

[Name of problem-solving court program]¹

Policies and Procedures Regarding Access to and Use of Confidential Records²

I. 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]³, with access limited to authorized individuals.⁴
- d. Upon expiration of consent for release of information written/paper program files shall be moved to [specify secure location where only program staff may access files] and shall be kept in a locked filing cabinet.^{4,5}
- 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.⁵ Access is limited, and disclosure/redisclosure is subject to approval by the treatment court judge and team.
- g. The [Name of problem-solving court] program creates⁶ and 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 regulations⁷.
- 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 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.⁸

¹ This model document is provided by the State Court Administrator's Office (SCAO) as a resource and 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.

² This document is generic in nature and should be modified to fit your program.

³ Satisfies requirement of 42 CFR § 2.16(a)(1)(iii) (maintain records in secure location when not in use)

⁴ Satisfies requirement of 42 CFR § 2.16(a)(1)(iv) (access to confidential records secure location)

⁵ Satisfies requirement of 42 CFR § 2.16(a)(2)(i) (maintaining electronic records)

⁶ Satisfies requirement of 42 CFR § 2.16(a)(2)(i) (creating electronic records)

⁷ Satisfies requirement of 42 CFR § 2.16(a)(2)(iii) (accessing electronic records)

⁸ https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/cf_stds.pdf

- ii. [Chart of Nonpublic and Limited-Access Court Records](#).⁹
 - iii. [Michigan Supreme Court Administrative Order 2006-2](#)¹⁰ - 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 Rediscovery 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 by removing direct identifiers, so that there is a very low risk of re-identification.^{11,12}
 - 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.

II. Record Retention and Disposal Schedule

- a. Records shall be retained as directed under General Schedules [#13 - District Courts](#)¹³, [#14 - Probate Courts](#)¹⁴, and [#15 - Circuit Courts](#)¹⁵.
- b. Records shall be removed, de-identified¹⁶, transferred, and destroyed as directed by the [Michigan Trial Court Records Management Standards Data, Case, and Other Court Records](#).^{17,18}

⁹ https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/cf_chart.pdf

¹⁰ [https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/Documents/Administrative Orders.pdf](https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/Documents/Administrative%20Orders.pdf) page 208; FAQ for 2006-02 is located at <https://courts.michigan.gov/Administration/SCAO/Resources/Documents/Administrative-Memoranda/2006-04.pdf>

¹¹ Satisfies requirement of 42 CFR § 2.16(a)(2)(i) (transmitting and receiving electronic records)

¹² Satisfies requirement of 42 CFR § 2.16(a)(2)(iv) (rendering patient identifying information non-identifiable)

¹³ https://www.michigan.gov/documents/dtmb/RMS_GS13_573186_7.pdf

¹⁴ https://www.michigan.gov/documents/dtmb/RMS_GS14_597247_7.pdf

¹⁵ https://www.michigan.gov/documents/dtmb/RMS_GS15_597248_7.pdf

¹⁶ Satisfies requirement of 42 CFR § 2.16(a)(1)(v) (rendering patient identifying information non-identifiable)

¹⁷ https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/cf_stds.pdf

¹⁸ Satisfies requirement of 42 CFR § 2.16(a)(1)(i) (transfer and removal of paper records) and (ii) (destruction of records)