

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE MONTANA OFFICE OF THE STATE PUBLIC DEFENDER
AND THE MONTANA STATE COURT ADMINISTRATOR**

Pursuant to §21(1) of House Bill 650,¹ the Montana Office of the State Public Defender (OPD) and the Montana State Court Administrator enter into this Memorandum of Understanding containing mutually agreeable protocols for when a public defender is appointed and participates in Treatment Courts² within the judicial branch.

WHEREAS, the Montana Judicial Branch and OPD have significant budget constraints; and,

WHEREAS, the impact of escalating drug usage, particularly methamphetamine, and alcohol abuse has increased court filings, most notably in dependency and neglect and criminal cases; and,

WHEREAS, many of these drug related cases are appropriate for Treatment Court disposition; and,

WHEREAS, the Montana Legislature has recognized the effectiveness of drug treatment³ and mental health courts;⁴ and,

WHEREAS, the Montana Courts have constitutional and statutory obligations relating to the appointment of counsel for individuals in Treatment Courts; and,

¹ Signed by Speaker of the House 4/27/17; Signed by President of the Senate 4/29/17; and signed by the Governor 5/11/17. The pertinent text of §21 reads:

Section 21. Appointment Protocols – transfer of spending authorization. (1) The office of court administrator and the office of state public defender shall work together to develop mutually agreeable protocols for when a public defender is appointed and participates in treatment courts operated by the judicial branch. The protocols must be developed and agreed to by both offices by December 31, 2017.

² Treatment Court means a District Court that operates an Adult, Juvenile, Mental Health, Family, Felony DUI or Veteran's treatment court.

³ Mont. Code Ann. §46-1-1104 et seq.

⁴ Mont. Code Ann. §46-1-1201 et seq.

WHEREAS, OPD has particular concerns about ensuring that public legal representation meets the highest professional and ethical standards, which becomes challenging considering ever-increasing caseloads and static staffing; and,

WHEREAS, the Montana Legislature has recognized that Drug Courts reduce recidivism and provide cost savings⁵; and

WHEREAS, the State Court Administrator believes that Treatment Courts are cost effective and reduce recidivism, when such courts have fidelity to the Ten Key Components⁶ and strive to adhere to best practice standards⁷.

THEREFORE, the Montana State Court Administrator's Office and OPD agree as follows:

1. Before applying for material grant funding, the Treatment Court team will discuss the application with the OPD. When practicable, Treatment Court grant applications shall include funding for partial or full public defender representation.
2. Public Defenders will represent indigent persons in Treatment Courts when appointed by the Court and statutorily or constitutionally mandated.
3. A Treatment Court Public Defender informs the drug court participant about the rigors of drug court, preserves all legal rights of the client, advocates for fair and equal treatment of client, participates in team meetings and attends court proceedings. The Public Defender's

⁵ Legislative Audit Division, "Performance Audit: Administration of Montana's Drug Courts" (January 2015) available at: <http://leg.mt.gov/content/Publications/Audit/Report/13P-08.pdf>

⁶ National Drug Court Institute (NDCI) & U.S. Dept. of Justice, The Ten Key Components (BJA: 1997) available at: <http://www.ndci.org/sites/default/files/ndci/KeyComponents.pdf>

⁷ The NDCI has developed best practice standards, available at <https://www.ndci.org/resources/publications/standards/>

The State Court Administrator is developing state standards through a peer assessment process. Available at: <http://courts.mt.gov/drugcourt/peer-review>

traditional attorney client privilege with the client remains intact and transcends any role that the Treatment Court Public Defender has as a member of the Treatment Court team.

4. Treatment Court judges will endeavor to schedule cases to efficiently use public defender's time.

5. Where appropriate, Treatment Court hearings will be held through teleconferencing.

6. Treatment Court teams will explore alternative funding sources, such as local government entities and private foundations.

7. Treatment Courts will aspire to serve high-risk/high-need offenders and operate with a census that is economical, while meeting evidence-based practices.

8. Educational opportunities through grants or other funding should be made available to all treatment team members, including members of OPD.

9. OPD should be integrally involved in the planning, funding and operating of any new or expanded Treatment Court.

10. Treatment Courts should explore the availability of private counsel on a pro-bono or reduced hourly basis to substitute for OPD.

11. When appropriate, Treatment Courts should consolidate termination/modification and revocation hearings, while protecting the Treatment Court participant's due process rights.

12. Where available, electronic sharing of information should be used in Treatment Courts.

13. Treatment Court staffings should be structured to provide maximum efficiency, while still sharing the needed information to make informed decisions.

16. Treatment Courts and OPD should work collaboratively on assuring dockets are efficiently set and disposed of effectively.

17. The State Court Administrator will try to obtain volunteer evaluators from colleges and universities to perform evaluations on the effectiveness of Montana's Treatment Courts including recidivism reduction and cost savings.

AGREED to this _____ day of _____, 2017.

Office of the State Public Defender

State Court Administrator