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Montana Attorney General's Office

QUARTERLY REPORT
MARCH 2015

Re: MOU/Agreement Requirements between the Montana Attorney General, the US Department of Justice and the Missoula County Attorney's Office.

Montana Attorney General's Office
QUARTERLY REPORT
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AN INTRODUCTION FROM TIM FOX,

ATTORNEY GENERAL OF MONTANA

On June 10, 2014, I signed a memorandum of understanding (MOU)[1] with Missoula County, the Missoula County Attorney's Office (MCAO), and the United States Department of Justice (USDOJ) resolving USDOJ's investigation of the MCAO's handling of sex assault prosecutions. This MOU outlined a cooperative agreement between the Montana Attorney General's Office (MTAGO) and the MCAO to ensure the success of the MCAO's efforts to improve its response to sexual assault. My office provided the first, semi-annual report to the USDOJ in December 2014 and we published the first quarterly report in January 2015. The first quarterly report is available here: *https://dojmt.gov/wp-content/uploads/Quarterly-Report-January-2015.pdf*.

I am now pleased to present to the public our second quarterly report covering progress and compliance with the agreements through March 2015. I've assigned a member of our Sex Assault Prosecution Unit to work with our technical advisor—nationally recognized sex assault expert Anne Munch—to work together to assist the MCAO and monitor compliance as described in the various MOUS. As part of this process, this team of experts spent a week in Missoula in early May working with the MCAO to review ongoing cases and discuss advanced investigative and trial strategy issues for these cases. They observed one of the weekly SVU meetings where

[1] This and the other MOUs are attached to the First Quarterly Report, available here at *https://dojmt.gov/wp-content/uploads/Quarterly-Report-January-2015.pdf*.

investigators and prosecutors who specialize in sex assault cases meet to discuss ongoing cases. They also met with an Attorney from the USDOJ's Civil Rights Division to review in person the USDOJ's comments to a first draft of this report.

Based on these and many other interactions, my staff reports that MCAO is sincerely dedicated and hard at work in ensuring they fulfill their obligations under these agreements and make improvements to sex assault prosecutions in Missoula. A few of the more notable accomplishments since the first quarterly report include:

- The MCAO and my office have implemented a formalized monitoring and compliance plan to streamline and add transparency to the compliance and monitoring process for the involved parties and the public.
- The MCAO now has an in-house victim witness coordinator to improve communication between the MCAO and sex assault victims.
- The MCAO has added a fourth prosecutor to the SVU unit to help ensure individual workloads in the SVU permit for proper attention to be given to sex assault cases.
- The MCAO is requesting further investigation in a significantly greater proportion of cases referred from law enforcement—indicating increased diligence and communication between prosecution and law enforcement to ensure that all investigative avenues are thoroughly explored prior to a charging decision.

We also continue to take the resources developed from our work with the MCAO and provide them to prosecutors all over Montana. We have made available and distributed the Sex Assault Policy and Procedures Manual to prosecutors all over Montana and the public at:

https://dojmt.gov/wp-content/uploads/SEXUAL-ASSAULT-POLICY-AND-PROCEDURE-MANUAL.pdf

Finally, my staff is working with Anne Munch to develop proposals to strengthen our sex assault laws in Montana and for our Sex Assault Prosecution Unit to provide a series of sex assault trainings for prosecutors all over Montana.

Although great things are happening, our efforts are far from over. As would be true in any prosecution office, we have identified opportunities for improvement in the way that the MCAO handles sex assaults.

I look forward to continuing cooperation with the MCAO and the USDOJ to address these opportunities and continue to make strides this extraordinary effort to make MCAO a model for the prosecution of these critically important cases.

Sincerely,

Tim Fox

WORK CONDUCTED PURSUANT TO THE MOU'S IN THE REPORTING PERIOD JANUARY 2015 – MARCH 2015

In addition to continued monitoring of compliance with the agreements, our efforts in the last quarter were focused on the implementation of the comments that Anne Munch (the Technical Advisor) made in response to the first quarterly report. The following is a summary of the progress in the same order as those topics were recommended in The Technical Advisor's letter, Dated December 26, 2014.[2]

I. Development of Policies and Guidelines for Sexual Assault Cases:

Recommendation: The Technical advisor recommended that the Montana AG create an additional condensed version of the specific policy and guideline language and use that document to develop compliance measures and processes.

Response: Our office has created a Condensed Policy and Guidelines for Handling Sex Assault Cases. This document is attached as Exhibit 1. We worked cooperatively with the US DOJ and the MCAO to develop and revise these policies. This document is intended to provide all parties to the MOU, and particularly the Sex Assault Prosecutors in the Missoula County Attorney's Office, with a concise summary of critical policies applicable to sex assault cases pursuant to the various MOUs and the Sex Assault Policy and Procedures Manual.

II. Training for county attorney supervisors and prosecutors in response to sexual assault:

Recommendation: The Technical Advisor recommended that all multi-disciplinary partners who are available to attend the training on Interviewing Sexual Assault Victims, including law enforcement, do so. She also recommended that any Missoula County Sheriff's Deputy assigned to sex assault cases be trained to the same level as was required in the USDOJ agreement, which the Missoula Police Department and the University of Montana had already received.

Response: Several multi-disciplinary partners, including three Missoula County Sheriff's

[2] This letter is attached to the First Quarterly Report, available here at *https://dojmt.gov/wp-content/uploads/Quarterly-Report-January-2015.pdf.*

Deputies from the Detectives division, one of the crime victim advocates, and all of the MCAO SVU attorneys attended a Webinar training that covered interviewing Sexual Assault victims. The Webinar was a three part series that included training on Neurobiology of Sexual Assault, the Neurobiology of Trauma, practical implications, and the Forensic Experiential Trauma Interview. The training was presented by the National Center for the Victims of Crime in spring 2014 and September 2014.

III. Assurances as to on-going practices within the Missoula County Attorney's Office:

Recommendation: The Technical advisor recommended meetings between the new victim advocate together with other members of the MCAO to discuss how the new MCAO victim advocate will fit into existing service position structure and work proactively with outside advocacy and law enforcement partners.

Response: The MCAO has filled the new Victim Witness Coordinator (VWC) position. Her name is Cathy Dorle. The VWC currently participates with other victim advocacy organizations as member of the MCAO Special Victim's Unit (SVU). She meets weekly with members of the Missoula County Crime Victim Advocate Office and SVU detectives from the Missoula City PD and Missoula County Sheriff's Office.

The VWC also participates in the monthly Missoula County Multidisciplinary Task Force meetings (MDT), which includes law enforcement, prosecutors, medical/health care providers, victim advocates and other social service professionals. The MDT's purpose is a unified approach to addressing child abuse and sexual assault in Missoula County.

The VWC participates in another multidisciplinary monthly meeting at First Step, wherein cases involving sexual assault are reviewed and discussed. The members of this team include, among others, law enforcement, the YWCA, and Child and Family Services.

Finally, the VWC is working with the Missoula Crime Victim Advocates on an ongoing basis. The VWC reports that the cooperation, communication and information sharing between the VWC and the MCVA has been proceeding smoothly. While this position is only a few months

old, the VWC's role at this point has been to assist the MCAO in fulfilling their duties of communication and consultation with the victims as well as informing the victims of their rights. Along these lines, the MCAO has developed a document entitled, "Victim Rights." This document is provided to and discussed with victims during the initial meetings between the victim and the MCAO. It is attached at Exhibit 4.

IV. Improved communication and coordination with law enforcement and community partners:

Recommendation: The Technical Advisor recommended a joint training be conducted on "the requirements of successful sexual assault prosecutions to facilitate effective investigations and minimize the influence of impermissible bias" for the Missoula Police Department (MPD), the University of Montana Police Department (formerly known as the University of Montana Office of Public Safety), and the Missoula County Sheriff's Office (MCSO) detectives, public safety officers or sheriff's deputies.

Response: The MCAO has informed us that Officers with the University of Montana and the Missoula Police Department are current on this training. In addition, the MCAO SVU attorneys conducted further training for the MCSO on this topic on April 28 and 29, 2015.

V. Assessment of this Agreement and Review of Cases by the Montana Attorney General:

Recommendation: The Technical advisor recommended our office develop a formal plan for monitoring compliance.

Response: Our office worked with the MCAO and the USDOJ to develop a formal plan. It is complete and was formally implemented in the MCAO earlier this Quarter. The plan is attached as Exhibit 2.

COMPLIANCE UPDATES

On Friday, March 13, a representative from the MT AGO's Prosecution Services Bureau (PSB), met telephonically with Missoula County Attorney Kirsten Pabst and Criminal Chief Jason Marks. Two weeks prior to this meeting, the MCAO had provided the MT AGO with the data described in the Monitoring and Compliance Plan, including a list of training and the updated Sexual Assault Case Data Forms. Having reviewed these materials, the MT AGO and MCAO discussed the reporting points outlined in the Monitoring and Compliance plan. The MT AGO followed up with specific queries on several particular cases.

Finally, a representative from MT AGO PSB made an in person visit to the MCAO during the first week of May, 2015 along with Anne Munch to discuss cases and policy with the MCAO. During that time the parties also met with a representative from the USDOJ Civil Rights Division to discuss USDOJ's comments to a first draft of this report. The parties also participated in one of the weekly SVU meeting where the SVU prosecutors and investigators discuss ongoing sex assault investigations.

During all these interactions the MCAO was professional, prompt and forthcoming in assisting the MT AGO in gathering the data and answering questions. The MCAO suggested some proposed changes to the Condensed Policies and Guidelines. The following is a summary of the updates provided by the MCAO to the MT AGO in order of the subject topics provided in the Monitoring and Compliance Plan.

I. *Changes, if any, to policies and guidelines for handling sexual assault cases:*

As explained above, the MT AGO, MCAO and US DOJ have developed a formalized Monitoring and Compliance Plan as well as a Condensed Policy Guidelines for Handling Sex Assault cases. Pursuant to this plan the MCAO has developed a Case Data sheet to be included and updated in each case file and a Victim's Rights Form to guide discussion during meetings with the victim(s). These documents are attached at Exhibits 3and 4 respectively.

II. A list and description and copies of any materials for Sexual Assault related trainings conducted or attended by MCAO attorneys and supervisors, including victim advocates, the MPD or MSO since the last Quarterly Report:

- Prosecuting Sexual Violence, NDAA. August 2013. (Jen Clark) *
- Trauma Webinar, 3 part series, Presented by The National Center for Victims of Crime. Spring 2014 (Suzy Boylan) [Attended the first and third again in September 2014]
  - Neurobiology of Sexual Assault;
  - The Neurobiology of Trauma – Practical Implications; and
  - The Forensic Experiential Trauma Interview
- Prosecuting the Difficult Sexual Assault Case, Presented by Prosecution Services Bureau, MT AGO. May 2014. (Attended by Suzy Boylan and Jen Clark)
- Corroborating the Forensic Interview, Western Regional Children's Advocacy Center. June 2014. (Attended by Suzy Boylan and Jordan Kilby)*
- Roundtable discussion with MT AG PSB, September 2014. (Attended by Suzy Boylan, Jen Clark, Jordan Kilby)
- Sexual Assault – Investigation Through Prosecution, Sponsored by the Helena Police Department, Helena, MT. March 2, 2015. (Attended by Suzy Boylan, Jen Clark, Jordan Kilby, Brian Lowney)

*indicates multi day training.

III. A list and description of Sexual Assault Related trainings scheduled to be attended or conducted by MCAO attorneys and /or supervisors:

- End Violence Against Women International Conference, New Orleans, LA. April 2015. (Attended by Suzy Boylan and Jen Clark)*.
- Child Forensic Interview Training, Sponsored by MT Department of Justice, Division of Criminal Investigation, MCSART Program, Montana Child and Family Services Division, and the Children's Alliance of Montana. Helena, MT. May 2015. (Attended by Brian Lowney and Jen Clark)*

*indicates multi day trainings

IV. A list of the designated sex assault prosecutors, supervisors, and in-house victim advocate: (* Indicates there has been a change since the last Quarterly Report.)

- SVU Supervisor: Jason Marks
- SVU Attorneys: Jen Clark, Suzy Boylan, Jordan Kilby, & Brian Lowney*
- Victim Witness Coordinator: Cathy Dorle*

V. Changes, if any, to MOU's between MCAO and MPD and MCSO since the last Quarterly Report:

- None.

VI. Current Sex Assault Case Data Forms on all sex assault cases referred to MCAO for charging or review. Data forms show new referrals and/or changes in status of previous referrals since the last Quarterly Report:

- The MCAO forwarded all current Sex Assault Case Data Forms to the AG.

VII. Updates as to participation and/or results of Missoula's sex assault safety and accountability audit and the victim and advocate survey through the University of Montana and MPD.

- The Missoula County Sexual Assault Safety and Accountability Audit report was released on May 1.
- The MCAO is working with the University of Montana and the MPD to include MCAO's suggested questions in the victim and advocate survey. MCAO Criminal Chief Jason Marks was a member of the committee tasked with developing this Audit.

VIII. Status update on the Special Victims Unit process at the MPD:

- The SVU attorneys meet weekly with the MPD SVU detectives and the victim advocate assigned to the MPD SVU. The MCAO victim witness coordinator also attends the weekly meetings. The parties discuss cases that have been referred to

the MCAO as well as cases that are under investigation. There have also been instances where the parties have discussed strategies for engaging reluctant victims who the advocate is aware of but who are reluctant to make a report. The MCSO will be included in these meetings once they have a dedicated investigator.

IX. Status update on MCAO involvement with law enforcement and community partners and update on community education efforts:

- MCAO prosecutors have scheduled several outreach opportunities in the community for this quarter including presentations for Leadership Missoula, Frenchtown High School (Healthy Choices), and the Montana Victim Advocate Academy. The County Attorney will also participate as a guest speaker at Kiwanis and will spend an hour talking about the MCAO's agreement with the MTAG and USDOJ aimed at improving the prosecution of sexual assaults.

X. Status of the $10,000 Expert Witness fees fund:

The fund has been used to pay the following experts in sexual assault cases tried this past Quarter:

- **Jean McAllister, MSW:** Jean testified as a blind expert to the nature and dynamics of trauma. She explained the counterintuitive behaviors exhibited by victims of trauma and discussed the symptoms that may arise after a traumatic event. She discussed the dynamics of sexual assault specifically, and the differences that are seen with non-stranger assaults.

- **Cat Otway, RN, SANE-A:** Cat is a registered nurse and a SANE-A. She discussed the injuries to the victim and how they are consistent with the report the victim made for sexual assault. Cat also dispels some myths of sexual assault and explains that there are not always physical injuries associated with a sexual assault.

XI. Review of all MCAO files for all declined sexual assault cases since the prior Quarterly report, if any:

- There were no sexual assault cases referred to MCAO for charging that were declined for prosecution since the prior Quarterly report.

AGGREGATE DATA ANALYSIS

The MOU between the MT AGO and MCAO[3] contemplates that the MT AGO will provide in this quarterly report "an analysis of collected data from the MCAO and a report on all measurable improvements in the response to allegations of sex assault." For purposes of this report, the Data analyzed will include those items listed on page 3 of the MOU between the MCAO, MT AGO and USDOJ, which includes the Aggregate Data on Sex Assault cases from June 2014 through March 1, 2015, specifically including:

- The number of sexual assault cases referred for review by local law enforcement to MCAO;
- The number of sexual assault cases charged by MCAO;
- The disposition of charged sexual assault cases;
- The number of sexual assault cases in which additional investigation was requested of local law enforcement;
- The number of victims of sexual assault who have utilized the services of the in-house victim witness-coordinator.

As a pre-requisite to gathering this Aggregate Data and as a way to monitor compliance in particular cases, the MCAO also is providing the MT AGO with the following case specific data as outlined in the Monitoring and Compliance Plan (Exhibit 2):

- Copies of all Current Sex Assault Case Data Forms on all cases referred to MCAO for charging or review since the last Quarterly Report.
- Copy of the complete files for all declined sex assault cases, if any, since prior Quarterly report.
- Data on sexual assault cases, organized by Defendant name and Case Number, which includes:
    - Referral type: review or charging.
    - Decision made
    - Disposition
    - Sentence

[3] All the MOUs referenced in this report are attached as Exhibit to the First Quarterly Report, available here at *https://dojmt.gov/wp-content/uploads/Quarterly-Report-January-2015.pdf.*

- The following dates and time spans: Date of referral, Date of any request for further investigation; Date of prosecution decision; Date of meeting with victim; Date of meeting with advocate; Date of plea offer; Date of Disposition.

The Aggregate Data provided by the MCAO is presented in attached Exhibits 5 and 6. Exhibit 5 represents cases referred for a charging decision from June 2014 through March 1, 2015. Cases referred for a charging decision are cases where law enforcement feels it has completed investigation and that there is probable cause to charge the case.

Exhibit 6 represents cases referred from June 2014 through March 1, 2015 for "review only." Cases referred for "review" are cases "where, in the eyes of the MPD detective, the investigation has not developed probable cause necessary for arrest and prosecution."[4]. The assigned prosecutor reviews that investigation and either agrees with the law enforcement decision to make the case inactive or refers the case back for further investigation.

I. Comparative Analysis of Cases Referred for Charging Decisions:

An analysis of the aggregate data for cases referred for a charging decision is provided below in Table 1. Table 1 is based on data compiled in November 2014 for the first quarterly report. Data gathered since the first quarterly report through March 1, 2015 indicates that no cases were referred for charging in the current reporting period ending March 1, 2015. There is no clear explanation for the fact that no cases were referred for charging in this quarter. It appears that this may simply be due to a lull in referrals due to the natural ebb and flow of crime, the fact that sexual assault investigations take time, and/or the fact that the MCAO is referring many cases back for further investigation.

The absence of cases referred in this reporting period provides no opportunity for any comparison to last quarter's cases referred for charging. However, in the interest of further developing the baseline for future comparison, this report will briefly address two important metrics: (1) the time between when a case is referred for charging and the MCAO makes first contact with the victim; and (2) the time between when a case is referred for charging and the MCAO makes a charging decision.

[4] Memorandum of Understanding Between Office of the Missoula County Attorney's Office and the City of Missoula Police Department (Dec. 13, 2013), at p.2.

According to the MCAO Sex Assault Manual there is no specific deadline for making a charging decision on cases referred for prosecution or meeting with the victim. The manual states at pages 19 to 20 that the prosecution should make contact with the investigator within two weeks of referral and emphasizes that communications with victims is of paramount importance.

In 80% of the cases referred for charging, the MCAO made a charging decision within 1 week of referral. The remaining 20% consists of two cases that took 129 days and 70 days respectively. The MCAO explained these longer delays were explained as due to heavy workload. With respect to contacting victims, the MCAO made (or attempted to make) contact with victims in 70% of the cases within 30 days of the case being referred for prosecution. In the remaining 30% of cases, the MCAO took 44 days, 73 days, and 147 days respectively to contact the victims. The 147 day delay in contacting the victim was for a legitimate reason, which for privacy reasons, is not disclosed here. The MCAO stated that the 44 and 73 day delays were due to heavy workload.

While the longer delays in both charging and victim contact appear to be a in the minority of cases, the MCAO acknowledges that this metric needs to be improved. To address these delays the MCAO has added a fourth prosecutor to the SVU unit and requires SVU attorneys to obtain supervisor permission to extend any deadlines for charging or victim contact. Additionally, one of the primary duties of the in-house victim witness coordinator will be to ensure victim contact occurs as soon as possible after the case is referred.

Table 1: Analysis of Sex Assault Cases Referred for a Charging Decision Between June 2014 and November 25, 2014 (Exhibit 5).

SA Cases Referred to MCAO for Charging by MPD and MCSO	10
SA Cases Charged by MCAO	8
SA Cases Referred for Further Investigation by MCAO	1
SA Cases Declined by MCAO	1
SA Cases in Which Prosecutor Made Contact with	8[5]

[5] Regarding the two cases in which the victim was not contacted, one victim was unable to be reached despite attempts by the Detective and Crime Victim Advocate. The other victim had not been contacted at the time of this

Victim	
Average Time Between Referral and First Contact with Victim	35 days
Longest Time Between Referral and First Contact with Victim.	147 days
Shortest Time Between Referral and First Contact with Victim	0 days
Average Time Between Referral and Charging Decision	21.4 days
Longest Time Between Referral and Charging Decision	70 days
Shortest Time Between Referral and Charging Decision	0 days

II. Comparative Analysis of Cases Referred for "review only":

An analysis of the aggregate data for cases referred for "review only" is provided below in Tables 2 and 3. Table 2 includes data compiled in November 2014 for the first quarterly report. Table 3 includes all data gathered since the first quarterly report through March 1, 2015.

The Sex Assault Policy and Procedure Manual, at page 19 through 21, provides that cases referred to MCAO for "review only" should be reviewed by a prosecutor within one month of referral. Only 6 out of the 16 (or 38%) of cases referred for review in the quarter ending November 2014 were reviewed with 30 days. In the current reporting quarter 6 out of the 9 cases (or 67%) of cases where the review is complete were completed within the 30 day window.[6] This appears to be a substantial improvement.

Furthermore, the average time period for review of these types of cases has decreased from 40 days for a review for the first quarterly reporting period down to 16 days during this current reporting period. Finally, there was comparative increase in this reporting period for the relative number of cases referred back for further investigation. We see this as evidence that the MCAO is taking a more affirmative role in ensuring investigations are exhaustive and complete from the prosecution perspective, before a case is closed.

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report.

[6] At the time of the March 1, 2015 data, review was still pending in 4 cases and it is possible that subsequent data will show that that review will have been completed in less than 30 days or more than 30 days.

Table 2: Analysis of Sex Assault cases Referred for "Review Only" (Exhibit 6--June 2014 through November 25, 2014)

		Average Time Between Referral and Decision (Days)	Cases in Which CA Agreed with Investigator	Cases in Which CA Referred Back for Further Investigation	Cases in Which the CA's Review is Pending
Total SA Cases Referred for Review	**16**	40	12	4	0
SA Cases Referred for No PC	**9**	41	7	2	1
SA Cases Referred Where Victim Declined to Participate	**8**	40	5	3[7]	0

Table 3: Analysis of Sex Assault cases Referred for "Review Only" (Exhibit 6--November 26, 2014 through March 1, 2015)

		Average Time Between Referral and Decision (Days)	Cases in Which CA Agreed with Investigator	Cases in Which CA Referred Back for Further investigation	Cases in Which the CA's Review is Pending
Total SA Cases Referred for Review	**13**	16	2	7	4
SA Cases Referred for No PC	**5**	19	1	2	2

[7] The reasons for referring a case back for further investigations are varied. In one case the CA made contact with the victim and the victim decided to participate. Even where the victim has declined to participate, the CA will sometimes want to insure the timely collection of ephemeral evidence in the event the victim decides to later participate.

SA Cases Referred Where Victim Declined to Participate	**4**	4	1	3[8]	0

CONCLUSION

The MT AGO concludes on the basis of the data collected and discussions with the MCAO and Technical Advisor that the MCAO is making significant substantive improvements in way MCAO handles sex assault cases. Specifically, this Quarter it is clear that the communication between the MCAO and law enforcement on these cases has improved, as evidenced in part by the weekly SVU meetings and the significant increase in cases referred for more investigation. We do see an opportunity for improvement for quicker decision making and victim contact on cases referred for charging. Based on the additional SVU prosecutor and closer supervisor control over deadlines, we expect that we will see fewer delays in future data.

[8] The reasons for referring a case back for further investigations are varied. In one case the CA made contact with the victim and the victim decided to participate. Even where the victim has declined to participate, the CA will sometimes want to insure the timely collection of ephemeral evidence in case the victim decides to later participate.