



National Judicial Opioid Task Force

Sample Court Transfer Agreement - State and Federal Courts

The first drug treatment court was founded in a Florida state court in 1989. Since that time, state courts have been at the forefront of expanding these specialized court programs that aid criminal defendants with substance use disorders and mental health conditions. There are more than 3,000 drug treatment courts across the United States. These specialty court programs focus on adult and juvenile drug and alcohol offenders, veterans, families, offenders with mental health conditions, and DWI offenders. In response to the opioid crisis, several states have developed Opioid Intervention Courts, specifically targeting a reduction in opioid overdose deaths through court supervised interventions immediately following arrest, intensive oversight, and the provision of medically assisted treatment and related services. All of these intensive supervision programs combine frequent judicial interaction with graduated incentives and sanctions and treatment services to rehabilitate offenders. The programs promote responsibility and accountability, while substantially reducing recidivism and taxpayer costs over incarceration and saving lives. Treatment courts are among the most successful justice initiatives in history.

Unfortunately for offenders in the federal court system, these programs are mostly unavailable. While there are federal treatment court programs in various jurisdictions, treatment courts are not available to most federal offenders. The smaller numbers and differences in the nature of drug-related crimes resolved in federal courts do not create sufficient caseloads for the operation of specialty court programs in most federal jurisdictions.

In 2015, the Montana Eighth Judicial District Court, United States District Court for the District of Montana and United States Attorney for the District of Montana, became the first federal-state courts to collaborate on making state treatment courts available to federal offenders. The courts developed a formal memorandum of understanding (MOU) that establishes a collaboration between the two court systems and allows for the entry of offenders on federal supervised release to participate in the state treatment court. This MOU has been utilized by the United States Department of Justice to expand this collaborative relationship to other jurisdictions.

The following document is based upon the MOU adopted and utilized in Montana and is designed and recommended for use in jurisdictions where state court judges – especially those who preside over adult drug court programs – operate in proximity to the location of a federal district court. It provides an additional option for the provision of appropriate and effective treatment to defendants who might otherwise lack access to such services.

MEMORANDUM OF UNDERSTANDING

between the

United States District Court for the _____ District of _____

and

United States Attorney’s Office for the _____ District of _____

and

[State Treatment Court]

I. BACKGROUND AND PURPOSE

A. Each year dozens of federal offenders are charged with misdemeanor and non-sexual felony crimes in the United States District Court for the _____ of _____. Many of these offenders have medical, mental health, substance abuse, and other problems. These offenders often need rehabilitative services not otherwise available to them in the federal court system.

The _____ Treatment Court (“Treatment Court”) is an incarceration alternative for qualifying defendant offenders. The Treatment Court reduces crime, enhances public safety, saves taxpayer costs, and enriches lives by facilitating sobriety, treating mental health conditions, improving social relationships, and promoting lifelong stability.

B. The purpose of this Memorandum of Understanding (“MOU”) among the United States District Court for the _____ District of _____ (“USDC”), the United States Attorney’s Office for the _____ District of _____ (“USAO”), and the Treatment Court is to facilitate the entry of federal offenders into the Treatment Court and to govern the parties’ obligations prior to, during, and following a federal defendant offender’s enrollment in the Treatment Court.

C. The Treatment Court is created and operated under [State Law]. The Treatment Court is operated under its internal policies and procedures manual. This MOU is not intended to confer or create authority not already in existence for the parties.

II. IDENTIFICATION, SCREENING, AND ENROLLMENT IN THE TREATMENT COURT

A. To identify potentially qualifying offenders, the USDC agrees to do the following:

- (1) As part of its routine pretrial services assessment of all criminal defendants facing new charges, supervised release or probation revocations, the U.S. Probation Office (“USPO”) shall identify those individuals with a substance use order and/or mental health condition.

- (2) Upon identifying a qualifying offender, the USPO or defendant's legal counsel shall provide the defendant's name to the USAO, the defendant's legal counsel, and the USDC.

B. To screen federal offenders for eligibility for the Treatment Court, the USDC and the USAO agree to do the following:

- (1) Upon notification of a defendant's screening status, in consultation with the USPO, the USAO shall perform a preliminary eligibility screening of the defendant. A defendant is disqualified from participation in the Treatment Court if the [INSERT REFERENCE TO ANY DISQUALIFICATION UNDER STATE LAW]. As allowed by law or existing policy, in its sole discretion, the USAO may plea bargain a disqualifying offense to qualify a defendant for Treatment Court. Contemporaneously, the USAO shall determine if it is willing to recommend the defendant for Treatment Court. The USAO shall provide the results of its eligibility screening to the defendant's legal counsel, USPO, and the USDC. The USAO retains an absolute veto over Treatment Court participation for defendants who receive a pre-adjudication diversion. For post-adjudication defendants, the USAO does not have a veto over entry into the Treatment Court because the decision lies in the discretion of the USDC. The USAO may make any sentencing recommendations it chooses and may choose whether to recommend Treatment Court for a particular defendant, while recognizing the ultimate decision whether to require participation in the Treatment Court shall be made by the USDC.
- (2) If a defendant is preliminarily eligible and the USAO and USPO agree with the defendant's participation in the Treatment Court, the defendant's legal counsel shall inquire into whether the defendant is interested in the Treatment Court. The Treatment Court is a voluntary program. The defendant's legal counsel shall inform the USAO, USPO, and the USDC of the defendant's decision.
- (3) If a defendant agrees to participate in the Treatment Court, the USPO shall notify the Treatment Court the defendant is eligible and ready to undergo the Treatment Court's eligibility screening. The USPO shall provide the Treatment Court with all pertinent information related to the defendant, and the results of any assessments performed by the USPO. The information shared by the USPO shall be kept confidential by the Treatment Court. To facilitate the transfer of information sharing, the USPO shall require the defendant execute a release of information to the Treatment Court.

C. To screen eligible defendants for the Treatment Court, the Treatment Court agrees to do the following:

- (1) Upon receipt of the defendant's name and information from the USPO, the Treatment Court shall undertake a risk/needs assessment¹ of the defendant, if necessary. For violent offenders, the risk/needs assessment may include an intimate partner violence assessment and/or a general violence risk assessment. The Treatment Court shall notify the defendant's legal counsel of the name and contact information of the individual who will complete the risk/needs assessment. It shall be the responsibility of the defendant and/or the defendant's legal counsel to schedule the assessment. The Treatment Court reserves the right to reject a defendant who unnecessarily delays completing the assessment.
- (2) Contemporaneously, the Treatment Court shall undertake a chemical dependency evaluation and/or mental health assessment of the defendant. The Treatment Court shall notify the defendant's legal counsel of the name and contact information of the individual who will complete the chemical dependency evaluation and/or mental health assessment of the defendant. It shall be the responsibility of the defendant and/or the defendant's legal counsel to schedule the evaluation. The Treatment Court reserves the right to reject a defendant who unnecessarily delays completing the evaluation.
- (3) The Treatment Court shall promptly review the assessment and evaluation results and decide whether the defendant is accepted into the Treatment Court. It is the sole discretion of the Treatment Court to accept a defendant. The Treatment Court shall follow its policies and procedures manual in reaching this decision. The Treatment Court shall communicate its decision and the specific bases of that decision, along with any available documents or reports, to the USAO, defendant's legal counsel, USPO, and the USDC.

D. To enroll a defendant in the Treatment Court, the USDC and the USAO agree to do the following:

- (1) Once a defendant is accepted by the Treatment Court, the USAO, defendant's legal counsel, USPO, and the USDC shall work together to facilitate the defendant's enrollment into the Treatment Court.
- (2) If the USAO agrees to a pretrial diversion of the defendant's case or the USDC agrees to a probationary sentence, a condition of the pretrial diversion or probationary sentence shall be the defendant's enrollment in and successful completion of the Treatment Court. For a misdemeanor pretrial diversion, the length of the diversion shall be no less than twelve (12) months, and for a felony pretrial diversion, the length of the diversion shall be no less than twenty four (24) months.

¹ A "risk/needs assessment" in this context is an evaluation of prognostic risks and criminogenic needs. These are evidence-based evaluative tools used for suitability of various substance abuse programs. *See, e.g., Douglas B. Marlowe, J.D., Ph.D., Evidence-Based Sentencing of Drug Offenders, An Analysis of Prognostic Risks and Criminogenic Needs*, 1 CHAPMAN J. CRIM. JUST. 167 (2009).

E. It is the parties' aspirational goal to Complete Section II, Parts A through D (identification through diversion/sentencing), within 30 days. Drug court research indicates expeditiously enrolling a participant in a treatment court program improves the participant's chance of success in the program.

III. PARTICIPATION IN TREATMENT COURT

A. To facilitate a defendant's participation in the Treatment Court, the USDC and the USAO agree to do the following:

- (1) The USPO shall supervise the defendant. Supervision shall include regular office visits with the defendant and random, unannounced home visits.
- (2) The USPO shall provide regular updates to the Treatment Court at least once per week. The USPO shall input progress notes into the Treatment Court database at least once per week (or e-mail progress notes to the Treatment Court coordinator).
- (3) The USPO shall designate one of its probation officers as a liaison to the Treatment Court. At least once per month, the liaison shall attend and participate in the Treatment Court weekly staff meeting.
- (4) The USAO, USPO, and USDC agree to abide by all federal and state requirements to keep confidential the results of a defendant's drug and alcohol tests administered by the Treatment Court.
- (5) Nothing herein shall confer any substantive or procedural rights on any party or participant beyond those in the Federal Rules of Criminal Procedure and Federal Rules of Evidence, nor shall it be construed as waiving any participant's constitutional or statutory rights. Nothing herein shall bind any court to a particular remedy.
- (6) If a defendant has not successfully completed the Treatment Court by the end of their term of supervised release or probation, the parties may apply to the USDC for an extension of the term to allow the defendant to complete the Treatment Court. The USDC will review and decide the application pursuant to Fed. R. Crim..P. 32.1, and 18 U.S.C. §§ 3563, 3564 and 3583.
- (7) The USPO, USAO, and USDC retain all rights regarding the defendant participant and may take actions such as revocation of supervised release or probation independent of the Treatment Court's involvement.

B. To facilitate a defendant's participation in the Treatment Court, the Treatment Court agrees to do the following:

- (1) The Treatment Court shall enroll an accepted defendant into the Treatment Court as soon as practicable. The Treatment Court shall require the defendant to sign the Participant Handbook and shall provide legal counsel to the defendant throughout his/her participation in the Treatment Court.
- (2) The Treatment Court shall develop an individualized treatment plan and make referrals to providers, impose weekly requirements on the defendant, regularly monitor the defendant's compliance with court requirements, and require the defendant to comply with random, frequent drug and alcohol testing. The Treatment Court shall pay the cost for the drug and alcohol testing and defendant's chemical dependency and/or mental health treatment.
- (3) The Treatment Court may impose a weekly fee to defendant participants.
- (4) The Treatment Court's internal policies and procedures manual shall govern its obligations to the defendant while the defendant participates in the Treatment Court.

IV. GRADUATION OR TERMINATION FROM TREATMENT COURT

A. Graduation from Treatment Court

If a participant successfully completes the Treatment Court, the Treatment Court shall graduate the defendant from the program. Upon graduation, the Treatment Court may recommend the USAO or USDC, in their sole discretion, discharge the remainder of the defendant's diversionary term or probationary sentence. This shall signify the conclusion of the Treatment Court's obligations under this agreement regarding a graduated defendant.

B. Termination from Treatment Court

If a defendant does not successfully complete the Treatment Court and the Treatment Court believes it can no longer provide services to the defendant, the Treatment Court will hold a termination hearing. The Treatment Court will receive evidence as to the defendant's noncompliance. The defendant shall be represented by legal counsel and shall be afforded a hearing to present evidence upon his/her behalf. It is in the sole discretion of the Treatment Court whether it should terminate a defendant from the program. Upon termination, the Treatment Court shall notify the USAO, USPO, and the USDC of the termination and shall refer the matter to these parties for further disposition of the defendant's case. This shall signify the conclusion of the Treatment Court's obligations under this agreement regarding a terminated defendant.

C. Administrative Discharge from Treatment Court

If a defendant is unable for medical, mental health, or other justified reasons to complete the requirements of the Treatment Court, the Treatment Court may, in its sole discretion,

administratively discharge the defendant from the Treatment Court. Upon administrative discharge, the Treatment Court shall notify the USAO, USPO, and the USDC of the administrative discharge and shall refer the matter to these parties for further disposition of the defendant's case. The Treatment Court may make recommendations regarding disposition; however, these recommendations are not binding on the USAO, USPO, and the USDC. This shall signify the conclusion of the Treatment Court's obligations under this agreement regarding an administratively discharged defendant.

V. INFORMATION SHARING AND CONFIDENTIALITY

A. The Treatment Court is obligated to gather and report certain defendant offender statistics for legislative and grant audits, and the parties will work cooperatively to exchange information and data and respond promptly to requests for information. The parties shall provide all other parties, their auditors, or their authorized agents reasonable access to records necessary to the Treatment Court's compliance with applicable laws and grants.

B. Treatment Court hearings are open to the public. Treatment Court staff meetings and communications are confidential. The parties may obtain and share confidential information about a defendant (including, but not limited to, confidential criminal justice information and individually identifiable health information). All such confidential information shall remain confidential. The parties shall try to ensure the confidentiality of protected information. The parties shall abide by all federal, state, and local laws, rules, and regulations governing the confidentiality and privacy of protected information. The parties shall ensure a defendant has signed a release of information among the parties before any confidential information is transmitted. If a defendant revokes a release of information, the parties shall immediately notify the other parties of the revocation and shall limit further communications to unprotected information. If a release of information is revoked, the Treatment Court may initiate termination proceedings against the revoking defendant.

VI. GENERAL TERMS

A. Liaisons

All project management and coordination of this MOU must be through a single point of contact designated as the party's liaison:

_____ designee is the Treatment Court liaison:

_____ designee is the USDC's liaison:

_____ is the USAO's liaison:

B. Limitation

Nothing in this MOU shall be construed as obligating the United States, the State of Montana, the Treatment Court, or any other public agency, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

C. Third-Parties and Appeals

Nothing in this MOU may be the basis of any third party challenges or appeals. Nothing in this MOU creates any rights or causes of action in persons not parties to this MOU.

D. Modification

Any modifications of this MOU must be in writing and approved by all parties.

E. Termination

Any party may terminate its participation in this MOU by providing written notice to all other parties not less thirty (30) days prior to the effective date of such termination. If a party terminates its participation in the MOU, the parties agree to honor any and all agreements entered into with participating defendant-defendants until the conclusion of their criminal case. The parties' obligations under Sections III(A)(4), V, and VI shall survive termination of this MOU.

F. Severability

The terms of this MOU are severable. If any term or condition is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall invalidate none of the remaining terms and conditions.

G. Further Assurances

The parties shall execute such further documents and do any and all such further things as necessary to implement and carry out the intent of this MOU.

H. Execution and Effective Date

This MOU may be by executed in separate counterparts, each of which when executed and delivered will be deemed an original, and all of which taken together will constitute one and the same agreement. Facsimile signatures are acceptable. This MOU shall be effective when signed by the last signatory.

I. Sovereign Immunity

Notwithstanding any other provision in this MOU, the USAO, USPO, and USDC, and all other federal agencies and federal employees expressly reserve and do not waive sovereign immunity for any alleged violations of the MOU. No federal employee, agency or the United States is subject to any state or local jurisdiction for alleged violations of the MOU.

FOR THE UNITED STATES DISTRICT COURT FOR THE _____ OF _____:

By: _____ DATE _____

FOR THE UNITED STATES ATTORNEY FOR THE _____ DISTRICT OF _____:

_____ DATE _____

FOR THE _____ TREATMENT COURT:

_____ DATE _____