

Mental Health Crisis Data

When responding to a mental health crisis, Minnesota law allows law enforcement agencies to obtain limited mental health information about the person in crisis to aid in managing the situation safely. Agencies that seek or use this sensitive information must have a written policy establishing privacy safeguards. This discussion and the linked model policy are intended to help cities lawfully obtain and administer mental health crisis data (MHCD).

RELEVANT LINKS:

I. Introduction

It has become increasingly common for police officers to encounter people who are experiencing a mental health crisis. Minnesota law grants law enforcement agencies immediate access to information from mental health providers to help them safely address these situations. Minnesota law requires agencies that seek or use this information to have a written policy that includes access procedures, retention guidelines, and data security safeguards.

II. Obtaining and using the information

The following scenario introduces how agencies might obtain, use, and administer information from mental health providers to assist in addressing a mental health crisis call:

A man in your community is reportedly hearing voices and threatening to kill himself. While officers are driving to the man's location, a dispatcher calls the county mental health division and:

- Informs that officers are responding to a mental health crisis;
- States that information is being sought from or about the man's provider to help keep everyone safe; and
- Gives the name of the subject. The county worker looks up the man's name, indicates he is being seen by a provider under contract with the county, and gives the dispatcher the provider's name and phone number.

In turn, the dispatcher calls the provider and repeats the information about the crisis, the patient's identity, and the need for information. The dispatcher connects the provider to the primary officer at the scene. After a brief discussion, the provider recommends the use of both active listening and trying to get the man to talk about his daughter, who is a bright spot in his life. These suggestions prove helpful. The call is resolved when the man becomes calm and agrees to go to the hospital.

RELEVANT LINKS:

Afterward, to satisfy legal requirements, an officer will make appropriate documentation about the information received from the provider. The agency will treat this information as private data and will ensure that it is retained no longer than indicated in the agency's retention policy.

III. Relevant laws

The legal framework for obtaining information in crisis situations reflects how people generally obtain mental health services, which is from either a private provider or through county or publicly funded entities.

[Minn. Stat. § 144.294, subd. 2.](#)

Minnesota Statutes, section 144.294 is part of the Minnesota Health Records Act and governs access to and disclosure of patients' mental health records across all provider types. The act protects information, whether oral or written, relating to a patient's mental health condition. "Providers" include psychiatrists, psychologists, mental health professionals and practitioners, and case managers. When contacted by law enforcement and informed of a crisis, subdivision 2 of this law requires the provider to disclose strategies for safely addressing the situation.

[Minn. Stat. § 13.46, subd. 7.](#)

Next, Minnesota Statutes, section 13.46, subdivision 7, is part of the Minnesota Government Data Practices Act (MGDPA). It contains provisions similar to the Health Records Act and covers not only providers, but also extends to community mental health centers and county mental health divisions. The net effect of these two laws is as follows:

- When a person is in crisis, if law enforcement knows or suspects the identity of the person's mental health provider, the agency may contact the provider directly to request information.
- If law enforcement does not know the identity of the provider, it may contact the county mental health division. If the county is the provider, it must supply strategies to address the crisis. Otherwise, if the county has the name and phone number of the person's provider, it must supply that.

[Minn. Stat. § 626.8477.](#)

Finally, section 626.8477 requires law enforcement agencies that seek or use this information to enact and enforce a written policy to protect this data.

IV. Triggers for disclosure obligations

A provider is required to disclose mental health information to law enforcement when informed by the agency that:

[See Minn.Stat § 256B.0624, subd. 2\(j\).](#)

- A named client or patient is currently involved in a mental health crisis, as defined in Minnesota Statutes, section 256B.0624, subdivision 2, paragraph (j), to which the law enforcement agency has responded; and
- The information being sought is necessary to protect the health or safety of the client, patient, or another.

RELEVANT LINKS:

Minn.Stat § 256B.0624,
subd. 2(j).

See 42 C.F.R. § 441.505.
See Minn. Stat. § 62Q.55.

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See 42 U.S.C. §
13955dd(e)(1)(A).

Minn. Stat. § 13.46, subd. 7.

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A. Mental health crisis, defined

A provider's disclosure obligations are triggered, in part, by notification from law enforcement that a patient or client is currently involved in a "mental health crisis," as defined by Minnesota Statutes, section 256B.0624, subd. 2(j). That definition provides:

"Mental health crisis" is a behavioral, emotional, or psychiatric situation that, without the provision of crisis response services, would likely result in significantly reducing the recipient's levels of functioning in primary activities of daily living, in an emergency situation under section 62Q.55, or in the placement of the recipient in a more restrictive setting, including but not limited to inpatient hospitalization.

This definition was not written with peace officers in mind. Rather, it is one of the criteria for determining whether medical assistance will cover the cost of crisis services. At a practical level, a situation should generally qualify as a mental health crisis under this definition if:

- The subject appears to be experiencing a behavioral, emotional, or psychiatric episode, and
- Without the involvement of a mobile crisis provider, the episode would likely culminate in one of the following negative outcomes:
 - The person would be unable to take care of basic functions like bathing, eating, dressing, and toileting; or
 - The person would need to be transported to a hospital for an emergency medical condition; or
 - The person would be taken into custody for a transport hold.

The fact that a mobile crisis response team is responding does not negate the existence of the crisis; agencies are still entitled to obtain MHCD if it is necessary.

B. The information is "necessary"

The Legislature has provided no criteria or guidelines for agencies to use in determining whether information is necessary to protect the health and safety of the person in crisis or others. Thus, there is no prohibition against officers using their professional judgment in assessing situations, or in determining that certain call types, such as threats of suicide, suffice to establish a need for MHCD.

V. Obtaining mental health crisis data

The laws direct providers to supply law enforcement with the minimum information necessary to safely address the crisis. Providers might be inclined

RELEVANT LINKS:

[Minn. Stat. § 626.8477.](#)

[Minn. Stat. §§ 13.46, subd. 7; 144.294, subd. 2.](#)

to interpret the minimum information standard conservatively in order to protect patient privacy. Officers should be prepared to explain the circumstances and reasons to the provider for disclosing the requested information; providing a thorough explanation is especially important since there may be no time for appeal to a higher authority.

VI. Documenting the receipt of crisis data

Both the Health Records Act and the Data Practices Act require agencies receiving MHCD to maintain a record of who requested the data, the provider that supplied it, and the name of the subject of the data. Notably, mental health providers are to supply agencies with “strategies” for safely responding to the crisis, not with a diagnosis of the subject’s condition. Nevertheless, it is foreseeable that a provider might mention a diagnosis or other highly sensitive information when trying to generate or explain “strategies,” especially when communicating under the pressure of a pending crisis. Officers receiving this information about a diagnosis should filter it out when preparing the required documentation.

VII. Policy requirement

Minnesota Statutes, section 626.8477 requires all agencies that seek or use MHCD to have and enforce a written policy governing its use. The policy must cover the requirements of sections 13.46 and 144.294, together with access procedures, retention policies, and data security safeguards.

VIII. Outreach and education efforts

Perhaps the worst time for a provider or county mental health department to learn about these laws, and their obligations under them, is when you are phoning them during an urgent crisis. Agencies may wish to consider proactively communicating with entities and providers that serve clients in your jurisdiction. The goals of these efforts are to provide education about the laws discussed above, and to work toward mutually agreeable plans for obtaining needed information when a crisis occurs.