

## INDIANA OFFICE OF COURT SERVICES

### PROBLEM-SOLVING COURTS PRACTICE GUIDELINES Access, Storage and Retention of Records

Problem-solving courts must comply with all applicable statutes and court rules regarding access to, and the storage and retention of court records. Court records may be accessed in accordance with IC 5-14-3 and the Indiana Rules on Access to Court Records. The security of problem-solving court records is governed by Administrative Rule 10, the guidelines for the retention of problem-solving court records are contained in Administrative Rule 7 and the standards for the electronic storage and preservation of problem-solving court records is governed by Administrative Rule 6.

#### I. Access to Problem-Solving Court Records

##### A. Indiana Code § 5-14-3

- i. Generally, court records are accessible to the general public unless specifically declared confidential by law or excepted from public access in accordance with IC 5-14-3-4.
- ii. Court records that are declared confidential pursuant to IC 5-14-3-4 may only be accessed in accordance with the applicable governing law. Public records excepted from public access include:
  - a. Those declared confidential by state statute.
  - b. Those required to be kept confidential by federal law (i.e. 42 CFR Part 2).
  - c. Those declared confidential by or under rules adopted by the Supreme Court of Indiana.

##### B. Indiana Rules on Access to Court Records

- i. Except as provided in the A.C.R., access to and the confidentiality of, court records is governed by IC 5-14-3.
- ii. Court records that are declared confidential pursuant to the A.C.R. may only be accessed in accordance with the applicable governing law.
- iii. Confidential court case records include the following records that are confidential pursuant statute or other court rule: [A.C.R. 5]
  - a. Alcohol and drug treatment records pursuant to 42 CFR Part 2;
  - b. Records of juvenile proceedings pursuant to IC 31-39-1-2;
  - c. Pre-sentence reports pursuant to IC 35-38-1-13;
  - d. Medical and mental health records pursuant to IC 16-39-3-10;
  - e. Information in probation files pursuant to IC 11-13-1-8(b);
  - f. Information deemed confidential pursuant to the Rules for Court-Administered Alcohol and Drug Programs pursuant to IC 12-23-14-13; and
  - g. Information deemed confidential pursuant to the Problem-Solving Court Rules pursuant to IC 33-23-16-16.

##### C. Problem-Solving Court Rules

- i. A problem-solving court shall establish written policy and procedure governing access to records in the participant case management files not otherwise governed

by other state or federal law. Access to all other problem-solving court records is governed by IC 5-14-3 and the Indiana Rules on Access to Court Records.

- ii. Confidential records include all participant records governed by 42 CFR Part 2 pertaining to drug and alcohol treatment records or medical records governed by IC 16-39. These records may be released to the participant, court staff, and others pursuant to an appropriate release of information form from the participant or authorized disclosures without the participant's consent.

## II. Storage and Security of Problem-Solving Court Records

Each judge is administratively responsible for the integrity of the problem-solving court records and must ensure that measures and procedures are employed to protect these records. [Admin. R. 10(A)]

All written problem-solving court records governed by 42 CFR Part 2 in paper format "must be maintained in a secure room, locked file cabinet, safe or other similar container when not in use." [42 CFR § 2.16(a)(1)] Records in electronic format must also be protected from unauthorized use and disclosure by password access protection or staff training on the authority to access confidential information. Each court is required to establish and follow written procedures to control access to and use of problem-solving court records governed by 42 CFR Part 2, including electronic participant records.

## III. Retention of Problem-Solving Court Records

The retention and disposal of court records is governed by Admin. R. 7 schedule 12-2-39. Problem-solving court case management files must be retained for a minimum of six (6) years after the participant's discharge from the problem-solving court or completion of probation whichever is later.