicants of private child-placing  
135 agencies, pursuant to §§ 63.2-1719 through 63.2-1721, subject to the restriction that the data shall not be  
136 further disseminated by the facility or agency to any party other than the data subject, the Commissioner  
137 of Social Services' representative or a federal or state authority or court as may be required to comply  
138 with an express requirement of law for such further dissemination;

139 13. The school boards of the Commonwealth for the purpose of screening individuals who are  
140 offered or who accept public school employment and those current school board employees for whom a  
141 report of arrest has been made pursuant to § 19.2-83.1;

142 14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery  
143 Law (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of  
144 investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

145 15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations  
146 of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital  
147 pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to  
148 the limitations set out in subsection E;

149 16. Licensed homes for adults, licensed district homes for adults, and licensed adult day-care centers  
150 for the conduct of investigations of applicants for compensated employment in licensed homes for adults  
151 pursuant to § 63.2-1720, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed  
152 adult day-care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

153 17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in  
154 § 4.1-103.1;

155 18. The State Board of Elections and authorized officers and employees thereof in the course of  
156 conducting necessary investigations with respect to registered voters, limited to any record of felony  
157 convictions;

158 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who  
159 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-176,  
160 19.2-177.1, 19.2-182.2, 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation,  
161 and treatment planning;

162 20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety  
163 Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first  
164 offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

165 21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the  
166 Department of Education, or the Department of Behavioral Health and Developmental Services for the  
167 purpose of determining applicants' fitness for employment or for providing volunteer or contractual  
168 services;

169 22. The Department of Behavioral Health and Developmental Services and facilities operated by the  
170 Department for the purpose of determining an individual's fitness for employment pursuant to  
171 departmental instructions;

172 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or religious  
173 elementary or secondary schools which are accredited by a statewide accrediting organization  
174 recognized, prior to January 1, 1996, by the State Board of Education or a private organization  
175 coordinating such records information on behalf of such governing boards or administrators pursuant to  
176 a written agreement with the Department of State Police;

177 24. Public and nonprofit private colleges and universities for the purpose of screening individuals  
178 who are offered or accept employment;

179 25. *Members of a threat assessment team established by a public institution of higher education*  
 180 *pursuant to § 23-9.2:10, for the purpose of assessing or intervening with an individual whose behavior*  
 181 *may present a threat to safety;*

182 26. Executive directors of community services boards or the personnel director serving the  
 183 community services board for the purpose of determining an individual's fitness for employment  
 184 pursuant to §§ 37.2-506 and 37.2-607;

185 26 27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of  
 186 determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

187 27 28. The Commissioner of the Department of Social Services for the purpose of locating persons  
 188 who owe child support or who are alleged in a pending paternity proceeding to be a putative father,  
 189 provided that only the name, address, demographics and social security number of the data subject shall  
 190 be released;

191 28 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.)  
 192 of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the  
 193 purpose of determining if any applicant who accepts employment in any direct consumer care position  
 194 has been convicted of a crime that affects their fitness to have responsibility for the safety and  
 195 well-being of persons with mental illness, mental retardation and substance abuse pursuant to  
 196 §§ 37.2-416, 37.2-506, and 37.2-607;

197 29 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating  
 198 applicants for a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000  
 199 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

200 30 31. The chairmen of the Committees for Courts of Justice of the Senate or the House of  
 201 Delegates for the purpose of determining if any person being considered for election to any judgeship  
 202 has been convicted of a crime;

203 31 32. Heads of state agencies in which positions have been identified as sensitive for the purpose of  
 204 determining an individual's fitness for employment in positions designated as sensitive under Department  
 205 of Human Resource Management policies developed pursuant to § 2.2-1201.1. Dissemination of criminal  
 206 history record information to the agencies shall be limited to those positions generally described as  
 207 directly responsible for the health, safety and welfare of the general populace or protection of critical  
 208 infrastructures;

209 32 33. The Office of the Attorney General, for all criminal justice activities otherwise permitted  
 210 under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of  
 211 Sexually Violent Predators Act (§ 37.2-900 et seq.);

212 33 34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design,  
 213 construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary  
 214 companies, for the conduct of investigations of applications for employment or for access to facilities,  
 215 by contractors, leased laborers, and other visitors;

216 34 35. Any employer of individuals whose employment requires that they enter the homes of others,  
 217 for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

218 35 36. Public agencies when and as required by federal or state law to investigate (i) applicants as  
 219 providers of adult foster care and home-based services or (ii) any individual with whom the agency is  
 220 considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1,  
 221 subject to the restriction that the data shall not be further disseminated by the agency to any party other  
 222 than a federal or state authority or court as may be required to comply with an express requirement of  
 223 law for such further dissemination, subject to limitations set out in subsection G;

224 36 37. The Department of Medical Assistance Services, or its designee, for the purpose of screening  
 225 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered,  
 226 or have accepted a position related to the provision of transportation services to enrollees in the  
 227 Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other  
 228 program administered by the Department of Medical Assistance Services;

229 37 38. The State Corporation Commission for the purpose of investigating individuals who are  
 230 members, senior officers, directors, and principals of an applicant for licensure as a mortgage lender or  
 231 mortgage broker, or a licensed mortgage lender or mortgage broker for the purpose of investigating  
 232 individuals applying for a position of employment in which the individual may have access to or process  
 233 personal identifying or financial information from a member of the public, pursuant to Chapter 16  
 234 (§ 6.1-408 et seq.) of Title 6.1. Notwithstanding any other provision of law, if an application for a  
 235 mortgage lender or mortgage broker license is denied based in whole or in part on information obtained  
 236 from the Central Criminal Records Exchange pursuant to § 6.1-414, the Commissioner of Financial  
 237 Institutions or his designee may disclose such information to the applicant or its designee;

238 38 39. The Department of Professional and Occupational Regulation for the purpose of investigating  
 239 individuals for initial licensure pursuant to § 54.1-2106.1; and

240 39 40. Other entities as otherwise provided by law.

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

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

253 B. Use of criminal history record information disseminated to noncriminal justice agencies under this  
254 section shall be limited to the purposes for which it was given and may not be disseminated further.

255 C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal  
256 history record information for employment or licensing inquiries except as provided by law.

257 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records  
258 Exchange prior to dissemination of any criminal history record information on offenses required to be  
259 reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is  
260 being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases  
261 where time is of the essence and the normal response time of the Exchange would exceed the necessary  
262 time period. A criminal justice agency to whom a request has been made for the dissemination of  
263 criminal history record information that is required to be reported to the Central Criminal Records  
264 Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination.  
265 Dissemination of information regarding offenses not required to be reported to the Exchange shall be  
266 made by the criminal justice agency maintaining the record as required by § 15.2-1722.

267 E. Criminal history information provided to licensed nursing homes, hospitals and to home care  
268 organizations pursuant to subdivision A 15 of ~~subsection A~~ shall be limited to the convictions on file  
269 with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

270 F. Criminal history information provided to licensed assisted living facilities, licensed district homes  
271 for adults, and licensed adult day-care centers pursuant to subdivision A 16 of ~~subsection A~~ shall be  
272 limited to the convictions on file with the Exchange for any offense specified in § 63.1-189.1 or  
273 63.2-1720.

274 G. Criminal history information provided to public agencies pursuant to subdivision 35 of ~~subsection~~  
275 A 36 shall be limited to the convictions on file with the Exchange for any offense specified in  
276 § 63.2-1719.

277 H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal  
278 Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the  
279 Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in  
280 the request to the employer or prospective employer making the request; provided that the person on  
281 whom the data is being obtained has consented in writing to the making of such request and has  
282 presented a photo-identification to the employer or prospective employer. In the event no conviction data  
283 is maintained on the person named in the request, the requesting employer or prospective employer shall  
284 be furnished at his cost a certification to that effect. The criminal history record search shall be  
285 conducted on forms provided by the Exchange.

286 § 19.2-389.1. Dissemination of juvenile record information.

287 Record information maintained in the Central Criminal Records Exchange pursuant to the provisions  
288 of § 16.1-299 shall be disseminated only (i) to make the determination as provided in §§ 18.2-308.2 and  
289 18.2-308.2:2 of eligibility to possess or purchase a firearm; (ii) to aid in the preparation of a pretrial  
290 investigation report prepared by a local pretrial services agency established pursuant to Article 5  
291 (§ 19.2-152.2 et seq.) of Chapter 9 of this title, a presentence or post-sentence investigation report  
292 pursuant to § 19.2-264.5 or 19.2-299 or in the preparation of the discretionary sentencing guidelines  
293 worksheets pursuant to subsection C of § 19.2-298.01; (iii) to aid local community-based probation  
294 services agencies established pursuant to the Comprehensive Community Corrections Act for  
295 Local-Responsible Offenders (§ 9.1-173 et seq.) with investigating or serving adult local-responsible  
296 offenders and all court service units serving juvenile delinquent offenders; (iv) for fingerprint  
297 comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System  
298 (AFIS) computer; (v) to attorneys for the Commonwealth to secure information incidental to sentencing  
299 and to attorneys for the Commonwealth and probation officers to prepare the discretionary sentencing  
300 guidelines worksheets pursuant to subsection C of § 19.2-298.01; (vi) to any full-time or part-time

301 employee of the State Police, a police department or sheriff's office that is a part of or administered by  
302 the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and  
303 detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, for  
304 purposes of the administration of criminal justice as defined in § 9.1-101; (vii) to the Department of  
305 Forensic Science to verify its authority to maintain the juvenile's sample in the DNA data bank pursuant  
306 to § 16.1-299.1; (viii) to the Office of the Attorney General, for all criminal justice activities otherwise  
307 permitted and for purposes of performing duties required by the Civil Commitment of Sexually Violent  
308 Predators Act (§ 37.2-900 et seq.); and (ix) to the Virginia Criminal Sentencing Commission for research  
309 purposes; and (x) to members of a threat assessment team established by a public institution of higher  
310 education pursuant to § 23-9.2:10 to aid in the assessment or intervention with individuals whose  
311 behavior may present a threat to safety.

312 § 23-9.2:10. Violence prevention committee; threat assessment team.

313 A. Each public college or university shall have in place policies and procedures for the prevention of  
314 violence on campus, including assessment and intervention with individuals whose behavior poses a  
315 threat to the safety of the campus community.

316 B. The board of visitors or other governing body of each public institution of higher education shall  
317 determine a committee structure on campus of individuals charged with education and prevention of  
318 violence on campus. Each committee shall include representatives from student affairs, law enforcement,  
319 human resources, counseling services, residence life, and other constituencies as needed. Such committee  
320 shall also consult with legal counsel as needed. Once formed, each committee shall develop a clear  
321 statement of: (i) mission, (ii) membership, and (iii) leadership. Such statement shall be published and  
322 available to the campus community.

323 C. Each committee shall be charged with: (i) providing guidance to students, faculty, and staff  
324 regarding recognition of threatening or aberrant behavior that may represent a threat to the community;  
325 (ii) identification of members of the campus community to whom threatening behavior should be  
326 reported; and (iii) policies and procedures for the assessment of individuals whose behavior may present  
327 a threat, appropriate means of intervention with such individuals, and sufficient means of action,  
328 including interim suspension or medical separation to resolve potential threats.

329 D. The board of visitors or other governing body of each public institution of higher education shall  
330 establish a specific threat assessment team that shall include members from law enforcement, mental  
331 health professionals, representatives of student affairs and human resources, and, if available, college or  
332 university counsel. Such team shall implement the assessment, intervention and action policies set forth  
333 by the committee pursuant to subsection C.

334 E. Each threat assessment team shall establish relationships or utilize existing relationships with local  
335 and state ~~law enforcement~~ law-enforcement agencies as well as mental health agencies to expedite  
336 assessment and intervention with individuals whose behavior may present a threat to safety. *Upon a*  
337 *preliminary determination that an individual poses a threat of violence to self or others or exhibits*  
338 *significantly disruptive behavior or need for assistance, a threat assessment team may obtain criminal*  
339 *history record information, as provided in §§ 19.2-389 and 19.2-389.1, and health records, as provided*  
340 *in § 32.1-127.1:03. No member of a threat assessment team shall redisclose any criminal history record*  
341 *information or health information obtained pursuant to this section or otherwise use any record of an*  
342 *individual beyond the purpose for which such disclosure was made to the threat assessment team.*

343 § 32.1-127.1:03. Health records privacy.

344 A. There is hereby recognized an individual's right of privacy in the content of his health records.  
345 Health records are the property of the health care entity maintaining them, and, except when permitted  
346 or required by this section or by other provisions of state law, no health care entity, or other person  
347 working in a health care setting, may disclose an individual's health records.

348 Pursuant to this subsection:

349 1. Health care entities shall disclose health records to the individual who is the subject of the health  
350 record, except as provided in subsections E and F of this section and subsection B of § 8.01-413.

351 2. Health records shall not be removed from the premises where they are maintained without the  
352 approval of the health care entity that maintains such health records, except in accordance with a court  
353 order or subpoena consistent with subsection C of § 8.01-413 or with this section or in accordance with  
354 the regulations relating to change of ownership of health records promulgated by a health regulatory  
355 board established in Title 54.1.

356 3. No person to whom health records are disclosed shall redisclose or otherwise reveal the health  
357 records of an individual, beyond the purpose for which such disclosure was made, without first  
358 obtaining the individual's specific authorization to such redisclosure. This redisclosure prohibition shall  
359 not, however, prevent (i) any health care entity that receives health records from another health care  
360 entity from making subsequent disclosures as permitted under this section and the federal Department of  
361 Health and Human Services regulations relating to privacy of the electronic transmission of data and

362 protected health information promulgated by the United States Department of Health and Human  
 363 Services as required by the Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C.  
 364 § 1320d et seq.) or (ii) any health care entity from furnishing health records and aggregate or other data,  
 365 from which individually identifying prescription information has been removed, encoded or encrypted, to  
 366 qualified researchers, including, but not limited to, pharmaceutical manufacturers and their agents or  
 367 contractors, for purposes of clinical, pharmaco-epidemiological, pharmaco-economic, or other health  
 368 services research.

369 B. As used in this section:

370 "Agent" means a person who has been appointed as an individual's agent under a power of attorney  
 371 for health care or an advance directive under the Health Care Decisions Act (§ 54.1-2981 et seq.).

372 "Certification" means a written representation that is delivered by hand, by first-class mail, by  
 373 overnight delivery service, or by facsimile if the sender obtains a facsimile-machine-generated  
 374 confirmation reflecting that all facsimile pages were successfully transmitted.

375 "Guardian" means a court-appointed guardian of the person.

376 "Health care clearinghouse" means, consistent with the definition set out in 45 C.F.R. § 160.103, a  
 377 public or private entity, such as a billing service, repricing company, community health management  
 378 information system or community health information system, and "value-added" networks and switches,  
 379 that performs either of the following functions: (i) processes or facilitates the processing of health  
 380 information received from another entity in a nonstandard format or containing nonstandard data content  
 381 into standard data elements or a standard transaction; or (ii) receives a standard transaction from another  
 382 entity and processes or facilitates the processing of health information into nonstandard format or  
 383 nonstandard data content for the receiving entity.

384 "Health care entity" means any health care provider, health plan or health care clearinghouse.

385 "Health care provider" means those entities listed in the definition of "health care provider" in  
 386 § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the  
 387 purposes of this section. Health care provider shall also include all persons who are licensed, certified,  
 388 registered or permitted or who hold a multistate licensure privilege issued by any of the health  
 389 regulatory boards within the Department of Health Professions, except persons regulated by the Board of  
 390 Funeral Directors and Embalmers or the Board of Veterinary Medicine.

391 "Health plan" means an individual or group plan that provides, or pays the cost of, medical care.

392 "Health plan" shall include any entity included in such definition as set out in 45 C.F.R. § 160.103.

393 "Health record" means any written, printed or electronically recorded material maintained by a health  
 394 care entity in the course of providing health services to an individual concerning the individual and the  
 395 services provided. "Health record" also includes the substance of any communication made by an  
 396 individual to a health care entity in confidence during or in connection with the provision of health  
 397 services or information otherwise acquired by the health care entity about an individual in confidence  
 398 and in connection with the provision of health services to the individual.

399 "Health services" means, but shall not be limited to, examination, diagnosis, evaluation, treatment,  
 400 pharmaceuticals, aftercare, habilitation or rehabilitation and mental health therapy of any kind, as well as  
 401 payment or reimbursement for any such services.

402 "Individual" means a patient who is receiving or has received health services from a health care  
 403 entity.

404 "Individually identifying prescription information" means all prescriptions, drug orders or any other  
 405 prescription information that specifically identifies an individual.

406 "Parent" means a biological, adoptive or foster parent.

407 "Psychotherapy notes" means comments, recorded in any medium by a health care provider who is a  
 408 mental health professional, documenting or analyzing the contents of conversation during a private  
 409 counseling session with an individual or a group, joint, or family counseling session that are separated  
 410 from the rest of the individual's health record. "Psychotherapy notes" shall not include annotations  
 411 relating to medication and prescription monitoring, counseling session start and stop times, treatment  
 412 modalities and frequencies, clinical test results, or any summary of any symptoms, diagnosis, prognosis,  
 413 functional status, treatment plan, or the individual's progress to date.

414 C. The provisions of this section shall not apply to any of the following:

415 1. The status of and release of information governed by §§ 65.2-604 and 65.2-607 of the Virginia  
 416 Workers' Compensation Act;

417 2. Except where specifically provided herein, the health records of minors; or

418 3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to  
 419 § 16.1-248.3.

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

422 1. As set forth in subsection E, pursuant to the written authorization of (i) the individual or (ii) in the

423 case of a minor, (a) his custodial parent, guardian or other person authorized to consent to treatment of  
424 minors pursuant to § 54.1-2969 or (b) the minor himself, if he has consented to his own treatment  
425 pursuant to § 54.1-2969, or (iii) in emergency cases or situations where it is impractical to obtain an  
426 individual's written authorization, pursuant to the individual's oral authorization for a health care  
427 provider or health plan to discuss the individual's health records with a third party specified by the  
428 individual;

429 2. In compliance with a subpoena issued in accord with subsection H, pursuant to a search warrant  
430 or a grand jury subpoena, pursuant to court order upon good cause shown or in compliance with a  
431 subpoena issued pursuant to subsection C of § 8.01-413. Regardless of the manner by which health  
432 records relating to an individual are compelled to be disclosed pursuant to this subdivision, nothing in  
433 this subdivision shall be construed to prohibit any staff or employee of a health care entity from  
434 providing information about such individual to a law-enforcement officer in connection with such  
435 subpoena, search warrant, or court order;

436 3. In accord with subsection F of § 8.01-399 including, but not limited to, situations where disclosure  
437 is reasonably necessary to establish or collect a fee or to defend a health care entity or the health care  
438 entity's employees or staff against any accusation of wrongful conduct; also as required in the course of  
439 an investigation, audit, review or proceedings regarding a health care entity's conduct by a duly  
440 authorized law-enforcement, licensure, accreditation, or professional review entity;

441 4. In testimony in accordance with §§ 8.01-399 and 8.01-400.2;

442 5. In compliance with the provisions of § 8.01-413;

443 6. As required or authorized by law relating to public health activities, health oversight activities,  
444 serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease,  
445 public safety, and suspected child or adult abuse reporting requirements, including, but not limited to,  
446 those contained in §§ 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-127.1:04, 32.1-276.5, 32.1-283,  
447 32.1-283.1, 37.2-710, 37.2-839, 53.1-40.10, 54.1-2400.6, 54.1-2400.7, 54.1-2403.3, 54.1-2506,  
448 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 63.2-1509, and 63.2-1606;

449 7. Where necessary in connection with the care of the individual;

450 8. In connection with the health care entity's own health care operations or the health care operations  
451 of another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of business in  
452 accordance with accepted standards of practice within the health services setting; however, the  
453 maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a  
454 pharmacy registered or permitted in Virginia shall only be accomplished in compliance with  
455 §§ 54.1-3410, 54.1-3411, and 54.1-3412;

456 9. When the individual has waived his right to the privacy of the health records;

457 10. When examination and evaluation of an individual are undertaken pursuant to judicial or  
458 administrative law order, but only to the extent as required by such order;

459 11. To the guardian ad litem and any attorney representing the respondent in the course of a  
460 guardianship proceeding of an adult patient who is the respondent in a proceeding under Chapter 10  
461 (§ 37.2-1000 et seq.) of Title 37.2;

462 12. To the guardian ad litem and any attorney appointed by the court to represent an individual who  
463 is or has been a patient who is the subject of a commitment proceeding under § 19.2-169.6, 19.2-176, or  
464 19.2-177.1, Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, Article 16 (§ 16.1-335 et seq.) of  
465 Chapter 11 of Title 16.1, or a judicial authorization for treatment proceeding pursuant to Chapter 11  
466 (§ 37.2-1100 et seq.) of Title 37.2;

467 13. To a magistrate, the court, the evaluator or examiner required under § 16.1-338, 16.1-339,  
468 16.1-342, or 37.2-815, a community services board or behavioral health authority or a designee of a  
469 community services board or behavioral health authority, or a law-enforcement officer participating in  
470 any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, § 19.2-169.6, 19.2-176,  
471 or 19.2-177.1, or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 regarding the subject of the proceeding,  
472 and to any health care provider evaluating or providing services to the person who is the subject of the  
473 proceeding or monitoring the person's adherence to a treatment plan ordered under those provisions.  
474 Health records disclosed to a law-enforcement officer shall be limited to information necessary to protect  
475 the officer, the person, or the public from physical injury or to address the health care needs of the  
476 person. Information disclosed to a law-enforcement officer shall not be used for any other purpose,  
477 disclosed to others, or retained;

478 14. To the attorney and/or guardian ad litem of a minor who represents such minor in any judicial or  
479 administrative proceeding, if the court or administrative hearing officer has entered an order granting the  
480 attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the  
481 health care entity of such order;

482 15. With regard to the Court-Appointed Special Advocate (CASA) program, a minor's health records  
483 in accord with § 9.1-156;

484 16. To an agent appointed under an individual's power of attorney or to an agent or decision maker  
 485 designated in an individual's advance directive for health care or for decisions on anatomical gifts and  
 486 organ, tissue or eye donation or to any other person consistent with the provisions of the Health Care  
 487 Decisions Act (§ 54.1-2981 et seq.);

488 17. To third-party payors and their agents for purposes of reimbursement;

489 18. As is necessary to support an application for receipt of health care benefits from a governmental  
 490 agency or as required by an authorized governmental agency reviewing such application or reviewing  
 491 benefits already provided or as necessary to the coordination of prevention and control of disease,  
 492 injury, or disability and delivery of such health care benefits pursuant to § 32.1-127.1:04;

493 19. Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of ownership  
 494 or closing of a pharmacy pursuant to regulations of the Board of Pharmacy;

495 20. In accord with subsection B of § 54.1-2400.1, to communicate an individual's specific and  
 496 immediate threat to cause serious bodily injury or death of an identified or readily identifiable person;

497 21. Where necessary in connection with the implementation of a hospital's routine contact process for  
 498 organ donation pursuant to subdivision B 4 of § 32.1-127;

499 22. In the case of substance abuse records, when permitted by and in conformity with requirements  
 500 of federal law found in 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2;

501 23. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate the  
 502 adequacy or quality of professional services or the competency and qualifications for professional staff  
 503 privileges;

504 24. If the health records are those of a deceased or mentally incapacitated individual to the personal  
 505 representative or executor of the deceased individual or the legal guardian or committee of the  
 506 incompetent or incapacitated individual or if there is no personal representative, executor, legal guardian  
 507 or committee appointed, to the following persons in the following order of priority: a spouse, an adult  
 508 son or daughter, either parent, an adult brother or sister, or any other relative of the deceased individual  
 509 in order of blood relationship;

510 25. For the purpose of conducting record reviews of inpatient hospital deaths to promote  
 511 identification of all potential organ, eye, and tissue donors in conformance with the requirements of  
 512 applicable federal law and regulations, including 42 C.F.R. § 482.45, (i) to the health care provider's  
 513 designated organ procurement organization certified by the United States Health Care Financing  
 514 Administration and (ii) to any eye bank or tissue bank in Virginia certified by the Eye Bank Association  
 515 of America or the American Association of Tissue Banks;

516 26. To the Office of the Inspector General for Behavioral Health and Developmental Services  
 517 pursuant to Article 3 (§ 37.2-423 et seq.) of Chapter 4 of Title 37.2;

518 27. To an entity participating in the activities of a local health partnership authority established  
 519 pursuant to Article 6.1 (§ 32.1-122.10:001 et seq.) of Chapter 4 of ~~this title~~, pursuant to subdivision 1 of  
 520 ~~this subsection~~;

521 28. To law-enforcement officials by each licensed emergency medical services agency, (i) when the  
 522 individual is the victim of a crime or (ii) when the individual has been arrested and has received  
 523 emergency medical services or has refused emergency medical services and the health records consist of  
 524 the prehospital patient care report required by § 32.1-116.1;

525 29. To law-enforcement officials, in response to their request, for the purpose of identifying or  
 526 locating a suspect, fugitive, person required to register pursuant to § 9.1-901 of the Sex Offender and  
 527 Crimes Against Minors Registry Act, material witness, or missing person, provided that only the  
 528 following information may be disclosed: (i) name and address of the person, (ii) date and place of birth  
 529 of the person, (iii) social security number of the person, (iv) blood type of the person, (v) date and time  
 530 of treatment received by the person, (vi) date and time of death of the person, where applicable, (vii)  
 531 description of distinguishing physical characteristics of the person, and (viii) type of injury sustained by  
 532 the person;

533 30. To law-enforcement officials regarding the death of an individual for the purpose of alerting law  
 534 enforcement of the death if the health care entity has a suspicion that such death may have resulted  
 535 from criminal conduct;

536 31. To law-enforcement officials if the health care entity believes in good faith that the information  
 537 disclosed constitutes evidence of a crime that occurred on its premises;

538 32. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a  
 539 person or persons who are subject to an order of quarantine or an order of isolation pursuant to Article  
 540 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of ~~this title~~;

541 33. To the Commissioner of the Department of Labor and Industry or his designee by each licensed  
 542 emergency medical services agency when the records consist of the prehospital patient care report  
 543 required by § 32.1-116.1 and the patient has suffered an injury or death on a work site while performing  
 544 duties or tasks that are within the scope of his employment; ~~and~~

545 34. To notify a family member or personal representative of an individual who is the subject of a  
546 proceeding pursuant to Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 of information that is directly  
547 relevant to such person's involvement with the individual's health care, which may include the  
548 individual's location and general condition, when the individual has the capacity to make health care  
549 decisions and (i) the individual has agreed to the notification, (ii) the individual has been provided an  
550 opportunity to object to the notification and does not express an objection, or (iii) the health care  
551 provider can, on the basis of his professional judgment, reasonably infer from the circumstances that the  
552 individual does not object to the notification. If the opportunity to agree or object to the notification  
553 cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the  
554 health care provider may notify a family member or personal representative of the individual of  
555 information that is directly relevant to such person's involvement with the individual's health care, which  
556 may include the individual's location and general condition if the health care provider, in the exercise of  
557 his professional judgment, determines that the notification is in the best interests of the individual. Such  
558 notification shall not be made if the provider has actual knowledge the family member or personal  
559 representative is currently prohibited by court order from contacting the individual; and

560 35. *To a threat assessment team established by a public institution of higher education pursuant to*  
561 *§ 23-9.2:10 when such records concern a student at the public institution of higher education, including*  
562 *a student who is a minor.*

563 Notwithstanding the provisions of subdivisions 1 through 34 of this subsection 35, a health care  
564 entity shall obtain an individual's written authorization for any disclosure of psychotherapy notes, except  
565 when disclosure by the health care entity is (i) for its own training programs in which students, trainees,  
566 or practitioners in mental health are being taught under supervision to practice or to improve their skills  
567 in group, joint, family, or individual counseling; (ii) to defend itself or its employees or staff against any  
568 accusation of wrongful conduct; (iii) in the discharge of the duty, in accordance with subsection B of  
569 § 54.1-2400.1, to take precautions to protect third parties from violent behavior or other serious harm;  
570 (iv) required in the course of an investigation, audit, review, or proceeding regarding a health care  
571 entity's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review  
572 entity; or (v) otherwise required by law.

573 E. Requests for copies of health records shall (i) be in writing, dated and signed by the requester; (ii)  
574 identify the nature of the information requested; and (iii) include evidence of the authority of the  
575 requester to receive such copies and identification of the person to whom the information is to be  
576 disclosed. The health care entity shall accept a photocopy, facsimile, or other copy of the original signed  
577 by the requestor as if it were an original. Within 15 days of receipt of a request for copies of health  
578 records, the health care entity shall do one of the following: (i) furnish such copies to any requester  
579 authorized to receive them; (ii) inform the requester if the information does not exist or cannot be  
580 found; (iii) if the health care entity does not maintain a record of the information, so inform the  
581 requester and provide the name and address, if known, of the health care entity who maintains the  
582 record; or (iv) deny the request (a) under subsection F, (b) on the grounds that the requester has not  
583 established his authority to receive such health records or proof of his identity, or (c) as otherwise  
584 provided by law. Procedures set forth in this section shall apply only to requests for health records not  
585 specifically governed by other provisions of state law.

586 F. Except as provided in subsection B of § 8.01-413, copies of an individual's health records shall  
587 not be furnished to such individual or anyone authorized to act on the individual's behalf when the  
588 individual's treating physician or the individual's treating clinical psychologist has made a part of the  
589 individual's record a written statement that, in the exercise of his professional judgment, the furnishing  
590 to or review by the individual of such health records would be reasonably likely to endanger the life or  
591 physical safety of the individual or another person, or that such health record makes reference to a  
592 person other than a health care provider and the access requested would be reasonably likely to cause  
593 substantial harm to such referenced person. If any health care entity denies a request for copies of health  
594 records based on such statement, the health care entity shall inform the individual of the individual's  
595 right to designate, in writing, at his own expense, another reviewing physician or clinical psychologist,  
596 whose licensure, training and experience relative to the individual's condition are at least equivalent to  
597 that of the physician or clinical psychologist upon whose opinion the denial is based. The designated  
598 reviewing physician or clinical psychologist shall make a judgment as to whether to make the health  
599 record available to the individual.

600 The health care entity denying the request shall also inform the individual of the individual's right to  
601 request in writing that such health care entity designate, at its own expense, a physician or clinical  
602 psychologist, whose licensure, training, and experience relative to the individual's condition are at least  
603 equivalent to that of the physician or clinical psychologist upon whose professional judgment the denial  
604 is based and who did not participate in the original decision to deny the health records, who shall make  
605 a judgment as to whether to make the health record available to the individual. The health care entity

606 shall comply with the judgment of the reviewing physician or clinical psychologist. The health care  
607 entity shall permit copying and examination of the health record by such other physician or clinical  
608 psychologist designated by either the individual at his own expense or by the health care entity at its  
609 expense.

610 Any health record copied for review by any such designated physician or clinical psychologist shall  
611 be accompanied by a statement from the custodian of the health record that the individual's treating  
612 physician or clinical psychologist determined that the individual's review of his health record would be  
613 reasonably likely to endanger the life or physical safety of the individual or would be reasonably likely  
614 to cause substantial harm to a person referenced in the health record who is not a health care provider.

615 Further, nothing herein shall be construed as giving, or interpreted to bestow the right to receive  
616 copies of, or otherwise obtain access to, psychotherapy notes to any individual or any person authorized  
617 to act on his behalf.

618 G. A written authorization to allow release of an individual's health records shall substantially include  
619 the following information:

620 AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

621 Individual's Name .....

622 Health Care Entity's Name .....

623 Person, Agency, or Health Care Entity to whom disclosure is to

624 be made .....

625 Information or Health Records to be disclosed .....

626 Purpose of Disclosure or at the Request of the Individual .....

627 As the person signing this authorization, I understand that I am giving my

628 permission to the above-named health care entity for disclosure of

629 confidential health records. I understand that the health care entity may

630 not condition treatment or payment on my willingness to sign this

631 authorization unless the specific circumstances under which such

632 conditioning is permitted by law are applicable and are set forth in this

633 authorization. I also understand that I have the right to revoke this

634 authorization at any time, but that my revocation is not effective until

635 delivered in writing to the person who is in possession of my health

636 records and is not effective as to health records already disclosed under

637 this authorization. A copy of this authorization and a notation concerning

638 the persons or agencies to whom disclosure was made shall be included with

639 my original health records. I understand that health information

640 disclosed under this authorization might be redisclosed by a recipient and

641 may, as a result of such disclosure, no longer be protected to the same

642 extent as such health information was protected by law while solely in the

643 possession of the health care entity.

644 This authorization expires on (date) or (event) .....

645 Signature of Individual or Individual's Legal Representative if Individual

646 is Unable to Sign .....

647 Relationship or Authority of Legal Representative .....

648 Date of Signature .....

649 H. Pursuant to this subsection:

650 1. Unless excepted from these provisions in subdivision 9 of this subsection, no party to a civil,  
651 criminal or administrative action or proceeding shall request the issuance of a subpoena duces tecum for  
652 another party's health records or cause a subpoena duces tecum to be issued by an attorney unless a  
653 copy of the request for the subpoena or a copy of the attorney-issued subpoena is provided to the other  
654 party's counsel or to the other party if pro se, simultaneously with filing the request or issuance of the  
655 subpoena. No party to an action or proceeding shall request or cause the issuance of a subpoena duces  
656 tecum for the health records of a nonparty witness unless a copy of the request for the subpoena or a  
657 copy of the attorney-issued subpoena is provided to the nonparty witness simultaneously with filing the  
658 request or issuance of the attorney-issued subpoena.

659 No subpoena duces tecum for health records shall set a return date earlier than 15 days from the date  
660 of the subpoena except by order of a court or administrative agency for good cause shown. When a  
661 court or administrative agency directs that health records be disclosed pursuant to a subpoena duces  
662 tecum earlier than 15 days from the date of the subpoena, a copy of the order shall accompany the  
663 subpoena.

664 Any party requesting a subpoena duces tecum for health records or on whose behalf the subpoena

665 duces tecum is being issued shall have the duty to determine whether the individual whose health  
666 records are being sought is pro se or a nonparty.

667 In instances where health records being subpoenaed are those of a pro se party or nonparty witness,  
668 the party requesting or issuing the subpoena shall deliver to the pro se party or nonparty witness  
669 together with the copy of the request for subpoena, or a copy of the subpoena in the case of an  
670 attorney-issued subpoena, a statement informing them of their rights and remedies. The statement shall  
671 include the following language and the heading shall be in boldface capital letters:

672 **NOTICE TO INDIVIDUAL**

673 The attached document means that (insert name of party requesting or causing issuance of the  
674 subpoena) has either asked the court or administrative agency to issue a subpoena or a subpoena has  
675 been issued by the other party's attorney to your doctor, other health care providers (names of health  
676 care providers inserted here) or other health care entity (name of health care entity to be inserted here)  
677 requiring them to produce your health records. Your doctor, other health care provider or other health  
678 care entity is required to respond by providing a copy of your health records. If you believe your health  
679 records should not be disclosed and object to their disclosure, you have the right to file a motion with  
680 the clerk of the court or the administrative agency to quash the subpoena. If you elect to file a motion  
681 to quash, such motion must be filed within 15 days of the date of the request or of the attorney-issued  
682 subpoena. You may contact the clerk's office or the administrative agency to determine the requirements  
683 that must be satisfied when filing a motion to quash and you may elect to contact an attorney to  
684 represent your interest. If you elect to file a motion to quash, you must notify your doctor, other health  
685 care provider(s), or other health care entity, that you are filing the motion so that the health care  
686 provider or health care entity knows to send the health records to the clerk of court or administrative  
687 agency in a sealed envelope or package for safekeeping while your motion is decided.

688 2. Any party filing a request for a subpoena duces tecum or causing such a subpoena to be issued  
689 for an individual's health records shall include a Notice in the same part of the request in which the  
690 recipient of the subpoena duces tecum is directed where and when to return the health records. Such  
691 notice shall be in boldface capital letters and shall include the following language:

692 **NOTICE TO HEALTH CARE ENTITIES**

693 **A COPY OF THIS SUBPOENA DUCES TECUM HAS BEEN PROVIDED TO THE INDIVIDUAL  
694 WHOSE HEALTH RECORDS ARE BEING REQUESTED OR HIS COUNSEL. YOU OR THAT  
695 INDIVIDUAL HAS THE RIGHT TO FILE A MOTION TO QUASH (OBJECT TO) THE ATTACHED  
696 SUBPOENA. IF YOU ELECT TO FILE A MOTION TO QUASH, YOU MUST FILE THE MOTION  
697 WITHIN 15 DAYS OF THE DATE OF THIS SUBPOENA.**

698 **YOU MUST NOT RESPOND TO THIS SUBPOENA UNTIL YOU HAVE RECEIVED WRITTEN  
699 CERTIFICATION FROM THE PARTY ON WHOSE BEHALF THE SUBPOENA WAS ISSUED  
700 THAT THE TIME FOR FILING A MOTION TO QUASH HAS ELAPSED AND THAT:**

701 **NO MOTION TO QUASH WAS FILED; OR**

702 **ANY MOTION TO QUASH HAS BEEN RESOLVED BY THE COURT OR THE  
703 ADMINISTRATIVE AGENCY AND THE DISCLOSURES SOUGHT ARE CONSISTENT WITH  
704 SUCH RESOLUTION.**

705 **IF YOU RECEIVE NOTICE THAT THE INDIVIDUAL WHOSE HEALTH RECORDS ARE  
706 BEING REQUESTED HAS FILED A MOTION TO QUASH THIS SUBPOENA, OR IF YOU FILE A  
707 MOTION TO QUASH THIS SUBPOENA, YOU MUST SEND THE HEALTH RECORDS ONLY TO  
708 THE CLERK OF THE COURT OR ADMINISTRATIVE AGENCY THAT ISSUED THE SUBPOENA  
709 OR IN WHICH THE ACTION IS PENDING AS SHOWN ON THE SUBPOENA USING THE  
710 FOLLOWING PROCEDURE:**

711 **PLACE THE HEALTH RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED  
712 ENVELOPE A COVER LETTER TO THE CLERK OF COURT OR ADMINISTRATIVE AGENCY  
713 WHICH STATES THAT CONFIDENTIAL HEALTH RECORDS ARE ENCLOSED AND ARE TO BE  
714 HELD UNDER SEAL PENDING A RULING ON THE MOTION TO QUASH THE SUBPOENA.  
715 THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN OUTER  
716 ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT OR ADMINISTRATIVE  
717 AGENCY.**

718 3. Upon receiving a valid subpoena duces tecum for health records, health care entities shall have the  
719 duty to respond to the subpoena in accordance with the provisions of subdivisions 4, 5, 6, 7, and 8 of  
720 this subsection.

721 4. Except to deliver to a clerk of the court or administrative agency subpoenaed health records in a  
722 sealed envelope as set forth, health care entities shall not respond to a subpoena duces tecum for such  
723 health records until they have received a certification as set forth in subdivision 5 or 8 of this subsection  
724 from the party on whose behalf the subpoena duces tecum was issued.

725 If the health care entity has actual receipt of notice that a motion to quash the subpoena has been

726 filed or if the health care entity files a motion to quash the subpoena for health records, then the health  
 727 care entity shall produce the health records, in a securely sealed envelope, to the clerk of the court or  
 728 administrative agency issuing the subpoena or in whose court or administrative agency the action is  
 729 pending. The court or administrative agency shall place the health records under seal until a  
 730 determination is made regarding the motion to quash. The securely sealed envelope shall only be opened  
 731 on order of the judge or administrative agency. In the event the court or administrative agency grants  
 732 the motion to quash, the health records shall be returned to the health care entity in the same sealed  
 733 envelope in which they were delivered to the court or administrative agency. In the event that a judge or  
 734 administrative agency orders the sealed envelope to be opened to review the health records in camera, a  
 735 copy of the order shall accompany any health records returned to the health care entity. The health  
 736 records returned to the health care entity shall be in a securely sealed envelope.

737 5. If no motion to quash is filed within 15 days of the date of the request or of the attorney-issued  
 738 subpoena, the party on whose behalf the subpoena was issued shall have the duty to certify to the  
 739 subpoenaed health care entity that the time for filing a motion to quash has elapsed and that no motion  
 740 to quash was filed. Any health care entity receiving such certification shall have the duty to comply  
 741 with the subpoena duces tecum by returning the specified health records by either the return date on the  
 742 subpoena or five days after receipt of the certification, whichever is later.

743 6. In the event that the individual whose health records are being sought files a motion to quash the  
 744 subpoena, the court or administrative agency shall decide whether good cause has been shown by the  
 745 discovering party to compel disclosure of the individual's health records over the individual's objections.  
 746 In determining whether good cause has been shown, the court or administrative agency shall consider (i)  
 747 the particular purpose for which the information was collected; (ii) the degree to which the disclosure of  
 748 the records would embarrass, injure, or invade the privacy of the individual; (iii) the effect of the  
 749 disclosure on the individual's future health care; (iv) the importance of the information to the lawsuit or  
 750 proceeding; and (v) any other relevant factor.

751 7. Concurrent with the court or administrative agency's resolution of a motion to quash, if  
 752 subpoenaed health records have been submitted by a health care entity to the court or administrative  
 753 agency in a sealed envelope, the court or administrative agency shall: (i) upon determining that no  
 754 submitted health records should be disclosed, return all submitted health records to the health care entity  
 755 in a sealed envelope; (ii) upon determining that all submitted health records should be disclosed, provide  
 756 all the submitted health records to the party on whose behalf the subpoena was issued; or (iii) upon  
 757 determining that only a portion of the submitted health records should be disclosed, provide such portion  
 758 to the party on whose behalf the subpoena was issued and return the remaining health records to the  
 759 health care entity in a sealed envelope.

760 8. Following the court or administrative agency's resolution of a motion to quash, the party on whose  
 761 behalf the subpoena duces tecum was issued shall have the duty to certify in writing to the subpoenaed  
 762 health care entity a statement of one of the following:

763 a. All filed motions to quash have been resolved by the court or administrative agency and the  
 764 disclosures sought in the subpoena duces tecum are consistent with such resolution; and, therefore, the  
 765 health records previously delivered in a sealed envelope to the clerk of the court or administrative  
 766 agency will not be returned to the health care entity;

767 b. All filed motions to quash have been resolved by the court or administrative agency and the  
 768 disclosures sought in the subpoena duces tecum are consistent with such resolution and that, since no  
 769 health records have previously been delivered to the court or administrative agency by the health care  
 770 entity, the health care entity shall comply with the subpoena duces tecum by returning the health records  
 771 designated in the subpoena by the return date on the subpoena or five days after receipt of certification,  
 772 whichever is later;

773 c. All filed motions to quash have been resolved by the court or administrative agency and the  
 774 disclosures sought in the subpoena duces tecum are not consistent with such resolution; therefore, no  
 775 health records shall be disclosed and all health records previously delivered in a sealed envelope to the  
 776 clerk of the court or administrative agency will be returned to the health care entity;

777 d. All filed motions to quash have been resolved by the court or administrative agency and the  
 778 disclosures sought in the subpoena duces tecum are not consistent with such resolution and that only  
 779 limited disclosure has been authorized. The certification shall state that only the portion of the health  
 780 records as set forth in the certification, consistent with the court or administrative agency's ruling, shall  
 781 be disclosed. The certification shall also state that health records that were previously delivered to the  
 782 court or administrative agency for which disclosure has been authorized will not be returned to the  
 783 health care entity; however, all health records for which disclosure has not been authorized will be  
 784 returned to the health care entity; or

785 e. All filed motions to quash have been resolved by the court or administrative agency and the  
 786 disclosures sought in the subpoena duces tecum are not consistent with such resolution and, since no

787 health records have previously been delivered to the court or administrative agency by the health care  
788 entity, the health care entity shall return only those health records specified in the certification,  
789 consistent with the court or administrative agency's ruling, by the return date on the subpoena or five  
790 days after receipt of the certification, whichever is later.

791 A copy of the court or administrative agency's ruling shall accompany any certification made  
792 pursuant to this subdivision.

793 9. The provisions of this subsection have no application to subpoenas for health records requested  
794 under § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation,  
795 audit, review or proceedings regarding a health care entity's conduct.

796 The provisions of this subsection shall apply to subpoenas for the health records of both minors and  
797 adults.

798 Nothing in this subsection shall have any effect on the existing authority of a court or administrative  
799 agency to issue a protective order regarding health records, including, but not limited to, ordering the  
800 return of health records to a health care entity, after the period for filing a motion to quash has passed.

801 A subpoena for substance abuse records must conform to the requirements of federal law found in 42  
802 C.F.R. Part 2, Subpart E.

803 I. Health care entities may testify about the health records of an individual in compliance with  
804 §§ 8.01-399 and 8.01-400.2.

805 J. If an individual requests a copy of his health record from a health care entity, the health care  
806 entity may impose a reasonable cost-based fee, which shall include only the cost of supplies for and  
807 labor of copying the requested information, postage when the individual requests that such information  
808 be mailed, and preparation of an explanation or summary of such information as agreed to by the  
809 individual. For the purposes of this section, "individual" shall subsume a person with authority to act on  
810 behalf of the individual who is the subject of the health record in making decisions related to his health  
811 care.