

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

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

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

**John Marshall Jones, Assistant County Attorney
Marlinee Iverson, Assistant Country Attorney**

**FROM: Sandra Simkins
Due Process Monitor**

DATE: June 10, 2016

RE: Compliance Report #7— April 2016

Juvenile Court Memphis Shelby County (Juvenile Court) entered into a Memorandum of Agreement (Agreement) with the United States Department of Justice Civil Rights Division (DOJ) on December 17, 2012. According to the Agreement, compliance shall be assessed by two monitors and a facility consultant. I was named the Due Process Monitor and have subject matter expertise in the area of due process and juvenile delinquency. The seventh regularly scheduled compliance review and site visit occurred April 4 – April 8, 2016. This report evaluates the extent to which Juvenile Court has complied with each substantive provision of the Due Process sections of the Agreement.

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Executive Summary

As I have previously noted, many significant improvements have been sustained including progress toward an independent indigent defense system.¹ However, there has been no discernible movement toward developing a comprehensive plan, which has been repeatedly requested since December 2014.

For this reporting period, I am pleased to report the following: 1) the University of Memphis Cecil C. Humphreys School of Law will be starting a Children’s Defense Clinic in the fall of 2016; 2) the Public Defender Juvenile Unit continues to increase capacity (currently handling 40% of cases) is launching a vertical team to represent youth facing transfer, and is continuing to implement new technologies that support oversight and workload control; 3) the Court recently completed a “trauma audit” through the National Council of Juvenile and Family Court Judges; 4) transfer numbers have continued to decline for the sixth straight year; 5) Dr. Tucker-Johnson’s Clinical Services has expanded capacity with the hiring of an additional psychologist; and 6) the Probation Department’s graduated sanctions grid continues to be successful and non-judicially handles thousands of cases annually.

Unfortunately, some challenges remain. First, during the previous compliance period (October 2015-April 2016) there were reports of dangerous conditions at the detention center since the Sheriff’s Department assumed authority six months ago.² Second, a new Panel Coordinator has been appointed by Juvenile Court (the fourth coordinator to be in this position since the signing of the Agreement) and is functioning under the same structure that was identified as inadequate in the original DOJ investigation.

¹See SANDRA SIMKINS, COMPLIANCE REPORT #6—OCTOBER 2015 (2015), page 4 [hereinafter SIMKINS #6], available at http://www.justice.gov/crt/about/spl/documents/shelby_firstmtrpt_6-5-13.pdf;

“Mayor Luttrell’s leadership and that of leadership within his Administration is commendable and reflects positive steps to improve the operational independence of the Shelby County Public Defender. I commend the Mayor and Mr. Dyer for initiating the resolution that removes the Public Defender from direct oversight of the County Attorney. Although this important step does not achieve sustainable independence, it does demonstrate an appreciation by the Administration that public defenders are not amenable to administrative direction in the same sense as other government employees. The new structure presents an opportunity for the Administration to continue to discern local options to better satisfy the constitutional obligation to respect the professional independence of public defenders. Also commendable are the steps taken to establish the Public Defender as the appointing authority for assistant public defenders. Ratification by the County Commission of an existing local ordinance (Article XI, Section 10-731) clarifies the role of the Public Defender in this important area and reverses the long-standing practice of assistant public defenders serving as political appointees of the elected Mayor. This is a significant achievement.”

²See, Commercial Appeal Article, “Criminal Justice Reform Advocates Troubled about juvenile court reports,” April 01, 2016

<http://www.commercialappeal.com/news/courts/criminal-justice-reform-advocates-troubled-about-juvenile-court-reports-2f5c5590-563b-27bb-e053-0100-374200691.html>, and “Assaults increased in Memphis juvenile detention,” http://journaltimes.com/news/news-state-tn/consultant-assaults-increased-in-memphis-juvenile-detention/article_8d2308f6-1521-5af2-9371-6d63fa3bd8ea.html

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

Compliance Standards	April 2013	Oct.2013	April 2014	Oct. 2014	April 2015	Oct. 2015	April 2016	
Substantial Compliance	0	0	0	24	38	43	50	
Partial Compliance	1	26	44	23	16	11	3	
Beginning Compliance	25	17	10	5	1	1	0	
Non Compliance	3	0	0	1	0	0	2	
Insufficient Information/pending	5	2	1	2	0	0	1	
Total # of Due Process Provisions in Agreement	34	45	55	55	55	55	56*	

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

*I have divided one compliance measure into two parts given nature of progress, see p. 17.

Ongoing Due Process Concerns

1. Continuing Lack of Independence in Defender Services

In my last two compliance reports I have written about the foundational issue of independence, and the need for a comprehensive plan that establishes an “independent, ethical and zealous” defense function in the Shelby County Public Defender’s Office and the appointed panel defender system.³ I have expressed repeated concerns over whether necessary steps were being taken to meet the Agreement’s requirement of defense independence. Last October, Mr. Carroll and Mr. Dyer reported that the County had encountered insurmountable obstacles due to the limitations of Supreme Court Rule 13 and restrictions in the County Charter. While I appreciate the difficulty these barriers pose, substantial compliance with the Agreement requires a system of defender services that is adequately independent to assure adherence to juvenile defender standards, provide appropriate oversight and control work load.

I appreciate the open dialogue in the area of defender services that has resumed since January 2016. Both Bill Powell and Public Defender Bush have sought my input as they explored options for local solutions. I applaud the effort underway to increase Public Defender capacity to provide representation in all delinquency proceedings except where there is a conflict of interest. This would significantly increase the number of youth represented by lawyers with adequate resources, training and supervision. During the April 2016 visit both Judge Michael and Mr. Bush expressed their support for this step. Although this plan would not solve all independence issues, it would greatly reduce the scope of issues associated with the panel and Panel Coordinator. This would be significant improvement over the status quo.⁴

³DOJ letters from October 30, 2014 and December 23, 2014, have referenced the need for “a *comprehensive plan* that outlines how the Agreement’s requirements of public defense independence, reasonable workloads, adherence to juvenile defender standards, and oversight by an independent body will be achieved. The plan should outline steps toward accomplishing the reforms and the timelines for achieving each step.”

⁴ Mr. Bush reports the proposed increase in Public Defender capacity is an opportunity to bring some private attorneys under the PD umbrella, and that he is working on a new position type with County Human Resources for this purpose. This is an example of the kind of practical solutions that would use attorneys familiar with juvenile court practice and provide them access to

2. Issues Concerning Independence of Panel Coordinator

Since beginning my role as the Due Process monitor in 2013, there have been four different Panel Coordinators. One Panel Coordinator was terminated by the Court. Each of the other four Panel Coordinators was hired, or temporarily assigned, by judicial appointment. There has never been a job description posted or an interview process where qualified applicants could be openly evaluated against objective standards.⁶ As I stated in Compliance Report #5, July 2015, “[i]t is hard to imagine more control than the ability to terminate employment. It appears in this area we are back where we started: the panel coordinator directly reports to a sole juvenile court judge.” In Shelby County, given the high percentage of cases handled by the panel, the panel coordinator’s structural bias towards the Court precludes independence and prevents compliance.

The problems of this structure were detailed in the original 2012 investigation:

Finally, we are concerned about the structure of juvenile Defender’s Office (“JDO”). The JDO [panel coordinator] is not an independent agency, nor is it affiliated with the county public defender’s office. Instead, JCMSC operates it entirely, and the [panel coordinator] is appointed by, and reports directly to, the Juvenile Court Judge. This organizational structure, while not unconstitutional per se, creates an apparent conflict of interest, as a juvenile defender must balance the duty of representing the child client with the inherent duty of loyalty to his or her employer. National standards for public defender systems strongly encourage independence from the judiciary to avoid conflicts of interest and judicial interference.

resources, training and supervision that are not available to the Panel. My only caution is that attorney compensation be set at an adequate rate. In my opinion the proposed \$50/hour is too low to support the quality of services required.

⁶ The qualifications and independence of the Panel Coordinator are an important component of due process because the coordinator is currently functioning as a panel attorney supervisor, and assessing the quality of delinquency representation. Juvenile defense is a specialized area of practice and juvenile defenders have particular ethical duties to represent the express interests of the child. See *National Juvenile Defender Standards, 1.3 (2012)* <http://www.njdc.info/publications.php> at 7. Prior experience and training as a juvenile defense attorney would be valuable in ensuring practice standards.

Furthermore, as a supervisor, there are specific supervisory standards that the Panel Coordinator should meet. See *National Juvenile Defender Standards, 9.7 (2012)* <http://www.njdc.info/publications.php> at 7.

By way of example, under national standards a juvenile defender supervisor has an obligation to address systemic barriers (such as the obstacles to defense practice I have mentioned in in previous reports) and on page 17 of this report. According to Standard 9.7:

“Supervisors bear some responsibility for addressing institutional barriers that impede counsel’s duty to provide zealous representation. Supervisors should ensure that stakeholders are aware that the supervisor will challenge systemic obstacles that undermine the due process and constitutional rights of clients.

Commentary: An individual lawyer may not be able to cure systemic deficiencies. Despite their best intentions, many juvenile defenders work in juvenile court systems that promote a culture antithetical to providing zealous representation. Systemic impediments to quality representation may include the late appointment of counsel, pressure to accept uncounseled pleas, confusion as to the role of the defender, lack of independence of counsel, limited availability of funding and personnel to provide ancillary support (e.g., investigators, social workers, experts, etc.), lack of parity with prosecutorial resources, lack of parity between appointed, private, and full-time counsel, and burdensome caseload sizes. Supervisors play a vital role in helping counsel surmount these obstacles

I don’t believe it is possible for the panel coordinator to meet these standards given the current structure.

See U.S. DEP'T OF JUSTICE, INVESTIGATION REGARDING THE JUVENILE COURT OF MEMPHIS & SHELBY COUNTY (APR. 2012) [hereinafter INVESTIGATION], available at <http://www.shelbycountyttn.gov/DocumentCenter/Home/View/5759>, at 50.

As noted, there has been progress with the creation of the Juvenile Unit of the Public Defender. At present, the Public Defender represents 40% of the cases. The remaining 60% of the cases are represented by the panel attorneys, under the direct supervision of the Panel coordinator who was appointed by Juvenile Court. If the capacity of the Public Defender Juvenile Unit continues to expand, these issues are dramatically reduced. I am hopeful that present efforts will identify local solutions to minimize or eliminate this issue.

3. Progress Report and Advisory Recommendations due by July 15.

I want to encourage the collaborative efforts underway to identify local solutions that will enhance defender independence⁷ for both the Public Defender and the Panel. Because the Mayor has now delegated responsibility for the collaborative reform process to Mr. Bush,⁸ I am requesting that he submit a written progress report by July 15, 2016. The report should identify achievable solutions and set a timeline for implementation. The report should be solution-oriented and focus on the necessary steps that can be taken to meet the Agreement's requirement to achieve *sustainable* defender independence, reasonable workload controls, adherence to juvenile defender standards and appropriate oversight. The progress report will avoid further delays and will permit feedback to avoid any further misunderstanding regarding the level of independence required to achieve substantial compliance. The report should address not only options that achieve sustainable independence for the Public Defender, but also make recommendations regarding solutions for Panel deficiencies as well. The progress report should address specific concerns regarding deficiencies in defender structures raised in previous correspondence.

4. Detention Center Conditions of Confinement

At the end of March 2016, I received multiple reports from individual lawyers regarding the treatment of their clients in the detention center. Concerns included: excessive use of shackling, physical abuse and the use of solitary confinement. These troubling reports were also recently highlighted in local media in April 2016.⁹ It is my understanding that Facility Monitor David Roush is working with the court to address these concerns and is providing additional

⁷ "The independence of the defense function and individual defense counsel is necessary to the provision of ethical and zealous juvenile advocacy, a hallmark of a fair and reliable justice system, and essential to achieving substantial compliance with the Agreement." DOJ letter, October 30, 2014.

⁸ Email from DOJ Attorney Winsome Gayle February 2, 2016.

⁹ See, <http://www.commercialappeal.com/news/courts/criminal-justice-reform-advocates-troubled-about-juvenile-court-reports-2f5c5590-563b-27bb-e053-0100-374200691.html> ("Criminal justice reform advocates responded with concern Thursday following reports that detention at Juvenile Court of Memphis and Shelby County became more dangerous after Shelby County Sheriff Bill Oldham took over detention operations on July 1. reported a 12 percent increase in use of disciplinary locked-room confinement, 58 percent increase in suicidal behavior without injury, a 31 percent increase in the rate of assaults of youth on youth, a 36 percent increase in the rate of physical restraints, a 303 percent increase in the use of mechanical restraints and a 126 percent increase in the percentage of staff who said they fear for their safety since the transfer of the facility from the court to the sheriff.")

guidance and technical assistance. Since my April 2016 visit I have heard positive reports from lawyers indicating that conditions are improving. Condition issues overlap with due process because youth have substantive due process rights to be free from harm while in detention. Youngberg v Romeo, 457 U.S. 307 (1982) Condition issues can also impact the voluntariness of youth making admissions to delinquent acts and should be considered in all detention hearings.

Recent Positive Developments

1. New Children's Defense Clinic at University of Memphis Cecil C. Humphreys School of Law

One of the highlights of this reporting period is the newly created Children's Defense Clinic at University of Memphis Cecil C. Humphrey's School of Law. During the past six months a national search was conducted for a clinical professor. During my visit I learned that an offer was extended and accepted and a new clinical faculty member began on June 1, 2016. The clinic is fully enrolled for the Fall 2016 term. I commend the leadership of Dean and Professor Peter Letsou and Public Defender Stephen Bush for the creation of this clinic which will be the first Children's Defense Clinic in Tennessee.

The addition of a law school clinic can have significant impact on the sustainability and future progress of Shelby's juvenile court in the following ways:

- a) The clinic will encourage young lawyers to consider the importance of juvenile law as an area of practice;
- b) A Children's Defender Clinic will provide Memphis with a pool of qualified practitioners who possess a deeper understanding of the unique specialization required to represent youth;
- c) The clinic can serve the state as a training center which could support juvenile defenders across Tennessee;
- d) The clinic can collaborate with other clinic programs to advance policy issues on behalf of Shelby County youth.¹⁰

The importance of the Children's Defense Clinic cannot be overstated. During a meeting with Dean Letsou and Mr. Bush, it appears that federal grant funds allocated for the clinic program are adequate to extend the preset contract term for an additional year. I applaud the Administration's decision to extend the term of these grants for this purpose.

2. Continued decline of transfer numbers for sixth straight year,

¹⁰The following subject-specific clinics operate as part of the University of Memphis Legal Clinic: 1) Child and Family Litigation Clinic, 2) Civil Litigation Clinic, 3) Elder Law Clinic, 4) Elder Health Law Advocacy Clinic, 5) Housing Adjudication Clinic, 6) Mediation Clinic, 7) Medical-Legal Partnership Clinic, 8) Neighborhood Preservation Clinic, see also <http://www.memphis.edu/law/programs/elder-healthlaw-advocacy.php>

I am pleased to report that the number of youth transferred continued to decline in 2015 for the sixth consecutive year. I commend Juvenile Court for their efforts.

Shelby County	2008	2009	2010	2011	2012	2013	2014	2015
# of children transferred to adult court*	225	194	151	121	99	90	77	47

*Data provided by JCMSC

Unfortunately, the number of “Notice of Transfers” filed by the District Attorney has not decreased. Currently, “Notice of Transfer” is filed nearly four times the number of youth transferred. The practice of filing high numbers of Notice of Transfer is out of step with national trends. In fact since 2005, 28 states have taken measures to remove youth from the adult system.¹¹

1. Fourteen states have reformed their transfer laws to reduce the number of youths that end up in the adult system (Arizona, Colorado, Connecticut, Delaware, Illinois, Nevada, Indiana, Utah, Virginia, Washington, Ohio, Maryland, Nebraska, and New Jersey).
2. Twelve states have made changes to their laws that allow age to be considered at sentencing (Florida, California, Colorado, Georgia, Indiana, Texas, Missouri, Ohio, Washington, Hawaii, West Virginia, and Iowa).
3. Eleven states have enacted laws limiting the detention of youths in adult jails (Texas, Colorado, Idaho, Indiana, Maine, Nevada, Hawaii, Virginia, Pennsylvania, Oregon, and Ohio).
4. Five states have raised the age of criminal majority, increasing the number of young people eligible to stay in juvenile court (Mississippi, Connecticut, Illinois, Massachusetts, and New Hampshire).

Shelby County Notice of Transfers vs. Number of Youth Transferred			
2014		2015	
Juveniles Transferred to adult court	Notice of Transfer filed	Juveniles Transferred to adult court	Notice of Transfer filed
77	182	47	153

¹¹ See “More Harm than Good,” <https://www.splcenter.org/20160217/more-harm-good-how-children-are-unjustly-tried-adults-new-orleans>, page 9.

As I previously reported, research demonstrates that juvenile transfer tends to increase recidivism and does not achieve public safety goals.¹² In addition, the high rate of “Notice of Transfer” increases case processing leading to over population in the detention center and increased costs.¹³ As a leader in Shelby County’s juvenile justice community, I encourage the Court to investigate why such high numbers persist.

3. *Trauma Audit*

In my fifth compliance report I discussed the importance of understanding trauma as it relates to juveniles¹⁴ and recommended that the Court receive trauma training. I am pleased to report that in February 2016 the Court completed a trauma audit with the National Council of Juvenile and Family Court Judges. A report will be generated within the next 60 days.

4. *Shelby’s High Number of Non-Judicial Dispositions*

In this seventh compliance report, I want to highlight the high number of non-judicial dispositions. My experience in other jurisdictions makes this a positive program. Each month approximately 200 youth have cases resolved after meeting with a probation officer. Between October 2015 and March 2016, 1058 youth avoided appearing in front of a magistrate. These cases include simple possession of marijuana, theft of property under \$500, vandalism, criminal trespass, disorderly conduct and simple assaults. In many jurisdictions these cases would go before a judge and result in formal probation and collateral consequences for youth. This increase in non-judicial dispositions contributes to the decreasing number of cases in juvenile court seen in the past several years.

	2013	2014	2015
Total Petitions to Juvenile Court	3099	2539	2553
Total Cases handled non-judicially	6863	5165	3565

Non-judicial dispositions are an important benefit. However the above information also shows a possible trend that should be considered, which is that there has been an increase in the percentage of cases that are petitioned to court.¹⁵ Large numbers of youth are still being referred

¹²Robert Hahn et al., Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services, Mortality & Morbidity Wkly.Rep., Nov. 30, 2007, at 1, <http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>

¹³ See supra 9. (Research consistently demonstrates that prosecuting children as adults *increases* the likelihood that they will end up behind bars again. As a general matter, juvenile transfer also unjustly treats a child as a fully formed adult when science shows that young people’s brains – and their decision-making abilities – are still developing.)

¹⁴The fifth report stated, “Nationally there continues to be much attention on how trauma affects youth and it continues to be a focus of the National Council of Juvenile and Family Court Judges (NCJFCJ). The NCJFCJ has made significant efforts to educate judges and attorneys about the effects of childhood trauma...The National Child Traumatic Stress Network (NCTSN) has created several projects and publications that explore how judges understand and approach children with trauma histories...The Attorney General of the United States and the Justice Department have devoted significant resources to better understand childhood exposure to trauma across the country, and have begun to address it through the Defending Childhood Initiative.” p. 8.

¹⁵ If you look at TOTALS (Petitions + Non judicial dispositions) and come up with a % of TOTAL the above #s show the % of cases petitioned has increased each year.

to juvenile court and although handled non-judicially, the contacts can have adverse consequences the contact could be used in subsequent proceedings.[Note: deleted “net widening” comment.]

Department of Children’s Services (DCS) Facility: Follow up from Prior Report

In October 2015 I reported a lack of education and access to dental care at a DCS Treatment Facility (Middle Tennessee Detention Facility). After that report, I notified an attorney at the Tennessee Justice Center in Nashville, Tennessee. The Tennessee Justice Center has taken action regarding this issue as demonstrated by the December 2015 letter.¹⁶

	<u>2013</u>	<u>2014</u>	<u>2015</u>
Pétitions	31%	33%	41%
Non Judicial	69%	67%	58%

¹⁶Exhibit "A"

Discussion of Compliance Findings

Methodology

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

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

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

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

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

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

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

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

PROBABLE CAUSE DETERMINATIONS	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCT. 013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCT. 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCT. 2015	COMPLIANCE RATING APRIL 2016
Within 90 days: revise policies to require prior to detaining a child Magistrate makes proper probable cause determination	BC	PC	PC	SC	SC	SC	SC
Within 90 days: insure PC determination within 48 hours of warrantless arrest	BC	PC	PC	SC	SC	SC	SC
Within 90 days: insure no child detained for more than 48 hours prior to Detention Hearing if Court has not made PC determination	BC	PC	PC	SC	PC	SC	SC
Within 90 days: insure every child has meaningful opportunity to test PC by revising practices to <ul style="list-style-type: none"> a. Appoint defense attorney to represent any indigent child. Indigence should be presumed unless information to contrary is provided 	BC	PC	PC	SC	SC	SC	SC
<ul style="list-style-type: none"> b. Require govt to prove existence of PC with reliable evidence or affidavit of complaint 	BC	BC	PC	PC	PC	PC	SC
<ul style="list-style-type: none"> c. Allow defense attorneys opportunity to challenge PC 	BC	PC	PC	PC	SC	SC	SC
<ul style="list-style-type: none"> d. Require record be maintained reflecting when defense counsel appointed, forms of evidence used, & whether defense attorney challenged evidence or provided alternative evidence. Such record should be accessible from the info system 	II/P	BC	PC	PC	SC	SC	SC
Each month, Judge or designee shall review a sampling of case files to determine whether requirements regarding notice of charges are being followed. Shall also include periodic observations of Detention & Adjudicatory hearings. If not, immediate corrective action shall be taken.	II/P	BC	PC	PC	PC	PC	SC

Affidavits of Complaint (AOC):

This topic has been addressed in a number of prior compliance reports. During this reporting period the issues seem to have decreased. I will continue to monitor this issue. I encourage continued supervision and oversight by the Juvenile Court Judge.

NOTICE OF CHARGES	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCT. 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCT. 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCT. 2015	COMPLIANCE RATING APRIL 2016
Within 90 days: revise policies to insure children & defense attorney receive copies of AOC as soon as available but at minimum before Detention Hearing. Also, insure Magistrates formally arraign children at all Detention Hearings.	BC	PC	PC	SC	SC	SC	SC
When changes are made to charges as set forth in petition prior to adjudicatory hearing that could increase the penalty, Juvenile Court shall provide notice of final charges by providing copies of new Petition at least 14 calendar days in advance of hearing unless advance notice is waived.	BC	PC	PC	SC	SC	SC	SC
When changes are made to charges as set forth in petition prior to adjudicatory hearing that could reduce the penalty, Juvenile Court shall provide notice of final charges by providing copies of new Petition within 24 hours of change in charges.	BC	PC	PC	SC	SC	SC	SC
Each month, Judge or designee shall review a sampling of case files to determine whether requirements regarding notice of charges are being followed. Shall also include periodic observations of Detention & Adjudicatory hearings. If not, immediate corrective action shall be taken.	II/P	PC	PC	SC	SC	SC	SC

Comments

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

TRANSFER HEARINGS	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCT. 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCTOBER 2015	COMPLIANCE RATING APRIL 2016
Within 90 days: require Transfer Hearings comport with due process requirements. Specifically, shall insure all Transfer Hearings include:	BC	PC	PC	SC	SC	SC	SC
<i>a.</i> Asst DA presents evidence in support of petition for transfer							
<i>b.</i> Children have right to attorney whose role is to represent their stated interest	BC	PC	PC	SC	SC	SC	SC
<i>c.</i> Children, through their attorney, are provided opportunity to present evidence on their own behalf	NC	II	BC	PC	PC	SC	SC
<i>d.</i> Children, through attorney, provided opportunity to confront evidence & witnesses	NC	BC	PC	PC	SC	SC	SC
<i>e.</i> Children are protected from self-incrimination	BC	PC	PC	SC	SC	SC	SC
<i>f.</i> Judge or Magistrate makes written findings that: child committed delinquent act, child is not committable to an institution for persons with developmental disability or mental illness and interests of community require Child be put under legal restraint or discipline	BC	BC	PC	PC	PC	SC/PC	SC (for written findings) However There is no place in TN for DD youth
<i>g.</i> Judge or Juvenile Court Magistrate considers & documents consideration of factors relevant to findings including 7 factors	NC	BC	PC	PC	SC	SC	SC
Each month, Judge, or designee, shall review all files related to Transfer Hearings to insure Hearings followed Agreement. Review shall include periodic observations of Transfer Hearings to insure Magistrates follow policies.	II/P	BC	PC	PC	SC	SC	SC

Comments

Continued Excellence of Clinical Services (newly hired staff has decreased backlog)

Clinical Services continues to deliver high quality evaluations. At the time of my visit there were very few cases in “backlog” status and by the end of April, the backlog had been eliminated. Dr. Tucker-Johnson recently hired Dr. Bailey to assist with evaluations.¹⁹ Dr. Bailey did her first evaluation in February 2016. She is a part-time contract psychologist. Her role is to perform the majority of clinical evaluations ordered by the Court. According to Dr. Tucker-Johnson, Clinical Services should soon be on track to complete evaluations within 30 days of receiving the court order.

Continued Decline in Number of Juveniles Transferred to Adult Court:

As I detailed in the executive summary, there has been a consistent decline in the number of youth transferred each year since 2008.

Judge or Magistrate makes written findings, child who is committable to an institution for persons with developmental disability or mental illness: Juvenile Court has continued to maintain compliance in making written findings. In regard to an “institution for persons with developmental disabilities or mental illness, it appears that there is no place to commit these disabled youth in Tennessee.²⁰ I encourage the court to consider community based options as an alternative resource.

Protections Against Self-incrimination	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCTOBER 2015	COMPLIANCE RATING APRIL 2016
Within 90 days: prevent POs or other staff from eliciting info about Children’s involvement in alleged delinquent act outside presence of Child’s defense attorney	BC	PC	PC	SC	SC	SC	SC
Within 90 days: notify Child’s attorney in writing of any probation conference or interview which shall be open to defense attorney.	BC	BC	PC	PC	PC	PC	PC

¹⁹ Dr. Bailey was previously contracted to do evaluations for Clinical Services when I noted problems in CR# 2. It is my understanding the Dr. Bailey has been trained by Dr. Tucker-Johnson and according to my review of reports there is homogeneity in the quality of all reports prepared.

²⁰ The following information was received from Dr. Tucker 4/27/16: “To my knowledge, there is not a place to commit developmentally disabled youth in Tennessee. The Department of Intellectual and Developmental Disabilities takes individuals at the age of 18, unless some change has occurred since I worked there (I left in 2013). When I was there, DIDD’s policy was to have DCS provide services to developmentally disabled youth under the age of 18.”

Within 90 days: insure POs advise Children of Miranda rights. Shall include	BC	BC	PC	PC	SC	SC	SC
a. Description of role of defense attorney							
b. Statement Child is entitled to attorney & maybe at no cost	BC	BC	PC	PC	SC	SC	SC
c. Statement that Child's statements regarding offense can be included in Probation report	BC	BC	PC	PC	SC	SC	SC
d. Statement that Child's statement can be used against them.	BC	BC	PC	PC	SC	SC	SC
POs have Children document understanding of rights against self-incrimination & must receive advice of attorney before waiving it.	BC	BC	PC	PC	PC	SC	SC
Consider partnership w/non-profit or academic organization to provide advice and support to children during the probation intake process	S/NR	S/NR	S/NR	S/NR	S/NR	S/NR	S/NR
Within 30 days: prohibit adverse use of information obtained from child during probation conference	BC	PC	PC	SC	SC	SC	SC
Within 30 days: insure Magistrates do not permit the govt to call Children as witnesses in Child's own Adjudicatory or Transfer Hearing	BC	PC	PC	SC	SC	SC	SC
Within 30 days: Magistrates required to give oral advisement of rights against self-incrimination to any Child wishing to testify at own hearing	BC	PC	PC	SC	SC	SC	SC
Each month the Judge or designee shall review sample of files to determine rights against self-incrimination are protected. This shall include periodic observation of probation conferences by appropriate supervisory staff of the probation dept. as well as observation of Adjudicatory & Transfer Hearings	II	II	BC	PC	PC	SC	SC
Immediately cease providing Visit & Contact forms to Magistrates prior to Adjudicatory Hearings.	PC	PC	PC	SC	SC	SC	SC

Comments

Success of Probation Unit:

As mentioned in previous compliance reports, a large percentage of youth who come to juvenile court have their cases resolved non-judicially, or by probation conference only. In 2015 of the total 3623 cases, 64% or 2354 cases were resolved non-judicially. (See additional comments page 8).

Downward Adjustment and Continued Success of the Graduated Sanctions Grid: In my last report I recommended that the Probation Department consider a downward adjustment to the graduated sanctions grid. I am pleased to report that there has been a downward adjustment to the graduated sanctions grid and that subsequent to the adjustment there have been fewer deviations. The grid has not yet been validated.

Data Regarding Lawyers at Probation Conferences: In my last report I recommended that the Panel Coordinator continue to keep data regarding the frequency panel attorneys are requested to assist in probation conferences so we have an accurate assessment. Since there has been a change in personnel, this request was not conveyed. I have renewed my request to Mr. Scot Bearup.

When I met with the Dean Letsou of University of Memphis Cecil C. Humphreys School of Law, I reiterated my belief that using law students as a resource may be beneficial.

JUVENILE DEFENDERS	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCT. 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCTOBER 2015	COMPLIANCE RATING APRIL 2016
Within 1 year insure independent, zealous advocacy by juvenile defenders. This shall include:	N/A	N/A	BC	BC	PC	PC	PC
h. Creation of specialized unit for juvenile defense within Office of the Public Defender							
i. Support Juvenile Public Defender Training	N/A	N/A	BC	PC	PC	SC	SC
j. Insure Juvenile Public Defender has appropriate administrative support, reasonable workloads & sufficient resources. Representation shall cover all stages of case as long as juvenile court has	N/A	N/A	BC	BC	PC	PC	PC

jurisdiction								
k. Implement attorney practice standards for juvenile defenders	N/A	N/A	BC	BC	PC	PC	SC	
Within 1 year insure independent advocacy including: a. Appoint juvenile defender to represent children at detention hearings & probable cause determinations as soon as possible	N/A	N/A	BC	BC	PC	PC	SC (timely appointment) NC (not independent)	
b. Establish Panel System Overseen by independent body to handle conflicts	N/A	N/A	II	NC	BC	BC	NC	
c. Support attorney practice standards for juvenile defenders including training and evaluation.	N/A	N/A	BC	BC	PC	PC	I/I (unclear if new PC can enforce defense standards due to structure)	
d. Insure juvenile defender has confidential meeting space to confer with clients within the facility	N/A	BC	PC	PC	SC	SC	SC	

Comments

Comprehensive Plan for Independent Indigent Defense System: No Progress During Last Six Months

This issue was discussed in the executive summary and I hope it will be resolved through my requested Progress Report and Advisory Recommendations. In regard to “supporting attorney practice standards for juvenile defenders including training and evaluation,” it is unclear if given the current structure the panel coordinator can enforce defense standards.

Administrative Obstacles to Defense Practice

A number of problems persist in this area. I have encouraged the Public Defender to address these issues in the next Committee “A” meeting. For example, problems persist in filing motions. Attorneys cannot efficiently file and set motions because there is no docket number. The ability to file motions is vital to ensuring quality juvenile representation. I understand that the Juvenile Court Clerk is the elected official who is directly responsible. However, I urge the Court to exercise leadership and explore options. For example, can an alternative process be created (i.e. use the arrest number rather than a docket number) so that motions can be efficiently filed?

Juvenile Defense Capacity Report

This issue has been discussed in the executive summary. Currently the Public Defender handles 40% of the docket. It was my understanding that the Public Defender is accepting all direct appointments from the detention docket (except in cases where there is a legal conflict of interest) However, at this point the defense has more capacity than cases currently provided and many detention cases are still assigned to the panel attorneys.

The case assignment structure is as follows. When a case comes in the Panel Coordinator evaluates the cases for any “conflicts” and then makes case assignments. The way I understand it, “conflict” can mean cases with multiple defendants or cases where the victim was previously represented by the Public Defender. In addition, I have been told that the Court strives for “continuity of representation” so if a child was previously represented by a panel attorney, that child will be assigned that panel attorney again irrespective of the previous or current charges. At this point, given the goal of expanding the role of the Public Defender as per the Agreement, I am requesting additional information regarding the panel coordinator’s case assignment process.

First, I am requesting that the Panel Coordinator describe in writing the present process used for attorney assignment in all delinquency matters.

1. Please provide a written report of the process and case-flow for matters where attorney is assigned on detention docket, including the process for determining whether a conflict of interest exists, and recommendations for improvements.
2. Please provide a written overview of process and case-flow for matters where council is assigned in advance of the first delinquency docket, including present process for determining whether a conflict of interest exists, and recommendations for improvements.

Next, I am requesting Monthly Reports on the following:

1. all detention docket appointments providing the following information:
 - a. Name of child, DOB and highest charge,
 - b. Whether public defender or panel attorney was assigned and why? (for example, if a panel attorney was assigned due to a conflict then state the type of conflict, if panel attorney is appointed for a non-conflict reason then a state the reason)
2. In all delinquency docket appointments, track the frequency of conflicts of interest. Juvenile Court should add this function to its regular data collection and submit a monthly report that differentiates whether a panel attorney assignment is made due to a conflict of interest or any other reason.

Role of Juvenile Defenders in Addressing Conditions of Confinement and Status of Post Disposition Representation

As I detailed in previous compliance reports, given the documented problems at Tennessee facilities I believe there is a need for post-disposition representation. (I also indicated post-disposition is an important function of the Public Defender and could perhaps be a function of the new Children's Defense Clinic).²³

During my meeting with Public Defender Juvenile Unit Staff, I learned defenders have regular contact with clients in the post-disposition stage. The social worker team visits Wilder twice a month and there is an attorney visit once per month. The Public Defender currently has 48 Post Disposition Cases.²⁴ The focus of the attorney is to continue to ensure that the rights of the child are not violated during their stay in DCS custody and to ensure timely and effective re-entry. Columbia is a DCS facility where children are sent once they have been ordered into DCS custody. Columbia is akin to a processing center which determines which DCS facility the child will be assigned to. In several cases attorneys had to file motions on their client's behalf. In one situation, it was brought to the attorney's attention that the child was not receiving his medication while at Columbia, although one of the Judge's primary reasons for placement had been medication concerns.

As I indicated in the executive summary, prior to my visit, juvenile defenders noted serious concerns about conditions in the detention center. I was very pleased that juvenile defenders assumed responsibility in reporting these issues. This is the mark of a healthy system and matches national standards. The National Juvenile Defense Standards, in particular, take an expansive view of the defender's role and create a duty for attorneys to report and address harmful conditions of confinement:

²³The goal of the post disposition representation was to 1) Protect the legal rights of clients: ensure proper DCS classification and placement, provide assistance/informal advocacy with institutional concerns (medical, educational, behavioral health, segregation, programmatic, etc.) protect client's rights while in detention or community based facility (shelter/group home) against abuse, provide legal rights education, and 2) Assist with successful reentry into the community: prepare children for successful reentry through release planning connect children to needed services in the community, ensure child's educational needs are being protected, work with DCS and other key stakeholders to ensure children receive needed treatment and services.
²⁴ The composition of the 48 cases is as follows: Wilder (24), Madison Oakes (2) Youth Town (2) Compass (2) Youth Villages (1) Parkwood (4) Columbia (10). In regard to the other facilities, we do not have regularly scheduled visitation like we do for Wilder, however, our social workers do periodically visit them, and keep up on their progress.

10.8 Report and Address Harmful Conditions of Confinement

Counsel is in a unique position to identify and address any harmful or unlawful conditions of confinement and to address system-wide abuses.

- a. Counsel should be aware of applicable local, state, and federal laws regarding treatment of youth in police custody, detention centers, jails, training schools, and other custodial facilities;
- b. Counsel has a duty to investigate and act upon any claims by the individual client of unlawful conditions of confinement and to document and ascertain the frequency with which such conditions have been noted by others; and
- c. Counsel has an obligation to move the court to stop placement of clients in facilities that engage in practices that put clients' safety and well-being at risk.

This example highlights the important role juvenile defenders serve to maintain the integrity of juvenile court process and why their independence is critical.²⁵

CONFIDENTIALITY OF JUVENILE DELINQUENCY PROCEEDINGS	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCTOBER 2015	COMPLIANCE RATING APRIL 2016
Within 30 days: revise policies to protect confidentiality in delinquency proceedings	BC	PC	PC	SC	SC	SC	SC
Insure only person properly concerned with child's case are admitted into any delinquency proceeding	BC	PC	PC	SC	SC	SC	SC

Comments

The policies continue to be incorporated into practice without incident.

²⁵Sue Burrell, Esq., Youth Law Center, Workshop: Solving Conditions of Confinement Problems for Youth in the Delinquency System: Self-Help for the Practitioners at the Beyond the Bench XIX conference (Dec. 11, 2007). The following is a list of action steps an individual can take (after obtaining permission from their client) 1) Make a Phone Call to the Facility Administrator, 2) Send a Fax to the Facility Administrator, 3) contact the Ombudsperson or Grievance Coordinator, 4) notify the Licensing or Regulatory Agency, 5) Make a Child Abuse Report, 6) contact the Civil Rights Division of the U.S. Department of Justice.

PLEA COLLOQUIES	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCTOBER 2015	COMPLIANCE RATING APRIL 2016
Within 6 months: establish procedure for plea colloquies that is age-appropriate and clear to the Child	N/A	PC	PC	SC	SC	SC	SC
Insure Magistrates conduct interactive oral colloquy w/ child that includes: Nature of delinquent act charged, Child's right to attorney, Right to plead not guilty & have Adjudicatory hearing, Child's waiver of right to trial on merits & an appeal	N/A	PC	PC	SC	SC	SC	SC
Within 6 months: insure children have a right to counsel whenever entering a plea of guilty	N/A	PC	PC	SC	SC	SC	SC

Comments

The plea colloquies maintain substantial compliance.

RESTITUTION GUIDELINES	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCTOBER 2015	COMPLIANCE RATING APRIL 2016
Within 6 months: establish guidelines for assigning restitution to any child adjudicated delinquent that provides the child a meaningful opportunity to Challenge the evidence of restitution. At a minimum the restitution guidelines shall: i. Require documentation to support the restitution request ii. Allow children adequate time to review the restitution request & opportunity to introduce evidence opposing the amount iii. Allow opportunity to request adjustment to restitution amount by introducing evidence of family income or obligations that would render the restitution an undue hardship	N/A	PC	PC	SC	SC	SC	SC

Comments

The restitution policy maintains substantial compliance.

BOND SETTING GUIDELINES	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCTOBER 2015	COMPLIANCE RATING APRIL 2016
Within 6 months: establish bond setting guidelines At minimum the guidelines shall: i. Prevent excessive bonds ii. Reasonably assure appearance in court iii. Take into account presumptive indigence of children iv. Allow parents to file statements of indigence	N/A	PC	PC	SC	SC	SC	SC

Comments

Bond amounts continue to be set in accordance to the guidelines and maintain substantial compliance.

LANGUAGE ACCESS PLAN	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCTOBER 2015	COMPLIANCE RATING APRIL 2016
Within 6 months: develop language access plan that complies with Title VI. Make summons & other crucial documents available in appropriate languages	N/A	PC	PC	II/P	SC	SC	SC
Implement language access plan within 1 year	N/A	BC	PC	II/P	SC	SC	SC

Comments

The language access plan remains in substantial compliance.

TREATMENT OF WITNESSES	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCTOBER 2015	COMPLIANCE RATING APRIL 2016
Within 6 months: revise procedures on treatment of witnesses to insure integrity of witness testimony is preserved. Include: All witnesses placed under oath All witnesses properly sequestered	N/A	PC	PC	SC	SC	SC	SC

Comments

This section has maintained substantial compliance.

JUDICIAL BENCH CARDS	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCTOBER 2015	COMPLIANCE RATING APRIL 2016
Within 6 months: develop bench cards Bench cards shall be readily accessible documents. Should be available upon request Juvenile Court shall produce bench cards for the following: a. Detention Hearing, PC determinations and bond settings b. Adjudicatory Hearings c. Plea colloquies d. Transfer Hearings e. Disposition hearings, including procedures for setting restitution f. Post-dispositional hearings	N/A	BC	PC	PC	SC	SC	SC

Comments

Bench cards continue to be used and I did not observe or hear of any issues during my seventh visit.

RECORDINGS OF JUVENILE DELINQUENCY HEARINGS	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCTOBER 2015	COMPLIANCE RATING APRIL 2016
Within 6 months: all hearings shall be recorded by electronic means, Private court reporters may provide written transcripts	N/A	BC	PC	PC	SC	SC	SC
Juvenile Court shall insure recordings are complete & of good quality							
Juvenile Court shall make recordings accessible at no cost to defense counsel representing indigent children							
Recordings shall be stored for 2 years							

Comments

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

WRITTEN FINDINGS	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING OCTOBER 2015	COMPLIANCE RATING APRIL 2016
Within 6 months: require Magistrates to produce court orders containing the written findings of fact for each judicial decision made Written findings of fact shall include the relevant statutory requirements, legal reasoning that formed the basis for the court's decision and a narrative of the facts considered in decision	N/A	BC	PC	PC	SC	SC	SC

Comments

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

TRAINING	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015	COMPLIANCE RATING OCTOBER 2015	COMPLIANCE RATING APRIL 2016
<p>Within 6 months: develop a training plan for all employees involved with delinquency docket & submit training plan to Monitor and US for approval Training plan shall insure appropriate staff are trained on topics relevant to their role & responsibilities in delinquency proceedings including: Constitutional due process requirements</p> <ul style="list-style-type: none"> i. Adolescent development ii. Dispositional planning iii. Best practices in social service & therapeutic options iv. Functional & practical purposes of juvenile court v. Appropriate professional role of different players within juvenile proceedings 	N/A	BC	PC	PC	PC	PC	SC
<p>Juvenile Court shall implement 1st training plan within 12 months & shall create subsequent training plans on an annual basis thereafter</p>	N/A	N/A	BC	PC	PC	PC	SC

Comments

During the last compliance period the court completed a “trauma audit” conducted by the National Council of Juvenile and Family Court Judges. It also appears that there has been improvement in the area of affidavits of probable cause.