



**State Court Administrative Office  
Court Services  
Problem-Solving Courts**

**Michigan Association of Treatment Court Professionals**

# **Adult Mental Health Court Standards, Best Practices, and Promising Practices**

**March 2021**

**INDEPENDENCE · ACCESSIBILITY · ENGAGEMENT · EFFICIENCY**



# ***Introduction***

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## **Purpose**

This manual is an extension of the *Adult Drug Court Standards, Best Practices, and Promising Practices* manual written by staff from the State Court Administrative Office and board members of the Michigan Association of Treatment Court Professionals. Members from the Mental Health Court Advisory Committee also assisted with producing this manual. It is intended to assist Michigan's adult mental health courts in complying with the mental health court statute,<sup>1</sup> best practices, and the *Essential Elements of a Mental Health Court*.

Mental health courts are based on the drug court model, so much of the research in this manual is from studies of drug courts; relevant information and practices have been applied to the mental health court concept. The content in this manual comes from many sources, but it leans most heavily on the National Association of Drug Court Professionals *Adult Drug Court Best Practice Standards, Volume I* and *Volume II*. When “drug court” is referenced in this manual, it is because the research was conducted on drug courts and not mental health courts. Until mental health court research suggests different practices are appropriate for mental health courts, the assumption is that drug court research is applicable to this population. This manual is intended for all adult mental health court team members, and the team should use it to ensure that their program is following the statute and implementing best practices.

## **Definitions**

The chapters in this manual include three types of information:

- **Standard:** Standards are pulled directly from the mental health court statute, the *Essential Elements of a Mental Health Court*, state and federal confidentiality law, and case law and precedent that are binding on Michigan courts.
- **Best Practice:** Best practices are supported by scientific research and data or nonbinding case law, and are proven methods to follow. The best practices have either been shown by empirical research to produce better outcomes than other practices or they are regarding compliance with confidentiality, due process, or other rules. Their use results in higher-quality programs.
- **Promising Practice:** Promising practices are not yet supported by scientific research or data, but anecdotal evidence and experience suggest they are helpful in adhering to the model. Promising practices are recommendations for courts to follow to operate a higher-quality program.

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<sup>1</sup> See Appendix A.

## **How to Use This Manual**

Each chapter is divided into relevant topics. Included within each topic are the standards, best practices, and promising practices, as well as the supporting authority or research. Not all topics have all three subdivisions: some topics have only best practices, and other topics do not have promising practices.

There are two kinds of best practices in this manual: best practices that a program must follow in order to become a certified mental health court (**bolded**) and best practices that a program should be following.

There are footnotes throughout the manual that refer to additional research. The 14 appendices are referenced in the chapters, including model documents that courts can use to comply with certain standards and required best practices. If you would like to request training or technical assistance, please contact your regional administrator. If you have questions, please contact [CourtServices@courts.mi.gov](mailto:CourtServices@courts.mi.gov).

## **Certification**

In order for a program to become a certified adult mental health court under MCL 600.1091, it must comply with the standards and required best practices in this manual. All standards and required best practices are in bold.

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# ***Chapter 1: Roles and Responsibilities of the Mental Health Court Judge***

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This chapter discusses the judge's roles on the mental health court team. The judge serves as the leader of the team and plays an important part in guiding participants through the program. Specific topics include the term as a mental health court judge, staffing meetings, and review hearings. Confidentiality is mentioned but discussed in further detail in Chapter 3. The judge is also important in ensuring participants' due process rights are protected; best practices regarding due process are discussed in Chapter 4.

## **I. General**

### ***A. Standards***

- 1. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. A judge should always be aware that the judicial system is for the benefit of the litigant and the public, not the judiciary. (Michigan Code of Judicial Conduct, Canon 1)**

### ***B. Best Practices***

- 1. Participants ordinarily appear before the same judge throughout their enrollment in the mental health court.**
  - a) Drug courts that rotated the judicial assignment or where participants appeared before alternating judges had the poorest outcomes in several research studies. (Finigan, Carey, & Cox, 2007) (National Institute of Justice, 2006)
- 2. The judge presides over the mental health court for no less than two consecutive years.**
  - a) When judges preside over drug courts for at least two years, those programs have significant cost savings and significantly lower recidivism. (Carey, Pukstas, Waller, Mackin, & Finigan, 2008) (Carey, Mackin, & Finigan, 2012)
  - b) Even greater reductions in recidivism were found in courts where the judges oversaw the drug court on a voluntary basis and the term was indefinite. (Carey, Mackin, & Finigan, 2012)
- 3. The judge bases interaction with mental health court participants on the four principles of procedural fairness: voice, neutrality, respectful treatment, and trustworthy authorities.**

- a) Drug use, probation violations, and recidivism rates were all reduced in drug courts that applied the four principles of procedural fairness. (MacKenzie, 2016)

## **II. Staffing meetings and Review Hearings**

### **A. Standards**

1. In the performance of judicial duties, the following standards apply:
  - a) A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism. (Michigan Code of Judicial Conduct, Canon 3(A)(1))
  - b) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers and of staff, court officials, and others subject to the judge's direction and control. (Michigan Code of Judicial Conduct, Canon 3(A)(3))
  - c) Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy, and respect. (Michigan Code of Judicial Conduct, Canon 3(A)(10))

### **B. Best Practices**

1. The judge regularly attends staffing meetings during which the mental health court team reviews each participant's progress and discusses potential consequences for performance.
  - a) Research has consistently shown that when the drug court judge regularly attends staffing meetings, cost savings increase and recidivism is reduced. (Carey, Pukstas, Waller, Mackin, & Finigan, 2008) (Carey, Mackin, & Finigan, 2012)
2. The judge considers the perspectives of all team members before making final decisions that affect participants' welfare or liberty interests. The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions.
  - a) The collaborative nature of drug courts brings together experts from various disciplines. Their expertise and shared information allows the judge to make better-informed decisions. (National Association of Drug Court Professionals, 2018) (Hora & Stalcup, 2008)
3. The judge spends sufficient time during status review hearings to review each participant's progress in the program. Evidence suggests judges should spend a minimum of three minutes interacting with each participant in court.

- a) Recidivism is significantly reduced, by as much as 153 percent, in drug courts where the judge spent at least three minutes interacting with each participant. The same study showed that cost savings were also improved when the judge spent the minimum three minutes with each participant. (Carey, Mackin, & Finigan, 2012)
- 4. The judge offers supportive comments to participants, stresses the importance of their commitment to treatment and other program requirements, and expresses optimism about their abilities to improve their health and behavior. The judge does not humiliate participants or subject them to foul or abusive language. The judge allows participants a reasonable opportunity to explain their perspectives concerning factual controversies and the imposition of sanctions, incentives, and therapeutic adjustments.
  - a) Research has consistently shown that the perceived quality of interactions between participants and the drug court judge are among the most influential factors for success in the program. (National Association of Drug Court Professionals, 2013, p. 23)
  - b) Significantly greater reductions in crime and substance use resulted when the judges were independently rated as being more fair, attentive, caring, and enthusiastic. (Zweig, Lindquist, Downey, Roman, & Rossman, 2012)

### **III. Works Cited**

Carey, S., Mackin, J., & Finigan, M. (2012). What works? The ten key components of drug court: Research-based best practices. *Drug Court Review*, 7(1), 6-42.

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Finigan, M., Carey, S., & Cox, A. (2007). *The impact of a mature drug court over 10 years of operation: Recidivism and costs*. Portland: NPC Research.

Hora, P., & Stalcup, T. (2008). Drug treatment courts in the twenty-first century: The evolution of the revolution in problem-solving courts. *Georgia Law Review*, 717-811.

MacKenzie, B. (2016). The Judge Is the Key Component: The Importance of Procedural Fairness in Drug-Treatment Courts. *Court Review*, 52, 8-34.

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National Institute of Justice. (2006). *Drug courts: The second decade*. Washington, D.C.: Office of Justice Programs, US Department of Justice.

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## ***Chapter 2: Participant Supervision and Compliance***

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This chapter discusses participant supervision and compliance with program requirements. Specific topics include the mental health court supervision caseload, frequency of monitoring events, services provided to participants, incentives and sanctions, phase promotion and graduation, and termination from the mental health court. Several topics are addressed in additional detail in other chapters.

### **I. Caseload**

#### ***A. Best Practices***

1. Specialized probation caseloads should not exceed 45 active participants per supervision officer.
  - a) Probationers on 45:1 caseloads received significantly more mental health services, were less likely to be arrested, and were less likely to have their probation revoked. (Prins, 2009)
2. The number of individuals participating in the program as a cohort or a track should be fewer than 125.
  - a) Programs that have fewer than 125 individual participants at one time have statistically significant reductions in recidivism. (Carey, Mackin, & Finigan, 2012)
  - b) Drug courts can serve more than 125 participants with effective results if the programs have sufficient personnel and resources to accommodate larger numbers of individuals. (Carey, Mackin, & Finigan, 2012) (Shaffer, 2010)

#### ***B. Promising Practices***

1. Case managers should have caseloads that are sufficiently manageable to perform core functions and monitor the overall conditions of participation.
  - a) Case managers should serve as conduits of information for the court about the status of treatment and support services. (Thompson, 2007)
2. Case managers also help participants prepare for their transition out of the court program by ensuring that all needed treatment and services will remain available and accessible after their court supervision concludes. (Thompson, 2007)
3. The caseload for a treatment provider administering individual therapy should not exceed a 40:1 ratio.
  - a) Treatment providers serve principally as treatment providers, administering individual therapy or counseling and perhaps facilitating or co-facilitating group interventions. They may also refer participants for ancillary services such as mental health treatment or vocational training. The caseload census guideline is derived from expert

consensus. (Case Management Society of America & National Association of Social Workers, 2008) (National Association of Drug Court Professionals, 2015)

- b) State rules on mental health and substance use disorder services say that the equivalent of one or more full-time counselors shall be available for approximately 40 clients. (Michigan Mental Health and Substance Abuse Services Rules, Part 7, R 325.14701)

## **II. Frequency of Monitoring and Review Hearings**

### ***A. Standards***

- 1. A mental health court shall provide a mental health court participant with all of the following:
  - a) Consistent and close monitoring of the participant, and interaction among the court, treatment providers, probation, and the participant. (MCL 600.1096(1)(a))
  - b) Periodic evaluation assessments of the participant's circumstances and progress in the program. (MCL 600.1096(1)(c))

### ***B. Best Practices***

- 1. Participants appear before the judge for status hearings at least once every two weeks during the first phase of the program. The frequency of status review hearings may be reduced gradually after participants have initiated abstinence from alcohol and illicit drugs and are regularly engaged in treatment. Status review hearings are scheduled at least once every four weeks until participants are in the last phase of the program.
  - a) A substantial body of research demonstrates the importance of scheduling status hearings no less frequently than every two weeks during the first phase of a drug court. Participants had significantly better treatment attendance, substance use abstinence, and graduation rates when they were required to appear before the judge every two weeks. (National Association of Drug Court Professionals, 2013) (Festinger, Marlowe, Lee, Kirby, Bovasso, & McLellan, 2002)
- 2. Participants meet individually with a clinical case manager or comparable treatment professional at least weekly during the first phase of mental health court.
  - a) Studies consistently find that drug courts reduce recidivism and are more cost-effective when participants meet individually with a clinical case manager or comparable treatment professional at least weekly during the first phase of the program. (Carey, Mackin, & Finigan, 2012) (Cissner, et al., 2013)

## **III. Services to Participants**

### ***A. Standards***

- 1. A mental health court shall provide a mental health court participant with all of the following:**
  - a) Mental health services, substance use disorder services, education, and vocational opportunities as appropriate and practicable. (MCL 600.1096(1)(e))**

### ***B. Best Practices***

- 1. Participants receive psychiatric medication to treat serious mental health symptoms.**
  - a) Psychiatric medication decreased the odds of negative termination. (Linhorst, 2015)**
  - b) Participants with mental health symptoms who were prescribed psychiatric medications were seven times more likely to graduate successfully from drug court than participants with mental health symptoms who did not receive psychiatric medication. (Marlowe, 2016)**
- 2. Mental health courts provided specialized classes and treatment options.**
  - a) Courts that prioritized intensive monitoring, tailored treatment options, and provided additional program supports saw a decrease in jurisdictional crime rates. (Bullard, 2014)**
- 3. In the first phase of mental health court, participants receive services designed primarily to address responsibility needs such as deficient housing; mental health symptoms; and substance-related cravings, withdrawal, or anhedonia. In the interim phases of mental health court, participants receive services designed to resolve criminogenic needs that co-occur frequently with substance use, such as criminal thinking patterns, delinquent peer interactions, and family conflict. In the later phases of mental health court, participants receive services designed to maintain treatment gains by enhancing their long-term adaptive functioning, such as vocational or educational counseling.**
  - a) Outcomes, including graduation rates, recidivism rates, and engagement in treatment, are improved when rehabilitation programs address ancillary needs in this specific sequence. (National Association of Drug Court Professionals, 2015)**
- 4. Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of mental health court.**
  - a) At least two studies of drug courts have reported improved program retention, graduation rates, and treatment retention when unemployed or underemployed participants received a manualized, cognitive-**

behavioral vocational intervention. (Deschenes, Ireland, & Kleinpeter, 2009) (Leukefeld, Webster, Staton-Tindall, & Duvall, 2007)

5. Where indicated, participants receive assistance finding safe, stable, and drug-free housing beginning in the first phase of mental health court and continuing as necessary throughout their enrollment in the program.
  - a) Participants are unlikely to succeed in treatment if they do not have a safe, stable, and drug-free place to live. (Quirouette, Hannah-Moffat, & Maurutto, 2015)

## **IV. Incentives and Sanctions**

### ***A. Standards***

1. A mental health court shall provide a mental health court participant with all of the following:
  - a) A regimen or strategy of appropriate and graduated but immediate rewards for compliance and sanctions for noncompliance, including, but not limited to, the possibility of incarceration or confinement. (MCL 600.1096(1)(d))
2. Programs designed to adhere to the 10 essential elements of a mental health court promulgated by the bureau of justice assistance that include all of the following characteristics:
  - a) Criminal justice and mental health staff collaboratively monitor participants' adherence to court conditions, offer individualized graduated incentives and sanctions, and modify treatment as necessary to promote public safety and participants' recovery. (MCL 600.1090(e)(ii)(I))

### ***B. Best Practices***

1. The mental health court has a range of sanctions of varying magnitudes that may be administered in response to program infractions.
  - a) Drug courts are able to reduce substance use and recidivism when the sanctions for failing to meet difficult goals increase progressively in magnitude over successive infractions. This gives treatment a chance to take effect, and prepares participants to meet steadily increasing responsibilities in the program. (National Association of Drug Court Professionals, 2013)
  - b) Sanctions that are weak in magnitude can cause habituation in which the individual becomes accustomed, and thus less responsive to, punishment. Imposing high-magnitude sanctions when a participant fails to meet an easy goal helps to avoid habituation. (National Association of Drug Court Professionals, 2013)

- 2. Sanctions are imposed as quickly as possible after noncompliant behavior. Mental health courts do not wait for the next review hearing to impose a sanction if the behavior can be addressed more immediately.**
  - a) The value of having sanctions imposed immediately after noncompliant behavior is a central tenet of behavior modification. Study results show that recidivism and cost-savings do not improve when drug courts wait until the next scheduled court appearance for noncompliant participants instead of bringing them in earlier. (Carey, Mackin, & Finigan, 2012)
  - b) If teams wait too long (two weeks or more) before applying a sanction, the participants may have other issues that are more relevant by then, or they may even have worked to improve their behavior by then, in which case they are receiving a sanction at the same time as they are doing well, providing them with a message that is unclear and may even be defeating. (Carey, Mackin, & Finigan, 2012)
3. Give out tangible symbolic incentives that are personalized to the participant.
  - a) Courts that gave out certificates of completion as incentives after each client moved up to the next level of the tiered-program structure, gave tangible symbolic incentives (coins and certificates of recognition) that were personalized to the individuals, and brought snacks for “honor roll” and/or used a progress chart/honor roll board that notified clients before court that they were to be rewarded for good behavior saw a decrease in jurisdictional crime rate. (Bullard, 2014)
4. Use jail sparingly as a sanction.
  - a) Successful mental health courts averaged 15.61 fewer jail days than less successful courts for a typical maximum jail sentence during the court program. (Bullard, 2014)
5. Divide compliant and noncompliant clients/defendants in the courtroom.
  - a) Mental health courts that visibly divided compliant and noncompliant clients/defendants saw a decrease in jurisdictional crime rate. (Bullard, 2014)
6. Jail sanctions are definite in duration and typically last no more than five days. Participants are given access to counsel and a fair hearing if a jail sanction might be imposed as a liberty interest is at stake.
  - a) Drug courts significantly lower recidivism and improve cost-savings when they use jail sanctions sparingly. (Carey, Pukstas, Waller, Mackin, & Finigan, 2008)
  - b) Research indicates that jail sanctions produce diminishing returns after approximately three to five days. (Carey, Mackin, & Finigan, 2012)
7. Participants do not receive punitive sanctions if they are otherwise compliant with their treatment and supervision requirements but are not responding to

the treatment interventions. The appropriate course of action may be to reassess the individual and adjust the treatment plan accordingly.

- a) If a drug court imposes substantial sanctions for substance use early in treatment, the team is likely to run out of sanctions and reach a ceiling effect before treatment has taken effect. Therefore, drug courts should ordinarily adjust participants' treatment requirements in response to positive drug tests early in the program. (Chandler, Fletcher, & Volkow, 2009)
8. Team members have a written schedule of sanctions for infractions.
  - a) Drug courts where team members are given a copy of the guidelines for sanctions had 72 percent greater cost savings. (Carey, Mackin, & Finigan, 2012)
  - b) Multistate research showed the most effective programs with regard to recidivism included greater predictability of sanctions. (Rossman & Zweig, 2012)

## V. Payments

### A. Standards

1. **The mental health court may require an individual admitted into the court to pay a reasonable mental health court fee that is reasonably related to the cost to the court for administering the mental health court program as provided in the memorandum of understanding.<sup>2</sup> The clerk of the mental health court shall transmit the fees collected to the treasurer of the local funding unit at the end of each month. (MCL 600.1095(3))**
  - a) Courts can use the [SCAO Drug Court Fee Calculator](#) to help determine what a reasonable fee would be. This calculator should be used only as a guide to help determine a program fee; it is not intended to determine an exact or required amount. Courts can determine the amount of the fee as it is reasonably related to the cost for administering the mental health court program.
2. **In order to continue to participate in and successfully complete a mental health court program, an individual shall comply with all court orders, violations of which may be sanctioned at the court's discretion. (MCL 600.1097(1))**
3. **The court shall require that a participant pay all court fines, court costs, court fees, restitution, and assessments, and pay all, or make substantial contribution toward payment of, the costs of the treatment and the mental health court program services provided to the participant,**

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<sup>2</sup> See Appendix I. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/MHC-ProgramMOU.pdf>.

**including, but not limited to, the costs of drug or alcohol testing or counseling. However, except as otherwise provided by law, if the court determines that the payment of court fines, court fees, or drug or alcohol testing expenses under this subsection would be a substantial hardship for the individual or would interfere with the individual's treatment, the court may waive all or part of those court fines, court fees, or drug or alcohol testing expenses. The cost of treatment shall be governed by chapter 8 of the mental health code, 1974 PA 258, MCL 330.1800 to 330.1842, if applicable. (MCL 600.1097(3))**

4. **The court shall not sentence a defendant to a term of incarceration, nor revoke probation, for failure to comply with an order to pay money unless the court finds, on the record, that the defendant is able to comply with the order without manifest hardship and that the defendant has not made a good-faith effort to comply with the order. (MCR 6.425(E)(3)(a))**
5. **If the court finds that the defendant is unable to comply with an order to pay money without manifest hardship, the court may impose a payment alternative, such as a payment plan, modification of any existing payment plan, or waiver of part or all of the amount of money owed to the extent permitted by law. (MCR 6.425(E)(3)(b))**

## **VI. Phase Promotion and Graduation**

### ***A. Best Practices***

1. Phase promotion is predicated on the achievement of realistic and defined behavioral objectives, such as completing a treatment regimen or remaining drug-abstinent for a specific period of time.
  - a) Drug courts have significantly better outcomes when they have a clearly defined phase structure and concrete behavioral requirements for advancement through the phases. (Carey, Mackin, & Finigan, 2012)
  - b) Phase advancement should not be based simply on the amount of time that participants have been enrolled in the program. (National Association of Drug Court Professionals, 2013)
  - c) According to the UCSB Evaluation Team, "Movement between phases is often predicated by a number of different factors, including progression in treatment and/or skill building, compliance with the above-decided elements of phasing, and duration spent in their current phase." (UCSB Evaluation Team; Department of Counseling, Clinical, and School Psychology; University of California, Santa Barbara) Some frequent elements used by mental health courts when determining how clients move between phases include:
    - i. Phases build on skills of previous phases.

- ii. Treatment plans and phasing requirements are flexible to individual needs of clients.
  - iii. Clients demonstrate progress from each phase in order to proceed to the next.
  - iv. Requirements to proceed from phase to phase are clearly delineated and communicated.
  - v. Treatment intensity and phase are based on client needs and not used as a sanction for noncompliance unless such noncompliance indicates a need for more intensive treatment.
  - vi. A standard range in duration of the MHTC program is determined and agreed upon.
  - vii. Program completion is based on engagement with treatment and law-abiding behavior.
  - viii. Recognition that some goals of treatment may not be attainable within time in mental health court.
  - ix. Phase progression should not be delayed for payment of outstanding fees, fines or restitution.
  - x. Court attendance is diminished across phases.
  - xi. Supervision conditions are based on need and risk level.
  - xii. Drug testing and drug treatment continues based on need throughout the program.
- 2. A period of greater than 90 continuous days of negative drug test results should be required before a participant is eligible to graduate.
  - a) Drug courts where participants were expected to have greater than 90 days clean (demonstrated by negative drug tests) before graduation had 164 percent greater reductions in recidivism compared with programs that expected less clean time. (Carey, Mackin, & Finigan, 2012)

## VII. Program Discharge

### A. Standards

- 1. If the participant is accused of a new crime, the judge shall have the discretion to terminate the participant's participation in the mental health court program. (MCL 600.1097(2))
- 2. Upon completion or termination of the mental health court program, the court shall find on the record or place a written statement in the court file indicating whether the participant completed the program successfully or whether the individual's participation in the program was terminated

**and, if it was terminated, the reason for the termination.<sup>3</sup> (MCL 600.1098(1))**

3. **The court shall send a record of a discharge and dismissal [under MCL 600.1095, and as outlined in MCL 600.1098(3)] to the criminal justice information center of the department of state police, and the department of state police shall enter that information into the law enforcement information network with an indication of participation by the individual in a mental health court. (MCL 600.1098(5))**

## ***B. Best Practice***

1. Mental health courts frequently acknowledged fear of graduation and adapted portions of the program to foster self-confidence.
  - a) Mental health courts that use program adaptations like mentor programs, alumni programs, or extension of the final program phase saw a decrease in jurisdictional crime rate. (Bullard, 2014)

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<sup>3</sup> See Appendix B. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/MHC-DischargeStatement.pdf>.

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## ***Chapter 3: Confidentiality***

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This chapter addresses confidentiality issues in mental health court and shares information with Chapter 4 (Due Process), so readers should review chapters 3 and 4 together. Specific information in this chapter includes the Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2, redisclosure, records management, and staff training.

### **I. Confidentiality**

#### ***A. Standards***

1. Mental health courts are required to comply with the Health Insurance Portability and Accountability Act (HIPAA). HIPAA is a federal law that protects confidentiality and the security of protected health information. While it does not specifically apply to mental health courts, HIPAA does apply to the treatment agencies partnering with mental health courts, so mental health courts should also comply with HIPAA. Full text of the HIPAA privacy law is available [here](#).
  - a) Mental health courts are required to comply with Title 42 of the United States Code, Section 290dd-2, which is the federal law that protects the confidentiality of the identity, diagnosis, prognosis, or treatment of any patient records which are maintained in connection with the performance of any federally assisted program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research. 42 CFR, Part 2, contains the regulations implementing the alcohol and substance abuse confidentiality law.
2. Information in the record of a recipient, and other information acquired in the course of providing mental health services to a recipient, shall be kept confidential and shall not be open to public inspection. The information may be disclosed outside the department, community mental health services program, licensed facility, or contract provider, whichever is the holder of the record, only in the circumstances and under the conditions set forth in MCL 330.1748 section 748 or section 748a. MCL 330.1748(1). Full text is available [here](#).
3. Confidential treatment court information and records may not be used to initiate or to substantiate any criminal charges against a participant or to conduct any investigation of a participant. (42 CFR, Section 2.35(d), MCL 600.1093(4), and MCL 600.1096(3))
4. State law may neither authorize nor compel any disclosure prohibited by the federal regulations, but where state law prohibits disclosure that would be permissible under the federal regulations, the stricter standard applies. (42 CFR, Section 2.20)

5. Treatment courts may receive or release information or records of participants only with the specific knowing, voluntary, and written consent of the participant or under certain very limited exceptions. (42 CFR, Sections 2.22 and 2.31(a))
    - a) Consents must include the following under 42 CFR, Sections 2.14-2.35:<sup>4</sup>
      - i. The name of the participant permitting disclosure.
      - ii. The specific name of the program or person permitted to make the disclosure.
      - iii. The name(s) of the individual(s) or the name(s) of the entity(-ies) to which a disclosure is to be made.
      - iv. The purpose of the disclosure. In accordance with §2.13(a), the disclosure must be limited to that information which is necessary to carry out the stated purpose.
      - v. How much and what kind of information is to be disclosed.
      - vi. A statement that the consent is subject to revocation at any time except to the extent that the program or person which is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment services in reliance on a valid consent to disclose information to a third party payer.
      - vii. Date, event, or condition upon which the consent will expire. The date, event, or condition must ensure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.
      - viii. The participant's signature and, if applicable, the signature of a person authorized to give consent for a minor.
      - ix. The date on which consent is signed.
  6. The participant must be advised, orally and in writing, of their rights regarding confidential information about their substance use disorder. The notice must cite Section 290dd-2 and the implementing regulations (Sections 2.1 through 2.67 of Title 42 of the Code of Federal Regulations), and must state the following:<sup>5</sup>
    - a) Federal law and regulations protect the confidentiality of substance use disorder treatment records;

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<sup>4</sup> See Appendix C. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/ReleaseInfoMultiParty.pdf>.

<sup>5</sup> See Appendix C. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/ReleaseInfoMultiParty.pdf>.

- b) It is a crime to violate this confidentiality requirement, which the participant may report to appropriate authorities, with the authority's name and contact information provided;
  - c) Notwithstanding this confidentiality requirement, covered information may be released under specified circumstances (which should be listed for the participant); and
  - d) The restrictions on disclosure and use in the regulations in 42 CFR part 2 do not apply to communication with law enforcement agencies or officials regarding crimes committed on the premises of the program, and/or crimes against program personnel, or to reporting of incidents of suspected child abuse and neglect to the appropriate state or local authorities, under state law. However, the restrictions continue to apply to the original substance use disorder patient records maintained by the part 2 program including their disclosure and use for civil or criminal proceedings which may arise out of the report of suspected child abuse and neglect.
- 7. Treatment courts may not disclose protected health information in response to a subpoena or a search warrant or any other form of request, even if signed by a judge, unless that client signs a consent form authorizing such disclosure or a court of competent jurisdiction enters an authorizing order under the standards set forth in the Code of Federal Regulations. (42 CFR, Section 2.61)
- 8. Any documented treatment information distributed on the basis of the treatment participant's consent should be accompanied by a Notice of Prohibition Against Rediscovery. (42 CFR, Section 2.32)
- 9. Mental health courts must have in place formal policies and procedures to protect against unauthorized uses and disclosures of confidential information (42 CFR, Section 2.16). The policies and procedures must address the following:
  - a) Paper records, including:
    - i. Transferring and removing such records;
    - ii. Destroying such records, including sanitizing the hard copy media associated with the paper printouts, to render the patient identifying information non-retrievable;
    - iii. Maintaining such records in a secure room, locked file cabinet, safe, or other similar container, or storage facility when not in use;

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<sup>6</sup> See appendices E and F.

- iv. Using and accessing workstations, secure rooms, locked file cabinets, safes, or other similar containers, and storage facilities that use or store such information; and
  - v. Rendering patient identifying information non-identifiable in a manner that creates a very low risk of re-identification (e.g., removing direct identifiers).
- b) Electronic media, including:
- i. Creating, receiving, maintaining, and transmitting such records;
  - ii. Destroying such records, including sanitizing the electronic media on which such records are stored, to render the patient identifying information non-retrievable;
  - iii. Using and accessing electronic records or other electronic media containing patient identifying information; and
  - iv. Rendering the patient identifying information non-identifiable in a manner that creates a very low risk of re-identification (e.g., removing direct identifiers).

## ***B. Best Practices***

1. Programs designed to adhere to the 10 essential elements of a mental health court promulgated by the bureau of justice assistance that include all of the following characteristics:
  - a) Health and legal information are shared in a manner that protects potential participants' confidentiality rights as mental health consumers and their constitutional rights as defendants. Information gathered as part of the participants' court-ordered treatment program or services are safeguarded from public disclosure in the event that participants are returned to traditional court processing. (MCL 600.1090(e)(ii)(G))
2. Mental health court teams are familiar with relevant federal and state laws and regulations in order to develop appropriate policies and procedures.
  - a) Because drug court programs are integrally involved with supervising the participation of drug offenders in substance use disorder treatment, the programs must take into account federal requirements as well as applicable state laws. (Holland, 1999)
3. Program personnel's access to confidential records is restricted after consent expires or is revoked.
  - a) All file storage systems should include procedures for limiting access to records after the participant's consent expires or is revoked. Thus, paper records that can be accessed by all drug court personnel during the duration of the participant's consent should be transferred to a

more restricted storage facility as soon as the consent is terminated. Records on computers can be sealed by changing the password or other access. (Tauber, Weinstein, & Taube, 1999)

- 4. Treatment courts establish a memorandum of understanding (MOU) on confidentiality and have all team members and replacement team members sign and agree to follow confidentiality procedures.<sup>7</sup> (Tauber, Weinstein, & Taube, 1999)**
- 5. Pre-court staffing meetings may be closed to participants and the public. (State of Washington v. Sykes, 2014) If open, compliance with consent requirements must be obtained.<sup>8</sup>**
6. Treatment courts should receive training on federal confidentiality requirements and how they affect treatment court practitioners and contractors. (Meyer, 2011)
7. Each treatment court should designate a team member as their confidentiality compliance officer. The confidentiality compliance officer should be aware of, and consulted about, all third-party inquiries pertaining to mandated disclosures and permitted redisclosures under the federal regulations. (Meyer, 2011)

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<sup>7</sup> See Appendix G. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/ConfidentialityMOU.pdf>.

<sup>8</sup> See Appendix H. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/VisitorConfidentialityForm.pdf>.

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# ***Chapter 4: Due Process***

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This chapter addresses procedural due process in mental health court. Specific information in this chapter includes the participant waiver of rights, the 1st Amendment, 4th Amendment, and 14th Amendment, as well as sanctions and termination. Please also see the [Michigan Court Rules](#) and [Code of Judicial Conduct](#).

## **I. Waiver of Rights**

### ***A. Standards***

- 1. If the individual is charged in a criminal case . . . his or her admission to mental health court is subject to all of the following conditions:<sup>9</sup>**
  - a) The individual waives, in writing, the right to a speedy trial and, with the agreement of the prosecutor, the right to a preliminary examination. (MCL 600.1094(1)(b))**
  - b) The individual signs a written agreement to participate in the mental health court. If the individual has been assigned a guardian, the legal guardian is required to sign all documents for the individual's admission in the mental health court. (MCL 600.1094(1)(c))**
- 2. The surrendering of any rights by the participant must be done knowingly, voluntarily, and intelligently. (Kelly v Allegan Circuit Judge, 1969)**

## **II. 1st Amendment**

### ***A. Standards***

- 1. Mental health court review hearings must be held open to the public.**
  - a) Although the Sixth Amendment right “is the right of the accused,” a member of the public can invoke the right to a public trial under the First Amendment. (United States Constitution, 1st Amendment and 6th Amendment)**
  - b) The sittings of every court within this state shall be public except that a court may, for good cause shown, exclude from the courtroom other witnesses in the case when they are not testifying and may, in actions involving scandal or immorality, exclude all minors from the courtroom unless the minor is a party or witness.**

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<sup>9</sup> See Appendix J. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/MHC-AgreementToParticipate.pdf>.

**This section shall not apply to cases involving national security.  
(MCL 600.1420)**

- c) The party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure.  
*(People v Vaughn, 2012)*
- 2. Mental health court conditions of participation, such as area and association restrictions, must be reasonable and must be narrowly drawn.
  - a) Analogizing to probation conditions in MCL 771.3(3)) “... a sentencing court must be guided by factors that are lawfully and logically related to the defendant’s rehabilitation.” *(People v Johnson (Larry), 1995)*
- 3. The mandating of an individual to attend Alcoholics Anonymous/ Narcotics Anonymous (AA/NA) is a violation of the First Amendment Establishment Clause prohibitions. The First Amendment applies to the states via the 14th Amendment of the U.S. Constitution. *(Hanas v Inner City Christian Outreach, 2008)*

#### ***B. Best Practices***

- 1. If it is appropriate and beneficial to order 12-step self-help programs, offenders who object to the deity-based 12-step programs cannot be ordered to attend them. In those instances, secular alternatives are made available. *(Meyer, 2011)*

### **III. 4th Amendment**

#### ***A. Best Practices***

- 1. The mental health court conducts home visits on participants, without reasonable suspicion, as part of a standard monitoring program.
  - a) Home visits are a critical function of community supervision.  
*(Harberts, 2011)*
  - b) Home visits as a condition of probation in the absence of reasonable suspicion are justified. *(United States vs Reyes, 2002)*
  - c) “[A] home visit is not a search, even though a visit may result in seizure of contraband in plain view.” *(United States v Newton, 2002)*<sup>10</sup>
- 2. A waiver against unreasonable searches and seizures may be made as a condition of probation.

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<sup>10</sup> See U.S. v Tessier, U.S. Court of Appeals, Sixth Circuit (02/18/16) citing with favor Reyes, *supra*; U.S. v LeBlanc, 490 F3d 361, 370 (5th Cir. 2007), upholding less invasive “home visits” where there was no reasonable suspicion.

- a) Analogizing to probation law, “a waiver of one’s constitutional protections against unreasonable searches and seizures may properly be made a condition of a probation order where the waiver is reasonably tailored to a defendant’s rehabilitation.” (People v Hellenthal, 1990) (MCL 791.236(19))
- b) A warrantless search of a probationer’s home by a probation officer who had reasonable suspicion was upheld based on a ‘special needs’ balancing test. (Griffin v Wisconsin, 1987)

## **IV. 14th Amendment**

### ***A. Standards***

1. There are objective standards that require recusal when “the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable.” (Withrow v Larkin, 1975)
2. Disqualification of a judge is warranted for reasons that include, but are not limited to, the following:
  - a) The judge is biased or prejudiced for or against a party or attorney. (MCR 2.003(C)(1)(a))
  - b) The judge, based on objective and reasonable perceptions, has either (i) a serious risk of actual bias impacting the due process rights of a party as enunciated in Caperton v Massey, [556 US 868]; 129 S Ct 2252; 173 L Ed 2d 1208 (2009), or (ii) has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct. (MCR 2.003(C)(1)(b))
  - c) The judge has personal knowledge of disputed evidentiary facts concerning the proceeding. (MCR 2.003(C)(1)(c))

## **V. Sanctions and Termination**

### ***A. Best Practices***

1. Mental health court termination hearings, and sanction hearings involving a liberty interest where the participant is contesting the facts of the violation, require procedural protections under due process and under MCR 6.445, including, but not limited to, the following:<sup>11</sup>
  - a) The court must hold a hearing similar to an arraignment hearing,
  - b) The court must ensure that the participant receives written notice of the alleged violation,

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<sup>11</sup> See Appendix K. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/ModelProgVioAdviceRights.pdf>.

- c) The court must advise the participant that the participant has a right to contest the charge at a hearing, and
  - d) The court must advise the participant that the participant is entitled to a lawyer's assistance at the hearing and at all subsequent court proceedings, and that the court will appoint a lawyer at public expense if the participant wants one and is financially unable to retain one.
    - i. This best practice is based on analogy to due process requirements in termination from probation; supported by several state supreme courts that have ruled on drug court terminations; and it complies with the probation violation rulings in *Gagnon v Scarpelli*, 411 U.S. 778, 92 S.Ct. 1756, 36 L.Ed.2d 656 (1973), and *People v Belanger*, 227 Mich App 637 (1998). See MCR 6.445 for additional information regarding procedural protections under the court rule.

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# ***Chapter 5: The Mental Health Court Team***

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This chapter discusses the various members on a mental health court team and the importance of collaboration among those members. Specific topics include team composition, roles of team members, participation in staffing meetings and review hearings, and communication and decision-making. The role of the judge is discussed in additional detail in Chapter 1 of this manual. Confidentiality is mentioned briefly here, but discussed in detail in Chapter 3. Various members of the team work to ensure participants' due process rights are protected; best practices regarding due process are discussed in Chapter 4. Teams should also engage in training as a team; training and education are discussed in Chapter 9.

## **I. Team Composition**

### ***A. Best Practices***

1. A dedicated multidisciplinary team of professionals manages the day-to-day operations of the mental health court, including reviewing participant progress during pre-court staff meetings and status hearings, contributing observations and recommendations within the team members' respective areas of expertise, and delivering or overseeing the delivery of legal, treatment, and supervision services. (National Association of Drug Court Professionals, 2015)
2. All court team members attend staffing and court review hearings.
  - a) Mental health courts that mandated all team members to attend staffing and dockets, even if not directly involved with any clients/defendants, saw a decrease in jurisdictional crime rate. (Bullard, 2014)
3. Include probation officers on the mental health court team.
  - a) Mental health courts that utilized probation officers, frequent home visits, ankle monitors, and frequent but random drug tests saw a decrease in jurisdictional crime rate. (Bullard, 2014)
4. The mental health court team comprises representatives from all partner agencies involved in creating the program, including, but not limited to, a judge or judicial officer, program coordinator, prosecutor, defense counsel representative, treatment representative, community supervision officer, and law enforcement officer.
  - a) Drug courts enjoy significantly greater reductions in recidivism and significantly higher cost savings when all of the above-mentioned team members regularly participate in staffing meetings and review hearings. (Carey, Mackin, & Finigan, 2012) (Cissner, et al., 2013)
  - b) When law enforcement is a member of the drug court team, drug courts can reduce recidivism by 87 percent and increase cost savings by 44 percent. (Carey, Mackin, & Finigan, 2012)

5. Successful courts had significantly more departmental representation at staffing and court than in less successful courts. Often, the overabundance of one department, i.e. treatment or legal, appeared clustered and proved to be unproductive to the collective goals for the court docket.
  - a) When too many treatment providers wanted their own view expressed, the team made no conclusions on how to treat the participant most effectively. When too many legal representatives attempted to protect their own clients' rights at a crowded staffing, the judge appeared bogged down by details and the staffing slowed considerably.  
(Bullard, 2014)

## ***B. Promising Practices***

1. An independent evaluator serves as a member of the mental health court team.
  - a) The evaluator is responsible for developing reliable and valid methodologies to study the effectiveness of the mental health court. It is necessary for all mental health courts to regularly evaluate program effectiveness. This is primarily done through three evaluations: process, outcome, and cost-benefit. While an evaluator is an essential team member of any mental health court, is not necessarily a position for a full-time employee in every program. Instead the role can be filled at the regional or local level. The evaluator, while generally considered a part of the mental health court team, does not participate in mental health court team reviews as it compromises the objectivity of the evaluator and the integrity of the evaluation process.  
(Minnesota Supreme Court, 2006)
  - b) Courts should consider partnering with local colleges or universities to find a qualified evaluator.
2. Communication with a psychiatrist is recommended, especially for those mental health courts whose participants are prescribed psychotropic medications.
3. Coordinating services with a local National Alliance on Mental Illness (NAMI) advocacy group can assist in providing services and enhance connection with treatment and other ancillary services.

## **II. Staffing Meetings and Review Hearings**

### ***A. Best Practices***

1. **Team members consistently attend pre-court staff meetings to review participant progress, determine appropriate actions to improve outcomes, and prepare for status hearings in court.**
  - a) When all team members consistently attend staffing meetings, drug courts can lower recidivism by 50 percent and are nearly twice as cost-

effective as those programs where not all team members attend. (Carey, Mackin, & Finigan, 2012)

- b) When a representative from treatment attends staffing meetings, recidivism was reduced by 105 percent. (Carey, Mackin, & Finigan, 2012)

**2. Team members attend status review hearings on a consistent basis.**  
**During the status review hearings, team members contribute relevant information or recommendations when requested by the judge or as necessary to improve outcomes or protect participants' legal rights.**

- a) Mental health courts that included a variety of positions in the staffing and court docket saw a decrease in jurisdictional crime rate. (Bullard, 2014)
- b) Mental health courts that mandated all court team members attend staffing and dockets, even if not directly involved with any clients/defendants, saw a decrease in jurisdictional crime rate. (Bullard, 2014)
- c) Drug courts were able to significantly reduce recidivism and improve cost-savings when the judge, attorneys, treatment, probation, and coordinator all attended status review hearings. (Carey, Mackin, & Finigan, 2012)
- d) When a representative from treatment attended status review hearings, recidivism was reduced 100 percent over drug courts that did not have a treatment representative attend. (Carey, Mackin, & Finigan, 2012)
- e) When a law enforcement officer attended status review hearings, recidivism was reduced 83 percent over drug courts that did not have a law enforcement officer attend. (Carey, Mackin, & Finigan, 2012)

### **III. Communication and Decision Making**

#### ***A. Best Practices***

**1. Team members share information as necessary to assess participants' progress in treatment and compliance with the conditions of mental health court. Defense attorneys make it clear to participants and other team members whether they will share communications from participants with the team.**

- a) Several studies have indicated that participants and staff alike rate communication among team members as one of the most important factors for success in drug court. (National Association of Drug Court Professionals, 2015)
  - i. Please also see Chapter 3, Confidentiality for information on appropriate scope for information sharing.

- 2. Team members and the agency they represent execute memoranda of understanding specifying what information will be shared among team members.<sup>12</sup>**
  - a) Assuming a participant has executed a valid waiver of his or her privacy and confidentiality rights, drug court team members are permitted, and indeed may be required, to share covered information in the course of performing their professional duties. Confidentiality and privacy rights belong to the participant, not to staff, and may be waived freely and voluntarily in exchange for receiving anticipated benefits, such as gaining access to effective treatment or avoiding a criminal record or jail sentence (Melton et al., 2007). Failing to abide by a valid confidentiality waiver could, under some circumstances, be a breach of a staff person's professional responsibilities to the participant. (NADCP, V2, 2018)
  - b) Staff persons also have ethical obligations to other drug court team members. If a staff person knowingly withholds relevant information about a participant from other team members, this omission could inadvertently interfere with the participant's treatment goals, endanger public safety, or undermine the functioning of the drug court team. All agencies involved in the administration of a drug court should, therefore, execute MOUs specifying what data elements will be shared among team members (Harden & Fox, 2011). The data elements listed above might be included in such MOUs to clarify the obligations of each professional on the team. (NADCP, V2, 2018)
- 3. Team members contribute relevant insights, observations, and recommendations based on their professional knowledge, training, and experience. The judge considers all team members' perspectives before making decisions that affect participants' welfare or liberty interests and explains the rationale for such decisions to team members and participants.**
  - a) Studies in more than 10 drug courts found that implementing a model designed to improve team communication skills increased job satisfaction and improved program measures such as admission rates, wait times for treatment, and no-show rates.<sup>13</sup> (National Association of Drug Court Professionals, 2015)

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<sup>12</sup> See Appendix G. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/ConfidentialityMOU.pdf>.

<sup>13</sup> For additional information on the suggested model, the Network for the Improvement of Addiction Treatment's Organizational Improvement Model, please see page 45 of *Adult Drug Court Best Practice Standards*, Volume 2, published by the National Association of Drug Court Professionals. The model seeks to create an environment where all team members are able to share differing views in a way that is likely to be heeded by others on the team.

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# ***Chapter 6: Mental Health Court Population and Admission***

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This chapter discusses screening and eligibility criteria for mental health courts. It can be used to ensure that programs are targeting the proper population among offenders. Specific topics include screening, eligible offenses, assessments, admission to the program and legal outcomes. Mental health courts can use this chapter to address their target population, screening and assessment practices, program eligibility requirements, and admission practices.

## **I. Screening**

### ***A. Standards***

- 1. To be admitted to a mental health court, an individual shall cooperate with and complete a preadmissions screening and evaluation assessment and shall submit to any future evaluation assessment as directed by the mental health court. A preadmission screening and evaluation assessment shall include all of the following:**
  - a) A review of the individual's criminal history. A review of the law enforcement information network may be considered sufficient for purposes of this subdivision unless a further review is warranted. The court may accept other verifiable and reliable information from the prosecution or defense to complete its review and may require the individual to submit a statement as to whether or not he or she has previously been admitted to a mental health court and the results of his or her participation in the prior program or programs. (MCL 600.1093(3)(a))**
  - b) An assessment of the risk of danger or harm to the individual, others, or the community. (MCL 600.1093(3)(b))**
  - c) A mental health assessment, clinical in nature, and using standardized instruments that have acceptable reliability and validity, meeting diagnostic criteria for serious mental illness, serious emotional disturbance, co-occurring disorder, or developmental disability. (MCL 600.1093(3)(c))**
  - d) A review of any special needs or circumstances of the individual that may potentially affect the individual's ability to receive mental health or substance abuse treatment and follow the court's orders. (MCL 600.1093(3)(d))**
- 2. The court may request that the department of state police provide to the court information contained in the law enforcement information network pertaining to an individual applicant's criminal history for the purposes**

of determining an individual's eligibility for admission into the mental health court and general criminal history review. (MCL 600.1093(5))

### ***B. Promising Practices***

1. A community's treatment capacity for the individual's needs should be taken into account when determining eligibility. (Thompson, 2007)

## **II. Eligible Offenses**

### ***A. Standards***

1. "Violent offender" means an individual who is currently charged with, or has been convicted of, an offense involving the death of, or a serious bodily injury to, any individual, whether or not any of these circumstances are an element of the offense, or with criminal sexual conduct of any degree. (MCL 600.1090(i))
2. Each mental health court shall determine whether an individual may be admitted to the mental health court. No individual has a right to be admitted into a mental health court. Admission into a mental health court program is at the discretion of the court, based on the individual's legal or clinical eligibility. An individual may be admitted to mental health court regardless of prior participation or prior completion status. However, in no case shall a violent offender be admitted into a mental health court. (MCL 600.1093(1))
3. In addition to admission to a mental health court under this chapter, an individual who is eligible for admission under this chapter may also be admitted to a mental health court under any of the following circumstances:
  - a) The individual has been assigned the status of youthful trainee under section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11. (MCL 600.1093(2)(a))
  - b) The individual has had criminal proceedings against him or her deferred and has been placed on probation under any of the following:
    - i. Section 7411 of the public health code, 1978 PA 368, MCL 333.7411. (MCL 600.1093(2)(b)(i))
    - ii. Section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a. (MCL 600.1093(2)(b)(ii))
    - iii. Section 350a or 430 of the Michigan penal code, 1931 PA 328, MCL 750.350

## ***B. Best Practices***

- i. Programs designed to adhere to the 10 essential elements of a mental health court promulgated by the bureau of justice assistance that include all of the following characteristics:
  - a) Eligibility criteria that address public safety and a community's treatment capacity, in addition to the availability of alternatives to pretrial detention for defendants with mental illnesses, and that take into account the relationship between mental illness and a defendant's offenses, while allowing the individual circumstances of each case to be considered. (MCL 600.1090(e)(ii)(B))

## **III. Clinical Mental Health and Substance Use Assessments**

### ***A. Standards***

- 1. A mental health court may hire or contract with licensed or accredited treatment providers, in consultation with the local community health service provider, and other such appropriate persons to assist the mental health court in fulfilling its requirements under this chapter. (MCL 600.1092)

### ***B. Best Practices***

- 1. Assess clients for the correct program through the use of both mental health and addiction assessment tools.
  - a) Courts that had multiple specially tailored treatment options were more successful in reducing jurisdictional recidivism. (Bullard, 2014)
  - b) Mental health courts that assessed clients for the correct program through the use of both mental health and addiction assessment tools saw a decrease in jurisdictional crime rate. (Bullard, 2014)
- 2. Clinical assessments use validated tools.
  - a) The predictive criterion validity of actuarial assessments of major risk and/or need factors greatly exceeds the validity of unstructured clinical judgment. (Andrews, Bonta, & Wormith, 2006)
  - b) Drug courts that use better assessment practices have better outcomes. (Shaffer, 2010)

## **IV. Risk and Need Assessment**

### ***A. Best Practices***

- 1. The mental health court program accepts participants who are both high risk and high need.
  - a) Drug courts that focus on high-risk and high-need participants reduce crime nearly twice as much as those focusing on less serious

- participants (Lowenkamp, Holsinger, & Latessa, 2005), and return approximately 50 percent greater cost savings to their communities (Bhati et al., 2008; Carey et al., 2008, 2012; Downey & Roman, 2010).
- b) If a program has low-risk participants, the program should keep the low-risk population separate from the high-risk population. (NADCP 2018)
  - 2. **Use a standardized risk and needs assessment to identify the expected likelihood of a particular outcome (e.g., recidivism) over a specified period of time (e.g., one year) for an individual.**
    - a) Standardized assessment tools are reliable and valid with regard to identifying those who are likely to succeed on probation. (Miller & Shutt, 2001)
  - 3. If a mental health court is unable to target only high-risk and high-need offenders, the program develops alternative tracks with services that are modified to meet the risk and need levels of its participants, and does not mix participants with different risk or need levels in the same counseling groups, residential treatment milieu, or housing unit.
    - a) Mixing participants with different risk or need levels together in treatment groups or residential facilities can make outcomes worse for the low-risk or low-need participants by exposing them to antisocial peers or interfering with their engagement in productive activities, such as work or school (DeMatteo et al., 2006; Lowenkamp & Latessa, 2004; McCord, 2003; Petrosino et al., 2000). A free publication from the NDCI provides evidence-based recommendations for developing alternative tracks in Drug Courts for low-risk and low-need participants.<sup>14</sup>
    - b) Providing substance use disorder treatment for nonaddicted substance users can lead to higher rates of reoffending or substance use or a greater likelihood of these individuals eventually becoming addicted. (Lovins et al., 2007; Lowenkamp & Latessa, 2005; Szalavitz, 2010; Wexler et al., 2004)
    - c) The lowest criminogenic risk (LSI-R score) mental health court participants had the highest rate of felony recidivism (20 percent). Recidivism rates in mental health court participants decreased as risk scores increased; the highest risk mental health court participants had the lowest rate of felony recidivism (7 percent). This finding underscores the importance of admitting high risk and high need applicants and suggests that mental health courts have the greatest benefit with higher risk participants.

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<sup>14</sup> Alternative Tracks in Adult Drug Courts: Matching Your Program to the Needs of Your Clients. Available at <http://www.ndci.org/sites/default/files/nadcp/AlternativeTracksInAdultDrugCourts.pdf>.

4. Ensure that the validation sample of the risk and needs assessment is similar to the mental health court's population.
  - a) Different racial or ethnic groups interpret the same assessment questions differently. (Carle, 2009)
  - b) Males and females show differences in the prediction of substance use dependence. (Perez & Wish, 2011)
  - c) DWI offenders require different assessments than drug court offenders. (Vlavianos, Floerke, Harrison, & Carey, 2015)
5. Re-examine dynamic risk factors after program admission.
  - a) Assessments completed within the month preceding the participant's failure have greater accuracy than ones done much earlier. (Lloyd, Hanson, & Serin, 2015)

## ***B. Promising Practices***

1. Identify both clinical and criminogenic risk factors for each individual so these factors may be addressed in the treatment provided. (Luskin, 2015)

# **V. Legal Outcome**

## ***A. Standards***

1. **The circuit court or the district court in any judicial circuit or a district court in any judicial district may adopt or institute a mental health court pursuant to statute or court rules. However, if the mental health court will include in its program individuals who may be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines, the circuit or district court shall not adopt or institute the mental health court unless the circuit or district court enters into a memorandum of understanding with each participating prosecuting attorney in the circuit or district court district, a representative or representatives of the community mental health services programs, a representative of the criminal defense bar, and a representative or representatives of community treatment providers. The memorandum of understanding also may include other parties considered necessary, including, but not limited to, a representative or representatives of the local court funding unit or a domestic violence service provider program that receives funding from the state domestic violence prevention and treatment board. The memorandum of understanding shall describe the role of each party.<sup>15</sup> (MCL 600.1091(1))**
2. **Pursuant to the agreement with the individual and prosecutor, the court may either delay further proceedings as provided in section 1 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.1, or**

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<sup>15</sup> See Appendix I. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/MHC-ProgramMOU.pdf>.

**proceed to sentencing, as applicable, and place the individual on probation or other court supervision in the mental health court program with terms and conditions according to the agreement and as considered necessary by the court. (MCL 600.1095(1)(b)(iii))**

## **VI. Admission Factors**

### ***A. Standards***

- 1. If the individual is charged in a criminal case . . . his or her admission to mental health court is subject to all of the following conditions:<sup>16</sup>**
  - a) The individual, if an adult, pleads guilty, no contest, or be convicted of any criminal charge on the record . . . (MCL 600.1094(1)(a))**
- 2. In addition to rights accorded a victim under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, the mental health court shall permit any victim of the offense or offenses of which the individual is charged . . . as well as any victim of a prior offense of which that individual was convicted . . . to submit a written statement to the court regarding the advisability of admitting the individual into the mental health court. (MCL 600.1094(4))**
- 3. An individual who has waived his or her right to a preliminary examination, who has pled guilty or no contest . . . as part of his or her referral process to a mental health court, and who is subsequently not admitted to a mental health court may withdraw his or her plea and is entitled to a preliminary examination . . . (MCL 600.1094(3))**

### ***B. Best Practices***

- 1. Use only objective criteria when determining eligibility for mental health court.**
  - a) Some Drug Courts may screen candidates for their suitability for the program based on the team's subjective impressions of the offender's motivation for change or readiness for treatment. Suitability determinations have been found to have no impact on Drug Court graduation rates or post-program recidivism. (Carey & Perkins, 2008; Rossman et al., 2011)**
  - b) Removing subjective eligibility restrictions and applying evidence-based selection criteria significantly increases the effectiveness and cost-effectiveness of Drug Courts by allowing them to serve the most appropriate target population. (Bhati et al., 2008; Sevigny et al., 2013)**

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<sup>16</sup> See Appendix J. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/MHC-AgreementToParticipate.pdf>.

## **VII. Informed Choice**

### ***A. Best Practices***

1. Inform clients of weekly requirements during each court date.
  - a) Mental health court team members that give out information on the next upcoming court date, drug testing schedule, homework assignments, and other meeting times to clients in paper form each week in every program phase saw a decrease in jurisdictional crime rate. (Bullard, 2014)

### ***B. Promising Practices***

1. Program should develop guidelines for the identification and expeditious resolution of competency concerns. (Thompson, 2007)

## **VIII. Program Entry**

### ***A. Best Practices***

1. Expedite the court process to quickly accept participants into the mental health court.
  - a) When the time between arrest and program entry is 50 days or less, programs see reductions in recidivism. (Carey, Mackin, & Finigan, 2012)

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# ***Chapter 7: Drug and Alcohol Testing***

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This chapter addresses drug and alcohol testing in mental health court. Specific topics include randomization, frequency, methods for collection and testing, the use of scientific information, and chain of custody. In addition to following these standards and best practices, courts should consult the *Ten Principles of a Good Testing Program*,<sup>17</sup> promulgated by the National Drug Court Institute. The Michigan Association of Treatment Court Professionals published the [\*MATCP Drug Testing Manual, 2nd Edition\*](#), as a reference for treatment courts.

## **I. General**

### **A. Best Practices**

1. Upon entering the Drug Court, participants receive a clear and comprehensive explanation of their rights and responsibilities related to drug and alcohol testing. This information is described in a participant contract or handbook and reviewed periodically with participants to ensure they remain cognizant of their obligations.
  - a) Outcomes are significantly better when Drug Courts specify their policies and procedures clearly in a participant manual or handbook. (Carey et al., 2012)
  - b) Drug Courts can enhance participants' perceptions of fairness substantially and reduce avoidable delays from contested drug and alcohol tests by describing their testing procedures and requirements in a participant contract or handbook. (NADCP V2, 2018)

## **II. Randomization**

### **A. Standards**

1. If determined by the mental health court to be necessary or appropriate, periodic and random testing for the presence of any non-prescribed controlled substance or alcohol in a participant's blood, urine, or breath, using to the extent practicable the best available, accepted, and scientifically valid methods. (MCL 600.1096(1)(b))

#### **1. Best Practices**

1. The probability of being tested on weekends and holidays is the same as other days.
  - a) Weekends and holidays are high-risk times for drug and alcohol use. Providing a respite from detection during these high-risk times reduces the randomness of testing and undermines the central aims of a drug-

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<sup>17</sup> See Appendix M.

testing program. (Kirby, Lamb, Iguchi, Husband, & Platt, 1995) (Marlatt & Gordon, 1985) (American Society of Addiction Medicine, 2013)

2. Urine tests are delivered no more than eight hours after a participant is notified that a test has been scheduled. (National Association of Drug Court Professionals, 2015) (Auerbach, 2007)
3. Tests with short detection windows such as oral fluid tests should be delivered no more than four hours after being notified that a test was scheduled. (National Association of Drug Court Professionals, 2015)

### **III. Frequency and Breadth of Testing**

#### ***A. Best Practices***

1. **Test specimens are examined for all unauthorized substances of abuse that are suspected to be used by mental health court participants.**  
**Randomly selected specimens are tested periodically for a broader range of substances to detect new substances of abuse that might be emerging in the mental health court population.**
  - a) Participants can easily evade detection of their substance use by switching to drugs that have similar effects but are not detected by the test. (American Society of Addiction Medicine, 2013)
  - b) Because new drugs of abuse are constantly being sought out by offenders to cheat drug tests, drug courts should frequently and randomly examine samples for a wide range of potential substances of abuse. (American Society of Addiction Medicine, 2013)
2. Drug and alcohol tests are conducted at least once per week.
  - a) Mental health courts that tested new clients at least once a week, if not more, saw a decrease in jurisdictional crime rate. (Bullard, 2014)
3. Provide multiple testing locations for mental health court participants to drug and alcohol test.
  - a) Mental health courts that had multiple drug testing sites that included testing on weekends and holidays, saw a decrease in jurisdictional crime rate. (Bullard, 2014)
4. Identify triggers and circumstances of potential use.
  - a) Mental health courts that had team members who made sure to point out any days noted for probable drug use at staffing and drug tested clients relative to that probable date saw a decrease in jurisdictional crime rate. (Bullard, 2014)

5. Tests that measure substance use over extended periods of time, such as ankle monitors, are applied for at least 90 consecutive days, followed by urine or other intermittent test methods.
  - a) Research indicates that use of an alcohol tether device may deter alcohol consumption and alcohol-impaired driving among recidivist DWI offenders if it is worn for at least 90 days. (Flango & Cheeseman, 2009) (Tison, Nichols, Casanova-Powell, & Chaudhary, 2015)
  - b) Mental health courts that used ankle monitors to monitor difficult clients saw a decrease in jurisdictional crime rate. Ankle monitors included global positioning system (GPS) trackers and/or alcohol monitors. (Bullard, 2014)

### ***B. Promising Practices***

1. Mental health courts take into account participants' medication side effects and symptomology of the mental illness when drug testing.

## **IV. Scientifically Valid Drug Testing Methods**

### ***A. Standards***

1. If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case. (Michigan Rules of Evidence, Rule 702. Adopted from the Federal Rules of Evidence, Rule 702. Based on *Daubert v. Merrell Dow Pharmaceuticals*)

### ***B. Best Practices***

1. A mental health court uses scientifically valid and reliable testing procedures.
  - a) To be admissible as evidence in a legal proceeding, drug and alcohol test results must be derived from scientifically valid and reliable methods. (Meyer, 2011)
  - b) Appellate courts have recognized the scientific validity of several commonly used methods for analyzing urine, including gas chromatography/mass spectrometry (GC/MS); liquid chromatography/tandem mass spectrometry (LC/MS/MS); the enzyme multiple immunoassay technique (EMIT); and some sweat, oral fluid, hair, and ankle-monitor tests. (Meyer, 2011)

- c) Appellate courts have recognized the scientific validity of ethyl glucuronide (ETG) testing. (Lawrence)
- 2. **If a participant denies substance use in response to a positive screening test, a portion of the same specimen is subjected to confirmatory analysis using an instrumented test, such as GC/MS or LC/MS. Unless a participant admits to using the drug identified by the screening procedure, confirmation of presumptive positive tests is mandatory.**
  - a) Gas chromatography-mass spectrometry (GC-MS) provides chemical fingerprint identification of drugs and is recognized as the definitive confirmation technology. (Cary, 2011)
  - b) Confirmation with an instrumented test virtually eliminates the odds of a false positive result, assuming the sample was collected and stored properly. (Auerbach, 2007)
  - c) It is necessary to validate positive screening results in order to rule out the potential of a false positive by performing a confirmation procedure. (Cary, 2011)
- 3. **Confirmatory tests are not withheld due to the participant's inability to pay.**
  - a) Drug courts commonly require participants to pay the cost of confirmation tests if the initial screening result is confirmed. (Cary, 2011) (Meyer, 2011)
- 4. **Metabolite levels are not used as evidence of new substance use or changes in participants' substance use patterns.**
  - a) Some drug courts interpret changes in quantitative levels of drug metabolites as evidence that new substance use has occurred or a participant's substance use pattern has changed. Unless a drug court has access to an expert trained in toxicology, pharmacology, or a related discipline, such practices should be avoided. Most drug and alcohol tests used in drug courts were designed to be *qualitative*, meaning they were designed to determine whether a drug or drug metabolite is present at levels above a pre-specified concentration level. The cutoff concentration level is calculated empirically to maximize the true-positive rate, true-negative rate, or classification rate. When drug courts engage in quantitative analyses, they are effectively altering the cut-off score and making the results less accurate. (NADCP, *Adult Drug Court Best Practice Standards*, Vol. II.)
  - b) Quantitative metabolite levels can vary considerably based on a number of factors, including the total fluid content in urine or blood (Cary, 2004; Schwilke et al., 2010). Moderate changes in participants' fluid intake or fluid retention could lead drug courts to miscalculate substance use patterns. Numeric results do not accurately discriminate between whether a participant's overall drug level is

increasing or decreasing, even if compared to previous urine drug concentrations from the same client and for the same drug. (Cary, 2004)

- c) The routine use of urine drug levels by court personnel in an effort to define substance use disorder behavior and formulate appropriately measured sanctions is a practice that can result in inappropriate, factually unsupportable conclusions, and a decision-making process that lacks a sound scientific foundation. (Cary, 2011)

**5. Test specimens are examined routinely for evidence of dilution and adulteration.**

- a) The temperature of each urine specimen should be examined immediately upon collection to ensure it is consistent with an expected human body temperature. An unusual temperature might suggest the sample cooled down because it was collected at an earlier point in time, or was mixed with water that was too cold or too hot to be consistent with body temperature. (National Association of Drug Court Professionals, 2015)
- b) Under normal conditions, urine specimens should be between 90 and 100 degrees Fahrenheit within four minutes of collection; a lower or higher temperature likely indicates a deliberate attempt at deception. (American Society of Addiction Medicine, 2013)

**6. Specimens should be tested for creatinine and specific gravity.**

- a) A creatinine level below 20 mg/dL is rare and is a reliable indicator of an intentional effort at dilution or excessive fluid consumption barring unusual medical or metabolic conditions (ASAM, 2013; Cary, 2011; Jones & Karlsson, 2005; Katz et al., 2007). (American Society of Addiction Medicine, 2013)
- b) Specific gravity reflects the amount of solid substances that are dissolved in urine. The greater the specific gravity, the more concentrated the urine; and the lower the specific gravity, the closer its consistency to water. The normal range of specific gravity for urine is 1.003 to 1.030, and a specific gravity of 1.000 is essentially water. Some experts believe a specific gravity below 1.003 reflects a diluted sample (Katz et al., 2007). Although this analysis, by itself, may not be sufficient to prove excessive fluid consumption, dilution is likely to have occurred if the specific gravity is low and accompanies other evidence of tampering or invalidity, such as a low creatinine level or temperature. (Dasgupta et al., 2004; Mikkelsen & Ash, 1988).

## V. Witnessed Collection

### A. Best Practices

1. Direct observed collection requires that an observer watch the donor urinate into the collection container. The observer's gender must be the same as the donor's gender, which is determined by the donor's gender identity, with no exception to this requirement. <https://www.federalregister.gov/d/2017-00979/p-592>
  - a) Gender identity means an individual's internal sense of being male or female, which may be different from an individual's sex assigned at birth. (Substance Abuse and Mental Health Services Administration (SAMHSA), HHS, 2017)
  - b) Before an observer is selected, the donor is informed that the gender of the observer will match the donor's gender, which is determined by the donor's gender identity. The collector then selects the observer to conduct the observation:
    - i. The collector asks the donor to identify the donor's gender on the Custody and Control Form (CCF) and initial it.
    - ii. The donor will then be provided an observer whose gender matches the donor's gender.
    - iii. The observer's name and gender is documented on the CCF. (Substance Abuse and Mental Health Services Administration (SAMHSA), HHS, 2017)
2. **Collection of test specimens is witnessed directly by a staff person who has been trained to prevent tampering and substitution of fraudulent specimens.**
  - a) The most effective way to ensure that the sample collection is valid and to avoid tampering is to ensure the collection is witnessed directly by someone who has been properly trained. (American Society of Addiction Medicine, 2013) (Cary, 2011)
3. **Breathalyzers must be calibrated according to certification standards established by the U.S. Departments of Transportation (DOT) and Health and Human Services (HHS) and/or the state toxicologist. The test must be administered by breath alcohol technicians who are trained in the use and interpretation of breath alcohol results. (U.S. Department of Justice, Office of Justice Programs, Drug Courts Program Office & American University, 2000)**
4. Barring exigent circumstances, participants are not permitted to undergo independent drug or alcohol testing in lieu of being tested by trained personnel assigned to or authorized by the mental health court.
  - a) Because specialized training is required to minimize tampering of test specimens, under most circumstances participants should be precluded from undergoing drug and alcohol testing by independent sources. In

exigent circumstances, such as when participants live a long distance from the test collection site, the drug court might designate independent professionals or laboratories to perform drug and alcohol testing. As a condition of approval, these professionals should be required to complete formal training on the proper collection, handling, and analyses of drug and alcohol test samples among drug court participants or comparable criminal justice populations. (NADCP V2, 2018)

- b) Mental health courts are also required to follow generally accepted chain-of-custody procedures when handling test specimens (ASAM, 2013; Cary, 2011; Meyer, 2011). Therefore, if independent professionals or laboratories perform drug and alcohol testing, they must be trained carefully to follow proper chain-of-custody procedures. (NADCP V2, 2018)

## VI. Chain of Custody and Results

### A. Best Practices

- 1. A chain-of-custody form is completed once a urine sample has been collected. This form ensures the identity and integrity of the sample through transport, testing and reporting of results. (Kadehjian, 2010)
- 2. Test results, including the results of confirmation testing, are available to the mental health court within 48 hours of sample collection.
  - a) A study of approximately 70 drug courts reported significantly greater reductions in criminal recidivism and significantly greater cost benefits when the teams received drug and alcohol test results within 48 hours of sample collection. (Carey, Mackin, & Finigan, 2012)

### B. Promising Practices

- 1. In order to comply with the 48-hour results best practice, mental courts that use alcohol tethers or in-home units should require download at least three times per week.

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# ***Chapter 8: Treatment***

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This chapter discusses treatment in mental health court. Specific topics include treatment entry, services, treatment duration, and medication-assisted treatment. Some of the topics in this chapter are also addressed in chapter 2 regarding participant supervision and compliance and in chapter 6 regarding population and admission.

## **I. General and Definition of Mental Health Courts**

### ***A. Best Practices***

1. “Mental health court” means any of the following:

**A court-supervised treatment program for individuals who are diagnosed by a mental health professional with having a serious mental illness, serious emotional disturbance, co-occurring disorder, or developmental disability. (MCL 600.1090(e)(i))**
2. **A clinically trained treatment representative is a core member of the mental health court team and regularly attends team meetings and status hearings.**
  - a) Recidivism may be reduced twofold when representatives from the drug court’s primary treatment agencies regularly attend staffing meetings and status review hearings. (Carey, Mackin, & Finigan, 2012)
3. Use multiple treatment facilities that allow for tailored treatment options for individual clients.
  - a) Mental health courts that were able to create extremely specialized classes and treatment saw a decrease in jurisdictional crime rate. (Bullard, 2014)
4. Treatment should address major criminogenic needs. Eight major criminogenic needs have been identified that contribute to the risk for recidivism among offenders and that are dynamic, or changeable via programmatic interventions.
  - a) Reductions in recidivism are proportional to the number of criminogenic needs addressed within offender treatment programs. (Peters, 2011)

## **II. Treatment Entry**

### ***A. Standard***

1. **Nothing in this chapter shall be construed to preclude a court from providing mental health services to an individual before he or she enters a plea and is accepted into the mental health court. (MCL 600.1094(2))**

## ***B. Best Practices***

- 1. Programs designed to adhere to the 10 essential elements of a mental health court promulgated by the bureau of justice assistance that include all of the following characteristics:**
  - a) Participants are identified, referred, and accepted into mental health courts, and then linked to community-based service providers as quickly as possible. (MCL 600.1090(e)(ii)(C))**
- 2. Mental health courts link participants to treatment as soon as possible.**
  - a) The initial placement of offenders with mental illness into the mental health court program, despite co-occurring substance use disorder and alcohol issues, lead to a rapid connection of clients to needed treatment and a decrease in jurisdictional crime rate. (Bullard, 2014)**
  - b) People mandated to treatment by the criminal justice system experience similar outcomes related to substance use and recidivism as those seeking treatment voluntarily. Retention in treatment is often higher among those coerced into treatment. Such participants perform as well as voluntary participants across a range of in-treatment indicators of progress (e.g., self-efficacy, coping skills, clinical symptoms, 12-step involvement, motivation for change). (Peters, 2011)**
- 3. Mental health courts should consider using the Risk Needs Responsivity (RNR) Model.**
  - a) The RNR model has led to better risk assessment instruments to predict criminal behavior and better treatment programs that match services to the level of risk and needs. As a result, the RNR model, when properly applied, has led to a reduction in recidivism. (Bonta & Andrews, 2007)**

## **III. Treatment Services**

### ***A. Best Practices***

- 1. Programs designed to adhere to the 10 essential elements of a mental health court promulgated by the bureau of justice assistance that include all of the following characteristics:**
  - a) Connect participants to comprehensive and individualized treatment supports and services in the community and strive to use, and increase the availability of, treatment and services that are evidence based. (MCL 600.1090(e)(ii)(F))**
- 2. Mental illness and substance use disorders are treated concurrently using an evidence-based curriculum that focuses on the mutually aggravating effects of the two conditions.**
  - a) Treating either disorder alone, without treating both disorders simultaneously is rarely, if ever, successful. Addiction and mental**

illness are reciprocally aggravating conditions, meaning that continued symptoms of one disorder are likely to precipitate relapse in the other disorder. (Chandler et al., 2004; Drake et al., 2008) For this reason, best practice standards for drug courts and other treatment programs require mental illness and addiction to be treated concurrently as opposed to consecutively. (Drake et al., 2004; Kushner et al., 2014; Mueser et al., 2003; Osher et al., 2012; Peters, 2008; Steadman et al., 2013)

- b) Whenever possible, both disorders should be treated in the same facility by the same professional(s) using an integrated treatment model that focuses on the mutually aggravating effects of the two conditions. The Substance Abuse and Mental Health Services Administration (SAMHSA, 2010) has published therapist toolkits to assist in delivering evidence-based integrated treatments for co-occurring substance-use and mental health disorders.
3. Participants receive psychiatric medication to treat serious mental health symptoms.
    - a) Psychiatric medication decreased the odds of negative termination. (Linhorst, 2015)
    - b) Participants who were prescribed psychiatric medications were seven times more likely to graduate successfully from drug court than participants with mental health symptoms who did not receive psychiatric medication. (Marlowe, 2016)
    - c) A participant should only be denied psychiatric medication if the decision is based on expert medical evidence from a qualified physician who has examined the participant and is adequately informed about the facts of the case. (Peters & Osher, 2004; Steadman et al., 2013)
  4. Mental health courts provide intensive monitoring, specialized treatment options, and program supports.
    - a) Courts that prioritized intensive monitoring, tailored treatment options, and additional program supports saw a decrease in jurisdictional crime rates. (Bullard, 2014)
  5. The mental health court offers trauma-informed services.
    - a) Although some participants with trauma histories do not require formal PTSD treatment, all staff members, including court personnel and other criminal justice professionals, need to be trauma-informed for all participants. (Bath, 2008) Staff members should remain cognizant of how their actions may be perceived by persons who have serious problems with trust, are paranoid or unduly suspicious of others' motives, or have been betrayed, sometimes repeatedly, by important persons in their lives. Safety, predictability and reliability are critical for treating such individuals. Several practice

recommendations should be borne in mind. (Bath, 2008; Covington, 2003; Elliott et al., 2005; Liang & Long, 2013) (National Association of Drug Court Professionals, 2015)

6. The mental health court offers gender-specific substance use disorder treatment groups.
  - a) A study of approximately 70 drug courts found that programs offering gender-specific services reduced criminal recidivism significantly more than those that did not. (Carey, Mackin, & Finigan, 2012)
  - b) In a randomized controlled experiment, female drug court participants with trauma histories who received manualized cognitive-behavioral PTSD treatments—Helping Women Recover (Covington, 2008) or Beyond Trauma (Covington, 2003)—in gender-specific groups were more likely to graduate from drug court, were less likely to receive a jail sanction in the program, and reported more than twice the reduction in PTSD symptoms than participants with trauma histories who did not receive PTSD treatment. (Messina et al., 2012)
  - c) Given the design of these studies, separating the effects of the PTSD treatments from the effects of the gender-specific groups is not possible. Studies have reported superior outcomes when women in the criminal justice system received various types of substance use disorder treatment in female-only groups. (Grella, 2008; Kissin et al., 2013; Liang & Long, 2013; Morse et al., 2013)
7. Participants are not incarcerated to achieve clinical or social service objectives such as obtaining access to detoxification services or sober living quarters.
  - a) Relying on in-custody substance use disorder treatment can reduce the cost-effectiveness of a drug court by as much as 45 percent. (Carey, Mackin, & Finigan, 2012)
  - b) Some drug courts may place participants in jail as a means of providing detoxification services or to keep them “off the streets” when adequate treatment is unavailable in the community. This practice is inconsistent with best practices, unduly costly, and unlikely to produce lasting benefits. (National Association of Drug Court Professionals, 2013, p. 42)

## IV. Evidence-Based Models of Treatment

### A. Best Practices

1. Treatment providers use evidence-based models and administer treatments that are documented in manuals and have been demonstrated to improve outcomes for addicted persons involved in the criminal justice system.
  - a) Outcomes from correctional rehabilitation are significantly better when evidence-based models are used, and fidelity to the model is

maintained through continuous supervision of the treatment providers.  
(National Association of Drug Court Professionals, 2013)

- b) Examples of manualized cognitive behavioral therapy (CBT) curricula that have been proven to reduce criminal recidivism among offenders include Moral Reconation Therapy (MRT), Reasoning and Rehabilitation (R&R), Thinking for a Change (T4C), relapse prevention therapy (RPT), and the Matrix Model. (National Association of Drug Court Professionals, 2013)

## V. Treatment Duration

### A. Best Practices

- 1. Participants receive a sufficient dosage and duration of treatment to address their needs.
  - a) Remaining in treatment for one year successfully engaged people with mental illness. (Denckla, 2001)
  - b) Providing continuous treatment for at least one year is associated with reduced recidivism. (Warren, 2007) The longer participants remain in treatment and the more sessions they attend, the better their outcomes. (National Association of Drug Court Professionals, 2013)

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# *Chapter 9: Education*

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Education and training are important components in any mental health court. This chapter discusses standards, best practices, and promising practices regarding education and training of the mental health court team.

## I. General

### *A. Standards*

1. Programs designed to adhere to the 10 essential elements of a mental health court promulgated by the bureau of justice assistance that include all of the following characteristics:
  - a) A team of criminal justice and mental health staff and treatment providers receives special, ongoing training and assists mental health court participants achieve treatment and criminal justice goals by regularly reviewing and revising the court process.  
(MCL 600.1090(e)(ii)(H))

### *B. Best Practices*

1. Team members participate in continuing education workshops on at least an annual basis to gain up-to-date knowledge about best practices on mental health court topics.
  - a) A multisite study involving more than 60 drug courts found that participation in annual training conferences was the single greatest predictor of program effectiveness. (Shaffer, 2006) (Shaffer, 2010)
2. New team members complete a formal orientation training as soon as practical after assuming their position<sup>18</sup>.
  - a) A multisite study of approximately 70 drug courts found that programs were over 50 percent more effective at reducing recidivism when they routinely provided formal orientation training for new staff. (Carey et al., 2012)
3. The mental health court judge attends current training events on legal and constitutional issues in mental health courts, judicial ethics, evidence-based substance use disorder and mental health treatment, behavior modification, and community supervision. Attendance at annual training conferences and workshops ensures contemporary knowledge about advances in the mental health court field.

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<sup>18</sup> See appendix D. This model document is also available at  
<https://courts.michigan.gov/Administration/admin/op/problem-solving-courts/Documents/ModelNewStaffOrientationMHC.pdf>

- a) Because judges have such a substantial impact on outcomes in drug court, continued training is especially important. (Carey, Mackin, & Finigan, 2012)
  - b) Outcomes are significantly better when the drug court judge attends annual training conferences on evidence-based practices in substance use disorder and mental health treatment and community supervision (Carey et al., 2008, 2012; Shaffer, 2010).
4. **Mental health professionals on the mental health court team are familiar with legal terminology and the criminal justice system, and criminal justice personnel on the team are familiar with treatment practices and protocols.**
- a) Mental health court professionals must familiarize themselves with legal terminology and the workings of the criminal justice system, just as criminal justice personnel must learn about treatment practices and protocols. (Thompson, 2007)
5. Before starting a mental health court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in mental health courts and develop fair and effective policies and procedures for the program.
- a) In drug courts where the teams participated in formal training prior to implementation, cost savings increased by two and a half times, and the programs were 50 percent more effective at reducing recidivism. (Carey, Pukstas, Waller, Mackin, & Finigan, 2008) (Carey, Mackin, & Finigan, 2012)
  - b) Drug courts that did not receive pre-implementation training had outcomes that were only negligibly different from traditional criminal justice programming. (Carey, Pukstas, Waller, Mackin, & Finigan, 2008)

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# ***Chapter 10: Program Evaluation***

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This chapter addresses program evaluation of a mental health court. Specific topics include collection and maintenance of information, evaluation, and program modification.

## **I. Collection and Maintenance of Information**

### ***A. Standards***

1. **Each mental health court shall collect and provide data on each individual applicant and participant and the entire program as required by the state court administrative office. The state court administrative office shall provide appropriate training to all courts entering data, as directed by the Supreme Court. (MCL 600.1099(1))**
2. **Each mental health court shall maintain files or databases on each individual participant in the program for review and evaluation as well as treatment, as directed by the state court administrative office. The information collected for evaluation purposes must include a minimum standard data set<sup>19</sup> developed and specified by the State Court Administrative Office. (MCL 600.1099(2))**

### ***B. Best Practices***

1. Mental health courts should maintain program data for evaluation purposes in an electronic database rather than paper files.
  - a) Drug courts are 65 percent more cost effective when they enter data for evaluations into an electronic database rather than storing it in paper files. (Carey, Mackin, & Finigan, 2012)
  - b) Michigan's Drug Court Case Management Information System can be accessed at <https://dccmis.micourt.org/default.aspx>.
2. Staff members are required to record information concerning the provision of services and in-program outcomes within 48 hours of the respective events. Timely and reliable data entry is required of each staff member and is a basis for evaluating staff job performance.
3. After 48 hours, errors in data entry have been shown to increase significantly. After one week, information is so likely to be inaccurate that it may be better to leave the data as missing than attempt to fill in gaps from faulty memory. (Marlowe, 2010)

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<sup>19</sup> See Appendix N. The minimum standard data set for Michigan mental health courts is also available at <http://courts.mi.gov/Administration/SCAO/OfficesPrograms/Documents/SpecialtyCourts/MentalHealthCourtDataStandards.pdf>.

## **II. Evaluation and Program Modification**

### ***A. Best Practices***

- 1. The mental health court monitors its adherence to best practice standards on at least an annual basis, develops a remedial action plan and timetable to rectify deficiencies, and examines the success of the remedial actions. Outcome evaluations describe the effectiveness of the mental health court in the context of its adherence to best practices.**
2. Adherence to best practices is generally poor in most sectors of the criminal justice and substance use disorder treatment systems. (Friedmann et al., 2007; Henderson et al., 2007; McLellan et al., 2003; Taxman et al., 2007) Programs infrequently deliver services that are proven to be effective and commonly deliver services which have not been subjected to careful scientific scrutiny. Over time, the quality and quantity of the services provided may decline precipitously. (Etheridge et al., 1995; Van Wormer, 2010) The best way for a mental health court to guard against these prevailing destructive pressures is to monitor its operations routinely, compare its performance to established benchmarks, and seek to align itself continually with best practices
  - a) Studies reveal that drug courts are significantly more likely to deliver effective services and produce positive outcomes when they hold themselves accountable for meeting empirically validated benchmarks for success. A multisite study involving approximately seventy drug courts found that programs had more than twice the impact on crime and were more than twice as cost-effective when they monitored their operations on a consistent basis, reviewed the findings as a team, and modified their policies and procedures accordingly. (Carey et al., 2008, 2012) Understanding what distinguishes effective drug courts from ineffective and harmful drug courts is now an essential goal for the field. Unless evaluators describe each drug court's adherence to best practices, there is no way to place that program's outcomes in context or interpret the significance of the findings. (NADCP V2)
3. Enlist the services of independent evaluators and implement appropriate recommended changes.
  - a) Programs that had external independent evaluators review their program and suggest changes and then implemented those changes were 100 percent more effective at reducing cost and 85 percent more effective in reducing recidivism than programs that did not. (Carey, Mackin, & Finigan, 2012)
4. Outcomes are examined for all eligible participants who entered the mental health court regardless of whether they graduated, withdrew, or were terminated from the program.
  - a) Outcomes must be examined for all eligible individuals who participated in the drug court regardless of whether they graduated, were terminated, or withdrew from the program. This is referred to as an intent-to-treat

analysis because it examines outcomes for all individuals whom the program initially set out to treat. Reporting outcomes for graduates alone is not appropriate because such an analysis unfairly and falsely inflates the apparent success of the program. For example, individuals who graduated from the drug court are more likely than terminated participants to have entered the program with less severe drug or alcohol problems, less severe criminal propensities, higher motivation for change, or better social supports. As a result, they might have been less likely to commit future offenses or relapse to substance use regardless of the services they received in drug court.

## ***B. Promising Practices***

1. Evaluate short-term outcomes frequently while participants are enrolled in the program.
  - a) The National Center for State Courts developed a list of performance measures ([Mental Health Court Performance Measures Implementation and User's Guide](#)) that mental health courts can use to measure their efficiency, efficacy, and achievement of program goals.
  - b) Short-term outcomes provide significant information about participants' clinical progress and the likely long-term impacts of the drug court on public health and public safety. Studies have consistently determined that post-program recidivism is reduced significantly when participants attend more frequent treatment and probation sessions, provide fewer drug-positive urine tests, remain in the program for longer periods of time, have fewer in-program technical violations and arrests for new crimes, and satisfy other conditions for graduation. (Gifford et al., 2014; Gottfredson et al., 2007, 2008; Huebner & Cobbina, 2007; Jones & Kemp, 2011; Peters et al., 2002) Drug courts should, therefore, monitor and report on these in-program outcomes routinely during the course of their operations. Several resources are available to help drug courts define and calculate.
2. Independent evaluators should examine your program's three to five year performance outcomes at least once every five years.
  - a) External evaluators should examine recidivism three years to five years after participants' program admission. Program admission should be the latest start date for the evaluation because that is when the drug court becomes capable of influencing participant behavior. (National Association of Drug Court Professionals, 2015)
  - b) While no specific research exists with regard to how frequently a program should be evaluated, a new evaluation is warranted when a program significantly changes its operations or has staff turnover. (National Association of Drug Court Professionals, 2015)

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# ***Chapter 11: Equity and Inclusion***

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## **I. Equity and Inclusion**

### ***A. Best Practices***

1. Individuals who have historically experienced sustained discrimination or reduced opportunities because of their race, ethnicity, gender, sexual orientation, sexual identity, physical or mental disability, religion, or socioeconomic status receive the same opportunities as other individuals to participate and succeed in mental health court.
  - a) Mental health courts are first and foremost courts, and the fundamental principles of due process and equal protection apply to their operations (Meyer, 2011). Mental health courts have an affirmative legal and ethical obligation to provide equal access to their services and equivalent treatment for all individuals.
2. Eligibility criteria for the mental health treatment court are nondiscriminatory in intent and impact. If an eligibility requirement has the unintended effect of differentially restricting access for members of groups that have historically experienced discrimination, the requirement is adjusted to increase the representation of such persons unless doing so would jeopardize public safety or the effectiveness of the mental health court.
  - a) Some commentators have suggested that unduly restrictive eligibility criteria might be partly responsible for the lower representation of minority persons in drug courts. (Belenko et al., 2011; O'Hear, 2009) Although there is no empirical evidence to confirm this hypothesis, drug courts must ensure that their eligibility criteria do not unnecessarily exclude minorities or members of groups that have historically experienced discrimination. If an eligibility criterion has the unintended impact of differentially restricting access to the drug court for such persons, then extra assurances are required that the criterion is necessary for the program to achieve effective outcomes or protect public safety.
3. The mental health court regularly monitors whether member of groups that have historically experienced discrimination complete the program at equivalent rates to other participants. If completion rates are significantly lower for members of a group that have historically experienced discrimination, the mental health court team investigates the reasons for the disparity, develops a remedial action plan, and evaluates the success of the remedial actions.
  - a) Numerous studies have reported that a significantly smaller percentage of African-American or Hispanic participants graduated successfully

from drug court as compared to non-Hispanic Caucasians. (Finigan, 2009; Marlowe, 2013) These findings are not universal, however. A smaller but growing number of evaluations has found no differences in outcomes or even superior outcomes for racial minorities as compared to Caucasians. (Brown, 2011; Cissner et al., 2013; Fulkerson, 2012; Saum et al., 2001; Somers et al., 2012; Vito & Tewksbury, 1998) Nevertheless, African-Americans appear less likely to succeed in a plurality of drug courts as compared to their nonracial minority peers. These findings require drug courts to determine whether racial or ethnic minorities or members of other groups that have historically experienced discrimination are experiencing poorer outcomes in their programs as compared to other participants and to investigate and remediate any disparities that are detected.

4. Members of groups that have historically experienced discrimination receive the same levels of care and quality of treatment as other participants with comparable clinical needs. The mental health court administers evidence-based treatments that are effective for use with members of groups that have historically experienced discrimination who are represented in the mental health court population.
  - a) The National Association of Drug Court Professionals (NADCP) minority resolution directs drug courts to remain vigilant to potential differences in the quality or intensity of services provided to minority participants and to institute corrective measures where indicated. In one study, outcomes were improved significantly for young African-American male participants when an experienced African-American clinician delivered a curriculum that addressed issues commonly confronting these young men, such as negative racial stereotypes. (Vito & Tewksbury, 1998) Similarly, a study of approximately 70 drug courts found that programs offering gender-specific services reduced criminal recidivism significantly more than those that did not. (Carey et al., 2012) Studies indicate the success of culturally tailored treatments depends largely on the training and skills of the clinicians delivering the services. (Castro et al., 2010; Hwang, 2006) Unless the clinicians attend comprehensive training workshops and receive ongoing supervision on how to competently deliver the interventions, outcomes are unlikely to improve for women and minority participants.
5. Except where necessary to protect a participant from harm, members of groups that have historically experienced discrimination receive the same incentives and sanctions as other participants for comparable achievements or infractions. The mental health court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants.
  - a) The NADCP minority resolution places an affirmative obligation on drug courts to continually monitor whether sanctions and incentives

are being applied equivalently for minority participants and to take corrective actions if discrepancies are detected.

6. Members of groups that have historically experienced discrimination receive the same legal dispositions as other participants for completing or failing to complete the mental health court program.
  - a) Due process and equal protection require drug courts to remain vigilant to the possibility of sentencing disparities in their programs and to take corrective actions where indicated.
7. Each member of the mental health court team attends up-to-date training events on recognizing implicit cultural biases and correcting disparate impacts for members of groups that have historically experienced discrimination.
  - a) One of the most significant predictors of positive outcomes for racial and ethnic minority participants in substance use disorder treatment is culturally sensitive attitudes on the part of the treatment staff, especially managers and supervisors. (Ely & Thomas, 2001; Guerrero, 2010) When managerial staff value diversity and respect their clients' cultural backgrounds, the clients are retained significantly longer in treatment and services are delivered more efficiently. (Guerrero & Andrews, 2011) Cultural-sensitivity training can enhance counselors' and supervisors' beliefs about the importance of diversity and the need to understand their clients' cultural backgrounds and influences. (Cabaj, 2008; Westermeyer, & Dickerson, 2008)

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## *Appendix A*

### *Michigan Adult Mental Health Court Statute*

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#### **600.1090 Definitions.**

As used in this chapter:

- (a) "Co-occurring disorder" means having 1 or more disorders relating to the use of alcohol or other controlled substances of abuse as well as any serious mental illness, serious emotional disturbance, or developmental disability. A diagnosis of co-occurring disorders occurs when at least 1 disorder of each type can be established independent of the other and is not simply a cluster of symptoms resulting from 1 disorder.
- (b) "Court funding unit" means that term as defined in section 151e of the revised judicature act of 1961, 1961 PA 236, MCL 600.151e.
- (c) "Developmental disability" means that term as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a.
- (d) "Domestic violence offense" means any crime alleged to have been committed by an individual against his or her spouse or former spouse, an individual with whom he or she has a child in common, an individual with whom he or she has had a dating relationship, or an individual who resides or has resided in the same household.
- (e) "Mental health court" means any of the following:
  - (i) A court-supervised treatment program for individuals who are diagnosed by a mental health professional with having a serious mental illness, serious emotional disturbance, co-occurring disorder, or developmental disability.
  - (ii) Programs designed to adhere to the 10 essential elements of a mental health court promulgated by the bureau of justice assistance that include all of the following characteristics:
    - (A) A broad-based group of stakeholders representing the criminal justice system, mental health system, substance abuse treatment system, any related systems, and the community guide the planning and administration of the court.
    - (B) Eligibility criteria that address public safety and a community's treatment capacity, in addition to the availability of alternatives to pretrial detention for defendants with mental illnesses, and that take into account the relationship between mental illness and a defendant's offenses, while allowing the individual circumstances of each case to be considered.
    - (C) Participants are identified, referred, and accepted into mental health courts, and then linked to community-based service providers as quickly as possible.
    - (D) Terms of participation are clear, promote public safety, facilitate the defendant's engagement in treatment, are individualized to correspond to the level of risk that each defendant presents to the community, and provide for positive legal outcomes for those individuals who successfully complete the program.
    - (E) In accordance with the Michigan indigent defense commission act, 2013 PA 93, MCL 780.981 to 780.1003, provide legal counsel to indigent defendants to explain program requirements, including voluntary participation, and guides defendants in decisions about program involvement. Procedures exist in the mental health court to address, in a timely fashion, concerns about a defendant's competency whenever they arise.

(F) Connect participants to comprehensive and individualized treatment supports and services in the community and strive to use, and increase the availability of, treatment and services that are evidence based.

(G) Health and legal information are shared in a manner that protects potential participants' confidentiality rights as mental health consumers and their constitutional rights as defendants. Information gathered as part of the participants' court-ordered treatment program or services are safeguarded from public disclosure in the event that participants are returned to traditional court processing.

(H) A team of criminal justice and mental health staff and treatment providers receives special, ongoing training and assists mental health court participants achieve treatment and criminal justice goals by regularly reviewing and revising the court process.

(I) Criminal justice and mental health staff collaboratively monitor participants' adherence to court conditions, offer individualized graduated incentives and sanctions, and modify treatment as necessary to promote public safety and participants' recovery.

(J) Data are collected and analyzed to demonstrate the impact of the mental health court, its performance is assessed periodically, and procedures are modified accordingly, court processes are institutionalized, and support for the court in the community is cultivated and expanded.

(f) "Participant" means an individual who is admitted into a mental health court.

(g) "Serious emotional disturbance" means that term as defined in section 100d of the mental health code, 1974 PA 258, MCL 330.1100d.

(h) "Serious mental illness" means that term as defined in section 100d of the mental health code, 1974 PA 258, MCL 330.1100d.

(i) "Violent offender" means an individual who is currently charged with, or has been convicted of, an offense involving the death of, or a serious bodily injury to, any individual, whether or not any of these circumstances are an element of the offense, or with criminal sexual conduct in any degree.

**600.1091 Mental health court; participants from other jurisdictions; certification by state court administrative office required.**

(1) The circuit court or the district court in any judicial circuit or a district court in any judicial district may adopt or institute a mental health court pursuant to statute or court rules. However, if the mental health court will include in its program individuals who may be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines, the circuit or district court shall not adopt or institute the mental health court unless the circuit or district court enters into a memorandum of understanding with each participating prosecuting attorney in the circuit or district court district, a representative or representatives of the community mental health services programs, a representative of the criminal defense bar, and a representative or representatives of community treatment providers. The memorandum of understanding also may include other parties considered necessary, including, but not limited to, a representative or representatives of the local court funding unit or a domestic violence service provider program that receives funding from the state domestic violence prevention and treatment board. The memorandum of understanding must describe the role of each party.

(3) A court that has adopted a mental health court under this section may accept participants from any other jurisdiction in this state based upon the residence of the participant in the receiving jurisdiction, the nonavailability of a mental health court in the jurisdiction where the participant is charged, and the availability of financial resources for both operations of the mental health court program and treatment services. A mental health court may refuse to accept participants from other jurisdictions.

(4) Beginning January 1, 2018, a mental health court operating in this state, or a circuit court in any judicial circuit or the district court in any judicial district seeking to adopt or institute a mental health court, must be certified by the state court administrative office. The state court administrative office shall establish the procedure for certification. Approval and certification under this subsection of a mental health court is required to begin or to continue the operation of a mental health court under this chapter. The state court administrative office shall not recognize and include a mental health court that is not certified under this subsection on the statewide official list of mental health courts. The state court administrative office shall include a mental health court certified under this subsection on the statewide official list of mental health courts. A mental health court that is not certified under this subsection shall not perform any of the functions of a mental health court, including, but not limited to, any of the following functions:

- (a) Charging a fee under section 1095.
- (b) Discharging and dismissing a case as provided in section 1098.
- (c) Receiving funding under section 1099a.

#### **600.1092 Hiring or contracting with treatment providers.**

A mental health court may hire or contract with licensed or accredited treatment providers, in consultation with the local community mental health service provider, and other such appropriate persons to assist the mental health court in fulfilling its requirements under this chapter.

#### **600.1093 Admission to mental health court.**

(1) Each mental health court shall determine whether an individual may be admitted to the mental health court. No individual has a right to be admitted into a mental health court. Admission into a mental health court program is at the discretion of the court based on the individual's legal or clinical eligibility. An individual may be admitted to mental health court regardless of prior participation or prior completion status. However, in no case shall a violent offender be admitted into mental health court.

(2) In addition to admission to a mental health court under this chapter, an individual who is eligible for admission under this chapter may also be admitted to a mental health court under any of the following circumstances:

- (a) The individual has been assigned the status of youthful trainee under section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11.
- (b) The individual has had criminal proceedings against him or her deferred and has been placed on probation under any of the following:
  - (i) Section 7411 of the public health code, 1978 PA 368, MCL 333.7411.
  - (ii) Section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.
  - (iii) Section 350a or 430 of the Michigan penal code, 1931 PA 328, MCL 750.350a and 750.430.

(3) To be admitted to a mental health court, an individual shall cooperate with and complete a preadmission screening and evaluation assessment and shall submit to any future evaluation assessment as directed by the mental health court. A preadmission screening and evaluation assessment shall include all of the following:

- (a) A review of the individual's criminal history. A review of the law enforcement information network may be considered sufficient for purposes of this subdivision unless a further review is warranted. The court may accept other verifiable and reliable information from the prosecution or defense to complete its review and may require the individual to submit a statement as to whether or not he or she has previously been admitted to a mental health court and the results of his or her participation in the prior program or programs.
- (b) An assessment of the risk of danger or harm to the individual, others, or the community.
- (c) A mental health assessment, clinical in nature, and using standardized instruments that have acceptable reliability and validity, meeting diagnostic criteria for a serious mental illness, serious emotional disturbance, co-occurring disorder, or developmental disability.
- (d) A review of any special needs or circumstances of the individual that may potentially affect the individual's ability to receive mental health or substance abuse treatment and follow the court's orders.

(4) Except as otherwise permitted in this chapter, any statement or other information obtained as a result of participating in a preadmission screening and evaluation assessment under subsection (3) is confidential and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be used in a criminal prosecution, unless it reveals criminal acts other than, or inconsistent with, personal drug use.

(5) The court may request that the department of state police provide to the court information contained in the law enforcement information network pertaining to an individual applicant's criminal history for the purposes of determining an individual's eligibility for admission into the mental health court and general criminal history review.

**600.1094 Admission to mental health court of individual charged in criminal case; conditions; mental health services before entry of plea; withdrawal of plea; additional rights of victim under William Van Regenmorter crime victim's rights act.**

(1) If the individual is charged in a criminal case his or her admission to mental health court is subject to all of the following conditions:

- (a) The individual, if an adult, pleads guilty, no contest, or be convicted of any criminal charge on the record.
- (b) The individual waives, in writing, the right to a speedy trial and, with the agreement of the prosecutor, the right to a preliminary examination.
- (c) The individual signs a written agreement to participate in the mental health court. If the individual is an individual who has been assigned a guardian, the parent or legal guardian is required to sign all documents for the individual's admission in the mental health court.

(2) Nothing in this chapter shall be construed to preclude a court from providing mental health services to an individual before he or she enters a plea and is accepted into the mental health court.

(3) An individual who has waived his or her right to a preliminary examination, who has pled guilty or no contest and who is subsequently not admitted to a mental health court may withdraw his or her plea and is entitled to a preliminary examination.

(4) In addition to rights accorded a victim under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, the mental health court shall permit any victim of the offense or offenses of which the individual is charged as well as any victim of a prior offense of which that individual was convicted to submit a written statement to the court regarding the advisability of admitting the individual into the mental health court.

**600.1095 Admission to mental health court; requirements; jurisdiction; fee.**

(1) Upon admitting an individual into a mental health court, all of the following apply:

(a) For an individual who is admitted to a mental health court based upon having criminal charges currently filed against him or her and who has not already pled guilty or no contest the court shall accept the plea of guilty or no contest.

(b) For an individual who pled guilty or no contest to, or admitted responsibility for, criminal charges for which he or she was admitted into the mental health court, the court shall do either of the following:

(i) In the case of an individual who pled guilty or no contest to criminal offenses that are not traffic offenses and who may be eligible for discharge and dismissal under the agreement for which he or she was admitted into mental health court upon successful completion of the mental health court program, the court shall not enter a judgment of guilt.

(ii) In the case of an individual who pled guilty to a traffic offense or who pled guilty to an offense but may not be eligible for discharge and dismissal pursuant to the agreement with the court and prosecutor upon successful completion of the mental health court program, the court shall enter a judgment of guilt.

(iii) Pursuant to the agreement with the individual and the prosecutor, the court may either delay further proceedings as provided in section 1 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.1, or proceed to sentencing, as applicable, and place the individual on probation or other court supervision in the mental health court program with terms and conditions according to the agreement and as considered necessary by the court.

(2) Unless a memorandum of understanding made pursuant to section 1088 between a receiving mental health court and the court of original jurisdiction provides otherwise, the original court of jurisdiction maintains jurisdiction over the mental health court participant as provided in this chapter until final disposition of the case, but not longer than the probation period fixed under section 2 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.2.

(3) The mental health court may require an individual admitted into the court to pay a reasonable mental health court fee that is reasonably related to the cost to the court for administering the mental health court program as provided in the memorandum of understanding. The clerk of the mental health court shall transmit the fees collected to the treasurer of the local funding unit at the end of each month.

**600.1096 Services provided by mental health court; exit evaluation; confidentiality of information obtained from assessment, treatment, or testing.**

(1) A mental health court shall provide a mental health court participant with all of the following:

- (a) Consistent and close monitoring of the participant and interaction among the court, treatment providers, probation, and the participant.
  - (b) If determined by the mental health court to be necessary or appropriate, periodic and random testing for the presence of any nonprescribed controlled substance or alcohol in a participant's blood, urine, or breath, using to the extent practicable the best available, accepted, and scientifically valid methods.
  - (c) Periodic evaluation assessments of the participant's circumstances and progress in the program.
  - (d) A regimen or strategy of appropriate and graduated but immediate rewards for compliance and sanctions for noncompliance, including, but not limited to, the possibility of incarceration or confinement.
  - (e) Mental health services, substance use disorder services, education, and vocational opportunities as appropriate and practicable.
- (2) Upon an individual's completion of the required mental health court program participation, an exit evaluation should be conducted in order to assess the individual's continuing need for mental health, developmental disability, or substance abuse services.
- (3) Any statement or other information obtained as a result of participating in assessment, treatment, or testing while in a mental health court is confidential and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be used in a criminal prosecution, unless it reveals criminal acts other than, or inconsistent with, personal controlled substance use.

**600.1097 Participation in and completion of mental health court program; compliance with court orders; accusation of new crime; judge discretion to terminate; payment of costs; objection to written individual plan of services; notice.**

- (1) In order to continue to participate in and successfully complete a mental health court program, an individual shall comply with all court orders, violations of which may be sanctioned at the court's discretion.
- (2) If the participant is accused of a new crime, the judge shall have the discretion to terminate the participant's participation in the mental health court program.
- (3) The court shall require that a participant pay all court fines, court costs, court fees, restitution, and assessments and pay all, or make substantial contributions toward payment of, the costs of the treatment and the mental health court program services provided to the participant, including, but not limited to, the costs of drug or alcohol testing or counseling. However, except as otherwise provided by law, if the court determines that the payment of court fines, court fees, or drug or alcohol testing expenses under this subsection would be a substantial hardship for the individual or would interfere with the individual's treatment, the court may waive all or part of those court fines, court fees, or drug or alcohol testing expenses. The cost of treatment shall be governed by chapter 8 of the mental health code, 1974 PA 258, MCL 330.1800 to 330.1842, if applicable.
- (4) The responsible mental health agency shall notify the court of a participant's formal objection to his or her written individual plan of services developed under section 712(2) of the mental health code, 1974 PA 258, MCL 330.1712. However, the court is not obligated to take any action in response to a notice received under this subsection.

**600.1098 Successful completion or termination; findings on the record or statement in court file; applicable law; discharge and dismissal of proceedings; criteria; discharge and dismissal of domestic violence offense; circumstances; discharge and dismissal under subsection (3); duties of court upon successful completion of probation or court supervision; termination or failure of participant to complete program; duties of court; records closed to public inspection and exempt from disclosure.**

(1) Upon completion or termination of the mental health court program, the court shall find on the record or place a written statement in the court file indicating whether the participant completed the program successfully or whether the individual's participation in the program was terminated and, if it was terminated, the reason for the termination.

(2) If an individual is participating in a mental health court under section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11, section 7411 of the public health code, 1978 PA 368, MCL 333.7411, section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a, or section 350a or 430 of the Michigan penal code, 1931 PA 328, MCL 750.350a and 750.430, the court shall proceed under the applicable section of law. There may only be 1 discharge or dismissal under this subsection.

(3) Except as provided in subsection (4), the court, with the agreement of the prosecutor and in conformity with the terms and conditions of the memorandum of understanding under section 1091, may discharge and dismiss the proceedings against an individual who meets all of the following criteria:

- (a) The individual has participated in a mental health court for the first time.
- (b) The individual has successfully completed the terms and conditions of the mental health court program.
- (c) The individual is not required by law to be sentenced to a correctional facility for the crimes to which he or she has pled guilty.
- (d) The individual has not previously been subject to more than 1 of the following:
  - (i) Assignment to the status of youthful trainee under section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11.
  - (ii) The dismissal of criminal proceedings against the individual under section 7411 of the public health code, 1978 PA 368, MCL 333.7411, section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a, or section 350a or 430 of the Michigan penal code, 1931 PA 328, MCL 750.350a and 750.430.

(4) The court may order a discharge and dismissal of a domestic violence offense only if all of the following circumstances apply:

- (a) The individual has not previously had proceedings dismissed under section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.
- (b) The domestic violence offense is eligible to be dismissed under section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.
- (c) The individual fulfills the terms and conditions imposed under section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a, and the discharge and dismissal of proceedings are processed and reported under section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.

(5) A discharge and dismissal under subsection (3) shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. There may only be 1 discharge and dismissal under

subsection (3) for an individual. The court shall send a record of the discharge and dismissal to the criminal justice information center of the department of state police, and the department of state police shall enter that information into the law enforcement information network with an indication of participation by the individual in a mental health court. All records of the proceedings regarding the participation of the individual in the mental health court under subsection (3) are closed to public inspection from the date of deferral and are exempt from public disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, but shall be open to the courts of this state, another state, or the United States, the department of corrections, law enforcement personnel, and prosecutors only for use in the performance of their duties or to determine whether an employee of the court, department, law enforcement agency, or prosecutor's office has violated his or her conditions of employment or whether an applicant meets criteria for employment with the court, department, law enforcement agency, or prosecutor's office. The records and identifications division of the department of state police shall retain a nonpublic record of an arrest, court proceedings, and the discharge and dismissal under this subsection.

(6) Except as provided in subsection (2), (3), or (4), if an individual has successfully completed probation or other court supervision, the court shall do the following:

- (a) If the court has not already entered an adjudication of guilt or responsibility, enter an adjudication of guilt.
- (b) If the court has not already sentenced the individual, proceed to sentencing pursuant to the agreement under which the individual was admitted into the mental health court.
- (c) Send a record of the conviction and sentence or the finding or adjudication of responsibility and disposition to the criminal justice information center of the department of state police.

(7) For a participant whose participation is terminated or who fails to successfully complete the mental health court program, the court shall enter an adjudication of guilt, if the entry of guilt was delayed or deferred under section 1094, and shall then proceed to sentencing or disposition of the individual for the original charges to which the individual pled guilty prior to admission to the mental health court. Except for program termination due to the commission of a new crime, failure to complete a mental health court program shall not be a prejudicial factor in sentencing. All records of the proceedings regarding the participation of the individual in the mental health court shall remain closed to public inspection and exempt from public disclosure as provided in subsection (5).

#### **600.1099 Mental health court; collection of data; maintenance of files or databases; standards; disclosure.**

(1) Each mental health court shall collect and provide data on each individual applicant and participant and the entire program as required by the state court administrative office. The state court administrative office shall provide appropriate training to all courts entering data, as directed by the supreme court.

(2) Each mental health court shall maintain files or databases on each individual participant in the program for review and evaluation as well as treatment, as directed by the state court administrative office. The information collected for evaluation purposes must include a minimum standard data set developed and specified by the state court administrative office.

(3) As directed by the supreme court, the state court administrative office shall provide standards for mental health courts in this state, including, but not limited to, developing a list of approved

measurement instruments and indicators for data collection and evaluation. These standards must provide comparability between programs and their outcomes.

(4) The information collected under this section regarding individual applicants to mental health court programs for the purpose of application to that program and participants who have successfully completed mental health courts is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

**600.1099a Mental health court; expenditure of funds by supreme court; quarterly reports; advisory committee; technical and training assistance.**

(1) The supreme court is responsible for the expenditure of state funds for the establishment and operation of mental health courts.

(2) Each mental health court shall report quarterly to the state court administrative office in a manner prescribed by the state court administrative office on the state funds received and expended by that mental health court.

(3) The state court administrative office may establish an advisory committee. If established, this committee shall be separate from and independent of the state's drug treatment court advisory committee.

(4) As directed by the supreme court, the state court administrative office shall, in conjunction with the department of community health, assure that training and technical assistance are available and provided to all mental health courts.

## *Appendix B*

### *Model Mental Health Court Discharge Statement*

STATE OF MICHIGAN [court number and type]	MHC Program Discharge <sup>20</sup>	CASE NO. [case/file number]
<p>In the matter of: [defendant name and DOB] [defendant address]</p> <p>On this [number] day of [month], [year] the defendant:</p> <ul style="list-style-type: none"> <li>6. Successfully completed the MHC program</li> <li>7. Voluntarily withdrew from the program</li>   <li>8. Was discharged from the program as unsuccessful due to:           <ul style="list-style-type: none"> <li>a. Violation of the program</li> <li>b. Conviction of new criminal charges</li> <li>c. Being a risk to public safety</li> <li>d. Other: [specify]</li> </ul> </li> </ul>		
<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <span style="font-size: 1.5em; font-weight: bold;">P</span>		_____ Honorable [name of MHC judge]
		_____ Date

<sup>20</sup> This model document is provided by SCAO as a resource and for informational purposes only to facilitate the operation of problem solving courts by local units of government and courts in compliance with statutory requirements. SCAO's sharing this model document is not intended (and cannot be construed) as legal advice.

Since there might be a delay in updating the model document on the web page and updating the model document in this manual, the most up-to-date version of the model document is always available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/MHC-DischargeStatement.pdf>

# *Appendix C*

## *Model Multi-Party Consent for Release of Information*

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### **Model Document Information**

This model document is provided by the State Court Administrative Office (SCAO) as a resource and is for informational purposes only. It is intended only to assist courts with operating a problem-solving court and to comply with the problem-solving court statutes. This model document is not intended (and cannot be construed) as legal advice.

Customize the sections that are in bold and highlighted in yellow. Once customized, the court should remove the brackets, bold, and highlighting. The parties listed in the model document do not include agencies that are likely a “Qualified Service Organization” (QSO) as defined in [42 CFR section 2.11](#). If there is an agency that the program would exchange confidential information with, and that agency is not a QSO<sup>21</sup> as defined in 42 CFR, you will need to add that agency as a party in this form.

As a model document, this is generic in nature and should be modified to fit your program.

Before developing your confidentiality documents please review the University of New Hampshire’s School of Law/Institute for Health Policy & Practice’s “Substance Use Disorder Treatment Confidentiality Boot Camp” guide located at <https://chhs.unh.edu/sites/default/files/substance-use-disorder-privacy-part-2-idn-workbook-unh-1017.pdf>.

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<sup>21</sup> Page 56 of the “Substance Use Disorder Treatment Confidentiality Boot Camp” guide has an example of the written agreement required for a QSO.

**[Name of problem-solving court]**  
**Multiple-Party Consent for Release of Information**

Participant's Full Name: \_\_\_\_\_ DOB: \_\_\_\_\_

**I authorize the following parties:**

1. [Name of problem-solving court],
2. [Name of county] MDOC probation/parole department
3. [Name of district court] probation department
4. [Name of county] prosecutor's office
5. [Name of treatment agency]
6. [Name of law enforcement agency]
7. [Name of law firm/office]

**To Communicate with and disclose to one another the following information:**

**INFORMATION TO BE SHARED**

1. Name, address, and other personal identifying information of the participant.
2. [Name of problem-solving court] program assessments (GAIN, COMPAS, risk and needs, etc.).
3. [Name of problem-solving court] program behavior summaries and updates.
4. Treatment information, including assessments, attendance, progress and compliance reports, treatment plans, and discharge summaries.
5. Drug and alcohol screening, testing, confirmation results, and payment information.
6. Health information.
7. Reportable communicable disease information, including HIV, sexually transmitted infections, hepatitis, and tuberculosis.
8. Health plan or health benefits information.
9. Electronic monitoring information, including compliance and payment information.
10. Other (specify, if any): \_\_\_\_\_

**Note: I authorize all of the foregoing information to be shared unless I indicate here, by number, one or more categories of information not to be shared:** \_\_\_\_\_

**PURPOSE AND USE OF DISCLOSURE**

**The purposes for the disclosures authorized by this form are:**

- To assess the participant's need for substance use, mental health, or developmental disabilities services and treatment.
- To provide, manage, and coordinate [name of problem-solving court] program and substance use, mental health, and developmental disabilities services and treatment for the participant.

- To develop a Person-Centered Plan, Service Plan, and/or Treatment Plan for the participant.
- To make dispositional recommendations for a court-involved participant.
- To monitor payment for services, and establish financial assistance if determined necessary.
- To improve service and treatment outcomes for participants involved in the [name of problem-solving court] program.
- To monitor my participation in the [name of problem-solving court] program and my compliance with the program rules.
- To provide information for evaluation of the [Name of problem-solving court] program.
- Other (please specify): \_\_\_\_\_

## **REDISCLOSURE AND CONFIDENTIALITY**

Once health care information is disclosed pursuant to this signed authorization, I understand that the federal health privacy law (45 CFR, Parts 160 and 164) protecting health information may not apply to the recipient of the information and, therefore, may not prohibit the recipient from redisclosing information to others. However, substance-abuse treatment information protected by federal law (42 CFR, Part 2), shall remain confidential and must not be redisclosed by the recipient except as authorized by those laws or this authorization<sup>22</sup>. The federal rules restrict any use of this information to criminally investigate or prosecute any alcohol or drug abuse patient.

## **CONSENT EXPIRATION**

The date, event, or condition upon which consent expires must ensure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

**This consent for release of information shall expire upon my discharge from the [name of problem-solving court] program.**

## **REVOCATION**

I understand that I may revoke this consent, orally or in writing, at any time except to the extent that action has been taken in reliance on it. I also understand that I do not have to fill out this form. If I do not fill it out, I cannot participate in the [Name of problem-solving court] program, but can still get health insurance, treatment, and other medical benefits from a health care provider.

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<sup>22</sup> An individual within the criminal justice system who receives patient information under 42 CFR § 2.35 may re-disclose and use it only to carry out that individual's official duties with regard to the patient's conditional release or other action in connection with which the consent was given.

I also understand that if I refuse to consent to disclosure, or attempt to revoke my consent prior to the expiration of this consent such action is grounds for immediate termination from the [name of problem-solving court] program.

## CONFIDENTIALITY RIGHTS

Federal law protects the confidentiality of treatment records under 42 CFR, Section 2.1 through Section 2.67; and Section 290dd-2. This means that:

- Treatment information is ordinarily kept confidential.
- Review hearings are held in open and public courtrooms, and although the court attempts to minimize confidential information in court, it is possible that an observer could connect a participant's identity with the fact that he or she is in treatment as a condition of participation in the [name of problem-solving court] program or that confidential information may be revealed. I specifically consent to a potential disclosure to third persons.
- Staffing meetings, which are held before review hearings, are typically closed to the public. Confidential information may be discussed by the [name of problem-solving court] team members at a staffing meeting. I understand that if a non-team member is invited to participate in a staffing meeting they must receive my consent prior to observation.
- It is a crime to violate confidentiality requirements, and the participant may report such violations to Michigan's attorney general at 517-373-1110.
- Notwithstanding this confidentiality requirement, covered information may be released under specified circumstances and may include communication with administration and qualified service organizations working with the [name of problem-solving court] program, outside auditors, central registries and researchers.
- The restrictions on disclosure and use in the regulations in 42 CFR part 2 do not apply to:
  1. Communication with law enforcement agencies or officials regarding a crime committed on program premises or against program personnel
  2. The reporting under state law of incidents of suspected child abuse and neglect to the appropriate state or local authorities. However, the restrictions continue to apply to the original substance use disorder patient records maintained by the part 2 program including their disclosure and use for civil or criminal proceedings which may arise out of the report of suspected child abuse and neglect
  3. Court orders signed pursuant to 42 CFR part 2 for release of specific information
  4. Disclosure to medical personnel if there is a determination that a medical emergency exists, i.e., there is a situation that poses an immediate threat to the health of any individual and requires immediate medical intervention - Information disclosed to the medical personnel who are treating such a medical emergency may be rediscovered by such personnel for treatment purposes as needed
  5. Reporting an immediate threat to the health or safety of an individual or the public to law enforcement if patient-identifying information is not disclosed

**I acknowledge that I have been advised of my rights, have received a copy of the advisement, and have had the benefit of legal counsel or have voluntarily waived the right to an attorney. I am not under the influence of drugs or alcohol. I fully understand my rights and I am signing this Consent voluntarily.**

**SIGNATURE CONSENTING TO RELEASE OF INFORMATION**

---

Participant signature

---

Date

---

Staff witness signature

---

Date

---

Staff witness printed name

**SIGNATURE CONFIRMING PARTICIPANT WAS ADVISED OF CONFIDENTIALITY RIGHTS BOTH VERBALLY AND IN WRITING**

---

Participant signature

---

Date

---

Staff witness signature

---

Date

---

Staff witness printed name

Parts of this form were adapted from:

Mark F Botts, L. B. (2015, April 7). <https://www.sog.unc.edu/publications/reports/north-carolina-juvenile-justice-%E2%80%93-behavioral-health-information-sharing-guide>. Retrieved April 11, 2018, from <https://www.sog.unc.edu/sites/www.sog.unc.edu/files/Information%20Sharing%20Guide%20FINAL%20PDF%20to%20authors%202015-06-25.pdf>

## ***Appendix D***

### ***New Staff/Team Member Orientation***

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#### New Staff/Team Member Orientation

#### **[Name of mental health court program]<sup>23</sup>**

Welcome to your new role with [name of mental health court program]. Please complete the following checklist to learn about Mental Health Courts and how your role on the team can positively change lives.

- Reviewed the [name of mental health court program] Policy Manual
- Reviewed the [name of mental health court program] Participant Handbook
  - Understand the Phase Structure and Phase Requirements of the Program
- Reviewed the Revised Judicature Act 236 of 1961 Chapter 10B, Mental Health Court  
[http://www.legislature.mi.gov/\(S\(nbvb44jni3qyzul03svnlv1o\)\)/documents/mcl/pdf/mcl-236-1961-10B..pdf](http://www.legislature.mi.gov/(S(nbvb44jni3qyzul03svnlv1o))/documents/mcl/pdf/mcl-236-1961-10B..pdf)
- Reviewed the Following Lessons:

All:

- Incentives and Sanctions (Adult Drug Court Lessons<sup>24</sup>)
- Confidential Information in Drug Court (Adult Drug Court Lessons<sup>2</sup>)
- Cultural Competency (Adult Drug Court Lessons<sup>2</sup>)
- Procedural Fairness (Adult Drug Court Lessons<sup>2</sup>)
- Implementing Evidence-Based Practice (Adult Drug Court Lessons<sup>2</sup>)

Judge:

- Role of the Judge (Adult Drug Court Lessons<sup>2</sup>)
- Introduction to Behavioral Health CSG Justice Center  
<https://www.youtube.com/watch?v=cloQG3-tSLI&feature=youtu.be>

Defense Attorney:

- Role of the Defense Attorney (Adult Drug Court Lessons<sup>2</sup>)
- Introduction to Behavioral Health CSG Justice Center  
<https://www.youtube.com/watch?v=cloQG3-tSLI&feature=youtu.be>

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<sup>23</sup> This model document is provided by SCAO as a resource and for informational purposes only to facilitate the operation of problem-solving courts by local units of government and courts in compliance with certification requirements. SCAO's sharing this model document is not intended (and cannot be construed) as legal advice.

<sup>24</sup> Treatment Courts Online <https://treatmentcourts.org>

Treatment Provider:

- Role of the Treatment Provider (Adult Drug Court Lessons<sup>2</sup>)
- Introduction to Criminal Justice CSG Justice Center  
<https://www.youtube.com/watch?v=4s68Y72wEYc>

Coordinator:

- Role of the Coordinator (Adult Drug Court Lessons<sup>25</sup>)
- Maximizing Participant Interactions (Adult Drug Court Lessons<sup>3</sup>)
- Introduction to Behavioral Health CSG Justice Center  
<https://www.youtube.com/watch?v=cloQG3-tSLI&feature=youtu.be>

Prosecutor:

- Role of the Prosecutor (Adult Drug Court Lessons<sup>3</sup>)
- Introduction to Behavioral Health CSG Justice Center  
<https://www.youtube.com/watch?v=cloQG3-tSLI&feature=youtu.be>

Supervision Officer:

- Role of the Probation Officer (Adult Drug Court Lessons<sup>3</sup>)
- Maximizing Participant Interactions (Adult Drug Court Lessons<sup>3</sup>)
- Introduction to Behavioral Health CSG Justice Center  
<https://www.youtube.com/watch?v=cloQG3-tSLI&feature=youtu.be>

Reviewed the Following Publications:

- Adult Mental Health Court Standards, Best Standards and Promising Practices  
<https://courts.michigan.gov/Administration/SCAO/Resources/Documents/bestpractice/MHC-BPManual.pdf>
- Improving Responses to People with Mental Illness: The Essential Elements of a Mental Health Court<sup>26</sup>  
[https://www.bja.gov/Publications/MHC\\_Essential\\_Elements.pdf](https://www.bja.gov/Publications/MHC_Essential_Elements.pdf)

Attended the Following Trainings:

- SCAO's DCCMIS Training (Held Tri-annually) – for team members entering data
- SCAO's Fundamentals of Problem Solving Courts (Held in March and October)
- Other:
- Other:

Parts of this document are based on the NDCI New Staff Training Guide available at  
<https://www.ndci.org/wp-content/uploads/2018/08/NDCI-New-Staff-Training-Guide.pdf>

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<sup>25</sup> Treatment Courts Online <https://treatmentcourts.org>

<sup>26</sup> Bureau of Justice Assistance, The Council of State Governments Justice Center, 2007

## **Appendix E**

# **Model Confidentiality Policies and Procedures**

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### **[Name of problem-solving court program]**

### **Policies and Procedures Regarding Access to and Use of Confidential Records<sup>27</sup>**

#### **1. Access and Use of Written and Electronic Confidential Records**

- a. Except as otherwise permitted in the Michigan problem-solving court statute, any statement or other information obtained as a result of participating in a preadmission screening and evaluation assessment is confidential and is exempt from disclosure under the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be used in a criminal prosecution, unless it reveals criminal acts other than, or inconsistent with, personal drug use.
- b. Confidential treatment court information and records may not be used to initiate or to substantiate any criminal charges against a participant or to conduct any investigation of a participant.
- c. Written/paper program files of open cases shall be kept in a locked filing cabinet in **[specify secure location]**, with access limited to authorized individuals.
- d. Upon expiration of consent for release of information written/paper program files shall be moved to **[specify secure location kept where only program staff may access files]** and shall be kept in a locked filing cabinet.
- e. Pre-court staffing meeting reports shall be returned to the **[title of problem-solving court staff]** upon conclusion of the meeting.
- f. Electronic data that is subject to confidentiality standards is protected by security walls and is password protected. Access is limited, and disclosure/rediscovery is subject to approval by the treatment court judge and team.
- g. The **[name of problem-solving court]** program stores electronic confidential information in the Drug Court Case Management Information System (DCCMIS). All users of DCCMIS shall sign a DCCMIS user confidentiality agreement prior to being assigned a username and password, and are only given access to information as permitted under 42 CFR part 2 regulations.
- h. Upon expiration of consent for release of information confidential records on computers are protected by changing the password or otherwise restricting access.
- i. Generally, unless access to a court file is restricted by statute, court rule or an order pursuant to MCR 8.119(I), any person may inspect pleadings and other

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papers in a court clerk's office and may obtain copies as provided in MCR 8.119(J).

- j. Responses to all requests for access to nonpublic and limited-access records shall be made per the following resources:
  - i. [Michigan Trial Court Records Management Standards Data, Case, and Other Court Records](#) – Section 2: Access to Records.<sup>28</sup>
  - ii. [Chart of Nonpublic and Limited-Access Court Records](#).<sup>29</sup>
  - iii. [Michigan Supreme Court Administrative Order 2006-2](#)<sup>30</sup> - Privacy Policy and Access to Records.
- k. Records of participants may be released to parties per a written consent in compliance with 42 CFR § 2.31.
- l. Any confidential information disclosed under a signed consent to release information, shall be accompanied by a written Notice of Prohibition against Redisclosure with the language required in 42 CFR § 2.32.
- m. Confidential electronic data that may be disclosed under 42 CFR regulations may be transmitted through DCCMIS, encrypted email, or through non-encrypted email after the confidential information has been de-identified.
- n. Confidential information may be disclosed to a Qualified Service Organization (QSA) as necessary for the QSA to provide services to the **[name of problem-solving court program]**.
- o. Confidential information may be released under specified circumstances, and may include medical emergency, crimes on the premises, crimes against staff, administration working with the **[name of problem solving court]**, and outside auditors, central registries, and researchers.
- p. Confidential information relating to the abuse or neglect of a child, state child abuse laws, court orders signed pursuant to 42 CFR part 2 for release of specific information, state laws relating to cause of death and duty to protect others, and to warn of serious imminent harm, is not protected by federal law and may be disclosed without consent.
- q. Staffing meetings may be observed by staff from other courts for the purpose of planning their own problem-solving court program, and by SCAO staff. All observers of the meeting shall sign a confidentiality agreement prior to the start of the meeting, and all participants discussed at the meeting must sign a **[name of problem-solving court program]** consent to release information, with the observing parties listed, prior to the staffing meeting.

## 2. Record Retention and Disposal Schedule

- a. Records shall be retained as directed under General Schedules [#13 - District Courts](#)<sup>31</sup>, [#14 - Probate Courts](#)<sup>32</sup>, and [#15 – Circuit Courts](#)<sup>33</sup>.

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<sup>28</sup> [https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/cf\\_stds.pdf](https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/cf_stds.pdf)

<sup>29</sup> [https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/cf\\_chart.pdf](https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/cf_chart.pdf)

<sup>30</sup> <https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/Documents/Administrative Orders.pdf> page 208; FAQ for 2006-02 is located at <https://courts.michigan.gov/Administration/SCAO/Resources/Documents/Administrative-Memoranda/2006-04.pdf>

<sup>31</sup> [https://www.michigan.gov/documents/dtmb/RMS\\_GS13\\_573186\\_7.pdf](https://www.michigan.gov/documents/dtmb/RMS_GS13_573186_7.pdf)

<sup>32</sup> [https://www.michigan.gov/documents/dtmb/RMS\\_GS14\\_597247\\_7.pdf](https://www.michigan.gov/documents/dtmb/RMS_GS14_597247_7.pdf)

<sup>33</sup> [https://www.michigan.gov/documents/dtmb/RMS\\_GS15\\_597248\\_7.pdf](https://www.michigan.gov/documents/dtmb/RMS_GS15_597248_7.pdf)

- b. Records shall be removed, de-identified, transferred, and destroyed as directed by the [Michigan Trial Court Records Management Standards Data, Case, and Other Court Records.](#)<sup>34</sup>

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<sup>34</sup> [https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/cf\\_stds.pdf](https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/cf_stds.pdf)

## **Appendix F**

### **Model DCCMIS User Confidentiality Agreement**

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#### **DCCMIS User Confidentiality Agreement<sup>35</sup>**

This Confidentiality Agreement applies to [name of problem-solving court program]’s employees, members of the [name of problem-solving court program] team, and all other professionals working with the [name of problem-solving court program] hereinafter referred to as “users”, who have direct access to the Drug Court Case Management Information System (DCCMIS).

User understands and agrees:

6. All network passwords are confidential and shall not be disclosed to any third party including other authorized users of the DCCMIS.
7. The [name of problem-solving court program] DCCMIS administrator shall provide user with the network password necessary to gain access to the DCCMIS network.
8. In the event that user reasonably suspects or becomes aware of any unauthorized use or disclosure of user’s network password or other confidential user identification, user shall immediately change the password, and shall immediately report the unauthorized use or disclosure to [name of problem-solving court program]’s DCCMIS administrator.
9. [Name of problem-solving court program]’s DCCMIS administrator, The State Court Administrative Office (SCAO), and Advanced Computer Technologies (ACT) shall have the right to suspend or revoke user’s network access without notice in the event of any breach or suspected breach of confidentiality.
10. To be accountable for all entries of client information, orders and data entered by user into DCCMIS under user’s password.
11. To access client information and/or records only for the following purposes in accordance with applicable state and federal laws and regulations:
  - a. coordinating services with ancillary and other treatment service providers;
  - b. reviewing client’s progress in program areas as needed per user’s role on the team;
  - c. conducting statistical research, or audits;
  - d. conducting quality assurance, or review activities; and,
  - e. For DCCMIS administrators requirements involving verification and other operational purposes.
12. To not disclose or re-disclose any client information and/or records to any other entity or individual without the prior written authorization of the participant or the participant’s authorized representative.

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13. SCAO and ACT may conduct unannounced audits of user's access to its information systems, software applications, network and data on a periodic basis to monitor appropriate use of and compliance with the obligations stated above.
14. Any violation of participant confidentiality may result in termination of access to DCCMIS.
15. Information may be disclosed in summary, statistical, or other form, which does not directly or indirectly identify particular program participants or related parties.

I understand that alcohol and/or drug treatment records and mental health records are protected under the Federal regulations governing Confidentiality and Drug Abuse Patient Records, 42 CFR Part 2, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR Parts 160 & 164, and cannot be disclosed without the written consent of the [name of program] participant or a person legally authorized to represent the participant unless otherwise provided for by the regulations.

---

Signature of DCCMIS user

---

Date

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Printed name of DCCMIS user

Attached:      Penalties under 42 CFR Part 2 and Penalties under HIPAA

## Penalties Under 42CFR Part 2

### **§2.3 Purpose and effect.**

(a) *Purpose.* Under the statutory provisions quoted in §§2.1 and 2.2, these regulations impose restrictions upon the disclosure and use of alcohol and drug abuse patient records which are maintained in connection with the performance of any federally assisted alcohol and drug abuse program. The regulations specify:

- (1) Definitions, applicability, and general restrictions in subpart B (definitions applicable to §2.34 only appear in that section);
- (2) Disclosures which may be made with written patient consent and the form of the written consent in subpart C;
- (3) Disclosures which may be made without written patient consent or an authorizing court order in subpart D; and
- (4) Disclosures and uses of patient records which may be made with an authorizing court order and the procedures and criteria for the entry and scope of those orders in subpart E.

### **(b) Effect.**

- (1) These regulations prohibit the disclosure and use of patient records unless certain circumstances exist. If any circumstances exists under which disclosure is permitted, that circumstance acts to remove the prohibition on disclosure but it does not compel disclosure. Thus, the regulations do not require disclosure under any circumstances.
- (2) These regulations are not intended to direct the manner in which substantive functions such as research, treatment, and evaluation are carried out. They are intended to insure that an alcohol or drug abuse patient in a federally assisted alcohol or drug abuse program is not made more vulnerable by reason of the availability of his or her patient record than an individual who has an alcohol or drug problem and who does not seek treatment.
- (3) Because there is a criminal penalty (a fine—see 42 U.S.C. 290dd-2, and 42 CFR 2.4) for violating the regulations, they are to be construed strictly in favor of the potential violator in the same manner as a criminal statute (see *M. Kraus & Brothers v. United States*, 327 U.S. 614, 621–22, 66 S. Ct. 705, 707–08 (1946)).

### **§2.4 Criminal penalty for violation.**

Under 42 U.S.C. [42 U.S.C. 290dd](#)–2, any person who violates any provision of those statutes or these regulations shall be fined not more than \$500 in the case of a first offense, and not more than \$5,000 in the case of each subsequent offense.

## **§2.5 Reports of violations.**

(a) The report of any violation of these regulations may be directed to the United States Attorney for the judicial district in which the violation occurs.

(b) The report of any violation of these regulations by a methadone program may be directed to the Regional Offices of the Food and Drug Administration.

## **Penalties Under HIPAA**

### **42USC1320d-5 General penalty for failure to comply with requirements and standards**

(a) General penalty

(1) In general

Except as provided in subsection (b), the Secretary shall impose on any person who violates a provision of this part a penalty of not more than \$100 for each such violation, except that the total amount imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed \$25,000.

### **42USC1320d-6 Wrongful disclosure of individually identifiable health information**

(a) Offense

A person who knowingly and in violation of this part-

- (1) uses or causes to be used a unique health identifier;
- (2) obtains individually identifiable health information relating to an individual; or
- (3) discloses individually identifiable health information to another person,

shall be punished as provided in subsection (b).

(b) Penalties

A person described in subsection (a) shall-

- (1) be fined not more than \$50,000, imprisoned not more than 1 year, or both;
- (2) if the offense is committed under false pretenses, be fined not more than \$100,000, imprisoned not more than 5 years, or both; and
- (3) if the offense is committed with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, be fined not more than \$250,000, imprisoned not more than 10 years, or both.

## ***Appendix G*** ***Model Confidentiality MOU***

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### **[Name of problem-solving court]**

### **Memorandum of Understanding Regarding Confidentiality<sup>36</sup>**

#### **I. Parties**

This agreement facilitates the exchange of information, between parties of the agreement, in order to effectively coordinate services and provide oversight to participants involved in the criminal justice and treatment systems. It is made and entered into, as of the date set forth below, by and between the following parties whose representatives have signed the agreement:

1. [Name of problem solving court]
2. [Name of county] MDOC
3. [Name of district court] probation department
4. [Name of county] prosecutor's office
5. [Name of treatment agency]
6. [Name of law enforcement agency]
7. [Name of law firm/office, or name of defense attorney on team]

#### **II. Purposes**

To foster trust and cooperation, by ensuring that each component of the problem-solving court is aware of how the other components will access, share, and use information.

To be used as a blueprint to explain how information will be distributed within the problem-solving court.

To improve cooperation, integration, and collaboration at the service delivery, administrative, and evaluative levels for the benefit of clients involved with both the criminal justice and treatment systems

Now, therefore, the parties agree that this memorandum of understanding reflects their understanding and agreement as to the permitted and prohibited sharing and uses of information in the legal process.

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<sup>36</sup> This model document is provided by State Court Administrator's Office (SCAO) as a resource and is for informational purposes only, to assist courts with operating a problem-solving court and to comply with the problem-solving court statute. This model document is not intended (and cannot be construed) as legal advice.

### **III. Definitions**

1. Code of Federal Regulations (CFR) is the general and permanent rules and regulations published by the executive departments and agencies of the federal government.
2. Confidential information means any information whether oral or recorded in any form or medium, that:
  - a. Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.
  - b. Would identify a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person; and is drug abuse information obtained by a federally assisted drug abuse program after March 20, 1972 (part 2 program), or is alcohol abuse information obtained by a federally assisted alcohol abuse program after May 13, 1974 (part 2 program); or if obtained before the pertinent date, is maintained by a part 2 program after that date as part of an ongoing treatment episode which extends past that date; for the purpose of treating a substance use disorder, making a diagnosis for that treatment, or making a referral for that treatment.
  - c. Is in the record of mental health services of a recipient, and other information acquired in the course of providing mental health services to a recipient.
3. Disclose or disclosure means a communication of participant identifying information, the affirmative verification or denial of another person's communication of participant identifying information, or the communication of any information from the record of a participant who has been identified.

### **IV. Each of the Parties agrees:**

1. That clients involved with both the criminal justice and treatment systems shall be afforded appropriate levels of treatment, with the least burdensome delivery of services;
2. That improvements to the quality and effectiveness of services can be supported by the sharing of relevant and necessary information;
3. That the privacy and confidentiality of information regarding clients involved with the criminal justice and treatment systems is an important legal and ethical obligation;
4. That this agreement shall be interpreted in light of, and consistent with governing state and federal laws;
5. To promote a mutual understanding of the allowances and limitations outlined in 42 CFR Part 2, and 45 CFR Parts 160 and 164, and other applicable state and federal laws;

6. That information identifying the clients or any information regarding client treatment, including information shared at team meetings, should only be shared pursuant to 42 CFR part 2, 45 CFR parts 160 and 164, and Section 290dd-2, and only to the degree it is necessary for the recipient of the information to perform his or her role;
7. To disclose confidential information to any party of this agreement who is designated on a validly executed Consent for Release of Confidential Information in accordance with the terms and limitations of the Consent for Release of Information form;
8. That they are bound by the redisclosure provisions of 42 CFR part 2, 45 CFR parts 160 and 164, and Section 290dd-2, and any disclosure of a participant's confidential information is accompanied by one of the following written statements:
  - a. This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR, Part 2). The federal rules prohibit you from making any further disclosure of information in this record that identifies a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed or as otherwise permitted by 42 CFR, Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose (see § 2.31). The federal rules restrict any use of the information to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at §§ 2.12(c)(5) and 2.65; or
  - b. 42 CFR, Part 2 prohibits unauthorized disclosure of these records.
9. To work together with the other agencies listed in this Memorandum of Understanding (MOU) to facilitate information sharing and to ensure that confidential information is disseminated only to the appropriate persons or agencies, as provided by law or otherwise pursuant to a lawfully obtained consent form;
10. To train relevant staff in procedures for interagency collaboration and information sharing;
11. To comply with relevant state and federal law, and other applicable local rules and ethical standards, which relate to records use, dissemination, and retention/destruction as specified in “[Name of problem-solving court program policies and procedures regarding access to and use of confidential records]”;
12. To develop appropriate internal written policies to ensure that confidential information concerning clients is disseminated only to appropriate personnel;
13. To acknowledge that members of the problem-solving court team may be subject to legal and ethical restrictions on disclosure, which in some situations must be observed

notwithstanding either the participant's consent to release information or the likelihood that disclosure would benefit the court and the participant. It is not improper for members of the team to withhold information when they are required to do so [specify any information that specific team members cannot share];

14. To ensure that any statements made by an individual during evaluation and intake are protected, pursuant to the individual's privilege against self-incrimination and right to counsel under the Fifth and Sixth Amendments to the United States Constitution, and MCL 600.1064(4);
15. That defense attorneys of the problem-solving court program shall make it clear to participants and other team members whether they will share participant communications with the team<sup>37</sup>.
16. To ensure that information obtained pursuant to the problem solving court agreement and the program's consent for release of information will not be used to initiate or substantiate any criminal charges against a participant except as otherwise authorized by 42 CFR Part 2 Section 2.12(d)(1), with those exceptions including child neglect or abuse and crimes committed on program premises or against program personnel.

## V. Administration of the Memorandum of Understanding

### 1. Term of Agreement:

This agreement is effective for one year upon the date of the final signature and shall renew automatically for subsequent one-year terms unless otherwise modified. Any signatory to this agreement may terminate participation upon thirty days' notice to all other signatories to the agreement.

### 2. Modification of Agreement:

Modification of this Agreement shall be made by formal consent of all parties, pursuant to the issuance of a written amendment, signed and dated by the parties, prior to any changes.

### 3. Other Interagency Agreements:

This agreement does not preclude or preempt each of the agencies from individually entering into an agreement with one or more parties to this agreement, nor does it supplant any existing agreement between such parties.

### 4. Signatures of Parties to this Agreement:<sup>38</sup>

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<sup>37</sup> Certification requires that the attorney's role is clarified for the team regarding what will and will not be communicated to each party regarding information received from the team and the participant

<sup>38</sup> The confidentiality MOU should be signed by all team members and, if applicable, an authorizing agent for their agency

In witness whereof, the parties hereto have entered into this agreement as evidenced by their signatures below. A certified copy of the agreement shall be provided to each signatory to the Agreement. The original Agreement shall be filed with the Clerk of the [court number and type] Court.

Honorable [name], Chief Judge, [court number and type] Court

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Signature

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Date

Honorable [name], [name of problem solving court] Judge, [court number and type] Court

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Signature

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Date

[Name], Program Coordinator, [name of problem solving court]

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Signature

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Date

[Name and title], team member, [name of county] prosecutor's office

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Signature

---

Date

[Name and title], authorizing official on behalf of [name of county] prosecutor's office

---

Signature

---

Date

[Name], defense attorney, team member, [name of law firm]

---

Signature

---

Date

[Name and title], authorizing official on behalf of [name of law firm]

---

Signature

---

Date

[Name], MDOC agent, team member, MDOC

\_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_

[Name and title], authorizing official on behalf of MDOC

\_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_

[Name], district court probation officer, team member, [court number] district court

\_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_

[Name and title], authorizing official on behalf of [court number] district court

\_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_  
[Name and title], team member, [name of law enforcement agency]

\_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_

[Name and title], authorizing official on behalf of [name of law enforcement agency]

\_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_

[Name and title], [agency name], team member, Community Mental Health Services provider

\_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_

[Name and title], [agency name], authorizing official on behalf of Community Mental Health Services provider

\_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_

[Name and title], [agency name], team member, [type of treatment/ancillary] services provider

\_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_

[Name and title], [agency name], authorizing official on behalf of [type of treatment/ancillary] services provider

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Signature

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Date

Parts of this document were modified from Mark F Botts, L. B. (2015, April 7).

<https://www.sog.unc.edu/publications/reports/north-carolina-juvenile-justice-%E2%80%93-behavioral-health-information-sharing-guide>. Retrieved April 11, 2018, from [https://www.sog.unc.edu:](https://www.sog.unc.edu/)  
<https://www.sog.unc.edu/sites/www.sog.unc.edu/files/Information%20Sharing%20Guide%20FINAL%20PDF%20to%20authors%202015-06-25.pdf>

## **VI. Attachments**

Attachment 1: **[Name of problem solving court]** procedures and/or policies regarding confidentiality

Attachment 2: **[Name of problem solving court]** consent to release information (form)

## ***Appendix H***

### ***Model Visitor Confidentiality and Consent for Release of Information***

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This model document is provided by the State Court Administrative Office (SCAO) as a resource and is for informational purposes only to assist courts with operating a problem-solving court to comply with the problem-solving court statute. This model document is not intended (and cannot be construed) as legal advice.

A court can customize the sections that are in bold and highlighted in yellow. Once customized, the court should remove the brackets, bold, and highlighting.

As a model document, it is generic in nature and should be modified to fit your program.

Before developing your confidentiality documents, please review the University of New Hampshire’s School of Law/Institute for Health Policy & Practice’s “Substance Use Disorder Treatment Confidentiality Boot Camp” guide located at <https://chhs.unh.edu/sites/default/files/substance-use-disorder-privacy-part-2-idn-workbook-unh-1017.pdf>.

If all participants do not sign the consent to release confidential information prior to the staffing meeting, visitors should not be attending the portion of the staffing meetings where those participants are discussed. Instead visitors may attend the portion of the staff meeting where only participants with signed releases are discussed.

## **[Name of PSC] Program Visitor Confidentiality Form**

I, \_\_\_\_\_, as a guest of the [name of PSC] Program, recognize my responsibility to maintain the confidentiality of the [name of PSC] Program, and hereby agree that:

1. Any and all information discussed at the [name of PSC] staffing team meeting must remain confidential and shall not be revealed to anyone.
2. If I receive a copy of case reports for a staffing team meeting, I will return all reports in their entirety to a team member at the end of the staffing team meeting.
3. I shall abide by the [name of PSC] program's Memorandum of Understanding (MOU) regarding confidentiality (attached).
4. I understand that alcohol and/or drug treatment records and mental health records are protected under the federal regulations governing Confidentiality and Drug Abuse Patient Records, 42 CFR, Part 2, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR, Parts 160 & 164, and I shall abide by the confidentiality provisions of the law.
5. By signing this form, I confirm that I have read and agree to the above statements.

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Signature of guest

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Date

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Printed name of guest

**[Name of PSC program]**

**Consent for Release of Information  
Observation of Staffing Meeting**

Participant's Full Name: \_\_\_\_\_ DOB: \_\_\_\_\_

I authorize the following parties:

1. **[Name of problem solving court],**
2. **[Name of county] MDOC probation/parole department**
3. **[Name of district court] probation department**
4. **[Name of county] prosecutor's office**
5. **[Name of treatment agency]**
6. **[Name of law enforcement agency]**
7. **[Name of law firm/office]**

To release information to the following parties:

1. Stakeholders of **[name of PSC program observing meeting]**
2. **[Name of agency evaluating program]**

To disclose information discussed at the staffing meeting, held on **[date]**, which may include the following information:

**INFORMATION TO BE SHARED**

1. Name, address, and other personal identifying information of the participant.
2. **[Name of PSC program]** assessments (GAIN, COMPAS, risk and needs, etc.).
3. **[Name of PSC program]** program assessments (GAIN, COMPAS, risk and needs, etc.).
4. **[Name of PSC program]** program behavior summaries and updates.
5. Treatment information, including assessments, attendance, progress and compliance reports, treatment plans, and discharge summaries.

6. Drug and alcohol screening, testing, confirmation results, and payment information.
7. Health information.
8. Reportable communicable disease information, including HIV, sexually transmitted infections, hepatitis, and tuberculosis.
9. Health plan or health benefits information.
10. Electronic monitoring information, including compliance and payment information.
11. Information required to obtain a restricted license through the ignition interlock program.
12. Other (specify, if any): \_\_\_\_\_

**Note: I authorize all of the foregoing information to be shared unless I indicate here, by number, one or more categories of information not to be shared: \_\_\_\_\_**

#### **PURPOSE OF USE AND DISCLOSURE**

The purposes for the disclosures authorized by this form are:

1. To assist [name of observing court/agency] in planning, implementation, or enhancement of their problem-solving court.
2. For the evaluation or audit of [name of PSC program].
3. Other (please specify): \_\_\_\_\_.

#### **REDISCLOSURE AND CONFIDENTIALITY**

Once health care information is disclosed pursuant to this signed authorization, I understand that the federal health privacy law (45 CFR, Parts 160 and 164) protecting health information may not apply to the recipient of the information and, therefore, may not prohibit the recipient from redisclosing information to others. However, substance abuse treatment information protected by federal law (42 CFR., Part 2), shall remain confidential and must not be redisclosed by the recipient except as authorized by those laws or this authorization. The federal rules restrict any use of this information to criminally investigate or prosecute any alcohol or drug abuse patient.

#### **CONSENT EXPIRATION**

The date, event, or condition upon which consent expires must ensure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

This consent for release of information shall expire on [date of the day following observed staffing].

## **REVOCATION**

I understand that I may revoke this consent, orally or in writing, at any time except to the extent that action has been taken in reliance on it. I also understand that I do not have to fill out this form. If I do not fill it out I can still get health insurance, and treatment and other medical benefits from a health care provider.

I also understand that if I refuse to consent to disclosure, or attempt to revoke my consent prior to the expiration of this consent such action is grounds for immediate termination from the **[Name of PSC program]** program.

## **SIGNATURE CONSENTING TO RELEASE OF INFORMATION**

---

Participant signature

---

Date

---

Staff witness signature

---

Date

---

Staff witness printed name

# *Appendix I*

## *Model Program MOU*

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### **Memorandum of Understanding<sup>39</sup>**

[Name of mental health court]

#### **I. Parties**

This agreement is made and entered into as of the date set forth below, by and between the following parties whose representatives have signed the agreement:

1. [Name of mental health court]
2. [Name of circuit court]
3. [Name of county] MDOC Probation/Parole Department
4. [Name of district court]
5. [Name of district court] Probation Department
6. [Name of county] Prosecutor's Office
7. [Name of community mental health agency on team], treatment provider
8. [Name of community treatment provider agency on team], Community Treatment Provider<sup>40</sup>
9. [Name of law enforcement agency on team]
10. [Name of law firm/office, or name of defense attorney on team], Defense Attorney

#### **II. Purpose**

The purpose of this Memorandum of Understanding (MOU) is to describe duties and allocate responsibilities for members of the [name of mental health court] team. The MOU also establishes team member responsibilities and requirements for maintaining compliance with the Michigan Mental Health Court Statute (MCL 600.1090).

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<sup>39</sup> This model memorandum of understanding is provided by SCAO as a resource and for informational purposes only to facilitate the operation of problem solving courts by local units of government and program compliance with statutory requirements. SCAO's sharing this model agreement is not intended (and cannot be construed) as legal advice - parties to the agreement should consult with their attorneys before entering into any agreement or contract.

<sup>40</sup> Per MCL 600.1091, "...if the mental health court will include in its program individuals who may be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines..." the court may not adopt a mental health court unless the court enters into "...a memorandum of understanding with each participating prosecuting attorney in the circuit or district court ..., a representative or representatives of the community mental health services programs, a representative of the criminal defense bar, and a representative or representatives of community treatment providers."

### **III. Terms/Definitions**

1. Ex parte communication: Any communication, relevant to a legal proceeding, between a judge and a party to the proceeding or any other person about the case, outside of the presence of the opposing party or the opposing party's attorney, that is not on the record.
2. Participant: Any person referred to the [name of mental health court], currently being screened as a candidate for [name of mental health court] (including those who are ultimately denied entry to the program), currently participating in [name of mental health court], or someone who has been discharged from the [name of mental health court].
3. Policies and Procedures Manual: A policy and procedure manual documents program policies and procedures designed to influence and determine all major decisions and actions, and all activities that take place within the boundaries set by them. Procedures are the specific methods employed to express policies in action in day-to-day operations of the organization.
4. Staffing meetings: Team meetings where participants' progress is discussed and options for incentives, sanctions, treatment, and phase changes are evaluated.
5. Stakeholders: A person, group or organization that has interest or concern in an organization.
6. Treatment services: Any services provided by a licensed clinician or by an employee of an agency providing therapeutic services for substance use disorder, mental health, or developmental disabilities.

### **IV. Mission of the [name of mental health court]**

We agree that the mission of the [name of mental health court] to successfully link those with a serious mental illness, serious emotional disturbance, or a developmental disorder to the appropriate treatment services while maintaining public safety and reducing recidivism.

### **V. Guiding Principles of the [name of mental health court]**

There are ten elements under which the respective agencies work cooperatively:

1. Develop a broad-based group of stakeholders to guide the administration of the program.
2. Target individuals whose mental illness is related to their crime and meet both clinical and legal criteria for admission.
3. Identify and link participants in a timely manner to the appropriate treatment services.
4. Promote positive legal outcomes by well-defined terms of participation that facilitate engagement in treatment that corresponds to the level of risk to the community.
5. Address competency issues in a timely fashion when they arise and provide legal counsel to assist with admission and program requirements.

6. Provide comprehensive and individualized treatment while striving to utilize evidence-based services.
7. Protect participants' health and legal information in compliance with federal confidentiality laws while making information available to the court team.
8. Maintain a court team that is comprised of court, criminal justice, and mental health staff, along with treatment and service providers who maintain ongoing specialized training. The team is responsible for assisting a participant to achieve their goals.
9. Collaboratively monitor program requirements while offering graduated incentives and sanctions to modify behavior.
10. Periodically evaluate the program's functioning and effectiveness to ascertain local support by reviewing data that is collected.

## **VI. Roles of the Parties of the [insert name of mental health court]<sup>41</sup>**

13. All parties shall:
  - i. Participate as a team member, operating in a non-adversarial manner.
  - ii. On an annual basis, attend current training events on legal and constitutional issues in mental health courts, evidence-based substance abuse and mental health treatment, behavior modification, and/or community supervision.
  - iii. Help to identify potential and eligible mental health court participants.
  - iv. Provide feedback, suggestions, and ideas on the operation of the mental health court.
  - v. Attend staffing meetings, and provide input on incentives and sanctions for participants.
  - vi. Share information as necessary, and in compliance with 42 CFR and HIPAA, to appraise participants' progress in, and compliance with, the conditions of mental health court.
  - vii. Ensure that they, all employees, and other agents shall maintain the confidentiality of all records generated during the term of this MOU in accordance with all applicable state and federal laws and regulations, including, but not limited to, 42 CFR Part 2, HIPAA, and 290dd-2.
14. The Mental Health Court Judge shall:
  - i. Serve as the leader of the team.
  - ii. Preside over status review hearings.
  - iii. Engage the community to generate local support for the mental health court.
  - iv. Communicate with the participants in a positive manner and make final decisions regarding incentives and sanctions and program continuation.

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<sup>41</sup> Per MCL 600.1091(1) "The memorandum of understanding shall describe the role of each party."

- v. Consider the perspective of all team members before making final decisions that affect participants' welfare or liberty interests, and explain the rationale for such decisions to team members and participants.
- vi. Rely on the expert input of duly trained treatment professionals when imposing treatment related conditions on the participants.
- vii. Provide program oversight and ensure communication and partnership with treatment

15. The Prosecuting Attorney shall:

- i. Provide legal screening of eligible participants.
- ii. Attend review hearing.
- iii. Represent the interests of the prosecutor and law enforcement.
- iv. Advocate for public safety.
- v. Advocate for victim interest.
- vi. Hold participants accountable for meeting their obligations.
- vii. If a plea agreement is made based on completion of the program, complete appropriate court documents for resultant modification(s) upon participant's successful completion of the program (reduced charge, nolle prosequi, etc.).
- viii. Help resolve other pending legal cases that impact participants' legal status or eligibility.

16. The Project Coordinator shall:

- i. Arrange for additional screenings of persons aside from the prosecutor's legal screening.
- ii. Attend review hearings.
- iii. Answer inquiries from defense attorneys on possible eligibility.
- iv. Enter data into the DCCMIS system.
- v. Liaison with non-treatment agencies that are providing services to the participants.
- vi. Ensure that new team members are provided with a formal training within three months of joining the team on the topics of confidentiality, and his or her role on the team, and ensure the new team member is provided with copies of all program policy and procedure manuals, the participant handbook, and a copy of all current memoranda of understanding.

17. The Probation Officers and Court Case Managers<sup>42</sup> shall:

- i. Attend review hearings.
- ii. Provide probation oversight for all program participants.
- iii. Work with the program coordinator in supervising and monitoring the individuals in the program.
- iv. Prepare presentence reports and perform drug and alcohol tests as needed.
- v. Schedule probation violations or show cause hearings for participants who have violated the program rules.

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<sup>42</sup> You may want to split this if you have both positions, or delete one title if you only have one position

vi. Enter data into the DCCMIS system.

18. The Defense Counsel Representative shall:

- i. Ensure that a defense counsel representative is present at all staffing meetings to avoid ex parte communication.
- ii. Attend review hearings.
- iii. Ensure that defendants' procedural and due process rights are followed.
- iv. Ensure that the participant is treated fairly and that the mental health court team follows its own rules.
- v. When appropriate, and without breaching attorney-client privilege, encourage clients to be forthcoming and honest regarding their recovery and rehabilitation process.

19. The Community Mental Health Services provider shall:

- i. Ensure that a treatment representative is present at all staffing meetings to ensure therapeutic input regarding any sanctions being considered.
- ii. Attend review hearings.
- iii. Conduct assessments to determine program eligibility, appropriate treatment services, and progress in treatment.
- iv. Report on attendance and progress of participants in treatment services.
- v. Liaison with any treatment providers and/or treatment agencies that are providing services to the participants, and keep the team updated on treatment attendance and progress.
- vi. Manage delivery of treatment services.
- vii. Administer, or ensure administration of, behavioral or cognitive-behavioral treatments that are documented in manuals and have been demonstrated to improve outcomes.
- viii. Provide clinical case management.
- ix. Offer insights and suggestions on the treatment plans of individuals in the program.
- x. Enter data into the DCCMIS system.

20. The Community Treatment Provider shall:

- xi. Attend review hearings.
- xii. Report on attendance and progress of participants in treatment services with their agency.
- xiii. Administer behavioral or cognitive-behavioral treatments that are documented in manuals and have been demonstrated to improve outcomes.
- xiv. Offer insights and suggestions on the treatment plans of individuals in the program.
- xv. Enter data into the DCCMIS system.

21. The Law Enforcement Agency representative shall:

- i. Provide deputies/officers to assist with home checks for participants (limited).

## **VII. Deferrals, Delays, and Deviation from Sentencing Guidelines**<sup>43</sup>

The prosecutor must approve an individual's admission into the [name of mental health court] if the individual will be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines.

## **VIII. Program Fee**<sup>44</sup>

The program charges a fee of [amount of fee] to each participant, to be paid in [specify due date or payment parameters]. In accordance with MCL 600.1095, the clerk of the mental health court shall transmit the fees collected to the treasurer of the local funding unit at the end of each month. The fee must be reasonable and calculated based on costs reasonably related to administering the program that are not covered by other funding such as insurance, block grants, PA 511, or another agency. These costs include [list types of costs included in program fee computation].<sup>45</sup>

## **IX. Term of Agreement**

This agreement is effective for one year upon the date of the final signature and shall renew automatically for subsequent one-year terms unless otherwise modified. Any signatory to this agreement may terminate participation upon thirty days' notice to all other signatories.

## **X. Agency Representatives**

This MOU will be administered by the [name of mental health court] local team, which consists of the following stakeholder agency representation:

- A. [Name of mental health court], Mental Health Court Judge, [name of judge]
- B. [Name of mental health court], Mental Health Court Program Coordinator, [name of coordinator]
- C. [Number of circuit court] Circuit Court, [title], [name of circuit court representative]
- D. [Name of county] MDOC, Probation/Parole Agent, [name of agent]
- E. [Number of district court] District Court, [title], [name of district court representative]
- F. [Number of district court] District Court Probation Department, Probation Officer, [name of probation officer]
- G. [Name of county] Prosecuting Attorney, [name of prosecutor representative]
- H. [Name of community mental health services agency], Clinical Liaison, [name of treatment provider]
- I. [Name of community treatment provider agency on team], Treatment Provider, [name of treatment provider]

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<sup>43</sup> Per MCL 600.1098(3) "...the court, with the agreement of the prosecutor and in conformity with the terms and conditions of the memorandum of understanding under section 1091, may discharge and dismiss the proceedings against an individual..." who meets the requirements of MCL 600.1098(3) a-d.

<sup>44</sup> Per MCL 600.1095(3) "The mental health court may require an individual admitted into the court to pay a reasonable mental health court fee that is reasonably related to the cost to the court for administering the mental health court program as provided in the memorandum of understanding."

<sup>45</sup> These costs typically include things such as program personnel, treatment, drug testing, supplies, travel costs, and training, but should also include any other costs incurred by the mental health court to administer the program

- J. [Name of law enforcement agency on team], [title], [name of law enforcement representative]
- K. [Name of law firm/office], Defense Attorney, [name of attorney]

## **XI. Modification of Agreement**

Modification of this agreement shall be made by formal consent of all parties, pursuant to the issuance of a written amendment, signed and dated by the parties, prior to any changes.

## **XII. Other Interagency Agreements**

This agreement does not preclude or preempt each of the agencies individually entering into an agreement with one or more parties to this agreement, nor does it supplant any existing agreement between such parties.

## **XIII. Signatures of Parties to this Agreement<sup>46</sup>**

The parties have entered into this agreement as evidenced by their signatures below. A certified copy of the agreement shall be provided to each signatory to the agreement. The original agreement shall be kept on file at [specify MOU location].

Honorable [name], Chief Judge, [court number and type] Court

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Signature

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Date

Honorable [name], [name of mental health court] Judge, [court number and type] Court

---

Signature

---

Date

[Name], [title], [court number] Circuit Court

---

Signature

---

Date

<sup>46</sup> Per MCL 600.1091 "...if the mental health court will include in its program individuals who may be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines..." the court may not adopt a mental health court unless the court enters into "...a memorandum of understanding with each participating prosecuting attorney in the circuit or district court ..., a representative or representatives of the community mental health services programs, a representative of the criminal defense bar, and a representative or representatives of community treatment providers."

[Name], [title], [court number] District Court

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Signature

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Date

[Name], Program Coordinator, [name of mental health court]

---

Signature

---

Date

[Name and title], [title], [court number] District Court Probation Department

---

Signature

---

Date

[Name], [title], [name of county] County Prosecutor's Office

---

Signature

---

Date

[Name], [title], [name of law enforcement agency]

---

Signature

---

Date

[Name], [title], Michigan Department of Corrections, [name of county] County

---

Signature

---

Date

[Name], Defense Attorney, [name of firm/agency]

---

Signature

---

Date

[Name], [title], [agency name], Community Mental Health Services

---

Signature

---

Date

[Name], [title], [agency name], Community Based Treatment Provider

---

Signature

---

Date

#### XIV. Attachments<sup>47</sup>

Attachment 1:

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<sup>47</sup> Insert here a list of forms or other pertinent documents referenced in the MOU or needed to implement the MOU. Delete this section if there are no attachments.

# *Appendix J*

## *Model Mental Health Court*

### *Agreement to Participate and Waiver*

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#### AGREEMENT TO PARTICIPATE<sup>48</sup> [Name of mental health court program]

I, [Name of participant], agree to participate in the [name of mental health court] Program<sup>49</sup>. I agree to follow all terms and conditions of the mental health court program as established by the court and the mental health court team.

#### **I agree to:**

- i. Complete any evaluations or assessments as directed by the mental health court, and follow the recommendations thereof. The treatment recommendations will be shared with the mental health court team.
- ii. Work with treatment staff to develop a treatment plan and follow the plan accordingly, including aftercare and continuing care recommendations.
- iii. Not use, possess, or consume alcohol and/or other illegal or controlled substances, nor be in the presence of any person using, possessing, or consuming said substances; nor enter premises where alcohol is the primary source of revenue. I understand if I am found to be under the influence of drugs, alcohol, or medication not prescribed to me I may be sanctioned and/or terminated from the program.
- iv. Submit to PBT's, electronic alcohol monitoring, and/or drug and alcohol screenings as directed.
- v. Be employed, enrolled in an educational program, or participate in another positive activity as directed.
- vi. Notify the mental health court of any changes in phone number within 24 hours.
- vii. Not change my place of residence without first notifying the mental health court.
- viii. Notify the mental health court of any police contact, arrest or criminal charge within 24 hours of event or of release from jail.
- ix. Make full and truthful reports to the mental health court as directed by any team member.
- x. Not engage in any antisocial, assaultive, threatening, or aggressive behavior.
- xi. Not leave the state without the prior consent of the mental health court.
- xii. Maintain the confidentiality of other mental health court participants.
- xiii. Pay all outstanding monies resulting from my conviction including but not limited to:

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<sup>48</sup> This model document is provided by SCAO as a resource and for informational purposes only to facilitate the operation of problem-solving courts by local units of government and courts in compliance with statutory requirements. SCAO's sharing this model document is not intended (and cannot be construed) as legal advice.

<sup>49</sup> Per MCL 600.1094(1)(c) the individual must sign a written agreement to participate in the mental health court.

court fines, court costs, court fees, restitution, and assessments; and pay all, or make substantial contributions toward payment of, the costs of the treatment and the mental health court program services provided to the participant, including, but not limited to, the costs of drug or alcohol testing or counseling. However, if the court determines that the payment of court fines, court fees, or drug or alcohol testing expenses would be a substantial hardship for me or would interfere with my treatment, the court may waive all or part of those fines, the fee, or costs of drug or alcohol testing.

xiv. Appear in court on all scheduled court dates and to attend all appointments with my probation officer, case manager, and/or treatment provider.

xv. Comply with the program's policies and conditions discussed within the **[name of mental health court program]** Participant Handbook.

**I waive the following rights<sup>50</sup>:**

1. The right to a speedy trial.
2. With the agreement of the prosecutor, the right to a preliminary hearing.
3. To be present at the team staffing meetings.

**I understand that:**

- i. The mental health court program has a duration of **[minimum to maximum]** months.
- ii. I understand I am required to attend all appointments for court, treatment, ancillary services, and all drug and alcohol testing as scheduled.
- iii. I understand that mental health court staff may make unscheduled home visits, and I will allow mental health court team members, together with law enforcement officials if accompanied, into my home at any time for supervision or compliance reasons.
- iv. Review hearings are held in open and public courtrooms, and although the court attempts to minimize confidential information in court, it is possible that an observer could connect a participant's identity with the fact that he or she is in treatment as a condition of participation in the mental health court or that confidential information may be revealed.
- v. Staffing meetings, which are held before review hearings, are typically closed to the public. Confidential information may be discussed by the mental health court team members at a staffing meeting. I understand that if a non-team member is invited to participate in a staffing meeting, they must sign a confidentiality agreement and receive my consent prior to observation. I understand that participants will not be present at staffing meetings.
- vi. The data in my public and confidential file may be used for research, data analysis and program evaluation by the mental health court, court staff, or individuals or others independent of the mental health court. Any data used in this way will be de-identified prior to distribution.
- vii. Failure to fully comply with all the terms and conditions of the program listed above may result in the following:
  1. Notification to the judge that I am in violation of the program.

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<sup>50</sup> Conditions 1, and 2 are required under MCL 600.1094(1)(b)

2. If I admit guilt to or am found guilty of a program violation; sanctions, up to and including jail, may be imposed or additional conditions may be added as determined by the judge with input from the mental health court team.
  3. Termination from the program.
- viii. I understand that the mental health court may amend these conditions and/or add new conditions, notice of which will be provided to me in writing. I understand that I must comply with the amended or added conditions.

**The mental health court coordinator agrees to:**

- i. Meet with the program participant as needed to help assure successful completion in the program.
- ii. Report the participant's progress and test results to the court.
- iii. Refer the participant to any community agency at the mental health court's disposal which may assist in the participant's recovery.

I have discussed the above listed conditions with my attorney or the mental health court coordinator and received a copy of this form and a copy of the [name of mental health court program] Participant Handbook.

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Participant Signature

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Date

I have discussed the above listed conditions with the participant and have provided a copy of the agreement and the [name of mental health court program] Participant Handbook to the participant.

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Attorney/Coordinator Signature

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Date

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Printed Name of Attorney/Coordinator

## ***Appendix M***

### ***Ten Principles of a Good Testing Program<sup>51</sup>***

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1. Design an effective drug detection program, place the policies and procedures of that program into written form (mental health court manual), and communicate the details of the drug detection program to the court staff and clients alike.
2. Develop a client contract that clearly enumerates the responsibilities and expectations associated with of the court's drug detection program.
3. Select a drug-testing specimen and testing methodology that provides results that are scientifically valid, forensically defensible, and therapeutically beneficial.
4. Ensure that the sample-collection process supports effective abstinence monitoring practices including random, unannounced selection of clients for sample collection and the use of witnessed/direct observation sample-collection procedures.
5. Confirm all positive screening results using alternative testing methods unless participant acknowledges use.
6. Determine the creatinine concentrations of all urine samples and sanction for creatinine levels that indicate tampering.
7. Eliminate the use of urine levels for the interpretation of client drug-use behavior.
8. Establish drug-testing result interpretation guidelines that have a sound scientific foundation and that meet a strong evidentiary standard.
9. In response to drug-testing results, develop therapeutic intervention strategies that promote behavioral change and support recovery.
10. Understand that drug detection represents only a single supervision strategy in an overall abstinence-monitoring program.

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<sup>51</sup> National Drug Court Institute. (2011). The Fundamentals of Drug Testing. In P. Cary, *The Drug Court Judicial Benchbook* (p. 137). Alexandria: National Drug Court Institute.

## ***Appendix N***

### ***Mental Health Court Minimum Standard Data***

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#### **Adult Mental Health Court Minimum Data Standards**

Pursuant to MCL 600.1099 each mental health court shall collect and provide data on each individual applicant and participant and the entire program as required by the State Court Administrative Office (SCAO). The information collected must include a minimum data standard set developed and specified by SCAO. In accordance with MCL 600.1099(3) SCAO has prepared the following minimum data standard sets. The minimum data standard sets include the minimum data that must be reported to SCAO. The reported data will be used to prepare the annual legislative report regarding mental health court performance.

Data must be collected and reported for all applicants that were screened for mental health court, even if the applicant was not accepted into the program. Therefore, minimum data standards that follow are broken into three sets; one set for screening, one set for case management data and one set for program discharge data relevant to accepted participants. This document provides descriptions and valid values for each of the variables in the minimum data standard sets. This information should be entered into the Drug Court Case Management Information System (DCCMIS) or in the SCAO excel spreadsheet template to be submitted to SCAO.

#### **Set 1: Screening**

<b>Variable</b>	<b>Description</b>	<b>Valid Values</b>	<b>DCCMIS Initial Eligibility Screening Page</b>
Court Name	Name of the problem solving court	Alphanumeric	NA-populated by DCCMIS
Court Type	Type of problem solving court program	Type of problem solving treatment court	NA-populated by DCCMIS

Referral Source	Party that referred candidate to the problem solving court	Title of person making referral	1
Referral Date	date that candidate was referred to the program	mm/dd/yyyy	1
Screening Date	Date candidate was screened for admission	mm/dd/yyyy	1
First Name	Candidate's legal first name	Alpha	1
Last Name	Candidate's legal last name	Alpha	1
Address	Candidate's street address at screening	Alpha	1
City	City associated with candidate's street address	Alpha	1
State	State associated with candidate's street address	Two-letter abbreviation	1
Zip Code	Zip code associated with candidate's street address	Five-number postal zip code	1
Race	Race of the candidate	Alpha	1
Gender	Gender of the candidate	Gender	1
DOB	Date the candidate was born	mm/dd/yyyy	1
Marital Status	Marital status of the candidate at screening	Marital status	1
SSN last 4 digits	Last four digits of candidate's Social Security number	Numeric (4 numbers and it must be accurate)	1

SID	State ID# from MSP. (Number assigned when candidate was fingerprinted)	Alphanumeric 1234567A (7 numbers and 1 letter and it must be accurate.)	1
Lead Charge	Charge that made candidate eligible for the problem solving court	Charge code and title	2
Case/Docket Number	Candidate's case or docket number	Alphanumeric	2
Offense Category	Offense category of the lead eligible charge	Offense category	2
Charge Type	Level of the lead charge (i.e. felony, misdemeanor, etc.)	Charge type	2
If charge type is felony, cell type is required	Cell type recommended from the sentencing guidelines	Cell type per MDOC guidelines	2
If charge type is felony, prior record variable (PRV) is required	Variable associated with previous offenses used to identify sentencing guidelines	Numeric	2
Incident Offense	Program eligible offense type	- New criminal offense - Probation/parole violation	2
Offense Date	Date that the program eligible offense occurred	mm/dd/yyyy	2
Drug Court/Court Program Approach	Approach to sentencing that the program takes (i.e. deferred, delayed, formal, consent, etc.)	Alpha	2

Prior adjudications/convictions	Any adjudications or convictions the candidate had previous to screening	- Yes (enter number of felonies and misdemeanors) - No	2
COMPAS violence risk category (if applicable)	The violence risk assessment value from the COMPAS	Violence risk assessment value category	2
COMPAS recidivism risk category (if applicable)	The recidivism risk assessment value from the COMPAS	Recidivism risk assessment value category	2
Current Substance Abuse	Does the candidate currently have an active/current substance abuse issue	- Yes (enter Primary Drug of Choice, Prior Substance Abuse Treatment (yes/no), ASAM placement criteria, and recommended treatment modality)- No	3
Prior Substance Abuse	Candidate's self-reported prior substance abuse	- Yes - No	3
Primary Drug of Choice (Enter Secondary and Tertiary Drugs of Choice if applicable)	Candidate's self-reported primary drug (if applicable)	Drug type	3
IV Drug User	Candidate's current use of IV drugs	- Currently IV drug user - Not currently IV drug user	3
History of IV Drug Use	Candidate's history of IV drug use	- No history of IV drug use - History of IV drug use	3

Primary Diagnosis Code	Primary ICD substance use disorder code as provided by a clinician	Numeric code for substance use disorder	3
Secondary Diagnosis Code	Secondary ICD code as provided by a clinician if dually diagnosed	Numeric code for substance use disorder or mental illness	3
Level of Service	Primary substance abuse or mental health treatment modality recommended	Substance Use Disorder or Mental Illness Treatment modality	3
Age Began Using Drugs	Self-reported age of first drug use	Numeric	3
Age Began Using Alcohol	Self-reported age of first alcohol use	Numeric	3
Medical Insurance Status	type of health insurance held by the candidate	Alpha	4
Highest Education Level Completed	Highest level of education completed at screening	Highest grade, certification, or degree completed	5
Current Employment Status	Employment at screening	Employment status	5
Living situation at entry	Candidate's living situation at time of screening	- Dependent - Homeless - Independent	5
History of foster care placement as a minor	Was the candidate ever placed in a foster home when under the age of 18?	- Yes - No	5
Has the defendant ever served in a branch of the U.S. Military	Confirmation of prior service	- Yes - No	5

## If Accepted into the Program

<b>Variable</b>	<b>Description</b>	<b>Valid Values</b>	<b>DCCMIS Location</b>
Date accepted	Date the candidate was accepted to the problem solving court	mm/dd/yyyy	Accepted into program pop-up screen
Judge	Name of judge candidate will see	Alpha	Accepted into program pop-up screen
Case Manager	Name of case manager candidate will see	Alpha	Accepted into program pop-up screen
Jail Status of Defendant	Was the defendant in jail when accepted into the problem solving court?	- Yes (enter admission date and end date) - No	Accepted into program pop-up screen

## If Rejected from the Program

<b>Variable</b>	<b>Description</b>	<b>Valid Values</b>	<b>DCCMIS Location</b>
Date Rejected	Date the candidate was rejected from the problem solving court	mm/dd/yyyy	Rejected from program pop-up screen
Mental Illness	Did the candidate have a mental health diagnosis at screening	-Yes -No - Unknown	Rejected from program pop-up screen

Rejection Reason	Reason for candidate's rejection from the problem solving court	Reason for rejection	Rejected from program pop-up screen
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## Set 2: Case Management

Minimum Standard Data Set for participants accepted into program.

Variable	Description	Valid Values	DCCMIS Location
Arrest/Detained Date	Date participant was arrested/detained on the lead charge if applicable	mm/dd/yyyy	criminal history
Sentencing Date	Date participant was sentenced on the lead charge	mm/dd/yyyy	criminal history
Dates of substance abuse testing	Date participant was to complete substance abuse testing	mm/dd/yyyy	Substance Abuse Testing
Type of substance abuse testing	Type of substance abuse test administered (i.e. UA, PBT, SCRAM, etc.)	Alpha	Substance Abuse Testing
Substance Abuse Test Results	Indicate which substances were tested for and whether each panel given was positive or negative	Substance abuse test results	Substance Abuse Testing
Dates of monitoring appointments, type of contact, and outcomes of the appointments	Dates of scheduled and unscheduled monitoring appointments with case manager/probation officer, type of contact, and outcome of the appointments	<ul style="list-style-type: none"> <li>- mm/dd/yyyy</li> <li>- Type of contact</li> <li>- Outcome of contact</li> </ul>	Journal-monitoring

Dates of scheduled problem solving court reviews and attendance outcome	Dates of scheduled problem solving court reviews, with attendance specified	- mm/dd/yyyy - Attendance status	Journal- "schedule drug court review"
Phase Progression or Demotion	Date participant progressed or was demoted through phases.	mm/dd/yyyy	Journal or Incentives/ Sanctions
Medication Compliance	Compliance status regarding medication	Alpha	Client Menu-Medical History
Medical Insurance Status (transfers from entry at screening, but should be updated as applicable)	type of health insurance held by the candidate	Alpha	Client Menu-Medical History
Sanction Date	Date participant received a sanction	mm/dd/yyyy	Incentives/ Sanctions
Sanction Type	Type of sanction the participant received	Type of sanction (if detention/jail, include date in and date out)	Incentives/ Sanctions
Sanction Reason	Reason the participant received a sanction	Alpha	Incentives/ Sanctions
Incentive Date	Date participant received an incentive	mm/dd/yyyy	Incentives/ Sanctions
Incentive Type	Type of incentive the participant received	Type of incentive	Incentives/ Sanctions
Incentive Reason	Reason the participant received an incentive	Alpha	Incentives/ Sanctions

Date of assessment (clinical and/or criminogenic risk and needs) administered to participant	Date that participant was assessed	mm/dd/yyyy	Local assessments
Type of assessment (clinical and/or criminogenic risk and needs) administered to participant	The validated assessment tool used to assess participant.	Name of assessment tool	Local assessments
Timing of assessment	When the assessment was administered relative to program entry.	When it was administered in relation to program entry	Local assessments
Score, diagnosis, or result of assessment	diagnosis, criminogenic risk level, or other results of assessment	Alpha	Local assessments
Treatment provider	Name of treatment provider	Alpha	Treatment-treatment plan
Treatment admit date for each treatment plan	Date the participant was admitted to a treatment modality	mm/dd/yyyy	Treatment-treatment plan
Treatment discharge date for each treatment plan	Date the participant was discharged from a treatment modality	mm/dd/yyyy	Treatment-treatment plan
Dates of sessions and units of treatment	Provide dates of treatment sessions, and contact hours.	- mm/dd/yyyy - Contact hours	Treatment-treatment plan
Treatment session status	compliance of participant for that session	Alpha	Treatment-treatment plan

Session Type	Type of treatment session	Type of treatment session	Treatment-treatment plan
Treatment discharge reason	Reason the participant was discharged from a treatment modality	Discharge Reason	Treatment-treatment plan
Treatment modality/service category	Type of treatment modality the participant received	Substance Use Disorder or Mental Health treatment modality	Treatment-treatment plan
Mental Health Treatment Modality	If "mental health" is the first treatment modality, specify the type of mental health treatment the participant received	Alpha	Treatment-treatment plan
If receiving mental health services, Primary Diagnosis Code is required	ICD code of primary diagnosis	ICD Numeric Code for Mental Illness	Treatment-treatment plan
Number of Bench Warrants	Number of bench warrants participant received during program. If using DCCMIS, the program calculates the total number based on individual entry of each bench warrant.	- Date of bench warrant (mm/dd/yyyy) - Days of active bench warrant (Numeric)	Criminal history
In-program New Offense- Date of Offense	Date of new offense that occurred during program participation	mm/dd/yyyy	Criminal history
In-program New Offense- Date of Arrest	Date of new arrest that occurred during program participation	mm/dd/yyyy	Criminal history

In-program new offense-arrest offense Category	Offense category, at arrest/detainment, of new offense that occurred during program participation	Offense category	Criminal history
In-program New offense – Arrest Charge Type	Charge type of new offense that occurred during program participation	Charge type	Criminal history
In program-new offense-convicted/adjudicated charge	Charge participant was convicted/adjudicated of for new offense that occurred during program participation	Charge	Criminal history
In-program New offense-convicted/adjudicated offense category	Offense category of new conviction/adjudication that occurred during program participation	Offense category	Criminal history
In-program New offense – conviction/adjudication charge type	Charge type of new conviction/adjudication that occurred during program participation	Charge type	Criminal history
In-program New offense-Sentence/disposition Type	Sentence/disposition type of new conviction/adjudication that occurred during program participation	Sentence type	Criminal history
In-program New offense-Length of Sentence	Length of sentence associated with new conviction that occurred during program participation	Length of incarceration sentence	Criminal history

Total number of jail days spent while in court program	Count any jail time associated with the lead charge, including time served from arrest until release to the problem solving court, problem solving court jail sanctions, and time for any new offenses	Numeric	Criminal history
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### Set 3: Discharge Data

Variable	Description	Valid Values	DCCMIS Location
Program discharge action	Indicate the reason the case is being closed	Alpha	Discharge
Program Discharge Date	Date the participant was discharged from the problem solving court	mm/dd/yyyy	Discharge
Program Discharge Reason	Reason the participant was discharged from the problem solving court	Reason for program discharge	Discharge
Offer related to court participation	Offer made contingent on program participation	Offer made contingent on program participation	Discharge
Outcome of charge	Outcome contingent on program participation	Outcome of offer made contingent on program participation	Discharge
Was there a Sentence/Disposition at Discharge	Was disposition held at discharge from the court program, instead of prior to or at program admission?	- Yes - No	Discharge
Supervision Status at Discharge	Participant's level of supervision upon discharge from program	Supervision status at discharge	Discharge

Improved mental health at discharge	Subjective decision by case manager	- Yes - No	Discharge
Improved quality of life at discharge	Subjective decision by case manager	- Yes - No	Discharge
Education level	Educational level achieved by participant at discharge	Highest grade completed, certification, or degree at time of discharge from program	Discharge
Education improved at discharge?	Subjective decision by case manager	- Yes - No	Discharge
Employment type	Employment status of participant at discharge	Employment status at discharge	Discharge
Employment improved at discharge?	Subjective decision by case manager	- Yes - No	Discharge
Housing improved at discharge	Subjective decision by case manager	- Yes - No	Discharge
Does the client have stable housing?	Did the participant have stable housing for at least 90 days prior to discharge from the program?	- Yes - No	Discharge
Custody Status at Discharge	Identify the type of child custody the participant had at discharge.	Custody status	Discharge

Questions about this data set can be directed to: Daisy Beckett, Problem-Solving Court Analyst 517-373-2218 or email [PSC@courts.mi.gov](mailto:PSC@courts.mi.gov).