



STATE OF MICHIGAN
St. Joseph County

45th JUDICIAL CIRCUIT COURT, FAMILY DIVISION

Hon. David C. Tomlinson, Family Court Judge

Thomas J. Robertson, Juvenile Court Director/Referee
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Administrative Order 2021 - 02

ORDER FOR THE ESTABLISHMENT OF A JUVENILE MENTAL HEALTH COURT PROGRAM

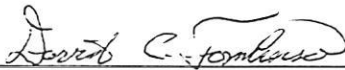
IT IS ORDERED:

This administrative order is issued in accordance with MCL 600.1099b, *et seq.* The purpose of this order is to establish a mental health court program (MHC) in 45th Circuit Court Juvenile Division to service St. Joseph County upon approval by the State Court Administrative Office (SCAO). All policies and procedures comply with the statute and are consistent with the *10 Essential Elements of a Mental Health Court* promulgated by the Bureau of Justice Assistance (see attachment A).

1. The court has entered into a memorandum of understanding with each participating county prosecuting attorney in the circuit or district court, a representative or representatives of the community mental health services program(s), a representative of the criminal defense bar specializing in juvenile law, and a representative or representatives of community treatment providers and other key parties pursuant to MCL 600.1099c. The memorandum of understanding describes the role of each party and is attached (Attachment B).
2. A multidisciplinary group of stakeholders participated in the planning and program design of the mental health court.
3. Team members have familiarized themselves with the operations of an existing mental health court(s) and cross-trained between mental health and judicial systems.
4. The MHC has established eligibility criteria that are consistent with MCL 600.1099e through MCL 600.1099h. Criteria, both legal and clinical, are clearly defined for admission.
5. In compliance with MCL 600.1099e(3), no participant will be admitted until a complete preadmission screening and an evaluation assessment are completed. Policies that facilitate timely participant identification, referral, and admission into the mental health court have been developed.
6. All participants will sign a written agreement to participate in the program in conformance with MCL 600.1099f(1)(b). Policies and procedures describing the program length, level of supervision, treatment plan development, requirements for successful completion, expulsion criteria, case disposition whether successful or unsuccessful completion of the program, sanctions, incentives, and other key program components are developed and will be explained to eligible participants as part of the terms of participation.
7. The MHC will provide consistent and close monitoring of the participant as required by MCL 600.1099i. Policies and procedures on the methods and frequency in which the responsible individuals will monitor participant compliance with the program requirements have been developed.
8. The court will maintain case files in compliance with Retention and Disposal Schedule General Schedule #15 Circuit Court, the Michigan Trial Court Case File Management Standards, and Part 2 of Title 42 of the Code of Federal Regulations to assure confidentiality of mental health court records.

9. Pursuant to MCL 600.10991, the coordinating court will provide the SCAO with the minimum standard data established by the SCAO for each individual applicant and participant of the mental health court.
10. The court will use the Drug Court Case Management Information System (DCCMIS) to maintain and submit the minimum standard data as determined by the SCAO.
11. In order to begin or continue operation of the mental health court, the 45th Circuit Court Juvenile Division will become certified by the State Court Administrative Office under MCL 600.1099c(4).

Date: 1-26-21

Chief Judge Signature: 

The Ten Essential Elements of a Mental Health Court

Essential Element 1: Planning and Administration

A broad-based group of stakeholders representing the criminal justice, mental health, substance abuse treatment, and related systems and the community guides the planning and administration of the court.

Essential Element 2: Target Population

Eligibility criteria address public safety and consider a community's treatment capacity, in addition to the availability of alternatives to pretrial detention for defendants with mental illnesses. Eligibility criteria also take into account the relationship between mental illness and a defendant's offenses, while allowing the individual circumstances of each case to be considered.

Essential Element 3: Timely Participant Identification and Linkage to Services

Participants are identified, referred, and accepted into mental health courts, and then linked to community-based service providers as quickly as possible.

Essential Element 4: Terms of Participation

Terms of participation are clear, promote public safety, facilitate the defendant's engagement in treatment, are individualized to correspond to the level of risk that the defendant presents to the community, and provide for positive legal outcomes for those individuals who successfully complete the program.

Essential Element 5: Informed Choice

Defendants fully understand the program requirements before agreeing to participate in a mental health court. They are provided legal counsel to inform this decision and subsequent decisions about program involvement. Procedures exist in the mental health court to address, in a timely fashion, concerns about a defendant's competency whenever they arise.

Essential Element 6: Treatment Supports and Services

Mental health courts connect participants to comprehensive and individualized treatment supports and services in the community. They strive to use – and increase the availability of – treatment and services that are evidence-based.

Essential Element 7: Confidentiality

Health and legal information should be shared in a way that protects potential participants' confidentiality rights as mental health consumers and their constitutional rights as defendants. Information gathered as part of the participants' court-ordered treatment program or services should be safeguarded in the event that participants are returned to traditional court processing.

Essential Element 8: Court Team

A team of criminal justice and mental health staff and service and treatment providers receives special, ongoing training and helps mental health court participants achieve treatment and criminal justice goals by regularly reviewing and revising the court process.

Essential Element 9: Monitoring Adherence to Court Requirements

Criminal justice and mental health staff collaboratively monitor participants' adherence to court conditions, offer individualized graduated incentives and sanctions, and modify treatment as necessary to promote public safety and participants' recovery.

Essential Element 10: Sustainability

Data are collected and analyzed to demonstrate the impact of the mental health court, its performance is assessed periodically (and procedures are modified accordingly), court processes are institutionalized, and support for the court in the community is cultivated and expanded

Memorandum of Understanding

St. Joseph County Adolescents in Recovery Court (ARC) Pilot Program

This is an understanding between the St. Joseph County Prosecuting Attorney; St. Joseph County Sheriff's Department; 45th Circuit Court-Family Division and their probation department; St. Joseph County Contract Defender, defense counsel representative; Community Mental Health & Substance Abuse Services of St. Joseph County; and David C. Tomlinson Chief Judge and program coordinator.

Purpose

The purpose of this Memorandum of Understanding (MOU) is to describe duties and allocate responsibilities for members of the St. Joseph County Juvenile Mental Health Court team. The MOU also establishes team member responsibilities and requirements for maintaining compliance with the federal law of confidentiality (42CFR, Part 2), the Health Insurance Portability and Accountability Act (HIPAA, 45 CFR, Parts 160 and subparts A and E of Part 164), and the Michigan Juvenile Mental Health Court Statute (MCL 600.1099b- 600.1099m).

Terms/Definitions

1. Participant: Any person referred to the St. Joseph County Juvenile Mental Health Court, currently being screened as a candidate for St. Joseph County Juvenile Mental Health Court (including those who are ultimately denied entry to the program), currently participating in St. Joseph County Juvenile Mental Health Court, or someone who has been discharged from the St. Joseph County Juvenile Mental Health Court.
2. Policies and Procedures Manual: A policy and procedure manual documents program policies and procedures designed to influence and determine all major decisions and actions, and all activities that take place within the boundaries set by them. Procedures are the specific methods employed to express policies in action in day-to-day operations of the organization.
3. Redisclosure: The act of sharing or releasing health information that was received from another source (e.g., external facility or provider) and made part of a patient's health record or the organization's designated recordset.
4. Stakeholders: A person, group or organization that has interest or concern in an organization.
5. Treatment services: Any services provided by a licensed clinician or by an employee of an agency providing therapeutic services for substance use disorder, mental health, or developmental disabilities.
6. Waiver: The "voluntary relinquishment of a known right." (Kelly v Allegan Circuit Judge, 1969)

Goals and Mission of the St. Joseph County ARC

1. The above parties agree to share the following vision for the St. Joseph County Juvenile Mental Health Court:
 - A. Enhance the quality of life for juveniles in St. Joseph County.
 - B. Provide leadership through innovative services.
 - C. Continuously improve services.
 - D. Achieve program goals through teamwork.
 - E. Reduce criminal behavior and decrease incarceration of the mentally ill.
 - F. Ensure each component of the juvenile mental health court is aware and in compliance with federal confidentiality law requirements.

2. We endorse the goals and mission of the St. Joseph County Juvenile Mental Health Court in order for participants to eliminate future criminal behavior and improve the quality of their lives. For this program to be successful, cooperation must occur within a network of systems to facilitate and achieve the mission, challenge, and vision of the St. Joseph County Juvenile Mental Health Court.
 3. We agree that the mission of the St. Joseph County Juvenile Mental Health Court shall be to successfully link those with a serious mental illness, serious emotional disturbance, or a developmental disorder to the appropriate treatment services while maintaining public safety and reducing recidivism.
 4. We agree to the following challenge of the St. Joseph County Juvenile Mental Health Court: Engage those with a serious mental illness, serious emotional disturbance, or a developmental disability involved in the criminal justice system in a continuum of treatment services and provide them with appropriate intervention through treatment, rehabilitative programming, reinforcement, and monitoring.
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Guiding Principles of the St. Joseph County ARC

1. The program shall adhere to the 10 essential elements of a mental health court:
 - A. Develop a broad-based group of stakeholders to guide the administration of the program.
 - B. Develop eligibility criteria that addresses public safety and the community's treatment capacity, and target individuals whose mental illness is related to their crime and meet both clinical and legal criteria for admission.
 - C. Identify and link participants in a timely manner to the appropriate treatment services.
 - D. Promote positive legal outcomes by well-defined terms of participation that facilitate engagement in treatment that corresponds to the level of risk to the community.
 - E. Address competency issues in a timely fashion when they arise and provide legal counsel to assist with admission and program requirements.
 - F. Provide comprehensive and individualized treatment while striving to utilize evidence-based services.
 - G. Protect participants' health and legal information in compliance with the Health Insurance Portability and Accountability Act (HIPAA) and Part 2 of 42 CFR while making information available to the court team.
 - H. Maintain a court team that is comprised of court, criminal justice, and mental health staff, along with treatment and service providers who maintain ongoing specialized training. The team is responsible for assisting a participant to achieve their goals.
 - I. Collaboratively monitor program requirements while offering graduated incentives and sanctions to modify behavior.
 - J. Annually evaluate the program's functioning and effectiveness to ascertain local support by reviewing data that is collected.
2. The Program shall comply with the 7 common characteristics of a juvenile mental health court published by Policy Research Associates, including all of the following:
 - A. Regularly scheduled special docket.
 - B. Less formal style of interaction among court officials and participants.
 - C. Age-appropriate screening and assessment for trauma, substance use, and mental disorder.
 - D. Team management of a participant's treatment and supervision.
 - E. System-wide accountability enforced by the juvenile mental health court.
 - F. Use of graduated incentives and sanctions.
 - G. Defined criteria for program success.

Roles of the Parties of the St. Joseph County ARC

The roles of the parties are as follows:

1. Juvenile mental health court judge/referee:
 - A. Serve as the leader of the team.
 - B. Attend staffing meetings and preside over status review hearings.
 - C. Engage the community to generate local support for the juvenile mental health court.
 - D. Communicate with the participants in a positive manner and make final decisions regarding incentives and sanctions, and program continuation.
 - E. Consider the perspective of all team members before making final decisions that affect participants' welfare or liberty interests and explain the rationale for such decisions to team members and participants.
 - F. Rely on the expert input of duly trained treatment professionals when imposing treatment related conditions on the participants.
 - G. Provide program oversight and ensure communication and partnership with treatment.
 - H. On an annual basis, attend current training events on legal and constitutional issues in mental health courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and/or community supervision.
2. Prosecuting attorney:
 - A. Provide legal screening of eligible participants.
 - B. Attend staffing meetings and review hearings and provide input on incentives and sanctions for participants.
 - C. Represent the interests of the prosecutor and law enforcement.
 - D. Provide feedback, suggestions, and ideas on the operation of the juvenile mental health court.
 - E. Advocate for public safety.
 - F. Advocate for victim interest.
 - G. Hold participants accountable for meeting their obligations.
 - H. If a plea agreement is made based on completion of the program, complete appropriate court documents for resultant modification(s) upon participant's successful completion of the program (reduced charge, nolle prosequi, etc.).
 - I. May help resolve other pending legal cases that impact participants' legal status or eligibility.
3. County sheriff's department:
 - A. Attend staffing meetings and provide input on incentives and sanctions for participants.
 - B. Provide deputies to assist with home checks for participants (limited).
 - C. Provide feedback, suggestions, and ideas on the operation of the juvenile mental health court.
4. Probation officers and/or court case managers:
 - A. Attend staffing meetings and review hearings and provide input on incentives and sanctions for participants.
 - B. Share information as necessary, and in compliance with 42 CFR and HIPAA, to appraise participants' progress in, and compliance with, the conditions of juvenile mental health court.
 - C. Provide probation oversight for all program participants.
 - D. Work with the program coordinator in supervising and monitoring the individuals in the program.
 - E. Prepare presentence reports and perform drug and alcohol tests as needed.
 - F. Schedule probation violations or show cause hearings for participants who have violated the program rules.

- G. On an annual basis, attend current training events on legal and constitutional issues in mental health courts, evidence-based substance abuse and mental health treatment, behavior modification, and/or community supervision.
 - H. Enter data into the DCCMIS system.
 - I. Provide feedback, suggestions, and ideas on the operation of the juvenile mental health court.
5. Defense counsel representative:
- A. Attend staffing meetings and review hearings and provide input on incentives and sanctions for participants.
 - B. Ensure that defendants' procedural and due process rights are followed.
 - C. Ensure that the participant is treated fairly, and that the juvenile mental health court team follows its own rules.
 - D. Provide feedback, suggestions, and ideas on the operation of the juvenile mental health court.
6. Project coordinator:
- A. Attend staffing meetings and provide input on incentives and sanctions for participants.
 - B. Share information as necessary, and in compliance with 42 CFR and HIPAA, to appraise participants' progress in, and compliance with, the conditions of juvenile mental health court.
 - C. Arrange for additional screenings of persons aside from the prosecutor's legal screening.
 - D. Answer inquiries from defense attorneys on possible eligibility.
 - E. Enter data into the DCCMIS system.
 - F. Liaison with treatment providers and drug testing contractor (if applicable), probation, and residential treatment facilities.
 - G. On an annual basis, attend current training events on legal and constitutional issues in mental health courts, evidence-based substance abuse and mental health treatment, behavior modification, and/or community supervision.
 - H. Ensure that new team members are provided with a formal training within three months of joining the team on the topics of confidentiality, and his or her role on the team. Ensure that the new team member is also provided with copies of all program policy and procedure manuals, the participant handbook, and a copy of all current memoranda of understanding.
7. Community Mental Health & Substance Abuse Services of St. Joseph County:
- A. Attend staffing meetings and review hearings and provide input on incentives and sanctions for participants.
 - B. Share information as necessary, and in compliance with 42 CFR and HIPAA, to appraise participants' progress in treatment and compliance with the conditions of juvenile mental health court.
 - C. Conduct assessments to determine program eligibility, make necessary referrals for services as needed, and progress in treatment.
 - D. Report on attendance and progress of participants in treatment services.
 - E. Manage delivery of treatment services.
 - F. Administer evidence based behavioral or cognitive-behavioral treatments and have been demonstrated to improve outcomes.
 - G. Provide clinical case management.
 - H. Offer insights and suggestions on the treatment plans of individuals in the program.
 - I. On an annual basis, attend current training events on legal and constitutional issues in mental health courts, evidence-based substance abuse and mental health treatment, behavior modification, and/or community supervision.
 - J. Enter data into the DCCMIS system.

- K. Provide feedback, suggestions, and ideas on the operation of the juvenile mental health court.
5. St. Joseph County, ISD
 - A. Attend staffing meetings and provide input on incentives and sanctions for participants.
 - B. Provide feedback, suggestions, and ideas on the operation of the juvenile mental health court.
 6. St. Joseph County Juvenile Day Treatment Supervisor
 - A. Attend staffing meetings and review hearings and provide input on incentives and sanctions for participants.
 - B. Share information as necessary, and in compliance with 42 CFR and HIPAA, to appraise participants' progress in, and compliance with, the conditions of juvenile mental health court
 - C. Offer insight and additional support services on treatment plans of individuals in the program.
 - D. Support Clinical programming
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Program Fee

The program charges a fee of **\$260.00** to each participant, to be paid in monthly payments of **\$25**. If you fail to pay on your program charge monthly, you may be placed on the show caused docket and placed on a **\$50** payment plan until paid off. In accordance with MCL 600.1099h, the juvenile mental health court shall transmit the fees collected to the treasurer of the local funding unit at the end of each month. The fee must be reasonable and calculated based on costs reasonably related to administering the program that are not covered by other funding such as insurance, block grants, PA 511, or another agency.

Deferrals, Delays, and Deviation from Sentencing Guidelines -

The prosecutor must approve an individual's admission into the St. Joseph County Juvenile Mental Health Court if the individual will be eligible for discharge and dismissal of an offense and must agree to each discharge and dismissal.

Confidentiality

1. A juvenile mental health court's performance of, or request for, an assessment of chemical dependency of a juvenile mental health court participant, or a referral to treatment, places the juvenile mental health court within the parameters of 42 CFR, Part 2. Additionally, treatment agencies partnering with the St. Joseph County Juvenile Mental Health Court must comply with the Health Insurance Portability and Accountability Act (HIPAA) that protects confidentiality and the security of protected health information; therefore, all parties agree to abide by the following:
 - A. Confidential treatment court information and records, including information obtained as a result of participating in a preadmission screening and evaluation assessment, is confidential and is exempt from disclosure under the Freedom of Information Act (FOIA), and may not be used to initiate or to substantiate any criminal charges against a participant or to conduct any investigation of a participant, unless it reveals criminal acts other than, or inconsistent with, personal drug use. (42 CFR, Part 2).

- B. State law may neither authorize nor compel any disclosure prohibited by the federal regulations, but where state law prohibits disclosure that would be permissible under the federal regulations, the stricter standard applies.
- C. Treatment courts may receive or release information or records of participants only with the specific knowing, voluntary, and written consent of the participant, or under certain very limited exceptions. (42 CFR, Sections 2.14 through 2.35)
- D. The participant must be advised, orally and in writing, that federal law protects the confidentiality of treatment records. The notice must cite Section 290dd-2 and the implementing regulations (Sections 2.1 through 24 of Title 42 of the code of Federal Regulations). Any documented treatment information distributed on the basis of the treatment participant's consent must be accompanied by a Notice of Prohibition Against Redisclosure. The prohibition on redisclosure only applies to information that would identify, directly or indirectly, an individual as having been diagnosed, treated, or referred for treatment for a substance use disorder, such as indicated through standard medical codes, descriptive language, or both, and allows other health-related information shared by the part 2 program to be redisclosed, if permissible under other applicable laws. (42 CFR, Section 2.32)
- E. Confidential records must be kept in a secure room and locked container. Access to confidential records must be limited to authorized individuals. (42 CFR, Section 2.16)
- F. Juvenile mental health court team members shall be familiar with relevant federal and state laws and regulations in order to develop or modify appropriate policies and procedures regarding confidentiality.
- G. All file storage systems shall include procedures for limiting access to records after the participant's consent expires or is revoked. Thus, paper records that can be accessed by all juvenile mental health court personnel during the duration of the participant's consent are transferred to a more restricted storage facility as soon as the consent is terminated. Records on computers are sealed by changing the password or other access.
- H. All team members shall abide by the attached St. Joseph County Juvenile Mental Health Court policy and procedures regarding sharing or distribution of confidential information which regulates and controls access to and use of written and electronic confidential records. Written procedures include requests for access to confidential information by the public, attorneys, or any interested party outside the treatment court team, and formal policies and procedures addressing security, including sanitization of associated media, for both paper and electronic records. (42 CFR section 2.16)
- I. Electronic data that is subject to confidentiality standards shall be protected by security walls and is password-protected. Access shall be limited, and disclosure/redisclosure is subject to approval by the treatment court judge and team.
- J. The juvenile mental health court team shall decide if pre-court staffing meetings will be closed to participants and the public and describe its policy in the participant agreement. If the staffing is open to visitors, the participant must be provided the name of the visitor(s) and must consent in writing to have his or her confidential information released to the visitor. All visitors shall be required to sign an agreement that they adhere to the confidentiality provisions of the law (and particularly as to the rule against redisclosure) and the other requirements of the St. Joseph County Juvenile Mental Health Court MOU.
- K. The parties, including each party's employees and other agents, shall maintain the confidentiality of all records generated during the term of this MOU in accordance with all applicable state and federal laws and regulations, including, but not limited to, 42 CFR Part 2.

