

SHELBY COUNTY, TENNESSEE COMPLIANCE REPORT

NO. 5

of

BILL POWELL

SETTLEMENT AGREEMENT COORDINATOR

(MARCH 23, 2015)

Submitted in compliance with December 17, 2012 MOA with U.S. Dept. of Justice

Civil Rights Division

**SHELBY COUNTY GOVERNMENT
OFFICE OF CRIMINAL JUSTICE COORDINATOR**

TO: Winsome Gayle
Civil Rights Division
Special Litigation Section
US Department of Justice

FROM: Bill Powell
Settlement Agreement Coordinator

DATE: March 23, 2015

SUBJECT: Compliance Report #5 -March 2015

The Memorandum of Agreement (MoA) between Shelby County and the US Department of Justice (DoJ) was entered into December 17, 2012. Page 37 of the MoA requires the Settlement Agreement Coordinator to develop and submit a report regarding compliance with the Agreement every six months until the Agreement is terminated. This is the 5th Compliance Report. It should be clear this report comprises my opinion and assessment of the work in my role as the Settlement Agreement Coordinator. As with previous reports, this report is comprised of three sections in the format below:

Format

1. Narrative summary providing an assessment of compliance with the commitments in the MoA during the period covered by the Report
2. Synopsis of each Substantive Remedial Measure, including page # from the MoA on which the commitment is found. This section will include a summary of each individual commitment in the MoA, a status update on that commitment and comments related to compliance. If documentation has been previously submitted for that item, that will be noted and the prior report can be referred to as needed. This section thus serves as a cumulative record showing the status of each item and referencing prior reports and documentation for those items
3. Appendix of supporting documentation including copies of pertinent policies, memos and other documentation related to each remedial measure and commitment

Narrative Summary

This 5th Compliance Report comes 2 years and 3 months after the MoA was signed. This report follows the election of Judge Dan Michael and substantial changes in the leadership team at Juvenile Court. A great deal has been accomplished since the MoA was signed and progress towards compliance continues to be made.

The MoA includes commitments in Due Process, DMC and Equal Protection, Protection from Harm: Detention Facility and Community Outreach. Below is a short summary of progress in each major area. This brief summary includes identification of good things that have occurred and identification of the main challenges in each area. More detailed comments on each item can be found in the following section -Synopsis of Substantive Remedial Measures.

Due Process

There have been a number of positive developments involving Due Process protections. Cases reviewed by Magistrates indicate defense attorneys are more active in advising clients of their rights and in challenging probable cause. Probation is collecting a wealth of data that can be used to identify needed services and programming for youth. The work done by the Public Defender to develop a clinic program with the University of Memphis is a groundbreaking improvement that can yield a number of benefits. The ongoing development of the Juvenile Defender Unit with the Public Defender's office and the piloting of a post disposition representation project also give reason for optimism.

The major challenge looming in Due Process protections are the structural issues related to the independence of the Public Defender and the Juvenile Defender Panel. Proposals to address these structural concerns have been put forth by both the Court and the Public Defender. It is important that a true collaborative effort take place to develop a consensus plan that addresses all the structural issues in a way that allows for the sustainable independent, ethical and zealous advocacy to take place that was envisioned when the MoA was signed.

Good:

- Samples of cases are routinely reviewed for due process protections by the Magistrates and by Probation. The data from the Magistrates showed consistent improvement in 2014 compared to data from 2013. Indications are that attorneys are present, advising clients of rights and increasingly challenging affidavits of complaint.
- The data also shows only 35% of those youth who have notices to transfer filed end up actually being transferred and magistrates are consistently providing written justifications for those that are transferred to the adult courts.
- Probation continues to provide a great deal of data on a monthly basis and that information provides a lot of information that can potentially be used to improve performance, service and outcomes.
- The Public Defender has worked with the University of Memphis Law School to develop a clinic program that will provide immediate representation for youth and also serve to train and prepare attorneys for juvenile defense practice. This clinic

is expected to become operational in Fall 2015 and is a tremendous accomplishment.

- The Juvenile Defender Unit of the Public Defender's Office is providing representation for about 20% of all appointments in the Court and has begun piloting a program to provide post disposition representation.

Challenges:

- Resolve the structural issues related to the independence of the Public Defender and the Juvenile Defender Panel.
- Review a sufficient number of cases to be confident that data obtained from monthly reviews are representative of the total workload.
- Analyze and respond to the data obtained in the monthly reviews. For example, 38% of the probation conferences were for females. This data suggests more services need to be developed for justice involved females.
- Data also show that children rarely request an attorney (2.5%) even though 18% of them do not admit to the charges for which they face sanctions.
- Develop data for defense function, both Public Defender and the Panel to help assess workload and performance

DMC and Equal Protection

This area continues to be the most challenging and has regressed since the last Compliance Report. This portion of the MoA essentially addresses the question as to whether all children appearing before the Court receive equal protection under the law. This is a very complex question, but a critically important one.

Myriad social issues come into play when determining what may happen with a delinquency case. Some things may be under the control of the Court, others may not, yet the Court is charged with insuring equal protection is provided and disparate treatment is addressed.

There has been some progress. Objective decision tools including the Detention Assessment Tool (DAT), Graduated Sanctions Grid (GSG) and the Youth Assessment Screening Instrument (YASI) have greatly improved the consistency of decision making at various levels of Court interaction. Many efforts have resulted in fewer admissions to Detention, including the call in program with law enforcement. The reduced admissions are a great sign yet disparities in those admissions and in the processes that follow admission continue to exist.

Despite this progress, disparities continue to exist and processes have not been effectively put in place to respond to these ongoing disparities. The Point of Contact process has been ineffective and a key position involved in working with the PoCs went unfilled for seven months.

Good:

- The use of objective decision making tools has greatly improved. The Court uses the Detention Assessment Tool (DAT) to make detention decisions, the Graduated Sanctions

Grid (GSG) to help guide dispositional determinations by Probation, and the Youth Assessment Screening Instrument (YASI) has helped guide service related decisions.

- A validation study on the DAT has been conducted by the University of Memphis.
- The phone in program with law enforcement is operational. This program allows law enforcement officers to phone in to Juvenile Court for information as to whether the youth should be transported or if a summons might be more appropriate.
- Work on the Strategic Plan for DMC reduction continues.
- The monthly Point of Contact reports have shown some recent improvement

Challenges:

- The latest Assessment Report by Dr. Leiber showed that according to the RRI data, disparities have grown in 5 of the 8 Decision Points since his last report was done
 - RRI data shows minorities are:
 - Less likely to be Diverted
 - More likely to be Detained
 - More likely to be Petitioned to Court
 - Less likely to be placed on Probation
 - More likely to receive a Secure Placement
- It should be noted the RR! shows disparities exist, they do not show why there is a disparity
- The resignation of Debra Monroe resulted in numerous delays with the submission of the Point of Contact reports. Ms. Monroe's position was vacant for seven months.
 - The Point of Contact process has had no discernible effect on DMC reduction. The Point of Contact reports, with some exceptions, have provided little in the way of analysis of DMC or in recommendations for how it might be reduced. The reports have been problematic even when data has been available.
 - The MoA requires Juvenile Court to assess the impact of current policies, procedures, and programs on DMC levels and measure the availability of a number of programs and services as well as an assessment of agreements with law enforcement, schools, social services agencies and cities and towns within Shelby County. As noted a year ago, this work has not been done.
 - The Graduated Sanctions Grid and the YASI need to be validated for this jurisdiction.
 - The call in program should be evaluated for outcomes including effect on DMC.

Protection from Harm: Detention Facility

The Detention Center continues to be a bright spot for the Court. The Detention Bureau was quick to develop a "Report Card" which provided a great deal of data that could be used to improve operational performance. Medical and mental health services provided by CCS have been extremely beneficial to the youth in the Detention Center and suicide prevention efforts have been greatly improved. The recent ACA audit was very positive. Some concerns still remain with Detention. The PREA policy needs to be finalized and implemented. Use of force needs to continue to be monitored closely, particularly the use of the non-physical hierarchy of responses to situations in Detention. There have been discussions about a move to Positive Behavior Management System which is a complex undertaking but can yield extremely good results. Population trends are also a concern as indications are that population may grow and the

nature of youth needs in the Facility could change with lengthier stays in Detention. Finally, the transition of the Detention Center to the Sheriff's Office could yield many positive outcomes but planning for that transition needs to begin immediately to insure minimal disruption for staff and youth.

Good:

- The Detention Center recently was audited by ACA and received an excellent reports
- The Detention Report Card continues to provide a wealth of information that can be used to track performance trends
- The DAT has been validated by the University of Memphis
- Security staff and the Health Department meet monthly with the medical provider to discuss performance audits
- Detention admissions in January/February 2015 declined by 6% compared to the same period in 2014
- The call in program has been implemented which is expected to further decrease admissions to Detention
- It appears control of the Detention Center will transition from Juvenile Court to the Sheriff's Office in July 2015

Challenges:

- Data validation must be done to insure confidence in the information being reported and relied upon for management purposes.
- PREA policies need to be finalized and implemented, staff trained and performance audited
- Admissions declined 6% in January/February 2015 yet the average # of bed days rose 69%. This data presents a number of implications for Detention that need to be addressed from creation of more pre-disposition alternatives to programming within Detention.
- There is a concern that the hierarchy of non-physical alternatives is not utilized to a greater extent
- The Positive Based Management System is a large undertaking that will require a "culture shift" in the Detention Center staff
- Items from the health care audits should be incorporated into the Detention Report Card so that trends can be monitored
- Transition teams and a transition plan should be established immediately to prepare for the movement of Detention to the Sheriff's Office.

Community Outreach Program (COP)

The Court is involved in a number of community activities but not in a planned or structured way. A Community Engagement Plan was adopted in December 2013 that provided structure to the myriad community activities in which the Court is involved and set a timeline for activities. That plan called for increased speaking engagements with schools and more public meetings but unfortunately that plan was not followed nor has a new plan been put forth.

The MoA requires a Data Dashboard. Phase I of the Data Dashboard has been implemented with work continuing for two additional phases .

The MoA required the Court to conduct or retain an individual to conduct a community survey by December 2013. The Court has been working with OJJDP to do the survey but there have been substantial delays related to OJJDP transitioning to a new technical assistance provider.

The CJJC was formed in early 2013 and the Court still has yet to receive any written input from them. The CJJC has recently had a change in leadership and they have discussed the need to provide input to the Court. Assistant County Attorney Marlinee Iverson is the third Attorney assigned by the County to work with the CJJC since March 2014. Ms. Iverson has also pushed the CJJC to provide written feedback to the Court. I have attended several meetings of the CJJC and the need for feedback has been discussed at each one, but none has yet been received.

Good:

- A public meeting was held in January 2015 and was well attended. There was good audience involvement and that meeting may have been the best public meeting since the MoA was signed
- Phase I of the Data Dashboard became operational in February 2015. Two additional phases are planned
- Court staff are involved in a large number of community interactions as documented in the monthly Interagency Reports
- The County Attorney assigned to the CJJC and the new Chair of the CJCC are both pushing processes by which the CJCC will provide feedback to the Court

Challenges:

- A Community Engagement Plan needs to be developed and followed to guide the activities of the Court
- Feedback from the CJJC to the Court is needed if the Court is expected to be responsive
- The community survey needs to be conducted

Conclusion

It has been 27 months since the MoA was signed. In that time there has been a great deal of progress, particularly in policy development, training and data collection. Since the last report the Court has been transitioning with the election of Judge Dan Michael who has taken an active role in pushing changes for the Court. He and his leadership team have the opportunity to make some important changes to move the Court forward

The biggest challenges looming for each area of the MoA are:

1. Due Process
Resolve the structural issues related to insure sustainable independence and zealous advocacy of the Public Defender and the Juvenile Defender Panel
2. Equal Protection

Make the Point of Contact process work to serve as a focal point of DMC reduction for the Court

3. Protection from Harm
Get validation of data done and establish a transition team and plan to insure a smooth transfer of the Detention Center to the Sheriff's Office
4. Community Outreach
Develop a written, structured plan of outreach to guide the numerous community interactions and insure those efforts work to inform the community of the Court's activities and increase the confidence of the community in the juvenile justice system

The Settlement Agreement signed by the County, Juvenile Court and DoJ represent more than simply a list of items to check off. It is an ambitious document that sets extremely high standards for a juvenile justice system. The Court has consistently expressed the desire to comply with the Settlement Agreement and to be a model for the Nation.

It is not easy to meet those standards and it certainly is not a quick process. The Court has worked hard to run the daily operations of a large court system and make needed improvements in a number of areas. The Court has a rejuvenated and dedicated leadership team. By working collaboratively with the Court Monitors and Facility Consultant as well as the DoJ attorneys and other stakeholders the Court has the opportunity to become what everyone aspires to be, a national leader in juvenile justice.

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:
 - 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. Completion of these forms would provide data that would be put in a spreadsheet and that would be used for the reviewer to assess performance and compliance with Due Process requirements. Spreadsheets would be completed on samples gathered by Judicial for cases that appeared in Court and by Probation for cases handled non-judicially. It was determined early on that a narrative analysis would accompany the spreadsheet. The purpose of the analysis would be to document the reviewer's assessment of the data and provide direction for any necessary changes or improvements.

These forms have been used in reviewing samplings of cases as required. Comments below will discuss reviews by Judicial staff and then reviews by Probation staff

Comments

Judicial Staff reviews:

Spreadsheets have been developed to aggregate information from a sample of case file reviews in order to track performance trends. The intent has been to use spreadsheets to report data and attach a narrative to discuss and demonstrate an analysis of that data.

Appendix 1 includes the spreadsheet covering aggregated data from calendar year 2014. Appendix 1 also includes a copy of the spreadsheet from calendar year 2013 which allows a comparison of results between the two years. It should be noted that Judicial does not provide narratives accompanying the spreadsheets to the Settlement Agreement Coordinator. Narratives are to be provided to the Due Process Monitor Sandra Simkins.

The spreadsheet reveals much about the work being done to protect Due Process. Some interesting excerpts include:

At Detention Probable Cause

- Attorneys were present at Detention Hearings 100% of the time in cases sampled for both 2013 and 2014
- Affidavits of Complaint were available 95% of the time in 2013 and 100% of the time in 2014
- Affidavits were contested by defense attorneys 81 % of the time in 2014 which was an increase over 2013 in which they were contested only 40% of the time. This is very encouraging although it should be noted that the % of Affidavits contested has declined in the past three months of 2014
- There was a statement of Attorney regarding Notice & advisement of rights 100% of the time in 2014 compared to 63% of the time in 2013
- Rights form by Magistrate was completed 100% of the time in 2014 compared to 75% of the time in 2013

Adjudicatory Hearing

- Attorney present 100% of the time for both years
- No amended petitions were filed
- 17% of the cases resulted in a trial in 2014 compared to 19% in 2013
- with 79% resulting in a waiver or admission
- Plea and rights form was completed 100% of the time in 2014 compared to 93% in 2013

Transfer Hearing

- In 2014 there was an average of 15 "Notices of Transfer filed" per month compared to half that number in 2013, an average of 7 Notices of Transfer"
- In 2014 the spreadsheet shows 184 "Notices of Transfers filed" but only 65 actual juveniles transferred. This means only 35% of those with notices filed ended up being transferred.
- Written rationale for the transfer was completed 100% of the time in 2014.
- The spreadsheet shows the Defense Counsel presented evidence opposing Probable Cause or in support of continued juvenile jurisdiction 53% of the time and waived evidence 47% of the time in 2014

There are a lot of impressive indicators in these numbers. With the exception of transfer cases, the data is based on a sample of cases reviewed. The reviews document that protections of due process are consistently present and those protections have improved during 2014. The transfer data demonstrates that a great majority of "Notices of Transfer" do not actually result in a youth being transferred into the adult system.

One area of possible concern is the number of cases being reviewed. The spreadsheet shows an average of 14 cases per month sampled on Detention Probable Cause in 2014. This is a decline from 19 cases per month in 2013. In December 2014 only 6 cases were reviewed. If this data is to be used to help evaluate the due process performance of the Court it is important that a sufficient number of cases are routinely reviewed to insure confidence that the data is representative of performance as a whole.

Probation reviews

Probation staff reviews a sampling of 40 cases per month. They do a spreadsheet detailing the results of those reviews and complete a narrative which explains the data and provides an analysis. They began completing this spreadsheet in March 2014. The spreadsheet for calendar year 2014 is included in **Appendix 2**. **Appendix 2** also includes the spreadsheet for January 2015 and the narratives submitted in January (analyzing December's data) and February (analyzing January's data).

The spreadsheets provide a great deal of useful information for Probation. They are able to document a variety of information including the frequency of an attorney being present, relationship of the adult accompanying the child at the probation conference, and demographic information of the children attending probation conferences. The spreadsheet also provides information about the level of the charges and the type disposition as well as which services are recommended. The narratives being provided offer a good synopsis of the data for each month reviewed.

Although this data and these narratives are a great advancement over what was being done before the MoA was signed, more can be done. The narratives should provide more than just a summary or recitation of the data. The data often contains key information that could be discussed with staff and used to advance the work of the Probation staff. For example, 38% of the probation conferences in 2014 reviewed involved female youth. 41% of the conferences in January, 2015 involved a female offender. The number of females being brought in for probation conferences seems to be an extremely high percentage of females getting involved in the justice system even if the numbers brought into Detention remain low. This begs the research question as to why such a large number of females are becoming justice involved. It also presents an opportunity. Are any special programs or services being developed to address this population?

Another concern illustrated by the data involves the number of children who choose not to request an attorney. In 2014 only 4% of the children had an attorney at the Probation conference. In January 2015 only one of the 40 cases sampled involved an attorney being present. About 18% of the youth do not admit to the charge in a probation conference. Procedures call for the case to be petitioned into Court if the youth does not admit to the charge unless it is a minor offense. Some type sanction may be levied for minor offenses even if the child does not admit to the offense. Thus, some of this 18% are leaving Juvenile Court with a record even though they did not admit to the charge and did not have an attorney involved.

One of the strengths of the Juvenile Court system is the number of cases handled non-judicially. This is truly a great thing. The down side though is the concern for a true understanding of collateral consequences children face when they are sanctioned. Court staff explains the collateral consequences to the child but there is a concern as to whether the child truly understands these potential consequences given the relatively high number that accept sanctions without admitting responsibility for the charge. This data could also be useful as the Juvenile Defense function attempts to provide representation at the pre-petition stage. Again, this is admittedly a double edged sword. It is hopeful a petition and Court can be avoided but it is also essential for a child to have a full understanding of their rights and the ramifications of their decisions.

It is these types of important questions that can be identified through a full analysis of the data. The last compliance report suggested it would be a good idea to share the spreadsheet data in staff meetings and brainstorm about what they mean and what can be done in response. That suggestion is worth repeating.

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

I. 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 comments 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

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

Due Process

I. 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

The MoA suggested Juvenile Court "consider developing a partnership with a non-profit or academic organization to provide advice and support to Children during the probation intake process." Although a suggestion and not a requirement the County and the Court took this suggestion seriously. In his report titled "Report to the Due Process Monitor Regarding Juvenile Defender Services" dated February 27, 2015, Public Defender Stephen Bush described a partnership with the University of Memphis Law School to implement a specialized juvenile delinquency clinic. Mr. Bush worked for 18 months in planning, seeking technical assistance and acquiring funding for this clinic.

Comments

In his report, Mr. Bush states this clinic, which is in active development and is expected to become operational in 2015 "will be the first specialty delinquency law school clinic program informed from its inception by the National Juvenile Defense Standards and the Juvenile Training Immersion Program." This is a remarkable accomplishment that has the potential to provide immediate support in the defense of youth in the juvenile justice system and to provide a training ground to better prepare a new generation of attorneys for the specialized practice of defense in the juvenile justice system.

Due Process

I. 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 was developed and conducted for Probation staff. A video of that training was made to use for routine training of new staff in Probation.

Comments

This video was well done. Sandra Simkins indicated training should be done for all new probation staff following the initial training in July 2013. Documentation for training of new staff since that time has been requested by not yet received. Administrator Barry Mitchell has indicated the training will be provided to all new staff by the end of this month (March 2015).

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

Due Process

I. 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 1⁵¹ Compliance Report dated April 2, 2013.

Due Process

I. 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 MoA requires the County to create a responsibility for the supervision and oversight of juvenile delinquency representation to the Public Defender's Office and to support the establishment of a specialized unit for juvenile defense. The Juvenile Defender Unit in the Public Defender's Office began accepting cases in February 2014. In his report titled "Report to the Due Process Monitor

Regarding Juvenile Defender Services" dated February 27, 2015, Public Defender Stephen Bush reported the Public Defender Unit was appointed to 480 complaints or 20% of all appointments. A pilot working on post disposition representation began in December 2014. The current staffing level for the Juvenile Defender Unit is;

- 6 Attorneys
 - 1 Supervising Attorney
 - 1 Attorney serving as Special Assistant for juvenile services
- 2 Investigators
- 2 Social Workers
- 1 Clerical Specialist
- 1 Director for systems of care

High quality training has been provided to members of the Public Defender's Office as well as private attorneys through the Juvenile Training Immersion Program (JTIP). Insuring sufficient administrative support, reasonable workloads and sufficient resources for defense is an ongoing challenge. One challenge is these things are difficult to evaluate.

Work has been done to develop practice standards but the lack of an adequate information system adds to the difficulty of measuring whether those standards have been met. Progress was being made by Panel Coordinator, Marilyn Hobbs, in gathering information to help assess work being done by Panel attorneys through an automated system developed by the Shelby County IT Department. Ms. Hobbs' replacement, Jane Sturdivant has continued efforts with Panel attorneys to assess their work but results at this time are unknown.

Comments

The MoA requires both the County and the Court to "independent, ethical and zealous advocacy" which is a difficult thing to measure. Both the Public Defender and the Court have worked on ways to meet this obligation. The Public Defender's efforts include the creation of the Juvenile Defender Unit, development of practice standards, provision of training and development of the coming Clinic Program with the University of Memphis Law School. The Court has worked to develop plans for insuring independent, ethical, and zealous advocacy through revisions of the Panel system which is currently providing representation for 80% of the complaints in Juvenile Court.

It is hoped that the Court, the County and other stakeholders can merge these efforts into a single comprehensive plan for the juvenile defense function. To this end, a meeting with key parties was held in December 2014 and those efforts are continuing.

Due Process

I. 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 section of the MoA is a corollary to the section above and speaks to the responsibility of the Court in insuring the provision of independent, ethical and jealous advocacy. Judge Michael has developed a proposal for revisions to the Panel system to address this portion of the MoA. The Panel is currently providing representation for 80% of the cases before the Court and, given current funding mechanisms it is expected the Panel system will continue to be relied upon heavily for the foreseeable future.

Comments

As stated in the section above, Judge Michael has submitted a plan to revise the Panel system and Public Defender Stephen Bush has submitted a report addressing provision of defender services, capacity, workload controls and independence issues. The ideal situation would be to merge these efforts into a single plan for the provision of independent, ethical and jealous advocacy that can be supported by all key stakeholders in this jurisdiction. Ultimately this effort is the key to meeting the due process concerns expressed in the MoA and in meeting the goals of Juvenile Court and Shelby County to make this Juvenile Court the best it can be.

Due Process

1. Policies and Procedures

(t) 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.

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

U) 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.

Due Process

1. Policies and Procedures

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

Comments

The possibility of having the Bench Book available on line had been previously discussed. Ultimately, the Court determined they would put the policies on their website with links to applicable cases. Hard copies of the Bench Book are available at the Court.

Due Process

I. 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 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.

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

A memo from Juvenile Court Clerk Joy 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. Recordings are available and are of good quality.

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

An updated training schedule is maintained by Ms. Brenda Johnson, HR Manager. That schedule is included in Appendix 3.

Comments

Juvenile Court staff continues to take advantage of a great number of training opportunities. The attached training schedule illustrates the variety of training in which the Court is engaged and the great number of staff receiving the training. Efforts continue to be made to coordinate training initiatives with JDAI, OJJDP and others.

DMC and Equal Protection

1. DMC Assessment

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

Status

Data is available at each decision point.

Comments

Basic data has been collected. It has been suggested that as the Points of Contact work on DMC issues they should be involved in identifying other data collection needs that may be helpful in informing their work.

DMC and Equal Protection

I. 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

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

Equal Protection Monitor Mike Leiber has submitted Assessment Reports with his bi-annual monitoring reports. Those Assessment Reports provide RRI data and a multivariate logistic regression analysis.

Comments

Below are comparisons of the RRI from 2009, 2013(Jan-June) and 2013 (July-Dec) for the 8 Decision Points. This information was included in the last Compliance Report in September 2014.

<u>Decision Point</u>	2013 (July - Dec)	2014 (Jan - June)
Referral to Juv Ct	4.33	3.95
Cases Diverted	0.86	0.89
Cases - Secure Detention	1.37	1.96
Petitioned	1.23	1.51
Delinquent Findings	1.09	1.09
Probation Placement	0.99	0.93
Secure Placement	0.96	1.77
Transfer	*(insufficient #s)	*(insufficient #s)

The data in Dr. Leiber's Assessment report shows disparities have grown (as measured by RRI) in 5 of the 8 Decision Points. The data show that in the first half of 2014 minorities are:

- less likely to be diverted ,
- more likely to Detained ,
- more likely to be Petitioned to Court,
- less likely to be placed on Probation and
- more likely to receive a Secure Placement

It should be kept in mind that the RRI does not show reasons for the disparities, simply that a disparity exists. Monitor Dr. Mike Leiber is conducting more in-depth statistical analyses of all of these areas which should help inform future reduction efforts. These statistics show the largest disparity remains with law enforcement but it also shows that disparities in other areas have grown slightly in the past year. It is clear that greater action must be taken in response to this data.

DMC and Equal Protection

I . 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 2^od Compliance Report submitted September 23, 2013.

Comments

There has been a staffing issue since Debra Monroe resigned in August 2014. Ms. Monroe had done the bulk of the statistical reporting on RRI rates. Upon her resignation the Court contracted with Ms. Monroe to continue providing data and analysis until her position could be filled. Since that resignation there have been numerous delays with information and analysis resulting in late reports from the Points of Contact. Ms. Monroe's position is scheduled to be filled in March 2015, seven months after her departure. It is not known how long it might take her replacement to get up to speed on the collection, evaluation and reporting requirements needed for this effort. Data collection had

been a strong point for the Court in this area but has taken a considerable step backwards in this reporting period.

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

Points of Contact have been designated and have submitted reports but the reports have been frequently late due to data and analysis issues discussed in the section DMC and Equal Protection 1.(c) above. The Point of Contact reports vary in the quality of their data provision and analysis. Many reports have few recommendations for DMC reduction and those with recommendations often do not show follow up or pursuit of those recommendations. Another issue seems that the Points of Contact have been bogged down in data and statistics to the detriment of using their excellent experience and work knowledge to identify work processes that might actually help reduce DMC. Prior to the recent problems with data collection, there has been a great deal of data available but what has been lacking in this process is viewing work processes in light of that data to consider changes that may reduce DMC. Overall, at this time the Points of Contact process has had no discernable effect on DMC reduction.

- (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. Information from Juvenile Court and from Dr. Leiber's Assessment Reports has provided ample information about where DMC occurs.

Comments

Data collection has not been an issue. Requested information has been provided by Debra Monroe and Shannon Caraway. Notwithstanding Debra Monroe's departure, information has previously provided that points to Decision Points where DMC occurs and the more extensive analysis done by Dr. Leiber has also helped pinpoint areas of DMC concern. Analysis of this information by the designated Points of Contact continues to be limited.

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

The comment below was originally included in the Compliance Report submitted in March 2014. The comment was repeated in September 2014. It is being repeated here in March 2015. There has been no significant progress made since the initial comment was made a year ago.

"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 4 contains an update on the strategic plan from DMC Coordinator Lisa Hill

Comments

The update provided by Lisa Hill enumerates a number of activities from a variety of partners related to DMC reduction. The update cites progress or lack thereof in various action steps in the Strategic Plan. action following comment was made in the last Compliance Report. The Strategic Plan along with the efforts and reports of the Points of Contact continue to offer 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

There has been much progress in the utilization of objective decision making tools. The Detention Assessment Tool (DAT) has long been in use by Detention to insure objectivity in the detention decision. A recent validation of the DAT completed by the University of Memphis showed the DAT was effective in identifying which youth could be safely released into the community.

The Graduated Sanctions Grid used by Probation has done much to provide consistency in determining appropriate non judicial dispositions.

The YASI was piloted in the Fall and full implementation followed training in September.

Comments

This continues to become a strong point for the Court. Validation of the DAT has done much to give credence to the use of that tool. Equal Protection monitor Mike Leiber is suggesting local validation for the Graduated Sanctions Grid (GSG) and the YASL. The Court is exploring how that might be done. There is some concern by private attorneys about the use of the YASL. They contend there are problems with several of the questions in this tool and how information may be used to the detriment of their client. One way to address these concerns may be to more clearly spell out the use of the various tools. For example, the GSG could serve as a pre-disposition tool and the YASI as a post disposition tool to help identify client needs and resources once a disposition has been made. This type usage might mitigate some of the defense counsel concerns regarding the YASL. The implementation of objective decision tools has been a noteworthy advancement for the Court. As these instruments are used it will be important to assess their impact, if any, on 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 should have begun in 2014.

Comments

There is still no indication this reassessment has begun . The last two Compliance Reports (March and September) suggested a planned schedule for reassessing policies, procedures, practices and existing agreements be established to insure this is done on a comprehensive basis. I would again suggest Technical Assistance will likely be needed to meet 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

This program began in December 2014. 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. A MoU has been signed with the Memphis Police Department (MPD) which would greatly expand this program. MPD has developed a policy for the program which is included in the 4th Compliance Report dated September 23, 2014.

Comments

There is a great deal of hope this program will result in a substantial reduction in the number of youth physically transported by law enforcement to Juvenile Detention. Juvenile Court has reported they are tracking numbers which will allow an evaluation of the impact of the call in program. Outcomes should be monitored to gauge the reduction in transports and also to examine possible effects on DMC.

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

The Court is engaged with JDAI in a number of efforts aimed at increasing capacity of various diversion programs. The population in Detention has increased due to an increase in the length of stay for youth in the facility. According to the Detention Report Card, the number of youth admitted to

Detention declined by 6% in January/February 2015 compared to 2014. but the average number of bed days increased by 69% over the same period! This type increase has a number of implications for Detention and emphasizes the importance of the development of pre-disposition alternatives to Detention.

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

The 3rd Compliance Report, dated March 21, 2014 included an email sent from Herb Lane, Chief Legal Officer of the Court which outlined the procedure for conducting a statistical review of transfers as required in the MoA p. 25 B. 3 (e).

Tom Coupe submitted a memo regarding "Transfers of Juveniles with Burglary Charges" in December 2014. That memo is attached in Appendix 5.

DMC and Equal Protection

3. DMC Reduction: Evaluation and Tools

- (t) 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

See the comments above in DMC and Equal Protection 1.(c)

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 on these management reports. The most recent monthly reports (covering January 2015) from the Points of Contact (PoCs) are attached in Appendix 6.

Comments

See the comments above in the section DMC and Equal Protection 1. (e)

DMC and Equal Protection

3. DMC Reduction: Evaluation and Tools

- (h) On an annual basis, JCMSC shall evaluate and revise all objective decision-making tools listed above to minimize the extent, if any, to which the tool uses racial or ethnic differences (or proxies for racial and ethnic differences) as a basis for decision-making. (MoA p. 26)

Status

The number of objective tools being used has increased. The DAT was recently validated. The YASI and Graduated Sanctions Grid have not been locally validated.

Comments

The Court discussed the possibility of having Mark Soler, through JDAI, arrange a validation of the Graduated Sanctions Grid but that did not work out. The YASI is a validated tool, but as Mike Leiber suggested in his recent monitoring report, it needs to be validated for the local population and purpose for which it is being used by the Court. The Court has indicated they may seek funding for validation purposes in the 2015-2016 budget which takes effect in July 2015.

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, programmin g 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

Training efforts have been extensive. An updated training schedule is maintained by Ms. Brenda Johnson, HR Manager. That schedule is included in Appendix 3.

Comments

Development of training plans is ongoing. Attempts have been made to coordinate training efforts with JDAI and OJJDP. Problems with delays in training provided by OJJDP were discussed in the last Compliance Report in September 2014. Those delays still remain although there are some signs that may change with the new TA provider arrangements being completed by OJJDP.

Protection from Harm: Detention Facility

I. 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. 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. That policy was included in the 3rd Compliance Report dated March 21, 2014.

Comments

The Detention Bureau still needs to finalize its PREA policy. This remains a critical deficiency. The Court has been working with consultant Steve Jett to provide Technical Assistance in writing and implementing an effective PREA policy. This policy needs to be finalized and implemented and the staff needs to be trained in its use.

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 7 includes the Detention Report Card for 2014 and the Report Card for 2015 both of which include spreadsheets of information, including use of force.

Comments

The Report Card data contains a great deal of important management data on security issues including information on Use of Force. The Use of Force data show that the rate of Use of Force for 2015 is roughly the same as that in 2014. One item of particular concern is the item "% of time Hierarchy of non-physical alternatives used". A low % in this item is indicative of two things: a) either the staff failing to attempt non-physical de-escalation techniques in response to problem behavior or b) the presence of a high number of spontaneous acts by youth which require an immediate physical intervention by staff. While the failure to use non-physical alternatives is clearly problematic, a high number of spontaneous acts by youth requiring physical interventions could also be problematic. That situation could indicate staff does not respond to tense environments thus allowing them to quickly escalate into violent acts by youth or it could be indicative of poor staff/youth relationships in which

youth may try to resolve problems themselves rather than relying on staff. In any event, this Use of Force indicator is one that bears close monitoring.

The Detention Report Card also shows that admissions to Detention have declined 6% in the first two months of 2015 compared to the same period in 2014. Although that is encouraging, the Report Card also shows the # of Bed Days has increased from 1133 to 1912, a 69% increase! This is due to an increased length of stay and could have several implications for Detention. This indicator should be monitored closely.

Discussions continue to be held about data validation, data integrity and data sharing with staff. Validation of the Report Card data is critically important. The Detention Bureau continues to surpass the rest of the Court in collecting and using data for management purposes. It is imperative that there is a high level of confidence in the data being reported for this management to be effective.

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 was trained on a new suicide prevention curriculum developed by Lindsay Hayes, a nationally recognized expert in suicide prevention. This training took place in March and April 2014 and is documented in Appendix 3. The training continues to be an important part of annual in-service training sessions.

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 I⁵¹ 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

A contract monitor has been hired to oversee performance by CCS. The audits are discussed at monthly meetings that include CCS, Detention, Court Administration and Health Department staff. The audit items developed by that monitor should be incorporated in the Detention Report Card so that trends can be identified and discussed with both security and medical staff.

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 7 includes the Detention Report Card mentioned earlier that includes a wealth of data, including information on self-harm.

Comments

CCS and Detention staff generally works well together to quickly screen and respond to issues faced by the youth in Detention. Regular audits are done by Shelby County and monthly meetings are held to discuss the results of those audits.

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

Staff has been trained. Documentation is available in the training grid attached in Appendix 3.

Comments

Detention Administrators continue to be responsive in incorporating recommendations from Facility Consultant David Roush in developing training and revising policies.

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

There is a lot of Court related activity in the community but there is no Community Engagement Plan guiding the activities.

Phase I of the Data Dashboard became operational in February 2014. Two other phases are planned.

Public meetings continue to be held every six months. The most recent public meeting held in January 2015 was well attended and productive.

The Juvenile Justice Consortium continues to meet but has not yet provided feedback to the Court to which the Court can respond.

Comments

Appendix 8 includes an Interagency Report for February 2015 submitted by the Court that includes community related activities engaged in by the Court and Court staff. These reports are done monthly. It is clear there is engagement with the community. The issue is that engagement does not seem planned. It is also unknown whether that engagement is succeeding in improving Court and Community relations. A Community Engagement Plan was included in the March 2014 Compliance Report. That report specified target audiences, stakeholders and outreach methods. Unfortunately the plan ceased to be followed in July 2014. To date, no updated plan has been submitted.

The CJJC needs to provide feedback to the Court. The CJJC has recently had a change in leadership and has had another change in the County Attorney representative assigned to work with the CJJC. The new Chair of the CJJC has expressed to the group the need to provide feedback and input to the Court. The current County Attorney representative, Marlinee Iverson, has also actively encouraged the CJJC to provide feedback to the Court and has developed forms to facilitate that purpose. The CJJC was formed in early 2013 and has gone two years without providing any type of written report to which the Court can respond. The CJJC was created to serve as a conduit through which to exchange information between the Court and the public. That purpose is a useful one but has yet to be filled.

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

The survey has not been done.

Comments

Dr. Laura Harris completed preparatory work to conduct a community survey about a year ago with the understanding the costs for the survey would be borne by OJJDP. Delays resulted from changes with OJJDP and their technical assistance provider leaving questions about the survey and other issues that continue to linger. There have been some recent indications that things are about to get back on track but at this point that remains to be seen.

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

- I. 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 5th of the semi-annual 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.

