Shelby County Government

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July 6, 2018

VIA EMAIL & U.S. MAIL
Michael Leiber, Ph.D.
Equal Protection Monitor
University of South Florida
4202 East Fowler Avenue, SOC 107
Tampa, FL 33620-8100

Re: *Memorandum of Agreement Regarding the Juvenile Court of Memphis and Shelby County*—December 17, 2012

Dear Dr. Leiber:

Pursuant to the Memorandum of Agreement, this letter sets forth the comments of Shelby County, Tennessee and the Juvenile Court of Memphis and Shelby County to the Draft Eleventh Compliance Report – Equal Protection, dated June 27, 2018, and the Appendices thereto.

Overall, we are pleased that the draft report recognizes significant progress by the Court in a number of Equal Protection areas governed by the MOA. In particular, the draft report recognizes that the Court has been in substantial compliance for the required 1-year period as to 6 Equal Protection provisions. As you aware, we have asked the Department of Justice to terminate those provisions (in the alternative to the requested termination of the entire Agreement). Also, 3 additional Equal Protection provisions are in substantial compliance for the second consecutive compliance report.

Shelby County responds to the following matters related to the Court, as discussed in the draft compliance report and appendices.

GENERAL RESPONSE TO THE DRAFT COMPLIANCE REPORT

According to both the Department of Justice and the Equal Protection Monitor, there are three prongs to reducing DMC: over-representation, going deeper into the system, and disparate treatment. The 11th draft compliance report focuses on only one of those prongs, over-representation, while acknowledging neither the Court's efforts to keep children from going deeper into the system (SRT, diversion team, Cease Fire, Aps, Bypass, Youth Court, electronic monitoring, Evening Reporting Center, precinct liaison, etc.), nor its efforts to rectify potential disparate treatment within the system (the majority of the beneficiaries of the listed programs are youth of color).

The draft 11th report (at 4) mentions an overarching concern that the Court has expressed consistently: "Not Enough Time has Passed for Changes to Take Effect and It Is an Ongoing Process[.]" Thus, the draft report seems to assert that monitoring should go on indefinitely, and the Monitor goes so far as to chide the Court (Appendix 1 (7th Assessment Study), at 5) on this matter: "This aspect of evaluation, revision and evaluation has [*sic*] a process is something the Juvenile Court has had a difficult time accepting." Contrary to this assertion, the MOA requires collecting, assessing, and evaluating data and implementing programs based on the data, which the Court has been doing for 5½ years. The draft report's demand that every program and every new imitative be evaluated and re-evaluated for some unknown period of time is **not** required by the MOA.

In addition, the draft compliance report includes a great deal of criticism of the Court but little recognition of the Court's hard work and ensuing results. For example, while the draft report notes (at 3) that "in 2017, Blacks are a little over two times more likely to be detained than Whites once legal and extra-legal factors are considered[,]" Appendix 1 (at 13) notes that "[m]ost of the legal and extralegal variables predict detention as one would expect. For example, crime severity is predictive of detention and has the strongest impact on the detention process." As the Court has communicated to the DOJ and the Monitor on an ongoing basis, this is a factor over which the Court has no control.

Furthermore, the analysis does not take into consideration socio-economic factors such as poverty (income and employment) and education, nor does it take into account the demographics of the City of Memphis. The reality is that 85% of the youth brought to the Court (again, a matter not within the Court's control) are from the City.

Thus, the Court is confused as to how the draft report claims (at 3) that "race continues to have a relationship with . . . non-judicial decision-making[,]"[1] meaning that more white youth are receiving non-judicial outcomes than are black youth, but ignores that the fact there is no finding of racial bias by the Court in adjudication at the judicial stage. Thus, the draft report gives the Court no credit for the lack of racial bias in Court outcomes.

RESPONSE TO APPENDIX 1 (7TH ASSESSMENT STUDY)

The Court cannot evaluate the Assessment Study unless and until it receives the Equal Protection Monitor's data. Dr. Aimee Burgdorf understood, based on her conversation with the Equal Protection Monitor during the April 2018 visit, that she would be provided with the Monitor's data (that is, the data provided by the Court to the Monitor and then "cleaned" by the Monitor). To date, however, Dr. Burgdorf has not received the data.

On two previous occasions, Dr. Burgdorf found errors in the Monitor's "cleaned" SRT data. Dr. Burgdorf corrected what she could and made the Monitor aware of the errors both times. Dr. Burgdorf also previously pointed out errors by the Monitor in connection with his analysis of the DAT. The Monitor looked at all youth who received the DAT, whether or not they were detained. This method, however, skewed the numbers in terms of the percentage of overrides because a youth who is never detained cannot, by definition, have an override.

Thus, the Court is rightfully concerned about the 7th Assessment Study as a whole.

COMPLETION AND IMPLEMENTATION OF STRATEGIC PLAN TO REDUCE DMC

The draft compliance report (at 18) reduces the Court's compliance rating on DMC Assessment provision III.B.1(h) (completion and implementation of strategic plan to reduce DMC) from substantial compliance to partial compliance. The Equal Protection Monitor stated in the compliance report following the October 2015 visit that the Court requested technical assistance on this piece in November 2013 and received the assistance in March 2014. Although the Monitor determined that revisions were necessary, the strategic plan was fully in place by October 2016. Thus,

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[1] The draft report does **not** state that the "relationship" is one of cause-and-effect; the Equal Protection Monitor has never communicated such an opinion. The draft report (at 3 (emphasis added)) nevertheless implicitly states such a conclusion: "One **possibility** is bias that may be present in the form of overt and/or indirect or subtle bias." If there is **evidence** to support this unfortunate statement the draft compliance report should include it; otherwise, the Court respectfully requests that this sentence, and any similar statements, be omitted from final Equal Protection compliance report #11.

substantial compliance was achieved, should have been recognized as early as October 2016, and has been has maintained for well over 1 year.

Furthermore, the Monitor has now added a new requirement: "Create a time-line addressing points raised in 1(b) and indicate what has been done and what is planned for the future." **This is inappropriate**, particularly 5½ years into the MOA. The development and implementation of the strategic plan is what is required by the Agreement. The Court met the requirement well over a year ago. While reducing DMC is everyone's goal, it is not a requirement of the MOA. The Court respectfully requests that the Monitor assign this provision a rating of substantial compliance in the final version of the 11th compliance report.

THE DAT

The Monitor continues to require the Court to re-evaluate and/or alter the DAT (Detention Assessment Tool, now version DAT 3.0). For example, the draft compliance report (at 6) states that "[c]hanges to structured decision-making tools, such as to the . . . DAT3 . . . take time to be evaluated, re-assessed, changed and implemented, evaluated, etc."

The DAT is used faithfully; however, no version of it has changed the DMC numbers significantly. The Court has now been told new changes should be made. But the answer to DMC is not continuous revisions to the DAT. In 2016 when the Court sought technical assistance in revising the DAT, the DOJ provided the Equal Protection Monitor. While the technical assistance was certainly beneficial, it apparently was not what was needed. For example, although the Monitor was told there were statutory bases for mandatory detention of a juvenile, the Court was not advised to revise the DAT to account for those bases. Rather, the Monitor stated it was not his role to be an expert on the DAT. The Court asked for technical assistance and the assistance received was helpful, but apparently not offered by an expert. Yet the Court is being held to a DMC standard on detentions that does not factor in the mandatory detention bases. The fact that the DAT does not achieve the results desired should not be laid at the feet of the Court.

REFERRALS TO THE COURT

As mentioned above, the draft compliance report continues to hold the Court responsible for referrals and recommends that the Court continue to work with the Memphis Police Department to reduce the number of youth referred to the Court. For example, the Monitor tasks the Court with requiring Memphis Police Department officers to behave a certain way (Appendix 1, at 4 (emphasis added)): "The Juvenile Court needs to continue to work with the MPD **to ensure** that MPD calls the Juvenile

Court before transporting a youth to detention to determine if a transport is necessary."

The draft report (at 9) also suggests that the Court immediately release those youth whose referral/transport could have been avoided had the law enforcement officer(s) involved used the LEAP (call-in) program. The Court has done this for years. A youth who is initially transported in such a situation is classified as "reception and release" (holding status) until it is confirmed that the youth does not meet the DAT, upon which the youth is released (unless the Court is statutorily required to override the DAT).

Court personnel regularly meet with the MPD director, deputy director, and top chiefs, have taught regularly at the MPD training academy, and continue to provide MPD officers with the pocket cards describing the LEAP program. Juvenile Court management have provided their cell phone numbers to all MPD chiefs, and receive calls 24/7 regarding situations involving juveniles. The Court cannot make MPD officers call the Court before transporting a youth; such a recommendation is singularly unhelpful. The Court has done everything within its control as far as working with the Memphis Police Department and will continue to do so. But the Court cannot **ensure** MPD compliance.

RESPONSE TO THE RRI CHART (APPENDIX 2)

The Court has made substantial improvement on the Referral RRI, which for 2017 was 3.50 (Appendix 2), the lowest it has been since the beginning of the MOA. This is of particular note because, as stated, the Court has no control over law enforcement's referrals to the Court. This RRI measurement is significant and demonstrates the work being done by the Court. But the draft report ignores the improvement and instead continues to hit the Court hard on referrals (for example, Appendix 1, at 16): "The Black relationship with detention is tied to the overrepresentation of Black youth transported via the police to detention." Again, the Court has no control over referrals by law enforcement; yet, the Monitor continues to insist the Court is responsible for this outcome.[2]

The 2017 RRI for Cases Diverted is 0.97. (Appendix 2). The ultimate goal is 1.0. This achievement is mentioned nowhere in the draft compliance report.

With respect to the 2017 RRI for Cases Involving Secure Detention (Appendix 2), the majority of youth who are securely detained (57%) are detained based on DAT overrides; of those overrides, 71% are due to statutory requirements (gun charges, for

[2] *See also* Referrals to the Court above.

example). Although the number of referrals increased from 4,951 in 2016 to 5,369 in 2017, 2,010 of the youth included in the 2017 referral total were **never** entered into the system because of the SRT. As a result, there are more youth being referred to the Court, but then handled informally, thus never entering the system. By including those 2,010 youth in the total, it appears there is an increase in the number of youth securely detained, when in fact there is a decrease. The Court respectfully submits that the final version of the Equal Protection compliance report should so reflect.

The 2017 RRI for Cases Petitioned has increased slightly. Again, because the number of cases handled by the SRT and other non-judicial programs has increased (thus removing youth with lesser charges before the petition stage), the pool of referrals is smaller and consists of youth whose charged offenses are much more serious. Thus, the Court's progress in other areas may cause this RRI to increase (as it has in 2017), and the final version of the compliance report should reflect this result. Furthermore, the District Attorney General determines the charges; again, the Court has no control over that variable.

The 2017 RRI for Cases Resulting in Delinquent Findings was 1.16 (Appendix 2), which is approaching the ultimate goal of 1.0.

The 2017 RRI for Cases [R]esulting in Probation Placement was 0.74 (Appendix 2), due in large part to the work of the SRT. Youth who would have been probated are now being diverted.

The 2017 RRI for Cases Resulting in Confinement in Secure Juvenile Facilities is 1.32 (Appendix 2), which is approaching the 1.0 goal.

The 2017 RRI for Cases Transferred to Adult Court was **0.72** (Appendix 2). In other words, for every white youth transferred to (adult) Criminal Court, there were only .72 black youth transferred.[3] This is significant for two reasons. First, there has not been enough data to actually calculate this RRI since 2012, when the RRI for Cases Transferred to Adult Court was 2.23. Second, in terms of DMC, this outcome is the most severe disposition given by the Court, and white youth receive it more than do black youth. Both the Equal Protection Monitor and the Due Process Monitor continue to take the Court to task over transfers. But the draft Equal Protection compliance report nowhere mentions this RRI.

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[3] Appendix 1 (at 11), discussing waivers of transfer hearings, notes that "[i]n the DOJ report race was found to be a predictor as Blacks were more likely than similarly situated Whites to be waived." However, contrary to the DOJ's finding, the Monitor concludes that "[t]here was not enough variation among race (i.e., not enough Whites) in our sample for 2017 to run statistically sound or stable models for the decision to waive youth into adult court." Moreover, the Court has no control over whether a youth and his/her attorney decide to waive a transfer hearing.

The draft compliance report seems to include only the RRI numbers that reflect negatively on the Court. We respectfully request that the final version of the report also include those RRI numbers that show the Court's progress.

THE MONITOR'S ACCESS TO GRID DATA

According to the draft compliance report (at 10), "[a]t the conclusion of the writing of this [draft] Eleventh Equal protection Monitor Report, the Juvenile Court had been non-responsive to repeated requests for the necessary information to assess what has been accomplished in terms of the GRG [Graduated Response Grid]." (The Court refers to this tool as the GRID.) Although the Court initially objected on legal grounds to turning over more **SRT** data, it ultimately agreed to do so, and provided the Monitor access to the appropriate Court personnel via email or call. The Monitor, however, did not request GRID data; instead, DOJ attorney Winsome Gayle contacted Dr. Laura Harris of Data for Good (the vendor).

In sum, the Court never argued against turning over to the Monitor any data other than SRT data (which ultimately was made available); the Monitor never requested GRID data in connection with the current draft compliance report. Moreover, the Monitor wrote the Scope of Work for the contract with Data for Good, was involved through the entire RFP process, and has had numerous calls with the vendor. The Court respectfully suggests that the Monitor's complaint about this matter is immaterial to any assessment of Equal Protection, and therefore should be excluded from the final version of the compliance report.

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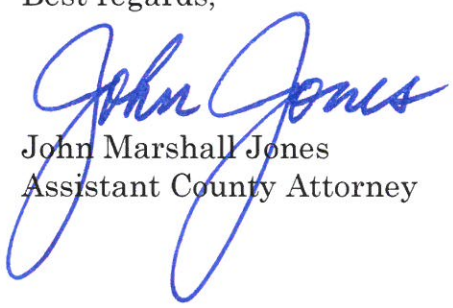
On behalf of Shelby County, Tennessee and the Juvenile Court of Memphis and Shelby County, we respectfully submit these comments and requests in response to the Draft Eleventh Compliance Report – Equal Protection, dated June 27, 2017, and the Appendices thereto. We appreciate your consideration, and look forward to receiving the final versions of the documents.

Best regards,



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/JMJ

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