

**MEMORANDUM OF UNDERSTANDING BETWEEN, THE MONTANA ATTORNEY
GENERAL, THE MISSOULA COUNTY ATTORNEY'S OFFICE, MISSOULA COUNTY,
AND
THE UNITED STATES DEPARTMENT OF JUSTICE**

- A. This Memorandum of Understanding ("MOU") is entered into by the Missoula County Attorney's Office ("the MCAO"), Missoula County ("Missoula County" or "County"), the Montana Attorney General's Office ("Montana Attorney General"), and the United States Department of Justice ("United States" or "USDOJ") (collectively, "the Parties"). This MOU is intended to resolve USDOJ's investigation of the MCAO, initiated pursuant to 42 U.S.C. § 14141 and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d.
- B. The purpose of this MOU is to provide for a cooperative effort by the parties, to ensure that the MCAO responds to sexual assault in a nondiscriminatory manner that complies with the Constitutions and laws of Montana and the United States; improves the safety and security of victims of sexual assault in Missoula County; and increases the Missoula County community's confidence in the MCAO's response to sexual assault. Entry of this MOU is in the public interest since it provides for expeditious changes to improve public safety and adherence to state and federal law.
- C. The United States investigated claims of gender discrimination by the MCAO in its handling of reports of sexual assault, and on February 14, 2014, provided a letter to the MCAO regarding that investigation. The MCAO enters into this MOU expressly denying any claims of constitutional or statutory violations.
- D. The United States asserts that it has jurisdiction both to investigate and to bring suit against the MCAO pursuant to 42 U.S.C. § 14141 and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d. The MCAO, the County, 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). Nothing in this MOU constitutes any admission, concession, or agreement by the MCAO, the County, or the Montana Attorney General that the United States has such jurisdiction or authority to investigate or seek remedy against the MCAO regarding its handling of sexual assault cases, nor a concession by the United States that it does not have such jurisdiction or authority.
- E. Nonetheless, prior to entering into this MOU, the MCAO had begun working to improve the MCAO's handling of reports of sexual assault, and, through this MOU, agrees to make further

changes to improve the MCAO's practices in this regard. In addition, the Montana Attorney General is working with the MCAO to improve the MCAO's handling of sexual assault cases.

- F. As part of the consideration for this MOU and the agreements contained herein, the MCAO and the Montana Attorney General agree to execute the "Agreement" attached as Exhibit 1 by and between the MCAO and the Montana Attorney General. The Agreement between the MCAO and the Montana Attorney General (Exhibit 1) is not intended to create legal rights or obligations except as between the MCAO and the Montana Attorney General. Under no circumstances does Exhibit 1 subject the MCAO or the Montana Attorney General to any liability, claim or action by the United States, including, without limitation, civil rights claims or claims for breach of contract or for specific performance.
- G. As further consideration for this MOU and the agreements contained herein, subject to the limitations in paragraph F, above, the Montana Attorney General agrees to:
1. Consult with USDOJ on the following items related to the implementation of the Agreement (Exhibit 1) between the MCAO and the Montana Attorney General:
 - a. The Montana Attorney General's selection of a Technical Advisor and the Montana Attorney General's contract with the Technical Advisor;
 - b. The Montana Attorney General's review and approval of MCAO's policies and guidelines for handling of sexual assault cases; and
 - c. The Montana Attorney General's review and approval of MCAO's sexual assault training program for its prosecutors, supervisors, and in-house victim advocate.

After consulting with USDOJ, the Montana Attorney General shall have sole authority and discretion to make any and all final decisions concerning paragraphs G.1.a. through G.1.c., above.

2. Except as prohibited by applicable privacy laws including the Montana Confidential Criminal Justice Information Act, obtain and provide the following information to USDOJ on a semi-annual basis for a period of two (2) years after the date of this MOU:
 - a. Copies of sexual assault policies implemented pursuant to the Agreement between MCAO and the Montana Attorney General (Exhibit 1).
 - b. Copies of MOUs executed between the MCAO and other local law enforcement agencies with respect to sexual assault crimes.

- c. Copies of all materials used by MCAO for training prosecutors on sexual assault cases pursuant to the Agreement between the MCAO and the Montana Attorney General (Exhibit 1).
- d. Copies of all written recommendations and/or conclusions made to the Montana Attorney General by the Technical Advisor pursuant to the Agreement between the MCAO and the Montana Attorney General (Exhibit 1) will be provided to USDOJ by the Montana Attorney General within 30 days of receipt.
- e. Data on the following:
 - i. The number of sexual assault cases referred for review by local law enforcement to MCAO.
 - ii. The number of sexual assault cases charged by MCAO.
 - iii. The disposition of charged sexual assault cases.
 - iv. The number of sexual assault cases in which additional investigation was requested of local law enforcement.
 - v. The number of victims of sexual assault who have utilized the services of the in-house victim witness-coordinator provided for in the Agreement between the MCAO and the Montana Attorney General (Exhibit 1).
- H. The Montana Attorney General has begun to implement a state-wide training program and is developing a state-wide policy guidance with respect to the handling of sexual assault cases by county attorneys, law enforcement, victim advocates, and the state and local court systems. In support of these initiatives and in support of the MCAO's efforts, subject to the limitations in paragraph F, above, the Montana Attorney General will utilize the services and work product of a Technical Advisor as provided for in Exhibit 1 to this MOU.
- I. The Parties acknowledge that this MOU is intended to ensure the success of MCAO's efforts to improve its response to sexual assault. Nothing in this MOU will be construed as an acknowledgement, an admission, or evidence of liability of Missoula County or the MCAO for any violation of state or federal law, violation of the State or Federal Constitution, or for any alleged gender bias or discrimination in the performance of sexual assault prosecution duties.
- J. Upon execution and implementation of this MOU, the United States agrees to forego the filing of any claims or actions against the MCAO and Missoula County with regard to the handling of sexual assault cases in the past, including, without limitation, any and all civil rights claims. The MCAO, in turn, agrees to dismiss its pending Complaint for Declaratory Judgment against the

USDOJ. The Parties acknowledge that nothing in this MOU precludes USDOJ from filing any other claims against the MCAO for any future conduct, including claims under 42 U.S.C. §14141, subject, however, to any and all defenses that the MCAO and the Montana Attorney General now have, or may have in the future.

This MOU 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.

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Dated this ____ day of June, 2014.

For the **STATE OF MONTANA**

Timothy C. Fox, Montana Attorney General

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Dated this ____ day of June, 2014.

For the **MISSOULA COUNTY ATTORNEY'S OFFICE**

Fred Van Valkenburg, Missoula County Attorney

Dated this ____ day of June 2014.

For **MISSOULA COUNTY**

Jean Curtiss, Chair

Bill Carey, Commissioner

Michele Landquist, Commissioner

Dated this ____ day of June, 2014.

For the UNITED STATES OF AMERICA:

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