



TEMPLATE FOR PREPARING A MEMORANDUM OF UNDERSTANDING REGARDING PROHIBITED AND PERMITTED DISCLOSURES AND USES OF PERSONALLY IDENTIFIABLE INFORMATION OF YOUTH IN THE JUVENILE JUSTICE SYSTEM

Instructions to users:

This template is designed to assist stakeholders in developing a memorandum of understanding (MOU) for Category One information sharing. 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 memorandum of understanding.

Note that federal confidentiality laws such as HIPAA (which governs health care records), FERPA (pertaining to education records) and the federal drug & alcohol treatment regulations have specific provisions regarding what information can and cannot be disclosed to various entities in the juvenile justice system and to third parties generally. (See the Federal Law Overview chapter in the main volume of the Tool Kit.) Various state statutes and court rules may also have similar provisions, including rules of evidence regarding the admissibility/inadmissibility of information at hearings. For this reason, it is highly recommended that stakeholders complete the mapping worksheet in the Tool Kit prior to and in preparation for developing an MOU.

This Memorandum of Understanding (MOU) is entered into by the following parties and represents the parties' agreement regarding information sharing at various decision points within the juvenile justice process.

I. PARTIES

The following parties are signatories to this Memorandum of Understanding:

[[Note to user: the needed signatories to an MOU will vary depending on the scope of the information sharing project (for example, whether it is at the state versus local level) as well as the configuration of agencies in your jurisdiction. The basic rule of thumb is that

any agency that will be either disclosing or receiving information will be a necessary signatory, as well as the legal representatives of the youth and families whose information will be shared as part of the project. Below is a partial list of possible participants in an information sharing project.]]

Juvenile Court

Juvenile Probation Office

District Attorney's Office

Public Defender's Office

Mental Health Department (and/or Substance Abuse and/or Behavioral Health)

Juvenile Justice Department/Department of Youth Corrections

Social Services/Child Welfare Department

School District

Treatment Providers *[[note to user: this is a broad category that can include hospitals, behavioral health services, private residential providers for adjudicated youth, community providers for adjudicated youth, etc.]]*

Law Enforcement Agency

II. LEGAL AUTHORITY

The parties enter this agreement pursuant to authority granted in *[[note to user: insert here relevant state statutes; if none exist, indicate that the parties are acting pursuant to general authority vested in them, or other authority as applicable]]*

III. PURPOSES

[[Note to user: the parties may describe the purposes of the MOU in a variety of ways and in different levels of detail; the following is simply one example.]]

WHEREAS, the privacy and confidentiality of information regarding a youth in the juvenile justice system is an important legal and ethical principle, and

WHEREAS, appropriate sharing of information can improve decision-making and care involving the youth, and

WHEREAS, the parties agree that information should be shared only when it presumptively will be to the youth's benefit, and

WHEREAS, the parties agree that information identifying the youth should be shared only to the degree it is necessary for the recipient of the information to perform his or her role, and

WHEREAS, youth who are charged with committing delinquent acts and /or criminal acts are guaranteed the rights against self-incrimination and to counsel pursuant to the Fifth and Sixth Amendments of the United States Constitution and our state constitution

NOW, THEREFORE, the parties agree that this Memorandum of Understanding reflects their understanding and agreement as to the permitted and prohibited sharing and uses of information in the juvenile justice process.

IV. INVESTIGATION/INTAKE

This part describes the disclosure and use of information to and by *[[note to user: insert here the name(s) of the relevant law enforcement agency]]* and *[[note to user: insert here the name of the agency that performs the intake function.]]*

Law enforcement

*[[Note to user: describe here information that the other signatories to the MOU will **provide to** law enforcement conducting an investigation. This section should specify*

- *exactly what information shall and shall not be disclosed to law enforcement and under what circumstances (i.e., in response to a subpoena or court order);*
- *the legal authority that permits or prohibits the disclosure;*
- *the permitted and prohibited uses of the information by the law enforcement agency; and*
- *any provisions regarding the future destruction of information gathered.]]*

*[[Note to user: describe here information that the other signatories to the MOU **will seek from** law enforcement during or at the conclusion of an investigation. This section should specify*

- *exactly what information shall and shall not be disclosed to the other party and under what circumstances (i.e., in response to a subpoena or court order);*
- *the legal authority that permits or prohibits the disclosure; and*
- *the permitted and prohibited uses of the information by the recipient agency and the legal provisions that govern such.]]*

Intake

The intake function is performed by *[[note to user: insert here the name of the agency that conducts intake of a youth at the front-end of the juvenile court pipeline.]]*

*[[Note to user: describe here information that the other signatories to the MOU will **provide to** intake personnel. This section should specify exactly*

- *what information shall and shall not be disclosed to intake personnel and under what circumstances (i.e., in response to a subpoena or court order or signed release by youth and/or his parents);*
- *the legal authority that permits or prohibits the disclosure;*
- *the permitted and prohibited uses of the information by intake personnel; and*
- *any provisions regarding the future destruction of information gathered by intake personnel.]]*

*[[Note to user: describe here information that the other signatories to the MOU **will seek from** intake personnel during or at the conclusion of an investigation. This section should specify exactly*

- *what information shall and shall not be disclosed to the other party and under what circumstances (i.e., in response to a subpoena or court order);*
- *the legal authority that permits or prohibits the disclosure; and*
- *permitted and prohibited uses of the information by the recipient agency.]]*

[[Note to user: to the extent that intake personnel are conducting any mental health, substance abuse, or risks/needs screening or assessment as part of the intake process, the MOU should specify the permitted and prohibited disclosure and use of that information by intake and other signatories.]]

V. ADJUDICATION

This part describes the disclosure and use of information for the adjudicatory hearing and, upon adjudication, the preparation of the pre-disposition study.

Adjudicatory hearing

*[[Note to user: describe here information that the other signatories to the MOU will **provide to** the court for the adjudicatory hearing. This section should specify exactly*

- *what information shall and shall not be disclosed to the court, under what circumstances (i.e., in response to a subpoena or court order), and the timing of the disclosure (i.e., pre-adjudication versus post-adjudication), including the legal authority that permits or prohibits disclosure;*
- *the circumstances and timing of disclosure of the information to the youth's defense counsel and the prosecution, including the governing legal authority;*
- *the legal authority governing the admissibility/inadmissibility of the information in an adjudicatory hearing; and*
- *any provisions regarding the future destruction/expungement of information contained in the juvenile court record.]]*

[[Note to user: describe here whether and to what extent juvenile court proceedings and their records will be open to public inspection, including any relevant legal authority.]]

Pre-disposition study

The pre-disposition study is performed by *[[note to user: insert here the name of the agency that gathers information for and prepares the pre-disposition study.]]*

*[[Note to user: describe here information that other signatories to the MOU will **provide to** the agency preparing the pre-disposition study. This section should specify exactly*

- *what information shall and shall be disclosed to the agency preparing the pre-disposition study and under what circumstances (i.e., in response to a subpoena*

- or court order or signed release by youth and/or his parents), including the legal authority that permits the disclosure; and*
- *the circumstances and timing of disclosure of the pre-disposition study to the court, the youth's defense counsel and the prosecution, including the governing legal authority;]]*

*[[Note to user: describe here information that other signatories to the MOU in addition to the court, defense counsel and prosecution **will seek from** the agency preparing the pre-disposition study. This section should specify exactly*

- *what information shall and shall not be disclosed to the other party and under what circumstances (i.e., in response to a subpoena or court order);*
- *the legal authority that permits or prohibits the disclosure; and*
- *the permitted and prohibited uses of the information by the recipient agency.]]*

[[Note to user: to the extent that the agency preparing the pre-disposition study is conducting any mental health, substance abuse, or risks/needs screening or assessment as part of the process, the MOU should specify the permitted and prohibited disclosure and use of that information by the signatories.]]

VI. Disposition

Disposition Hearing

This part describes the disclosure and use of the pre-disposition study prepared for a youth who has been adjudicated delinquent.

[[Note to user: describe here how the pre-disposition report will be used at the disposition hearing including

- *the legal authority governing the admissibility/inadmissibility of the pre-disposition study in a disposition hearing; and*
- *any provisions regarding the future destruction/expungement of the disposition report in the juvenile court record.]]*

[[Note to user: describe in details who shall receive the court's final disposition order and copies of the disposition report.]]

[[Note to user: describe here whether and to what extent juvenile court proceedings and their records will be open to public inspection, including any relevant legal authority.]]

Reports to Court/Post-disposition Review Hearings

As part of a youth's disposition, the youth may be served by one or more of the following agencies: *[[note to user: insert here the various agencies to which youth can be ordered by the court as part of their disposition, i.e., juvenile probation, state or local correctional facilities, private residential facilities, treatment facilities or providers,*

community-based programs, etc.]]. This part describes the disclosure and use of reports and evaluations regarding the youth and his or her progress in the program.

[[Note to user: describe here the reports that will be prepared by the service providers and submitted to the court and its designee. This section should specify

- what agency will be designated to receive these reports on behalf of the court;*
- the circumstances (i.e., by court order, subpoena, and/or release signed by youth and/or youth's family) and timing of disclosure of the reports to the court and its designee, the youth's defense counsel and the prosecution, including the governing legal authority;*
- what information shall and shall not be included in the report, including the governing legal authority;*
- the permitted and prohibited uses of the information by the recipients;.*
- the legal authority governing the admissibility/inadmissibility of the report contents in any post-disposition review hearing; and*
- any provisions regarding the future destruction/expungement of these reports in the juvenile court record.]]*

[[Note to user: to the extent that the service providers are conducting any mental health, substance abuse, or risks/needs screening, assessment or treatment as part of their program, the MOU should specify the permitted and prohibited disclosure and use of that information by the signatories.]]

VII. ISSUES THAT THIS MOU DOES NOT COVER

[[Note to user: describe here any specific issues which the terms of this MOU do NOT cover, including any terms that will be subject to negotiation by the MOU interagency management team responsible for administration of the MOU. See next part.]]

VIII. ADMINISTRATION OF THE MOU

This part describes the membership and operation of the interagency team that will oversee administration of the MOU.

An interagency management team consisting of the following individuals shall govern administration of this MOU: *[[Note to user: list here the individuals by title who will serve on this team, or the already-existing body that will perform this function.]]*

The interagency management team shall operate as follows: *[[Note to user: describe here the protocol for the team including regular meetings and communications, mechanism for seeking amendment of the MOU, etc.]]*

The following individuals or departments within each signatory are authorized to *disclose* information to and *receive* information from other signatories in compliance with the terms of this MOU: *[[Note to user: list here the individuals by title or departments within*

each signatory that will be actually carrying out the information sharing described in the MOU]]

The members of management team will be responsible for monitoring their respective agencies' compliance with the terms of the MOU.

[[Note to user: this part could also describe any training that the signatories agree to hold and participate in any internal auditing activities that the signatories agree to undertake to monitor compliance with the MOU, etc.]]

IX. DISPUTE RESOLUTION PROCESS

This part describes dispute resolution mechanism that the signatories agree to follow in order to address any complaints about the interpretation or implementation of the requirements of the MOU.

[[Note to user: describe here the dispute resolution process including

- *the interagency entity that will review and resolve any disputes (this could be the interagency management team or a separate group);*
- *an agreement as to how this interagency entity will investigate disputes and formulate recommendations for their resolution; and*
- *the individual (named by title) within each agency who will be responsible for implementing the recommendations of the interagency entity to resolve the dispute.]]*

X. GRIEVANCE AND REVIEW PROCESS

This part describes the grievance process that youth and their families may pursue if they believe that there has been a violation of the terms of the MOU or applicable federal or state confidentiality laws; and the review process that allows youth and families to review records subject to sharing under the MOU and seek amendment of any inaccurate information.

[[Note to user: describe here the grievance process that youth and their families may pursue if they believe that there has been a violation of the terms of the MOU or applicable federal or state law governing the disclosure and use of information subject to the MOU. Include:

- *a process by which the individual (by title) within each signatory will be responsible for receiving and investigating complaints from youth and their families and reporting this information to the interagency management team;*
- *a description of how remediation will be developed and undertaken if a complaint is substantiated.]]*

[[Note to user: describe here a process by which youth and their families can review records subject to sharing under the MOU and can seek to amend inaccurate information contained therein.]]

XI. DURATION OF THE MOU

This MOU is in effect *[[Note to user: describe here the start date/event and end date/event, if of limited duration, of the MOU.]]*

XII. SIGNATORIES

In witness whereof the parties have hereto have executed this Memorandum of Understanding.

[[Note to user: if appropriate you may add a statement to the effect that legal counsel for each signatory has reviewed and approved the MOU.]]

Signature lines for each party

ATTACHMENTS

[[Note to user: it is recommended that you attach to the MOU any universal consent forms, model court orders or other documents that the signatories have agreed to use, as described in the text of the MOU, for the information sharing project.]]