

**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 has been routinely reviewed as required. These monthly reviews were extended to include reviews done by Probation staff to determine protection of due process during Probation conferences. Comments below will discuss reviews by Judicial staff and then reviews by Probation staff.

Comments

Judicial Staff reviews:

Staff has developed a process to aggregate the information from these case file reviews in order to track performance trends. Spreadsheets for that purpose have been created and, as of February 2014, a narrative report has been submitted to accompany the spreadsheets.

Appendix I includes a spreadsheet developed to show the aggregated results of case file reviews. It also includes the most recent narrative report analyzing data from December 2013 and from January 2014. The spreadsheet reveals much about the work being done to protect Due Process. For example, from March through December 2013 it shows the following:

At Detention Probable Cause

- Affidavits of Complaint were available 95% of the time (100% for each of the past 5 months)
- Affidavits were contested by defense attorneys 40% of the time
- There was a statement of Attorney regarding Notice & advisement of rights 63% of the time (100% for each of the past 3 months)
- Rights form by Magistrate 75% of the time (100% for the past 3 months)

Adjudicatory Hearing

- Attorney present 100% of the time
- Amended petition filed 5% of the time

- Plea and rights form completed 93% of the time

Transfer Hearing

- Rights form present (protection against self-incrimination) 95% of time (100% for past 7 months)
- Transfer Granted 77% of the time, Waived 23% of the time
- Written Rationale for transfer completed 100% of the time
- Nature of past treatment efforts completed 90% (100% past 4 months)
- Child's suitability for additional treatment completed 82% (100% past 5 months)
- Child social factors considered 49% of the time (100% past 4 months)

These numbers are quite revealing. They generally document that protections of due process are present. In many cases they show that documentation lacking in the early months, has been dramatically improved in recent months as many areas are now reflecting being done 100% of the time. The narrative report is particularly helpful in explaining what is going on with the numbers.

It is my opinion that the spreadsheets which allow tracking of performance trends and the narrative reports which show an understanding of and response to the data are essential components in sustaining the improvements in performance.

Probation reviews

Probation staff has likewise reviewed a sampling of cases. The latest of those reviews are included in **Appendix 2**. These reviews have been more challenging and the information garnered from them frankly, has not been helpful. In order to have more complete information as to what is occurring in Probation conferences a more thorough review of cases is necessary. A more complete spreadsheet documenting information from those reviews is also essential if performance trends are to be tracked. Drafts of those review forms and the spreadsheets are included in **Appendix 3**. It is expected future reviews of probation cases will be guided by this review process and performance trends can begin to be tracked. As it stands, there is little systematic information available relevant to Probation conferences.

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 has been reviewed as required.

Comments

See the spreadsheet and narrative in **Appendix 1** and comments in the section Due Process 1. (a) (v) above 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 has been reviewed as required.

Comments

See the spreadsheet and narrative in **Appendix I** and comments in the section Due Process 1. (a) (v) above 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;

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- 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

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 was submitted in the 2nd Compliance Report on September 23, 2013.

Comments

There have been no further developments on this item.

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 Monitor Sandra Simkins expressed concerns about protections against self-incrimination at the Probation Conference stage. In response to those concerns, internal training has been developed for Probation staff. A video of that training was made to use for routine training of new staff in Probation. The training was conducted February 20, 2014.

Comments

Creation of a video for this training was an important step. It should be insured this training is delivered to all new Probation staff to insure they are adequately trained to protect the due process rights of children against self incrimination in Probation conferences.

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 has been reviewed as required.

Comments

See the spreadsheet and narrative in **Appendix 1** and comments in the section Due Process 1. (a) (v) above 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

The Juvenile Defender Unit in the Public Defender’s Office began accepting cases in February 2014. Public Defender Stephen Bush arranged for extensive, high quality training for attorneys in this unit as well as members of the private bar through the Juvenile Training Immersion Program (JTIP). The Juvenile Defender Unit is planned to grow incrementally with additional attorneys and support staff coming on board in future months.

Comments

The Juvenile Defender Unit is in place but continues to be a work in progress. Much is to be learned about what cases they can take and how the “reasonable workloads” portion of the MoA will be operationalized. The Juvenile Defender Unit has begun with one team of attorneys and ultimately is expected to include 3 teams of attorneys supported by investigative and social work resources. The training has been excellent and well attended by members of the private bar as well as by attorneys in the Public Defender’s Office.

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 part of the MoA requires implementation of attorney practice standards and supporting supervision and evaluation of attorneys against these practice standards. Mr. Bush has accepted the responsibility of developing these standards which will guide not only the Juvenile Defender Unit, but all attorneys practicing in Juvenile Court. He has indicated this work may take a year.

Comments

As noted in the previous Compliance Report, the current structure and placement of the Juvenile Defender Coordinator continue to be in limbo. The changing role of the panel and the role of the private bar, given the creation of the Juvenile Defender Unit, are unsettled and a plan for how all of this will mesh has not been made apparent. The sooner a plan is revealed and a direction made clear, the better. Until that occurs, the Panel will continue to be hindered by an uncertain future.

Mr. Bush has taken the lead in promulgating and adopting attorney practice standards. That is good. The expectation that this may take a year is not so good. While that time frame may be the best that can be done, it is a concern that practice standards supporting the training and supervision/evaluation of attorneys against those practice standards may not be available until well into 2015.

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 was included in the 2nd Compliance Report submitted September 23, 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

This policy was completed in June 2013 and was submitted to DoJ at that time. The policy was included in the 2nd Compliance Report submitted September 23, 2013.

Comments

The policies are in place. Future monitoring efforts should verify the proper implementation of the policies.

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 was included in the 2nd Compliance Report submitted September 23, 2013.

Comments

The policies are in place. Future monitoring efforts should verify the proper implementation of the policies.

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 were included in the 2nd Compliance Report submitted September 23, 2013.

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 was included in the 2nd Compliance Report submitted September 23, 2013.

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;

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- 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 were included in the 2nd Compliance Report submitted September 23, 2013.

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 was included in the 2nd Compliance Report submitted September 23, 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

The Juvenile Court Clerk has the responsibility of recording hearings.

Comments

The memo from Ms. Touliatos describes the recording, the storage of those recordings and the quality checks of those recordings. That memo was included in the 2nd Compliance Report submitted September 23, 2013.

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 4**.

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. The lone exception has been a lack of technical assistance and training on objective decision making tools. This is discussed elsewhere in this report but this lack of progress has greatly impeded DMC reduction efforts.

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. Data is available at each decision point.

Comments

As the Points of Contact work on DMC issues it is anticipated they may identify other data collection needs.

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;

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- (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 5 includes three documents. The 1st is the RRI rates for Shelby County for the reporting period July – December 2013. All documents were submitted by Debra Monroe. The 2nd document is a comparison of Shelby County with national data from 2007. The third document is a chart comparing State RRI information for Black and Hispanic Youth. These documents are submitted in response to sections 1. (b) (i) and (ii) above.

The 2nd Compliance Report submitted September 23, 2013 included memos and charts that covered sections (v) and (vi) of this section.

Comments

The RRI numbers in Appendix 5 show good performance in several areas.

Below are comparisons of the RRI from 2009, 2013(Jan-June) and 2013 (July-Dec)

<u>Decision Point</u>	<u>2009</u>	<u>2013 (1st ½)</u>	<u>2013 (2nd ½)</u>
Referral to Juv Ct	3.4	3.88	4.33
Cases Diverted	0.9	0.94	0.86
Cases – Secure Detention	2.1	1.31	1.37
Petitioned	1.2	0.84	1.23
Delinquent Findings	1.3	1.38	1.09
Probation Placement	1.0	1.16	0.99
Secure Placement	1.7	0.79	0.96
Transfer	2.3	* (insufficient #s)	* (insufficient #s)

Compared to the findings issued in page 31 of the April 26, 2012 DoJ report, the RRI numbers from the 2nd half of 2013, July through December show reduced disparities at 5 of the 8 Decision Points. As of the end of 2013 RRI data revealed there were no disparate outcomes for African American children in Cases Diverted, Probation Placement or Secure Placement whereas the April 2012 report reflected disparities in those areas. Monitor Dr. Mike Leiber is conducting more in-depth statistical analyses of all of these areas which should help inform future reduction efforts. Obviously work remains but there are some reasons to be encouraged. The statistics also illustrate that the largest disparity remains with law enforcement. In fact, those numbers have shown an increasing disparity since 2009. Discussions have taken place but it remains clear that, unless changes are made with law enforcement practices, DMC is likely to continue.

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

A memo describing the staffing for data collection and reporting for Corrective Services was included in the 2nd Compliance Report submitted September 23, 2013.

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) were designated. An email confirming those designations was attached to the first Compliance Report dated April 2, 2013. There have been some changes in those designations.

Comments

There have been issues with the Points of Contact understanding and assuming an active role in DMC reduction efforts. This will be discussed in a later section of this report.

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

Several reports were included in the 2nd Compliance Report submitted September 23, 2013. Those reports were in draft form. This portion of the MoA requires the Court to determine the specific Decision Points where DMC occurs. That information is available as shown in **Appendix 5** and that information has been shared with the Points of Contact (PoCs).

Comments

Data collection has not been an issue. Requested information has been provided by Debra Monroe and Shannon Carraway. The RRI information points to Decision Points where DMC occurs and the more extensive analysis done by Dr. Leiber has also helped pinpoint areas of DMC concern.

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. A host of documents were submitted and included in the 2nd Compliance Report dated September 23, 2013.

Comments

Although a number of documents were previously submitted containing a wealth of information, those documents did not constitute an assessment of impact of current policies, procedures and programs. Efforts have been made to meld this assessment with work done by the monthly Points of Contact reports but those reports have not sufficiently accomplished this depth of analysis. OJJDP has provided Technical Assistance relevant to the program inventory with additional assistance scheduled in April 2014. Much work remains if the Points of Contact are going to adequately assess impact of

policies, programs and procedures in these areas. Putting the service inventory into a useable format to help assess DMC and increase diversion options also remains a considerable hurdle.

DMC and Equal Protection

1. DMC Assessment

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

Status

Lisa Hill, DMC Coordinator submitted a Strategic Plan to Reduce DMC on December 16, 2013.

Appendix 6 includes a list of the members of the committee formed to oversee the execution of the strategic plan. **Appendix 6** also includes a document outlining Action Steps relevant to this strategic plan

Comments

It will be important to closely track the efforts and timelines in the Strategic Plan. The DMC area, more than any other, has been struggling with finding a structured, cohesive way to address the problem. The Strategic Plan along with the efforts and reports of the Points of Contact is the best hope of organizing these efforts and making progress in reducing DMC.

DMC and Equal Protection

2. Policies and Procedures

- (a) Within six months of the Effective Date, JCMSC shall revise its policies, procedures, practices, and existing agreements to reduce DMC at each Decision Point along the stages of juvenile justice and to encourage objective decision-making in all departments relating to its delinquency docket. (MoA p. 23)
- (b) JCMSC's revision of its policies, procedures, practices, and existing agreements shall include the following: (MoA p. 23)
 - (i) Collection of data sufficient to evaluate whether the relevant policy, procedure, practice, or agreement results in DMC reduction;
 - (ii) A provision requiring the least restrictive options and alternatives to a detention setting to ensure DMC reductions;

- (iii) Guidelines expressly identifying a list of infractions and reasons for which a Child may not be detained. This list shall prohibit detention for punishment, treatment, to meet the demands of the community, the police, a victim, or school administrators, to provide convenient access to the Child, to arrange for services, to satisfy the demands of the Child's parent(s) or guardian(s), or to facilitate the interrogation of the Child or investigation of the offense;
- (iv) Guidelines expressly identifying the reasons for which a Child may be detained. This list shall include the requirement that the Juvenile Court Magistrates make a determination that there is probable cause to believe that the Child has committed a delinquent offense for which he or she may be detained;
- (v) Training and guidance on the use of existing and new objective decision-making tools; and
- (vi) A requirement that a supervisory authority review all overrides within each department on, at minimum, a monthly basis.

Status

The lack of objective decision making tools has been perhaps the greatest hindrance to insuring consistency of treatment among those youth appearing in Juvenile Court, at least for those cases handled non-judicially. The Detention Assessment Tool (DAT) is the best example of an objective tool utilized at the Court. Evaluation and Referral (E&R) and the Youth Services Bureau (YSB) also use objective scales to aid decision making although these tools are not validated. The 2nd Compliance Report included a Graduated Sanctions Grid and a policy dated August 16, 2013 outlining its use by Probation staff. This Grid would have provided another objective tool. For some reason, implementation of this Grid did not occur until March 2014, six months after the Grid and policy were created.

Comments

The Court has been formally seeking Technical Assistance from OJJDP in the development of objective decision making tools since at least August 2013. **Appendix 7** includes 3 documents. One is a letter from Larry Scroggs dated December 11, 2013 requesting additional time on this section in order to receive technical assistance. The second document is an email from Winsome Gayle with DoJ granting an extension until March 17, 2014. The third document is an email from Jerry Maness, Director of Court Services, requesting a further extension as technical assistance still has not been provided.

Assistance was initially scheduled then cancelled and to date, has not been rescheduled. The importance of objective tools to assist decision making cannot be overestimated. The Court expressed an interest in utilizing the YASI (Youth Assessment Screening Instrument) but decided to wait after receiving feedback from DoJ and OJJDP. I also encouraged the Court not to implement the YASI given the reservations expressed by DoJ and OJJDP. The result has been that the Court decided not to implement the YASI and to await Technical Assistance from OJJDP that has been 8 months (and counting) in coming. This delay has been a tremendous drawback.

Despite the delay in technical assistance, in at least one instance, the Court has been slow to implement change in areas under their control. The Graduated Sanctions Grid discussed above is a

glaring example. The Grid and accompanying policy was submitted in August 2013 but not implemented until 6 months later.

The DMC area is the most challenging portion of the MoA. Greater assistance is needed in developing the necessary tools to address it but the Court must also be more aggressive in implementing changes within their purview that can address DMC.

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

A planned schedule for reassessing policies, procedures, practices and existing agreements should be established to insure this is done on a comprehensive basis. 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

See the status and comments above under: DMC and Equal Protection 2. Policies and Procedures (a) and (b)

Comments

See above

DMC and Equal Protection

3. DMC Reduction: Evaluation and Tools

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

Status

See the status and comments above under: DMC and Equal Protection 2. Policies and Procedures (a) and (b)

Comments

See above

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 was included in the 2nd Compliance Report submitted September 23, 2013.

Comments

The following comment was included in the last Compliance Report submitted September 23, 2013.

“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.”

No formalized evaluation was done of this pilot, consequently the impact of the program is unknown. We don’t know whether officers will simply call in on cases which might be issue a summons or whether the call will prompt the issuance of a summons for cases which previously might have been transported. Much attention has been focused on the need to have MPD involved in the “call in”

program. It is certainly true that MPD must be involved in any large scale effort to reduce transports to the Court. Given the lack of an evaluation it is also true that, even with MPD's involvement, it is unknown whether the call in program will make any difference.

DMC and Equal Protection

3. DMC Reduction: Evaluation and Tools

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

Status

The 2nd Compliance Report submitted September 23, 2013 included a memo that discussed assessment tools, upcoming technical assistance and some existing and planned community partnerships. This appendix also included copies of some current assessment tools used by the Court.

Comments

While a considerable amount of information has been submitted in this area, the challenge remains to use this information to formulate a structured, cohesive plan to inform decision making.

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

Appendix 8 includes an email sent from Herb Lane, Chief Legal Officer of the Court. This email outlines the procedure for conducting a statistical review of transfers as required in the MoA p. 25 B. 3 (e).

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.

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. The most recent monthly reports from the Points of Contact (PoCs) are attached in **Appendix 9**.

Comments

Data is not the problem. Although some additional data needs have been identified, that will always be the case. The problem is in the Points of Contact (PoCs) using this information and drilling down to

determine the causes of DMC and developing recommendations to do something about it. The PoC process is the key to addressing DMC issues but that process has fallen short thus far. The PoCs have not driven this process as was anticipated. Decision Points where DMC exists have been easily identified but the policies, procedures and practices have not been sufficiently examined to drive change. Many of the reports have been weak and many did not even mention DMC which is the purpose of the reports. Efforts are ongoing to revise the PoC process. The success of those efforts is likely to determine the success of DMC reduction efforts.

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 4**.

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 on November 5, 2013 to incorporate feedback received from Facilities Consultant David Roush. The policy finalized as a result of that work is included in **Appendix 10.**

Comments

This policy delineates a Use of Force Continuum, itemizes approved methods of restraint and provides guidance to staff in dealing with situations involving use of force. Detention Administration must 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 11 includes three documents. The first two are Detention Report Cards, spreadsheets of information which includes information on use of force, one spreadsheet for Calendar Year 2013, the second for January and February 2014. The third document is an analysis done of use of force events for February 2014.

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. The Deputy Administrator of Detention who was compiling these reports retired at the end of January. This transition resulted in delays in the reports being prepared.

It is important that policies be developed that guide the preparation of these reports so future delays can be avoided. Discussions have been held about data validation, data integrity and data sharing with staff. It is necessary to develop plans in these areas to maximize the preparation and use of data in managing operations. It is also important when preparing the narrative report to insure any issues with performance are noted and addressed.

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

Suicide policies were revised and those policies were attached in the 2nd Compliance Report which was submitted September 23, 2013. 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 that plays a critical role in suicide prevention. The second Compliance Report also included a copy of the suicide prevention policy for CCS as well as a copy of the medical assessment and receiving screening instruments used by CCS.

Comments

Staff is being trained on a new suicide prevention curriculum developed by Lindsay Hayes, a nationally recognized expert in suicide prevention. This training is taking place in March and April 2014. Staff has been quick to embrace recommendations on suicide prevention and the quick scheduling of this new training curriculum is an example of that proactive approach.

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

The suicide policies address these areas.

Comments

The 2nd Compliance Report submitted September 23, 2013 urged establishment of a review process to insure policy is followed and the above items are done. That recommendation remains the same. It is important to establish strong policies. It is important to train on those policies. It is equally important to monitor and review performance to insure proper implementation of those policies and training. Another recommendation was made in the 2nd Compliance Report to incorporate data on these items into the Report Card. That recommendation should be pursued as well.

A contract monitor has been hired to oversee performance by CCS. Audit items developed by that monitor should be incorporated in the Detention Report Card.

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

Appendix 11 includes the Detention Report mentioned earlier that includes a wealth of data, including information in self-harm.

Appendix 12 includes narrative reports analyzing suicide prevention and suicide prevention screening time data.

Comments

Detention staff should work closely with CCS and the health contract monitor to insure data is accurately gathered and used. Detention is working with CCS on a questionnaire that could be administered by security staff at Intake as a quick suicide screening instrument to insure all detainees are screened within an hour. That proposed screening questionnaire has been submitted to DoJ and Facility Consultant David Roush for feedback. The questionnaire is attached in **Appendix 13**.

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 Annual In-Service training schedule for March/April 2014 which is attached **Appendix 14**.

Comments

Detention Administrators have been quick to incorporate recommendations from Facility Consultant David Roush in developing training for staff. Examples in this year's in-service training program include training on Suicide Prevention based on a newly developed curriculum by Lindsay Hayes, HIPPA training for staff and a new Crisis Prevention Intervention Program (CPI). CCS has also been quick to offer assistance in training for Detention staff.

Establishment of policies/procedures responsive to the Prison Rape Elimination Act (PREA) has also become a point of emphasis. Detention has begun working on draft policies and has explored the possibility of working with qualified PREA auditors to conduct audits of PREA compliance.

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 15 includes a Community Engagement Plan submitted December 12, 2013.

Comments

The plan is superior to prior submissions in that it specifies target audiences, stakeholders and outreach methods. The plan also includes a proposed timeline for activities for 2014. Among other activities, it provides for 5 community meetings to be convened at various locations and focusing on particular aspects of the Court. The timeline of activities also provides a means by which to evaluate the implementation of the Community Engagement Plan.

The MoA also requires the creation of a data dashboard. The Court is working with Shelby County's Information Technology Department to establish this dashboard. This work is lagging behind. The Juvenile Court page on Shelby County Government's website has a link to a "Department of Justice Compliance Page". There is a lot of information that can be found through links on this page but this does not constitute a "dashboard" that makes it neither easy to find nor easy to understand. Work should continue on establishing a dashboard that is both easy to access and informative.

Other aspects of Community Engagement involve the role of Lisa Hill, DMC Coordinator, and the Countywide Juvenile Justice Consortium (CJJC). Lisa Hill has been involved in various community activities both individually and with the CJJC. The CJJC is a group of concerned citizens appointed to help keep the public informed about what the Court is doing and also to give feedback to the Court about what concerns the community might have with the Court. The CJJC has met regularly and has some dedicated members. Craig Willis with the County Attorney's Office has been the liaison with the CJJC. Kathy Kirk-Johnson, also with the County Attorney's Office, assumed that role in March 2014. Lisa Hill has attended public meetings and has shared information about DMC with the CJJC.

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 16 includes an outline of a proposal from Dr. Laura Harris to conduct a community survey. Dr. Harris is working with the Court and OJJDP to develop the research questions, methods and parameters for the project.

Comments

This proposal will establish an initial baseline of public satisfaction with the Court. Funding arrangements will need to be made to insure the survey can be conducted annually as required by the MoA.

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.

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 plan was submitted April 12, 2013 and was included in the 2nd Compliance Plan submitted September 23, 2013.

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 3rd of the compliance reports.

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.