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Montana Legislative Services Division
Legal Services Office

TO: Task Force on State Public Defender Operations

FROM: Julie Johnson, Legal Services Office

RE: Legal Guidelines for Treatment Courts (45, F)

DATE: May 11, 2016

At the February 2016 meeting, I was asked to research the legal guidelines for treatment courts. Treatment courts include both drug treatment courts and mental health treatment courts. Currently, treatment courts, their structure, and their effectiveness are being studied as a part of the work by the Commission on Sentencing. At the November 2015 meeting, a number of presentations on drug courts were given, including one entitled "Drug Courts 101" by Judge Ingrid Gustafson of the 13th Judicial District. The link to those materials is:

<http://leg.mt.gov/css/Committees/interim/2015-2016/Sentencing/Meetings/Nov-2015/nov-2015.asp>

Section 46-1-1104, MCA, sets forth the legal structure for drug treatment courts. Highlights include:

- A judicial district or court of limited jurisdiction may establish a drug treatment court
- Participation in a drug treatment court is voluntary and is subject to the consent of the prosecutor, the defense attorney, and the court pursuant to a written agreement
- A court can impose reasonable sanctions under the agreement, including incarceration

Section 46-1-1204, MCA, sets forth the legal structure for mental health treatment courts. Highlights include:

- A judicial district or court of limited jurisdiction may establish a mental health treatment court
- Participation in a mental health treatment court is voluntary and is subject to the consent of the prosecutor, the defense attorney, and the court pursuant to a written agreement.
- Upon successful completion of mental health treatment court, a participant's case must be disposed of by the judge in the manner prescribed by the agreement and by the applicable policies and procedures adopted by the mental health treatment court.
- Disposition may include pretrial diversion under 46-16-130, dismissal of criminal charges, probation, deferred sentencing, suspended sentencing, or a reduced period of incarceration.

Neither drug treatment courts nor mental health treatment courts obviate the need for a public defender if the underlying charge carries the possibility of incarceration.

The whole of §§ 46-1-1104 and 46-1-1204, MCA, are provided below for reference:

46-1-1104. Drug treatment court structure. (1) Each judicial district or court of limited jurisdiction may establish a drug treatment court under which drug offenders may be processed to address an identified substance abuse problem as a condition of pretrial release, pretrial diversion under 46-16-130, probation, incarceration, parole, or other release from a detention or correctional facility.

(2) Participation in drug treatment court is voluntary and is subject to the consent of the prosecutor, the defense attorney, and the court pursuant to a written agreement.

(3) A drug treatment court may grant reasonable incentives under a written agreement if the court finds that a drug offender is performing satisfactorily in drug treatment court, is benefiting from education, treatment, and rehabilitation, has not engaged in criminal conduct, and has not violated the terms and conditions of the agreement. Reasonable incentives may include but are not limited to:

- (a) graduation certificates;
- (b) early graduation;
- (c) fee reduction or waiver of fees;
- (d) record expungement of the underlying case; or
- (e) reduced contact with a probation officer.

(4) The court may impose reasonable sanctions under the agreement, including incarceration or rejection from the drug treatment court, if the court finds that the drug offender is not performing satisfactorily in drug treatment court, is not benefiting from education, treatment, or rehabilitation, has engaged in conduct rendering the offender unsuitable for the program, has otherwise violated the terms and conditions of the agreement, or is for any reason unable to participate. Sanctions may include:

- (a) a short-term jail sentence;
- (b) fines;
- (c) extension of time in the program;
- (d) peer review;
- (e) geographical restrictions;
- (f) termination; or
- (g) contempt of court.

(5) Upon successful completion of drug treatment court, a drug offender's case must be disposed of by the judge in the manner prescribed by the agreement and by the applicable policies and procedures adopted by the drug treatment court. This may include but is not limited to pretrial diversion under 46-16-130, dismissal of criminal charges, probation, deferred sentencing, suspended sentencing, or a reduced period of incarceration. A drug offender who successfully completes the program may be given credit for the time the offender served in the drug treatment program by the judge upon disposition.

(6) Each local jurisdiction that intends to establish a drug treatment court or to continue the operation of an existing drug treatment court shall establish a local drug treatment court team.

(7) The drug treatment court team shall, when practicable, conduct a staff meeting prior to each drug treatment court session to discuss and provide updated information regarding drug offenders. After determining the offender's progress or lack of progress, the drug treatment court team shall agree on the appropriate incentive or sanction to be applied. If the drug treatment court team cannot agree on the appropriate action, the court shall make

the decision based on information presented in the staff meeting.

(8) The provisions of this part apply only to offenders who qualify for participation based on qualifications established by each drug treatment court. The provisions of this part do not apply to drug offenders who have been convicted of a sexual or violent offense, as defined in 46-23-502. This part does not confer a right or expectation of a right to participate in a drug treatment court and does not obligate a drug treatment court to accept any offender. The establishment of a drug treatment court may not be construed as limiting the discretion of a prosecutor to act on any criminal case that the prosecutor considers advisable to prosecute. Each drug treatment court judge may establish rules and may make special orders and necessary rules that do not conflict with rules adopted by the Montana supreme court.

(9) Each drug offender shall contribute to the cost of substance abuse treatment in accordance with 46-1-1112(2).

(10) A drug treatment court coordinator is responsible for the general administration of a drug treatment court under the direction of the drug treatment court judge.

(11) The supervising agency shall timely forward information to the drug treatment court concerning the drug offender's progress and compliance with any court-imposed terms and conditions.

(12) A department of corrections probation and parole officer may participate in a drug treatment court team if authorized by the department. The department may authorize participation if it determines, in its discretion, that the caseloads of local probation and parole officers permit participation. If necessitated by a change in caseloads, the department may withdraw authorization for participation by its probation and parole officers in a drug treatment court. The department of corrections may not authorize its probation and parole officers to supervise a participant of a drug treatment court program who has not been convicted of a felony offense and committed to the supervision of the department.

46-1-1204. Mental health treatment court structure. (1) Each judicial district or court of limited jurisdiction may establish a mental health treatment court under which persons with a mental disorder who are charged with a criminal offense may be processed to address an identified mental health problem as a condition of pretrial release, pretrial diversion under 46-16-130, probation, incarceration, parole, or other release from a detention or correctional facility.

(2) Participation in a mental health treatment court is voluntary and is subject to the consent of the prosecutor, the defense attorney, and the court pursuant to a written agreement.

(3) A mental health treatment court may grant reasonable incentives under a written agreement. Reasonable incentives may include but are not limited to:

- (a) graduation certificates;
- (b) early graduation;
- (c) fee reduction or waiver of fees;
- (d) record expungement of the underlying case; or
- (e) reduced contact with a probation officer.

(4) The court may impose reasonable sanctions under the agreement for failure to comply with the agreement. Prior to imposition of a sanction, the mental health treatment court team shall review the participant's individual treatment program and the participant's conduct. If the mental health treatment court team determines that the participant's failure to comply:

(a) was not willful, was a symptom of a mental disorder, or was a result of an inappropriate treatment plan, the court may impose sanctions, including:

- (i) fines;
- (ii) extension of time in the program;
- (iii) peer review; or

(iv) geographical restrictions; or

(b) was willful, not a symptom of a mental disorder, and not the result of an inappropriate treatment plan, the court may impose sanctions, including:

(i) a short-term jail sentence;

(ii) termination of participation in the program; or

(iii) contempt of court.

(5) Upon successful completion of mental health treatment court, a participant's case must be disposed of by the judge in the manner prescribed by the agreement and by the applicable policies and procedures adopted by the mental health treatment court. This may include but is not limited to pretrial diversion under 46-16-130, dismissal of criminal charges, probation, deferred sentencing, suspended sentencing, or a reduced period of incarceration. A participant who successfully completes the program must be given credit for the time the participant served in the mental health treatment program by the judge upon disposition.

(6) Each local jurisdiction that intends to establish a mental health treatment court or to continue the operation of an existing mental health treatment court shall establish a local mental health treatment court team.

(7) The mental health treatment court team shall, when practicable, conduct a staff meeting prior to each mental health treatment court session to discuss and provide updated information regarding participants. After determining the participant's progress or lack of progress, the mental health treatment court team shall agree on the appropriate incentive or sanction to be applied. If the mental health treatment court team cannot agree on the appropriate action, the court shall make the decision based on information presented in the staff meeting. The provisions of this part apply only to persons with a mental disorder who are charged with a criminal offense and who qualify for participation based on qualifications established by each mental health treatment court. The provisions of this part do not apply to participants who have been convicted of a sexual or violent offense, as defined in 46-23-502. This part does not confer a right or expectation of a right to participate in a mental health treatment court and does not obligate a mental health treatment court to accept any offender. The establishment of a mental health treatment court may not be construed as limiting the discretion of a prosecutor to act on any criminal case that the prosecutor considers advisable to prosecute. Each mental health treatment court judge may establish rules and may make special orders and necessary rules that do not conflict with rules adopted by the Montana supreme court.

(8) Each participant shall contribute to the cost of treatment and the program in accordance with 46-1-1212(2). A mental health treatment court coordinator is responsible for the general administration of a mental health treatment court under the direction of the mental health treatment court judge. The supervising agency shall timely forward information to the mental health treatment court concerning the participant's progress and compliance with any court-imposed terms and conditions.

(9) A department of corrections probation and parole officer may participate in a mental health treatment court team if authorized by the department. The department may authorize participation if it determines, in its discretion, that the caseloads of local probation and parole officers permit participation. If necessitated by a change in caseloads, the department may withdraw authorization for participation by its probation and parole officers in a mental health treatment court. The department of corrections may not authorize its probation and parole officers to supervise a participant of a mental health treatment program who has not been convicted of a felony offense and committed to the supervision of the department.

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