

**Protocol on Appropriate Policies and Procedures in Mental Health
Screening, Assessment, and Treatment of Youths in Detention**

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I. Introductory Statement—Key Considerations

The purpose of the Indiana Juvenile Mental Health Screening, Assessment and Treatment Pilot Project is to ensure that youth are screened and appropriate mental health services are initiated in secure detention facilities. The type of information elicited in the screening process, which typically will occur in the detention center by detention center staff, is medical in character, bearing directly on the mental health status of the youth and the potential need for mental health treatment. This same information, which is elicited by a series of questions asked during the screening process, has the potential to compromise a youth's due process rights against self-incrimination if the information is shared or disclosed for purposes other than for the purpose of the Pilot Project, *i.e.*, providing mental health services to youth who need them in detention.

Current laws do not provide clear guidelines on how to maintain the confidential character of the information in the detention center context. This protocol recognizes that mental health screening is essential to identifying youth in detention who need mental health services, and thus adopts a mental health records model that incorporates as best practices the confidentiality protections found in state law (I.C. 16-39-2) and federal law (the Health Insurance Portability and Accountability Act of 1996 (HIPAA)).

This protocol requires that county participants maintain screening records as confidential medical records and not as court records (which typically can be shared among court agencies without obtaining consent, pursuant to Indiana Administrative Rule 9) or as detention-related records (which are generally accessible to the public pursuant to I.C. 31-39-3-3). Thus, this protocol has been developed to provide the most protection for records of the screening, assessment, and mental health treatment of youth in secure detention, adopting as best practices the standards embodied in state law (I.C. 16-39-2) and federal law (HIPAA)). As this protocol requires, the Business Associate Agreement will obligate the parties to comply with specified confidentiality requirements.

Still, this protocol recognizes that assessment and treatment of mental health disorders of youth in the juvenile justice system is difficult for several reasons. First, juvenile detention centers typically are not "providers" of mental health services, and the youth in the centers are typically not "patients" of the detention centers. Yet, once a youth is referred for assessment or treatment, those who provide those services are such "providers." Accordingly, the providers of these mental health services – and the records they generate – would be regulated by applicable confidentiality laws. Second, the applicable law may not be clear because there are two different laws (state and federal) that can apply to mental health records. The particular law which applies will depend on a given fact situation, especially in light of the fact that counties will vary in how they provide for screening, and referrals for assessment and treatment of youth in detention. Third, it may not always be clear whether a particular record is or is not a "mental health record" subject to protection by applicable law. As discussed below, screening records of a youth in detention may or may not be or become part of the

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youth's mental health record. Regardless, these protocols require that screening records are to be held confidentially no matter where they are held, whether that is by the mental health provider as part of the "mental health record," or at the detention facility, as part of the youth's "medical packet or file." The protocols below outline procedures for limited disclosure, consistent with the confidential nature of the information.

Finally, some youths needing mental health services may also need alcohol or drug treatment. Alcohol and drug abuse records are governed by another federal statute, 42 CFR Part 2. This federal law has stringent confidentiality requirements as well, but also some significant differences from the state and federal laws dealing with mental health records, including that the juvenile is the owner of his or her own alcohol or drug records for the purposes of release. This protocol does not address requirements for alcohol or drug treatment records.

The focus of the Pilot Project is on the mental health needs, pre-adjudication, of youth in secure detention. However, all youth who enter secure detention, pre- or post-adjudication, will be screened according to the protocols. Further, this protocol addresses procedures designed to ensure that the mental health needs of youth in secure detention are being met. This protocol is not intended to address, and does not address, how the judicial system obtains mental health information in the adjudication phase of juvenile hearings, e.g., determinations of insanity or lack of competency. Finally, this protocol setting forth agreed best practices is not intended to create, and does not create, statutory requirements that do not exist under law. In the event of concern about whether or which law applies in a particular situation, participating detention centers should seek appropriate guidance. By participating in the Pilot Project, however, the counties are agreeing to follow the policies and procedures designed to maximize the confidentiality of records of mental health screening, assessment, and treatment of youth while in detention, as set forth in this protocol.

This protocol focuses on three key considerations that participating detention centers should keep in mind in connection with the Pilot Project:

- A. **Patient-focused.** The Pilot Project is patient-focused – the primary purpose of the project is to ensure that youths in secure detention obtain any necessary mental health treatment. To ensure this, youths in secure detention are statutorily protected against having statements they make in screening, assessment, and treatment used as evidence against them on the issue of whether they committed a delinquent act or a crime.
- B. **Limited disclosure.** In accordance with the underlying policy of Indiana and federal law, especially HIPAA, when using or disclosing mental health information about youths in secure detention, detention centers should limit the use and disclosure of mental health information to the minimum extent necessary to accomplish the intended purpose of the use or disclosure. Guidelines to accomplish this are set out in the protocol below.

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- C. **Collaboration.** Obtaining any necessary mental health treatment for youths in detention is a collaborative process that may, as necessary, involve multiple parties, including the youth, his or her parent(s) or guardian, the youth's attorney, the detention facility, probation, the prosecutor, and the judge.

Participating counties will be required to enter into a memorandum of understanding (MOU) with the Pilot Project Director acknowledging their agreement to follow the terms of this protocol. For each participating county, the MOU will be signed by authorized representatives of the court, the detention center, participating service providers, the prosecutor's office, probation, and the public defender's office or defense counsel. Likewise, each county will be required to enter into a Business Associate Agreement signed by the same county representatives as to the MOU, as explained below in IV.E.

II. Screening Process

A. Description of Screening Process

1. Each county's secure juvenile detention center ("Site") will administer the MAYSI-2 screening tool for youth in detention. Each Site has received, reviewed, and approved the use of the MAYSI-2 screening tool. See *MAYSI-2 Screening Instrument* (Related Document A).
2. Each Site will designate and arrange for the training of the individuals either within or outside the detention facility who will administer the MAYSI-2 to youth upon their admission to the detention facility. In accordance with Pilot Project's "train the trainer" program, the Site Coordinator will be trained by the Pilot Project, and then the Site Coordinator will provide training to detention center staff. The Site Coordinator will provide training records of all staff administering the MAYSI-2 to the Pilot Project Director.
3. The juvenile detention facility¹ will administer the MAYSI-2 screen to all youth entering secured confinement. If a youth was screened by the detention facility within the two weeks immediately before re-entry, the detention facility will not re-screen the youth (as long as the initial screen is still on file). See *Protocols for the Administration of the MAYSI-2* (Related Document B).

¹ This protocol addresses screening of youth in secured confinement. The Advisory Board encourages counties to screen youth in unsecured shelters, but the screening of youth outside of secured confinement is not part of the Pilot Project.

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4. All youth entering juvenile detention will receive the MAYSI-2 screen as soon as possible and not later than 24 hours after entry, unless the staff determines that it is inappropriate for medical or impairment reasons to screen a particular youth in the first 24 hours. See *Protocols for the Administration of the MAYSI-2* (Related Document B).
5. All or part of the MAYSI-2 screen will not be administered to any youth who specifically declines to be screened. Parental consent is not needed for this screening. Indiana Juvenile Detention Standards, 210 IAC 6-3-4.238 (mental health and suicide screening required upon entry). Reasons for not administering the screen should be documented and reported to the Site Coordinator for further reporting to the Pilot Project Director. The detention facility is expected, however, to follow precautionary measures, such as increased observation, and pursue efforts to seek parental/guardian involvement, if mental health concerns are apparent with resistant youth. See *Record of Youth Not Administered MAYSI-2* (sample form) (Related Document C).
6. The individual administering the MAYSI-2 screen to youth in the detention facility will be trained to provide information to the youth about the screening process, prior to screening and in language that the youth can understand. This information will explain possible and prohibited disclosures and uses of the information and statements gathered during the screen, including what access the youth will or will not have to the results of the MAYSI-2 screen (defined below in section II.B.). See *Guidelines for Introducing the MAYSI-2 to Youth* (Related Document D).
7. The MAYSI-2 should not replace other suicidal screening that is conducted when youth first enter the facility. Indiana Juvenile Detention Standards, 210 I.A.C. 6-3-4.238.

B. Permissible and Prohibited Disclosure and Uses of Information and Statements in Screening Process

1. Each county will identify the detention facility director or his/her designee responsible for maintaining the records of the results of the MAYSI-2 screen, including any information collected and statements made incident to the screen. These documents will collectively be referred to as the “screening records.”

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2. It is not clear under current law whether screening records in and of themselves are “mental health records.”² Nevertheless, screening records typically become part of a youth’s mental health records if the youth is referred for a mental health assessment or treatment. Regardless, screening records contain mental health information which is confidential in nature. Accordingly, screening records of each youth in detention, regardless of whether there is a referral for assessment and/or treatment, will be maintained confidentially in the youth’s “medical packet or file.” As set forth below in this Section, the results of the MAYSI-2 screen, *i.e.*, the scores of the MAYSI-2, will be disclosed only to the degree necessary (following this protocol’s limited disclosure precepts) to obtain a mental health assessment and/or mental health treatment for youths in detention. The results of the MAYSI-2 screen are defined as the list of scales on the MAYSI-2 on which the youth scored at either the “caution” or “warning” levels.
3. For each youth in detention, within two weeks of the youth’s release from the detention facility, the screening records, including the results of the MAYSI-2 screen, should be either maintained confidentially in a youth’s medical packet, or transmitted in their entirety (all electronic and hard copy files) to the detention facility’s clinic or health care provider, where the youth’s health care file is maintained. Regardless of whether the screening results in a mental health assessment, the screening records will be treated as mental health records, and therefore should be maintained confidentially for seven years in accordance with I.C. 16-39-2-2. Each detention facility will prepare a procedure to ensure that each youth’s MAYSI-2 screening records are maintained (or transmitted) as required by this protocol.
4. If there are no warnings or cautions that trigger the need for a mental health assessment under the county’s protocol, the results of the MAYSI-2 screen will remain with the detention facility director or his/her designee (Site Coordinator) in the youth’s confidential medical packet or until they are transmitted with the rest of the screening records to the clinic or health care provider, as explained in II.B.3 above.
5. If there are warnings and/or cautions that trigger the need for a mental health assessment under the county’s protocol, the results of the MAYSI-2 screen will be shared with the youth’s parent(s) or guardian. For youth under age 18, the parent(s) or guardian is the

² “Mental health records” are defined in Indiana law as “recorded or unrecorded information concerning the diagnosis, treatment, or prognosis of a patient receiving mental health services . . . The term does not include alcohol and drug abuse records.” I.C. 16-18-2-226.

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authorized individual to exercise a youth's access rights. I.C. 16-39-2-9.

6. The results of a MAYSI-2 screen should not be shared with the youth without the consent of the youth's parent(s) or guardian. This requirement, however, should not prevent or interfere with any necessary follow-up interviewing or screening of the youth.
7. When a mental health assessment for a youth is indicated under the county's protocol, the detention facility will notify the youth's parent(s) or guardian to obtain any necessary consent to refer the youth for an assessment. See *Consent of Parent or Guardian* (sample form) (Related Document E). If the detention center does not have the necessary consent, see Section III.A below.
8. If there are warnings and/or cautions that trigger the need for a mental health assessment under the county's protocol, once consent has been obtained, the detention facility will provide the results of the MAYSI-2 screen to the mental health provider doing the assessment and any mental health or medical provider involved in the treatment or provision of care of the youth.
9. Participating Counties are required to enter into a Business Associate Agreement with mental health provider(s) and authorized representatives of juvenile justice agencies at the county level, as explained in IV.E. Without a Business Associate Agreement (sample form) (Related Document J), the results of a MAYSI-2 screen may not be shared with the youth's attorney, probation, the prosecutor, and/or the judge without the consent of the youth's parent(s) or guardian. See Section IV.E below. In accordance with best practices, in an effort to keep youth's families involved, detention centers are expected to attempt to obtain consent from the youth's parent or guardian before releasing results, and keep adequate records of what information is released to whom for what purpose, even with a Business Associate Agreement in place. HIPAA, 45 C.F.R. 160 and 164. See *Consent of Parent or Guardian* (sample form) (Related Document E).
10. Emergency situation provision: If the youth scores at either the "caution" or "warning" levels on the suicidal ideation scale of the MAYSI-2, the detention facility will immediately take any emergency action necessary to protect the life of the youth. 210 I.A.C. 6-3-4.238 (mental health and suicide screening required upon entry); I.C. 16-39-2-6; I.C. 31-32-12-1 (authorizing court ordered emergency mental health assessment or treatment).

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11. Permitted uses of the results of the MAYSI-2 screen: In accordance with I.C. 16-39-2-6, results of the MAYSI-2 screen may be provided to (i) mental health and other medical providers providing assessment and treatment/services for the youth; and (ii) the appropriate child welfare agency for the purpose of investigating reports of child abuse or neglect. This section does not prevent the disclosure of statements made by the youth in the MAYSI-2 screening process that are required to be reported for the purpose of investigating child abuse or neglect.
12. Prohibited uses of the results of the MAYSI-2 screen: In compliance with I.C. 31-32-2-2.5 and 31-37-8-4.5, results of the MAYSI-2 screen (as well as the screening records) may not be used as evidence against the youth on the issue of whether the youth committed a delinquent act or crime. I.C. 31-32-2-2.5 and 31-37-8-4.5 protect youth from self-incrimination on the issue of whether the youth committed a delinquent act or crime in connection with statements made in the process of the MAYSI-2 screen, and any subsequent mental health assessment or treatment.

III. Referral Process for Assessment and Treatment

A. Description of Assessment Referral Process

1. Each Site will issue a protocol that complies with the *Protocol on State Cut-Off Criteria Mandating Responses by Detention Centers* (Related Document F), and *Indiana Guidelines for Counties to Develop Policy on Responses to Elevated MAYSI-2 Scores* (Related Document G). *The Protocol on State Cut-Off Criteria Mandating Responses by Detention Centers* establishes the minimum combination of warnings and/or cautions on the MAYSI-2 that the counties can adopt as their trigger for the need for a mental health assessment of a youth in detention. However, county participants may adopt a more protective level in their own protocols, *i.e.*, that would require less combinations of warnings/cautions, as the trigger for their assessment referrals. More protective levels than the Pilot Project's Mandatory Response Cut-off would result in the county providing greater numbers of youth mental health services in detention.
2. When the results of a MAYSI-2 screen trigger the need for a mental health assessment, as provided in a county's protocol, the county (in cooperation with any applicable referring county) is obligated to arrange for an assessment (unless the youth's parent(s) or guardian withhold consent). Detention center staff should consider conducting follow up questions in order to confirm the

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need for an immediate assessment when warranted. (See section on “Second Screening” in *Protocols for the Administration of the MAYSI-2* (Related Document B), and *MAYSI-2 Second Screening Form* (Related Document H). In arranging the assessment, the county will notify the youth’s parent(s) or guardian about the MAYSI-2 results, and obtain consent for referring the youth to a mental health provider for an assessment. The youth’s attorney will be notified with the MAYSI-2 results and the referral for an assessment, with the parent or guardian’s consent. See *Consent of Parent or Guardian* (sample form) (Related Document E)³. See Section II.B.7 to 9 above.

3. Each county will identify the individual in the detention facility and/or the agency responsible for conducting assessments of youth in detention. In identifying the individual and/or agency who will conduct the mental health assessment, the county will disclose what relationships it has established with mental health providers to provide for these services, the licensing and other qualifications of the mental health providers, and strategies for funding the provision of these services.
4. Each county will seek to ensure that the mental health providers utilized in the referral process employ assessment tools and processes that fall within the range of generally accepted practices and include clearly stated recommendations for further treatment if treatment is warranted.
5. When a mental health assessment is warranted under the county’s protocol, the county will refer and arrange for such an assessment to be conducted as soon as practically possible, commensurate with the urgent circumstances involved. The Pilot Project is not responsible for arranging payment for services by responsible parties, or obtaining assistance through other funding sources; this is the responsibility of the county (and/or the referring county, if the youth came from a referring county).
6. Appropriate and adequate levels of monitoring or supervision should be employed until an assessment and follow up care can be procured. If the youth should be released prior to scheduling the assessment, the parent(s) or guardian will be provided with information and referral for follow up care in the community. See *Information and Referral for Follow-Up Care Upon Release of Youth* (sample form) (Related Document I).

³ Most service providers will have their own form, but the detention centers should also have a form for limited disclosures that occur among juvenile justice agencies (*i.e.*, probation, prosecutor, judge, defense attorney). A sample form has been provided (Related Document E).

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7. If the detention facility does not have necessary consent to refer the youth for an assessment, but believes that an assessment is necessary for the safety of the youth, then the detention facility should provide all necessary care to avoid immediate risk of harm to the youth in medical emergencies. 210 I.A.C. 6-3-4.238 (mental health and suicide screening/care required).
8. The detention facility should also follow statutory procedures for obtaining a court ordered assessment of the youth while in detention when the youth, and/or the youth's parent or guardian, does not consent. I.C. 31-32-12-1; 31-32-13-1 (procedures for obtaining court-ordered emergency mental health assessment or treatment).
9. The individual or agency conducting the assessment will provide information to the youth, prior to the assessment and in language that the youth can understand, about the assessment, as required by the provider's standard mental health notice. This information will explain possible and prohibited disclosures and uses of the information and statements gathered during the assessment, including what access the youth will or will not have to the assessment records.

B. Description of Treatment Referral Process

1. If a mental health assessment indicates that immediate treatment is necessary, the juvenile detention facility should seek the consent of the youth's parent(s) or guardian for referral for treatment.
2. Treatment records will be maintained confidentially, in accordance with I.C. 16-39-2. Permitted disclosures and uses of information are detailed in Section IV. Releases of mental health records and information should be consented to by the youth and his/her parent(s) or guardian, as provided in Section IV. *Consent of Parent or Guardian* (sample form) (Related Document E).
3. If the youth and/or his/her parent(s) or guardian refuses to provide consent, and the detention facility staff believes that an emergency situation exists, statutory procedures to obtain court ordered treatment should be followed. Emergency care should be provided to prevent immediate risk of harm to youth in emergency situations. See above sections III.A.6 and III.A.7.

IV. Permissible and Prohibited Disclosure and Uses of Information and Statements in Assessment and Treatment

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- A. Mental health records are defined by Indiana law as “recorded or unrecorded information concerning the diagnosis, treatment, or prognosis of a patient receiving mental health services or disability training. The term does not include alcohol and drug abuse records.” I.C. 16-18-2-226. Alcohol and drug abuse records are governed by another federal statute, 42 CFR Part II, which also has confidentiality requirements.
- B. The mental health records generated through screening, assessment or treatment of a youth in detention will be maintained confidentially by the mental health provider, whether inside or outside the juvenile detention facility. I.C. 16-39-2. Mental health information received by juvenile justice entities will also be maintained confidentially pursuant to the county participant’s Business Associate Agreement.
- C. The rule of limited disclosure should be followed whenever releasing mental health information. The mental health records of a youth in detention will be maintained confidentially, and may not be shared except for limited disclosures explicitly permitted in accordance with I.C. 16-39-2 and HIPAA. For example, if the provider is located inside the detention facility, records may only be shared beyond the provider in a limited fashion, *i.e.*, only the records or information as necessary and as specifically authorized for the purpose intended. In accordance with HIPAA, rather than providing wholesale access to mental health records, permissible disclosures would be summaries with diagnosis, prognosis, special health or safety concerns, and prescribed medications. Although Indiana law is specific to whom disclosures are permitted, the law is not specific as to what extent of information should be disclosed. I.C. 16-39-2-6. Thus, the sharing of information or records should be limited to the minimum necessary for purposes of disclosure, consistent with federal law requirements. 45 C.F.R. 164.502 (b); 165.514 (d).
- D. What information may be shared with whom?
 - 1. The youth’s parent(s) or guardian should have access to the entire mental health record, defined as the youth’s, mental health assessment and/or treatment records.
 - 2. With parental or guardian consent, a youth in detention should have access to his/her entire mental health record.
 - 3. The youth’s attorney should have access to all of the youth’s mental health record with the consent of the youth and his/her parent(s) or guardian, or the part of the youth’s mental health records limited as necessary and appropriate for treatment, care and supervision as specified in the applicable *Business Associate Agreement* (sample form) (Related Document J).

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4. The director of the detention facility should have access limited to summaries with diagnosis, prognosis, special health or safety concerns, and prescribed medications.
 5. Detention facility staff, including care providers, teachers, counselors, and social workers should have access limited to summaries with diagnosis, prognosis, special health or safety concerns, and prescribed medications as necessary and appropriate for treatment, care and supervision.
 6. Clinic or health care provider – full access to entire mental health records, with the requirement to maintain confidentiality of the records.
- E. Federal and Indiana law do not authorize release of mental health records by mental health providers to probation officers, prosecutors, or judges without consent, and federal law does not authorize release of mental health records to defense attorneys without consent. Under HIPAA (45 CFR 164.502(e)),⁴ however, agreements may be entered into that would allow a business associate exception, which may be justified on the basis that these entities/individuals receive information for the sole purpose of assisting with the provision of services, including pre-adjudication, in diversion programs, and/or for disposition. In order for detention center staff to share information from youth's mental health records to the following individuals, business associate agreements shall be entered into among the service providers, the detention facility, probation, the prosecutor, the judge, and defense counsel. See *Business Associate Agreement* (sample form) (Related Document J). A copy of these agreements should be filed with the Pilot Project Director.

The rule of limited disclosure should be followed, as set forth below:

1. Probation officers should have access to summaries as needed to assist in procuring services for youth pre-adjudication, as part of a diversion program, or for the purpose of disposition.
2. The prosecutor should have access to summaries as needed to assist in procuring services for youth pre-adjudication, as part of a diversion program, or for the purpose of disposition.
3. The judge should have access to summaries as needed to assist in procuring services for youth pre-adjudication, as part of a diversion program, or for the purpose of disposition.

⁴ Indiana law also provides for the release of information for legitimate business purposes, although unlike HIPAA, written agreements are not required by the Indiana statute. I.C. 16-39-2-6(a)(13) and 16-39-5-3(c).

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4. In the event that defense counsel do not otherwise have access to these records (through consent), they should at least have access to summaries as needed to assist in procuring services for youth pre-adjudication; to assist in a diversion program; and for the purpose of disposition. Defense counsel should receive, at the earliest opportunity, all the information provided to probation, the prosecutor, and the judge.

F. Prohibited uses of mental health records or information in these records: In compliance with I.C. 31-32-2-2.5 and 31-37-8-4.5, results of the MAYSI-2 screen (as well as the screening records) may not be used as evidence against the youth on the issue of whether the youth committed a delinquent act or crime. I.C. 31-32-2-2.5 and 31-37-8-4.5 protect youth from self-incrimination on the issue of whether the youth committed a delinquent act or crime in connection with statements made in the process of the MAYSI-2 screen, and any subsequent mental health assessment or treatment.

V. Procedures for Maintaining Mental Health Screening Records Confidentially

- A. The screening records, including the results of the MAYSI-2 screen, must be held confidentially as medical files and may not become part of a youth's permanent court, education, or disciplinary record. This section does not prevent the screening records from being maintained in the detention center's clinic or health care provider.
- B. Electronic and hard copy files are to be maintained in a secured area with limited authorized access. The detention center director and site coordinator must maintain a current list of all staff with limited authorized access, and this must be kept current with the Pilot Project Director.
- C. Procedures for accessing, administering and using MAYSI-2 must be established and followed to maintain privacy.
- D. Disclosure of screening results for data collection activities of the Pilot Project may be done without obtaining consent from the youth's parent(s) or guardian. Disclosures done for research purposes if conducted according to the research protocols established by the Pilot Project are permitted by I.C.16-39-2-6. Procedures must be in place to ensure that the data collected does not identify the youth.

VI. Memorandum of Understanding and Follow-Up Treatment Procedures

A. Memorandum of Understanding to Follow Protocol

An MOU with this Protocol attached must be signed by authorized representatives of the court, the detention center, participating service

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providers, the prosecutor's office, probation, and the public defender's office or defense counsel, and returned to the Pilot Project Director on or around October 15, 2007. All county-developed protocols, policies and procedures required by this Protocol will be filed with the Pilot Project Director on or around November 16, 2007.

B. Procedures to Encourage Follow-Up Treatment Upon Release

Juvenile detention facilities should adopt procedures to encourage youth and their families to follow up with any recommended mental health services when the youth are released, including assistance with release of documents necessary to provide continuity of care.