

APPENDIX 1

**DIRECTIVES
TO COMPLY WITH
MEMORANDUM OF AGREEMENT**

PROBABLE CAUSE DETERMINATIONS

DIRECTIVE ONE

Magistrates shall assure that no child be detained without a finding of probable cause to believe that: (1) a delinquent act was committed, (2) the named child committed the delinquent act alleged, and (3) the alleged delinquent act is one for which Tennessee statutes, Tennessee Rules of Juvenile Procedure and Court policy permit the use of detention. See TCA 37-1-114.

(MOA, A. 1. (a) (i), page 9) [Effective on or about 3/17/2013]

DIRECTIVE TWO

A child taken into custody without a warrant shall have a probable cause determination to detain with forty-eight (48) hours of coming into Juvenile Court.

(MOA, A. 1. (a) (ii), page 9) [Effective on or about 3/17/2013]

DIRECTIVE THREE

No child shall be detained for more that forty-eight (48) hours prior to the Detention Hearing if the Court has not made a Probable Cause Determination.

(MOA, A. 1. (a) (iii), page 9) [Effective on or about 3/17/2013]

DIRECTIVE FOUR

The child shall have the opportunity to test probable cause by:

- (1) Appointment of counsel;
- (2) Requiring the state to produce evidence by either a live witness or an Affidavit of Complaint;
- (3) Allowing defense counsel the opportunity to cross-examine witnesses and present evidence; and
- (4) Maintaining a complete record of the detention hearing.

(MOA, A. 1. (a) (iv), page 9) [Effective on or about 3/17/2013]

NOTICE OF CHARGES

DIRECTIVE FIVE

Magistrates shall formally arraign children at all Detention Hearings.

(MOA, A. 1. (b) (i), page 9) [Effective on or about 3/17/2013]

DIRECTIVE SIX

Magistrates shall ensure that defense attorneys have a reasonable time within which to prepare their cases.

(MOA, A. 1. (a) (ii), page 9) [Effective on or about 3/17/2013]

TRANSFER HEARINGS

DIRECTIVE SEVEN

The Judge or a Magistrate sitting as Special Judge shall ensure transfer hearings are conducted pursuant to TCA 37-1-134.

Written findings should state there are reasonable grounds to believe that:

- (1) The child committed the delinquent act;
- (2) The child is not committable to an institution for persons with a developmental disability or mental illness; and
- (3) The interests of the community require that the child be put under legal restraint or discipline.

Factors to be considered and documented to find the above should include:

- (1) The nature and extent of the child's prior delinquency;
- (2) The nature of past treatment efforts and the child's response there
- (3) The child's suitability for additional treatment;
- (4) The nature of the delinquent act;
- (5) The child's social factors;
- (6) The alternatives within the juvenile system which were considered and the rationale for rejecting those alternatives; and
- (7) Whether the juvenile justice system can provide rehabilitation of the juvenile.

(MOA, A.1. (c), page 11) [Effective on or about 3/17/2013]

PROTECTIONS AGAINST SELF-INCRIMINATION

DIRECTIVE EIGHT

The Prosecution shall not be allowed to call a child as a witness in the child's own adjudicatory or transfer hearing.

(MOA, A. 1. (d) (vii), page 9) [Effective on or about 1/17/2013]

DIRECTIVE NINE

Magistrates shall give oral advisement of rights against self-incrimination to any child who wishes to testify at his or her own adjudicatory or transfer hearing.

(MOA, A. 1. (d) (viii), page 9) [Effective on or about 1/17/2013]

PLEA COLLOQUIES

DIRECTIVE TEN

Magistrates shall conduct an interactive oral colloquy with the child to ensure a knowing and voluntary waiver. (MOA, A. 1. (f) (ii), page 9) [Effective on or about 6/17/2013]

RESTITUTION GUIDELINES

DIRECTIVE ELEVEN

Magistrates shall require documentation to support restitution request, allow the child time to review and present evidence in opposition, and consider ability to pay. (MOA, A. 1. (g), page 9) [Effective on or about 6/17/2013]

BOND-SETTING GUIDELINES

DIRECTIVE TWELVE

Magistrates shall ensure that reasonable bonds are set that will assure the child's appearance for court and that are not excessive or punitive. (MOA, A. 1. (h), page 9) [Effective on or about 6/17/2013]

CONFIDENTIALITY OF JUVENILE DELINQUENCY PROCEEDINGS

DIRECTIVE THIRTEEN

Magistrates shall ensure that all detention, delinquency, and transfer matters are restricted to only those persons concerned with, or having an interest in, that particular case. (MOA, A. 1. (i), page 9) [Effective on or about 1/17/2013]

TREATMENT OF WITNESSES

DIRECTIVE FOURTEEN

Magistrates shall ensure that the integrity of witness testimony is preserved by: (a) placing witnesses under oath; and (b) sequestering witnesses. (MOA, A.1. (k) (i), page 17) [Effective on or about 6/17/2013]

JUDICIAL BENCH CARDS

DIRECTIVE FIFTEEN

Magistrates shall reference the appropriate bench card and review same with the child during the hearing or proceedings. (MOA, A. 1. (l), page 18) [Effective on or about 6/17/2013]

WRITTEN FINDINGS

DIRECTIVE SIXTEEN

Juvenile Court Magistrates shall produce court orders containing written findings of fact and conclusions of law. (MOA, A. 1. (m), page 18) [Effective on or about 6/17/2013]