

► MEASURING YOUR PROGRESS

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## Every Court Leader Should Know

Careful attention should be given to the Health Insurance Portability and Accountability Act (HIPAA), which outlines what personal health information can be shared and under what circumstances, and Title 42 of the Code of Federal Regulations (42 CFR) Part 2, which relates to personal substance use disorder information.

### PURPOSE (THEORY OF CHANGE)

Courts share responsibility for identifying and moving individuals with mental health and co-occurring substance use disorders out of the justice system to treatment, yet many court systems do not fully understand the level of need for diversion programs or the need to collect data, share information, and track outcomes.

Collecting, analyzing, and sharing data is essential to developing and enhancing court and justice partner collaborations to divert people with mental health and co-occurring and substance use disorders away from the justice system and into treatment.

When partnered with the Sequential Intercept Model, identifying data collection and sharing opportunities across the intercepts is a critical part of developing a comprehensive continuum of behavioral health services.

For example, when an individual is arrested, an initial hearing presided over by a judicial official takes place. When this process occurs at “Intercept 2,” identification of people with mental health and co-occurring substance use disorders assists judicial officials in deciding whether pretrial detention, treatment-oriented conditions, or specialized community supervision will provide the best possible outcome for the individual and the public. Although the initial hearing is a constitutionally supported due process right, diversion data and outcomes at this intercept are often not collected, analyzed, or shared.

When an individual has not yet been diverted at previous intercepts, “Intercept 3” centers around court driven diversion of individuals from the jail or prison into programs or services that allow criminal charges to be resolved while also addressing the defendant’s mental health and co-occurring substance use disorder needs. Many courts are collecting data related to problem-solving courts which operate at this intercept but are missing opportunities to establish more robust data tracking opportunities.

Regardless of the intercept, data assists state and local court leaders in making informed decisions that meet their specific priorities. The relational leadership theory consists of five main components that court leaders should know and practice to build effective relationships: inclusiveness, empowerment, purposefulness, ethics, and process.



### Are Courts and Court Personnel Covered by HIPAA Law?

The answer...NO

Some state laws are more restrictive than HIPAA, so court leaders must consider state rules when collecting, analyzing, and sharing data.

Court leaders must also consider 42 CFR Part 2 and how this rule may limit healthcare providers in their data collecting and disclosure procedures.

## APPLICATION

The State Court Behavioral Health Data Elements Interim Guide outlines ideal state court data elements to collect across the Leading Change Model as well as elements to collect in coordination with other systems. There are four key steps to begin this process.

1. Using the Data Elements Guide as a starting point, a workgroup should prioritize which data elements are important for your jurisdiction to collect to measure and assess effective responses.
2. Identify which agency(ies) will be responsible for the collection of the data and reporting to the workgroup.
3. Secure necessary data-sharing agreements.
4. Leverage technology whenever possible.

Many of the decisions about what data to track will depend on a specific state or jurisdiction's priorities. There are many pre-established behavioral health and criminal justice metrics to draw on when determining what to collect.

Beyond just tracking data, court leaders should consider developing formal relationships with partners (such as local universities) to analyze the data which leads to informed resource allocation and improved outcomes.

## Importance to Leading Change

As courts rely more heavily on data for case management, strategic planning, budgeting, and improving court performance, we recognize that data are more than by-products of case processing. Courts, the public, and justice partners increasingly depend on ready access to accurate and timely data, which are necessary for public trust and confidence in the judiciary. Data are now strategic assets of the courts and courts need strong data governance policies and practices to address the entire life cycle of data.

- [Data Governance | Court Statistics Project](#)

## RESOURCES

- SAMHSA Gains Center: [The Sequential Intercept Model](#)
- National Initiative to Improve the Justice System Response to Mental Illness: [State Court Behavioral Health Data Elements Interim Guide](#) (Final data guides are under development.)
- SAMHSA: [Data Collection Across the Sequential Intercept Model](#)
- DHS, State of IL: [Jail Datalink System](#)
- SAMHSA: [Substance Abuse Confidentiality Regulations](#)
- SAMHSA: [Center of Excellence for Protected Health Information \(CoE-PHI\)](#)

