

Model Memorandum of Understanding¹

[Name of juvenile mental health court]

This is an understanding between the [name of county] Prosecuting Attorney; [name of county] Sheriff's Department; [court number] Circuit Court-Family Division and their probation department; [name of defense counsel representative], defense counsel representative; [name of community mental health] treatment provider; [name of substance use/abuse treatment agency], substance abuse treatment services; and [name of juvenile mental health court] judge and program coordinator.

Purpose

The purpose of this Memorandum of Understanding (MOU) is to describe duties and allocate responsibilities for members of the [name of juvenile mental health court] team. The MOU also establishes team member responsibilities and requirements for maintaining compliance with the federal law of confidentiality (42 CFR, Part 2), the Health Insurance Portability and Accountability Act (HIPAA, 45 CFR, Parts 160 and subparts A and E of Part 164), and the Michigan Juvenile Mental Health Court Statute (MCL 600.1099b-600.1099m).

Terms/Definitions

1. Participant: Any person referred to the [name of juvenile mental health court], currently being screened as a candidate for [name of juvenile mental health court] (including those who are ultimately denied entry to the program), currently participating in [name of juvenile mental health court], or someone who has been discharged from the [name of juvenile mental health court].
2. 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.
3. Redisclosure: The act of sharing or releasing health information that was received from another source (e.g., external facility or provider) and made part of a patient's health record or the organization's designated record set.
4. Stakeholders: A person, group or organization that has interest or concern in an organization.
5. 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.
6. Waiver: The "voluntary relinquishment of a known right." (Kelly v Allegan Circuit Judge, 1969)

Goals and Mission of the [name of juvenile mental health court]

1. The above parties agree to share the following vision for the [name of juvenile mental health court]:
 - A. Enhance the quality of life throughout [name of county] County.
 - B. Provide leadership through innovative services.

¹ 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 courts in 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.

- C. Continuously improve services.
 - D. Achieve program goals through teamwork.
 - E. Reduce criminal behavior and decrease incarceration of the mentally ill.
 - F. Ensure each component of the juvenile mental health court is aware and in compliance with federal confidentiality law requirements.
2. We endorse the goals and mission of the **[name of juvenile mental health court]** in order for participants to eliminate future criminal behavior and improve the quality of their lives. For this program to be successful, cooperation must occur within a network of systems to facilitate and achieve the mission, challenge, and vision of the **[name of juvenile mental health court]**.
 3. We agree that the mission of the **[name of juvenile mental health court]** shall be 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.
 4. We agree to the following challenge of the **[name of juvenile mental health court]**: Engage those with a serious mental illness, serious emotional disturbance, or a developmental disability involved in the criminal justice system in a continuum of treatment services and provide them with appropriate intervention through treatment, rehabilitative programming, reinforcement, and monitoring.

Guiding Principles of the [name of juvenile mental health court]

1. The program shall adhere to the 10 essential elements of a mental health court:²
 - A. Develop a broad-based group of stakeholders to guide the administration of the program.
 - B. Develop eligibility criteria that addresses public safety and the community’s treatment capacity, and target individuals whose mental illness is related to their crime and meet both clinical and legal criteria for admission.
 - C. Identify and link participants in a timely manner to the appropriate treatment services.
 - D. 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.
 - E. Address competency issues in a timely fashion when they arise and provide legal counsel to assist with admission and program requirements.
 - F. Provide comprehensive and individualized treatment while striving to utilize evidence-based services.
 - G. Protect participants’ health and legal information in compliance with the Health Insurance Portability and Accountability Act (HIPAA) and Part 2 of 42 CFR while making information available to the court team.
 - H. 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.
 - I. Collaboratively monitor program requirements while offering graduated incentives and sanctions to modify behavior.
 - J. Periodically evaluate the program’s functioning and effectiveness to ascertain local support by reviewing data that is collected.
2. The program shall comply with the 7 common characteristics of a juvenile mental health court published by Policy Research Associates, including all of the following:³
 - A. Regularly scheduled special docket.
 - B. Less formal style of interaction among court officials and participants.

² Per MCL 600.1099b (e) (iii)

³ Per MCL 600.1099c (3) a-g

- C. Age-appropriate screening and assessment for trauma, substance use, and mental disorder.
- D. Team management of a participant's treatment and supervision.
- E. System-wide accountability enforced by the juvenile mental health court.
- F. Use of graduated incentives and sanctions.
- G. Defined criteria for program success.

Roles of the Parties of the [insert name of juvenile mental health court]

[Individual juvenile mental health courts are to amend and modify their MOU in accordance with their decisions as to who makes up their team and those members' appropriate roles and responsibilities.]⁴

The roles of the parties are as follows:

1. Juvenile mental health court judge:
 - A. Serve as the leader of the team.
 - B. Attend staffing meetings and preside over status review hearings.
 - C. Engage the community to generate local support for the juvenile mental health court.
 - D. Communicate with the participants in a positive manner and make final decisions regarding incentives and sanctions, and program continuation.
 - E. 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.
 - F. Rely on the expert input of duly trained treatment professionals when imposing treatment related conditions on the participants.
 - G. Provide program oversight and ensure communication and partnership with treatment.
 - H. On an annual basis, attend current training events on legal and constitutional issues in mental health courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and/or community supervision.
2. Prosecuting attorney:
 - A. Provide legal screening of eligible participants.
 - B. Attend staffing meetings and review hearings and provide input on incentives and sanctions for participants.
 - C. Represent the interests of the prosecutor and law enforcement.
 - D. Provide feedback, suggestions, and ideas on the operation of the juvenile mental health court.
 - E. Advocate for public safety.
 - F. Advocate for victim interest.
 - G. Hold participants accountable for meeting their obligations.
 - H. 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.).
 - I. May help resolve other pending legal cases that impact participants' legal status or eligibility.
3. County sheriff's department:
 - A. Attend staffing meetings and provide input on incentives and sanctions for participants.
 - B. Provide deputies to assist with home checks for participants (limited).
 - C. Provide feedback, suggestions, and ideas on the operation of the juvenile mental health court.
4. Probation officers and/or court case managers:
 - A. Attend staffing meetings and review hearings and provide input on incentives and sanctions for participants.

⁴ Per MCL 600.1099c (1) "The memorandum of understanding shall describe the role of each party."

- B. Share information as necessary, and in compliance with 42 CFR and HIPAA, to appraise participants' progress in, and compliance with, the conditions of juvenile mental health court.
 - C. Provide probation oversight for all program participants.
 - D. Work with the program coordinator in supervising and monitoring the individuals in the program.
 - E. Prepare presentence reports and perform drug and alcohol tests as needed.
 - F. Schedule probation violations or show cause hearings for participants who have violated the program rules.
 - G. 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.
 - H. Enter data into the DCCMIS system.
 - I. Provide feedback, suggestions, and ideas on the operation of the juvenile mental health court.
5. Defense counsel representative:
- A. Attend staffing meetings and review hearings and provide input on incentives and sanctions for participants.
 - B. Ensure that defendants' procedural and due process rights are followed.
 - C. Ensure that the participant is treated fairly and that the juvenile mental health court team follows its own rules.
 - D. Provide feedback, suggestions, and ideas on the operation of the juvenile mental health court.
6. Project coordinator:
- A. Attend staffing meetings and provide input on incentives and sanctions for participants.
 - B. Share information as necessary, and in compliance with 42 CFR and HIPAA, to appraise participants' progress in, and compliance with, the conditions of juvenile mental health court.
 - C. Arrange for additional screenings of persons aside from the prosecutor's legal screening.
 - D. Answer inquiries from defense attorneys on possible eligibility.
 - E. Enter data into the DCCMIS system.
 - F. Liaison with treatment providers and drug testing contractor (if applicable), probation, and residential treatment facilities.
 - G. 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.
 - H. 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. Ensure that the new team member is also provided with copies of all program policy and procedure manuals, the participant handbook, and a copy of all current memoranda of understanding.
7. Community mental health services provider:
- A. Attend staffing meetings and review hearings and provide input on incentives and sanctions for participants.
 - B. Share information as necessary, and in compliance with 42 CFR and HIPAA, to appraise participants' progress in treatment and compliance with the conditions of juvenile mental health court.
 - C. Conduct assessments to determine program eligibility, appropriate treatment services, and progress in treatment.
 - D. Report on attendance and progress of participants in treatment services.
 - E. Manage delivery of treatment services.
 - F. Administer behavioral or cognitive-behavioral treatments that are documented in manuals and have been demonstrated to improve outcomes.
 - G. Provide clinical case management.

- H. Offer insights and suggestions on the treatment plans of individuals in the program.
- I. 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.
- J. Enter data into the DCCMIS system.
- K. Provide feedback, suggestions, and ideas on the operation of the juvenile mental health court.

Program Fee⁵

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 600.1099h, the juvenile 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 included⁶ in program fee computation]**.

Deferrals, Delays, and Deviation from Sentencing Guidelines⁷

The prosecutor must approve an individual's admission into the **[name of juvenile mental health court]** if the individual will be eligible for discharge and dismissal of an offense, and must agree to each discharge and dismissal.

Confidentiality

1. A juvenile mental health court's performance of, or request for, an assessment of chemical dependency of a juvenile mental health court participant, or a referral to treatment, places the juvenile mental health court within the parameters of 42 CFR, Part 2. Additionally, treatment agencies partnering with the **[name of juvenile mental health court]** must comply with the Health Insurance Portability and Accountability Act (HIPAA) that protects confidentiality and the security of protected health information, therefore, all parties agree to abide by the following:
 - A. Confidential treatment court information and records, including 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 (FOIA), and may not be used to initiate or to substantiate any criminal charges against a participant or to conduct any investigation of a participant, unless it reveals criminal acts other than, or inconsistent with, personal drug use. (42 CFR, Part 2)
 - B. 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.
 - C. 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 2.14 through 2.35)
 - D. The participant must be advised, orally and in writing, that federal law protects the confidentiality of treatment records. The notice must cite Section 290dd-2 and the implementing regulations (Sections 2.1 through 24 of Title 42 of the code of Federal Regulations).

⁵ Per MCL 600.1099h (c) "The juvenile mental health court may require a juvenile and his or her parent, legal guardian, or legal custodian admitted into the court to pay a reasonable juvenile mental health court fee that is reasonably related to the cost to the court for administering the juvenile mental health court program as provided in the memorandum of understanding."

⁶ 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 juvenile mental health court to administer the program.

⁷ Per MCL 600.1099k (2) "...the court, with the agreement of the prosecutor and in conformity with the terms and conditions of the memorandum of understanding under section 1099c, may discharge and dismiss the proceedings."

- E. Any documented treatment information distributed on the basis of the treatment participant's consent must be accompanied by a Notice of Prohibition Against Redisclosure. The prohibition on redisclosure only applies to information that would identify, directly or indirectly, an individual as having been diagnosed, treated, or referred for treatment for a substance use disorder, such as indicated through standard medical codes, descriptive language, or both, and allows other health-related information shared by the part 2 program to be redisclosed, if permissible under other applicable laws. (42 CFR, Section 2.32)
 - F. Confidential records must be kept in a secure room and locked container. Access to confidential records must be limited to authorized individuals. (42 CFR, Section 2.16)
2. Juvenile mental health court team members shall be familiar with relevant federal and state laws and regulations in order to develop or modify appropriate policies and procedures regarding confidentiality.
 3. All file storage systems shall 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 juvenile mental health court personnel during the duration of the participant's consent are transferred to a more restricted storage facility as soon as the consent is terminated. Records on computers are sealed by changing the password or other access.
 4. All team members shall abide by the attached **[name of juvenile mental health court]** policy and procedures regarding sharing or distribution of confidential information which regulates and controls access to and use of written and electronic confidential records. Written procedures include requests for access to confidential information by the public, attorneys, or any interested party outside the treatment court team, and formal policies and procedures addressing security, including sanitization of associated media, for both paper and electronic records. (42 CFR section 2.16)
 5. Electronic data that is subject to confidentiality standards shall be protected by security walls and is password-protected. Access shall be limited, and disclosure/redisclosure is subject to approval by the treatment court judge and team.
 6. The juvenile mental health court team shall decide if precourt staffing meetings will be closed to participants and the public and describe its policy in the participant agreement. If the staffing is open to visitors the participant must be provided the name of the visitor(s) and must consent in writing to have his or her confidential information released to the visitor. All visitors shall be required to sign an agreement that they adhere to the confidentiality provisions of the law (and particularly as to the rule against redisclosure) and the other requirements of the **[name of juvenile mental health court]** MOU.
 7. The parties, including each party's 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.

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.

Agency Representatives

[Individual juvenile mental health courts are to amend and modify their MOU in accordance with their decisions as to stakeholder agencies.]

This MOU will be administered by the **[name of juvenile mental health court]** local team, which consists of the following stakeholder agency representation: **[name of county]** Prosecuting Attorney; **[name of county]** Sheriff's Department, **[court number]** Circuit Court-Family Division and their probation department; **[name of defense counsel representative]** defense counsel representative; **[name of community mental health agency]** treatment provider; **[name of substance use/abuse treatment agency]**

substance abuse treatment services; and **[name of juvenile mental health court]** judge and project coordinator.

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.

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.

Signatures of Parties to this Agreement^{8,9}

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 filed with the clerk of **[court number] [court type]** Court.

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

Signature

Date

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

Signature

Date

[Name], Court Administrator, **[court number]** Circuit Court

Signature

Date

[Name], Court Administrator, **[court number]** District Court

Signature

Date

[Name], Project Coordinator, **[name of juvenile mental health court]**

Signature

Date

⁸ Per MCL 600.1099c (1), “A family division of circuit court adopting or instituting a juvenile mental health court shall enter into a memorandum of understanding with all participating prosecuting authorities in the circuit, a representative or representatives of the community mental health services program, a representative of the bar specializing in juvenile law, and a representative or representatives of community treatment providers...”

⁹ If this is the only program memorandum of understanding with respect to confidentiality, then all team members, replacement team members, and a representative of their agencies must sign this memorandum of understanding.

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

Signature

Date

[Name], Chief Prosecuting Attorney, [name of county]

Signature

Date

[Name], Sheriff, [name of county] Sheriff's Department

Signature

Date

[Name and title], Michigan Department of Corrections

Signature

Date

[Name], defense attorney, [name of firm/agency]

Signature

Date

[Name and title], [name of community mental health agency]

Signature

Date

[Name and title], [name of community treatment provider agency]

Signature

Date

Attachments

**[Insert here list of forms or other pertinent documents to implement the above agreement.
Delete this section if there are no attachments.]**

Attachment 1: **[Name of juvenile mental health court]** policy and procedures regarding sharing or distribution of confidential information

Attachment 2: Policy and Procedure Manual

Attachment 3: **[Name of juvenile mental health court]** consent to release information (form)

Attachment 4: **[Name of juvenile mental health court]** visitor confidentiality agreement

Attachment 5: Notice of Prohibition Against Redisclosure