

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

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

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

**Jina Shoaf,  
Assistant County Attorney**

**FROM: Sandra Simkins  
Due Process Monitor**

**DATE: July 3, 2015**

**RE: Compliance Report #5—April 2015**

Juvenile Court Memphis Shelby County (Juvenile Court) entered into a Memorandum of Agreement (Agreement) with the United States Department of Justice Civil Rights Division (DOJ) on December 17, 2012. According to the Agreement, compliance shall be assessed by two monitors and a facility consultant. I was named the Due Process Monitor, and have subject matter expertise in the area of due process and juvenile delinquency. The fifth regularly scheduled compliance review and site visit occurred April 26, 2015 through May 1, 2015. This report evaluates the extent to which Juvenile Court has complied with each substantive provision of the Due Process sections of the Agreement.

## **Format**

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## Executive Summary

This Agreement between the Department of Justice, Shelby County Tennessee through the County Mayor and County Attorney, and Juvenile Court is unique. The progress made is significant and under the leadership of Judge Dan Michaels, improvements have been sustained and continued. The commitment demonstrated by County Mayor Luttrell and County Attorney Ross Dyer during this last compliance period has also been instrumental in meeting the terms of the Agreement.

I am particularly pleased to report the following: 1) sustained implementation of court policies over two years, 2) the continued success of the probation department, including the thorough training of newly-hired probation officers, and the consistent success of the graduated sanctions grid, 3) the leadership of Dr. Tucker-Johnson in Clinical Services which resulted in high quality psychological evaluations, 4) the planned academic partnership between Juvenile Court and the University of Memphis School of Law, 5) the overall decrease in the number of youth waived to adult court, 6) the data collection systems implemented by the juvenile defender panel coordinator, and 7) the continued success of the Shelby County Public Defender Juvenile Unit, with increased capacity on the horizon.

In my last compliance report I noted that the greatest challenge rests in creating an independent defense bar. While there has been movement in this area, the development of a structure that can provide independence to both the public defender juvenile unit and panel attorneys is still a work in progress. In addition to the independence issues, the following previously noted challenges remain: 1) affidavits of complaint are insufficient to sustain probable cause in several documented cases, 2) there was a violation of the 48 hour detention rule, 3) the continued high number of “notice of transfers” filed and corresponding backlog of psychological evaluations, and 4) defense obstacles to obtaining court orders and scheduling motions. Finally, I recommend that Juvenile Court become trained on the impact of childhood trauma.

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

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

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

## **Recent Positive Developments**

*Academic Partnership with the University of Memphis School of Law:* The Agreement does not require, but specifically suggests an academic partnership between Juvenile Court and the University of Memphis School of Law. After 18 months of planning, there is an agreement between the Shelby County Public Defender and the University of Memphis School of Law to implement a specialized juvenile delinquency clinic housed at the law school. This clinic will support the reform in Shelby County by training a new generation of juvenile defenders and promoting best practices. This juvenile-focused clinic is a direct result of Public Defender Stephen Bush’s leadership and is scheduled to come to the law school in the next academic year.

*Data Collection System Developed by Panel Coordinator:* Ms. Sturdivant, the recently hired Juvenile Defender Panel Coordinator, did an excellent job compiling data on the 28 panel attorneys. She created a procedure to collect and organize important information about attorney representation. The data includes the number and type of motions filed by attorneys, transfer hearing data (including the number of psychological evaluations requested,) number of investigations requested, number of cases that went to trial, and whether the attorney interviewed the client in detention prior to court.

*Public Defender Juvenile Unit’s Adherence to “Team-Based” Best Practices, Post Disposition Representation, and Increased Case Capacity while maintaining workload controls:* The new juvenile unit of the Shelby County Public Defender continues to adhere to best practice standards by initiating holistic team- based representation. Each team includes a lead attorney, a social worker and an investigator. During the first year of operation, the new unit handled 480 cases or 20% of the total delinquency docket. On April 24, 2015 the Public Defender indicated to Juvenile Court that they are now available to increase caseload capacity to 30% of the total delinquency docket. Also, in December of 2014, the juvenile unit began visiting post-disposition clients placed in Tennessee facilities and tracking information of 34 clients in DCS corrective custody. It appears \$500,000 in new funding will be included in budget for FY 2016 that begins July 1, 2015. It will support additional staff and will further increase juvenile defender capacity while adhering to workload controls.

*Consistent Success in the Departments of Probation and Clinical Services:* Probation and Clinical Services continue to meet the Agreement requirements. High quality evaluations are routinely being conducted by Clinical Services. Between October 1, 2014 and April 20, 2015, Clinical Services completed 27 psychological evaluations. I am pleased that evaluations are routinely requested by attorneys representing youth in transfer hearings and I commend the leadership of Dr. Tucker-Johnson and her staff. Likewise, the continued success of the graduated sanctions grid and the well trained newly-hired probation officers are outstanding.

*Transfer Hearing Data Shows Continued Decline:* The issue of juvenile transfer to adult court has been a focus in each of my previous compliance reports. I am pleased to report that the

number of youth transferred continued to decline in 2014 for the sixth consecutive year. I commend Juvenile Court for their efforts.

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

\*Data provided by JCMSC

I have focused on the number of “Notice of Transfers” filed in comparison to the practice in other Tennessee counties and the number of youth actually transferred. I am encouraged that there has been a decrease in “Notice of Transfers” filed. Each filing creates a chain reaction that includes a time-consuming psychological evaluation. Currently, the Notice of Transfers are filed at a rate of 2.5 times the number of youth who are actually transferred,<sup>1</sup> and the overall rate of transfer in Shelby county remains an outlier within Tennessee.

Transfer Based on County Population	Total Juvenile Population 10-17 <sup>2</sup>	2013		2014	
		Juveniles Transferred to adult court	Notice of Transfer filed	Juveniles Transferred to adult court	Notice of Transfer filed
Hamilton County	32,510	19	51		
Knox County	42,056	2	5		
Davidson County	55,522	8	37		
Shelby County	109,199	90	266	77	182*

\*Data provided by Juvenile Court

## Ongoing Due Process Concerns

### Independence of Defense Function

#### *Status of Comprehensive Plan*

On December 17, 2014 a meeting occurred in Shelby County to address the independence of juvenile indigent defense. After the meeting, a December 23, 2014 Department of Justice letter requested the following minimum steps:

<sup>1</sup> 2014 Data from other Tennessee Counties is not yet available.

<sup>2</sup> Population data is from 2012 available [http://ojidp.gov/ojstatbb/ezapop/asp/comparison\\_selection.asp?selState=47](http://ojidp.gov/ojstatbb/ezapop/asp/comparison_selection.asp?selState=47)

1. *Judge Michael, the Mayor's Office and the Offices of the County Attorney and the Public Defender should continue the [December 17, 2014] collaborative discussion of the elements necessary to reform the juvenile justice systems' public defense function in accordance with the Agreement. This leadership team may need to invite other stakeholders as required by Shelby County's unique dynamics, culture and circumstances.*
2. *Seek technical assistance from a substantive expert who has engaged in defense reform work and from a skilled facilitator to help structure and guide your discussion and set goals and a realistic schedule for dialogue and decision making.*
3. *Develop a **comprehensive plan** that outlines how the Agreement's requirements of public defense independence, reasonable workloads, adherence to juvenile defender standards, and oversight by an independent body will be achieved. The plan was to be submitted to the Department of Justice and the Due Process Monitor by March 16, 2015. The plan should outline steps toward accomplishing the reforms and the timelines for achieving each step. The reform efforts should begin no later than April 15, 2015. (emphasis added)*

At the time of the compliance tour the “comprehensive plan” requested by the Department of Justice in their December 23, 2014 letter had not yet been received. On April 1, 2015 there was an additional meeting which used the assistance of David Carroll, from the 6<sup>th</sup> Amendment Center<sup>3</sup>, to discuss the development of an independent defense structure. The most recent plan, delivered on May 7, 2015, indicates that there has been progress on these issues. The comprehensive plan is still evolving. Presently, neither an independent body to oversee the panel nor an independent public defender has been established. It is unclear why there has been such a significant delay in the development of the plan or what collaboration occurred before and after the April 1, 2015 meeting.

At this point, given the state of flux, I am not going to comment on the developing comprehensive plan, though I am encouraged by recent conversations. For more details about the strengths and deficits of the proposed plan, see the May 21, 2015 letter from the Department of Justice in the attached appendix.

#### *Problematic Structure of the Panel Attorney Coordinator Position*

Since the October 2014 compliance tour, there has been a personnel change in the position of the juvenile defender panel coordinator. In the original Investigation of Shelby County Juvenile Court, the Department of Justice noted the following concerns regarding the structure of juvenile defense, which at that time was handled exclusively by the court-appointed panel attorneys:

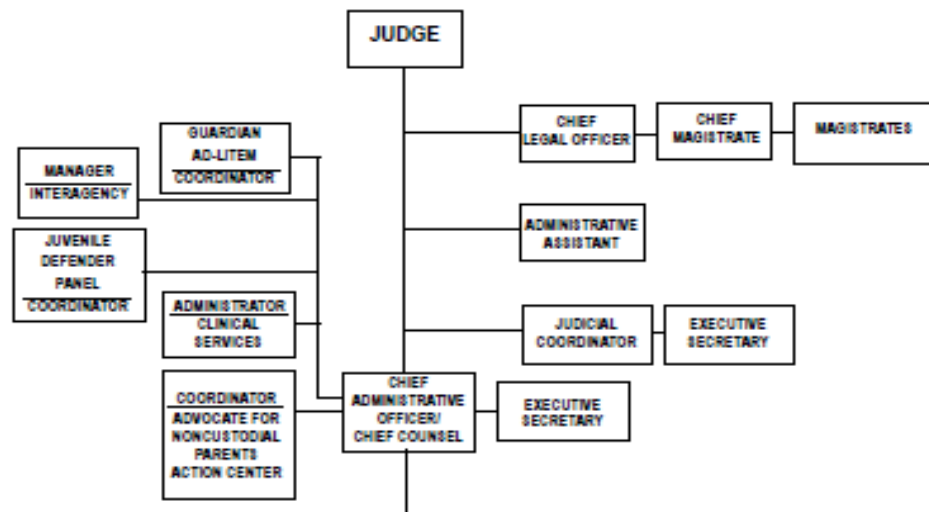
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<sup>3</sup> See <http://sixthamendment.org/>

Finally, we are concerned about the structure of Juvenile Defender’s Office (“JDO”). The JDO is not an independent agency, nor is it affiliated with the county public defender’s office. Instead, JCMSC operates it entirely, and the Chief Juvenile Defender is appointed by, and reports directly to the Juvenile Court Judge. This organizational structure, while not unconstitutional *per se*, creates an apparent conflict of interest, as a juvenile defender must balance the duty of representing the child client with the inherent duty of loyalty to his or her employer. National standards for public defender systems strongly encourage independence from the judiciary to avoid conflicts of interest and judicial interference.<sup>4</sup>

At the time of the 2012 Agreement the organizational structure of Juvenile Court was as follows:

### JUVENILE COURT OF MEMPHIS AND SHELBY COUNTY, TENNESSEE ORGANIZATIONAL CHART



Over the past 15 months, there have been significant strides toward creating a juvenile unit in the Public Defender’s office, which I detailed in the last report. Although the new juvenile unit has made impressive gains, at present the public defenders represent 20% of delinquency cases while the panel represents 80%. Given the high number of cases represented by the panel, ensuring panel attorney independence remains a critical issue. In my first three compliance reports, I detailed a number of issues concerning the role of the panel coordinator.<sup>5</sup>

<sup>4</sup> See U.S. DEP’T OF JUSTICE, INVESTIGATION JUVENILE COURT OF MEMPHIS & SHELBY COUNTY (APR. 26, 2012) [hereinafter INVESTIGATION], available at, at <http://www.justice.gov/crt/about/spl/findsettle.php> at 50.

<sup>5</sup> In response to those issues, in early 2014, the panel coordinator position was changed so that it was under the supervision of the Mayor, monthly meetings were held with the lawyers so that they could express concerns, the coordinator was made aware of National Juvenile Defense Standards, and the coordinator was required to keep detailed data regarding the performance of the lawyers. In my fourth compliance report I noted significant progress in the coordinators performance, including the meeting which resulted in a joint letter to juvenile court and detailed performance data.

On November 14, 2014, at the direction of Judge Michaels, the panel coordinator was moved back under the supervision of Juvenile Court. On November 18, 2014, the panel coordinator was terminated. On December 1, 2014, Ms. E. Jane Sturdivant Tillman was hired as juvenile defender panel coordinator. The position was not posted and it is unclear what, if any, replacement process occurred. The manner in which the panel coordinator was terminated and replaced demonstrates the concentrated power and influence Juvenile Court exercises over the defense function. It is hard to imagine more control than the ability to terminate employment. It appears that in this area, we are back where we started: the panel coordinator directly reports to a sole juvenile court judge. This appears to be a direct conflict of interest. For example, if a lawyer wants to take on systemic issues within juvenile court, will the structure of the panel be a deterrent? Will a panel coordinator have to choose between supporting the lawyer and risking her job? Recent events create concern about the ability of the panel to be independent. One significant change is that the coordinator now uses a computerized program that randomly distributes cases to the panel. While randomized, her current system does allow for override, which seems necessary given the particularities of case assignments. However, the current organizational structure of Juvenile Court resembles the structure of 2012.

#### *Continued Insufficient Evidence on Affidavit of Complaints and Violation of 48 Hour Detention Rule*

Insufficient Affidavits of Complaint (AOC) remain a concern.<sup>6</sup> As I indicated in my last compliance report:

*It appears that there are two distinct issues regarding juvenile court's insufficient AOC's. First, is the issue of how the AOC's are written and whether or not they contain adequate information. I have discussed this matter with Juvenile Court and have been told that training for Juvenile Court and law enforcement regarding necessary details for an AOC will be conducted. The second issue is whether or not juvenile court, in the face of an insufficient AOC, is willing to dismiss the case or keep the child out of detention. The willingness of magistrates to make unpopular probable cause and detention decisions requires additional judicial oversight and leadership. I was pleased to learn that a Magistrate training will be held on this issue on December 16, 2014.*

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<sup>6</sup> See U.S. DEP'T OF JUSTICE, AGREEMENT JUVENILE COURT OF MEMPHIS & SHELBY COUNTY (DEC.12, 2012) [hereinafter & AGREEMENT ], available at, <http://www.justice.gov/crt/about/spi/findsettle.php> at 9. The Agreement requires the following: "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." The Agreement also requires that: *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.* (page 9) The requirement that probable cause must be found in order to detain a child longer than 48 hours comes from the Supreme Court case of County of Riverside v. McLaughlin, 500 U.S. 44, 57 (1991), which states that "A jurisdiction that chooses to offer combined [probable cause and arraignment] proceedings must do so as soon as is reasonably feasible, but in no event later than 48 hours after arrest. See INVESTIGATION at 17.

This has been a longstanding concern of defense attorneys. Unfortunately, even after the training on December 16, 2014, I listened to several audio tapes and reviewed AOC's where there was insufficient evidence and the child was still held in detention. For details of the specific cases, see the probable cause section of the compliance report.

*Recommendation that Juvenile Court Receive Trauma Training*

The MOA specifically requires ongoing training. The training provision requirement includes "adolescent development" and "best practices in social and therapeutic options for children and families, including evidenced based practices."<sup>7</sup> While the MOA does not specifically require training in "trauma," I believe that trauma training is required under the broader umbrella of adolescent development and evidenced based practices.

Nationally there continues to be much attention on how trauma affects youth and it continues to be a focus of the National Council of Juvenile and Family Court Judges (NCJFCJ). The NCJFCJ made significant efforts to educate judges and attorneys about the effects of childhood trauma. The publication of "Ten Things Every Juvenile Court Judge Should Know About Trauma and Delinquency" empowers judges to "best assist traumatized youth who enter the juvenile justice system."<sup>8</sup>

*"The mission of the juvenile court is complex. The court is tasked with protecting society, safeguarding the youth and families that come to its attention, and holding delinquent youth accountable while supporting their rehabilitation. In order to successfully meet these sometimes contradictory goals, the courts, and especially the juvenile court judge, are asked to understand the myriad underlying factors that affect the lives of juveniles and their families. One of the most pervasive of these factors is exposure to trauma. To be most effective in achieving its mission, the juvenile court must both understand the role of traumatic exposure in the lives of children and engage resources and interventions that address child traumatic stress."<sup>9</sup>*

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<sup>7</sup> AGREEMENT AT P.19 2(B)(III) AND 2(B)(V).

<sup>8</sup> The 10 Key Principles include: 1) A traumatic experience is an event that threatens someone's life, safety, or well-being, 2) Child traumatic stress can lead to Post Traumatic Stress Disorder (PTSD), 2) Trauma impacts a child's development and health throughout his or her life, 3) Complex trauma is associated with risk of delinquency, 4) Traumatic exposure, delinquency, and school failure are related, 5) Trauma assessments can reduce misdiagnosis, promote outcomes, and maximize resource, 6) There are mental health treatments that are effective in helping youth who are experiencing child traumatic stress, 7) There is a compelling need for effective family involvement, 8) Youth are resilient, 9) The juvenile justice system needs to be trauma-informed at all levels, Kristine Buffington et al., *Ten Things Every Juvenile Court Judge Should Know about Trauma and Delinquency*, NAT'L COUNCIL OF JUVENILE & FAMILY COURT JUDGES (JULY 1, 2010), [http://www.ncjfcj.org/sites/default/files/trauma%20bulletin\\_0.pdf](http://www.ncjfcj.org/sites/default/files/trauma%20bulletin_0.pdf)

<sup>9</sup> Excerpt taken from "Ten Things Every Juvenile Court Judge Should Know About Trauma and Delinquency



The National Child Traumatic Stress Network (NCTSN) created several projects and publications that explore how judges understand and approach children with trauma histories.<sup>10</sup> The Attorney General of the United States and the Justice Department have devoted significant resources to better understand childhood exposure to trauma across the country, and to address it through the Defending Childhood Initiative.<sup>11</sup> The NCJFCJ focus on trauma continued with the publications of “Snapshot: Trauma Audit” in August 2014 and “Toward a Conceptual Framework for Trauma-Informed Practice in Juvenile and Family Courts” in 2013.<sup>12</sup>

Many of the troubling behaviors seen in juvenile clients may be better understood through the lens of childhood trauma. According to a 2013 publication:

*Without an accurate understanding of trauma, youth often receive inappropriate mental health treatment, including psychotropic medication, and may face harsher consequences in court. Moreover, when youth or families are provided services ill-matched to their needs, they frequently fail to engage in treatment, and drop out of the services. This, in turn, can lead to legal consequences when youth are perceived to be willfully disobeying court-ordered treatment or terms of probation.*<sup>13</sup>

Childhood trauma can impact brain development and Post Traumatic Stress Disorder (PTSD). PTSD can cause youth to overreact to situations, have trouble with authority figures and have difficulty making good decisions. Trauma can also result in self-medication. If the juvenile who self-medicates is given drug treatment without addressing the underlying causes of trauma, treatment is unlikely to be effective. An understanding of how trauma impacts children can aid in making decisions regarding detention, disposition and transfer. For example, an awareness of a young girl’s prior trauma may help explain why she ran away from a foster home and assist in creating an appropriate disposition. If aggressive behavior is a result of PTSD it may help a judge in making transfer decision or detention decision.

**Recommendation:** Recognizing the specific training provision of the MOA, I recommend that arrangements be made to do trauma training for the court and other stakeholders through the National Council of Juvenile and Family Court Judges.

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<sup>10</sup> See, e.g., Judges and Child Trauma (reporting the results of focus groups conducted to understand how knowledgeable juvenile and family court judges are about child trauma and to identify ways to work to promote education on the issue. NCTSN has also established other projects that are more child-focused, and promote peer-to-peer support and empower youth and their families to share and reflect on their own stories and experiences.

<sup>11</sup> See *Taskforce on Children Exposed to Violence*, DEP’T OF JUSTICE, <http://www.justice.gov/defendingchildhood/task-force.html> (last visited Oct. 14, 2013).

<sup>12</sup> Available at <http://www.ncjfcj.org/our-work/trauma-informed-system-care>.

<sup>13</sup> Trauma and Resiliency, A New Look at Legal Advocacy for youth in the Juvenile Justice and Child Welfare Systems, Jessica Fierman and Lauren Fine, 2013 at 6. See <http://www.jlc.org/resources/publications/trauma-and-resilience>

## Discussion of Compliance Findings

### Methodology

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

During the four-day site visit, I observed delinquency hearings, detention/probable cause hearings, probation conferences and the major crimes docket. Unfortunately I was not able to observe any transfer hearings. During the site visit I had meetings with the following: Juvenile Court staff, individual probation officers, panel attorneys, and the entire staff of the new public defender juvenile unit, the juvenile defender panel attorney coordinator, the chief defender, the Clinical Services Director, and the chief of the District Attorney’s juvenile unit. I also reviewed the fifth compliance report prepared by Settlement Coordinator Bill Powell. All of the above provided useful information about current Juvenile Court operations, the progress that has been made toward compliance with the Agreement, and the areas where continued attention is needed.

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

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

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

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

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

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

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

*Insufficient Affidavits of Complaint (AOC) and Violation of 48 hour Rule:*

As noted in the executive summary, two cases were identified where insufficient probable cause was used to continue detention of a juvenile. As the Due Process monitor, I have an obligation to look at individual cases in order to evaluate if changes have happened in policy and practice. I evaluate individual cases through compliance tours and by requesting audio tapes of individual cases. While it is not my place to “second guess” a Magistrate’s decision, I must pay attention to the process and whether or not due process is being followed in real cases. The MOA requires that a child not be held in detention past 48 hours *unless* there is sufficient probable cause identified in either the affidavit or via witness testimony.

In the first example below, the hearing did not comport to due process. Although the prosecutor acknowledges that the AOC is deficient and the defense attorney clearly states his objection to holding the youth in detention without reliable probable cause, the Magistrate permitted continued detention beyond 48 hours in order for the prosecutor to fix the affidavit the following day.

*Example #1:* Detention and Probable Cause Hearing for A.W. held on February 23, 2015. <sup>14</sup>

*Magistrate:* Is the state relying solely up on the affidavit of the complaint?

*Prosecutor:* Judge it’s a bit tricky... I think... I don’t’ think it’s fully necessary that the exact name be provided. It says the officers were told of what happened and that’s where the charges came from. If that’s becoming an issue I may need to bring in witnesses to say who made that statement to them. But the court is allowed to rely on reliable hearsay and I’d like to proceed on the affidavit and if we need to shore it up I can do so tomorrow. I know counsel probably would like more detail and I’d be glad to provide that as far as who was there and made that report. But there has been some, at the bare bones it does set it out. But if more detail needs to be provided I’d be glad to do that tomorrow.

*Defense Attorney:* I am going to make an issue out of that Mr. Johnson

*Prosecutor:* Well then the state would ask, I have not had a chance to get someone down here today to shore that up, I can do that tomorrow. Otherwise I’m prepared to proceed. If that’s going to be the issue I ask for a reset until tomorrow. It does say that a police report was made and made these statements but it doesn’t name the person who made the statements. It’s the state’s position that the facts are set out that the defendant should be charge with.

*Magistrate:* Are you asking for a continuance?

*Prosecutor:* Yes, I would be. I am.

*Defense Attorney:* This young man was brought into detention on Friday, three days ago, and I think under the law and the Agreement he is entitled to test his detention within

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<sup>14</sup> See original redacted affidavit in the Appendix.

three days and that's what we're asking the court to do. If the state is not prepared, send him home and when state is ready we'd be happy to bring him back and go through it. That's my argument at this point. I'm not sure if the court has had a chance to look at the affidavit but it recites that on February 17 A.W. committed and aggravated assault against M.M. his girlfriend, that on February 18 he went to her house and broke windows and that on the 19<sup>th</sup> kidnapped her and took her away from her home. Everyone in neighborhood knows that's not true according to his mother, M.M. was at her home on the 20<sup>th</sup>

*Magistrate:* Well Counsel you're making arguments that would be better made at trial not to rebut probable cause. We're not going to, I'm not going to hear it, and I'm going to pass it.

*Defense Attorney:* He's entitled to a hearing within three days. I ask the court to conduct the hearing based on what we have.

*Magistrate:* I'm going to continue this matter for one day. Please put this on detention docket for tomorrow. This is at state's request.

[End of audio. AW remained in Detention until a hearing the following day.]

*Example #2: Detention and Probable Cause Hearing of T.H. April 17, 2015*

In this case the AOC stated:

*On April 10, 2015 at approximately 4:20 pm victim OW was at the BP gas station at 1336 Poplar. While on this parking lot victim was confronted by three males and hit in the back of the head, he was then attacked by an angry mob of approximately 50 people and hit repeatedly all over his body. Victim suffered several abrasions and bruises to his head, chest, shoulder and back. Victim attempted to retreat to his vehicle 2009 Dodge Caliber causing the mob to hit and kick his vehicle. The vehicle had damage to the passenger's side door, and fender estimated at \$1,000. On April 16, 2015 T.H was identified as a member of the mob that attacked victim and his vehicle. TH was located at Northwest Prep at 1266 Poplar where he was arrested and transported to Crump GUIB. Houston read aloud and waived his Miranda Rights and confessed to his involvement in this riot.*

In this case, the prosecutor relied solely on the affidavit and it is unclear what role T.H. had in the riot. Unlike other AOC's related to the BP incident<sup>15</sup> which detailed specific actions the defendant had taken toward the victim, this AOC reveals nothing other than T.H. "confessed to his involvement." Perhaps if the statement given by T.H. was attached it would have provided the necessary evidence for probable cause, but the statement was not introduced. On its face, the AOC indicates mere presence at the scene of a riot that involved "approximately 50 people."

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<sup>15</sup> Note, this was a high profile incident with a video that was on the local news and YouTube.

Examples #1 and #2 involved the same Magistrate but different defense attorneys. In each case, the defense attorney made the appropriate objections regarding the lack of probable cause and requested that the juvenile not be held in detention due to an insufficient AOC. In each case the Magistrate proceeded to hold the youth in custody. Example #1 is particularly disturbing because the District Attorney acknowledged the problem on the record and asked for a continuance. Yet the Magistrate violated the parameters of the Agreement and the law in favor of the prosecutor. As mentioned in previous reports, even a short period of detention can harm youth.<sup>16</sup> I want to point out that in Example #2, reporters were in the courtroom covering the high profile BP case. This is the second time I have observed a high profile case lead to detention on questionable facts.<sup>17</sup> If due process protections are set aside when it is inconvenient, the improvements have not yet become established.

**Recommendations:** 1) I recommend that the Judge review the audio tapes of these cases and discuss this with the Magistrate, 2) I also recommend additional training by a juvenile-focused organization such as the National Council of Juvenile and Family Court Judges (i.e. role of juvenile court judges), and 3) I recommend additional supervision and oversight by the Juvenile Court Judge.

*Judicial Narrative:* I have been receiving appropriate judicial narratives during this compliance period.

NOTICE OF CHARGES	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCT. 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCT. 2014	COMPLIANCE RATING APRIL 2015
Within 90 days: revise policies to insure children & defense attorney receive copies of AOC as soon as available but at minimum before Detention Hearing. Also, insure Magistrates formally arraign children at all Detention Hearings.	BC	PC	PC	SC	SC
When changes are made to charges as set forth in petition	BC	PC	PC	SC	SC

<sup>16</sup> See, e.g., Carla Cesaroni & Michele Peterson-Badali, *Understanding the Adjustment of Incarcerated Young Offenders: A Canadian Example*, 10 youth Just. 1-19 (2010); Carla Cesaroni & Michele Peterson-Badali *Young Offenders in Custody: Risk and Adjustment*, 32 Crim. Adjustment and behav. 251-77 (2005). See, e.g., Thomas J. Dishion, Joan McCord & Francois Poulin, *When Interventions Harm: Peer Groups and Problem Behavior*, 54 am. Psychologist 755-64 (1999); T. Dishion & J. Tipsord, *Peer Contagion in Child and Adolescent Social and Emotional Development* 62 aNN. rev. PsyChol. 189-14 (2011); L. Leve & P. Chamberlain, *Association with Delinquent Peers: Intervention Effects for Youth in the Juvenile Justice System*, 33 J. of Abnormal Child Psychol. 339-47 (2005); Richard Mendel, *the Annie E. Casey Foundation, No Place for Kids: the Case for Reducing juvenile Incarceration* (2011); Catherine A. Gallagher & Adam Dobrin, *Can Juvenile Justice Detention Facilities Meet the Call of the American Academy of Pediatrics and National Commission on Correctional Health Care? A National Analysis of Current Practices*, 119 Pediatrics 991 (2007). 140 Stevens H. Clarke & Gary Koch, *Juvenile Court: Therapy or Crime Control, and Do Lawyers Make a Difference*, 14 law & soc’y rev. 263, 293-94 (1980).

<sup>17</sup> The first time occurred during the fall of 2014 related to the “Kroger” incident which also received a lot of media attention.

prior to adjudicatory hearing that could increase the penalty, Juvenile Court shall provide notice of final charges by providing copies of new Petition at least 14 calendar days in advance of hearing unless advance notice is waived.					
When changes are made to charges as set forth in petition prior to adjudicatory hearing that could reduce the penalty, Juvenile Court shall provide notice of final charges by providing copies of new Petition within 24 hours of change in charges.	BC	PC	PC	SC	SC
Each month, Judge or designee shall review a sampling of case files to determine whether requirements regarding notice of charges are being followed. Shall also include periodic observations of Detention & Adjudicatory hearings. If not, immediate corrective action shall be taken.	II/P	PC	PC	SC	SC

Comments

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

<b>TRANSFER HEARINGS</b>	<b>COMPLIANCE RATING APRIL 2013</b>	<b>COMPLIANCE RATING OCT. 2013</b>	<b>COMPLIANCE RATING APRIL 2014</b>	<b>COMPLIANCE RATING OCTOBER 2014</b>	<b>COMPLIANCE RATING APRIL 2015</b>
Within 90 days: require Transfer Hearings comport with due process requirements. Specifically, shall insure all Transfer Hearings include: a. Asst DA presents evidence in support of petition for transfer	BC	PC	PC	SC	SC
b. Children have right to attorney whose role is to represent their stated interest	BC	PC	PC	SC	SC
c. Children, through their attorney, are provided opportunity to present evidence on their own behalf	NC	II	BC	PC	PC
d. Children, through attorney, provided opportunity to confront evidence & witnesses	NC	BC	PC	PC	SC
e. Children are protected from self-incrimination	BC	PC	PC	SC	SC

f. Judge or Magistrate makes written findings that: child committed delinquent act, child is not committable to an institution for persons with developmental disability or mental illness and interests of community require Child be put under legal restraint or discipline	BC	BC	PC	PC	PC
g. Judge or Juvenile Court Magistrate considers & documents consideration of factors relevant to findings including 7 factors	NC	BC	PC	PC	SC
Each month, Judge, or designee, shall review all files related to Transfer Hearings to insure Hearings followed Agreement. Review shall include periodic observations of Transfer Hearings to insure Magistrates follow policies.	II/P	BC	PC	PC	SC

Comments

*Sustained Progress among juvenile defense and Clinical Services:* As I stated in the executive summary, there are many positive developments. Clinical Services is doing an outstanding job of delivering high quality evaluations according to best practices. In addition, both the panel attorneys and the juvenile public defenders are doing good work in this area. I am pleased to see that most youth who now face transfer hearings had evaluations performed before the transfer hearing. I heard that an evaluation backlog formed and many evaluations were sent out to West Tennessee forensics. I was also informed that Dr. Tucker Johnson was in the process of hiring additional help.

*Continued Decline in Number of Juveniles Transferred:* As I detailed in the executive summary, there has been a consistent decline in the number of youth transferred each year since 2008.

*Amenability and Competency: Ability of child to present evidence on their own behalf and consideration of seven factors:* Since the last compliance report, this issue has been resolved. Transfer evaluations now contain an amenability portion. I heard no complaints regarding the issue of competency evaluations during this review period.

*(f) Judge or Magistrate makes written findings, child who is committable to an institution for persons with developmental disability or mental illness:* This section of the Agreement has two distinct requirements, first that the judge make adequate written findings, second that the judge make a determination about whether or not to commit a child to an institution for mental illness. In regard to the first requirement, Juvenile Court did an outstanding job. I reviewed all files where transfer was granted and in each case the findings were thorough. However, it has come to my attention that a recent case highlighted the inadequacy of Tennessee programs for delinquent youth with mental illnesses. If no institution exists in which to place a delinquent youth, is the court considering community services or home based services to address the issue? I will continue to research this issue.



<b>Protections Against Self-incrimination</b>	<b>COMPLIANCE RATING APRIL 2013</b>	<b>COMPLIANCE RATING OCTOBER 2013</b>	<b>COMPLIANCE RATING APRIL 2014</b>	<b>COMPLIANCE RATING OCTOBER 2014</b>	<b>COMPLIANCE RATING APRIL 2015</b>
Within 90 days: prevent POs or other staff from eliciting info about Children's involvement in alleged delinquent act outside presence of Child's defense attorney	BC	PC	PC	SC	SC
Within 90 days: notify Child's attorney in writing of any probation conference or interview which shall be open to defense attorney.	BC	BC	PC	PC	PC
Within 90 days: insure POs advise Children of Miranda rights. Shall include	BC	BC	PC	PC	SC
a. Description of role of defense attorney					
b. Statement Child is entitled to attorney & maybe at no cost	BC	BC	PC	PC	SC
c. Statement that Child's statements regarding offense can be included in Probation report	BC	BC	PC	PC	SC
d. Statement that Child's statement can be used against them.	BC	BC	PC	PC	SC
POs have Children document understanding of rights against self-incrimination & must receive advice of attorney before waiving it.	BC	BC	PC	PC	PC
Consider partnership w/non-profit or academic organization to provide advice and support to children during the probation intake process	S/NR	S/NR	S/NR	S/NR	S/NR
Within 30 days: prohibit adverse use of information obtained from child during probation conference	BC	PC	PC	SC	SC
Within 30 days: insure Magistrates do not permit the govt to call Children as witnesses in Child's own Adjudicatory or Transfer Hearing	BC	PC	PC	SC	SC

Within 30 days: Magistrates required to give oral advisement of rights against self-incrimination to any Child wishing to testify at own hearing	BC	PC	PC	SC	SC
Each month the Judge or designee shall review sample of files to determine rights against self-incrimination are protected. This shall include periodic observation of probation conferences by appropriate supervisory staff of the probation dept as well as observation of Adjudicatory & Transfer Hearings	II	II	BC	PC	PC
Immediately cease providing Visit & Contact forms to Magistrates prior to Adjudicatory Hearings.	PC	PC	PC	SC	SC

Comments

*Probation Unit Maintains Success:* As mentioned in the executive summary, I continue to be pleased with the conduct of the probation officers during conferences.

New probation officers have been well trained: Prior to my visit, I was given a schedule of probation conferences to attend, however I chose to ignore the schedule and randomly sat in with families I happened to see in the hallway waiting for their conferences. I had the opportunity to witness three probation officers I have not previously observed. Two of the probation officers were newly hired and had recently been trained. I was extremely pleased with what I saw.

In each conference it was clear that the probation officers genuinely cared about the youth and spent over 30 minutes with families trying to understand the issues and resolve them. One probation officer gave the family his personal cell phone number and encouraged them to “call him at any time.” Another officer hugged two teenage girls at the end of the conference after encouraging them to do better in school. A third officer told the youth, “I really do value your side of the story,” and “I’m concerned about you, not just the charges.” In two of the cases the matter was handled without going to juvenile court. In each case, the probation officer had the child “explain back” Miranda rights to make sure the youth understood them. During one conference the youth asked for a lawyer and the probation officer immediately stopped all questioning to accommodate that request. It was clear that the new probation officers had been trained on the importance of age appropriate explanation of rights.

Continued Success of the Graduated Sanctions Grid: The Graduated Sanctions Grid is consistently followed with over 65% of all cases handled non-judicially. Data provided from October 2014 to February 2015 indicates that the Grid was followed at least 89% of time and there was never more than 2% upward override.

**Recommendation:** Given the consistent downward overrides, I recommend that the Probation Department consider a downward adjustment to the graduated sanctions grid. I also recommend that the grid be validated.

Inconsistent Data Regarding Lawyers at Probation Conferences: According to the data kept by the probation department in the sampled cases, lawyers were rarely requested during the probation conferences of the past six months. However, Ms. Sturdivant indicated that “several times a week” panel lawyers are asked to attend probation conferences. This discrepancy may be due to the low number of cases being sampled by the probation department or the sampling method.

**Recommendation:** I recommended that Ms. Sturdivant continue to keep data regarding the frequency panel attorneys are requested to assist in probation conferences so we have an accurate assessment.

*Child’s Attorney Notified of Probation Conference and Child receiving advice of attorney before waiving Miranda rights:* While recognizing the impressive work of the probation officers, the original Agreement requires attorneys to be present at the probation conference. This was an issue that was discussed previously when the Tennessee Administrative office of the Courts refused to pay panel attorneys for this representation. This is an area ripe for the new academic partnership.

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

Within 1 year insure independent advocacy including: a. Appoint juvenile defender to represent children at detention hearings & probable cause determinations as soon as possible	N/A	N/A	BC	BC	PC
b. Establish Panel System Overseen by independent body to handle conflicts	N/A	N/A	II	NC	BC
c. Support attorney practice standards for juvenile defenders including training and evaluation.	N/A	N/A	BC	BC	PC
d. Insure juvenile defender has confidential meeting space to confer with clients within the facility	N/A	BC	PC	PC	SC

Comments

*Public Defender and Panel Lack Independence:* As I noted in detail in the executive summary, progress has been made, yet this remains the biggest challenge. For more information regarding the specific strengths and weaknesses of the new comprehensive plan, see the May 21, 2015 Department of Justice letter in the appendix. During the last compliance period, the leadership of Mayor Luttrell has been critical in creating Public Defender independence. It is my understanding that at this point it is proposed that the Public Defender be moved into a separate division out from under the County Attorney, that the Public Defender have authority over staff appointments and budget, and an advisory commission on defense issues be created. These are all significant steps toward independence and I commend the Mayor for his contribution to this important issue.

*Who is monitoring quality of juvenile defense panel?* It is unclear at this point who will be monitoring the quality of representation of the juvenile defender panel. It is important that the monitor is aware of and ensures that the panel is adhering to practice standards.<sup>18</sup> If the new coordinator is going to monitor the quality of representation, she will require training on national best practice standards in juvenile law. Although she is uniformly respected as an adult criminal defense attorney, her recent practice has not been in the area juvenile law. If she is going to monitor the quality of counsel, it is very important that she be trained in the specialized aspects of juvenile defense and be connected to statewide and regional juvenile defender resources.<sup>19</sup>

*Administrative Obstacles to Defense Practice:* I noted many administrative obstacles to defense practice in my fourth compliance report. Since the fall of 2014, results have been mixed. There have been the following improvements:

<sup>18</sup> As of December 17, 2014, Proposed Juvenile Defense Standards for Use in Tennessee have previously been developed by the Shelby County Public Defender’s Office.

<sup>19</sup> I have the following specific training suggestions for the Panel Coordinator: 1) reach out to the National Juvenile Defender Center and become aware of the resources and networks provided, 2) reach out to the Central Regional Juvenile Defender Center (Directed by Kim Brooks Tandy ([ktandy@childrenslawky.org](mailto:ktandy@childrenslawky.org) ) 3) Participate in any trainings, including all trainings provided by the Public Defenders organized by Stephen Bush, 4) attend the National Juvenile Defender Summit in October of 2015, and 5) attend the annual Juvenile Defender weeklong Immersion Training at Georgetown University Law School.

1. There is now a standing order to obtain psychological evaluations;
2. There is now a standing order for all records released by the clerk of courts, this includes audio recordings;
3. Some attorneys indicated it is easier to file motions; and
4. A confidential meeting space for female clients has been arranged.

However, the following administrative obstacles to defense practice remain:

1. Difficulty in getting Court Orders once the proceeding is finished. Unlike the practice in other jurisdictions, in Shelby County Juvenile Court, attorneys are not given an order at the end of a hearing. This creates extra work to track down the order for the purpose of file maintenance and general defense practice. It is unclear to me why orders cannot be generated during the hearings, or at the very least, be available in a central location the following day.
2. Some attorneys indicate that while filing the motion is straightforward, getting the motion listed for hearing remains problematic.

As I indicated previously, these obstacles are time-consuming for defense attorneys which can impact advocacy for children. It is my understanding that Ms. Pam Skelton has had several meetings with attorneys to discuss these concerns. It is not clear to me whether this format is effective.

**Recommendation:** I encourage Juvenile Court, Ms. Sturdivant and the Team Leaders of the public defender juvenile unit to continue to work towards a solution.

### *Juvenile Defense Capacity Report*

Public Defender Stephen Bush provided a detailed report regarding Defender Services on February 27, 2015.<sup>20</sup> As I indicated in my executive summary, I believe the public defender juvenile unit is on the right track with its holistic team-based practice<sup>21</sup> while maintaining workload controls.

In 2014, according to Juvenile Court, there were 7,372 delinquency complaints. Of these, 4,885 complaints were resolved non-judicially. Counsel was appointed in 2,487 delinquency complaints. Public Defender staff was appointed to 480 complaints, or 20% of all appointments, in the initial year of service delivery. Panel attorneys were appointed to provide representation for 1,942 complaints, or 80%. As presently staffed the Public Defender unit is seeking to increase representations in delinquency complaints during its second year of operations by 50%,

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<sup>20</sup>See Report to the Due Process Monitor Regarding Juvenile Defender Services [hereinafter, "Report"], attached in Appendix. This report strives to provides an "assessment of all juvenile defender capacity (PD and panel) for both primary and conflict services, b) create a framework to assess juvenile defender capacity, and c) makes specific recommendations for establishing workload controls, enhancing operational independence, and improving supervision and evaluation of all juvenile defenders pursuant to practice standards," See Report at 1.

<sup>21</sup> More information about the details of team based practice and structure of defense can be found in appendix, however, fundamentals of team based practice include: 1) The client is at the center of all of the work done on the case, 2) Every client is screened for social services, 3) Every case is investigated to satisfy attorney ethical obligations.

bringing their percentage of total delinquency representation to 30%.<sup>22</sup> The County Commission did not grant the funding increase as requested, but endorsed an increase of \$500,000 for juvenile defender services for FY2016. While the capacity of the juvenile defender should continue to be monitored, this increase, as well as the academic partnership are both positive steps.

*Need for Case Management System:* It is clear that the juvenile unit requires a case management system. In this age of technology tracking cases and analyzing data are critical in order to obtain additional funding and evaluate the allocation of resources in the practice. I agree with the assessment of Josh Perry, Executive Director of the Louisiana Center for Children's Rights, who wrote in his February 25, 2015 letter:

*"When I visited Shelby County in December of 2013, I discussed with you the importance of moving as quickly as possible to commission, build and deploy a CMS. A high functioning CMS allows you to measure workload, assess programmatic effectiveness, and supervise staff....I was troubled to learn, in a January of 2015 visit to your office, that you still have not been able to deploy a CMS....It appears that the absence of a CMS is also making it more difficult for you to bring SCPD into substantial compliance with the federal MOA."*<sup>23</sup>

**Recommendation:** It is unclear why the Public Defender has been unable to obtain a CMS. I recommend that a CMS be implemented.

*Proposed Standards Need to be implemented:* In December of 2014, the Shelby County Public Defender Proposed Juvenile Defense Standards for Use in Tennessee. These standards were created in conjunction with national and statewide juvenile defense experts.

**Recommendation:** Implement the standards for use throughout Shelby County Juvenile Defense Bar.

*Post Disposition Representation: Progress Within Public Defenders Juvenile Unit, Clients of Panel Attorney also Need Post Disposition Representation.*

As I indicated in my executive summary, I am pleased with the progress of the Public Defender Juvenile Unit in providing post disposition representation to their clients. Currently, the scope of post dispositional advocacy is two- fold:

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<sup>22</sup>According to the Public Defender's Report, "under caseload limits the PD unit can provide representation for no more than the equivalent of 720 case units. The Panel Plan (as most recently proposed) would provide representation for an additional 420 complaints, if each private attorney averages 14 appointments per year. Against a projected need to appoint counsel in 2,300 delinquency complaints, additional representation would be required in 1,100 delinquency complaints. To address the gap the Public Defender renewed a previous request to increase funding for a total operational budget of \$3 million. An increase of \$942,000 was sought to enhance operational and organizational depth, that would have allowed the PD unit to double present capacity from approximately 30% of petitioned delinquency volume to 60%; and to increase in overall case representation capacity from 720 case equivalents to 1,520 per year."

<sup>23</sup> Full text of Mr. Perry's letter can be found in the Report attached in the Appendix, at Appendix 4.

- 1) *Protect the legal rights of clients:* ensure proper DCS classification and placement, provide assistance/informal advocacy with institutional concerns (medical, educational, behavioral health, segregation, programmatic, etc.) protect client’s rights while in detention or community based facility (shelter/group home) against abuse, provide legal rights education, and
- 2) *Assist with successful reentry into the community:* prepare children for successful reentry through release planning connect children to needed services in the community, ensure child’s educational needs are being protected, work with DCS and other key stakeholders to ensure children receive needed treatment and services.

Since December 2014, the juvenile public defenders have visited clients at Wilder. They conducted post disposition/DCS training in January 2015 and have worked to build relationships with DCS in order to develop information sharing systems. As I indicated in my last report:

*Post Disposition representation was envisioned by the MOA and is critical to ensure facility accountability and to assist in creating positive outcomes for youth. National Juvenile Defender Standards also stress the importance of post disposition representation. Section VII, Role of Juvenile Counsel after Disposition includes seven different standards: 7.1 Maintain Regular Contact with Client Following Disposition; 7.2 Disclose the right to appeal; 7.3 Trial counsel’s Obligations Regarding Appeals; 7.4 Obligations of Trial Counsel to Appellate Attorney; 7.5 Represent the Client Post Disposition; 7.6 Sealing and Expunging Records; 7.7 Provide Representation at Probation and Parole Review and Violation Hearings.*

**Recommendation:** I am recommending that juvenile panel attorneys begin to develop a program to provide post disposition representation. I believe this was envisioned by the Agreement and is part of best practice and zealous representation throughout the jurisdiction of juvenile court. This may be another area well suited to the new academic partnership.

CONFIDENTIALITY OF JUVENILE DELINQUENCY PROCEEDINGS	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013	COMPLIANCE RATING APRIL 2014	COMPLIANCE RATING OCTOBER 2014	COMPLIANCE RATING APRIL 2015
Within 30 days: revise policies to protect confidentiality in delinquency proceedings	BC	PC	PC	SC	SC

Insure only person properly concerned with child's case are admitted into any delinquency proceeding	BC	PC	PC	SC	SC
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Comments

The policies continue to be incorporated into practice without incident.

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

Comments

The plea colloquies I observed and listened too on the audio were all well-done. I heard Magistrates working to make sure the child understood his rights with age appropriate and interactive oral colloquies that include all of the above requirements.

<b>RESTITUTION GUIDELINES</b>	<b>COMPLIANCE RATING APRIL 2013</b>	<b>COMPLIANCE RATING OCTOBER 2013</b>	<b>COMPLIANCE RATING APRIL 2014</b>	<b>COMPLIANCE RATING OCTOBER 2014</b>	<b>COMPLIANCE RATING APRIL 2015</b>
Within 6 months: establish guidelines for assigning restitution to any child adjudicated delinquent that provides the child a meaningful opportunity to challenge the evidence of restitution.	N/A	PC	PC	SC	SC



At a minimum the restitution guidelines shall:					
i. Require documentation to support the restitution request					
ii. Allow children adequate time to review the restitution request & opportunity to introduce evidence opposing the amount					
iii. Allow opportunity to request adjustment to restitution amount by introducing evidence of family income or obligations that would render the restitution an undue hardship					

Comments

Juvenile court continues to sustain the progress made and the restitution policy is being followed.

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

Comments

During my fifth compliance visit, I reviewed several files where Bond was set and observed Bond being set in detention hearings. Bond amounts continue to be set in accordance to the guidelines.

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

Implement language access plan within 1 year	N/A	BC	PC	II/P	SC
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Comments

The language access plan has been in effect since April 15, 2013.

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

Comments

The new policy is being implemented. I was not made aware of any issues relating to the treatment of witnesses during my fifth compliance report.

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

Comments

Bench cards continue to be used and I did not observe or hear of any issues. During my fifth visit, I observed judges and magistrates utilizing the bench cards. The bench book is also available online.

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

Comments

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

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

facts considered in decision					
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Comments

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

<b>TRAINING</b>	<b>COMPLIANCE RATING APRIL 2013</b>	<b>COMPLIANCE RATING OCTOBER 2013</b>	<b>COMPLIANCE RATING APRIL 2014</b>	<b>COMPLIANCE RATING OCTOBER 2014</b>	<b>COMPLIANCE RATING APRIL 2015</b>
Within 6 months: develop a training plan for all employees involved with delinquency docket & submit training plan to Monitor and US for approval Training plan shall insure appropriate staff are trained on topics relevant to their role & responsibilities in delinquency proceedings including: Constitutional due process requirements i. Adolescent development ii. Dispositional planning iii. Best practices in social service & therapeutic options iv. Functional & practical purposes of juvenile court v. Appropriate professional role of different players within juvenile proceedings	N/A	BC	PC	PC	PC
Juvenile Court shall implement 1 <sup>st</sup> training plan within 12 months & shall create subsequent training plans on an annual basis thereafter	N/A	N/A	BC	PC	PC

Comments

Since the last compliance report Juvenile Court has continued to conduct trainings. This is particularly important given the new individuals who have been hired. I am pleased that the specific training on Affidavits of Complaint occurred. However, I have noted continuing problems in this area.

**Recommendation:** I recommend ongoing training of new magistrates. In addition, as noted above I recommend a specific training for Juvenile Court on trauma and trauma informed care.



U.S. Department of Justice

Civil Rights Division

JP:WGG:RCG:mrh  
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May 21, 2015

**VIA ELECTRONIC AND U.S. MAIL**

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Re: Reforming Juvenile Defense Services

Dear Mr. Dyer and Mr. Scroggs:

As discussed in our call on May 19, 2015, we are writing to summarize the observations we made regarding Shelby County's Comprehensive Plan for Independence of Juvenile Defenders ("Comprehensive Defender Plan") and to address the essential next steps. The Comprehensive Defender Plan was submitted on May 8, 2015, and includes the County and Juvenile Court proposal to meet the requirements of the Memorandum of Agreement ("Agreement") to "ensure independent, ethical, and zealous advocacy" to children appearing in delinquency matters. See Agreement Section A.1.(e)(i) and (ii) at 14, 15.

First, we appreciate your continued engagement and dialogue regarding reforms to the defense function. Mayor Luttrell and Judge Michael's leadership on this issue is evident in many of the positive features outlined in the plan. More work needs to be done, however, so we also outline additional next steps toward achieving our shared commitment to making Shelby County's juvenile justice system a national model. As you know, this letter is preceded by other letters discussing the necessary steps to meeting the defender requirements of the Agreement. We urge you to consider those letters, dated October 30 and December 23, 2014, in connection with our discussions and this letter.

Second, in our call, we noted a number of constructive elements towards achieving independent, ethical, and zealous advocacy in the Comprehensive Defender Plan. They are worthy of repeating here and include:

- Convening of the April 1, 2015 collaborative discussion with key stakeholders about potential reforms to the juvenile defense function.
- Creation of a Division of Defender Services for the Shelby County Public Defender, providing operational independence for that office.
- Ensuring that the Director of the Division of Defender Services has hiring and removal authority of staff attorneys and to create a budget for presentation to the County Commission.
- Establishing an Advisory Committee regarding the new division.
- Creation of a Selection Committee to determine panel attorney appointments that requires only perfunctory approval by the Judge.
- Providing for the use of a database to assign counsel, either public defender or appointed counsel, to clients with override options based on attorney workload and experience.
- Requiring periodic review of panel attorney performance and an evaluation of whether attorneys require mentoring, training, or removal.


Third, we discussed the remaining challenges at length and understand your commitment to meeting these requirements. We discussed the following elements of the plan that require additional work:

- Determining whether the creation of the Division of Defender Services is an interim step towards achieving further independence. As noted above, creation of the Division is a positive step towards achieving independence, however, the Public Defender remains under the control of the Mayor; i.e. the political influence remains. More needs to be done to ensure that the appointment and removal of the Public Defender is shielded from political influence.
- Clearly defining the membership and work of the Advisory Committee. As currently proposed, there are two such bodies and it is unclear that such division is necessary or whether they will have overlapping functions. The plan should clarify that the committee's responsibilities, including the need to develop proposals for further structural reforms to both the Public Defender and the appointed counsel process.
- Creating a structure to ensure Panel Coordinator independence from judicial influence or refining the appointed counsel process in such a manner that the Coordinator only serves a ministerial function in the appointment, removal, and evaluation of the panel attorneys and an alternative, independent mechanism is developed for the evaluation of panel attorney performance.
- Limiting the input of the District Attorney from the selection and removal of appointed counsel as this practice would be contrary to national guidelines for defender services.
- Ensuring that defenders are adhering to the Shelby County Juvenile Defense Standards and workload limitations.
- Generating a means to track the frequency and rationale for Panel Coordinator overrides of the automated appointments.
- Developing concrete guidelines or standards for removal of a Panel member from the appointment list.

We understand that you will be working towards achieving these necessary elements, in part, by consulting with a substantive defense reform expert. In doing so, we urge you to continue engaging in the collaborative process outlined in our December 23 letter, including providing an outline of implementation steps and timelines for achieving these reforms.

We look forward to your further development of the Comprehensive Defender Plan that will secure the independence of the Public Defender as well as the independence of the appointed counsel process.

Sincerely,

  
Winsome G. Gayle  
Special Counsel

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