



# Appendix A

Arizona Mental Health Court Standards

Arizona Supreme Court:

Mental Health Court Advisory Committee



in collaboration with the

National Center for State Courts

ADVANCING JUSTICE TOGETHER | 2014-2019

## Mental Health Court Advisory Committee

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## Table of Contents

<b><u>Introduction to these Standards</u></b> .....	Page 4
A. Generally	
B. Description of a Mental Health Court	
C. Reasons to Establish a Mental Health Court	
D. Reasons to Have Standards for a Mental Health Court	
E. Development, Planning, and Ongoing Administration ("planning group")	
F. Glossary of Acronyms	
<b><u>Summary of the Mental Health Court Standards</u></b> .....	Page 9
<b><u>Standard 1. The Mental Health Court Team</u></b> .....	Page 11
1A. Team Function	
1B. Team Selection	
1C. Team Roles	
1D. Team Collaboration	
1E. Team Education and Training	
<b><u>Standard 2. Referral, Eligibility, and Assessment</u></b> .....	Page 15
2A. Generally	
2B. Program Participation	
2C. Referral Sources	
2D. Time of Referral	
2E. Eligibility, Exclusion, and Assessment Criteria	
2F. Terms of Participation	
<b><u>Standard 3. Program Structure</u></b> .....	Page 18
3A. Generally	
3B. Program Phases	
3C. Successful Completion and Transition	
<b><u>Standard 4. Court Proceedings</u></b> .....	Page 20
4A. Review Hearings and Pre-hearing Team Meetings	
4B. Frequency of Court Appearances and Contacts	
4C. Length of Interactions in Court	
4D. Judicial Demeanor	
4E. Consistent Docket	
4F. Opportunity to Be Heard	

**Standard 5. Treatment**..... Page 22

- 5A. Case Plan
- 5B. Court Order
- 5C. Adjustments to the Level of Treatment
- 5D. Efficient and Effective Treatment
- 5E. Provider Training and Credentials

**Standard 6. Case Plan Adjustments, Incentives and Sanctions**..... Page 24

- 6A. Advance Notice
- 6B. Individual and Consistent Consequences
- 6C. Motivating Behavior
- 6D. Case Plan Adjustments
- 6E. Jail Sanction
- 6F. Termination

**Standard 7. Confidentiality of Records**..... Page 26

- 7A. Sharing Confidential Information
- 7B. HIPAA
- 7C. Attorney Representation
- 7D. Retention and Destruction of Mental Health Court Records

**Standard 8. Sustainability**..... Page 27

- 8A. Public Awareness
- 8B. Mental Health Court Collaboration
- 8C. Periodic Reviews of Operation
- 8D. Performance Monitoring
- 8E. Performance Measures

**List of Resources**..... Page 30

**Appendices**

1. Two templates for a Memorandum of Understanding
2. Best Practices for Historically Disadvantaged Groups
3. Form: Sample Welcome and Terms of Participation (for a participation in a limited jurisdiction court)
4. National Center for State Courts: Performance Measures

## Introduction to these Standards

A mental health court

- Is a therapeutic problem-solving court for participants with mental illnesses
- Provides frequent judicial oversight
- Uses a team-based approach regarding treatment and supervision
- Is evidence-based in its application of treatment, supervision, incentives, and sanctions

A. Generally. A “mental health court” is a specialized docket of criminal cases for participants with mental illnesses. These standards are intended to further the efficiency, effectiveness, and accountability of Arizona’s mental health courts. Accordingly, these standards should guide the design of new mental health courts in Arizona and the enhancement of existing programs. They apply to both general and limited jurisdiction courts. They also encompass specialized probation caseloads to improve outcomes for participants with serious mental illnesses who have been sentenced.

The models used by Arizona’s existing mental health courts, and the availability of local behavioral health resources, vary throughout the state. One of the most notable differences in the Arizona models concerns the point in time when participants begin their participation in a mental health court. Most limited jurisdiction mental health courts use misdemeanor diversion programs, and these courts dismiss the participants’ charges upon successful completion of diversion; these are “pre-adjudication” models. Other courts, particularly the superior court, use post-sentencing “post-adjudication” models, where participants’ terms of felony probation include participation in a mental health court. Mental health courts in Arizona therefore operate with some autonomy, and each one has a distinct operating philosophy and local characteristics.

In recognition of unique circumstances in each jurisdiction, and the corresponding need for diversity among Arizona’s mental health courts, these standards allow courts to develop and operate programs that best serve their target populations. However, the eight enumerated standards identify fundamental components of any mental health court. These standards use the word “must” to indicate something is mandatory. The word “may” allows the use of discretion. The word “should” indicates something is recommended and encouraged.

B. Description of a Mental Health Court. A mental health court uses a **problem solving approach** for criminal cases involving eligible participants with mental illnesses, in lieu of more traditional criminal court procedures. Judges and

behavioral health professionals operate as a **team with specialized knowledge** about mental illnesses to provide these participants with ongoing judicial supervision and coordinated behavioral health treatment. Mental health court teams design and implement **community-based case plans** for these participants.

Arizona courts rely on executive agencies, such as the Department of Health Services and Regional Behavioral Health Authorities, and other public and private entities, to provide treatment and services. An effective mental health court collaborates with service providers and uses the court's authority to connect participants with mental illnesses with these providers for targeted therapeutic interventions.

An effective mental health court also requires collaboration with law enforcement agencies, including detention officers and the jail's medical personnel. Law enforcement collaboration may assist in identifying and referring offenders who might be eligible for a mental health court.

C. Reasons to Establish a Mental Health Court. The reasons to establish a mental health court include:

- **Increasing public safety;**
- **Improving outcomes for participants with mental illnesses and reducing their rate of recidivism;**
- **Diverting participants with mental illnesses from incarceration;**
- **Making the most effective use of limited resources in the criminal justice and behavioral health systems;**
- **Establishing participants' access to treatment for mental health and substance abuse problems, and monitoring participants' engagement in those treatment programs; and**
- **Improving the quality of life for people with mental illnesses who are charged with crimes.**

D. Reasons to Have Standards for a Mental Health Court. Standards for the development and administration of a mental health court help

- **Establish a means for monitoring performance** and conducting evaluations, which promote the accountability of mental health courts and their participants;

- **Guide** those seeking to establish a successful mental health court, enhance the effectiveness of existing mental health courts, and navigate transitions a mental health court will inevitably encounter (e.g., changing judges or treatment providers);
- **Manage economies of scale**, enabling these courts to confidently increase the number of participants they serve by providing a uniform set of empirically-based processes that are reliable and reproducible;
- **Provide training and technical assistance** for mental health court staff and collaborators; and
- **Increase public confidence** in mental health courts by demonstrating a sound basis for self-regulation.

The most effective mental health courts embrace standards based on **sound empirical research** and **evidence-based practices**. Evidence-based decision-making considers the best current evidence, the results of thorough scientific research, and experienced professional judgment. Those standards promote communication among mental health court stakeholders by clearly establishing common expectations and providing guidance for mutually beneficial outcomes.

These standards include several references to standards prepared by the National Association of Drug Court Professionals. Standards used in a drug court may be fully or partially applicable to mental health courts, but please note that the transferability of particular drug court standards to other types of problem-solving courts has not yet been validated.

E. Development, Planning, and Ongoing Administration (“planning group”). A mental health court is best designed by a multi-disciplinary “planning group.” A planning group includes the judge or judges who intend to establish a mental health court. A planning group also should include these representatives, several of whom are essential:

- prosecuting attorneys;
- public defenders or members of the private defense bar;
- probation officers and other court personnel, such as clerks and administrators;
- local law enforcement officers;
- jail administrators and jail medical representatives;
- a RHBA representative;
- medical providers;

- individuals and organizations in the community who have expertise in the field of mental health or substance abuse, and who facilitate links to treatment and community resources, and whose participation in the mental health court is essential to its success.

Some members of a planning group may also be members of the mental health court team, which is described in Standard 1.

Establishing a mental health court is a significant endeavor, and sustaining a mental health court requires a long-term commitment from a variety of individuals and organizations. The planning group should identify the need for a mental health court; should ascertain that the court's caseload justifies the establishment of a mental health court; and should confirm that there are adequate and readily-accessible community resources for behavioral health treatment and social services. Planning groups should also consider whether the local court and potential team members have the time to commit for team meetings, for an increased number of court status hearings, and for requisite training; whether the program would require additional staff, such as a court program coordinator; and whether there are financial or funding issues. The planning group should agree on the specific purposes of its mental health court, and should articulate the court's clear, specific, and realizable goals. The court's purpose and goals should be in writing, and should serve as a foundation for measuring its subsequent effectiveness.

The planning group should confirm and document role expectations by written agreements. A template for a written agreement, also known as a memorandum of understanding ("MOU"), is attached as Appendix 1. The MOU commits each party to the manner that the party will participate in the mental health court. The MOU also specifies the roles, responsibilities, and training requirements of each party, and describes each party's relationship to the other parties. There should be MOUs for members of the team, and for associated public and private health care agencies and social service organizations. The MOU emphasizes the collaborative nature of a mental health court.

To assure consistency and assist with inevitable turnover in team membership, the planning group should compile and maintain policies and procedures identifying program operations. These policies and procedures should include the court's eligibility criteria, referral and screening procedures, treatment resources, policy regarding incentives and sanctions, information-sharing protocols, data collection, and other program components. The existence of written court policies helps ensure consistency and lessens the impact when key team members depart. MOUs, if sufficiently detailed, may serve as a policy.

The planning group has an important role in the mental health court even after the court has become established. The planning team should periodically (a) review mental health court data and performance measures (b) consider participant and team member observations and feedback, and (c) make appropriate revisions to mental health court policies, procedures, operations, and MOU's, to help maintain the program's relevance and efficiency.

F. Glossary of Acronyms. The following acronyms may be used in these standards, or in references contained in the list of resources.

ADHS:	Arizona Department of Health Services
AHCCCS:	Arizona Health Care Cost Containment System
AOC:	Administrative Office of the Courts
DBHS:	Division of Behavioral Health Services
CPSA:	Community Partnership of Southern Arizona
GMH:	General mental health
HIPAA:	Health Insurance Portability and Accountability Act
MHC:	Mental health court
MOU:	Memorandum of Understanding
NAMI:	National Alliance on Mental Illness
NARBHA:	Northern Arizona Regional Behavioral Health Authority
NCSC:	National Center for State Courts
RBHA:	Regional Behavioral Health Authority
SAMHSA:	Substance Abuse and Mental Health Services Administration
SMI:	Seriously mentally ill
SPC:	Specialized probation caseload

## Summary of the Mental Health Court Standards

**Standard 1: The Mental Health Court Team** must work collaboratively. Every member has a specific role that contributes to its effectiveness. Responsibilities of team members should be outlined in a memorandum of understanding. The team and its members must receive education and training to increase their effectiveness.

**Standard 2: Referral, Eligibility and Assessment:** Team members must consider and assess pre-defined legal, clinical, competency, and risk criteria when determining a participant's eligibility for a mental health court. Some participants enter a mental health court program prior to case adjudication; others enter a program after pronouncement of judgment and sentencing. The participant's participation in a pre-adjudication program or post-adjudication probation should take into consideration the advice of defense counsel and the requirements of participation.

**Standard 3: Program Structure:** A participant progresses through phases of orientation, stabilization, reintegration, and maintenance. A participant successfully completes the program after meeting all of the mental health court requirements. Planning for a participant's transition out of the mental health court program is a key element of a participant's success.

**Standard 4: Court Proceedings:** Consistent contact and the quality of interactions between a judge and a participant are among the most influential factors in a participant's success in the program. The mental health court team meets before each court session, which is followed by a review hearing in the courtroom with the participant present. A participant has an opportunity to state his or her perspective at a review hearing.

**Standard 5: Treatment:** The mental health court team prepares a written case plan for each participant, and the case plan is incorporated in a court order. The case plan is based on evidence-based assessments of the participant and the participant's individual needs and issues. The case plan provides for quality and effective services from appropriately licensed clinicians and experienced professionals. The case plan details the participant's responsibilities and provides advance notice of circumstances that might result in participant's termination from the program, and it is the basis for monitoring participant's progress.

**Standard 6:** The team develops policies and procedures for **Case Plan Adjustments, Incentives and Sanctions**. The judge should be consistent in applying incentives and sanctions, while also taking into account an individual participant's circumstances. Incentives are more likely to produce better outcomes than sanctions. Jail sanctions should be certain, immediate, short in length, and used sparingly. Adjustment to treatment plans should precede sanctions or termination from the mental health court.

**Standard 7: Confidentiality of Records** requires that mental health court records be protected by legal consent requirements, and be disclosed only on a need-to-know basis to aid in case planning. The mental health court team develops a legal release of information form compatible with HIPAA and with the confidentiality requirements of alcohol and drug abuse patient records under federal law (42 CFR Part 2), and potential court participants can review the form with defense counsel. Record retention and destruction must follow standards promulgated by the Arizona Supreme Court and other governing authority.

**Standard 8: Sustainability of Mental Health Courts** is promoted by creating public awareness, formal and informal networking, feedback from all stakeholders, periodic reviews, monitoring court performance on common measures, and implementing changes to improve operations and outcomes. The mental health team should collect specified data to monitor the accountability, efficiency, and effectiveness of a mental health court.

# Standard 1: The Mental Health Court Team

## 1A. Team Function

The mental health court must function as a team.

These standards acknowledge that structures of mental health courts, as well as the availability of resources, vary statewide. Accordingly, these standards recognize that the composition of a team may differ from one location to another, or that a team may expand or contract based on the needs of an individual case.

## 1B. Team Selection

The mental health court team works collaboratively to help participants in the mental health court program achieve goals and successfully complete the program. The team brings together staff from agencies who have a direct role in a participant's entrance into the program and progression through the case plan.

Team members in general, and court officers in particular, should be willing to adapt to a nontraditional setting that is collaborative and problem-solving rather than adversarial or punitive. Effective teams include court personnel with expertise or interest in mental health issues, and behavioral health providers with criminal justice experience. Valuable attributes for team members include a sense of mutual respect, a shared affinity for working collaboratively, and an interest in helping participants with serious mental illnesses.

The planning group may determine who the members of the mental health court team will be. In the absence of direction from the planning group, the court's presiding judge or the judge's designee will determine who will be members of the mental health court team.

A court team should include the following:

- A judicial officer;
- A member of the court staff;
- A prosecutor;
- A defense attorney;
- One or more mental health or substance abuse treatment providers, or a designated liaison or case manager;
- A RBHA representative or liaison.

When available and if appropriate, and for greater effectiveness, a court team also may include the following:

- A court supervision agent such as a probation officer or surveillance officer;
- A peer mentor or coach;
- Other individuals identified by the court with appropriate expertise or knowledge.

**1C. Team Roles** Team members participate in the court proceedings described in Standard 4. The following paragraphs describe the role of each member, although these descriptions do not preempt other professional responsibilities.

- (1) Judicial officer: The judicial officer is a critical, central figure in a mental health court. A mental health court functions best with a judicial officer who has a dedicated assignment to the program for at least two years. As in other problem-solving courts, the judge plays a much larger role than a judge in a conventional criminal court. This expanded role may encompass program implementation, performance monitoring, outcome reporting, and ongoing involvement in supervision of participants, case-planning, and intervention. The judge must preside over review hearings, personally interact with every program participant, provide incentives, and explain consequences. Although the judge has final decision-making authority on motions and other legal issues in a case, the judge must consider the input of the prosecutor, other team members, the participant and the participant's counsel, the participant's family members, and the victim, if any. When imposing treatment-related conditions, a judge must rely on input from trained treatment professionals.
- (2) Court staff: Staff is responsible for overall court administration of the program. The court's problem-solving approach includes calendaring mental health court cases together, such as for review hearings and ceremonies, and doing so is a duty of court staff. Court staff's role also includes coordinating communications between team members and the court, promoting efficiency of court operations, and supporting the program's sustainability.
- (3) Prosecutor: A prosecutor represents the interests of the State and victims while collaborating with other team members to resolve problems and facilitate successful outcomes. The specific duties of the prosecutor may vary among jurisdictions and may vary between pre-adjudication and post-adjudication cases. Prosecutors frequently screen cases and evaluate a participant's eligibility for participation from a legal

standpoint. The prosecutor has the authority to decline cases in diversion programs pursuant to A.R.S §§ 11-361 et. seq. and 13-3422. The prosecutor in a pre-adjudication case determines when and if it is appropriate to file a motion to dismiss charges against a participant.

- (4) Defense counsel: A participant in a mental health court should be afforded legal representation during review hearings. Defense counsel assures that a participant makes informed decisions about the program, and that the participant understands legal documents such as waivers or consents a participant might be required to sign. In addition to fulfilling the traditional obligations of defense counsel, a defense attorney on a mental health court team explains program requirements and benefits to the participant, the legal ramifications of participation, and possible consequences of noncompliance.
- (5) RBHA representative: The RBHA representative may confirm that the participant has an SMI or GMH designation, and may solicit from and provide to other team members a participant's clinical and social histories. The representative meets informally with other members of the team to build their support for, and familiarity with, the participant. The RBHA representative assures the participant is linked to behavioral health treatment and other recommended support services, addresses gaps in services, responds to grievances, and assures treatment providers submit timely and complete progress reports to the mental health court.
- (6) Treatment providers: These individuals provide clinical and social services to a participant. Although clinical services are usually outpatient, some disorders or co-occurring disorders may require inpatient or residential care. Clinical service providers do assessments, furnish treatment, and prescribe medication. Clinical treatment may be for behavioral health, substance abuse, or general health, and may be provided in individual or group settings. Treatment also encompasses social services regarding such things as education, vocation, employment, transportation, or housing. Service providers submit regular progress and compliance reports to other team members; clinician reports include clinical recommendations.
- (7) Probation and Surveillance Officers: Probation officers (which for purposes of this paragraph includes surveillance officers) provide supervision of participants in the community. They ensure that participants live in safe, supportive environments; attend treatment

sessions and adhere to treatment plans; establish healthy relationships; abstain from using illegal drugs; abide by victim contact regulations, and pay restitution when applicable; and follow the law. They report to the team a participant's progress, as well as violations of conditions, and make recommendations for sanctions and incentives. Additionally, they maintain communication with a participant's family members, employer, case manager, and others to solve problems and to track the participant's progress.

- (8) Peer mentor: A peer mentor provides peer support to a participant and assists a participant in navigating public behavioral health and medical services systems. The peer mentor provides support to the participant during hearings, meetings and treatment as requested by the participant and the team. A peer mentor promotes wellness by sharing personal experiences with a participant and other staff members. A peer mentor may provide a participant with transportation to court hearings and appointments for treatment.

The MOU described in Section E of the Introduction to these standards should include additional details concerning each of these roles. The MOU also should include continuing education and training required for each role.

#### **1D. Team Collaboration**

All team members must work collaboratively to monitor and support a participant's adherence to the case plan and other court conditions. The RBHA and service providers have primary responsibility for managing the delivery of clinical treatment and social services. These representatives must regularly communicate with other members of the mental health court team, and they should establish streamlined communication protocols to ensure that accurate and timely information about each participant's progress in treatment is conveyed to the entire team.

Team members must understand the responsibilities and boundaries of other team members. Team members also must respect the ethical requirements of other members.

#### **1E. Team Education and Training**

Team members should attend continuing education programs and other training opportunities concerning legal aspects of a mental health court, and clinical aspects of mental illnesses and substance abuse. They should stay current with recent developments in these fields. The mental health court judge should encourage team members to participate in state, regional, or national associations

concerning mental health courts, and to attend training sessions and conferences sponsored by these and other relevant associations. Some training should be targeted to each defined role of a member of the mental health court team.

A mental health court judge should attend current training events on legal issues in mental health courts, judicial ethics, evidence-based mental health treatment, behavior modification, training on how to interact with individuals with behavioral health needs, and community supervision. When serving a co-occurring population, a judge should also attend evidence-based substance abuse training. Attendance at annual training conferences and workshops enhances contemporary knowledge about advances in the mental health court field.

Team members, including judges, may visit or meet with service providers in the community to better understand the settings in which participants receive clinical treatment and social services. Court staff should also receive appropriate training on communicating and interacting with participants in the program.

Attorneys would also benefit from training described in this section even if they are not assigned to a mental health court, if the attorneys interact with participants with serious mental illnesses on other dockets.

## **Standard 2: Referral, Eligibility, and Assessment**

### **2A. Generally**

Criteria regarding a participant's eligibility for a mental health court should be well defined and specified in writing. Notwithstanding the criteria specified in Standard 2(E), the criteria may be waived upon special consideration by the judge. However, no person has a right to be admitted to a mental health court program.

### **2B. Program Participation**

In problem-solving courts, program participation is generally knowing and voluntary. However, legal and practical considerations differ between pre-adjudication and post-adjudication case models for mental health courts:

Upon entering a pre-adjudication program, a participant must be advised of the terms of participation, as specified in Standard 2(F).

Post-adjudication, participation in a mental health specialized probation caseload and a mental health court program may not be voluntary per se, insofar as the court may order participation as a term of probation.

However, post-adjudication, a participant must willingly agree to accept probation over other sentencing alternatives. See, for example, *Demarce v Willrich*, 203 Ariz. 502, 56 P.3d 76, (Div. 1, 2002; review denied, 2003).

Mental health courts must identify issues concerning a participant's competency, and must resolve those issues before participant's admission to the program. If a participant has a guardian, the mental health court team should also provide the guardian with appropriate information.

Although the availability of defense counsel varies from one jurisdiction to another, courts should strive to make counsel available for advising a participant about the requirements of a mental health court program.

## **2C. Referral Sources**

A participant may be referred to a mental health court from a wide variety of sources, including judges, law enforcement and detention officers, defense attorneys, prosecutors, clinical and social service providers, probation officers, public and community agencies, and family members and guardians. Eligibility criteria must be communicated to potential referral sources to maximize the effectiveness of the referral network.

## **2D. Time of Referral**

Referral sources should strive to identify potential participants at the earliest possible time in the criminal justice process. However, mental health courts should accept referrals throughout the criminal justice process, including post-adjudication periods for a participant on probation, if other criteria are satisfied.

## **2E. Eligibility, Exclusion, and Assessment Criteria**

A participant's admission to a mental health court is conditioned on meeting eligibility criteria. A mental health court team does not apply subjective criteria or personal impressions to determine a participant's suitability for the program. Eligibility criteria should take into consideration the targeted population for the program. These criteria should be non-discriminatory in intent and impact. The mental health team must consider clinical diagnoses, legal eligibility criteria, and a review of local services that are available to serve the targeted population. Legal and clinical eligibility criteria need not be the same in every jurisdiction.

The team establishes eligibility criteria for a pre-adjudication diversion program, but the criteria are subject to the requirements of Arizona law (see Standard 1(C)(3)). Most eligibility criteria specify offenses or circumstances that disqualify a participant from the program, and crimes involving victims may require the victim's consent.

In determining clinical eligibility, a significant, but not the only, factor is whether a participant has been designated seriously mentally ill (“SMI.”) A person who has been designated SMI generally is eligible for a variety of treatment resources and has a RBHA case manager. A participant who has not been previously evaluated for mental health needs may be referred for an SMI evaluation before acceptance into a mental health court. The mental health court team should also consider whether the program would be appropriate for a participant without an SMI determination. For example, the team may consider whether a participant with a general mental health (“GMH”) designation, or one who has a developmental disability, is an appropriate candidate.

Generally, participants who do not have significant and treatable mental illnesses are not eligible for the program.

Notwithstanding the presence or absence of an SMI designation, behavioral health agencies and treatment providers who interact with or who are members of the mental health court team must use evidence-based screening and assessment tools to identify appropriate candidates for the mental health court program. Those who administer screening and assessment tools must be trained and proficient in the administration of these tools and in the interpretation of the results. As part of entry into the program, participants with mental illnesses should be screened for substance use.

The mental health court team should consider risk to the community in determining a participant’s eligibility for mental health court. It must use evidence-based practices to measure risk.

A participant is not disqualified from mental health court because of the use of legally prescribed psychotropic or addiction medication. If a participant has the requisite mental health designation, the participant also is not disqualified from participation in the mental health court because of co-occurring substance abuse or medical conditions, unless either (a) appropriate treatment is available through an alternate problem-solving court or program in the community; or (b) appropriate treatment resources are not available through the mental health court.

## **2F. Terms of Participation**

Mental health courts must establish general program parameters outlining such subjects as the program duration, conditions, and the impact of program completion or unsuccessful termination. Within these parameters, the terms of participation should be individualized for each participant and should be put in writing prior to entering the program. Mental health courts must communicate to participants the benefits of participation, the terms of participation, and the legal

consequences of not adhering to the court's case plan and conditions. These standards encourage courts to provide a participant with written terms of participation before or at the participant's first appearance before a mental health court judge.

## Standard 3: Program Structure

**3A. Generally.** A mental health court program involves several phases. Early phases of a program are characterized by a participant's frequent appearances in the courtroom. The commitment of resources and the frequency of court appearances will decrease in most cases as a participant makes progress in the program. The length of a participant's mental health court program in a post-adjudication case must not exceed the maximum period of probation of the offense(s) for which a participant was convicted. A participant in a pre-adjudication mental health court case may continue in the program for as long as the judge and team members determine to be appropriate, if the participant knowingly and voluntarily waives the speedy trial requirements of Rule 8 of the Arizona Rules of Criminal Procedure.

**3B. Program phases.** The phases of a program are labelled for reference purposes and to describe how a participant progresses through the program. In reality, however, there may be no distinct demarcation between when a phase concludes and another begins; a participant may be simultaneously participating in more than one phase.

- (1) Orientation. The first phase focuses on orienting a participant to the program, and introducing a participant to members of the team. During this phase, the team provides the participant with a clear understanding of the program, supplemented by written materials if appropriate and available, and explains to the participant required individual responsibilities and goals. (Appendix 3 contains a sample information sheet for a participant in a limited jurisdiction court.) The team emphasizes the requirements of remaining law-abiding and, if appropriate, submitting to random substance testing. The team familiarizes the participant with the location of service providers and addresses transportation issues. The participant begins therapeutic relationships with service providers and demonstrates his or her initial commitment to the program.
- (2) Stabilization. During this second phase the participant has the most intensive contact with the team. The participant attends court frequently for review hearings. The team encourages the participant to comply with the case plan (see Standard 5A regarding the case plan); to attend scheduled appointments with team members, service providers, case managers, and others; to take prescribed medication, if needed; and to abide by other program requirements. If appropriate,

the participant may be subject to frequent and random drug and alcohol testing. If the participant does not have stable housing, the participant is working with the mental health court team to secure it. The participant demonstrates progress toward treatment goals and stability, as exhibited by the participant's unique circumstances and as provided by the participant's case plan. The participant remains law abiding and commits no new criminal offenses.

- (3) Community reintegration. After the participant has remained stable for a designated period of time, the participant's other needs, such as educational and vocational, are addressed, and the team links the participant with community and ancillary services and supports. The participant continues to attend court status hearings, and the team continues to monitor the participant's compliance with program requirements. The participant continues to receive mental health and substance abuse treatment, and if appropriate, submits to random substance testing. The participant demonstrates increased insight into his or her situation, including the desirability of remaining law-abiding, and development of necessary life skills (e.g., decision-making, problem solving, financial and time management, anger management, and recovery.)
- (4) Maintenance. The participant has complied with the requirements of the behavioral health treatment and has continued with any prescribed regimen of medication. The participant has secured stable housing; is pursuing employment, education, or volunteer opportunities; and is developing a functional support system. The participant demonstrates more effective development of life skills, and the ability to connect with community recovery and support systems. The team monitors the participant for possible regression, and provides appropriate and supportive responses and referrals.

### **3C. Successful Completion and Transition**

The mental health court team should prepare every participant for transition out of the program. A participant should be able to demonstrate personal and clinical improvement since entry into the program, comparatively better stabilization, and an ability to function in a community setting. The participant should demonstrate an ability to identify necessary and specific community resources (for example, contacts for help with medication or with mental health symptoms.) The mental health team should consider introducing a participant to appropriate "alumni" or other support groups.

A participant successfully completes a program when the participant has progressed through all phases of the program, has complied with the court's conditions, and remains arrest-free. The judge may conduct an individual or

group ceremony or a specially designated proceeding for those participants, which may be attended by the participant's family members and others. At this proceeding the judge may award the participant a certificate of program completion or, if appropriate, may provide the participant with a copy of the court's order discharging the participant from probation or dismissing the case. This special proceeding is an opportunity for a participant to receive recognition for completing the program.

## Standard 4: Court Proceedings

**4A. Review hearings and Pre-hearing Team Meetings.** Team supervision of a participant is integral to the participant's successful completion of the program.

The team typically meets immediately before a review hearing. The team discusses confidential information (see Standard 7), and the meeting is not open to the public or to the participant, although the participant's counsel usually attends. The team meeting is most effective when team members prepare and share progress reports and have current information on each participant. The team discusses the participant's compliance with the case plan (see Standard 5A), results of random drug tests, progress reports from treatment providers, and social or other issues, as well as any appropriate adjustments to the case plan, incentives, or sanctions (see Standard 6).

Following the team's meeting, the team convenes in the courtroom for a review hearing. The review hearing is open to the public, but the calendar should include only mental health cases to reduce stigma and to promote a sense of community among participants. The participant must be present at the review hearing. When appropriate, family members or other supporting individuals should be welcomed and acknowledged. The judge must confer with a participant concerning the participant's compliance with the case plan and progress in the program, and the judge may request input from team members. The review hearing has legal as well as therapeutic purposes. The review hearing may conclude with the court providing the participant with a contract detailing the participant's ongoing and upcoming responsibilities.

### 4B. Frequency of Court Appearances and Contacts

A participant's contacts with a judge at review hearings, as well as with other team members in and out of court, provide accountability and oversight. These contacts also ensure that the court and team have up-to-date information about the participant, which allow the court and team to timely and meaningfully respond to any inappropriate behavior.

Contacts between a participant and a judge, and with other team members, should be more frequent at the outset of the program to promote the participant's stability.

Those contacts should decrease as a participant progresses positively through the program.

#### **4C. Length of Interactions in Court**

The judge should spend an appropriate amount of time during review hearings to interact with each participant, to have a conversation directly with the participant (rather than with defense counsel), and to review with each participant his or her progress in the mental health program. For example, and although adult drug courts might be distinguishable from mental health courts, empirical research nonetheless suggests a judge should spend at least three minutes interacting with each drug court participant. See [Adult Drug Court Best Practice Standards, Volume I](#) (NADCP, 2013) particularly Standard III, “Roles and Responsibilities of the Judge,” Comment F, which states:

“In a study of nearly seventy adult Drug Courts, outcomes were significantly better when the judges spent an average of at least three minutes, and as much as seven minutes, interacting with the participants during court sessions....Shorter interactions may not allow the judge sufficient time to gauge each participant’s performance in the program, intervene on the participant’s behalf, impress upon the participant the importance of compliance with treatment, or communicate that the participant’s efforts are recognized and valued by staff.”

#### **4D. Judicial Demeanor**

The quality of interactions between a judge and a participant is one of the most influential factors in a participant’s success. A judge should offer positive and supportive comments to a participant, stress the importance of the participant’s commitment to treatment and other program requirements, and express optimism about the participant’s abilities to improve his or her health and behavior. The judge may also admonish the participant when appropriate. The judge should give a participant a clear explanation about why a particular consequence is or is not being imposed.

#### **4E. Consistent Docket**

A participant should ordinarily appear before the same judge throughout the term of enrollment in a mental health court to provide consistency and stability in attaining program goals. A consistent docket also allows the judge to develop a deeper knowledge of each individual case, as well as expertise in dealing with this particular type of case.

To help maintain the continuity of a program, a judge should serve in a mental health court for at least two consecutive years.

#### **4F. Opportunity to Be Heard**

A judge should give a participant an opportunity to explain the participant's perspectives regarding matters before the court, particularly regarding factual controversies and the imposition of incentives, sanctions, and therapeutic adjustments. If a participant has difficulty expressing himself or herself because of factors such as a language barrier, nervousness, or cognitive limitation, a judge must permit the participant's attorney or legal representative to assist in providing such explanations.

## **Standard 5: Treatment**

#### **5A. Case Plan**

The mental health court team must ensure that there is a written case plan for each participant in a mental health court. The case plan includes specific ways for connecting a participant with necessary services and support. Tailoring a case plan to the needs of the individual participant is an important element of a mental health court. The treatment provider or probation officer is generally responsible for maintaining the case plan.

The case plan must consider a participant's mental health and substance abuse assessments; risk assessments and public safety concerns; the individual participant's needs; and any other relevant factors and information. A participant in a diversion-model mental health court may have input into the case plan by expressing his or her personal needs.

The case plan includes clinical services based on recommendations from behavioral health professionals. Clinical services typically include, as appropriate, a combination of mental health treatment, medication management, substance abuse treatment, other forms of counseling, crisis intervention services, peer support and mentoring, and community-based case management services. Clinical services also may address co-occurring medical issues.

The case plan addresses social services that are adjuncts to clinical treatment, such as transportation or housing, public benefits, vocational or educational services, or other appropriate services. The case plan also includes other court requirements, such as payment of fines or restitution, if any, performance of community service, and court-ordered obligations, terms, and conditions.

## **5B. Court Order**

The judge must enter an order encompassing the terms of the case plan and detailing a participant's responsibilities in a mental health program. For a participant in a specialized probation caseload, this order may be the same as the terms and conditions of probation. For a participant in another mental health court program, the order may be in the form of a contract between the court and the participant.

The court order must require the participant to comply with the terms of the case plan, including additional terms and conditions the judge deems necessary and appropriate. The judge may authorize other members of the mental health court team, including service providers, to carry out the terms of the court's order. For example, the order may require the participant to submit to random urine tests, and a probation officer or clinical provider may be authorized to carry out this term.

## **5C. Adjustments to the Level of Treatment**

Adjustments to the level of treatment should be based on each participant's response to treatment rather than tied to the mental health court's programmatic structure. A participant should not receive sanctions or an augmented sentence for failing to respond to a level of treatment substantially below or above the participant's assessed treatment needs.

## **5D. Efficient and Effective Treatment**

A participant's treatment success is enhanced by reducing delay between the time of arrest and the time a participant is linked to treatment, as well as by the quality of services delivered by treatment providers. Mental health courts have the authority to evaluate and require quality and effective treatment services.

A participant is generally not incarcerated to achieve a clinical or social service objective, such as obtaining access to a treatment bed.

## **5E. Provider Training and Credentials**

Clinical service providers must meet applicable state licensing requirements or be appropriately certified to deliver mental health treatment, or to deliver substance abuse treatment if serving a co-occurring population. Service providers should have experience working with criminal justice populations, and must have appropriate supervision to ensure adherence to evidence-based practices.

## Standard 6: Case Plan Adjustments, Incentives and Sanctions

### 6A. Advance Notice

A mental health court should adopt written policies and procedures concerning the administration of therapeutic adjustments, incentives and sanctions to mental health court participants. The court should provide these policies and procedures to team members in advance, or at the start, of a participant's participation in the program. The policies and procedures should provide a range of consequences the court may impose; the criteria for program advancement, successful completion, and termination from the program; and the legal and collateral consequences of successful completion and termination. Within these parameters, the mental health court judge reserves discretion to modify a presumptive consequence in light of circumstances presented in each case.

### 6B. Individual and Consistent Consequences

The judge should impose positive or negative consequences that are appropriate to the individual and compatible with the individual's case plan. To assure procedural fairness, those consequences should be substantially consistent with those received by other participants in the same stage of the program who engaged in comparable conduct, barring extenuating factors or individual circumstances.

### 6C. Motivating Behavior

The mental health court should place substantial emphasis on incentivizing productive behavior. A participant's advancement in, and successful completion of, the program should include objective evidence the participant is engaged in productive activities, such as volunteering, employment (as appropriate), education, or attendance at peer support groups. See [Adult Drug Court Best Practice Standards, Volume I](#) (NADCP, 2013) particularly Standard IV, "Incentives, Sanctions, and Therapeutic Adjustments," Comment H, which states:

"Drug Courts achieve significantly better outcomes when they focus as much on incentivizing behaviors as they do on reducing undesirable behaviors....significantly better outcomes were achieved by Drug Courts that offered higher and more consistent levels of praise and positive incentives from the judge....several other studies found that a 4:1 ratio of incentives to sanctions was associated with significantly better outcomes among drug offenders....Support for the 4:1 ratio must be viewed with caution because it was derived from after-the-fact correlations rather than from controlled studies....Nevertheless, although this correlation does not

prove causality, it does suggest that Drug Courts are more likely to be successful if they make positive incentives readily available to their participants.”

#### **6D. Case Plan Adjustments**

The judge should consider alternative, or additional, support or services for a participant who has willfully failed to comply with program conditions, if those alternatives might reasonably assist the participant in being successful in the program. The judge should consider, if applicable and with clinical input, an adjustment of the treatment plan before administering sanctions or terminating a participant from the program.

#### **6E. Jail Sanction**

Graduated sanctions are a fundamental feature of a mental health court. Because a jail is not a good therapeutic environment, a sanction of incarceration is generally contrary to the objectives of a mental health court. A jail sanction must be imposed judiciously and sparingly. Prior to imposing a jail sanction, a judge should consider the potential impact of incarceration on the continuity of the participant’s medication schedule. A judge should impose a jail sanction in a post-adjudication case only if less severe sanctions have been ineffective, although there are exceptions when a participant poses an immediate risk to public safety, or is substantially not compliant with the case plan. A jail sanction should be definite in duration and, generally, brief.

#### **6F. Termination**

The court team must provide a participant with advance notice of circumstances that may result in participant’s termination from the mental health court program. Generally, a participant may be terminated from the program if the participant cannot continue to safely reside in the community, or if a participant repeatedly fails to comply with the case plan, or treatment or supervision requirements. A participant who is unsuccessful and terminated from the mental health court may receive a sentence or disposition based on the original, underlying offense.

In courts serving a co-occurring population, a judge should not automatically terminate a participant from the mental health court because of the participant’s continued substance use, if the participant otherwise complies with the conditions of treatment and supervision. However, a participant may be terminated for continued substance use if the participant is not amenable to treatment that is reasonably available in their community. If a participant is terminated from a mental health court because adequate treatment is not reasonably available in their community, the participant must not receive an augmented sentence or

disposition for failing to complete the mental health court program.

## **Standard 7: Confidentiality of Records**

### **7A. Sharing Confidential Information**

The court and team members must maintain the privacy of treatment information as required by law and as provided in Rule 123 of the Rules of the Supreme Court<sup>1</sup>. The exchange of treatment information among team members should be limited to what is necessary for the team to make decisions concerning the case plan. Written information must only be exchanged by methods that maintain confidentiality. The team's discussion of confidential information must occur in closed team meetings. The team should avoid discussion of treatment information in open court.

The prosecutor must not use in the underlying case, or in any subsequent case, clinical information concerning a participant's program-related treatment that the prosecutor acquired as a member of the team, without a court order or other authorized process established by law.

### **7B. HIPAA**

Each mental health court must use a Release of Information form, developed in consultation with legal counsel, which adheres to federal and state laws.

While the court is not a covered entity under HIPAA, to comply with HIPAA and allow disclosure of protected behavioral health information to other mental health court team members, as a condition of acceptance into the mental health court, absent a court order, the participant shall be ordered to execute a release and authorization in compliance with HIPAA and 42 CFR part 2 (for substance use information).

Potential participants must be allowed to review the waiver or consent to release information form with defense counsel. Participant's counsel should confirm to the court the waiver or consent form has been reviewed with the participant. The court when necessary should inquire whether these forms have been interpreted for the participant.

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<sup>1</sup> For further guidance on access to mental health court records, see Maricopa County Superior Court [Administrative Order number 2014-092](#).

### **7C. Defense Attorney Representation**

## **7D. Retention and Destruction of Mental Health Court Records.**

Court records should be retained and destroyed in accordance with the schedule provided by the Arizona Code of Judicial Administration §§ 3-402 in the (Superior Court Retention and Disposition Schedule) and 4-302 (Limited Jurisdiction Records Retention and Disposition Schedule).

## **Standard 8: Sustainability**

### **8A. Public Awareness**

Under the direction of its presiding judge or court administrator, a court should publicize and educate the community, the media, and key criminal justice and mental health organizations and individuals concerning the benefits to the community of a mental health court, and the court's values and purposes.

### **8B. Mental Health Court Collaboration**

Mental health courts should collaborate with one another to improve existing mental health court operations, and to offer advice and information to jurisdictions that may want to establish a new mental health court. Mental health courts should provide resources to one another, identify courts willing to serve as mentor courts, and assist in the identification of other practices to improve mental health court operations.

### **8C. Periodic Reviews of Operation**

The mental health court team should periodically review its mental health court process, procedures, operation, and MOUs, and revise them as necessary and appropriate. The team should review available data, obtain participant feedback, solicit observations of team members, and make recommendations to and receive direction from the planning group in order to regularly improve the operation of its mental health court. The team should also consider its needs for training and cross-training, and plans for transition and succession of team members.

### **8D. Performance Monitoring**

To ensure long-term sustainability, and to promote accountability, efficiency, and effectiveness, a mental health court should monitor its own performance. To do so, it should collect and compile measures of performance.

## 8E. Performance Measures

Performance measures serve as tools to better manage and effectively administer mental health courts. Performance measures will assist with making policy decisions about how to address mental health issues within the criminal justice system and provide information to the public, the court community, participants, and funding agencies to provide accountability and sustainability.

The National Center for State Courts (“NCSC”) established nationally recognized performance measures. Detailed descriptions and calculations of each measure can be found in the Mental Health Court Performance Measures: Implementation and User’s Guide at <http://www.ncsc.org/Services-and-Experts/Areas-of-expertise/Problem-solving-courts/Mental-Health-Court-Performance-Measures.aspx>.

Arizona courts use the following NCSC performance measures:

1. *In-Program Reoffending*
2. *Attendance at Scheduled Judicial Status Hearings*
3. *Attendance at Scheduled Therapeutic Sessions*
4. *Living Arrangement*
5. *Retention*
6. *Time from Arrest to Referral*
7. *Time from Referral to Admission*
8. *Total Time in Program*
9. *Team Collaboration*
10. *Agency Collaboration*
11. *Need-Based Treatment and Supervision*
12. *Participant-Level Satisfaction*
13. *Participant Preparation for Transition*
14. *Post-Program Recidivism*

Details concerning the NCSC performance measures are included in Appendix 4.

Mental health court teams must collect and maintain the basic data identified in performance measures 1, 2, 3, 6, 7, and 8.

These standards require all stakeholders, including the Arizona Department of Health Services (“ADHS”), RBHA’s, service providers, law enforcement, jails, and the courts, to develop methods and systems for collecting and sharing additional data shown in performance measures 4, 5, 9, 10, 11, 12, 13, and 14.

An MOU must specify responsibilities for data collection, or collection of certain data elements, by particular team members. MOUs may specify protocols for data collection and data sharing. Data collection processes optimally should be standardized statewide, because standardization of data elements will have the benefit of allowing aggregation and comparison of collected data. However, collection of certain data by particular jurisdictions may require customization based on local infrastructure and organization.

## **Resources**

- **General Information:**

Justice Center: The Council of State Governments – [Essential Elements for a Mental Health Court](#)

Justice Center: The Council of State Governments - [Improving Responses to People with Mental Illnesses: The Essential Elements of Specialized Probation Initiatives](#)

Justice Center: The Council of State Governments – [Mental Health webpage](#)

California Administrative Office of the Courts: [Mental Health Courts, an Overview \(2012\)](#)

National Center for State Courts: [Mental Health Court Performance Measures](#)

National Center for State Courts: [Mental Health Courts Resource Guide](#) (multiple links)

National Association of Drug Court Professionals: [Adult Drug Court Best Practice Standards, Volume I](#)

Ohio Administrative Office of the Courts: [Handbook for Developing a Mental Health Court Docket](#)

SAMHSA (“Substance Abuse and Mental Health Services Administration”) Gains Center for Behavioral Health and Justice Transformation <http://gainscenter.samhsa.gov/>

Dr. Nicole Waters: [Responding to the Need for Accountability in Mental Health Courts](#) (2011)

Website for the Arizona Department of Health Services, [Division of Behavioral Health Services](#)

[Common Characteristics of Juvenile Mental Health Courts](#) (Policy Research Associates)

- **Training Curriculum:**

Justice Center: The Council of State Governments – Interdisciplinary Curriculum for Developing a Mental Health Court: <http://learning.csgjusticecenter.org/>

## **Model Memorandum of Understanding**

### **[Multiple Parties]**

#### **MENTAL HEALTH TREATMENT COURT**

This agreement is entered into between **[insert court name and number]** and **[insert agencies names]** to document the roles and responsibilities of each agency in the planning and operation of the mental health treatment court.

**A. Program Description**

[insert content]

**B. Mission Statement and Program Goals**

[insert content]

**C. Provisions**

Each agency agrees to participate by coordinating and/or providing the following:

**The [insert court name and number] agrees to:**

- 1) Designate a judge to preside over the mental health treatment court program and docket.
- 2) Establish a planning committee to develop written program policies and procedures.
- 3) Establish procedures to be used to determine that participants have sufficient understanding to participate in the program.
- 4) Establish points of participant eligibility for the mental health treatment court at post-arraignment or later.
- 5) Designate primary court personnel responsible for answering questions, serving as liaison to agency personnel, and participating in treatment team meetings and status review hearings.
- 6) Indicate processes by which court personnel will identify prospective program participants, initially screen for legal and clinical eligibility, and refer prospective program participants to the community mental health service program for further assessment.

- 7) Identify the clinical eligibility criteria for the designated target population.
- 8) Designate case manager roles, responsibilities, and caseloads.
- 9) List the procedures court personnel use to relay information regarding prospective participants to the treatment agency to enable them to conduct the psychiatric assessment to determine clinical eligibility.
- 10) Develop preferred methods, forms, and timetables for exchanging information between court staff and agency personnel regarding court-related progress and compliance of program participants, including filing of new criminal charges or technical probation violations and reporting results of drug and alcohol tests.
- 11) Compile and submit any mandated financial or program progress reports to the appropriate agencies.
- 12) Comply with all mental health treatment court policies and procedures that have been previously agreed upon by all parties.
- 13) Work with the community mental health service program to determine consumer representative(s) on the planning committee to represent the interests of participants and their families.
- 14) [insert content]

**The mental health treatment court judge agrees to:**

- 1) Chair meetings, preside over status review hearings, coordinate team meetings, participate in the development of policies and procedures, and assist with identifying funding sources to sustain the program.
- 2) Assist in the development of legal and clinical eligibility criteria.
- 3) Use incentives, sanctions and disciplines as deemed necessary for participant success.
- 4) Comply with all mental health treatment court policies and procedures that have been previously agreed upon by all parties.

- 5) Participate in training on how to screen for eligible participants.
- 6) [insert content]

**The community mental health services program agrees to:**

- 1) Assist in the development of legal and clinical eligibility criteria.
- 2) Participate on the planning committee.
- 3) Comply with all mental health treatment court policies and procedures that have been previously agreed upon by all parties.
- 4) Identify primary agency personnel responsible for answering questions, serving as liaison to court personnel, and participating in treatment team meetings and status review hearings.
- 5) Provide a description of services including admissions and discharge criteria available to mental health treatment court program participants and notify the court in writing of any changes in program services offered.
- 6) Communicate maximum time frames needed for conducting psychiatric assessments from date of court referral, beginning program participant treatment from date of acceptance, and exchanging progress and compliance information from date of occurrence.
- 7) Develop preferred methods, forms, and timetables for exchanging information between agency and mental health court docket personnel regarding agency-related progress and compliance of program participants, including appointment attendance, medication compliance, drug and alcohol test results, individualized treatment plan status, progress, changes, agency discharge plans, and recommendations for continuing care or additional service needs.
- 8) Participate in treatment team meetings and in staffing of cases.

- 9) Arrange or coordinate with the substance abuse coordinating agency for substance use disorder treatment services for persons with co-occurring mental health and substance use disorders.
- 10) Provide training to team members on how to screen for individuals exhibiting symptoms of mental illness.
- 11) Provide information to the mental health court team on relevant mental health confidentiality and recipient rights laws.
- 12) [insert content]

**The county prosecuting attorney agrees to:**

- 1) Assist in the development of legal and clinical eligibility criteria.
- 2) Participate on the planning committee and in the staffing of cases.
- 3) Designate someone to attend treatment team meetings and all scheduled court proceedings.
- 4) Interact with defense counsel in a non-adversarial manner to address pleas and the application of sanctions and incentives.
- 5) Screen all potential participants based upon established eligibility criteria.
- 6) Comply with all mental health treatment court policies and procedures that have been previously agreed upon by all parties.
- 7) Participate in training on how to screen for eligible participants.
- 8) [insert content]

**The city attorney agrees to:**

- 1) Assist in the development of legal and clinical eligibility criteria.
- 2) Participate on the planning committee and in the staffing of cases.
- 3) Interact with defense counsel in a non-adversarial manner to address pleas and the application of sanctions and incentives.
- 4) Designate someone to attend treatment team meetings and all

scheduled court proceedings.

- 5) Comply with all mental health treatment court policies and procedures that have been previously agreed upon by all parties.
- 6) Screen all potential participants based upon established eligibility criteria.
- 7) Participate in training on how to screen for eligible participants.
- 8) [insert content]

**The public defense attorney agrees to:**

- 1) Participate on the planning committee and in the staffing of cases.
- 2) Attend treatment team meetings.
- 3) Comply with all mental health treatment court policies and procedures that have been previously agreed upon by all parties.
- 4) Interact with the city attorney and/or county prosecutor in a non-adversarial manner to address pleas and the application of sanctions and incentives.
- 5) Assure that participant procedural and due process rights are protected.
- 6) Participate in training on how to screen for eligible participants.
- 7) [insert content]

**The [insert law enforcement agency] agrees to:**

- 1) Participate on the planning committee.
- 2) Identify and screen in-custody offenders for referral to the mental health treatment court based upon eligibility criteria.
- 3) Designate an officer(s) who will complete specialized training on identifying individuals with mental illness. This officer(s) will be a member of the mental health treatment court team.
- 4) Comply with all mental health treatment court policies and procedures that have been previously agreed upon by all parties.
- 5) Participate in training on how to screen for eligible participants.
- 6) [insert content]

**The city and/or county jail agree(s) to:**

- 1) Comply with all mental health treatment court policies and procedures that have been previously agreed upon by all parties.
- 2) Screen all potential participants based upon established eligibility criteria.
- 3) Provide treatment such as medications to jail residents that are participants in the mental health treatment court program to stabilize their mental illness while they are incarcerated.
- 4) Participate in training on how to screen for eligible participants.
- 5) [insert content]

**The [insert court name and number] Probation Department and/or Department of Corrections Probation Department agree(s) to:**

- 1) Participate on the planning committee.
- 2) Designate probation officer(s) to handle all presentence and supervision duties for the mental health treatment court caseload and to serve on the team.
- 3) Identify and recommend referrals.
- 4) Attend status review hearings and team meetings.
- 5) Comply with all mental health treatment court policies and procedures that have been previously agreed upon by all parties.
- 6) Participate in training on how to screen for eligible participants.
- 7) [insert content]

**The substance abuse coordinating agency agrees to:**

- 1) Comply with all mental health treatment court policies and procedures that have been previously agreed upon by all parties.
- 2) Provide, arrange, or coordinate with the community mental health services program for mental health treatment services for persons with co-occurring mental health and substance use disorders.
- 3) Provide information to the mental health treatment court team on a timely basis regarding participant treatment progress.
- 4) [insert content]

**The case manager agrees to:**

- 1) Coordinate the work and activities of all parties serving as members of the mental health treatment court team.
- 2) Serve as primary contact person for the mental health treatment court.
- 3) Screen all potential participants based upon established eligibility criteria.
- 4) Collaborate with the participant and other mental health treatment court team members when developing the treatment plan.
- 5) Comply with all mental health treatment court policies and procedures that have been previously agreed upon by all parties.
- 6) Coordinate activities with assigned probation staff without duplicating supervision activities.
- 7) Serve as the primary team member that brokers services for treatment, employment and/or education, and housing, and monitors participant compliance and progress with the treatment plan.
- 8) Participate in training on how to screen for eligible participants.
- 9) [insert content]

**D. Methods for Exchanging and Maintaining Confidential Information**

[insert content (i.e. regarding HIPPA; 42 CFR Part 2; Michigan Mental Health Code; Michigan Public Health Code; etc.)]

**E. Other Data Reporting Requirements**

[Insert information on various team member evaluation and/or any other specific reporting requirements and methods].

**F. Procedures for Conflict Resolution**

[insert content]

**G. Mutual Indemnification**

The participating agencies agree to indemnify, defend, and hold harmless each other and their officers, agents, and employees from any and all claims, actions, or proceedings arising solely out of the acts or omissions of the indemnifying agency in the performance of this memorandum of understanding.

The participating agencies agree that each is acting in an independent capacity and not as officers, employees, or agents of the other agencies.

**H. Terms of Agreement**

This agreement is effective on [insert date] and may be renewed each year upon mutual agreement of all parties.

**I. Fiscal Terms**

This memorandum of understanding does not involve an exchange of funds. Any exchange of funds for services rendered as part of the mental health treatment court will be described in a separate contract.

**J. Terms and Conditions**

All terms and conditions of this agreement are subject to the continuation of mental health treatment court funding.

**K. Termination of Memorandum of Understanding**

Upon mutual consent of all parties, this memorandum of understanding is subject to further negotiation and revision as required to support the needs of the mental health treatment court program. Any changes shall be in writing and signed by all parties herein or their duly appointed representatives authorized to act on their behalf. This memorandum of understanding may be terminated by any party for any reason by giving a 30-calendar-day written notice.

**L. Review of the Memorandum of Understanding**

This memorandum of understanding will be reviewed on a yearly basis by the [insert court name and number] mental health treatment court planning committee and revised as necessary upon mutual agreement of all parties.

Signatures of Authorized Representatives:

\_\_\_\_\_

Name and Title

\_\_\_\_\_

Date

Agency Name

\_\_\_\_\_

Name and Title

\_\_\_\_\_

Date

Agency Name

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Name and Title

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Name and Title

Date

Agency Name

## TEMPLATE FOR A MEMORANDUM OF UNDERSTANDING (MOU) FOR CROSS-SYSTEM COLLABORATION

A Memorandum of Understanding (MOU) is a document describing a collaborative relationship between parties. It expresses a mutual accord between the parties, and indicates an intended common line of action.

A memorandum of understanding at a minimum must (1) identify the parties, (2) spell out the subject matter of the agreement and its objectives, (3) summarize the essential terms of the agreement, and (4) be signed by the parties.

This sample MOU template is designed to establish a framework and articulate responsibilities for developing cross-system collaboration among justice, mental health and substance abuse organizations, as well as with other parties and entities that provide resources, services and supports to individuals with mental illnesses, substance use disorders, and/or co-occurring disorders. Although the four items in the preceding paragraph, standing alone, may be sufficient for some MOUs, mental health court stakeholders should consider including the additional sections identified in this template.

**Important Note:** Although the “example” language in this template suggests ~~that~~ there can be multiple parties to a single MOU, it may instead be more practical and appropriate to have multiple MOUs, with only two parties to each individual MOU.

**A. Title of MOU:** The title should reflect its purpose.

**B. Intent:** This section should articulate the desire to formalize relationships across systems to address the needs of a target population. It should identify the involved stakeholders and indicate their desire to work together.

Example:

*The intent of this MOU is to establish and maintain a partnership with the judicial system, juvenile and criminal justice system, local mental health and substance abuse providers, hospitals, families, consumers, provider networks, HMO's, social services, educational system, social security, housing, vocational services and other organizations that share and will promote the common goals and objectives ~~to~~ that address the needs of individuals with serious mental illnesses and/or substance use disorders who frequently appear in the juvenile or criminal justice system*

Another example:

*The intent of this MOU is to formalize the establishment of the (name of group) and to develop goals, objectives and guiding principles that address the needs of individuals with serious mental illnesses and/or substance use disorders who frequently appear in the juvenile or criminal justice system; as well as establish membership and responsibilities of its members.*

**C. Purpose:** This section should state the purpose of this document, and how it will guide the parties' actions.

Example:

*This agreement is intended to guide the (name of group) in identifying the needs of individuals with serious mental illnesses and/or substance use disorders who frequently appear in the juvenile or criminal justice system. The parties agree to share and develop strategies and best practices that will address the needs and create system improvements, increase public safety, use limited resources effectively and efficiently, and promote advocacy for increased resources*

**Goals:** This section should outline the goals the group identifies relevant to the overarching reason they have come together., i.e. what do they hope to accomplish, what changes do they want to make, what are their primary outcomes, etc.

Example:

*The goals of (name of group) are to:*

1. *Reduce recidivism of individuals with mental illnesses and/or co-occurring substance use disorders from having contact with the juvenile or criminal justice system*
2. *Increase public safety*
3. *Increase access to services*
4. *Increase capacity of community-based services*
5. *Improve information sharing and data collection for continuity of care and outcome reporting*
6. *Improve coordination of care among systems*

Example:

*Improve access to and quality of mental health and substance abuse services and supports through a systematic approach to developing and supporting strategies to introduce, adapt and apply evidence-based and best practices to reduce contact with the juvenile or criminal justice system for individuals with serious mental illnesses and/or substance use disorders*

**D. Guiding Principles:** This section addresses the shared principles, values and ideals the group will adhere to in its work together. This section can also outline the overall responsibilities of its members. Guiding principles may be written as “Where As”

Examples

*The members of (name of group) agree to adhere to the following guiding principles:*

1. *Be respectful of the ideas and opinions of all members*
2. *Be responsive to assigned responsibilities*
3. *Promote open communication*
4. *Work for the common good of the community and the people it serves*
5. *Adopt a shared vision and mission, goals and objectives*

Example:

Recitals:

1. *The participating members agree to support this MOU*
2. *This agreement is intended to promote system change and improvements to reduce contact with the juvenile or criminal justice systems for individuals with serious mental illnesses, emotional disorders and/or substance use disorders; and to promote recovery and resiliency*
3. *The participants of this agreement will work in collaboration to support and strengthen this agreement*

- E. Objectives:** This section outlines the strategies or processes of how the group will achieve its goals. Also this section may also articulate the various roles and responsibilities of the members.

Example:

*The objectives of this (name of group) to achieve its goals are:*

1. *To complete a system mapping how a person moves through the system that will identify strengths and weaknesses of the system, its resource needs, duplication, etc.*
2. *To identify and recommend evidence based and best practice approaches that will help support a process of change within the community*
3. *To build on existing management and leadership skills at all levels to enable the application of innovative and creative approaches for change and improvements*
4. *For members of this MOU to share resources to change and improve the system*

- F. Responsibilities of the Members:** This section can be broad or specific for each member.

Example:

*All members of the (name of group) will designate staff members to participate in meetings and serve on committees*

*All members are expected to support the specific activities of this group (name of group) All members must be willing to share necessary information for system change and improvements*

*One member may be identified as providing meeting space*

*One member may offer staff to take minutes of group*

- G. Closing sentence before the signature lines:** This is intended to imply that by signing this MOU the person signing agrees with its intent, purpose, content and duties.

Example:

This agreement will be signed by the appropriate agency representatives. By signing, the parties agree to support and uphold this agreement. The parties agree to renegotiate

this Agreement if revisions of any applicable laws or regulation make changes in this Agreement necessary, or at least annually.

**H. Signature Page:** There should be a signature section listing the Name and Title of each party and the date.

Example:

Signed by:

Name: John or Jane Doe

Title: Judge or Sheriff or CEO, etc

Date:

## **Best Practices Regarding Historically Disadvantaged Groups**

The planning group and the mental health court team, when appropriate, should consider the following best practices for mental health courts with dockets involving historically disadvantaged groups.

### **Equivalent Access**

Eligibility criteria for the mental health courts should be non-discriminatory in intent and impact. If eligibility requirements have the unintended effect of restricting access for members of a historically disadvantaged group, those requirements should be adjusted to increase the representation of such persons, unless doing so would jeopardize public safety or the effectiveness of the mental health court. Assessment tools used to determine participants' eligibility for a mental health court are valid for members of historically disadvantaged groups represented in the respective arrestee population.

### **Equivalent Retention**

The mental health court should monitor whether members of historically disadvantaged groups complete the program at rates equivalent to other participants. If completion rates are significantly lower for members of a historically disadvantaged group, the mental health court team should investigate reasons for the disparity, develop a remedial action plan, and evaluate the success of these remedial actions.

### **Equivalent Dispositions**

Members of historically disadvantaged groups should receive the same legal dispositions as other participants for completing or failing to complete the mental health court program.

### **Team Training**

Each member of the mental health court team should attend up-to-date training events on recognizing implicit cultural biases and correcting disparate impacts for members of historically disadvantaged groups.

**Welcome to the Mental Health Court [Sample form for limited jurisdiction courts]**

You have been charged with a crime. The judge has found that because of a mental illness, you are eligible for this court's mental health program. This program is voluntary. You do not have to participate in the program.

If you decide to go through this program, you must agree to the terms of participation on the next page. The program can last a year or longer, and you must follow these terms as long as you are in the program.

There are a number of people you will contact as you go through the program. These include the judge and the court staff.

The people who you contact through this program – known as the mental health court team - may also include

- Your attorney
- Your probation officer
- Your case manager
- A representative from the Arizona Department of Behavioral Health Services
- A court coordinator
- Treatment providers, who will provide mental health and substance abuse counseling
- Peer support
- And others

Shortly after you enter the program, one or more members of the mental health court team will provide you with a case plan. The case plan will contain the mental health and substance abuse services you need to successfully complete the mental health court program.

You will return to court several times during the program. The judge will meet with the mental health court team and learn about your progress in the program. In order for the judge to speak with the mental health court team, you will be required to sign consent forms. The judge will also speak with you about the progress you are making in your treatment, and other issues you may be having such as housing, school, or a job. The judge or the mental health court team may help you with these issues.

If you successfully complete the program, your family and friends may be invited to attend a special court proceeding. Successful completion of the program may sometimes result in a dismissal or a reduction of the criminal charges.

If you do not abide by the terms of participation on the next page, the judge will impose a sanction. The sanctions are also listed on the next page. One sanction is that the judge will end your participation in the mental health court program.

Please contact a member of your mental health court team if you have any questions. We hope you take this opportunity to be successful in the mental health court program!

### **Standard Terms of Participation in the Mental Health Court**

#### **You must:**

- 1. Take all of your prescribed medication
- 2. Not use alcohol or illegal drugs (you may be required to provide random breath and urine samples for alcohol and drug testing)
- 3. Attend all of your court appearances
- 4. Attend all group and individual counseling, including substance abuse treatment
- 5. Reach the individual treatment goals established by your **treatment plan**
- 6. Maintain frequent contact with your case manager and, if you have one, your attorney and **your probation officer**
- 7. Attend vocational or educational classes
- 8. Improve relationships with family members and others
- 9. Have stable **housing**
- 10. Make progress in the phases of your mental health court program
- 11. Accomplish other goals **identified by your treatment team**
- 12. Obey the law

#### **Sanctions:**

If you do not abide by the terms of your participation, the judge may impose a sanction, including one or more of the following:

1. Increasing the length of time of your mental health program
2. Increasing the number of times you must appear in court
3. Issuing an arrest warrant (if you fail to appear for a court date)
4. Ordering jail time
5. Ordering community service
6. Giving you writing assignments
7. Terminating you from the mental health program, which may result in you being sentenced on your original criminal charges
8. Ordering another appropriate sanction not listed here

#### **Incentives:**

As you progress through the program, the judge may provide incentives, such as:

- ✓ Reducing the number of times you must appear in court
- ✓ Praising your accomplishments
- ✓ Increasing your privileges and providing you with new opportunities

## National Center for State Courts: Performance Measures:

### Participant Accountability

**1 In-Program Reoffending** – The incidence of in-program reoffending (i.e. whether an arrest occurred, yes or no). In-program reoffending is defined as an arrest that results in the offender being formally charged (excluding traffic citations other than DUI) and which occurs between admission and exit. While the date of arrest must fall between the entry date and exit date, the charge date may come after the participant has exited the program. This measure serves as an important measure of offender compliance and the level of supervision received, hence, an indicator for public safety.

**2 Attendance at Scheduled Judicial Status Hearings** – The percent of scheduled judicial status hearings attended by the participant. The performance measure reflects the level of judicial supervision for each participant.

**3 Attendance at Scheduled Therapeutic Sessions** – The percent of scheduled therapeutic sessions (defined as services to address mental health and/or substance abuse problems) attended. Therapeutic treatment is an essential element of MHCs.

### Social Functioning

**4 Living Arrangement** – Tracks the progress of MHC participants toward securing a stable living arrangement. Specifically, the percent of participants who are homeless or not at exit, by living status at entry. Adequate housing is a prerequisite for treatment effectiveness.

### Case Processing

**5 Retention** – The percent of participants admitted to the MHC during the same time frame, who exit the program by one of the following means: Successful completion, administrative closure, voluntary withdrawal while in compliance, discharge, transfer, and failure/termination. Retention is important in MHCs because it is critical that participants receive treatment and supervision of long enough duration to affect change.

**6 Time from Arrest to Referral** – The average length of time between a participant's arrest and referral to MHC. While the referral process is not entirely under the court's control, it is an important component in obtaining relevant and timely information. This is especially true when offenders who are mentally ill are incarcerated and are at risk for decompensation.

**7 Time from Referral to Admission** – The average length of time between the referral to MHC and when the participant was accepted into the program. The span of time between referral and admission is an important part of controlling the length of time it takes to get a participant into treatment. This measure will help the court identify inefficiencies in the screening and qualification process.

**8 Total Time in Program** – The average length of time between a participant's admission into the MHC and permanent exit. If this time span is very short, participants may not be receiving enough treatment and care to affect long term improvement. If it is very long, courts may be devoting too great a share of their resources to difficult cases, denying opportunities to other potential participants.

### **Collaboration**

**9 Team Collaboration** – The percentage of time that information relevant for discussion at the pre-docket meeting is available to the team. This provides a gauge to the court of the level of collaboration across the entire MHC team and allows for the identification of gaps in information sharing. With this measure, courts can investigate a lack of resources or lack of commitment by individuals/agencies. This is NOT a measure of attendance at pre-docket meetings.

**10 Agency Collaboration** – The percentage of time that a MHC representative was notified within 24 and 48 hours that a participant in the program was arrested. This measure assesses the timeliness of the basic communication flow between corrections (jail) and the MHC program so that services and medication are maintained during time spent in detention. Effective inter-agency collaboration will improve the effectiveness of the MHC and its operations.

### **Individualized and Appropriate Treatment**

**11 Need-Based Treatment and Supervision** – The goal of this measure is to align participants' diagnosis and criminogenic risk with the appropriate treatment and service dosage. The measure provides courts with an indicator of whether the resources available for supervision and treatment are allocated based on need. Operationally, it measures the percentage of participants who receive the highest (and alternatively lowest) level of services and supervision and whether those are the same participants who are designated as having highest (and lowest) needs. Achieving this will provide the necessary balance for effective use of tax payer money, ensuring public safety, and improving the welfare of the participant using need-based, individualized, and appropriate treatment.

### Procedural Fairness

**12 Participant-Level Satisfaction** – Perceived fairness of the program by the participant as expressed in a short 5-question survey. Research indicates that the perception of fairness is often more important than the actual outcome of the case (see e.g., procedural justice) making this measure important in gauging the perception of the participant.

### Aftercare/Post-Exit Transition

**13 Participant Preparation for Transition** – Percent of correct responses by the participant identifying sources of assistance (e.g., for medication or mental health symptoms) to be used after exiting the program. This measure provides the MHC with an assessment of whether participants are prepared for their transition by ensuring that needed treatment and services will remain available and accessible after their court supervision concludes.

**14 Post-Program Recidivism** – Percentage of participants who reoffended within two years after exiting the MHC. This performance measure is an important measure of the lasting outcomes of the court's program as well as public safety. It captures longer-term outcomes, as compared to Measure 1 "In-Program Reoffending," and is thus reflective of the effectiveness of the program.

### **Performance Measures for Mental Health Courts are Used...**

- as a Management Tool,
- to Monitor Program Performance,
- to Demonstrate Accountability to Funding Agencies, Court Leaders, External Partners, and the Public.

Performance measurement is considered an essential activity in many government and non-profit agencies because it provides tools for managers to exercise and maintain control over their organizations, as well as provides a mechanism for governing bodies and funding agencies to hold organizations accountable for producing the intended results. As a relative newcomer among problem-solving courts, Mental Health Court (MHCs) are still seen as experimental models for courts in some jurisdictions. MHCs are designed for offenders with mental illnesses who enter the criminal justice system. The programs are diverse, including specialized criminal dockets or pre-trial diversion programs, which operate to align the offender with mental health services and judicial supervision as an alternative to traditional jail time. While there are nearly 300 MHCs nationwide at the present time, there is a paucity of data to evaluate the success of MHCs. Moreover, there is a lack of consensus on what key elements ought to be used to measure the

performance of MHCs. The extent to which MHCs offer an effective problem-solving alternative to the criminal justice system is currently unanswerable without adequate performance measures designed for MHCs.

#### **14 Core Performance Measures**

The performance measures are designed to be implemented as a complete and comprehensive set, providing balance across seven key measurement domains. These measures are both important management tools to gauge performance of the MHC program and relatively simple measures to implement. The performance measures are organized by domain. A select advisory group of MHC experts and project staff from the National Center for State Courts (NCSC) worked together to produce a set of performance measures designed specifically for MHCs. These measures were then tested for feasibility, ease of implementation, and usefulness by four courts located in Orange Co., CA; Monroe Co., NY; York Co., PA; and Washington DC.

#### **MHCPM DATA ANALYSIS TEMPLATES**

The project provides free, Excel-based templates that allow mental health court officials to enter data and produce easy to interpret data-based graphics. These graphics show the results for each measure on a summary level for the court, and can be viewed on screen or printed as hand-outs.