

## **Due Process**

Remaining Due Process sections include the issues of independence of the Public Defender and sufficient capacity for the Juvenile Defender Unit to provide representation for all non-conflict cases. In addition, the Due Process Monitor reports have cited "obstacles to defense practice" which needed to be addressed. Significant progress has been made in these areas and is covered in some detail in the sections below.

### **1. Policies and Procedures**

#### **(a) Probable Cause Determinations**

- (i) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to require that prior to detaining any Child, Juvenile Court Magistrates make a determination that there is probable cause that: (1) a delinquent act was committed, (2) the named Child committed the delinquent act alleged, and (3) the alleged delinquent act is one for which Tennessee statutes and JCMSC policy permit the use of detention. **(MOA p. 9)**
- (ii) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to provide Children arrested without a warrant a Probable Cause Determination to detain within 48 hours of the warrantless arrest. **(MOA p.9)**
- (iii) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to ensure that no Child is detained for more than 48 hours prior to the Detention Hearing if the Court has not made a Probable Cause Determination. **(MOA p. 9)**
- (iv) Within 90 days of the Effective Date, JCMSC shall ensure that every Child has a meaningful opportunity to test the existence of probable cause during his or her Probable Cause Determination by revising its policies practices and procedures to: **(MOA p. 9)**
  - a. Appoint a defense attorney to represent any indigent Child or Child whose indigence cannot be readily determined in advance of the Probable Cause Determination. Children must be presumed indigent unless information to the contrary is provided to JCMSC;
  - b. Require the government to prove the existence of probable cause with reliable evidence such as a live witness or an Affidavit of Complaint completed and sworn to by a law enforcement officer with firsthand knowledge of the incident leading to the arrest of the Child or by an officer who communicates with a reliable source who has firsthand knowledge of the incident leading to the child's arrest;
  - c. Allow defense attorneys an opportunity to challenge the government's evidence of probable cause, by cross-examining witnesses, presenting alternative testimony, or by any other appropriate means; and
  - d. Require that a record be maintained, reflecting when defense counsel was appointed, the forms of evidence used, and whether the defense attorney challenged such evidence or presented alternative evidence. Such record should be accessible from the information and recording system.

**Status**

All items above except for subsection (iv) (b) have been completed and terminated from the MOA, and this remaining subsection has been in Substantial Compliance for one year and has been completed.

**Due Process**

1. Policies and Procedures

(a) Probable Cause Determinations

- (v) Each month, the Judge, or his or her designee, shall review a sampling of Case Files to determine whether the procedures for Probable Cause Determinations are being followed as required by this Agreement. The review shall include periodic observations of Probable Cause Determinations to ensure that Juvenile Court Magistrates and other staff follow policies, procedures, and practices required by this Agreement. If the review reveals that the procedures regarding Probable Cause Determinations have not been properly followed, the Judge shall take immediate corrective action, including a discussion with the responsible staff, to bring about compliance with the terms and requirements of this Agreement. **(MOA p. 10)**

**Status**

All items above have been in Substantial Compliance for one year and have been completed.

**Due Process**

1. Policies and Procedures

(b) Notice of Charges

- (i) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices in accordance with Tenn. Code Ann. § 40-10-101 to ensure that Children and defense counsel receive copies of the Affidavit of Complaint as soon as it is available, but at a minimum before the Detention Hearing. JCMSC shall also ensure that Juvenile Court Magistrates formally arraign Children at all Detention Hearings. **(MOA p. 10)**
- (ii) When changes are made to a Child's charges as set forth in a filed Petition prior to the Adjudicatory Hearing that could increase the penalty, JCMSC shall provide notice of the final charges by providing copies of the amended or new Petition upon the filing of same Petition at least 14 calendar days in advance of the hearing so that the Child and defense counsel have sufficient time to prepare for the hearing, unless the Child and defense counsel waive the advance notice. If defense counsel establishes that he or she has not had sufficient time to prepare for the hearing because of changes to the Child's charges and requests a continuance, JCMSC shall move the date of the Adjudicatory Hearing to provide counsel with a reasonable opportunity to prepare. **(MOA p. 10)**
- (iii) When changes are made to a Child's charges as set forth in a filed Petition prior to the Adjudicatory Hearing that reduce the penalty or drop the charges, JCMSC shall provide notice of the final charges by providing copies of the amended or new Petition to the Child and defense counsel upon the filing of same Petition within 24 hours of the change in charges. **(MOA p. 11)**

**Status**

All items above have been completed and terminated from the MOA.

## Due Process

### 1. Policies and Procedures

#### (b). Notice of Charges

- (iv) Each month, the Judge, or his or her designee, shall review a sampling of Case Files to determine whether the requirements regarding notice of charges are being followed as required by this Agreement. The review shall include periodic observations of Detention and Adjudicatory Hearings to ensure that Juvenile Court Magistrates and other staff follow policies, procedures, and practices regarding notice of charges required by this Agreement. If the review reveals that the procedures have not been properly followed, the Judge shall take immediate corrective action, including a discussion with the responsible staff, to bring about compliance with the terms and requirements of this Agreement. **(MOA p. 11)**

## Status

All items above have been completed and terminated from the MOA.

## Due Process

### 1. Policies and Procedures

#### (c) Transfer Hearings

- (i) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices in accordance with Tenn. Code Ann. § 37-1-134 and the Tennessee Rules of Juvenile Procedure, R. 24(b) to require Transfer Hearings that comport with due process requirements prior to waiving jurisdiction and ordering transfer of a Child's case to adult court. Specifically, JCMSC shall ensure that all Transfer Hearings include the following: **(MOA p. 11)**
  - a. The Assistant District Attorney presents evidence in support of the petition for transfer;
  - b. Children have a right to an attorney whose role is to represent their stated interest;
  - c. Children, through their attorneys, are provided the opportunity to introduce evidence on their own behalf;
  - d. Children, through their attorneys, are provided the opportunity to meaningfully confront evidence presented against them, including cross-examining adverse witnesses;
  - e. Children are protected from self-incrimination;
  - f. The Judge or Juvenile Court Magistrate presiding as Special Judge makes written findings on whether there are reasonable grounds to believe that: (1) the Child committed the delinquent act as alleged; (2) the Child is not committable to an institution for persons with a developmental disability or mental illness; and (3) the interests of the community require that the Child be put under legal restraint or

discipline; and

- g. The Judge or Juvenile Court Magistrate presiding as Special Judge considers and documents his or her consideration of factors relevant to his or her findings, including, but not limited to: (1) the extent and nature of the Child's prior delinquency; (2) the nature of past treatment efforts and the nature of the Child's response thereto; (3) the Child's suitability for additional treatment; (4) the nature of the delinquent act alleged; (5) the Child's social factors; (6) the alternatives within the juvenile justice system which were considered and the rationale for rejecting those alternatives; and (7) whether the juvenile court and juvenile justice system can provide rehabilitation of the juvenile.

### **Status**

These policies were submitted in the 1st Compliance Report dated April 2, 2013. (See also attached update from Dr. Tucker Johnson, Ph.D., Office of Clinical Psychology, and labelled as Attachment 10.)

### **Due Process**

#### 1. Policies and Procedures

##### (c) Transfer Hearings

- (ii) Each month, the Judge, or a designee, shall review all files related to Transfer Hearings to determine if Transfer Hearings properly follow the requirements of this Agreement. The review shall include periodic observations of Transfer Hearings to ensure that Juvenile Court Magistrates and other staff follow policies, procedures and practices required by this Agreement. If the review reveals that the Transfer Hearing procedures have not been properly followed, the Judge shall take immediate corrective action, including a discussion with the responsible staff, to bring about compliance with the terms and requirements of this Agreement. **(MOA p. 12)**

### **Status**

This item has been completed and terminated from the MOA.

### **Due Process**

#### 1. Policies and Procedures

##### (d) Protections Against Self-Incrimination

- (i) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to prevent probation officers or any other staff from eliciting information about Children's involvement in the alleged delinquent act or acts in question outside the presence of the Child's defense attorney. **(MOA p. 12)**
- (ii) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to notify a Child's defense attorney in writing of any probation conference or interview. The probation conference or interview shall be open to the Child's defense attorney. **(MOA p. 13)**
- (iii) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to ensure that probation officers appropriately advise Children of their Miranda rights. The probation officer's advisement of rights shall include: **(MOA p. 13)**

- A description of the role of a defense lawyer;
- A statement that the Child is entitled to the appointment of a defense attorney and that a defense attorney may be provided at no cost if the Child is eligible;
- A statement that the Child's statements regarding the alleged offense can be included in the probation report; and
- A statement that the Child's statement could be used against him or her by the prosecutor, probation officer, or the Magistrate Judge in further proceedings, including disposition.

### **Status**

All items above except for subsection (d) (ii) have been completed and terminated from the MOA. As to the remaining subsection, each and every youth are advised in writing that an attorney may be requested, and all conferences are open to the child's attorney. My understanding is that this item is still in Partial Compliance due to the fact that attorneys are not assigned to every probation conference. The Court took Monitor Simkins' advice and again approached the State regarding payment for representation at the probation conferences. Per the Tennessee Administrative Office of Courts (AOC), it will not pay for representation at the pre-petition stage (see attached email dated August 24, 2017 and labelled Attachment 5). The University of Memphis Law School clinic has declined to assist at this stage as well. The Public Defender and/or a Panel Attorney (pro bono) will attend a conference (even without payment) if a child or family so requests.

### **Due Process**

#### 1. Policies and Procedures

#### (d) Protections Against Self-Incrimination

- (iv) JCMSC shall require probation officers to have Children document in writing their receipt and understanding of their rights against self-incrimination. JCMSC shall consider the Child's ability to understand his or her rights and ensure that the rights are explained in age-appropriate language. Children must receive the advice of counsel about their rights against self-incrimination and the meaning of any waiver before signing a waiver. Children must acknowledge their waiver in writing in order for the probation conference to proceed. (MOA p. 13)

### **Status**

See above Status note.

### **Due Process**

#### 1. Policies and Procedures

#### (d) Protections Against Self-Incrimination

- (v) JCMSC shall consider developing a partnership with a non-profit or academic organization to provide advice and support to Children during the probation intake process. Participants in this program shall be trained on the appropriate role of probation officers, the Child's right against self-incrimination, and the policies, procedures, and practices regarding

protections against self-incrimination developed as part of this Agreement. (MOA p. 13)

**Status**

This item has been completed and terminated from the MOA.

**Due Process**

1. Policies and Procedures

(d) Protections Against Self-Incrimination

- (vi) Within 30 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices in accordance with Tenn. Code Ann. § 37-1-127(b) and(e) to prohibit the adverse use of information obtained from a Child during his or her probation conference. (MOA p. 14)

**Status**

This item has been completed and terminated from the MOA.

**Due Process**

1. Policies and Procedures

(d) Protections Against Self-Incrimination

- (vii) Within 30 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices in accordance with Tenn. Code Ann. § 37-1-127(b) to ensure that Juvenile Court Magistrates do not permit the government to call Children as witnesses in the Child's own Adjudicatory or Transfer Hearing. (MOA p. 14)
- (viii) Within 30 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices in accordance with Tenn. Code Ann. § 37-1-127(b) to require Juvenile Court Magistrates to give an oral advisement of rights against self-incrimination to any Child who wishes to testify at his or her own Adjudicatory or Transfer Hearings. (MOA p. 14)

**Status**

These items have been completed and terminated from the MOA.

**Due Process**

1. Policies and Procedures

(d) Protections Against Self-Incrimination

- (ix) Each month, the Judge, or his or her designee, shall review a sampling of Case Files to determine whether the requirements of this Agreement regarding protections against self-incrimination of Children are being properly followed. The review shall include periodic observations of probation conferences by appropriate supervisory staff of the Court's Probation Department as well as periodic observations of Adjudicatory and Transfer Hearings by the Judge or his or her designee. If the reviews reveal that the procedures regarding protection against self-incrimination have not been properly followed, the Judge shall take immediate corrective action, including a discussion with the responsible staff, to

bring about compliance with the terms and requirements of this Agreement. (MOA p. 14)

**Status**

This item has been completed and terminated from the MOA.

**Due Process**

1. Policies and Procedures

(d) Protections Against Self-Incrimination

- (x) JCMSC shall immediately cease the practice of providing Visit and Contact forms to Juvenile Court Magistrates prior to Adjudicatory Hearings. (MOA p. 14)

**Status**

This item has been completed and terminated from the MOA.

**Due Process**

1. Policies and Procedures

(e) Juvenile Defenders

- (i) Within one year of the Effective Date, SCG shall take action to ensure independent, ethical, and zealous advocacy by the juvenile defenders representing Children in delinquency hearings. This action shall include: (MOA p. 14)
  - a. Creating a responsibility for the supervision and oversight of juvenile delinquency representation to the Shelby County Public Defender 's Office ("SCPD") and supporting the establishment of a specialized unit for juvenile defense;
  - b. Supporting SCPD training for juvenile defenders, including training on trial/advocacy skills and knowledge of adolescent development;
  - c. Ensuring that juvenile defenders have appropriate administrative support, reasonable workloads, and sufficient resources to provide independent, ethical, and zealous representation to Children in delinquency matters. Representation of Children shall cover all stages of the juvenile delinquency case, including pre-adjudicatory investigation, litigation, dispositional advocacy, and post dispositional advocacy for as long as JCMSC has jurisdiction over a Child; and
  - d. Implementing attorney practice standards for juvenile defenders; supporting the training of attorneys within the SCPD specialized unit and the independent panel system on the practice standards; and supporting supervision and evaluation of said attorneys against such practice standards.

**Status**

The MOA requires the County to support the Public Defender's Office in its responsibility for the supervision and oversight of juvenile delinquency representation and to support the establishment of a specialized unit for juvenile defense. Attached is a report that shows a breakdown of representation by the Juvenile Defender Panel and the Public Defender for June, July and August, 2017 and labelled Attachment 2. The complaints handled by the Public Defender have steadily increased as shown below:

<b>Year</b>	<b>% complaints represented by Public Defender</b>
2014	19%
2015	30%
2016	53%
2017	61-62% (June, July, August 2017)

### **Comments**

Following issuance of the Executive Order by the County Mayor which provided assurances of freedom from political influence and operational independence, it is incumbent on the Public Defender to move forward in implementing the operational items proposed in the "Blueprint to Achieve Compliance in Juvenile Defender Services" which was submitted on August 15, 2016. Recommendations in the Blueprint include:

1. Establish Adequate Assurances, including a term of service, to protect the Chief Public Defender from political influence
2. Establish operational independence by:
  - Allowing the PD to advocate for funding and participate fully in state/local budget proceedings
  - Reorganize the PD Division for service delivery consistent with the ABA Ten Principles
  - Establish business rules that govern administration of public defense revenue sources
  - Insure the PD can manage all operations and functions in a manner that meets ethical obligations
3. Increase Public Defender capacity to provide direct representation

This Executive Order and the Blueprint have allowed the County Administration to meet the spirit of the MOA by exercising local control without having to count on long term changes in the State defense system which may or may not come about. I concur with the prior report in stating that all those responsible for taking these bold steps to comply with the MOA should be commended for their work, and that this area should now be in Substantial Compliance with the MOA.

### **Due Process**

#### 1. Policies and Procedures

##### (e) Juvenile Defenders

- (i) Within one year of the Effective Date, JCMSC shall take action to ensure independent, ethical, and zealous advocacy by the juvenile defenders representing Children in delinquency hearings. This action shall include: **(MOA p. 15)**
  - a. Appointing juvenile defenders to represent children at Detention Hearings and Probable Cause Determinations as early as possible, including immediately after intake staff completes required paperwork where possible;
  - b. Establishing a juvenile defender panel system, overseen by an independent body, to handle any delinquency cases that either pose a conflict for the specialized unit for juvenile defense or would cause the juvenile unit to breach workload restrictions required by this Agreement;



- c. Supporting the promulgation and adoption of attorney practice standards for juvenile defenders; supporting the training of attorneys within the SCPD specialized unit and the independent panel system on the practice standards; and supporting supervision and evaluation of said attorneys against such practice standards; and
- d. Ensuring that juvenile defenders have a confidential meeting space to confer with their clients within the Facility.

**Status**

See the comments in the section above.

**Comments**

The Public Defender's Juvenile Unit continues to provide representation for the youth. The capacity of the Public Defender's Juvenile Unit has expanded to cover all non-conflict cases and this seems to be the best opportunity to address DOJ concerns about Due Process protections. The Public Defender has a Transfer Unit to handle those critical cases. As such, these items should now be in Substantial Compliance.

**Due Process**

1. Policies and Procedures

(f) Plea Colloquies

- (i) Within six months of the Effective Date, JCMSC shall revise its policies, procedures, and practices to establish a procedure for conducting plea colloquies that is age-appropriate and clear to the Child. **(MOA p. 16)**
- (ii) JCMSC shall also ensure that Juvenile Court Magistrates conduct an interactive oral colloquy with the Child that includes: **(MOA p. 16)**
  - a. The nature of the delinquent act charged;
  - b. The Child's right to an attorney;
  - c. The Child's right to plead not guilty and to have an Adjudicatory Hearing instead where he or she would have the right to cross-examine adverse witnesses and the right to remain silent;
  - d. The Child's waiver of a right to trial on the merits and an appeal by entering a guilty plea;
- (iii) Within six months of the Effective Date, JCMSC shall revise its policies, procedures, and practices to ensure that Children have a right to counsel whenever entering a plea of guilty. **(MOA p. 16)**

**Status**

These items have been completed and terminated from the MOA.

## Due Process

### 1. Policies and Procedures

#### (g) Restitution Guidelines

- (i) Within six months of the Effective Date, JCMSC shall revise its policies, procedures, and practices to establish guidelines for assigning restitution to any Child adjudicated delinquent that provides the Child a meaningful opportunity to challenge the evidence of restitution. **(MOA p. 16)**
- (ii) At minimum, the restitution guidelines shall: **(MOA p. 16)**
  - a. Require documentation to support the restitution request;
  - b. Allow Children adequate time to review the restitution request and the opportunity to introduce evidence opposing the restitution amount; and
  - c. Allow Children an opportunity to request an adjustment to the restitution amount by introducing evidence of any family income and/or obligations that would prevent the ability to pay the restitution amount or render the restitution amount an undue hardship.

## Status

These items have been completed and terminated from the MOA.

## Due Process

### 1. Policies and Procedures

#### (h) Bond-Setting Guidelines

- (i) Within six months of the Effective Date, JCMSC shall revise its policies, procedures, and practices to establish guidelines for the setting of bonds for Children charged with delinquent acts. **(MOA p. 17)**
- (ii) At minimum, the guidelines regarding bonds shall: **(MOA p. 17)**
  - a. Prevent excessive bonds for Children;
  - b. Reasonably assure the Child's appearance for court;
  - c. Take into account the presumptive indigence of Children and recognize that parental income may not be available to the Child; and
  - d. Allow parents to file statements of indigence where appropriate.

## Status

These items have been completed and terminated from the MOA.

**Due Process**

1. Policies and Procedures

(i) Confidentiality of Juvenile Delinquency Proceedings

- (i) Within 30 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to protect the Children's confidentiality in delinquency proceedings. **(MOA p.17)**
- (ii) The Court shall ensure, in accordance with Tenn. R. Juv. P. 27 and Tenn. Supreme Court Rule 30. C. (5) that only persons who are properly concerned in a Child 's case or in the Court' s discretion, only persons with a direct interest in the case, are admitted into any delinquency proceeding. **(MOA p.17)**

**Status**

These items have been completed and terminated from the MOA.

**Due Process**

1. Policies and Procedures

(j) Language Access Plan

- (i) Within six months of the Effective Date, JCMSC shall develop a language access plan that complies with Title VI of the Civil Rights Act of 1964, as amended, (42 U.S.C. § 2000d et seq.) to ensure that persons with limited English proficiency have a meaningful access to Court proceedings. JCMSC shall assess the language needs of the Shelby County population and make summonses and other crucial court documents available in appropriate languages. **(MOA p. 17)**
- (ii) JCMSC shall implement the language access plan within one year of the Effective Date. **(MOA p.17)**

**Status**

These items have been completed and terminated from the MOA.

**Due Process**

1. Policies and Procedures

(k) Treatment of Witnesses

- (i) Within six months of the Effective Date, JCMSC shall revise its policies, practices, and procedures on treatment of witnesses to ensure that the integrity of witness testimony is

preserved. The policy shall, at minimum, require that prior to testifying at any delinquency proceeding: **(MOA p. 17)**

- a. All witnesses are placed under oath; and
- b. All witnesses are appropriately sequestered.

**Status**

These items have been completed and terminated from the MOA.

**Due Process**

1. Policies and Procedures

(1) Judicial Bench Cards

- (i) Within six months of the Effective Date, JCMSC shall develop bench cards containing specific guidelines to inform Juvenile Court Magistrates about the substantive issues they need to cover during hearings in order to comply with due process requirements of the United States Constitution. **(MOA p. 18)**
- (ii) The bench cards shall be readily accessible documents that contain due process requirements, relevant case law and statutory references, and written findings Juvenile Court Magistrates shall make at the culmination of each hearing. The bench card should be made available to counsel upon request. **(MOA p. 18)**
- (iii) JCMSC shall produce bench cards for the following type of hearings and proceedings: **(MOA p. 18)**
  - a. Detention Hearing, Probable Cause Determinations, and bond-settings;
  - b. Adjudicatory Hearings;
  - c. Plea Colloquies;
  - d. Transfer Hearings;
  - e. Disposition Hearings, including procedures for setting restitution; and
  - f. Post-dispositional Hearings;

**Status**

These items have been completed and terminated from the MOA.

## **Due Process**

### 1. Policies and Procedures

#### (m) Written Findings

- (i) Within six months of the Effective Date, JCMSC shall revise its policies, procedures, and practices to require Juvenile Court Magistrates to produce court orders containing written findings of fact for each judicial decision made. **(MOA p.18)**
- (ii) The written findings of fact shall include the relevant statutory requirements, the legal reasoning that formed the basis for the court's decision, and a narrative of the facts that the Juvenile Court Magistrate considered in reaching its conclusion. **(MOA p. 18)**

## **Status**

These items have been completed and terminated from the MOA.

## **Due Process**

### 1. Policies and Procedures

#### (n) Recordings of Juvenile Delinquency Hearings

- (i) Within six months of the Effective Date, JCMSC shall have all delinquency hearings, including initial Detention Hearings, Adjudicatory Hearings, Transfer Hearings, and probation revocation hearings recorded by electronic means. Privately engaged court reporters may provide written transcripts. **(MOA p. 19)**
- (ii) JCMSC shall ensure that the recordings are complete and of sufficient quality to ensure a meaningful review. **(MOA p. 19)**
- (iii) JCMSC shall make recordings accessible at no cost to defense counsel representing indigent Children. **(MOA p. 19)**
- (iv) JCMSC shall make arrangements to store each recording for two years. **(MOA p. 19)**

## **Status**

These items have been completed and terminated from the MOA.

## **Due Process**

### 2. Training

- (a) Within six months of the Effective Date, JCMSC shall develop a training plan for all employees

involved with its delinquency docket and submit the training plan to the Monitor and the United States for review and approval. **(MOA p. 19)**

- (b) JCMSC's training plan shall ensure that appropriate staff are trained on topics relevant to their role and responsibilities in juvenile delinquency proceedings including: **(MOA p. 19)**
  - (i) Trial advocacy;
  - (ii) Constitutional due process requirements;
  - (iii) Adolescent development;
  - (iv) Disposition planning;
  - (v) Best practices in social service and therapeutic options for Children and families , including evidence-based practices;
  - (vi) The functional and practical purposes of the juvenile court, including the Court's ability to handle cases involving Children charged with serious or violent delinquent acts; and
  - (vii) The appropriate professional role of different players within juvenile proceedings.
- (c) JCMSC shall implement its first training plan within 12 months of the Effective Date and shall create subsequent training plans on an annual basis thereafter. **(MOA p. 19)**

### **Status**

These items have been completed and in Substantial Compliance for one year. It is good to note again that the Court has continued to be extremely supportive of staff training.

### **DMC and Equal Protection**

In July, 2016, Equal Protection Monitor Dr. Michael Leiber conducted a technical assistance visit at the Court to develop a focused approach to addressing DMC issues with Court staff (see attached memo from Dr. Leiber labelled as Attachment 6). Following that visit, Juvenile Court CAO Pam Skelton put together a Strategic Planning Committee to develop new and/or updated approaches to address DMC and Equal Protection issues. Ms. Skelton has convened regular meetings of the Strategic Planning Committee to follow up on Dr. Leiber's technical assistance visit. Notes are compiled documenting the discussions of this committee and are distributed to committee members and to Dr. Leiber. These meetings continue to maintain focus on the tasks and insuring accountability for moving various items forward. Please see attached memo to Dr. Leiber which is the latest Strategic Planning Committee updates.

#### 1. DMC Assessment

- (a) Within six months of the Effective Date, JCMSC shall identify all data collection needs to engage in a thorough evaluation of DMC at each major Decision Point along of the stages of juvenile justice. **(MOA p. 21)**

### **Status**

Data is and continues to be available at each decision point. All data is reviewed by the DMC Coordinator and the Data/Research Analyst, who share it with other staff regularly. This item is ready to be brought into Substantial Compliance. (Examples of Data are attached and labelled as Attachment 11).

### **DMC and Equal Protection**

#### 1. DMC Assessment

- (b) Within nine months of the Effective Date, JCMSC shall augment the appropriate data collection method to assist in its evaluation of its DMC levels, causes, and reduction. The method shall include an assessment of the following areas within JCMSC and Shelby County related to comparisons of white and African-American children, as well as any additional population groups which constitute five percent or more of the juveniles referred to JCMSC in the preceding year: **(MOA p. 21)**
  - (i) Relative rate index for each Decision Point, including, but not limited to, pre- adjudication detention, diversion , and transfers;
  - (ii) A comparison of JCMSC, the County' s, and the State' s RRI with the national RRI data;
  - (iii) Referring agencies, types of offenses referred by each particular agency; offense severity referred by the agency; and resources offered to Children within the referring agency' s jurisdiction;
  - (iv) Number of Children in detention over a set period of time, their risk assessment scores, the component parts of their risk assessment scores, the recommended actions from their risk assessment scores, their social factors, whether they were placed in alternative programs, and the outcomes of those alternative programs;
  - (v) Available diversion options for Children appearing before JCMSC. This shall account for the options available in different geographic regions of the County; and
  - (vi) Number of youth formally considered for transfer to adult court and the number actually certified for transfer.

### **Status**

All items above have been completed except for b (ii), and this is in process. We fully expect this to be presented at the next DOJ visit in October, 2017.

### **DMC and Equal Protection**

#### 1. DMC Assessment

- (c) Within six months of the Effective Date, JCMSC shall identify staffing needs to collect, evaluate, and report DMC data as required by this Agreement. JCMSC shall assign additional staff required within nine months. **(MOA p. 22)**

### **Status**

This area is now in Substantial Compliance. Dr. Aimee Burgdorf continues her work in this area as the Data/Research Analyst and continues to take the lead with enthusiasm in approaching this work.

### **DMC and Equal Protection**

#### 1. DMC Assessment

- (d) Within six months of the Effective Date, the Shelby County Mayor shall appoint a coordinator responsible for oversight of the progress on reducing DMC on the part of JCMSC and other departments and agencies of Shelby County Government that he may select in the exercise of his sound discretion. **(MOA p. 22)**

#### **Status**

This item has been completed and terminated from the MOA.

### **DMC and Equal Protection**

#### 1. DMC Assessment

- (e) Within six months of the Effective Date, JCMSC shall also identify and designate a point of contact ("POC") within each department responsible for delinquency matters before the court - including, but not limited to, probation, detention, and the Juvenile Court Magistrates - to report on and evaluate the department's DMC reduction efforts. **(MOA p. 22)**

#### **Status**

The Point of Contact (POC) process was replaced with the Strategic Planning Committee convened by Pam Skelton, which serves a similar purpose, meets regularly and has been successful in targeting DMC at different points. The decision to discontinue the POC process and reports was made in consultation with Equal Protection Monitor Dr. Mike Leiber at his last report in September, 2016. Due to the ongoing efforts and success of the Strategic Planning Committee, it may now be time to bring this item into substantial compliance.

- (f) JCMSC shall collect data and information required by this Agreement to determine where DMC occurs. This collection effort shall begin within nine months of the Effective Date. In particular, JCMSC shall determine the specific Decision Points where DMC occurs. This shall include geographic regions, referring agency (including individual schools) and the Decision Points noted in the DOJ Report of Findings, namely, detention, alternatives to detention, and transfer recommendations. An analysis of this data shall be conducted on an annual basis. **(MOA p. 22)**

#### **Status**

As stated in the last report, this portion of the MOA requires the Court to determine the specific Decision Points where DMC occurs. Information from Juvenile Court and from Dr. Leiber's Assessment Reports provides ample information about where DMC occurs. Data collection has not been an issue, and as such this item is also ready to be brought into Substantial Compliance.

### **DMC and Equal Protection**

#### 1. DMC Assessment

- (g) Within six months of the Effective Date, JCMSC shall assess the impact of its current policies,



procedures, and programs on DMC levels at each Decision Point. JCMSC shall conduct an inventory of the available services and diversion options by race, ethnicity, and geographic region. The inventory shall measure, at minimum, the availability of family therapy, parent training, cognitive-behavioral treatment, mentoring, academic skills enhancement, afterschool recreation, vocational/job training, and wraparound services. This assessment shall include an analysis of JCMSC's current agreements with law enforcement, schools, social services agencies, and the cities and towns within Shelby County. (MOA p. 22)

### **Status**

This section requires an assessment and an inventory of available services and diversion options. A host of documents were submitted and included in the 2nd Compliance Report dated September 23, 2013 which addressed the inventory. However, between February and May 2017, the Court has evaluated six “in-house” programs and two “outside” programs that are used as diversion options. Program logic models have been developed to guide the monitoring and assessment of the programs as the Court moves forward. Policies and procedures associated with each of “in-house” programs have been reviewed through the use of a “program/policy” report card and recommendations have been made to the appropriate program administrators. Likewise, an analysis of the Court’s current agreements with law enforcement is done monthly through the examination of LEAP reports, status reports to MPD, and quarterly meetings with MPD. A more current analysis of the courts agreements with the schools, social service agencies and the cities and towns within Shelby County are currently underway.

### **DMC and Equal Protection**

#### 1. DMC Assessment

- (h) Within nine months of the Effective Date, JCMSC shall complete and implement its strategic plan to reduce DMC. A committee shall be formed to oversee the execution of the strategic plan. The committee shall consider further development of diversion programs including community service, informal hearings, family group conferences, victim impact panels, victim-offender mediation, mentoring, teen courts, restitution, and other restorative justice strategies. The committee shall recommend changes to the plan based on experience of success or failures in implementation. (MOA p. 23)

### **Status**

Lisa Hill, Shelby County DMC Coordinator submitted a Strategic Plan to Reduce DMC on December 16, 2013. The plan was revised late 2015 with the assistance of the Court’s DMC Coordinator, and submitted with prior reports. A portion of the plan was dependent upon the success of the Points of Contact Committee which had difficulty finding steady ground. Therefore, the POC Committee was replaced in 2016 with the Strategic Planning Committee being led by Court CAO Pamela Skelton. Since the Strategic Planning Committee’s inception, the Court has experienced positive movement. The committee is currently using OJJDP’s Strategy for Reducing DMC as its model moving forward. (see summary of OJJDP Strategy for Reducing DMC attached and labeled as Attachment 12 and see updates on Strategic Plan from Lisa Hill labeled as Attachment 13).

### **DMC and Equal Protection**

#### 2. Policies and Procedures

- (a) Within six months of the Effective Date, JCMSC shall revise its policies, procedures, practices, and existing agreements to reduce DMC at each Decision Point along the stages of juvenile justice and to encourage objective decision-making in all departments relating to its delinquency docket. **(MOA p. 23)**
- (b) JCMSC's revision of its policies, procedures, practices, and existing agreements shall include the following: **(MOA p. 23)**
  - (i) Collection of data sufficient to evaluate whether the relevant policy, procedure, practice, or agreement results in DMC reduction;
  - (ii) A provision requiring the least restrictive options and alternatives to a detention setting to ensure DMC reductions;
  - (iii) Guidelines expressly identifying a list of infractions and reasons for which a Child may not be detained. This list shall prohibit detention for punishment, treatment, to meet the demands of the community, the police, a victim, or school administrators, to provide convenient access to the Child, to arrange for services, to satisfy the demands of the Child's parent(s) or guardian(s), or to facilitate the interrogation of the Child or investigation of the offense;
  - (iv) Guidelines expressly identifying the reasons for which a Child may be detained. This list shall include the requirement that the Juvenile Court Magistrates make a determination that there is probable cause to believe that the Child has committed a delinquent offense for which he or she may be detained;
  - (v) Training and guidance on the use of existing and new objective decision-making tools; and
  - (vi) A requirement that a supervisory authority review all overrides within each department on, at minimum, a monthly basis.

**Status**

The Court continues to progress in the utilization of objective decision making tools. The Detention Assessment Tool (DAT) has long been in use by Detention to insure objectivity in the detention decision, and was revised and implemented on February 1, 2017, pursuant to suggestions from Dr. Leiber. The DAT validation report completed by the University of Memphis showed the DAT was effective in identifying which youth could be safely released into the community. The Graduated Response Grid (GRG) used by Probation has done much to provide consistency in determining appropriate non-judicial dispositions, and is currently being validated by an independent contractor, Data for Good.

**DMC and Equal Protection**

2. Policies and Procedures

- (c) JCMSC shall reassess the effectiveness of its policies, procedures, practices, and existing agreements annually. JCMSC shall make necessary revisions to increase the effectiveness of JCMSC's DMC reduction efforts within the County. **(MOA p. 24)**

**Status**

As previously mentioned, the Court has recently performed multiple evaluations and assessments. The DMC reduction model that was adopted requires regular monitoring to ensure that necessary revisions to increase

effectiveness are performed. The Court is committed to the all phases of the process (identification, assessment, intervention, evaluation, and monitoring) and all results will be shared with the appropriate administrators.

### **DMC and Equal Protection**

#### 3. DMC Reduction: Evaluation and Tools

- (a) Within nine months of the Effective Date, JCMSC shall commence use of objective decision-making tools to assess necessary court services for Children, including, but not limited to, alternatives to detention, referrals for social services, and prevention and early intervention services. This requirement may not replace the necessary steps to ensure compliance with due process described in the above Section. **(MOA p. 24)**

### **Status**

The DAT, YASI and Graduated Response Grid are among the objective decision and risk assessment tools used by the Court. The Grid has been reworked and is currently being validated as stated above. The DAT was recently revised (February 1, 2017) pursuant to Dr. Leiber's suggestions. The Court continues to assess and re-assess its tools and programs.

### **DMC and Equal Protection**

#### 3. DMC Reduction: Evaluation and Tools

- (b) Within nine months of the Effective Date, JCMSC shall refine its objective decision -making tools for determining whether pre-adjudication detention is necessary for a particular Child. In addition to due process considerations outlined above, JCMSC shall expressly identify a list of reasons for which a Child may not be detained. This list shall include, but is not limited to: punishment; treatment; meeting the demands of the community, the police, a victim, or school administrators; providing convenient access to the Child; arranging services for the Child; satisfying the demands of the Child's parent(s) or guardian(s); or facilitating the interrogation of the Child or investigation of the offense. **(MOA p. 24)**

### **Status**

See comments in the section above, along with the fact that the Court has now hired a full-time expeditor who constantly reviews and monitors children in detention and pushes for alternatives when warranted.

### **DMC and Equal Protection**

#### 3. DMC Reduction: Evaluation and Tools

- (c) Within nine months of the Effective Date, JCMSC shall implement a pilot program allowing law enforcement to phone in information about a recently arrested youth, which could lead to more youth being released with a summons and fewer transports by law enforcement to JCMSC. **(MOA p. 24)**

### **Status**

This program is known as LEAP (Law Enforcement Assessment Program) and it began in December 2014. The

Court has entered into Memorandums of Understanding (MOUs) with all but one (1) law enforcement agency in the County. The Court DMC Coordinator, Ms. Bridgette Bowman, has led the charge in this area by teaching a course with others at the MPD Training Academy, and by recently getting the MPD Director to agree to receive monthly reports on the LEAP data which shows the numbers of call-ins. This sharing of information should be very beneficial as we move forward knowing that 85% of all transports to the Court are from the City of Memphis.

### **DMC and Equal Protection**

#### 3. DMC Reduction: Evaluation and Tools

- (d) Within nine months of the Effective Date, JCMSC shall develop objective tools for providing pre- and post-adjudication alternatives to secure detention, probation recommendations (including initial placement, technical violations, and the level of supervision), and transfer recommendations. To assist with the expansion of services, JCMSC shall partner with other County departments and agencies as necessary to increase access to direct services within the community (including the implementation of a pilot diversion program). JCMSC shall use the inventory of the available services and diversion options by race, ethnicity, and geographic region to inform its decision to provide or expand the required services. In particular, JCMSC shall assess the availability of house arrest, day/evening treatment centers, intensive probation, shelter care, specialized foster care, and attendant or holdover care. **(MOA p. 24)**

#### **Status**

The Court continues to be involved in the creation and development of a number of programs including the Juvenile Court Precinct Liaison Initiative (JCPL) and the School Based Probation Liaison (SBPL). The Court worked closely with the University of Tennessee Health Sciences Center, the University of Memphis, and the Urban Child Institute to develop a resource/services manual that was mapped by zip code, so that families can be referred to services located in their neighborhoods. In addition, the Court continues to work closely with JDAI to seek detention alternatives and potential local resources.

### **DMC and Equal Protection**

#### 3. DMC Reduction: Evaluation and Tools

- (e) Within nine months of the Effective Date, JCMSC shall develop and implement a process to statistically review all transfer recommendations. The objective measure and the Transfer Hearing bench card (referenced in the due process section above) shall be evaluated to determine if there are any patterns contributing to DMC in transfer recommendations, identify the departments and particular decision-makers contributing to DMC in transfer recommendations, and develop an action plan for eliminating the pattern and reducing the factors contributing to DMC in transfer recommendations. **(MOA p. 25)**

#### **Status**

This process is in place and review has been ongoing. While discussions with the prosecutor are open and continue, the Notice of Transfers are filed by the District Attorney General's Office in her sole discretion. We know of nothing else that can be done by the Court at this time.

## **DMC and Equal Protection**

### 3. DMC Reduction: Evaluation and Tools

- (f) Within nine months of the Effective Date, JCMSC shall begin implementing the revised data collection mechanism to assist in its continued evaluation of DMC levels, causes, and reduction. **(MOA p. 25)**

## **Status**

There cannot be any doubt that the Court collects data timely and appropriately and consistently uses this data to evaluate DMC. Two staff members, Ms. Bridgette Bowman and Dr. Aimee Burgdorf, work on pulling, assessing and reviewing the data constantly. Their reviews and assessments are shared constantly with staff.

## **DMC and Equal Protection**

### 3. DMC Reduction: Evaluation and Tools

- (g) Within nine months of the Effective Date, each designated DMC point of contact shall begin to use the department's data to evaluate the following on a monthly basis: **(MOA p. 25)**
  - (i) The relative rate index relating to the department's area of review;
  - (ii) A review of overrides using the objective factors developed for the department, including whether permissible overrides should be revised;
  - (iii) A review of the number of Children detained, in part, due to the department's actions;
  - (iv) A review of any explanations of such detention actions;
  - (v) A review of the number of Children offered non-judicial options by the department; and
  - (vi) A review of the effectiveness of the decision-making tools developed to ensure that decisions are not based on a Child's race or proxies for a Child's race or ethnicity.

Each month, the designated DMC point of contact shall provide a management report to the department head and to the Judge identifying conduct or decision-making that increases DMC or frustrates efforts to reduce DMC. The DMC point of contact, department head, and Judge shall address these concerns. The DMC point of contact shall ensure that suggestions for addressing inconsistencies and overrides are communicated to the responsible JCMSC employee. **(MOA p. 25)**

## **Status**

The POC reports have been replaced with updates and memorandums from the Strategic Planning Committee, which meets every 3 weeks and has done so since Dr. Leiber's TA visit in 2016.

## **DMC and Equal Protection**

### 3. DMC Reduction: Evaluation and Tools

- (h) On an annual basis, JCMSC shall evaluate and revise all objective decision-making tools listed above to minimize the extent, if any, to which the tool uses racial or ethnic differences (or proxies for racial and ethnic differences) as a basis for decision-making. **(MOA p. 26)**

### **Status**

The number of objective tools being used has increased as discussed above. The DAT has been validated and the Graduated Response Grid is in the process of being validated. The Court continues to work toward substantial compliance on this item.

## **DMC and Equal Protection**

### 4. Training

- (a) Within one year of the Effective Date, JCMSC shall provide all staff involved in any fashion in its delinquency docket with a minimum of sixteen hours of training on DMC in the juvenile justice system. The training shall emphasize the role of the Court, Juvenile Court Magistrates, probation, detention, and other Court personnel in reducing DMC in the juvenile justice process. The training shall include an interactive component with sample cases, responses, feedback, and testing to ensure retention. Training for all new staff shall be provided bi- annually. The training shall also address: **(MOA p. 26)**
  - (i) Understanding the potential causes of DMC, including, but not limited to, institutional resources, individual decision-making, differential handling of Children based on race or ethnicity, programming options, availability of prevention and treatment options, and eligibility criteria for court services;
  - (ii) Using data collection methods to inform DMC reduction progress;
  - (iii) Understanding how bias - implicit or explicit - may impact the decision-making process;
  - (iv) Evaluating the availability of programs and services that take into account community resources;
  - (v) Using decision-making tools in a fair manner and evaluating any decision to override objective outcomes;
  - (vi) Understanding the importance of community engagement and awareness of racial or ethnic disparities in the treatment of Children appearing before the Court; and
  - (vii) Understanding the Court's oversight role on community issues impacting juvenile justice.
- (b) JCMSC shall ensure that all staff involved in any fashion in the delinquency docket shall complete a minimum of four hours of refresher training on an annual basis. This refresher training shall include

updates related to JCMSC's challenges and progress in reducing DMC over the prior year. (MOA p. 27)

**Status**

The Court continues to provide extensive staff training and is constantly looking for new training opportunities. Dr. Leiber stated in his last report that the Court is to be “commended for their effort in this regard” and these items were moved up to Substantial Compliance.

**Protection from Harm: Detention Facility**

Even before the MOA was signed, the Court has focused on improving the facility. That work has continued through a partnership with the Shelby County Sheriff’s Office, which began operating the facility in July 2015. Significant improvements included:

- Hiring national suicide expert Lindsay Hays to assess the facility. His suggested policies/procedures have been implemented and utilized by staff and medical/mental health providers.
- Hiring Correct Care Solutions (“CCS”) to provide medical/mental health on site 24/7, with oversight by the Shelby County Health Department, through a contract monitor. Monthly medical contract meetings are held. CCS has been an important part of the team’s progress and has continued to suggest and implement valuable therapeutic programs.
- Policies were revised and implemented.
- Mechanisms for data collection were developed.
- Metrics were developed.
- Positive Behavior Management System (“PBMS”) was implemented and continually refined
- JDAI Facility Assessment performed with recommendations
- American Corrections Association (“ACA”) Accreditation received.
- Detention Analysis Tool (“DAT”) validated by University of Memphis.
- Staffing analysis completed and additional supervisory personnel in place
- Technical Assistance in several areas, including Training for Trainers

The result has been a decline in uses of force, more utilization of non-physical alternatives to force in difficult situations, less use of physical and mechanical restraints and a dramatic decline in confining youth to their rooms. Improved training and use of the PBMS have resulted in a safer environment for youth and staff. The average daily population has risen in recent months.

An increased length of stay is the cause of this increase and efforts to manage and decrease this population are priorities for both the team that includes the Court, the Sheriff’s Office, the Health Department, CCS, the District Attorney General, and the Mayor.

1. Use of Force

- (a) No later than the Effective Date, the Facility shall continue to prohibit all use of a restraint chair and pressure point control tactics. (MOA p. 28)

**Status**

This item has been completed and terminated from the MOA.

1. Use of Force

- (b) Within six months of the Effective Date, the Facility shall analyze the methods that staff uses to control Children who pose a danger to themselves or others. The Facility shall ensure that all methods used in these situations comply with the use of force and mental health provisions in this Agreement. (MOA p. 28)

**Status**

This is in compliance.

- (c) Within six months of the Effective Date, JCMSC shall ensure that the Facility' s use of force policies, procedures, and practices: (MOA p. 28)
  - (i) Ensure that staff use the least amount of force appropriate to the harm posed by the Child to stabilize the situation and protect the safety of the involved Child or others;

**Status**

This is in compliance.

- (ii) Prohibit the use of unapproved forms of physical restraint and seclusion;

**Status**

This is in partial compliance. Room confinement has dropped dramatically since the April 2017 visit.

- (iii) Require that restraint and seclusion only be used in those circumstances where the Child poses an immediate danger to self or others and when less restrictive means have been properly, but unsuccessfully, attempted;

**Status**

This is in partial compliance. Room confinement has dropped dramatically since the April 2017 visit.

- (iv) Require the prompt and thorough documentation and reporting of all incidents, including allegations of abuse, uses of force, staff misconduct, sexual misconduct between children, child on child violence, and other incidents at the discretion of the Administrator, or his/her designee;

**Status**

This is in compliance.

- (v) Limit force to situations where the Facility has attempted, and exhausted, a hierarchy of pro-active non-physical alternatives;

**Status**

This is in compliance.

- (vi) Require that any attempt at non-physical alternatives be documented in a Child's file;

**Status**

This is in compliance.



- (vii) Ensure that staff are held accountable for excessive and unpermitted force;

**Status**

This is in compliance.

- (viii) Within nine months of the Effective Date ensure that Children who have been subjected to force or restraint are evaluated by medical staff immediately following the incident regardless of whether there is a visible injury or the Child denies any injury;

**Status**

This is in compliance.

- (ix) Require mandatory reporting of all child abuse in accordance with Tenn. Code. Ann. § 37-1-403; and

**Status**

This is in compliance.

- (x) Require formal review of all uses of force and allegations of abuse, to determine whether staff acted appropriately.

**Status**

This is in partial compliance. A multi-disciplinary review team will conduct monthly meetings and review all documents and video.

**Comments**

Uses of force and room confinement have dropped dramatically. Room confinement is no longer utilized as a sanction. The facility has recorded Suicide Precaution by hours from initiation until release, even though youth have not been in their rooms except to sleep. This method of reporting will be changed and previous submissions will be recalculated for review by Coordinator and Consultant.

1. Use of Force

- (d) Each month, the Administrator, or his or her designee, shall review all incidents involving force to ensure that all uses of force and reports on uses of force were done in accordance with this Agreement. The Administrator shall also ensure that appropriate disciplinary action is initiated against any staff member who fails to comply with the use of force policy. The Administrator or designee shall identify any training needs and debrief staff on how to avoid similar incidents through de-escalation. The Administrator shall also discuss the wrongful conduct with the staff and the appropriate response that was required in the circumstance. To satisfy the terms of this provision, the Administrator, or his or her designee, shall be fully trained in use of force. **(MOA p. 29)**

**Status**

This is in Partial compliance. Assistant Chief Fields had previously designated Chief Inspector Bridgeforth to review the incidents and she has been conducting reviews in compliance with this provision. All staff are fully trained in the use of force.

A multi-disciplinary review team has started to conduct monthly meetings and review all documents (including

video) to ensure compliance and disciplinary action as needed, identify training needs and work with staff to ensure appropriate responses.

Below is a chart of Average Daily Population from 2015 through the July 2017 (see also attached graph labelled as Attachment 8):

<b>AVERAGE DAILY POPULATION IN DETENTION</b>			
	<b>2015</b>	<b>2016</b>	<b>2017</b>
<b>JAN</b>	<b>62</b>	<b>80</b>	<b>95</b>
<b>FEB</b>	<b>66</b>	<b>84</b>	<b>97</b>
<b>MAR</b>	<b>56</b>	<b>72</b>	<b>94</b>
<b>APR</b>	<b>53</b>	<b>52</b>	<b>79</b>
<b>MAY</b>	<b>54</b>	<b>60</b>	<b>72</b>
<b>JUN</b>	<b>51</b>	<b>48</b>	<b>79</b>
<b>JUL</b>	<b>44</b>	<b>44</b>	<b>77</b>
<b>AUG</b>	<b>51</b>	<b>47</b>	
<b>SEP</b>	<b>63</b>	<b>60</b>	
<b>OCT</b>	<b>74</b>	<b>64</b>	
<b>NOV</b>	<b>71</b>	<b>72</b>	
<b>DEC</b>	<b>74</b>	<b>82</b>	
<b>AVERAGE DAILY POPULATION FOR THE YEAR</b>	<b>59.92</b>	<b>63.75</b>	<b>84.71</b>

Below is a comparison of monthly averages for key indicators for the most recent 6 month periods:

	<u><b>Jan.-June 2016</b></u>	<u><b>July-Dec 2016</b></u>	<u><b>Jan.-June 2017</b></u>
Total # Admitted to Detention	456	446	424
<b><u>USE OF FORCE</u></b>			
Use of Bed Days (mo. av)	2028	1889	2601
Total Use of Force per 100 youth	33	22.5	5.5
Use of Force rate per 100 youth	1.5	1.3	0.197
% times Hierarch of non-physical			

alternatives used	15.5%	43.2%	32.8%
<b><u>SAFETY AND ORDER</u></b>			
Sick/Injured/Care per 100 days of confinement (non-assaultive)	0.48	1.48	0.083
Injuries to youth by other youth per 100 days	0.064	.042	0.008
Assaults on youth per 100 days	0.808	0.755	0.479
Physical restraint use per 100 days	1.514	1.3	0.197
Mechanical restraint use per 100 days	0.129	0.058	0.032
Use of room confinement per 100 days	1.048	0.556	0.119
Av. hours of room confinement	18.3	19.76	24.09

**Comments**

The improvements are dramatic and show focused and continuous efforts to improve. (see attached Report Card labelled as Attachment 9)

Declines continue in the number and rates of use of force while alternatives are consistently being utilized.

Declines continue in injuries to youth by other youth, the number of assaults, and the use of physical and mechanical restraints.

The use of room confinement continues to plummet.

**While the average hours of room confinement appear to increase, it is believed that recalculation of the actual hours spent in the room during suicide precautions as opposed to total time on precautions will more accurately reflect usage.**

The data shows some significant progress and juvenile focused, interactive training, increased progress with the Positive Behavior Management System, increased supervisory staff, and regular meetings convened by Sheriff's Office CAO Steve Leech with the Detention Management team focusing on improvements are having a positive effect.

**Automation of data collection is complete and has streamlined operations. Captain Weichel continues to work closely with Shannon Caraway of the Court to insure the automation and validation efforts have been implemented.**

Hope Academy continues to be a huge asset and the expanded capacity allows more youth to participate in the educational program. **Work is ongoing to secure more educational opportunities for youth through local school systems.** Youth not in classrooms receive counseling/programming during school hours.

**As the average daily population appears to be holding steady at 90, the Detention staff are working closely**

with Hope Academy staff, counselors and volunteers, and Correct Care Solutions staff for programming. Focused teamwork continues with Detention and Court staff communicating multiple times every day to expedite the release of detained youth. The District Attorney General's Office is part of the responding team when youth with special needs are about to be detained so that all alternatives can be explored.

### **Protection from Harm: Detention Facility**

#### 2. Suicide Prevention

- (a) Within 60 days of the Effective Date, JCMSC shall develop and implement comprehensive policies and procedures regarding suicide prevention and the appropriate management of suicidal Children. The policies and procedures shall incorporate the input from the Division of Clinical Services. The policies and procedures shall address, at minimum: **(MOA p. 29)**
  - (i) Intake screening for suicide risk and other mental health concerns in a confidential environment by a qualified individual for the following: past or current suicidal ideation and/or attempts; prior mental health treatment; recent significant loss, such as the death of a family member or a close friend; history of mental health diagnosis or suicidal behavior by family members and/or close friends; and suicidal issues or mental health diagnosis during any prior confinement.
  - (ii) Procedures for initiating and terminating precautions;
  - (iii) Communication between direct care and mental health staff regarding Children on precautions, including a requirement that direct care staff notify mental health staff of any incident involving self-harm;
  - (iv) Suicide risk assessment by the QMHP;
  - (v) Housing and supervision requirements, including minimal intervals of supervision and documentation;
  - (vi) Interdisciplinary reviews of all serious suicide attempts or completed suicides;
  - (vii) Multiple levels of precautions, each with increasing level of protection;
  - (viii) Requirements for all annual in-service training, including annual mock drills for suicide attempts and competency-based instruction in the use of emergency equipment ;
  - (ix) Requirements for mortality and morbidity review; and
  - (x) Requirements for regular assessment of the physical plant to determine and address any potential suicide risks.

#### **Status**

No child has ever committed suicide at the facility. Before the MOA was signed, national juvenile suicide expert Lindsay Hayes was engaged to assess the facility and assist with policies and procedures. Likewise, before the MOA was signed, the commitment was made to ensure 24/7 medical care, including qualified mental

health professionals. Correct Care Solutions (“CCS”) began work in August 2013. Mr. Hayes’ recommendations have been implemented by the facility and CCS. They have been improved upon with guidance from health professionals in the Health Department, which oversees the medical contract through a contract monitor, as well as the contract provider’s mental health team. The Health Department conducts a monthly review of CCS contract compliance.

**It is important to recognize that the vast majority of the youth are detained for acts that would be characterized as aggravated felonies if committed by an adult. Those felonies typically include weapons and serious injuries or death of the victim and charges of various degrees of murder or attempted murder are commonplace. Such acts could result in transfer for trial as an adult, with adult prison sentences, including life with the possibility of parole. It is also very likely that many of these youth are suffering from childhood trauma and come from impoverished and possibly unstable families.**

All areas of this section of the MOA are in compliance, as they have been since December 2014, with the exception of (vii), which was lowered to partial compliance in the June 2017 report. That was based on “insufficient clinical documentation” and a belief that “Better safe than sorry” was not working well. CCS has committed to ensuring more thorough documentation.

A multi-disciplinary review team consisting of a CCS mental health provider, detention staff’s top management team, and the Policy and Statutory Compliance Officer is committed to holding monthly meetings to review the month’s suicidal precautions, uses of isolation/room confinement, and uses of force to ensure compliance with policies and suggest improvements/training opportunities.

**Protection from Harm: Detention Facility**

2. Suicide Prevention

- (b) Within 60 days of the Effective Date, JCMSC shall ensure security staff posts are equipped with readily available, safely secured, suicide cut-down tools. (MOA p. 30)

**Status**

This item has been completed and terminated from the MOA.

**Protection from Harm: Detention Facility**

2. Suicide Prevention

- (c) After intake and admission, JCMSC shall ensure that, within 24 hours, any Child expressing suicidal intent or otherwise showing symptoms of suicide is assessed by a QMHP using an appropriate, formalized suicide risk assessment instrument. (MOA p. 30)

**Status**

This item has been completed and terminated from the MOA.

- (d) JCMSC shall require direct care staff to immediately notify a QMHP any time a Child is placed on suicide precautions. Direct care staff shall provide the mental health professional with all relevant information related to the Child’s placement on suicide precautions. (MOA p. 30)

**Status**

This item has been in compliance since December 2014.

- (e) JCMSC shall prohibit the routine use of isolation for Children on suicide precautions. Children on suicide precautions shall not be isolated unless specifically authorized by a QMHP. Any such isolation and its justification shall be thoroughly documented in the accompanying incident report, a copy of which shall be maintained in the Child's file. **(MOA p. 30)**

**Status**

This item has been in compliance since June 2017 and work to sustain compliance is continuing.

- (f) Within nine months of the Effective Date, the following measures shall be taken when placing a Child on suicide precautions: **(MOA p. 30)**
  - (i) Any Child placed on suicide precautions shall be evaluated by a QMHP within two hours after being placed on suicide precautions. In the interim period, the Child shall remain on constant observation until the QMHP has assessed the Child.
  - (ii) In this evaluation, the QMHP shall determine the extent of the risk of suicide, write any appropriate orders, and ensure that the Child is regularly monitored.
  - (iii) A QMHP shall regularly, but no less than daily, reassess Children on suicide precautions to determine whether the level of precaution or supervision shall be raised or lowered, and shall record these reassessments in the Child's medical chart.
  - (iv) Only a QMHP may raise, lower, or terminate a Child's suicide precaution level or status.
  - (v) Following each daily assessment, a QMHP shall provide direct care staff with relevant information regarding a Child on suicide precautions that affects the direct care staff's duties and responsibilities for supervising Children, including at least: known sources of stress for the potentially suicidal Children; the specific risks posed; and coping mechanisms or activities that may mitigate the risk of harm.

**Status**

All areas have been in compliance since June 2015. Subsection (ii) was reduced to partial compliance in June 2017 due to documentation concerns regarding clinical assessments. CCS has committed to ensuring more thorough documentation.

- (g) JCMSC shall ensure that Children who are removed from suicide precautions receive a follow up assessment by a QMHP while housed in the Facility. **(MOA p. 31)**
- (h) All staff, including administrative, medical, and direct care staff or contractors, shall report all incidents of self-harm to the Administrator, or his or her designee, immediately upon discovery. **(MOA p. 31)**
- (i) All suicide attempts shall be recorded in the classification system to ensure that intake staff is aware of past suicide attempts if a Child with a history of suicidal ideations or attempts is readmitted to the Facility.

**Status**

These areas have been in compliance since December 2014.

## 2. Suicide Prevention

- (j) Each month, the Administrator, or his or her designee, shall aggregate and analyze the data regarding self-harm, suicide attempts, and successful suicides. Monthly statistics shall be assembled to allow assessment of changes over time. The Administrator, or his or her designee, shall review all data regarding self-harm within 24 hours after it is reported and shall ensure that the provisions of this Agreement, and policies and procedures, are followed during every incident. **(MOA p. 31)**

### Status

This area has been in compliance since December 2016.

Below is a comparison of monthly averages for Suicide Prevention key indicators for the most recent 6 month periods:

	<u>Jan.-June 2016</u>	<u>July-Dec 2016</u>	<u>Jan.-June 2017</u>
Total # Admitted to Detention	456	446	424
Rate of QMHP calls per 100 youth	0.271	2.47	0.240
Rate of youth on Suicide Precautions per 100 youth	0.261	2.78	0.240
Average time on Suicide Precautions In hours	07.65	62.61	82.59

### Comments

**While the average hours of room confinement appear to increase, it is believed that recalculation of the actual hours spent in the room during suicide precautions as opposed to total time on precautions produce a more accurate reflection of confinement.**

## 4. Training

- (a) Within one year of the Effective Date, JCMSC shall ensure that all members of detention staff receive a minimum of eight hours of competency-based training in each of the categories listed below, and two hours of annual refresher training on that same content. The training shall include an interactive component with sample cases, responses, feedback, and testing to ensure retention. Training for all new detention staff shall be provided bi-annually. **(MOA p. 31)**
- (i) Use of force: Approved use of force curriculum, including the use of verbal de-escalation and prohibition on use of the restraint chair and pressure point control tactics.
- (ii) Suicide prevention: The training on suicide prevention shall include the following:
- A description of the environmental risk factors for suicide, individually predisposing factors, high risk periods for incarcerated Children, warning signs and symptoms, known sources of stress to potentially suicidal Children, the specific risks posed, and coping mechanisms or

- activities that may help to mitigate the risk of harm.
- b. A discussion of the Facility's suicide prevention procedures, liability issues, recent suicide attempts at the Facility, searches of Children who are placed on suicide precautions, the proper evaluation of intake screening forms for signs of suicidal ideation, and any institutional barrier that might render suicide prevention ineffective .
- c. Mock demonstrations regarding the proper response to a suicide attempt and the use of suicide rescue tools.
- d. All detention staff shall be certified in CPR and first aid.

The Administrator shall review and, if necessary, revise the suicide prevention training curriculum to incorporate the requirements of this paragraph.

**Status**

This section has been in compliance since December 2014

**Comments**

Refinements to training, particularly those driven by increased technical assistance and PMBS knowledge continue.

**Protection from Harm/Performance Metrics**

- (a) In order to ensure that JCMSC's protection from harm reforms are conducted in accordance with the Constitution, JCMSC's progress in implementing these provisions and the effectiveness of these reforms shall be assessed by the Facility Consultant on a semi-annual basis during the term of his Agreement. In addition to assessing the JCMSC's procedures, practices, and training, the Facility Consultant shall analyze the following metrics related to protection from harm reforms:
  - (i) Review of the monthly reviews of force reports and the steps taken to address any wrongful conduct uncovered in the reports.
  - (ii) Review the effectiveness of the suicide prevention plan. This includes a review of the number of Children placed on suicide precautions, a representative sample of the files maintained to reflect those placed on suicide precautions, the basis for such placement, the type of precautions taken, whether the Child was evaluated by a QMHP, and the length of time the Child remained on the precaution; and

**Status**

This item is in Partial Compliance

**Comments**

**The reports are reviewed monthly and there is no instance where wrongful conduct was not addressed. Likewise, no child has committed suicide and all aspects of the precautions are monitored and documented. The new monthly multi-disciplinary team meeting should address these concerns.**

- (b) JCMSC shall maintain a record of the documents necessary to facilitate a review by the Facility



Consultant and United States in accordance with Provision VI of this Agreement.

### **Status**

This item has been in Compliance since January 2014.

### **Community Outreach**

- A. Within six months of the Effective Date, JCMSC shall develop and implement a community outreach program to keep the community informed about the progress of its reforms. The community outreach program shall include a process for updating and receiving input from a countywide juvenile justice consortium comprised of the Memphis/Shelby Juvenile Justice Board and other key stakeholders, including, but not limited to, six to nine citizens selected by the Mayor and approved by the County Commission who are reflective of the cultural and ethnic diversity of the County to include no less than two parents of children who have had delinquency matters before JCMSC, a person under the age of twenty-one (21) who has had direct contact with the juvenile justice system, and community advocates. **(MOA p. 33)**
- B. The community outreach program shall require at least one open meeting every six months for the first three (3) years of this Agreement and at least one time annually thereafter. The open meetings shall inform the public about the requirements of this Agreement, discuss JCMSC's progress in each substantive area of the Agreement, and address community concerns related to the fair administration of juvenile justice. The meetings shall be held in a location with easy access to public transportation. At least one week before the open meetings, JCMSC shall widely publicize the meetings using print media, radio, and the internet. **(MOA p. 33)**
- C. The community outreach meetings shall include summaries of reports completed pursuant to this Agreement during the period immediately prior to the meeting and inform the public of any policy changes or other significant actions taken as a result of this Agreement. **(MOA p. 33)**
- D. JCMSC shall publish on its website annual reports outlining its reform efforts in accordance with this Agreement. The annual report shall include a description of the measures taken to address the due process and detention reforms and to reduce the level of DMC at different Decision Points. **(MOA p. 33)**
- E. The community outreach program shall include a data dashboard that directly communicates JCMSC's compliance with the provisions of this Agreement. The data dashboard shall present a snapshot of JCMSC's progress toward complying with the due process, equal protection, and protection from harm goals identified in the Agreement. JCMSC shall ensure that the data dashboard is available on a publicly accessible website that is updated on a monthly basis at minimum. **(MOA p. 34)**

### **Status**

The Court hired Leon Gray about a year ago to coordinate community outreach efforts, and these efforts continue and are ongoing. A calendar of quarterly public meetings has been created and meetings have been held in areas including Hickory Hill, Whitehaven and Frayser. Mr. Gray is working collaboratively with the JDAI to hold joint meetings, and these efforts have been beneficial to the Court as a whole.

The County-wide Juvenile Justice Consortium (CJJC) has continued to be active and has added some new members to augment the core of volunteers who have been the heart of the CJJC. The Court adopted the CJJC recommendation to create a brochure for parents of Court involved youth and to develop a parent orientation for

youth in Detention. This type of valuable feedback and response from the Court is what was envisioned in the creation of the CJJC. The Court has provided any support requested by the Consortium, and has worked toward enacting many of the suggestions of the Consortium including Parent Orientation classes and more assistance at our front desk in the lobby. The Court has reached Substantial Compliance under Sections IV.B., C., D., and E. All that remains under this Community Outreach piece is the Consortium piece and the court-wide community survey piece.

### **Community Outreach**

- F. Within one year of the Effective Date, JCMSC shall conduct, or retain an individual or entity approved by the DOJ with expertise in social science research and statistics to conduct, a representative survey of members of the Shelby County community regarding their experiences with and perceptions of JCMSC. The community survey shall be conducted annually until the termination of this Agreement. The individual or entity conducting the annual community survey shall: **(MOA p. 34)**
1. Develop a baseline of measures on public satisfaction with JCMSC, attitudes among court personnel, and the quality of encounters with the court by Children and their families;
  2. Conduct baseline surveys of County residents, JCMSC personnel, and Children appearing before JCMSC on delinquency matters, and follow-up surveys on at least an annual basis; and
  3. Ensure that the community surveys are designed to capture the opinions of community members in each demographic group and geographic region of Shelby County.

### **Status**

In 2012, the Court put in a request for funding for the Community Survey to the Office of Juvenile Justice and Delinquency Prevention (OJJDP) but did not receive it until October 2016. OJJDP put the survey out for bids and selected a vendor. The survey got underway in the spring of 2016 under the direction of OJJDP. However, we were advised by the vendor that the survey was placed “on hold” in June 2017. No data or findings have yet to be reported to the Court. The Court has done all that it can do to get this survey completed.

### **Implementation and Monitoring**

- G. Settlement Agreement Coordinator. JCMSC or the County shall appoint an official or employee to serve as the Settlement Agreement Coordinator, whose duties shall include: **(MOA p. 37)**
1. Developing reports regarding compliance with this Agreement and providing such reports to the United States, the Monitors, and the Facility Consultant every six months until this Agreement is terminated. The first report shall be provided four months after the Effective Date.
  2. Providing to the United States, the Monitors, and the Facility Consultant the raw data upon which each compliance report is based upon request and any reports prepared by JCMSC's technical consultants regarding compliance with this Agreement, and any other reports routinely submitted to the Settlement Agreement Coordinator regarding compliance with this Agreement.

### **Status**

This item is complete as I. Judge Paul G. Summers, Senior Judge, TN (ret.), was appointed as Settlement Agreement Coordinator by Mayor Luttrell and Judge Michael on September 1, 2017.