

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (the “Agreement”) is made pursuant to the Indiana Juvenile Mental Health Screening, Assessment and Treatment Pilot Project (“Pilot Project”) among the mental health provider(s) and juvenile justice entities of \_\_\_\_\_ County for the purpose of maintaining confidentially the mental health information of youth in detention, following standards set forth in the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Standards for Privacy of Individually Identifiable Health Information, located at 45 C.F.R. parts 160 and 164.

### **INTRODUCTION**

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)),<sup>1</sup> 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 confidential medical/mental health information for the sole purpose of assisting with the provision of services. As a requirement for participation in this Pilot Project, a Business Associate Agreement is to be entered into among the mental health provider(s), the county detention facility, and all individuals or entities receiving confidential mental health records of youth in detention.

### **RECITALS**

WHEREAS, Business Associate plays a key role in the juvenile justice system as related to the provision of mental health services (“Services”) for certain youth in the care or custody of the participant county’s detention facility (“Facility”); and

WHEREAS, in connection with these Services, there may be the need to disclose the youth’s MAYSI-2 screening results or other mental health information, which will be treated by agreement as Protected Health Information (PHI) subject to protection under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Standards; and

WHEREAS, all Parties to this Agreement will comply with the terms of this Agreement, and the related *Protocol on Appropriate Policies and Procedures in Mental Health Screening, Assessment and Treatment of Youths in Detention*; and

WHEREAS, this Agreement is intended to continue as long as \_\_\_\_\_ County is a participant in the Pilot Project.

NOW THEREFORE, the Parties to this Agreement agree as follows:

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<sup>1</sup> 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).

## **DEFINITIONS**

For purposes of this Agreement, the terms below shall have the following meanings:

1. Protected Health Information. "Protected Health Information" (PHI) shall be understood to include all "Individually Identifiable Mental Health Information." This term specifically includes all mental health records or information, including MAYSI -2 screening results or records, regardless of how or where the information is maintained or transmitted, in electronic media, or in any other form or medium. 45 CFR 160.103.
2. Privacy Standards. "Privacy Standards" means the Standards for Privacy of Individually Identifiable Health Information, 45. CF R Parts 160 and 164.
3. Individual. "Individual" means the youth who is the subject of the Protected Health Information.
4. Individually Identifiable Health Information. "Individually Identifiable Health Information" means information that is created or received by a covered entity or business associate; relates to the past, present or future mental health condition of an individual, or the provision of mental health care to an individual; and identifies the individual, or provides a reasonable basis to believe the information can be used to identify the individual.
5. Required by Law. Required by Law means a mandate contained in a law that compels a use or disclosure of PHI and that is enforceable in a Court of Law.
6. Business Associate. Business Associate in this Agreement refers to the county's cooperating offices and agencies—*i.e.*, county detention facility and other juvenile justice entities; judge, prosecutor, probation and public defender—that are to receive confidential mental health information or records as part of the process to secure "Mental Health Services" for youth in detention during the Pilot Project.
7. Mental Health Provider. "Mental Health Provider" is a covered entity under HIPAA. (45 C.FR 160.103) The Privacy Standards of HIPAA are extended through them to non-covered entities pursuant to a Business Associate Agreement. 45 CFR 164.502(e)).
8. Facility. "Facility" refers to the county detention facility. The county detention facility is both a business associate of the Mental Health Provider(s) and performs a "provider" function with other juvenile justice entities, who themselves are business associates by virtue of the detention center's function of arranging mental health care services to youth in its custody or care.
9. Services. "Services" refer to the arrangement or provision of mental health services for certain youth in custody of the participant county's detention facility.

## **BUSINESS ASSOCIATE OBLIGATIONS**

1. Use and Disclosure of PHI. Business Associate shall not, and shall ensure that its employees, contractors, and agents do not, use or disclose PHI received from Facility or Mental Health Provider in any manner that would constitute a violation of the Privacy Standards if used by Facility, except that Business Associate may use PHI as

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allowed under HIPAA for the limited purpose of planning, provision, and/or monitoring of services or as Required by Law.

Business Associate agrees to comply with applicable federal and state laws, including but not limited to (i) the Privacy Standards; (ii) I.C. 16-39-2; and (iii) IC 31-32-2-2.5 which restricts the use of screening, assessment and treatment records against a youth on the issue of whether the youth committed a delinquent act or crime.

Business Associate shall in all cases:

- a. provide training to its employees or agents regarding the confidentiality requirements in the Privacy Standards, this Agreement and the *Protocol on Appropriate Policies and Procedures in Mental Health Screening, Assessment and Treatment of Youths in Detention and related protocols*;
  - b. obtain reasonable assurances from the person or entity to whom or to which PHI is disclosed that the PHI will be held confidentially by its employees or agents; and it will be used or further disclosed only as required by law or in furtherance of the purpose for which it was disclosed; permissible disclosures may only occur with other business associate entities or mental health providers involved in the youth's assessment, treatment or care;
  - c. notify Pilot Project Director and Detention Facility Director of any instances of which it is aware in which the PHI is used or disclosed for a purpose that is not otherwise provided for in this Agreement, the Pilot Project protocols, or for a purpose not expressly permitted by the Privacy Standards;
  - d. work with the Pilot Project Director and Detention Facility Director to eliminate breaches of confidentiality, and mitigate any harmful effect that is known to Business Associate; and
  - e. ensure that all disclosures of PHI are subject to the principle of "minimum necessary use and disclosure," *i.e.*, only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request may be disclosed. See *Protocol on Appropriate Policies and Procedures in Mental Health Screening, Assessment and Treatment*, Section IV. C and D (specifying permissible and prohibited disclosure and uses of information and statements in assessment and treatment; and what information may be shared with whom).
2. Safeguards. Business Associate agrees that it will maintain all appropriate safeguards to ensure that PHI is not used or disclosed other than as provided by this Agreement or as required by Law. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of Facility as required by the HIPAA Security Standards. Business Associate agrees to require that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of Facility or Business Association as required by the HIPAA

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Security Standards. Business Associate will ensure that its agents or subcontractors agree to be bound by the same restrictions, terms, and conditions, that apply to Business Associate pursuant to this Agreement with respect to such PHI.

3. De-Identified Information. Use and disclosure of de-identified health information by Business Associate is permitted, but only if the de-identification is in compliance with 45 CFR §164.502(d), and any such de-identified health information meets the standard and implementation specifications for de-identification under 45 CFR §164.514(a) and (b), or such regulations as they may be amended from time to time.
4. Accounting of Disclosures. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Facility to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 54 CFR §164.528. Business Associate agrees to provide to Facility or an Individual, within sixty (60) days, information collected in accordance with this paragraph of this Agreement, to permit Facility to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA.
5. Termination. This agreement terminates: i) at the end of the Pilot Project; or ii) if the County ceases to participate in or withdraws from the Pilot Project. Upon termination of this agreement, Business Associate agrees to return and destroy all PHI that is maintained in any form, and will comply with federal and state laws as they may be amended from time to time governing the maintenance or retention of PHI. If Business Associate determines that the return or destruction of PHI is not feasible, Business Associate shall so inform Mental Health Provider, Facility and Pilot Project Director; and Business Associate agrees to extend the protections of this Agreement to the information and limit further uses and disclosures of the PHI to those purposes that make the return or destruction of the PHI infeasible, for so long as Business Associate retains the PHI.

**IN WITNESS WHEREOF**, the parties below have executed this Agreement.

**AGREED AS BUSINESS ASSOCIATES ON BEHALF OF \_\_\_\_\_  
COUNTY:**

JUVENILE DETENTION FACILITY OF \_\_\_\_\_ COUNTY

\_\_\_\_\_  
Detention Center Director or Designate

\_\_\_\_\_  
Date

JUVENILE COURT OF \_\_\_\_\_ COUNTY

\_\_\_\_\_  
Presiding Judge or Designate

\_\_\_\_\_  
Date

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PROSECUTING ATTORNEY'S OFFICE OF \_\_\_\_\_ COUNTY

\_\_\_\_\_  
Prosecuting Attorney or Designate

\_\_\_\_\_  
Date

JUVENILE PROBATION OFFICE OF \_\_\_\_\_ COUNTY

\_\_\_\_\_  
Chief Probation Officer or Designate

\_\_\_\_\_  
Date

PUBLIC DEFENDER'S OFFICE OF \_\_\_\_\_ COUNTY

\_\_\_\_\_  
Chief Public Defender or Designate

\_\_\_\_\_  
Date

*Additional Juvenile Defender Signatories to this Business Associate Agreement (Use Additional Pages as Necessary):*

\_\_\_\_\_  
Signature and Title/Entity

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature and Title/Entity

\_\_\_\_\_  
Date

**AGREED ON BEHALF OF COUNTY MENTAL HEALTH PROVIDER:**

MENTAL HEALTH PROVIDER of \_\_\_\_\_ COUNTY

\_\_\_\_\_  
Director of Facility or Designate

\_\_\_\_\_  
Date

*Additional Mental Health Provider Signatories to this Business Associate Agreement (Use Additional Pages as Necessary):*

\_\_\_\_\_  
Signature and Title/Entity

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature and Title/Entity

\_\_\_\_\_  
Date

**AGREED ON BEHALF OF PILOT PROJECT:**

\_\_\_\_\_  
Project Director or Designate

\_\_\_\_\_  
Date