



Shelby County Government

MARK H. LUTTRELL, JR.
MAYOR

JUDGE PAUL G. SUMMERS
DOJ SETTLEMENT COORDINATOR

May 15, 2018

Honorable John M. Gore
Acting Assistant Attorney General
Civil Rights Division
U. S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Honorable D. Michael Dunavant
United States Attorney
Western District of Tennessee
167 North Main Street, Suite 800
Memphis, Tennessee 38103

Honorable Mark H. Luttrell, Jr.
Mayor, Shelby County, Tennessee
160 North Main Street
Memphis, Tennessee 38103

Honorable Dan H. Michael
Judge, Juvenile Court
Memphis and Shelby County, Tennessee
616 Adams Avenue
Memphis, Tennessee 38103

Honorable Bill Oldham
Sheriff, Shelby County, Tennessee
201 Poplar Avenue, 9th Floor Suite 9-01
Memphis, TN 38103

RE: Memorandum of Agreement

Gentlemen:

Mayor Mark Luttrell called me in July 2017 after I retired as state Senior Judge. He asked me if I would consider accepting the position of Settlement Coordinator for the Memorandum of Agreement (MOA) entered into between Shelby County, the Juvenile Court of Memphis and Shelby County (JCMSC), and the Department of Justice (DOJ). The mayor advised that he needed “someone, preferably a lawyer, with (my) skill sets and experience” to facilitate and guide the County and the Court toward a resolution. He told me that the DOJ investigation began with the filing of a complaint in 2009; findings by DOJ in August 2012; and the signing of the MOA in December 2012.

I reached out to the County Attorney, Juvenile Judge, and Shelby County Sheriff (who, although not an original signatory, undertook the Shelby County Juvenile Detention Center on July 1, 2015). I met with the mayor, his staff, and the staffs of the other Shelby County principals in early August. After our meeting, I agreed to become the new settlement coordinator. I remember specifically advising all in attendance that my goal was to settle the case by resolution and mutual termination, and “my job was to work myself out of a job.”

Since then I have worked daily with officials, primarily in county government, with resolution as the goal. I have studied the 2012 MOA and all reports. I have met with monitors, consultants, DOJ lawyers, and representatives from local, state and federal government. I understand the substantive and procedural issues and provisions. I have a firm grasp on reforms and efforts accomplished by the County and the Court. In analyzing the County’s progress in the MOA, I have used a burden of proof standard higher than a preponderance of evidence standard trial judges utilize in declaratory judgment actions.

I understand the definitions of substantial compliance, good faith discretion, and termination. I appreciate the difference between the Tenth Amendment and the Supremacy Clause. Having been a judge, trial and appellate, civil and criminal for a third of my career, I know courtrooms and the judiciary. As a civil or criminal trial lawyer (prosecutor, defense attorney, attorney general, JAG) for the other two-thirds, I understand the state and federal judicial systems. I have litigated cases at every level, state or federal, including the U. S. Supreme Court.

In my 11th Compliance Report, filed March 5, 2018, I stated that as to termination “the County is not quite there yet, but I can see the end in sight.” I also reported that when the County and Court have reached substantial compliance in all major areas for a year, I would so report. My 12th Compliance Report is attached.

The MOA was signed on December 17, 2012, by Mayor Luttrell, Judge Michael’s predecessor, and General Dunavant’s predecessor. Of the original signatories from Tennessee, Mayor Luttrell is still in office; and he is term limited effective September 1, 2018. I think it is important to understand the backgrounds and careers of these three Tennessee decision makers as they relate to the Memorandum of Agreement. They understand criminal justice, juvenile justice, crime, victims, fundamental fairness, and our constitutions.

Honorable D. Michael Dunavant

After his nomination as U. S. Attorney by President Trump in 2017, Mike Dunavant received unanimous confirmation by the Senate.

After meeting with the U. S. Attorney for West Tennessee on several occasions, I learned immediately that the MOA was a top priority for him, especially in his fight against violent crime and for victims in his

district. He has studied the MOA to the point that he could be lecturing on the subject. He favors resolution as soon as possible.

Raised in West Tennessee, General Dunavant practiced law in his hometown of Ripley (Lauderdale County), north of Shelby County, for eleven years prior to his election as state District Attorney General in 2006. He served as Assistant Public Defender in the Lauderdale County Juvenile Court. During that time, he engaged in indigent defense representation of adult criminal cases in Lauderdale and Tipton Counties. It was at that time that PD Dunavant in 1997 became the youngest lawyer in the state to be “death certified” by the Tennessee Supreme Court to handle capital murder cases.

Elected for an eight year term in August 2006, Dunavant took office as District Attorney General (DA) of the 25th Judicial District, a five county judicial district in West Tennessee. Two counties, Tipton and Lauderdale, are north of Memphis and Shelby County; and they border the Mississippi River. The remaining three (Fayette, Hardeman, and McNairy) are directly east of Memphis; and they border Mississippi. Of the 31 judicial districts in Tennessee, the 25th is one of the largest geographical districts in the state.

The elected DA in Tennessee is the most powerful public official in his or her district, and the DA’s decision to prosecute or not is answerable to no one. He or she has unbridled power, and the DA’s decision in criminal cases to proceed is final. The DA has adult and juvenile criminal jurisdiction, and his or her decision to move to transfer a juvenile delinquency case to criminal court is not subject to debate. The decision to transfer, of course, is up to the juvenile judge, after a full and fair transfer hearing.

In 2014 Mike Dunavant won re-election without any opponent, which signified the endorsement of his judgment, fairness, and decision making by the citizens of the 25th. While DA, General Dunavant served as President of the Tennessee District Attorneys General Conference; Child Support Committee; and Tennessee Joint Task Force on Children’s Justice and Child Sexual Abuse. He received the Excellence Award from the Tennessee Chapter of Children’s Advocacy Centers. General Dunavant and his wife, Marianne, were the 2014 recipients of the “Champion of Victims’ Rights Award” for their resilience and work in the area of crime victims’ rights and advocacy.

On a personal note, I knew Mike Dunavant when he began practicing law in Ripley. I was a judge on the Court of Criminal Appeals, so we would periodically see each other at legal functions, both being from West Tennessee. When he was elected DA in the 25th District, I was then Attorney General of Tennessee; and he and I had more things in common. I had served as DA of the 25th, and now we were working criminal prosecutions and appeals as trial and appellate counsel. Now, he is my U. S. Attorney. Mike Dunavant is a man of high principles and integrity.

General Dunavant supports my assessment and position on the MOA and its termination. On several occasions at meetings with signatories, he has stated that the JCMSC and the County are in substantial compliance in all major areas; and if not, “it is legally or physically impossible” for anyone to be in compliance. He agrees that if the DOJ were to file suit against Shelby County, “they would lose.” If Shelby County filed a declaratory action suit against the DOJ, the County would win. We both agree that resolution and termination by August is imperative.

Furthermore, General Dunavant’s first priority is to “reduce violent crime,” and much of that is being driven by young people in Shelby County. He says that if you have any “disproportionate minority contacts” (DMC) in the juvenile justice system, it is with victims and not the delinquents or defendants. The overwhelming majority of violent crime offenders in the county juvenile system are black males, and most of their victims are black. General Dunavant told me on March 26th that the most violent offender in his district was the “17 year-old with a gun.” He is right.

General Dunavant fully supports General Sessions' and DOJ's Project Safe Neighborhood program, whereby U. S. Attorneys work with state and local law enforcement and focus on the "alpha criminals," which include 17 year-olds with a gun. As the U. S. Attorney General said at the DC Winter Meeting of the National Association of Attorneys General on February 27, 2018: "85% of law enforcement is at the state and local level." I attended that meeting as a former Attorney General. And as to juvenile crime, local and state law enforcement regulates 100% of delinquency and transfer cases; the federal government has no juvenile system.

General Dunavant agrees with the "new balance" of juvenile justice, as espoused by the Office of Juvenile Justice and Delinquency Prevention (OJJDP). There is a rebalancing from a focus on "therapeutic intervention." He concurs with OJJDP's rebalancing mantra: **enhance safety, enforce accountability, and empower children.** That is exactly what Shelby County and JCMSC have been doing since before 2012.

Honorable Mark H. Luttrell, Jr.

Mark Luttrell ran for Sheriff of Shelby County in 2002, in a campaign that addressed jail conditions. The Shelby County jail at that time was in federal court in a class action case and under consent decree with DOJ. Luttrell prevailed in the election and was the only sheriff elected in Tennessee's 95 counties with a purely corrections background. He had previously served 23 years with the U. S. Bureau of Prisons and was warden at three federal institutions. When he retired from the DOJ, he was appointed Director of the Shelby County Corrections Center serving three years before his election as sheriff.

Then-Sheriff Luttrell says "it took five years of intense work and approximately \$25mm to correct the deficiencies noted in both the consent decree and class action suit. We achieved success by focusing on reducing overcrowding, changing our inmate supervision modality, enhancing staff training and, lastly, achieving accreditation through the American Correctional Association." Shelby County utilized national resources to assist in the remedial actions, particularly the National Institute of Corrections. The results produced a constitutionally compliant correctional facility.

After serving two terms, Sheriff Luttrell became Mayor Luttrell in 2010. Shelby County was the most populous and largest in land area of the 95 Tennessee counties. The county is about 52% black; and Memphis, the largest city, is about 2/3 black. Over half of the police are minority as are the sheriffs' deputies. The police chief is of African-American descent. In 2012, when Mayor Luttrell had been mayor for two years, 89% of the serious offenses in delinquency juvenile proceedings were committed by black youth. In 2017, it was 87%. Most offenders are male. Overwhelmingly, the victims are also black and usually from the inner city. That is the juvenile criminal justice system that Mayor Luttrell inherited when he signed the MOA in 2012.

Mayor Luttrell was instrumental in having the Sheriff of Shelby County take over the juvenile jail, or detention center, on July 1, 2015. Prior to that, the center was managed by the Juvenile Court. Having had much experience with DOJ consent decrees and class action lawsuits, he knew how to establish a constitutionally sound jail under his watch. His actions and foresight have been successful. In 2012 the detention facility housed a total of 3,952 juvenile detainees; 89% were black and 10% white. In 2017 the same facility housed 869 juveniles; 92% were black and 6% white.

Aside from the detention facility and decrease in detainees, Mayor Luttrell has made great strides in due process and equal protection arenas. He has hired Juvenile Detention Alternatives Initiative (JDAI) coordinators, Disproportionate Minority Contacts (DMC) coordinators, research specialists, Community Outreach directors, monitors, consultants, medical professionals, suicide prevention experts, and

settlement coordinators. Detention numbers have declined; alternatives and diversion have increased. There are no alleged misdemeanants or unruly cases in detention; they are charged with first or second degree murder, aggravated rape, armed robbery, aggravated carjacking, and other serious felonies. It would almost take a 17 year-old trying to break into detention, with a gun, for him to be charged and detained on a single burglary charge these days. This is not an exaggeration. I receive the detention reports each Friday. The average citizen in the suburbs would be shocked at the severity of the alleged offenses. The inner city dwellers would not; they experience juvenile crime daily.

Kudos should go to Sheriff Bill Oldham, who took over detention in 2015. Since 2012 there have been three different consultants hired by the DOJ, with the last one terminated in December 2017. Each consultant has different ideas and constantly changes standards, and the sheriff has done a masterful job in adjusting as the goal post changes. Sheriff Oldham is a nationally recognized and award winning sheriff who followed Mayor/Sheriff Luttrell and has created a sensitive, proactive detention center. Sheriff Oldham created the Incarcerated Youth Speaking Out For Change - a joint venture by the Shelby County Sheriff's Office and BRIDGES - a nonprofit committed to youth-led social change. The program allows young offenders to improve their writing and speaking skills while offering unique insights in what led them to a life of crime. These young offenders speak to other youth about how not to wind up in detention, jail, or prison. Sheriff Oldham is changing the paradigm from excuses to motivation.

After Shelby County has spent over \$11.2mm on MOA related programs and personnel, the district now has the most independent, unelected district public defender in Tennessee. 30 public defenders in Tennessee are elected; the mayor appoints the PD in Shelby County, confirmed by the County Commission. In 2017 Mayor Luttrell signed an executive order giving the Public Defender complete independence from the mayor, including fiscal and personnel matters. Now the PD has a full juvenile court public defender team; handles at least 62% of total cases; and 100% of non-conflict cases. The balance of conflict cases are randomly selected using a similar computer program as the federal court uses in West Tennessee. Indigent attorney appointments comport with Tennessee Supreme Court Rule 13. This whole process has revolutionized the representation of juvenile cases in this district. It is second to none in Tennessee, where most lawyers are appointed by the judge using a legal pad with names of lawyer-volunteers who agree to accept appointed cases. The JCMSC is on the leading edge in indigent appointments in any criminal or juvenile court jurisdiction in the state.

Honorable Dan H. Michael

Dan H. Michael was elected judge of the Juvenile Court of Memphis and Shelby County in August 2014, almost two years after the MOA was signed by his predecessor, Judge Curtis Person. As Judge of the Court, he hears appeals from the magistrates and presides over the major crimes docket, hearing the most serious felony cases at the Court. Judge Michael is also responsible for the administration of the Court's Administrative Services Division, Court Services Division and Child Support Services Division.

The JCMSC is 118 years old and hears an average of 50,000 cases annually. These include delinquency, truancy, unruly, child support, termination of parental rights, probation, probation violation, transfer, and major crime matters. An average of 385,000 people annually comes into the building, which includes the detention facility.

In 1995 Judge Michael was appointed Chief Counsel to the Juvenile Judge, Kenneth Turner. In 1997 he became Magistrate Pro Tempore. In 1998 he was awarded the Child Advocacy National Certificate of Recognition by the American Bar Association of Young Lawyers for "Significant Legal Contribution to Advancing the Welfare of our Nation's Children." In 2001 Judge Turner appointed him to the bench as Juvenile Court Referee. In January 2013 Judge Person appointed him as Chief Magistrate and Special Judge.

Since taking office as Judge of the Juvenile Court, Judge Michael has implemented the following policies, procedures and programs focused on compliance with the MOA with the Department of Justice:

1. Recruited the Sheriff's Department to undertake, manage and operate the detention facility and court security.
2. Hired the Director of Community Outreach, Mr. Leon Gray, to further engage the citizens' interest and support of the JCMSC.
3. Implemented trauma training for ALL employees, creating a trauma-informed court family.
4. With the assistance of The Jason Foundation, Inc. (JFI), trained and educated ALL Court personnel, including Judge Michael, on the warning signs and risk assessments of youth suicide. Parenthetically, there has been no suicide reported in the history of the Court, nor has there been an attempt, even in the detention facility, in several years.
5. Continued his progress in gaining Model Court Status nationally.
6. Enhanced a Court Speaker Bureau (where court personnel speak primarily to schools).
7. Created an "open door policy" for all staff to share ideas, proposals and solutions.
8. Created an environment of diversity, both racial and gender, in the Court's management and employees, which replicates the demographics of Memphis and Shelby County.
9. Increased community involvement, such as quarterly community meetings in various locations, as well as JDAI quarterly empowered parent meetings.
10. Created greater efficiency with the new docket/immediate order system.
11. Installed a digital docket information center in the Court's lobby.
12. Computerized the docket information available at the Ambassador's Desk in the lobby.
13. Implemented and enhanced the Summons Review Team (SRT).
14. Created the in-house position of DMC coordinator.
15. Hosts an Annual Volunteer Reception in the Court's lobby for volunteers to mingle and mix with the Judge, Magistrate Judges, CAO and Court staff and to show appreciation for their volunteerism.
16. Raised emphasis on timely detention hearings.
17. Created the position of Court Expeditor, who is in charge of special duties, including identifying inappropriate admissions, and reducing lengths of stay in detention.
18. Reassigned Probation Officers to be housed at Memphis PD precincts for "hands-on" immediate solutions for minor delinquent acts.
19. Increased detention alternatives (contracted with new electronic monitoring vendor to decrease number of children in secured detention).
20. Commissioned youth artists for Court Artwork throughout the building, creating a more pleasant surrounding for court-involved youth and families.
21. Created the Judge's Executive Cabinet, responsible for helping to make strategic decisions implementing new ideas, strategies, and goals for the Court.
22. Partnered with the University of Memphis Law School regarding their internship program; the Judge is a guest speaker and professor.
23. Partnered with the City of Memphis' EMPLOY Summer Youth Program.
24. Partnered with the Shelby County Commission's Summer Youth Program.
25. Delivers an annual State of the Court Address to staff and media.

As chief administrator, Judge Michael has created the most diverse Juvenile Court bench in the history of the Court. The bench now includes seven women and five men, six African-Americans, five Caucasians and one Taiwanese-American. Women and blacks hold key administrative positions throughout the courthouse, including CAO Pam Skelton, COO Gary Cummings, Chief Probation Officer Bridgette Bowman, and Chief Legal Officer/Magistrate Judge Garland Erguden.

Judge Michael is on the board of the National Council of Juvenile and Family Court Judges. Every effort every day since he has been in office has been focused on achieving a National Model Court Status for the Juvenile Court of Memphis and Shelby County.

Honorable Bill Oldham

Bill Oldham was first elected Shelby County Sheriff in 2010, having served for almost eight years as Chief Deputy before that. He won re-election in 2014 and is finishing his final year, ending a career that began in 1972 as a Memphis Police Department (MPD) patrolman. He rose through the ranks to lead the MPD.

The Sheriff's Office has approximately 2,000 employees: over half are assigned to Corrections; the Sheriff operates one of the largest jails in the United States. Governor Bill Haslam appointed Sheriff Oldham to serve on the Tennessee Corrections Institute (TCI) Board of Control, and his peers elected him Chairman. T.C.I. governs the State's adult facilities and training. Sheriff Oldham's peers in the Tennessee Sheriff's Association also voted him Sheriff of the Year.

Under his leadership, the Sheriff's Office achieved the national Triple Crown in accreditations (American Corrections Association, National Commission on Correctional Health Care, and Commission on Accreditation for Law Enforcement Agencies). It was one of only two agencies at the time to achieve the Tri-ARC, for Communications and the Training Academy accreditations.

Sheriff Oldham is passionate about youth, both in and out of custody, and supports many mentoring/sports programs. As Chief Deputy and Sheriff he ensured that youth were not being detained for violating school rules and was first to agree to issue citations instead of arrest. The Sheriff heartily endorsed Juvenile Court's call-ahead program and has pushed to expand the SHAPE diversion program to all schools. He has revamped education and programming for "youthful offenders" in all facilities and many of his fresh approaches have had proven results. He has operated the detention facilities with transparency and has allowed numerous groups to tour and provide presentations. His work to reduce recidivism through educational opportunities and mentoring has led to many community partnerships and a large base of mentors, particularly those working with juveniles. The Memphis Bar Association honored him with its first Champion of Justice award.

With that history, it was no surprise that Judge Michael asked for Sheriff Oldham's assistance, or that Sheriff Oldham agreed to undertake the task of operating the Juvenile Detention facility. The Sheriff put his considerable resources to work and assembled a top leadership team who were given the resources to make meaningful change. Immediate changes involved additional training and certification and more resources. This has been a learning process but has always been guided by national best practice with a goal of becoming a model facility. JDAI is currently referring other agencies to the leadership of the Sheriff and the Court due to the dramatic drop in isolation/room confinement.

The 12th Compliance Report

I have been a lawyer for 43 years. I have lived in West Tennessee most all my life. I understand Memphis and Shelby County, having graduated from high school in Shelby County. I understand the demographics, politics, judicial system and culture of Shelby County.

I understand the state judicial system – civil, criminal, and juvenile. I have been a prosecutor, trial attorney and defense lawyer in all three systems. I have been a trial and appellate judge in all three systems.

When I returned from the JAG Corps in 1979 to practice law in my hometown of Somerville, 45 miles outside of Memphis, I was basically the public defender in Fayette County. We had no organized public defender system in the rural areas of Tennessee; only larger, urban counties like Shelby County had a public defender system. Usually the youngest lawyers were appointed by the various courts to represent criminal defendants or juveniles charged with delinquent acts. A lawyer was not reimbursed unless the defendant was bound over to the grand jury, indicted and arraigned before the circuit (criminal) court. If you were appointed and your case was disposed of in the lower courts or juvenile court, you received no attorneys' fees for your work. It was pro bono. If the case went to trial or a plea, as an adult or a transferred juvenile to criminal court, the maximum fee was, as I recall, \$500. That was the system.

I represented indigent criminal defendants and youth petitioned for delinquent acts in juvenile court. For example, I was appointed by the juvenile judge (a non-lawyer judge at that time) in 1980 to represent a teenage black youth, age 15, who, along with his 17 year-old brother and 23 year-old half-brother, were charged with first degree murder. His name was Frank. Frank lived with his aunt. I never met his parents throughout the process. They never participated, only his aunt.

The district attorney general moved to transfer Frank to be tried as an adult; I defended him. The case was transferred to the circuit court. He was held in detention for well over six months, along with his 17 year-old brother, in the women's section of the Fayette County jail. (Fayette County had no detention facility then, or now for that matter.). Frank was indicted in a first degree murder true bill by the grand jury; and we moved for a change of venue, which was granted. Many months later a jury trial ensued in Madison County, three counties from Fayette County; Frank, along with his next older brother, was acquitted. After his aunt made Frank thank me for my work that night in the courtroom, he walked out of the courthouse. I never saw Frank again. His oldest half-brother, tried separately, was convicted of killing the elderly victim by bludgeoning him to death for his social security money.

A couple of years after Frank's trial, I was elected District Attorney General in the 25th Judicial District; and I prosecuted juveniles who were transferred to the circuit court to be tried as adults, although the crimes were committed before they were 18. I can recall a 16 year-old white youth, a resident at Wilder Youth Development Center (a juvenile delinquent facility located in Fayette County), who was charged with murdering the hometown football coach on September 30, 1989. Upon my motion as DA, the case was transferred to the circuit court; and the defendant later was convicted and sentenced to life in prison.

I have been on both sides of the legal fence in juvenile and adult cases. I have a complete understanding of the juvenile and adult systems in Tennessee, and I understand the Shelby County Juvenile Court very well. Having been a senior trial judge and tried contested trials in over half of Tennessee's counties, I can say unequivocally that the Juvenile Court of Memphis and Shelby County is a model system, not only for Tennessee, but I suspect the United States.

If you paid attention to the complaints filed back in 2009 by a handful of uninformed community activists about the JCMSC, you would think that every morning when a Memphis policeman or a Shelby County deputy got out of bed, he or she yearned about arresting some black child for being unruly or shoplifting, while ignoring white children in East Memphis who were committing aggravated burglary. This was and is absolute fiction. The last thing that a cop wants to do is have to work with or even go to juvenile court, with all of its rules, regulations, protections, detention initiatives and rehabilitative alternatives. Criminal Court with adults at 201 Poplar Avenue is much simpler and easier. But, police must react to the crime reports and what they discover; and juvenile crime is a target rich environment, especially in the urban areas. They are simply doing their job. They cannot and will not ignore real crime committed by juvenile offenders. They are concerned about victims.

Furthermore, the complaints insinuated that the Juvenile Court had control over who the police brought to the sally port for processing. The juvenile court is a reactive court; it has to take in and process the people that the police bring in – it has no other choice. If black children are committing the crimes, they have to be processed. The truth is that most of the crimes committed by juveniles are committed by young blacks. These are serious crimes. And their victims are predominantly African-American.

Do you know where the complaints come from now? They come from the inner city neighborhoods, the victims, who call the police and call the Court and complain: “I told you about this thug who broke into my house and my neighbor’s house and stole all we had. You picked him up yesterday, and he’s back out of the street today. He’s in front of my house. I feel like I am a prisoner in my own home. Please do something!” The victims are complaining about the 17 year-old, often with a gun, who is terrorizing their neighborhood. The victims are not concerned with detention alternatives, diversion and probation programs.

We do not have a race problem in Shelby County, Washington, DC, or Chicago, for that matter. We do not have a DMC, an equal protection, a detention, or a due process problem. We have a **crime** problem. It is a fact that most of the juvenile crimes are committed by young black males with no parental supervision, no goals, no stable family, little education, and no self-worth. A significant majority of black children born in Shelby County are born into single parent homes. Oftentimes there are **no** parents. Ironically, the Juvenile Court struggles to be *parens patriae* or guardians because the real parents have vanished. The “family” for these children, sadly, is the street and gangs. Our juvenile justice system does the best it can – to be the court, the probation system, the parents, the department of human services, the department of children’s services, the welfare department, the detention alternative, the medical center, the rehabilitation center, and the jail.

Our U. S. Attorney General said in his speech to the National Association of Attorneys General on February 27th of this year: “We need to reduce crime in America; support men and women in blue; target violent crime; and **fix those consent decrees.**” **Certainly MOAs, which have not been proven by a preponderance of evidence,** would be included with consent decrees.

Conclusion

I will not belabor the point. My lengthy report, attached hereto as my 12th Compliance Report, speaks for itself. I hope this will be my last report as Settlement Coordinator. I shall stand by this report in any forum in which I am called.

I told Mayor Luttrell and Judge Michael in August 2017, and later General Dunavant on several occasions, that I would report the truth and tell it like it is. If my reports and observations did not favor Shelby County or the Court, I would say that. If my reports showed that the Court and County needed more monitoring and consulting, I would report that. I do not represent the County, the Court, or the DOJ; I represent the Memorandum of Agreement and the plain, unvarnished truth. I have weighed the evidence in the same manner as if the County was the plaintiff in a declaratory judgment action. In making these assessments and forming my opinions, I have used a high standard that approaches clear and convincing evidence.

The Juvenile Court of Memphis and Shelby County, the County, and all political subdivisions thereof have been, and are in, compliance or substantial compliance for at least a year in every major aspect of the Memorandum of Agreement signed on December 17, 2012.

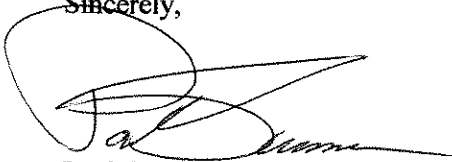
As a Tennessean, I am immensely proud of the hard work, diligent application and dedication to duty these public officers and employees have displayed since 2009. Because of their efforts, the children and

citizens of Shelby County have a quintessential judicial system in the Juvenile Court of Memphis and Shelby County.

I recommend that all parties, to whom this letter is addressed – General Gore, General Dunavant, Mayor Luttrell, Judge Michael, and Sheriff Oldham – after consultation with respective counsel, terminate the Memorandum of Agreement without unnecessary delay. Resolution should be finalized on or before July 15, 2018.

With highest personal regards, I am

Sincerely,

A handwritten signature in black ink, appearing to read "Paul G. Summers", with a large, sweeping flourish that loops back to the left.

Paul G. Summers
Senior Judge, Tennessee (Ret.)
Settlement Agreement Coordinator

Enclosure: 12th Compliance Report of Settlement Coordinator



Shelby County Government

MARK H. LUTTRELL, JR.
MAYOR

JUDGE PAUL G. SUMMERS
DOJ SETTLEMENT COORDINATOR

TO: **Honorable Mark H. Luttrell, Jr.**
 Mayor, Shelby County, Tennessee

Honorable Dan H. Michael
 Juvenile Court Judge of Memphis & Shelby County

Honorable Bill Oldham
 Sheriff of Shelby County, Tennessee

Honorable Kathryn Pascover
 Shelby County Attorney

US Department of Justice
 Honorable D. Michael Dunavant
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Winsome Gayle, Esq.
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 Civil Rights Division, Special Litigation Section

Professor Sandra Simkins, Due Process Monitor

Dr. Michael Leiber, Equal Protection Monitor

Pamela Clark, LCSW, Facilities Monitor

FROM: **Honorable Paul G. Summers, Settlement Agreement Coordinator**
 Senior Judge (Ret.), State of Tennessee

DATE: **May 15, 2018**

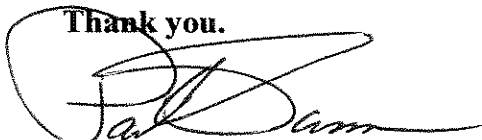
RE: **12th and Final Compliance Report**

I have studied the 2012 Memorandum of Agreement (MOA) between Shelby County Government and the Department of Justice (DOJ). I understand the substantive and procedural issues and provisions. I have a firm grasp on reforms and efforts accomplished by Shelby County (County) and the Juvenile Court of Memphis and Shelby County (JCMSC). In analyzing the County's progress vis-à-vis the MOA, I use a burden of proof standard higher than a preponderance of evidence standard trial judges utilize in declaratory judgment actions.

I understand the definitions of substantial compliance, good faith discretion, and termination. I have studied the Tenth Amendment and the Supremacy Clause, and I understand the difference. I also have a career of experience in dealing with judicial systems, federal and state. The County and JCMSC are now in Substantial Compliance in all sections/sub-sections of the MOA. I am reporting my findings to you in this 12th (and Final) Compliance Report in my capacity as the Settlement Coordinator, and it is attached hereto.

Please let me know if you have any questions or need anything further.

Thank you.

A handwritten signature in black ink, appearing to read "Paul G. Summers", written over a circular stamp or mark.

**Paul G. Summers, Settlement Agreement Coordinator
Senior Judge (Ret.), Tennessee**

Narrative Summary

This is the 12th Compliance Report since the Memorandum of Agreement (MOA) was signed by all parties on or about December 17, 2012. There has been continued progress in each of the three (3) areas of the MOA since my 11th report, and in my review of all matters it is time to report that the County, JCMSC and the Shelby County Sheriff are now in **Substantial Compliance** in all areas of the MOA.

The MOA includes commitments in Due Process, Disproportionate Minority Contact (DMC) and Equal Protection (including Community Outreach), and Protection from Harm: Detention Facility. Below is a short summary of progress in each major area. This summary includes highlights of positive events and major accomplishments in each area, which ultimately lead me to declare that Shelby County and the JCMSC have reached Substantial Compliance in all areas.

Due Process

My last Compliance Report, submitted on March 5, 2018, noted significant progress made in the remaining areas of Due Process during the prior six months. The MOA contained 15 separate sections and 56 compliance provisions under Due Process. Due to a year or more of substantial compliance (SC), 12 of those 15 sections & 47 of the 56 compliance provisions have been completed and terminated from the MOA, leaving only a few matters for the Due Process monitor to review. There can be no doubt that very little was left to accomplish in the area of Due Process, and that the few remaining areas are now also in **Substantial Compliance**.

As noted in the last report, the Mayor signed an Executive Order which provided assurances that allow the Public Defender (PD) to provide "independent, ethical and zealous advocacy" as required by the MOA. This Executive Order was an innovative move by the Mayor's Administration which supports independence and addresses the MOA through local action. The Order obviates waiting on changes at the State level in public defense structures and/or funding, all within the constraints of the Shelby County Charter.

Public Defender Stephen Bush has submitted his "Blueprint to Achieve Compliance in Juvenile Defender Services." This document provides a roadmap to compliance with the MOA that can be achieved through local action. Given the assurances outlined in the Executive Order, the Public Defender has implemented the operational steps outlined in the "Blueprint."

The representation by the Juvenile Defender Unit has risen above 60%, and the unit is

receiving 100% of all non-conflict appointments.

Due process protections afforded at the Court are much improved, exceptional, and in many cases, peerless. There is a demanding focus of protecting rights as well as documenting consideration of factors in decisions by both Magistrates and staff. The majority of cases are handled non-judicially, and the Probation staff does an effective job in advising youth of their rights and in administering a Graduated Response Grid designed to promote consistent dispositional decisions. Of the 5,100 delinquency cases handled in 2017, 68% were handled non-judicially.

Positive Events and Major Accomplishments:

1. The Public Defender handled sixty-two percent (62%) for calendar year 2017; and this office handles 100% of all non-conflict cases. (*see attached report from 2017 labeled as Attachment 1*).
2. Even though the Tennessee Administrative Office of the Courts (AOC) has continued to decline to pay for legal representation at this stage (pre-petition), and the University of Memphis Law School clinic has denied assistance at this stage as well, as of March 1, 2018 the Public Defender and the Court have worked together to implement a program that will assign a Public Defender and/or a panel attorney (pro bono until July 1st when JCMSC gets funding) to attend conferences with full implementation of this program no later than July 1st. DOJ Assistant Attorney General Winsome Gayle has indicated that this represents a full solution to meet Substantial Compliance.
3. JCMSC was noted to be in Substantial Compliance in all sub-sections under Transfer Hearings under the MOA in October, 2015. The Court was unexpectedly dropped to Partial Compliance in October, 2016, when the Due Process Monitor alleged that open file discovery was required under the MOA. Based upon the legal authority under federal and state law, General Gayle advised in an email dated April 10, 2018, that the MOA required disclosures under *Brady* and *Giglio*, and that nothing more was required to meet Substantial Compliance (see attached email labeled as Attachment 2). Thus, with the Due Process monitor reinstating JCMSC's Substantial Compliance; it is clear that JCMSC has been in Substantial Compliance for over two (2) years. The Court has also implemented a standard discovery order (see attached sample order labeled as Attachment 3).

Legal Limitations

The few remaining subsections under Juvenile Defenders cannot be met by JCMSC due to the following:

1. Independence of the panel attorneys – Rule 13 of the Tennessee Supreme Court requires the Juvenile Judge to appoint counsel and to maintain a roster of attorneys for

conflict representation. The Court requested an Opinion from the Judicial Ethics Committee of the Tennessee Judicial Conference. Judge Alan E. Glenn, the chairman of said Committee, advised in a letter dated September 7, 2017, that the Court must comply with the dictates of Rule 13 unless and until the Tennessee Supreme Court or the General Assembly changes the rule (see attached letter labeled as Attachment 4). The Court can do nothing further under this provision. It makes no difference if the conflict screens are done by the Panel Coordinator or the Public Defender's Office; the appointment order must come from the Judge.

Notwithstanding these legal limitations, many changes have been made to provide adequate assurances of independence, including a fall back provision, holding the office of chief public defender in a *de jure* capacity, provision of a dual method of appointment which applies across mayoral terms, and a large increase in compensation to match that of elected public defenders across the State of Tennessee. The Public Defender's Office has been given Independent hiring and restructuring authority, along with a substantial funding increase to permit the hiring of additional legal and support staff. The Tennessee Supreme Court has supported a bill presented to the Tennessee Legislature in 2018 which proposes to create an independent, statewide indigent defense commission which has been led by the Chief Justice and by Mr. David Carroll of the Sixth Amendment Center.

The option of changing the Shelby County Charter to provide for the election of chief public defender, thereby attaining true independence, was offered three years ago to both the Department of Justice attorneys and the Chief Public Defender. That offer was declined as both the chief public defender and the DOJ attorneys preferred to work within the present structure. Unless state law is changed – something the County and Court have no control over – everything that can be done on this issue has been done. The Due Process section in the MOA is now complete and in Substantial Compliance in all areas.

DMC and Equal Protection

The Equal Protection Monitor has noted in his last two (2) reports that the Court was “laying a foundation to reduce the presence of DMC” and that if it “continues to enact changes in policies and procedures, it is anticipated that reductions...and greater equity in the treatment of all youth will occur in court referrals, secure detention, and non-judicial outcomes.”

Following the Equal Protection Monitor's technical assistance visit in July, 2016, Juvenile Court CAO Pamela Skelton formed a Strategic Planning Committee to address DMC issues and the Equal Protection Monitor's recommendations. Disparities needed to be addressed at each decision point in the juvenile justice system and the Strategic Planning

Committee has been the focal point for pushing for change. Some examples of the constant work being done through this committee:

- The Court implemented **each and every** change requested by the Equal Protection Monitor during his October, 2016 visit to the DAT resulting in the use of DAT 3.0 on of February 1, 2017. Dr. Leiber has made additional suggestions to the DAT in particular and has held a second Technical Assistance here at the Court on February 21, 2018 with additional changes requested which are now in process and will become the DAT 3.1. The Court continues to implement the Equal Protection Monitor's suggestions and requests to the DAT even though the original DAT (DAT 1) was validated by the University of Memphis in its final report to the Court in September, 2015, and even though Dr. Leiber admitted numerous times during his visit that he is not an expert on the DAT. The University's suggested changes were made to the DAT resulting in the DAT 2, to which the Equal Protection monitor requested additional changes in 2016 and in 2018.
- A Summons Review Team has been established to develop a process to address summonses without the necessity of Court intervention. This initiative's intent is to prevent qualifying youth from making formal contact with the judicial system, thereby strategically impacting the Referral Decision Point. More importantly, the program diverts youth away from the Court, thereby preventing both their entry and/or furtherance in the juvenile justice system.
- The Graduated Response Grid has been reconstructed to establish more appropriate and more consistent dispositions. In addition to the grid being revised, appropriate court staff understands the need to apply court responses from a restorative perspective versus a disposition mindset objective. Pursuant to the request by DOJ and Dr. Leiber, this grid is being validated by an independent contractor.
- An expeditor position has been created and filled to facilitate the release of youth from detention. The Expeditor and Expeditor Team assess the daily detention population for youth who may be eligible for a less restrictive alternative.

Many positive developments have occurred since the MOA was signed. The number of children detained has been dramatically reduced since the MOA was signed (see **Juvenile Admission report for 2012-2017 attached as Attachment 5**). In 2012, 3,952 youth were admitted to the detention facility; in 2017, 869 youth were admitted. The bulk of this reduction involves minority youth which means fewer minority youth are progressing through the juvenile justice system. It is also important to note that the Equal Protection Monitor's analysis continues to reflect that race is not a statistically significant determinant of judicial decision-making. The Court deserves recognition that the strategies implemented under the Strategic Planning Committee, with advice and recommendations from Dr. Leiber throughout, have been accomplished and that **Substantial Compliance** has been met in all areas.

Remaining Provisions:

1. Referrals
2. Secure detention
3. Non-judicial decision making
 - a. *Cases petitioned*
 - b. *Diverted or dismissed/warned*
4. Waiver/Transfer to adult court
 - a. *Notice of transfer; waiver to adult court*

Positive Events and Major Accomplishments:

The Court continues its Strategic Planning Team to address DMC & the Equal Protection Monitor's recommendations. The team meets approximately every three weeks, and a written memo of each meeting is sent to the Equal Protection Monitor updating him on the team's progress (see latest memo dated May 1, 2018 attached and labeled as Attachment 6).

The Court's webpage has been fully implemented with a data dashboard where all of the court's data is linked and accessible, along with all DOJ related documents, reports, charts, etc. (<https://dashboard.shelbycountyttn.gov/>)

Referral

- a. MPD Quarterly Meetings- Meetings between the Court and MPD Director Rallings & Deputy Director Ryall delve into various areas of concerns and possible solutions. As a result of the most recent meeting in July, monthly LEAP reports will be sent to the MPD Director on a monthly basis per his request.
- b. Porter Leath & Youth Villages Safe Place- There are two areas where the Court has respite beds to be utilized as an alternative to detention, specifically in domestic violence cases. This process has been instructive and educational.
- c. MPD Cheat/informational card- Regarding LEAP and when to transport. In addition to the above, the Detention Facility utilizes these cards in the intake process.
- d. Precinct Liaison- The Court currently has a Juvenile Services Specialist who works out of Old Allen Precinct & one that works out of Tillman Precinct. Data shows that the Precinct Liaison Program has impacted the number of summons and transports being formally handled by Juvenile Court.

Case Referrals RRI was at 4.45 in 2016 and decreased to 3.50 in 2017 (see attached RRI numbers from 2016 and 2017 labelled as Attachment 7).

Secure Detention

- e. Expedite Review Team- Court staff discusses internally communications from the Sheriff's office each day as to any children who may be eligible for release. The team conducts weekly expedition meetings with Court staff, defense attorneys, Public Defenders, and the District Attorney General's office. This team also reviews youth on electronic monitoring for length of time.
- f. Detention Assessment Tool (DAT) - Revised DAT (4th version) is in the works with additional suggestions from Equal Protection Monitor's 2nd Technical Assistance visit in February, 2018.
- g. Ceasefire Program- Operation Ceasefire is a violence prevention program that uses a public health approach, outreach workers, public education campaigns, and community mobilization to reduce shootings and killings. Youth who participate in Operation Ceasefire receive this disposition either as an informal adjustment or as a direct court order.
- h. Electronic Monitoring- Greater use of electronic monitoring continues as an alternative to detention (not release); we currently have a capacity for 45-50 monitors (pre-adjudication).
- i. Evening Reporting Center (ERC) - The ERC continues as a community-based alternative to detention which started in February 2015, to target youth under supervised probation. The program has been expanded to include not only referrals from Juvenile Court made in response to a probation violation (post-adjudication), but also for youth who may be at risk of being detained or remaining in detention (pre-adjudication). The program works with 10 youths at a time, and the youth are in the program for 30 days.

2017 RRI numbers were up a bit in 2017. However, it must be noted that 87% of all serious offenses committed by juveniles in 2017 were committed by black youth (see attached **Serious and Other Offenses graphs and charts from 2012 through 2017 and collectively labelled as Attachment 8**).

In addition, certain violent crimes in 2017 were up statistically from prior years. Aggravated Robbery, Aggravated Assault, Carjacking, and firearm possession offenses increased in 2017 (see attached **Delinquent Offenses 2012-2017 report and also Serious Offenses report from 2013-2017 attached hereto and collectively labelled as Attachment 9**).

Non-Judicial

- j. Summons Review Team (SRT)- SRT reviews summonses for the charges viewed as minor misdemeanor offenses (this item is for referral numbers and for non-judicial handling to determine if some of the summonses can be handled with no contact or minimal contact/lowest diversion sanctions). This pilot program began

in November 2016, and the SRT consists of the entire staff with reviews that begin from the top and move down to line staff.

- k. Response Grid- Grid was implemented in late 2016 to replace the original “Graduated Sanctions Grid,” which provided a mechanism to make case processing determinations on using objective criteria vs. subjective review by each counselor. The Response Grid is currently being validated by an independent contractor pursuant to the Equal Protection Monitor’s request. The Equal Protection monitor participated substantially in writing the Scope of Work for the RFP, has had numerous conversations with the County’s outside vendor, and conducted interviews with this outside vendor (along with DOJ attorneys) at the last 2 on-site visits.
- l. Policy Review – New policies were created on the summons processes and the Response Grid, and a Policy Report card was developed to use on all policy reviews henceforth. Policy reviews continue and are ongoing.
- m. Youth Court- The statutorily based program began in February 2011, with student teams from four Memphis City Schools, and expanded to 17 high schools in 2016. Youth Court is a juvenile delinquency diversion and peer restorative justice program dedicated to rehabilitation of first-time nonviolent offenders. The program holds the youthful offenders accountable for their behavior and educates them about citizenship. Local attorneys and law students from the University of Memphis guide the student team members in their roles as prosecutors, defense counsel, jurors and court officers. Seventy-eight (78) cases were referred to the program in 2017, involving 326 students and 81 volunteer attorneys. Seventeen (17) first-time offenders began participating as high school team members soon after their dispositions were completed, and all of their charges were dismissed. The program has the lowest recidivism of any Court program, with a current rate of seven percent (3%).
- n. Resource Directory- The Court worked in collaboration with University of Tennessee Health Science Center, University of Memphis, and the Urban Child Institute to map referral resources by services and zip codes (zip code mapping was at the request of Dr. Leiber but not a requirement of the MOA). The directory is being utilized throughout the Court system and by the Public Defender’s Office & is updated regularly.
- o. Unruly Walk-In Clinic-This walk-in clinic is one of the Court’s resources for youth and families who need the opportunity to speak with someone and get some services where there is no pending charge before the Court. One of the probation counselors is available during business hours to see anyone who walks in with an issue.

The Court continues to assess and readjust the various diversion programs as needed. The Court has also adopted OJJDP’s 5-step model to strategically reduce DMC. The strategy includes the

development of program logic models, and such models have been developed for “in-house” diversion programs. This best practice will influence the Court’s actions as it moves forward.

Finally, in a report prepared by The Sentencing Project in which all 50 states’ Relative Rate Index (RRI) numbers were compared for the year 2015, the State of Tennessee was near the bottom of the list (**see attached report labelled as Attachment 10**). With Shelby County being the largest county in the state, its RRI number factored in considerably to obtain the state RRI.

Limitations that affect the Court’s scope of work:

The following areas have not reached Substantial Compliance due to various circumstances out of the Court’s control.

1. Referrals (arrests & summons) - The Court does not hire or supervise law enforcement; but when we can educate about different alternatives and choices, the data has shown a decline in the numbers.
2. The Court cannot force MPD to use the LEAP programs but continues to educate them on the program from the top management to in-service training of all officers.
3. Notice of Transfers - Per Dr. Leiber to address the lack of movement to address notice of and actual transfer to adult court as it pertains to DMC, “the Juvenile Court needs to figure out a way to address this issue; admittedly, most of the decision-making rests with the prosecutor.”(Compliance Report#9, pg.8-#5) The truth is that all of the decisions in this area are made by the prosecutor and Dialogue with the DA’s office is ongoing. The data from 2017 shows that 221 Notices of Transfer were filed by the prosecutor, and 80 were withdrawn by the prosecutor after the initial filings. Only 44 hearings were held by the Judge to determine probable cause to transfer, and of those, the Court denied transfer 25 times. Thus, in looking at the decision making when it comes before the Court, less than half of the youth who had hearings were transferred to adult court.

Community Outreach Program

The Court continues to be involved in a number of community activities. The challenge has been to plan and structure these activities into a cohesive effort to improve Court/Community relations, but this is now being done as shown by the following:

- Mr. Leon Gray coordinates community outreach efforts, and these efforts are ongoing. A calendar of quarterly public meetings in 2018 has been created; and meetings in 2017 were 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) continues 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 in all areas except the Consortium piece, which is now in **Substantial Compliance** and should be terminated from the MOA.

Positive Events and Major Accomplishments:

- a. Quarterly Community Meetings- Public forum where the community can ask questions to a panel of Juvenile Court Staff and community stakeholders and also receive information about the various programs/resources that are available.
- b. Citizens Police Academy- Provides the citizens of Memphis with a better understanding of police functions; how policies are developed; the decision making process; and what an officer experiences on a day-to-day basis.
- c. Speaker's Bureau- Helps the Court facilitate a knowledgeable presence in our community at various community functions/events.
- d. Juvenile Detention Alternative Initiative (JDAI) - Memphis' success in reducing the number of youth in detention earned the City a coveted partnership with the AECF in June 2011. Memphis is one of the largest urban courts in the U.S. and the first in Tennessee selected by AECF as a JDAI Site.
- e. JDAI Parent Forums- Our JDAI initiative, through the Committee and Ms. Kimbrell Owens, has held 2 parent forums this year and plans to hold one more event in the fall months.
- f. Faith-based Initiative- Mr. Leon Gray, through his work and contacts in the faith-based community, has reached out to churches throughout Memphis to request volunteers and mentors for the Court in various capacities. Mr. Gray has held various events and tours and will continue this work throughout the remainder of 2017.
- g. Countywide Juvenile Justice Consortium (Consortium or CJJC) - The Consortium is a requirement of the MOA under Section IV.A. of the MOA under "Community Outreach." The CJJC is an independent group of citizens appointed mostly by the Mayor. The Court sends Mr. Gary Cummings to all of its meetings to act as a liaison, and he communicates regularly with the Consortium.

- h. Judge's Action Center- Was created in 2008 to serve as a liaison between Juvenile Court and the public to help answer questions or address concerns for people who have issues involving Juvenile Court of child welfare matters. The Action Center provides helpful and timely answers for those who have questions concerning Juvenile Court; assists people with problems that have previously gone unresolved; and receives suggestions on how to improve court operations.

Protection from Harm: Detention Facility

Juvenile Detention Services ("JDS") has seen dramatic improvements in the past six (6) years. The Shelby County Sheriff's Office assumed responsibility for JDS in July 2015 and has worked in a cooperative relationship with the Court, the Shelby County Schools/Hope Academy, Correct Care Solutions ("CCS") the medical provider and sought technical assistance OJJDP, JDAI, the Amarillo Youth Center of High Plains, the Jason Foundation, Inc., the Facility Consultants and others. The results have been tangible: plummeting uses of force and isolation/confinement and improved relationships with youth. Credit goes to focused training and programming, particularly the more fully developed Positive Behavior Management System ("PBMS"). There has been a focus on meticulous documentation of the time youth are confined, particularly in connection with suicide precautions. Sgt. Michelle Hunt is now the full time PBMS coordinator. Staff and youth continue to interact in small groups several times day, allowing staff and youth to develop trusting relationships which open the lines of communication. CAO Steve Leech continues active engagement with JDS leadership to ensure proper funding and staff support. A multi-disciplinary review team meets monthly to review the month's suicide precautions, room confinement, and each use of force, including videos. That review is in addition to the reviews by JDS leadership following each use of force.

The 2016 Staff Analysis assists JDS leadership maintain proper staffing as the juvenile population increases. The Sheriff ensures that every new Correctional Officer recruit has been trained to work at JDS and there is a growing pool of qualified staff to draw upon as needed. JDS is becoming a prestigious assignment.

Youth are being educated and treated therapeutically with the services of the Shelby County School's Hope Academy, the JDS Juvenile Manager and counselors, CCS mental health staff, and volunteers. Youth are busy with classes, tutors, and projects. There is additional classroom space. Youth have additional helpings of meals and healthy snacks and are able to read in their rooms.

Many subsections have been terminated and removed and the rest are positioned to be terminated. All are in substantial compliance.

Former Facilities monitor Dr. David Roush, at his last visit to the Court (before his retirement) in fall/winter 2016, advised individuals with the Court and the Sheriff's Office that most items were complete and ready to be removed from the MOA. With another year and a half to continue work on the few items remaining, along with implementation of suggestions not mentioned nor required by the MOA (such as the Positive Behavior Management System), there is no doubt that the Sheriff's team has brought the facility into full Substantial Compliance.

Positive Events and Major Accomplishments:

- Uses of Force dramatic decline continues.
- Non-physical alternatives dramatic increase continues.
- Room confinement/isolation dramatic decline continues; no "routine" confinement
- Force/alternatives to force/room confinement and suicide precaution incidents have immediate reviews with/by staff/command staff followed by an intensive monthly review.
- Assaults and injuries to youth have declined.
- No youth has committed suicide during the span of the MOA and no youth suffered serious injury as a result of a suicide attempt during that time.
- The Jason Foundation, Inc. provided suicide prevention training to detention, medical and court staff in 2017. That training has enhanced the training and policies in place pursuant to recommendations by Lindsey Hayes and the medical provider.
- Positive Behavior Management System (PBMS) continues to grow thoughtfully with input from staff, youth, and national advisers. There have been significant results, even though it is not a requirement of the MOA.
- Sgt. M. Hunt serves as the full-time PBMS coordinator
- Training is more interactive and youth focused. It includes alternatives to force, PBMS, tactics, and adolescent behavior, among others.
- 24/7 contract medical/psychological services continue to do an excellent job and communication between medical staff and security staff is sound. The CCS mental health director participates in monthly reviews.
- Hope Academy is offering educational opportunities to every child.
- The electronic Major Incident Reporting System has been in use since September 2016 with guidance and approval by Dr. Roush.
- The December 2017 consultant report reflected over 80% compliance.
- Staffing analysis provides guidance as population increases.
- Youth have lights and books to enable reading in their rooms.
- Youth receive "seconds" as part of every meal and have snacks in the evening.
- JDAI is referring other facilities to JDS for technical assistance in lowering room confinement time.

The Major Incident Reporting System automates the collection of data and changes may only be made through supplements, thereby guarding and preserving the integrity of the information. The improvements in performance are even more impressive, given the increasing population. The Average Daily population in 2017 and early 2018 has risen from prior years.

The primary cause for the population increase appears to be increases in length of stay, so working collaboratively with the Court to manage the population has been a continuous effort by the Sheriff's Office. The current population count is at 60; this is a considerable decrease due to said collaboration. The good relationship between the Court and the Sheriff's Office has and will continue.

On the rare occasions when youth are confined to their rooms following a serious disciplinary breach, all protocol regarding disciplinary notice and hearings are followed.

A multi-disciplinary review team consisting of a Correct Care Solutions ("CCS") mental health provider, JDS top management team, and the Policy and Statutory Compliance Officer continue to hold monthly meetings. The team reviews the month's suicidal precautions; uses of isolation/room confinement; and uses of force to ensure compliance with policies and suggest improvements/training opportunities. This is in addition to the immediate reviews of use of force incidents by top JDS personnel, particularly video, and review/coaching with staff members.

Completed and Removed Provisions/Protection from Harm:

Use of Force, III.C.1. (a)

Suicide Prevention, III.C.2. (b), (c), (d), (f), (g), (h), (i), (h), (i), (j)

Training, III.C.3. (a) (i) and (ii)—entire section completed

Performance Metrics, III.C.4. (b)

Remaining Provisions/Protection from Harm:

Use of Force, III.C.1. (b) analysis (compliance for 1 year thus Substantial Compliance has been met)

(c), (d)—policies and review are in Substantial Compliance

Suicide Prevention, III.C.2. (a) (Substantial Compliance in all 10 subsections),

(e) isolation (compliance for 1 year thus Substantial Compliance has been met)

Performance Metrics, III.C.4. (a) (i) review of force and (ii) effectiveness of suicide plan (Substantial Compliance has been met).

Limitations that affect the Detention Center's scope of work:

The population continues to be a concern as youth are being detained in connection with violent felonies and the average length of stay has increased. The increase in young women accused of violent felonies is alarming. Detention staff works as a team with the Juvenile Court Judge, Magistrates, CAO, and all Court personnel, meeting and communicating multiple times each day to address the status of the detained youth.

The older facility continues to be an issue. An assessment of the facility has been conducted. The County continues to work on options for a facility capable of housing detained and transferred youth while also providing increased classroom and medical space.

See attached Report Card and Year to Date information labelled as Attachment 11.

Due Process

The Due Process requirements of the MOA between the Department of Justice and Shelby County contained 14 separate sections & a total of 56 compliance provisions. The Court is now in Substantial Compliance in the remaining 9 sub-sections (47 sub-sections have been completed and terminated from the MOA) and it is now time to declare the remaining MOA provisions as completed and terminated.

1. Policies and Procedures

(a) Probable Cause Determinations- Terminated

- (i) **Terminated**
- (ii) **Terminated**
- (iii) **Terminated**
- (iv) **Terminated**
 - a. **Terminated**
 - b. **Terminated**
 - c. **Terminated**
 - d. **Terminated**
- (v) **Terminated**

1. Policies and Procedures

(b) Notice of Charges – Terminated

- (i) **Terminated**
- (ii) **Terminated**
- (iii) **Terminated**
- (iv) **Terminated**

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. **Terminated**

- b. **Terminated**
- c. Children, through their attorneys, are provided the opportunity to introduce evidence on their own behalf; **this matter has been in Substantial Compliance since October, 2015, due to disclosure of *Brady* and *Giglio* materials. The monitor's complaint that open file discovery is not provided is not required by the MOA. General Winsome Gayle advised in her email to County Attorney Kathryn W. Pascover and Assistant County Attorney/Litigation Supervisor John M. Jones on April 10, 2018, that the MOA required disclosure pursuant to *Brady* and *Giglio* for Substantial Compliance to be met. The Court has recently put in place a standard discovery order to be entered as requested by attorneys to fully state the disclosure requirements. The County has been in Substantial Compliance since October, 2015.**
- d. Children, through their attorneys, are provided the opportunity to meaningfully confront evidence presented against them, including cross-examining adverse witnesses; **see above. The County has been in Substantial Compliance since October, 2015.**
- e. **Terminated**
- f. **Terminated**
- g. **Terminated**

Status

Substantial Compliance has been maintained in the remaining provisions since October, 2015.

Due Process

1. Policies and Procedures

(c) Transfer Hearings- Terminated

- (ii) Terminated**

(d) Protections Against Self-Incrimination

- (i) Terminated**
- (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). This sub-section is now in Substantial Compliance.**
- (iii) Terminated**

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 youth's attorney. The Court, following the Due Process Monitor's advice, 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; the University of Memphis Law School clinic has declined numerous times to assist at this stage as well. Thus, the County, the Public Defender, and the Court worked together to begin a program on March 1, 2018, to have an attorney attend all probation conferences. Full representation by attorneys at all conferences will be complete by July 1, 2018 (if not before). General Winsome Gayle stated in her April 10th email that this full solution meets **Substantial Compliance**.

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). This sub-section is now in Substantial Compliance.**

Status

Substantial Compliance has been maintained since October 2015.

Due Process

1. Policies and Procedures

(d) Protections against Self-Incrimination

- (v) **Terminated**
- (vi) **Terminated**
- (vii) **Terminated**
- (viii) **Terminated**
- (ix) **Terminated**
- (x) **Terminated**

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; **this sub-section is in Substantial Compliance.**

- b. **Terminated**
- 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; **this sub-section has now been in Substantial Compliance for one year.**
- d. **Terminated.**

Status

The remaining sub-sections under the Juvenile Defender section are now in **Substantial Compliance**. 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 2017. The complaints handled by the Public Defender have steadily increased as shown below:

Year	% complaints represented by Public Defender
2014	19%
2015	30%
2016	53%
2017	62%

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

The Public Defender’s Office is fully operational under The Blueprint, as all of these items have been operationalized and are ongoing. The one remaining recommendation of the Chief Public Defender is to bring his salary up to pay parity with the State Public Defender’s Conference and the Mayor has done this as of April

1, 2018.

Due Process

1. Policies and Procedures

(e) Juvenile Defenders

- (ii) 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; **this sub-section is in Substantial Compliance.**
 - 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; **this subsection cannot be met due to State law; however, due to the Blueprint by the Chief Public Defender and the Executive Order entered by the Shelby County Mayor, a local solution has been created that satisfies independence. Thus, this sub-section is in Substantial Compliance.**
 - 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; **this subsection is in Substantial Compliance.**
 - d. **Terminated**

Comments

The Public Defender's Juvenile unit continues to provide representation to youth and now handles the majority of cases and all non-conflict cases. In addition, the Public Defender has a Transfer Unit to handle the transfer cases and hearings. The Panel Attorney handles conflict cases randomly by software and administered by the Panel Coordinator as such, the court has done all that it can do subject to TN State Law; and these items should now be in **Substantial Compliance.**

Due Process

1. Policies and Procedures

(f) Plea Colloquies – Terminated

(i) **Terminated**

(ii) **Terminated**

a. **Terminated**

- b. Terminated**
- c. Terminated**
- d. Terminated**

(iii) Terminated

(g) Restitution Guidelines- Terminated

(i) Terminated

(ii) Terminated

- a. Terminated**
- b. Terminated**
- c. Terminated**

(h) Bond-Setting Guidelines- Terminated

(i) Terminated

(ii) Terminated

- a. Terminated**
- b. Terminated**
- c. Terminated**
- d. Terminated**

(i) Confidentiality of Juvenile Delinquency Proceedings- Terminated

(i) Terminated

(ii) Terminated

(j) Language Access Plan- Terminated

(i) Terminated

(ii) Terminated

(k) Treatment of Witnesses- Terminated

(i) Terminated

a. Terminated

b. Terminated

(l) Judicial Bench Cards- Terminated

(i) Terminated

(ii) Terminated

(iii) Terminated

a. Terminated

b. Terminated

- c. Terminated**
- d. Terminated**
- e. Terminated**
- f. Terminated**

(m) Written Findings- Terminated

- (i) Terminated**
- (ii) Terminated**

(n) Recordings of Juvenile Delinquency Hearings- Terminated

- (i) Terminated**
- (ii) Terminated**
- (iii) Terminated**
- (iv) Terminated**

Due Process

2. Training- Terminated

(a) Terminated

(b) Terminated

- (i) Terminated**
- (ii) Terminated**
- (iii) Terminated**
- (iv) Terminated**
- (v) Terminated**
- (vi) Terminated**
- (vii) Terminated**

(c) Terminated

DMC and Equal Protection

In July, 2016, Equal Protection Monitor Dr. Michael Leiber conducted his first technical assistance visit at the Court to develop a focused approach to addressing DMC issues with Court staff. Following that visit, Juvenile Court CAO Pam Skelton organized 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 since that. The Detention Assessment Tool (DAT) was enacted at the Detention facility in 2006, and was validated by the University of Memphis in September, 2015. All changes suggested and requested by the University of Memphis were enacted in the DAT 2.0. In addition, every suggestion made by Dr. Leiber at his July, 2016, visit and since have been implemented by the Court. These changes include those requested to the Detention Assessment Tool (DAT). This revised DAT became the DAT 3.0. His second technical assistance visit was held on February 21, 2018 to discuss new issues with the DAT, including assessments of the tool on a monthly basis & creating a separate category for “mandatory” detention per Tennessee State law. These items have or will also be implemented in the latest revision, DAT 3.1. It is clear

that the Court has taken DMC and Equal Protection into all of its programs, policies and procedures. The DMC Deputy Administrator, the DMC Research Analyst, the community services outreach, and the constant analysis require that the Equal Protection and DMC sections be reflected as in **Substantial Compliance**.

1. *DMC Assessment*

(a) *Data*

- (i) 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 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 has reached **Substantial Compliance** per the October 2017 Equal Protection Monitor.

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 in this section and, in particular, the State & National RRI data were discussed at the October 2017 visit. This item is now in **Substantial Compliance**.

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** and has been for a year or more. 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.

1. DMC Assessment

- (d) **Terminated**

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, which was replaced with the Strategic Planning Committee in September, 2016, 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, this subsection is in **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 in **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, in 2017, the Court evaluated both in-house and 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. Analysis of the Court’s agreements with the schools, social service agencies and the cities/ towns within Shelby County is currently underway and is an ongoing process. The Court has made these assessments a part of the overall DMC Strategy and as such this provision has reached **Substantial Compliance**.

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. This sub-section is in **Substantial Compliance**.

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 DAT3 was implemented on February 1, 2017, pursuant to suggestions from Dr. Leiber. The process to assess and modify the DAT continues per Dr. Leiber's February, 2018 visit has resulted in DAT 3.1. 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. The DMC Coordinator, the Research Specialist/Analyst, and the Administrator of Children's Bureau work daily on policies, procedures, & working to engage objective decision making; therefore, these provisions are in **Substantial Compliance**.

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 all phases of the process (identification, assessment, intervention, evaluation, and monitoring) and all results will be shared with the appropriate administrators. This provision is in **Substantial Compliance**.

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 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 revised (February 1, 2017) pursuant to Dr. Leiber's suggestions and technical assistance on new and additional changes was held on February 21, 2018, resulting in the DAT 3.1. The Court continues to assess and re-assess its tools and programs, and has implemented each and every one of the EP Monitor's requirements, & suggestions. This provision now meets **Substantial Compliance**, along with the evaluation tools and subsections below.

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 continues to work with its full-time expeditor who constantly reviews and monitors children in detention and pushes for alternatives when warranted. This subsection is now in **Substantial Compliance**.

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 Memoranda of Understanding (MOUs) with all but one (1) law enforcement agency in the County. The Court DMC Coordinator 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 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. The Court has done all that has been required & is in **Substantial Compliance** on this provision.

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. The Court has met all requirements here and is in **Substantial Compliance**.

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; the Court has met all requirements and is in **Substantial Compliance**.

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. The DMC Deputy Administrator & Research Analyst work together on pulling, assessing and reviewing the data constantly. Their reviews and assessments are shared constantly with staff. The Court has met all requirements & is in **Substantial Compliance**.

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 memoranda from the Strategic Planning Committee, which meets every 3-4 weeks and has done so since Dr. Leiber's TA visit in 2016. The Court has completed all requirements and is in **Substantial Compliance**.

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, and reviews and assessments continue and will continue. The Court is in **Substantial Compliance**.

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 biannually. 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 are in **Substantial Compliance**.

5. 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. **Terminated**
- 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 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 is now in **Substantial Compliance** in all Community Outreach sections.

Community Outreach

F. **Terminated.**

Protection from Harm/Detention

USE OF FORCE

1. Use of Force

(a) Restraint chair/pressure point **Terminated**

(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 provision is in **Substantial Compliance** which has been accomplished by multiple reviews.

(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;
- (ii) Prohibit the use of unapproved forms of physical restraint and seclusion;
- (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;
- (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;
- (v) Limit force to situations where the Facility has attempted, and exhausted, a hierarchy of pro-active non-physical alternatives;

- (vi) Require that any attempt at non-physical alternatives be documented in a Child's file;
- (vii) Ensure that staff are held accountable for excessive and unpermitted force;
- (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;
- (ix) Require mandatory reporting of all child abuse in accordance with Tenn. Code. Ann. § 37-1-403; and
- (x) Require formal review of all uses of force and allegations of abuse, to determine whether staff acted appropriately.

Status: All ten (10) subparts are now in Substantial Compliance. JDS staff is fully trained in the use of force appropriate for youth. In addition to the immediate reviews with corrective action as needed, the focus of the multi-disciplinary review team is to ensure compliance, corrective/disciplinary action as needed, identify training needs, and to work with staff to ensure appropriate responses.

Comments: Uses of force and room confinement have dropped dramatically. Staff is routinely using non-physical alternatives. The facility had previously recorded Suicide Precaution by hours from initiation until release, thereby allowing the suggestion that they had been in the rooms during that time when, in fact, they were frequently only in their rooms to sleep. This method of reporting has been changed to accurately reflect the time youth are confined. Each use of force is reviewed and critiqued by JDS leadership, including Assistant Chief Fields, Chief Inspector Bridgeforth (who is also Chief Fields' designee), and staff. In addition to the reviews that follow each use of force, a multi-disciplinary review team meets monthly to review documents and video.

- (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 provision is in Substantial Compliance. JDS staff is fully trained in the use of force appropriate for youth. In addition to the immediate reviews with corrective action as needed, the focus of the multi-disciplinary review team is to ensure compliance, corrective/disciplinary action as needed, identify training needs, and to work with staff to ensure appropriate responses.

Comments: Verbal skills are replacing uses of force, as verified by the sustained decline in the number and rates of use of force. Declines also continue in injuries to youth by other youth, the

number of assaults, and the use of physical and mechanical restraints. The data reflects significant progress, due to the expansion of PBMS, juvenile focused interactive training, and review meetings. 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.

SUICIDE PREVENTION

2. (a) 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: This section and all 10 subsections are in Substantial Compliance.

Comments: No child has ever committed suicide at the facility. JDS, CCS, and the Court continue to be proactive in this area, as evidenced by the entire group completing Jason Foundation suicide prevention training in December 2017. Before the MOA was signed in 2012, the Court had engaged national juvenile suicide expert Lindsay Hayes to assess the facility and had committed to ensure 24/7 medical care, including qualified mental health professionals. CCS began work in August 2013. Mr. Hays' recommendations have been implemented by the facility and CCS. Improvements have been made with guidance from health professionals in the Health Department, which provides oversight of the CCS contract. The Health Department conducts a monthly review of CCS contract compliance.

It is important to recognize that the vast majority of the youth who are in detention have been detained on allegations that could result in serious consequences. It is also very likely that many of these youth are suffering from childhood trauma and come from impoverished and possibly unstable families.

All provisions of Section 2 (a) of the MOA are now in Substantial Compliance, and with the exception of (i), which was lowered to partial compliance in the November 2017 report. That reduction was based on an unnamed/unknown "staff" "indicating" that the screening instrument was administered in a non-confidential environment. Detention and CCS leadership have given assurances that suicide risk screenings are **never** administered while youth are "standing against the wall by the elevator in the intake area" and the particular staff member was never identified by DOJ monitor Dr. Gloss who gave this information.

The multi-disciplinary review team (consisting of a CCS mental health provider, detention staff's top management team, and the Policy and Statutory Compliance Officer(s) and now a Health Department supervisory contract 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.

2. Suicide Prevention- (b) Suicide cut down tools available. **Terminated**

2. Suicide Prevention- (c) QMPH assessment within 24 hours of admission. **Terminated**

2. Suicide Prevention (d) QMPH Notification/information re: suicide precautions. **Terminated**

(e) JCMSC shall prohibit the routine 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 provision is in **Substantial Compliance** and has been since June, 2017.. Isolation on suicide precautions is rare.

2. Suicide Prevention (f) Precautionary measures. **Terminated**

2. Suicide Prevention (g) Review of Charts. **Terminated**

2. Suicide Prevention (h) Report all incidents of self-harm. **Terminated**
2. Suicide Prevention (i) Record all incidents in classification to ensure history is known to all. **Terminated**
3. Suicide Prevention (j) Analyze/review data. **Terminated**

TRAINING

3. Training (a) (i) (ii) (a) (b) (c) (d) have all been **Terminated**

PERFORMANCE METRICS FOR PROTECTION FROM HARM

4. 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.

Status: Substantial Compliance.

- (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: Substantial Compliance. The November 2017 report stated, "The effectiveness review has shown significant improvement" yet wanted additional work to clarify risk levels, responses, and community standard of practice is followed. This work has been accomplished.

Comments: The reports are reviewed monthly in various settings by peers, the Health Department, and the multi-disciplinary review committee. The suicide prevention plan is based on guidance by national expert Lindsey Hayes, including the annual in-service training received by CCS. No child has committed suicide and all aspects of the precautions are monitored and documented.

4. Performance Metrics (b) Maintain reports. **Terminated**