



CATEGORY ONE INFORMATION SHARING

TEMPLATE FOR A NARRATIVE ANALYSIS OF LEGAL REQUIREMENTS FOR INFORMATION-SHARING IN XYZ JURISDICTION'S JUVENILE COURT

Instructions to users:

This template is designed to assist users in writing a narrative analysis of legal requirements regarding the sharing and use of information in their jurisdiction.

As with the other tools for Category One, the template tracks possible information sharing at three distinct phases of the juvenile court process – investigation/intake, adjudication, and disposition. It is designed for broad applicability and therefore covers many possible types of information-sharing; the user must determine which sections below are relevant to his/her particular information-sharing project.

Note that text in italics within double brackets [[]] are instructions to the user, as distinguished from all other text which is sample language that can be used in the narrative memo.

Stakeholders in *[[insert name of XYZ jurisdiction]]* wish to improve care provided to youth entering the juvenile justice system. Many youth and their families come into contact with multiple law enforcement, juvenile justice, social welfare and treatment systems, and may do so repeatedly over time. Stakeholders agree that an integrated, multi-system approach offers the best hope for providing for the often complex needs of these youth and when appropriate their families.

One barrier to an integrated approach is a perceived inability to share pertinent information across systems. There are many reasons that information does not get shared. These reasons range from the constitutionally protected interests of the child, to state and federal laws structuring the sharing of information, to simple confusion and misapprehension about what confidentiality laws actually say.

This memorandum provides guidance regarding state and federal laws that apply to information sharing in the *[[insert name of XYZ jurisdiction]]* juvenile justice system. It builds from a mapping exercise conducted earlier that examined the different types of information that might be shared at various points within the juvenile process.

In providing this analysis, several assumptions are made.

- Juveniles who become involved in the juvenile justice process have important constitutional rights to counsel and to avoid self-incrimination. In addition, the adolescent may face the risk of having his or her case transferred to adult court. Given these facts, there should be a conclusive presumption against sharing any information that is or might be offense-specific unless state law provides for the release of such information post-disposition.
- As a general rule, the consent of the youth, or if applicable the consent of the youth's parents or caregivers, should precede the release of most information, including treatment information, child welfare information, and education records. While the formal age of consent in this state is *[[fill in age]]*, youth as young as *[[fill in age]]* should be given the opportunity to provide consent.
- When information is shared, the principle of minimally necessary should apply. That is, only that information required by the recipient for the decision at hand should be made available.
- Despite these cautions, every effort should be made to use those mechanisms available to share information across systems in a legally appropriate manner. These include the use of court orders, business associate agreements, and applicable state law provisions permitting the sharing of information.

Federal and State Constitutional Guarantees

[[This section should discuss constitutional guarantees applicable to the juvenile justice process, including at a minimum the right to counsel and the right to avoid self-incrimination.]]

Law enforcement records

This section describes state laws regarding the confidentiality and disclosure of law enforcement records, with a particular focus on those relevant to investigations of juveniles.

[[This section should discuss those state and federal laws governing access by law enforcement to particular types of records, including treatment information, child welfare and social services records, and education records.]]

This section should also describe the laws governing access by other agencies and individuals to law enforcement records as well as restrictions on the recipients' use of this information.

In particular, in discussing information flowing to and from law enforcement, note the following:

- Whether state or federal law explicitly requires consent before disclosure;
- Whether the youth can give consent or whether it must be provided by the caregiver and, in the latter case, whether the youth's assent is required;
- Whether there are circumstances in which this information may be disclosed without consent, for example, in an emergency; and
- Whether there are limitations, restrictions, or prohibitions on the use or reuse of this information by the recipient.]]

Intake records

This section discusses laws governing the confidentiality and disclosure of information gathered during the intake process.

[[This section should discuss those state and federal laws governing access by intake to particular types of records, including treatment information, child welfare and social services records, and education records.

This section should also describe the laws governing access by other agencies and individuals to intake records as well as restrictions on the recipients' use of this information.

In particular, in discussing information flowing to and from intake, note the following:

- Whether state or federal law explicitly requires consent before disclosure;
- Whether the youth can give consent or whether it must be provided by the caregiver and, in the latter case, whether the youth's assent is required;
- Whether there are circumstances in which this information may be disclosed without consent, for example, in an emergency; and
- Whether there are limitations, restrictions, or prohibitions on the use or reuse of this information by the recipient.]]

Detention Records

This section discusses laws governing the confidentiality and disclosure of information held by a detention facility or other facility that has physical custody of a juvenile pending resolution of the juvenile's case.

[[This section should discuss those state and federal laws governing access by the detention facility to particular types of records, including treatment information, child welfare and social services records, and education records.

This section should also describe the laws governing access by other agencies and individuals to detention records as well as restrictions on the recipients' use of this information.

In particular, in discussing information flowing to and from the detention facility, note the following:

- *Whether state or federal law explicitly requires consent before disclosure;*
- *Whether the youth can give consent or whether it must be provided by the caregiver and, in the latter case, whether the youth's assent is required;*
- *Whether there are circumstances in which this information may be disclosed without consent, for example, in an emergency; and*
- *Whether there are limitations, restrictions, or prohibitions on the use or reuse of this information by the recipient.]*

Juvenile Court Records

This section discusses laws governing the confidentiality, disclosure, admissibility and use of information generated in the adjudicatory and disposition stages of a juvenile case. This information include but are not limited to competency evaluations; pre-disposition reports; progress reports and other information from the disposition placement agency and aftercare agency, if applicable; as well as the record of the actual adjudicatory, disposition and disposition review hearings.

[[This section should address the following issues:

- *What laws govern disclosure of various types of records to the individual preparing the pre-disposition report or the competency evaluation (see next section on treatment and education records);*
- *What laws govern disclosure of the pre-disposition report or competency evaluation by the preparer to the court? To counsel of record?*
- *What laws govern the disclosure of progress reports and other records (i.e., treatment and education records; see next section) to the court? To counsel of record?*
- *Whether state or federal law explicitly requires consent before disclosure of any of these records;*
- *Whether the youth can give consent or whether it must be provided by the caregiver and, in the latter case, whether the youth's assent is required;*
- *Whether there are circumstances in which this information may be disclosed without consent, for example, in an emergency;*
- *Whether there are limitations, restrictions, or prohibitions on the use or reuse of this material;*
- *Whether laws or court rules govern the admissibility of any of this information in a hearing in the pending juvenile case; in other proceedings; and*
- *Whether the juvenile court hearing and records are open to the public, the media, or others.]*

Treatment and education records

This section discusses laws governing the confidentiality, disclosure, admissibility and use of physical health records, mental health treatment records, substance abuse records, and school records.

[[This section should discuss whether and under what circumstances this information may be shared with the agencies and individuals described in the preceding sections, and any restrictions on the recipients' use of the information including its admissibility/inadmissibility in hearing. It should include (but not be limited to) discussion of applicable state and federal laws with regard to:

- *Health care records (see HIPAA provisions and applicable state laws);*
- *Mental health treatment records (see HIPAA provisions and applicable state law);*
- *Substance abuse treatment records (see federal regulations at 42 CFR, Part 2 and applicable state law); and*
- *School records (see FERPA and applicable state laws).*

In particular, note

- *Whether state or federal law explicitly requires consent before disclosure of any of these records;*
- *Whether the youth can give consent or whether it must be provided by the caregiver and, in the latter case, whether the youth's assent is required;*
- *Whether there are circumstances in which this information may be disclosed without consent, for example, in an emergency;*
- *Whether other types of vehicles (i.e., uniform consent forms, business associate agreements under HIPAA, qualified service organization agreements under 42 CFR, Part 2, etc.) are available to facilitate information sharing;*
- *Whether there are limitations, restrictions, or prohibitions of the use or reuse of this material; and*
- *Whether laws or court rules govern the admissibility of any of this information in a hearing in the pending juvenile case; in other proceeding.]]*

Summary

[[The summary section should provide the primary conclusions reached in the course of the mapping and legal analyses. It would include a summary of

- *The circumstances in which information can be shared only with the consent of the individual or his or her authorized representative;*
- *A summary of what (and in what circumstances) information may be shared absent consent under an exception to the general consent requirement; and*

- *A summary of the other types of vehicles (i.e., uniform consent forms, business associate agreements under HIPAA, qualified service organization agreements under 42 CFR, Part 2, etc.) available to facilitate information sharing.]*