

EXHIBIT 1
AGREEMENT BETWEEN THE MONTANA ATTORNEY GENERAL AND
THE MISSOULA COUNTY ATTORNEY'S OFFICE

The Montana Attorney General and the Missoula County Attorney's Office (MCAO) enter into this Agreement because the Montana Attorney General and MCAO are committed to ensuring that allegations of sexual assault are handled appropriately, that victims are treated with compassion and respect, and that the criminal justice system operates without gender bias.

Purpose. The purpose of this Agreement is to promote public confidence in the criminal justice system through agreement and cooperation between the MCAO and the Montana Attorney General by improving policies and practices related to sexual assault prosecutions in Missoula County. For purposes of this Agreement, the term "sexual assault" means sexual contact without consent as defined in Mont. Code Ann. Sections 45-5-502, 503, exclusive of sexual assault cases involving victims under the age of 16.

Authority. Pursuant to Mont. Code Ann. Section 2-15-501(5), the Attorney General of the State of Montana has the sole authority to supervise the MCAO in the handling of any specific case. Only the Montana Attorney General shall have the authority to provide input on the MCAO's decision to exercise its prosecutorial discretion with respect to any individual case, specifically whether to charge a case that has been declined; investigate or direct further investigation of a referred sexual assault case; or take, or refrain from taking, any actions related to the prosecution of charged cases.

Technical Advisor. The Montana Attorney General agrees to enter into contract with Anne Munch Consulting, Inc. (hereafter the "Technical Advisor") for a total amount including fees, costs and expenses not to exceed \$150,000. The Technical Advisor shall assist with training attorneys in the Montana Department of Justice Prosecution Services Bureau and the MCAO's supervisors to standards acceptable to the Montana Attorney General regarding the proper handling of sexual assault cases, and to assist the Montana Attorney General with the assessment of the MCAO's performance under this Agreement.

The Technical Advisor will only have the contractual duties and responsibilities conferred by the Montana Attorney General as may be needed to facilitate the MCAO's performance under this Agreement. The maximum amount of compensation, including costs and expenses, payable to the Technical Advisor will be specified in the contract with the Technical Advisor and shall not exceed that amount.

The Technical Advisor shall not have any authority with respect to the MCAO's prosecutorial discretion; specifically she shall not have the authority to direct the MCAO to charge a case that has been declined; investigate or direct further investigation of a referred sexual assault case; take or refrain from taking, any actions related to the prosecution of charged cases; or related to proposing or accepting plea agreements.

The Technical Advisor will be hired for a period of not less than one year, but may have her contract extended at the Montana Attorney General's sole discretion. The MCAO has agreed to seek funding for the fees and costs of the Technical Advisor from the Missoula County Board of Commissioners for a maximum period of two years from the date this Agreement is executed by the Montana Attorney

General. The Montana Attorney General will work with the Technical Advisor to reach a mutually agreed upon fees and costs arrangement based on a contract amount that will not be exceeded.

Development of policies and guidelines for sexual assault cases. Within 90 days of execution of the contract with the Technical Advisor, the MCAO agrees to develop written policies and guidelines for handling of sexual assault cases. The MCAO agrees these policies and guidelines will be consistent where appropriate, with guidance of the National District Attorneys Association (NDAA) regarding sexual assault prosecutions and will include the following standard topics relevant to sexual assault prosecutions: plea guidelines, internal timelines for handling sexual assault cases, including charging decisions, coordination with law enforcement and community partners, communication with victim advocates and complaining witnesses, response to stranger and non-stranger sexual assault, response to drug- or alcohol-facilitated sexual assault, and supervisory review of case handling and charging decisions. The Montana Attorney General, in consultation with the Technical Advisor, shall have sole authority and discretion to review and approve the MCAO's written policies and guidelines. Following their approval by the Montana Attorney General, the MCAO's written policies and guidelines shall be published on the MCAO's website.

Training for county attorney supervisors and prosecutors in response to sexual assault. Within the first year of the agreement and every year thereafter for the life of this Agreement, the MCAO agrees to provide prosecutors, supervisors and the in-house victim advocate initial and on-going training in handling sexual assault cases to ensure they are fully equipped to handle these matters. The training will be consistent with the guidelines of the NDAA and will be approved by the Montana Attorney General in consultation with the Technical Advisor. The training will include, but is not limited to: methods of proving non-stranger, drug- or alcohol-facilitated sexual assault, sexual assault where consent is a defense, the body of scientific knowledge commonly accepted as necessary for prosecuting sexual assault cases, effective techniques for interviewing sexual assault victims, and addressing misinformation about bias and sexual assault victimology, including misinformation about victim response to sexual assault. The MCAO agrees, at its own expense, to ensure that deputy county attorneys handling sexual assault cases participate in any sexual assault prosecution training offered by the Montana Attorney General.

Assurances as to on-going practices within the Missoula County Attorney's Office. The MCAO agrees to implement or continue the following on-going practices with respect to its response to sexual assault allegations, which the Attorney General shall have sole authority and discretion to review and approve in consultation with the Technical Advisor:

- **In-person meetings with complaining witnesses:** Prosecutors will make every reasonable effort to conduct in-person meetings with the detectives and complaining witnesses prior to making a determination whether to file charges in sexual assault cases referred and recommended for prosecution. Consistent with Montana law, advocates will be invited and encouraged to participate in such meetings between prosecutors and complaining witnesses.
- **Case related communication with victims and victim advocates:** Subject to the cooperation and availability of victims, prosecutors will communicate key substantive information and decisions about cases and the underlying rationale directly to victims or their victim advocates as required by Montana law.

- Victim Advocates: The MCAO agrees to seek funding from the Missoula County Board of Commissioners for a full-time in-house victim-coordinator for the MCAO, in order to provide improved notification, support, and referral services to victims and to provide victims with information not available to the Missoula Crime Victim Advocate Office or external advocates.
- Utilization of specialized sexual assault prosecution expertise: Within 60 days of the execution of this Agreement, the MCAO agrees to designate an appropriate number of attorneys, based on caseload, to be primarily responsible for sexual assault cases. The attorneys will be selected based on their demonstrated skills and interest and will be required to attend periodic sexual assault-specific training. Nothing in this Agreement prohibits the MCAO from pairing less-experienced county attorneys with county attorneys who specialize in sexual assault cases to develop skills, provided the deputy county attorney who specializes in sexual assault cases has primary responsibilities in the prosecution. In addition, the MCAO will utilize the services of specialized prosecution expertise within the Montana Department of Justice Prosecution Services Bureau whenever the necessary expertise for a particular sexual assault prosecution is not available within the MCAO or, because of caseload demands, is unreasonably delayed.
- Utilization of specialized sexual assault investigation expertise: The parties acknowledge the MCAO does not employ internal investigators, but rather relies upon the investigatory expertise of cooperating law enforcement agencies. However, in evaluating cases and preparing prosecutions for trial, the MCAO does review and evaluate investigations and may request further investigatory efforts when necessary to making a charging decision or in preparing a case for trial. The MCAO will enter into a Memorandum of Understanding (MOU) with local law enforcement agencies to formalize past practices and ensure that appropriate and adequate investigative services are available to prosecutors for the handling of sexual assault cases from referral through trial. The MOU will include the provision that if, after case referral to the MCAO, further investigation is necessary, the MCAO will request further investigation from law enforcement or the Montana Department of Justice Division of Criminal Investigation (DCI). The MCAO agrees to utilize the services of specialized investigative expertise within the DCI whenever the necessary expertise for a particular sexual assault investigation is not available within local law enforcement offices. In addition, such expertise shall be requested whenever a conflict of interest would prevent an objective investigation or caseload demands on local law enforcement would unreasonably delay an investigation.

Nothing herein shall be construed to, or is intended to infer, that the MCAO has supervisory authority over, or control of, the investigatory functions of law enforcement.

- Computer Tracking System: Unless extended by mutual agreement of the parties, the MCAO will, within 120 days of the date of this Agreement and at MCAO's cost, design and implement a computer tracking system for victim advocates and victims to track the status of their cases. Subject to privacy limitations imposed by state and federal laws, the information in this tracking system will be accessible by in-house and external victim advocates.

- Supervisor Review: The MCAO agrees to continue enhanced supervision of prosecuting attorneys responsible for prosecuting sexual assault cases.

Supervisors will closely evaluate sexual assault investigations and prosecutions and ensure that such prosecutions are not undermined by lack of knowledge or impermissible bias and are conducted with the same level of attention and quality as prosecutions of other crimes.

Supervisors will review and approve decisions to decline prosecutions in sexual assault cases. This review will include an evaluation to assess whether the declination decision was made for any inappropriate reason. Supervisors will document their review.

The MCAO will conduct a periodic examination of supervisory review data in all sexual assault cases, including closed cases, declined cases and cases where the complaining witness declined to participate in the prosecution of such cases in an effort to identify any systemic problems, including deficiencies or delays in the investigation, charging decision, and prosecution of sexual assault cases, and indications, if any, of gender bias. The review will include information gathered from a review of case files and feedback from victims and victim advocates.

Improved communication and coordination with law enforcement and community partners. The MCAO agrees to implement measures to improve communication and coordination to effectively handle sexual assault cases. The Montana Attorney General, in consultation with the Technical Advisor, shall have sole authority and discretion to approve such measures, which will include:

- Cooperation with law enforcement and community partners: The MCAO agrees to increase and improve its communication, coordination and cooperation with community and law enforcement partners, including the Missoula Police Department (MPD), Missoula County Sheriff's Office (MCSO), University of Montana Police Department (UMPD), Crime Victim Advocate Office, and community advocates, including, without limitation, the Missoula YWCA, JUST Response, and the University of Montana SARC program. These efforts will be aimed at increasing the willingness and ability of sexual assault victims to participate in prosecutions of meritorious cases, facilitating the collection and analysis of relevant evidence, and minimizing the additional hardship that this participation can cause for sexual assault victims. These efforts will include:
 - Adherence to all agreed responsibilities set out in the Memorandum of Understanding between the MCAO and the MPD dated December 13, 2013 (a copy of which is attached hereto as Exhibit "A") and which shall also be applicable to any cases submitted to the MCAO by MCSO or UMPD. Exhibit A will be amended to 1) ensure that supervisors in the MCAO assess the quality of sexual assault investigations, provide written feedback to the Missoula Police; and 2) provide more guidance about the responsibilities of the MCAO for cases referred for review.
 - Entering into an MOU with the MCSO with substantially the same terms as the MOU with the MPD.

- Working with stakeholders to clarify, in writing, the roles and responsibilities of the MCAO, crime victim advocates and community advocates related to supporting and communicating with victims of sexual assault.
- Agreeing to participate in and support the City of Missoula's efforts to organize and lead a sexual assault safety and accountability audit.
- The MCAO agrees to provide training to the MPD and the MCSO detectives on the requirements of successful sexual assault prosecutions to facilitate effective investigations and minimize the influence of impermissible bias.
- Public education and outreach: In the interest of transparency and improved communication with its community and law enforcement partners, the MCAO agrees to provide the public with information about the criminal justice process, including basic information about the roles of prosecutors and law enforcement in responding to sexual assault, the types of charges available in cases of sexual assault, and the policies applicable to plea negotiation. Such information will be disseminated in a manner designed to reach the greatest number of victims of sexual assault and the law enforcement and community partners that interact with the victims of sexual assault in Missoula County, including through publication on the MCAO's website. This outreach will include outreach focused on communities at particular risk of perpetrating or being victimized by sexual assault. In collaboration with law enforcement and community partners, the Montana Attorney General and the MCAO agree also to conduct outreach to communities at particular risk for perpetrating or being victimized by sexual assault. The community outreach efforts will be funded at a level approved by, and paid by, the Montana Attorney General's Office.
- Data collection: To identify shortcomings and assess improvement, the MCAO agrees to collect specific information about decisions related to sexual assault referrals, initial meetings with victims, charging decisions, plea offers, case dispositions, and sentences, including, but not limited to, the dates and periods of time between each of these steps in the MCAO's handling of a sexual assault case. Except as to confidential criminal justice information, the MCAO agrees to collect and disseminate on a quarterly basis aggregate data on sexual assault cases to the Montana Attorney General and the public.
- Victim and advocate survey: The MCAO agrees to participate in the victim survey program currently underway through the University of Montana to obtain feedback from victims and advocates to help the MCAO continue to improve its handling of sexual assault cases. The MCAO will work cooperatively with the Missoula Police Department and the University of Montana to ensure that the sexual assault victim survey includes questions about the experience of sexual assault victims with the MCAO, including those victims who decline to participate in an investigation. The MCAO will seek to include questions asking whether and when victims meet with prosecutors; whether and how prosecutors prepare victims for proceedings related to the prosecution of their cases, including motions hearings, trials, and sentencing; whether and how prosecutors describe the prosecution process to victims; and whether and how prosecutors inform victims about their rights during the investigative or pretrial phases, during trial, and after trial and sentencing.

Expert Witness Expenses. In order to facilitate and support prosecution of sexual assault cases, the MCAO will seek additional funding from the Missoula County Board of Commissioners in the amount of \$10,000 a year for the next two fiscal years for the purpose of paying expert witnesses who may be needed to provide additional evidence in such cases. In addition, the Montana Attorney General will seek funding from the Montana Legislature to assist county attorneys for such purpose in the next session of the legislature. This funding is in addition to other sources of funding for experts and is not a limit on the ability of the MCAO to hire such experts as are necessary to pursue cases.

Assessment of this Agreement and Review of Cases by the Montana Attorney General. The Montana Attorney General, in consultation with the Technical Advisor, agrees to establish an appropriate plan to monitor compliance with the terms of this Agreement.

- **Monitoring:** The monitoring duties of the Montana Attorney General will include: the development and implementation of policies and training, and assessing implementation of other provisions of this Agreement, including, for example, the duty to evaluate supervision of sexual assault cases, coordination with law enforcement partners, and data collection. The Montana Attorney General will also provide technical assistance to the MCAO, as appropriate pursuant to the Agreement. Unless extended by agreement of the parties, an appropriate monitoring and compliance plan will be developed within 60 days of entering into a contract with the Technical Advisor. Following development of the monitoring and compliance plan, in consultation with the Technical Advisor, the Montana Attorney General will monitor compliance with this Agreement for a period of one (1) year.
- **Review of Cases:** For a period of one (1) year following execution of this Agreement by the Montana Attorney General, the Montana Attorney General will review all sexual assault cases where the MCAO has declined prosecution.

Reporting. The Montana Attorney General, in consultation with the Technical Advisor, will provide public quarterly reports regarding whether the requirements of this Agreement have been implemented, including an analysis of collected data from the MCAO and a report on all measurable improvements in the response to allegations of sexual assault. In the interest of transparency and improved communication with its community and law enforcement partners, the Montana Attorney General's quarterly reports and all recommendations and/or conclusions of the Technical Advisor shall be public with the exception of material covered by applicable privacy laws including the Montana Confidential Criminal Justice Information Act.

No Third-Party Rights. This Agreement does not create or give rise to any third-party rights, claims, damages, or causes of action. No person or entity is intended to be a third-party beneficiary of any provision of this Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement.

Enforcement. This Agreement is not intended to create legal rights or obligations except as between the MCAO and the Montana Attorney General. Under no circumstances does this Agreement subject the MCAO or the Montana Attorney General to any liability, claim or action by the United States, including, without limitation claims by the United States alleging violations of civil rights or claims for breach of contract or specific performance.

The Montana Attorney General will exercise continuing supervisory authority over the MCAO to ensure compliance with this Agreement. If a question arises regarding the MCAO's performance or compliance with this Agreement, the Montana Attorney General shall give the MCAO notice of the issue and the parties will attempt to resolve the issue promptly by mutual Agreement. In the absence of a mutually acceptable agreement to resolve the issue, the Montana Attorney General shall have the sole authority and discretion under Mont. Code Ann. Section 2-15-501(5), to determine appropriate supervisory measures to obtain compliance with this Agreement.

Interpretation of this Agreement relating to the U.S. Department of Justice (USDOJ). The MCAO and the Montana Attorney General expressly deny that the USDOJ has any authority over locally elected county attorneys who fall under the statutory supervisory control of the Montana Attorney General pursuant to Mont. Code Ann. Section 2-15-501(5). Therefore, nothing in this Agreement constitutes any admission or agreement by the MCAO or the Montana Attorney General that the USDOJ has jurisdiction or authority to investigate or seek a remedy against the MCAO regarding its handling of sexual assault cases.

The MCAO expressly denies any claims of bias or statutory/constitutional violations. Consequently, nothing in this Agreement shall be construed as an acknowledgment, an admission, or evidence of liability of the MCAO for any violation of State or Federal law, violation of the State or Federal Constitution, or for any alleged gender bias by the MCAO. By entering into this Agreement, the MCAO does not imply that there is validity to any allegations alleged by the USDOJ.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

Dated this ____ day of June, 2014.

STATE OF MONTANA

Timothy C. Fox, Montana Attorney General

Dated this ____ day of June, 2014.

MISSOULA COUNTY ATTORNEY'S OFFICE

Fred Van Valkenburg, Missoula County Attorney