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## Advisory Opinion 24AO:0011

**DATE: October 10, 2024**

**SUBJECT: Does Iowa Code § 22.7(5A) require that a department of justice form be utilized to maintain the confidentiality of a crisis intervention report?**

Joseph Messerich, Assistant Chief of Police  
Samantha Schueller, Records  
City of Dubuque Police Department  
Dubuque Law Enforcement Center  
770 Iowa Street  
Dubuque, Iowa

Mr. Messerich and Ms. Schueller,

This Advisory Opinion is written in response to your request dated August 16, 2024, requesting an advisory opinion from the Iowa Public Information Board (IPIB) pursuant to Iowa Code chapter 23 and Iowa Administrative Code rule 497-1.3. This opinion concerns the confidentiality of a crisis intervention report developed pursuant to Iowa Code § 22.7(5A). Advisory opinions may be adopted by IPIB pursuant to Iowa Code section 23.6(3) and Rule 497–1.2(2): “[t]he board may on its own motion issue opinions without receiving a formal request.” IPIB’s jurisdiction is limited to the application of Iowa Code chapters 21, 22, and 23, and rules in Iowa Administrative Code chapter 497. Advice in an advisory opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

### **QUESTION POSED:**

Does Iowa Code § 22.7(5A) require that a department of justice form be utilized to maintain the confidentiality of a crisis intervention report?

### **OPINION:**

This question arises from the definition of a crisis intervention report pursuant to Iowa Code § 22.7(5A). A crisis intervention report is defined as “a report generated by a law enforcement agency using a prescribed form created by the department of justice to record the following information relevant to assess the nature of a crisis.

The question is whether a crisis intervention report remains confidential if it is not recorded on a prescribed form created by the department of justice.

### **Board Members**

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IPIB staff spent several weeks attempting to locate a prescribed form for the crisis intervention report. After outreach to several agencies and associations, a report finally surfaced. Based on this question and the length of time it took for IPIB to locate the form, it seems likely that law enforcement agencies may be unaware of the existing form and have been utilizing other forms to document crisis intervention incidents.

Iowa Code § 22.7(5A) is a new exemption in Chapter 22, having passed the Iowa Legislature in 2022. Like all new laws, it takes time to socialize the law and to develop corresponding forms to ensure appropriate practice of the law. This appears to be the case with Iowa Code § 22.7(5A).

IPIB's role is to ensure compliance with and appropriate application of transparency laws in Iowa. It is in this spirit that the following recommendations are made:

1. Law enforcement agencies should locate and become familiar with the prescribed crisis intervention report form created by the department of justice for the purpose of recording information relevant to assess the nature of a crisis. It is IPIB's understanding that this form is available in TRaCS, although some law enforcement agencies have reported difficulty in accessing the form. Law enforcement agencies should incorporate this form into their crisis intervention response systems if they have not already done so.
2. It is possible that law enforcement agencies developed crisis intervention reports following the passage of Iowa Code § 22.7(5A) but before the development of the prescribed crisis intervention report form. It is also possible that agencies developed crisis intervention reports following the passage of Iowa Code § 22.7(5A), but were unaware of the existence of the prescribed crisis intervention report form. For these scenarios, IPIB's opinion is that a crisis intervention report maintains its confidentiality even if it had not been recorded on a prescribed department of justice form if the crisis intervention report meets all other requirements of Iowa Code § 22.7(5A).
3. Law enforcement agencies should be on notice that a crisis intervention report exists, and going forward all crisis intervention reports must be on a prescribed form to comply with Iowa Code § 22.7(5A).

The following advisory opinion is applicable to crisis intervention reports created before the development of a prescribed crisis intervention report form or before awareness of the existence of a prescribed crisis intervention report form. **For these circumstances, IPIB's opinion is that a crisis intervention report maintains its confidentiality even if not recorded on a prescribed department of justice form if the crisis intervention report meets all other requirements of Iowa Code § 22.7(5A).** The following analysis applies:

**Iowa Code Chapter 22.7 expresses clear intent to establish confidentiality for specific types of public records, including crisis intervention reports.**

Iowa Code Chapter 22.7 creates confidentiality for certain types of public records: “[T]he following public records shall be kept confidential unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:” It is clear the intent of Iowa Code Chapter 22.7 is to allow specific types of public records to remain confidential due to the unique circumstances and sensitive information contained within.

Crisis intervention reports are among those listed. (Iowa Code § 22.7(5A).) The specific language in Iowa Code establishing a crisis intervention report as confidential is as follows:

*A crisis intervention report generated by a law enforcement agency regarding a person experiencing a mental health crisis, substance-related disorder crisis, or housing crisis, when the report is generated for*

*the specific purpose of providing crisis intervention information to assist peace officers under any of the following circumstances:*

*(1) De-escalating conflicts.*

*(2) Referring a person experiencing a mental health crisis, substance-related disorder crisis, or housing crisis to a mental health treatment provider, substance-related disorder treatment provider, homeless service provider, or any other appropriate service provider.*

Iowa Code § 22.7(5A) establishes confidentiality for reports generated during a crisis intervention to de-escalate conflict and refer individuals in crisis to appropriate services.

**Iowa Code § 22.7(5A)(b) specifically identifies who may have access to a crisis intervention report.**

Consistent with the overall intent to protect crisis intervention reports as confidential, Iowa Code § 22.7(5A)(b) identifies who may access a crisis intervention report. It is notable that most exceptions listed in Chapter 22.7 do not specifically identify who can access a confidential public record. The General Assembly codified a specific subset of individuals authorized to access a crisis intervention report:

*A crisis intervention report generated for the purposes of this subsection shall be made available to the person who is the subject of the report upon the request of the person who is the subject of the report, and may be provided to a mental health treatment provider, substance-related disorder treatment provider, homeless service provider, or any other appropriate service provider in connection with a referral for services.*

The only individuals granted access to a crisis intervention report are the individual subject to the report itself or the service provider(s) assisting the individual. Iowa Code § 22.7(5A)(c) also explicitly states a crisis intervention report is not a peace officers' investigative report, which is further evidence of the General Assembly's intent to create a specialized exception.

**The definition of a crisis intervention report, based on the lack of knowledge a required form exists has created ambiguity in the application of the law.**

It is clear that crisis intervention reports are intended to remain protected and confidential pursuant to Iowa Code § 22.7(5A). However, the definition of a "crisis intervention report" creates ambiguity in an otherwise clear law. Within Iowa Code 22.7(5A), a crisis intervention report is defined as a prescribed form created by the department of justice. The question is whether the crisis intervention report, if recorded on a form other than that prescribed by the department of justice, is confidential. This is the heart of the question posed and the focus of this Advisory Opinion.

Iowa Code § 22.7(5A)(e) defines a "crisis intervention report" or "report" as (emphasis added):

*"a report generated by a law enforcement agency using a prescribed form created by the department of justice to record the following information relevant to assess the nature of a crisis:*

*(a) Any biological or chemical causes of the crisis.*

*(b) Any observed demeanors and behaviors of the person experiencing the crisis.*

*(c) Persons notified in relation to the crisis.*

*(d) Whether suicide or injuries occurred in relation to the crisis and the extent of those injuries.*

*(e) Whether weapons were involved in the crisis and a description of the weapon.*

A plain reading of this provision suggests a crisis intervention report is confidential only if generated using a prescribed form created by the department of justice.<sup>1</sup> As IPIB has discovered, some crisis intervention reports may have been developed before the creation of the prescribed form or before awareness of the prescribed form. This creates ambiguity in the application of Iowa Code § 22.7(5A).

**Ambiguity in Chapter 22 requires a balancing test to determine if disclosure is appropriate.**

Iowa Code § 22.7(5A) was not added until 2022. For this reason, IPIB does not have specific judicial interpretive precedent to follow.

The Iowa Supreme Court has held in many cases addressing Iowa Code § 22.7 that a balancing test must be applied when there is ambiguity within Chapter 22.<sup>2</sup> There are distinctions between the cases that utilize the balancing test and the question raised in this Advisory Opinion. For example, many of the cases in which a balancing test is applied involve definitional ambiguity. In this case, the definition of a crisis intervention report is clear; however, because the form did not yet exist or there was not awareness of the form, ambiguity was created. A strict reading of the definition in these circumstances would void any confidentiality protections and undermine the intent of the statute. For this reason, and consistent with the cited Iowa cases, a balancing test should be applied weighing the interest of the individual’s privacy versus the interest of the public’s need to know. Application of the balancing test when ambiguity exists is the common practice applied to Iowa Code § 22.7.

**An individual’s privacy interests in maintaining the confidentiality of a crisis intervention report outweighs the public’s interest in knowing the details of a crisis.**

Federal and state laws have taken substantial measures to protect an individual’s mental health and substance-related disorder information. Federal laws, such as the Health Insurance Portability and Accountability Act (HIPAA) and the Family Educational Rights and Privacy Act (FERPA) outline specific privacy protections for an individual’s information related to mental health and substance-related disorder. Iowa laws also have special protections for data related to mental health and substance-related disorders. (E.g. Iowa Code Chapter 228).

As protections for mental health and substance-related disorder information have increased, numerous justifications have been presented to support the increased protections. These justifications include reducing stigma to ensure that individuals access assistance and protecting the unique and personal nature of mental health and substance-related disorder treatments.

The General Assembly recognized the unique nature of this type of information and the important privacy interests attached when they chose to create a confidentiality exception for crisis intervention reports. Audio recordings of that the legislative debate adding crisis intervention reports as confidential focused on allowing law enforcement to respond to an individual facing a mental health crisis and to protect that individual and their information.

Crisis interventions occur when individuals face their worst moments. Crisis interventions involve issues like teens contemplating suicide, a veteran experiencing PTSD, a woman seeking to leave an environment of domestic violence, or the sexual assault of a child. These are intensely difficult and personal experiences.

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<sup>1</sup> The department of justice in Iowa Code is a reference to the Iowa Attorney General’s Office. The Iowa Code references the Iowa Attorney General’s Office as the department of justice and references the federal agency as the “U.S. Department of Justice.”

<sup>2</sup> E.g. *City of Dubuque v. Telegraph Herald, Inc.*, 297 N.W.2d 523, 526 (Iowa 1980); *State ex rel. Shanahan v. Iowa District court*, 356 N.W.2d 523 (Iowa 1984); *Hawk Eye v. Jackson*, 521 N.W.2d 750 (Iowa 1994); *DeLaMater v. Marion Civil Service Commission*, 554 N.W.2d 875 (Iowa 1996); *Clymer v. City of Cedar Rapids*, 601 N.W.2d 42 (Iowa 1999). These tests have differing elements when applied to different portions of Iowa Code Chapter 22.7, but all contain a balancing test of public vs. private interests.

A strict reading of the definition of crisis intervention report, in circumstances in which the form did not exist or there was not awareness of the form, would completely erode the legislative intent to protect crisis intervention reports. Crisis intervention reports developed in these circumstances, and the details within related to mental health, substance-related disorder, and housing information, could be a matter of public record. This result would be inconsistent with the intent of the law.

There is little question the substantial individual privacy interests connected to mental health crisis, substance-related disorder crisis, and housing crisis information, and the response and assistance provided by law enforcement, far outweigh the public's interest in obtaining detailed information regarding an individual's crisis and the assistance they receive in response. The public may still obtain the date, time, specific location, and immediate facts and circumstances surrounding the incident to ensure transparency of the government action without the need to know the individual's most private facts and information contained in the report.

### **A crisis intervention report may include recordings.**

A corresponding question has also been raised regarding the type of information included within a crisis intervention report. For example, is body camera footage and other types of recordings part of the crisis intervention report? The answer to this question also lies within Iowa Code § 22.7(5A) and the intent of the statute.

- The statute states the report must be generated by a law enforcement agency to record information relevant to assess the nature of the crisis. Among the information that may be recorded, the statute specifically calls out recording any observed demeanors and behaviors of the person experiencing the crisis. Iowa Code § 22.7(5A)(e)(1)(b). This recording could occur by body camera footage, voice recording, or any other mechanism or equipment that law enforcement may use for recordings.
- The intent of the statute is to protect the privacy interests of individuals seeking or receiving assistance in a crisis. To withhold a report but release recordings of the incident would undermine the intent to protect privacy interests.
- The statute has made clear there are only certain portions of the report that may be made available as a public record, which include the date, time, specific location, and immediate facts and circumstances surrounding the incident.

For these reasons, recordings of the incident, in any medium, may be made part of the crisis intervention report and deemed confidential pursuant to Iowa Code § 22.7(5A).

### **Crisis intervention reports should remain confidential, if the report was created before the development of a prescribed form or before awareness of the existence of a prescribed form, if the crisis intervention reports meet all other requirements of Iowa Code § 22.7(5A).**

A crisis intervention report generated pursuant to Iowa Code § 22.7(5A) before development of a prescribed form or awareness of the prescribed form, if it meets all other criteria of Iowa Code § 22.7(5A), should remain confidential even if the report is not generated using a prescribed form. The other criteria within Iowa Code § 22.7(5A) include the following:

- The report must be generated by a law enforcement agency in response to a mental health crisis, substance-related disorder crisis, or housing crisis.
- The report must be generated for the specific purpose of providing crisis intervention information to assist peace officers under any of the following circumstances:
  - De-escalating conflicts.


- Referring a person experiencing a mental health crisis, substance-related disorder crisis, or housing crisis to a mental health treatment provider, substance-related disorder treatment provider, homeless service provider, or any other appropriate service provider.
- The report must be generated by a law enforcement agency to record the following information relevant to assess the nature of a crisis:
  - Any biological or chemical causes of the crisis.
  - Any observed demeanors and behaviors of the person experiencing the crisis.
  - Persons notified in relation to the crisis.
  - Whether suicide or injuries occurred in relation to the crisis and the extent of those injuries.
  - Whether weapons were involved in the crisis and a description of the weapon.
  - The disposition of the crisis intervention and any crime committed.

It should also be noted that not all information related to a crisis intervention report is confidential. Pursuant to Iowa Code § 22.7(5A)(d), the date, time, specific location, and immediate facts and circumstances surrounding the incident can be disclosed in certain circumstances. Governmental bodies should closely review all requirements contained within Iowa Code § 22.7(5A).

**BY DIRECTION AND VOTE OF THE BOARD:**

Joan Corbin  
E.J. Giovannetti  
Barry Lindahl  
Luke Martz  
Joel McCrea  
Monica McHugh  
Jackie Schmillen

**SUBMITTED BY:**



Kimberly Murphy, J.D.  
Deputy Director  
Iowa Public Information Board

**ISSUED ON:**

October 17, 2024

*Pursuant to Iowa Administrative Rule 497-1.3(3), a person who has received a board opinion may, within 30 days after the issuance of the opinion, request modification or reconsideration of the opinion. A request for modification or reconsideration shall be deemed denied unless the board acts upon the request within 60 days of receipt of the request. The IPIB may take up modification or reconsideration of an advisory opinion on its own motion within 30 days after the issuance of an opinion.*

*Pursuant to Iowa Administrative Rule 497-1.3(5), a person who has received a board opinion or advice may petition for a declaratory order pursuant to Iowa Code section 17A.9. The IPIB may refuse to issue a declaratory order to a person who has previously received a board opinion on the same question, unless the requestor demonstrates a significant change in circumstances from those in the board opinion.*