

SCAO Model Document

Documents: Program Memorandum of Understanding (MOU)

Program Type: Adult Mental Health Courts

This model document is provided by the State Court Administrative Office (SCAO) as a resource and is for informational purposes only, to facilitate the operation of problem-solving courts by local units of government and to assist program compliance with statutory requirements. SCAO's sharing this model document is not intended (and cannot be construed) as legal advice.

Please customize all sections that are in bold and are highlighted in yellow. Once these sections have been customized to reflect your program remove the brackets, bold, and highlighting.

This is a model document, which means it is generic in nature and should be modified to fit your program. However, it should be noted that portions of the document are required by statute, and are indicated with a footnote referencing the specific statute.

Memorandum of Understanding¹

[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 Provider²
9. [Name of law enforcement agency on team]
10. [Name of law firm/office, or name of defense attorney on team], Defense Attorney

I. 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).

II. 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.

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² 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. 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.

IV. 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.

V. Roles of the Parties of the [insert name of mental health court]³

1. All parties shall:
 - a. Participate as a team member, operating in a non-adversarial manner.
 - b. 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.
 - c. Help to identify potential and eligible mental health court participants.
 - d. Provide feedback, suggestions, and ideas on the operation of the mental health court.
 - e. Attend staffing meetings, and provide input on incentives and sanctions for participants.
 - f. 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.
 - g. 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.
2. The Mental Health Court Judge shall:
 - a. Serve as the leader of the team.
 - b. Preside over status review hearings.
 - c. Engage the community to generate local support for the mental health court.
 - d. Communicate with the participants in a positive manner and make final decisions regarding incentives and sanctions and program continuation.

³ Per MCL 600.1091(1) "The memorandum of understanding shall describe the role of each party."

- 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
2. The Prosecuting Attorney shall:
- a. Provide legal screening of eligible participants.
 - b. Attend review hearing.
 - c. Represent the interests of the prosecutor and law enforcement.
 - d. Advocate for public safety.
 - e. Advocate for victim interest.
 - f. Hold participants accountable for meeting their obligations.
 - g. 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.).
 - h. Help resolve other pending legal cases that impact participants' legal status or eligibility.
3. The Project Coordinator shall:
- a. Arrange for additional screenings of persons aside from the prosecutor's legal screening.
 - b. Attend review hearings.
 - c. Answer inquiries from defense attorneys on possible eligibility.
 - d. Enter data into the DCCMIS system.
 - e. Liaison with non-treatment agencies that are providing services to the participants.
 - f. 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.
4. The Probation Officers and Court Case Managers⁴ shall:
- a. Attend review hearings.
 - b. Provide probation oversight for all program participants.
 - c. Work with the program coordinator in supervising and monitoring the individuals in the program.
 - d. Prepare presentence reports and perform drug and alcohol tests as needed.
 - e. Schedule probation violations or show cause hearings for participants who have violated the program rules.
 - f. Enter data into the DCCMIS system.
5. The Defense Counsel Representative shall:
- a. Ensure that a defense counsel representative is present at all staffing meetings to avoid ex parte communication.
 - b. Attend review hearings.
 - c. Ensure that defendants' procedural and due process rights are followed.
 - d. Ensure that the participant is treated fairly and that the mental health court team follows its own rules.
 - e. When appropriate, and without breaching attorney-client privilege, encourage clients to be forthcoming and honest regarding their recovery and rehabilitation process.

⁴ You may want to split this if you have both positions, or delete one title if you only have one position

6. The Community Mental Health Services provider shall:
 - a. Ensure that a treatment representative is present at all staffing meetings to ensure therapeutic input regarding any sanctions being considered.
 - b. Attend review hearings.
 - 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. 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.
 - f. Manage delivery of treatment services.
 - g. Administer, or ensure administration of, behavioral or cognitive-behavioral treatments that are documented in manuals and have been demonstrated to improve outcomes.
 - h. Provide clinical case management.
 - i. Offer insights and suggestions on the treatment plans of individuals in the program.
 - j. Enter data into the DCCMIS system.

7. The Community Treatment Provider shall:
 - a. Attend review hearings.
 - b. Report on attendance and progress of participants in treatment services with their agency.
 - c. Administer behavioral or cognitive-behavioral treatments that are documented in manuals and have been demonstrated to improve outcomes.
 - d. Offer insights and suggestions on the treatment plans of individuals in the program.
 - e. Enter data into the DCCMIS system.

8. The Law Enforcement Agency representative shall:
 - a. Provide deputies/officers to assist with home checks for participants (limited).

VI. Deferrals, Delays, and Deviation from Sentencing Guidelines⁵

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.

VII. Program Fee⁶

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]**.⁷

⁵ 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.

⁶ 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.”

⁷ 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

VII. 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.

IX. Agency Representatives

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

1. [Name of mental health court], Mental Health Court Judge, [name of judge]
2. [Name of mental health court], Mental Health Court Program Coordinator, [name of coordinator]
3. [Number of circuit court] Circuit Court, [title], [name of circuit court representative]
4. [Name of county] MDOC, Probation/Parole Agent, [name of agent]
5. [Number of district court] District Court, [title], [name of district court representative]
6. [Number of district court] District Court Probation Department, Probation Officer, [name of probation officer]
7. [Name of county] Prosecuting Attorney, [name of prosecutor representative]
8. [Name of community mental health services agency], Clinical Liaison, [name of treatment provider]
9. [Name of community treatment provider agency on team], Treatment Provider, [name of treatment provider]
10. [Name of law enforcement agency on team], [title], [name of law enforcement representative]
11. [Name of law firm/office], Defense Attorney, [name of attorney]

X. 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.

XI. 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.

XII. 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 kept on file at [specify MOU location].

⁸ 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."

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

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

Signature

Date

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

Signature

Date

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

Signature

Date

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

Signature

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. Attachments¹⁰

Attachment 1:

¹⁰ 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.