

SHELBY COUNTY, TENNESSEE COMPLIANCE REPORT

NO. 8

of

BILL POWELL

SETTLEMENT AGREEMENT COORDINATOR

(September 12, 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**

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

FROM: Bill Powell *BP*
Settlement Agreement Coordinator

DATE: September 12, 2016

SUBJECT: Compliance Report #8 – September 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 8th 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 8th Compliance Report comes 3 years and 9 months after the MoA was signed. There have been significant accomplishments over the nearly 4 years since the MoA was signed. Progress continues to be made in many areas though important work remains to be done.

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

Due Process

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

The Children's Defense Clinic is a great addition to the Juvenile Justice System in Shelby County. Public Defender Stephen Bush worked with the County Administration to secure funding for this Clinic which became operational in August 2016. This Clinic will provide specialized training for law students and should yield long term benefits of improving representation of youth in Shelby County. This is a tremendous achievement.

The biggest challenges remaining in the area of Due Process are the capacity of the Public Defender and the structural independence of the defense function.

In the area of Public Defender capacity, the Juvenile Defender Unit of the Public Defender's Office continues to increase their caseload and has handled 50% of the appointed counsel cases in 2016. This has increased from 19% to 30% in the previous two years. Funding continues to be sought to increase the capacity of the Juvenile Defender Unit so they can handle all non-conflict appointed counsel cases.

In the area of structural independence, Public Defender Stephen Bush submitted a "Blueprint to Achieve Compliance in Juvenile Defender Services" on August 15th. This "Blueprint" provides a roadmap to compliance with the MoA that can be achieved through local action. The ability to implement this "Blueprint" is the best bet to act locally to achieve defender independence which is so vital to our system of justice.

In short, things are going well in the area of Due Process.

Good:

- Data samples show continued good performance in 2016 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

- 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 50% of the complaints compared to 30% in 2015 and 19% in 2014. This percentage continues to trend upwards as evidenced by the fact they handled 60% of the complaints from May through August 2016.
- The Children's Defense Clinic at the University of Memphis became operational in August 2016

Challenges:

- Increasing Public Defender capacity so that the Juvenile Defender Unit has the capability of handling all non-conflict assigned counsel cases.
- Implementing the recommendations outlined in the "Blueprint to Achieve Compliance in Juvenile Defender Services". Although the recommendations are within local control there remain a number of details that must be articulated and implemented.
- Probation does a very good job explaining the right to counsel and keeping cases from going to Court. Even so, an increasing number of youth, 33% in 2016 do not admit to charges yet receive some record of sanctions while 98% of them do not have an attorney

DMC and Equal Protection

Dr. Michael Leiber, Equal Protection Monitor, completed an Assessment Report for 2015 data which continued to show disparities at every decision point in the juvenile justice system. Based on the Relative Rate Index (RRI), Dr. Leiber reports minority youth are:

- More likely to be referred by law enforcement to Juvenile Court
- Less likely to be diverted
- More likely to Detained
- More likely to be found Delinquent
- More likely to be Petitioned to Court,
- More likely to receive a Secure Placement

This area has been a substantial challenge in virtually all areas of the country and continues to be a challenge in Shelby County. Despite these numbers, there is some reason for optimism. Following a July 2016 technical assistance visit by Dr. Leiber, Juvenile Court CAO Pam Skelton has assumed leadership in addressing DMC and Equal Protection issues. The results have been very encouraging. There have been a flurry of meetings around these issues resulting in many activities focusing on DMC are taking place. Included among those activities are:

- ✓ Systematic reviews of policies at various decision points
- ✓ Internal reviews of the DAT and Graduated Sanctions Grid
- ✓ Preliminary assessment of programs including School Based Probation Liaison and LEAP
- ✓ Discussions with MPD regarding referrals

In addition, staff has begun stepping up to become engaged in discussions about solutions to DMC concerns. Some innovative suggestions are being brought to the table such as a “Preventative Contact Approach” which has great potential in reducing DMC.

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.

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 since the MoA was signed. 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. The leadership being shown by Ms. Skelton gives hope for progress in this area.

Good:

- Leadership taken by CAO Pam Skelton
- Process and timelines established for review of policies at each decision point
- Internal review of Graduated Sanctions Grid to simplify decisions and insure consistency
- Internal assessment begun on many programs offered to attempt to divert youth from the Court. These programs include the Law Enforcement Assessment Program (LEAP), the Juvenile Court Precinct Liaison Initiative (JCPL), and the School Based Probation Liaison (SBPL)
- 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)
- Greater staff engagement
- Innovative suggestions being discussed such as the Preventative Contact Approach which could result in reductions in DMC and in youth progression through the justice system

Challenges:

- Follow up on the number of activities begun after Dr. Leiber’s technical assistance visit.
- Point of Contact reports need to offer guidance to reduce DMC and recommendations made need follow up
- Although some internal reviews of programs have begun, these reviews fall short of the impact or outcome evaluations necessary to know the true effect of these programs and whether they are making a difference. It would be advisable to pursue the use of graduate students to do some of this work absent the availability of funding for more robust evaluations.
- RRI data still show significant problems and, given that assessment of this data is done on an annual basis the next assessment is not likely to show much difference since many changes are just beginning to be put into place and we are 9 months into 2016.

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. This has been a substantial change and adjustments continue to be made. There have been a number of improvements since the last Compliance Report was submitted in March 2013. Two events have contributed greatly to recent improvements:

1. Sheriff's CAO Leech has taken a leadership role in convening the Juvenile Detention command staff on a bi-weekly basis to focus on operational challenges and solutions. These meetings have allowed a strict focus on what needs to be done to improve operations and provide follow up on those actions.
2. Technical assistance visit by Facility Consultant Dr. David Roush in June. This visit provided direct assistance with training and data collection, reporting and validation. There was also a great deal of discussion regarding the differences in supervising youth vs. adults and how those differences affect operations in areas such as the Positive Behavior Management System (PBMS). The staff embraced the information provided in this visit and the bi-weekly management meetings have helped focus the improvement efforts which have followed.

In the past 6 months the data has shown the following compared to the 1st 6 months after the Sheriff assumed control of Detention:

- Declines in the number and rates of Use of Force
- Decline in Injuries to youth
- Decline in Physical and Mechanical Restraints
- Decline in Use of Room Confinement
- Decline in the Average Duration of Room Confinement
- Slight increase in the rate of Assaults on Youth
- Slight decline in the frequency with which the Hierarchy of non-physical alternatives are used

The data above shows progress is being made. There are other signs of improvement. Following the visit by Dr. Roush, training is more interactive and has more of a juvenile focus, with support from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) a Train the Trainer initiative will take place in October 2016. Staff has also sought refresher training on Safe Crisis Management to improve decision making and techniques in use of force situations and supervisory staff will also undergo that training. Population management efforts continue and the population has remained stable for the past several months. The PBMS program has improved relations with youth and staff and is showing benefits through the improvement of youth behavior.

Supervision and documentation need to continue to improve and some processes are being put in place to address those concerns. Data collection and validation also continue to be concerns and work is being done there as well. Adjustments are being proposed to the Detention Report Card which will allow more precision in how data is being tracked. With the assistance of Shannon

Caraway of Juvenile Court, automation of data collection is being planned which should help with accuracy, documentation and validation.

The medical services provider, CCS, continues to perform well and their relationship with Detention staff and Health Department staff is a good one.

Overall, there is reason to be optimistic about progress in the Protection from Harm portion of the MoA and a continued focus on operational improvements should help sustain that progress.

Good:

- Contract medical services provider is doing a good job and communication between medical staff and security staff seems to be good
- Hope Academy has expanded and is a great asset
- The Positive Based Management System is going well
- Interactive training has improved and has more of a juvenile focus
- Refresher training on Safe Crisis Management should help improve response in use of force situations
- Population reduction efforts in conjunction with the Court are helping
- Involvement of CAO Steve Leech has put a focus on operational improvement and follow up
- Train the Trainer initiative will occur in October 2016
- Data shows reductions in use of force, injuries, restraints and room confinement
- A Staffing Analysis report has been submitted to Dr. Roush
- Proposed changes in Detention Report Card show promise for improved precision and tracking of information

Challenges:

- Follow up on Staffing Analysis
- Slight increase in Youth assaults in the past 6 months
- Continued low levels of use of non-physical alternatives
- Implementation of data collection, automation and validation is still a work in progress
- Documentation improvement need

Community Outreach Program (COP)

The Court continues to be involved in a number of community 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 was unable to obtain a new position dedicated to community outreach but, in recognition of the importance of that role has decided to revise the duties of an existing position to include outreach responsibilities. Leon Gray will begin in that role in mid September 2016. Whereas the MoA required semi-annual public meetings, Juvenile Court has created a calendar of Quarterly public meetings to further provide the community with information about Court

activities. The first of those meetings was held September 8th in Hickory Hill and provided a wealth of information on Court activities and programming.

The CJJC has continued to be active and is in the process of recruiting some energetic new members to augment the core of volunteers who have been the heart of the CJJC. The Court adopted the CJJC recommendation to create a brochure for parents of Court involved youth and to develop a parent orientation for youth in Detention. This type of valuable feedback and response from the Court is what was envisioned in the creation of the CJJC.

The long awaited Community Survey began in March 2016. Plans called for a total of 800 interviews to be conducted and about 30% of those had been done through July 30th. It is hoped that an interim report will be available soon.

Good

- Public Meetings are planned Quarterly
- A Community Outreach Coordinator will begin work in mid September 2016
- Court Services Director Gary Cummings is attending CJJC meetings to foster communication between the CJJC and the Court
- The Community Survey is underway and 30% of the interviews have been done as of July 30th.
- The CJJC remains active and has provided helpful input to the Court resulting in the development of an informational brochure and an orientation for parents

Challenges

- Follow up on the Quarterly public meetings
- Continue to utilize feedback from the CJJC
- Utilize the Community Outreach Coordinator to develop a structured Outreach Plan
- Complete the Community Survey and review the results

Conclusion

It has been 45 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.
 - Implement recommendations for local action in the “Blueprint to Achieve Compliance in Juvenile Defender Services” to address independence issues of the defense function

2. Equal Protection
 - Follow through on the momentum begun after Dr. Leiber's technical assistance visit
 - Articulate and implement specific changes in policies/practices aimed at directly reducing disparities in each decision point
 - Develop more thorough analyses of various Court programs so that a determination can be made as to what is working to reduce DMC
3. Protection from Harm
 - Work out the details necessary to implement an effective system of automated data collection and validation.
 - Continue to reduce the numbers of use of force, assaults on youth and use of room confinement
 - Continue to enhance the PBMS and monitor its effect on use of force, grievances and staff interactions
 - Improve documentation in all areas so that there is confidence in data gathered and reported
4. Community Outreach
 - Build on current outreach plans and develop a structured outreach plan that will convey Court improvements to the community and obtain useful feedback from the community in improving operations
 - Complete the Community Survey and analysis the findings from that work
 - 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. Improvements have been made in Detention training and plans are underway to address documentation and data validation issues.

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. The appointed Monitors and Facility Consultant have demonstrated an ability and willingness to not only monitor but assist the Court, the Sheriff's Department and the County in reaching these lofty goals.

Due Process

1. Policies and Procedures

(a) Probable Cause Determinations

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

Status

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

Due Process

1. Policies and Procedures

(a) Probable Cause Determinations

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

Status

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

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

Comments

Judicial Staff reviews:

Spreadsheets have been developed to aggregate information from a sample of case file reviews in order to track performance trends. The intent has been to use spreadsheets to report data and attach a narrative to discuss and demonstrate an analysis of that data. 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 July 2015 through July 2016. It should be noted that Judicial does not provide narratives accompanying the spreadsheets to the Settlement Agreement Coordinator. Narratives are 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 65% of the cases compared to 64% reported in Compliance Report #7 completed in March 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 99% of the time in this reporting period.

Adjudicatory Hearing

- An Attorney has been present in 100% of the Adjudicatory Hearings.
- Amended petitions were filed in 2% of the cases compared to 6% reported in Compliance Report #7.
- 5% of cases resulted in a trial which is the same rate reported in Compliance Report #7. This percentage is a decline from 19% in 2013
- Slightly fewer cases (84%) resulted in a Waiver and Admission in this report compared to 86% reported in Compliance Report #7.
- 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
- Written rationale for the transfer was completed 100% of the time in this period.

This data continues to support 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. Also included in **Appendix 1** is a memo from Dr. Tucker Johnson, Director of the Office of Clinical Services at Juvenile Court. This memo gives an update on the status of psychological evaluations and some data regarding the number of evaluations completed and the average time to completion. Dr. Johnson continues to do an excellent job and her work has been a strong point for the Court.

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 January through July 2016 is included in **Appendix 2**.

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.

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
- 71% of the time the child's Mother attends the conference
- The youth at Probation conferences were a bit younger than reported in 2015. In 2016 most of the youth (45%) were aged 13-15 years old while (43%) were aged 16-17 years old. In 2015, 48% of the youth at Probation conferences were 16-17 years old while 39% of the youth are between the age of 13-15
- 33% of the youth at Probation conferences were female compared to 45% female in 2015
- 6% of the youth are classified as Special Education
- 100% of the youth have their rights explained to them in the conference
- 85% of the youth were African American compared to 93% in 2015
- A high percentage of the youth (33%) did not admit to the charge compared to 25% last year
- The most common disposition at Probation conferences is a Warn/counsel (49%)
- The most common service recommended at the Probation conference was Anger Management with 13% of the youth recommended for that service

The availability of this wealth of data is a great improvement 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 is a strong point 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.

As mentioned in previous reports, if there is a concern with this process it remains that a high percentage of the youth do not admit to the charges (33% in 2016, up from 25% in 2015) yet end up with some type record in Juvenile Court even though 98% of them do not have an attorney. Probation counselors have been trained and are insuring youth know about their rights to counsel but those rights are not being exercised. 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 1st Compliance Report dated April 2, 2013.

Due Process

1. Policies and Procedures

(b) Notice of Charges

- (iv) Each month, the Judge, or his or her designee, shall review a sampling of Case Files to determine whether the requirements regarding notice of charges are being followed as required by this Agreement. The review shall include periodic observations of Detention and Adjudicatory Hearings to ensure that Juvenile Court Magistrates and other staff follow policies, procedures, and practices regarding notice of charges required by this Agreement. If the review reveals that the procedures have not been properly followed, the Judge shall take immediate corrective action, including a discussion with the responsible staff, to bring about compliance with the terms and requirements of this Agreement. **(MoA p. 11)**

Status

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

Comments

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

Due Process

1. Policies and Procedures

(c) Transfer Hearings

- (i) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices in accordance with Tenn. Code Ann. § 37-1-134 and the Tennessee Rules of Juvenile Procedure, R. 24(b) to require Transfer Hearings that comport with due process requirements prior to waiving jurisdiction and ordering transfer of a Child's case to adult court. Specifically, JCMSC shall ensure that all Transfer Hearings include the following: **(MoA p. 11)**
 - a. The Assistant District Attorney presents evidence in support of the petition for transfer;
 - b. Children have a right to an attorney whose role is to represent their stated interest;
 - c. Children, through their attorneys, are provided the opportunity to introduce evidence on their own behalf;
 - d. Children, through their attorneys, are provided the opportunity to meaningfully confront evidence presented against them, including cross-examining adverse witnesses;
 - e. Children are protected from self-incrimination;
 - f. The Judge or Juvenile Court Magistrate presiding as Special Judge makes written findings on whether there are reasonable grounds to believe that: (1) the Child committed the delinquent act as alleged; (2) the Child is not committable to an institution for persons with a developmental disability or mental illness; and (3) the interests of the community require that the Child be put under legal restraint or discipline; and
 - g. The Judge or Juvenile Court Magistrate presiding as Special Judge considers and documents his or her consideration of factors relevant to his or her findings, including, but not limited to: (1) the extent and nature of the Child's prior delinquency; (2) the nature of past treatment efforts and the nature of the Child's response thereto; (3) the Child's suitability for additional treatment; (4) the nature of the delinquent act alleged; (5) the Child's social factors; (6) the alternatives within the juvenile justice system which were considered and the rationale for rejecting those alternatives; and (7) whether the juvenile court and juvenile justice system can provide rehabilitation of the juvenile.

Status

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

Due Process

1. Policies and Procedures

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

Status

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

Comments

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

Due Process

1. Policies and Procedures

(d) Protections Against Self-Incrimination

- (i) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to prevent probation officers or any other staff from eliciting information about Children's involvement in the alleged delinquent act or acts in question outside the presence of the Child's defense attorney. **(MoA p. 12)**
- (ii) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to notify a Child's defense attorney in writing of any probation conference or interview. The probation conference or interview shall be open to the Child's defense attorney. **(MoA p. 13)**
- (iii) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to ensure that probation officers appropriately advise Children of their Miranda rights. The probation officer's advisement of rights shall include: **(MoA p. 13)**
 - a. A description of the role of a defense lawyer;
 - b. A statement that the Child is entitled to the appointment of a defense attorney and that a defense attorney may be provided at no cost if the Child is eligible;
 - c. A statement that the Child's statements regarding the alleged offense can be included in the probation report; and

- d. A statement that the Child's statement could be used against him or her by the prosecutor, probation officer, or the Magistrate Judge in further proceedings, including disposition.

Status

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

Comments

By all accounts, the Probation staff 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 1st Compliance Report dated April 2, 2013.

Due Process

1. Policies and Procedures

(d) Protections Against Self-Incrimination

- (v) JCMSC shall consider developing a partnership with a non-profit or academic organization to provide advice and support to Children during the probation intake process. Participants in this program shall be trained on the appropriate role of probation officers, the Child's right against self-incrimination, and the policies, procedures, and practices regarding protections against self-incrimination developed as part of this Agreement. (MoA p. 13)

Status

The MoA suggested Juvenile Court "consider developing a partnership with a non-profit or academic organization to provide advice and support to Children during the probation intake process. The 5th Compliance Report detailed the work done by Public Defender Stephen Bush in creating a partnership

with the University of Memphis Law School to implement a specialized juvenile delinquency clinic. Mr. Bush worked for over 2 years in planning, seeking technical assistance and acquiring funding for The Children's Defense Clinic, led by Professor Lisa Geis, is dedicated to training law students who will provide specialized defense for children involved in delinquency matters in Shelby County. The Clinic began operating in August 2016.

Comments

Creation of the Children's Defense Clinic is a tremendous accomplishment. 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. 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 1st Compliance Report dated April 2, 2013.

Due Process

1. Policies and Procedures

(d) Protections Against Self-Incrimination

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

Status

These policies were submitted in the 1st Compliance Report dated April 2, 2013. Due Process Monitor Sandra Simkins expressed concerns about protections against self-incrimination at the Probation

Conference stage. In response to those concerns, internal training was developed and conducted for Probation staff. A video of that training was made to use for routine training of new staff in Probation.

Due Process

1. Policies and Procedures

(d) Protections Against Self-Incrimination

- (ix) Each month, the Judge, or his or her designee, shall review a sampling of Case Files to determine whether the requirements of this Agreement regarding protections against self-incrimination of Children are being properly followed. The review shall include periodic observations of probation conferences by appropriate supervisory staff of the Court's Probation Department as well as periodic observations of Adjudicatory and Transfer Hearings by the Judge or his or her designee. If the reviews reveal that the procedures regarding protection against self-incrimination have not been properly followed, the Judge shall take immediate corrective action, including a discussion with the responsible staff, to bring about compliance with the terms and requirements of this Agreement. **(MoA p. 14)**

Status

Forms were created to assist in the review of case files, including protections against self-incrimination. A sampling of cases has been reviewed as required.

Comments

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

Due Process

1. Policies and Procedures

(d) Protections Against Self-Incrimination

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

Status

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

Due Process

1. Policies and Procedures

(e) Juvenile Defenders

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

Status

The MoA requires the County to create a responsibility for the supervision and oversight of juvenile delinquency representation to the Public Defender's Office and to support the establishment of a specialized unit for juvenile defense. **Appendix 3** includes a report that shows a breakdown of representation by the Juvenile Defender Panel and the Public Defender for 2016. The complaints handled by the Public Defender have steadily increased as shown below:

<u>Year</u>	<u>% complaints represented by Public Defender</u>
2014	19%
2015	29.8%
2016	50%

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.

The MoA requires both the County and the Court to insure “independent, ethical and zealous advocacy” which remains a difficult thing to measure. Both the Public Defender and the Court have worked on ways to meet this obligation.

At the request of Due Process Monitor Sandra Simkins, Public Defender Stephen Bush submitted a “Blueprint to Achieve Compliance in Juvenile Defender Services” on August 15, 2016. The report includes several recommendations focusing on independence and capacity issues with Defender services. The recommendations include:

1. Establish Adequate Assurances, including a term of service, to protect the Chief Public Defender from political influence
2. Establish operational independence by:
 - Allowing the PD to advocate for funding and participate fully in state/local budget proceedings
 - Reorganize the PD Division for service delivery consistent with the ABA Ten Principles
 - Establish business rules that govern administration of public defense revenue sources
 - Insure the PD can manage all operations and functions in a manner that meets ethical obligations
3. Increase Public Defender capacity to provide direct representation

These recommendations included timelines for accomplishing these tasks.

Comments

This “Blueprint” provides direction and timelines for fleshing out the details necessary to achieve a greater degree of independence for the Public Defender and increasing the capacity of the Juvenile Unit so that “independent, ethical, and zealous advocacy by the juvenile defenders representing Children in delinquency hearings” can be provided. Accomplishing this within the framework of the County Charter is a bold move and the Mayor’s Administration should be commended for supporting the concepts in this “Blueprint”. The devil is often in the details and much remains to be done to implement the concepts in the Blueprint. Nevertheless, this Blueprint presents a path for the County Administration to meet the spirit of the MoA by exercising local control without having to count on long term changes within the State government system which may or may not come about. The immediate challenge is to adhere to the timelines in the Blueprint and get things done.

Due Process

1. Policies and Procedures

(e) Juvenile Defenders

- (ii) Within one year of the Effective Date, JCMSC shall take action to ensure independent, ethical, and zealous advocacy by the juvenile defenders representing Children in delinquency hearings. This action shall include: **(MoA p. 15)**

- a. Appointing juvenile defenders to represent children at Detention Hearings and Probable Cause Determinations as early as possible, including immediately after intake staff completes required paperwork where possible;
- b. Establishing a juvenile defender panel system, overseen by an independent body, to handle any delinquency cases that either pose a conflict for the specialized unit for juvenile defense or would cause the juvenile unit to breach workload restrictions required by this Agreement;
- c. Supporting the promulgation and adoption of attorney practice standards for juvenile defenders; supporting the training of attorneys within the SCPD specialized unit and the independent panel system on the practice standards; and supporting supervision and evaluation of said attorneys against such practice standards; and
- d. Ensuring that juvenile defenders have a confidential meeting space to confer with their clients within the Facility.

Status

See the comments in the section above.

Comments

By all accounts, the Public Defender's Juvenile Unit has done a good job in providing representation for the youth. Expanding the capacity of the Public Defender's Juvenile Unit 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 2nd Compliance Report submitted September 23, 2013.

Due Process

1. Policies and Procedures

(g) Restitution Guidelines

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

Status

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

Comments

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

Due Process

1. Policies and Procedures

(h) Bond-Setting Guidelines

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

Status

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

Comments

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

Due Process

1. Policies and Procedures

(i) Confidentiality of Juvenile Delinquency Proceedings

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

Status

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

Due Process

1. Policies and Procedures

(j) Language Access Plan

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

Status

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

Comments

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

Due Process

1. Policies and Procedures

(k) Treatment of Witnesses

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

Status

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

Due Process

1. Policies and Procedures

(I) Judicial Bench Cards

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

Status

A policy regarding bench cards was created 6-17-13. Submissions for bench cards in accordance with this item were included in the 2nd Compliance Report submitted September 23, 2013.

Comments

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

Due Process

1. Policies and Procedures

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

Status

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

Due Process

1. Policies and Procedures

- (n) Recordings of Juvenile Delinquency Hearings
 - (i) Within six months of the Effective Date, JCMSC shall have all delinquency hearings, including initial Detention Hearings, Adjudicatory Hearings, Transfer Hearings, and probation revocation hearings recorded by electronic means. Privately engaged court reporters may provide written transcripts. **(MoA p. 19)**
 - (ii) JCMSC shall ensure that the recordings are complete and of sufficient quality to ensure a meaningful review. **(MoA p. 19)**
 - (iii) JCMSC shall make recordings accessible at no cost to defense counsel representing indigent Children. **(MoA p. 19)**
 - (iv) JCMSC shall make arrangements to store each recording for two years. **(MoA p. 19)**

Status

The Juvenile Court Clerk has the responsibility of recording hearings.

Comments

A memo from Juvenile Court Clerk Joy Touliatos describes the recording, the storage of those recordings and the quality checks of those recordings. That memo was included in the 2nd Compliance Report submitted September 23, 2013. Recordings are available and are of good quality.

Due Process

2. Training

- (a) Within six months of the Effective Date, JCMSC shall develop a training plan for all employees involved with its delinquency docket and submit the training plan to the Monitor and the United States for review and approval. **(MoA p. 19)**
- (b) JCMSC's training plan shall ensure that appropriate staff are trained on topics relevant to their role and responsibilities in juvenile delinquency proceedings including: **(MoA p. 19)**
 - (i) Trial advocacy;
 - (ii) Constitutional due process requirements;
 - (iii) Adolescent development;
 - (iv) Disposition planning;
 - (v) Best practices in social service and therapeutic options for Children and families, including evidence-based practices;
 - (vi) The functional and practical purposes of the juvenile court, including the Court's ability to handle cases involving Children charged with serious or violent delinquent acts; and
 - (vii) The appropriate professional role of different players within juvenile proceedings.
- (c) JCMSC shall implement its first training plan within 12 months of the Effective Date and shall create subsequent training plans on an annual basis thereafter. **(MoA p. 19)**

Status

An updated training schedule is maintained by Ms. Brenda Johnson, HR Manager. That schedule covers Juvenile Court training from 2012-2016 and is included in **Appendix 4**.

Comments

Juvenile Court has continued to be extremely supportive of staff training. The attached training schedule illustrates the variety of training in which the Court is engaged and the great number of staff receiving the training. Great attendance at the JDAI Summit in June and at the DMC training in August is particularly noteworthy.

DMC and Equal Protection

This area has been a challenge since the signing of the MoA in December 2012. In July 2016 Equal Protection Monitor, Dr. Michael Leiber conducted a technical assistance visit to work with staff to develop a focused approach to addressing DMC issues. Juvenile Court CAO Pam Skelton has since assumed leadership in planning and developing approaches to address DMC and Equal Protection issues. There has been a flurry of meetings to follow up on Dr. Leiber's technical assistance visit. If

these activities continue, there is reason to be optimistic that progress will be made. **Appendix 5** contains a memo from Ms. Skelton to Dr. Leiber providing follow up on actions discussed during the technical assistance visit.

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

DMC and Equal Protection

1. DMC Assessment

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

Status

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

Comments

There have been a number of personnel changes that have impacted data collection. Recently, Aimee Burgdorf has been assigned as the Data Analyst with responsibilities in this area. Ms. Burgdorf has been active and enthusiastic in approaching this work.

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.

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 6** includes POC reports from Judicial, Corrective Services and Detention & Children’s Bureau.

Comments

The Point of Contact (POC) reports continue to be a mixed bag. There have been improvements in the data provided and in the analysis of that data but previous expressed concerns remain.

As stated in Compliance Report #7, POC 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 easiest evaluation of a POC report is simply whether it provides any recommendation or guidance to reduce DMC in that area. Of the three reports in **Appendix 6**, the report on Detention & the Children’s Bureau is the only report that includes any type of recommendation for action.

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, 2014 and 2015 for the 8 Decision Points. This information is from Dr. Michael Leiber’s Assessment Study dated June 17, 2016. 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>	<u>2015</u>
Referral to Juv Ct	3.4	5.06	4.38	4.26
Cases Diverted	0.9	0.88	0.92	0.91
Cases – Secure Detention	2.1	1.64	2.02	2.31
Petitioned	1.2	1.46	1.69	1.79
Delinquent Findings	1.3	1.16	1.18	1.70
Probation Placement	1.0	1.04	1.05	1.29
Secure Placement	1.7	1.05	1.50	1.65
Transfer	2.3	*(insufficient #s)	*(insufficient #s)	*(insufficient #s)

The data in Dr. Leiber’s Assessment report disparities exist at every Decision point and have grown, as measured by RRI in 6 of the 8 Decision Points in each of the past 2 years. The data show that in 2015 minorities are:

- More likely to be referred by law enforcement to Juvenile Court
- Less likely to be diverted
- More likely to 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.

As mentioned earlier, CAO Pam Skelton has assumed leadership in this area and is promoting a structured and aggressive approach to DMC reduction following suggestions provided by Dr. Leiber during his recent technical assistance visit.

- (f) JCMSC shall collect data and information required by this Agreement to determine where DMC occurs. This collection effort shall begin within nine months of the Effective Date. In particular, JCMSC shall determine the specific Decision Points where DMC occurs. This shall include geographic regions, referring agency (including individual schools) and the Decision Points noted in the DOJ Report of Findings, namely, detention, alternatives to detention, and transfer recommendations. An analysis of this data shall be conducted on an annual basis. (MoA p. 22)

Status

Several reports were included in the 2nd Compliance Report submitted September 23, 2013. Those reports were in draft form. This portion of the MoA requires the Court to determine the specific Decision Points where DMC occurs. Information from Juvenile Court and from Dr. Leiber's Assessment Reports has provided ample information about where DMC occurs.

Comments

Data collection has not been an issue.

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 which addressed the inventory. An assessment of policies is currently underway.

Comments

Appendix 7 includes a brief policy review plan and a “Policy Report Card” form. A team has been formed to review policies in a number of areas including processing of juvenile summons, filing of petitions, decision making tools, and criteria based programming. The plan calls for “policy report cards” to be completed on each by September 22, 2016. The report card form calls for a determination as to whether the policy has DMC implications and calls for a recommendation to be made. This policy review is a necessary foundational step in assessing internal factors that may cause DMC. The challenge will be in having a thorough enough discussion of how these policies may impact decisions that lead to disparities. Establishment of a plan is a good start.

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.

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.

Comments

Both the GSG and the DAT are being reviewed from the perspective of DMC implications. **Appendix 8** includes a memo suggesting a Preventative Contact Approach – Summons Alternative Strategy – Graduated Response Grid. This approach proposes to reduce the number of referrals to the Court and decrease further processing through the system. **Appendix 8** also includes a proposed GSG that would decrease cases moving further through the juvenile justice system. These proposals represent a creative approach that has great potential to reduce DMC. It is very encouraging to see this type of approach being brought forward. In addition, **Appendix 9** includes a memo providing a synopsis of activities geared to address DMC, a memo updating the Capstone Project, a memo describing a meeting with MPD to discuss referrals and a memo titled "Reassessment of Existing Partnerships between Juvenile Court and Others." This demonstrates the breadth of activities engaged in following the technical assistance visit by Dr. Leiber.

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. The initial review is underway as described earlier. It will be important to periodically assess the impact of policies and practices moving forward.

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

The YASI and Graduated Sanction Grid are among tools used by the Court.

Juvenile Court uses other tools including the YASI and an in house developed Graduated Sanctions Grid. Funding has not been forthcoming for full fledged evaluations of these tools but efforts are underway to review the GSG and tweak that tool based on identified concerns with consistency and ease of use.

Court staff has also done preliminary assessments of some of the programs in use. **Appendix 10** includes assessments of the following programs:

1. School Based Probation Liaison Initiative – this is a partnership in which school staff serves as liaisons with Juvenile Court Probation counselors for probationers in those schools.
2. Juvenile Court Police Precinct Liaison Program – in this program a probation counselor is assigned to work at a police precinct in an effort to decrease referrals of justice involved youth in that precinct.

These assessments provide some data about the programs but fall short of an impact assessment necessary to fully evaluate the utility of the programs and any possible impact on DMC.

It would be useful to work with local universities to use graduate students to undertake some type of elementary impact assessment of the various tools and programs if funding for evaluations remain unobtainable.

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

The DAT has been professionally evaluated by a team from the University of Memphis. It is being further reviewed to determine possible DMC impacts. A summary of an internal review completed in July 2016 is included in **Appendix 11**.

DMC and Equal Protection

3. DMC Reduction: Evaluation and Tools

- (c) Within nine months of the Effective Date, JCMSC shall implement a pilot program allowing law enforcement to phone in information about a recently arrested youth, which could lead to more youth being released with a summons and fewer transports by law enforcement to JCMSC. **(MoA p. 24)**

Status

This program known as LEAP (Law Enforcement Assessment Program) began in December 2014. A document describing the pilot program and a copy of the Memorandum of Understanding (MoU) between Juvenile Court and the Sheriff's Department was included in the 2nd Compliance Report submitted September 23, 2013.

Comments

Appendix 12 contains an analysis of the LEAP program. Although there is much useful data included in the analysis the tie of this program to DMC is tenuous at best. It could be that more in depth analysis would provide some connection or it could be the program needs to be revised with specific targets for LEAP based on DMC information. This is not to say LEAP is not useful or that it does not help reduce referrals. It is simply to say that this level of assessment does not provide enough data to claim it is likely to have an impact on DMC. It is possible that, with some tweaks, this could be a program that not only reduces referrals but also does that in a way that reduces disparities.

DMC and Equal Protection

3. DMC Reduction: Evaluation and Tools

- (d) Within nine months of the Effective Date, JCMSC shall develop objective tools for providing pre-and post-adjudication alternatives to secure detention, probation recommendations (including initial placement, technical violations, and the level of supervision), and transfer recommendations. To assist with the expansion of services, JCMSC shall partner with other County departments and agencies as necessary to increase access to direct services within the community (including the implementation of a pilot diversion program). JCMSC shall use the inventory of the available services and diversion options by race, ethnicity, and geographic

region to inform its decision to provide or expand the required services. In particular, JCMSC shall assess the availability of house arrest, day/evening treatment centers, intensive probation, shelter care, specialized foster care, and attendant or holdover care. **(MoA p. 24)**

Status

The 2nd Compliance Report submitted September 23, 2013 included a memo that discussed assessment tools, upcoming technical assistance and some existing and planned community partnerships. This appendix also included copies of some current assessment tools used by the Court.

Comments

The Court has been involved in the development of a number of programs including the Juvenile Court Precinct Liaison Initiative (JCPL) and the School Based Probation Liaison (SBPL). These initiatives are discussed above with documents included in **Appendix 10**. 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 3rd Compliance Report, dated March 21, 2014 included an email sent from Herb Lane, Chief Legal Officer of the Court which outlined the procedure for conducting a statistical review of transfers as required in the MoA p. 25 B. 3 (e).

Tom Coupe submitted a memo regarding “Transfers of Juveniles with Burglary Charges” in December 2014. That memo was attached in the 5th Compliance Report submitted in March 2015.

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 although an internal review of the GSG is currently being done.

Comments

This was discussed in 3. DMC Reduction: Evaluation and Tools (b)

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

In addition to the training schedule mentioned above, **Appendix 13** includes a memo from June 10, 2016 discussing specific DMC training.

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's Office. After a rocky start, things are beginning to improve. The Positive Behavior Management System (PBMS) has been implemented and relations between youth and staff are getting better. In response to technical assistance provided in June by Facility Consultant David Roush, interactive training methods have been incorporated and embraced by the staff. This improved training and ongoing development of PBMS has resulted in a better understanding of the needs of youth vs. the needs of adults. This change in approach appears to be beneficial for youth and staff. As staff becomes more proficient at engaging with youth in a positive way it is expected that management data will reflect declines in uses of force, room confinement, restraints and grievances. It is important to continue to improve documentation so there is confidence in the management data that is so important in managing the facility. Sheriff's Department CAO Steve Leech has begun convening bi-weekly meetings with administrative staff responsible for Detention operations to put a focus on tracking improvement efforts. These meetings have been helpful in focusing on the organizational efforts necessary to improve operations.

1. Use of Force

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

Status

The restraint chairs were removed from the Detention Center on April 26, 2012. Documentation was submitted in the 1st Compliance Report dated April 2, 2013.

Protection from Harm: Detention Facility

1. Use of Force

- (b) Within six months of the Effective Date, the Facility shall analyze the methods that staff uses to control Children who pose a danger to themselves or others. The Facility shall ensure that all methods used in these situations comply with the use of force and mental health provisions in this Agreement. **(MoA p. 28)**
- (c) Within six months of the Effective Date, JCMSC shall ensure that the Facility's use of force policies, procedures, and practices: **(MoA p. 28)**
 - (i) Ensure that staff use the least amount of force appropriate to the harm posed by the Child to stabilize the situation and protect the safety of the involved Child or others;
 - (ii) Prohibit the use of unapproved forms of physical restraint and seclusion;
 - (iii) Require that restraint and seclusion only be used in those circumstances where the Child poses an immediate danger to self or others and when less restrictive means have been properly, but unsuccessfully, attempted;

- (iv) Require the prompt and thorough documentation and reporting of all incidents, including allegations of abuse, uses of force, staff misconduct, sexual misconduct between children, child on child violence, and other incidents at the discretion of the Administrator, or his/her designee;
- (v) Limit force to situations where the Facility has attempted, and exhausted, a hierarchy of pro-active non-physical alternatives;
- (vi) Require that any attempt at non-physical alternatives be documented in a Child's file;
- (vii) Ensure that staff are held accountable for excessive and unpermitted force;
- (viii) Within nine months of the Effective Date ensure that Children who have been subjected to force or restraint are evaluated by medical staff immediately following the incident regardless of whether there is a visible injury or the Child denies any injury;
- (ix) Require mandatory reporting of all child abuse in accordance with Tenn. Code. Ann. § 37-1-403; and
- (x) Require formal review of all uses of force and allegations of abuse, to determine whether staff acted appropriately.

Status

The Use of Force policy was revised on November 5, 2013 to incorporate feedback received from Facilities Consultant David Roush. That policy was included in the 3rd Compliance Report dated March 21, 2014.

Comments

The PREA policy was included in Compliance Report #7 submitted in March 2016.

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 14 includes the Detention Report Card for the period January through June 2016 which provides a great deal of management information.

The Sheriff assumed responsibility for Detention in July 2015. Below is a comparison of monthly averages for key indicators for the 1st 6 months in which Detention was operated by the Sheriff to the 2nd 6 month period since the Sheriff took over:

	July-Dec 2015	Jan-June 2016
Total # Youth Admitted to Detention	492	456
<u>USE OF FORCE</u>		
Number of Bed Days(average per month)	1943	2028
Total # of Use of Force (per month)	33.5	33
Use of Force Rate per 100 youth	1.666	1.5
% of Times Hierarchy of Non-physical alternatives used	17.7%	15.5
<u>SAFETY AND ORDER</u>		
Injuries to youth per 100 days of confinement (non-assaultive)	.192	.048
Injuries to youth by other youth per 100 days	.197	.064
Assaults on youth per 100 days	.563	.808
Physical restraint use per 100 days	1.697	1.514
Mechanical restraint use per 100 days	.182	.129
Use of room confinement per 100 days	1.402	1.048
Average duration of room confinement in hours	24.54	18.3

Comments

Fewer youth have been admitted to Detention although the length of stay of those youth has increased. A comparison of the data from July/December 2015 to January/June 2016 show:

- Declines in the number and rates of Use of Force
- Decline in Injuries to youth
- Decline in Physical and Mechanical Restraints
- Decline in Use of Room Confinement
- Decline in the Average Duration of Room Confinement
- Slight increase in the rate of Assaults on Youth
- Slight decline in the frequency with which the Hierarchy of non-physical alternatives are used

Also included in **Appendix 14** is a chart “Average Daily Population – Juvenile Court Detention” prepared by Sheriff’s Population Management Analyst Chris Floyd, which illustrates population trends for the past four years. This chart allows management to view and react to population trends which can greatly affect activities in Detention.

The data shows some incremental improvement since Compliance Report #7 was submitted in March 2016. There are encouraging signs that data is trending toward less Use of Force, less Use of Physical and Mechanical Restraints and less use of Room Confinement.

With the assistance of Facility Consultant David Roush efforts have begun on a system of data validation to insure confidence in the data which is so important in managing the facility. Shannon

Caraway of Juvenile Court has been extremely helpful in this process. **Appendix 15** contains a draft of a revised Detention Report Card. This revision will allow greater precision with information pertaining to items such as Youth Injuries, Room Confinement, Use of Force and Restraints. This represents a further evolution in the collection and analysis of data that is important in understanding what is happening in Detention. Along with this revised Report Card is an effort to automate much of the data collection so that it can be properly validated.

Hope Academy continues to be a huge asset and the expanded capacity allows more youth to participate in the educational program.

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.

CCS has been a great addition to the Court since the MoA was signed and has added much to the protection of youth in Detention.

Protection from Harm: Detention Facility

2. Suicide Prevention

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

Status

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

Protection from Harm: Detention Facility

2. Suicide Prevention

- (c) After intake and admission, JCMSC shall ensure that, within 24 hours, any Child expressing suicidal intent or otherwise showing symptoms of suicide is assessed by a QMHP using an appropriate, formalized suicide risk assessment instrument. **(MoA p. 30)**
- (d) JCMSC shall require direct care staff to immediately notify a QMHP any time a Child is placed on suicide precautions. Direct care staff shall provide the mental health professional with all relevant information related to the Child's placement on suicide precautions. **(MoA p. 30)**
- (e) JCMSC shall prohibit the routine use of isolation for Children on suicide precautions. Children on suicide precautions shall not be isolated unless specifically authorized by a QMHP. Any such isolation and its justification shall be thoroughly documented in the accompanying incident report, a copy of which shall be maintained in the Child's file. **(MoA p. 30)**

- (f) Within nine months of the Effective Date, the following measures shall be taken when placing a Child on suicide precautions: **(MoA p. 30)**
 - (i) Any Child placed on suicide precautions shall be evaluated by a QMHP within two hours after being placed on suicide precautions. In the interim period, the Child shall remain on constant observation until the QMHP has assessed the Child.
 - (ii) In this evaluation, the QMHP shall determine the extent of the risk of suicide, write any appropriate orders, and ensure that the Child is regularly monitored.
 - (iii) A QMHP shall regularly, but no less than daily, reassess Children on suicide precautions to determine whether the level of precaution or supervision shall be raised or lowered, and shall record these reassessments in the Child's medical chart.
 - (iv) Only a QMHP may raise, lower, or terminate a Child's suicide precaution level or status.
 - (v) Following each daily assessment, a QMHP shall provide direct care staff with relevant information regarding a Child on suicide precautions that affects the direct care staff's duties and responsibilities for supervising Children, including at least: known sources of stress for the potentially suicidal Children; the specific risks posed; and coping mechanisms or activities that may mitigate the risk of harm.
- (g) JCMSC shall ensure that Children who are removed from suicide precautions receive a follow up assessment by a QMHP while housed in the Facility. **(MoA p. 31)**
- (h) All staff, including administrative, medical, and direct care staff or contractors, shall report all incidents of self-harm to the Administrator, or his or her designee, immediately upon discovery. **(MoA p. 31)**
- (i) All suicide attempts shall be recorded in the classification system to ensure that intake staff is aware of past suicide attempts if a Child with a history of suicidal ideations or attempts is readmitted to the Facility.

Status

The suicide policies address these areas.

Comments

A contract monitor has been hired to oversee performance by CCS. The audits are discussed at monthly meetings that include CCS, Detention, Court Administration and Health Department staff. This is a good process and aids in communication between health and security staff. Communication between security staff and medical staff seems to be good.

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

Suicide Prevention data included in the Report Card in **Appendix 14** compares performance in certain areas from July/December 2015 to January/June 2016.

<u>SUICIDE PREVENTION</u>	<u>July - December 2015</u>	<u>January - June 2016</u>
Total # Youth Admitted to Detention	492	456
Rate of QMHP calls per 100 youth	.506	.271
Rate of Youth on Suicide Precautions per 100 youth	.497	.261
Average Time on Suicide Precaution (hours)	65.19	97.65

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. The increase in Average Time on Suicide Precautions is somewhat skewed by a single case in June 2016 but, even with that case the average time appears to have grown. That growth should be explored at the monthly Medical Services Review Team (MSRT) meetings with Detention and CCS staff.

Protection from Harm: Detention Facility

3. Training

- (a) Within one year of the Effective Date, JCMSC shall ensure that all members of detention staff receive a minimum of eight hours of competency-based training in each of the categories listed below, and two hours of annual refresher training on that same content. The training shall include an interactive component with sample cases, responses, feedback, and testing to ensure retention. Training for all new detention staff shall be provided bi-annually. **(MoA p. 31)**
- (i) Use of force: Approved use of force curriculum, including the use of verbal de-escalation and prohibition on use of the restraint chair and pressure point control tactics.
- (ii) Suicide prevention: The training on suicide prevention shall include the following:
- a. A description of the environmental risk factors for suicide, individually predisposing factors, high risk periods for incarcerated Children, warning signs

and symptoms, known sources of stress to potentially suicidal Children, the specific risks posed, and coping mechanisms or activities that may help to mitigate the risk of harm.

- b. A discussion of the Facility's suicide prevention procedures, liability issues, recent suicide attempts at the Facility, searches of Children who are placed on suicide precautions, the proper evaluation of intake screening forms for signs of suicidal ideation, and any institutional barrier that might render suicide prevention ineffective.
- c. Mock demonstrations regarding the proper response to a suicide attempt and the use of suicide rescue tools.
- d. All detention staff shall be certified in CPR and first aid.

The Administrator shall review and, if necessary, revise the suicide prevention training curriculum to incorporate the requirements of this paragraph.

Status

Staff has been trained. Documentation was provided in the 5th Compliance Report submitted in March 2015.

Comments

There has been a renewed focus on training following Dr. Roush's technical assistance visit in June 2016. Training methodologies have become more interactive and more sharply focused on the difference between juveniles and adults. In addition, Dr. Roush had previously expressed concerns about the implementation and supervision of the Safe Crisis Management (SCM) program. In response to these concerns an SCM training refresher is being done and supervisory staff is also attending in order to insure they have a complete understanding of this important program. The Sheriff's Office has received approval from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) for assistance with a "Train the Trainer" program which will occur in October 2016. This focus on training methodology and content in conjunction with the PBMS program and a better understanding of juvenile issues is a great improvement for the Detention operations. It is hopeful these changes will translate to measurable reductions in Use of Force, Use of Restraints and Use of Room Confinement. **Appendix 16** contains a brief memo submitted by the Sheriff's Office listing their thoughts on progress/highlights since the previous DoJ visit in April 2016.

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

Progress with the Countywide Juvenile Justice Consortium (CJJC) continues to be made under the leadership of the Chairman Bishop Mays. **Appendix 17** includes a memo from Assistant County Attorney Marlinee Iverson providing an update on activities with the Consortium. Ms. Iverson serves as the liaison between the CJJC and the County.

Juvenile Court was unsuccessful in an attempt to obtain a new position dedicated to Community Outreach in the 2016-2017 budget. Despite this rejection the Court has decided to re-purpose a position and an individual dedicated to focusing on Community Outreach will start work on September 16, 2016. **Appendix 18** includes two documents. The 1st is a Calendar of Quarterly Community Meetings for 2016 – 2017. The 2nd document is an agenda for the first of those meetings which was held in Hickory Hill on September 8th.

An update on progress with the webpage and dashboard is included in the memo contained in **Appendix 5**.

Comments

Progress is being made in the area of Community Outreach. Work done following the recent technical assistance visit by Dr. Leiber have brought an improved focus on DMC and Community Outreach.

The community meeting in Hickory Hill on September 8th provided a good synopsis of several programs and activities being undertaken by Juvenile Court. The addition of a position dedicated to Community Outreach should allow a targeted approach to the outreach as well as a focus on follow up on feedback received during the outreach.

The CJJC provided useful feedback which led the Court to develop a parent orientation program. In addition, the CJJC is in the process of recruiting some energetic new members.

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 19 includes an email from Dr. Laura Harris that provides an update of the survey project by Dr. Laura Harris.

Implementation and Monitoring

- E. Settlement Agreement Coordinator. JCMSC or the County shall appoint an official or employee to serve as the Settlement Agreement Coordinator, whose duties shall include: **(MoA p. 37)**
1. Developing reports regarding compliance with this Agreement and providing such reports to the United States, the Monitors, and the Facility Consultant every six months until this Agreement is terminated. The first report shall be provided four months after the Effective Date.

2. Providing to the United States, the Monitors, and the Facility Consultant the raw data upon which each compliance report is based upon request and any reports prepared by JCMSC's technical consultants regarding compliance with this Agreement, and any other reports routinely submitted to the Settlement Agreement Coordinator regarding compliance with this Agreement.

Status

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

Comments

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

General Provisions

A. Policies and Procedures

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

JCMSC shall provide all such documents to the United States for its review within thirty (30) days of the review and approval by the Monitors. Within forty-five (45) days of its receipt of the policies, procedures, and other written documents, the United States shall provide either written approval of each document, or written concerns or objections it has to the documents that include proposed revisions. Such approval shall not be unreasonably withheld. In the event that the United States asserts that policies,

procedures, or other written documents are not in compliance with the terms of this Agreement, the Parties will confer on the matter for up to thirty (30) days. **(MoA p. 39)**

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

Status

This was done and policies submitted to DoJ previously.

General Provisions

B. Reporting Requirements

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

Status

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

General Provisions

B. Reporting Requirements

2. Compliance Report. JCMSC shall submit a bi-annual compliance report to the United States, the first of which shall be filed within six months of the Effective Date. Thereafter, the bi-annual reports shall be filed 30 days prior to the Monitors' and Facility Consultant's bi-annual compliance tour until the Agreement is terminated. Each bi-annual compliance report submitted by JCMSC shall describe the actions JCMSC has taken during the reporting period to implement this Agreement and shall make

specific reference to the Agreement provisions being implemented. To the extent any provision of this Agreement is not being implemented, the compliance report shall also describe what actions, including any additional revisions to policies, procedures and practices, JCMSC will take to ensure implementation, and the date(s) by which those actions will be taken. **(MoA p. 41)**

Status

This report constitutes the 8th 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.