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HOUSE BILL NO. 1191

Offered January 17, 2022

A BILL to amend and reenact §§ 9.1-193 and 37.2-311.1 of the Code of Virginia, relating to Marcus alert system; optional participation.

Patrons—Ransone, Avoli, Ballard, Batten, Brewer, Campbell, R.R., Cherry, Durant, Fowler, Greenhalgh, Hodges, LaRock, March, Robinson, Runion, Taylor, Walker, Wiley, Wright and Wyatt

Referred to Committee on Public Safety

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-193 and 37.2-311.1 of the Code of Virginia are amended and reenacted as follows:

§ 9.1-193. Mental health awareness response and community understanding services (Marcus) alert system; law-enforcement protocols.

A. As used in this article, unless the context requires a different meaning:

"Area" means a combination of one or more localities or institutions of higher education contained therein that may have law-enforcement officers as defined in § 9.1-101.

"Body-worn camera system" means the same as that term is defined in § 15.2-1723.1.

"Community care team" means the same as that term is defined in § 37.2-311.1.

"Comprehensive crisis system" means the same as that term is defined in § 37.2-311.1.

"Developmental disability" means the same as that term is defined in § 37.2-100.

"Developmental services" means the same as that term is defined in § 37.2-100.

"Historically economically disadvantaged community" means the same as that term is defined in § 56-576.

"Mental health awareness response and community understanding services alert system" or "Marcus alert system" means the same as that term is defined in § 37.2-311.1.

"Mental health service provider" means the same as that term is defined in § 54.1-2400.1.

"Mobile crisis response" means the same as that term is defined in § 37.2-311.1.

"Mobile crisis team" means the same as that term is defined in § 37.2-311.1.

"Registered peer recovery specialist" means the same as that term is defined in § 54.1-3500.

"Substance abuse" means the same as that term is defined in § 37.2-100.

B. The Department of Behavioral Health and Developmental Services and the Department shall collaborate to ensure that the Department of Behavioral Health and Developmental Services maintains purview over best practices to promote a behavioral health response through the use of a mobile crisis response to behavioral health crises whenever possible, or law-enforcement backup of a mobile crisis response when necessary, and that the Department maintains purview over requirements associated with decreased use of force and body-worn camera system policies and enforcement of such policies in the protocols established pursuant to this article and § 37.2-311.1.

C. By July 1, 2021, the Department shall develop a written plan outlining (i) the Department's and law-enforcement agencies' roles and engagement with the development of the Marcus alert system; (ii) the Department's role in the development of minimum standards, best practices, and the review and approval of the protocols for law-enforcement participation in the Marcus alert system set forth in subsection D; and (iii) plans for the measurement of progress toward the goals for law-enforcement participation in the Marcus alert system set forth in subsection E.

D. All protocols and training for law-enforcement participation in the Marcus alert system shall be developed in coordination with local behavioral health and developmental services stakeholders and approved by the Department of Behavioral Health and Developmental Services according to standards developed pursuant to § 37.2-311.1. Such protocols and training shall provide for a specialized response by law enforcement designed to meet the goals set forth in this article to ensure that individuals experiencing a mental health, substance abuse, or developmental disability-related behavioral health crisis receive a specialized response when diversion to the comprehensive crisis system is not feasible. Specialized response protocols and training by law enforcement shall consider the impact to care that the presence of an officer in uniform or a marked vehicle at a response has and shall mitigate such impact when feasible through the use of plain clothes and unmarked vehicles. The specialized response protocols and training shall also set forth best practices, guidelines, and procedures regarding the role of law enforcement during a mobile crisis response, including the provisions of backup services when requested, in order to achieve the goals set forth in subsection E and to support the effective diversion of mental health crises to the comprehensive crisis system whenever feasible.

E. The goals of law-enforcement participation, including the development of local protocols, in

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58 comprehensive crisis services and the Marcus alert system shall be:

59 1. Ensuring that individuals experiencing behavioral health crises are served by the behavioral health
60 comprehensive crisis service system when considered feasible pursuant to protocols and training and
61 associated clinical guidance provided pursuant to Title 37.2;

62 2. Ensuring that local law-enforcement departments and institutions of higher education with
63 law-enforcement officers establish standardized agreements for the provision of law-enforcement backup
64 and specialized response when required for a mobile crisis response;

65 3. Providing immediate response and services when diversion to the comprehensive crisis system
66 continuum is not feasible with a protocol that meets the minimum standards and strives for the best
67 practices developed by the Department of Behavioral Health and Developmental Services and the
68 Department pursuant to § 37.2-311.1;

69 4. Affording individuals whose behaviors are consistent with mental illness, substance abuse,
70 intellectual or developmental disabilities, brain injury, or any combination thereof a sense of dignity in
71 crisis situations;

72 5. Reducing the likelihood of physical confrontation;

73 6. Decrease arrests and use-of-force incidents by law-enforcement officers;

74 7. Ensuring the use of unobstructed body-worn cameras for the continuous improvement of the
75 response team;

76 8. Identifying underserved populations in historically economically disadvantaged communities whose
77 behaviors are consistent with mental illness, substance abuse, developmental disabilities, or any
78 combination thereof and ensuring individuals experiencing a mental health crisis, including individuals
79 experiencing a behavioral health crisis secondary to mental illness, substance use problem,
80 developmental or intellectual disabilities, brain injury, or any combination thereof, are directed or
81 referred to and provided with appropriate care, including follow-up and wrap-around services to
82 individuals, family members, and caregivers to reduce the likelihood of future crises;

83 9. Providing support and assistance for mental health service providers and law-enforcement officers;

84 10. Decreasing the use of arrest and detention of persons whose behaviors are consistent with mental
85 illness, substance abuse, developmental or intellectual disabilities, brain injury, or any combination
86 thereof by providing better access to timely treatment;

87 11. Providing a therapeutic location or protocol to bring individuals in crisis for assessment that is
88 not a law-enforcement or jail facility;

89 12. Increasing public recognition and appreciation for the mental health needs of a community;

90 13. Decreasing injuries during crisis events;

91 14. Decreasing the need for mental health treatment in jail;

92 15. Accelerating access to care for individuals in crisis through improved and streamlined referral
93 mechanisms to mental health and developmental services;

94 16. Improving the notifications made to the comprehensive crisis system concerning an individual
95 experiencing a mental health crisis if the individual poses an immediate public safety threat or threat to
96 self; and

97 17. Decreasing the use of psychiatric hospitalizations as a treatment for mental health crises.

98 F. ~~By July 1, 2021, every~~ A locality ~~shall~~ *may* establish a voluntary database to be made available to
99 the 9-1-1 alert system and the Marcus alert system to provide relevant mental health information and
100 emergency contact information for appropriate response to an emergency or crisis. Identifying and health
101 information concerning behavioral health illness, mental health illness, developmental or intellectual
102 disability, or brain injury may be voluntarily provided to the database by the individual with the
103 behavioral health illness, mental health illness, developmental or intellectual disability, or brain injury;
104 the parent or legal guardian of such individual if the individual is under the age of 18; or a person
105 appointed the guardian of such person as defined in § 64.2-2000. An individual shall be removed from
106 the database when he reaches the age of 18, unless he or his guardian, as defined in § 64.2-2000,
107 requests that the individual remain in the database. Information provided to the database shall not be
108 used for any other purpose except as set forth in this subsection.

109 G. ~~By July 1, 2022, every~~ Every locality ~~shall have established~~ *may establish* local protocols that
110 meet the requirements set forth in the Department of Behavioral Health and Developmental Services
111 plan set forth in clauses (vi), (vii), and (viii) of subdivision B 2 of § 37.2-311.1. ~~In addition, by July 1,~~
112 ~~2022, every locality shall have established, or be part of an area that has established, A locality that opts~~
113 ~~to participate in the Marcus alert system shall develop~~ protocols for law-enforcement participation in the
114 Marcus alert system ~~that has been, which shall be~~ approved by the Department of Behavioral Health and
115 Developmental Services and the Department *prior to such participation.*

116 § 37.2-311.1. Comprehensive crisis system; Marcus alert system; powers and duties of the
117 Department related to comprehensive mental health, substance abuse, and developmental disability
118 crisis services.

119 A. As used in this section and §§ 37.2-311.2 through 37.2-311.6, unless the context requires a

different meaning:

"Community care team" means a team of mental health service providers, and may include registered peer recovery specialists and law-enforcement officers as a team, with the mental health service providers leading such team, to help stabilize individuals in crisis situations. Law enforcement may provide backup support as needed to a community care team in accordance with the protocols and best practices developed pursuant to § 9.1-193. In addition to serving as a co-response unit, community care teams may, at the discretion of the employing locality, engage in community mental health awareness and services.

"Comprehensive crisis system" means the continuum of care established by the Department of Behavioral Health and Developmental Services pursuant to this section.

"Crisis call center" means a call center that provides crisis intervention that meets NSPL standards for risk assessment and engagement and the requirements of § 37.2-311.2.

"Crisis stabilization center" means a facility providing short-term (under 24 hours) observation and crisis stabilization services to all referrals in a home-like, nonhospital environment.

"Fund" means the Crisis Call Center Fund established under § 37.2-311.4.

"Historically economically disadvantaged community" means the same as that term is defined in § 56-576.

"Mental health awareness response and community understanding services alert system" or "Marcus alert system" means a set of protocols to (i) initiate a behavioral health response to a behavioral health crisis, including for individuals experiencing a behavioral health crisis secondary to mental illness, substance abuse, developmental disabilities, or any combination thereof; (ii) divert such individuals to the behavioral health or developmental services system whenever feasible; and (iii) facilitate a specialized response in accordance with § 9.1-193 when diversion is not feasible.

"Mobile crisis response" means the provision of professional, same-day intervention for children or adults who are experiencing crises and whose behaviors are consistent with mental illness or substance abuse, or both, including individuals experiencing a behavioral health crisis that is secondary to mental illness, substance abuse, developmental or intellectual disability, brain injury, or any combination thereof. "Mobile crisis response" may be provided by a community care team or a mobile crisis team, and a locality may establish either or both types of teams to best meet its needs.

"Mobile crisis team" means a team of one or more qualified or licensed mental health professionals and may include a registered peer recovery specialist or a family support partner. A law-enforcement officer shall not be a member of a mobile crisis team, but law enforcement may provide backup support as needed to a mobile crisis team in accordance with the protocols and best practices developed pursuant to § 9.1-193.

"NSPL" or "National Suicide Prevention Lifeline" means the national suicide prevention and mental health crisis hotline established by the federal government in accordance with 42 U.S.C. § 290bb—36c to provide a national network of crisis centers linked by a toll-free number to route callers in suicidal crisis or emotional distress to the closest certified local crisis center.

"NSPL Administrator" means the entity designated by the federal government to administer the NSPL.

"Registered peer recovery specialist" means the same as such term is defined in § 54.1-3500.

"SAMHSA" or "Substance Abuse and Mental Health Services Administration" means the agency within the U.S. Department of Health and Human Services that leads federal behavioral health efforts.

B. The Department shall have the following duties and responsibilities for the provision of crisis services and support for individuals with mental illness, substance abuse, developmental or intellectual disabilities, or brain injury who are experiencing a crisis related to mental health, substance abuse, or behavioral support needs:

1. The Department shall develop a comprehensive crisis system, with such funds as may be appropriated for such purpose, based on national best practice models and composed of a crisis call center, community care and mobile crisis teams, crisis stabilization centers, and the Marcus alert system. In addition to all requirements under this section, the crisis call center shall meet the requirements of § 37.2-311.2.

2. By July 1, 2021, the Department, in collaboration with the Department of Criminal Justice Services and law-enforcement, mental health, behavioral health, developmental services, emergency management, brain injury, and racial equity stakeholders, shall develop a written plan for the development of a Marcus alert system. Such plan shall (i) inventory past and current crisis intervention teams established pursuant to Article 13 (§ 9.1-187 et seq.) of Chapter 1 of Title 9.1 throughout the Commonwealth that have received state funding; (ii) inventory the existence, status, and experiences of community services board mobile crisis teams and crisis stabilization units; (iii) identify any other existing cooperative relationships between community services boards and law-enforcement agencies; (iv) review the prevalence of crisis situations involving mental illness or substance abuse, or both,

181 including individuals experiencing a behavioral health crisis that is secondary to mental illness,
182 substance abuse, developmental or intellectual disability, brain injury, or any combination thereof; (v)
183 identify state and local funding of emergency and crisis services; (vi) include protocols to divert calls
184 from the 9-1-1 dispatch and response system to a crisis call center for risk assessment and engagement,
185 including assessment for mobile crisis or community care team dispatch; (vii) include protocols for local
186 law-enforcement agencies to enter into memorandums of agreement with mobile crisis response
187 providers regarding requests for law-enforcement backup during a mobile crisis or community care team
188 response; (viii) develop minimum standards, best practices, and a system for the review and approval of
189 protocols for law-enforcement participation in the Marcus alert system set forth in § 9.1-193; (ix) assign
190 specific responsibilities, duties, and authorities among responsible state and local entities; and (x) assess
191 the effectiveness of a locality's or area's plan for community involvement, including engaging with and
192 providing services to historically economically disadvantaged communities, training, and therapeutic
193 response alternatives.

194 C. 1. ~~No later than December 1, 2021, the~~ The Department shall establish ~~five a~~ a Marcus alert
195 ~~programs program~~ and a community care or mobile crisis ~~teams, one located in each of the team in the~~
196 ~~geographic area served by each community services board or behavioral health authority that has opted~~
197 ~~to participate in the Marcus alert program. The Department shall establish at least five Department~~
198 ~~regions.~~

199 2. ~~No later than July 1, 2023, the Department shall establish five additional Marcus alert system~~
200 ~~programs and community care or mobile crisis teams; by December 1, 2021, and at least five Marcus~~
201 ~~alert programs and community care or mobile crisis teams per year in every year thereafter until a~~
202 ~~Marcus alert program and a community care or mobile crisis team has been established in the service~~
203 ~~area of each community services board or behavioral health authority that has opted to participate in~~
204 ~~the Marcus alert system. In establishing such programs, the Department shall:~~

205 1. ~~Annually establish at least one located Marcus alert program and a community care or mobile~~
206 ~~crisis team in each of the five Department regions. Community; however if no community services~~
207 ~~board or behavioral health authority in a region that has not yet established a Marcus alert program~~
208 ~~and a community care or mobile crisis team has opted to participate in the Marcus alert system, the~~
209 ~~Department shall not be required to establish a Marcus alert program and a community care or mobile~~
210 ~~crisis team in that region; and~~

211 2. ~~Prioritize establishment of a Marcus alert program and a community care or mobile crisis team at~~
212 ~~the community services boards or behavioral health authorities that have not yet established a Marcus~~
213 ~~alert program and a community care or mobile crisis team that serve the largest populations population~~
214 ~~in each the region, excluding those community services boards or behavioral health authorities already~~
215 ~~selected under subdivision 1, shall be selected for programs under this subdivision.~~

216 3. ~~The Department shall establish additional Marcus alert systems and community care teams in~~
217 ~~geographical areas served by a community services board or behavioral health authority by July 1, 2024;~~
218 ~~July 1, 2025; and July 1, 2026. No later than July 1, 2026, all community services board and behavioral~~
219 ~~health authority geographical areas shall have established a Marcus alert system that uses a community~~
220 ~~care or mobile crisis team.~~

221 4. ~~All.~~

222 ~~Every community care teams team and mobile crisis teams team established under pursuant to this~~
223 ~~section shall meet the standards set forth in § 37.2-311.3.~~

224 ~~No community services board or behavioral health authority shall be required to establish a Marcus~~
225 ~~alert program and a community care or mobile crisis team unless the localities participating in the~~
226 ~~community services board or behavioral health authority have agreed to participate in the Marcus alert~~
227 ~~system.~~

228 D. ~~The Department shall assess and report on annually by November 15 to the Governor and the~~
229 ~~Chairmen of the House Committees for Courts of Justice and Health, Welfare and Institutions, the~~
230 ~~Senate Committees on the Judiciary and Education and Health, and the Joint Commission on Health~~
231 ~~Care regarding the impact and effectiveness of the comprehensive crisis system and the effectiveness of~~
232 ~~such system in meeting its the goals set forth in this section. The assessment report shall include, for the~~
233 ~~previous calendar year, (i) a description of approved local Marcus alert programs in the~~
234 ~~Commonwealth, including the number of such programs operating in the Commonwealth, the number of~~
235 ~~such programs added in the previous calendar year, and an analysis of how such programs work to~~
236 ~~connect the Commonwealth's comprehensive crisis system and mobile crisis response programs; (ii) the~~
237 ~~number of crisis incidents occurring in the Commonwealth and the number of such incidents that~~
238 ~~involved injuries to parties involved in such incidents; (iii) the number of calls to received by the crisis~~
239 ~~call center; established pursuant to this section; (iv) the number of mobile crisis responses; undertaken~~
240 ~~by community care teams and mobile crisis teams in the Commonwealth; (v) the number of mobile crisis~~
241 ~~responses that involved law-enforcement backup; and overall function of the comprehensive crisis~~
242 ~~system. A portion of the report, focused on the function of the Marcus alert system and local protocols~~

243 for law-enforcement participation in the Marcus alert system; shall be written in collaboration with the
244 Department of Criminal Justice Services and shall include the number and description of approved local
245 programs and how the programs interface comprehensive crisis system and mobile crisis response; the
246 number of crisis incidents and injuries to any parties involved; a description of successes and problems
247 encountered; and an analysis of the overall operation of any local protocols or programs, including any
248 disparities in response and outcomes by race and ethnicity of individuals experiencing a behavioral
249 health crisis and recommendations for improvement of the programs; (vi) *an analysis of the overall*
250 *operation of local protocols adopted or programs established pursuant to §9.1-193, including any*
251 *disparities in response and outcomes by race and ethnicity of individuals experiencing a behavioral*
252 *health crisis; (vii) a description of the overall function of the Marcus alert program, including a*
253 *description of any successes of the program and any challenges encountered; (viii) a description of the*
254 *overall function of the comprehensive crisis system; and (ix) recommendations for improvement of the*
255 *Marcus alert system and approved local Marcus alert programs. The report shall also include a specific*
256 *plan to phase in (a) a description of barriers to establishment of a local Marcus alert system program*
257 *and community care or mobile crisis team to provide mobile crisis response in each remaining*
258 *geographical area served by a community services board or behavioral health authority as required in*
259 *subdivision 3 in which such program and team has not been established and (b) a plan for*
260 *addressing those barriers to increase the number of local Marcus alert programs and community care*
261 *or mobile crisis teams are established. The Department, in collaboration with the Department of*
262 *Criminal Justice Services, shall (i) submit a report by November 15, 2021, to the Joint Commission on*
263 *Health Care outlining progress toward the assessment of these factors and any assessment items that are*
264 *available for the reporting period and (ii) submit a comprehensive annual report to the Joint Commission*
265 *on Health Care by November 15 of each subsequent year assist the Department in the preparation of*
266 *the report required by this subsection.*