




## Standard 7: Record Keeping

See section 5 of binder

### Learning Objectives

As a result of this session, you should be able to:

- Identify the different types of records maintained by members of your treatment team and the court.
- Develop a system of record keeping that provides a complete record of judicial action in and out of court
- Develop a bifurcated filing system to protect confidential medical and treatment records

Contents of the Criminal Court File  
Kept by Clerk of Court  
(Not judge's file)

Contents of the Treatment Court File Kept  
by the Coordinator  
(Separate from the treatment provider,  
clerk of court and judge's files)

Contents of the Judge's File  
(not the court file)

Contents of the Treatment Provider File

Contents of DOC file

### **Policy and Procedure Manual**

- Should identify the record keeping systems of the court
- Should identify a procedure to review all court files on a regular basis to be certain they do not contain confidential information

### **Policy and Procedure Manual**

- Should provide for a procedure for the coordinator or other treatment team member to review treatment provider files on a regular basis to determine they maintain fidelity to evidence-based practices

### **Policy and Procedure Manual**

- Should be reviewed with participants as part of the court orientation process
- Develop a process to follow if a team member receives an open records request

### **Freedom of Information Act (FOIA)**

- Wis. Stat. s.19.31 et. seq.
- A series of laws designed to guarantee that the public has access to records of the government bodies at all levels.
- This pertains to all records not already required to be maintained as open for the public

### **Freedom of Information Act (FOIA)**

- “Record” is any document, regardless of physical form that “has been created or is being kept by” an authority. Wis. Stat. s.19.32(2)
- A presumption of complete public access
- Denial of public access is contrary to public interest and only permitted in exceptional cases.

## Freedom of Information Act (FOIA)

“Authority” includes any of the following having custody of a record:

- State or local office
- Elective official
- Public body, corporate or politic
- Or a formally constituted subunit of the above

## Freedom of Information Act (FOIA)

Any requester has a right to inspect a record.

“Requester” is any person who requests inspection or copies of a record, except a committed or incarcerated person. There are many exceptions. READ THE STATUTE

## Freedom of Information Act (FOIA)

- Elected officials are the legal custodians of their records.
- May designate a staff employee to act as the custodian.

## Freedom of Information Act (FOIA) Practical Considerations

- Do not need to create records to respond to requests
- Fees: May be imposed for copies.
  - May not exceed the actual, necessary and direct cost of reproduction, mailing and shipping, unless a fee or cost is otherwise provided by law
- Can waive or reduce if find in public interest

### **Freedom of Information Act (FOIA) Practical Considerations**

#### Timing:

- If no regular office hours - Permit access to inspect within 48 hours or 2 consecutive hours per week with 2 hours advance notice.
- If regular office hours provide access at all open times.
- No time limit to copy and provide or deny. Should be as soon as practical, without delay

### **Freedom of Information Act (FOIA) Practical Considerations**

- Cannot destroy a record after receipt of a request until granted, or at least 60 days after denied.
- Not required to notify a record subject prior to responding to a request, with exceptions

### **Freedom of Information Act (FOIA) Practical Considerations**

#### Enforcement of request:

- A requester may bring a mandamus action to a court or request a DA or AG to bring that action
- A circuit court can award actual reasonable attorney's fees, damages of not less than \$100 and actual costs and punitive damages to prevailing party plus penalties

### **Freedom of Information Act (FOIA) Practical Considerations**

- The court should not receive and retain confidential information. Consider whether or not to use email.
- Coordinators and case managers should not be court employees – all records are then subject to FOIA
- All records to be provided should be reviewed to determine if must be disclosed and whether redactions are appropriate and needed

## QUIZ

In what files should the following be placed?

### DOC Case Management Plan

- A. Judge's file
- B. Coordinator's File
- C. DOC file
- D. Court file
- E. Both B and C

### Diagnostic Assessment

- A. Judge's file
- B. Coordinator's file
- C. Court file
- D. Treatment provider file
- E. Both B and D

### Cheat Sheet (Team Progress Report)

- A. Judge's file
- B. Coordinator's file
- C. Court file
- D. Treatment provider file
- E. Both B and C

Please turn off your clicker when done!

## Resources

- Wisconsin Statute Chapter 51
- Wisconsin Treatment Courts Best Practices for Record-keeping, Confidentiality and Ex Parte Communication
- WI DHS on Confidentiality

## Breakout 2

- Review files to ensure they comply with the standards and any applicable rules on confidentiality and record keeping
- Review policies and procedures on record keeping. Note any areas needing further review and adjustment.