

**MEMORANDUM OF UNDERSTANDING  
MONTGOMERY COUNTY SUPREME COURT  
MONTGOMERY COUNTY OPIATE TREATMENT COURTS  
STABILIZATION PART**

**Mission Statement:** In recognition of the opiate crisis affecting the County of Montgomery, this Part seeks to preserve human life. The mission of the Stabilization Part is to identify newly arrested defendants who are in an acute opiate addicted state and are at high risk for overdose. This Part will expedite the transfer of an arraigned defendant into the care and supervision of a treatment provider which will be monitored by the Court. The aim of this Part is not to confer a dispositional benefit upon a defendant but rather to preserve his or her existence and provide an opportunity to seek recovery.

**Overview:** This Memorandum of Understanding shall generally outline the process, procedures and policy of the Court and its stakeholders: Montgomery County Supreme Court, Montgomery County District Attorney's Office (MCDA), Montgomery County Public Defender (MCPD), Montgomery County Probation Department (Probation), private defense bar, and law enforcement agencies in Montgomery County.

**Process:** **Arrest.** Following the arrest of a defendant who is being held in the custody of the Montgomery County Sheriff (MCSO) or the City of Amsterdam Police Department and awaiting a morning arraignment:

○ Between the hours of 8:00 a.m. and 8:30 a.m. the Montgomery County Drug Court Coordinator who is employed by the NYS Unified Court System shall confer with both the MCSO Deputies assigned to jail booking and with the Amsterdam Police Department and review their processing and medical records in order to assess those defendants appearing clinically acute (criteria to be established by recognized clinical measurements) for opiate overdose risk. Those defendants will be personally interviewed by the Drug Court Coordinator to assess their high risk/high need acute state ("clinically eligibility").

○ Once said defendants are identified as clinically eligible, that information will be indicated to the Montgomery County Court Clerk who will arrange for the transport of those defendants to the Montgomery County Opiate Treatment Court Stabilization Part (MCOTC-SP) for arraignment. The Montgomery County Court Clerk shall also obtain copies of the said defendants' accusatory instruments.

○ **Arraignment.** The defendant shall undergo a conventional arraignment before the MCOTC-SP judge. For misdemeanor and violation level offenders, an order of removal to Supreme Court shall be executed. Bail shall be considered in conformance with Criminal Procedure Law §510.30 and the spirit of this Part. The Montgomery County Drug Court Coordinator's assessment of the defendant's clinical eligibility shall be confirmed by the MCOTC-SP judge at arraignment. Present at arraignment shall be a member from the MCDA's office and either a member from the MCPD's office or an attorney assigned pursuant to Article 18-b of the County Law. Effort shall also be made to identify and contact a defendant's retained counsel, if any.

○ **Legal Eligibility for Stay of Prosecution.** Montgomery County District Attorney Kelli P. McCoski has consented to stay the prosecution of all misdemeanor and violation-level offenses and all felony offenses currently enumerated in Criminal Procedure Law Article 216 for clinically eligible defendants. Following arraignment the parties shall indicate on the record stay of prosecution and speedy trial waiver.

○ **Stay of Prosecution.** For an initial period of 45 calendar days the prosecution shall be stayed pending defendant's daily compliance with the clinical directives of the MCOTC-SP court via the treatment provider and case manager. In the case of a defendant who is not transferred bed-to-bed to an inpatient facility said defendant shall be required to report to the Coordinator daily, Monday through Friday, and in the MCOTC-SP as directed. Said stay may be extended as required by the MCOTC-SP. Additionally, said stay shall only be applicable to the matter before MCOTC-SP and not any other pending matter, unless upon consent of the parties said other matter was removed to MCOTC-SP. In other words, MCOTC-SP shall not issue stays for matters not before it. All rights pertaining to the People and defendant are stayed until a party unilaterally withdraws from the stay of prosecution agreement. Said withdrawal must occur on the record.

○ **Legal Eligibility for all Other Offenses.** All defendants who meet the clinical criteria shall be transferred to MCOTC-SP with the exception of Class A-I, A-II offenses and Class B Violent Felony Offenses. Felonies that are not enumerated in CPL Article 216 shall not be eligible for this part except upon the written consent of the District Attorney, defense counsel and the court.

○ **Assignment of Counsel.** Upon the assignment of an assistant public defender or an attorney pursuant to article 18-b of the County Law, the MCDA shall provide a written stay of prosecution for a 45-day period which

will stay the prosecution and preserve all of the defendant's rights. In the event a defendant has or desires to retain private counsel who is not present at arraignment, the matter will be adjourned for the appearance of counsel and consideration of the stay application.

○ **Initial clinical process.** Following the arraignment the defendant will be immediately linked with a treatment provider who shall meet with defendant and commence a regimented inpatient/outpatient program for which defendant's attendance and participation shall be reported daily to the MCOTC-SP Coordinator. In the event a defendant were to abscond, the treatment provider shall notify the MCOTC-SP Coordinator and the MCDA will forward a proposed warrant to the court.

The MCOTC-SP Coordinator shall communicate defendant's progress in treatment to the MCOTC-SP in person or in writing. In the event stabilization has not been reached within 45 calendar days, the MCOTC-SP, within its sole discretion may, after reviewing the clinical and participation/attendance records of defendant, extend the stabilization period up to an additional 45 calendar days. Should defendant not reach stabilization within the extended period, the matter shall be transferred consistent with this memorandum.

○ **Daily reporting.** All defendants that are in outpatient treatment shall report to the Coordinator every day. In the event a defendant is taken into custody for a violation of the MCOTC-SP requirements the assigned attorney shall be notified forthwith and defendant shall be placed on the following day's docket for further proceedings. Those taken into custody on a Friday shall appear on the following Monday's calendar.

○ **Failure to Appear.** The MCOTC-SP retains the authority to issue a bench warrant upon a defendant's failure to appear.

○ **Failure to adequately participate.** Recognizing the challenges associated with recovery, which include but are not limited to relapse, untruthfulness and reoffending, the MCOTC-SP Judge will have sole discretion as to whether and to what extent an eligible defendant has failed to meet the requirements and expectations consistent with the spirit of this Part. At a minimum defendants are required to attend their evaluations, individual and group treatment sessions, daily court appearances, comply with medication-assisted treatment (MAT) and shall avoid injurious or vicious habits. In this regard the Court may consider all relevant evidence and/or treatment-court-styled-sanctions in the event of a curable violation when considering defendant's compliance and continuation in this Part.

○ **Contesting MCOTC-SP Compliance.** Defendant shall be entitled to proffer, on the record, his or her explanation as to the Court's determination relative to lack of compliance. The Court shall have the discretion to remand a defendant into custody pending completion of the proffer process. If the Court finds defendant committed a non-curable violation, then the stay of prosecution shall terminate and the matter shall be transferred for disposition in accordance with this memorandum.

○ **Achieving stabilization.** Upon a clinical determination of stabilization or upon other termination from the MCOTC-SP, a defendant shall proceed within one of the following options:

○ *Misdemeanor and Violation Level Offenses.* Such a defendant, following consultation with counsel, prosecution and the court shall have the option of: (1) entering a plea to the charge or a plea to a lesser offense or other dispositive application which can be presided over and disposed of by the MCOTC-SP judge but only in the event the proposed disposition is an ACD. (2) Upon consent of the necessary parties the matter may be transferred to the Montgomery County Adult Drug Treatment Court or other eligible treatment court; (3) In the event a defendant pursues motion practice and trial the matter shall be transferred to the local criminal court having jurisdiction over the case.

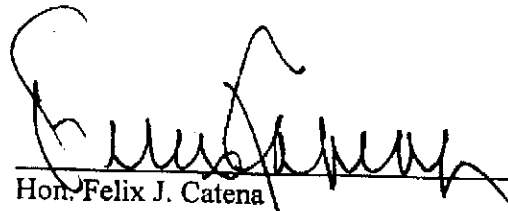
○ *Felony offenses.* The following options are available to a defendant initially charged with a felony: (1) in the event a felony complaint is negotiated for a plea down to a misdemeanor offense the MCOTC-SP judge may take the necessary procedural steps to dispose of the matter consistent with the preceding paragraph for misdemeanor and violation-level offenses. (2) The case may be transferred to the Montgomery County Adult Drug Treatment Court, Judicial Diversion Program or other eligible treatment court. (3) The parties may negotiate a disposition which necessitates a superior court information. (4) In the event a defendant pursues motion practice and trial the matter shall be transferred to the local criminal court having jurisdiction over the case.

○ **Violation of Probation.** In the event a defendant who is in custody is a probation violator said defendant shall be evaluated by the Coordinator who shall transmit her assessment to the Judge assigned to the probation violation. Only at the sole direction of the assigned judge shall the violator be transferred to MCOTC-SP.

○ **Out-of-Custody Defendants.** The MCOTC-SP Coordinator will attempt to identify those out-of-custody defendants appearing at arraignment in the local criminal courts who may be clinically eligible for participation in the MCOTC-SP. The local criminal court will endeavor to make an announcement to the general audience near the commencement of court as to the availability of this Part and then communicate with the Coordinator so that those defendants who might meet the clinically eligible requirements are assessed. If those defendants are assessed as clinically eligible then they shall be referred to appear before the MCOTC-SP. In such a case the foregoing procedures shall be applicable once appearing before the MCOTC-SP.

○ **Post Arraignment Transfer.** Upon the sole discretion of MCOTC-SP the Court may accept transfers of defendants whose matters are pending in any City, Town, or Village Court who meet the clinical criteria, on an interim basis, until such time as they are stabilized and can return to the transferring court.

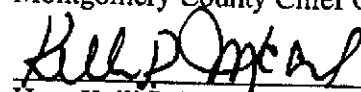
Dated: April 19, 2019

  
Hon. Felix J. Catena  
Acting Justice Supreme Court and MCOTC-SP Judge

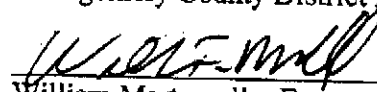
Dated: April 17, 2019

  
Timothy J. Riley  
Montgomery County Chief Court Clerk,

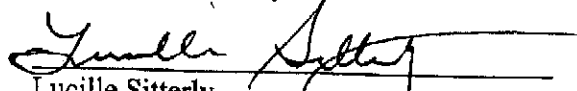
Dated: April 15, 2019

  
Hon. Kelli P. McCoski  
Montgomery County District Attorney

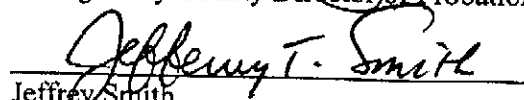
Dated: April 18, 2019

  
William Martuscello, Esq.  
Montgomery County Public Defender

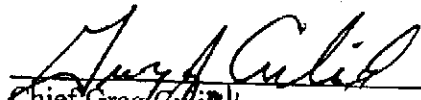
Dated: April 18, 2019

  
Lucille Sitterly  
Montgomery County Director of Probation

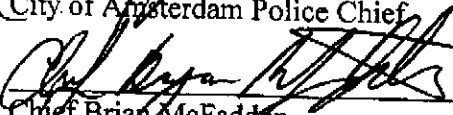
Dated: April 18, 2019

  
Jeffrey Smith  
Montgomery County Sheriff

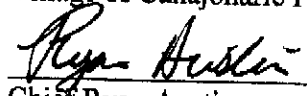
Dated: 4/15/19

  
Chief Greg C. ...  
City of Amsterdam Police Chief

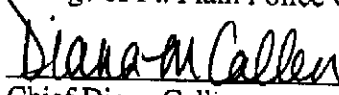
Dated: 4-15-19

  
Chief Brian McFadden  
Village of Canajoharie Police Chief

Dated: 4-15-19

  
Chief Ryan Austin  
Village of Ft. Plain Police Chief

Dated: 4-16-19

  
Chief Diana Callen  
Village of St. Johnsville Police Chief