

**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 were submitted in the 1st Compliance Report dated April 2, 2013.

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

Forms were created to assist in the review of individual case files, including Probable Cause determinations. A sampling of cases have been routinely reviewed as required.

Comments

Staff has been encouraged to develop a process to aggregate the information from these case file reviews in order to track performance trends. Spreadsheets for that purpose have been slow in developing but a great deal of recent progress has been made. **Appendix 1** includes a spreadsheet developed to show the aggregated results of case file reviews. Although the spreadsheet still needs to be tweaked, its development has a great deal of potential for revealing performance in due process areas and allowing improvement efforts to be focused. Efforts will need to be made to analyze the reports and determine courses of action in response to the data shown. For example, the spreadsheet portion “Detention Probable Cause” reflects that affidavits of Complaint have been available 88% of the time. It also shows that the Rights Form by Magistrate was done 50% of the time from May – July 2013. On the other hand it also shows that the percentage of times those forms were done properly increased each month from 19% to 83%.

In short, these spreadsheets provide key data in documenting performance in the Due Process areas of the MoA and in focusing improvement efforts. This is a noteworthy accomplishment.

Due Process

1. Policies and Procedures

(b) Notice of Charges

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

Status

These policies were submitted in the 1st Compliance Report dated April 2, 2013.

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

Forms were created to assist in the review of case files, including Notice of Charge determinations. A sampling of cases have been reviewed as required.

Comments

See the spreadsheet in **Appendix I** and comments in the section above Due Process 1. (a) (v) regarding the spreadsheet and aggregated information on reviews.

Due Process

1. **Policies and Procedures**

(c) **Transfer Hearings**

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

or mental illness; and (3) the interests of the community require that the Child be put under legal restraint or discipline; and

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

Status

These policies were submitted in the 1st Compliance Report dated April 2, 2013.

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

Forms were created to assist in the review of case files, including Transfer Hearings. A sampling of cases have been reviewed as required.

Comments

See the spreadsheet in **Appendix I** and comments in the section above Due Process 1. (a) (v) regarding the spreadsheet and aggregated information on reviews.

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

These policies were submitted in the 1st Compliance Report dated April 2, 2013.

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

These policies were submitted in the 1st Compliance Report dated April 2, 2013.

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

Appendix 2 includes a document from Larry Scroggs providing information on a meeting with the officials from the University of Memphis Law School regarding the possible establishment of a clinic to help address this item.

Comments

Questions remain about how this partnership would work and how it might be funded. Public Defender Stephen Bush expressed his desire to be involved in the development of this project and should have input into how it evolves.

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

These policies were submitted in the 1st Compliance Report dated April 2, 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

These policies were submitted in the 1st Compliance Report dated April 2, 2013.

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

Forms were created to assist in the review of case files, including protections against self-incrimination. A sampling of cases have been reviewed as required.

Comments

See the spreadsheet in **Appendix I** and comments in the section above Due Process 1. (a) (v) regarding the spreadsheet and aggregated information on reviews.

Due Process

1. Policies and Procedures

(d) Protections Against Self-Incrimination

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

Status

This was documented in the 1st Compliance Report dated April 2, 2013.

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 continues to work on this transition. Funding was received from both the State and County. Although greater funding would have been desirable Mr. Bush has expressed confidence that he can begin operations by December 17, 2013 as required by the MoA.

Comments

Mr. Bush has been working on this independently and little detailed information has been shared other than assurances that it will be done. There is no doubt that Mr. Bush has been working hard in this area and there is no doubt he is committed to doing it right. Given the limited funding provided to the Public Defender's Office it is clear the Defender Panel will continue to play an important role in the juvenile defense system. Mr. Bush has rightfully taken the position that the Public Defender's Office should assume responsibility for the development of standards of practice and for providing training. He has gone to great lengths to work on obtaining the best training available. Mr. Bush indicated the core standards will be based on the 2013 NJDC's standards which he stated is the best resource available. They will follow the Juvenile Training Immersion Program (JTIP). Mr. Bush has stated although he cannot provide dates at this point he expects he will be ready to report on that by early October.

Mr. Bush is working diligently and methodically to establish quality standards and arrange the best training available. Clearly, this takes time and that length of time it is taking comes with some some short term drawbacks. There are structural issues with the Panel system including questions about standards, questions about training and questions about resources. The Bar Association expressed a willingness to assist with developing a plan to address issues with attorney selection and review processes for the Panel. That effort has slowed down awaiting direction from Mr. Bush. Adding to the problems in juvenile defense is the issue with the

Administrative Office of the Courts being reluctant to pay for attorneys at the Probation conference stage. That too, is being worked on.

This is a complicated issue that is not easily addressed. The purpose of these comments is not to be critical of Mr. Bush's efforts but rather to acknowledge that the time it is taking to work through these issues has a cost and an impact in the short term. The short term issues include a continued lack of support for the Panel, confusion about its ultimate direction and continued confusion surrounding the Panel and its operations.

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

As noted above, Stephen Bush has assumed responsibility for the promulgation of attorney practice standards and for training that will serve both his office and Panel attorneys. Marilyn Hobbs, Juvenile Defender Coordinator, was organizationally transferred from Juvenile Court to the County Mayor's Chief Administrative Officer (CAO). This removes the Juvenile Defender Coordinator from the supervision of Juvenile Court and places her under the oversight of a

separate elected official. Placement in the County’s CAO is seen as a temporary move. It is presumed a more permanent arrangement will be determined in conjunction with the creation of a Juvenile Defender Unit in the Public Defender’s Office.

Comments

As noted in the section above, the current structure and placement of the Juvenile Defender Coordinator seem to be in limbo. The sooner the structural issues are resolved and standards are established the better.

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

This policy was completed in June 2013 and was submitted to DoJ at that time. The policy is included in Appendix 3.

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

This policy was completed in June 2013 and was submitted to DoJ at that time. The policy is included in Appendix 4.

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)
- (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

This policy was completed in June 2013 and was submitted to DoJ at that time. The policy is included in **Appendix 5**.

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

These policies were submitted in the 1st Compliance Report dated April 2, 2013.

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

This plan is outlined in a memo from Dini Malone on April 15, 2013. Policies involving language access are included in a Detention Policy and a Volunteer Services Bureau policy.

Comments

The above documents are included in **Appendix 6**.

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

This policy was completed in June 2013 and was submitted to DoJ at that time. The policy is included in **Appendix 7**.

Comments

N/A

Due Process

1. **Policies and Procedures**

(l) 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

A policy regarding bench cards was created 6-17-13. Submissions for bench cards in accordance with this item are included in **Appendix 8**.

Comments

N/A

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

This policy was complete in June 2013 and was submitted to DoJ at that time. The policy is included in **Appendix 9**.

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

The Juvenile Court Clerk has the responsibility of recording hearings. A memo from Juvenile Court Clerk, Joy Touliatos is included in **Appendix 10**.

Comments

The memo from Ms. Touliatos describes the recording, the storage of those recordings and the quality checks of those recordings.

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

A training schedule is maintained by Ms. Brenda Johnson, HR Manager. That schedule is included in **Appendix 11**.

Comments

There has been a tremendous amount of training since the release of the Findings by DoJ in April 2012. Efforts continue to be made to coordinate training initiatives with JDAI, OJJDP and others. Andrea Coleman and her staff with OJJDP have been extremely cooperative in assisting with training and technical assistance.

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

A number of conversations and email exchanges have been held with Mike Lieber, Shannon Caraway, Debra Monroe, Lisa Hill and others. It is my understanding the collection needs have been identified for each decision point.

Comments

N/A

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

Appendix 12 includes two documents for the reporting period January – June 2013. The first document includes raw numbers, the second calculates the RRI for Shelby County. The documents were submitted by Debra Monroe via email on 7-15-13. These documents are submitted in response to sections 1. (b) (i) and (ii) above. Item (ii) has been a topic of discussion relevant to updated national RRI numbers and which represents the best comparison.

Appendix 13 includes memos and charts from Mamie Jones, Deputy Chief Probation Officer, that cover sections (v) and (vi) of this section.

Comments

The RRI numbers in Appendix 12 show good performance in several areas. Compared to the findings issued in page 31 of the April 26, 2012 DoJ report, the RRI numbers from January through June 2013 show reduced disparities at 3 of the 8 Decision Points. In fact, in two of those areas, Cases Petitioned and Cases Resulting in Secure Confinement, the statistics show there was no disparate outcomes for African American Children whereas the April 2012 report reflected disparities in those areas. Obviously work remains but there are some reasons to be encouraged.

A document in Appendix 13 is titled Juveniles Transferred to Adult Court. This shows that in the first 6 months of 2013 there were 41 juveniles transferred to Adult Court. This compares to 70 juveniles transferred in the first 6 months of 2012. In terms of pure numbers this constitutes a 41% reduction in the number of juveniles transferred. Tracking the numbers of transfers sought and the numbers of transfers granted would provide important information in this area.

Information for Sections (iii) and (iv) is not included in Appendix 15 of this report.

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

Appendix 14 includes a memo describing the staffing for data collection and reporting for Corrective Services.

Comments

There does not appear to be any staffing issues regarding data collection.

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 as was reported in the first Compliance report.

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 was attached to the first Compliance Report dated April 2, 2013.

Comments

There have been some issues with the Points of Contact understanding and assuming an active role in DMC reduction efforts.

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

Appendix 15 includes an email from Debra Monroe dated September 11th and drafts of 4 reports involving this section.

Comments

The reports included are:

- Cases Involving Secure Detention
- Cases Transferred to Adult Criminal Justice System
- Juvenile Detention Alternatives
- Referrals to Juvenile Court (summons only)

The reports include a lot of good information but they are still in draft form. The data charts are preceded by a narrative portion which shows some analysis of the data. The entire DMC section requires merging good data with experienced practitioners who then use the data to reduce DMC. This is the challenge faced with this section of the MoA.

These drafts need to be finalized and the Points of Contact should be actively involved in finalizing the format and necessary information so they can put it to use.

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. **Appendix 16** includes a memo from Deputy Chief Probation Officer, Mamie Jones, dated September 3, 2013 and a host of documents.

Comments

Some of the documents include breakdowns of program involvement by zip code. Some others include lists of services. The memo by Ms. Jones indicates assistance is being sought from OJJDP in conducting a level of service inventory and in increasing the use of available diversion options.

The MoA required an assessment of impact within 6 months or by June 17, 2013. That assessment is way behind. It is hopeful that OJJDP can help with structuring the assessment so that the inventory information can be used to help determine gaps which may affect DMC levels. It should be noted this item in the MoA also references an assessment of policies and procedures at each Decision Point to see if those policies/procedures influence DMC. It is not clear whether the level of service inventory work with OJJDP will include assessment of those policies/procedures.

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

Appendix 17 includes 3 documents. The first is a memo from Mamie Jones dated September 3, 2013 listing the current diversion programs and a statement that technical assistance has been scheduled to help complete the strategic plan to reduce DMC. The second document is an email from Larry Scroggs dated September 17, 2013 listing the members of the DMC Strategic Planning Committee. The third document is a September 2013 revision of a draft “Strategic Plan for Countywide Juvenile Disproportionate Minority Contact Monitoring, Reduction and Prevention Efforts”. This document was prepared by Lisa Hill, DMC Coordinator.

Comments

The strategic plan will be an important document in charting a direction for DMC efforts. A great deal of work has been put into data collection. Challenges remain in how to analyze the data and how to put that analysis to work in reducing DMC. The DMC area, more than any other, has been struggling with finding a structured, cohesive way to address the problem. A strategic plan offers the best hope of organizing these efforts.

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

Appendix 18 includes a memo from Mamie Jones dated September 10, 2013, a Graduated Sanctions Grid for Corrective Services and three policies.

Comments

Some of these requirements are covered elsewhere in the MoA.

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

Appendix 19 includes a memo from Mamie Jones dated September 12, 2013 addressing this item.

Comments

Technical assistance has been requested from OJJDP to help with the development of objective decision making tools. Currently, some tools are used such as the DAT, Graduated Sanctions Grid, CASII and CRAFFT. A formal review of the DAT is being done. Reviews and/or validations of other tools need to be done to insure proper tools are available. The use of objective decision making tools is critically important to insure fairness in decision making and in addressing DMC concerns.

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

Appendix 20 includes a memo from Mamie Jones dated September 12, 2013 and several other documents addressing this item. The documents include policies addressing the Purpose of Detention. They also include a copy of the Detention Assessment Tool (DAT) and an outline of changes in the DAT.

Comments

See above comments relative to the importance of objective decision making tools. Technical assistance has been requested from OJJDP.

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

A document describing the pilot program and a copy of the Memorandum of Understanding (MoU) between Juvenile Court and the Sheriff's Department is included in **Appendix 21**.

Comments

Plans should be made to evaluate the pilot project. The program description cites the purpose as being "to reduce the number of youth transported to Juvenile Court who don't pose a major threat or danger to themselves or the community." A formalized approach to evaluating the program will be necessary to gauge its success and to use in expanding the program to other law enforcement agencies if deemed appropriate.

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

Appendix 22 includes a memo from Mamie Jones dated September 9, 2013 discussing assessment tools, upcoming technical assistance and some existing and planned community partnerships. This appendix also includes copies of some current assessment tools used by the Court.

Comments

The memo from Ms. Jones covers a lot of area and discusses some plans to develop a pilot project with the Memphis Police Department and plans to assess the availability of day/evening reporting centers. These are ambitious plans that have a lot of potential. It will be important to take a structured planning approach to make these things happen.

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

There is some uncertainty about the meaning of this item. Transfers can be viewed as a three phase effort. There is an initial determination by the District Attorney as to whether transfer should be considered. This is followed by a more in-depth review by the DA to determine whether they will seek to transfer the juvenile. The third phase is the Court decision as to whether the child should be transferred. The DA makes the recommendation, the Court makes the decision. There is a lot of data available but guidance is needed on what exactly is being requested.

It is unclear as to whether this item intends a review of the transfer recommendations by the DA or the transfer decisions by the Court, or both. This was discussed at length at the Committee A

meeting on September 5, 2013 which culminated with the decision to seek clarification from DoJ. That clarification was requested but an answer has not yet been received.

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

As has been discussed elsewhere in this report, data collection efforts are extensive and ongoing. There have not been any situations identified in which data or information has been unattainable.

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;
 - (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

Lisa Hill, DMC Coordinator, has been working with the Points of Contact to develop a format for these management reports. A template was submitted by Ms. Hill and is included in **Appendix 23**.

Comments

The report template needs to be modified to follow the items specified in this section of the MoA. These reports will become the roadmaps for improving DMC. They need to make use of available data, document an analysis of that data and include recommendations based on the experiences of the Points of Contact. A more detailed report template will help clarify what is expected of the Points of Contact and provide guidance for how DMC reduction should be approached.

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

Technical assistance has been requested to help with objective decision making tools. It is anticipated that new or revised tools will be a result of that assistance.

Comments

Once tools are reviewed and in place a mechanism will need to be set up to evaluate them on an annual basis as required by this commitment in the MoA. It is likely technical assistance will be necessary for that evaluation as well.

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 detailing training is attached in **Appendix 11**.

Comments

Development of training plans is ongoing. Very good cooperation has been received from Andrea Coleman and OJJDP. Training associated with JDAI has also been very helpful and the coordination with DoJ required training and JDAI training has been good.

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. Documentation was submitted in the 1st Compliance Report dated April 2, 2013.

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)
- (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

The Use of Force policy was revised August 14, 2013. A copy is included in **Appendix 24**.

Comments

This is a good policy. It delineates a Use of Force Continuum, itemizes approved methods of restraint and provides guidance to staff in dealing with situations involving use of force. It will be important to insure staff understands the policy and that supervisors review situations to insure staff complies with the policy.

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

Appendix 25 includes three documents. The first two are spreadsheets of information compiled on use of force. The third document is an analysis done of use of force events for August 2013.

Comments

Use of force incidents are reviewed, data is compiled on use of force events, and that data is analyzed to identify issues associated with uses of force. Administrators have consulted with

Facility Monitor David Roush and have been quick to incorporate his comments into their policies and actions. A great deal of progress has been made in this area.

Protection from Harm: Detention Facility

2. Suicide Prevention

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

A revised Suicide Prevention policy is included in **Appendix 26**. There are actually two policies: the first is the Suicide Prevention policy, the second is a policy addressing Suicide Crisis which describes what should be done in the event of an actual or attempted suicide. On August 1, 2013 Correct Care Solutions (CCS) was retained as the contract medical provider. CCS provides mental health staff who play a critical role in suicide prevention. This appendix also includes the suicide prevention policy for CCS as well as a copy of the medical assessment and receiving screening instruments used by CCS.

Comments

This is a vast improvement from the previous Suicide Prevention policy in use at Juvenile Court. It address the concerns expressed by Lindsay Hayes, a consultant brought in to review suicide prevention efforts. The combination of a contracted medical services provider with mental health staff and this more complete suicide prevention policy has turned this area from a point of weakness to a point of strength. Of course, care will need to be taken to insure the policy is implemented as designed.

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

These policies were submitted in the 1st Compliance Report dated April 2, 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)

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

Status

See the Suicide Prevention policy in Appendix 26.

Comments

A review process should be established to insure policy is followed and the above items are done. Consideration should be given to incorporating data on these items into the Report Card developed by Detention Administrators. In addition, there are plans to hire a contract monitor to oversee performance by CCS. These items should be on the audit schedule for that monitor.

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

A great deal of data is gathered relative to this item. **Appendix 27** includes a spreadsheet from the Report Card on Suicide Prevention. It also includes two documents analyzing suicide prevention data in Detention in August 2013. **Appendix 28** includes a policy on Critical Incident Review. This policy meets the needs of MoA page 29 2. (a) (vi). It also provides a mechanism to review any serious incident in Detention whether it is related to suicide prevention or not.

Comments

The data sheets need some tweaking to make them more useful from a management standpoint but they reflect a huge leap forward in the ability of Detention Administrators to track activity in this area. The data and the analysis will become more meaningful with the onset of CCS's involvement in providing mental health care to children in Detention. The Critical Incident Review policy is an important one for a number of reasons. It not only meets the needs of the MoA but it provides guidance for reviewing important incidents in Detention and a framework for the organization to incorporate "lessons learned" from those incidents. It can be a great management tool if implemented properly.

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. Please refer to the spreadsheet in **Appendix 11**.

Comments

In his initial report Facility Consultant, David Roush, expressed some concerns about a couple of areas in which he felt the Shield of Care curriculum could be more thorough. Detention Administrator Gary Cummings has reported making arrangements with Dr. Vardell of CCS to implement additional training for staff to address the concerns of Dr. Roush.

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

Appendix 29 includes a Community Outreach policy created September 17, 2013. This appendix also includes an email from Tom Coupe, Community Outreach liaison with Juvenile Court on community activities with which he has been involved. In addition, the appendix

includes an email from Mr. Coupe indicating Technical Assistance will be provided on October 22, 2013 through OJJDP.

Comments

Mr. Coupe has been involved in a great deal of community outreach. It is important to develop a community outreach plan to reach the goals of the MoA. Despite Mr. Coupe's assertion that the MoA does not require a strategic plan for Community Outreach, the MoA clearly requires a community outreach program. It is my opinion that a program requires a plan rather than just a compilation of activities by the Community Outreach liaison. Mr. Coupe has done a great job in reaching out to the community but the outreach efforts should be more expansive and involve more than just his efforts. The policy spells out what should be done, it is hoped the technical assistance can lend structure and planning to the effort.

Community Outreach

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

Status

Appendix 30 includes an email from Tom Coupe on September 5, 2013 that documents a discussion about conducting the survey required in this section of the MoA.

Comments

This item requires that the survey be conducted or an individual or entity retained by December 17, 2013. Work needs to continue to identify funding and to work through the County's contracting gauntlet to meet this commitment.

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.

Comments

Documentation of this appointment was included in the Compliance Report dated April 2, 2013.

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

This was done and policies submitted to DoJ previously.

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

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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 plan was submitted April 12, 2013 and is included in Appendix 31.

Comments

N/A

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 second 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