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SENATE BILL NO. 361

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator McPike
on February 2, 2022)

(Patron Prior to Substitute—Senator Stuart)

*A BILL to amend and reenact § 9.1-193 of the Code of Virginia, relating to Marcus alert system.***Be it enacted by the General Assembly of Virginia:****1. That § 9.1-193 of Code of Virginia is 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 comprehensive crisis services and the Marcus alert system shall be:

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

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

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

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

5. Reducing the likelihood of physical confrontation;

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

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

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

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

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

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

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

13. Decreasing injuries during crisis events;

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

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

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

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

F. By July 1, 2021 2023, every locality shall establish a voluntary database to be made available to the 9-1-1 alert system and the Marcus alert system to provide relevant mental health information and emergency contact information for appropriate response to an emergency or crisis. Identifying and health information concerning behavioral health illness, mental health illness, developmental or intellectual disability, or brain injury may be voluntarily provided to the database by the individual with the behavioral health illness, mental health illness, developmental or intellectual disability, or brain injury; the parent or legal guardian of such individual if the individual is under the age of 18; or a person appointed the guardian of such person as defined in § 64.2-2000. An individual shall be removed from the database when he reaches the age of 18, unless he or his guardian, as defined in § 64.2-2000, requests that the individual remain in the database. Information provided to the database shall not be used for any other purpose except as set forth in this subsection.

G. By July 1, 2022 2024, every locality shall have established local protocols that meet the requirements set forth in the Department of Behavioral Health and Developmental Services plan set forth in clauses (vi), (vii), and (viii) of subdivision B 2 of § 37.2-311.1. In addition, by July 1, 2022 2024, every locality shall have established, or be part of an area that has established, protocols for law-enforcement participation in the Marcus alert system that has been approved by the Department of Behavioral Health and Developmental Services and the Department.