



State Court Administrative Office  
Court Services  
Problem-Solving Courts

Michigan Association of Treatment Court Professionals

# Veterans Treatment Court Standards, Best Practices, and Promising Practices

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INDEPENDENCE · ACCESSIBILITY · ENGAGEMENT · EFFICIENCY



# *Introduction*

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## **Purpose**

This manual is an extension of the *Adult Drug Court Standards, Best Practices, and Promising Practices* manual written by staff from the State Court Administrative Office and board members of the Michigan Association of Treatment Court Professionals. It is intended to assist Michigan’s veterans treatment courts in complying with the veterans treatment court statute,<sup>1</sup> best practices, and the [10 Key Components of Veterans Treatment Courts](#). When applicable, information about the Department of Veterans Affairs (VA) is included.

Veterans treatment courts are based on the drug court model, so much of the research in this manual is from studies of drug courts; relevant information and practices have been applied to the veterans treatment court concept. Research suggests that veterans treatment court outcomes are at least as favorable as those of other treatment courts.<sup>2</sup> The content in this manual comes from many sources, but it leans most heavily on the National Association of Drug Court Professionals *Adult Drug Court Best Practice Standards, Volume I* and *Volume II*. When “drug court” is referenced in this manual, it is because the research was conducted on drug courts and not veterans treatment courts. Until veterans treatment court research suggests different practices are appropriate for veterans treatment courts, the assumption is that drug court research is applicable to this population. This manual is intended for all veterans treatment court team members to ensure that their program is following the statute and implementing best practices.

## **Definitions**

The chapters in this manual include three main types of information:

- **Standard:** Standards are pulled directly from the veterans treatment court statute, the *10 Key Components*, state and federal confidentiality law, and case law and precedent that are binding on Michigan courts.
- **Best Practice:** Best practices are supported by scientific research and data or nonbinding case law, and are proven methods to follow. The best practices have either been shown by empirical research to produce better outcomes than other practices or they are regarding compliance with confidentiality, due process, or other rules. Their use results in higher-quality programs.
- **Promising Practice:** Promising practices are not yet supported by scientific research or data, but anecdotal evidence and experience suggest they are helpful in adhering to the model. Promising practices are recommendations for courts to follow to operate a higher-quality program.

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<sup>1</sup> See Appendix A.

<sup>2</sup> See *Veterans Courts: Early Outcomes and Key Indicators for Success*, written by Justin Holbrook and Sara Anderson of the Widener University School of Law, available at <http://ssrn.com/abstract=1912655>. This research paper collects data from multiple sources, including a survey. Because the survey had a small number of respondents, the results should be qualified, but all indications are that veterans treatment courts enjoy favorable comparisons to drug court outcomes.

## **How to Use This Manual**

Each chapter is divided into relevant topics. Included within each topic are the standards, best practices, and promising practices, as well as the supporting authority or research. Not all topics have all three subdivisions: some topics have only best practices, and other topics do not have promising practices.

There are two kinds of best practices in this manual: best practices that a program must follow in order to become a certified veterans treatment court (bolded) and best practices that a program should be following.

There are footnotes throughout the manual that refer to additional research. The 15 appendices are referenced in the chapters, including model documents that courts can use to comply with certain standards and required best practices. If you would like to request training or technical assistance, please contact your regional administrator. If you have questions, please contact [CourtServices@courts.mi.gov](mailto:CourtServices@courts.mi.gov).

## **Certification**

In order for a program to become a certified veterans treatment court under MCL 600.1201, it must comply with the standards and required best practices in this manual. All standards and required best practices are in bold.

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# *Chapter 1: Roles and Responsibilities of the Veterans Treatment Court Judge*

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This chapter discusses the judge's roles on the veterans treatment court team. The judge serves as leader of the team and plays an important part in guiding participants through the program. Specific topics include the terms veterans treatment court judge, staffing meetings, and review hearings. Confidentiality is mentioned but discussed in further detail in Chapter 3. The judge is also important in ensuring participants' due process rights are protected; best practices regarding due process are discussed in Chapter 4.

## **I. General**

### ***A. Standards***

1. **A veterans court shall comply with the modified version of the 10 key components of drug treatment courts as promulgated by the Buffalo Veterans Treatment Court, which include all of the following essential characteristics:**
  - a) **Ongoing close judicial interaction with each veteran is essential. (MCL 600.1201(1)(g))**
2. **An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. A judge should always be aware that the judicial system is for the benefit of the litigant and the public, not the judiciary. (Michigan Code of Judicial Conduct, Canon 1)**

### ***B. Best Practices***

1. **Participants ordinarily appear before the same judge throughout their enrollment in the veterans treatment court.**
  - a) Drug courts that rotated the judicial assignment or where participants appeared before alternating judges had the poorest outcomes in several research studies. (Finigan, Carey, & Cox, 2007) (National Institute of Justice, 2006)
2. **The judge presides over the veterans treatment court for no less than two consecutive years.**
  - a) **When judges preside over drug courts for at least two years, those programs have significant cost savings and significantly lower recidivism. (Carey, Pukstas, Waller, Mackin, & Finigan, 2008) (Carey, Mackin, & Finigan, 2012)**
  - b) **Even greater reductions in recidivism were found in courts where the judges oversaw the drug court on a voluntary basis and the term was indefinite. (Carey, Mackin, & Finigan, 2012)**

3. The judge bases interaction with participants on the four principles of procedural fairness: voice, neutrality, respectful treatment, and trustworthy authorities.
  - a) Drug use, probation violations, and recidivism rates were all reduced in drug courts that applied the four principles of procedural fairness. (MacKenzie, 2016)

## **II. Staffing Meetings and Review Hearings**

### ***A. Standards***

1. **In the performance of judicial duties, the following standards apply:**
  - a) **A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism. (Michigan Code of Judicial Conduct, Canon 3(A)(1))**
  - b) **A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers and of staff, court officials, and others subject to the judge's direction and control. (Michigan Code of Judicial Conduct, Canon 3(A)(3))**
  - c) **Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy, and respect. (Michigan Code of Judicial Conduct, Canon 3(A)(10))**

### ***B. Best Practices***

1. **The judge regularly attends staffing meetings during which the veterans treatment court team reviews each participant's progress and discusses potential consequences for performance.**
  - a) Research has consistently shown that when the judge regularly attends staffing meetings, cost savings increase and recidivism is reduced. (Carey, Pukstas, Waller, Mackin, & Finigan, 2008) (Carey, Mackin, & Finigan, 2012)
2. The judge considers the perspectives of all team members before making final decisions that affect participants' welfare or liberty interests. The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions.
  - a) The collaborative nature of treatment courts brings together experts from various disciplines. Their expertise and shared information allow the judge to make better-informed decisions. (National Association of Drug Court Professionals, 2018) (Hora & Stalcup, 2008)
3. The judge spends sufficient time during status review hearings reviewing each participant's progress in the program. Evidence suggests judges should spend a minimum of three minutes interacting with each participant in court.

- a) Recidivism was significantly reduced, by as much as 153 percent, in drug courts where the judge spent at least three minutes interacting with each participant. The same study showed that cost savings were also improved when the judge spent the minimum three minutes with each participant. (Carey, Mackin, & Finigan, 2012)
- 4. The judge offers supportive comments to participants, stresses the importance of their commitment to treatment and other program requirements, and expresses optimism about their ability to improve their health and behavior. The judge does not humiliate participants or subject them to foul or abusive language. The judge allows participants a reasonable opportunity to explain their perspectives concerning factual controversies and the imposition of sanctions, incentives, and therapeutic adjustments.
  - a) Research has consistently shown that the perceived quality of interactions between participants and the drug court judge is among the most influential factors for success in the program. (National Association of Drug Court Professionals, 2013)
  - b) Significantly greater reductions in crime and substance use resulted when the judges were independently rated as being more fair, attentive, caring, and enthusiastic. (Zweig, Lindquist, Downey, Roman, & Rossman, 2012)

### III. Works Cited

- Carey, S., Mackin, J., & Finigan, M. (2012). What works? The ten key components of drug court: Research-based best practices. *Drug Court Review*, 7(1), 6-42.
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- Hora, P., & Stalcup, T. (2008). Drug treatment courts in the twenty-first century: The evolution of the revolution in problem-solving courts. *Georgia Law Review*, 717-811.
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- National Association of Drug Court Professionals. (2018). *Adult Drug Court Best Practice Standards. Volume 1*.
- National Institute of Justice. (2006). *Drug courts: The second decade*. Washington, D.C.: Office of Justice Programs, US Department of Justice.
- Zweig, J., Lindquist, C., Downey, P., Roman, J., & Rossman, S. (2012). Drug court policies and practices: How program implementation affects offender substance use and criminal behavior outcomes. *Drug Court Review*, 43-79.

## *Chapter 2: Participant Supervision and Compliance*

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This chapter discusses participant supervision and compliance with program requirements. Specific topics include the veterans treatment court supervision caseload, frequency of monitoring events, services provided to participants, incentives and sanctions, phase promotion and graduation, and termination from the veterans treatment court. Several topics are addressed in additional detail in other chapters.

### **I. Caseload**

#### *A. Best Practices*

1. The number of individuals participating in the program as a cohort or a track should be fewer than 125.
  - a) Programs that have fewer than 125 individual participants at one time have statistically significant reductions in recidivism. (Carey, Mackin, & Finigan, 2012)
2. Supervision caseloads should not exceed 50 active participants per supervision officer (most commonly a probation officer).
  - a) Probationers on 50:1 caseloads received significantly more probation office sessions, field visits, employer contacts, telephone check-ins, and substance use disorder and mental health treatment. As a consequence of receiving more services, they also had significantly better probation outcomes, including fewer positive drugs tests and other technical violations. (Jalbert & Rhodes, 2012)

### **II. Frequency**

#### *A. Standards*

1. **A veterans treatment court shall provide an individual admitted to the court with all of the following:**
  - a) **Consistent, continual, and close monitoring and interaction with the court, treatment providers, probation, and the participant. (MCL 600.1207 (1)(a))**
  - b) **Periodic evaluation assessments of the participant's circumstances and progress in the program. (MCL 600.1207(1)(d))**

#### *B. Best Practices*

1. **Participants appear before the judge for status hearings at least once every two weeks during the first phase of the program. The frequency of status review hearings may be reduced gradually after participants have initiated abstinence from alcohol and illicit drugs and are regularly engaged in treatment. Status review hearings are scheduled at least once every four weeks until participants are in the last phase of the program.**
  - a) A substantial body of research demonstrates the importance of scheduling status hearings no less frequently than every two weeks

during the first phase of a drug court. Participants had significantly better treatment attendance, substance use abstinence, and graduation rates when they were required to appear before the judge every two weeks. (National Association of Drug Court Professionals, 2013) (Festinger, Marlowe, Lee, Kirby, Bovasso, & McLellan, 2002)

2. Participants meet individually with a clinical case manager or comparable treatment professional at least weekly during the first phase of veterans treatment court.
  - a) Studies consistently find that drug courts reduce recidivism and are more cost-effective when participants meet individually with a clinical case manager or comparable treatment professional at least weekly during the first phase of the program. (Carey, Mackin, & Finigan, 2012) (Cissner, et al., 2013)

### ***C. Promising Practices***

1. Participants meet with a supervision officer (most commonly a probation officer) at least twice per month in the early phases of the program. Many courts require weekly meetings in early phases.
  - a) While there is no specific research available on this topic, research on frequency of review hearings and meetings with clinical case managers is relevant. More frequent meetings allow for closer supervision.

## **III. Services to Participants**

### ***A. Standards***

1. **A veterans treatment court shall provide an individual admitted to the court with all of the following:**
  - a) **Substance abuse treatment services, relapse prevention services, education, and vocational opportunities as appropriate and practicable. It is the intent of the legislature that, where practicable, these services shall be provided by the VA. (MCL 600.1207(1)(f))**
  - b) **Mental health treatment services as appropriate and practicable. It is the intent of the legislature that, where practicable, these services shall be provided by the VA. (MCL 600.1207(1)(g))**
2. **A veterans court shall comply with the modified version of the 10 key components of drug treatment courts as promulgated by the Buffalo Veterans Treatment Court, which include all of the following essential characteristics:**
  - a) **Integration of alcohol, drug treatment, and mental health services with justice system case processing. (MCL 600.1201(1)(a))**

## ***B. Best Practices***

1. **Where indicated, participants receive assistance finding safe, stable, and drug-free housing beginning in the first phase of veterans treatment court and continuing as necessary throughout their enrollment in the program.**
  - a) Participants are unlikely to succeed in treatment if they do not have a safe, stable, and drug-free place to live. (Quirouette, Hannah-Moffat, & Maurutto, 2015)
2. Participants regularly attend self-help or peer-support groups in addition to professional counseling. The peer-support groups follow a structured model or curriculum such as 12-step or Smart Recovery and offer nonfaith-based options
  - a) Participation in self-help or peer-support groups is consistently associated with better long-term outcomes, including greater abstinence and lower mortality rates, when used in conjunction with substance use disorder treatment. (Kelly, Stout, Zywiak, & Schneider, 2006) (Moos & Timko, 2008)
3. Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of veterans treatment court.
  - a) At least two studies of drug courts have reported improved program retention, graduation rates, and treatment retention when unemployed or underemployed participants received a manualized, cognitive-behavioral vocational intervention. (Deschenes, Ireland, & Kleinpeter, 2009) (Leukefeld, Webster, Staton-Tindall, & Duvall, 2007)
4. Ignition interlock devices and restricted driver licenses are made available to eligible participants. Veterans treatment courts should use the National Center for DWI Courts ignition interlock device guidelines when incorporating the use of these devices into their programs.<sup>3</sup>
  - a) An evaluation of Michigan’s Ignition Interlock Pilot Program showed that, compared to non-interlock offenders in DWI/Sobriety Court and to standard probationers, interlock program participants have the lowest recidivism rates after one, two, three, and four years of follow-up. This is true for both drunk driving-related reoffending and for general criminal reoffending. (Kierkus & Johnson, 2016)

## **IV. Incentives and Sanctions**

### ***A. Standards***

1. **A veterans treatment court shall provide an individual admitted to the court with all of the following:**

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<sup>3</sup> The Michigan Secretary of State has interpreted veterans treatment courts to be within the Drug/DWI court model for purposes of ignition interlock requirements. Thus, veterans treatment courts can offer ignition interlock restricted licenses to their participants.

- a) **A regimen or strategy of appropriate and graduated but immediate rewards for compliance and sanctions for noncompliance, including, but not limited to, the possibility of incarceration or confinement. (MCL 600.1207(1)(e))**
- 2. **A veterans court shall comply with the modified version of the 10 key components of drug treatment courts as promulgated by the Buffalo Veterans Treatment Court, which include all of the following essential characteristics:**
  - a) **A coordinated strategy that governs veterans treatment court responses to participants' compliance. (MCL 600.1201(1)(f))**

## ***B. Best Practices***

1. **The veterans treatment court places as much emphasis on incentivizing productive behaviors as it does on reducing crime, substance use, and other infractions.**
  - a) Drug courts are able to reduce substance use and better prevent criminal behavior when they focus as much on incentivizing productive behaviors as they do on reducing noncompliant or undesirable behaviors. (Zweig, Lindquist, Downey, Roman, & Rossman, 2012)
2. **The veterans treatment court has a range of sanctions of varying magnitudes that may be administered in response to program infractions.**
  - a) Programs are able to reduce substance use and recidivism when the sanctions for failing to meet difficult goals increase progressively in magnitude over successive infractions. This gives treatment a chance to take effect, and prepares participants to meet steadily increasing responsibilities in the program. (National Association of Drug Court Professionals, 2013)
  - b) Sanctions that are weak in magnitude can cause habituation in which the individual becomes accustomed, and thus less responsive, to punishment. Imposing high-magnitude sanctions when a participant fails to meet an easy goal helps to avoid habituation. (National Association of Drug Court Professionals, 2013)
3. **Sanctions are imposed as quickly as possible after noncompliant behavior. Veterans treatment courts do not wait for the next review hearing to impose a sanction if the behavior can be addressed more immediately.**
  - a) The value of having sanctions imposed immediately after noncompliant behavior is a central tenet of behavior modification. Study results show that recidivism and cost-savings do not improve when drug courts wait until the next scheduled court appearance for noncompliant participants instead of bringing them in earlier. (Carey, Mackin, & Finigan, 2012)
  - b) If teams wait too long (two weeks or more) before applying a sanction, the participants may have other issues that are more relevant by then, or they may even have worked to improve their behavior by then, in which case they are receiving a sanction at the

- same time as they are doing well, providing them with a message that is unclear and may even be defeating. (Carey, Mackin, & Finigan, 2012)
4. Jail sanctions are definite in duration and typically last no longer than five days. Participants are given access to counsel and a fair hearing if a jail sanction might be imposed as a liberty interest is at stake.
    - a) Drug courts significantly lower recidivism and improve cost savings when they use jail sanctions sparingly. (Carey, Pukstas, Waller, Mackin, & Finigan, 2008)
    - b) Research indicates that jail sanctions produce diminishing returns after approximately three to five days. (Carey, Mackin, & Finigan, 2012)
  5. Participants do not receive punitive sanctions if they are otherwise compliant with their treatment and supervision requirements, but are not responding to the treatment interventions. The appropriate course of action may be to reassess the individual and adjust the treatment plan accordingly.
    - a) If a drug court imposes substantial sanctions for substance use early in treatment, the team is likely to run out of sanctions and reach a ceiling effect before treatment has taken effect. Therefore, drug courts should ordinarily adjust participants' treatment requirements in response to positive drug tests early in the program. (Chandler, Fletcher, & Volkow, 2009)
  6. Participants are not incarcerated to achieve clinical or social service objectives such as obtaining access to detoxification services or sober living quarters.
    - a) Relying on in-custody substance use disorder treatment can reduce the cost-effectiveness of a drug court by as much as 45 percent. (Carey, Mackin, & Finigan, 2012)
  7. Team members have a written schedule of sanctions for infractions that is shared with participants.
    - a) Drug courts where team members are given a copy of the guidelines for sanctions had 72% greater cost savings.
    - b) Multistate research showed the most effective programs with regard to recidivism included greater predictability of sanctions. (Rossman & Zweig, 2012)

### ***C. Promising Practices***

1. Immediate and tangible rewards help a veterans treatment court demonstrate the benefits of abstinence and treatment. Courts should seek to include tangible or token rewards, such as coins, gifts, certificates, or entry into a drawing in an incentives program.
  - a) Frequently, the benefits of abstinence, such as better health and lifestyle, are abstract and distant to the abuser. The point of motivational incentives is to bring the benefits of abstinence forward in less time. Both voucher- and prize-based reinforcement systems have been repeatedly shown to be effective interventions among substance users. (Stitzer, 2008) These tangible rewards can

be used in veterans treatment court to more quickly improve behaviors.

## V. Payments

### *A. Standards*

1. **The veterans treatment court may require an individual admitted into the court to pay a veterans treatment court fee that is reasonably related to the cost to the court for administering the veterans treatment court program as provided in the memorandum of understanding under section 1201(2).<sup>4</sup> (MCL 600.1206(4))**
  - a) Courts can use the [SCAO Problem-Solving Court Fee Calculator](#) to help determine what a reasonable fee would be. This calculator should be used only as a guide to help determine a program fee; it is not intended to determine an exact or required amount. Courts can determine the amount of the fee as it is reasonably related to the cost for administering the veterans treatment court program.
2. **In order to continue to participate in and successfully complete a veterans treatment court program, an individual shall do all of the following:**
  - a) **Pay all court-ordered fines and costs, including minimum state costs. (MCL 600.1208(1)(a))**
  - b) **Pay the veterans treatment court fee allowed under section 1206(4). (MCL 600.1208(1)(b))**
  - c) **Pay all court-ordered restitution. (MCL 600.1208(1)(c))**
  - d) **Pay all crime victims' rights assessments under section 5 of 1989 PA 196, MCL 780.905. (MCL 600.1208(1)(d))**
3. **The court shall not sentence a defendant to a term of incarceration, nor revoke probation, for failure to comply with an order to pay money unless the court finds, on the record, that the defendant is able to comply with the order without manifest hardship and that the defendant has not made a good-faith effort to comply with the order. (MCR 6.425(3)(a))**
4. **If the court finds that the defendant is unable to comply with an order to pay money without manifest hardship, the court may impose a payment alternative, such as a payment plan, modification of any existing payment plan, or waiver of part or all of the amount of money owed to the extent permitted by law. (MCR 6.425(E)(3)(b))**

## VI. Phase Promotion and Graduation

### *A. Best Practices*

1. **Phase promotion is predicated on the achievement of realistic and defined behavioral objectives, such as completing a treatment regimen or remaining drug-abstinent for a specific period of time.**

- a) Drug courts have significantly better outcomes when they have a clearly defined phase structure and concrete behavioral requirements for advancement. (Carey, Mackin, & Finigan, 2012)
  - b) Phase advancement should not be based simply on the amount of time that participants have been enrolled in the program. (National Association of Drug Court Professionals, 2013)
- 2. In order to graduate, participants who are able to join the labor force must have a job or be in school in instances where health insurance and other social benefits such as VA benefits are not at risk.
  - a) Both having a job and being in school are connected to cost-savings and reduced recidivism after the participant leaves the program. (Carey, Mackin, & Finigan, 2012)
- 3. A period of greater than 90 continuous days of negative drug test results is required before a participant is eligible to graduate.
  - a) Drug courts where participants were expected to have greater than 90 days clean (demonstrated by negative drug tests) before graduation had 164 percent greater reductions in recidivism compared with programs that expected less clean time. (Carey, Mackin, & Finigan, 2012)

## VII. Program Discharge

### *A. Standards*

1. **The veterans treatment court shall be notified if the veterans treatment court participant is accused of a new crime, and the judge shall consider whether to terminate the participant's participation in the veterans treatment program in conformity with the memorandum of understanding under section 1201(2). If the participant is convicted of a felony for an offense that occurred after the defendant is admitted to veterans treatment court, the judge shall terminate the participant's participation in the veterans treatment court. (MCL 600.1208(2))**
2. **Upon completion or termination of the veterans treatment court program, the court shall find on the record or place a written statement in the court file as to whether the participant completed the program successfully or whether the individual's participation in the program was terminated and, if it was terminated, the reason for the termination.<sup>5</sup> (MCL 600.1209(1))**
3. **The court shall send a record of the discharge and dismissal [under MCL 600.1206, and as outlined in MCL 600.1209(4)] to the criminal justice information center of the department of state police, and the department of state police shall enter that information into the L.E.I.N. with an indication of participation by the individual in a veterans treatment court. (MCL 600.1209(6))**

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<sup>5</sup> See Appendix B. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/VTC-DischargeStatment.pdf>.

## ***B. Best Practices***

- 1. Unless termination is required under MCL 600.1208 or the participant can no longer be managed safely in the community, veterans treatment courts do not terminate participants based only on drug or alcohol use or possession.**
  - a) Drug courts have significantly poorer outcomes and are considerably less cost-effective when they terminate participants based only on drug or alcohol use. Drug courts that had a policy of terminating participants for positive drug tests or new arrests for drug possession offenses had 50 percent higher criminal recidivism and 48 percent lower cost savings than drug courts that responded to new use by increasing treatment or applying sanctions of lower severity. (Carey, Mackin, & Finigan, 2012)
  - b) Drug courts that terminated participants merely for drug or alcohol use have significantly poorer recidivism rates and are less cost-effective. (Carey, Mackin, & Finigan, 2012)

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## Chapter 3: Confidentiality

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This chapter addresses confidentiality issues in veterans treatment court and shares information with Chapter 4 (Due Process); readers should review chapters 3 and 4 together. Specific information in this chapter includes the Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2, redisclosure, records management, and staff training. Courts should also review the [Patient Rights & Responsibilities](#) information and [VA Privacy Practices](#) available at <https://www.va.gov/health/>. Specific VA regulations and directives are available from the VA's Office of Regulation Policy and Management at <https://www.va.gov/orpm/>.

### I. Confidentiality

#### A. Standards

1. Veterans treatment courts are required to comply with Title 42 of the United States Code, Section 290dd-2, which is the federal law that protects the confidentiality of the identity, diagnosis, prognosis, or treatment of any patient records that are maintained in connection with the performance of any federally assisted program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research. 42 CFR, Part 2, contains the regulations implementing the alcohol and substance abuse confidentiality law. Full text of the law is available [here](#).
2. Veterans treatment courts are required to comply with the Health Insurance Portability and Accountability Act (HIPAA). HIPAA is a federal law that protects confidentiality and the security of protected health information. While it does not directly apply to treatment courts, HIPAA does apply to the treatment agencies partnering with treatment courts, so veterans treatment courts must also comply with HIPAA. Full text of the HIPAA privacy law is available [here](#).
3. Information in the record of a recipient, and other information acquired in the course of providing mental health services to a recipient, shall be kept confidential and shall not be open to public inspection. The information may be disclosed outside the department, community mental health services program, licensed facility, or contract provider, whichever is the holder of the record, only in the circumstances and under the conditions set forth in MCL 330.1748 section 748 or section 748a. MCL 330.1748(1). Full text is available [here](#).
4. 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. (42 CFR, Section 2.35(d), MCL 600.1203(4), and MCL 600.1207(2))
5. 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. (42 CFR, Section 2.20)

6. **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 2.22 and 2.31(a)) (Veterans Health Administration Notice of Privacy Practices)**
  - a) **Consent may be paper or electronic, and must include the following under 42 CFR, Sections 2.14-2.35:<sup>6</sup>**
    - i. **The name of the participant permitting disclosure.**
    - ii. **The specific name of the program(s) or person(s) permitted to make the disclosure.**
    - iii. **The name(s) of the individual(s) or the name(s) of the entity(-ies) to which a disclosure is to be made..**
    - iv. **The purpose of the (re)disclosure. In accordance with §2.13(a), the disclosure must be limited to that information which is necessary to carry out the stated purpose.**
    - v. **How much and what kind of information is to be disclosed.**
    - vi. **A statement that the consent is subject to revocation at any time except to the extent that the program or person which is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment services in reliance on a valid consent to disclose information to a third-party payer.**
    - vii. **Date, event, or condition upon which the consent will expire. The date, event, or condition must ensure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.**
    - viii. **The participant's signature and, if applicable, the signature of a person authorized to give consent for a minor.**
    - ix. **The date on which consent is signed.**
7. **The participant must be advised, orally and in writing, of their rights regarding confidential information about their substance use disorder. The notice must cite Section 290dd-2 and the implementing regulations (Sections 2.1 through 2.67 of Title 42 of the code of Federal Regulations), and must state the following:<sup>7</sup>**
  - a) **Federal law and regulations protect the confidentiality of substance use disorder treatment records;**
  - b) **It is a crime to violate this confidentiality requirement, which the participant may report to appropriate authorities, with the authority's name and contact information provided;**

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<sup>6</sup> See Appendix C. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/ReleaseInfoMultiParty.pdf>.

<sup>7</sup> See Appendix C. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/ReleaseInfoMultiParty.pdf>.

- c) **Notwithstanding this confidentiality requirement, covered information may be released under specified circumstances (which should be listed for the participant); and**
  - d) **The restrictions on disclosure and use in the regulations in 42 CFR part 2 do not apply to communication with law enforcement agencies or officials regarding crimes committed on the premises of the program, and/or crimes against program personnel, or to reporting of incidents of suspected child abuse and neglect to the appropriate state or local authorities, under state law. However, the restrictions continue to apply to the original substance use disorder patient records maintained by the part 2 program including their disclosure and use for civil or criminal proceedings which may arise out of the report of suspected child abuse and neglect.**
8. **Treatment courts may not disclose protected health information in response to a subpoena or a search warrant or any other form of request, even if signed by a judge, unless that client signs a consent form authorizing such disclosure, or a court of competent jurisdiction enters an authorizing order under the standards set forth in the federal regulations. (42 CFR, Section 2.61)**
  9. **Any documented treatment information distributed on the basis of the treatment participant's consent should be accompanied by a Notice of Prohibition Against Redisclosure. (42 CFR, Section 2.32)**
  10. **Veterans treatment courts must have in place formal policies and procedures to protect against unauthorized uses and disclosures of confidential information (42 CFR, Section 2.16). The policies and procedures must address the following:<sup>8</sup>**
    - a) **Paper records, including:**
      - i. **Transferring and removing such records;**
      - ii. **Destroying such records, including sanitizing the hard copy media associated with the paper printouts, to render the patient identifying information non-retrievable;**
      - iii. **Maintaining such records in a secure room, locked file cabinet, safe, or other similar container, or storage facility when not in use;**
      - iv. **Using and accessing workstations, secure rooms, locked file cabinets, safes, or other similar containers, and storage facilities that use or store such information; and**
      - v. **Rendering patient identifying information non-identifiable in a manner that creates a very low risk of re-identification (e.g., removing direct identifiers).**
    - b) **Electronic records, including:**
      - i. **Creating, receiving, maintaining, and transmitting such records;**

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<sup>8</sup> See appendices E and F.

- ii. **Destroying such records, including sanitizing the electronic media on which such records are stored, to render the patient identifying information non-retrievable;**
- iii. **Using and accessing electronic records or other electronic media containing patient identifying information; and**
- iv. **Rendering the patient identifying information non-identifiable in a manner that creates a very low risk of re-identification (e.g., removing direct identifiers).**

## ***B. Best Practices***

1. **Veterans treatment court teams are familiar with relevant federal and state laws and regulations in order to develop appropriate policies and procedures.**
  - a) Because court programs are integrally involved with supervising the participation of drug offenders in substance use disorder treatment, the programs must take into account federal requirements as well as applicable state laws. (Holland, 1999)
2. **Program personnel’s access to confidential records is restricted after consent expires or is revoked.**
  - a) All file storage systems 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 treatment 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. (Tauber, Weinstein, & Taube, 1999)
3. **Treatment courts establish a memorandum of understanding (MOU) on confidentiality and have all team members and replacement team members sign and agree to follow confidentiality procedures.<sup>9</sup> (Tauber, Weinstein, & Taube, 1999)**
4. **Precourt staffing meetings may be closed to participants and the public. (State of Washington v. Sykes, 2014) If open, compliance with consent requirements must be obtained.<sup>10</sup>**
5. Treatment courts receive training on federal confidentiality requirements and how they affect treatment court practitioners and contractors. (Meyer, 2011)
6. Treatment courts designate a team member as their confidentiality compliance officer. The confidentiality compliance officer should be aware of, and consulted about, all third-party inquiries pertaining to mandated disclosures and permitted disclosures under the federal regulations. (Meyer, 2011)

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<sup>9</sup> See Appendix G. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/ConfidentialityMOU.pdf>.

<sup>10</sup> See Appendix H. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/VisitorConfidentialityForm.pdf>.

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## Chapter 4: Due Process

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This chapter addresses procedural due process in veterans treatment court. Specific information in this chapter includes the participant waiver of rights, the 1st Amendment, 4th Amendment, and 14th Amendment, as well as sanctions and termination. Please also see the [Michigan Court Rules](#) and [Code of Judicial Conduct](#).

### I. Waiver of Rights

#### A. Standards

1. **Before an individual is admitted into a veterans treatment court, the court shall find on the record or place a statement in the court file establishing all of the following . . . the individual understands the consequences of entering the veterans treatment court and agrees to comply with all court orders and requirements of the court’s program and treatment providers. (MCL 600.1204)**
2. **If the individual being considered for admission to a veterans treatment court is charged in a criminal case, his or her admission is subject to all of the following conditions:<sup>11</sup>**
  - a) **The individual waives in writing the right to a speedy trial, the right to representation by an attorney at veterans treatment court review hearings, and, with the agreement of the prosecutor, the right to a preliminary examination. (MCL 600.1205(1)(c))**
  - b) **The individual signs a written agreement to participate in the veterans treatment court. (MCL 600.1205(1)(d))**
3. **The surrendering of any rights by the participant must be done knowingly, voluntarily, and intelligently. (Kelly v Allegan Circuit Judge, 1969)**

### II. 1st Amendment

#### A. Standards

1. **The mandating of an individual to attend Alcoholics Anonymous/Narcotics Anonymous (AA/NA) is a violation of the 1st Amendment Establishment Clause prohibitions. The 1st Amendment applies to the states via the 14th Amendment of the U.S. Constitution. (Hanas v Inner City Christian Outreach, 2008)**
2. **Veterans treatment court review hearings must be held open to the public.**
  - a) **Although the 6th Amendment right “is the right of the accused,” a member of the public can invoke the right to a**

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<sup>11</sup> See Appendix J. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/VTC-AgreementToParticipate.pdf>.

**public trial under the 1st Amendment. (United States Constitution, 1st Amendment and 6th Amendment)**

- b) **The sittings of every court within this state shall be public except that a court may, for good cause shown, exclude from the courtroom other witnesses in the case when they are not testifying and may, in actions involving scandal or immorality, exclude all minors from the courtroom unless the minor is a party or witness. This section shall not apply to cases involving national security. (MCL 600.1420)**
  - c) **The party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure. (People v Vaughn, 2012)**
3. **Veterans treatment court conditions of participation, such as area and association restrictions, must be reasonable and must be narrowly drawn.**
- a) **Analogizing to probation conditions in MCL 771.3(3)), “. . . a sentencing court must be guided by factors that are lawfully and logically related to the defendant’s rehabilitation.” (People v Johnson (Larry), 1995)**

### ***B. Best Practices***

- 1. If it is appropriate and beneficial to order 12-step, self-help programs, offenders who object to the deity-based 12-step programs cannot be ordered to attend them. In those instances, secular alternatives must be made available. (Meyer, 2011)

## **III. 4th Amendment**

### ***A. Best Practices***

- 1. The veterans treatment court conducts home visits on participants, without reasonable suspicion, as part of a standard monitoring program.
  - a) Home visits are a critical function of community supervision. (Harberts, 2011)
  - b) Home visits as a condition of probation in the absence of reasonable suspicion are justified. (United States vs Reyes, 2002)
  - c) “[A] home visit is not a search, even though a visit may result in seizure of contraband in plain view.” (United States v Newton, 2002)<sup>12</sup>
- 2. A waiver against unreasonable searches and seizures may be made as a condition of probation.

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<sup>12</sup> See also United States v Tessier, U.S. Court of Appeals, Sixth Circuit (02/18/16), citing with favor Reyes, supra; United States v LeBlanc, 490 F3d 361, 370 (5th Cir. 2007) cases upholding less invasive “home visits” where there was no reasonable suspicion.

- a) Analogizing to probation law, “a waiver of one’s constitutional protections against unreasonable searches and seizures may properly be made a condition of a probation order where the waiver is reasonably tailored to a defendant’s rehabilitation.” (People v Hellenthal, 1990) (MCL 791.236(19))
- b) A warrantless search of a probationer’s home by a probation officer who had reasonable suspicion was upheld based on a ‘special needs’ balancing test. (Griffin v Wisconsin, 1987)

## IV. 14th Amendment

### *A. Standards*

1. **There are objective standards that require recusal when “the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable.” (Withrow v Larkin, 1975)**
2. **Disqualification of a judge is warranted for reasons that include, but are not limited to, the following:**
  - a) **The judge is biased or prejudiced for or against a party or attorney. (MCR 2.003(C)(1)(a))**
  - b) **The judge, based on objective and reasonable perceptions, has either (i) a serious risk of actual bias impacting the due process rights of a party as enunciated in Caperton v Massey, [556 US 868]; 129 S Ct 2252; 173 L Ed 2d 1208 (2009), or (ii) has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct. (MCR 2.003(C)(1)(b))**
  - c) **The judge has personal knowledge of disputed evidentiary facts concerning the proceeding. (MCR 2.003(C)(1)(c))**
3. **Participation in a drug court (the model for veterans treatment court) is not a fundamental right, and drug offenders are not part of any suspect or semi-suspect class. (Lamont v State, 2006)**

## V. Sanctions and Termination

### *A. Best Practices*

1. Veterans treatment court termination hearings, and sanction hearings involving a liberty interest where the participant is contesting the facts of the violation, require procedural protections under due process and under [MCR 6.445](#), including, but not limited to, the following:<sup>13</sup>
  - a) **The court must hold a hearing similar to an arraignment hearing,**
  - b) **The court must ensure that the participant receives written notice of the alleged violation,**

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<sup>13</sup> See Appendix K. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/ModelProgVioAdviceRights.pdf>.

- c) **The court must advise the participant that the participant has a right to contest the charge at a hearing, and**
- d) **The court must advise the participant that the participant is entitled to a lawyer's assistance at the hearing and at all subsequent court proceedings, and that the court will appoint a lawyer at public expense if the participant wants one and is financially unable to retain one.**
  - i. This best practice is based on analogy to due process requirements in termination from probation; supported by several state supreme courts that have ruled on drug court terminations; and it complies with the probation violation rulings in *Gagnon v Scarpelli*, 411 U.S. 778, 92 S.Ct. 1756, 36 L.Ed.2d 656 (1973), and *People v Belanger*, 227 Mich App 637 (1998). See MCR 6.445 for additional information regarding procedural protections under the court rule.

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# *Chapter 5: The Veterans Treatment Court Team*

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This chapter discusses the various members on a veterans treatment court team and the importance of collaboration among those members. Specific topics include team composition, roles of team members, participation in staffing meetings and review hearings, and communication and decision-making. The role of the judge is discussed in additional detail in Chapter 1 of this manual. Confidentiality is mentioned briefly here, but discussed in detail in Chapter 3. Various members of the team work to ensure participants' due process rights are protected; best practices regarding due process are discussed in Chapter 4. Teams should also engage in training as a team; training and education are discussed in Chapter 9.

## **I. Team Composition**

### ***A. Standards***

1. **A veterans court shall comply with the modified version of the 10 key components of drug treatment courts as promulgated by the Buffalo Veterans Treatment Court, which include all of the following essential characteristics:**
  - a) **Use of a nonadversarial approach; prosecution and defense counsel promote public safety while protecting any participant's due process rights. (MCL 600.1201(1)(b))**
  - b) **Forging of partnerships among veterans treatment court, veterans administration, public agencies, and community-based organizations generates local support and enhances veteran treatment court effectiveness. (MCL 600.1201(1)(j))**
2. **The veterans treatment court shall cooperate with, and act in a collaborative manner with, the prosecutor, defense counsel, treatment providers, the local substance abuse coordinating agency for that circuit or district, probation departments, the United States Department of Veterans Affairs, local VSOs<sup>14</sup> in that circuit or district, and to the extent possible, local law enforcement, the department of corrections, and community corrections agencies. (MCL 600.1206(3))**

### ***B. Best Practices***

1. **A dedicated multidisciplinary team of professionals manages the day-to-day operations of the veterans treatment court, including reviewing participant progress during precourt staff meetings and status hearings, contributing observations and recommendations within the team members' respective areas of expertise, and delivering or overseeing the delivery of legal, treatment, and supervision services.**
2. **The team comprises representatives from all partner agencies involved in creating the program, including but not limited to a judge or judicial officer, program coordinator, prosecutor, defense counsel representative, treatment**

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<sup>14</sup> Veterans Service Organization

representative, community supervision officer, veterans justice outreach specialist, and law enforcement officer.

- a) Drug courts enjoy significantly greater reductions in recidivism and significantly higher cost savings when all team members regularly participate in staffing meetings and review hearings. (Carey, Mackin, & Finigan, 2012) (Cissner, et al., 2013)
- b) When law enforcement is a member of the drug court team, drug courts can reduce recidivism by 87 percent and increase cost savings by 44 percent. (Carey, Mackin, & Finigan, 2012)
3. Successful courts had significantly more departmental representation at staffing and court than in less successful courts. Often, the overabundance of one department, i.e. treatment or legal, appeared clustered and proved to be unproductive to the collective goals for the court docket.
  - a) When too many treatment providers wanted their own view expressed, the team made no conclusions on how to treat the participant most effectively. When too many legal representatives attempted to protect their own clients' rights at a crowded staffing, the judge appeared bogged down by details and the staffing slowed considerably. (Bullard, 2014)

### ***C. Promising Practices***

1. An independent evaluator serves as a member of the veterans treatment court team.
  - a) The evaluator is responsible for developing reliable and valid methodologies to study the effectiveness of the treatment court. It is necessary for all treatment courts to regularly evaluate program effectiveness. This is primarily done through three evaluations: process, outcome, and cost-benefit. While an evaluator is an essential team member of any treatment court, it is not necessarily a position for a full-time employee in every program. Instead, the role can be filled at the regional or local level. The evaluator, while generally considered a part of the team, does not participate in team reviews as it compromises the objectivity of the evaluator and the integrity of the evaluation process. (Minnesota Supreme Court, 2006)
  - b) Courts should consider partnering with local colleges or universities to find a qualified evaluator.

## **II. Staffing Meetings and Review Hearings**

### ***A. Best Practices***

1. **Team members consistently attend precourt staff meetings to review participant progress, determine appropriate actions to improve outcomes, and prepare for status hearings in court.**
  - a) When all team members consistently attend staffing meetings, drug courts can lower recidivism by 50 percent, and are nearly twice as

- cost-effective as those programs where not all team members attend. (Carey, Mackin, & Finigan, 2012)
- b) When a representative from treatment attended staffing meetings, recidivism was reduced by 105 percent. (Carey, Mackin, & Finigan, 2012)
2. **Team members attend review status hearings on a consistent basis. During the status review hearings, team members contribute relevant information or recommendations when requested by the judge or as necessary to improve outcomes or protect participants' legal rights.**
    - a) Drug courts were able to significantly reduce recidivism and improve cost-savings when the judge, attorneys, treatment, probation, and coordinator all attended status review hearings. (Carey, Mackin, & Finigan, 2012)
    - b) When a representative from treatment attended status review hearings, recidivism was reduced 100 percent over drug courts that did not have a treatment representative attend. (Carey, Mackin, & Finigan, 2012)
    - c) When a law enforcement officer attended status review hearings, recidivism was reduced 83 percent over drug courts that did not have a law enforcement officer attend. (Carey, Mackin, & Finigan, 2012)

### III. Communication and Decision Making

#### *A. Best Practices*

1. **Team members share information as necessary to assess participants' progress in treatment and compliance with the conditions of veterans treatment court. Defense attorneys make it clear to participants and other team members whether they will share communications from participants with the team.**
  - a) Several studies have indicated that participants and staff alike rate communication among team members as one of the most important factors for success in drug court. (National Association of Drug Court Professionals, 2015)
  - b) Please also see Chapter 3, Confidentiality for information on appropriate scope for information sharing.
2. **Team members and the agency they represent execute memoranda of understanding specifying what information will be shared among team members.<sup>15</sup>**
  - a) Assuming a participant has executed a valid waiver of his or her privacy and confidentiality rights, drug court team members are permitted, and indeed may be required, to share covered information in the course of performing their professional duties. Confidentiality and privacy rights belong to the participant, not to

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<sup>15</sup> See Appendix G. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/ConfidentialityMOU.pdf>.

staff, and may be waived freely and voluntarily in exchange for receiving anticipated benefits, such as gaining access to effective treatment or avoiding a criminal record or jail sentence (Melton et al., 2007). Failing to abide by a valid confidentiality waiver could, under some circumstances, be a breach of a staff person's professional responsibilities to the participant. (NADCP, V2, 2018)

- b) Staff persons also have ethical obligations to other drug court team members. If a staff person knowingly withholds relevant information about a participant from other team members, this omission could inadvertently interfere with the participant's treatment goals, endanger public safety, or undermine the functioning of the drug court team. All agencies involved in the administration of a drug court should, therefore, execute MOUs specifying what data elements will be shared among team members (Harden & Fox, 2011). The data elements listed above might be included in such MOUs to clarify the obligations of each professional on the team. (NADCP, V2, 2018)

**3. Team members contribute relevant insights, observations, and recommendations based on their professional knowledge, training, and experience. The judge considers all team members' perspectives before making decisions that affect participants' welfare or liberty interests and explains the rationale for such decisions to team members and participants.**

- a) Studies in more than 10 drug courts found that implementing a model designed to improve team communication skills increased job satisfaction and improved program measures such as admission rates, wait times for treatment, and no-show rates.<sup>16</sup> (National Association of Drug Court Professionals, 2015)

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<sup>16</sup> For additional information on the suggested model, the Network for the Improvement of Addiction Treatment's Organizational Improvement Model, please see page 45 of *Adult Drug Court Best Practice Standards*, Volume 2, published by the National Association of Drug Court Professionals. The model seeks to create an environment where all team members are able to share differing views in a way that is likely to be heeded by others on the team.

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## ***Chapter 6: Veterans Treatment Court Population and Admission***

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This chapter discusses screening and eligibility criteria for veterans treatment courts. It can be used to ensure that programs are targeting the proper population among offenders. Specific topics include screening, eligible offenses, assessments, admission to the program and legal outcomes. Veterans treatment courts can use this chapter to address their target population, screening and assessment practices, program eligibility requirements, and admission practices.

### **I. Screening**

#### ***A. Standards***

- 1. To be eligible for admission to a veterans treatment court, an individual shall cooperate with and complete a preadmissions screening and evaluation assessment and shall agree to cooperate with any future evaluation assessment as directed by the veterans treatment court. A preadmission screening and evaluation assessment shall include all of the following:**
  - a) A determination of the individual's veteran status. A review of the DD Form 214 "certificate of release or discharge from active duty" satisfies the requirement of this subdivision. (MCL 600.1203(3)(a))**
  - b) A complete review of the individual's criminal history, and whether the individual has been admitted to, has participated in, or is currently participating in a veterans treatment court, drug treatment court, or other specialty court, whether admitted under this act or a law listed under subsection (2), and the results of the individual's participation. A review of the L.E.I.N. satisfies the requirements of this subdivision unless a further review is warranted. The court may accept other verifiable and reliable information from the prosecution or defense to complete its review and may require the individual to submit a statement as to whether or not he or she has previously been admitted to a veterans treatment court, drug treatment court, or other specialty court, and the results of his or her participation in the prior program or programs. (MCL 600.1203(3)(b))**
  - c) An assessment of the risk of danger or harm to the individual, others, or the community. (MCL 600.1203(3)(c))**
  - d) A review of the individual's history regarding the use or abuse of any controlled substance or alcohol and an assessment of whether the individual abuses controlled substances or alcohol or is drug or alcohol dependent. It is the intent of the legislature that, to the extent practicable, an assessment under**

**this subdivision shall be a clinical assessment completed by the VA. (MCL 600.1203(3)(d))**

- e) **A review of the individual’s mental health history. It is the intent of the legislature that, to the extent practicable, this assessment shall be a clinical assessment completed by the VA. (MCL 600.1203(3)(e))**
  - f) **A review of any special needs or circumstances of the individual that may potentially affect the individual’s ability to receive substance abuse treatment and follow the court’s orders. (MCL 600.1203(3)(f))**
2. **The court may request that the department of state police provide to the court information contained in the L.E.I.N. pertaining to an individual applicant's criminal history for the purposes of determining an individual's admission into the veterans treatment court and general criminal history review, including whether the individual has previously been admitted to and participated in a veterans treatment court, drug treatment court, or other specialty court under this act or a statute listed under subsection (2), and the results of the individual's participation. The department of state police shall provide the information requested by a veterans treatment court under this subsection. (MCL 600.1203(5))**

***B. Best Practices***

- 1. Use clinical assessments instead of screening tools to determine diagnoses.
  - a) Substance use screening tools do not accurately identify diagnoses. (Greenfield & Hennessy, 2008)

***C. Promising Practices***

- 1. The veterans treatment court gives careful consideration when deciding whether to accept a defendant who is still active in the National Guard or Reserves.
  - a) Those serving in the National Guard or Reserves can be called to training, called to active duty, or deployed for extended periods of time. These assignments may keep a participant away from the veterans treatment court, unable to participate in hearings, treatment, or testing. Such an interruption in services can affect the ability to complete the program, so courts should consider a guardsman’s or reservist’s ability to participate.

**II. Eligible Offenses**

***A. Standards***

- 1. **“Violent offender” means an individual who is currently charged with or has pled guilty to an offense involving the death of, or a serious bodily injury to, any individual, whether or not any of these circumstances are an element of the offense, or an offense that is criminal sexual conduct in any degree. (MCL 600.1200(k))**
- 2. **A veterans treatment court shall determine whether an individual may be admitted to the veterans treatment court. No individual has a right to be**

admitted into a veterans treatment court. However, an individual is not eligible for admission into a veterans treatment court if he or she is a violent offender. An individual is eligible for admission into a veterans treatment court if he or she has previously had an offense discharged or dismissed as a result of participation in a veterans treatment court, drug treatment court, or other specialty court, but he or she shall not have a subsequent offense discharged or dismissed as a result of participating in the veterans treatment court. (MCL 600.1203(1))

3. In addition to admission to a veterans treatment court under this act, an individual who is eligible for admission under this act may also be admitted to a veterans treatment court under any of the following circumstances:

- a) The individual has been assigned the status of youthful trainee under section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11. (MCL 600.1203(2)(a))
- b) The individual has had criminal proceedings against him or her deferred and has been placed on probation under any of the following:
  - i. Section 7411 of the public health code, 1978 PA 368, MCL 333.7411 or a local ordinance or another law of this state, another state, or the United States that is substantially similar to that section. (MCL 600.1203(2)(b)(i))
  - ii. Section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a. (MCL 600.1203(2)(b)(ii))
  - iii. Section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430 or a local ordinance or another law of this state, another state, or the United States that is substantially similar to that section. (MCL 600.1203(2)(b)(iii))
  - iv. Section 350a of the Michigan penal code, 1931 PA 328, MCL 750.350a and 750.430, or a local ordinance of another law of this state, another state, or the United States that is substantially similar to those sections. (MCL 600.1203(2)(b)(iv))

4. In order to be considered for placement in the [DWI/sobriety court interlock] program, an individual must have been convicted of either of the following:

- a) Two or more convictions for violating section 625(1) or (3) of the Michigan vehicle code, 1949 PA 300, MCL 257.625, or a local ordinance of this state substantially corresponding to section 625(1) or (3) of the Michigan vehicle code, 1949 PA 300, MCL 257.625. (MCL 600.1084(4)(a))
- b) One conviction for violating section 625(1) or (3) of the Michigan vehicle code, 1949 PA 300, MCL 257.625, or a local ordinance of this state substantially corresponding to section

**625(1) or (3) of the Michigan vehicle code, 1949 PA 300, MCL 257.625, preceded by 1 or more convictions for violating a local ordinance or law of another state substantially corresponding to section 625(1), (3), or (6) of the Michigan vehicle code, 1949 PA 300, MCL 257.625, or a law of the United States substantially corresponding to section 625(1), (3), or (6) of the Michigan vehicle code, 1949 PA 300, MCL 257.625. (MCL 600.1084(4)(b))**

### **III. Clinical Substance Use and Mental Health Assessments**

#### ***A. Standards***

- 1. To be eligible for admission to a veterans treatment court, an individual shall cooperate with and complete a preadmissions screening and evaluation assessment and shall agree to cooperate with any future evaluation assessment as directed by the veterans treatment court. A preadmission screening and evaluation assessment shall include all of the following:**
  - a) An assessment of the risk of danger or harm to the individual, others, or the community. (MCL 600.1203(3)(c))**
  - b) A review of the individual's history regarding the use or abuse of any controlled substance or alcohol and an assessment of whether the individual abuses controlled substances or alcohol or is drug or alcohol dependent. It is the intent of the legislature that, to the extent practicable, an assessment under this subdivision shall be a clinical assessment completed by the VA. (MCL 600.1203(3)(d))**
  - c) A review of the individual's mental health history. It is the intent of the legislature that, to the extent possible, this assessment shall be a clinical assessment completed by the VA. (MCL 600.1203(3)(e))**
  - d) A review of any special needs or circumstances of the individual that may potentially affect the individual's ability to receive substance abuse treatment and follow the court's orders. (MCL 600.1203(3)(f))**
- 2. A veterans treatment court may hire or contract with licensed or accredited treatment providers, in consultation and cooperation with the local substance abuse coordinating agency, and other appropriate persons to assist the veterans treatment court in fulfilling its requirements under this chapter, including, but not limited to, an investigation of an individual's background or circumstances, or a clinical evaluation of an individual, before the individual is admitted or permitted to participate in a veterans treatment court. It is the intent of the legislature that, services, including, but not limited to, clinical evaluations, drug and alcohol treatment, and mental health services, shall be provided by the VA to the extent that is practical. (MCL 600.1202)**

## ***B. Best Practices***

1. **Clinical assessments use validated tools.**
  - a) The predictive criterion validity of actuarial assessments of major risk and/or need factors greatly exceeds the validity of unstructured clinical judgment. (Andrews, Bonta, & Wormith, 2006).
  - b) Drug courts that use better assessment practices have better outcomes (Shaffer, 2010).

## **IV. Risk and Need Assessment**

### ***A. Best Practices***

1. **The veterans treatment court program accepts participants who are both high-risk and high-need.**
  - a) Drug courts that focus on high-risk and high-need participants reduce crime nearly twice as much as those focusing on less serious participants (Lowenkamp, Holsinger, & Latessa, 2005), and approximately 50% greater cost savings to their communities (Bhati et al., 2008; Carey et al., 2008, 2012; Downey & Roman, 2010).
  - b) If a program has low-risk participants, the program should keep the low-risk population separate from the high-risk population. (NADCP 2018)
2. **Use a standardized risk and needs assessment to identify the expected likelihood of a particular outcome (e.g., recidivism) over a specified period of time (e.g., one year) for an individual.**
  - a) Standardized assessment tools are reliable and valid with regard to identifying those who are likely to succeed on probation. (Miller & Shutt, 2001)
3. **If a veterans treatment court is unable to target only high-risk and high-need offenders, the program develops alternative tracks with services that are modified to meet the risk and need levels of its participants, and does not mix participants with different risk or need levels in the same counseling groups, residential treatment milieu, or housing unit.**
  - a) Mixing participants with different risk or need levels together in treatment groups or residential facilities can make outcomes worse for the low-risk or low-need participants by exposing them to antisocial peers or interfering with their engagement in productive activities, such as work or school (DeMatteo et al., 2006; Lowenkamp & Latessa, 2004; McCord, 2003; Petrosino et al., 2000). A free publication from the NDCI provides evidence-based recommendations for developing alternative tracks in Drug courts for low-risk and low-need participants.<sup>17</sup>

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<sup>17</sup> Alternative Tracks in Adult Drug Courts: Matching Your Program to the Needs of Your Clients. Available at <http://www.ndci.org/sites/default/files/nadcp/AlternativeTracksInAdultDrugCourts.pdf>.

- b) Providing substance use disorder treatment for nonaddicted substance users can lead to higher rates of reoffending or substance use or a greater likelihood of these individuals eventually becoming addicted (Lovins et al., 2007; Lowenkamp & Latessa, 2005; Szalavitz, 2010; Wexler et al., 2004)
  - c) The lowest criminogenic risk (LSI-R score) MHC participants had the highest rate of felony recidivism (20%). Recidivism rates in MHC participants decreased as risk scores increased; the highest risk MHC participants had the lowest rate of felony recidivism (7%). This finding underscores the importance of admitting high risk and high need applicants and suggests that MHCs have the greatest benefit with higher risk participants.
4. Ensure that the validation sample of the risk and needs assessment is similar to the veterans treatment court's population.
    - a) Different racial or ethnic groups interpret the same assessment questions differently. (Carle, 2009)
    - b) Males and females show differences in the prediction of substance use dependence. (Perez & Wish, 2011)
    - c) DWI offenders require different assessments than drug offenders. (Vlavianos, Floerke, Harrison, & Carey, 2015)
  5. Reexamine dynamic risk factors after program admission.
    - a) Assessments completed within the month preceding the participant's failure have greater accuracy than ones done much earlier. (Lloyd, Hanson, & Serin, 2015)

## V. Legal Outcome

### *A. Standards*

1. **The circuit court in any judicial circuit or the district court in any judicial district may adopt or institute a veterans treatment court by statute or court rule if the circuit or district 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, a representative or representatives of community treatment providers, a representative or representatives of veterans service organizations in the circuit or district court district, and a representative or representatives of the United States Department of Veterans Affairs. However, the memorandum will only be required to include the prosecuting attorney if the veterans treatment court will include in its program individuals who may be eligible for discharge and dismissal of an offense, a delayed sentence, deferred entry of judgment, or a sentence involving deviation from the sentencing guidelines. The memorandum of understanding also may include other parties considered necessary, such as any other prosecutor in the circuit or district court district, local law enforcement, the probation departments in that circuit or district, the local substance abuse coordinating agency for that circuit or district, a domestic violence service provider program that receives funding from the state domestic**

violence prevention and treatment board, a representative or representatives of the local court funding unit, and community corrections agencies in that circuit or district. The memorandum of understanding shall describe the role of each party, and the conditions for which the memorandum of understanding must be renewed and amended.<sup>18</sup> (MCL 600.1201(2))

2. An individual who may be eligible for discharge and dismissal of an offense, delayed sentence, deferred entry of judgment, or deviation from the sentencing guidelines shall not be admitted to a veterans treatment court unless the prosecutor first approves the admission of the individual into the veterans treatment court in conformity with the memorandum of understanding under section 1201(2). (MCL 600.1205(2))
3. An individual shall not be admitted to, or remain in, a veterans treatment court under an agreement that would permit the discharge or dismissal of a traffic offense upon successful completion of the veterans treatment court program. (MCL 600.1205(3))

## VI. Admission Factors

### *A. Standards*

1. If the individual being considered for admission to a veterans treatment court is charged in a criminal case, his or her admission is subject to all of the following conditions:<sup>19</sup>
  - a) The offense or offenses allegedly committed by the individual are generally related to the military service of the individual, including the abuse, illegal use, or possession of a controlled substance or alcohol, or mental illness that arises as a result of service. (MCL 600.1205(1)(a))
  - b) The individual pleads guilty to the charge or charges on the record. (MCL 600.1205(1)(b))
2. In addition to rights accorded a victim under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, the veterans treatment court shall permit any victim of the offense or offenses of which the individual is charged, any victim of a prior offense of which that individual was convicted, and members of the community in which the offenses were committed or in which the defendant resides to submit a written statement to the court regarding the advisability of admitting the individual into the veterans treatment court. (MCL 600.1205(4))
3. An individual who has waived his or her right to a preliminary examination and has pled guilty as part of his or her application to a veterans treatment court and who is not admitted to a veterans treatment

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<sup>18</sup> See Appendix I. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/VTC-ProgramMOU.pdf>.

<sup>19</sup> See Appendix J. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/VTC-AgreementToParticipate.pdf>.

**court shall be permitted to withdraw his or her plea and is entitled to a preliminary examination. (MCL 600.1205(5))**

### ***B. Best Practices***

- 1. Use only objective criteria when determining eligibility for veterans treatment court.**
  - a) Some drug courts may screen candidates for their suitability for the program based on the team's subjective impressions of the offender's motivation for change or readiness for treatment. Suitability determinations have been found to have no impact on drug court graduation rates or post program recidivism (Carey & Perkins, 2008; Rossman et al., 2011).
  - b) Removing subjective eligibility restrictions and applying evidence-based selection criteria significantly increases the effectiveness and cost-effectiveness of drug courts by allowing them to serve the most appropriate target population (Bhati et al., 2008; Seigny et al., 2013).

## **VII. Findings on the Record or in the Court File**

### ***A. Standards***

- 1. Before an individual is admitted into a veterans treatment court, the court shall find on the record or place a statement in the court file establishing all of the following:<sup>20</sup>**
  - a) **That the individual is a veteran. (MCL 600.1204(a))**
  - b) **That the individual is dependent upon or abusing drugs or alcohol, or suffers from a mental illness, and is an appropriate candidate for participation in the veterans treatment court. (MCL 600.1204(b))**
  - c) **That the individual understands the consequences of entering the veterans treatment court and agrees to comply with all court orders and requirements of the court's program and treatment providers. (MCL 600.1204(c))**
  - d) **That the individual is not an unwarranted or substantial risk to the safety of the public or any individual, based upon the screening and assessment or other information presented to the court. (MCL 600.1204(d))**
  - e) **That the individual is not a violent offender. (MCL 600.1204(e))**
  - f) **That the individual has completed a preadmission screening and evaluation assessment under section 1203(3) and has agreed to cooperate with any future evaluation assessment as directed by the veterans treatment court. (MCL 600.1204(f))**

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<sup>20</sup> See Appendix L. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/VTC-AdmissionConditionStatement.pdf>.

- g) **The individual meets the requirements, if applicable, of a statute listed under section 1203(2). (MCL 600.1204(g))**
- h) **The terms, conditions, and duration of the agreement between the parties, and the outcome for the participant of the veterans treatment court upon successful completion by the participant or termination of participation. (MCL 600.1204(h))**

## VIII. Program Entry

### A. Best Practices

1. Expedite the court process to quickly accept participants into the veterans treatment court.
  - a) When the time between arrest and program entry is 50 days or less, programs see reductions in recidivism. (Carey, Mackin, & Finigan, 2012).

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# Chapter 7: Drug and Alcohol Testing

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This chapter addresses drug and alcohol testing in veterans treatment court. Specific topics include randomization, frequency, methods for collection and testing, the use of scientific information, and chain of custody. In addition to following these standards and best practices, courts should consult the *Ten Principles of a Good Testing Program*,<sup>21</sup> promulgated by the National Drug Court Institute. The Michigan Association of Treatment Court Professionals published the [MATCP Drug Testing Manual, 2nd Edition](#), as a reference for treatment courts.

## I. General

### A. Best Practices

1. Upon entering the Veterans Treatment Court, participants receive a clear and comprehensive explanation of their rights and responsibilities related to drug and alcohol testing. This information is described in a participant contract or handbook and reviewed periodically with participants to ensure they remain cognizant of their obligations.
  - a) Outcomes are significantly better when drug courts specify their policies and procedures clearly in a participant manual or handbook (Carey et al., 2012).
  - b) Drug courts can enhance participants' perceptions of fairness substantially and reduce avoidable delays from contested drug and alcohol tests by describing their testing procedures and requirements in a participant contract or handbook. (NADCP V2, 2018)

## II. Randomization

### A. Standards

1. A veterans treatment court shall provide an individual admitted to the court with all of the following:
  - a) **Mandatory periodic and random testing for the presence of any controlled substance or alcohol in a participant's blood, urine, or breath, using, to the extent practicable, the best available, accepted, and scientifically valid methods. (MCL 600.1207(1)(c))**

### B. Best Practices

1. The probability of being tested on weekends and holidays is the same as other days.
  - a) Weekends and holidays are high-risk times for drug and alcohol use. Providing a respite from detection during these high-risk times reduces the randomness of testing and undermines the

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<sup>21</sup> See Appendix N.

- central aims of a drug-testing program. (Kirby, Lamb, Iguchi, Husband, & Platt, 1995) (Marlatt & Gordon, 1985) (American Society of Addiction Medicine, 2013)
2. Urine tests are delivered no more than eight hours after a participant is notified that a test has been scheduled. (National Association of Drug Court Professionals, 2015) (Auerbach, 2007)
  3. Tests with short detection windows such as oral fluid tests should be delivered no more than four hours after being notified that a test was scheduled. (National Association of Drug Court Professionals, 2015)

### III. Frequency and Breadth of Testing

#### *A. Standards*

1. **A veterans court shall comply with the modified version of the 10 key components of drug treatment courts as promulgated by the Buffalo Veterans Treatment Court, which include all of the following essential characteristics:**
  - a) **Monitoring of abstinence by frequent alcohol and other drug testing. (MCL 600.1201(1)(e))**

#### *B. Best Practices*

1. **For participants with a substance use disorder, urine testing is performed at least twice per week until participants are in the last phase of the program and preparing for graduation.**
  - a) In a multisite study of approximately 70 drug courts, programs performing urine testing at least twice per week in the first phase lowered recidivism by 38 percent and were 61 percent more cost-effective than programs testing less frequently. (Carey, Mackin, & Finigan, 2012)
  - b) The most effective drug courts perform urine drug testing at least twice per week for the first several months of the program. (Carey & Perkins, 2008)
2. **For participants with no indication of a substance use disorder, urine testing is performed at least once per week in the first phase of the program.**
  - a) Mental health courts that tested new clients at least once a week, if not more, saw a decrease in jurisdictional crime rate. (Bullard, 2014)
3. **Test specimens are examined for all unauthorized substances that are suspected to be used by participants. Randomly selected specimens are tested periodically for a broader range of substances to detect new substances that might be emerging in the population.**
  - a) Participants can easily evade detection of their substance use by switching to drugs that have similar effects but are not detected by the test. (American Society of Addiction Medicine, 2013)

- b) Because new drugs of abuse are constantly being sought out by offenders to cheat drug tests, treatment courts should frequently and randomly examine samples for a wide range of potential substances of abuse. (American Society of Addiction Medicine, 2013)
- 3. Tests that measure substance use over extended periods of time, such as ankle monitors, are applied for at least 90 consecutive days followed by urine or other intermittent test methods.
  - a) Research indicates that use of an alcohol tether device may deter alcohol consumption and alcohol-impaired driving among recidivist DWI offenders if it is worn for at least 90 days. (Flango & Cheeseman, 2009) (Tison, Nichols, Casanova-Powell, & Chaudhary, 2015)

## IV. Scientifically Valid Drug Testing Methods

### *A. Best Practices*

1. **A veterans treatment court uses scientifically valid and reliable testing procedures.**
  - a) To be admissible as evidence in a legal proceeding, drug and alcohol test results must be derived from scientifically valid and reliable methods. (Meyer, 2011)
  - b) Appellate courts have recognized the scientific validity of several commonly used methods for analyzing urine, including gas chromatography/mass spectrometry (GC/MS); liquid chromatography/tandem mass spectrometry (LC/MS/MS); the enzyme multiple immunoassay technique (EMIT); and some sweat, oral fluid, hair, and ankle-monitor tests. (Meyer, 2011)
  - c) Appellate courts have recognized the scientific validity of ethyl glucuronide (ETG) testing. (Lawrence)
2. **If a participant denies substance use in response to a positive screening test, a portion of the same specimen is subjected to confirmatory analysis using an instrumented test, such as GC/MS or LC/MS. Unless a participant admits to using the drug identified by the screening procedure, confirmation of presumptive positive tests is mandatory.**
  - a) Gas chromatography-mass spectrometry (GC/MS) provides chemical fingerprint identification of drugs and is recognized as the definitive confirmation technology. (Cary, 2011)
  - b) Confirmation with an instrumented test virtually eliminates the odds of a false positive result, assuming the sample was collected and stored properly. (Auerbach, 2007)
  - c) It is necessary to validate positive screening results in order to rule out the potential of a false positive by performing a confirmation procedure. (Cary, 2011)

3. **Confirmatory tests are not withheld due to the participant's inability to pay.**
  - a) Courts commonly require participants to pay the cost of confirmation tests if the initial screening result is confirmed. (Cary, 2011) (Meyer, 2011)
4. **Metabolite levels are not used as evidence of new substance use or changes in participants' substance use patterns.**
  - a) Some drug courts interpret changes in quantitative levels of drug metabolites as evidence that new substance use has occurred or a participant's substance use pattern has changed. Unless a drug court has access to an expert trained in toxicology, pharmacology, or a related discipline, such practices should be avoided. Most drug and alcohol tests used in drug courts were designed to be *qualitative*, meaning they were designed to determine whether a drug or drug metabolite is present at levels above a pre-specified concentration level. The cutoff concentration level is calculated empirically to maximize the true-positive rate, true-negative rate, or classification rate. When drug courts engage in quantitative analyses, they are effectively altering the cut-off score and making the results less accurate. (NADCP, *Adult Drug Court Best Practice Standards*, Vol. II.)
  - b) Quantitative metabolite levels can vary considerably based on a number of factors, including the total fluid content in urine or blood (Cary, 2004; Schwilke et al., 2010). Moderate changes in participants' fluid intake or fluid retention could lead drug courts to miscalculate substance use patterns.
  - c) Quantitative metabolite levels can vary considerably based on a number of factors, including the total fluid content in urine or blood. (Cary, 2004)
  - d) Numeric results do not accurately discriminate between whether a participant's overall drug level is increasing or decreasing even if compared to previous urine drug concentrations from the same client and for the same drug. (Cary, 2004)
  - e) The routine use of urine drug levels by court personnel in an effort to define substance use behavior and formulate appropriately measured sanctions is a practice that can result in inappropriate, factually unsupported conclusions and a decision-making process that lacks a sound scientific foundation. (Cary, 2011)
5. **Test specimens are examined routinely for evidence of dilution and adulteration.**
  - a) The temperature of each urine specimen should be examined immediately upon collection to ensure it is consistent with an expected human body temperature. An unusual temperature might suggest the sample cooled down because it was collected at an earlier point in time, or was mixed with water that was too cold or too hot to be consistent with body temperature. (National Association of Drug Court Professionals, 2015)

- b) Under normal conditions, urine specimens should be between 90 and 100 degrees Fahrenheit within four minutes of collection; a lower or higher temperature likely indicates a deliberate attempt at deception. (American Society of Addiction Medicine, 2013)
- c) Specimens should be tested for creatinine and specific gravity. A creatinine level below 20 mg/dL is rare and is a reliable indicator of an intentional effort at dilution or excessive fluid consumption. (American Society of Addiction Medicine, 2013)
- d) A creatinine level below 20 mg/dL is rare and is a reliable indicator of an intentional effort at dilution or excessive fluid consumption barring unusual medical or metabolic conditions (ASAM, 2013; Cary, 2011; Jones & Karlsson, 2005; Katz et al., 2007). (American Society of Addiction Medicine, 2013)
- e) Specific gravity reflects the amount of solid substances that are dissolved in urine. The greater the specific gravity, the more concentrated the urine; and the lower the specific gravity, the closer its consistency to water. The normal range of specific gravity for urine is 1.003 to 1.030, and a specific gravity of 1.000 is essentially water. Some experts believe a specific gravity below 1.003 reflects a diluted sample (Katz et al., 2007). Although this analysis, by itself, may not be sufficient to prove excessive fluid consumption, dilution is likely to have occurred if the specific gravity is low and accompanies other evidence of tampering or invalidity, such as a low creatinine level or temperature. (Dasgupta et al., 2004; Mikkelsen & Ash, 1988).

## V. Witnessed Collection

### *A. Best Practices*

1. **Direct observed collection requires that an observer watch the donor urinate into the collection container. The observer's gender must be the same as the donor's gender, which is determined by the donor's gender identity, with no exception to this requirement. (Substance Abuse and Mental Health Services Administration (SAMHSA), HHS, 2017)**
  - a) Gender identity means an individual's internal sense of being male or female, which may be different from an individual's sex assigned at birth. <https://www.federalregister.gov/d/2017-00979/p-349>
  - b) Before an observer is selected, the donor is informed that the gender of the observer will match the donor's gender, which is determined by the donor's gender identity. The collector then selects the observer to conduct the observation:
    - i. The collector asks the donor to identify the donor's gender on the Custody and Control Form (CCF) and initial it.
    - ii. The donor will then be provided an observer whose gender matches the donor's gender.

- iii. The observer's name and gender is documented on the CCF. <https://www.federalregister.gov/d/2017-00979/p-593>
2. **Collection of test specimens is witnessed directly by a staff person who has been trained to prevent tampering and substitution of fraudulent specimens.**
  - a) The most effective way to ensure that the sample collection is valid and to avoid tampering is to ensure the collection is witnessed directly by someone who has been properly trained. (American Society of Addiction Medicine, 2013) (Cary, 2011)
3. **Breathalyzers must be calibrated according to certification standards established by the U.S. Departments of Transportation (DOT) and Health and Human Services (HHS) and/or the state toxicologist. The test must be administered by breath alcohol technicians who are trained in the use and interpretation of breath alcohol results. (U.S. Department of Justice, Office of Justice Programs, Drug Courts Program Office & American University, 2000)**
4. Barring exigent circumstances, participants are not permitted to undergo independent drug or alcohol testing in lieu of being tested by trained personnel assigned to or authorized by the mental health court.
  - a) Because specialized training is required to minimize tampering of test specimens, under most circumstances participants should be precluded from undergoing drug and alcohol testing by independent sources. In exigent circumstances, such as when participants live a long distance from the test collection site, the drug court might designate independent professionals or laboratories to perform drug and alcohol testing. As a condition of approval, these professionals should be required to complete formal training on the proper collection, handling, and analyses of drug and alcohol test samples among drug court participants or comparable criminal justice populations. (NADCP V2, 2018)
  - b) Mental health courts are also required to follow generally accepted chain-of-custody procedures when handling test specimens (ASAM, 2013; Cary, 2011; Meyer, 2011). Therefore, if independent professionals or laboratories perform drug and alcohol testing, they must be trained carefully to follow proper chain-of-custody procedures. (NADCP V2, 2018)

## VI. Chain of Custody and Results

### *A. Standards*

1. **If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods,**

and (3) the witness has applied the principles and methods reliably to the facts of the case. (Michigan Rules of Evidence, Rule 702. Adopted from the Federal Rules of Evidence, Rule 702. Based on *Daubert v. Merrell Dow Pharmaceuticals*)

### ***B. Best Practices***

1. **A chain-of-custody form is completed once a urine sample has been collected. This form ensures the identity and integrity of the sample through transport, testing, and reporting of results. (Kadehjian, 2010)**
2. Test results, including the results of confirmation testing, are available to the veterans treatment court within 48 hours of sample collection.
  - a) A study of approximately 70 drug courts reported significantly greater reductions in recidivism and significantly greater cost benefits when the teams received drug and alcohol test results within 48 hours of sample collection. (Carey, Mackin, & Finigan, 2012)

### ***C. Promising Practices***

1. In order to comply with the 48-hour results best practice, veterans treatment courts that use tethers or in-home units should require download at least 3 times per week.

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## *Chapter 8: Treatment*

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This chapter discusses treatment in veterans treatment court. Specific topics include treatment entry, services, treatment duration, and medication-assisted treatment. Some of the topics in this chapter are also addressed in chapter 2 regarding participant supervision and compliance and in chapter 6 regarding population and admission.

### **I. General and Definition of Veterans Treatment Courts**

#### ***A. Standards***

1. **“Veterans treatment court” or “veterans court” means a court adopted or instituted under section 1201 that provides a supervised treatment program for individuals who are veterans and who abuse or are dependent upon any controlled substance or alcohol or suffer from a mental illness. (MCL 600.1200(j))**
2. **“Mental illness” means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life, including, but not limited to, post-traumatic stress disorder and psychiatric symptoms associated with traumatic brain injury. (MCL 600.1200(d))**

#### ***B. Best Practices***

1. **A veterans justice outreach specialist (VJO) from the VA is a member of the veterans treatment court team.**
  - a) VA has developed the veterans justice outreach initiative to provide direct services to veterans in the criminal justice system. VJO staff work with courts to help justice-involved veterans get mental health assessment, treatment planning, and referrals to VA services. (United States Department of Veterans Affairs, 2017)
2. **If the program regularly uses treatment agencies outside of the VA, clinically trained representatives from these agencies are core members of the veterans court team and regularly attend team meetings and status hearings.**
  - a) Recidivism may be reduced twofold when representatives from the treatment court’s primary treatment agencies regularly attend staffing meetings and status review hearings. (Carey, Mackin, & Finigan, 2012)
3. **Treatment should address major criminogenic needs. Eight major criminogenic needs have been identified that contribute to the risk for recidivism among offenders and that are dynamic or changeable via programmatic interventions.**
  - a) Reductions in recidivism are proportional to the number of criminogenic needs addressed within offender treatment programs. (Peters, 2011)

4. One or two treatment agencies, including the VA, are primarily responsible for managing the delivery of treatment services for veterans treatment court participants.
  - a) In studies surveying veterans treatment courts, 92 percent of respondents listed the Department of Veterans Affairs as essential for their courts' success. (Holbrook & Anderson, 2011)
  - b) Drug courts that worked with two or fewer treatment agencies were able to reduce recidivism by 74 percent over drug courts that used more agencies. (Carey, Mackin, & Finigan, 2012)

## II. Treatment Entry

### *A. Best Practices*

1. **Veterans treatment courts link participants to treatment as soon as possible.**
  - a) People mandated to treatment by the criminal justice system experience similar outcomes related to substance use and recidivism as those seeking treatment voluntarily. Retention in treatment is often higher among those coerced into treatment. Such participants perform as well as voluntary participants across a range of in-treatment indicators of progress (e.g., self-efficacy, coping skills, clinical symptoms, 12-step involvement). (Peters, 2011)
  - b) Participants who enter drug court quickly tend to enter treatment more quickly. (Worcel, Furrer, Green, & Rhodes, 2006)
2. Veterans treatment courts consider using the Risk Needs Responsivity (RNR) Model.
  - a) The RNR model has led to better risk assessment instruments to predict criminal behavior and better treatment programs that match services to the level of risk and needs. As a result, the RNR model, when properly applied, has led to a reduction in recidivism. (Bonta & Andrews, 2007)

## III. Treatment Services

### *A. Standards*

1. **A veterans court shall comply with the modified version of the 10 key components of drug treatment courts as promulgated by the Buffalo Veterans Treatment Court, which include all of the following essential characteristics:**
  - a) **Provision of access to a continuum of alcohol, drug, mental health, and related treatment and rehabilitation services. (MCL 600.1201(1)(d))**

## ***B. Best Practices***

1. **The veterans treatment court offers a full spectrum of mental health treatment and Post Traumatic Stress Disorder (PTSD) services.**
  - a) The first studies to evaluate the efficacy of veterans treatment courts have found that involvement in veterans treatment court produces sustainable improvements in recovery and PTSD for participants. (Knudsen & Wingenfeld, 2015)
2. **The veterans court offers trauma-informed services.**
  - a) In a study of the efficacy of veterans treatment courts, veterans improved in all study measures , including improvement in PTSD symptom severity and depression symptoms, and a decrease in self-harm , when they were provided with a combination of trauma-specific treatment, peer-mentor services, and medication. (Knudsen & Wingenfeld, 2015)
  - b) Although some participants with trauma histories do not require formal PTSD treatment, all staff members, including court personnel and other criminal justice professionals, need to be trauma-informed for all participants (Bath, 2008). Staff members should remain cognizant of how their actions may be perceived by persons who have serious problems with trust, are paranoid or unduly suspicious of others' motives, or have been betrayed, sometimes repeatedly, by important persons in their lives. Safety, predictability, and reliability are critical for treating such individuals. Several practice recommendations should be borne in mind (Bath, 2008; Covington, 2003; Elliott et al., 2005; Liang & Long, 2013) (National Association of Drug Court Professionals, 2015)
3. **Mental illness and substance use disorders are treated concurrently using an evidence-based curriculum that focuses on the mutually aggravating effects of the two conditions.**
  - a) Treating either disorder alone without treating both disorders simultaneously is rarely, if ever, successful. Addiction and mental illness are reciprocally aggravating conditions, meaning that continued symptoms of one disorder are likely to precipitate relapse in the other disorder (Chandler et al., 2004; Drake et al., 2008). For this reason, best practice standards for drug courts and other treatment programs require mental illness and addiction to be treated concurrently as opposed to consecutively (Drake et al., 2004; Kushner et al., 2014; Mueser et al., 2003; Osher et al., 2012; Peters, 2008; Steadman et al., 2013).
  - b) Whenever possible, both disorders should be treated in the same facility by the same professional(s) using an integrated treatment model that focuses on the mutually aggravating effects of the two conditions. The Substance Abuse and Mental Health Services Administration (SAMHSA, 2010) has published therapist toolkits to assist in delivering evidence-based integrated treatments for co-occurring substance-use and mental health disorders.

4. Participants receive psychiatric medication to treat serious mental health symptoms.
  - a) Psychiatric medication decreased the odds of negative termination. (Linhorst, 2015)
  - b) Participants who were prescribed psychiatric medications were seven times more likely to graduate successfully from drug court than participants with mental health symptoms who did not receive psychiatric medication. (Marlowe, 2016)
  - c) A participant should only be denied psychiatric medication if the decision is based on expert medical evidence from a qualified physician who has examined the participant and is adequately informed about the facts of the case (Peters & Osher, 2004; Steadman et al., 2013).
5. The veterans treatment court offers a continuum of care for substance use disorder treatment, including detoxification, residential, sober living, day treatment, intensive outpatient, and outpatient services.
  - a) Outcomes, including graduation rates and recidivism, are significantly better in drug courts that offer a continuum of care for substance use disorder treatment, which includes residential treatment and recovery housing in addition to outpatient treatment. (Carey, Mackin, & Finigan, 2012) (Koob, Brocato, & Kleinpeter, 2011)
  - b) Community aftercare treatment for offenders can significantly reduce rates of substance use and recidivism. (Peters, 2011)
  - c) The same study found trauma-specific treatment to be important for veterans with combat exposure. (Knudsen & Wingefeld, 2015)
6. The drug court offers gender-specific substance use disorder treatment groups.
  - a) A study of approximately 70 drug courts found that programs offering gender-specific services reduced criminal recidivism significantly more than those that did not. (Carey, Mackin, & Finigan, 2012)
  - b) In a randomized controlled experiment, female drug court participants with trauma histories who received manualized cognitive-behavioral PTSD treatments, Helping Women Recover (Covington, 2008) or Beyond Trauma (Covington, 2003), in gender-specific groups were more likely to graduate from drug court, were less likely to receive a jail sanction in the program, and reported more than twice the reduction in PTSD symptoms than participants with trauma histories who did not receive PTSD treatment (Messina et al., 2012).
  - c) Given the design of these studies, separating the effects of the PTSD treatments from the effects of the gender-specific groups is not possible. Studies have reported superior outcomes when women in the criminal justice system received various types of substance use disorder treatment in female-only groups (Grella, 2008; Kissin et al., 2013; Liang & Long, 2013; Morse et al., 2013).

7. Participants are not incarcerated to achieve clinical or social service objectives such as obtaining access to detoxification services or sober living quarters.
  - a) Relying on in-custody substance use disorder treatment can reduce the cost-effectiveness of a drug court by as much as 45 percent. (Carey, Mackin, & Finigan, 2012)
  - b) Some drug courts may place participants in jail as a means of providing detoxification services or to keep them “off the streets” when adequate treatment is unavailable in the community. This practice is inconsistent with best practices, unduly costly, and unlikely to produce lasting benefits. (National Association of Drug Court Professionals, 2013)

## IV. Evidence-Based Models of Treatment

### *A. Best Practices*

1. **Treatment providers use evidence-based models and administer treatments that are documented in manuals and have been demonstrated to improve outcomes for persons involved in the criminal justice system.**
  - a) Outcomes from correctional rehabilitation are significantly better when evidence-based models are used, and fidelity to the model is maintained through continuous supervision of the treatment providers. (National Association of Drug Court Professionals, 2013)
  - b) Examples of manualized cognitive behavioral therapy (CBT) curricula that have been proven to reduce criminal recidivism among offenders include Moral Reconciliation Therapy (MRT), Reasoning and Rehabilitation (R&R), Thinking for a Change (T4C), Relapse Prevention Therapy (RPT), and the Matrix Model. (National Association of Drug Court Professionals, 2013)

## V. Treatment Duration

### *A. Best Practices*

1. **Participants receive a sufficient dosage and duration of substance use disorder and/or mental health treatment to achieve long-term sobriety and recovery from addiction and mental illness.<sup>22</sup>**
  - a) Providing continuous treatment for at least one year is associated with reduced recidivism. (Warren, 2007)
  - b) The longer participants remain in treatment and the more sessions they attend, the better their outcomes. (National Association of Drug Court Professionals, 2013)

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<sup>22</sup> The VA provides clinical practice guidelines for substance abuse and several mental health issues. These guidelines, available at <http://www.healthquality.va.gov/HEALTHQUALITY/guidelines/MH/index.asp>, inform courts about treatment duration.

## VI. Medication-Assisted Treatment

### *A. Best Practices*

1. **Veterans treatment courts allow the use of medication-assisted treatment (MAT) when appropriate, based on a case-specific determination and handle MAT very similarly to other kinds of treatment.**<sup>23</sup>
  - a) Numerous controlled studies have reported significantly better outcomes when addicted offenders received MAT including opioid antagonist medications such as naltrexone, opioid agonist medications such as methadone, and partial agonist medications such as buprenorphine. (Chandler, Fletcher, & Volkow, 2009) (Finigan, Perkins, Zold-Kilbourn, Parks, & Stringer, 2011)
  - b) Buprenorphine or methadone maintenance administered prior to and immediately after release from jail or prison has been shown to significantly increase opiate-addicted inmates' engagement in treatment, reduce illicit opiate use, reduce rearrests, and reduce mortality and hepatitis C infections. (National Association of Drug Court Professionals, 2013)
2. The court does not determine the type, dosage, and duration of medication-assisted treatment.
  - a) The basic purpose of probation is to provide an individualized program of rehabilitation. (Roberts v United States, 1943)

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<sup>23</sup> See the VA guidelines, *supra*, for information on the use of medication-assisted treatment for substance abuse and alcohol dependence.

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## *Chapter 9: Education*

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Education and training are important components in any veterans treatment court. This chapter discusses standards, best practices, and promising practices regarding education and training of the veterans treatment court team.

### **I. General**

#### ***A. Standards***

1. **A veterans court shall comply with the modified version of the 10 key components of drug treatment courts as promulgated by the Buffalo Veterans Treatment Court, which include all of the following essential characteristics:**
  - a) **Continuing interdisciplinary education promotes effective veterans treatment court planning, implementation, and operations. (MCL 600.1201(1)(i))**
2. **A court that is adopting a veterans treatment court shall participate in training as required by the state court administrative office. (MCL 600.1201(3))**

#### ***B. Best Practices***

1. **Team members participate in continuing education workshops at least annually to gain up-to-date knowledge about best practices on veterans treatment court topics.**
  - a) **A multisite study involving more than 60 drug courts found that participation in annual training conferences was the single greatest predictor of program effectiveness. (Shaffer, 2006) (Shaffer, 2010)**
2. **New team members complete a formal orientation training as soon as practical after assuming their position.**
  - a) **A multisite study of approximately 70 drug courts found that programs were over 50 percent more effective at reducing recidivism when they routinely provided formal orientation training for new staff. (Carey et al., 2012)**
3. **The veterans treatment court judge attends current training events on legal and constitutional issues in treatment courts, judicial ethics, evidence-based substance use disorder and mental health treatment, behavior modification, and community supervision. Attendance at annual training conferences and workshops ensure contemporary knowledge about advances in the treatment court field.**
  - a) **Because judges have such a substantial impact on outcomes in treatment courts, continued training is especially important. (Carey, Mackin, & Finigan, 2012)**
  - b) **Outcomes are significantly better when the drug court judge attends annual training conferences on evidence-based practices in**

substance use disorder and mental health treatment and community supervision. (Carey et al., 2008, 2012; Shaffer, 2010)

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# Chapter 10: Program Evaluation

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This chapter addresses program evaluation of a veterans treatment court. Specific topics include collection and maintenance of information, evaluation, and program modification.

## I. Collection and Maintenance of Information

### *A. Standards*

1. **Each veterans treatment court shall collect and provide data on each individual applicant and participant and the entire program as required by the state court administrative office.<sup>24</sup> (MCL 600.1210)**

### *B. Best Practices*

1. Maintain program data for evaluation purposes in an electronic database rather than paper files.
  - a) Drug courts are 65 percent more cost effective when they enter data for evaluations into an electronic database rather than storing it in paper files. (Carey, Mackin, & Finigan, 2012)
  - b) Michigan's Drug Court Case Management Information System (DCCMIS) can be accessed at <https://dccmis.micourt.org/default.aspx>.
2. Staff members are required to record information concerning the provision of services and in-program outcomes within 48 hours of the respective events. Timely and reliable data entry is required of each staff member and is a basis for evaluating staff job performance.
  - a) After 48 hours, errors in data entry have been shown to increase significantly. After one week, information is so likely to be inaccurate that it may be better to leave the data as missing than attempt to fill in gaps from faulty memory. (Marlowe, 2010)

## II. Evaluation and Program Modification

### *A. Best Practices*

1. **The veterans treatment court monitors its adherence to best practice standards on at least an annual basis, develops a remedial action plan and timetable to rectify deficiencies, and examines the success of the remedial actions. Outcome evaluations describe the effectiveness of the veterans treatment court in the context of its adherence to best practices.**
  - a) Adherence to best practices is generally poor in most sectors of the criminal justice and substance use disorder treatment systems (Friedmann et al., 2007; Henderson et al., 2007; McLellan et al.,

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<sup>24</sup> See Appendix O. The minimum standard data set for Michigan veterans health courts is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/MinimumStandardDataVeterans.pdf>.

2003; Taxman et al., 2007). Programs infrequently deliver services that are proven to be effective and commonly deliver services which have not been subjected to careful scientific scrutiny. Over time, the quality and quantity of the services provided may decline precipitously. (Etheridge et al., 1995; Van Wormer, 2010) The best way for a drug court to guard against these prevailing destructive pressures is to monitor its operations routinely, compare its performance to established benchmarks, and seek to align itself continually with best practices

- b) Studies reveal that drug courts are significantly more likely to deliver effective services and produce positive outcomes when they hold themselves accountable for meeting empirically validated benchmarks for success. A multisite study involving approximately 70 drug courts found that programs had more than twice the impact on crime and were more than twice as cost-effective when they monitored their operations on a consistent basis, reviewed the findings as a team, and modified their policies and procedures accordingly. (Carey et al., 2008, 2012)  
Understanding what distinguishes effective drug courts from ineffective and harmful drug courts is now an essential goal for the field. Unless evaluators describe each drug court's adherence to best practices, there is no way to place that program's outcomes in context or interpret the significance of the findings. (NADCP V2)
2. Enlist the services of independent evaluators and implement appropriate recommended changes.
    - a) Programs that had external independent evaluators review their program and suggest changes, and then implemented those changes, were 100 percent more effective at reducing cost and 85 percent more effective in reducing recidivism than programs that did not. (Carey, Mackin, & Finigan, 2012)
  3. Outcomes are examined for all eligible participants who entered the mental health court regardless of whether they graduated, withdrew, or were terminated from the program.
    - a) Outcomes must be examined for all eligible individuals who participated in the drug court regardless of whether they graduated, were terminated, or withdrew from the program. This is referred to as an intent-to-treat analysis because it examines outcomes for all individuals whom the program initially set out to treat. Reporting outcomes for graduates alone is not appropriate because such an analysis unfairly and falsely inflates the apparent success of the program. For example, individuals who graduated from the drug court are more likely than terminated participants to have entered the program with less severe drug or alcohol problems, less severe criminal propensities, higher motivation for change, or better social supports. As a result, they might have been less likely to commit future offenses or relapse to substance use regardless of the services they received in drug court.

## ***B. Promising Practices***

1. Evaluate short-term outcomes frequently while participants are enrolled in the program.
  - a) The National Research Advisory Committee developed a [list of performance measures](#) that drug courts should use to measure their efficiency, efficacy, and achievement of program goals. (National Association of Drug Court Professionals, 2015) Veterans treatment courts can use a similar methodology.
  - b) Short-term outcomes provide significant information about participants' clinical progress and the likely long-term impacts of the drug court on public health and public safety. Studies have consistently determined that post program recidivism is reduced significantly when participants attend more frequent treatment and probation sessions, provide fewer drug-positive urine tests, remain in the program for longer periods of time, have fewer in-program technical violations and arrests for new crimes, and satisfy other conditions for graduation. (Gifford et al., 2014; Gottfredson et al., 2007, 2008; Huebner & Cobbina, 2007; Jones & Kemp, 2011; Peters et al., 2002. drug courts should, therefore, monitor and report on these in-program outcomes routinely during the course of their operations. Several resources are available to help drug courts define and calculate.
2. Independent evaluators should examine the program's three- to five-year performance outcomes at least once every five years.
  - a) External evaluators should examine recidivism three years to five years after participants' program admission. Program admission should be the latest start date for the evaluation because that is when the drug court becomes capable of influencing participant behavior. (National Association of Drug Court Professionals, 2015)
  - b) While no specific research exists with regard to how frequently a program should be evaluated, a new evaluation is warranted when a program significantly changes its operations or has staff turnover. (National Association of Drug Court Professionals, 2015)

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# Chapter 11: Equity and Inclusion

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## I. Equity and Inclusion

### A. Best Practices

1. Individuals who have historically experienced sustained discrimination or reduced opportunities because of their race, ethnicity, gender, sexual orientation, sexual identity, physical or mental disability, religion, or socioeconomic status receive the same opportunities as other individuals to participate and succeed in veterans treatment court.
  - a) Veterans treatment courts are first and foremost courts, and the fundamental principles of due process and equal protection apply to their operations. (Meyer, 2011) Veterans treatment courts have an affirmative legal and ethical obligation to provide equal access to their services and equivalent treatment for all individuals.
2. Eligibility criteria for the veterans treatment court are nondiscriminatory in intent and impact. If an eligibility requirement has the unintended effect of differentially restricting access for members of groups that have historically experienced discrimination, the requirement is adjusted to increase the representation of such persons unless doing so would jeopardize public safety or the effectiveness of the veterans treatment court.
  - a) Some commentators have suggested that unduly restrictive eligibility criteria might be partly responsible for the lower representation of minority persons in drug courts (Belenko et al., 2011; O’Hear, 2009). Although there is no empirical evidence to confirm this hypothesis, drug courts must ensure that their eligibility criteria do not unnecessarily exclude minorities or members of groups that have historically experienced discrimination. If an eligibility criterion has the unintended impact of differentially restricting access to the drug court for such persons, then extra assurances are required that the criterion is necessary for the program to achieve effective outcomes or protect public safety.
3. The veterans treatment court regularly monitors whether member of groups that have historically experienced discrimination complete the program at equivalent rates to other participants. If completion rates are significantly lower for members of a group that have historically experienced discrimination, the veterans treatment court team investigates the reasons for the disparity, develops a remedial action plan, and evaluates the success of the remedial actions.
  - a) Numerous studies have reported that a significantly smaller percentage of African-American or Hispanic participants graduated successfully from drug court as compared to non-Hispanic Caucasians. (Finigan, 2009; Marlowe, 2013) These findings are not universal, however. A smaller but growing number of evaluations has found no differences in outcomes or even superior

outcomes for racial minorities as compared to Caucasians. (Brown, 2011; Cissner et al., 2013; Fulkerson, 2012; Saum et al., 2001; Somers et al., 2012; Vito & Tewksbury, 1998)

Nevertheless, African-Americans appear less likely to succeed in a plurality of drug courts as compared to their nonracial minority peers. These findings require drug courts to determine whether racial or ethnic minorities or members of other groups that have historically experienced discrimination are experiencing poorer outcomes in their programs as compared to other participants, and to investigate and remediate any disparities that are detected.

4. Members of groups that have historically experienced discrimination receive the same levels of care and quality of treatment as other participants with comparable clinical needs. The veterans treatment court administers evidence-based treatments that are effective for use with members of groups that have historically experienced discrimination who are represented in the mental health court population.
  - a) The National Association of Drug Court Professionals (NADCP) minority resolution directs drug courts to remain vigilant to potential differences in the quality or intensity of services provided to minority participants and to institute corrective measures where indicated. In one study, outcomes were improved significantly for young African-American male participants when an experienced African-American clinician delivered a curriculum that addressed issues commonly confronting these young men, such as negative racial stereotypes. (Vito & Tewksbury, 1998) Similarly, a study of approximately 70 drug courts found that programs offering gender-specific services reduced criminal recidivism significantly more than those that did not. (Carey et al., 2012)<sup>7</sup>. Studies indicate the success of culturally tailored treatments depends largely on the training and skills of the clinicians delivering the services. (Castro et al., 2010; Hwang, 2006) Unless the clinicians attend comprehensive training workshops and receive ongoing supervision on how to competently deliver the interventions, outcomes are unlikely to improve for women and minority participants.
5. Except where necessary to protect a participant from harm, members of groups that have historically experienced discrimination receive the same incentives and sanctions as other participants for comparable achievements or infractions. The veterans treatment court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants.
  - a) The NADCP minority resolution places an affirmative obligation on drug courts to continually monitor whether sanctions and incentives are being applied equivalently for minority participants and to take corrective actions if discrepancies are detected.
6. Members of groups that have historically experienced discrimination receive the same legal dispositions as other participants for completing or failing to complete the veterans treatment court program.

- a) Due process and equal protection require drug courts to remain vigilant to the possibility of sentencing disparities in their programs and to take corrective actions where indicated.
7. Each member of the veterans treatment court team attends up-to-date training events on recognizing implicit cultural biases and correcting disparate impacts for members of groups that have historically experienced discrimination.
- a) One of the most significant predictors of positive outcomes for racial and ethnic minority participants in substance use disorder treatment is culturally sensitive attitudes on the part of the treatment staff, especially managers and supervisors. (Ely & Thomas, 2001; Guerrero, 2010) When managerial staff value diversity and respect their clients' cultural backgrounds, the clients are retained significantly longer in treatment and services are delivered more efficiently. (Guerrero & Andrews, 2011) Cultural-sensitivity training can enhance counselors' and supervisors' beliefs about the importance of diversity and the need to understand their clients' cultural backgrounds and influences. (Cabaj, 2008; Westermeyer, & Dickerson, 2008)

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## ***Chapter 12: Veteran Peer Mentors***

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This chapter discusses the standards, best practices, and promising practices regarding veteran mentors as part of the veterans treatment court. Specific topics include the role of mentors and mentor coordinators, recruitment, and training.

### **I. General and the Role of Mentors**

#### ***A. Standards***

1. **A veterans treatment court shall provide an individual admitted to the court with all of the following:**
  - a) **A mentorship relationship with another veteran who can offer the participant support, guidance, and advice. It is the intent of the legislature that, where practicable, the assigned mentor should be as similar to the individual as possible in terms of age, gender, branch of service, military rank, and period of military service. (MCL 600.1207(1)(b))**

#### ***B. Best Practices***

1. **Mentors play an active role in helping veterans both in the courtroom and in the community.**
  - a) **In a study of the Buffalo Veterans Treatment Court, 100 percent of participants reported that the mentors helped them stay focused and be successful in the program. (Washousky, et. al., 2012)**
2. **The veterans treatment court maintains a broad and diverse corps of volunteer mentors.**
  - a) **The presence of a diverse and qualified veterans mentor program was identified as a key factor in the success of the Buffalo Veterans Treatment Court. (Washousky, et. al., 2012)**

#### ***C. Promising Practices***

1. **The veterans treatment court retains a mentor coordinator who is responsible for recruitment, training, and some oversight of mentors.**
  - a) **The mentor coordinator manages interaction between the mentors and the veterans treatment court team, and also schedules mentors to be present during court hearings.**
2. **Veteran mentors attend court sessions when scheduled.**
  - a) **Having a mentor attend a court session with the veteran participant provides support for the participant, especially when he or she may be feeling isolated.**

## II. Recruitment and Screening

### *A. Promising Practices*

1. The veterans treatment court adopts a recruitment and screening policy for new mentors.
  - a) It is important to recruit and retain respectable veterans to serve as mentors. A screening policy may include a requirement that mentors are in good current standing with the law, willing to commit to the program for a minimum length of time, and willing to participate in training before beginning to work with a participant.
2. The veterans treatment court gives careful consideration to whether law enforcement officers or other government employees can serve as mentors.
  - a) Law enforcement officers and other government employees, such as court staff, have certain duties with regard to reporting violations of the law. If a police officer who is serving as a mentor becomes aware of a participant's illegal drug use or other program violation, that officer is put in a difficult situation between his or her job duties and role as a mentor. The court should carefully consider this balance when establishing a mentor recruitment policy.
3. The veterans treatment court partners with local Veterans service organizations to recruit mentors.
  - a) Organizations such as the Veterans of Foreign Wars (VFW), Vietnam Veterans of America (VVA), and AMVETS can provide access to veterans who are active in their communities and willing to volunteer.
4. The veterans court accepts qualified program graduates as mentors.
  - a) Many courts have reported positive results when using program graduates as mentors. Most courts require a graduate to wait a minimum amount of time, usually six months, before beginning to volunteer as a mentor.

## III. Education and Training

### *A. Best Practices*

1. Mentoring is most effective when the roles of the mentor and mentee are clearly delineated (Tsai & Helsel, 2016) and when potential mentors are properly identified and trained (Greden et al., 2010) (Douds & Hummer, 2019)

### *B. Promising Practices*

1. All prospective mentors complete required initial training.
  - a) Training is crucial for new mentors. Training can include observing court sessions, learning the fundamentals of the court system and criminal justice case processing, basic information on substance use and mental health, and staying current on veterans' issues and resources in the community.

2. Initial training includes a confidentiality workshop.
  - a) The court should provide confidentiality training to all mentors, in accordance with the confidentiality policy. Mentors will be more comfortable knowing what they can share and what they must share with the court.
3. The veterans treatment court provides regular training for all mentors.
  - a) Courts should offer training for all mentors, including experienced ones, on a regular basis. Many courts offer short topical training sessions once monthly or twice yearly to help mentors keep abreast of VA operations, substance use or mental health, or life skills.

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# *Appendix A*

## *Michigan Veterans Treatment Court Statute*

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### **600.1200 Definitions.**

As used in this chapter:

- (a) "Department of Veterans Affairs" or "VA" means the United States Department of Veterans Affairs.
- (b) "Domestic violence offense" means any crime alleged to have been committed by an individual against his or her spouse or former spouse, an individual with whom he or she has a child in common, an individual with whom he or she has had a dating relationship, or an individual who resides or has resided in the same household.
- (c) "L.E.I.N." means the law enforcement information network regulated under the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.
- (d) "Mental illness" means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life, including, but not limited to, post-traumatic stress disorder and psychiatric symptoms associated with traumatic brain injury.
- (e) "Participant" means an individual who is admitted into a veterans treatment court.
- (f) "Prosecutor" means the prosecuting attorney of the county, the city attorney, the village attorney, or the township attorney.
- (g) "Traffic offense" means a violation of the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or a violation of a local ordinance substantially corresponding to a violation of that act, that involves the operation of a vehicle and, at the time of the violation, is a felony or misdemeanor.
- (h) "Veteran" means an individual who meets both of the following:
  - (i) Is a veteran as defined in section 1 of 1965 PA 190, MCL 35.61.
  - (ii) Served at least 180 days of active duty in the armed forces of the United States.
- (i) "Veteran service organization" or "VSO" means an organization that is accredited by the United States Department of Veterans Affairs, as recognized under 38 CFR 14.628.
- (j) "Veterans treatment court" or "veterans court" means a court adopted or instituted under section 1201 that provides a supervised treatment program for individuals who are veterans and who abuse or are dependent upon any controlled substance or alcohol or suffer from a mental illness.
- (k) "Violent offender" means an individual who is currently charged with or has pled guilty to an offense involving the death of, or a serious bodily injury to, any individual, whether or not any of these circumstances are an element of the offense, or an offense that is criminal sexual conduct in any degree.

### **600.1201 Veterans court; compliance; characteristics; adoption or institution of veterans treatment court; memorandum of understanding; training; participants from other jurisdiction; validity of transfer; certification by state court administrative office.**

(1) A veterans court shall comply with the modified version of the 10 key components of drug treatment courts as promulgated by the Buffalo veterans treatment court, which include all of the following essential characteristics:

- (a) Integration of alcohol, drug treatment, and mental health services with justice system case processing.

- (b) Use of a nonadversarial approach; prosecution and defense counsel promote public safety while protecting participants' due process rights.
- (c) Early and prompt identification and placement of eligible participants in the veterans treatment court program.
- (d) Provision of access to a continuum of alcohol, drug, mental health, and related treatment and rehabilitation services.
- (e) Monitoring of abstinence by frequent alcohol and other drug testing.
- (f) A coordinated strategy that governs veterans treatment court responses to participants' compliance.
- (g) Ongoing judicial interaction with each veteran is essential.
- (h) Monitoring and evaluation to measure the achievement of program goals and gauge effectiveness.
- (i) Continuing interdisciplinary education promotes effective veterans treatment court planning, implementation, and operations.
- (j) Forging of partnerships among veterans treatment court, veterans administration, public agencies, and community-based organizations generates local support and enhances veteran treatment court effectiveness.

(2) The circuit court in any judicial circuit or the district court in any judicial district may adopt or institute a veterans treatment court by statute or court rule if the circuit or district 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, a representative or representatives of community treatment providers, a representative or representatives of veterans service organizations in the circuit or district court district, and a representative or representatives of the United States Department of Veterans Affairs. However, the memorandum of understanding will only be required to include the prosecuting attorney if the veterans treatment court will include in its program individuals who may be eligible for discharge and dismissal of an offense, a delayed sentence, deferred entry of judgment, or a sentence involving deviation from the sentencing guidelines. The memorandum of understanding also may include other parties considered necessary, such as any other prosecutor in the circuit or district court district, local law enforcement, the probation departments in that circuit or district, the local substance abuse coordinating agency for that circuit or district, a domestic violence service provider program that receives funding from the state domestic violence prevention and treatment board, a representative or representatives of the local court funding unit, and community corrections agencies in that circuit or district. The memorandum of understanding shall describe the role of each party, and the conditions for which the memorandum of understanding must be renewed and amended.

(3) A court that is adopting a veterans treatment court shall participate in training as required by the state court administrative office.

(4) A court that has adopted a veterans treatment court under this section may accept participants from any other jurisdiction in this state based upon either the residence of the participant in the receiving jurisdiction or the unavailability of a veterans treatment court in the jurisdiction where the participant is charged. The transfer can occur at any time during the proceedings, including, but not limited to, prior to adjudication. The receiving court shall have jurisdiction to impose sentence, including, but not limited to, sanctions, incentives, incarceration, and phase changes. A transfer under this subsection is not valid unless it is agreed to by all of the following:

- (a) The defendant or respondent.
- (b) The attorney representing the defendant or respondent.
- (c) The judge of the transferring court and the prosecutor of the case.

(d) The judge of the receiving veterans treatment court and the prosecutor of a court funding unit of the veterans treatment court.

(5) Beginning January 1, 2018, a veterans treatment court operating in this state, or a circuit court in any judicial circuit or the district court in any judicial district seeking to adopt or institute a veterans treatment court, must be certified by the state court administrative office. The state court administrative office shall establish the procedure for certification. Approval and certification under this subsection of a veterans treatment court is required to begin or to continue the operation of a veterans treatment court under this chapter. The state court administrative office shall not recognize and include a veterans treatment court that is not certified under this subsection on the statewide official list of veterans treatment courts. The state court administrative office shall include a veterans treatment court certified under this subsection on the statewide official list of veterans treatment courts. A veterans treatment court that is not certified under this subsection shall not perform any of the functions of a veterans treatment court, including, but not limited to, any of the following functions:

(a) Charging a fee under section 1206.

(b) Discharging and dismissing a case as provided in section 1209.

(c) Receiving funding under section 1211.

(d) Certifying to the secretary of state that an individual is eligible to receive a restricted license under section 1084 of this act and section 304 of the Michigan vehicle code, 1949 PA 300, MCL 257.304.

#### **600.1202 Hiring or contracting with treatment providers.**

A veterans treatment court may hire or contract with licensed or accredited treatment providers, in consultation and cooperation with the local substance abuse coordinating agency, and other appropriate persons to assist the veterans treatment court in fulfilling its requirements under this chapter, including, but not limited to, an investigation of an individual's background or circumstances, or a clinical evaluation of an individual, before the individual is admitted or permitted to participate in a veterans treatment court. It is the intent of the legislature that, services, including, but not limited to, clinical evaluations, drug and alcohol treatment, and mental health services, shall be provided by the VA to the extent that is practical.

#### **600.1203 Admission to veterans treatment court.**

(1) A veterans treatment court shall determine whether an individual may be admitted to the veterans treatment court. No individual has a right to be admitted into a veterans treatment court. However, an individual is not eligible for admission into a veterans treatment court if he or she is a violent offender. An individual is eligible for admission into a veterans treatment court if he or she has previously had an offense discharged or dismissed as a result of participation in a veterans treatment court, drug treatment court, or other specialty court, but he or she shall not have a subsequent offense discharged or dismissed as a result of participating in the veterans treatment court.

(2) In addition to admission to a veterans treatment court under this act, an individual who is eligible for admission under this act may also be admitted to a veterans treatment court under any of the following circumstances:

(a) The individual has been assigned the status of youthful trainee under section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11.

(b) The individual has had criminal proceedings against him or her deferred and has been placed on probation under any of the following:

(i) Section 7411 of the public health code, 1978 PA 368, MCL 333.7411, or a local ordinance or another law of this state, another state, or the United States that is substantially similar to that section.

(ii) Section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a, or a local ordinance or another law of this state, another state, or the United States that is substantially similar to that section.

(iii) Section 350a or 430 of the Michigan penal code, 1931 PA 328, MCL 750.350a and 750.430, or a local ordinance or another law of this state, another state, or the United States that is substantially similar to those sections.

(3) To be eligible for admission to a veterans treatment court, an individual shall cooperate with and complete a preadmissions screening and evaluation assessment and shall agree to cooperate with any future evaluation assessment as directed by the veterans treatment court. A preadmission screening and evaluation assessment shall include all of the following:

(a) A determination of the individual's veteran status. A review of the DD Form 214 "certificate of release or discharge from active duty" satisfies the requirement of this subdivision.

(b) A complete review of the individual's criminal history and whether the individual has been admitted to, has participated in, or is currently participating in a veterans treatment court, drug treatment court, or other specialty court, whether admitted under this act or a law listed under subsection (2), and the results of the individual's participation. A review of the L.E.I.N. satisfies the requirements of this subdivision unless a further review is warranted. The court may accept other verifiable and reliable information from the prosecution or defense to complete its review and may require the individual to submit a statement as to whether or not he or she has previously been admitted to a veterans treatment court, drug treatment court, or other specialty court, and the results of his or her participation in the prior program or programs.

(c) An assessment of the risk of danger or harm to the individual, others, or the community.

(d) A review of the individual's history regarding the use or abuse of any controlled substance or alcohol and an assessment of whether the individual abuses controlled substances or alcohol or is drug or alcohol dependent. It is the intent of the legislature that, to the extent practicable, an assessment under this subdivision shall be a clinical assessment completed by the VA.

(e) A review of the individual's mental health history. It is the intent of the legislature that, to the extent practicable, this assessment shall be a clinical assessment completed by the VA.

(f) A review of any special needs or circumstances of the individual that may potentially affect the individual's ability to receive substance abuse treatment and follow the court's orders.

(4) Except as otherwise permitted in this act, any statement or other information obtained as a result of an individual's participation in a preadmission screening and evaluation assessment under subsection (3) is confidential, 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, except for a statement or information that reveals criminal acts other than personal drug use.

(5) The court may request that the department of state police provide to the court information contained in the L.E.I.N. pertaining to an individual applicant's criminal history for the purposes of determining an individual's admission into the veterans treatment court and general criminal history review, including whether the individual has previously been admitted to and participated

in a veterans treatment court, drug treatment court, or other specialty court under this act or under a statute listed under subsection (2), and the results of the individual's participation. The department of state police shall provide the information requested by a veterans treatment court under this subsection.

**600.1204 Findings or statement.**

Before an individual is admitted into a veterans treatment court, the court shall find on the record or place a statement in the court file establishing all of the following:

- (a) That the individual is a veteran.
- (b) That the individual is dependent upon or abusing drugs or alcohol, or suffers from a mental illness, and is an appropriate candidate for participation in the veterans treatment court.
- (c) That the individual understands the consequences of entering the veterans treatment court and agrees to comply with all court orders and requirements of the court's program and treatment providers.
- (d) That the individual is not an unwarranted or substantial risk to the safety of the public or any individual, based upon the screening and assessment or other information presented to the court.
- (e) That the individual is not a violent offender.
- (f) That the individual has completed a preadmission screening and evaluation assessment under section 1203(3) and has agreed to cooperate with any future evaluation assessment as directed by the veterans treatment court.
- (g) That the individual meets the requirements, if applicable, of a statute listed under section 1203(2).
- (h) The terms, conditions, and duration of the agreement between the parties, and the outcome for the participant of the veterans treatment court upon successful completion by the participant or termination of participation.

**600.1205 Admission of individual charged in criminal case; conditions.**

(1) If the individual being considered for admission to a veterans treatment court is charged in a criminal case, his or her admission is subject to all of the following conditions:

- (a) The offense or offenses allegedly committed by the individual are generally related to the military service of the individual, including the abuse, illegal use, or possession of a controlled substance or alcohol, or mental illness that arises as a result of service.
- (b) The individual pleads guilty to the charge or charges on the record.
- (c) The individual waives in writing the right to a speedy trial, the right to representation by an attorney at veterans treatment court review hearings, and, with the agreement of the prosecutor, the right to a preliminary examination.
- (d) The individual signs a written agreement to participate in the veterans treatment court.

(2) An individual who may be eligible for discharge and dismissal of an offense, delayed sentence, deferred entry of judgment, or deviation from the sentencing guidelines shall not be admitted to a veterans treatment court unless the prosecutor first approves the admission of the individual into the veterans treatment court in conformity with the memorandum of understanding under section 1201(2).

(3) An individual shall not be admitted to, or remain in, a veterans treatment court under an agreement that would permit the discharge or dismissal of a traffic offense upon successful completion of the veterans treatment court program.

(4) In addition to rights accorded a victim under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, the veterans treatment court shall permit any victim of the offense or offenses of which the individual is charged, any victim of a prior offense of which that individual was convicted, and members of the community in which the offenses were committed or in which the defendant resides to submit a written statement to the court regarding the advisability of admitting the individual into the veterans treatment court.

(5) An individual who has waived his or her right to a preliminary examination and has pled guilty as part of his or her application to a veterans treatment court and who is not admitted to a veterans treatment court shall be permitted to withdraw his or her plea and is entitled to a preliminary examination.

**600.1206 Admission to veterans treatment court; conditions; length of jurisdiction; collaboration; fee; information contained in L.E.I.N. pertaining to criminal history.**

(1) All of the following conditions apply to an individual admitted to a veterans treatment court:

(a) For an individual who is admitted to a veterans treatment court based upon having a criminal charge currently filed against him or her, the court shall accept the individual's plea of guilty.

(b) One of the following applies to an individual who pled guilty to a criminal charge for which he or she was admitted to a veterans treatment court, as applicable:

(i) If the individual pled guilty to an offense that is not a traffic offense and may be eligible for discharge and dismissal under the agreement with the court and prosecutor upon successful completion of the veterans treatment court program, the court shall not enter a judgment of guilt.

(ii) If the individual pled guilty to a traffic offense or another offense but is not eligible for discharge and dismissal under the agreement with the court and prosecutor upon successful completion of the veterans treatment court program, the court shall enter a judgment of guilt.

(c) Under the agreement with the individual and the prosecutor, the court may delay or defer further proceedings as provided in section 1 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.1, or proceed to sentencing, as applicable in that case under that agreement, and place the individual on probation or other court supervision in the veterans treatment court program with terms and conditions according to the agreement and as considered necessary by the court.

(2) Unless a memorandum of understanding made pursuant to section 1088 between a receiving veterans treatment court and the court of original jurisdiction provides otherwise, the original court of jurisdiction maintains jurisdiction over the veterans treatment court participant as provided in this act until final disposition of the case, but not longer than the probation period fixed under section 2 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.2.

(3) The veterans treatment court shall cooperate with, and act in a collaborative manner with, the prosecutor, defense counsel, treatment providers, the local substance abuse coordinating agency for that circuit or district, probation departments, the United States Department of Veterans Affairs, local VSOs in that circuit or district, and, to the extent possible, local law enforcement, the department of corrections, and community corrections agencies.

(4) The veterans treatment court may require an individual admitted into the court to pay a veterans treatment court fee that is reasonably related to the cost to the court for administering the veterans treatment court program as provided in the memorandum of understanding under section 1201(2). The clerk of the veterans treatment court shall transmit the fees collected to the treasurer of the local funding unit at the end of each month.

(5) The veterans treatment court may request that the department of state police provide to the court information contained in the L.E.I.N. pertaining to an individual applicant's criminal history for purposes of determining the individual's compliance with all court orders. The department of state police shall provide the information requested by a veterans treatment court under this subsection.

**600.1207 Veterans treatment court; responsibilities to individual.**

(1) A veterans treatment court shall provide an individual admitted to the court with all of the following:

- (a) Consistent, continual, and close monitoring and interaction with the court, treatment providers, probation, and the participant.
- (b) A mentorship relationship with another veteran who can offer the participant support, guidance, and advice. It is the intent of the legislature that, where practicable, the assigned mentor should be as similar to the individual as possible in terms of age, gender, branch of service, military rank, and period of military service.
- (c) Mandatory periodic and random testing for the presence of any controlled substance or alcohol in a participant's blood, urine, or breath, using, to the extent practicable, the best available, accepted, and scientifically valid methods.
- (d) Periodic evaluation assessments of the participant's circumstances and progress in the program.
- (e) A regimen or strategy of appropriate and graduated but immediate rewards for compliance and sanctions for noncompliance, including, but not limited to, the possibility of incarceration or confinement.
- (f) Substance abuse treatment services, relapse prevention services, education, and vocational opportunities as appropriate and practicable. It is the intent of the legislature that, where practicable, these services shall be provided by the VA.
- (g) Mental health treatment services as appropriate and practicable. It is the intent of the legislature that, where practicable, these services shall be provided by the VA.

(2) Any statement or other information obtained as a result of participating in assessment, treatment, or testing while in a veterans treatment court 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, except for a statement or information that reveals criminal acts other than, or inconsistent with, personal drug use.

**600.1208 Duties of individual; notification of new crime; payment of fines, fees, and costs.**

(1) In order to continue to participate in and successfully complete a veterans treatment court program, an individual shall do all of the following:

- (a) Pay all court-ordered fines and costs, including minimum state costs.
- (b) Pay the veterans treatment court fee allowed under section 1206(4).
- (c) Pay all court-ordered restitution.
- (d) Pay all crime victims' rights assessments under section 5 of 1989 PA 196, MCL 780.905.
- (e) Comply with all court orders. Violations of a court order may be sanctioned within the court's discretion.
- (f) Meet with a member of a veteran service organization or a county veteran counselor to discuss available veterans benefit programs for which the individual may qualify.

(2) The veterans treatment court shall be notified if the veterans treatment court participant is accused of a new crime, and the judge shall consider whether to terminate the participant's

participation in the veterans treatment court program in conformity with the memorandum of understanding under section 1201(2). If the participant is convicted of a felony for an offense that occurred after the defendant is admitted to the veterans treatment court, the judge shall terminate the participant's participation in the veterans treatment court.

(3) The court shall require that a participant pay all fines, costs, the fee, restitution, and assessments described in subsection (1)(a) to (d) and pay all, or make substantial contributions toward payment of, the costs of the treatment and the veterans treatment court program services provided to the participant, including, but not limited to, the costs of urinalysis and such testing or any counseling provided. However, if the court determines that the payment of fines, the fee, or costs of treatment under this subsection would be a substantial hardship for the individual or would interfere with the individual's substance abuse or mental health treatment, the court may waive all or part of those fines, the fee, or costs of treatment.

**600.1209 Veterans treatment court program; finding or statement upon completion or termination of program; discharge or dismissal of proceedings; duties of court upon successful completion of probation or court supervision; termination or failure to successfully complete program; duties of court.**

(1) Upon completion or termination of the veterans treatment court program, the court shall find on the record or place a written statement in the court file as to whether the participant completed the program successfully or whether the individual's participation in the program was terminated and, if it was terminated, the reason for the termination.

(2) If a participant successfully completes probation or other court supervision and the participant's proceedings were deferred or the participant was sentenced under section 1206, the court shall comply with the agreement made with the participant upon admission into the veterans treatment court, or the agreement as it was altered after admission by the court with approval of the participant and the prosecutor for that jurisdiction as provided in subsections (3) to (8).

(3) If an individual is participating in a veterans treatment court under a statute listed in section 1203(2), the court shall proceed under the applicable section of law. There shall be not more than 1 discharge or dismissal under this subsection.

(4) Except as provided in subsection (5), the court, with the agreement of the prosecutor and in conformity with the terms and conditions of the memorandum of understanding under section 1201(2), may discharge and dismiss the proceedings against an individual who meets all of the following criteria:

- (a) The individual has participated in a veterans treatment court for the first time.
- (b) The individual has successfully completed the terms and conditions of the veterans treatment court program.
- (c) The individual is not required by law to be sentenced to a correctional facility for the crimes to which he or she has pled guilty.
- (d) The individual is not currently charged with and has not pled guilty to a traffic offense.
- (e) The individual has not previously been subject to more than 1 of any of the following:
  - (i) Assignment to the status of youthful trainee under section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11.
  - (ii) The dismissal of criminal proceedings against him or her under section 7411 of the public health code, 1978 PA 368, MCL 333.7411, section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a, or section 350a or 430 of the Michigan penal code, 1931 PA 328, MCL 750.350a and 750.430.

- (5) The court may grant a discharge and dismissal of a domestic violence offense only if all of the following circumstances apply:
- (a) The individual has not previously had proceedings dismissed under section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.
  - (b) The domestic violence offense is eligible to be dismissed under section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.
  - (c) The individual fulfills the terms and conditions imposed under section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a, and the discharge and dismissal of proceedings are processed and reported under section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.
- (6) A discharge and dismissal under subsection (4) shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. There shall be not more than 1 discharge and dismissal under subsection (4) for an individual. The court shall send a record of the discharge and dismissal to the criminal justice information center of the department of state police, and the department of state police shall enter that information into the L.E.I.N. with an indication of participation by the individual in a veterans treatment court. Unless the court enters a judgment of guilt, all records of the proceedings regarding the participation of the individual in the veterans treatment court under subsection (4) are closed to public inspection and are exempt from public disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, but shall be open to the courts of this state, another state, or the United States, the department of corrections, law enforcement personnel, and prosecutors only for use in the performance of their duties or to determine whether an employee of the court, department, law enforcement agency, or prosecutor's office has violated his or her conditions of employment or whether an applicant meets criteria for employment with the court, department, law enforcement agency, or prosecutor's office. The records and identifications division of the department of state police shall retain a nonpublic record of an arrest and the discharge and dismissal under this subsection.
- (7) Except as provided in subsection (3), (4), or (5), if an individual has successfully completed probation or other court supervision, the court shall do the following:
- (a) If the court has not already entered an adjudication of guilt or responsibility, enter an adjudication of guilt.
  - (b) If the court has not already sentenced the individual, proceed to sentencing.
  - (c) Send a record of the conviction and sentence or the finding or adjudication of responsibility and disposition to the criminal justice information center of the department of state police. The department of state police shall enter that information into the L.E.I.N. with an indication of successful participation by the individual in a veterans treatment court.
- (8) For a participant whose participation is terminated or who fails to successfully complete the veterans treatment court program, the court shall enter an adjudication of guilt if the entering of guilt was deferred or sentencing was delayed under section 1206 and shall then proceed to sentencing or disposition of the individual for the original charges to which the individual pled guilty prior to admission to the veterans treatment court. Upon sentencing or disposition of the individual, the court shall send a record of that sentence or disposition and the individual's unsuccessful participation in the veterans treatment court to the criminal justice information center of the department of state police, and the department of state police shall enter that information into the L.E.I.N., with an indication that the individual unsuccessfully participated in a veterans treatment court.

**600.1210 Collection of data.**

Each veterans treatment court shall collect and provide data on each individual applicant and participant and the entire program as required by the state court administrative office.

**600.1211 Funds; report.**

(1) Where practicable, the supreme court has authority to expend state funds for the establishment and operation of veterans treatment courts. Federal funds provided to the state for the operation of veterans treatment courts shall be distributed by the department of community health or the appropriate state agency as otherwise provided by law. Nothing in this subsection prevents a local unit of government or circuit or district court from expending funds for the establishment and operation of veterans treatment courts.

(2) The state treasurer may receive money or other assets from any source for deposit into the appropriate state fund or funds for the purposes described in subsection (1).

(3) Each veterans treatment court shall report quarterly to the state court administrative office on the funds received and expended by that veterans treatment court in a manner prescribed by the state court administrative office.

**600.1212 State drug treatment court advisory committee; monitoring; recommendations.**

The state drug treatment court advisory committee created under section 1082 shall monitor the effectiveness of veterans treatment courts and the availability of funding and present annual recommendations to the legislature and supreme court regarding statutory changes regarding veterans treatment courts.

## *Appendix B*

### *Model Veterans Treatment Court Discharge Statement*

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STATE OF MICHIGAN <b>[court number and type]</b>	VTC Program Discharge <sup>25</sup>	CASE NO. <b>[case/file number]</b>
In the matter of:	<b>[defendant name and DOB]</b> <b>[defendant address]</b>	
<p>On this <b>[number]</b> day of <b>[month]</b>, <b>[year]</b> the defendant:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Successfully completed the VTC program</li> <li><input type="checkbox"/> Voluntarily withdrew from the program</li> <li><input type="checkbox"/> Was discharged from the program as unsuccessful due to:             <ul style="list-style-type: none"> <li><input type="checkbox"/> Violation of the program</li> <li><input type="checkbox"/> Conviction of new criminal charges</li> <li><input type="checkbox"/> Being a risk to public safety</li> <li><input type="checkbox"/> Other: <b>[specify]</b></li> </ul> </li> </ul>		
Honorable <b>[name of VTC judge]</b>	P _____	Date _____

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<sup>25</sup> This model document 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 document is not intended (and cannot be construed) as legal advice.

Since there might be a delay in updating the model document on the web page and updating the model document in this manual, the most up-to-date version of the model document is always available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/VTC-DischargeStatment.pdf>

## *Appendix C*

# *Model Multi-Party Consent for Release of Information*

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### **Model Document Information**

This model document is provided by the State Court Administrative Office (SCAO) as a resource and is for informational purposes only. It is intended only to assist courts with operating a problem-solving court and to comply with the problem-solving court statutes. This model document is not intended (and cannot be construed) as legal advice.

Customize the sections that are in bold and highlighted in yellow. Once customized, the court should remove the brackets, bold, and highlighting. The parties listed in the model document do not include agencies that are likely a “Qualified Service Organization” (QSO) as defined in [42 CFR section 2.11](#). If there is an agency that the program would exchange confidential information with, and that agency is not a QSO<sup>26</sup> as defined in 42 CFR, you will need to add that agency as a party in this form.

As a model document, this is generic in nature and should be modified to fit your program.

Before developing your confidentiality documents please review the University of New Hampshire’s School of Law/Institute for Health Policy & Practice’s “Substance Use Disorder Treatment Confidentiality Boot Camp” guide located at <https://chhs.unh.edu/sites/default/files/substance-use-disorder-privacy-part-2-idn-workbook-unh-1017.pdf>.

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<sup>26</sup> Page 56 of the “Substance Use Disorder Treatment Confidentiality Boot Camp” guide has an example of the written agreement required for a QSO.

**[Name of problem-solving court]**  
**Multiple-Party Consent for Release of Information**

Participant's Full Name: \_\_\_\_\_ DOB: \_\_\_\_\_

**I authorize the following parties:**

1. **[Name of problem-solving court]**,
2. **[Name of county]** MDOC probation/parole department
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]**
8. Michigan Secretary of State (Interlock Program)

**To Communicate with and disclose to one another the following information:**

**INFORMATION TO BE SHARED**

1. Name, address, and other personal identifying information of the participant.
2. **[Name of problem-solving court]** program assessments (GAIN, COMPAS, risk and needs, etc.).
3. **[Name of problem-solving court]** program behavior summaries and updates.
4. Treatment information, including assessments, attendance, progress and compliance reports, treatment plans, and discharge summaries.
5. Drug and alcohol screening, testing, confirmation results, and payment information.
6. Health information.
7. Reportable communicable disease information, including HIV, sexually transmitted infections, hepatitis, and tuberculosis.
8. Health plan or health benefits information.
9. Electronic monitoring information, including compliance and payment information.
10. Information required to obtain a restricted license through the ignition interlock program.
11. Other (specify, if any): \_\_\_\_\_

**Note: I authorize all of the foregoing information to be shared unless I indicate here, by number, one or more categories of information not to be shared: \_\_\_\_\_**

**PURPOSE AND USE OF DISCLOSURE**

**The purposes for the disclosures authorized by this form are:**

- To assess the participant's need for substance use, mental health, or developmental disabilities services and treatment.

- To provide, manage, and coordinate **[name of problem-solving court]** program and substance use, mental health, and developmental disabilities services and treatment for the participant.
- To develop a Person-Centered Plan, Service Plan, and/or Treatment Plan for the participant.
- To make dispositional recommendations for a court-involved participant.
- To monitor payment for services, and establish financial assistance if determined necessary.
- To improve service and treatment outcomes for participants involved in the **[name of problem-solving court]** program.
- To monitor my participation in the **[name of problem-solving court]** program and my compliance with the program rules.
- To provide information for evaluation of the **[Name of problem-solving court]** program
- To disclose to the Michigan Secretary of State (Interlock Program) information required on Michigan form MC393 to obtain a restricted license through the ignition interlock program.
- Other (please specify): \_\_\_\_\_

## **REDISCLASURE AND CONFIDENTIALITY**

Once health care information is disclosed pursuant to this signed authorization, I understand that the federal health privacy law (45 CFR, Parts 160 and 164) protecting health information may not apply to the recipient of the information and, therefore, may not prohibit the recipient from redisclosing information to others. However, substance-abuse treatment information protected by federal law (42 CFR, Part 2), shall remain confidential and must not be redisclosed by the recipient except as authorized by those laws or this authorization<sup>27</sup>. The federal rules restrict any use of this information to criminally investigate or prosecute any alcohol or drug abuse patient.

## **CONSENT EXPIRATION**

The date, event, or condition upon which consent expires must ensure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

**This consent for release of information shall expire upon my discharge from the **[name of problem-solving court]** program.**

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<sup>27</sup> An individual within the criminal justice system who receives patient information under 42 CFR § 2.35 may re-disclose and use it only to carry out that individual's official duties with regard to the patient's conditional release or other action in connection with which the consent was given.

## REVOCAATION

I understand that I may revoke this consent, orally or in writing, at any time except to the extent that action has been taken in reliance on it. I also understand that I do not have to fill out this form. If I do not fill it out, I cannot participate in the **[Name of problem-solving court]** program, but can still get health insurance, treatment, and other medical benefits from a health care provider.

I also understand that if I refuse to consent to disclosure, or attempt to revoke my consent prior to the expiration of this consent such action is grounds for immediate termination from the **[name of problem-solving court]** program.

## CONFIDENTIALITY RIGHTS

Federal law protects the confidentiality of treatment records under 42 CFR, Section 2.1 through Section 2.67; and Section 290dd-2. This means that:

- Treatment information is ordinarily kept confidential.
- Review hearings are held in open and public courtrooms, and although the court attempts to minimize confidential information in court, it is possible that an observer could connect a participant's identity with the fact that he or she is in treatment as a condition of participation in the **[name of problem-solving court] program** or that confidential information may be revealed. I specifically consent to a potential disclosure to third persons.
- Staffing meetings, which are held before review hearings, are typically closed to the public. Confidential information may be discussed by the **[name of problem-solving court]** team members at a staffing meeting. I understand that if a non-team member is invited to participate in a staffing meeting they must receive my consent prior to observation.
- It is a crime to violate confidentiality requirements, and the participant may report such violations to Michigan's attorney general at 517-373-1110.
- Notwithstanding this confidentiality requirement, covered information may be released under specified circumstances and may include communication with administration and qualified service organizations working with the **[name of problem-solving court]** program, outside auditors, central registries and researchers.
- The restrictions on disclosure and use in the regulations in 42 CFR part 2 do not apply to:
  1. Communication with law enforcement agencies or officials regarding a crime committed on program premises or against program personnel
  2. The reporting under state law of incidents of suspected child abuse and neglect to the appropriate state or local authorities. However, the restrictions continue to apply to the original substance use disorder patient records maintained by the part 2 program including their disclosure and use for civil or criminal proceedings which may arise out of the report of suspected child abuse and neglect
  3. Court orders signed pursuant to 42 CFR part 2 for release of specific information
  4. Disclosure to medical personnel if there is a determination that a medical emergency exists, i.e., there is a situation that poses an immediate threat to the health of any individual and requires immediate medical intervention -

Information disclosed to the medical personnel who are treating such a medical emergency may be redisclosed by such personnel for treatment purposes as needed

5. Reporting an immediate threat to the health or safety of an individual or the public to law enforcement if patient-identifying information is not disclosed

**I acknowledge that I have been advised of my rights, have received a copy of the advisement, and have had the benefit of legal counsel or have voluntarily waived the right to an attorney. I am not under the influence of drugs or alcohol. I fully understand my rights and I am signing this Consent voluntarily.**

**SIGNATURE CONSENTING TO RELEASE OF INFORMATION**

\_\_\_\_\_  
Participant signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Staff witness signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Staff witness printed name

**SIGNATURE CONFIRMING PARTICIPANT WAS ADVISED OF CONFIDENTIALITY RIGHTS BOTH VERBALLY AND IN WRITING**

\_\_\_\_\_  
Participant signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Staff witness signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Staff witness printed name

Parts of this form were adapted 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%20Sharing%20Guide%20FINAL%20PDF%20to%20authors%202015-06-25.pdf>

## Appendix D

### New Staff/Team Member Orientation

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#### New Staff/Team Member Orientation Sheet for [Name of veterans treatment court program]<sup>28</sup>

Welcome to your new role with [name of veterans treatment court program]. Please complete the following checklist to learn about Veterans Treatment Courts and how your role on the team can positively change lives.

- Received/Read the [name of veterans treatment court program] Policy Manual
- Received/Read [name of veterans treatment court program] Participant Handbook
  - Understand the Phase Structure and Phase Requirements
- Received/Read Revised Judicature Act 236 of 1961 Chapter 12, Veterans Treatment Courts  
[http://www.legislature.mi.gov/\(S\(hmyauf131ybwg23vudcpwock\)\)/documents/mcl/pdf/mcl-236-1961-12.pdf](http://www.legislature.mi.gov/(S(hmyauf131ybwg23vudcpwock))/documents/mcl/pdf/mcl-236-1961-12.pdf)
- Reviewed the Following Lessons at Treatment Courts Online [www.treatmentcourts.org](http://www.treatmentcourts.org):  
All:
  - Incentives and Sanctions (Adult Drug Court Lessons)
  - Confidential Information in Drug Court (Adult Drug Court Lessons)
  - Cultural Competency (Adult Drug Court Lessons)
  - Procedural Fairness (Adult Drug Court Lessons)
  - Implementing Evidence-Based Practice (Adult Drug Court Lessons)
  - Successful Drug Testing (Adult Drug Court Lessons)
  - Males and Trauma (Veterans Treatment Court Lessons)
  - Veterans Health Administration (Veterans Treatment Court Lessons)
  - Mental Illness, Traumatic Brain Injury, and Substance Abuse (Veterans Treatment Court Lessons)
- Judge:
  - Role of the Judge (Adult Drug Court Lessons)

Date of  
hire:Orientation completion date  
(within 6 months from hire):

<sup>28</sup> This model document is provided by the State Court Administrative 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 certification requirements. SCAO's sharing this model document is not intended (and cannot be construed) as legal advice.

Mentor Coordinator:

- How to Build a Mentoring Program for your Veterans Treatment Court (Veterans Treatment Court Lessons)

Veterans Justice Outreach Specialist:

- Role of the VHA Veterans Justice Outreach Specialist (Veterans Treatment Court Lessons)

Defense Attorney:

- Role of the Defense Attorney (Adult Drug Court Lessons)

Coordinator:

- Role of the Coordinator (Adult Drug Court Lessons)
- Maximizing Participant Interactions (Adult Drug Court Lessons)
- Developing a Veterans Treatment Court (Veterans Treatment Court Lessons)
- How to Build a Mentoring Program for your Veterans Treatment Court (Veterans Treatment Court Lessons)

Prosecutor:

- Role of the Prosecutor (Adult Drug Court Lessons)

Supervision Officer:

- Role of the Probation Officer (Adult Drug Court Lessons)
- Maximizing Participant Interactions (Adult Drug Court Lessons)

Reviewed the Following Publications:

- Veterans Treatment Court Standards, Best Standards and Promising Practices  
<https://courts.michigan.gov/Administration/SCAO/Resources/Documents/bestpractice/VTC-BPManual.pdf>
- The Ten Key Components of Veterans Treatment Court<sup>29</sup>  
<http://justiceforvets.org/sites/default/files/files/TenKeyComponentsofVeteransTreatmentCourts.pdf>

Attended the Following Trainings:

- SCAO's DCCMIS Training (Held Tri-annually) – for team members entering data
- SCAO's Fundamentals of Problem Solving Courts (Held in March and October)
- Other:
- Other:

Parts of this document are based on the NDCI New Staff Training Guide available at <https://www.ndci.org/wp-content/uploads/2018/08/NDCI-New-Staff-Training-Guide.pdf>

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<sup>29</sup> Justice for Vets, The National Clearinghouse for Veterans Treatment Courts at the National Association of Drug Court Professionals

## *Appendix E*

### *Model Confidentiality Policies and Procedures*

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#### **[Name of problem-solving court program] Policies and Procedures Regarding Access to and Use of Confidential Records<sup>30</sup>**

##### **1. 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]**, with access limited to authorized individuals.
- 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.
- 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. 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 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 regulations.
- 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).

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<sup>30</sup> 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.

- 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.<sup>31</sup>
  - ii. [Chart of Nonpublic and Limited-Access Court Records](#).<sup>32</sup>
  - iii. [Michigan Supreme Court Administrative Order 2006-2](#)<sup>33</sup> - 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 Redisclosure 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.
- 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.

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<sup>31</sup> [https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/cf\\_stds.pdf](https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/cf_stds.pdf).

<sup>32</sup> [https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/cf\\_chart.pdf](https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/cf_chart.pdf).

<sup>33</sup> <https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/Documents/AdministrativeOrders.pdf> page

208; FAQ for 2006-02 is located at

<https://courts.michigan.gov/Administration/SCAO/Resources/Documents/Administrative-Memoranda/2006-04.pdf>.

## 2. Record Retention and Disposal Schedule

- a. Records shall be retained as directed under General Schedules [#13 - District Courts](#)<sup>34</sup>, [#14 - Probate Courts](#)<sup>35</sup>, and [#15 – Circuit Courts](#)<sup>36</sup>.
- b. Records shall be removed, de-identified, transferred, and destroyed as directed by the [Michigan Trial Court Records Management Standards Data, Case, and Other Court Records](#).<sup>37</sup>

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<sup>34</sup> [https://www.michigan.gov/documents/dtmb/RMS\\_GS13\\_573186\\_7.pdf](https://www.michigan.gov/documents/dtmb/RMS_GS13_573186_7.pdf).

<sup>35</sup> [https://www.michigan.gov/documents/dtmb/RMS\\_GS14\\_597247\\_7.pdf](https://www.michigan.gov/documents/dtmb/RMS_GS14_597247_7.pdf).

<sup>36</sup> [https://www.michigan.gov/documents/dtmb/RMS\\_GS15\\_597248\\_7.pdf](https://www.michigan.gov/documents/dtmb/RMS_GS15_597248_7.pdf).

<sup>37</sup> [https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/cf\\_stds.pdf](https://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/cf_stds.pdf).

# *Appendix F*

## *Model DCCMIS User Confidentiality Agreement*

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### **DCCMIS User Confidentiality Agreement<sup>38</sup>**

This Confidentiality Agreement applies to **[name of problem-solving court program]**'s employees, members of the **[name of problem-solving court program]** team, and all other professionals working with the **[name of problem-solving court program]** hereinafter referred to as "users", who have direct access to the Drug Court Case Management Information System (DCCMIS).

User understands and agrees:

6. All network passwords are confidential and shall not be disclosed to any third party including other authorized users of the DCCMIS.
7. The **[name of problem-solving court program]** DCCMIS administrator shall provide user with the network password necessary to gain access to the DCCMIS network.
8. In the event that user reasonably suspects or becomes aware of any unauthorized use or disclosure of user's network password or other confidential user identification, user shall immediately change the password, and shall immediately report the unauthorized use or disclosure to **[name of problem-solving court program]**'s DCCMIS administrator.
9. **[Name of problem-solving court program]**'s DCCMIS administrator, The State Court Administrative Office (SCAO), and Advanced Computer Technologies (ACT) shall have the right to suspend or revoke user's network access without notice in the event of any breach or suspected breach of confidentiality.
10. To be accountable for all entries of client information, orders and data entered by user into DCCMIS under user's password.
11. To access client information and/or records only for the following purposes in accordance with applicable state and federal laws and regulations:
  - a. coordinating services with ancillary and other treatment service providers;
  - b. reviewing client's progress in program areas as needed per user's role on the team;
  - c. conducting statistical research, or audits;
  - d. conducting quality assurance, or review activities; and,
  - e. For DCCMIS administrators requirements involving verification and other operational purposes.
12. To not disclose or re-disclose any client information and/or records to any other entity or individual without the prior written authorization of the participant or the participant's authorized representative.
13. SCAO and ACT may conduct unannounced audits of user's access to its information systems, software applications, network and data on a periodic basis to monitor appropriate use of and compliance with the obligations stated above.

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<sup>38</sup>This model document is provided by 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.

14. Any violation of participant confidentiality may result in termination of access to DCCMIS.
15. Information may be disclosed in summary, statistical, or other form, which does not directly or indirectly identify particular program participants or related parties.

I understand that alcohol and/or drug treatment records and mental health records are protected under the Federal regulations governing Confidentiality and Drug Abuse Patient Records, 42 CFR Part 2, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR Parts 160 & 164, and cannot be disclosed without the written consent of the **[name of program]** participant or a person legally authorized to represent the participant unless otherwise provided for by the regulations.

\_\_\_\_\_  
Signature of DCCMIS user

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed name of DCCMIS user

Attached: Penalties under 42 CFR Part 2 and Penalties under HIPAA

## Penalties Under 42CFR Part 2

### §2.3 Purpose and effect.

(a) *Purpose.* Under the statutory provisions quoted in §§2.1 and 2.2, these regulations impose restrictions upon the disclosure and use of alcohol and drug abuse patient records which are maintained in connection with the performance of any federally assisted alcohol and drug abuse program. The regulations specify:

- (1) Definitions, applicability, and general restrictions in subpart B (definitions applicable to §2.34 only appear in that section);
- (2) Disclosures which may be made with written patient consent and the form of the written consent in subpart C;
- (3) Disclosures which may be made without written patient consent or an authorizing court order in subpart D; and
- (4) Disclosures and uses of patient records which may be made with an authorizing court order and the procedures and criteria for the entry and scope of those orders in subpart E.

(b) *Effect.*

- (1) These regulations prohibit the disclosure and use of patient records unless certain circumstances exist. If any circumstance exists under which disclosure is permitted, that circumstance acts to remove the prohibition on disclosure but it does not compel disclosure. Thus, the regulations do not require disclosure under any circumstances.
- (2) These regulations are not intended to direct the manner in which substantive functions such as research, treatment, and evaluation are carried out. They are intended to insure that an alcohol or drug abuse patient in a federally assisted alcohol or drug abuse program is not made more vulnerable by reason of the availability of his or her patient record than an individual who has an alcohol or drug problem and who does not seek treatment.
- (3) Because there is a criminal penalty (a fine—see 42 U.S.C. 290dd-2, and 42 CFR 2.4) for violating the regulations, they are to be construed strictly in favor of the potential violator in the same manner as a criminal statute (see *M. Kraus & Brothers v. United States*, 327 U.S. 614, 621–22, 66 S. Ct. 705, 707–08 (1946)).

### §2.4 Criminal penalty for violation.

Under 42 U.S.C. [42 U.S.C. 290dd–2](#), any person who violates any provision of those statutes or these regulations shall be fined not more than \$500 in the case of a first offense, and not more than \$5,000 in the case of each subsequent offense.

## **§2.5 Reports of violations.**

(a) The report of any violation of these regulations may be directed to the United States Attorney for the judicial district in which the violation occurs.

(b) The report of any violation of these regulations by a methadone program may be directed to the Regional Offices of the Food and Drug Administration.

### **Penalties Under HIPAA**

#### **42USC1320d-5** General penalty for failure to comply with requirements and standards

(a) General penalty

(1) In general

Except as provided in subsection (b), the Secretary shall impose on any person who violates a provision of this part a penalty of not more than \$100 for each such violation, except that the total amount imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed \$25,000.

#### **42USC1320d-6** Wrongful disclosure of individually identifiable health information

(a) Offense

A person who knowingly and in violation of this part-

- (1) Uses or causes to be used a unique health identifier;
- (2) Obtains individually identifiable health information relating to an individual; or
- (3) Discloses individually identifiable health information to another person,

shall be punished as provided in subsection (b).

(b) Penalties

A person described in subsection (a) shall-

- (1) Be fined not more than \$50,000, imprisoned not more than 1 year, or both;
- (2) If the offense is committed under false pretenses, be fined not more than \$100,000, imprisoned not more than 5 years, or both; and
- (3) If the offense is committed with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, be fined not more than \$250,000, imprisoned not more than 10 years, or both.

# *Appendix G*

## *Model Confidentiality MOU*

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### **[Name of problem-solving court]**

## **Memorandum of Understanding Regarding Confidentiality<sup>39</sup>**

### **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.

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<sup>39</sup> 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.

2. Confidential information means any information, whether oral or recorded in any form or medium, that:
  - 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, and Section 290dd-2, 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 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 information has been disclosed to you from records protected by federal confidentiality rules (42 CFR, Part 2). The federal rules prohibit you from making any further disclosure of information in this record that identifies 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 unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed or as 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. 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);

15. 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.<sup>40</sup>
  
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:<sup>41</sup>  
In witness whereof, the parties hereto 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 the [court number and type] Court.

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

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<sup>40</sup> Requirement of certification

<sup>41</sup> The confidentiality MOU should be signed by all team members and, if applicable, an authorizing agent for their agency.

Signature

Date

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**[Name and title]**, team member, **[name of county]** prosecutor's office

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**[Name and 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 and title]**, authorizing official on behalf of **[name of law firm]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**[Name]**, MDOC agent, team member, MDOC

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**[Name and title]**, authorizing official on behalf of MDOC

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**[Name]**, district court probation officer, team member, **[court number]** district court

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**[Name and title]**, authorizing official on behalf of **[court number]** district court

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**[Name and title]**, team member, **[name of law enforcement agency]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**[Name and title]**, authorizing official on behalf of **[name of law enforcement agency]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**[Name and title]**, **[agency name]**, team member, Community Mental Health Services provider

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**[Name and title]**, **[agency name]**, authorizing official on behalf of Community Mental Health Services provider

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**[Name and title]**, **[agency name]**, team member, **[type of treatment/ancillary]** services provider

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

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Signature

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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%20Sharing%20Guide%20FINAL%20PDF%20to%20authors%202015-06-25.pdf>

## *Appendix H*

# *Model Visitor Confidentiality and Consent for Release of Information*

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This model document is provided by the State Court Administrative Office (SCAO) as a resource and is for informational purposes only to assist courts with operating a problem-solving court to comply with the problem-solving court statute. This model document is not intended (and cannot be construed) as legal advice.

A court can customize the sections that are in bold and highlighted in yellow. Once customized, the court should remove the brackets, bold, and highlighting.

As a model document, it is generic in nature and should be modified to fit your program.

Before developing your confidentiality documents, please review the University of New Hampshire's School of Law/Institute for Health Policy & Practice's "Substance Use Disorder Treatment Confidentiality Boot Camp" guide located at <https://chhs.unh.edu/sites/default/files/substance-use-disorder-privacy-part-2-idn-workbook-unh-1017.pdf>.

If all participants do not sign the consent to release confidential information prior to the staffing meeting, visitors should not be attending the portion of the staffing meetings where those participants are discussed. Instead visitors may attend the portion of the staff meeting where only participants with signed releases are discussed.

## **[Name of PSC] Program Visitor Confidentiality Form**

I, \_\_\_\_\_, as a guest of the **[name of PSC]** Program, recognize my responsibility to maintain the confidentiality of the **[name of PSC]** Program, and hereby agree that:

1. Any and all information discussed at the **[name of PSC]** staffing team meeting must remain confidential and shall not be revealed to anyone.
2. If I receive a copy of case reports for a staffing team meeting, I will return all reports in their entirety to a team member at the end of the staffing team meeting.
3. I shall abide by the **[name of PSC]** program's Memorandum of Understanding (MOU) regarding confidentiality (attached).
4. I understand that alcohol and/or drug treatment records and mental health records are protected under the federal regulations governing Confidentiality and Drug Abuse Patient Records, 42 CFR, Part 2, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR, Parts 160 & 164, and I shall abide by the confidentiality provisions of the law.
5. By signing this form, I confirm that I have read and agree to the above statements.

\_\_\_\_\_  
Signature of guest

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed name of guest

**[Name of PSC program]**  
**Consent for Release of Information**  
**Observation of Staffing Meeting**

Participant name: \_\_\_\_\_ DOB: \_\_\_\_\_

I authorize the following parties:

1. **[Name of problem solving court]**,
2. **[Name of county]** MDOC probation/parole department
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]**

To release information to the following parties:

1. Stakeholders of **[name of PSC program observing meeting]**
2. **[Name of agency evaluating program]**<sup>42</sup>

To disclose information discussed at the staffing meeting, held on **[date]**, which may include the following information:

**INFORMATION TO BE SHARED**

1. Name, address, and other personal identifying information of the participant.
2. **[Name of PSC program]** assessments (GAIN, COMPAS, risk and needs, etc.).
3. **[Name of PSC program]** program assessments (GAIN, COMPAS, risk and needs, etc.).
4. **[Name of PSC program]** program behavior summaries and updates.
5. Treatment information, including assessments, attendance, progress and compliance reports, treatment plans, and discharge summaries.
6. Drug and alcohol screening, testing, confirmation results, and payment information.
7. Health information.
8. Reportable communicable disease information, including HIV, sexually transmitted infections, hepatitis, and tuberculosis.
9. Health plan or health benefits information.
10. Electronic monitoring information, including compliance and payment information.
11. Information required to obtain a restricted license through the ignition interlock program.
12. Other (specify, if any): \_\_\_\_\_

**Note: I authorize all of the foregoing information to be shared unless I indicate here, by number, one or more categories of information not to be shared: \_\_\_\_\_**

\_\_\_\_\_  
<sup>42</sup> Choose the appropriate option

## PURPOSE OF USE AND DISCLOSURE

The purposes for the disclosures authorized by this form are:

1. To assist **[name of observing court/agency]** in planning, implementation, or enhancement of their problem-solving court.
2. For the evaluation or audit of **[name of PSC program]**.
3. Other (please specify): \_\_\_\_\_.

## REDISCLASURE AND CONFIDENTIALITY

Once health care information is disclosed pursuant to this signed authorization, I understand that the federal health privacy law (45 CFR, Parts 160 and 164) protecting health information may not apply to the recipient of the information and, therefore, may not prohibit the recipient from redisclosing information to others. However, substance abuse treatment information protected by federal law (42 CFR., Part 2), shall remain confidential and must not be redisclosed by the recipient except as authorized by those laws or this authorization. The federal rules restrict any use of this information to criminally investigate or prosecute any alcohol or drug abuse patient.

## CONSENT EXPIRATION

The date, event, or condition upon which consent expires must ensure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

This consent for release of information shall expire on **[date of the day following observed staffing]**.

## REVOCAATION

I understand that I may revoke this consent, orally or in writing, at any time except to the extent that action has been taken in reliance on it. I also understand that I do not have to fill out this form. If I do not fill it out I can still get health insurance, and treatment and other medical benefits from a health care provider.

I also understand that if I refuse to consent to disclosure, or attempt to revoke my consent prior to the expiration of this consent such action is grounds for immediate termination from the **[Name of PSC program]** program.

## SIGNATURE CONSENTING TO RELEASE OF INFORMATION

\_\_\_\_\_  
Participant signature

\_\_\_\_\_  
Staff witness signature

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---

---

Date

---

Date

---

Staff witness printed name

# *Appendix I*

## *Model Program MOU*

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### Memorandum of Understanding<sup>43,44</sup>

**[Name of veterans 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:

1. **[Name of veterans treatment 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 treatment agency on team]**, Treatment Provider
8. **[Name of substance use/abuse treatment agency]**, Substance Abuse Treatment Provider
9. **[Name of law enforcement agency on team]**
10. **[Name of law firm/office, or name of defense attorney on team]**, Defense Attorney
11. U.S. Department of Veterans Affairs<sup>45</sup>
12. **[Name of Veterans Service Organization on team]**

#### **II. Purpose**

The purpose of this Memorandum of Understanding (MOU) is to describe duties and allocate responsibilities for members of the **[name of veterans treatment court]** team. The MOU also establishes team member responsibilities and requirements for maintaining compliance with the Michigan Veterans Court Statute (MCL 600.1200-600.1212).

#### **III. 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

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<sup>43</sup> Per MCL 600.1201(2) the court may adopt or institute a veterans treatment court if it enters into a MOU.

<sup>44</sup> This model MOU 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.

<sup>45</sup> Your Veterans Affairs (VA) may prefer to enter into an individual MOU with the program. An individual MOU would meet statutory requirements, and the VA would not need to be included on this MOU.

- 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 veterans treatment court]**, currently being screened as a candidate for **[name of veterans treatment court]** (including those who are ultimately denied entry to the program), currently participating in **[name of veterans treatment court]**, or someone who has been discharged from the **[name of veterans treatment court]**.
  3. 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.
  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 any agency providing therapeutic services for substance use disorder, mental health, or developmental disabilities.

#### **IV. Mission of the [name of veterans treatment court]**

1. We agree that the mission of the **[name of veterans treatment court]** shall be to successfully stabilize substance using and mentally ill individuals while maintaining public safety.
2. We endorse the goals of the **[name of veterans 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, challenge, and vision of the **[name of veterans treatment court]**.

#### **V. Guiding Principles of the [name of veterans treatment court]**

1. Veterans treatment court programs 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.
2. Veterans treatment court offers an opportunity for veterans, whose mental illness or substance use disorder is related to their service and contributed to their crime, a program that integrates alcohol, drug treatment, and mental health services with justice system case processing.
3. Treatment intervention should occur early on upon entry to the criminal justice system to achieve maximum treatment outcomes.
4. Thorough assessment and evaluation is a critical component of the veterans treatment court program.
5. Participants with mental illness or substance use disorders cannot maximize their treatment potential without appropriate treatment intervention that includes their families when appropriate.
6. Participant accountability is foremost in the program, with written program agreements and court monitoring of behavior on a regular basis. Court monitoring will include sanctioning or treatment adjustment for negative behaviors and positive rewards for improved behaviors.
7. Veterans treatment 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.
8. Participant entry into the veterans treatment court program shall be governed by written eligibility criteria as established by the veterans treatment court team.
  9. Information about participant progress, participant family progress, and the functioning of the veterans treatment court program shall be made available to all team members, in compliance with federal and state confidentiality laws.
  10. Effective evaluation of the veterans treatment court program shall be sought with appropriate responses being made relative to these evaluations.
  11. Forging of partnerships among veterans treatment court, veterans administration, public agencies, and community-based organizations generates local support and enhances veteran treatment court effectiveness.

**VI. Roles of the Parties of the [name of veterans treatment court]<sup>46</sup>**

1. All parties shall:
  - i. Participate as a team member, operating in a non-adversarial manner.
  - ii. On an annual basis, attend current training events on legal and constitutional issues in veterans treatment courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and/or community supervision.
  - iii. Help to identify potential and eligible veterans treatment court participants.
  - iv. Provide feedback, suggestions, and ideas on the operation of the veterans treatment court.
  - v. Attend staffing meetings, and provide input on incentives and sanctions for participants.
  - vi. Share information as necessary, and in compliance with federal confidentiality laws, to appraise participants' progress in, and compliance with, the conditions of veterans treatment court.
  - vii. 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.
2. Veterans treatment court judge shall:
  - i. Serve as the leader of the team.
  - ii. Preside over status review hearings.
  - iii. Engage the community to generate local support for the veterans treatment court.
  - iv. Communicate with the participants in a positive manner and make final decisions regarding incentives and sanctions and program continuation.
  - v. 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.
  - vi. Rely on the expert input of duly trained treatment professionals when imposing treatment related conditions on the participants.
  - vii. Provide program oversight and ensure communication and partnership with treatment.
  - viii. Shall consider whether to terminate a participant's participation in the veterans treatment court program if that participant is accused of a new crime. If a participant

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<sup>46</sup> Per MCL 600.1201(2) "The memorandum of understanding shall describe the role of each party..."

is convicted of a felony for an offense that occurred after being admitted to veterans treatment court, the judge must terminate the participant from the program.<sup>47</sup>

3. Prosecuting attorney shall:
  - i. Provide legal screening of eligible participants.
  - ii. Attend review hearings.
  - iii. Represent the interests of the prosecutor and law enforcement.
  - iv. Advocate for public safety.
  - v. Advocate for victim interest.
  - vi. Hold participants accountable for meeting their obligations.
  - vii. 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.).
  - viii. May help resolve other pending legal cases that impact participants' legal status or eligibility.
  
4. Program coordinator shall:
  - i. Arrange for additional screenings of persons aside from the prosecutor's legal screening.
  - ii. Attend review hearings.
  - iii. Answer inquiries from defense attorneys on possible eligibility.
  - iv. Enter data into DCCMIS system.
  - v. Liaison with non-treatment agencies that are providing services to the participants.
  - vi. 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 provided with copies of all program policy and procedure manuals, the participant handbook, and a copy of all current memoranda of understanding.
  
5. Probation officer and court case manager shall:
  - i. Administer a validated criminogenic risk/needs assessment tool to participants during the referral process to ensure the veterans treatment court is serving the appropriate target population.
  - ii. Attend review hearings
  - iii. Work with the program coordinator in supervising and monitoring the individuals in the program.
  - iv. Prepare presentence reports, and perform alcohol and drug tests as needed.
  - v. 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.
  - vi. Enter data into the DCCMIS system.

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<sup>47</sup> Per MCL 600.1208 "The veterans treatment court shall be notified if the veterans treatment court participant is accused of a new crime, and the judge shall consider whether to terminate the participant's participation in the veterans treatment court program in conformity with the memorandum of understanding..."

6. Defense counsel representative shall:
  - i. Ensure that a defense counsel representative is present at all staffing meetings to avoid ex parte communication.
  - ii. Attend review hearings.
  - iii. Ensure that defendants' procedural and due process rights are followed.
  - iv. Ensure that the participant is treated fairly and that the veterans treatment court team follows its own rules.
  - v. When appropriate, and without breaching attorney-client privilege, encourage clients to be forthcoming and honest regarding their recovery process.
  
7. Veterans justice outreach specialist shall:
  - i. Arrange for clinical assessments to determine program eligibility, appropriate treatment services, and progress in treatment.
  - ii. Ensure that a treatment representative is present at all staffing meetings to ensure therapeutic input regarding any sanctions being considered.
  - iii. Liaison with any Veterans Affairs (VA) treatment providers that are providing services to the participants, and keep the team updated on treatment attendance and progress.
  - iv. Attend review hearings.
  - v. Manage delivery of treatment services.
  - vi. Administer, or ensure administration of, behavioral or cognitive-behavioral treatments that are documented in manuals and have been demonstrated to improve outcomes.
  - vii. Offer insights and suggestions on the treatment plans of individuals in the program.
  - viii. Connect veterans to VA treatment services and homeless programs.
  - ix. Enter data into the DCCMIS system.
  
8. Treatment provider shall:
  - i. Attend review hearings.
  - ii. Liaison with any non-VA treatment providers and/or treatment agencies that are providing services to the participants, and keep the team updated on treatment attendance and progress.
  - iii. Offer insights and suggestions on the treatment plans of individuals in the program.
  - iv. Enter data into the DCCMIS system.
  
9. Veterans Service Organization shall:
  - i. Meet with participants to discuss available veterans benefit programs for which they may qualify.
  - ii. Facilitate a mentor pool.
  - iii. Coordinate veteran events with mentors and participants.
  
10. Law enforcement agency shall:
  - i. Provide officers to assist with home checks for participants (limited).

## VII. Deferrals, Delays, and Deviation from Sentencing Guidelines<sup>48</sup>

Under MCL 600.1205(2), the prosecutor must approve an individual's admission into the **[name of veterans treatment court]** if the individual will be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines.<sup>49</sup>

## VIII. Program Fee<sup>50</sup>

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 600.1206(4) the clerk of the veterans 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 cost of program personnel, treatment, drug testing, supplies, travel costs, training, and any other costs incurred by the veterans treatment court to administer the program]**.

## IX. Term of Agreement<sup>51</sup>

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

1. **[Name of veterans treatment court]**, Veterans Court Program Coordinator, **[name of coordinator]**
2. **[Name of veterans treatment court]**, Veterans Court Judge, **[name of judge]**
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**

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<sup>48</sup> Per MCL 600.1205(2) "An individual who may be eligible for discharge and dismissal of an offense, delayed sentence, deferred entry of judgment, or deviation from the sentencing guidelines shall not be admitted to a veterans treatment court unless the prosecutor first approves the admission of the individual into the veterans treatment court in conformity with the memorandum of understanding under section 1201(2)."

<sup>49</sup> Per MCL 600.1209(4) "...the court, with the agreement of the prosecutor and in conformity with the terms and conditions of the memorandum of understanding under section 1201(2), may discharge and dismiss the proceedings against an individual who meets..." the criteria of MCL 600.1209(4) (a) through 600.1209(4)(e).

<sup>50</sup> Per MCL 600.1206(4) "The veterans treatment court may require an individual admitted into the court to pay a veterans treatment court fee that is reasonably related to the cost to the court for administering the veterans treatment court program as provided in the memorandum of understanding under section 1201(2)."

<sup>51</sup> Per MCL 600.1201(2) "The memorandum of understanding shall describe the role of each party, and the conditions for which the memorandum of understanding must be renewed and amended."

- 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]**
  11. U.S. Department of Veterans Affairs<sup>52</sup>, **[title], [name of representative]**
  12. **[Name of Veterans Service Organization], [title], [name of representative]**

**XI. Modification of Agreement**<sup>53</sup>

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.

**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 Agreement**<sup>54</sup>

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 veterans treatment court]** Judge, **[court number and type]** Court

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

<sup>52</sup> Your VA may prefer to enter into an individual MOU with the program. That would meet statutory requirements.

<sup>53</sup> Per MCL 600.1201(2) “The memorandum of understanding shall describe the role of each party, and the conditions for which the memorandum of understanding must be renewed and amended.”

<sup>54</sup> Per MCL 600.1201(2) The court may adopt or institute a veterans treatment court if it enters into a memorandum of understanding with “...a representative of the criminal defense bar, a representative or representatives of community treatment providers, a representative or representatives of veterans service organizations in the circuit or district court district, and a representative or representatives of the United States department of veterans affairs.” The memorandum of understanding must also include the prosecuting attorney “...if the veterans treatment court will include in its program individuals who may be eligible for discharge and dismissal of an offense, a delayed sentence, deferred entry of judgment, or a sentence involving deviation from the sentencing guidelines.”

**[Name]**, Chief Prosecuting Attorney, **[name of county]** County Prosecutor's Office

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**[Name]**, **[title]**, U.S. Department of Veterans Affairs

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**[Name and title]**, **[agency name]**, provider of **[type of treatment services]** treatment services

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**[Name and title]**, **[agency name]**, provider of substance abuse treatment services

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**[Name and title]**, **[name of veterans service organization in the circuit/district]**, provider of veterans services

\_\_\_\_\_  
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]**, **[court number]** Circuit Court

Signature

Date

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**[Name]**, Program Coordinator, **[name of veterans treatment court]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**XIV.**

**Attachments**<sup>55</sup>

Attachment 1:

\_\_\_\_\_  
<sup>55</sup> 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.

# *Appendix J*

## *Model Veterans Treatment Court Agreement to Participate and Waiver*

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### AGREEMENT TO PARTICIPATE [Name of veterans treatment court program]

I, [name of participant], agree to participate in the [name of veterans treatment court] Program. I agree to follow all terms and conditions of the veterans treatment court program as established by the court and the veterans treatment court team.

#### **I agree to:**

1. Complete any evaluations or assessments as directed by the veterans treatment court, and follow the recommendations thereof. The treatment recommendations will be shared with the veterans treatment court team.
2. Work with treatment staff to develop a treatment plan and follow the plan accordingly, including aftercare and continuing care recommendations.
3. Meet with a member of a veteran service organization or a county veteran counselor, as directed by the veterans treatment court, to discuss available veterans benefit programs for which I may qualify<sup>56</sup>.
4. Not use, possess, or consume alcohol and/or other illegal or controlled substances, nor be in the presence of any person using, possessing, or consuming said substances; nor enter premises where alcohol is the primary source of revenue. I understand if I am found to be under the influence of drugs, alcohol, or medication not prescribed to me that I may be sanctioned and/or terminated from the program.
5. Submit to PBT's, electronic alcohol monitoring, and/or drug and alcohol screenings as directed.
6. Be employed or enrolled in an educational program, or participate in another positive activity as directed.
7. Notify the veterans treatment court of any changes in phone number within 24 hours.
8. Not change my place of residence without first notifying the veterans treatment court.
9. Notify the veterans treatment court of any police contact, arrest or criminal charge within 24 hours of event or of release from jail.
10. Make full and truthful reports to the veterans treatment court as directed by any team member.
11. Not engage in any antisocial, assaultive, threatening, or aggressive behavior.
12. Not leave the state without the prior consent of the veterans treatment court.
13. Maintain the confidentiality of other veterans treatment court participants.
14. Pay all court ordered fines and costs, including minimum state costs, the veterans treatment court fee, crime victims rights assessments, and restitution resulting from my conviction, in order to successfully complete the program. I will also pay all, or make substantial contributions toward payment of, the costs of the treatment and the veterans treatment court program services provided to me, including, but not limited to, the costs of urinalysis and

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<sup>56</sup> Required under MCL 600.1208(1)(f).

such testing or any counseling provided. However, if the court determines that the payment of fines, the fee, or costs of treatment would be a substantial hardship for me or would interfere with my treatment, the court may waive all or part of those fines, the fee, or costs of treatment<sup>57</sup>.

15. Appear in court on all scheduled court dates and to attend all appointments with my probation officer, case manager, mentor, and/or treatment provider.
16. Comply with the program's policies and conditions discussed within the **[name of veterans treatment court program]** Participant Handbook.

**I waive the following rights<sup>58</sup>:**

1. The right to a speedy trial.
2. The right to representation by an attorney at the review hearings. I still maintain the right to an attorney for any program violation or probation violation where the facts are contested and a liberty interest is at stake, or if I may be terminated from the veterans treatment court program.
3. With the agreement of the prosecutor, the right to a preliminary hearing.
4. To be present at the team staffing meetings.

**I understand that:**

1. The veterans treatment court program has a duration of **[minimum to maximum]** months.
2. If I am convicted of a felony for an offense that occurred after I am admitted to veterans treatment court, the judge must terminate my participation in the program per MCL 600.1208.
3. I understand I am required to attend all appointments for court, treatment, ancillary services, and all drug and alcohol testing as scheduled.
4. I understand that veterans treatment court staff may make unscheduled home visits, and I will allow veterans treatment court team members, together with law enforcement officials if accompanied, into my home at any time for supervision or compliance reasons.
5. Review hearings are held in open and public courtrooms, and although the court attempts to minimize confidential information in court, it is possible that an observer could connect a participant's identity with the fact that he or she is in treatment as a condition of participation in the veterans treatment court or that confidential information may be revealed.
6. Staffing meetings, which are held before review hearings, are typically closed to the public. Confidential information may be discussed by the veterans treatment court team members at a staffing meeting. I understand that if a non-team member is invited to participate in a staffing meeting, they must sign a confidentiality agreement and receive my consent prior to observation. I understand that participants will not be present at staffing meetings.
7. The data in my public and confidential file may be used for research, data analysis and program evaluation by the veterans treatment court, court staff, or individuals or others independent of the veterans treatment court. Any data used in this way will be de-identified prior to distribution.
8. Failure to fully comply with all the terms and conditions of the program listed above may result in the following:

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<sup>57</sup> Required under MCL 600.1208(1) and (3).

<sup>58</sup> Conditions 1, 2, and 3 are required under MCL 600.1205(1)(c).

1. Notification to the judge that I am in violation of the program.
  2. If I admit guilt to or am found guilty of a program violation; then sanctions, up to and including jail, may be imposed or additional conditions may be added as determined by the judge with input from the veterans treatment court team.
  3. Termination from the program.
9. I understand that the veterans treatment court may amend these conditions and/or add new conditions, notice of which will be provided to me in writing. I understand that I must comply with the amended or added conditions.

**The veterans treatment court coordinator agrees to:**

1. Meet with the program participant as needed to help assure successful completion in the program.
2. Report the participant's progress and test results to the court.
3. Refer the participant to any community agency at the veterans treatment court's disposal which may assist in the participant's recovery.

I have discussed the above listed conditions with my attorney or the veterans treatment court coordinator and received a copy of this form and a copy of the **[name of veterans treatment court program]** Participant Handbook.

\_\_\_\_\_  
Participant Signature<sup>59</sup>

\_\_\_\_\_  
Date

I have discussed the above listed conditions with the participant and have provided a copy of the agreement and the **[name of veterans treatment court program]** Participant Handbook to the participant.

\_\_\_\_\_  
Attorney/Coordinator Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Attorney/Coordinator

<sup>59</sup> Under MCL 600.1205(1)(d) the individual must sign a written agreement to participate in the veterans treatment court.

## *Appendix L*

### *Veterans Treatment Court Admission Conditions*

<b>VTC Admission Conditions<sup>60</sup></b>		
<b>Defendant name:</b>	<b>Defendant DOB:</b>	<b>Defendant case #:</b>
<p>The above named defendant has been referred to the <b>[County or Court]</b> VTC program. Per MCL 600.1204 the court finds the following conditions to be true, prior to the defendant's admission to the <b>[County or Court]</b> VTC program:</p> <ol style="list-style-type: none"> <li>(1) The individual is a veteran.</li> <li>(2) The individual has been assessed and has been shown to meet clinical eligibility criteria under MCL 600.1204b.</li> <li>(3) The individual understands the consequences of entering the VTC program and agrees to comply with all court orders and requirements of the program and treatment providers.</li> <li>(4) The individual is not an unwarranted or substantial risk to the safety of the public or any individual, based upon the screening or assessment and other information presented to the court.</li> <li>(5) The individual is not a violent offender.</li> <li>(6) The individual has completed a preadmission screening and evaluation assessment that includes the following:               <ul style="list-style-type: none"> <li>• A complete review of the individual's criminal history and whether the individual has been admitted to, has participated in, or is currently participating in a VTC, DTC, or specialty court, and the results of the individual's participation</li> <li>• An assessment of the risk of danger or harm to the individual, others, or the community</li> <li>• A review of the individual's history regarding SUD and an assessment of whether the individual has a current SUD disorder</li> <li>• A review of the individual's mental health history</li> <li>• A review of any special needs or circumstances of the individual that may potentially affect the individual's ability to receive treatment and follow the court's orders.</li> </ul> <p>and has agreed to cooperate with any future evaluation assessment as directed by the VTC.</p> </li> <li>(7) The following deferral condition applies:               <ul style="list-style-type: none"> <li><input type="checkbox"/> The individual has been assigned the status of youthful trainee under section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11</li> </ul> </li> </ol>		

<sup>60</sup> This model document 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 document is not intended (and cannot be construed) as legal advice.

- The individual has had criminal proceedings against him or her deferred and has been placed on probation under the following:
  - Section 7411 of the public health code, 1978 PA 368, MCL 333.7411 (controlled substance), or a local ordinance or another law of this state, another state, or the United States that is substantially similar to that section.
  - Section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a (domestic violence), or a local ordinance or another law of this state, another state, or the United States that is substantially similar to that section.
  - Section 350a (parental kidnapping) or 430 (health care professional practicing under the influence) of the Michigan penal code, 1931 PA 328, or a local ordinance or another law of this state, another state, or the United States that is substantially similar to that section.
  - MCL 600.1206 (VTC Deferral)
- No deferral applies

(8)

- Upon successful completion of the program **[specify details of the agreement]**.<sup>61</sup>
- Upon failure to successfully complete the program **[specify details of the agreement]**.
- With the agreement of the prosecutor sentencing is delayed in this matter as provided in section 1 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.1. At the end of the delay period **[specify details of the agreement]**.
- Other: \_\_\_\_\_
- No offer has been made that is contingent upon participation in or completion of this program.

P

Honorable **[name]**, DTC program Judge, **[court number and type]** Court \_\_\_\_\_ Date \_\_\_\_\_

<sup>61</sup> Under MCL 600.1204(h) the admission findings or statement must include, “The terms, conditions, and duration of the agreement between the parties, and the outcome for the participant of the [VTC] upon successful completion by the participant or termination of participation.” This will vary by program and should be tailored to each VTC participant.

## *Appendix N*

### *Ten Principles of a Good Testing Program<sup>62</sup>*

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1. Design an effective drug detection program, place the policies and procedures of that program into written form (drug court manual), and communicate the details of the drug detection program to the court staff and clients alike.
2. Develop a client contract that clearly enumerates the responsibilities and expectations associated with of the court's drug detection program.
3. Select a drug-testing specimen and testing methodology that provide results that are scientifically valid, forensically defensible, and therapeutically beneficial.
4. Ensure that the sample-collection process supports effective abstinence monitoring practices including random, unannounced selection of clients for sample collection and the use of witnessed/direct observation sample-collection procedures.
5. Confirm all positive screening results using alternative testing methods unless participant acknowledges use.
6. Determine the creatinine concentrations of all urine samples and sanction for creatinine levels that indicate tampering.
7. Eliminate the use of urine levels for the interpretation of client drug-use behavior.
8. Establish drug-testing result interpretation guidelines that have a sound scientific foundation and that meet a strong evidentiary standard.
9. In response to drug-testing results, develop therapeutic intervention strategies that promote behavioral change and support recovery.
10. Understand that drug detection represents only a single supervision strategy in an overall abstinence-monitoring program.

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<sup>62</sup> National Drug Court Institute. (2011). The Fundamentals of Drug Testing. In P. Cary, *The Drug Court Judicial Benchbook* (p. 137). Alexandria: National Drug Court Institute.

# *Appendix O*

## *Veterans Treatment Court Minimum Standard Data*

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### **Veterans Treatment Court Minimum Data Standards**

MCL 600.1210 states that each veterans treatment court shall collect and provide data on each individual applicant and participant and the entire program as required by the State Court Administrative Office. The information collected must include a minimum data standard set developed and specified by the State Court Administrative Office. In accordance with this act, the State Court Administrative Office has prepared the following minimum data standard sets. The sets include the minimum data that must be reported to the State Court Administrative Office on an annual basis.

Data must be collected and reported for all applicants screened for veterans treatment court, even if the applicant was not accepted into the veterans treatment court program. Therefore, minimum data standards that follow are broken into three sets; one set for screening, one set for case management data and one set for program discharge data relevant to accepted participants. This document provides descriptions and valid values for each of the variables in the minimum data standard sets. This information should be entered into the Drug Court Case Management Information System (DCCMIS), or in the SCAO excel spreadsheet template.

#### **Set 1: Screening**

Minimum Data Standard set for participants screened for veterans treatment court.

<b>Variable</b>	<b>Description</b>	<b>Valid Values</b>	<b>DCCMIS Initial Eligibility Screening Page</b>
Court Name	Name of the problem solving court	Alphanumeric	NA-populated by DCCMIS
Court Type	Type of problem solving court program	Type of problem solving treatment court	NA-populated by DCCMIS
Referral Source	Party that referred candidate to the problem solving court	Title of person making referral	1
Referral Date	date that candidate was referred to the program	mm/dd/yyyy	1

Screening Date	Date candidate was screened for admission	mm/dd/yyyy	1
First Name	Candidate's legal first name	Alpha	1
Middle Name	Candidate's legal middle name	Alpha	1
Last Name	Candidate's legal last name	Alpha	1
Address	Candidate's street address at screening	Alpha	1
City	City associated with candidate's street address	Alpha	1
State	State associated with candidate's street address	Two-letter abbreviation	1
Zip Code	Zip code associated with candidate's street address	Five-number postal zip code	1
Race	Race of the candidate	Alpha	1
Gender	Gender of the candidate	Gender	1
DOB	Date the candidate was born	mm/dd/yyyy	1
Marital Status	Marital status of the candidate at screening	Marital status	1
SSN last 4 digits	Last four digits of candidate's Social Security number	Numeric (4 numbers and it must be accurate)	1
SID	State ID# from MSP. (Number assigned when candidate was fingerprinted)	Alphanumeric 1234567A (7 numbers and 1 letter and it must be accurate.)	1
Lead Charge	Charge that made candidate eligible for the problem solving court	Charge code and title	2
Case/Docket Number	Candidate's case or docket number	Alphanumeric	2
Offense Category	Offense category of the lead eligible charge	Offense category	2

Charge Type	Level of the lead charge (i.e. felony, misdemeanor, etc.)	Charge type	2
If charge type is felony, cell type is required	Cell type recommended from the sentencing guidelines	Cell type per MDOC guidelines	2
If charge type is felony, prior record variable (PRV) is required	Variable associated with previous offenses used to identify sentencing guidelines	Numeric	2
Incident Offense	Program eligible offense type	- New criminal offense - Probation/parole violation	2
Offense Date	Date that the program eligible offense occurred	mm/dd/yyyy	2
Drug Court/Court Program Approach	Approach to sentencing that the program takes (i.e. deferred, delayed, formal, consent, etc.)	Alpha	2
Prior adjudications/convictions	Any adjudications or convictions the candidate had previous to screening	- Yes (enter number of felonies and misdemeanors) - No	2
COMPAS violence risk category (if applicable)	The violence risk assessment value from the COMPAS	Violence risk assessment value category	2
COMPAS recidivism risk category (if applicable)	The recidivism risk assessment value from the COMPAS	Recidivism risk assessment value category	2
Prior Substance Abuse	Candidate's self-reported prior substance abuse	- Yes - No	3
Substance Abuse Assessment Instrument	The assessment instrument used to determine clinical eligibility for participation	Name of assessment tool	3
Risk Assessment Instrument	The assessment instrument used to determine criminogenic risk. Enter as "other screening/assessment" in DCCMIS, and specify tool	Name of criminogenic risk and needs assessment tool	3

Prior Substance Abuse Treatment	Has the candidate received substance abuse treatment before?	- Yes (enter treatment modality/service category) - No	3
Primary Drug of Choice (Enter Secondary and Tertiary Drugs of Choice if applicable)	Candidate's self-reported primary drug (if applicable)	Drug type	3
IV Drug User	Candidate's current use of IV drugs	- Currently IV drug user - Not currently IV drug user	3
History of IV Drug Use	Candidate's history of IV drug use	- No history of IV drug use - History of IV drug use	3
Primary Diagnosis Code	Primary ICD substance use disorder code as provided by a clinician	Numeric code for substance use disorder	3
Secondary Diagnosis Code	Secondary ICD code as provided by a clinician if dually diagnosed	Numeric code for substance use disorder or mental illness	3
ASAM Placement Criteria	American Society of Addiction Medicine level of care	ASAM placement criteria	3
Level of Service	Primary substance abuse or mental health treatment modality recommended	Substance Use Disorder or Mental Illness Treatment modality	3
Age Began Using Drugs	Self-reported age of first drug use	Numeric	3
Age Began Using Alcohol	Self-reported age of first alcohol use	Numeric	3
Current Substance Abuse Treatment	Is the candidate currently in a SA treatment program	- Yes (enter treatment modality/service category) - No	3
History of mental health condition(s)	History of mental illness	- Yes - No	3

Current Medical Conditions	Candidate's medical conditions at time of screening.	Category of medical condition	4
Highest Education Level Completed	Highest level of education completed at screening	Highest grade, certification, or degree completed	5
Current Employment Status	Employment at screening	Employment status	5
Number of times moved in the last three years	Number of times candidate reports moving in last three years	Alpha	5
Length of time at current address	Time candidate has lived at current address	Months and years	5
Living situation at entry	Candidate's living situation at time of screening	- Dependent - Homeless - Independent	5
History of foster care placement as a minor	Was the candidate ever placed in a foster home when under the age of 18?	- Yes - No	5
Has the defendant ever served in a branch of the U.S. Military	Confirmation of prior service (should be "yes" for all veterans treatment court candidates)	- Yes - No	6
Branch of service	Branch of service in which the candidate served	Alpha	6
Enlistment or commissioning date	Date the candidate entered service	mm/dd/yyyy	6
Military discharge date	Date the candidate was discharged from service	mm/dd/yyyy	6
Years of service	Total years the candidate served	Numeric	6
Military discharge reason	Reason the candidate was discharged from service	Alpha	6
Military rank	Rank at time of discharge	Alpha	6
Deployed abroad	Deployment abroad during services	- Yes (enter total months and location) - No	6

Has the defendant been exposed to military combat	Exposure to combat during service	- Yes (enter number of deployments to combat zone) - No	6
Conflict eras of service	Conflict at time of service	Alpha	6
Military-related mental illness or behavioral health issues	Military-related mental illness or behavioral health issues	Alpha	3
PTSD	Diagnosis of post- traumatic stress disorder	- Yes - No	6
TBI	Diagnosis of traumatic brain injury	- Yes - No	6
IED or HME	Exposure to improvised explosive device or homemade explosive	- Yes - No	6
MST	History of military sexual trauma	- Yes - No	6
Date of Referral to VA/VJO	Date referred to Veterans Administration and/or Veterans Justice Outreach	mm/dd/yyyy	6
Veteran eligible for benefits	Is the veteran eligible for veterans' benefits	- Yes - No	6
Date assessment received from VA/VJO	Date assessment received from VA/VJO	mm/dd/yyyy	6
Veterans Association or group membership	Membership in veterans association or group (example: VFW)	- Yes - No	6
Receiving disability compensation from the VA	Whether the veteran receives disability benefits	- Yes (enter percent disabled) - No	6
Utilizing services from the Vet Center	Whether the veteran receives services from the Vet Center	- Yes - No	6

### If Accepted into the Program

Variable	Description	Valid Values	DCCMIS Location
Date accepted	Date the candidate was accepted to the problem solving court	mm/dd/yyyy	Accepted into program pop-up screen
Judge	Name of judge candidate will see	Alpha	Accepted into program pop-up screen
Case Manager	Name of case manager candidate will see	Alpha	Accepted into program pop-up screen
Veteran Mentor	Is a volunteer veteran mentor assigned	- Yes (enter date assigned) - No	Accepted into program pop-up screen
Jail Status of Defendant	Was the defendant in jail when accepted into the problem solving court?	- Yes (enter admission date and end date) - No	Accepted into program pop-up screen

### If Rejected from the Program

Variable	Description	Valid Values	DCCMIS Location
Date Rejected	Date the candidate was rejected from the problem solving court	mm/dd/yyyy	Rejected from program pop-up screen
Mental Illness	Did the candidate have a mental health diagnosis at screening	-Yes -No - Unknown	Rejected from program pop-up screen
Rejection Reason	Reason for candidate's rejection from the problem solving court	Reason for rejection	Rejected from program pop-up screen

## Set 2: Case Management

Minimum Standard Data Set for participants accepted into program.

Variable	Description	Valid Values	DCCMIS Location
Arrest/Detained Date	Date participant was arrested/detained on the lead charge if applicable	mm/dd/yyyy	criminal history
Sentencing Date	Date participant was sentenced on the lead charge	mm/dd/yyyy	criminal history
Sentencing Guidelines	Incarceration time range assigned to the lead charge	Days or months	criminal history
Dates of substance abuse testing	Date participant was to complete substance abuse testing	mm/dd/yyyy	Substance Abuse Testing
Type of substance abuse testing	Type of substance abuse test administered (i.e. UA, PBT, SCRAM, etc.)	Alpha	Substance Abuse Testing
Substance Abuse Test Results	Indicate which substances were tested for and whether each panel given was positive or negative	Substance abuse test results	Substance Abuse Testing
Dates of monitoring appointments, type of contact, and outcomes of the appointments	Dates of scheduled and unscheduled monitoring appointments with case manager/probation officer, type of contact, and outcome of the appointments	- mm/dd/yyyy - Type of contact - Outcome of contact	Journal-monitoring
Dates of scheduled problem solving court reviews and attendance outcome	Dates of scheduled problem solving court reviews, with attendance specified	- mm/dd/yyyy - Attendance status	Journal-"schedule drug court review"
Phase Progression or Demotion	Date participant progressed or was demoted through phases.	mm/dd/yyyy	Journal or Incentives/Sanctions

Sanction Date	Date participant received a sanction	mm/dd/yyyy	Incentives/ Sanctions
Sanction Type	Type of sanction the participant received	Type of sanction (if detention/jail, include date in and date out)	Incentives/ Sanctions
Sanction Reason	Reason the participant received a sanction	Alpha	Incentives/ Sanctions
Incentive Date	Date participant received an incentive	mm/dd/yyyy	Incentives/ Sanctions
Incentive Type	Type of incentive the participant received	Type of incentive	Incentives/ Sanctions
Incentive Reason	Reason the participant received an incentive	Alpha	Incentives/ Sanctions
Date of assessment (clinical and/or criminogenic risk and needs) administered to participant	Date that participant was assessed	mm/dd/yyyy	Local assessments
Type of assessment (clinical and/or criminogenic risk and needs) administered to participant	The validated assessment tool used to assess participant.	Name of assessment tool	Local assessments
Timing of assessment	When the assessment was administered relative to program entry.	When it was administered in relation to program entry	Local assessments
Score, diagnosis, or result of assessment	diagnosis, criminogenic risk level, or other results of assessment	Alpha	Local assessments
Treatment provider	Name of treatment provider	Alpha	Treatment-treatment plan
Treatment admit date for each treatment plan	Date the participant was admitted to a treatment modality	mm/dd/yyyy	Treatment-treatment plan
Treatment discharge date for each treatment plan	Date the participant was discharged from a treatment modality	mm/dd/yyyy	Treatment-treatment plan

Dates of sessions and units of treatment	Provide dates of treatment sessions, and contact hours.	- mm/dd/yyyy - Contact hours	Treatment-treatment plan
Treatment discharge reason	Reason the participant was discharged from a treatment modality	Discharge Reason	Treatment-treatment plan
Treatment modality/service category	Type of treatment modality the participant received	Substance Use Disorder or Mental Health treatment modality	Treatment-treatment plan
Mental Health Treatment Modality	If "mental health" is the first treatment modality, specify the type of mental health treatment the participant received	Alpha	Treatment-treatment plan
If receiving mental health services, Primary Diagnosis Code is required	ICD code of primary diagnosis	ICD Numeric Code for Mental Illness	Treatment-treatment plan
	If receiving medication assisted treatment services, sections a-i are required		
a. Is this participant an opioid user and clinically eligible for MAT?	Indicates the participant is an opioid user and clinically eligible to receive MAT services	- Yes- No	Treatment-treatment plan
b. Will this participant receive MAT while in the Program?	Indicates participants will receive MAT while in the program	- Yes - No	Treatment-treatment plan
c. Are this person's MAT services funded through SCAO grant funding?	Indicates SCAO state funding is being used to assist in MAT services	- Yes - No	Treatment-treatment plan
d. MAT type is required	Type of medication the participant is using	- Naltrexone - Methadone - Suboxone	Treatment-treatment plan
e. MAT admit and discharge date	Admission and discharge date associated with the MAT treatment modality	mm/dd/yyyy	Treatment-treatment plan

f. First dosage date and end dosage date	Indicates the first and last medication dosage date of the participant	mm/dd/yyyy	Treatment-treatment plan
g. MAT status at discharge	Identifies participants MAT status when discharged from the program	MAT discharge reason	Treatment-treatment plan
h. Was the participant compliant with their MAT?	Indicates medication compliance at treatment or program discharge.	Compliance status at discharge	Treatment-treatment plan
i. Number of session/units of MAT treatment	Number of MAT units a participant received under the Mat treatment modality	Numeric	Treatment-treatment plan
If participating in the Interlock Program, sections a-f are required.			
a. Is this participant a member of the Interlock Program	Indicates participation in the Interlock Program	- Yes - No	Interlock
b. Was participant ordered to install interlock device on vehicles	Indicates order given to participant	- Yes - No	Interlock
c. Did participant install interlock device on vehicle as required	Indicates if interlock was installed	- Yes (enter date) - No	Interlock
d. Participant removed interlock device without court approval	Indicates if the participant removed interlock device without permission	- Yes (enter date and whether it resulted in a program sanction) - No	Interlock
e. Did participant tamper with interlock device	Indicates if the participant tampered with the interlock device without permission	- Yes (enter date and whether it resulted in a program sanction) - No	Interlock

f. Did participant operate vehicle not equipped with interlock	Indicates if the participant operated a vehicle without an interlock device	- Yes (enter date and whether it resulted in a program sanction) - No	Interlock
Veteran mentor contact	Dates that the participant met with their mentor	mm/dd/yyyy	Ancillary services
Dates of 12-step program meetings attended	Dates of 12-step meetings the participant attended during treatment	mm/dd/yyyy	Ancillary services
Number of Bench Warrants	Number of bench warrants participant received during program. If using DCCMIS, the program calculates the total number based on individual entry of each bench warrant.	- Date of bench warrant (mm/dd/yyyy) - Days of active bench warrant (Numeric)	Criminal history
Number of days participant was active in the program	Subtract the number of days participant was inactive due to a bench warrant from the total of days participant was in the program	Numeric	Criminal history
In-program New Offense- Date of Offense	Date of new offense that occurred during program participation	mm/dd/yyyy	Criminal history
In-program New Offense- Date of Arrest	Date of new arrest that occurred during program participation	mm/dd/yyyy	Criminal history
In-program new offense-arrest offense Category	Offense category, at arrest/detainment, of new offense that occurred during program participation	Offense category	Criminal history
In-program New offense – Arrest Charge Type	Charge type of new offense that occurred during program participation	Charge type	Criminal history

In program-new offense-convicted/adjudicated charge	Charge participant was convicted/adjudicated of for new offense that occurred during program participation	Charge	Criminal history
In-program New offense-convicted/adjudicated offense category	Offense category of new conviction/adjudication that occurred during program participation	Offense category	Criminal history
In-program New offense – conviction/adjudication charge type	Charge type of new conviction/adjudication that occurred during program participation	Charge type	Criminal history
In-program New offense-Sentence/disposition Type	Sentence/disposition type of new conviction/adjudication that occurred during program participation	Sentence type	Criminal history
In-program New offense-Length of Sentence	Length of sentence associated with new conviction that occurred during program participation	Length of incarceration sentence	Criminal history
Total number of jail days spent while in court program	Count any jail time associated with the lead charge, including time served from arrest until release to the problem solving court, problem solving court jail sanctions, and time for any new offenses	Numeric	Criminal history

### Set 3: Discharge Data

Variable	Description	Valid Values	DCCMIS Location
Program discharge action	Indicate the reason the case is being closed	Alpha	Discharge
Program Discharge Date	Date the participant was discharged from the problem solving court	mm/dd/yyyy	Discharge

Program Discharge Reason	Reason the participant was discharged from the problem solving court	Reason for program discharge	Discharge
Offer related to court participation	Offer made contingent on program participation	Offer made contingent on program participation	Discharge
Outcome of charge	Outcome contingent on program participation	Outcome of offer made contingent on program participation	Discharge
Was there a Sentence/Disposition at Discharge	Was disposition held at discharge from the court program, instead of prior to or at program admission?	- Yes - No	Discharge
Supervision Status at Discharge	Participant's level of supervision upon discharge from program	Supervision status at discharge	Discharge
Education level	Educational level achieved by participant at discharge	Highest grade completed, certification, or degree at time of discharge from program	Discharge
Education improved at discharge?	Subjective decision by case manager	- Yes - No	Discharge
Employment type	Employment status of participant at discharge	Employment status at discharge	Discharge
Employment improved at discharge?	Subjective decision by case manager	- Yes - No	Discharge
Housing improved at discharge	Subjective decision by case manager	- Yes - No	Discharge

Does the client have stable housing?	Did the participant have stable housing for at least 90 days prior to discharge from the program?	- Yes - No	Discharge
Custody Status at Discharge	Identify the type of child custody the participant had at discharge.	Custody status	Discharge

Questions about this data set can be directed to: Daisy Beckett, Problem-Solving Court Analyst  
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