



**State Court Administrative Office**  
**Court Services**  
**Problem-Solving Courts**

**Michigan Association of Treatment Court Professionals**

# **Adult Drug Court Standards, Best Practices, and Promising Practices**

**March 2021**

**INDEPENDENCE · ACCESSIBILITY · ENGAGEMENT · EFFICIENCY**



# *Introduction*

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## **Purpose**

This manual was written by staff from the State Court Administrative Office and board members of the Michigan Association of Treatment Court Professionals. It is designed to assist Michigan's adult drug and DWI courts in complying with the drug court statute,<sup>1</sup> best practices, the [\*10 Key Components of Drug Courts\*](#), and the [\*10 Guiding Principles of DWI Courts\*](#). The content in this manual comes from many sources, but it leans most heavily on statute and the National Association of Drug Court Professionals *Adult Drug Court Best Practice Standards, Volume I* and *Volume II*. The manual pulls important pieces from all of these sources in order to best represent Michigan's practices. This manual is intended for all adult drug court team members, and the team should use it to ensure that their program is following the statute and implementing best practices.

## **Definitions**

The chapters in this manual include three types of information:

- **Standard:** Standards are from the drug court statute, the *10 Key Components*, the *10 Guiding Principles*, federal and state confidentiality laws, and case law and other 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.

## **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 while some 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 drug 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 adult drug court under MCL 600.1062, 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 Drug Court Judge

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This chapter discusses the judge's roles on a drug court team. The judge serves as the leader of the team and plays an important part in guiding participants through the program. Specific topics include the term as a drug 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 drug treatment court shall comply with the 10 key components promulgated by the national association of drug court professionals, which include all of the following essential characteristics:**
  - a) **Ongoing close judicial interaction with each participant and supervision of progress for each participant. (MCL 600.1060(c)(vii))<sup>2</sup>**
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 drug 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)**

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<sup>2</sup> The Michigan drug court statute refers to the [10 Key Components of Drug Courts](#). The National Center for DWI Courts, a division of the National Association of Drug Court Professionals, has also promulgated the [10 Guiding Principles of DWI Courts](#). Judges in DWI/Sobriety courts should also respect Guiding Principle #6, which reads, "Judges are a vital part of the DWI Court team. As leader of this team, the judge's role is paramount to the success of the DWI court program. The judge must be committed to the sobriety of program participants, possess exceptional knowledge and skill in behavioral science, own recognizable leadership skills as well as the capability to motivate team members and elicit buy-in from various stakeholders. The selection of the judge to lead the DWI Court team, therefore, is of utmost importance."

2. The judge presides over the drug 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, & Finnegan, 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, & Finnegan, 2012)
3. The judge bases interaction with drug court 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 drug court team reviews each participant's progress and discusses potential consequences for performance.**
  - a) Research has consistently shown that when the drug court judge regularly attends staffing meetings, cost savings increase and recidivism is reduced. (Carey, Pukstas, Waller, Mackin, & Finigan, 2008) (Carey, Mackin, & Finnegan, 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 drug 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, & Finnegan, 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, 2018)
  - 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)

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## *Chapter 2: Participant Supervision and Compliance*

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This chapter discusses participant supervision and compliance with program requirements. Specific topics include the drug court supervision caseload, frequency of monitoring events, services provided to participants, incentives and sanctions, phase promotion and graduation from drug court, and termination from drug 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, & Finnegan, 2012)
  - b) Drug courts can serve more than 125 participants with effective results if the programs have sufficient personnel and resources to accommodate larger numbers of individuals. (Carey, Mackin, & Finnegan, 2012) (Shaffer, 2010)
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)
3. The caseload for a treatment provider administering individual therapy should not exceed a 40:1 ratio.
  - a) Treatment providers serve principally as treatment providers, administering individual therapy or counseling and perhaps facilitating or co-facilitating group interventions. They may also refer participants for ancillary services such as mental health treatment or vocational training. The caseload census guideline is derived from expert consensus. (Case Management Society of America & National Association of Social Workers., 2008) (National Association of Drug Court Professionals, 2018)

- b) State rules on mental health and substance use disorder services say that the equivalent of one or more full-time counselors shall be available for approximately 40 clients. (Michigan Mental Health and Substance Abuse Services Rules, Part 7, R 325.14701)

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

1. The caseload for a clinical case manager should not exceed a 75:1 ratio.
  - a) Case managers assess participant needs, broker referrals for services, and report progress information to the team. The caseload census guideline is derived from expert consensus. (Rodriguez, 2011) (National Association of Drug Court Professionals, 2018) Research is based on outcomes in the context of general probation, particularly high-risk, high-need probationers.

## **II. Monitoring and Review Hearings**

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

1. **A drug treatment court shall provide a drug court participant with all of the following:**
  - a) **Consistent, continual, and close monitoring of the participant and interaction among the court, treatment providers, probation, and the participant. (MCL 600.1072(1)(a))**
  - b) **Periodic evaluation assessments of the participant's circumstances and progress in the program. (MCL 600.1072(1)(c))**

### ***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, 2018) (Festinger, et al., 2002)
2. Participants meet individually with a clinical case manager or comparable treatment professional at least weekly during the first phase of drug 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, & Finnegan, 2012) (Cissner, et al., 2013)

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

1. Drug court 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 drug treatment court shall provide a drug court participant with all of the following:**
  - a) **Substance use disorder treatment services, relapse prevention services, education, and vocational opportunities as appropriate and practicable. (MCL 600.1072(1)(e))**
2. **A drug treatment court shall comply with the 10 key components promulgated by the national association of drug court professionals, which include all of the following essential characteristics:**
  - a) **Integration of alcohol and other drug treatment services with justice system case processing. (MCL 600.1060(c)(i))**

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

1. 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 non-faith-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)

2. In the first phase of drug court, participants receive services designed primarily to address responsiveness needs such as deficient housing; mental health symptoms; and substance-related cravings, withdrawal, or anhedonia. In the interim phases of drug court, participants receive services designed to resolve criminogenic needs that co-occur frequently with substance use, such as criminal thinking patterns, delinquent peer interactions, and family conflict. In the later phases of drug court, participants receive services designed to maintain treatment gains by enhancing their long-term adaptive functioning, such as vocational or educational counseling.
  - a) Outcomes, including graduation rates, recidivism rates, and engagement in treatment, are improved when rehabilitation programs address ancillary needs in this specific sequence. (National Association of Drug Court Professionals, 2018)
3. Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of drug 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, Stanton-Tindall, & Duvall, 2007)
4. Where indicated, participants receive assistance finding safe, stable, and drug-free housing beginning in the first phase of drug 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)

## IV. Ignition Interlock

### A. *Standards*

1. **Before the secretary of state issues a restricted license to a program participant under section 304 of the Michigan vehicle code, 1949 PA 300, MCL 257.304, the DWI/sobriety court judge shall certify to the secretary of state that the individual seeking the restricted license has been admitted into the program and that an interlock device has been placed on each motor vehicle owned or operated, or both, by the individual. (MCL 600.1084(6))**
2. **If any of the following occur, the DWI/sobriety court judge shall immediately inform the secretary of state of that occurrence:**
  - a) **The court orders that a program participant be removed from the DWI/sobriety court program before he or she successfully completes it. (MCL 600.1084(6)(a))**

- b) **The court becomes aware that a program participant operates a motor vehicle that is not equipped with an interlock device or that a program participant tampers with, circumvents, or removes a court-ordered interlock device without prior court approval. (MCL 600.1084(6)(b))**
- c) **A program participant is charged with a new violation of section 625 of the Michigan vehicle code, 1949 PA 300, MCL 257.625. (MCL 600.1084(6)(c))**

***B. Best Practices***

- 1. **Ignition interlock devices and restricted driver licenses are made available to eligible participants. Drug courts should utilize the National Center for DWI Courts' ignition interlock device guidelines when incorporating the use of these devices into their programs.**
  - 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)**

**V. Incentives and Sanctions**

***A. Standards***

- 1. **A drug treatment court shall provide a drug court participant with all of the following:**
  - 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 600.1072(1)(d))**
- 2. **A drug treatment court shall comply with the 10 key components promulgated by the national association of drug court professionals, which include all of the following essential characteristics:**
  - a) **Use of a coordinated strategy with a regimen of graduated sanctions and rewards to govern the court's responses to participants' compliance. (MCL 600.1060(c)(vi))**

***B. Best Practices***

- 1. **The drug 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 drug court has a range of sanctions of varying magnitudes that may be administered in response to program infractions.**
  - a) Drug courts 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, 2018)
  - 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, 2018)
- 3. **Sanctions are imposed as quickly as possible after noncompliant behavior. Drug 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, & Finnegan, 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, & Finnegan, 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, & Finnegan, 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, & Finnegan, 2012)
7. Team members have a written schedule of sanctions for infractions.
  - a) Drug courts where team members are given a copy of the guidelines for sanctions had 72% greater cost savings. (Carey, Mackin, & Finnegan, 2012)
  - b) Multistate research showed the most effective programs with regard to recidivism included greater predictability of sanctions. (Rossman & Zwiieg, 2012)

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

1. Immediate and tangible rewards help a drug court demonstrate the benefits of abstinence. 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 drug court to more quickly improve behaviors.

## **VI. Payments**

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

1. **The drug treatment court may require an individual admitted into the court to pay a reasonable drug court fee that is reasonably related to the cost to the court for administering the drug treatment court program as provided in the memorandum of understanding.<sup>3</sup> (MCL 600.1070(4))**

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<sup>3</sup> See Appendix I. This model document is also available at [http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/DTC\\_ProgramMOU.pdf](http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/DTC_ProgramMOU.pdf).

- a) Courts can use the State Court Administrative ([SCAO](#)) [Drug 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 drug treatment court program.
2. **In order to continue to participate in and successfully complete a drug treatment court program, an individual shall comply with all of the following:**
    - a) **Pay all court-ordered fines and costs, including minimum state costs. (MCL 600.1074(1)(a))**
    - b) **Pay the drug treatment court fee allowed under section 1070(4). (MCL 600.1074(1)(b))**
    - c) **Pay all court-ordered restitution. (MCL 600.1074(1)(c))**
    - d) **Pay all crime victims rights assessments under section 5 of 1989 PA 196, MCL 780.905. (MCL 600.1074(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))**

## VII. 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 through the phases. (Carey, Mackin, & Finnegan, 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, 2018)
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 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. If the participant is engaged in positive activities that lead to higher and legal income, they are less likely to engage in drug use and other criminal activities. (Carey, Mackin, & Finnegan, 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, & Finnegan, 2012)

## VIII. Program Discharge

### A. *Standards*

1. **The drug treatment court must be notified if the participant is accused of a new crime, and the judge shall consider whether to terminate the participant's participation in the drug treatment program in conformity with the memorandum of understanding under section 1062. If the participant is convicted of a felony for an offense that occurred after the defendant is admitted to drug treatment court, the judge shall terminate the participant's participation in the program. (MCL 600.1074)**
2. **Upon completion or termination of the drug 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>4</sup> (MCL 600.1076(1))**
3. **The court shall send a record of the discharge and dismissal [under MCL 600.1070, and as outlined in MCL 600.1076(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 law enforcement information network with an indication of participation by the individual in a drug treatment court. (MCL 600.1076(6))**

### B. *Best Practices*

1. **Unless termination is required under MCL 600.1074 or the participant can no longer be managed safely in the community, drug courts do not terminate participants based only on drug or alcohol use or possession.**

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<sup>4</sup> See Appendix B. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/DTC-DischargeStatement.pdf>.

- 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, & Finnegan, 2012)
- b) Drug courts that terminate participants merely for drug or alcohol use have significantly poorer recidivism rates and are less cost-effective. (Carey, Mackin, & Finnegan, 2012)

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## Chapter 3: Confidentiality

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This chapter addresses confidentiality issues in drug court and shares some information with Chapter 4 (Due Process), so 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.

### I. Confidentiality

#### A. Standards

1. Drug 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. Drug 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 drug treatment courts, HIPAA does apply to the treatment agencies partnering with drug treatment courts, so drug courts must also comply with HIPAA. Full text of the HIPAA privacy law is available [here](#).
3. Except as otherwise permitted in the [Michigan drug 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. (MCL 600.1064(4) and MCL 600.1072(2))
4. 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](#).

5. 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 600.1064(4), and MCL 600.1072(2))
6. 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)
7. 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))
  - a) Consent may be paper or electronic, and must include the following under 42 CFR, Sections 2.14-2.35:5
    - 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 of the program(s) or person(s) to which disclosure is to be made.
    - iv. How much and what kind of information is to be disclosed.
    - v. The purpose of the disclosure. In accordance with §2.13(a), the disclosure must be limited to that information which is necessary to carry out the stated purpose.
    - 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.
8. 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>6</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;**
  - 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.**
- 9. 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)**
- 10. Any documented treatment information distributed on the basis of the treatment participant's consent should be accompanied by a Notice of Prohibition against Rediscovery. (42 CFR, Section 2.32)**
- 11. Drug 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>7</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;**

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<sup>5</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>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 appendices E and F.

- 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;**
  - 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. **Drug court teams are familiar with relevant federal and state laws and regulations in order to develop appropriate policies and procedures.**
  - a) Because drug 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 drug 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>8</sup> (Tauber, Weinstein, & Taube, 1999)
4. **Pre-court staffing meetings may be closed to participants and the public. (State v. Sykes, 2014) If open, compliance with consent requirements must be obtained.**<sup>9</sup>
5. Treatment courts receive training on federal confidentiality requirements and how they affect treatment court practitioners and contractors. (Myer, 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. (Myer, 2011)

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<sup>8</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>9</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 drug 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 drug treatment court, the court shall find on the record or place a statement in the court file pertaining to . . . the individual understands the consequences of entering the drug treatment court and agrees to comply with all court orders and requirements of the court's program. (MCL 600.1066(b))
2. If the individual being considered for admission to a drug treatment court is charged in a criminal case . . . his or her admission is subject to all of the following conditions:<sup>10</sup>
  - a) The individual must waive, in writing, the right to a speedy trial, the right to representation at drug court treatment review hearings by an attorney, and, with the agreement of the prosecutor, the right to a preliminary examination. (MCL 600.1068(1)(c))
  - b) The individual must sign a written agreement to participate in the drug treatment court. (MCL 600.1068(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, Inc., 2008)

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

2. **All court proceedings under the Michigan drug court statute shall be open to the public. (MCL 600.1076(9))**
  - a) **Although the 6th Amendment right “is the right of the accused,” a member of the public can invoke the right to a 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. **Drug 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, 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 drug 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>11</sup>

2. A waiver against unreasonable searches and seizures may be made as a condition of probation.
  - 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))

## V. Sanctions and Termination

### A. *Best Practices*

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<sup>11</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.

1. **Drug 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:**
  - 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,**
  - 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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<sup>12</sup> See Appendix K. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/ModelProgVioAdviceRights.pdf>.

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## *Chapter 5: The Drug Court Team*

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This chapter discusses the various members on a drug 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 drug treatment court shall comply with the 10 key components promulgated by the national association of drug court professionals, which include all of the following essential characteristics:**
  - a) Use of a nonadversarial approach by prosecution and defense that promotes public safety while protecting participant's due process rights. (MCL 600.1060(c)(i))**
  - b) The forging of partnerships among other drug courts, public agencies, and community-based organizations to generate local support. (MCL 600.1060(c)(x))**
- 2. The drug 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, and, to the extent possible, local law enforcement, the department of corrections, and community corrections agencies. (MCL 600.1070(3))**

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

- 1. A dedicated multidisciplinary team of professionals manages the day-to-day operations of the drug court, including reviewing participant progress during pre-court 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. (National Association of Drug Court Professionals, 2018)**

2. The drug court 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 representative, community supervision officer, and law enforcement officer.
  - a) Drug courts enjoy significantly greater reductions in recidivism and significantly higher cost savings when all of the above-mentioned team members regularly participate in staffing meetings and review hearings. (Carey, Mackin, & Finnegan, 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, & Finnegan, 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 drug court team.
  - a) The evaluator is responsible for developing reliable and valid methodologies to study the effectiveness of the drug court. It is necessary for all drug 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 drug 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 drug court team, does not participate in drug court 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.
2. The drug court communicates with a medical doctor, particularly one with a specialty in addictionology and especially for those drug courts using medication-assisted treatment.

## II. Staffing Meetings and Review Hearings

### A. *Best Practices*

1. **Team members consistently attend pre-court 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, & Finnegan, 2012)
  - b) When a representative from treatment attended staffing meetings, recidivism was reduced by 105 percent. (Carey, Mackin, & Finnegan, 2012)
2. **Team members attend status review 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, & Finnegan, 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, & Finnegan, 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, & Finnegan, 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 drug 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, 2018)

- 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>13</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 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, Petrila, Poythress, & Slobogin, 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. (National Association of Drug Court Professionals, 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 (Hardin & Fox, 2011). The data elements listed above might be included in such MOUs to clarify the obligations of each professional on the team (National Association of Drug Court Professionals, 2018).

**3. Team members contribute relevant insights, observations, and recommendations based on their professional knowledge, training, and experience. The judge should consider all team members' perspectives before making decisions that affect participants' welfare or liberty interests, and should explain 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 (National Association of Drug Court Professionals, 2018).

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

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## *Chapter 6: Drug Court Population and Admission*

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This chapter discusses screening and eligibility criteria for drug courts. It can be used to ensure that programs are targeting the proper population among offenders. Specific topics include screening, eligible offenses, assessments, and admission to the program and legal outcomes. Drug 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 admitted to a drug treatment court, an individual must cooperate with and complete a preadmissions screening and evaluation assessment and must agree to cooperate with any future evaluation assessment as directed by the drug treatment court. A preadmission screening and evaluation assessment shall include all of the following:**
  - a) A complete review of the individual's criminal history, and a review of whether or not the individual has been admitted to and has participated in or is currently participating in a drug treatment court . . . and the results of the individual's participation. A review of the law enforcement information network may be considered sufficient for purposes 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 drug treatment court and the results of his or her participation in the prior program or programs. (MCL 600.1064(3)(a))**
  - b) An assessment of the risk of danger or harm to the individual, others, or the community. (MCL 600.1064(3)(b))**
- 2. The court may request that the department of state police provide to the court information contained in the law enforcement information network pertaining to an individual applicant's criminal history for the purposes of determining an individual's admission into the drug treatment court and general criminal history review, including whether the individual has previously been admitted to and participated in a drug treatment court under this act, or under section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11, 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, section 1 of chapter XI of**

the code of criminal procedure, 1927 PA 175, MCL 771.1, section 350a of the Michigan penal code, 1931 PA 328, MCL 750.350a, or section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430, and the results of the individual's participation. The department of state police shall provide the information requested by a drug treatment court under this subsection. (MCL 600.1064(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)

## **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 serious bodily injury to any individual, whether or not any of the circumstances are an element of the offense, or an offense that is criminal sexual conduct of any degree. (MCL 600.1060(g))
2. Each drug treatment court shall determine whether an individual may be admitted to the drug treatment court. No individual has a right to be admitted into a drug treatment court. However, an individual is not eligible for admission into a drug treatment court if he or she is a violent offender. (MCL 600.1064(1))
3. In addition to admission to a drug treatment court under this act, an individual who is eligible for admission pursuant to this act may also be admitted to a drug 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 600.1064(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. (MCL 600.1064(2)(b)(i))
    - ii. Section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a. (MCL 600.1064(2)(b)(ii))
    - iii. Section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430. (MCL 600.1064(2)(b)(iii))
    - iv. Section 350a of the Michigan penal code, 1931 PA 328, MCL 750.350a. (MCL 600.1064(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))**

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

1. **The drug court allows charges other than substance use or possession.**
  - a) **If drug courts do not serve individuals whose future crimes are likely to involve high victimization or incarceration costs, the drug court's cost savings are minimal because the investment costs of treatment are not outweighed by the reduction in recidivism achieved through drug court. (Downey & Roman, 2010).**
  - b) **Drug court participants who self-report that they sold drugs perform as well as other participants in drug court programs. (Marlowe, Festinger, Dugosh, Arabia, & Kirby, 2008).**

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

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

1. **To be admitted to a drug treatment court, an individual must cooperate with and complete a preadmissions screening and evaluation assessment and must agree to cooperate with any future evaluation assessment as directed by the drug treatment court. A preadmission screening and evaluation assessment shall include all of the following:**

- a) **As much as practicable, a complete 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 this assessment should be a clinical assessment as much as practicable. (MCL 600.1064(3)(c))**
  - b) **A review of any special needs or circumstances of the individual that may potentially affect the individual's ability to receive substance use disorder treatment and follow the court's orders. (MCL 600.1064(3)(c))**
- 2. **A drug 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 such appropriate persons to assist the drug treatment court in fulfilling its requirements under this chapter, such as the investigation of an individual's background or circumstances, or the clinical evaluation of an individual, for his or her admission into or participation in a drug treatment court. (MCL 600.1063)**

## ***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).
- 2. Drug courts do not exclude participants with serious mental health issues.
  - a) Drug courts that excluded offenders with serious mental health issues were significantly less cost-effective and had no better impact on recidivism than drug courts that did not exclude such individuals. (Carey, Mackin, & Finnegan, 2012).

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

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

- 1. **The drug 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 percent 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. (National Association of Drug Court Professionals, 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 drug 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 National Drug Court Institute (NDCI) provides evidence-based recommendations for developing alternative tracks in Drug Courts for low-risk and low-need participants.
  - b) Providing substance use disorder treatment for non-addicted 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) Mental Health Court (MHC) participants had the highest rate of felony recidivism (20 percent). Recidivism rates in MHC participants decreased as risk scores increased; the highest risk MHC participants had the lowest rate of felony recidivism (7 percent). 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 drug 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 court 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 drug treatment court, pursuant to statute or court rules. However, if the drug treatment court will include in its program individuals who may be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines, the circuit or district court shall not adopt or institute the drug treatment court unless 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, and a representative or representatives of community treatment providers. 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, and community corrections agencies in that circuit or district. The MOU shall describe the role of each party.<sup>14</sup> (MCL 600.1062(1))**
  - a) **In the case of an individual who will be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines, the prosecutor must approve of the admission of the individual into the drug treatment court in conformity with the memorandum of understanding under section 1062. (MCL 600.1068(2))**
2. **An individual shall not be admitted to, or remain in, a drug treatment court pursuant to an agreement that would permit a discharge or dismissal of a traffic offense upon successful completion of the drug treatment court program. (MCL 600.1068(3))**

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<sup>14</sup> See Appendix I. This model document is also available at [http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/DTC\\_ProgramMOU.pdf](http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/DTC_ProgramMOU.pdf).

## VI. Admission Factors

### A. *Standards*

1. **If the individual being considered for admission to a drug treatment court is charged in a criminal case . . . his or her admission is subject to all of the following conditions:<sup>15</sup>**
  - a) **The offense or offenses allegedly committed by the individual must be related to the abuse, illegal use, or possession of a controlled substance or alcohol. (MCL 600.1068(1)(a))**
  - b) **The individual, if an adult, must plead guilty to the charge or charges on the record. (MCL 600.1068(1)(c))**
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 drug treatment court must 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 either 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 drug treatment court. (MCL 600.1068(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 drug treatment court and who is not admitted to a drug treatment court, shall be permitted to withdraw his or her plea and is entitled to a preliminary examination. (MCL 600.1068(5))**

### B. *Best Practices*

1. **Use only objective criteria when determining eligibility for drug 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; Sevigny et al., 2013).**

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

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

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

1. **Before an individual is admitted into a drug treatment court, the court shall find on the record, or place a statement in the court file pertaining to, all of the following:<sup>16</sup>**
  - a) **The individual is dependent upon or abusing drugs or alcohol and is an appropriate candidate for participation in the drug treatment court. (MCL 600.1066(a))**
  - b) **The individual understands the consequences of entering the drug treatment court and agrees to comply with all court orders and requirements of the court's program and treatment providers. (MCL 600.1066(b))**
  - c) **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 600.1066(c))**
  - d) **The individual is not a violent offender. (MCL 600.1066(d))**
  - e) **The individual has completed a preadmission screening and evaluation assessment under section 1064(3) and has agreed to cooperate with any future evaluation assessment as directed by the drug treatment court. (MCL 600.1066(e))**
  - f) **The individual meets the requirements, if applicable, under section 7411 of the public health code, 1978 PA 368, MCL 333.7411, section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11, section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a, section 1 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.1, section 350a of the Michigan penal code, 1931 PA 328, MCL 750.350a, or section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430. (MCL 600.1066(f))**
  - g) **The terms, conditions, and the duration of the agreement between the parties, especially as to the outcome for the participant of the drug treatment court upon successful completion by the participant or termination of participation. (MCL 600.1066(g))**

## **VIII. Program Entry**

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

1. Expedite the court process to quickly accept participants into the drug court.

- a) When the time between arrest and program entry is 50 days or less, programs see reductions in recidivism. (Carey, Mackin, & Finnegan, 2012)

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<sup>16</sup> See Appendix L. This model document is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/DTC-AdmissionConditionStatement.pdf>.

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## Chapter 7: Drug and Alcohol Testing

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This chapter addresses drug and alcohol testing in drug 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>17</sup> promulgated by the NDCI and available in Appendix A of this manual. 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 drug 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. (National Association of Drug Court Professionals, 2018)

### II. Randomization

#### A. Standards

1. **A drug treatment court shall provide a drug court participant with all of the following . . . 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 600.1072(1)(b))**

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<sup>17</sup> See Appendix N.

2. **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 central aims of a drug-testing program. (Kirby, Lamb, Iguchi, Husband, & Platt, 1995) (Marlatt & Gordon, 1985) (American Society of Addiction Medicine, 2013)
  - b) Husband, & Platt, 1995) (Marlatt & Gordon, 1985) (American Society of Addiction Medicine, 2013)
  - c) Society of Addiction Medicine, 2013)
3. 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, 2018) (Auerbach, 2007)
4. 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, 2018)

### III. Frequency and Breadth of Testing

#### A. *Standards*

1. **A drug treatment court shall comply with the 10 key components promulgated by the national association of drug court professionals, which include all of the following essential characteristics:**
  - a) **Monitoring of participants effectively by frequent alcohol and other drug testing to ensure abstinence from drugs or alcohol. (MCL 600.1060(c)(v))**

#### B. *Best Practices*

1. **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, & Finnegan, 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. **Test specimens are examined for all unauthorized substances that are suspected to be used by drug court participants. Randomly selected specimens are tested periodically for a broader range of substances to detect new substances that might be emerging in the drug court 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, drug 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 drug 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 should be 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) Drug 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 prespecified 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. (National Association of Drug Court Professionals, 2018)
  - 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. 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)
  - c) The routine use of urine drug levels by court personnel in an effort to define substance use disorder 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, 2018)

- 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. (Substance Abuse and Mental Health Services Administration (SAMHSA), HHS, 2017)
    - i. 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:

- (1) The collector asks the donor to identify the donor's gender on the Custody and Control Form (CCF) and initial it.
  - (2) The donor will then be provided an observer whose gender matches the donor's gender.
  - (3) The observer's name and gender is documented on the CCF. (Substance Abuse and Mental Health Services Administration (SAMHSA), HHS, 2017)
- 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 drug treatment 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. (National Association of Drug Court Professionals, 2018)
  - b) Drug treatment 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. (National Association of Drug Court Professionals, 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 drug 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, & Finnegan, 2012)

### C. *Promising Practices*

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

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## Chapter 8: Treatment

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This chapter discusses treatment in drug 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 Drug Treatment Courts and DWI Courts

#### A. Standards

1. **“Drug treatment court” means a court-supervised treatment program for individuals who abused or are dependent upon any controlled substance or alcohol. A drug treatment court shall comply with the 10 key components promulgated by the national association of drug court professionals. (MCL 600.1060(c))**
2. **"DWI/sobriety court" means the specialized court docket and programs established within judicial circuits and districts throughout this state that are designed to reduce recidivism among alcohol offenders and that comply with the 10 guiding principles of DWI courts as promulgated by the National Center for DWI Courts. (MCL 600.1084(9)(a))**

#### B. Best Practices

1. **A clinically trained treatment representative is a core member of the drug court team and regularly attends team meetings and status hearings.**
  - a) Recidivism may be reduced twofold when representatives from the drug court’s primary treatment agencies regularly attend staffing meetings and status review hearings. (Carey, Mackin, & Finnegan, 2012)
2. 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)

3. One or two treatment agencies are primarily responsible for managing the delivery of treatment services for drug court participants.
  - a) 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, & Finnegan, 2012)

## II. Treatment Entry

### A. *Best Practices*

1. **Drug courts link participants to treatment as soon as possible.**
  - a) Family dependency drug court participants are linked to treatment more quickly than those who experience the traditional dependency court system, stay in treatment longer, and are more likely to complete treatment. (Bruns, Pullmann, Wiggins, & Watterson, 2011)
  - b) 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, motivation for change). (Peters, 2011)
  - c) Participants who enter drug court quickly tend to enter treatment more quickly. (Worcel, Furrer, Green, & Rhodes, 2006)
2. Drug 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 drug treatment court shall comply with the 10 key components promulgated by the national association of drug court professionals, which include all of the following essential characteristics:**
  - a) **Access to a continuum of alcohol, drug, and other related treatment and rehabilitation services. (MCL 600.1060(c)(iv))**

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

1. 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.
2. The drug 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, & Finnegan, 2012) (Koob, Brocato, & Kleinpeter, 2011)
  - b) Community aftercare treatment for offenders can significantly reduce rates of substance use and recidivism. (Peters, 2011)
3. The drug court offers trauma-informed services.
  - a) 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, 2018)

4. 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, & Finnegan, 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)
5. The drug court offers mental health treatment.
  - a) Programs that excluded offenders with serious mental health issues were significantly less cost-effective and had no better impact on recidivism than drug courts that did not exclude such individuals. (Carey, Mackin, & Finnegan, 2012)
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, & Finnegan, 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, 2018)

## 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 addicted 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, 2018)
- 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, 2018)

## V. Treatment Duration

### *a. Best Practices*

1. **Participants receive a sufficient dosage and duration of substance use disorder treatment to achieve long-term sobriety and recovery from addiction.**
  - 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, 2018)
2. Participants ordinarily receive 6 to 10 hours of counseling per week during the initial phase of treatment and approximately 200 hours of counseling over 9 to 12 months; however, the drug court allows for flexibility to accommodate individual differences in each participant's response to treatment.
  - a) The best outcomes are achieved when addicted offenders complete a course of treatment extending over approximately 9 to 12 months. (Peters, 2011) (Cobbina & Huebner, 2007)
  - b) Assuming drug courts are treating individuals who are addicted to drugs or alcohol, and are at a high risk for criminal recidivism or treatment failure, studies show that, on average, participants will require 6 to 10 hours of counseling per week in the first phase and 200 hours over the course of treatment. (National Association of Drug Court Professionals, 2018)

## VI. Medication-Assisted Treatment

### *A. Best Practices*

**1. Drug 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.**

- a) Numerous controlled studies have reported significantly better outcomes when addicted offenders received medication-assisted treatments 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, 2018)

**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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## *Chapter 9: Education*

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

### **I. General**

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

- 1. A drug treatment court shall comply with the 10 key components promulgated by the national association of drug court professionals, which include all of the following essential characteristics:**
  - a) Continued interdisciplinary education in order to promote effective drug court planning, implementation, and operation. (MCL 600.1060(c)(ix))**
- 2. A court that is adopting a drug treatment court shall participate in training as required by the state court administrative office and the bureau of justice assistance of the United States department of justice. (MCL 600.1062(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 drug 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<sup>18</sup>.**
  - a) A multisite study of approximately seventy 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, Mackin, & Finnegan, 2012).**
- 3. The drug court judge attends current training events on legal and constitutional issues in drug 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 drug court field.**

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<sup>18</sup> See Appendix D New Staff/Team Member Orientation

- a) Because judges have such a substantial impact on outcomes in drug court, continued training is especially important. (Carey, Mackin, & Finnegan, 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).
4. Before starting a drug court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in drug courts and develop fair and effective policies and procedures for the program.
- a) In drug courts where the teams participated in formal training prior to implementation, cost savings increased by two and a half times, and the programs were 50 percent more effective at reducing recidivism. (Carey, Pukstas, Waller, Mackin, & Finigan, 2008) (Carey, Mackin, & Finnegan, 2012)
  - b) Drug courts that did not receive pre-implementation training had outcomes that were only negligibly different from traditional criminal justice programming. (Carey, Pukstas, Waller, Mackin, & Finigan, 2008)

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## *Chapter 10: Program Evaluation*

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This chapter discusses program evaluation of a drug court. Specific topics include collection and maintenance of information, evaluation, and program modification.

### **I. Collection and Maintenance of Information**

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

- 1. Each drug 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. (MCL 600.1078(1))**
- 2. Each drug treatment court shall maintain files or databases on each individual applicant or referral who is denied or refused admission to the program, including the reasons for the denial or rejection, the criminal history of the applicant, the preadmission evaluation and assessment, and other demographic information as required by the state court administrative office. (MCL 600.1078(2))**
- 3. Each drug treatment court shall maintain files or databases on each individual participant in the program for review and evaluation as well as treatment, as directed by the state court administrative office. The information collected for evaluation purposes must include a minimum standard data set<sup>19</sup> developed and specified by the state court administrative office. This information should be maintained in the court files or otherwise accessible by the courts and the state court administrative office and, as much as practicable, should include all of the following:**
  - a) Location and contact information for each individual participant, both upon admission and termination or completion of the program for follow-up reviews, and third party contact information. (MCL 600.1078(3)(a))**
  - b) Significant transition point dates, including dates of referral, enrollment, new court orders, violations, detentions, changes in services or treatments provided, discharge for completion or termination, any provision of after-care, and after-program recidivism. (MCL 600.1078(3)(b))**

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<sup>19</sup> See Appendix O. The minimum standard data set for Michigan drug courts is also available at <http://courts.mi.gov/Administration/admin/op/problem-solving-courts/Documents/MinimumStandardDataAdult.pdf>.

- c) **The individual's precipitating offenses and significant factual information, source of referral, and all drug treatment court evaluations and assessments. (MCL 600.1078(3)(c))**
  - d) **Treatments provided, including intensity of care or dosage, and their outcomes. (MCL 600.1078(3)(d))**
  - e) **Other services or opportunities provided to the individual and resulting use by the individual, such as education or employment and the participation of and outcome for that individual. (MCL 600.1078(3)(e))**
  - f) **Reasons for discharge, completion, or termination of the program. (MCL 600.1078(3)(f))**
- 4. Each year, all DWI/sobriety courts that participate in the [ignition interlock] program, in cooperation with the state court administrative office, shall provide to the legislature, the secretary of state, and the supreme court documentation as to participants' compliance with court ordered conditions. Best practices available must be used in the research in question, as resources allow, so as to provide statistically reliable data as to the impact of the program on public safety and the improvement of life conditions for participants. The topics documented must include, but not be limited to, all of the following:**
- a) **The percentage of those participants ordered to place interlock devices on their vehicles who actually comply with the order. (MCL 600.1084(5)(a))**
  - b) **The percentage of participants who remove court-ordered interlocks from their vehicles without court approval. (MCL 600.1084(5)(b))**
  - c) **The percentage of participants who consume alcohol or controlled substances. (MCL 600.1084(5)(c))**
  - d) **The percentage of participants found to have tampered with court-ordered interlocks. (MCL 600.1084(5)(d))**
  - e) **The percentage of participants who operated a motor vehicle not equipped with an interlock. (MCL 600.1084(5)(e))**
  - f) **Relevant treatment information as to participants. (MCL 600.1084(5)(f))**
  - g) **The percentage of participants convicted of a new offense under section 625(1) or (3) of the Michigan vehicle code, 1949 PA 300, MCL 257.625. (MCL 600.1084(5)(g))**
  - h) **Any other information found to be relevant. (MCL 600.1084(5)(h))**

5. **As directed by the state court administrative office, after an individual is discharged either upon completion or termination of the program, the drug treatment court should conduct, as much as practicable, follow-up contacts with and reviews of participants for key outcome indicators, such as drug use, recidivism, and employment, as frequently and for a period of time determined by the state court administrative office based upon the nature of the drug treatment court and the nature of the participant. These follow-up contacts and reviews of former participants are not extensions of the court’s jurisdiction over the individuals. (MCL 600.1078(4))**

***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, & Finnegan, 2012)
  - b) Michigan’s Drug Court Case Management Information System 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 drug 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 drug 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., 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 seventy 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. (National Association of Drug Court Professionals, 2018).
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, & Finnegan, 2012)
  3. Outcomes are examined for all eligible participants who entered the drug treatment 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, 2018)
  - 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, 2018)

- 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, 2018)

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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 drug treatment court.
  - a) Drug treatment courts are first and foremost courts, and the fundamental principles of due process and equal protection apply to their operations (Meyer, 2011). Drug 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 drug 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 drug 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 drug 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 drug 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 drug 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 drug treatment court population.
  - a) The 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). 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 drug 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 drug 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 drug 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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# *Appendix A*

## *Michigan Drug Court Statute*

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### **600.1060 Definitions.**

As used in this chapter:

- (a) "Dating relationship" means that term as defined in section 2950.
- (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) "Drug treatment court" means a court supervised treatment program for individuals who abuse or are dependent upon any controlled substance or alcohol. A drug treatment court shall comply with the 10 key components promulgated by the national association of drug court professionals, which include all of the following essential characteristics:
  - (i) Integration of alcohol and other drug treatment services with justice system case processing.
  - (ii) Use of a nonadversarial approach by prosecution and defense that promotes public safety while protecting any participant's due process rights.
  - (iii) Identification of eligible participants early with prompt placement in the program.
  - (iv) Access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
  - (v) Monitoring of participants effectively by frequent alcohol and other drug testing to ensure abstinence from drugs or alcohol.
  - (vi) Use of a coordinated strategy with a regimen of graduated sanctions and rewards to govern the court's responses to participants' compliance.
  - (vii) Ongoing close judicial interaction with each participant and supervision of progress for each participant.
  - (viii) Monitoring and evaluation of the achievement of program goals and the program's effectiveness.
  - (ix) Continued interdisciplinary education in order to promote effective drug court planning, implementation, and operation.
  - (x) The forging of partnerships among other drug courts, public agencies, and community-based organizations to generate local support.
- (d) "Participant" means an individual who is admitted into a drug treatment court.
- (e) "Prosecutor" means the prosecuting attorney of the county, the city attorney, the village attorney, or the township attorney.
- (f) "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.
- (g) "Violent offender" means an individual who is currently charged with or has pled guilty to, or, if the individual is a juvenile, is currently alleged to have committed or has admitted responsibility for, an offense involving the death of or serious bodily injury to any individual, whether or not any of the circumstances are an element of the offense, or an offense that is criminal sexual conduct of any degree.

**600.1062 Drug treatment court; adoption by circuit or district court; memorandum of understanding; parties; adoption of juvenile drug treatment court by family division of circuit court; training; transfer of participant from other jurisdiction; certification by state court administrative office.**

(1) The circuit court in any judicial circuit or the district court in any judicial district may adopt or institute a drug treatment court, pursuant to statute or court rules. However, if the drug treatment court will include in its program individuals who may be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines, the circuit or district court shall not adopt or institute the drug treatment court unless 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, and a representative or representatives of community treatment providers. 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, and community corrections agencies in that circuit or district. The memorandum of understanding shall describe the role of each party.

(2) The family division of circuit court in any judicial circuit may adopt or institute a juvenile drug treatment court, pursuant to statute or court rules. However, if the drug treatment court will include in its program individuals who may be eligible for discharge or dismissal of an offense, or a delayed sentence, the family division of circuit court shall not adopt or institute a juvenile drug treatment court unless the family division of circuit court enters into a memorandum of understanding with each participating county prosecuting attorney in the circuit or district court district, a representative of the criminal defense bar specializing in juvenile law, and a representative or representatives of community treatment providers. 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, the local substance abuse coordinating agency for that circuit, a domestic violence service provider program that receives funding from the state domestic violence prevention and treatment board, and community corrections agencies in that circuit. The memorandum of understanding shall describe the role of each party. A juvenile drug treatment court is subject to the same procedures and requirements provided in this chapter for drug treatment courts created under subsection (1), except as specifically provided otherwise in this chapter.

(3) A court that is adopting a drug treatment court shall participate in training as required by the state court administrative office and the Bureau of Justice Assistance of the United States Department of Justice.

(4) A court that has adopted a drug treatment court pursuant to 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 drug treatment court in the jurisdiction where the participant is charged. The transfer 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 drug treatment court and the prosecutor of a court funding unit of the drug treatment court.

(5) Beginning January 1, 2018, a drug 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 drug 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 drug treatment court by the state court administrative office is required to begin or to continue the operation of a drug treatment court under this chapter. The state court administrative office shall not recognize and include a drug treatment court that is not certified under this subsection on the statewide official list of drug treatment courts. The state court administrative office shall include a drug treatment court certified under this subsection on the statewide official list of drug treatment courts. A drug treatment court that is not certified under this subsection shall not perform any of the functions of a drug treatment court, including, but not limited to, doing any of the following:

- (a) Charging a fee under section 1070.
- (b) Discharging and dismissing a case as provided in section 1076.
- (c) Receiving funding under section 1080.
- (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.

#### **600.1063 Hiring or contracting with treatment providers.**

A drug 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 such appropriate persons to assist the drug treatment court in fulfilling its requirements under this chapter, such as the investigation of an individual's background or circumstances, or the clinical evaluation of an individual, for his or her admission into or participation in a drug treatment court.

#### **600.1064 Admission to drug treatment court; confidentiality of information obtained from preadmission screening and evaluation assessment; criminal history contained in L.E.I.N.**

(1) Each drug treatment court shall determine whether an individual may be admitted to the drug treatment court. No individual has a right to be admitted into a drug treatment court. However, an individual is not eligible for admission into a drug treatment court if he or she is a violent offender.

(2) In addition to admission to a drug treatment court under this act, an individual who is eligible for admission pursuant to this act may also be admitted to a drug 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.
  - (ii) Section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.
  - (iii) Section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430.
  - (iv) Section 350a of the Michigan penal code, 1931 PA 328, MCL 750.350a.

(3) To be admitted to a drug treatment court, an individual must cooperate with and complete a preadmissions screening and evaluation assessment and must agree to cooperate with any future

evaluation assessment as directed by the drug treatment court. A preadmission screening and evaluation assessment shall include all of the following:

- (a) A complete review of the individual's criminal history, and a review of whether or not the individual has been admitted to and has participated in or is currently participating in a drug treatment court, whether admitted under this act or under section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11, 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, section 1 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.1, section 350a of the Michigan penal code, 1931 PA 328, MCL 750.350a, or section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430, and the results of the individual's participation. A review of the law enforcement information network may be considered sufficient for purposes 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 drug treatment court and the results of his or her participation in the prior program or programs.
  - (b) An assessment of the risk of danger or harm to the individual, others, or the community.
  - (c) As much as practicable, a complete 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 this assessment should be a clinical assessment as much as practicable.
  - (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.
  - (e) For a juvenile, an assessment of the family situation including, as much as practicable, a comparable review of any guardians or parents.
- (4) Except as otherwise permitted in this act, any statement or other information obtained as a result of participating in a preadmission screening and evaluation assessment under subsection (3) 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.
- (5) The court may request that the department of state police provide to the court information contained in the law enforcement information network pertaining to an individual applicant's criminal history for the purposes of determining an individual's admission into the drug treatment court and general criminal history review, including whether the individual has previously been admitted to and participated in a drug treatment court under this act, or under section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11, 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, section 1 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.1, section 350a of the Michigan penal code, 1931 PA 328, MCL 750.350a, or section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430, and the results of the individual's participation. The department of state police shall provide the information requested by a drug treatment court under this subsection.

**600.1066 Placement of findings or statement in court file.**

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

- (a) The individual is dependent upon or abusing drugs or alcohol and is an appropriate candidate for participation in the drug treatment court.
- (b) The individual understands the consequences of entering the drug treatment court and agrees to comply with all court orders and requirements of the court's program and treatment providers.
- (c) 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.
- (d) The individual is not a violent offender.
- (e) The individual has completed a preadmission screening and evaluation assessment under section 1064(3) and has agreed to cooperate with any future evaluation assessment as directed by the drug treatment court.
- (f) The individual meets the requirements, if applicable, under section 7411 of the public health code, 1978 PA 368, MCL 333.7411, section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11, section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a, section 1 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.1, section 350a of the Michigan penal code, 1931 PA 328, MCL 750.350a, or section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430.
- (g) The terms, conditions, and the duration of the agreement between the parties, especially as to the outcome for the participant of the drug treatment court upon successful completion by the participant or termination of participation.

**600.1068 Individual charged in criminal case; factors for admission to drug treatment court.**

(1) If the individual being considered for admission to a drug treatment court is charged in a criminal case or, in the case of a juvenile, is alleged to have engaged in activity that would constitute a criminal act if committed by an adult, his or her admission is subject to all of the following conditions:

- (a) The offense or offenses allegedly committed by the individual must be related to the abuse, illegal use, or possession of a controlled substance or alcohol.
- (b) The individual, if an adult, must plead guilty to the charge or charges on the record. The individual, if a juvenile, must admit responsibility for the violation or violations that he or she is accused of having committed.
- (c) The individual must waive, in writing, the right to a speedy trial, the right to representation at drug treatment court review hearings by an attorney, and, with the agreement of the prosecutor, the right to a preliminary examination.
- (d) The individual must sign a written agreement to participate in the drug treatment court.

(2) In the case of an individual who will be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines, the prosecutor must approve of the admission of the individual into the drug treatment court in conformity with the memorandum of understanding under section 1062.

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

(5) An individual who has waived his or her right to a preliminary examination and has pled guilty or, in the case of a juvenile, has admitted responsibility, as part of his or her application to a drug treatment court and who is not admitted to a drug treatment court, shall be permitted to withdraw his or her plea and is entitled to a preliminary examination or, in the case of a juvenile, shall be permitted to withdraw his or her admission of responsibility.

#### **600.1070 Admission of individual into drug treatment court; requirements.**

(1) Upon admitting an individual into a drug treatment court, all of the following apply:

(a) For an individual who is admitted to a drug treatment court based upon having criminal charges currently filed against him or her, the court shall accept the plea of guilty or, in the case of a juvenile, the admission of responsibility.

(b) For an individual who pled guilty to, or admitted responsibility for, criminal charges for which he or she was admitted into the drug treatment court, the court shall do either of the following:

(i) In the case of an individual who pled guilty to an offense that is not a traffic offense and who may be eligible for discharge and dismissal pursuant to the agreement with the court and prosecutor upon successful completion of the drug treatment court program, the court shall not enter a judgment of guilt or, in the case of a juvenile, shall not enter an adjudication of responsibility.

(ii) In the case of an individual who pled guilty to a traffic offense or who pled guilty to an offense but may not be eligible for discharge and dismissal pursuant to the agreement with the court and prosecutor upon successful completion of the drug treatment court program, the court shall enter a judgment of guilt or, in the case of a juvenile, shall enter an adjudication of responsibility.

(c) Pursuant to the agreement with the individual and the prosecutor, the court may either 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 pursuant to that agreement, and place the individual on probation or other court supervision in the drug treatment court program with terms and conditions according to the agreement and as deemed necessary by the court.

(2) Unless a memorandum of understanding made pursuant to section 1088 between a receiving drug treatment court and the court of original jurisdiction provides otherwise, the original court of jurisdiction maintains jurisdiction over the drug 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. In the case of a juvenile participant, the court may obtain jurisdiction over any parents or guardians of the juvenile in order to assist in ensuring the juvenile's continued participation and successful

completion of the drug treatment court, and may issue and enforce any appropriate and necessary order regarding the parent or guardian of a juvenile participant.

(3) The drug 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, and, to the extent possible, local law enforcement, the department of corrections, and community corrections agencies.

(4) The drug treatment court may require an individual admitted into the court to pay a reasonable drug court fee that is reasonably related to the cost to the court for administering the drug treatment court program as provided in the memorandum of understanding under section 1062. The clerk of the drug treatment court shall transmit the fees collected to the treasurer of the local funding unit at the end of each month.

(5) The drug treatment court may request that the department of state police provide to the court information contained in the law enforcement information network 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 drug treatment court under this subsection.

#### **600.1072 Monitoring, testing, and assessments to be provided to participants.**

(1) A drug treatment court shall provide a drug court participant with all of the following:

(a) Consistent, continual, and close monitoring of the participant and interaction among the court, treatment providers, probation, and the participant.

(b) 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.

(c) Periodic evaluation assessments of the participant's circumstances and progress in the program.

(d) 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.

(e) Substance abuse treatment services, relapse prevention services, education, and vocational opportunities as appropriate and practicable.

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

#### **600.1074 Continuing and completing drug treatment court program; requirements.**

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

(a) Pay all court ordered fines and costs, including minimum state costs.

(b) Pay the drug treatment court fee allowed under section 1070(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 which may be sanctioned according to the court's discretion.

(2) The drug treatment court must be notified if the participant is accused of a new crime, and the judge shall consider whether to terminate the participant's participation in the drug treatment program in conformity with the memorandum of understanding under section 1062. If the participant is convicted of a felony for an offense that occurred after the defendant is admitted to drug treatment court, the judge shall terminate the participant's participation in the program.

(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 drug 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 treatment, the court may waive all or part of those fines, the fee, or costs of treatment.

**600.1076 Completion or termination of drug treatment program; findings on the record or written statement in court file; applicable law; discharge and dismissal of proceedings; criteria; discharge and dismissal of domestic violence offense; circumstances; duties of court; effect of termination; court proceedings open to public; retention of nonpublic record by department of state police.**

(1) Upon completion or termination of the drug 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) For a participant who successfully completes probation or other court supervision and whose proceedings were deferred or who was sentenced under section 1070, the court shall comply with the agreement made with the participant upon admission into the drug 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 drug treatment court under section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11, 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, the court shall proceed under the applicable section of law. There may only be 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 1062, may discharge and dismiss the proceedings against an individual who meets all of the following criteria:

- (a) The individual has participated in a drug treatment court for the first time.
- (b) The individual has successfully completed the terms and conditions of the drug 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 or, for a juvenile, without adjudication of responsibility and are not a conviction or a finding of responsibility for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or, for a juvenile, a finding of responsibility. There may only be 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 law enforcement information network with an indication of participation by the individual in a drug treatment court. All records of the proceedings regarding the participation of the individual in the drug 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.
- (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 or, in the case of a juvenile, enter a finding or adjudication of responsibility.
  - (b) If the court has not already sentenced the individual, proceed to sentencing or, in the case of a juvenile, disposition pursuant to the agreement.
  - (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 law enforcement information network with an indication of successful participation by the individual in a drug treatment court.
- (8) For a participant whose participation is terminated or who fails to successfully complete the drug treatment court program, the court shall enter an adjudication of guilt, or, in the case of a juvenile, a finding of responsibility, if the entering of guilt or adjudication of responsibility was deferred under section 1070, and shall then proceed to sentencing or disposition of the individual for the original charges to which the individual pled guilty or, if a juvenile, to which the juvenile admitted responsibility prior to admission to the drug 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 drug 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 law enforcement information network, with an indication that the individual unsuccessfully participated in a drug treatment court.

(9) All court proceedings under this section shall be open to the public. Except as provided in subsection (10), if the record of proceedings as to the defendant is deferred under this section, the record of proceedings during the period of deferral shall be closed to public inspection.

(10) Unless the court enters a judgment of guilt or an adjudication of responsibility under this section, the department of state police shall retain a nonpublic record of the arrest, court proceedings, and disposition of the criminal charge under this section. However, the nonpublic record shall be open to the following individuals and entities for the purposes noted:

(a) The courts of this state, law enforcement personnel, the department of corrections, and prosecuting attorneys for use only in the performance of their duties or to determine whether an employee of the court, law enforcement agency, department of corrections, or prosecutor's office has violated his or her conditions of employment or whether an applicant meets criteria for employment with the court, law enforcement agency, department of corrections, or prosecutor's office.

(b) The courts of this state, law enforcement personnel, and prosecuting attorneys for the purpose of showing that a defendant has already once availed himself or herself of this section.

(c) The department of human services for enforcing child protection laws and vulnerable adult protection laws or ascertaining the preemployment criminal history of any individual who will be engaged in the enforcement of child protection laws or vulnerable adult protection laws.

#### **600.1078 Collection and maintenance of information.**

(1) Each drug 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.

(2) Each drug treatment court shall maintain files or databases on each individual applicant or referral who is denied or refused admission to the program, including the reasons for the denial or rejection, the criminal history of the applicant, the preadmission evaluation and assessment, and other demographic information as required by the state court administrative office.

(3) Each drug treatment court shall maintain files or databases on each individual participant in the program for review and evaluation as well as treatment, as directed by the state court administrative office. The information collected for evaluation purposes must include a minimum standard data set developed and specified by the state court administrative office. This information should be maintained in the court files or otherwise accessible by the courts and the state court administrative office and, as much as practicable, should include all of the following:

(a) Location and contact information for each individual participant, both upon admission and termination or completion of the program for follow-up reviews, and third party contact information.

(b) Significant transition point dates, including dates of referral, enrollment, new court orders, violations, detentions, changes in services or treatments provided, discharge for completion or termination, any provision of after-care, and after-program recidivism.

(c) The individual's precipitating offenses and significant factual information, source of referral, and all drug treatment court evaluations and assessments.

(d) Treatments provided, including intensity of care or dosage, and their outcomes.

- (e) Other services or opportunities provided to the individual and resulting use by the individual, such as education or employment and the participation of and outcome for that individual.
  - (f) Reasons for discharge, completion, or termination of the program.
- (4) As directed by the state court administrative office, after an individual is discharged either upon completion or termination of the program, the drug treatment court should conduct, as much as practicable, follow-up contacts with and reviews of participants for key outcome indicators, such as drug use, recidivism, and employment, as frequently and for a period of time determined by the state court administrative office based upon the nature of the drug treatment court and the nature of the participant. These follow-up contacts and reviews of former participants are not extensions of the court's jurisdiction over the individuals.
- (5) Each drug treatment court shall provide to the state court administrative office all information requested by the state court administrative office.
- (6) With the approval and at the discretion of the supreme court, the state court administrative office shall be responsible for evaluating and collecting data on the performance of drug treatment courts in this state as follows:
- (a) The state court administrative office shall provide an annual review of the performance of drug treatment courts in this state to the minority and majority party leaders in the senate and house of representatives, the state drug treatment court advisory board created under section 1082, the governor, and the supreme court.
  - (b) The state court administrative office shall provide standards for drug treatment courts in this state including, but not limited to, developing a list of approved measurement instruments and indicators for data collection and evaluation. These standards must provide comparability between programs and their outcomes.
  - (c) The state court administrative office's evaluation plans should include appropriate and scientifically valid research designs, which, as soon as practicable, should include the use of comparison and control groups.
- (7) The information collected under this section regarding individual applicants to drug treatment court programs for the purpose of application to that program and participants who have successfully completed drug treatment courts shall be exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

#### **600.1080 Disposition of funds.**

- (1) The supreme court is responsible for the expenditure of state funds for the establishment and operation of drug treatment courts. Federal funds provided to the state for the operation of drug treatment courts shall be distributed by the department of community health or the appropriate state agency as otherwise provided by law.
- (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 drug treatment court shall report quarterly to the state court administrative office on the funds received and expended by that drug treatment court, in a manner prescribed by the state court administrative office.

#### **600.1082 Drug treatment court advisory committee.**

- (1) A state drug treatment court advisory committee is created in the legislative council. The state drug treatment court advisory committee consists of the following members:
  - (a) The state court administrator or his or her designee.

(b) Seventeen members appointed jointly by the speaker of the house of representatives and the senate majority leader, as follows:

- (i) A circuit court judge who has presided for at least 2 years over a drug treatment court.
- (ii) A district court judge who has presided for at least 2 years over a drug treatment court.
- (iii) A judge of the family division of circuit court who has presided for at least 2 years over a juvenile drug treatment court program.
- (iv) A circuit or district court judge who has presided for at least 2 years over an alcohol treatment court.
- (v) A circuit or district court judge who has presided over a veterans treatment court.
- (vi) A court administrator who has worked for at least 2 years with a drug or alcohol treatment court.
- (vii) A prosecuting attorney who has worked for at least 2 years with a drug or alcohol treatment court.
- (viii) An individual representing law enforcement in a jurisdiction that has had a drug or alcohol treatment court for at least 2 years.
- (ix) An individual representing drug treatment providers who has worked at least 2 years with a drug or alcohol treatment court.
- (x) An individual representing criminal defense attorneys, who has worked for at least 2 years with drug or alcohol treatment courts.
- (xi) An individual who has successfully completed a drug treatment court program.
- (xii) An individual who has successfully completed a juvenile drug treatment court program.
- (xiii) An individual who is an advocate for the rights of crime victims.
- (xiv) An individual representing the Michigan association of drug court professionals.
- (xv) An individual who is a probation officer and has worked for at least 2 years for a drug or alcohol treatment court.
- (xvi) An individual representing a substance abuse coordinating agency.
- (xvii) An individual representing domestic violence service provider programs that receive funding from the state domestic violence prevention and treatment board.

(2) Members of the advisory committee shall serve without compensation. However, members of the advisory committee may be reimbursed for their actual and necessary expenses incurred in the performance of their duties as members of the advisory committee.

(3) Members of the advisory committee shall serve for terms of 4 years each, except that the members first appointed shall serve terms as follows:

- (a) The members appointed under subsection (1)(b)(i) to (vi) shall serve terms of 4 years each.
- (b) The members appointed under subsection (1)(b)(vii) to (xi) shall serve terms of 3 years each.
- (c) The members appointed under subsection (1)(b)(xii) to (xvii) shall serve terms of 2 years each.

- (4) If a vacancy occurs in an appointed membership on the advisory committee, the appointing authority shall make an appointment for the unexpired term in the same manner as the original appointment.
- (5) The appointing authority may remove an appointed member of the advisory committee for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.
- (6) The first meeting of the advisory committee shall be called by the speaker of the house of representatives and the senate majority leader. At the first meeting, the advisory committee shall elect from among its members a chairperson and other officers as it considers necessary or appropriate. After the first meeting, the advisory committee shall meet at least quarterly, or more frequently at the call of the chairperson or if requested by 9 or more members.
- (7) A majority of the members of the advisory committee constitute a quorum for the transaction of business at a meeting of the advisory committee. A majority of the members present and serving are required for official action of the advisory committee.
- (8) The business that the advisory committee may perform shall be conducted at a public meeting of the advisory committee held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.
- (9) A writing prepared, owned, used, in the possession of, or retained by the advisory committee in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.
- (10) The advisory committee shall monitor the effectiveness of drug treatment courts and veterans treatment courts and the availability of funding for those courts and shall present annual recommendations to the legislature and supreme court regarding proposed statutory changes regarding those courts.

**600.1084 DWI/sobriety court interlock program; certification of DWI/sobriety court by state court administrative office; consideration for placement; documentation of compliance with conditions; restricted license; informing secretary of state of certain occurrences; summary revocation or suspension of restricted license; definitions.**

- (1) The DWI/sobriety court interlock program is created under this section.
- (2) All DWI/sobriety courts that participate in the program shall comply with the 10 guiding principles of DWI courts as promulgated by the National Center for DWI Courts.
- (3) Beginning January 1, 2018, a DWI/sobriety 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 DWI/sobriety court, must be certified by the state court administrative office in the same manner as required for a drug treatment court under section 1062(5). A DWI/sobriety court shall not perform any of the functions of a DWI/sobriety court, including, but not limited to, the functions of a drug treatment court described in section 1062(5) after January 1, 2018 unless the court has been certified by the state court administrative office as provided in section 1062(5).
- (4) In order to be considered for placement in the 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.
  - (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.

(5) Each year, all DWI/sobriety courts that participate in the program, in cooperation with the state court administrative office, shall provide to the legislature, the secretary of state, and the supreme court documentation as to participants' compliance with court ordered conditions. Best practices available must be used in the research in question, as resources allow, so as to provide statistically reliable data as to the impact of the program on public safety and the improvement of life conditions for participants. The topics documented must include, but not be limited to, all of the following:

- (a) The percentage of those participants ordered to place interlock devices on their vehicles who actually comply with the order.
- (b) The percentage of participants who remove court-ordered interlocks from their vehicles without court approval.
- (c) The percentage of participants who consume alcohol or controlled substances.
- (d) The percentage of participants found to have tampered with court-ordered interlocks.
- (e) The percentage of participants who operated a motor vehicle not equipped with an interlock.
- (f) Relevant treatment information as to participants.
- (g) The percentage of participants convicted of a new offense under section 625(1) or (3) of the Michigan vehicle code, 1949 PA 300, MCL 257.625.
- (h) Any other information found to be relevant.

(6) Before the secretary of state issues a restricted license to a program participant under section 304 of the Michigan vehicle code, 1949 PA 300, MCL 257.304, the DWI/sobriety court judge shall certify to the secretary of state that the individual seeking the restricted license has been admitted into the program and that an interlock device has been placed on each motor vehicle owned or operated, or both, by the individual.

(7) If any of the following occur, the DWI/sobriety court judge shall immediately inform the secretary of state of that occurrence:

- (a) The court orders that a program participant be removed from the DWI/sobriety court program before he or she successfully completes it.
- (b) The court becomes aware that a program participant operates a motor vehicle that is not equipped with an interlock device or that a program participant tampers with, circumvents, or removes a court-ordered interlock device without prior court approval.
- (c) A program participant is charged with a new violation of section 625 of the Michigan vehicle code, 1949 PA 300, MCL 257.625.

(8) The receipt of notification by the secretary of state under subsection (7) must result in summary revocation or suspension of the restricted license under section 304 of the Michigan vehicle code, 1949 PA 300, MCL 257.304.

(9) As used in this section:

- (a) "DWI/sobriety court" means the specialized court docket and programs established within judicial circuits and districts throughout this state that are designed to reduce recidivism among alcohol offenders and that comply with the 10 guiding principles of DWI courts as promulgated by the National Center for DWI Courts.

(b) "Ignition interlock device" means that term as defined in section 20d of the Michigan vehicle code, 1949 PA 300, MCL 257.20d.

(c) "Program" means the DWI/sobriety court interlock program created under this section.

**600.1088 Transfer of case to another court.**

(1) Beginning January 1, 2018, a case may be transferred totally from 1 court to another court for the defendant's participation in a state-certified treatment court. A total transfer may occur prior to or after adjudication, but must not be consummated until the completion and execution of a memorandum of understanding that must include, but need not be limited to, all of the following:

(a) A detailed statement of how all funds assessed to defendant will be accounted for, including, but not necessarily limited to, the need for a receiving state-certified treatment court to collect funds and remit them to the court of original jurisdiction.

(b) A statement providing which court is responsible for providing information to the department of state police, as required under section 3 of 1925 PA 289, MCL 28.243, and forwarding an abstract to the secretary of state for inclusion on the defendant's driving record.

(c) A statement providing where jail sanctions or incarceration sentences would be served, as applicable.

(d) A statement that the defendant has been determined eligible by and will be accepted into the state-certified treatment court upon transfer.

(e) The approval of all of the following:

(i) The chief judge and assigned judge of the receiving state-certified treatment court and the court of original jurisdiction.

(ii) A prosecuting attorney from the receiving state-certified treatment court and the court of original jurisdiction.

(iii) The defendant.

(2) As used in this section, "state-certified treatment court" includes the treatment courts certified by the state court administrative office as provided in section 1062, 1084, 1091, or 1201.

## Appendix B

# Model Drug Court Discharge Statement

STATE OF MICHIGAN [court number and type]	DTC Program Discharge <sup>20</sup>	CASE NO. [case/file number]
In the matter of:	[defendant name and DOB] [defendant address]	
<p>On this [number] day of [month], [year] the defendant:</p> <p><input type="checkbox"/> Successfully completed the DTC program</p> <p><input type="checkbox"/> Voluntarily withdrew from the program</p> <p><input type="checkbox"/> Was discharged from the program as unsuccessful due to:</p> <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: [specify]</li> </ul>		
Honorable [name of DTC judge]	P	Date

<sup>20</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 <https://courts.michigan.gov/Administration/admin/op/problem-solving-courts/Documents/DTC-DischargeStatement.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>21</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>21</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:**

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

2. 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.
3. To develop a Person-Centered Plan, Service Plan, and/or Treatment Plan for the participant.
4. To make dispositional recommendations for a court-involved participant.
5. To monitor payment for services, and establish financial assistance if determined necessary.
6. To improve service and treatment outcomes for participants involved in the [name of problem-solving court] program.
7. To monitor my participation in the [name of problem-solving court] program and my compliance with the program rules.
8. To provide information for evaluation of the [Name of problem-solving court] program
9. 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.
10. 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>22</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.**

## 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]

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<sup>22</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.

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:

1. Treatment information is ordinarily kept confidential.
2. 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.
3. 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.
4. It is a crime to violate confidentiality requirements, and the participant may report such violations to Michigan's attorney general at 517-373-1110.
5. 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.
6. The restrictions on disclosure and use in the regulations in 42 CFR part 2 do not apply to:
  - i. Communication with law enforcement agencies or officials regarding a crime committed on program premises or against program personnel.
  - ii. 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.
  - iii. Court orders signed pursuant to 42 CFR part 2 for release of specific information.
  - iv. 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.
  - v. 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>:

## Appendix D

### New Staff and Team Member Orientation

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#### New Staff/Team Member Orientation

#### **[Name of drug treatment court program]**<sup>23</sup>

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

- Reviewed the **[name of drug treatment court program]** Policy Manual
- Reviewed the **[name of drug treatment court program]** Participant Handbook
  - Understand the Phase Structure and Phase Requirements
- Reviewed the Revised Judicature Act 236 of 1961 Chapter 10A, Drug Treatment Courts [http://www.legislature.mi.gov/\(S\(20ihxlqoqmej0dreisoglh52\)\)/documents/mcl/pdf/mcl-236-1961-10A..pdf](http://www.legislature.mi.gov/(S(20ihxlqoqmej0dreisoglh52))/documents/mcl/pdf/mcl-236-1961-10A..pdf)
- Reviewed the following Adult Drug Court Lessons at Treatment Courts Online [www.treatmentcourts.org](http://www.treatmentcourts.org):
 

All:

  - Incentives and Sanctions
  - Confidential Information in Drug Court
  - Cultural Competency
  - Procedural Fairness
  - Implementing Evidence-Based Practice
  - Successful Drug Testing

Judge:

  - Role of the Judge

Defense Attorney:

  - Role of the Defense Attorney

Treatment Provider:

  - Role of the Treatment Provider

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

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<sup>23</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.

Coordinator:

- Role of the Coordinator
- Maximizing Participant Interactions

Prosecutor:

- Role of the Prosecutor

Supervision Officer:

- Role of the Probation Officer
- Maximizing Participant Interactions

Reviewed the Following Publications:

- Adult Drug Court Standards, Best Standards and Promising Practices  
<https://courts.michigan.gov/Administration/SCAO/Resources/Documents/bestpractice/ADC-BPManual.pdf>
- Defining Drug Courts: The Key Components<sup>24</sup>  
<https://www.ncjrs.gov/pdffiles1/bja/205621.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>24</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 2004

## *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>25</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).
- j. Responses to all requests for access to nonpublic and limited-access records shall be made per the following resources:
  - [Michigan Trial Court Records Management Standards Data, Case, and Other Court Records](#) – Section 2: Access to Records.

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<sup>25</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.

- [Chart of Nonpublic and Limited-Access Court Records.](#)<sup>26</sup>
  - [Michigan Supreme Court Administrative Order 2006-2](#)<sup>27</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.

## 2. Record Retention and Disposal Schedule

- a. Records shall be retained as directed under General Schedules [#13 - District Courts](#),<sup>28</sup> [#14 - Probate Courts](#),<sup>29</sup> and [#15 – Circuit Courts](#).<sup>30</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>31</sup>

<sup>26</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>27</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>

<sup>28</sup> [https://www.michigan.gov/documents/dtmb/RMS\\_GS13\\_573186\\_7.pdf](https://www.michigan.gov/documents/dtmb/RMS_GS13_573186_7.pdf)

<sup>29</sup> [https://www.michigan.gov/documents/dtmb/RMS\\_GS14\\_597247\\_7.pdf](https://www.michigan.gov/documents/dtmb/RMS_GS14_597247_7.pdf)

<sup>30</sup> [https://www.michigan.gov/documents/dtmb/RMS\\_GS15\\_597248\\_7.pdf](https://www.michigan.gov/documents/dtmb/RMS_GS15_597248_7.pdf)

<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)

## Appendix F

### ***Model DCCMIS User Confidentiality Agreement***

#### **DCCMIS User Confidentiality Agreement<sup>32</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.

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<sup>32</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.

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.
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.

## 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>33</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.

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<sup>33</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.

### **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.
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. 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>34</sup>
15. 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);
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>35</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>34</sup> Requirement of certification

<sup>35</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

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Signature

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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 Sharing Guide FINAL PDF to authors 2015-06-25.pdf](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/Information%20Sharing%20Guide%20FINAL%20PDF%20to%20authors%202015-06-25.pdf)

**VI. Attachments**

Attachment 1: **[Name of problem solving court]** procedures and/or policies regarding confidentiality

Attachment 2: **[Name of problem solving court]** consent to release information (form)

## *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'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]**

To release information to the following parties:

1. Stakeholders of **[name of PSC program observing meeting]**
2. **[Name of agency evaluating program]**<sup>36</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): \_\_\_\_\_

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<sup>36</sup> Choose the appropriate option

**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 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

---

Date

---

Staff witness signature

---

Date

---

Staff witness printed name

# Appendix I

## Model Program MOU

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### Memorandum of Understanding<sup>37</sup> [Name of drug treatment court]

#### I. Parties

This agreement is made and entered into as of the date set forth below, by and between the following parties whose representatives have signed the agreement:

- a. [Name of drug treatment court]
- b. [Name of circuit court]
- c. [Name of county] MDOC probation/parole department
- d. [Name of district court]
- e. [Name of district court] probation department
- f. [Name of county] prosecutor's office
- g. [Name of treatment agency on team], treatment provider
- h. [Name of law enforcement agency on team]
- i. [Name of law firm/office, or name of defense attorney on team], defense attorney

#### II. Purpose

The purpose of this Memorandum of Understanding (MOU) is to describe duties and allocate responsibilities for team members of the [name of drug treatment court] Drug Treatment Court Team. The MOU also establishes team member responsibilities and requirements for maintaining compliance with the Michigan Drug Court Statute (MCL 600.1060-600.1088).

#### III. Terms/Definitions

- a. Ex parte communication: Any communication, relevant to a legal proceeding, between a judge and a party to the proceeding or any other person about the case, outside of the presence of the opposing party or the opposing party's attorney, that is not on the record.
- b. Participant: Any person referred to the [name of drug treatment court], currently being screened as a candidate for [name of drug treatment court] (including those who are ultimately denied entry to the program), currently participating in [name of drug treatment court], or someone who has been discharged from the [name of drug treatment court] program.
- c. Policies and Procedures Manual: Policy and procedure manuals document policies and procedures designed to influence and determine all major decisions and actions, and all activities that take place within the boundaries set by them.

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<sup>37</sup> This model document is provided by SCAO as a resource, for informational purposes only to assist courts with operating a problem-solving court and to comply with the problem-solving court statute. This model document is not intended (and cannot be construed) as legal advice.

Procedures are the specific methods employed to express policies in action in day-to-day operations of the organization.

- d. Staffing meetings: Team meetings where participants' progress is discussed and options for incentives, sanctions, treatment, and phase changes are evaluated.
- e. Stakeholders: A person, group or organization that has interest or concern in an organization.
- f. Treatment services: Any services provided by a licensed clinician or by an employee of an agency providing therapeutic services for substance use disorder, mental health, or developmental disabilities.

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

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

We endorse the goals and mission of the [name of drug treatment court] in order for participants to eliminate future criminal behavior and improve the quality of their lives. For this program to be successful, cooperation must occur within a network of systems to facilitate and achieve the mission, challenges, and vision of the [name of drug treatment court].

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

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

- h. Participant entry into the drug court program shall be governed by written eligibility criteria as established by the drug court team.
- i. Information about participant progress, participant family progress, and the functioning of the drug court program shall be made available to all team members in compliance with federal and state confidentiality laws.
- j. Effective evaluation of the drug court program shall be sought with appropriate responses being made relative to these evaluations.

**VI. Roles of the Parties of the [name of drug treatment court]<sup>38</sup>**

- a. 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 drug treatment courts, evidence-based substance abuse and mental health treatment, behavior modification, and/or community supervision.
  - iii. Help to identify potential and eligible drug treatment court participants.
  - iv. Provide feedback, suggestions, and ideas on the operation of the drug court.
  - v. Attend staffing meetings, and provide input on incentives and sanctions for participants.
  - vi. Share information as necessary, and in compliance with 42 CFR and HIPAA, to appraise participants' progress in, and compliance with, the conditions of drug treatment court.
  - vii. Ensure that they, all employees, and other agents shall maintain the confidentiality of all records generated during the term of this MOU in accordance with all applicable state and federal laws and regulations, including, but not limited to, 42 CFR Part 2, HIPAA, and 290dd-2.
- b. The roles of the individual parties are as follows:
  - i. Drug court judge:
    - 1. Serve as the leader of the team.
    - 2. Preside over status review hearings.
    - 3. Engage the community to generate local support for the drug court.
    - 4. Communicate with the participants in a positive manner and make final decisions regarding incentives, sanctions, and program continuation.
    - 5. Consider the perspective of all team members before making final decisions that affect participants' welfare or liberty interests, and explain the rationale for such decisions to team members and participants.

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<sup>38</sup> Per MCL 600.1062(1) "The memorandum of understanding shall describe the role of each party."

6. Rely on the expert input of duly trained treatment professionals when imposing treatment related conditions on the participants.
  7. Provide program oversight and ensure communication and partnership with treatment.
  8. Shall consider whether to terminate a participant's participation in the drug treatment program if that participant is accused of a new crime. If a participant is convicted of a felony for an offense that occurred after being admitted to drug treatment court, the judge must terminate the participant from the program.<sup>39</sup>
- ii. Prosecuting attorney:
1. Provide legal screening of eligible participants.
  2. Attend review hearings.
  3. Represent the interests of the prosecutor and law enforcement.
  4. Advocate for public safety.
  5. Advocate for victim interest.
  6. Hold participants accountable for meeting their obligations.
  7. If a plea agreement is made based on completion of the program, complete appropriate court documents for resultant modification(s) upon participant's successful completion of the program (reduced charge, nolle prosequi, etc.).
  8. May help resolve other pending legal cases that impact participants' legal status or eligibility.
- iii. Program coordinator:
1. Arrange for additional screenings of persons aside from the prosecutor's legal screening.
  2. Attend review hearings.
  3. Answer inquiries from defense attorneys on possible eligibility.
  4. Enter data into DCCMIS system.
  5. Liaison with non-treatment agencies that are providing services to the participants.
  6. Ensure that new team members are provided with a formal training within three months of joining the team on the topics of confidentiality, and his or her role on the team, and that the new team member is provided with copies of all program policy and procedure manuals, the participant handbook, and a copy of all current memoranda of understanding.
- iv. Probation officers and court case managers:
1. Administer a validated criminogenic risk/needs assessment tool to participants during the referral process to ensure the drug treatment court is serving the appropriate target population.
  2. Attend review hearings.

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<sup>39</sup> Per MCL 600.1074(2) "The drug treatment court must be notified if the participant is accused of a new crime, and the judge shall consider whether to terminate the participant's participation in the drug treatment program in conformity with the memorandum of understanding..."

3. Work with the program coordinator in supervising and monitoring the individuals in the program.
  4. Prepare presentence reports, and perform drug and alcohol tests as needed.
  5. Schedule probation violations or show cause hearings for participants who have violated the program rules and are subject to termination from the program, or if a liberty interest is at stake.
  6. Enter data into the DCCMIS system.
- v. Defense counsel representative:
1. Ensure that defendants' procedural and due process rights are followed.
  2. Ensure that a defense counsel representative is present at all staffing meetings to avoid ex parte communication.
  3. Attend review hearings.
  4. Ensure that the participant is treated fairly and that the drug treatment court team follows its own rules.
  5. When appropriate, and without breaching attorney-client privilege, encourage clients to be forthcoming and honest regarding their recovery process.
- vi. Treatment provider:
1. Conduct assessments to determine program eligibility, appropriate treatment services, and progress in treatment.
  2. Ensure that a treatment representative is present at all staffing meetings to ensure therapeutic input regarding any sanctions being considered.
  3. Liaison with any treatment providers and/or treatment agencies that are providing services to the participants, and keep the team updated on treatment attendance and progress.
  4. Attend review hearings.
  5. Manage delivery of treatment services.
  6. Administer, or ensure administration of, behavioral or cognitive-behavioral treatments that are documented in manuals and have been demonstrated to improve outcomes.
  7. Provide clinical case management.
  8. Offer insights and suggestions on the treatment plans of individuals in the program.
  9. Enter data into the DCCMIS system.
- vii. Law enforcement agency:
1. Provide officers to assist with home checks for participants

## **VII. Deferrals, Delays, and Deviation from Sentencing Guidelines<sup>40</sup>**

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<sup>40</sup> Per MCL 600.1076(4) "...the court, with the agreement of the prosecutor and in conformity with the terms and conditions of the memorandum of understanding under section 1062, may discharge and dismiss the proceedings against an individual..." who meets the requirements of MCL 600.1076(4) a-e.

Under MCL 600.1068(2)<sup>41</sup>, the prosecutor must approve an individual’s admission into the **[name of drug treatment court]** if the individual will be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines.

### **VIII. Program Fee**<sup>42</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 600.1070 the clerk of the drug treatment court shall transmit the fees collected to the treasurer of the local funding unit at the end of each month. The fee must be reasonable and calculated based on costs reasonably related to administering the program that are not covered by other funding such as insurance, block grants, PA 511, or another agency. These costs include **[list types of costs included in program fee computation]**<sup>43</sup>.

### **IX. Term of Agreement**

This agreement is effective for one year upon the date of the final signature and shall renew automatically for subsequent one-year terms unless otherwise modified. Any signatory to this agreement may terminate participation upon thirty days’ notice to all other signatories.

### **X. Agency Representatives**

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

- a. **[Name of drug treatment court]**, drug court judge, **[name of judge]**
- b. **[Name of drug treatment court]**, drug court program coordinator, **[name of coordinator]**
- c. **[Number of circuit court]** Circuit Court, **[title]**, **[name of circuit court representative]**
- d. **[Name of county]** MDOC, probation/parole agent, **[name of agent]**
- e. **[Number of district court]** District Court, **[title]**, **[name of district court representative]**
- f. **[Number of district court]** district court probation department, probation officer, **[name of probation officer]**
- g. **[Name of county]** prosecuting attorney, **[name of prosecutor representative]**
- h. **[Name of treatment agency on team]**, treatment provider, **[name of treatment provider]**
- i. **[Name of law enforcement agency on team]**, **[title]**, **[name of law enforcement representative]**
- j. **[Name of law firm/office]**, defense attorney, **[name of attorney]**

### **XI. Modification of Agreement**

Modification of this agreement shall be made by formal consent of all parties, pursuant to the issuance of a written amendment, signed and dated by the parties, prior to any changes.

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<sup>41</sup> Per MCL 600.1068(2) “In the case of an individual who will be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines, the prosecutor must approve of the admission of the individual into the drug treatment court in conformity with the memorandum of understanding...”

<sup>42</sup> Per MCL 600.1070(4) “The drug treatment court may require an individual admitted into the court to pay a reasonable drug court fee that is reasonably related to the cost to the court for administering the drug treatment court program as provided in the memorandum of understanding...”

<sup>43</sup> These costs typically include things such as program personnel, treatment, drug testing, supplies, travel costs, and training, but should also include any other costs incurred by the drug treatment court to administer the program.

**XII. Other Interagency Agreements**

This agreement does not preclude or preempt each of the agencies individually entering into an agreement with one or more parties to this agreement, nor does it supplant any existing agreement between such parties.

**XIII. Signatures of Parties to this Agreement<sup>44</sup>**

The parties have entered into this agreement as evidenced by their signatures below. A copy of the agreement shall be provided to each signatory to the agreement. The original agreement shall be filed with the clerk of [court number] Judicial [court type] Court.

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Honorable [name], [name of drug treatment court] Judge, [court number and type] Court

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

[Name], Program Coordinator, [name of drug treatment court]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

<sup>44</sup> Per MCL 600.1062 "...if the drug treatment court will include in its program individuals who may be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines..." the court may not adopt or institute a drug treatment court unless the court enters into "...a memorandum of understanding with each participating prosecuting attorney in the circuit or district court district, a representative of the criminal defense bar, and a representative or representatives of community treatment providers."

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

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Signature

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Date

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

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Signature

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Date

**[Name], [title], [name of law enforcement agency]**

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Signature

---

Date

**[Name], [title]**, Michigan Department of Corrections, **[name of county]** County

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Signature

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Date

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

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Signature

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Date

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

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Signature

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Date

**[Name], [title], [agency name]**

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Signature

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Date

**[Name], [title], [agency name]**

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Signature

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Date

**[Name], [title], [agency name]**

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Signature

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Date

# *Appendix J*

## *Model Drug Court Agreement to Participate and Waiver*

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### AGREEMENT TO PARTICIPATE

**[Name of drug court program]**

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

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

1. Complete any evaluations or assessments as directed by the drug treatment court, and follow the recommendations thereof. The treatment recommendations will be shared with the drug 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. 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.
4. Submit to PBT's, electronic alcohol monitoring, and/or drug and alcohol screenings as directed.
5. Be employed or enrolled in an educational program, or participate in another positive activity as directed.
6. Notify the drug treatment court of any changes in phone number within 24 hours.
7. Not change my place of residence before notifying the drug treatment court.
8. Notify the drug treatment court of any police contact, arrest or criminal charge within 24 hours of event or release from jail.
9. Make full and truthful reports to the drug treatment court as directed by any team member.
10. Not engage in any antisocial, assaultive, threatening, or aggressive behavior.
11. Not leave the state without the prior consent of the drug treatment court.
12. Maintain the confidentiality of other drug treatment court participants.
13. Pay all court ordered fines and costs, including minimum state costs, the drug 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 drug treatment court program services provided to me, 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 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>45</sup>. MCL 600.1074(1) and (3).

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

**I waive the following rights<sup>46</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 drug 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 drug 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 drug treatment court, the judge must terminate my participation in the program per MCL 600.1074.
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 drug treatment court staff may make unscheduled home visits, and I will allow drug 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 drug 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 drug treatment court team members at a staffing meeting. I understand that if someone outside of the problem-solving court team 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 drug treatment court, court staff, or individuals or others independent of the drug 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:
  - a. Notification to the judge that I am in violation of the program.
  - b. If I admit guilt to or am found guilty of a program violation; then sanctions, up

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<sup>45</sup> This is required under MCL 600.1074(1) and (3).

<sup>46</sup> Conditions 1-3 are required under MCL 600.1068(1)(c).

to and including jail, may be imposed or additional conditions may be added as determined by the judge with input from the drug treatment court team.

- c. Termination from the program.
- 9. I understand that the drug 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 drug 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 drug treatment court's disposal which may assist in the participant's recovery.

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

\_\_\_\_\_  
Participant Signature<sup>47</sup>

\_\_\_\_\_  
Date

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

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

\_\_\_\_\_  
Date

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

<sup>47</sup> MCL 600.1068(1)(d) requires the participant to sign a written agreement to participate in the drug court.

## Appendix L

### Drug Court Admission Conditions

<b>DTC Admission Conditions<sup>48</sup></b>		
Defendant name:	Defendant DOB:	Defendant case #:
<p>The above named defendant has been referred to the <b>[County or Court]</b> DTC program. Per MCL 600.1066 the court finds the following conditions to be true, prior to the defendant's admission to the <b>[County or Court]</b> DTC program:</p> <ol style="list-style-type: none"> <li>(1) The individual has been assessed and has been shown to meet clinical eligibility criteria under MCL 600.1066a.</li> <li>(2) The individual understands the consequences of entering the DTC and agrees to comply with all court orders and requirements of the program and treatment providers.</li> <li>(3) 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.</li> <li>(4) The individual is not a violent offender.</li> <li>(5) 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 and has also agreed to cooperate with any future evaluation assessment as directed by the DTC.</li> </ul> </li> <li>(6) The following deferral condition applies:</li> </ol>		

<sup>48</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 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
- 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 600.1070 (DTC Deferral)
- No deferral applies

(7)

- Upon successful completion of the program **[specify the details of the agreement]**.<sup>49</sup>
- Upon failure to successfully complete the program **[specify the 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 the 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>49</sup> Under MCL 600.1066(g) 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 [DTC] upon successful completion by the participant or termination of participation.” This will vary by program and should be tailored to each DTC participant.

## *Appendix N*

### *Ten Principles of a Good Testing Program*<sup>50</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>50</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

### Minimum Standard Data

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#### Adult Drug Treatment Court, Sobriety Court, and Hybrid Court Minimum Data Standards

MCL 600.1078 states that each drug 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 data collected will be used toward annual program reporting to the legislature and governor per statute. Courts are responsible for ensuring that the data described below are collected frequently and accurately.

Data must be collected and reported for all drug court applicants that were screened for drug court, even if the applicant was not accepted into the drug court program. Therefore, the 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 standard data sets. This information should be entered into the Drug Court Case Management Information System (DCCMIS), or in the SCAO excel spreadsheet template to be submitted to SCAO.

#### Set 1: Screening

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

Variable	Description	Valid Values	DCCMIS Initial Eligibility Screening Page
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	- Yes - No	5

### **If Accepted into the Program**

<b>Variable</b>	<b>Description</b>	<b>Valid Values</b>	<b>DCCMIS Location</b>
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
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

<b>Variable</b>	<b>Description</b>	<b>Valid Values</b>	<b>DCCMIS Location</b>
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 drug treatment court.

<b>Variable</b>	<b>Description</b>	<b>Valid Values</b>	<b>DCCMIS Location</b>
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
Session Type	Type of treatment session	Type of treatment session	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
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

Minimum Standard Data set for participants discharged from the program.

<b>Variable</b>	<b>Description</b>	<b>Valid Values</b>	<b>DCCMIS Location</b>
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  
517-373-2218 or TrialCourtServices@courts.mi.gov

## Family Dependency Court Minimum Data Standards

MCL 600.1078 states that each drug 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 data collected will be used toward annual program reporting to the legislature and governor per statute. Courts are responsible for ensuring that the data described below are collected frequently and accurately.

Data must be collected and reported for all drug court applicants that were screened for drug court, even if the applicant was not accepted into the drug court program. Therefore, the 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 standard data sets. This information should be entered into the Drug Court Case Management Information System (DCCMIS), or in the SCAO excel spreadsheet template to be submitted to SCAO.

### Set 1: Screening

Minimum Data Standard set for participants screened for family dependency 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 (if available)	State ID# from MSP. (Number assigned when candidate was fingerprinted)	Alphanumeric 1234567A (7 numbers and 1 letter and it must be accurate.)	1
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
Prior adjudications/convictions	Any adjudications or convictions the candidate had previous to screening	- Yes (enter number of felonies and misdemeanors) - No	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

### **If Accepted into the Program**

<b>Variable</b>	<b>Description</b>	<b>Valid Values</b>	<b>DCCMIS Location</b>
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
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**

<b>Variable</b>	<b>Description</b>	<b>Valid Values</b>	<b>DCCMIS Location</b>
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 family dependency court.

<b>Variable</b>	<b>Description</b>	<b>Valid Values</b>	<b>DCCMIS Location</b>
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
Session Type	Type of treatment session	Type of treatment session	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
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

Minimum Standard Data set for participants discharged from family dependency court.

<b>Variable</b>	<b>Description</b>	<b>Valid Values</b>	<b>DCCMIS Location</b>
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  
517-373-2218 or [CourtServices@courts.mi.gov](mailto:CourtServices@courts.mi.gov)