

# Virginia State Crime Commission

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## Death and Rape Investigations by Campus Police

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2011

# Death and Rape Investigations by Campus Police

## Executive Summary

During the 2011 Regular Session of the Virginia General Assembly, Delegate Paula Miller introduced House Bill 2490 (HB 2490) which proposed to amend Va. Code § 23-234, relating to death and rape investigations by campus police departments. The bill was referred by the House Militia, Police and Public Safety Committee to the Crime Commission for review.

Crime Commission staff utilized several methodologies to assess the issue, including examining other states with similar statutes, reviewing national and state-level research, collecting data relating to campus crime and sexual assaults, and creating an informal work group. Staff also disseminated comprehensive surveys to campus police departments and their respective administrations.

The purview of HB 2490 was limited to investigations of medically unattended deaths and alleged rapes at Virginia's 33 campus police departments. If passed, the bill would impact at least 43 local law enforcement agencies that surround campus police department jurisdictions. Currently, there are only two other states that have similar statutes to HB 2490: Tennessee and South Carolina.

A review of existing literature and data revealed a number of different factors contributing to campus crime rates -- namely the proportion of students living on campus. Further, research reveals that the vast majority of reported campus crime is against property, specifically larceny and vandalism. When examining information relating to sexual assaults, research and data consistently indicate that sexual assaults are a highly underreported crime on campuses and in the general community. Additionally, very few cases result in a successful conviction. This pattern holds true across Virginia campuses and communities. The development of Sexual Assault Response Teams (SART) has been one response to such patterns. It should be noted that there are three potential avenues for rape investigations occurring at colleges and universities with campus police departments: criminal investigations, judicial investigations and/or Title IX investigations. Each investigation is mutually exclusive, and more than one type of investigation can occur simultaneously.

An informal work group with various representatives was created to discuss the bill topic and to assist in developing a comprehensive survey for campus police departments and their respective administrations. The campus police department survey focused on a number of key issues related to criminal investigations, including jurisdiction, joint investigation, concurrent jurisdiction and mutual aid agreements. The survey also examined campus police department personnel, accreditation and training. Findings underscore that campus police officers must meet the same requirements for

basic training and in-service training as all law enforcement officers in Virginia. Finally, specific attention was placed on campus death and rape investigations and whether the department had a written policy for such investigations and to what extent campus police departments notified or requested assistance from local law enforcement or the Virginia State Police.

The survey, disseminated to the administrations of higher education institutions with campus police departments, focused on the different avenues provided for student conduct that could be considered criminal in a court of law. Specific attention was placed on judicial boards and the types of members serving, burden of proof levels, rights of the accused and victim, as well as the number and types of referrals heard by such boards. The vast majority of referrals were for alcohol and drug violations. The survey also addressed Title IX investigations and the implications of the U.S. Department of Education's "Dear Colleague Letter" pertaining to investigations by colleges and universities relating to "acts of sexual violence." The letter is still being interpreted and implemented by college and university administrators. There is a divergence of opinion on what the letter requires. Finally, the survey asked a number of questions dealing with threat assessment teams. All public institutions indicated that they had implemented a team, as required by the Code of Virginia.

The Crime Commission reviewed study findings at its November 16, 2011, meeting and directed staff to draft legislation for several key issues. As a result of the study effort, the Crime Commission endorsed the following recommendations at its December 6, 2011, meeting:

**Recommendation 1:** Amend Va. Code § 15.2-1627.4 to require campus police departments to be specifically listed for inclusion in local or regional Sexual Assault Response Teams (SART).

**Recommendation 2:** Amend Va. Code § 23-234 to require campus police departments and local law enforcement agencies or the Virginia State Police to have mutual aid agreements for cooperation in providing assistance with death and alleged rapes occurring on college or university property.

**Recommendation 3:** Amend Va. Code § 63.2-1509 to require college and university employees to be included in the list of individuals who are required to report instances of suspected child abuse.

## Background

### OVERVIEW OF HB 2490

House Bill 2490 was introduced by Delegate Paula Miller during the 2011 Regular Session of the Virginia General Assembly.<sup>1</sup> It was referred to the House Militia, Police and Public Safety Committee and subsequently referred to the Crime Commission for review. The bill proposed to amend Va. Code § 23-234, relating to investigations by campus police departments. The bill in its final version was the same as introduced,

with no amendments or modifications made in Committee. Specifically, HB 2490 required that the:

*...chief law enforcement officer of a public or private institution of higher education, or his designee, shall immediately notify the local law enforcement agency of the locality in which the institution of higher education is located of (i) the death of any person on the property of the institution when such person is medically unattended and (ii) any report alleging that a rape has occurred on the property of the institution. Upon notification, the local law enforcement agency shall assume responsibility for leading the investigation. The campus police department and all other employees of the institution of higher education shall cooperate with the local law enforcement agency conducting the investigation and shall provide any assistance requested by the local law enforcement agency.*

The bill, if passed, would have impacted at least 43 local law enforcement agencies that surround campus police department jurisdictions, including 23 city/county police departments, 14 sheriff's offices and 6 town police departments.

Colleges and universities either have a campus police department or a security department. The focus of HB 2490 was only upon institutions with campus police departments. Campus security departments already rely on local law enforcement or the Virginia State Police (VSP) to conduct any death, rape or other criminal investigation. There are 33 campus police departments in the Commonwealth. All 15 public four-year and above, as well as 9 private four-year and above and 9 public two-year institutions have campus police departments. Unlike campus security departments, campus police departments handle all calls for service on their respective campus jurisdictions and employ sworn, Virginia Department of Criminal Justice Services (DCJS) certified law enforcement officers who undergo the same training as all sworn law enforcement officers in the Commonwealth. Campus security departments rely upon special conservators of the peace, proprietary officers or contracted security officers.

## **OTHER STATES**

Currently, there are only two other states that have similar existing statutes as proposed by HB 2490: Tennessee and South Carolina. Each is described in detail below.

### ***Tennessee***

Tennessee Code § 49-7-129 ("Robert 'Robbie' Nottingham Campus Crime Scene Investigation Act of 2004") requires that:

*...the chief security officer or chief law enforcement officer of the institution shall immediately notify, unless otherwise prohibited by federal law, the local law enforcement agency with territorial jurisdiction over the institution, if the medically unattended death of a person occurs on the property of the institution, or if the officer is in receipt of a report from the victim alleging that any degree of rape has occurred on the property of the institution.<sup>2</sup>*

The statute also requires that, upon notification, it shall be the duty of each law enforcement agency to participate in a joint investigation of the death or alleged rape reported. In the case of a medically unattended death, the local law enforcement agency shall lead the investigation, whereas in the case of an alleged rape, the campus law enforcement agency shall lead the investigation. The statute indicates that officers and all other employees of the institution shall cooperate in every respect with the investigation conducted by the local law enforcement agency.

There are also two additional provisions that require “any official of a public or private institution of higher education receiving a report from a victim of rape occurring on the property or in the vicinity of the institution shall refer the victim to a sexual assault program or other service on campus or in the community.” These programs must then report back to campus police the number of requests for assistance received from victims who were raped on or in the vicinity of a public or private institution of higher education during the preceding calendar year by January 31. A knowing violation of this section is a Class C misdemeanor.<sup>3</sup>

In sum, the key difference between the provisions of HB 2490 and Tennessee’s statute is that Tennessee calls for a joint investigation rather than completely turning the investigation over to local law enforcement.

### ***South Carolina***

South Carolina Code § 59-154-10, also known as the “Jessica Horton Act,” is similar to Tennessee’s statute:

The chief of the campus police of an institution of higher learning, or his designee, immediately shall notify the State Law Enforcement Division if there is a death resulting from an incident occurring on the property of the institution or if the officer or another official of the institution is in receipt of a report alleging that an act of criminal sexual conduct has occurred on the property of the institution.<sup>4</sup>

However, there are key differences. First, the campus police notify the State Law Enforcement Division rather than local law enforcement. Second, instead of requiring notification for “medically unattended deaths,” South Carolina’s statute expands the inclusion to “any death resulting from an incident occurring on the property of the institution.” Finally, the scope is also expanded from “rape” to any “act of criminal sexual conduct.”

Like Tennessee, the State Law Enforcement Division, upon notification, participates in a joint investigation of the death or alleged act of criminal sexual conduct, with the State Law Enforcement Division taking the lead in death investigations and the campus police taking the lead in investigating acts of criminal sexual conduct. This statute also calls for the cooperation of campus police and other employees of the institution of higher learning with any investigation conducted by the State Law Enforcement Division.

## ACADEMIC LITERATURE

### *Nature of Campus Crime*

When examining the academic literature, there are several factors consistently identified as contributing to the campus crime rate. First, one of the most consistent factors impacting campus crime rates has been the number of students living on campus.<sup>5</sup> This concept makes intuitive sense in that students living on campus and their property are exposed to potential victimization 24 hours a day, as opposed to those who commute to campus for only a few hours per week or who take on-line courses only.<sup>6</sup>

Second, the overall wealth of the institution and student body has been found to increase campus crime rates, specifically property crime rates, in that more expensive targets are more attractive to potential offenders.<sup>7</sup> Third, the overall demographic characteristics of the student body can lead to an increase in campus crime rates. For instance, some research has found a positive correlation between the percentage of male students enrolled and campus crime rates.<sup>8</sup>

Fourth, the impact of substance abuse on campus crime is cited widely in the literature.<sup>9</sup> Somewhat related, research has shown that certain types of organizations can affect campus crime rates. Specifically, research has consistently found that institutions with a higher number of national social “Greek” fraternities and sororities on campus tend to have higher levels of alcohol consumption and crime on campus.<sup>10</sup>

Research has also examined the campus crime phenomenon in terms of institution location or comparison to surrounding communities. Consistently, this body of literature reveals lower overall rates of campus crime compared to rates in the general community.<sup>11</sup> In general, crimes are not only less common, but also less violent. Numerous studies have indicated that violent crime rates are substantially lower than the communities that surround them and the nation as a whole.<sup>12</sup> Furthermore, studies find that property offenses, specifically larcenies, comprise the overwhelming majority of campus crime.<sup>13</sup> This is a finding supported by both official and victimization data.

The “mix” of crimes appears to vary by campus location as well. Some researchers have found that as campuses become more urban or have a closer proximity to surrounding areas with high unemployment rates, the proportion of crime rates tends to be higher.<sup>14</sup> There appears to be mixed evidence as to whether there is a community “spill-over” effect onto the campuses affecting crime.<sup>15</sup> However, what does appear to be agreed upon is that the vast majority of crime committed on campus is perpetrated by its own students.<sup>16</sup>

### *Nature of Sexual Assaults*

Other researchers have focused on specific campus crimes. There is a plethora of research highlighting the fact that students, specifically women, are exposed to higher risks of sexual victimization on campuses.<sup>17</sup> Research and data consistently indicate that sexual assault is a highly underreported crime both in the general community and on campuses.<sup>18</sup> There are various reasons why such crimes go unreported, including:

- Shame, guilt, or embarrassment;
- Fear of not being believed;
- Concerns about confidentiality;
- Unwillingness to recount details multiple times;
- Fear of retaliation; and,
- Fear or distrust of the overall criminal justice system.<sup>19</sup>

When examining the nature of rapes on campus, research has repeatedly found that the vast majority are acquaintance rapes,<sup>20</sup> and that many involve alcohol or drug consumption by the assailant, victim or both.<sup>21</sup> Research and data also consistently indicate that only a very low percentage of sexual assault cases result in convictions, whether the crime occurred in the general community or on a campus.<sup>22</sup> Virginia is no exception.

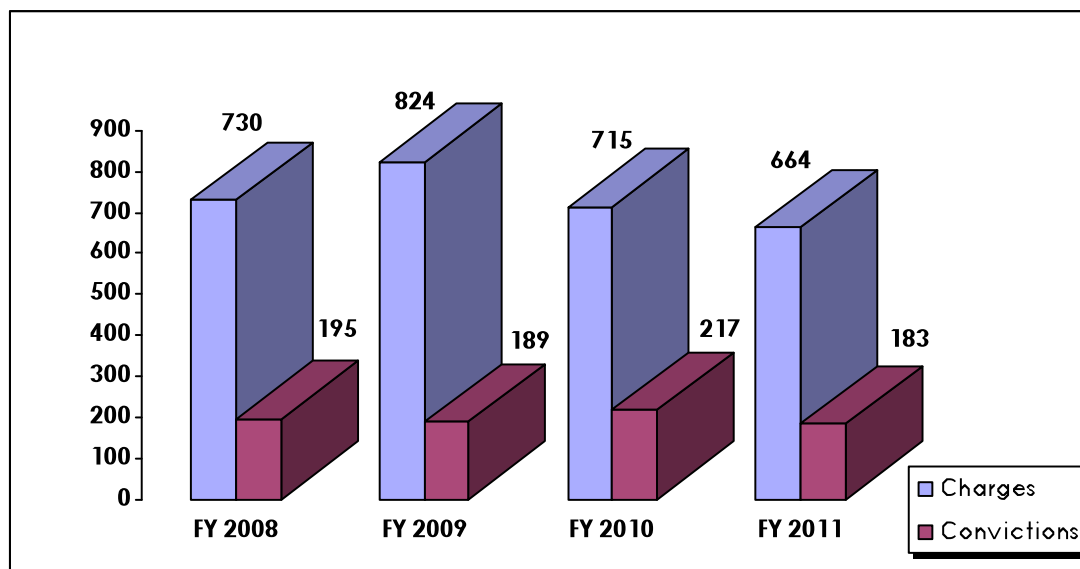
**Virginia Data**

Staff requested the total number of charges and convictions in Virginia between Fiscal Year (FY) 08 through FY11 for:

- Rape (Va. Code § 18.2-61 (A)(i) and (ii));
- Forcible sodomy (Va. Code § 18.2-67.1 (A)(2)), and;
- Forcible object penetration (Va. Code § 18.2-67.2 (A)(2)).

As seen in Figure 1 below, there is approximately a 25% conviction rate when examining the aggregate number of charges and convictions for these particular statutes.

**Figure 1: Total Number of Aggregate Charges and Convictions for Rape, Forcible Sodomy, and Object Penetration in Virginia, FY08-FY11**



Source: Virginia Criminal Sentencing Commission, Supreme Court's Circuit Court Case Management System.

Note: Includes offenses under Va. Code §§ 18.2-61 A (i) and (ii), 18.2-67.1 (A)(2), and 18.2-67.2 (A)(2);

Figures are based on concluded cases. Cases still pending in Circuit Court are not included in the figures above. Fairfax, Alexandria and Prince William County were not participating in the Supreme Court's Circuit Court Case Management System during FY07-FY10. During FY11, Prince William rejoined the Supreme Court's system and Virginia Beach left the system.

When examining the total number of charges and convictions for each individual statute as seen below in Figure 2, the data continues to show significant case attrition with only approximately 20%-30% resulting in a conviction.

**Figure 2: Breakdown of Total Number of Charges and Convictions for Rape, Forcible Sodomy, and Object Penetration in Virginia, FY08-FY11**

| Total Charges                                |      |      |      |      |
|----------------------------------------------|------|------|------|------|
| TYPE OF OFFENSE                              | FY08 | FY09 | FY10 | FY11 |
| <b>Rape-</b> §§ 18.2-61 (A) (i) and (ii)     | 352  | 428  | 305  | 338  |
| <b>Forcible Sodomy-</b> § 18.2-67.1(A)(2)    | 216  | 250  | 230  | 181  |
| <b>Object Penetration-</b> § 18.2-67.2(A)(2) | 162  | 146  | 180  | 145  |
| Total Convictions                            |      |      |      |      |
| TYPE OF OFFENSE                              | FY08 | FY09 | FY10 | FY11 |
| <b>Rape-</b> §§ 18.2-61 (A) (i) and (ii)     | 84   | 86   | 81   | 93   |
| <b>Forcible Sodomy-</b> § 18.2-67.1(A)(2)    | 60   | 66   | 76   | 49   |
| <b>Object Penetration-</b> § 18.2-67.2(A)(2) | 51   | 37   | 60   | 41   |

Source: Virginia Criminal Sentencing Commission, Supreme Court's Circuit Court Case Management System. Figures are based on concluded cases. Cases still pending in Circuit Court are not included in the figures above. Fairfax, Alexandria and Prince William County were not participating in the Supreme Court's Circuit Court Case Management System during FY07-FY10. During FY11, Prince William rejoined the Supreme Court's system and Virginia Beach left the system.

**Sexual Assault Response Teams**

One response to concerns over low conviction rates for sexual assault cases has been the development of Sexual Assault Response Teams (SART). Many states, including Virginia, have created these teams, which provide a multidisciplinary response to criminal sexual assaults. Use of such a multidisciplinary response in conducting medical forensic examinations can help provide victims access to immediate care, help reduce trauma, encourage use of community resources, enhance public safety by aiding in the investigation, arrest and prosecution of offenders, and increase public awareness of such coordinated responses to perhaps encourage more reporting of sexual assaults.<sup>23</sup>

In 2009, Virginia implemented Va. Code § 15.2-1627.4, which requires each Commonwealth's Attorney to coordinate the establishment of a multidisciplinary response to criminal sexual assault and hold a meeting, at least annually, to discuss implementation of DCJS protocols and policies for sexual assault response teams and to establish and review guidelines for the community's response--to include the collection, preservation and secure storage of evidence from Physical Evidence Recovery Kit (PERK) examinations.<sup>24</sup> Per Va. Code § 15.2-1627.4, the following individuals or their designees shall be invited to participate in the annual meeting:



- Commonwealth's Attorney;
- Sheriff;
- Director of the local sexual assault crisis center, if any;
- Chief of each police department in the jurisdiction, if any;
- Forensic nurse examiner or other health care provider who performs PERK examinations in the jurisdiction, if any; and,
- Director of the victim/witness program in the jurisdiction, if any.

As will be discussed later, the language of the statute is not clear whether campus police departments and their respective chiefs are required to be included. In other words, unlike other areas of the Virginia Code, this section does not specifically list campus police departments (chiefs) for inclusion.

## Reported Campus Crime Data

In order to understand the impact of the proposed bill, relevant campus crime data was considered. There are a number of data sources available to examine *reported* campus crime, such as Clery Act data, Virginia Incident Based Reporting (IBR) data and campus crime logs. It should be underscored that the data from these three sources should not be strictly compared to one another, for a number of reasons, including definitional differences, the manner in how incidents/offenses are counted, and differences in state versus federal reporting requirements.

### CLERY ACT DATA

Each institution of higher education in the United States that is eligible for Title IV funding must produce and distribute an annual report containing crime statistics and statements of security policy.<sup>25</sup> Clery Act statistics are compiled annually by the U.S. Department of Education and can serve as a means to inform potential college students and their parents of criminal offenses reported on college campuses. Such institutions must disclose the following reported crimes:

- Murder;
- Forcible and non-forcible sex offenses;
- Robbery;
- Aggravated assault;
- Burglary;
- Motor vehicle theft;
- Arson; and,
- Negligent manslaughter.

The reported crimes are categorized by the hierarchy rule, which counts only the most serious offense in an incident. Institutions must also report the total number of arrests and referrals for liquor, drug, and weapon law violations. All crimes are categorized based on where the offense took place, including on campus, in residence halls (subset of on-campus figures), non-campus and public property.

There are several limitations of Clery Act statistics that need to be mentioned. Perhaps most significant is that the Clery Act does not require all crimes to be reported. For example, some of the most commonly reported crimes, such as larceny/theft, vandalism, threats, and harassment are not mandated to be reported.

Another key difference between Clery Act data and the other data mentioned in this report is the Clery Act data includes offenses reported to *any* campus security authority, such as campus police and security officers, deans of students, directors of athletics, coordinators of Greek affairs, campus health centers, campus counseling centers, victim advocacy centers or campus rape crisis centers.<sup>26</sup> This is an important distinction, as this may impact the total number of reported sexual assaults included. As such, Clery Act figures will typically be higher than figures reported by other law enforcement agency data and are not directly comparable. Similar to Uniform Crime Reporting (UCR) data, National Incident Based Reporting System (NIBRS) data and campus crime logs, Clery Act statistics only represent alleged criminal offenses and do not necessarily reflect prosecutions or convictions for crime.

Despite such limitations, the Clery Act statistics can be valuable to evaluate with other sources of data. They are the only source of data readily available for all Title IV institutions with either campus police or campus security departments. For purposes of this study, Clery Act statistics were gathered from Calendar Year (CY) 06 through CY10 for all Virginia campus police departments. The CY10 Clery Act findings, the most recent available, are provided below.

**CY10 Clery Act Findings**

According to the CY10 Clery Act statistics, there were a total of 815 offenses reported at institutions with campus police departments in Virginia. Figure 3 illustrates the breakdown of these reported offenses. However, due to the exclusion of crimes such as larceny and vandalism, these percentages do not capture the true overall nature or volume of campus crime.

**Figure 3: 2010 Clery Act Crimes for Virginia's Campus Police Departments**

| Rank | Type of Offense       | Number of Offenses (N=815) | Percent of Offenses |
|------|-----------------------|----------------------------|---------------------|
| 1    | Burglary              | 539                        | 66%                 |
| 2    | Forcible Sex Offenses | 83*                        | 10%                 |
| 3    | Motor Vehicle Theft   | 65                         | 8%                  |
| 4    | Aggravated Assault    | 56                         | 7%                  |
| 5    | Robbery               | 51                         | 6%                  |
| 6    | Arson                 | 21                         | 3%                  |

Source: U.S. Department of Education, Clery Act statistics, CY10. N=33 campus police departments.

Note: Figures account for all on-campus, non-campus and public property offenses reported to campus authorities. \* 71 of the 83 reported forcible sex offenses occurred on-campus.

**VIRGINIA IBR DATA**

Virginia IBR data is compiled annually by the VSP. Unlike Clery Act data and the old UCR program, NIBRS/IBR data expands the scope of crimes required for reporting into Group A and Group B offenses.<sup>27</sup> Group A offenses include more serious crimes against

persons, property and society, whereas Group B offenses include less serious offenses. The data captures the total number of offenses reported and arrests for all Group A offenses; however, the data only captures the number of arrests and not the number of offenses for Group B offenses. Recall that Clery Act data will include crimes that are reported to authorities other than law enforcement and that the data includes crimes occurring on adjacent public property, which is investigated by another law enforcement agency. This is not the case with IBR data. In order for data to be captured, the offense/incident must be reported directly to a law enforcement agency. Furthermore, the figures reported by each agency, in general, will reflect the number of offenses/incidents occurring within its jurisdiction and not any surrounding jurisdictions.

It should be noted that only 24 of the 33 Virginia campus police departments' IBR statistics were published for the 2010 calendar year. This exclusion could be due to a number of reasons, which are not necessarily unique to campus police departments, as some other law enforcement agencies' figures are not included either. The primary reason that a law enforcement agency's figures are not included in the publication is that they may not currently have the technological capability to participate in the program, as the records management system required to participate is very costly. One reason that is unique to why not all campus police department figures are included is because the provisions under Va. Code § 52-28 "shall not apply to any police agency not paid entirely from public funds." This would explain why some of the campus police departments at private institutions are not listed.

Given the discussion above, in general, IBR figures will be lower than Clery Act statistics since IBR data does not reflect all 33 campus police departments, and because IBR data only records crimes reported directly to law enforcement.

### ***Virginia IBR Findings***

There were 485,901 Group A offenses reported across the Commonwealth in CY10 with 1% (6,459 of 485,901) of such offenses being reported by campus police departments. Over two-thirds of reported offenses were for larceny or vandalism, as illustrated in Figure 4 below. This listing provides a far more accurate portrayal of reported campus crime.

**Figure 4: Top 5 Group A Offenses Reported at VA Campus Police Departments, CY10**

| Ranking | Type of Offense             | Total Offenses | Percent of Offenses |
|---------|-----------------------------|----------------|---------------------|
| 1       | Larceny                     | 3,015          | 47%                 |
| 2       | Vandalism                   | 1,367          | 21%                 |
| 3       | Drug/narcotic offenses      | 655            | 10%                 |
| 4       | Simple assault/intimidation | 566            | 9%                  |
| 5       | Burglary                    | 340            | 5%                  |

Source: Virginia State Police, *Crime in Virginia (2010)*; n=24 campus police departments; 6,459 offenses.

Staff examined the total number of murder/non-negligent manslaughters reported statewide versus the total reported by campus police departments. As seen in Figure 5

below, such offenses are relatively rare on campuses with police departments over the past five fiscal years.

**Figure 5: Total Murder/Non-Negligent Manslaughters Reported Statewide and by Virginia Campus Police Departments, CY06-CY10**

| CY   | Statewide Murder Offenses | Campus Murder Offenses |
|------|---------------------------|------------------------|
| 2006 | 398                       | 0                      |
| 2007 | 411                       | 3*                     |
| 2008 | 369                       | 1                      |
| 2009 | 349                       | 1                      |
| 2010 | 369                       | 0                      |

Source: Virginia State Police, *Crime in Virginia (2006-2010)*.

n= 22 campus police departments for CY06-CY08; n=23 for CY09; n=24 for CY10.

\*30 of the 32 murders occurring at Virginia Tech in 2007 were captured by the Virginia State Police IBR figures in Montgomery County.

Staff also examined the total number of forcible sex offenses reported statewide versus the total reported by campus police departments over the past five fiscal years. One should keep in mind that these figures only represent reported incidences of forcible sex offenses (forcible rape, sodomy, object penetration and fondling) with many incidents likely not being reported to law enforcement. Additionally, one may note that the total number of forcible sex offenses reported in 2010 was 31 as seen below in Figure 6, which is much lower than the 71 on-campus sexual assaults captured by 2010 Clery Act data illustrated in Figure 3. This is due to a number of potential reasons, namely the fact that not all 33 campus police departments are captured by IBR data and because Clery Act data *includes* sexual assaults reported to other campus authorities besides law enforcement, including health, counseling and rape crisis centers. This is one clear example of why Clery Act data and IBR data cannot be directly compared.

**Figure 6: Total Forcible Sex Offenses Reported Statewide and by Virginia Campus Police Departments, CY06-CY10**

| CY   | Statewide Forcible Sex Offenses* | Campus Forcible Sex Offenses |
|------|----------------------------------|------------------------------|
| 2006 | 5,475                            | 50                           |
| 2007 | 5,317                            | 33                           |
| 2008 | 5,259                            | 46                           |
| 2009 | 4,779                            | 42                           |
| 2010 | 4,981                            | 31                           |

Source: Virginia State Police, *Crime in Virginia (2006-2010)*.

n= 22 campus police departments for CY06-CY08; n=23 for CY09; n=24 for CY10.

\*Figure represents total number of victims involved in all offenses reported.

Finally, staff looked at statewide and campus-specific arrest data. Of the 485,901 Group A offenses reported in Virginia during 2010, there were 142,524 arrests.<sup>28</sup> Of the 6,459 Group A offenses reported by campus police departments, there were 580 arrests.

While this may seem like a low number of arrests, recall that the vast majority of reported campus crime involves larceny or vandalism, which have historically low clearance rates. Campus police made an additional 2,750 Group B arrests in CY10.

Figure 7 below illustrates a more specific breakdown of the total number of forcible sex offenses reported statewide and by campus police departments in CY10. While attempting to determine any type of “clearance rate” is discouraged with IBR, it is readily apparent that relatively few arrests are made. These low arrest rates could be due to a number of reasons. For instance, while offenses may be reported to police, law enforcement may not be given enough information to move forward with an arrest when the perpetrator cannot be identified or when the victim does not wish to press charges. Further, law enforcement is required to have probable cause to make an arrest, which can sometimes be difficult to achieve given the fact patterns of some sexual assault cases.

**Figure 7: Total Number of IBR Forcible Sex Offenses and Arrests, Total Statewide vs. Virginia Campus Police Departments, CY10**

| Type of Incident            | Total Statewide Offenses | Total Statewide Arrests | Total Campus PD Offenses | Total Campus PD Arrests |
|-----------------------------|--------------------------|-------------------------|--------------------------|-------------------------|
| Forcible Rape               | 1,518                    | 377                     | 16                       | 0                       |
| Forcible Sodomy             | 506                      | 177                     | 15                       | 0                       |
| Forcible Object Penetration | 301                      | 105                     |                          | 0                       |
| Forcible Fondling           | 2,362                    | 775                     |                          | 3                       |
| <b>TOTAL</b>                | <b>4,687*</b>            | <b>1,434</b>            | <b>31</b>                | <b>3</b>                |

Source: Virginia State Police, *Crime in Virginia (2010)*. n= 24 campus police departments.

Note: When comparing offenses and arrests, one cannot determine a precise clearance rate as 1 arrest can “clear” multiple offenses/incidents. Also, specific breakdown for reported “other forcible sex offenses” was not readily available for campus police departments.

\* 4,687 offenses involving 4,981 victims.

**CAMPUS CRIME LOGS**

Campus crime logs are required by both federal and state laws. Under federal law pursuant to C.F.R., Title 34, § 668.46, every institution with a campus police or security department must maintain a crime log. The log entries must contain the nature of the crime, the data and time the crime was reported, the general location and disposition, if known. Va. Code § 23-232.2 has additional requirements, such as a general description of injuries suffered or property damaged or stolen, as well as the name and address of any individual arrested as a result of felonies committed against persons or property or misdemeanors involving assault, battery, or moral turpitude reported to the campus police.

Staff requested crime logs from all 33 campus police departments, with 79% (26 of 33) submitting logs for analysis. Unlike Virginia IBR data, campus crime logs capture both Group A and Group B offenses reported. There were nearly 10,000 log entries submitted for analysis. Staff extracted only the Group A and Group B reported offenses for analysis. As such, entries for incidents such as fire alarms, building checks or parking tickets were not included. This exclusion reduced the total number of crime log entries to 8,669 for CY10.

**Campus Crime Log Findings**

As seen below in Figure 8, even when capturing all Group B offenses in addition to Group A offenses, larceny and vandalism are still the two most reported offenses on campus, followed by a myriad of alcohol-related offenses.

**Figure 8: Top 15 Group A and Group B Offenses Reported in Virginia Campus Police Department Crime Logs, CY10**

| Ranking | Type of Offense          | Total Log Entries | Percent of Total Log Entries |
|---------|--------------------------|-------------------|------------------------------|
| 1       | Larceny                  | 2,803             | 32.3%                        |
| 2       | Vandalism                | 1,436             | 16.6%                        |
| 3       | Liquor Law Violations    | 1,310             | 15.1%                        |
| 4       | Drunkenness              | 774               | 8.9%                         |
| 5       | Drug/Narcotic Offenses   | 545               | 6.3%                         |
| 6       | Assaults                 | 529               | 6.1%                         |
| 7       | Burglary                 | 286               | 3.3%                         |
| 8       | Trespassing              | 264               | 3.0%                         |
| 9       | DUI                      | 178               | 2.1%                         |
| 10      | Disorderly Conduct       | 146               | 1.7%                         |
| 11      | Fraud                    | 126               | 1.5%                         |
| 12      | Weapon Law Violations    | 63                | less than 1%                 |
| 13      | Robbery                  | 57                | less than 1%                 |
| 14      | Forcible Sexual Assaults | 45                | less than 1%                 |
| 15      | Counterfeit              | 26                | less than 1%                 |
| *       | All Other                | 81                | less than 1%                 |

Source: CY10 Virginia campus police department crime logs; N= 8,669 log entries; n= 26 campus police departments.

**OTHER DATA**

Since the purview of the bill encompassed any medically unattended death, staff requested the total number of suicides and accidental deaths occurring on campuses across the Commonwealth from the Virginia Department of Health (VDH). It should be underscored that the figures illustrated in Figure 9 represent all campuses in Virginia rather than only the 33 institutions with campus police departments. Further, the figures for CY10-CY11 are still preliminary.

**Figure 9: Va. Department of Health- Total Virginia Suicides and Accidental Deaths Statewide and on Virginia Campuses**

| Type of Death                         | CY07     | CY08     | CY09     | CY10*    | CY11*†   |
|---------------------------------------|----------|----------|----------|----------|----------|
| Total Va. Suicides                    | 906      | 949      | 974      | 1,002    | 480      |
| <b>Total Campus Suicides</b>          | <b>4</b> | <b>2</b> | <b>1</b> | <b>1</b> | <b>1</b> |
| Total Va. Accidental Deaths           | 2,404    | 2,297    | 2,175    | 2,245    | 901      |
| <b>Total Campus Accidental Deaths</b> | <b>0</b> | <b>2</b> | <b>1</b> | <b>0</b> | <b>1</b> |

Source: Virginia Department of Health, Office of Chief Medical Examiner.

\*Numbers are preliminary and subject to change; † Cases reported and/or finalized by June 30, 2011.

Note: Figures represent reports from all campuses in the Commonwealth.

To achieve a greater specificity in the types of other death investigations handled by campus police departments, staff asked campus police to self-report the total number of suicides, and accidental, natural and undetermined deaths occurring on their campus or as a result of an incident occurring on their campus over the past five calendar years. For each type of death classification, staff asked that the figures be broken into whether the individual was a student, faculty/staff member or other individual (visitor, passerby, etc.). In addition to any homicide investigations, these types of non-homicide deaths would also likely fall under the purview of HB 2490.

**Figure 10: Total Number of Self-Reported Deaths on Campus, CY07-CY11**

| Type of Death              | CY07                  | CY08                                    | CY09                                     | CY10                                    | CY11*                                   |
|----------------------------|-----------------------|-----------------------------------------|------------------------------------------|-----------------------------------------|-----------------------------------------|
| <b>Suicides</b>            | 4 students<br>1 other | 1 student<br>1 faculty/staff<br>1 other | 1 student                                | 5 students                              | 1 student                               |
| <b>Accidental Deaths</b>   | 1 student<br>1 other  | 2 students                              | 1 other                                  | 1 student                               | 0                                       |
| <b>Natural Deaths</b>      | 2 faculty/staff       | 2 students<br>2 other                   | 3 students<br>1 faculty/staff<br>2 other | 1 student<br>2 faculty/staff<br>4 other | 1 student<br>1 faculty/staff<br>2 other |
| <b>Undetermined Deaths</b> | 0                     | 0                                       | 0                                        | 0                                       | 1 other                                 |
| <b>TOTAL</b>               | <b>9</b>              | <b>9</b>                                | <b>8</b>                                 | <b>13</b>                               | <b>5</b>                                |

Source: Virginia State Crime Commission, Campus Police Department Survey, 2011.

N=33 campus police departments; \*Figures include all deaths up to and including September 1, 2011.

## Campus Police Department Survey Findings

### HB 2490 INFORMAL WORK GROUP

In order for Crime Commission staff to obtain a full understanding of the issues surrounding HB 2490, staff requested assistance from key stakeholders to discuss HB 2490 and to assist in the development of comprehensive surveys for both campus police departments and their respective administrations. Specifically, staff invited representatives from the following agencies and organizations to participate:

- Campus police departments;
- Campus women’s center directors;
- College/university administrators;
- Commonwealth’s Attorneys Offices;
- Council for Independent Colleges in Virginia;
- Local law enforcement;
- Judicial/student conduct directors;
- Sexual assault and suicide prevention specialists;
- Virginia Association of Chiefs of Police;
- Virginia Department of Criminal Justice Services;
- Virginia Department of Health; and,
- Virginia Sheriff’s Association.

### CAMPUS POLICE DEPARTMENT SURVEY

Staff disseminated surveys to all Virginia campus police departments.<sup>29</sup> All (33 of 33) campus police departments responded to the survey for a 100% response rate. The survey addressed a number of key issues that will be discussed below.

#### *Campus Police Department Investigations*

A key element in any criminal investigation is jurisdiction. The powers, duties and jurisdiction of campus police officers is defined by Va. Code § 23-234. Specifically, a campus police officer may exercise the powers and duties conferred by law:

...(i) upon any property owned or controlled by the relevant public or private institution of higher education, or, upon request, any property owned or controlled by another public or private institution of higher education and upon the streets, sidewalks, and highways, immediately adjacent thereto, (ii) pursuant to a mutual aid agreement provided for in § 15.2-1727 between the governing board of a public or private institution and such other institution of higher education, public or private, in the Commonwealth or adjacent political subdivisions, (iii) in close pursuit of a person as provided in § 19.2-77, and (iv) upon approval by the appropriate circuit court of a petition by the local governing body for concurrent jurisdiction in designated areas with the police officers of the county, city, or town in which the institution, its satellite campuses, or other properties are located. The local governing body may petition the circuit court pursuant only to a request by the local law enforcement agency for concurrent jurisdiction.<sup>30</sup>



### ***Joint Investigations***

Joint investigations involve two or more agencies in an investigation, with one of the agencies taking the lead. Between FY08-FY11, 85% (28 of 33) of campus police departments reported being involved with other law enforcement agencies in a joint investigation. In some cases, the campus police department took the lead and in other cases, the other law enforcement agency took the lead.

The vast majority of joint investigations are undertaken with local law enforcement or the VSP; however, campus police also reported conducting such investigations with federal agencies (FBI, DEA, ICE, U.S. Secret Service and U.S. Postal Service), other college/university police departments, regional drug task forces or crash investigation teams, as well as the Virginia ABC and the Virginia Game and Inland Fisheries Department.

The survey did reveal that some of these joint investigations involved a death or rape that occurred on campus property between FY08-FY11. Specifically, 29% (8 of 28) indicated that a joint investigation involving a death occurred on their campus and 43% (12 of 28) indicated that a joint investigation involving an alleged rape occurred on their campus between the stated fiscal years.

### ***Concurrent Jurisdiction***

Concurrent jurisdiction is a legal agreement filed in circuit court by local governing bodies pursuant to Va. Code § 23-234. With this agreement, the jurisdiction of the campus police department is extended, which allows the campus police to respond to situations near the campus with the same authority as if in their campus jurisdiction. As such, concurrent jurisdiction agreements essentially create a primary and a secondary jurisdiction for campus police departments.

To be clear, the city or county where a campus is located has the inherent right to conduct investigations anywhere within their jurisdiction, and that includes the college campus, similar to how the VSP have jurisdiction anywhere in the Commonwealth. Another element to underscore is that in order for concurrent jurisdiction to occur, the local governing body may only petition the circuit court pursuant upon a request by the local law enforcement agency.

Thirty percent (10 of 33) of campus police departments reported having concurrent jurisdiction with at least one of their surrounding localities. Six additional departments reported that they were working towards a concurrent jurisdiction agreement.

### ***Mutual Aid Agreements***

Mutual aid agreements involve a reciprocal agreement for cooperation in providing police services in specific circumstances, such as emergencies, special events or assistance with investigations, equipment or technology. Such agreements can be made between two agencies or many. Agreements can also be written or verbal. When mutual aid is invoked, any investigation stemming from an incident typically is headed by the agency that requested the mutual aid.

Most campus police departments, 88% (29 of 33), have a mutual aid agreement with another jurisdiction. Six additional agencies are working towards a mutual aid agreement with another law enforcement agency.

### ***Campus Police Department Personnel***

The survey also examined campus police personnel. When looking at the level of experience of campus police chiefs, all have a significant amount of prior law enforcement experience. The average amount of prior experience was 20 years. Such previous experience was gained mostly at local police departments, sheriff's offices with primary law enforcement responsibilities and other campus police departments. In addition, 61% (20 of 33) of campus police chiefs have served an additional three or more years in their current position. Twenty-four percent (10 of 33) have served more than 10 years in their current position as campus police chief.

Most campus police chiefs, 91% (30 of 33), report directly to a vice-president level administrator for either finance, administration or business. Only 9% (3 of 33) of campus police chiefs report directly to a student affairs/services administrator.

According to survey findings, there were a total of 740 sworn campus police officers employed as of September 1, 2011. Of the 740 sworn campus police officers, there were 688 full-time sworn officers and 52 part-time sworn officers. There was an average of 21 full-time sworn officers per agency and the range of sworn officers was anywhere from 0 to 80 full-time and 0 to 8 part-time officers. The length of time officers have been employed with campus police departments varied:

- 27% (194 of 730) serving less than 3 years;
- 21% (155 of 730) 3-5 years;
- 20% (149 of 730) 6-10 years;
- 13% (94 of 730) 11-15 years;
- 9% (65 of 730) 16-20 years; and,
- 10% (73 of 730) over 20 years.<sup>31</sup>

Over half of campus police officers, 56% (414 of 740), have previously worked for a local, state, or federal law enforcement agency.

### ***Accreditation***

Campus law enforcement agencies can be accredited by three different entities, including the Virginia Law Enforcement Standards Commission (VLEPSC), the Commission on Accreditation for Law Enforcement Agencies (CALEA), and the International Association of Campus Law Enforcement Administrators (IACLEA). Accreditation can be beneficial in that it provides a uniform set of written directives based on national best practices. Accreditation can also limit an agency's liability and risk exposure. It should be noted that accreditation can be very costly, and even though many law enforcement agencies are not typically accredited, many will base their policies on such accredited standards and best practices.

As of November 2011, 12% (4 of 33) of campus police department were state-accredited through VLEPSC, including the College of William and Mary, James Madison

University, Radford University, and Virginia Commonwealth University. When examining Virginia city and county police departments and sheriff's offices with primary law enforcement, 55% (74 of 134) were similarly accredited.

Another 12% (4 of 33) of campus police departments were nationally accredited through CALEA as of November 2011, including George Mason University, University of Richmond, University of Virginia, and Virginia Tech. When examining Virginia city and county police departments, sheriff's offices with primary law enforcement and the Virginia State Police, 16% (21 of 134) were similarly accredited.

Finally, campus police departments can also be accredited through IACLEA, which is technically a "subset" of CALEA since it utilizes its standards with permission. As of November 2011, 6% (2 of 33) of campus police departments were accredited through IACLEA, including the University of Richmond and Virginia Tech.

### ***Training***

Campus police officers undergo the same basic training as all sworn law enforcement officers in the Commonwealth of Virginia. They also have the same requirements for in-service training, which includes annual firearms certification<sup>32</sup> and 40 hours of in-service training every two years. The 40 in-service training hours include four hours of legal training, two hours of cultural diversity training and 34 hours of career development training.

The courses an officer takes for career development training varies from officer to officer. Currently, there is no way to readily identify all of the specific courses each law enforcement officer attended for their 40 hours of in-service training. Since the courses taken vary from officer to officer, it would require obtaining specific information on over 18,000 individual officers across the Commonwealth.<sup>33</sup> Therefore, staff was unable to readily compare in-service training received by campus law enforcement officers to in-service training received by local law enforcement officers.

Staff was able to determine that training is made available by many providers, such as:

- Virginia Department of Criminal Justice Services (DCJS);
- Virginia Department of Forensic Sciences (DFS);
- Local/state/federal law enforcement;
- Virginia Center for Policing Innovation (VCPI);
- Private entities; and,
- Non-profit entities.

One area of training that staff focused upon was the training made available by DFS. Specifically, staff requested the list of agencies whose officers attended courses offered by DFS between FY07-FY11. The DFS offers the Virginia Forensic Science Academy, which is an intensive nine-week school that teaches officers all aspects of evidence collection, preservation and packaging. The academy is offered approximately two times per year. Over the past five fiscal years, 87 local law enforcement agencies sent officers and four campus police departments sent officers. For graduates of the academy, an annual three-day re-training seminar is offered.

The DFS also provides other forensic/crime scene investigation courses to law enforcement, such as:

- Basic Crime Scene Investigation;
- Bloodstain Pattern Analysis (Basic and Advanced);
- Crime Scene Photography courses;
- Crime Scene Sketching courses;
- Drug Evidence Seminar;
- Fingerprint Examiners and Processing Seminars;
- Fire Investigations;
- Hit and Run Investigations; and,
- Homicide Scene Seminar.

Over the past five fiscal years, 174 local law enforcement agencies and eight campus police departments sent officers to attend such courses.

***Campus Death Investigations***

The survey asked whether campus police departments had a written policy for death investigations and whether they notify, request assistance or ever completely turn over an investigation to local law enforcement or the VSP. Seventy-three percent (24 of 33) of campus police departments had a written policy for death investigations. As seen in Figure 11 below, all campus police departments indicated that they would request assistance from local law enforcement given certain circumstances. Typically, requests for assistance would occur when additional resources or expertise was needed or when the incident involved other parties who lived off of campus.

**Figure 11: Death Investigation Notification and Request for Assistance by Virginia Campus Police to Local Law Enforcement and the Virginia State Police**

| <b>Local Law Enforcement</b>              | <b>YES</b> | <b>ONLY IN SOME CIRCUMSTANCES</b> | <b>NO</b> |
|-------------------------------------------|------------|-----------------------------------|-----------|
| Notify when death occurs on campus (N=33) | 61%        | 30%                               | 9%        |
| Request Assistance (N=33)                 | 45%        | 55%                               | 0%        |
| Completely turn over investigation (n=32) | 31%        | 16%                               | 53%       |
| <b>Virginia State Police</b>              | <b>YES</b> | <b>ONLY IN SOME CIRCUMSTANCES</b> | <b>NO</b> |
| Notify when death occurs on campus (N=33) | 33%        | 30%                               | 36%       |
| Request Assistance (N=33)                 | 27%        | 42%                               | 30%       |
| Completely turn over investigation (N=33) | 15%        | 24%                               | 61%       |

Source: Virginia State Crime Commission, Campus Police Department Survey, 2011.

***Campus Rape Investigations***

For purposes of this study, rape was defined as rape, forcible sodomy or object penetration. Victims of alleged rape at colleges and universities with campus police

departments have various reporting options, including moving forward with a criminal investigation (violation of law) or an internal judicial/student conduct investigation (violation of university code of conduct). Also, colleges and universities conduct Title IX investigations (violation of civil rights). Each avenue will be discussed in further detail below.

*A. Criminal Investigations*

It should be noted that a criminal investigation of an alleged rape is not automatic. It is contingent upon the offense being reported to the campus police department. Nearly all campus police departments, 90% (30 of 33) have a written policy for rape investigations as required by Va. Code § 9.1-1301. The three departments lacking a policy indicated that their policy was to hand the investigation over to a local law enforcement agency to investigate.

**Figure 12: Rape Investigation Notification and Request for Assistance by Virginia Campus Police to Local Law Enforcement and the Virginia State Police**

| <b>Local Law Enforcement</b>              | <b>YES</b> | <b>ONLY IN SOME CIRCUMSTANCES</b> | <b>NO</b> |
|-------------------------------------------|------------|-----------------------------------|-----------|
| Notify when rape occurs on campus (n=32)  | 34%        | 53%                               | 13%       |
| Request Assistance (n=32)                 | 28%        | 63%                               | 9%        |
| Completely turn over investigation (n=31) | 16%        | 29%                               | 55%       |
| <b>Virginia State Police</b>              | <b>YES</b> | <b>ONLY IN SOME CIRCUMSTANCES</b> | <b>NO</b> |
| Notify when rape occurs on campus (n=31)  | 16%        | 19%                               | 65%       |
| Request Assistance (n=31)                 | 6%         | 35%                               | 58%       |
| Completely turn over investigation (n=31) | 3%         | 23%                               | 74%       |

Source: Virginia State Crime Commission, Campus Police Department Survey, 2011.

*B. Judicial Investigations*

Surveys were sent to the administrations of all 33 institutions which have campus police departments to determine the different avenues that campuses utilize to handle matters that could be considered criminal in a court of law.<sup>34</sup> The surveys were typically completed by the deans of students or directors of judicial affairs/student conduct. There was an 88% (29 of 33) response rate to the survey request.

Each of the 29 responding institutions reported having a judicial/student conduct mechanism for handling student misconduct that could be considered criminal in a court of law. Most judicial boards involve students with a combination of faculty, staff and administrators serving, as illustrated in Figure 13 below.

**Figure 13: Types of Members Serving on Judicial Boards**

| <b>Type of Member</b> | <b>Total Number of Institutions</b> | <b>Percent of Institutions</b> |
|-----------------------|-------------------------------------|--------------------------------|
| Students              | 22 of 29                            | 76%                            |

|                |          |     |
|----------------|----------|-----|
| Faculty        | 18 of 29 | 62% |
| Staff          | 14 of 29 | 48% |
| Administration | 19 of 29 | 66% |
| Other          | 12 of 29 | 28% |

Source: Virginia State Crime Commission, Judicial/Student Conduct Mechanism Survey, 2011.

The survey also examined the burden of proof level for judicial hearings. All but one institution reported their burden of proof level. Most institutions, 61% (17 of 28), reported that their burden of proof level was *preponderance of the evidence*.

**Figure 14: Judicial Board Hearing Burden of Proof Levels**

| Burden of Proof Level                      | Total Number of Institutions | Percent of Institutions* |
|--------------------------------------------|------------------------------|--------------------------|
| Preponderance of evidence                  | 17 of 28                     | 61%                      |
| Reasonable evidence/sufficient information | 5 of 28                      | 18%                      |
| Clear and convincing evidence              | 4 of 28                      | 14%                      |
| Beyond a reasonable doubt                  | 1 of 28                      | 4%                       |
| Other**                                    | 1 of 28                      | 4%                       |

Source: Virginia State Crime Commission, Judicial/Student Conduct Mechanism Survey, 2011.

\* Figures may not total to 100% due to rounding.

\*\*Clear and convincing evidence except for sexual misconduct cases, where the burden is preponderance of the evidence.

The survey also revealed that both the accused and the victim/accuser have similar rights, as illustrated in Figure 15 below.

**Figure 15: Rights of Accused and Victim at Judicial Hearings**

| Accused/ Victim Permitted to:                    | Accused | Victim |
|--------------------------------------------------|---------|--------|
| Speak at hearing?                                | 97%     | 86%    |
| Cross-examine witnesses at hearing?              | 76%     | 66%    |
| Be present for entire hearing?                   | 93%     | 83%    |
| Submit <i>written</i> testimony/evidence?        | 100%    | 100%   |
| Read all written reports?                        | 86%     | 76%    |
| Receive all written reports prior to hearing?    | 59%     | 55%    |
| Have character witnesses testify?                | 48%     | 38%    |
| Have fact witnesses testify?                     | 86%     | 90%    |
| Have advisor/advocate <i>present</i> at hearing? | 83%     | 83%    |
| Have advisor/advocate <i>speak</i> at hearing?   | 21%     | 28%    |
| Have legal counsel <i>present</i> at hearing?    | 66%     | 66%    |
| Have legal counsel <i>speak</i> at hearing?      | 7%      | 10%    |
| Have legal counsel question witnesses?           | 3%      | 7%     |
| Have parents/guardians present at hearing?       | 55%     | 55%    |

Source: Virginia State Crime Commission, Judicial Board/Student Conduct Mechanism Survey, 2011; N=29.

Nearly all institutions, 97% (28 of 29), indicated that they had some form of an appeal process. Appeals were typically heard by appeals committees/boards/councils, college

or university presidents, deans or vice presidents of student affairs or boards of trustees or visitors. There was often more than one level of appeal as well.

Most institutions, 79% (23 of 29), indicated that their hearings proceed regardless of any potential or existing criminal or civil litigation for the same incident. Most also indicated that the hearings, findings, and sanctions are not open to the public. Specifically, 86% (25 of 29) indicated hearings as not being open to public and 79% (23 of 29) indicated findings and sanctions are not open to the public. Some institutions indicated that the accused may request an open hearing only in certain cases and others mentioned that findings and sanctions are reported but only in the aggregate. However, by federal law both the accused and victim/accuser of violent crimes are notified of the specific outcomes of the case.

In addition to judicial boards, 55% (16 of 29) of institutions indicated that they had additional mechanisms for handling matters that could be considered criminal in a court of law, such as:

- Administrative hearings (n=5);
- Formal resolution by Dean or Dean’s staff (n=5);
- Informal resolution (n=3);
- Mediation (n=3);
- Panhellenic councils (n=3);
- Psychological evaluation panels (n=2); and/or,
- Sexual assault boards (n=2).

In order to uncover the types of cases heard by judicial boards, staff requested all violations occurring between January 1, 2010, and December 31, 2010, that could be considered criminal in a court of law, in accordance with Family Educational Rights and Privacy Act (FERPA) guidelines (34 CFR Part 99.3). As such, the requested information only included the date of the incident and hearing, the charge, disposition, sanction and the offenders’ age, class and gender. There was an 82% (27 of 33) response rate for the submission of such records. There was a total of 6,264 valid judicial referral records within the stated timeframe.

From the results, one can see that 84% of referrals were for alcohol or drug violations, as seen in Figure 16. There were no referrals related to deaths; however, there were 13 referrals for rape or sexual assault. Overall, 83% (5,208 of 6,264) of those referred were found responsible, as illustrated in Figure 17.

**Figure 16: Type and Total Number of Judicial Referrals, CY10**

| Ranking | Type of Offense    | Number of Referrals | Percent of Referrals |
|---------|--------------------|---------------------|----------------------|
| 1       | Alcohol violations | 4,372               | 70%                  |

|              |                        |              |              |
|--------------|------------------------|--------------|--------------|
| 2            | Drug violations        | 868          | 14%          |
| 3            | Assaults               | 357          | 6%           |
| 4            | Disorderly conduct     | 212          | 3%           |
| 5            | Larceny                | 209          | 3%           |
| 6            | Vandalism              | 154          | 2%           |
| 7            | Weapon law violations  | 23           | less than 1% |
| 8            | Trespassing            | 17           | less than 1% |
| 9            | Burglary               | 14           | less than 1% |
| 10           | Rape/sexual assault    | 13           | less than 1% |
| 11           | Forgery                | 11           | less than 1% |
| 12           | Obstruction of justice | 6            | less than 1% |
| 13           | Fraud                  | 3            | less than 1% |
| 13           | Gambling               | 3            | less than 1% |
| 14           | Robbery                | 1            | less than 1% |
| 14           | Pornography            | 1            | less than 1% |
| <b>TOTAL</b> |                        | <b>6,264</b> | <b>100%</b>  |

Source: Virginia State Crime Commission, Judicial Records Analysis, CY10, n=27 institutions.

**Figure 17: Type of Hearing Outcome for Judicial Referrals, CY10**

| Type of Outcome                              | Number of Referrals | Percent of Referrals |
|----------------------------------------------|---------------------|----------------------|
| Responsible                                  | 5,206               | 83%                  |
| Not Responsible                              | 894                 | 14%                  |
| Other<br>(student withdrew, dismissed, etc.) | 164                 | 3%                   |

Source: Virginia State Crime Commission, Judicial Records Analysis, CY10, n=27 institutions.

*C. Title IX Investigations*

The final avenue for the investigation of sexual assaults at colleges and universities is an investigation under Title IX of the federal law. Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of federal financial assistance. Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX.

In April 2011, the U.S. Department of Education, Office for Civil Rights, issued what is now referred to as the “Dear Colleague Letter” (DCL). The purpose of the letter was to inform institutions of their responsibilities under Title IX to protect students from sexual harassment, which includes acts of sexual violence. The DCL defines sexual violence as physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol. An individual may also be unable to give consent due to an intellectual or other disability. Consequently, rape, sexual assault, sexual battery, and sexual coercion are all considered acts of sexual harassment covered under Title IX.



The DCL requires institutions to investigate complaints of sexual violence through a grievance process or its judicial council. Such claims must be investigated regardless of, or in addition to, any criminal investigation. The burden of proof in such cases must be based on a *preponderance of the evidence* standard. Furthermore, institutions may have an obligation to respond to student conduct that initially occurs off of campus property. Unlike criminal and judicial investigations, Title IX investigations can move forward without the victim's consent.

The individual in charge of such investigations is a Title IX Coordinator. Most institutions, 79% (23 of 29), indicated that they currently have a Title IX coordinator. One additional institution is in the process of identifying their coordinator. The survey sought to determine how complaints involving Title IX "acts of sexual violence" were handled:

- 61% (14 of 23) handle such complaints through their existing judicial/student conduct mechanism;
- 30% (7 of 23) have an entirely separate mechanism for such complaints; and,
- 9% (2 of 23) indicate that students may use either or both; or, that such complaints are handled through their existing judicial board but with more tailored rules and/or with a different burden of proof.

Since the DCL was just released in April 2011, there are still significant differences in opinion on what the DCL and relevant law actually require.

### ***Threat Assessment Teams***

In summer 2011, the Governor's Advisory Board on Domestic Violence Prevention and Response met on several occasions, with the Crime Commission's Executive Director participating on the Enhancing Campus Safety subcommittee. As part of these efforts, Crime Commission staff was asked to examine how many institutions had threat assessment teams, since the issue fell within the purview of the current bill.

Threat assessment teams were established in 2008 under Va. Code § 23-9.2:10, which requires:

Each public college/university shall have in place policies and procedures for the prevention of violence on campus, including assessment and intervention with individuals whose behavior poses a threat to the safety of the campus community...The board of visitors or other governing body shall determine a committee structure on campus of individuals charged with education and prevention of violence on campus, including representatives from: Student Affairs, Law Enforcement, Human Resources, Counseling Services, Residence Life, and Other Constituencies as needed.

Based on survey results, 88% (29 of 33) of institutions currently have a threat assessment team. Specifically, all 15 public four-year and above and all nine public two-year institutions with campus police departments indicated that they have a threat assessment teams and were therefore compliant with the law. Although not required under Virginia law, 56% (5 of 9) of private four-year and above institutions with

campus police departments indicated they have a threat assessment team. One additional private institution indicated that they were in the process of creating one.

Based on data from 25 institutions with threat assessment teams, there were approximately 659 “persons of concern” and 584 threat assessment cases opened during the 2010-2011 academic year. The number of cases ranged from 0 to over 250 and the median number was 10 “persons of concern” per institution and six threat assessment cases per institution.

## Summary and Conclusion

The purview of HB 2490 is limited to Virginia’s 33 campus police departments. The provisions of the bill would only apply to investigations of medically unattended deaths and alleged rapes. If passed, the bill would impact at least 43 local law enforcement agencies that surround campus police department jurisdictions. Only two other states have enacted somewhat similar statutes.

Research and data consistently indicate that campus crime consists primarily of property offenses, specifically larceny. Furthermore, the evidence shows that sexual assault is a highly underreported crime and is difficult to prosecute, regardless of whether the assault occurs on a campus or in the general community.

Campus police officers must meet the same requirements for basic training and in-service training as all law enforcement officers in Virginia. There are three potential avenues for rape investigations occurring at colleges and universities with campus police departments: criminal investigations, judicial investigations and/or Title IX investigations. Each investigation is mutually exclusive. In regard to Title IX investigations, the DCL is still being interpreted and implemented by college and university administrators. There is a divergence of opinion on what the letter requires.

As a result of the study effort, the Crime Commission endorsed the following recommendations at its December 6, 2011 meeting:

**Recommendation 1:** Amend Va. Code § 15.2-1627.4 to require campus police departments to be specifically listed for inclusion in local or regional Sexual Assault Response Teams (SART).

Senator Janet Howell introduced Senate Bill 301 during the 2012 General Session of the Virginia General Assembly, based on the Crime Commission recommendation. The bill was passed by the Virginia Senate and Virginia House of Delegates as introduced, and signed by the Governor.<sup>35</sup>

Delegate Robert Bell introduced House Bill 969 during the 2012 General Session of the Virginia General Assembly, based on the Crime Commission recommendation. The bill was passed by the Virginia House of Delegates and the Virginia Senate as introduced, and signed by the Governor.<sup>36</sup>

**Recommendation 2:** Amend Va. Code § 23-234 to require campus police departments and local law enforcement agencies or the Virginia State Police to have mutual aid agreements for cooperation in providing assistance with death and alleged rapes occurring on college or university property.

Senator Janet Howell introduced Senate Bill 302 during the 2012 General Session of the Virginia General Assembly, based on the Crime Commission recommendation. The bill was passed by the Virginia Senate and the Virginia House of Delegates with an agreed substitute, and signed by the Governor.<sup>37</sup>

Delegate Robert Bell introduced House Bill 965 during the 2012 General Session of the Virginia General Assembly, based on the Crime Commission recommendation. The bill was passed by the Virginia House of Delegates and the Virginia Senate with an agreed substitute, and signed by the Governor.<sup>38</sup>

**Recommendation 3:** Amend Va. Code § 63.2-1509 to require college and university employees to be included in the list of individuals who are required to report instances of suspected child abuse.

Senator Janet Howell introduced Senate Bill 303 during the 2012 General Session of the Virginia General Assembly, based on the Crime Commission recommendation. Senate Bill 303 was incorporated into Senator Richard Stuart's Senate Bill 239, which passed by the Virginia Senate with a substitute and the Virginia House of Delegates with a committee amendment. Afterwards, the Governor's recommendation was received by, agreed upon, and adopted by both the Virginia Senate and the Virginia House of Delegates. The bill was then signed by the Governor.<sup>39</sup>

Delegate Robert Bell introduced House Bill 970 during the 2012 General Session of the Virginia General Assembly, based on the Crime Commission recommendation. The bill was passed by the Virginia House of Delegates as introduced and the Virginia Senate with committee amendments agreed to by the House of Delegates, and signed by the Governor.<sup>40</sup>

## Acknowledgements

The Virginia State Crime Commission extends its appreciation to the following agencies for their assistance and cooperation on this study:

HB 2490 Informal Work Group Members

U.S. Department of Education

Virginia's Campus Law Enforcement Agencies

Virginia's College and University Administrators

Virginia Association of Campus Law Enforcement Administrators

Virginia Criminal Sentencing Commission

Virginia Department of Criminal Justice Services

Virginia Department of Forensic Science

Virginia Department of Health

Virginia State Council of Higher Education

Virginia State Police

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<sup>1</sup> H.B. 2490 Va. General Assemb., Reg. Sess. (2011).

<sup>2</sup> TENN. CODE ANN. § § 49-7-129 (West 2011).

<sup>3</sup> This is the least serious misdemeanor under Tennessee law, carrying no more than 30 days in jail, and a fine of no more than \$50.00; TENN. CODE ANN. § 40-35-111 (West 2011).

<sup>4</sup> S.C. CODE ANN. § 59-154-10 (West 2011).

<sup>5</sup> Bromley, M.L., Community college crime: An exploratory review. *Journal of Security Administration*, 22(2), 11-21 (1999); Fox, J., & Hellman, D., Correlates of campus crime. *Journal of Criminal Justice*, 13(5), 429-444 (1985); Henson, V.A., & Stone, W.E., Campus crime: A victimization study. *Journal of Criminal Justice*, 27(4), 295-307 (1999); McPheters, L., Econometric analysis of factors influencing crime on the campus. *Journal of Criminal Justice*, 6, 47-52 (1978); Moriarty, L.J., & Pelfrey, W.V., Exploring explanations for campus crime: Examining internal and external factors. *Journal of Contemporary Criminal Justice*, 12(1), 108-118 (1996); Sloan, J., Campus crime and campus communities: An analysis of crimes known to campus police and security. *Journal of Security Administration*, 15(2), 31-47 (1992); Sloan, J., The correlates of campus crime: An analysis of reported crimes on college and university campuses. *Journal of Criminal Justice*, 22(1), 31-47 (1994); Volkwein, J., Szelest, B., & Lizotte, A., The relationship of campus crime to campus and student characteristics. *Research in Higher Education*, 36(6), 647-670 (1995).

<sup>6</sup> Lewis, L., & Farris, E., National Center for Educational Statistics, Campus Crime and Security at Postsecondary Education Institutions, NCES 97-402. Washington, D.C.: Government Printing Office (1997).

<sup>7</sup> Fernandez, A., & Lizotte, A., An analysis of the relationship between campus crime and community crime: Reciprocal effects. In B. Fisher and J. Sloan (eds.), *Campus crime: Legal, social and policy perspectives*, pp. 79-102. Springfield, IL: Charles C. Thomas (1995); Fox, *supra* note 5; Sloan, 1992 and 1994, *supra* note 5; Volkwein, *supra* note 5.

<sup>8</sup> Fox, *supra* note 5.

<sup>9</sup> See, for example, CASA, *Wasting the best and the brightest: Substance abuse at America's colleges and universities*. Columbia University: National Center on Addiction and Substance Abuse (2007); Hingson, R.W., Heeren, T., Azkocs, R.C., Kopstein, A., & Wechsler, H., Magnitude of alcohol-related mortality and morbidity among U.S. college students ages 18-24. *Journal of Studies on Alcohol*, 63, 136-144 (2002); Marcus, R.F., & Swett, B., Multiple-precursor scenarios: Predicting and reducing campus violence. *Journal of Interpersonal Violence*, 18(5), 553-571 (2003); Siegel, D.G., & Raymond, C.H., An ecological approach to violent crime on campus. *Journal of Security Administration*, 15(2), 19-29 (1992); Sloan, 1994, *supra* note 5.

<sup>10</sup> See, for example, CASA, *supra* note 9; Caudill, B.D., Crosse, S.B., Campbell, B., Howard, J., Luckey, B., & Blane, H.T., High-risk drinking among college fraternity members: A national perspective. *Journal of American College Health*, 55(3), 141-155 (2006); Chaloupka, F.J., & Wechsler, H., Binge drinking in college: The impact of price, availability, and alcohol control policies. *Contemporary*

*Economic Policy*, 14, 112-124 (1996); Sloan, 1992, *supra* note 5; Wechsler, H., Kuo, M., Lee, H., & Dowdall, G.W., Environmental correlates of underage alcohol use and related problems of college students. *American Journal of Preventive Medicine*, 19(1), 24-29 (2000).

<sup>11</sup> Bromley, M.L., Campus and community crime rate comparison: A statewide study. *Journal of Security Administration*, 15(2), 49-64 (1992); Bromley, M.L., Comparing campus and city crime rates: A descriptive study. *American Journal of Police*, 14(1), 131-148 (1995); Bromley, 1999, *supra* note 5; Fox, *supra* note 5; U.S. Department of Education, *The incidence of crime on the campuses of U.S. postsecondary education institutions: A report to Congress*. Washington, D.C.: Office of Post Secondary Education, Policy, Planning and Innovation (2001); Volkwein, *supra* note 5.

<sup>12</sup> Bromley, *supra* note 11; Reaves, B.A., & Goldberg, A.L., *Campus law enforcement agencies*. Bureau of Justice Statistics, NCJ-161137. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (1996); Sloan, 1992 and 1994, *supra* note 5; Volkwein, *supra* note 5.

<sup>13</sup> Brantingham, P.J., & Brantingham, P.L., Surveying campus crime: What can be done to reduce crime and fear. *Security Journal*, 5(3), 160-171 (1994); Henson, *supra* note 5; Lewis, *supra* note 6; Siegel, *supra* note 9.

<sup>14</sup> Fox, *supra* note 5; McPheters, *supra* note 5.

<sup>15</sup> Fernandez, *supra* note 7; Volkwein, *supra* note 5.

<sup>16</sup> Siegel, *supra* note 10; Sloan, *supra* note 5.

<sup>17</sup> See, for example, Fisher, B., Cullen, F., & Turner, M., *The sexual victimization of college women: Findings from two national-level studies*. Washington, D.C.: National Institute of Justice and Bureau of Justice Statistics (2000); Fisher, B.S., Daigle, L.E., Cullen, F.T., & Turner, M.G., Reporting sexual victimization to the police and others: Results from a national-level study of college women. *Criminal Justice and Behavior*, 30(1), 6-38 (2003); Karjane, H.M., Fisher, B.S., & Cullen, F.T., *Executive summary: Campus sexual assault: How America's institutions of higher education respond. Final report*. NIJ Grant # 1999-WA-VX-0008. Newton, MA: Education Development Center, Inc. (2002); Koss, M., Gldycz, C., & Wisniewski, N., The scope of rape: Incidences and prevalence of sexual aggression and victimization in a national sample of higher education students. *Journal of Consulting and Clinical Psychology*, 55(2), 162-170 (1987).

<sup>18</sup> See, for example, Fisher et al., 2003, *supra* note 17; National Crime Victimization Survey (NCVS) data.

<sup>19</sup> See, for example, Sable, M.R., Danis, F., Mauzy, D.L., & Gallagher, S.K., Barriers to reporting sexual assault for women and men. *Journal of American College Health*, 55(3), 157-162 (2006); NCVS data, *supra* note 18.

<sup>20</sup> Fisher et al., 2000, *supra* note 17.

<sup>21</sup> See, for example, Abbey. Alcohol-related sexual assault: A common problem among college students. *Journal of Studies on Alcohol*, 14, 118-128 (2002); Mohler-Kuo, M., Dowdall, G.W., Koss, M.P., & Wechsler, H., Correlates of rape while intoxicated in a national sample of college women. *Journal of Studies on Alcohol*, 65, 37-45 (2004).

<sup>22</sup> See, for example, Campbell, R., Patterson, D., Bybee, D., Dworkin, E.R., Predicting sexual assault prosecution outcomes. *Criminal Justice and Behavior*, 36(7), 712-727 (2009); Campbell, R., The psychological impact of rape victims' experiences with the legal, medical and mental health systems. *American Psychologist*, 68, 702-717 (2008).

<sup>23</sup> See, for example, U.S. Department of Justice, A national protocol for sexual assault medical forensic examinations: Adults/adolescents (NCJ 206554). Washington, DC: Office on Violence Against Women (2004); Virginia Department of Criminal Justice Services, Sexual assault response teams (SART): A model protocol for Virginia. (2011).

<sup>24</sup> A key change in 2008 to Virginia law, under Va. Code § 19.2-165.1(B), was the requirement that PERK examinations be paid for by the Commonwealth regardless of whether or not the victim chooses to participate in the criminal justice system.

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<sup>25</sup> As required under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”) and the Code of Federal Regulations (CFR, Title 34).

<sup>26</sup> U.S. Department of Education (2011). *The handbook for campus safety and security reporting*. Available at <http://www.ed.gov/admins/lead/safety/campus.html>.

<sup>27</sup> Group A offenses include: murder, non-negligent murder, kidnapping/abduction, forcible rapes, other forcible sex offenses, robbery, aggravated assault, simple assault/intimidation, arson, extortion/blackmail, burglary, larceny, motor vehicle theft, counterfeiting/forgery, fraud, embezzlement, stolen property, destruction/damage/vandalism, drug/narcotic offenses, non-forcible sex offenses, pornography, gambling, prostitution, bribery, and weapons law violations. Group B offenses include: bad checks, curfew/loitering/vagrancy, disorderly conduct, D.U.I., drunkenness, non-forcible family offenses, liquor law violations, peeping tom, runaway, trespass of real property, conspiracy, and all other offenses except traffic. Only arrests are maintained for Group B offenses.

<sup>28</sup> One must be cautioned that from these figures, a precise clearance rate cannot be determined as one arrest can “clear” multiple offenses/incidents under the NIBRS schema.

<sup>29</sup> A copy of the VSCC Campus Police Department Survey is available upon request.

<sup>30</sup> VA. CODE ANN. § 23-234 (2011).

<sup>31</sup> Data on length of service was only available for 730 of the 740 officers.

<sup>32</sup> Annual training also includes review of policies, procedures and use of force.

<sup>33</sup> Such information should be available from individual law enforcement agencies and/or academies; Total number of officers, retrieved from VSP’s, *Crime in Virginia*, 2010.

<sup>34</sup> A copy of the VSCC Judicial/Student Conduct Mechanism Survey is available upon request.

<sup>35</sup> 2012 Va. Acts ch. 373.

<sup>36</sup> 2012 Va. Acts ch. 625.

<sup>37</sup> 2012 Va. Acts ch. 282.

<sup>38</sup> 2012 Va. Acts ch. 450.

<sup>39</sup> 2012 Va. Acts ch. 815.

<sup>40</sup> 2012 Va. Acts ch. 698.