

Mental Health Expert

OPD Protocol Governing Referral and
Examination

Introduction

- The focus of the Office of the Public Defender (OPD) Protocol Governing Referral and Examination is to mainstream the nature and extent of examinations to specifically address the referral question(s) asked by an attorney regarding a client's mental health and its relation to legal impairments.
- The protocol standardizes the referral and examination process.
- As the process is standardized, there will be more efficient use of time resulting in cost savings for the case.

Help Attorneys Get What They Need

- Based on research data and input from various experts in Montana, each of the four protocol levels provide information to an attorney specific to the needs of the referral question(s).
- Attorneys are not told “No” when there is a possibility of the need for an evaluation—when there is some teeth to the request; when it can be justified.

Cost Containment

- In addition, cost containment elements were taken into consideration during the development of this protocol.
- Specific fees were developed for each of the protocol levels and are specific to the credentials of the expert.
- The Commission approved the fee schedule.

Definitions

- **Mental Disorder** (DSM and MCA)
 - DSM = clinically significant behavioral or psychological syndrome or pattern

 - MCA 53-21-102 (9) (a) “Mental disorder” means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.
 - (b) The term does not include:
 - (i) addiction to drugs or alcohol;
 - (ii) drug or alcohol intoxication;
 - (iii) mental retardation; or
 - (iv) epilepsy.
 - (c) A mental disorder may co-occur with addiction or chemical dependency.

Definitions, continued

■ **Mental Disease or Defect**^{***}

■ MCA 46-14-102(1)

- information gained from examination regarding a defendant's mental condition in any determination regarding:
 - **fitness to proceed** and stand trial;
 - **at the time the offense was committed, a particular state of mind that is an essential element of the offense**; and
 - sentencing purposes = was the defendant unable to **appreciate** the criminality of the defendant's behavior or to **conform** the defendant's behavior to the requirements of the law.

(2) (a) As used in this chapter, **“mental disease or defect”** means **an organic, mental, or emotional disorder that is manifested by a substantial disturbance in behavior, feeling, thinking, or judgment to such an extent that the person requires care, treatment, and rehabilitation.**

- (b) The term "mental disease or defect" does **not** include:
- (i) an abnormality manifested **only by repeated criminal or other antisocial behavior**;
 - (ii) a **developmental disability**, as defined in [53-20-102](#);
 - (iii) drug or alcohol **intoxication**; or
 - (iv) drug or alcohol **addiction**.

^{***}(Paraphrased and emphasis added. Please see MCA for complete wording)

Montana Professionals/Experts

- Mental Health Professional (53-21-102 , 27-1-1101)
 - Certified professional person, physician, psychologist, social worker, advanced practice registered nurse
- LAC = Licensed Addiction Counselor (37-35)
- LCPC = Licensed Clinical Professional Counselor (37-23)
- LCSW = Licensed Social Worker (37-22)
- Psychologist = Licensed Psychologist (37-17)
- Psychiatrist= physician with a specialty in Psychiatry (37-3)
- APRN = Advanced Practice Registered Nurse (37-8)
- MSOTA (Montana Sex Offender Treatment Association) clinical member (<http://.msota.org/>, 46-18-111)
- Certified Professional Person (53-21-102, 105, 106)
 - Physician, APRN, psychologist, person certified by the department (53-21-106)

Mental Health Issue

- When an attorney deems there may be a “Mental Health issue” with a case:
 - Determine the referral question(s)/issue(s)
 - Please refer to the RQ Checklist
 - Utility of the checklist
 - Plan for data gathering
 - To gather information regarding the standard process of answering the RQ/issue
 - Then
 - One or more of the following four protocols should be employed:

1) Consultation with OPD Mental Health (MH) Consultant

- Contact with the OPD Mental Health (MH) Consultant regarding a case.
 - Will discuss areas that lead the attorney to think a mental health issue may exist in the case.
 - Will discuss referral questions/issues
 - Will discuss next course of action (i.e. refer for evaluation)
 - Will discuss provider options
- This process requires no additional funds or approvals and is not time limited.

2) Consultation with a MH expert

- Attorney and MH expert discuss the case specifics and referral question(s), proposed mental health needs and recommended course of action.
 - Please see the Referral Question/Issues Checklist
- Expert consultations will take between 15 minutes and two hours.
- There will be associated costs depending on length of the consultation and prior approval by the Regional Deputy Public Defender is needed per policy.

3) Screening by a MH expert

- Attorney contacts a Mental Health (MH) expert to discuss the referral and proposed examination schedule.
- Screenings will take two to four hours.
- There will be associated costs depending on the length of the screening.
- Prior approval by the Regional Deputy Public Defender is needed per policy.
 - See Pre-Approval MH Expert form

4) Examination by a MH expert

- Attorney contacts a Mental Health (MH) expert to discuss the referral and proposed comprehensive examination schedule.
- Comprehensive examinations take six or more hours to complete.
- There will be associated costs depending on the length of the examination.
- Prior approval by the Regional Deputy Public Defender is needed per policy.
 - See Pre-approval MH Expert form

OPD Website Address

<http://www.publicdefender.mt.gov/>

- Mental Health link
 - Protocol
 - RQ Checklist
 - ROI
 - MH Pre-approval Form
 - MOU MH Expert