

**SYNOPSIS OF  
SUBSTANTIVE REMEDIAL MEASURES**

**Due Process**

**1. Policies and Procedures**

**(a) Probable Cause Determinations**

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

- d. Require that a record be maintained, reflecting when defense counsel was appointed, the forms of evidence used, and whether the defense attorney challenged such evidence or presented alternative evidence. Such record should be accessible from the information and recording system.

**Status**

These policies have been completed and are attached in **Appendix 2**.

The policy titled “Probable Cause Determinations and Detention Hearings” in the Chapter Judges and Magistrates.

Probation has submitted the following policies in response to Probable Cause Determinations.

They are:

Corrective Services Policy II-2 Red Flag Files-Probable Cause Determination Chapter Pre-Adjudication

Corrective Services Policy II-3 Appointment/Notification of Counsel Chapter Pre-Adjudication

Corrective Services Policy II-4 Detention Hearing-Probable Cause Determination and Notice of Charges Chapter Pre-Adjudication

**Comments**

These policies, procedures and practices were due to be revised by March 17, 2013 (Sunday). The policy from the Magistrates was submitted on March 18, 2013 (Monday). The groups of Probation policies were submitted February 27<sup>th</sup> and March 14. On January 31, 2013 directives were issued by Chief Legal Officer, Herb Lane that provided instructions to the magistrates in a number of areas. This document outlining these directives is attached in **Appendix 1**. The directives have various implementation dates specified in the document. The directives guided the actions of the magistrates pending completion of the detailed policies which became effective March 18, 2013. Although this policy applies to the judicial officers portions of it refer to actions required by other areas such as the Detention Services Bureau or Juvenile Defender Panel. It will be important to insure policies in the other areas are congruent with this policy to insure effective implementation.

**Due Process**

1. Policies and Procedures

(a) Probable Cause Determinations

- (v) Each month, the Judge, or his or her designee, shall review a sampling of Case Files to determine whether the procedures for Probable Cause Determinations are being followed as required by this Agreement. The review shall include periodic observations of Probable Cause Determinations to ensure that Juvenile Court Magistrates and other staff follow policies, procedures, and practices required by this Agreement. If the review reveals that the procedures regarding Probable Cause Determinations have not been properly followed, the Judge shall take

immediate corrective action, including a discussion with the responsible staff, to bring about compliance with the terms and requirements of this Agreement. (MoA p. 10)

### Status

A policy titled “Review of Procedures” was created to guide the reviews included in the MoA relevant to Due Process. This policy was submitted on March 18, 2013 and is attached in Appendix 3. The MoA did not require this policy but it was created to guide the reviews to insure due process policies were followed.

### Comments

Juvenile Court should be commended for articulating a process for these reviews. It should be noted the MoA requires reviewing a sampling of case files and also periodic observations of proceedings. This policy covers document reviews but it should be augmented by direct observation as well. These policies became effective March 17, 2013. It is expected that these monthly reviews will begin on that date and be available on a monthly basis.

### Due Process

#### 1. Policies and Procedures

##### (b) Notice of Charges

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

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- (iii) When changes are made to a Child’s charges as set forth in a filed Petition prior to the Adjudicatory Hearing that reduce the penalty or drop the charges, JCMSC shall provide notice of the final charges by providing copies of the amended or new Petition to the Child and defense counsel upon the filing of same Petition within 24 hours of the change in charges. (MoA p. 11)

**Status**

Three policies are submitted to comply with this section. They are attached in **Appendix 4**. The policies include:

Notice of Charges - Judges and Magistrates

Corrective Services Policy III-1 Court Hearing–Notice of Charges Chapter: Court Preparation Amending Charges in Petition – Judges and Magistrates

**Comments**

These policies, procedures and practices were due to be revised by March 17, 2013 (Sunday). The policy from the Judges/Magistrates was submitted on March 18, 2013 (Monday). The policy from Probation was submitted March 22, 2013. The policies also require action by the Detention Services Bureau and the Office of Clinical Services. It will be important to insure those offices have policies to insure these actions are understood and implemented.

**Due Process**

1. Policies and Procedures

(b) Notice of Charges

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

**Status**

A policy titled “Review of Procedures” covers this review and was previously discussed in this report. This policy was submitted on March 18, 2013 and is attached in **Appendix 3**.

**Comments**

N/A

**Due Process**

1. Policies and Procedures

(c) Transfer Hearings

- (i) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices in accordance with Tenn. Code Ann. § 37-1-134 and the Tennessee Rules of Juvenile Procedure, R. 24(b) to require Transfer Hearings that comport with due process requirements prior to waiving jurisdiction and ordering transfer of a Child’s case to adult court. Specifically, JCMSC shall ensure that all Transfer Hearings include the following: **(MoA p. 11)**
  - a. The Assistant District Attorney presents evidence in support of the petition for transfer;
  - b. Children have a right to an attorney whose role is to represent their stated interest;
  - c. Children, through their attorneys, are provided the opportunity to introduce evidence on their own behalf;
  - d. Children, through their attorneys, are provided the opportunity to meaningfully confront evidence presented against them, including cross-examining adverse witnesses;
  - e. Children are protected from self-incrimination;
  - f. The Judge or Juvenile Court Magistrate presiding as Special Judge makes written findings on whether there are reasonable grounds to believe that: (1) the Child committed the delinquent act as alleged; (2) the Child is not committable to an institution for persons with a developmental disability or mental illness; and (3) the interests of the community require that the Child be put under legal restraint or discipline; and
  - g. The Judge or Juvenile Court Magistrate presiding as Special Judge considers and documents his or her consideration of factors relevant to his or her findings, including, but not limited to: (1) the extent and nature of the Child’s prior delinquency; (2) the nature of past treatment efforts and the nature of the Child’s response thereto; (3) the Child’s suitability for additional treatment; (4) the nature of the delinquent act alleged; (5) the Child’s social factors; (6) the alternatives within the juvenile justice system which were considered and the rationale for rejecting those alternatives; and (7) whether the juvenile court and juvenile justice system can provide rehabilitation of the juvenile.

**Status**

This policy, titled “Transfer Hearing Policy” has been completed and is attached in **Appendix 5**.

**Comments**

These policies, procedures and practices were due to be revised by March 17, 2013 (Sunday). The policy was submitted on March 18, 2013 (Monday).

**Due Process**

1. **Policies and Procedures**

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

**Status**

A policy titled “Review of Procedures” was covers this review and was previously discussed in this report. This policy was submitted on March 18, 2013 and is attached in **Appendix 3**.

**Comments**

N/A

**Due Process**

1. **Policies and Procedures**

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

- (i) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to prevent probation officers or any other staff from eliciting information about Children’s involvement in the alleged delinquent act or acts in question outside the presence of the Child’s defense attorney. **(MoA p. 12)**
- (ii) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to notify a Child’s defense attorney in writing of any probation

conference or interview. The probation conference or interview shall be open to the Child's defense attorney. (MoA p. 13)

- (iii) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to ensure that probation officers appropriately advise Children of their Miranda rights. The probation officer's advisement of rights shall include: (MoA p. 13)
- a. A description of the role of a defense lawyer;
  - b. A statement that the Child is entitled to the appointment of a defense attorney and that a defense attorney may be provided at no cost if the Child is eligible;
  - c. A statement that the Child's statements regarding the alleged offense can be included in the probation report; and
  - d. A statement that the Child's statement could be used against him or her by the prosecutor, probation officer, or the Magistrate Judge in further proceedings, including disposition.

### Status

The following policies were submitted for this section.

Corrective Services Policy II-3 Appointment/Notification of Counsel Chapter Pre-Adjudication included in Appendix 2.

Corrective Services Policy II- 5 Scheduling a Probation Conference-Written Notification of Counsel" Chapter: Pre-Adjudication included in Appendix 6.

Corrective Services Policy II-6 Nonjudicial Probation Conference-Miranda Rights and Eliciting Information without Benefit of Counsel Chapter: Pre-Adjudication included in Appendix 6.

### Comments

The policies were due March 17<sup>th</sup>. Policy II-3 and II-6 were submitted on February 28<sup>th</sup> and Policy II-5 was submitted March 22<sup>nd</sup>. In Policy II-6 #5 emphasizes if counsel is not present the charge should not be discussed with the family. It would be useful to explicitly state the charge also should not be discussed with the child without counsel present. These policies could be clearer regarding who specifically does what notifications and should also give explicit timelines as to when the notifications should be done. As with other policies, these reference actions by the Juvenile Defenders. It is important that supporting policies with other departments are congruent.



**Due Process**

1. **Policies and Procedures**

(d) Protections Against Self-Incrimination

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

**Status**

Documentation of these rights is done through the “Rights of Parties” forms (JC-7J). a memo to this effect and the form are included in **Appendix 7**.

**Comments**

N/A

**Due Process**

1. **Policies and Procedures**

(d) Protections Against Self-Incrimination

- (v) JCMSC shall consider developing a partnership with a non-profit or academic organization to provide advice and support to Children during the probation intake process. Participants in this program shall be trained on the appropriate role of probation officers, the Child’s right against self-incrimination, and the policies, procedures, and practices regarding protections against self-incrimination developed as part of this Agreement. (MoA p. 13)

**Status**

This item has been discussed and is under consideration.

**Comments**

A conversation with DoJ was held March 13, 2013 in which they clarified this item was not a necessity but rather a suggestion that should be considered. It was understood the advice and support suggested was of a legal nature and the non-profit or academic organization could be the Law School. Larry Scroggs has indicated they will discuss the possibility of a relationship with the law school for this purpose.

**Due Process**

1. Policies and Procedures

(d) Protections Against Self-Incrimination

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

**Status**

The following policies were submitted to address this section and all are in **Appendix 8**:

Corrective Services Policy II-5 Adverse Use of Information Obtained in the Probation Conference – (Pre-Court) Chapter: Due Process

Corrective Services Policy II-7 Adverse Use of Information Obtained in the Probation Conference – Pre-Court Chapter: Pre-Adjudication

Corrective Services Policy II-8 Visit and Contact Report – Probation Report Chapter: Pre-Adjudication

**Comments**

These policies were due January 17, 2013. Corrective Services II-5 It was submitted January 29, 2013. Corrective Services Policies II-7 and II-8 were submitted March 22, 2013.

**Due Process**

1. Policies and Procedures

(d) Protections Against Self-Incrimination

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

**Status**

The policy has been completed. It is titled Protections Against Self Incrimination Chapter: Judges and Magistrates and is included in **Appendix 9**.

**Comments**

The policy was due January 17, 2013. It was submitted February 14, 2013 On January 31, 2013 directives were issued by Chief Legal Officer, Herb Lane that provided instructions to the magistrates in a number of areas including prohibiting the prosecution from calling the child as a witness in their own adjudicatory or transfer hearing. The document containing that directive is attached in **Appendix 1**.

**Due Process**

1. **Policies and Procedures**

(d) Protections Against Self-Incrimination

- (ix) Each month, the Judge, or his or her designee, shall review a sampling of Case Files to determine whether the requirements of this Agreement regarding protections against self-incrimination of Children are being properly followed. The review shall include periodic observations of probation conferences by appropriate supervisory staff of the Court’s Probation Department as well as periodic observations of Adjudicatory and Transfer Hearings by the Judge or his or her designee. If the reviews reveal that the procedures regarding protection against self-incrimination have not been properly followed, the Judge shall take immediate corrective action, including a discussion with the responsible staff, to bring about compliance with the terms and requirements of this Agreement. **(MoA p. 14)**

**Status**

A policy titled “Review of Procedures” was covers this review and was previously discussed in this report. This policy was submitted on March 18, 2013 and is attached in **Appendix 3**.

**Comments**

N/A

**Due Process**

1. **Policies and Procedures**

(d) Protections Against Self-Incrimination

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

**Status**

Two memos and a policy, Corrective Services Policy II-6 Visit & Contact Report (V&C)- Probation Report Chapter: Due Process, were submitted to address this section. The first memo is dated July 6, 2012, the second January 17, 2013 and the policy was submitted January 29, 2013. All are attached in **Appendix 10**.

**Comments**

N/A

**Due Process**

1. Policies and Procedures

(e) Juvenile Defenders

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

**Status**

Public Defender Stephen Bush began working on the foundations for transfer of the juvenile defense function to the Public Defender’s Office shortly after the findings issued by DoJ in April 2012. The Public Defender’s Office is under the Administration of County Mayor Mark Luttrell. Both Judge Person and Mayor Luttrell are supportive of this transition.

**Comments**

Mr. Bush has been working on this independently. Little has been shared about the possible budgetary impact of this transition. The budget process for the coming year will be a large hurdle and will be an indicator of the support of the local legislative body for the type of transition necessary. The timeline of one year for implementation of attorney practice standards is a long time. It would be helpful if these standards were put in place as soon as possible to provide guidance for the Panel attorneys.

**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;
  - b. Establishing a juvenile defender panel system, overseen by an independent body, to handle any delinquency cases that either pose a conflict for the specialized unit for juvenile defense or would cause the juvenile unit to breach workload restrictions required by this Agreement;
  - c. Supporting the promulgation and adoption of attorney practice standards for juvenile defenders; supporting the training of attorneys within the SCPD specialized unit and the independent panel system on the practice standards; and supporting supervision and evaluation of said attorneys against such practice standards; and
  - d. Ensuring that juvenile defenders have a confidential meeting space to confer with their clients within the Facility.

**Status**

This item is on a bit of a dual track. In the future the bulk of the legal representation will be handled by the Public Defender's Office which is being planned as discussed above. It is expected that the Juvenile Defender Panel will continue to exist in some form although that form has yet to be revealed.

**Comments**

Although the MoA gives JCMSC a year (December 17, 2013) to meet these commitments it is clear that efforts to support zealous advocacy should begin sooner. To that end, the Juvenile Defender Panel received training on due process issues on March 25<sup>th</sup> funded by OJJDP and coordinated by Monitor Sandra Simkins. Discussions need to begin soon to determine the future of the Juvenile Defender Panel. Establishment of standards of practice for the Juvenile Defender Panel that mirror standards that will be expected of the Public Defender would be helpful.

**Due Process**

1. Policies and Procedures

(f) Plea Colloquies

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

**Status**

These policies are due June 17, 2013.

**Comments**

N/A

**Due Process**

1. Policies and Procedures

(g) Restitution Guidelines

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

**Status**

These policies are due June 17, 2013.

**Comments**

N/A

**Due Process**

1. Policies and Procedures

(h) Bond-Setting Guidelines

- (i) Within six months of the Effective Date, JCMSC shall revise its policies, procedures, and practices to establish guidelines for the setting of bonds for Children charged with delinquent acts. **(MoA p. 17)**

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- (ii) At minimum, the guidelines regarding bonds shall: **(MoA p. 17)**
  - a. Prevent excessive bonds for Children;
  - b. Reasonably assure the Child’s appearance for court;
  - c. Take into account the presumptive indigence of Children and recognize that parental income may not be available to the Child; and
  - d. Allow parents to file statements of indigence where appropriate.

### **Status**

These policies are due June 17, 2013.

### **Comments**

N/A

### **Due Process**

#### 1. Policies and Procedures

##### (i) Confidentiality of Juvenile Delinquency Proceedings

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

### **Status**

Two policies and a memo were submitted to address this section. All of these are attached in **Appendix 11**:

Confidentiality of Juvenile Delinquency Proceedings Chapter: Judges and Magistrates

Media Access Chapter: Judges and Magistrates

### **Comments**

The policy was due January 17, 2013. A memo was issued by Herbert Lane, Chief Legal Officer on January 17, 2013 regarding confidentiality of juvenile delinquency proceedings. Policies were submitted on February 14, 2013. On January 31, 2013 directives were issued by Chief Legal Officer, Herb Lane that provided instructions to the magistrates in a number of areas. One



of these directives involved confidentiality in delinquency proceedings. This document outlining these directives is attached in **Appendix 1**.

**Due Process**

1. **Policies and Procedures**

(j) Language Access Plan

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

**Status**

These plans are due June 17, 2013.

**Comments**

N/A

**Due Process**

1. **Policies and Procedures**

(k) Treatment of Witnesses

- (i) Within six months of the Effective Date, JCMSC shall revise its policies, practices, and procedures on treatment of witnesses to ensure that the integrity of witness testimony is preserved. The policy shall, at minimum, require that prior to testifying at any delinquency proceeding: **(MoA p. 17)**
  - a. All witnesses are placed under oath; and
  - b. All witnesses are appropriately sequestered.

**Status**

These policies are due June 17, 2013.

**Comments**

N/A

**Due Process**

1. **Policies and Procedures**

(I) **Judicial Bench Cards**

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

**Status**

These bench cards are due June 17, 2013.

**Comments**

A substantial amount of work has been done in this area.

**Due Process**

1. Policies and Procedures

(m) Written Findings

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

**Status**

These policies are due June 17, 2013.

**Comments**

N/A

**Due Process**

1. Policies and Procedures

(n) Recordings of Juvenile Delinquency Hearings

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

**Status**

These commitments are due June 17, 2013.

**Comments**

N/A

**Due Process**

2. Training

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

**Status**

These policies are due June 17, 2013.

**Comments**

A great deal of training has been done since the release of the Findings by DoJ in April 2012. Efforts are being made to coordinate training initiatives with JDAI, OJJDP and others.

## **DMC and Equal Protection**

### **1. DMC Assessment**

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

### **Status**

These commitments are due June 17, 2013.

### **Comments**

The DMC Coordinator was hired February 18, 2013 and work has begun on meeting these commitments.

## **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**

These commitments are due September 17, 2013

**Comments**

It is likely some technical assistance may be needed in this area.

**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**

These commitments are due June 17, 2013

**Comments**

N/A

**DMC and Equal Protection**

1. DMC Assessment

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

**Status**

This item is complete. Lisa Hill was appointed by Mayor Luttrell effective February 18, 2013.

**Comments**

Although the MoA did not require this appointment to be made until June 2013, the Mayor expedited the appointment because of the importance of this position in meeting many of the DMC commitments in the MoA.

## **DMC and Equal Protection**

### **1. DMC Assessment**

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

### **Status**

Points of contact (POC) have been designated. An email confirming those designations is attached in **Appendix 12**.

### **Comments**

The plan is for the POCs to work as a team with the DMC Coordinator in identifying and reducing DMC. The MoA required these points of contact to be identified by June 1, 2013. They were designated early to begin working with the DMC Coordinator.

## **DMC and Equal Protection**

### **1. DMC Assessment**

- (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**

These commitments are due September 17, 2013

### **Comments**

N/A

**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**

These commitments are due June 17, 2013

**Comments**

The DMC Coordinator along with the Points of Contact will work on this commitment. It is possible technical assistance could be needed here.

**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**

These commitments are due September 17, 2013.

**Comments**

N/A



## **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**

These commitments are due June 17, 2013

### **Comments**

This is a large undertaking. Work has begun on identifying data collection needs. The Points of Contact are going to be very important in meeting these commitments.

**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**

This commitment is for an annual assessment that would likely begin in 2014.

**Comments**

Technical assistance will likely be needed for this commitment.

**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**

These commitments are due September 17, 2013

**Comments**

Staff has begun researching objective decision making tools. Some technical assistance may be needed to select and operationalize such tools throughout the organization.

**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**

These commitments are due September 17, 2013

**Comments**

N/A

**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**

These commitments are due September 17, 2013

**Comments**

N/A

**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**

These commitments are due September 17, 2013

**Comments**

N/A

**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**

These commitments are due September 17, 2013

**Comments**

N/A

**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**

These commitments are due September 17, 2013

**Comments**

N/A

**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;

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- (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**

These commitments are due September 17, 2013

**Comments**

N/A

**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**

This commitment involves an annual evaluation of decision making tools.

**Comments**

It is likely technical assistance will be necessary for this commitment.

## **DMC and Equal Protection**

### **4. Training**

- (a) Within one year of the Effective Date, JCMSC shall provide all staff involved in any fashion in its delinquency docket with a minimum of sixteen hours of training on DMC in the juvenile justice system. The training shall emphasize the role of the Court, Juvenile Court Magistrates, probation, detention, and other Court personnel in reducing DMC in the juvenile justice process. The training shall include an interactive component with sample cases, responses, feedback, and testing to ensure retention. Training for all new staff shall be provided bi-annually. The training shall also address: **(MoA p. 26)**
- (i) Understanding the potential causes of DMC, including, but not limited to, institutional resources, individual decision-making, differential handling of Children based on race or ethnicity, programming options, availability of prevention and treatment options, and eligibility criteria for court services;
  - (ii) Using data collection methods to inform DMC reduction progress;
  - (iii) Understanding how bias – implicit or explicit – may impact the decision-making process;
  - (iv) Evaluating the availability of programs and services that take into account community resources;
  - (v) Using decision-making tools in a fair manner and evaluating any decision to override objective outcomes;
  - (vi) Understanding the importance of community engagement and awareness of racial or ethnic disparities in the treatment of Children appearing before the Court; and
  - (vii) Understanding the Court’s oversight role on community issues impacting juvenile justice.
- (b) JCMSC shall ensure that all staff involved in any fashion in the delinquency docket shall complete a minimum of four hours of refresher training on an annual basis. This refresher training shall include updates related to JCMSC’s challenges and progress in reducing DMC over the prior year. **(MoA p. 27)**

### **Status**

A number of training efforts have been undertaken. A spreadsheet of training done in 2012-2013 is attached in **Appendix 13**.

### **Comments**

Development of training plans is ongoing. Very good cooperation has been received from Andrea Coleman and OJJDP. There is a great deal of overlap with training needed for JDAI and

the MoA and it has been a challenge to effectively coordinate needed training and still meet the daily work responsibilities of the Court.

**Protection from Harm: Detention Facility**

1. Use of Force

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

**Status**

The restraint chairs were removed from the Detention Center on April 26, 2012 upon the direction of Judge Person. A memo dated January 17, 2013 documents that removal and the prohibition against pressure point tactics. Also included is a form dated May 10, 2011 which Detention staff were required to sign acknowledging the prohibition against pressure point tactics. These are attached in **Appendix 14**.

**Comments**

N/A

**Protection from Harm: Detention Facility**

1. Use of Force

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

**Status**

These commitments are due June 17, 2013

**Comments**

N/A

**Protection from Harm: Detention Facility**

1. Use of Force

- (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)

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- (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**

These commitments are due June 17, 2013

**Comments**

The Use of Force policy for the Shelby County Sheriff's Office Jail Division has been shared with Juvenile Court staff for use as a model.



**Protection from Harm: Detention Facility**

**1. Use of Force**

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

**Status**

It is expected these reviews will be submitted following the June 17, 2013 review of the Use of Force policy.

**Comments**

N/A

**Protection from Harm: Detention Facility**

**2. Suicide Prevention**

- (a) Within 60 days of the Effective Date, JCMSC shall develop and implement comprehensive policies and procedures regarding suicide prevention and the appropriate management of suicidal Children. The policies and procedures shall incorporate the input from the Division of Clinical Services. The policies and procedures shall address, at minimum: (MoA p. 29)
- (i) Intake screening for suicide risk and other mental health concerns in a confidential environment by a qualified individual for the following: past or current suicidal ideation and/or attempts; prior mental health treatment; recent significant loss, such as the death of a family member or a close friend; history of mental health diagnosis or suicidal behavior by family members and/or close friends; and suicidal issues or mental health diagnosis during any prior confinement.
  - (ii) Procedures for initiating and terminating precautions;
  - (iii) Communication between direct care and mental health staff regarding Children on precautions, including a requirement that direct care staff notify mental health staff of any incident involving self-harm;

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- (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 levels 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**

The policy was due February 17, 2013 (Sunday). A memo from Jerry Maness was received February 15, 2013 indicating a preliminary Suicide Prevention plan was drafted and adopted on that date. The policy titled Suicide Prevention Chapter: Medical and Mental Health Services was received February 19, 2013. The memo, the policy and the Detention Center Intake Health Screening form (JC-141) are all attached in **Appendix 15**.

### **Comments**

It is my opinion the Suicide Prevention policy submitted is woefully deficient and does not meet the Protection from Harm commitments made in the MoA. A short list of my observations of this policy include:

- The policy as written is vague and gives little guidance to staff trying to figure out what to do in observing and managing youth in the facility.
- The Intake Screening/Assessment process in the policy does not provide adequate nor timely screening of youth entering the facility.
- Communication processes are muddled with little to nothing in the policy explaining the roles of Clinical Services or Mobile Crisis.
- Nothing in the policy addresses the need for individualized treatment plans.
- The policy has a blank section on Mortality-Morbidity Review noting that it is in development. The policy was submitted February 15<sup>th</sup> and, as of March 28<sup>th</sup> nothing has been received on that item.

Lindsay Hayes, a nationally recognized expert in juvenile suicide prevention was retained to complete an assessment of suicide prevention practices. He visited Juvenile Court from August 21 through August 23, 2012. Mr. Hayes issued his *“Report on Suicide Prevention Practices Within the Detention Services Bureau of the Juvenile Court for Memphis and Shelby County”*. This comprehensive report cited some things being done well and made a number of

recommendations for improvement. To be fair, several of Mr. Hayes' recommendations have been followed. Training for staff on suicide prevention has been done, a mock suicide drill was conducted, and various levels of observation have been defined. To be sure, there has not been a suicide at Juvenile Court since 1974. That being said, Shelby County brought in an expert who made a number of key recommendations that we have failed to implement even though it has been six months since his report. Those recommendations included:

- Adequate screening of all youth entering the facility
- Clarifying roles of Detention, Clinical Services
- Development of individualized treatment plans
- Written policies clearly indicating activities for youth on suicide precautions
- Develop multidisciplinary mortality-morbidity review team

Mr. Hayes' recommendations had been discussed extensively at Committee A since his report was received. Despite those discussions, the current policy was submitted. There are plans to contract for medical and mental health services beginning in July 2013. At that point, all of these things will still need to be done and policies developed to govern them. In the meantime, it is my opinion this commitment has not been met.

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

#### **2. Suicide Prevention**

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

#### **Status**

This item is complete. A memo dated December 3, 2008 to this effect is included in **Appendix 16**.

#### **Comments**

The cut down tools are part of what is called a "Code Blue Pack". Contents of the Code Blue pack are listed in the attached memo. Also included in Appendix 16 is a memo describing a mock suicide drill held by Detention on February 12, 2013.

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

#### **2. Suicide Prevention**

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

- (d) JCMSC shall require direct care staff to immediately notify a QMHP any time a Child is placed on suicide precautions. Direct care staff shall provide the mental health professional with all relevant information related to the Child's placement on suicide precautions. (MoA p. 30)
- (e) JCMSC shall prohibit the routine use of isolation for Children on suicide precautions. Children on suicide precautions shall not be isolated unless specifically authorized by a QMHP. Any such isolation and its justification shall be thoroughly documented in the accompanying incident report, a copy of which shall be maintained in the Child's file. (MoA p. 30)

**Status**

An email dated March 22, 2013 was submitted to document where in the Suicide Prevention policy these items are covered. This email is attached in Appendix 17.

**Comments**

See previous comments regarding the Suicide Prevention policy.

**Protection from Harm: Detention Facility**

2. Suicide Prevention

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

risks posed; and coping mechanisms or activities that may mitigate the risk of harm.

**Status**

These measures are due in place by September 17, 2013.

**Comments**

Shelby County plans to contract with a medical and mental health provider by July 1, 2013. Plans are to increase medical and mental health staffing. It is likely there will be changes in policies covering how medical and mental health services are provided and how security and these services interact.

**Protection from Harm: Detention Facility**

2. **Suicide Prevention**

- (g) JCMSC shall ensure that Children who are removed from suicide precautions receive a follow up assessment by a QMHP while housed in the Facility. (MoA p. 31)

**Status**

See the Suicide Prevention policy in **Appendix 15**

**Comments**

See the prior comments on the Suicide Prevention policy.

**Protection from Harm: Detention Facility**

2. **Suicide Prevention**

- (h) All staff, including administrative, medical, and direct care staff or contractors, shall report all incidents of self-harm to the Administrator, or his or her designee, immediately upon discovery. (MoA p. 31)
- (i) All suicide attempts shall be recorded in the classification system to ensure that intake staff is aware of past suicide attempts if a Child with a history of suicidal ideations or attempts is readmitted to the Facility.

**Status**

See the Suicide Prevention policy in **Appendix 15**

**Comments**

See the prior comments on the Suicide Prevention policy.

**Protection from Harm: Detention Facility**

2. **Suicide Prevention**

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

**Status**

This information has been requested but not received at the time of this report.

**Comments**

**Protection from Harm: Detention Facility**

3. **Training**

- (a) Within one year of the Effective Date, JCMSC shall ensure that all members of detention staff receive a minimum of eight hours of competency-based training in each of the categories listed below, and two hours of annual refresher training on that same content. The training shall include an interactive component with sample cases, responses, feedback, and testing to ensure retention. Training for all new detention staff shall be provided bi-annually. (MoA p. 31)
  - (i) Use of force: Approved use of force curriculum, including the use of verbal de-escalation and prohibition on use of the restraint chair and pressure point control tactics.
  - (ii) Suicide prevention: The training on suicide prevention shall include the following:
    - a. A description of the environmental risk factors for suicide, individually predisposing factors, high risk periods for incarcerated Children, warning signs and symptoms, known sources of stress to potentially suicidal Children, the specific risks posed, and coping mechanisms or activities that may help to mitigate the risk of harm.
    - b. A discussion of the Facility's suicide prevention procedures, liability issues, recent suicide attempts at the Facility, searches of Children who are placed on suicide precautions, the proper evaluation of intake screening forms for signs of suicidal ideation, and any institutional barrier that might render suicide prevention ineffective.

- c. Mock demonstrations regarding the proper response to a suicide attempt and the use of suicide rescue tools.
- d. All detention staff shall be certified in CPR and first aid.

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

**Status**

Use of Force and Suicide Prevention training are ongoing. Many staff have been trained and others are being trained in March and April 2013. Please refer to the spreadsheet in **Appendix 13**.

**Comments**

N/A

**Community Outreach**

- A. Within six months of the Effective Date, JCMSC shall develop and implement a community outreach program to keep the community informed about the progress of its reforms. The community outreach program shall include a process for updating and receiving input from a countywide juvenile justice consortium comprised of the Memphis/Shelby Juvenile Justice Board and other key stakeholders, including, but not limited to, six to nine citizens selected by the Mayor and approved by the County Commission who are reflective of the cultural and ethnic diversity of the County to include no less than two parents of children who have had delinquency matters before JCMSC, a person under the age of twenty-one (21) who has had direct contact with the juvenile justice system, and community advocates. **(MoA p. 33)**
- B. The community outreach program shall require at least one open meeting every six months for the first three (3) years of this Agreement and at least one time annually thereafter. The open meetings shall inform the public about the requirements of this Agreement, discuss JCMSC's progress in each substantive area of the Agreement, and address community concerns related to the fair administration of juvenile justice. The meetings shall be held in a location with easy access to public transportation. At least one week before the open meetings, JCMSC shall widely publicize the meetings using print media, radio, and the internet. **(MoA p. 33)**

- C. The community outreach meetings shall include summaries of reports completed pursuant to this Agreement during the period immediately prior to the meeting and inform the public of any policy changes or other significant actions taken as a result of this Agreement. (MoA p. 33)
- D. JCMSC shall publish on its website annual reports outlining its reform efforts in accordance with this Agreement. The annual report shall include a description of the measures taken to address the due process and detention reforms and to reduce the level of DMC at different Decision Points. (MoA p. 33)
- E. The community outreach program shall include a data dashboard that directly communicates JCMSC's compliance with the provisions of this Agreement. The data dashboard shall present a snapshot of JCMSC's progress toward complying with the due process, equal protection, and protection from harm goals identified in the Agreement. JCMSC shall ensure that the data dashboard is available on a publicly accessible website that is updated on a monthly basis at minimum. (MoA p. 34)

#### **Status**

This plan is due June 17, 2013. The Countywide Juvenile Justice Consortium has been appointed and has met. The Juvenile Justice Board approved their nominees on February 19, 2013 and Larry Scroggs provided an email to that effect. The resolution appointing the Mayor's nominees and the email from Larry Scroggs regarding the Juvenile Justice Board appointees are attached in **Appendix 18**.

#### **Comments**

The Countywide Juvenile Justice Consortium has been formed. The community outreach plan is in the process of being developed.

#### **Community Outreach**

- F. Within one year of the Effective Date, JCMSC shall conduct, or retain an individual or entity approved by the DOJ with expertise in social science research and statistics to conduct, a representative survey of members of the Shelby County community regarding their experiences with and perceptions of JCMSC. The community survey shall be conducted annually until the termination of this Agreement. The individual or entity conducting the annual community survey shall: (MoA p. 34)
  - 1. Develop a baseline of measures on public satisfaction with JCMSC, attitudes among court personnel, and the quality of encounters with the court by Children and their families;



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2. Conduct baseline surveys of County residents, JCMSC personnel, and Children appearing before JCMSC on delinquency matters, and follow-up surveys on at least an annual basis; and
3. Ensure that the community surveys are designed to capture the opinions of community members in each demographic group and geographic region of Shelby County.

**Status**

There has been no action on this item. It is due December 17, 2013.

**Comments**

N/A

**Implementation and Monitoring**

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

**Status**

This item is complete. Bill Powell was appointed as Settlement Agreement Coordinator by Judge Person and Mayor Luttrell. The letter making this appointment, dated January 23, 2013 is attached in **Appendix 19**.

**Comments**

This document is the first Compliance Report.

## General Provisions

### A. Policies and Procedures

1. **Policy and Procedure Review.** All existing Policies and Procedures shall be reviewed and/or revised to ensure compliance with the substantive terms of this Agreement. Where JCMSC does not have a policy in place to comply with a substantive term, JCMSC shall generate such policy. The initial policy and procedures review shall be initiated by JCMSC officials and shall be subject to review by the United States and the Monitor. **(MoA p. 39)**
  
2. **Schedule for Policy and Procedure Review.** Unless otherwise stated in Section III of this Agreement, JCMSC shall complete its policy review and revision within six months of the Effective Date. To accomplish this goal, JCMSC shall adhere to the Agreement regarding each substantive provision. After JCMSC completes its initial revision, JCMSC shall immediately submit the revised policies to the Monitor for review and approval. The Monitor shall, as soon as practicable but in no event more than sixty (60) days submit to JCMSC any suggested revisions to the proposed policies. Within thirty (30) days after receiving the Monitor's revisions, JCMSC shall revise the policies to incorporate the Monitor's revisions and shall resubmit the procedures to the Monitor for review and approval. The Monitor, or Facility Consultant, shall submit to JCMSC any suggested revisions to the proposed policies and procedures within thirty (30) days. This review process shall continue until the Monitor, or Facility Consultant, has approved of all policies and procedures.

JCMSC shall provide all such documents to the United States for its review within thirty (30) days of the review and approval by the Monitors. Within forty-five (45) days of its receipt of the policies, procedures, and other written documents, the United States shall provide either written approval of each document, or written concerns or objections it has to the documents that include proposed revisions. Such approval shall not be unreasonably withheld. In the event that the United States asserts that policies, procedures, or other written documents are not in compliance with the terms of this Agreement, the Parties will confer on the matter for up to thirty (30) days. **(MoA p. 39)**

3. The final policies and procedures shall be subject to further revision if, after review of the Internal Oversight documents, the Monitors or Facility Consultant, the United States, or JCMSC determines that the policies or procedures are not successfully solving the deficiency identified in the Report of Findings. Suggested changes made by JCMSC shall be reviewed and approved by the Monitors or Facility Consultant and the United States. **(MoA p. 40)**
  
4. **Policy Implementation.** No later than three months after the Monitor's final approval of each policy or procedure, JCMSC shall formally adopt and begin implementing the policies and modify all orders, job descriptions, training

materials, and performance evaluation instruments in a manner consistent with the revised policies and procedures. Following adoption and implementation, JCMSC shall annually review each policy and procedure and revise as necessary. Any revisions to the policies and procedures shall be submitted to the Monitor for review and approval. Unless otherwise stated, all policies and procedures shall be implemented within one year of the Effective Date. (MoA p. 40)

**Status**

These policies are due June 17, 2013.

**Comments**

N/A

**General Provisions**

B. Reporting Requirements

1. Comprehensive Action Plan. Within four months of the Effective Date, JCMSC shall submit to the United States a comprehensive action plan specifying the measures it intends to take in order to bring JCMSC into compliance with the substantive requirements of the Agreement, including anticipated timeframes for completion of each measure. (MoA p. 40)

**Status**

This item is due April 17, 2013.

**Comments**

Clarification for this item was received from DoJ who indicated they wanted a plan for longer term issues and outlining intermediate steps for items such as the Community Outreach Plan and the transition of defender duties to the Public Defender's Office.

**General Provisions**

B. Reporting Requirements

2. Compliance Report. JCMSC shall submit a bi-annual compliance report to the United States, the first of which shall be filed within six months of the Effective Date. Thereafter, the bi-annual reports shall be filed 30 days prior to the Monitors' and Facility Consultant's bi-annual compliance tour until the Agreement is terminated. Each bi-annual compliance report submitted by JCMSC shall describe the actions JCMSC has taken during the reporting period to implement this Agreement and shall make specific reference to the Agreement provisions being implemented. To the extent any provision of this Agreement is

not being implemented, the compliance report shall also describe what actions, including any additional revisions to policies, procedures and practices, JCMSC will take to ensure implementation, and the date(s) by which those actions will be taken. (MoA p. 41)

**Status**

This report constitutes the first of the compliance reports.

**Comments**

N/A

**General Provisions**

**B. Reporting Requirements**

3. **Records.** JCMSC shall maintain sufficient records to document that the requirements of this Agreement are being properly implemented and shall make such records available to the United States at all reasonable times for inspection and copying. These records shall be maintained for three years. In addition, JCMSC shall maintain and submit upon request records or other documents to verify that it has taken such actions as described in the compliance reports (e.g., census summaries, policies, procedures, protocols, training materials and incident reports) and shall also provide all additional documents reasonably requested. (MoA p. 41)

**Status**

Records are being maintained.

**Comments**

N/A