

SHELBY COUNTY, TENNESSEE COMPLIANCE REPORT

NO. 6

of

BILL POWELL

SETTLEMENT AGREEMENT COORDINATOR

(SEPTEMBER 17, 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: September 17, 2015

SUBJECT: Compliance Report #6 – September 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 6th 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. This section will include a summation of positive developments as well as a summation of key challenges that remain.
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 6th Compliance Report comes 2 years and 9 months after the MoA was signed. There has been a great deal 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

The Due Process protections afforded at the Court are much improved since the Court and the County entered into the MoA with the Department of Justice. There is a focus on the protection of rights and on documenting consideration of factors in decisions by Magistrates and by staff. Most cases are handled non-judicially and the Probation staff does a good job in assuring youth are advised of their rights and in administering a Graduated Sanctions Grid designed to help them make consistent dispositional decisions. The Probation staff continues to collect a mass of data which could provide valuable assistance in developing services and programs for youth.

The Juvenile Defender Unit of the Public Defender's Office continues to increase their caseload and currently handles about 25% of the appointed counsel cases. Public Defender Stephen Bush has requested an increase in the number of cases assigned to the Juvenile Defender Unit. Mr. Bush has continued to work with the University of Memphis Law School to develop a clinic program for juvenile justice. This is a noteworthy achievement and it is hoped the clinic will become operational soon.

As has been the case for several months, the major challenge in the Due Process area involves development of a plan to address the structural issues related to the independence of the Public Defender and the Juvenile Defender Panel. County Attorney Ross Dyer has been working on developing this plan. This work has included convening a panel of stakeholders in April 2015 and in bringing in David Carroll of the Sixth Amendment Center to consult on related issues. Mr. Dyer reports that a draft document had been received from Mr. Carroll although it had not yet been distributed to other stakeholders. This has been a laborious process. DoJ has emphasized the importance of fully collaborating with other partners to develop a comprehensive plan that indicates "how public defense oversight by an independent body will be achieved." They also indicated "the plan should outline steps toward accomplishing the reforms and the timelines for achieving each step." It is hoped an acceptable plan will be available soon.

Good:

- Data samples show improved performance in 2014/2015 for Due Process protections. Attorneys are present 100% of the time at Detention Hearings, contest Affidavits more frequently, consistently provide statements of Notice and Advisement of Rights

- Only 39% of those youth who receive “Notices of Transfer” end up being transferred
- The Juvenile Defender Unit has increased their capacity to where they are currently handling 25% of the appointed counsel cases
- Consultant David Carroll of the Sixth Amendment Center was brought in to assist with the development of the plan for defense independence and structural issues with the Panel
- Probation continues to do a good job in capturing valuable data and in explaining the rights to youth at Probation conferences
- The Graduated Sanctions Grid was revised to better reflect appropriate dispositional decisions
- Progress continues to be made in the development of the specialized law clinic at the University of Memphis

Challenges:

- Resolve the structural issues related to the independence of public defense and the Juvenile Defender Panel in a collaborative way that insures sustainability
- Analyze and respond to the opportunities reflected in the monthly data collected in Probation
- 98% of the youth do not request an attorney even though they are informed of their right to counsel. This number becomes more of a concern when coupled with the fact that an increasing number of youth do not admit to the charges in a Probation conference. At this point, 25% of the youth do not admit to the charges yet only 2% are represented by counsel
- The vast majority of youth (87%) decline any offer of services through E&R

DMC and Equal Protection

This area continues to be the most problematic of all sections of the MoA. This portion of the MoA is concerned with the question of whether all children appearing before the Court receive equal protection under the law. This is both a very complex question and a massively important one.

As stated in the last Compliance Report, 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.

The most recent Assessment report by Dr. Mike Leiber shows disparities have gotten worse at 6 of the 8 Decision Points since 2013. This data make it clear much more must be done to become compliant with the MoA and to insure everyone’s goal of equal protection is met.

To be sure, there are some positives to report in this area. The number of children detained, the number of children petitioned to Court, the number of children transferred to the adult system have all been dramatically reduced. The bulk of this reduction involves minority youth, thus, from a sheer numbers standpoint, many fewer minority youth are progressing through the juvenile justice system. That is outstanding news and the work of the Court needs to be recognized for these reductions. The other side of that coin is that, although overall numbers are

down, minority youth are still detained more, diverted less, and found delinquent at higher rates than their white counterparts. That is, they disproportionately receive tougher sanctions than similarly situated white youth. Despite the reduction in total numbers, the ratios remain the same or worse. Those ratios are the heart of the claim that DMC exists. It is hoped the newly created DMC Coordinator position at the Court will bring energy and structure to efforts to reduce DMC in the juvenile system.

Good:

- The Court hired a dedicated DMC Coordinator position to take the lead on DMC reduction efforts at the Court
- The call in program, the Law Enforcement Assessment Program (LEAP), is operational and is being expanded to other municipalities in Shelby County
- Many programs are offered to attempt to divert youth from the Court. These programs include SHAPE, the Juvenile Court Precinct Liaison Initiative (JCPL), and the School Based Probation Liaison (SBPL)
- The Graduated Sanctions Grid (GSG) has been revised
- Data reporting and analysis in the Point of Contact reports has improved
- Overall numbers progressing through the Juvenile Court system have been reduced at a number of levels.
- Objective tools continue to be used at many stages of the system (DAT, YASI, GSG)

Challenges:

- DMC has gotten worse according to the data in Equal Protection Monitor Dr. Mike Leiber's Assessment report. There is an urgent need to plan and implement DMC reduction efforts at each Decision Point
- The Point of Contact reports need to offer guidance to reduce DMC
- The MoA requires an annual assessment of the effect of policies/procedures/programs and existing agreements on DMC levels at each Decision Point (pp. 22 & 25 of MoA) but that has yet to be done despite this being mentioned in each Compliance Report for the past 18 months
- Plans need to be developed to conduct evaluations of the various diversion programs initiated through the Court's efforts to see what work
- Objective tools such as the YASI and the GSG need to be validated

Protection from Harm: Detention Facility

The Detention Center was transferred to the Sheriff's Office on July 1, 2015. The Sheriff is very familiar with the MoA and has expressed strong support for reaching compliance. Upon assuming control of Detention changes were made in food services and the policy was changed to allow youth to have reading materials in their room. These changes have been well received. The Positive Behavior Management System (PBMS) has been implemented and security staff is optimistic about its potential to improve staff/youth relations and to reduce problem problematic incidents in Detention.

The Detention staff created a data Report Card soon after the MoA was signed. That Report Card was filled with valuable data in a number of areas and its development helped provide a

management focus for Detention as well as provide documentation for improvements made. A review of the most recent Report Card shows improvement in a number of areas including reductions in Detention admissions, fewer overrides to the DAT, and fewer calls to the Qualified Mental Health Provider, reduced Use of Force by the staff, and reductions in Room Confinement. These are extremely positive indicators.

Important challenges remain with Detention. The transition to the Sheriff's Office is a huge undertaking and it is important that it be planned so it can proceed in a structured manner. Although staff has been working very hard to effectuate the transition, the plan was not submitted until September 17th. It would have been advisable to have submitted the plan to Facility Consultant Dr. Roush prior to beginning the transition to gain the benefits of his insight.

Another important challenge involves data integrity. The need for data validation and data integrity was first discussed in Committee A in March 2014. There have been questions about funding and delays with arranging a consultant to work on the issue. The data reported in the Report Card has internal inconsistencies and, without a process of data validation, questions remain about how much trust can be placed in the numbers.

Good:

- The Detention Center was transferred to the Sheriff's Office July 1st
- The Detention Center recently was audited by ACA and received an excellent report
- The Detention Report Card continues to provide a wealth of information that can be used to track performance trends
- Security staff and the Health Department continue to meet monthly with the medical provider to discuss performance audits
- Detention admissions have declined 22% in 2015 compared to the same period in 2014
- Data indicates Use of Force and the use of Room Confinement have declined
- The call in program has been implemented and is in the process of being expanded to other municipalities
- The Positive Based Management System has been implemented

Challenges:

- Data validation must be done to insure confidence in the information being reported and relied upon for management purposes.
- The PREA policy needs to be finalized as recommended in Committee A as far back as June 2012
- Admissions declined 26% in 2015 yet the average # of bed days rose 29%. 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.
- Concerns continue 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 great deal of management attention to insure its proper implementation
- Items from the health care audits should be incorporated into the Detention Report Card as recommended in September 2014

Community Outreach Program (COP)

The Court continues to be involved in a number of community activities but would benefit by those activities being better planned and structured. The monthly Interagency Report prepared by the Court includes an exhaustive list of activities engaged in by various staff members. It also describes the number of collaborative activities in which the Court is involved. A Community Engagement Plan was created with a timeline of activities for June-December 2015. To this point, the plan has not been followed. There have been some personnel issues as the individual coordinating the plan in the past was assigned other duties following the death of the Panel Coordinator. It has been announced that Bridgett Bowman, the DMC Coordinator for the Court will be involved with community engagement in some capacity.

Public meetings continue to be held every six months with the most recent meeting held August 11, 2015. The Court provides good information during these meetings.

There have been positive developments with the Countywide Juvenile Justice Consortium (CJJC) as they have become more active with the community and have finally submitted feedback to the Court. The Court has, in turn, responded to the CJJC report and it is hoped those exchanges will be helpful.

Work is being done with Dr. Tom Harig to develop the long awaited Community Survey.

Good:

- A public meeting was held in August 2015 and good information was provided.
- Court staff are involved in a large number of community interactions as documented in the monthly Interagency Reports
- The CJJC has become more active in the community and has provided feedback to the Court. The Court responded to the CJJC and it is hoped that exchange will benefit all parties
- An individual has begun work on the Community Survey

Challenges:

- The Community Engagement Plan needs to be re-written or followed
- The Community Survey needs to be conducted

Conclusion

It has been 33 months since the MoA was signed. There has been a lot of hard work invested in that time and a lot of progress has been made. Better policies are in place, extensive training has been undertaken, numerous objective decision tools are in place and a great deal of data has been collected.

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 signaled an intention to do more than just meet the Constitutional minimums of a juvenile justice system. The MoA provided an outline which, if achieved, could lead the Court to become a model for the Nation, which has been a stated goal of Juvenile Court Judge Dan Michael.

By working collaboratively and using the nationally recognized expertise of the Court Monitors and Facility Consultant as well as the DoJ attorneys and other stakeholders that goal is certainly within reach.

Due Process

1. Policies and Procedures

(a) Probable Cause Determinations

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

Status

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

Due Process

1. Policies and Procedures

(a) Probable Cause Determinations

- (v) Each month, the Judge, or his or her designee, shall review a sampling of Case Files to determine whether the procedures for Probable Cause Determinations are being followed as required by this Agreement. The review shall include periodic observations of Probable Cause Determinations to ensure that Juvenile Court Magistrates and other staff follow policies, procedures, and practices required by this Agreement. If the review reveals that the procedures regarding Probable Cause Determinations have not been properly followed, the Judge shall take immediate corrective action, including a discussion with the responsible staff, to bring about compliance with the terms and requirements of this Agreement. **(MoA p. 10)**

Status

Forms were created to assist in the review of individual case files, including Probable Cause determinations. 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. To the extent the sample drawn is representative of the total cases, these spreadsheets offer the opportunity to form conclusions about the work being done and to use data to inform improvements in Court operations.

Appendix 1 includes the spreadsheet covering aggregated data from August 2014 through July 2015. 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 from this period (August 2014 through July 2015).
- Affidavits of Complaint were available 100% of the time in this period.
- Affidavits were contested by defense attorneys in 64% of the cases and it was done through Oral Argument 99% of the time. As a point of comparison, in 2013 Affidavits were only contested 40% of the time.
- There was a statement of Attorney regarding Notice & advisement of rights 100% of the time in this period 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

- An Attorney has been present in 100% of the Adjudicatory Hearings.
- Amended petitions were filed in 5% of the cases
- 6% of the cases resulted in a trial in this period compared to 19% in 2013
- 83% of the cases resulted in a Waiver and Admission
- Plea and rights form were completed 100% of the time in this period compared to 93% in 2013

Transfer Hearing

- In this period there has been an average of 12.5 “Notices of Transfer filed” per month
- In this period the spreadsheet shows 150 “Notices of Transfers filed” but only 58 actual juveniles transferred. This means only 39% of those with notices filed ended up being transferred.
- Written rationale for the transfer was completed 100% of the time in this period.

This data reflects impressive performance relative to the protection of due process. 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 considerably in the past 2 years. The transfer data also demonstrates that a great majority of “Notices of Transfer” do not actually result in a youth being transferred into the adult system.

As in the 5th Compliance Report submitted in March 2015, it is important to note that the spreadsheet shows an average of 11 cases per month sampled on Detention Probable Cause in this period which is a decline from 19 cases sampled per month in 2013. This data is incredibly helpful in providing the Court a quantifiable measure of the provision of Due Process protections. As such, it is critically 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 complete 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 2015 is included in **Appendix 2. Appendix 2** also includes the narrative submitted in September (analyzing August’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 offer a good synopsis of the data for each month reviewed.

Some samples of the information contained in the data from the sample of Probation conferences shows:

- 98 % of the youth are not represented by an attorney
- 74% of the time the child's Mother attends the conference
- Most of the youth (49%) at Probation conferences are between 16-17 years old while 10% of the youth are between the age of 10-12
- 43% are female compared to 38% in 2014
- 5% of the youth are classified as Special Education
- 100% of the youth have their rights explained to them in the conference
- 87% of the youth were African American
- 25% of the youth did not admit to the charge compared to 18% in 2014
- 7% of the dispositions at the Probation conference were not consistent with the Graduated Sanctions Grid but, in all of these cases, the Grid was overridden with supervisory approval
- The most common service recommended at the Probation conference was Anger Management with 14% of the youth recommended for that service

This data and these narratives are a great advancement over what was being done before the MoA was signed, more can be done. The large number of cases handled via Probation conferences rather than being petitioned to Court represents a strength of the Juvenile Court system in Shelby County. In addition to the large number of cases diverted by this process, the conferences themselves are, by all accounts, handled well by the Probation staff.

An opportunity exists to utilize the data to improve the system even further. For example:

- 43% of the probation conferences involve female youth. This was pointed out in the last Compliance Report in March 2015. This is a large number of females and it has increased even more in 2015 compared to last year.
- 25% of the youth did not admit to the charges. This was a considerable increase over the 18% in 2014.
- Even though 25% did not admit to the charges only 2% were represented by an Attorney
- 14% of the youth needed help with Anger Management according to the Probation staff yet 87% of the youth who are referred for services by E&R decline those services

Juvenile Court has an opportunity to take a well-functioning Department to the next level by incorporating recommendations for action into the narratives. Some possible recommendations could

include things such as the development of programs targeted at particular populations (the growing # of females), policy changes (begin discussions about options for youth who do not admit to charges), and training for staff to help them get more youth and families to take advantage of available services.

Due Process

1. Policies and Procedures

(b) Notice of Charges

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

Status

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

Due Process

1. Policies and Procedures

(b) Notice of Charges

- (iv) Each month, the Judge, or his or her designee, shall review a sampling of Case Files to determine whether the requirements regarding notice of charges are being followed as required by this Agreement. The review shall include periodic observations of Detention and Adjudicatory Hearings to ensure that Juvenile Court Magistrates and other staff follow policies, procedures, and practices regarding notice of charges

required by this Agreement. If the review reveals that the procedures have not been properly followed, the Judge shall take immediate corrective action, including a discussion with the responsible staff, to bring about compliance with the terms and requirements of this Agreement. **(MoA p. 11)**

Status

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

Comments

See the spreadsheet and 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

1. Policies and Procedures

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

Status

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

Comments

See the spreadsheet and 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

(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.

Comments

By all accounts, the Probation staff is doing a good job in this area.

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.” The 5th Compliance Report detailed the work done by Public Defender Stephen Bush in creating 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

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. Details are still being finalized but this program has tremendous potential to advance juvenile defense work in Shelby County.

Due Process

1. Policies and Procedures

(d) Protections Against Self-Incrimination

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

Status

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

Due Process

1. Policies and Procedures

(d) Protections Against Self-Incrimination

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

Status

These policies were submitted in the 1st Compliance Report dated April 2, 2013. Due Process Monitor Sandra Simkins expressed concerns about protections against self-incrimination at the Probation Conference stage. In response to those concerns, internal training was developed and conducted for Probation staff. A video of that training was made to use for routine training of new staff in Probation. It is important that this training be administered to all new staff.

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

1. Policies and Procedures

(d) Protections Against Self-Incrimination

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

Status

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

Due Process

1. Policies and Procedures

(e) Juvenile Defenders

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

Status

The 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. **Appendix 3** includes a report for 2015 that reflects the Juvenile Defender Unit in the Public Defender's Office was assigned 25% of the appointed counsel cases. It

also includes a chart indicating steady growth in that caseload. It is also important to note that the Public Defender Unit takes the bulk of their cases from the Detention docket which tends to contain the more serious cases.

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, Jane Sturdivant who worked to gather information to help assess work being done by Panel attorneys through an automated system developed by the Shelby County IT Department. The tragic death of Ms. Sturdivant was a loss to the Court in a number of ways.

Comments

The MoA requires both the County and the Court to insure “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 with the County Attorney to develop plans for insuring independent, ethical, and zealous advocacy through revisions of the Panel system which is currently providing representation for 75% of the complaints in Juvenile Court.

Due Process

1. Policies and Procedures

(e) Juvenile Defenders

- (ii) Within one year of the Effective Date, JCMSC shall take action to ensure independent, ethical, and zealous advocacy by the juvenile defenders representing Children in delinquency hearings. This action shall include: **(MoA p. 15)**
 - a. Appointing juvenile defenders to represent children at Detention Hearings and Probable Cause Determinations as early as possible, including immediately after intake staff completes required paperwork where possible;
 - b. Establishing a juvenile defender panel system, overseen by an independent body, to handle any delinquency cases that either pose a conflict for the specialized unit for juvenile defense or would cause the juvenile unit to breach workload restrictions required by this Agreement;
 - c. Supporting the promulgation and adoption of attorney practice standards for juvenile defenders; supporting the training of attorneys within the SCPD specialized unit and the independent panel system on the practice standards; and

supporting supervision and evaluation of said attorneys against such practice standards; and

- d. Ensuring that juvenile defenders have a confidential meeting space to confer with their clients within the Facility.

Status

This 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. On December 23, 2014 Winsome Gayle of DoJ sent a letter urging the County to “promptly engage in the following steps”:

- Continue the collaborative discussion of elements necessary to reform the public defense function
- Seek technical assistance from a substantive expert engaged in defense reform work and from a skilled facilitator to help structure and guide the discussion
- Develop a comprehensive plan that indicates how public defense independence, reasonable workloads, adherence to juvenile defender standards and oversight by an independent body will be achieved. The plan should outline steps toward accomplishing the reforms and the timelines for achieving each step.

County Attorney Ross Dyer convened a meeting April 1, 2015 to continue work to develop the plan and David Carroll of the 6th Amendment Center was brought in to help with this work. Mr. Carroll came to town and, with Mr. Dyer, met with some individual parties in mid-July.

At last report, Mr. Dyer indicated a draft document had been received from Mr. Carroll although it had yet to be distributed.

Comments

This effort is the key to meeting the due process concerns expressed in the MoA. It has been a laborious process and it will be up to the Due Process Monitor and DoJ to determine if the plan, whenever it is put forth, meets their expectations of a comprehensive plan hitting all the targets outlined above and developed in a collaborative manner which will make for a sustainable system.

Due Process

1. Policies and Procedures

(f) Plea Colloquies

- (i) Within six months of the Effective Date, JCMSC shall revise its policies, procedures, and practices to establish a procedure for conducting plea colloquies that is age-appropriate and clear to the Child. **(MoA p. 16)**
- (ii) JCMSC shall also ensure that Juvenile Court Magistrates conduct an interactive oral colloquy with the Child that includes: **(MoA p. 16)**

- a. The nature of the delinquent act charged;
 - b. The Child’s right to an attorney;
 - c. The Child’s right to plead not guilty and to have an Adjudicatory Hearing instead where he or she would have the right to cross-examine adverse witnesses and the right to remain silent;
 - d. The Child’s waiver of a right to trial on the merits and an appeal by entering a guilty plea;
- (iii) Within six months of the Effective Date, JCMSC shall revise its policies, procedures, and practices to ensure that Children have a right to counsel whenever entering a plea of guilty. **(MoA p. 16)**

Status

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

Due Process

1. Policies and Procedures

(g) Restitution Guidelines

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

Status

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

Comments

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

Due Process

1. Policies and Procedures

(h) Bond-Setting Guidelines

- (i) Within six months of the Effective Date, JCMSC shall revise its policies, procedures, and practices to establish guidelines for the setting of bonds for Children charged with delinquent acts. **(MoA p. 17)**
- (ii) At minimum, the guidelines regarding bonds shall: **(MoA p. 17)**
 - a. Prevent excessive bonds for Children;
 - b. Reasonably assure the Child’s appearance for court;
 - c. Take into account the presumptive indigence of Children and recognize that parental income may not be available to the Child; and
 - d. Allow parents to file statements of indigence where appropriate.

Status

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

Comments

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

Due Process

1. Policies and Procedures

(i) Confidentiality of Juvenile Delinquency Proceedings

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

in the Court’s discretion, only persons with a direct interest in the case, are admitted into any delinquency proceeding. **(MoA p. 17)**

Status

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

Due Process

1. Policies and Procedures

(j) Language Access Plan

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

Status

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

Comments

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

Due Process

1. Policies and Procedures

(k) Treatment of Witnesses

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

Status

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

Due Process

1. Policies and Procedures

(l) Judicial Bench Cards

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

Status

A policy regarding bench cards was created 6-17-13. Submissions for bench cards in accordance with this item 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

1. Policies and Procedures

(m) Written Findings

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

Status

This policy was 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 4**.

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. Due Process monitor Sandra Simkins made a specific recommendation in her last report that the Court seek training for staff on trauma related issues. The Court has embraced that recommendation and reports they are in the process of arranging for that training for all staff.

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

1. DMC Assessment

- (b) Within nine months of the Effective Date, JCMSC shall augment the appropriate data collection method to assist in its evaluation of its DMC levels, causes, and reduction. The method shall include an assessment of the following areas within JCMSC and ShelbyCounty 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.

DMC and Equal Protection

1. DMC Assessment

- (c) Within six months of the Effective Date, JCMSC shall identify staffing needs to collect, evaluate, and report DMC data as required by this Agreement. JCMSC shall assign additional staff required within nine months. **(MoA p. 22)**

Status

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

Comments

Caralee Barrett has been hired to work on data collection and analysis.

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. The Point of Contact process was designed to help reduce DMC. **Appendix 5** includes the most recent Point of Contact reports.

Comments

The Point of Contact reports have shown some improvement. A great deal of data is cited and some degree of analysis is apparent. The reports vary in the quality of their analysis and recommendations. It

seems apparent in the historic reading of the Points of Contact reports that the DoJ findings of disparate treatment are not universally accepted or are believed to be caused by factors outside of the Court’s control. One argument for this position is that the Court has reduced the number of minorities in the system at many points. Numbers of minority youth detained and number of minority youth transferred into the adult system are dramatically down. These numbers show outstanding reductions and certainly prove fewer minority youth are advancing through the system. These reductions lead many to believe great progress has been made in reducing the adverse impacts of the juvenile justice system on minority youth. However, despite these remarkable reductions, minority youth are still detained more, diverted less, and found delinquent at higher rates than their white counterparts. That is, they disproportionately receive tougher sanctions than similarly situated white youth. Despite the reduction in total numbers, the ratios remain the same or worse. Those ratios are the heart of the claim that DMC exists.

The other position that indicates Leiber’s findings of disparate treatment are not accepted is that individual cases are analyzed and any disparities are explained away. In many of the reports, the analysis centers on looking at individual cases to try and determine whether disparate treatment has occurred. These reports tend to conduct an analysis of a few cases and justify why certain actions were taken. This is a worthwhile exercise but can be somewhat of a myopic approach. For example, in some cases it is argued that a minority youth received a harsher sanction due to more prior contacts with the Court. This seems logical yet does not consider the possibility that some of those prior contacts may have been the result of DMC issues with law enforcement. Data shows that law enforcement has the highest RRI and with that being the case it seems minority youth may be brought into the system in situations where similarly situated white youth may not have been. If that is true, then basing future decisions strictly on the number of prior contacts with the Court could be based on a faulty foundation. My point is that this is clearly a complex issue and requires complex analysis. Dr. Leiber has completed in depth studies and analysis of Juvenile Court data and concluded disparities exist in a number of areas. The Point of Contact reports seemed designed to argue with Leiber’s findings. Perhaps Leiber’s findings have flaws, but reading the Point of Contact reports does not present enough evidence to refute those findings.

The bottom line with the Point of Contact reports is that they were intended to lead to the reduction of DMC and, according to Dr. Leiber’s reports, that has clearly not happened. If the Court wants to argue DMC cannot be reduced, or that Dr. Leiber’s reports are incorrect, more evidence is needed to make that argument a convincing one.

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. Below are comparisons of the RRI from 2009, 2013 and 2014 for the 8 Decision Points. This information is from Dr. Michael Leiber’s Assessment Study dated July 3, 2015. The numbers highlighted in **bold** show DMC exists.

<u>Decision Point</u>	<u>2009</u>	<u>2013</u>	<u>2014</u>
Referral to Juv Ct	3.4	5.06	4.38
Cases Diverted	0.9	0.88	0.92
Cases – Secure Detention	2.1	1.64	2.02
Petitioned	1.2	1.46	1.69
Delinquent Findings	1.3	1.16	1.18
Probation Placement	1.0	1.04	1.05
Secure Placement	1.7	1.05	1.50
Transfer	2.3	*(insufficient #s)	*(insufficient #s)

The data in Dr. Leiber’s Assessment report shows disparities exist in 6 of the 8 Decision points and have grown (as measured by RRI) in 6 of the 8 Decision Points from 2013. The data show that in 2014 minorities are:

- More likely to be referred by law enforcement to Juvenile Court
- Less likely to be diverted
- More likely to be Detained
- More likely to be found Delinquent
- More likely to be Petitioned to Court,
- 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.

Bridgette Bowman was hired to coordinate DMC efforts for the Court. It is hoped that Ms. Bowman can use this position to provide structure and direction to the Court’s efforts to reduce DMC.

- (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 Shannon Caraway. Caralee Barrett has provided much information and analysis at various decision points. Information has been 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.

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 ShelbyCounty. **(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 was repeated in March 2015 and is repeated here again in September 2015. There has been no significant progress made since the initial comment was made 18 months 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 6** 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 gist of this update is that a number of activities are occurring and are at various stages of implementation. This includes programs such as the Juvenile Court Precinct Liaison Initiative (JCPL), “Real Talk” programs at one of the schools, the School Based Probation Liaison (SBPL) and others. Given the number and variety of programs being pursued data collection and evaluation are vitally important. The update provided in **Appendix 6** mentions data collection with some of the programs and while that is important, it will be necessary to do more than simply report numbers. Outcome evaluation, including effects on DMC should be an important component of assessing these programs.

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 (GSG) used by Probation has done much to provide consistency in determining appropriate non judicial dispositions. Pursuant to a recommendation by Due Process Monitor, Sandra Simkins, adjustments have been made to the GSG to align it more with actions taken by the Court.

The YASI has also been implemented.

Comments

This has been an area of great improvement since the inception of the MOA and 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. Professors from the University of Memphis have worked on validation of a revised DAT, known as DAT 2. At the time of this report, that validation report has not been received.

Equal Protection monitor Mike Leiber has suggested local validation for the Graduated Sanctions Grid (GSG) and the YASI. That must be pursued if the value of those instruments is to be maximized. Some private attorneys continue to express concern about the use of the YASI. 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. It was suggested in the 5th Compliance Report submitted in March 2015 those concerns might be addressed by more clearly spelling 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 YASI. 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 three Compliance Reports(March 2014, September 2014, and March 2015) suggested a planned schedule for reassessing policies, procedures, practices and existing agreements be established to insure this is done on a comprehensive basis. There has been no response to this suggestion. 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 known as LEAP (Law Enforcement Assessment 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. The Memphis Police Department has begun the program and the municipalities of Germantown and Collierville have recently asked to join the call in program.

Comments

The Court has recognized the importance of training officers to use the program. Larry Scroggs, in a recent email spoke of the need to do "reinforcement" training with MPD to maximize use of the program. 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 has been involved in the development of a number of programs including the Juvenile Court Precinct Liaison Initiative (JCPL) and the School Based Probation Liaison (SBPL). They continue to work closely with JDAI to seek alternatives.

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 was attached in the 5th Compliance Report submitted in March 2015. The Equal Protection Monitor, Dr. Leiber needs to determine what, if any, more needs to be done to comply with this provision of the MOA.

DMC and Equal Protection

3. DMC Reduction: Evaluation and Tools

- (f) Within nine months of the Effective Date, JCMSC shall begin implementing the revised data collection mechanism to assist in its continued evaluation of DMC levels, causes, and reduction. **(MoA p. 25)**

Status

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. Bridgette Bowman, the recently hired DMC Coordinator for the Court will be working with the Points of Contact and Court staff on these reports.

Comments

See the lengthy 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 and a validation of DAT 2 is nearing completion. The YASI and Graduated Sanctions Grid have not been locally validated. The Graduated Sanctions Grid (GSG) was revised somewhat at the suggestion of Due Process Monitor Sandra Simkins.

Comments

The Court indicated they were seeking funding for validation purposes in the 2015-2016 budget which took effect in July 2015. This section of the MoA requires an evaluation and revision of all objective decision tools to minimize racial and ethnic differences on an annual basis. Some schedule or plans for validation is necessary to be compliant with this section.

DMC and Equal Protection

4. Training

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

Status

Training efforts have been extensive. An updated training schedule is maintained by Ms. Brenda Johnson, HR Manager. That schedule is included in **Appendix 4**.

Comments

Development of training plans is ongoing. Attempts have been made to coordinate training efforts with JDAI and OJJDP.

Protection from Harm: Detention Facility

On July 1, 2015 the Juvenile Detention Center was transferred to and placed under the control of the Shelby County Sheriff, Bill Oldham. Most of the staff transferred with the facility. An Assessment Report was prepared under the guidance of the Sheriff's Office prior to the transfer to gauge what issues would be faced with the transition. The Administrator of Detention under the Court, Gary Cummings, did not transfer to the Sheriff's Office although he has assisted with the transition. A push was made several months ago to establish a transition team and transition plan to help with a smooth move to the Sheriff's Office. Although the transition occurred July 1st, the written transition plan was just received September 17th and thus the content of that plan will not be discussed in this report.

It should be noted that the Sheriff's Office is fully aware of the MoA and has consistently expressed their intentions to comply in every respect. Sheriff's staff has been actively engaged since the transition in making physical improvements to the facility such as painting. They have also moved quickly to adopt some recommendations from Facility Consultant David Roush in making immediate changes with food services and changing the policy to allow reading materials in the rooms. These changes have been well received.

As with any change of this magnitude, there have been and will be bumps in the road as things move forward. There is much good work that has been done in Detention prior to the transition and that work will need to be maintained. There are also a number of lingering items that would benefit from quick attention and a planned, structured approach. The Sheriff's personnel are very familiar with both the importance of complying with the MoA and with the benefits to be gained by the expertise of the Facility Consultant and DoJ personnel as we move forward.

1. Use of Force

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

Status

The restraint chairs were removed from the Detention Center on April 26, 2012. 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 PREA policy has yet to be finalized. The need for a full PREA policy was first brought up in Committee A on June 19, 2012 which was prior to the MoA even being signed. Consultants have been consulted, drafts have been drafted and it has been reported training has been done. Nonetheless, a final policy has not been seen. Given the transfer of Detention to the Sheriff's Office on July 1, 2015 it is now being reported that the Sheriff's Office is reviewing the policy.

Protection from Harm: Detention Facility

1. Use of Force

- (d) Each month, the Administrator, or his or her designee, shall review all incidents involving force to ensure that all uses of force and reports on uses of force were done in accordance with this

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

Status

Appendix 7 includes the Detention Report Cards of 2014 and 2015 to allow a comparison of a number of items, 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. There are a number of items worth highlighting and comments on all those items will be made in this section.

	2014	2015
# Youth Admitted to Detention per month	109	81
% Overrides to DAT	16%	12%
% Overridden due to Danger to community	12%	35%
QMHP calls per 100 youth	.89	.63
Average time on suicide precautions (hours)	65	90.6 or 65.19*
Use of Force per 100 youth	1.65	1.14* or 1.13
% Hierarchy non physical alternatives used	27.4%	34.2% or 23.7%*
Duration of Room Confinement (hours)	16.7 or 45.27	18.21 or 45.27*

The numbers above paint a positive picture of Detention. The following conclusions can be drawn: Fewer youth are being admitted (down 26%), fewer DATs are being overridden, QMHP calls have declined and use of force is down. All of these point to encouraging improvements.

The one burning question is can the data be trusted? All of the above data with an * has discrepancies within the Report Card itself. Some may be formulaic errors within the spreadsheet or it may be something else. The need for data validation and data integrity has been discussed for over a year. This need was initially brought up in Committee A on March 10, 2014. There have been questions about funding a validation effort and there have been delays with attempts to arrange a consultant to work on the issue. Detention has led the charge at the Court with the collection and analysis of data for management purposes but it remains essential that data integrity is assured. The data above show very good performance in Detention but, without a process of data validation, there are questions as to how much trust can be placed in the data, particularly given the inconsistencies in the spreadsheets themselves.

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 was documented in the 5th Compliance Report submitted in March 2015. The training continues to be an important part of annual in-service training sessions. Given the transfer of Detention to the Sheriff's Office it is important that this training continue to be given annually. Lindsay Hayes also worked with Sheriff's Department staff on suicide policies at the adult jail so it is anticipated this training will continue to be followed.

Protection from Harm: Detention Facility

2. Suicide Prevention

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

Status

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

Protection from Harm: Detention Facility

2. Suicide Prevention

- (c) After intake and admission, JCMSC shall ensure that, within 24 hours, any Child expressing suicidal intent or otherwise showing symptoms of suicide is assessed by a QMHP using an appropriate, formalized suicide risk assessment instrument. **(MoA p. 30)**
- (d) JCMSC shall require direct care staff to immediately notify a QMHP any time a Child is placed on suicide precautions. Direct care staff shall provide the mental health professional with all relevant information related to the Child's placement on suicide precautions. **(MoA p. 30)**
- (e) JCMSC shall prohibit the routine use of isolation for Children on suicide precautions. Children on suicide precautions shall not be isolated unless specifically authorized by a QMHP. Any such isolation and its justification shall be thoroughly documented in the accompanying incident report, a copy of which shall be maintained in the Child's file. **(MoA p. 30)**
- (f) Within nine months of the Effective Date, the following measures shall be taken when placing a Child on suicide precautions: **(MoA p. 30)**
 - (i) Any Child placed on suicide precautions shall be evaluated by a QMHP within two hours after being placed on suicide precautions. In the interim period, the Child shall remain on constant observation until the QMHP has assessed the Child.

- (ii) In this evaluation, the QMHP shall determine the extent of the risk of suicide, write any appropriate orders, and ensure that the Child is regularly monitored.
 - (iii) A QMHP shall regularly, but no less than daily, reassess Children on suicide precautions to determine whether the level of precaution or supervision shall be raised or lowered, and shall record these reassessments in the Child's medical chart.
 - (iv) Only a QMHP may raise, lower, or terminate a Child's suicide precaution level or status.
 - (v) Following each daily assessment, a QMHP shall provide direct care staff with relevant information regarding a Child on suicide precautions that affects the direct care staff's duties and responsibilities for supervising Children, including at least: known sources of stress for the potentially suicidal Children; the specific risks posed; and coping mechanisms or activities that may mitigate the risk of harm.
- (g) JCMSC shall ensure that Children who are removed from suicide precautions receive a follow up assessment by a QMHP while housed in the Facility. **(MoA p. 31)**
- (h) All staff, including administrative, medical, and direct care staff or contractors, shall report all incidents of self-harm to the Administrator, or his or her designee, immediately upon discovery. **(MoA p. 31)**
- (i) All suicide attempts shall be recorded in the classification system to ensure that intake staff is aware of past suicide attempts if a Child with a history of suicidal ideations or attempts is readmitted to the Facility.

Status

The suicide policies address these areas.

Comments

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. This is a good process and aids in communication between health and security staff. In the 4th Compliance Report submitted September 23, 2014 it was recommended 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. This recommendation is worth repeating.

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 work well together to quickly screen and respond to issues faced by the youth in Detention. Regular audits are done by ShelbyCounty 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 was provided in the 5th Compliance Report submitted in March 2015.

Community Outreach

- A. Within six months of the Effective Date, JCMSC shall develop and implement a community outreach program to keep the community informed about the progress of its reforms. The community outreach program shall include a process for updating and receiving input from a countywide juvenile justice consortium comprised of the Memphis/Shelby Juvenile Justice Board and other key stakeholders, including, but not limited to, six to nine citizens selected by the Mayor and approved by the County Commission who are reflective of the cultural and ethnic diversity of the County to include no less than two parents of children who have had delinquency matters before JCMSC, a person under the age of twenty-one (21) who has had direct contact with the juvenile justice system, and community advocates. **(MoA p. 33)**

- B. The community outreach program shall require at least one open meeting every six months for the first three (3) years of this Agreement and at least one time annually thereafter. The open meetings shall inform the public about the requirements of this Agreement, discuss JCMSC’s progress in each substantive area of the Agreement, and address community concerns related to the fair administration of juvenile justice. The meetings shall be held in a location with easy access to public transportation. At least one week before the open meetings, JCMSC shall widely publicize the meetings using print media, radio, and the internet. **(MoA p. 33)**

- C. The community outreach meetings shall include summaries of reports completed pursuant to this Agreement during the period immediately prior to the meeting and inform the public of any policy changes or other significant actions taken as a result of this Agreement. **(MoA p. 33)**

- D. JCMSC shall publish on its website annual reports outlining its reform efforts in accordance with this Agreement. The annual report shall include a description of the measures taken to address the due process and detention reforms and to reduce the level of DMC at different Decision Points. **(MoA p. 33)**

- E. The community outreach program shall include a data dashboard that directly communicates JCMSC’s compliance with the provisions of this Agreement. The data dashboard shall present a snapshot of JCMSC’s progress toward complying with the due process, equal protection, and protection from harm goals identified in the Agreement. JCMSC shall ensure that the data dashboard is available on a publicly accessible website that is updated on a monthly basis at minimum. **(MoA p. 34)**

Status

Appendix 8 includes the “Interagency Services Report” of August 2015. This document lists highlights of Judge Michael’s calendar and the activities of various members of the Court staff.

Additionally, it includes a brief description of collaboratives/partnerships and related activities. This report provides good documentation of the many external activities in which Court staff is involved.

Appendix 9 contains the 2015 Community Engagement Plan. This document provides an outline of targeted audiences, stakeholders, outreach methods and a proposed timeline for June – December 2015. Unfortunately, this plan has not been followed. A similar plan was submitted for calendar year 2014 but that plan ceased to be followed in July 2014. The 2015 plan was ultimately submitted in mid year 2015 but it has not been followed.

Phase I of the Data Dashboard became operational in February 2014. Two other phases are planned. It is not clear when they will be implemented.

Public meetings continue to be held every six months. The most recent public meeting was held August 11, 2015. It was attended by around 30 people which included several individuals connected with the Court and/or the juvenile justice system. Good information was provided in the presentation although most questions from the public were involved child support or were unrelated to delinquency issues.

There have been positive developments with the Countywide Juvenile Justice Consortium (CJJC). The CJJC has become more active during this period and has provided feedback to the Court on meetings they have held with the community. The importance of providing information to the Court has been repeatedly emphasized by the CJJC Chair at their meetings. **Appendix 10** includes a report from the CJJC following a public meeting they convened in Frayser in May. On September 1, 2015 the Court sent a response to this report that included some helpful information for the CJJC to share at future meetings. This report is also included in **Appendix 11**.

Comments

It is clear the Court is involved in a large number of community activities. The problem remains that those activities are not part of a structured plan designed to improve Court/community relations. It has been reported that Bridgette Bowman may be assigned to help with the Community Engagement Plan.

The exchange of feedback between the CJJC and the Court is the way that process was designed to work. This is a hopeful sign this process is beginning to work as an avenue to improve Court/community relations.

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 ShelbyCounty 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

Delays resulted from changes with OJJDP and their technical assistance provider. Dr. Tom Harig has been retained to conduct the survey. There have been some administrative issues reported but it is expected the survey will be completed by the end of the year.

Implementation and Monitoring

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

Status

This item is complete. Bill Powell was appointed as Settlement Agreement Coordinator by Judge Person and Mayor Luttrell.

Comments

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

General Provisions

A. Policies and Procedures

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

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

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

submitted to the Monitor for review and approval. Unless otherwise stated, all policies and procedures shall be implemented within one year of the Effective Date. **(MoA p.40)**

Status

This was done and policies submitted to DoJ previously.

General Provisions

B. Reporting Requirements

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

Status

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

General Provisions

B. Reporting Requirements

2. Compliance Report. JCMSC shall submit a bi-annual compliance report to the United States, the first of which shall be filed within six months of the Effective Date. Thereafter, the bi-annual reports shall be filed 30 days prior to the Monitors' and Facility Consultant's bi-annual compliance tour until the Agreement is terminated. Each bi-annual compliance report submitted by JCMSC shall describe the actions JCMSC has taken during the reporting period to implement this Agreement and shall make specific reference to the Agreement provisions being implemented. To the extent any provision of this Agreement is not being implemented, the compliance report shall also describe what actions, including any additional revisions to policies, procedures and practices, JCMSC will take to ensure implementation, and the date(s) by which those actions will be taken. **(MoA p. 41)**

Status

This report constitutes the 6th 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.