



---

## WORKSHEET TO ANALYZE EXISTING STATE STATUTES AND PROPOSED LEGISLATION FOR INFORMATION SHARING BETWEEN YOUTH-SERVING AGENCIES

---

*This worksheet is designed to provide individuals with a checklist of questions to consider when evaluating their own state's information sharing laws or proposed legislation on information sharing. Many of the points in the worksheet, however, contemplate implementation procedures for the information sharing policy described in the statute. The exact details of implementation may not be found within the text of the statute or proposed legislation, but in implementing procedures separately published or in comments or annotations to the statute. This worksheet can be used when thinking about drafting new legislation or to evaluate current legislative efforts on information sharing policies. The points of consideration are categorized to facilitate user-friendliness.*

*In addition to passing legislation, there are also other mechanisms for implementing information sharing policies, including drafting memoranda of understanding between youth-serving agencies. A similar worksheet to analyze memoranda of understanding can be found on the Tool Kit's CD. Also, the chapter entitled Examples of State Information Sharing Statutes in the main volume contains examples of model statutory language from various states related to the protections described in the worksheet.*

---

### Participating Agencies

1. Which agencies will participate in the information sharing policy created by the statute?
2. Does the statute specify the individuals (by title) or departments within each agency that will be authorized to *disclose* information to another participating agency?
3. Does the statute specify the individual(s) (by title) or departments within each agency that will be authorized to *receive* information from another participating agency?
4. Does the statute specify the individual (by title) within each participating agency who will be responsible for ensuring that the agency only discloses and uses information in compliance with the terms of the statute and other applicable federal and state laws?
5. Does the statute specify the individual (by title) within each participating agency who will be responsible for receiving and resolving complaints of improper

- disclosure or use of information in violation of the terms of the statute and other applicable federal and state laws?
6. Does the statute create a conflict resolution mechanism to which participating agencies can submit complaints about the interpretation or implementation of the requirements of the statute?
  7. Does the statute mandate training for personnel in the participating agencies on the requirements of the statute and other applicable federal and state laws with regard to information disclosure and use? If yes, which agencies are responsible for developing and conducting the trainings? If yes, will the training be offered on a regular basis to ensure that new employees of participating agencies are trained?
  8. Does the statute create an audit procedure to assess each participating agency's compliance with the requirements of the statute and other applicable federal and state laws? If yes, what agency is responsible for conducting the audit? How often will the audit be performed? Will the results of the audit be publicly available?

### **Applicable Federal and State Laws**

9. Does the statute describe all the other applicable federal and state laws that govern the internal maintenance and handling, including security protections and technological requirements, of information held by each participating agency?
10. Does the statute list all the other applicable federal and state laws that govern the disclosure of information by each participating agency to other participating agencies as well as third parties outside the scope of the state statute?
11. Does the statute list all the applicable federal and state laws that govern the receiving agency's
  - a. maintenance and handling of the information, including security protections and technological requirements?
  - b. use of the information?
  - c. re-disclosure of received information to other participating agencies and third parties outside the scope of the state statute?
12. Does the statute specify in which instances the receiving agency becomes subject to the same federal and state laws regarding information as the disclosing agency?

### **Procedures for Disclosure of and Access to Information**

13. Is the information sharing scheme created by the statute *consent driven*, meaning that the person who has legal authority over the information (usually the youth and/or his/her parent/legal guardian)

- a. must give prior written consent before any participating agency may disclose information?
  - b. has the option to refuse consent for disclosure to all or some of the participating agencies?
14. Does the statute create a *common process for obtaining informed consent* for the disclosure of information that provides verbal and written notice to the youth and/or parent/legal guardian, in understandable language, of the following:
- a. The reason why the youth and/or parent/legal guardian is being asked to authorize the disclosure of information.
  - b. The permitted and prohibited uses of the disclosed information.
  - c. The rules regarding use and re-disclosure to which the receiving agency is subject.
  - d. That the youth and/or parent/legal guardian has the option to refuse consent for disclosure to all or some of the participating agencies, and the consequences, if any, of refusing consent.
  - e. The way by which the youth and/or parent/legal guardian can revoke consent for disclosure.
  - f. The grievance procedure for suspected improper disclosure or use of information in violation of the terms of the proposed legislation/protocol and other applicable federal and state laws.
  - g. The penalties to which the participating agencies are subject for the improper disclosure or use of information in violation of the terms of the proposed legislation/protocol and other applicable federal and state laws.
15. Does the statute provide for a *universal written consent form* for use by all participating agencies that complies with applicable federal laws and regulations and contains at least the following elements:
- a. Identifies the individual who is the subject of the information.
  - b. Identifies the agency that is disclosing the information.
  - c. Identifies the agency that is receiving or accessing the information.
  - d. Identifies with sufficient specificity the information that will be disclosed.
  - e. Identifies with sufficient specificity the *permitted* and *prohibited* uses of the disclosed information.
  - f. States that the youth and/or legal guardian has the option to refuse consent for disclosure to all or some of the participating agencies, and how/where on the consent form the youth and/or parent/legal guardian can specify which agencies s/he does not authorize to receive or access information.
  - g. Describes how the youth and/or parent/legal guardian can revoke consent for disclosure.
  - h. Describes the grievance procedure for suspected improper disclosure or use of information in violation of the terms of applicable federal and state laws.

- i. Describes the penalties to which the participating agencies are subject for the improper disclosure or use of information in violation of the terms of applicable federal and state laws.
  - j. States that the subject of the information has been provided a copy of the signed consent form for his/her records.
  - k. States the expiration date or event of the consent form.
  - l. Dated signature of the youth and/or parent/legal guardian.
16. For each participating agency, does the statute describe with sufficient specificity the information that the agency is *permitted* to disclose without the prior written consent of the youth and/or parent/legal guardian?
17. For each participating agency, does the statute describe with sufficient specificity the information that the agency *must* disclose without the prior written consent of the youth and/or parent/legal guardian to comply with other legal mandates (i.e., mandated child abuse reporting laws)?
18. Does the statute contain a statement that all participating agencies will only access information in accordance with the terms of the statute as well as other applicable federal and state laws?
19. If the statute allows a participating agency that does not have the youth's (or parent/legal guardian's) consent to disclose information to comply with a court order, does it provide
- a. That the agency must notify the youth and/or parent/legal guardian and the youth's legal counsel about the court order prior to disclosing any information?
  - b. That the youth's lawyer has the opportunity to appear in court to challenge the court order?

### **Permitted and Prohibited Uses of Information**

20. Does the statute state the purposes for the information sharing?
21. For each participating agency, does the statute describe with sufficient specificity the *permitted* uses of information that it receives?
22. For each participating agency, does the statute describe with sufficient specificity the *prohibited* uses of information that it receives?
23. Does the statute state with sufficient specificity which information is admissible and is inadmissible as evidence in any court proceeding involving the youth, including hearings in delinquency proceedings, criminal prosecutions, and child welfare cases?

## **Consumer Protections**

24. Does the statute specify that the youth and/or parent/legal guardian has the option to refuse consent for disclosure to all or some of the participating agencies?
25. Does the statute specify how the youth and/or parent/legal guardian can access information and obtain copies?
26. Does statute provide a procedure by which the youth and/or parent/legal guardian can seek to amend inaccurate information?
27. Does the statute create a grievance procedure for suspected improper disclosure or use of information in violation of the terms of the statute and other applicable federal and state laws?
28. Does the statute impose penalties on the participating agencies for improper disclosure or use of information in violation of the terms of the statute and other applicable federal and state laws?
29. Does the statute create a mechanism by which consumers can dispute policies and procedures created by the participating agencies in implementing and executing the information-sharing scheme created?

## **Review and Approval for Proposed Legislation only**

30. Has the proposed legislation been reviewed by legal counsel for each of the participating agencies? Have all the participating agencies approved the legislation? If no, what are their specific concerns?
31. Has the proposed legislation been reviewed by legal counsel for the youth who are the subject of the information? By legal counsel for the parents/legal guardians of the youth? Has legal counsel for the youth approved the proposed legislation? If no, what are their specific concerns?