

**SHELBY COUNTY, TENNESSEE COMPLIANCE REPORT**

**NO. 7**

**of**

**BILL POWELL**

**SETTLEMENT AGREEMENT COORDINATOR**

**(March 10, 2016)**

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**

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**TO:** Winsome Gayle  
Civil Rights Division  
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**FROM:** Bill Powell *BP*  
Settlement Agreement Coordinator

**DATE:** March 10, 2016

**SUBJECT:** Compliance Report #7 – March 2016

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 7<sup>th</sup> 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 the 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 7<sup>th</sup> Compliance Report comes 3 years and 3 months after the MoA was signed. There have been significant accomplishments over the past 3 years. Progress towards and surpassing compliance continues to be made in many areas.

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**

Good performance continues in this area. 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 Juvenile Defender Unit of the Public Defender's Office continues to increase their caseload and currently handles about 30% of the appointed counsel cases. Funding is being sought to allow the Public Defender's Juvenile Unit to increase their capacity so they can handle all non-conflict appointed counsel cases. The University of Memphis Law School Clinic Program for juvenile justice will become operational in Fall 2016. This is a noteworthy achievement and has the potential to greatly enhance training for attorneys and representation of youth in the juvenile justice system.

## **Good:**

- Data samples show continued good performance in 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
- The number of youth transferred to the adult system continues to drop. 26 youth were transferred in 2015, this is down from 47 in 2014 and down from 121 in 2011.
- Probation continues to do a good job in capturing valuable data and in explaining the rights to youth at Probation conferences
- The Juvenile Defender Unit has increased the number of youth they represent. They handled about 30% of the youth compared to 19% in 2014. In addition, this number is climbing as evidenced by the fact they handled about 40% of the cases for the past six months
- The specialized law clinic at the University of Memphis will become operational in Fall 2016
- The Court is placing a focus on training on trauma related issues. A trauma audit was recently conducted by the National Council of Juvenile and Family Court Judges and was well received by everyone involved.

### **Challenges:**

- Public Defender Stephen Bush is preparing a plan by which the Public Defender will be able to handle all indigent delinquency cases that do not pose an ethical conflict. Acquiring funding for this capacity expansion is a challenge but this effort would be a quantum leap forward in addressing concerns of due process protections and independence of defense counsel
- Even if the Public Defender can handle all non-conflict cases, some independence issues remain to be resolved
- Probation does a very good job explaining the right to counsel and keeping cases from going to Court. Even so, it is a concern that 25% of the youth do not admit to charges yet receive some record of sanctions while 98% of them do not have an attorney
- The vast majority of youth (88%) decline any offer of services through E&R and thus do without services that could be helpful

### **DMC and Equal Protection**

This area continues to be a challenge but there are some encouraging signs. 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 previous Compliance Reports, 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 was completed with data in Calendar Year 2014. That data showed disparities had gotten worse at 6 of the 8 Decision Points since 2013. The next Assessment report for data in 2015 is expected to be available in May 2016.

Given that additional data from the Assessment report is not available, it is useful in this report to review the processes used by the Court to address previously identified equal protection issues.

There have been some positive developments. 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 which means fewer minority youth are progressing through the juvenile justice system. The Court deserves recognition for this accomplishment. That being said, more needs to be done to insure everything is being done to provide equitable treatment across racial lines.

Since the last Compliance Report, Bridgette Bowman was hired as the Court DMC Coordinator. She has developed a 30-60-90 Day Plan largely intended to provide a structured, targeted approach to reduce DMC. She will work with the County DMC Coordinator and others in the community to bring attention to DMC concerns but her main thrust must be to work with the Court to identify and modify any internal processes that contribute to DMC.

**Good:**

- A 30-60-90 Day Plan was developed by the Court DMC Coordinator to focus DMC reduction efforts. This plan identifies responsibilities and establishes timelines for completion of activities
- A 30 Day Update on the above plan was submitted along with documentation of the work
- Many programs are offered to attempt to divert youth from the Court. These programs include the Law Enforcement Assessment Program (LEAP), SHAPE, the Juvenile Court Precinct Liaison Initiative (JCPL), and the School Based Probation Liaison (SBPL)
- 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)
- Both the Court and County DMC Coordinators will work jointly on the Strategic Plan to reduce DMC which was developed in 2013

**Challenges:**

- The 30-60-90 Day Plan must be followed and documented
- Point of Contact reports need to offer guidance to reduce DMC and recommendations made need follow up
- Specific plans need to be developed to conduct evaluations of the various diversion programs initiated through the Court's efforts to see what works
- Each Decision Point needs to be assessed for DMC issues
- Objective tools such as the YASI and the GSG need to be validated

**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. A number of individuals have worked hard on this transition but, to this point, it has not gone well. Since this transition, the data has indicated that Detention has become a more dangerous place. Whereas a year ago, Protection from Harm appeared to be in the best shape of the four sections of the MoA, as of now, it appears to be the most precarious.

It is revealing to compare outcomes in the first six months of 2015 when Detention was operated by the Court to the second six months of 2015 after the Sheriff assumed responsibility.

Since the Sheriff assumed responsibility for Detention the data shows:

- Use of Force increased 72%
- The Hierarchy of non-physical alternatives was used ½ as often
- Non assaultive injuries to youth increased over 300%
- The rate of assaults on youth increased 68%
- Physical restraints increased 54%
- Mechanical restraints increased 143%

This data clearly shows the Juvenile Detention Center is a more dangerous place. Why? The Sheriff assumed control in July 2015 and virtually all of the Detention line staff transferred at

that time. Although the same numbers of youth are being brought into Detention, the population has increased due to longer lengths of stay. Nevertheless, this does not explain the increase in danger as the statistics above are largely based on rates of events per 100 youth which controls for population level.

This data is extremely disturbing. It shows a steep decline in performance in Detention since July 2015. The same number of youth entered Detention but the Use of Force and Safety and Order statistics changed dramatically.

Transfer of the Juvenile Detention Center to the Sheriff was a large undertaking with a number of associated items required to make this a successful transition. Those items include:

- Development and implementation of a Transition Plan
- Staffing Analysis
- Data Validation to insure availability and integrity of information
- Change to a Positive Based Management System (PBMS)
- Population Management
- Data Analysis and management response to that data

These are just a few of the issues the Sheriff took on when he accepted responsibility for Juvenile Detention. The planning, organization and implementation required for a successful transition has simply not happened. Individuals are working hard but things are disorganized and chaotic with the result being that improvements are not being made in a timely manner and the youth in Detention are suffering for it.

There have been some positive developments. Hope Academy is an asset, food services have improved, reading materials have been returned to the youths' rooms, medical services are competently provided and monitored, the Report Card data tool is extremely useful and the Court is a willing partner with the transition.

Given those positives, the current problems are puzzling. Issues with planning have been repeatedly pointed out and the Sheriff's Office either will not or cannot resolve them. The lack of planning has created a domino of problems that grow in stature because of a lack of or a delayed response. The needs for Detention to get back on track in the "Protection from Harm" portion of the MoA are so considerable that, if not planned, prioritized and effectively implemented and managed will continue to deteriorate and present threats to the safety of the youth housed in Detention.

**Good:**

- Contract medical services provider is doing a good job and communication between medical staff and security staff seems to be good
- Food services have improved
- Hope Academy is an asset although capacity needs to increase
- The Detention Report Card continues to provide a wealth of information that can be used to identify problems before they get out of hand
- The Positive Based Management System has been implemented

### **Challenges:**

- Increasingly high levels of uses of force
- Low levels of use of non-physical alternatives
- Increasingly high levels of youth assaults and injuries
- Increasingly high use of physical and mechanical restraints
- Increased duration of room confinement
- Lack of formal planning to address identified needs and issues
- Data validation remains a crucial need
- Increasing population yet no evidence of analysis or management of the population
- Concerns about the capacity issues for Hope Academy
- Staffing analysis
- Concerns about the effectiveness of the training for Safe Crisis Management (SCM)
- 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 has consistently been involved in a number of activities. The challenge has been to plan and structure these activities into a cohesive effort to improve Court/Community relations. There have been some encouraging developments in this area.

The Court continues to hold semi-annual public meetings in which they present progress reports on compliance with the MoA. An interim Community Outreach Plan has been developed to guide efforts until a full time Community Outreach Coordinator can be hired, hopefully in July 2016. The Court DMC Coordinator is also involved in outreach efforts on DMC issues. Court Services Director Gary Cummings has begun attending meetings with the CJJC and will serve as a liaison with that group. Finally, there appears to be some movement with the Community Survey. Problems with OJJDP have long hindered this project.

### **Good**

- Public Meetings are held semi-annually
- Plans call for hiring a full time Community Outreach Coordinator
- An interim Community Outreach Plan has been developed until the Outreach Coordinator is brought on board
- The DMC Coordinator is initiating outreach efforts related to DMC issues
- Court Services Director Gary Cummings will attend CJJC meetings and foster communication between the CJJC and the Court
- It looks like the Community Survey may finally happen

### **Challenges**

- Need to insure follow through on the interim Community Outreach Plan
- Develop a back-up plan in the event funding is not received to hire a full time Community Outreach Coordinator
- Continue to get reports from the CJJC and responses from the Court to the CJJC
- Stay on top of the Community Survey efforts

## **Conclusion**

It has been 39 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
  - Obtain funding for Public Defender capacity expansion so they can handle all indigent non-conflict cases.
  - Produce the plan for implementation of the expanded Juvenile Unit so they can handle the workload
  - Address independence issues with the Panel which will continue to provide valuable defense services
2. Equal Protection
  - Follow the 30-60-90 Day DMC Reduction plan prepared by the Court DMC Coordinator
  - Make the Point of Contact process work to serve as a focal point of DMC reduction for the Court
  - Follow up on the Strategic Plan to reduce DMC
3. Protection from Harm
  - Prepare a structured, detailed plan to accomplish all those things necessary to accomplish the primary goals of making Detention a safer place by reducing the rate of assaults and use of force including. Most of those things are discussed in this report and in the December 21, 2015 report from the Facility Consultant
4. Community Outreach
  - Follow through on the Interim Community Outreach Plan
  - Work with the CJJC to improve flow of information between the Community and the Court
  - Prepare a back up plan in the event funding for the Community Outreach Coordinator is not received

There have been a number of important improvements made since the Settlement Agreement was signed. This report reflects improvement in Due Process Protections, a plan to pursue DMC reductions and a more structured plan for Community Outreach. Unfortunately, the Protection from Harm area has regressed and demands urgent attention.

The Settlement Agreement signaled an intention of Juvenile Court and Shelby County to do more than just meet the Constitutional minimums of a juvenile justice system; it established a path that could guide the Court to become a model for the Nation, which has been a stated goal of Juvenile Court Judge Dan Michael.

## **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 1<sup>st</sup> 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 February 2015 through January 2016. **Appendix 1** also includes data sheets on Notice of Transfers Granted and Denied. 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 (February 2015 through January 2016).
- 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% in this period. That is trending upwards as 72% of the affidavits were contested since the last Compliance Report was completed in September 2016.
- There was a statement of Attorney regarding Notice & advisement of rights had been given 100% of the time in this period.
- Rights form by Magistrate was completed 100% of the time in 2015.

#### Adjudicatory Hearing

- An Attorney has been present in 100% of the Adjudicatory Hearings.
- Amended petitions were filed in 6% of the cases
- The percentage of cases resulting in a trial continue to decline with 5% of the cases resulting in a trial in this period compared to 6% at the time of the last Compliance Report and 19% in 2013
- 86% of the cases resulted in a Waiver and Admission in this period from February 2015 through January 2016. This is also an upward trend with 89% resulting in a Waiver and Admission since the last Compliance Report.
- Plea and rights forms were completed 100% of the time in this period.

#### Transfer Hearing

- The average of 13 “Notices of Transfer filed” per month has remained steady
- In this period the spreadsheet shows 26 transfers. These numbers continue to show a steady decline. There were 121 transfers in 2011 and 47 transfers in 2015.
- Written rationale for the transfer was completed 100% of the time in this period.

This data continues to demonstrate 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 3 years.

#### 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 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 show:

- 98 % of the youth are not represented by an attorney
- 75% of the time the child's Mother attends the conference
- Most of the youth (48%) at Probation conferences are between 16-17 years old while 39% of the youth are between the age of 13-15
- 45% are female
- 7% of the youth are classified as Special Education
- 100% of the youth have their rights explained to them in the conference
- 93% of the youth were African American
- 25% of the youth did not admit to the charge
- The most common service recommended at the Probation conference was Anger Management with 13% of the youth recommended for that service
- The vast majority of youth, 88%, decline any services

This data and these narratives are a great advancement over what was being done before the MoA was signed. The large number of cases handled via Probation conferences rather than being petitioned to Court continues to represent 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.

If there is a concern with this process it remains that 25% of the youth do not admit to the charges yet end up with some type record in Juvenile Court even though 98% of them do not have an attorney. Probation counselors are insuring youth know about their rights to counsel. This presents a difficult dilemma for the juvenile justice system.

## **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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> Compliance Report dated April 2, 2013.

**Comments**

By all accounts, the Probation staff continues to do 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 1<sup>st</sup> 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 5<sup>th</sup>

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 over 2 years in planning, seeking technical assistance and acquiring funding for this clinic. Plans are for the Clinic to begin operations in the Fall of 2016

**Comments**

The potential for this program is considerable. It will be able to support direct representation of youth, including pre-petition representation and will provide a training ground for future attorneys to become involved the practice of juvenile defense. This has been a considerable undertaking with both funding and organizational challenges yet the collaborative nature of this effort can yield tremendous benefits for both the juvenile justice system and our community.

**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 1<sup>st</sup> 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 1<sup>st</sup> 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. New staff continues to be provided training with this video.

## **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 1<sup>st</sup> 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 that shows a breakdown of representation by the Juvenile Defender Panel and the Public Defender for 2013 – 2014 -2015. The complaints handled by the Public Defender have increased from 19% in 2014 to 29.8% in 2015.

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). It is expected this training will be continued in collaboration with the Law Clinic at the University of Memphis.

## **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.

At present, Public Defender Stephen Bush is developing a plan which will involve the Public Defender Juvenile Unit providing representation in all non-conflict indigent juvenile delinquency cases. The

Public Defender’s Juvenile Unit is currently handling about 30% of the appointed cases. Mr. Bush has indicated this has increased recently, with the Public Defender Unit being assigned to 40% of the appointed cases for the past six months. The challenges with having the Public Defender Unit handle all non-conflict delinquency cases are financial and organizational. Funding options are currently being pursued and organizational plans are being developed. It is expected this expansion of the role of the Public Defender’s Juvenile Unit will be operational by July 2016. It is hoped the organizational plans will be available by April 2016.

Some independence issues with the Public Defender and the Panel remain even if this expansion of the work for the Public Defender is successful but those issues become smaller. Discussions should continue to insure as much as possible can be done to assure the independence of defense counsel representing youth at all stages.

## **Due Process**

### **I. Policies and Procedures**

#### **(e) Juvenile Defenders**

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

## **Status**

See the comments in the section above.

## **Comments**

This effort is the key to meeting the due process concerns expressed in the MoA. By all accounts, the Public Defender’s Juvenile Unit has done a good job in providing representation for the youth.

Expanding their role to cover all non-conflict cases seems to be the best opportunity to address DoJ concerns about Due Process protections.

## **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 2<sup>nd</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> 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 1<sup>st</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> 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. At the urging of Due Process monitor, Sandra Simkins, the Court has aggressively moved forward in seeking training on trauma related issues. **Appendix 5** includes an agenda for a Trauma Audit through the National Council of Juvenile and Family Court Judges (NCJFCJ). Included with this agenda is an email update commenting on the site visit by NCJFCJ

### **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 Shelby County related to comparisons of white and African-American children, as well as any additional population groups which constitute five percent or more of the juveniles referred to JCMSC in the preceding year: **(MoA p. 21)**
  - (i) Relative rate index for each Decision Point, including, but not limited to, pre-adjudication detention, diversion, and transfers;
  - (ii) A comparison of JCMSC, the County's, and the State's RRI with the national RRI data;
  - (iii) Referring agencies, types of offenses referred by each particular agency; offense severity referred by the agency; and resources offered to Children within the referring agency's jurisdiction;
  - (iv) Number of Children in detention over a set period of time, their risk assessment scores, the component parts of their risk assessment scores, the recommended actions from their risk assessment scores, their social factors, whether they were placed in alternative programs, and the outcomes of those alternative programs;

- (v) Available diversion options for Children appearing before JCMSC. This shall account for the options available in different geographic regions of the County; and
- (vi) Number of youth formally considered for transfer to adult court and the number actually certified for transfer.

**Status**

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

**DMC and Equal Protection**

In January 2016, Court DMC Coordinator developed a 30-60-90 Day DMC Action Plan **Appendix 6**. This Plan includes a number of activities each with a timeline to be completed within a 30, 60 or 90 day period. This DMC Action Plan is intended to provide structure to the DMC reduction efforts of the Court and allow tracking and documentation of those efforts. The Plan is built around recommendations contained in Dr. Leiber’s recent 6<sup>th</sup> Compliance Report. It will be referenced below as the 30-60-90 Day Plan. Updates will be submitted after each 30 day interval. The 30 Day Progress Report is attached as **Appendix 7**.

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 2<sup>nd</sup> Compliance Report submitted September 23, 2013.

**Comments**

In the last Compliance Report it was noted that Caralee Barrett had been hired to work on data collection and analysis. Ms. Barrett recently resigned and her position is expected to be filled soon. It is important there be a system in place so that all data collection and analysis is not dependent upon one person. The Court has shown an understanding of this issue by temporarily assigning Aimee Burgdorf to fill that role. Prior to Ms. Barrett coming on board the position had been vacant for several months.

**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. In addition, the Court hired Bridgette Bowman to serve as the DMC Coordinator for the Court. Ms. Bowman is expected to focus on the examination of internal Court operations in an effort to reduce DMC.

It will be helpful if the DMC Coordinators can forge a relationship through which they can share information and find some opportunities to work together to reduce DMC. Their roles can be distinct yet complimentary.

**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 8** includes the most recent Point of Contact report on Referrals and Admissions to Detention.

**Comments**

The Point of Contact (POC) report in **Appendix 8** showed improvement in the data provided and in analysis of that data. A number of concerns remain about the Point of Contact Reports:

Reports are not done at each Decision Point. While some decision points may warrant more focus than others, DMC needs to be reduced at any point in which it exists. A POC report is a prerequisite to formulating efforts to reduce DMC therefore, no POC report - no apparent effort to reduce DMC.

The POC report in **Appendix 7** contains good information but the entire closing paragraph questions whether DMC is real. This was discussed exhaustively in the 6<sup>th</sup> Compliance Report (p. 22/23) submitted by the Settlement Agreement Coordinator on September 16, 2015. That discussion will not be repeated here, suffice it to say those discussions took place years ago along with training explaining the research that led to the DoJ findings. If there is no evidence to refute findings of DMC, it seems best to focus on reduction efforts.

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 continues to exist. An updated Assessment covering calendar year 2015 study is expected in May 2016.

<u>Decision Point</u>	<u>2009</u>	<u>2013</u>	<u>2014</u>
Referral to Juv Ct	3.4	<b>5.06</b>	<b>4.38</b>
Cases Diverted	<b>0.9</b>	<b>0.88</b>	<b>0.92</b>
Cases – Secure Detention	<b>2.1</b>	<b>1.64</b>	<b>2.02</b>
Petitioned	<b>1.2</b>	<b>1.46</b>	<b>1.69</b>
Delinquent Findings	<b>1.3</b>	<b>1.16</b>	<b>1.18</b>
Probation Placement	1.0	1.04	1.05
Secure Placement	1.7	<b>1.05</b>	<b>1.50</b>
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 to 2014. 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. The POC process remains the key to developing operational changes to reduce DMC.

In the last Compliance Report the following statement was made following the hiring of Bridgette Bowman as Court DMC Coordinator: “It is hoped that Ms. Bowman can use this position to provide structure and direction to the Court’s efforts to reduce DMC.” The Reports in **Appendices 6 & 7** provide some encouragement that structure and direction are being established. Whether results follow will soon be determined.

- (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 2<sup>nd</sup> 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.

**DMC and Equal Protection**

1. DMC Assessment

- (g) Within six months of the Effective Date, JCMSC shall assess the impact of its current policies, procedures, and programs on DMC levels at each Decision Point. JCMSC shall conduct an inventory of the available services and diversion options by race, ethnicity, and geographic region. The inventory shall measure, at minimum, the availability of family therapy, parent training, cognitive-behavioral treatment, mentoring, academic skills enhancement, afterschool recreation, vocational/job training, and wraparound services. This assessment shall include an analysis of JCMSC’s current agreements with law enforcement, schools, social services agencies, and the cities and towns within Shelby County. **(MoA p. 22)**

**Status**

This section requires an assessment and an inventory. A host of documents were submitted and included in the 2nd Compliance Report dated September 23, 2013.

**Comments**

**Appendix 9** includes a document from the 30 Day Update. This document lists the individuals identified to review policies/procedures with Ms. Bowman to assess the impact on DMC levels. Documentation will need to be provided on the outcomes of the work of this group.

**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 10** contains an update on the strategic plan and a memo discussing that plan from DMC Coordinator Lisa Hill.

**Comments**

Follow up on the Strategic Plan has been lacking and the status of many items is still being determined. In the memo in Appendix 10 Ms. Hill indicated she and Court DMC Coordinator Bridgette Bowman will work together to update and track the plan. As it stands, many items in the plan have been completed but if the plan is to be useful, it is in dire need of direction and leadership.

**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. The DAT validation report 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**

As stated in previous Compliance Reports, this has been an area of great improvement since the inception of the MOA. 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. Recommendations in the DAT validation report should be implemented.

Equal Protection monitor Mike Leiber recommended local validation for the Graduated Sanctions Grid (GSG) and the YASI a year ago. 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 and prior recommendations to address these concerns have gone unheeded. The Court has previously reported they would seek funding for validation studies but funding has not been received. Until validation is done the effects of these instruments remain unknown.

**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**

The group listed in **Appendix 9** has been formed to meet the obligations of this section of the MoA. A report on the outcomes of that work is necessary to become compliant with this section.

**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 2<sup>nd</sup> 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**

An evaluation of this program is needed. Prior to his retirement, Juvenile Court CAO Larry Scroggs spoke of the need to do “reinforcement” training with MPD to maximize use of the program. The POC report on Referrals to Detention in **Appendix 8** states that “law enforcement may be operating under guidelines or policies that ...do not fall in line with the Court’s goals.”

There was a great deal of hope this program would result in a substantial reduction in the number of youth physically transported by law enforcement to Juvenile Detention. There needs to be a determination as to whether this is working as planned and, if not, if it could be tweaked to make it more beneficial.

**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 2<sup>nd</sup> 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). As with other initiatives, care must be taken to evaluate the effects of these programs to determine their effectiveness. The Court continues 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 3<sup>rd</sup> 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 5<sup>th</sup> 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**

The POC reports were discussed in the above 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 has been validated. 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**

As stated in the last 6<sup>th</sup> Compliance Report the Court indicated they were seeking funding for validation purposes in the 2015-2016 budget which took effect in July 2015. That funding apparently was not received. There needs to be some viable plan to validate these instruments.

### **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.

**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. A number of individuals have worked hard on this transition but, to this point, it has not gone well. Since this transition, the data has indicated that Detention has become a more dangerous place. Whereas a year ago, Protection from Harm appeared to be in the best shape of the four sections of the MoA, as of now, it appears to be the most precarious.

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 1<sup>st</sup> 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 is attached in **Appendix 11**. Data related to PREA reporting has been requested but not yet received.

**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 12** includes the Detention Report Card for calendar year 2015 which provides a great deal of management information.

The Sheriff assumed responsibility for Detention in July 2015. It is revealing to compare outcomes in the first six months of 2015 when Detention was operated by the Court to the second six months of 2015 after the Sheriff assumed responsibility. **Appendix 13** is a spreadsheet covering performance from January through June 2015, the period when Detention was operated by the Court. **Appendix 14** is a spreadsheet covering performance from July through December 2015, the period when Detention was operated by the Sheriff.

Below is a comparison of monthly averages for key indicators before the Sheriff took over and since the Sheriff took over:

	Juvenile Court Operated (Jan-June)	Sheriff Operated (July-Dec)	% Change n/a
Total # Youth Admitted to Detention	491	492	n/a
<b><u>USE OF FORCE</u></b>			
Number of Bed Days(average per month)	1739	1943	+12%
Total # of Use of Force (per month)	19.5	33.5	+72%
Use of Force Rate per 100 youth	1.101	1.666	+51%
% of Times Hierarchy of Non-physical alternatives used	35.3%	17.7%	-50%
<b><u>SAFETY AND ORDER</u></b>			
Injuries to youth per 100 days of confinement (non-assaultive)	.047	.192	+309%
Injuries to youth by other youth per 100 days	.125	.197	+58%
Assaults on youth per 100 days	.335	.563	+68%
Physical restraint use per 100 days	1.103	1.697	+54%
Mechanical restraint use per 100 days	.075	.182	+143%
Use of room confinement per 100 days	1.587	1.402	-12%
Average duration of room confinement in hours	19.6	24.54	+25%

**Comments**

This data is extremely disturbing. They show a precipitous decline in performance in Detention since July 2015. The same number of youth entered Detention but the Use of Force and Safety and Order statistics changed dramatically. Since the Sheriff assumed responsibility for Detention the data shows:

- Use of Force increased 72%
- The Hierarchy of non-physical alternatives was used ½ as often
- Non assaultive injuries to youth increased over 300%
- The rate of assaults on youth increased 68%
- Physical restraints increased 54%
- Mechanical restraints increased 143%

This data clearly shows the Juvenile Detention Center is a more dangerous place. Why? The Sheriff assumed control in July 2015 and virtually all of the Detention line staff transferred at that time. Although the same numbers of youth are being brought into Detention, the population has increased due to longer lengths of stay. Nevertheless, this does not explain the increase in danger as the statistics above are largely based on rates of events per 100 youth which controls for population level.

Transfer of the Juvenile Detention Center to the Sheriff was a large undertaking with a number of associated items required to make this a successful transition. Those items include:

- Development and implementation of a Transition Plan
- Staffing Analysis
- Data Validation to insure availability and integrity of information
- Change to a Positive Based Management System (PBMS)
- Population Management
- Data Analysis and management response to that data

These are just a few of the issues the Sheriff took on when he accepted responsibility for Juvenile Detention. The planning, organization and implementation required for a successful transition has simply not happened. Individuals are working hard but things are disorganized and chaotic with the result being that improvements are not being made in a timely manner and the youth in Detention are suffering for it.

This is not to say that nothing is being done right. Hope Academy is an asset, food services have improved, reading materials have been returned to the youths' rooms, medical services are competently provided and monitored, the Report Card data tool is extremely useful and the Court is a willing partner with the transition.

That good news aside, the current problems are puzzling. Issues with planning have been repeatedly pointed out and the Sheriff's Office either will not or cannot resolve them. The lack of planning has created a domino of problems that grow in stature because of a lack of or delayed response. The needs for Detention to get back on track in the "Protection from Harm" portion of the MoA are so considerable that, if not planned, prioritized and effectively implemented and managed will continue to deteriorate and present threats to the safety of the youth housed in Detention.

### **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.

**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 1<sup>st</sup> 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. Communication between security staff and medical staff seems to be good.

In the 4<sup>th</sup> 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 was repeated in the 6<sup>th</sup> Findings and Recommendations letter from Facility Consultant David Roush. It has yet to be done.

**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**

As with Use of Force and Safety and Order statistics in **Appendices 13 & 14** the data shows changes since the Sheriff assumed operation of the Detention Center. Below shows a comparison of Suicide Prevention data 6 months prior to the Sheriff assuming control and 6 months after.

<b><u>SUICIDE PREVENTION</u></b>	<b><u>Juvenile Court Operated (Jan-June)</u></b>	<b><u>Sheriff Operated (July-Dec)</u></b>	<b><u>% Change</u></b>
Total # Youth Admitted to Detention	491	492	n/a
Rate of QMHP calls per 100 youth	.652	.506	-22%
Rate of Youth on Suicide Precautions per 100 youth	.651	.497	-24%
Average Time on Suicide Precaution (hours)	95.3	65.19	-32%

**Comments**

The data above shows fewer calls to the “Qualified Mental Health Professional” (QMHP). The QMHP is employed by the contract medical provider, Correct Care Solutions. The data also shows a decline

in the youth placed on suicide precautions and a decline in the amount of time a youth spends on suicide precautions.

The meaning of this data is uncertain and bears analysis. On one hand, it could mean fewer youth with mental health issues are in Detention and thus there is a declining need for mental health services. On the other hand, since Detention staff is often the ones calling on the QMHP it could mean fewer youth with mental health issues are being identified by Detention and referred to the QMHP. It is also possible this change could be a reflection of changes made with the individual QMHP.

In any event, the change since July is a significant one and should be examined.

### **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 5<sup>th</sup> Compliance Report submitted in March 2015.

### **Comments**

Training has been provided but, given the dramatic increase in uses of force and assaultive behaviors, this bears a re-examination. It could be that the training was not effective or it could be an implementation issue. In the 6<sup>th</sup> Findings and Recommendations Letter, Dr. Roush expressed concerns about the implementation of the Safe Crisis Management (SCM) program. His concerns were outlined on page 11 of his report and cited issues with supervision, manner in which the training was conducted and in the application of the SCM principles. Given the rising levels of violence in Detention, determinations need to be made as to whether there are training issues, implementation issues, supervision issues or some combination of these.

### **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**

Public meetings continue to be held twice a year. The next open meeting is scheduled for March 30, 2016.

**Appendix 15** includes the “Interagency Services Report” of February 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.

The Court recognizes they needed greater focus on community engagement and, in February 2016, attempted to gain approval from the County Commission to create a Community Engagement Coordinator position. The position was not approved and the Court was advised to seek funding during the regular budget cycle through which the position would be available July 2016. The Court plans to seek this funding and in the meantime have created an interim Community Outreach Plan for 2016 which is included in **Appendix 16**. This is a short term plan that addresses community engagement through publicizing and holding a large open meeting, improved connections with the CJJC and planned uses of the Speaker’s Bureau. It also includes outreach to be conducted by Court DMC Coordinator Bridgette Bowman through the development of a Community Engagement Team. This short term plan, while not ideal, does demonstrate an understanding of the importance of planning and carrying out activities aimed at improved Court/Community relations. These plans must be followed.

Progress with the Countywide Juvenile Justice Consortium (CJJC) continues. Progress is slow, but it is progress. The CJJC is convening meetings with focus groups and preparing a report on the feedback received. The feedback reports are shared with the Court. **Appendix 17** includes a report from a focus group with “Guardians of Children Who Have Had Contact With the Court”. The CJJC Chair continues to emphasize the importance of providing feedback for the Court. It has been a struggle to get attendance and participation at some of the focus groups but the CJJC continues to try.

### **Comments**

The Interagency Report is evidence the Court is involved in a large number of community activities. Concerns in the past have been the absence of a structured plan to guide activities aimed at improving Court/Community relations. There are a few encouraging signs since the last Compliance Report submitted in September 2015. First, the Court intends to hire a person dedicated to this activity although that person is not likely to be on staff until July 2016. Secondly, in recognition of the delays in hiring that person the Court has submitted an interim plan so at least there are some planned activities that will occur prior to July. Of course, whether this interim plan is followed will tell much about how seriously community engagement is taken. In addition, community involvement of the Court DMC Coordinator has been planned. The exchange of feedback between the CJJC and the Court continues to be a work in progress.

## **Community Outreach**

- F. Within one year of the Effective Date, JCMSC shall conduct, or retain an individual or entity approved by the DOJ with expertise in social science research and statistics to conduct, a representative survey of members of the Shelby County community regarding their experiences with and perceptions of JCMSC. The community survey shall be conducted annually until the termination of this Agreement. The individual or entity conducting the annual community survey shall: **(MoA p. 34)**
1. Develop a baseline of measures on public satisfaction with JCMSC, attitudes among court personnel, and the quality of encounters with the court by Children and their families;
  2. Conduct baseline surveys of County residents, JCMSC personnel, and Children appearing before JCMSC on delinquency matters, and follow-up surveys on at least an annual basis; and
  3. Ensure that the community surveys are designed to capture the opinions of community members in each demographic group and geographic region of Shelby County.

## **Status**

**Appendix 18** includes an email from Pam Skelton that contains an overview of the survey project by Dr. Laura Harris.

## **Comments**

Delays resulting from changes with OJJDP and their technical assistance provider have hampered this project for two years.

## **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 2<sup>nd</sup> 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 7<sup>th</sup> 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.