

SCAO Model Document

Documents: Program MOU

Program Type: Problem-Solving Courts

This model document is provided by the State Court Administrator's Office (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.

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 drug treatment 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:

- a. [Name of drug treatment court]
- b. [Name of circuit court]
- c. [Name of county] MDOC probation/parole department
- d. [Name of district court]
- e. [Name of district court] probation department
- f. [Name of county] prosecutor's office
- g. [Name of treatment agency on team], treatment provider
- h. [Name of law enforcement agency on team]
- i. [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 team members of the [name of drug treatment court] Drug Treatment Court Team. The MOU also establishes team member responsibilities and requirements for maintaining compliance with the Michigan Drug Court Statute (MCL 600.1060-600.1088).

III. Terms/Definitions

- a. 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.
- b. Participant: Any person referred to the [name of drug treatment court], currently being screened as a candidate for [name of drug treatment court] (including those who are ultimately denied entry to the program), currently participating in [name of drug treatment court], or someone who has been discharged from the [name of drug treatment court] program.
- c. Policies and Procedures Manual: Policy and procedure manuals document 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.
- d. Staffing meetings: Team meetings where participants' progress is discussed and options for incentives, sanctions, treatment, and phase changes are evaluated.
- e. Stakeholders: A person, group or organization that has interest or concern in an organization.
- f. 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.

¹ This model document is provided by SCAO as a resource, 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.

IV. Mission of the [name of drug treatment court]

We agree that the mission of the [name of drug treatment court] program shall be to successfully rehabilitate substance using individuals while maintaining public safety.

We endorse the goals and mission of the [name of drug treatment 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, challenges, and vision of the [name of drug treatment court].

V. Guiding Principles of the [name of drug treatment court]

- a. Drug and alcohol addiction is a chronic relapsing disease that is treatable, and substance use is reversible behavior, which, if unaddressed, may lead to continuing and increasing criminal behavior and other personal, family, and societal problems.
- b. Drug court programs offer an opportunity to direct those in crisis with addictions and substance use disorders to begin a rehabilitation process, which may ultimately lead to a reduction or elimination of addiction and use, and permit the development of a productive lifestyle.
- c. Treatment intervention should occur early on upon entry to the criminal justice system to achieve maximum treatment outcomes.
- d. Thorough assessment and evaluation is a critical component of the drug court program.
- e. Participants with drug and alcohol abuse issues cannot maximize their treatment potential without appropriate treatment intervention that includes their families when appropriate.
- f. Participant accountability is foremost in the program, with written program agreements and court monitoring of behavior on a regular basis. Court monitoring will include incremental sanctioning for negative behaviors and positive rewards for improved behaviors.
- g. Drug court programs are established with written protocols, which are well-defined and documented through the policies and procedures manual. The program manual will be updated annually, to respond to the changes in the needs of the programs, participants, families, agencies, and community.
- h. Participant entry into the drug court program shall be governed by written eligibility criteria as established by the drug court team.
- i. Information about participant progress, participant family progress, and the functioning of the drug court program shall be made available to all team members in compliance with federal and state confidentiality laws.
- j. Effective evaluation of the drug court program shall be sought with appropriate responses being made relative to these evaluations.

VI. Roles of the Parties of the [name of drug treatment court]²

- a. All parties shall:
 - i. Participate as a team member, operating in a non-adversarial manner.

² Per MCL 600.1062(1) “The memorandum of understanding shall describe the role of each party.”

- ii. On an annual basis, attend current training events on legal and constitutional issues in drug treatment courts, evidence-based substance abuse and mental health treatment, behavior modification, and/or community supervision.
- iii. Help to identify potential and eligible drug treatment court participants.
- iv. Provide feedback, suggestions, and ideas on the operation of the drug 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 drug treatment 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.

b. The roles of the individual parties are as follows:

i. Drug court judge:

- 1. Serve as the leader of the team.
- 2. Preside over status review hearings.
- 3. Engage the community to generate local support for the drug court.
- 4. Communicate with the participants in a positive manner and make final decisions regarding incentives, sanctions, and program continuation.
- 5. 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.
- 6. Rely on the expert input of duly trained treatment professionals when imposing treatment related conditions on the participants.
- 7. Provide program oversight and ensure communication and partnership with treatment.
- 8. Shall consider whether to terminate a participant's participation in the drug treatment program if that participant is accused of a new crime.

ii. Prosecuting attorney:

- 1. Provide legal screening of eligible participants.
- 2. Attend review hearings.
- 3. Represent the interests of the prosecutor and law enforcement.
- 4. Advocate for public safety.
- 5. Advocate for victim interest.
- 6. Hold participants accountable for meeting their obligations.
- 7. 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.).
- 8. May help resolve other pending legal cases that impact participants' legal status or eligibility.

iii. Program coordinator:

- 1. Arrange for additional screenings of persons aside from the prosecutor's legal screening.
- 2. Attend review hearings.
- 3. Answer inquiries from defense attorneys on possible eligibility.
- 4. Enter data into DCCMIS system.
- 5. Liaison with non-treatment agencies that are providing services to the participants.
- 6. 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 that 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.

- iv. Probation officers and court case managers:
 - 1. Administer a validated criminogenic risk/needs assessment tool to participants during the referral process to ensure the drug treatment court is serving the appropriate target population.
 - 2. Attend review hearings.
 - 3. Work with the program coordinator in supervising and monitoring the individuals in the program.
 - 4. Prepare presentence reports, and perform drug and alcohol tests as needed.
 - 5. Schedule probation violations or show cause hearings for participants who have violated the program rules and are subject to termination from the program, or if a liberty interest is at stake.
 - 6. Enter data into the DCCMIS system.

- v. Defense counsel representative:
 - 1. Ensure that defendants' procedural and due process rights are followed.
 - 2. Ensure that a defense counsel representative is present at all staffing meetings to avoid ex parte communication.
 - 3. Attend review hearings.
 - 4. Ensure that the participant is treated fairly and that the drug treatment court team follows its own rules.
 - 5. When appropriate, and without breaching attorney-client privilege, encourage clients to be forthcoming and honest regarding their recovery process.

- vi. Treatment provider:
 - 1. Conduct assessments to determine program eligibility, appropriate treatment services, and progress in treatment.
 - 2. Ensure that a treatment representative is present at all staffing meetings to ensure therapeutic input regarding any sanctions being considered.
 - 3. 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.
 - 4. Attend review hearings.
 - 5. Manage delivery of treatment services.
 - 6. Administer, or ensure administration of, behavioral or cognitive-behavioral treatments that are documented in manuals and have been demonstrated to improve outcomes.
 - 7. Provide clinical case management.
 - 8. Offer insights and suggestions on the treatment plans of individuals in the program.
 - 9. Enter data into the DCCMIS system.

- vii. Law enforcement agency:
 - 1. Provide officers to assist with home checks for participants

VII. Deferrals, Delays, and Deviation from Sentencing Guidelines³

Under MCL 600.1068(2)⁴, the prosecutor must approve an individual's admission into the **[name of drug treatment court]** if the individual will be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines.

VIII. 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 600.1070 the clerk of the drug treatment 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 computation⁶]**.

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 drug treatment court]** local team, which consists of the following stakeholder agency representation:

1. **[Name of drug treatment court]**, drug court judge, **[name of judge]**
2. **[Name of drug treatment court]**, drug 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 treatment agency on team]**, treatment provider, **[name of treatment provider]**
9. **[Name of law enforcement agency on team]**, **[title]**, **[name of law enforcement representative]**
10. **[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.

³ Per MCL 600.1076(4) "...the court, with the agreement of the prosecutor and in conformity with the terms and conditions of the memorandum of understanding under section 1062, may discharge and dismiss the proceedings against an individual..." who meets the requirements of MCL 600.1076(4) a-e.

⁴ Per MCL 600.1068(2) "In the case of an individual who will be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines, the prosecutor must approve of the admission of the individual into the drug treatment court in conformity with the memorandum of understanding..."

⁵ Per MCL 600.1070(4) "The drug treatment court may require an individual admitted into the court to pay a reasonable drug court fee that is reasonably related to the cost to the court for administering the drug treatment 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 drug treatment court to administer the program.

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 Agreement⁷

The parties have entered into this agreement as evidenced by their signatures below. A 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] Judicial [court type] Court.

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

Signature

Date

Honorable [name], [name of drug treatment 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 drug treatment court]

Signature

Date

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

Signature

Date

[Name], [title], [name of county] county prosecutor’s office

⁷ Per MCL 600.1062 "...if the drug treatment 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 or institute a drug treatment court unless the court enters into "...a memorandum of understanding with each participating prosecuting attorney in the circuit or district court district, a representative of the criminal defense bar, and a representative or representatives of community treatment providers."

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], provider of [type of treatment services] services

Signature

Date

XIV. Attachments

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

Attachment 1: