

[Name of problem-solving court]¹
Memorandum of Understanding Regarding Confidentiality²

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.

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:

¹ This document is generic in nature and should be modified to fit your program.

² 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.

- 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, Section 290dd-2, and MCL 300.1748, 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 Information form 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 record which has been disclosed to you is protected by federal confidentiality rules (42 CFR part 2). The federal rules prohibit you from making any further disclosure of this record unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed in this record or, is 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. 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.³

³ Requirement of certification

15. 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);
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:⁴
In witness whereof, the parties hereto have entered into this agreement as evidenced by their signatures below. A copy of the signed 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

Signature Date

Honorable **[Name]**, **[Name of problem-solving court]** Judge, **[Court number and type]** Court

⁴ The confidentiality MOU should be signed by all team members and, if applicable, an authorizing agent for their agency

Signature

Date

[Name], Program Coordinator, **[Name of problem-solving court]**

Signature

Date

[Name], **[Title]**, team member, **[Name of county]** prosecutor's office

Signature

Date

[Name], **[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], **[Title]**, authorizing official on behalf of **[Name of law firm]**

Signature

Date

[Name], MDOC agent, team member, MDOC

Signature

Date

[Name], **[Title]**, authorizing official on behalf of MDOC

Signature

Date

[Name], District Court Probation Officer, team member, **[court number]** district court

Signature

Date

[Name], [Title], authorizing official on behalf of **[Court number]** district court

Signature

Date

[Name], [Title], team member, **[Name of law enforcement agency]**

Signature

Date

[Name], [Title], authorizing official on behalf of **[Name of law enforcement agency]**

Signature

Date

[Name], [Title], [Agency name], team member, Community Mental Health Services provider

Signature

Date

[Name], [Title], [Agency name], authorizing official on behalf of Community Mental Health Services provider

Signature

Date

[Name], [Title], [Agency name], team member, **[type of treatment/ancillary]** services provider

Signature

Date

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

Signature

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/sites/www.sog.unc.edu/files/Information Sharing Guide FINAL
PDF to authors 2015-06-25.pdf](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)