

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

**Honorable Dan Michael
Presiding Judge, Memphis-Shelby Juvenile Court**

**Honorable Mark H. Luttrell, Jr.
Mayor, Shelby County, Tennessee**

**Jina Shoaf
Assistant County Attorney**

**FROM: Sandra Simkins
Due Process Monitor**

DATE: December 22, 2015

RE: Compliance Report #6—October 2015

Juvenile Court Memphis Shelby County (Juvenile Court) entered into a Memorandum of Agreement (Agreement) with the United States Department of Justice Civil Rights Division (DOJ) on December 17, 2012. According to the Agreement, compliance shall be assessed by two monitors and a facility consultant. I was named the Due Process Monitor and have subject matter expertise in the area of due process and juvenile delinquency. The sixth regularly scheduled compliance review and site visit occurred October 5, 2015 through October 10, 2015. This report evaluates the extent to which Juvenile Court has complied with each substantive provision of the Due Process sections of the Agreement.

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Executive Summary

While many significant improvements have been sustained,¹ the challenge of creating an independent defense bar remains. I acknowledge the progress and commitment demonstrated by many individuals, and I commend the Mayor for establishing the Public Defender as a separate Division of Defender Services, and also for clarifying the role of the Public Defender as the appointing and removing authority for assistant public defenders. These steps are significant. However, I have concerns about how the Agreement is proceeding in the key area of creating a comprehensive plan for an independent defense bar. In the past year the unwillingness to engage key stakeholders in collaboration after repeated requests is puzzling and has created delay.

The following challenges also remain, including: 1) the inability of defense attorneys to obtain certain court orders, and 2) the lack of sufficient basis for affidavits of complaint.

For this reporting period, the following additional improvements are new and noteworthy: 1) transfer numbers have continued to decline for the sixth straight year, 2) the probation department made a successful downward adjustment to the graduated sanctions grid, 3) Court staff has held monthly meetings with juvenile defenders to address obstacles to defense practice, 4) recent appeals and innovative disposition plans are the result of the Public Defender Juvenile Unit's team based practice, and 5) the Public Defender Juvenile Unit has increased capacity to handle more cases.

Finally, I learned that Memphis youth sent to Middle Tennessee Juvenile Detention Center, a DCS treatment facility, can be held for months without access to an accredited education program, which violates numerous educational rights. While this important issue is outside of the provisions of the Agreement, I am very pleased to report that Juvenile Court has taken steps to resolve the issue.

Overall, of the 55 Due Process Provisions assessed pursuant to the MOA, Juvenile Court's compliance status is as follows:

¹ Many positive developments I mentioned in compliance report #5 have been sustained, including: 1) sustained implementation of new court policies over two years, 2) the continued success of the probation department, including the thorough training of newly-hired probation officers, and the success of the graduated sanctions grid, 3) the leadership of Dr. Tucker-Johnson in Clinical Services which resulted in high quality psychological evaluations, 4) the planned academic partnership between Juvenile Court and the University of Memphis School of Law, 5) the overall decrease in the number of youth waived to adult court, 6) the data collection systems implemented by the juvenile defender panel coordinator, and 7) the continued success of the Shelby County Public Defender Juvenile Unit, with increased capacity on the horizon.

Compliance Standards	April 2013	Oct. 2013	April 2014	Oct. 2014	April 2015	Oct. 2015	
Substantial Compliance	0	0	0	24	38	43	
Partial Compliance	1	26	44	23	16	10	
Beginning Compliance	25	17	10	5	1	1	
Non Compliance	3	0	0	1	0	0	
Insufficient Information/pending	5	2	1	2	0	1	
Total # of Due Process Provisions in Agreement	34	45	55	55	55	55	

Definitions regarding compliance standards are found in the “Methodology” section of this report.

Challenge of Creating A Comprehensive Independent Juvenile Defense System

1. Background

The Agreement states as follows:

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:

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; [*emphasis added*]

(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:

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; [*emphasis added*]

The focus on independence is clear from the above section that the Agreement. The Agreement also assigns responsibility of the supervision and oversight of delinquency representation to the Public Defender. Mayor Luttrell’s leadership, resulting in the creation of a separate division for the Public Defender, out from under the County Attorney is promising. I wish to commend the Mayor for his important contributions and encourage him to maintain his commitment for the considerable remaining challenges.

2. Status of Comprehensive Plan

As mentioned in several previous compliance reports, the independence of the defense function is a foundational issue of the Agreement. This continues to be the greatest challenge. I am pleased that the County and the Court have remained in dialogue and are attempting to meet the terms of the Agreement. However, since my last compliance visit in April of 2015, requests to engage in meaningful and productive stakeholder collaboration have not been realized in an effective manner. Given the language of the Agreement, and repeated correspondence to address the issue it my opinion that the Public Defender is being underutilized in this important process area.

In a May 21, 2015 letter, the DOJ references previous letters² and reiterates the need for collaboration. This is the third letter in which the DOJ specifically requests collaboration. Since the last compliance report, the County has retained David Carroll, Executive Director of the Sixth Amendment Center, as a consultant. Individual meetings have been conducted between Mr. Carroll and select Shelby County stakeholders. During these individual meetings the possibility of a single-agency, independent commission approach to defender services was explored. Unfortunately, between May 21, 2015 and October 5, 2015 involvement of the Public Defender in meaningful collaboration has been minimal.

I am pleased that the County has engaged David Carroll for technical assistance. At this point I understand that it is Mr. Carroll's opinion that Tennessee Rule 13 creates an insurmountable barrier to achieving sustainable defense independence.³ Based on the information I have obtained I am not convinced that a thorough examination has occurred. In my experience whether or not an objective can be achieved is frequently tied to the desire and creativity of those involved. During the past two and one-half years I have heard many ideas as to how independence might be advanced within the existing structure of Rule 13.⁴ Some of these ideas appear in the Public Defender's report of February 2015. I would like those ideas to be explored.

² DOJ referenced letters from October 30, 2014 and December 23, 2014. After a December 17, 2014 stakeholder meetings convened by the DOJ, a December 23, 2014 DOJ letter requested the following minimum steps: 1) Judge Michael, the Mayor's Office and the Offices of the County Attorney and the Public Defender should continue the [December 17, 2014] collaborative discussion of the elements necessary to reform the juvenile justice systems' public defense function in accordance with the Agreement. This leadership team may need to invite other stakeholders as required by Shelby County's unique dynamics, culture and circumstances. 2) Seek technical assistance from a substantive expert who has engaged in defense reform work and from a skilled facilitator to help structure and guide your discussion and set goals and a realistic schedule for dialogue and decision making. 3) Develop a *comprehensive plan* that outlines how the Agreement's requirements of public defense independence, reasonable workloads, adherence to juvenile defender standards, and oversight by an independent body will be achieved. The plan was to be submitted to the Department of Justice and the Due Process Monitor by March 16, 2015. The plan should outline steps toward accomplishing the reforms and the timelines for achieving each step. The reform efforts should begin no later than April 15, 2015. (emphasis added)

³ See David Carroll letters of September 24, 2015 and October 2, 2015 detailing why he believes Rule 13 prevents Shelby County from creating an independent defense structure.

⁴ As noted in the DOJ email of October 31, 2015, "We recommend that the Public Defender's Office be required to suggest stakeholders/invitees to the discussion. It is our understanding that the Public Defender has given much thought to the independence issues and may have some suggestions as to local stakeholders who may be able to offer guidance to the group. Such stakeholders should be included in the discussion."

Rule 13 is a significant barrier.⁵ However, there may be additional measures of independence that could be achieved even as Tennessee undertakes review of the statewide system of indigent defense and Rule 13.⁶ It is premature to cease working on independence issues until potential solutions have been explored by key member of the Memphis community. In addition, since the appointed counsel juvenile defense function has historically been under the authority of the Court, it is critical that this independence process be perceived as inclusive, transparent and thorough, rather than controlled and cursory.

Recommendation: Follow the suggested recommendations cited in the DOJ's October 13, 2015 email correspondence.

3. *Significant Positive Development: Shelby County Public Defender no longer operates as a subdivision under the County Attorney*

Mayor Luttrell's leadership and the leadership within his Administration is commendable and reflects positive steps to improve the operational independence of the Shelby County Public Defender. I commend the Mayor and Mr. Dyer for initiating the resolution that removes the Public Defender from direct oversight of the County Attorney. Although this important step does not achieve sustainable independence, it does demonstrate an appreciation by the Administration that public defenders are not amenable to administrative direction in the same sense as other government employees. The new structure presents an opportunity for the Administration to continue to discern local options to better satisfy the constitutional obligation to respect the professional independence of public defenders.

Also commendable are the steps taken to establish the Public Defender as the appointing authority for assistant public defenders. Ratification by the County Commission of an existing local ordinance (Article XI, Section 10-731) clarifies the role of the Public Defender in this important area and reverses the long-standing practice of assistant public defenders serving as political appointees of the elected Mayor. This is a significant achievement.

⁵ During my last compliance report, I learned through example how the current structure of the state directly limits access to counsel for indigent youth. A panel attorney represented a youth, A.F. for seven months between August of 2014 and April of 2015. A.F. was charged with first degree murder, was fifteen years old at the time of the offense, was facing prosecution in adult court and had serious mental health and intellectual disabilities. The attorney provided outstanding representation. The attorney filed more than 10 prehearing motions and three memorandums of law and fact. The attorney issued worked with experts, obtained neurological evaluations and reviewed the extensive psychiatric, psychological and social records in preparation of the hearing. After resolving the case, the attorney filed a motion to exceed Rule 13 maximum attorney fee (\$1500.00) due to the complexity of the case, extraordinary circumstances and the 240 hours he had spent preparing it. The motion to exceed was granted by the Juvenile Court of Shelby County, on August 12, 2015. Based on the rate of \$40.00 per hour the attorney submitted a bill of \$9600.00 to the Tennessee Administrative Office of the Courts. Despite extensive documentation, the attorney received a check for \$1500.00. The attorney was paid at a rate of \$6.25/hour. Rule 13 directly limits access to qualified counsel for indigent defendants. The hourly rate reflected here is lower than the Federal and State of Tennessee minimum wage of \$7.25/hour.

⁶ On October 22, 2015 a Tennessee Supreme Court Task Force is announced *See* <http://www.tsc.state.tn.us/press/2015/10/21/supreme-court-appoints-task-force-study-indigent-representation-funding-tennessee>

These key improvements are good examples of local problem solving that results in important improvements in operational independence. In the meantime the Administration and key stakeholders should continue efforts to realize local options that further enable the Public Defender to act with independence.

4. Status of Panel Attorney Coordinator Position

The Court lost a great asset in the untimely death of Jane Sturdivent this past summer. Since that time, Tom Coupe has been filling the role of panel coordinator. Mr. Coupe is being assisted by investigator Roger Waters. I am pleased with Mr. Coupe’s ability to assign cases and maintain data collection. However, as I indicated in my last compliance report, the current structure resembles the original 2012 structure and panel attorneys need greater support and supervision to maintain best practice juvenile defense standards.

Recent Positive Developments

Continued decline of transfer numbers for sixth straight year,

The issue of juvenile transfer to adult court has been a focus in each of my previous compliance reports. I am pleased to report that early numbers indicate that the number of youth transferred will continue to decline in 2015 for the sixth consecutive year. I commend Juvenile Court for their efforts.

Shelby County	2008	2009	2010	2011	2012	2013	2014	Jan-Oct. 2015
<u># of children transferred to adult court*</u>	225	194	151	121	99	90	77	38

*Data provided by JCMSC

I have also focused on the number of “Notice of Transfers” filed in comparison to the practice in other Tennessee counties and the number of youth actually transferred. Currently, Notice of Transfer is filed at a rate of over three times the number of youth who are actually transferred. This high rate remains a cause for concern. I recommend that a more thorough assessment of cases occur at the front end to avoid unnecessary allocation of resources.

Shelby County Notice of Transfers vs. Number of Youth Transferred				
2014		2015 Jan.1 through October 31		
Juveniles Transferred to adult court	Notice of Transfer filed	Juveniles Transferred to adult court	Number of Transfer Hearings	Notice of Transfer filed
77	182	38	60	150

Team based practice of Shelby County Public Defender Juvenile Unit Produces innovative disposition work and recent appeals.

During the last compliance visit, I had the opportunity to meet with thirteen members of the Shelby County Public Defender Juvenile Unit. I was extremely pleased to learn about several innovations. The Juvenile Unit has created a disposition resource guide and searchable database. The resource guide is used to find local support for youth and families. The searchable database enables defenders to put in pieces of information (such as zip code, type of insurance and type of service required—i.e. anger management) and the database will locate all available resources. This outstanding innovation is a byproduct of a well-trained juvenile unit and manageable caseloads. In addition, I learned that the Juvenile Unit has taken five appeals to date. Like independence, an active appeals process is also critical to a healthy defense system.

Additional Due Process Concerns

Complex six-step process to obtain court orders creates barriers to defense practice

As I mentioned in my last compliance report, defense attorneys continue to have problems obtaining necessary court orders once the hearing is complete. I was able to meet with Katha Roberts from the clerk’s office. I learned that in some cases, court orders are completed immediately and delivered to the attorney before the attorneys leave the courthouse. These cases include dependency and neglect, Rule 24 cases,⁷ youth who are being released from detention and youth who resolve their cases with a plea agreement.

However, there is another group of cases where the orders are handled by the clerk’s

Ms. Roberts reported that this process takes between two and four weeks. In response to this information I have written a letter to the Court Clerk, Ms. Joy Touliatos requesting that adjustments be made.

Recommendation: I recommend that the clerk’s office adopt the same system as judicial administration. I recommend that clerks type up orders the

⁷ Formerly known as major crimes

day of the hearing so that the attorney may receive the order before they leave the building.

Continued Concerns Regarding Insufficient Evidence on Affidavit of Complaints

This is the third consecutive time I have focused on this issue. Although training was held for Magistrates in December of 2014, I believe there are still compliance issues. I have included several examples in the Probable Cause section of this report.

Lack of Education and Access to Dental Care at DCS Treatment Facilities Highlights Need for Post- Disposition Representation

During this compliance tour I learned that some Memphis youth are sent to Middle Tennessee Detention Facility, a DCS facility, and that this facility does not have an accredited education program. According to panel attorney Juan Williams, his client [C.U.] had been sent to this facility for five months and that during that time he was not going to school but rather received “worksheets.” The youth was also denied access to dental care. I requested the audio tape of C.U’s hearing to confirm the panel attorney’s report. After I listened to the audio, it was clear that DCS is fully aware of the lack of education being provided at this facility.⁸

Fortunately, Magistrate Hogan demanded that the situation be remedied and took it upon herself to monitor the situation. Magistrate Hogan scheduled a review hearing within a week and ordered DCS to obtain immediate dental care for the youth and come up with a better plan. By the end of my visit it appeared that C.U’s situation had been resolved; however, there are still many other Tennessee children being housed at Middle Tennessee Detention Facility.⁹ In addition, I have learned that Judge Michael has assumed leadership in this area and is committed to doing everything possible to “keep Shelby youth local” and ensure that they get the resources they need. This is a great example of Juvenile Court intervening to address post-disposition issues.

This example also highlights the need for post-disposition representation. Fortunately for C.U., his attorney monitored his progress and took action. Post-disposition representation ensures that the rehabilitation that the juvenile court intended is actually occurring. Unfortunately, Tennessee, like 37 other states, does not have mandatory review hearings and youth do not routinely have access to counsel. In 2014, the Justice Policy Institute issued the report *Sticker Shock*¹⁰ which reported how much states spend to house one child for one year in a juvenile facility. In Tennessee the annual cost to place a youth in a facility was \$109,971.

Juvenile Court does not have authority over DCS or the placement of youth.¹¹ However, this Magistrate and Judge Michael found a way to to respond to the situation. . As I mentioned in my previous report, I believe post-disposition representation is an excellent project for the forthcoming Law School Clinical program.

⁸ For excerpts of the tape, please see the Juvenile Defender section of this report.

⁹ In response to this situation I have filed a complaint with the Department of Justice Office of Civil Rights, written letters to DCS and the Tennessee Administrative Office of the Courts.

¹⁰ *Excerpted from: Justice Policy Institute, STICKER SHOCK, available at <http://www.justicepolicy.org/research/8477>*

¹¹ T.C.A. Section 37-1-137

Recommendation: I recommend that Magistrates and panel attorneys replicate the diligence displayed by Magistrate Hogan and Attorney Juan Williams to ensure that the educational and health needs of court involved youth are met. I also reiterate my suggestion that post-disposition representation is an ideal area for the forthcoming academic partnership.

Discussion of Compliance Findings

Methodology

The information for this compliance report was obtained using the same methods as the previous four compliance reports. I have relied on information from a variety of Juvenile Court stakeholders. I have reviewed “Committee A” minutes and have maintained email correspondence with Juvenile Court. I requested and reviewed numerous documents before and during the site visit.

During the five-day site visit, I observed delinquency hearings, detention/probable cause hearings, probation conferences and the major crimes docket including a transfer hearing. During the site visit I had meetings with the following: Juvenile Court staff, individual probation officers, panel attorneys, and the entire staff of the new public defender juvenile unit, the juvenile defender panel attorney coordinator, the Public Defender, the Clinical Services Director, and the chief of the District Attorney’s juvenile unit. I also reviewed the sixth compliance report prepared by Settlement Coordinator Bill Powell. All of the above provided useful information about current Juvenile Court operations, the progress that has been made toward compliance with the Agreement, and the areas where continued attention is needed.

The Agreement does not conceptualize or require specific compliance levels; however experience in other jurisdictions suggests that the following levels are useful in evaluation. Note, “significant period” of time means longer than one year.

Substantial Compliance means that Juvenile Court has drafted the relevant policies and procedures, has trained the staff responsible for implementation, has sufficient staff to implement the required reform; has demonstrated the ability to properly implement the procedures over a significant period of time and has ascertained that the procedures accomplish the outcome envisioned by the provision.

Partial Compliance means that Juvenile Court has drafted policies and procedures and has trained staff responsible for implementation. While progress has been made toward implementing the policy, it has not yet been sustained for a significant period of time.

Beginning Compliance means that the Juvenile Court has made initial efforts to implement the required reform and achieve the outcome envisioned by the provision, but significant work remains. Policies may need to be revised, staff may need to be trained, procedures may need continued implementation to accomplish outcome envisioned by the Agreement.

Non –Compliance means that Juvenile Court has made no notable compliance on any of the key components of the provision.

Insufficient Information/pending means that it is not possible to assess compliance at this moment.

PROBABLE CAUSE DETERMINATIONS	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCT. 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCT. 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCT. 2015
Within 90 days: revise policies to require prior to detaining a child Magistrate makes probable cause determination	BC	PC	PC	SC	SC	SC
Within 90 days: insure PC determination within 48 hours of warrantless arrest	BC	PC	PC	SC	SC	SC
Within 90 days: insure no child detained for more than 48 hours prior to Detention Hearing if Court has not made PC determination	BC	PC	PC	SC	PC	SC
Within 90 days: insure every child has meaningful opportunity to test PC by revising practices to <ul style="list-style-type: none"> a. Appoint defense attorney to represent any indigent child. Indigence should be presumed unless information to contrary is provided 	BC	PC	PC	SC	SC	SC
<ul style="list-style-type: none"> b. Require govt to prove existence of PC with reliable evidence or affidavit of complaint 	BC	BC	PC	PC	PC	PC
<ul style="list-style-type: none"> c. Allow defense attorneys opportunity to challenge PC 	BC	PC	PC	PC	SC	SC
<ul style="list-style-type: none"> d. Require record be maintained reflecting when defense counsel appointed, forms of evidence used, & whether defense attorney challenged evidence or provided alternative evidence. Such record should be accessible from the info system 	II/P	BC	PC	PC	SC	SC
Each month, Judge or designee shall review a sampling of case files to determine whether requirements regarding notice of charges are being followed. Shall also include periodic observations of Detention & Adjudicatory hearings. If not, immediate corrective action shall be taken.	II/P	BC	PC	PC	PC	PC

Insufficient Affidavits of Complaint (AOC):

As noted in the executive summary, several cases were identified where the AOC was insufficient to establish probable cause. In my previous compliance report I discussed my role in looking at individual cases.¹²

Example #1: Insufficient AOC used to establish Probable Cause--hearing for juvenile S.J. held on October 6, 2015.

Body of AOC was as follows:

Personally appeared before me, [police officer], and made oath that on or about the 2nd day of October, 2015, in said county; within the jurisdiction of the Juvenile Court of Memphis and Shelby County Tennessee, one S.J. did unlawfully commit the offense of Aggravated Assault 39-13-102

Further, affiant makes oath that the essential facts constituting said offense(s), the source of the affiant's information, and the reasons why the affiant's information is believable concerning said facts are as follows: On October 2, 2015, Victims A and B along with witness C were leaving a house at [location] approached by Defendants LH, SJ, AD, EB, KB, FH, AS, AS, JS and MR who were armed with box cutter, brass knuckles, bottles and bricks. All defendants assaulted victim A and when victim B attempted to break them up she was assaulted by the defendants. While victim A was knocked unconscious all defendants continued to assault her. Victim A was cut across the nose and right ear with the box cutter which resulted in her receiving stitches. Victim A will have to undergo surgery for a broken nose as a result of being struck with a brick. Victim B sustained several nots to her head from being struck repeatedly with brass knuckles. Victims came to Airways Station where they provided a signed/typed statement. Defendants were subsequently charged as above.

Nine girls were charged with affidavits identical to this one. There are multiple problems with these affidavits: 1) it is unclear who the affiant is, 2) it is unclear what role the individual girls had in the assault. The AOC reads as if each girl engaged in exactly the same behavior, which is highly unlikely, and 3) the AOC doesn't describe the identification procedure or indicate whether the victims knew the individuals involved.

Example #2: Insufficient AOC used to establish Probable Cause--hearing for juvenile R.B. held on August 31, 2015.

Body of AOC was as follows:

¹² As the Due Process monitor, I have an obligation to look at individual cases in order to evaluate if changes have happened in policy and practice. I evaluate individual cases through compliance tours and by requesting audio tapes of individual cases. While it is not my place to "second guess" a Magistrate's decision, I must pay attention to the process and whether or not due process is being followed in real cases.

Personally appeared before me [police officer] and made oath that on or about the 21st day of August, 2015, in said county; within the jurisdiction of the Juvenile court of Memphis and Shelby County, Tennessee, one [juvenile] M/B 16 yrs. old, did unlawfully commit the offense(s) of First Degree Murder in Perpetration of a Felony to wit: Robbery (T.C.A. 39-13-202)

*Further affiant makes oath that the essential facts constituting said offense(s), the source of the affiant’s information, and the reasons why the affiant’s information is believable concerning said facts as follows: On August 21, 2015 [Victim 1] and [Victim 2] were shot multiple times and killed inside of their home at [location]. Their deaths were ruled a homicide by the Medical Examiner’s office. The investigation led to [juvenile] being identified as one of the persons responsible for the murder. **Witnesses John Doe and Jane Doe** gave signed statements to investigators that [juvenile] confessed to planning the robbery and shooting the victims which resulted in [juvenile] taking several items from the home after the murders. [emphasis added]*

There are many deficits in this AOC. First and foremost, as it was submitted there is no information about the witnesses. Even if they were confidential informants, the AOC could have included the following: 1) whether or not they are civilian witnesses, 2) whether or not they eye witnesses or “ear” witnesses, 3) Whether or not there any other corroborating evidence to support what John and Jane Doe say, 4) whether there are reasons to think these witnesses are reliable, and 5) information surrounding how the juvenile confessed. Even an anonymous tip needs indicia of reliability.

These AOC’s could be cured by (a) an actual hearing at which the defense gets to inquire further through cross examination or (b) a subsequent affidavit with more information.

Recommendations: I recommend additional training and supervision and oversight by the Juvenile Court Judge.

NOTICE OF CHARGES	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCT. 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCT. 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCT. 2015
Within 90 days: revise policies to insure children & defense attorney receive copies of AOC as soon as available but at minimum before Detention Hearing. Also, insure Magistrates formally arraign children at all Detention Hearings.	BC	PC	PC	SC	SC	SC
When changes are made to charges as set forth in petition prior to adjudicatory hearing that could increase the penalty, Juvenile Court shall provide notice of final charges by providing copies of new Petition at least 14 calendar days in advance of hearing unless advance notice is waived.	BC	PC	PC	SC	SC	SC

When changes are made to charges as set forth in petition prior to adjudicatory hearing that could reduce the penalty, Juvenile Court shall provide notice of final charges by providing copies of new Petition within 24 hours of change in charges.	BC	PC	PC	SC	SC	SC
Each month, Judge or designee shall review a sampling of case files to determine whether requirements regarding notice of charges are being followed. Shall also include periodic observations of Detention & Adjudicatory hearings. If not, immediate corrective action shall be taken.	II/P	PC	PC	SC	SC	SC

Comments

Juvenile Court continues to be in compliance with this section. Nothing in the data, observations or meetings with various stakeholders raised concern in this area.

TRANSFER HEARINGS	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCT. 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCTOBER 2015
Within 90 days: require Transfer Hearings comport with due process requirements. Specifically, shall insure all Transfer Hearings include: a. Asst DA presents evidence in support of petition for transfer	BC	PC	PC	SC	SC	SC
b. Children have right to attorney whose role is to represent their stated interest	BC	PC	PC	SC	SC	SC
c. Children, through their attorney, are provided opportunity to present evidence on their own behalf	NC	II	BC	PC	PC	SC
d. Children, through attorney, provided opportunity to confront evidence & witnesses	NC	BC	PC	PC	SC	SC
e. Children are protected from self-incrimination	BC	PC	PC	SC	SC	SC
f. Judge or Magistrate makes written findings that: child committed delinquent act, child is not committable to an institution for persons with developmental disability or mental illness and interests of community require Child be put	BC	BC	PC	PC	PC	I/I*

under legal restraint or discipline						
g. Judge or Juvenile Court Magistrate considers & documents consideration of factors relevant to findings including 7 factors	NC	BC	PC	PC	SC	SC
Each month, Judge, or designee, shall review all files related to Transfer Hearings to insure Hearings followed Agreement. Review shall include periodic observations of Transfer Hearings to insure Magistrates follow policies.	II/P	BC	PC	PC	SC	SC

*I need additional information, see paragraph below.

Comments

Continued Excellence of Clinical Services: Clinical Services continues to deliver high quality evaluations according to best practices. Each compliance period I review all evaluations prepared by Dr. Tucker-Johnson and her very limited staff.¹³ The improvement is staggering since this issue was raised two years ago. Shelby County Juvenile Court can be extremely proud. I believe the expeditious creation of this best practices unit could be a national model. Dr. Tucker-Johnson incorporates recent developments in her field and now includes a detailed trauma assessment in each evaluation.

Continued Decline in Number of Juveniles Transferred: As I detailed in the executive summary, there has been a consistent decline in the number of youth transferred each year since 2008.

Judge or Magistrate makes written findings, child who is committable to an institution for persons with developmental disability or mental illness: As I indicated in my previous report, in regard to judge’s making written findings, Juvenile Court has continued to do an outstanding job. However, there seems to be an inadequacy of Tennessee programs for delinquent youth with serious mental illnesses. I need further information about local mental health resources (i.e. is there as section of a local hospital that could be used for this purpose, or other community services?) I will continue to research this issue.

¹³ Dr. Tucker-Johnson has a part-time psychologist who completes approximately two evaluations per month, and a pre-doctoral psychology intern who works three days per week. She continues to thoroughly supervise their reports. Although bids were received on a Request for Proposals for the part-time psychologist who would complete more evaluations for Clinical Services, no additional support was hired. .

Protections Against Self-incrimination	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCTOBER 2015
Within 90 days: prevent POs or other staff from eliciting info about Children's involvement in alleged delinquent act outside presence of Child's defense attorney	BC	PC	PC	SC	SC	SC
Within 90 days: notify Child's attorney in writing of any probation conference or interview which shall be open to defense attorney.	BC	BC	PC	PC	PC	PC
Within 90 days: insure POs advise Children of Miranda rights. Shall include	BC	BC	PC	PC	SC	SC
a. Description of role of defense attorney						
b. Statement Child is entitled to attorney & maybe at no cost	BC	BC	PC	PC	SC	SC
c. Statement that Child's statements regarding offense can be included in Probation report	BC	BC	PC	PC	SC	SC
d. Statement that Child's statement can be used against them.	BC	BC	PC	PC	SC	SC
POs have Children document understanding of rights against self-incrimination & must receive advice of attorney before waiving it.	BC	BC	PC	PC	PC	SC
Consider partnership w/non-profit or academic organization to provide advice and support to children during the probation intake process	S/ NR	S/NR	S/NR	S/NR	S/NR	S/NR
Within 30 days: prohibit adverse use of information obtained from child during probation conference	BC	PC	PC	SC	SC	SC
Within 30 days: insure Magistrates do not permit the govt to call Children as witnesses in Child's own Adjudicatory or Transfer Hearing	BC	PC	PC	SC	SC	SC
Within 30 days: Magistrates required to give oral advisement of rights against self-incrimination to any Child wishing to testify at own hearing	BC	PC	PC	SC	SC	SC

Each month the Judge or designee shall review sample of files to determine rights against self-incrimination are protected. This shall include periodic observation of probation conferences by appropriate supervisory staff of the probation dept as well as observation of Adjudicatory & Transfer Hearings	II	II	BC	PC	PC	SC	
Immediately cease providing Visit & Contact forms to Magistrates prior to Adjudicatory Hearings.	PC	PC	PC	SC	SC	SC	

Comments

Success of Probation Unit:

As mentioned in previous compliance reports, a large percentage of youth who come to juvenile court have their cases resolved non-judicially, or by probation conference only. In 2015 of the total 3623 cases, 64% or 2354 cases were resolved non-judicially. The remaining cases were resolved through a court hearing (1211 or 33%) or with a transfer hearing (60 or 3%). I continue to be pleased with the conduct of the probation officers during conferences.

Newly hired staff is well trained in *Miranda*: It is my practice to target newly hired probation officers for observation of probation conferences. I continue to be impressed with recently hired probation officers. The impact of the Department of Justice Investigation and Agreement could diminish in the three years since inception. I am pleased that the importance of developmentally appropriate language and the tool of asking the child to “repeat back” what she understands has been incorporated into the culture of the probation department.

In one probation conference, I observed the probation officer do her best to encourage and counsel the child. Since the case was going to court and could not be resolved non-judicially, the probation officer instructed the child of his rights and avoided asking anything about the case that could be incriminating.

In a second probation conference, where the child was very withdrawn, the probation officer very carefully went through the *Miranda* rights in age appropriate language. This newly hired probation officer asked the child to explain his rights four different ways to ensure that he fully understood the concept.

Finally, I watched the extraordinary work of Eric Roberts, as he navigated the difficult situation of a mother whose child was assaulted by the police over a minor offense. Eric Roberts acknowledged the challenges faced by African American men, related personal experiences and encouragement to the family. The professionalism, concern and effectiveness was impressive.

Downward Adjustment and Continued Success of the Graduated Sanctions Grid: In my last report I recommended that the Probation Department consider a downward adjustment to the graduated sanctions grid. I am pleased to report that there has been a downward adjustment to

the graduated sanctions grid and that subsequent to the adjustment there have been fewer deviations. The grid is in the process of being validated.

Data Regarding Lawyers at Probation Conferences: In my last report I recommended that the panel coordinator continue to keep data regarding the frequency panel attorneys are requested to assist in probation conferences so we have an accurate assessment.

When I met with the Dean Letsou of University of Memphis Cecil C. Humphreys School of Law, I mentioned this issue. I described the lack of access to counsel for youth at probation conferences, the requirement in the Agreement and the refusal by the Tennessee Administrative Office of the Courts refused to pay panel attorneys for this representation. I reiterated my belief that using law students as a resource may be beneficial.

JUVENILE DEFENDERS	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCT. 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCTOBER 2015
Within 1 year insure independent, zealous advocacy by juvenile defenders. This shall include: : h. Creation of specialized unit for juvenile defense within Office of the Public Defender	N/A	N/A	BC	BC	PC	PC
i. Support Juvenile Public Defender Training	N/A	N/A	BC	PC	PC	SC
j. Insure Juvenile Public Defender has appropriate administrative support, reasonable workloads & sufficient resources. Representation shall cover all stages of case as long as juvenile court has jurisdiction	N/A	N/A	BC	BC	PC	PC
k. Implement attorney practice standards for juvenile defenders	N/A	N/A	BC	BC	PC	PC
Within 1 year insure independent advocacy including: a. Appoint juvenile defender to represent children at detention hearings & probable cause determinations as soon as possible	N/A	N/A	BC	BC	PC	PC

b. Establish Panel System Overseen by independent body to handle conflicts	N/A	N/A	II	NC	BC	BC
c. Support attorney practice standards for juvenile defenders including training and evaluation.	N/A	N/A	BC	BC	PC	PC
d. Insure juvenile defender has confidential meeting space to confer with clients within the facility	N/A	BC	PC	PC	SC	SC

Comments

Comprehensive Plan for Independence

As I noted in detail in the executive summary, progress has been made. Specifically, the Public Defender is now a separate division, the Division of Defender Services. This division can hire/fire their own employees. However, creating a comprehensive plan for indigent defense independence remains the biggest challenge. At present there is no one ensuring that the panel attorneys who have handled 72% of the cases in 2015, are engaging in standards based practice.

Administrative Obstacles to Defense Practice: Difficulty in getting Court Orders:

This issue has been detailed in the executive summary. I am hopeful that this issue will be resolved soon. In regard to the other obstacles that were mentioned in my last report, the monthly meetings between Pam Skeleton and the Juvenile Unit appear to be effective.

Juvenile Defense Capacity Report

As I indicated in my previous report, I believe the public defender juvenile unit is on the right track with its holistic team-based practice¹⁴ while maintaining workload controls. So far, in 2015, according to Juvenile Court, there have been 3623 delinquency complaints. Of these, 2354 (over 60%) of complaints were resolved non-judicially. Counsel was appointed in 1496 delinquency complaints. Public Defender staff was appointed to 425 complaints, or 28% of all appointments. Panel attorneys were appointed to provide representation for 1,071 complaints, or 72%. The Public Defender has increased representations in delinquency complaints by 8%, nearing its initial goal of total delinquency representation to 30%.

It is my understanding that at this point the Public Defender is accepting all direct appointments from the detention docket (except in cases where there is a legal conflict of interest or the court determines other counsel should be appointed for good cause). It seems appropriate that this practice should continue. In March and May of 2015 the Public Defender notified the panel coordinator that the juvenile unit had additional capacity, and requested assignment of additional appointments from the delinquency docket, up to a total of 60 per month. The PD

¹⁴ Fundamentals of team based practice include: 1) The client is at the center of all of the work done on the case, 2) Every client is screened for social services, 3) Every case is investigated to satisfy attorney ethical obligations.

should continue to notify the panel coordinator to ensure that PD services are maximized. I am requesting that the PD include me and the Director of Court Services on these communications.

Priority allocation of PD resources

During the site visit the Public Defender provided an overview of how they plan to allocate resources in two areas which are required by the Agreement and which face the funding limitations of Supreme Court Rule 13: 1) post-dispositional representation, and 2) pre-petition representation. In addition, the Public Defender intends to begin providing vertical representation of juveniles facing prosecution as adults.

Juvenile Unit's Involvement in Statewide Issues

The Agreement attempted to create a model juvenile court. To that end the Shelby County Public Defender Juvenile Unit has enlisted the resources of the National Juvenile Defender Center and has adapted National Best Practice Standards for local practice by incorporating Tennessee law. For the past three years the Juvenile Unit has also attended the National Juvenile Defender Center Summit. Unfortunately, despite this investment of resources the Juvenile Unit has not yet become a part of the statewide juvenile community. It is important that the Juvenile Unit share its experience to assist other Tennessee counties and it is important that the Juvenile Unit have access to resources beyond Shelby in other parts of Tennessee.

Recommendation: I recommend that the Juvenile Unit make it a priority to network with other juvenile defenders in Tennessee on a regular basis.

Case Management System: It is my understanding that a new case management system, “JustWare” arrived on October 28, 2015.

Proposed Standards Need to be implemented: As I mentioned previously, in December of 2014, the Shelby County Public Defender Proposed Juvenile Defense Standards for use in Tennessee. These standards were created in conjunction with national and statewide juvenile defense experts. I am hopeful that with enhanced independence these standards will be promulgated.

Recommendation: Implement the standards for use throughout Shelby County Juvenile Defense Bar.

Post Disposition Representation

As I mentioned in the executive summary, during my visit the case of C.U. provided an example of why post disposition representation is so important. In my previous compliance report I recommended that juvenile panel attorneys begin to develop a program to provide post disposition representation and that this area well suited to the new academic partnership. Below are excerpts from the hearing held on September 18, 2015.

[Magistrate Hogan] *Again, this is that Middleton holding place that appears to me to be worthless....*

[DCS] *It would be nice if the state would come up with another option*

[C.U's attorney] *He's been there for five months...*

.....

[Magistrate Hogan] *You said something about school, my understanding is....it's not an actual school, its assignments that the kids complete and turn in. And they get no credit because it's not accredited from what I understand*

[DCS] *I don't know the answer Your Honor because they don't give us any options so our hands are tied.....*

[Magistrate Hogan] *You all need a big lawsuit. That's the only thing that's going to change this is a huge lawsuit. Someone needs to sue them because this is totally unacceptable. And this has been going on for months and months and months. Now here he has dental problems, that's fairly easy to address. Why does it take months and it still hasn't been addressed. That's inexcusable? Who is watching who is overseeing this facility?*

[DCS]

It is not fair. It is not fair to these children. We are sitting up here and it is not our lives being impacted in this way and if we are here to rehabilitate and provide service and we are not doing it then we are spinning our wheels and lying, and I for one don't like doing it. I want a report next week that dental issues have been taken care of.

Status of Post Disposition Representation Pilot:

As I detailed above and in previous compliance reports, given the documented problems at Tennessee facilities there is a need for post disposition representation. In my last compliance report, I reported that the Public Defender Juvenile Unit had begun post disposition representation.¹⁵ No updated information regarding the post-disposition pilot is available at this time.

¹⁵ The goal of the post disposition representation was to 1) Protect the legal rights of clients: ensure proper DCS classification and placement, provide assistance/informal advocacy with institutional concerns (medical, educational, behavioral health, segregation, programmatic, etc.) protect client's rights while in detention or community based facility (shelter/group home) against abuse, provide legal rights education, and 2) Assist with successful reentry into the community: prepare children for successful reentry through release planning connect children to needed services in the community, ensure child's educational needs are being protected, work with DCS and other key stakeholders to ensure children receive needed treatment and services.

CONFIDENTIALITY OF JUVENILE DELINQUENCY PROCEEDINGS	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCTOBER 2015
Within 30 days: revise policies to protect confidentiality in delinquency proceedings	BC	PC	PC	SC	SC	SC
Insure only person properly concerned with child's case are admitted into any delinquency proceeding	BC	PC	PC	SC	SC	SC

Comments

The policies continue to be incorporated into practice without incident.

PLEA COLLOQUIES	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCTOBER 2015
Within 6 months: establish procedure for plea colloquies that is age-appropriate and clear to the Child	N/A	PC	PC	SC	SC	SC
Insure Magistrates conduct interactive oral colloquy w/ child that includes: Nature of delinquent act charged, Child's right to attorney, Right to plead not guilty & have Adjudicatory hearing, Child's waiver of right to trial on merits & an appeal	N/A	PC	PC	SC	SC	SC
Within 6 months: insure children have a right to counsel whenever entering a plea of guilty	N/A	PC	PC	SC	SC	SC

Comments

The plea colloquies maintain substantial compliance.

RESTITUTION GUIDELINES	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCTOBER 2015
<p>Within 6 months: establish guidelines for assigning restitution to any child adjudicated delinquent that provides the child a meaningful opportunity to Challenge the evidence of restitution.</p> <p>At a minimum the restitution guidelines shall:</p> <ul style="list-style-type: none"> i. Require documentation to support the restitution request ii. Allow children adequate time to review the restitution request & opportunity to introduce evidence opposing the amount iii. Allow opportunity to request adjustment to restitution amount by introducing evidence of family income or obligations that would render the restitution an undue hardship 	N/A	PC	PC	SC	SC	SC

Comments

The restitution policy maintains substantial compliance.

BOND SETTING GUIDELINES	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCTOBER 2015
<p>Within 6 months: establish bond setting guidelines</p> <p>At minimum the guidelines shall:</p> <ul style="list-style-type: none"> i. Prevent excessive bonds ii. Reasonably assure appearance in court iii. Take into account presumptive indigence of children iv. Allow parents to file statements of indigence 	N/A	PC	PC	SC	SC	SC

Comments

Bond amounts continue to be set in accordance to the guidelines.

LANGUAGE ACCESS PLAN	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCTOBER 2015
Within 6 months: develop language access plan that complies with Title VI. Make summons & other crucial documents available in appropriate languages	N/A	PC	PC	II/P	SC	SC
Implement language access plan within 1 year	N/A	BC	PC	II/P	SC	SC

Comments

The language access plan remains in substantial compliance.

TREATMENT OF WITNESSES	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCTOBER 2015
Within 6 months: revise procedures on treatment of witnesses to insure integrity of witness testimony is preserved. Include: All witnesses placed under oath All witnesses properly sequestered	N/A	PC	PC	SC	SC	SC

Comments

This section has maintained substantial compliance.

JUDICIAL BENCH CARDS	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCTOBER 2015
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<p>Within 6 months: develop bench cards Bench cards shall be readily accessible documents. Should be available upon request</p> <p>Juvenile Court shall produce bench cards for the following:</p> <ul style="list-style-type: none"> a. Detention Hearing, PC determinations and bond settings b. Adjudicatory Hearings c. Plea colloquies d. Transfer Hearings e. Disposition hearings, including procedures for setting restitution f. Post-dispositional hearings 	N/A	BC	PC	PC	SC	SC
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Comments

Bench cards continue to be used and I did not observe or hear of any issues. During my sixth visit, I observed judges and magistrates utilizing the bench cards. The bench book is also available online.

RECORDINGS OF JUVENILE DELINQUENCY HEARINGS	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCTOBER 2015
Within 6 months: all hearings shall be recorded by electronic means, Private court reporters may provide written transcripts	N/A	BC	PC	PC	SC	SC
Juvenile Court shall insure recordings are complete & of good quality						
Juvenile Court shall make recordings accessible at no cost to defense counsel representing indigent children						
Recordings shall be stored for 2 years						

Comments

I had the opportunity to listen to recordings of court proceedings. I found the recordings to be clear and of good quality. A standing order is in effect ensuring defense attorneys access to audio tapes.

WRITTEN FINDINGS	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING OCTOBER 2015
<p>Within 6 months: require Magistrates to produce court orders containing the written findings of fact for each judicial decision made</p> <p>Written findings of fact shall include the relevant statutory requirements, legal reasoning that formed the basis for the court's decision and a narrative of the facts considered in decision</p>	N/A	BC	PC	PC	SC	SC

Comments

During my sixth site visit I reviewed the files of all transfer hearings and randomly selected adjudicatory hearing files. Each file contained a detailed written finding of fact.

TRAINING	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCTOBER 2015
<p>Within 6 months: develop a training plan for all employees involved with delinquency docket & submit training plan to Monitor and US for approval</p> <p>Training plan shall insure appropriate staff are trained on topics relevant to their role & responsibilities in delinquency proceedings including:</p> <ul style="list-style-type: none"> i. Adolescent development ii. Dispositional planning iii. Best practices in social service & therapeutic options iv. Functional & practical purposes of juvenile court v. Appropriate professional role of different players within juvenile proceedings 	N/A	BC	PC	PC	PC	PC
<p>Juvenile Court shall implement 1st training plan within 12 months & shall create subsequent training plans on an</p>	N/A	N/A	BC	PC	PC	PC

annual basis thereafter						
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Comments

As noted above, problems persist with affidavits of complaint that I believe require additional training and oversight. It is my understanding that the Court is in the process of coordinating a training program on trauma.