

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

**Honorable Curtis Person,  
Presiding Judge, Memphis-Shelby Juvenile Court**

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

**FROM: Sandra Simkins, Due Process Monitor**

**DATE: June 16, 2014**

**RE: Compliance Report #3**

Juvenile Court Memphis Shelby County (JCMSC) 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 third regularly scheduled compliance review and site visit occurred April 7, 2014 through April 11, 2014. This report evaluates the extent to which JCMSC has complied with each substantive provision of the Due Process sections of the Agreement.

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## **Executive Summary**

Improvement continues within JCMSC regarding due process. During my third compliance visit I saw many changes that JCMSC can be proud of. I am particularly pleased to report the following:

1) The creation of a new specialized juvenile defender unit within the Office of the Shelby County Public Defender; 2) Significant improvements in the probation department to ensure children understand their Miranda Rights against self- incrimination at the probation conference; 3) The probation departments successful implementation of the structured decision making grid; 4) Changes within clinical services leadership that embraces best practice standards in psychological evaluations; 5) Expanded data collection from the court and the willingness to share reports and provide a narrative evaluation of data. All of these improvements enhance the due process rights of children and the quality of juvenile court. Overwhelmingly the new policies are being implemented and the data collected reveals consistent progress. It is my hope that there will be continued support for these newly created systems and that that they will become integral components of a new JCMSC

This compliance report is the first time that Juvenile Defender practice will be specifically assessed. While the nascent creation of the new public defender juvenile unit is promising, I have the following concerns: 1) Current structure of the juvenile defender panel, (including its leadership, lack of assessment tools, and limitations under Rule 13); 2) The Court's unwillingness to accommodate important defense attorney training ; and 3) The lacking operational independence of the juvenile indigent defense delivery system (this includes the panel and the Office of the Public Defender).

Further, I continue to have concerns about transfer hearings. First, while recognizing the dramatic decrease of the number of children transferred in the past five years, the transfer rate in Memphis remains markedly higher than the rest of Tennessee. Second, I remain concerned about the quality of defense practice at transfer hearings. Specifically, there has been an enormous drop in evaluations that are being requested from Clinical Services; it is clear that many juvenile defense attorneys are representing children at transfer hearings without the benefit of a recent psychological evaluation. In addition, it is unclear whether evidence is routinely presented by defense attorneys at transfer hearings. I recommend that transfer hearing practice standards and data collection tools be created to evaluate the quality of representation at transfer hearings.

Finally, I have concerns about the current practices at the probable cause hearings and how Tennessee Rule 15 is being interpreted regarding the ability to cross examine witnesses.

Overall, of the 55 Due Process Provisions required to be completed, I find that JCMSC's compliance status is as follows:

<b>Compliance Standards</b>	<b>1<sup>st</sup> Compliance Report April 2013</b>	<b>2<sup>nd</sup> Compliance Report October 2013</b>	<b>3<sup>rd</sup> Compliance Report April 2014</b>
Substantial Compliance	0	0	0
Partial Compliance	1	26	44
Beginning Compliance	25	17	10
Non Compliance	3	0	0
Insufficient Information/pending	5	2	1
<b>Total # of Required Due Process Provisions in Agreement</b>	<b>34</b>	<b>45</b>	<b>55</b>

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

### **Positive Developments**

#### Juvenile Defenders: Shelby County Public Defender Creates Specialized Juvenile Unit

On December 17, 2013, the specialized Juvenile Unit of the Shelby County Public Defender was established. The Public Defender Juvenile Unit began accepting appointments and providing continuous representation on January 6, 2014, and began continuous representation from detention hearings on February 3, 2014.

Prior to the creation of the new juvenile unit, Chief Defender Stephen Bush invested much time and effort learning about juvenile defense and juvenile defender best practice standards.<sup>1</sup> He met with juvenile defense leaders from across the country in order to understand how to effectively represent children and embody the *Ten Core Principles for Providing Quality Delinquency Representation through Public Defender Delivery Systems*.<sup>2</sup> In January Mr. Bush filed *Defending Shelby County’s Children: A Roadmap for Excellence in Juvenile Defense*, setting forth a framework for meeting defender obligations under the Agreement. At the time of this compliance visit, six full time juvenile defenders have been hired, including one supervising attorney. In addition two full time investigators, one legal secretary and one administrative assistant who also acts as an office manager have been hired. Public Defender staff vacancies should be filled as soon as practicable, once office space is available. I had the opportunity to meet with the entire unit in the temporary office space at 160 N. Main Street. It was encouraging to see such enthusiastic lawyers dedicated to representing children.

The vision of Chief Defender Bush includes a unified juvenile defense bar. Whether a child is represented by the Office of the Public Defender or an appointed attorney, the attorney

<sup>1</sup> *National Juvenile Defender Standards* (2012) <http://www.njdc.info/publications.php>

<sup>2</sup> *Ten Core Principles for Providing Quality Delinquency Representation through Public Defender Delivery Systems* (2008) <http://www.njdc.info/publications.php>

will have access to resources and be held to the same practice standards. In addition, Chief Defender Bush strives to provide holistic advocacy which integrates legal representation with education advocacy. He intends to provide cross disciplinary advocacy through a team approach which includes social workers and investigators. He also plans to engage the community in this process.

*Juvenile Defense Capacity:* Unfortunately, at this time there is little data available. The systemic improvements underway must be sustainable, to ensure independent, ethical and zealous advocacy. Because the Agreement requires the Shelby County Public Defender to provide supervision and oversight of juvenile delinquency representation, I am requesting that Mr. Bush initiate an objective assessment of all juvenile defender capacity (PD and panel) for both primary and conflict services. This report should set forth a framework to assess juvenile defender capacity and make recommendations for improving organization of service delivery. The report, to be provided prior to the next compliance tour, should include recommendations for establishing workload controls, enhancing operational independence, and improving supervision and evaluation of all juvenile defenders pursuant to practice standards.

Probation Department Progress: Implementation of Structured Decision Making Grid and revised Miranda Rights practice for Probation Conferences

*Graduated Sanctions Grid:* As I mentioned in my last compliance report, JCMSC has an excellent diversion program. Many cases that would proceed to juvenile court in other jurisdictions are being resolved without a petition. However, to ensure that all children are treated consistently, the probation department created a new “Graduated Sanctions” grid defining which offenses are eligible for diversion and the corresponding sanction (See attachment “A”). The importance of this structured decision making tool cannot be over emphasized. Given the large number of children who go through the probation department and who are eligible for diversion, it is paramount that management ensures consistency and prevents bias.

Required under the equal protection section of this Agreement, March 2014 was the first full month that the grid has been in effect. Of the 439 cases handled, 331 cases (75%) were handled non-judicially—so these cases were never petitioned into juvenile court. In addition the data from the Graduated Sanctions grid showed that there were very few requests for overrides; therefore, the grid seems to be an effective tool. However, since this tool has just been implemented additional validation maybe required at some later point.

*Improved Miranda Rights Practice:* In my last report I articulated my concern that probation officers were merely reading a “script” and that children who did not understand their rights were simply signing the form during probation conferences. Over the past six months the probation department worked hard to incorporate my recommendations, including revising the rights form to include age-appropriate child-friendly language and re-training all staff on the importance of asking the child to “repeat back” what the Miranda Rights mean to insure understanding. I was very pleased with what I observed and with the feedback I have received from a variety of JCMSC stakeholders. Anecdotal evidence indicates that the new Miranda Rights form and training have improved communication as evidenced by the significant increase in the number of children who request counsel probation conferences.

## Clinical Services: New Leadership Incorporates Best Practices

JCMSC has a new Director of Clinical Services, Dr. Tucker Johnson. Dr. Tucker Johnson reports that she is committed to best practices and will incorporate the standards I laid out in my last compliance report. She has also developed new polices for transfer evaluations and will be bringing in a national expert to facilitate training for all staff in June of 2014.

## **Ongoing Due Process Concerns**

### Juvenile Defenders

*Lack of Independence Concerns:* The Agreement requires an independent defense bar. The original investigation cited many problems with the previous structure including the fact that the juvenile defender coordinator reported directly to the judge. The requirements of the Agreement follow best practice standards including the ABA's principals of public defense. Principal number one of the *ABA Ten Principals of a Public Defense System* is unequivocal about the importance of an independent public system. The principal states:

The public defense function, including the selection, funding, and payment of defense counsel, is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel. To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel or contract systems. Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense. The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.<sup>4</sup>

*Independence of the Panel:* Several months ago an organizational change was instituted. Rather than reporting to the judge, the juvenile defender coordinator now works under the direction of Harvey Kennedy, who is the CAO of the Mayor's Office. However, there have been no other apparent changes, despite this organizational change. For example, the office still remains in the exact same location and when I meet with the panel attorneys, they consistently

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<sup>4</sup> National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Chapter 13, *The Defense* (1973) [hereinafter "NAC"], Standards 13.8, 13.9; National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976) [hereinafter "NSC"], Guidelines 2.8, 2.18, 5.13; American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3rd ed. 1992) [hereinafter "ABA"], Standards 5-1.3, 5-1.6, 5-4.1; *Standards for the Administration of Assigned Counsel Systems* (NLADA 1989) [hereinafter "Assigned Counsel"], Standard 2.2; NLADA *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, (1984) [hereinafter "Contracting"], Guidelines II-1, 2; National Conference of Commissioners on Uniform State Laws, *Model Public Defender Act* (1970) [hereinafter "Model Act"], § 10(d); Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties* (1979) [hereinafter "ABA Counsel for Private Parties"], Standard 2.1(D). Standard 2.1(D).

report that the issues they raise are not effectively dealt with. Whether this is because the court is unresponsive to concerns raised, whether the coordinator lacks the management skills necessary to address concerns or whether the coordinator believes the judge is still her boss remains unclear. In order to be in substantial compliance, true independence must be achieved. I want to emphasize that the panel is comprised of many excellent lawyers, but these lawyers need greater institutional support and oversight.

*Independence of the Public Defender Juvenile Unit:* In addition to my independence concerns about the panel structure, I am also concerned that the Office of the Public Defender does not operate with adequate independence to ensure sustainability of the reforms that are underway.

*Training: Court's reluctance to accommodate defense attorney trainings*

In January of 2014 and again in April of 2014, a group from the National Juvenile Defender Center conducted defense trainings for the existing panel attorneys and the newly hired juvenile public defenders. These trainings, known as Juvenile Training Intensive Practice or "JTIP," are an important part of the Agreement. Juvenile defense attorneys need specialized training so that they may develop the skills to zealously advocate on behalf of children and protect their due process rights. For both JTIP I and JTIP II the court continued to schedule delinquency hearings. This resulted in attorneys, including the juvenile panel coordinator, being unable to participate in the training. While it is important to ensure that the children in detention have court hearings, it is disappointing that the remaining cases were not continued for a brief time to allow fuller participation.

Transfer Hearings: Children proceeding to Transfer hearings without psychological evaluations, Juvenile Defenders not consistently presenting evidence at hearings

In response to the concerns I raised regarding clinical services psychological evaluations, the Court ceased its practice of ordering an evaluation for every child who received notice of transfer. Unfortunately, this has resulted in children proceeding to transfer hearings without the benefit of a current psychological evaluation.

As I indicated in my previous compliance report, a psychological evaluation can be a critical defense tool. Exposure to trauma, mental health issues, intellectual disability, and underlying environmental factors are all relevant to the court's determination of whether or not the child is amenable to treatment in the juvenile system. For a child, a transfer hearing is a life altering event. Every defense attorney must have a sound theory of defense for the transfer hearing. It is not my recommendation that the court go back to its previous practice of having a blanket policy of requesting evaluations in every case. Rather, I suggest that all defenders who handle transfer hearings be well trained in how to develop a defense theory, including multiple ways to obtain, cultivate and present mitigating evidence. Defense attorneys should also consider filing motions to obtain funds to hire independent experts to perform psychological evaluations in order to communicate individualized client issues to be addressed in the evaluation.

I understand that there are some situations where the attorney may choose not to have an evaluation. For example, if the child is nearly 18 years old, the strategic choice might be to

avoid evaluation and opt for the enhanced due process protections and jury trial option of adult court. However, at JCMSC it is unclear whether the attorneys are not requesting evaluations because it is part of a planned strategy, or whether they have not had sufficient training, oversight and support. Unfortunately, in addition to juvenile defenders not consistently requesting psychological evaluations, data revealed that juvenile defenders are also not consistently presenting evidence at transfer hearings. This pattern is problematic and needs further attention.

Transfer Hearings: Despite consistent steady decline, transfer rate remains highest in Tennessee

As noted in my first compliance report, according to Tennessee Juvenile Court Statistical Data provided by the Tennessee Council of Juvenile and Family court Judges Administrative Office of the Courts, in 2012 a total of 161 cases for children under age 18 were transferred to adult court by the state of Tennessee. Of the 161 cases statewide, the overwhelming majority of transfer cases came from Shelby County.<sup>5</sup> The below charts indicate a significant and steady decline in transfer cases since 2008. Yet, compared to the rest of the state of Tennessee, the transfer numbers are still high. For example:

Shelby County	2008	2009	2010	2011	2012	2013
<u># of children transferred to adult court*</u>	225	194	151	121	99	90

\*Data provided by JCMSC

Tennessee 2012	Shelby County	Hamilton County	Davidson County	Knox County
<u># of children transferred to adult court in 2012 by county*</u>	99**	19	8	2

\* Data provided by TN AOC

\*\*There is a discrepancy between the 2012 transfer numbers provided by JCMSC and AOC. AOC reports that 91 children were transferred to adult court from Shelby county in 2012, but JCMSC reports the number as 99. Given the intense scrutiny JCMSC has been under as a result of the Agreement, I trust the reliability of their data and choose to use it in this comparison.

<sup>5</sup> See <http://www.tncourts.gov/courts/juvenile-family-courts/statistics> at 82.

Transfer based on County Population	Total Juvenile Population 10-17*	# of Juveniles Transferred to adult court in 2013
Hamilton County	32,510	19
Knox County	42,056	2
Davidson County	55,522	8
Shelby County	109,199	90

\*population data

from 2012 is most recent available [http://ojidp.gov/ojstatbb/ezapop/asp/comparison\\_selection.asp?selState=47](http://ojidp.gov/ojstatbb/ezapop/asp/comparison_selection.asp?selState=47)

This is a multi-faceted issue. Shelby does have the highest transfer rate, and according to the Tennessee Administrative office of Courts (AOC) more juveniles in Shelby are charged with the most serious offenses.<sup>6</sup> For example, during the first six months of 2013, 28 juveniles in Shelby were charged with “1<sup>st</sup> degree murder” and 30 juveniles in Shelby were charged with “rape of a child.” By way of comparison, during the first six months of 2013 there were no other juveniles in any other Tennessee county that were charged with 1<sup>st</sup> degree murder and no other county had more than two juveniles charged with “rape of a child.”<sup>7</sup>

While Shelby has more juveniles charged with serious transferable offenses, it is unclear if police practices or “over charging” contribute to the problem. I recommend deeper analysis as to how serious juvenile offenses are being handled in Shelby verses how serious juvenile offenses are handled in other Tennessee Counties.

In addition, JCMSC data reveals that not all of the cases that receive “Notice of Transfer” are listed on the “Transfer Docket.” It is my understanding that a “Notice of Transfer” is generally filed by the prosecutor during the detention hearing. After the detention hearing, there are a number reasons why the case may not end up on the transfer docket. For example, after the detention hearing, a magistrate may decide that the case is inappropriate for the transfer docket and refuse to list it. Or, after negotiation with the defense attorney, the prosecutor might decide to withdraw the notice of transfer.

JCMSC Transfer Cases Oct 13, 2013 – March 14, 2014	
# of Cases where “Notice of Transfer” was Filed	126
# of Transfer Petitions Granted	53
# of Transfer Petitions Denied	27

<sup>6</sup> <http://www.tncourts.gov/courts/juvenile-family-courts/statistics> at January – June 2013

<sup>7</sup> *Id.*, <http://www.tncourts.gov/courts/juvenile-family-courts/statistics> January – June 2013

	Shelby	Davidson	Hamilton	Knox
Criminal Homicide	1	0	0	0
1 <sup>st</sup> degree murder	28	0	0	0
2 <sup>nd</sup> degree murder	1	0	0	0
Rape of Child	30	1	0	2



## **Conclusion**

Overall JCMSC continues to make progress. Much has been achieved. I commend JCMSC for its dedication and commitment to the process of meeting the provisions of the Agreement and hope they will focus energies on the areas of concern. Thank you for the opportunity to be a part of this historic settlement.

## Discussion of Compliance Findings

### Methodology

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

During the five-day site visit, I observed the following: 17 delinquency hearings, seven detention/probable cause hearings, two probation conferences, and five cases on the major crimes docket. Unfortunately I was not able to observe any transfer hearings. During the site visit I had meetings with the following: JCMSC court staff, three magistrates, three individual probation officers, a group of 17 panel attorneys, the staff of the new juvenile unit, the juvenile defender coordinator, the Chief Defender, the new Clinical Services Director, the chief juvenile District Attorney, the juvenile justice consortium, and the Ad Hoc Committee. I also reviewed the third compliance report prepared by Settlement Coordinator Bill Powell. All of the above provided useful information about current JCMSC 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 JCMSC 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 JCMSC 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 JCMSC 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 JCMSC 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. Given that my first compliance visit occurred three weeks after the new policies were implemented, there was insufficient data to evaluate.

<b>PROBABLE CAUSE DETERMINATIONS</b>	<b>COMPLIANCE RATING</b>	<b>COMPLIANCE RATING</b>	<b>COMPLIANCE RATING</b>
	<b>APRIL 2013</b>	<b>OCT. 2013</b>	<b>APRIL 2014</b>
Within 90 days: revise policies to require prior to detaining a child Magistrate makes proper probable cause determination	Beginning Compliance	Partial Compliance	Partial Compliance
Within 90 days: insure PC determination within 48 hours of warrantless arrest	Beginning Compliance	Partial Compliance	Partial Compliance
Within 90 days: insure no child detained for more than 48 hours prior to Detention Hearing if Court has not made PC determination	Beginning Compliance	Partial Compliance	Partial Compliance
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>	Beginning Compliance	Partial Compliance	Partial Compliance
<ul style="list-style-type: none"> <li>b. Require govt to prove existence of PC with reliable evidence or affidavit of complaint</li> </ul>	Beginning Compliance	Beginning Compliance	Partial Compliance
<ul style="list-style-type: none"> <li>c. Allow defense attorneys opportunity to challenge PC</li> </ul>	Beginning Compliance	Partial Compliance	Beginning Compliance
<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>	Insufficient Information/ Pending	Beginning Compliance	Partial Compliance

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.	Insufficient Information/ Pending	Beginning Compliance	Partial Compliance
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## Probable Cause

### Comments

Overall, the policies created to ensure due process at the probable cause and detention hearing continue to be followed. Observations and data review revealed that no child is being held for over 48 hours without a finding of probable cause. Further, in every case an attorney is present to represent the child at the probable cause and detention hearing stage.

The data collection system has begun to track issues related to contesting an AOC. An issue that was raised in my previous report was the failure of juvenile defenders to contest the AOC. As per the Agreement, a record is maintained reflecting when defense counsel was appointed and the forms of evidence used. The data collected revealed improvement in this area:

Juvenile Defenders Contesting Affidavit of Compliant (sampling)	YTD 2013	Jan.-Feb. 2014
Contested Affidavit of Complaint	36%	68%
Contested via Oral argument	61%	95%
Contested via Written documents	2%	0%
Contested via Live Witnesses	2%	5%

In addition, the Court continues to review a sampling of case files and report the findings as per the agreement.

During my visit I observed seven probable cause hearings. Overall, I was pleased to see juvenile defenders arguing on behalf of their clients. In one case a juvenile defender was successful in getting a case dismissed. This case involved the theft of a cell phone. The juvenile defender was able to obtain a copy of the co-defendant's statement. The statement revealed that the co-defendant had possession of the cell phone at the time of the arrest and the co-defendant admitted to taking the cell phone. This was an excellent example of investigation and zealous advocacy.

*Potential Problem:* The Agreement requires that the government prove the existence of probable cause with reliable evidence and that the defense attorney be given an opportunity to challenge probable cause. During my compliance visit, several stakeholders mentioned a probable cause hearing where a juvenile defender attempted to subpoena the state's witnesses in order to cross examine the witnesses at a probable cause hearing. The magistrate assigned to that case denied the defenders' request.

Tennessee Rules of Juvenile Procedure, Rule 15 Procedures for Detention Hearings states as follow:

(a) *Explanation of Petition and Proceedings. At the beginning of the detention hearing, the court shall inform the parties as to the nature of the complaint, the purpose of the detention hearing, the possible consequences of the court's disposition in that and/or subsequent proceedings, and their legal rights, including:*

(3) *The right to confront and to cross-examine the persons who prepared any police reports, probation reports or other documents submitted, as well as any witness examined by the court during the detention proceedings.*

The Agreement follows the contours of Rule 15 and meets the due process requirements of the United States Constitution. Whether or not the court should allow juvenile defenders to subpoena the state's witnesses is beyond the scope of this compliance report. However, in examining this issue, it appears that many other jurisdictions have statutes that are similar to Tennessee's and explicitly grant the right to cross examine witnesses at the detention/probable cause hearings.<sup>24</sup>

Several courts have attempted to further explain a defendant's right to cross examine witnesses at the detention/probable cause stage. For example, in Illinois "[a]t a detention proceeding, the minor respondent must be represented by counsel, and is afforded an opportunity to fully cross examine the State's witnesses." *In re W.J.*, 284 Ill. App. 3d 203, 209, 672 N.E.2d 778, 782 (1996). In the District of Columbia, "[a] delinquency respondent has the same basic rights in a probable cause hearing as an adult alleged offender does in a preliminary examination, *i.e.*, to cross-examine government witnesses and introduce evidence on his own behalf on the question of probable cause." *Matter of R.D.S.*, 359 A.2d 136, 139 (D.C. 1976). In Massachusetts, "[s]ince the purpose of the probable cause hearing is to 'screen out at this ... critical stage of the criminal process those cases that should not go to trial,' we have held that defendants at such hearings must have the opportunity to cross-examine adverse witnesses and to present testimony in their own behalf to the extent available at a trial." *Com. v. Ortiz*, 393 Mass. 523, 534, 471 N.E.2d 1321, 1329 (1984) (internal citation omitted) (and affirming that juvenile probable cause hearings are identical in purpose, and, non-explicitly, as to form, as adult probable cause hearings). Finally, in North Dakota, "[u]pon application of a party the court or the clerk of the court shall issue, or the court on its own motion may issue, subpoenas requiring attendance and testimony of witnesses and production of papers at any [juvenile court] hearing." N.D. Cent. Code Ann. § 27-20-18. That said, the North Dakota Supreme Court has also held that "the right to confrontation is a trial right and does not apply to the same extent at pretrial hearings." *In re R.A.*, 799 N.W.2d 332, 340 (N.D. 2011). I expect this issue to continue to evolve in Memphis.

One final issue I would like to raise regarding probable cause is the current culture of requiring detention for any juvenile charged with a gun offense. This seems to be the case even if the gun was not found on the juvenile, but was in the vicinity of the juvenile (i.e. juvenile was in a car as a passenger along with several others). I believe there is much case law favoring individualized determinations in juvenile court. I encourage further conversation on this issue.

<b>NOTICE OF CHARGES</b>	<b>COMPLIANCE RATING</b> <b>APRIL 2013</b>	<b>COMPLIANCE RATING</b> <b>OCT. 2013</b>	<b>COMPLIANCE RATING</b> <b>OCT. 2013</b>
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.	Beginning Compliance	Partial Compliance	Partial Compliance
When changes are made to charges as set forth in petition prior to adjudicatory hearing that could increase the penalty, JCMSC 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.	Beginning Compliance	Partial Compliance	Partial Compliance
When changes are made to charges as set forth in petition prior to adjudicatory hearing that could reduce the penalty, JCMSC shall provide notice of final charges by providing copies of new Petition within 24 hours of change in charges.	Beginning Compliance	Partial Compliance	Partial Compliance
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.	Insufficient Information/Pending	Partial Compliance	Partial Compliance

## Notice of Charges

### Comments

JCMSC 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>
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	Beginning Compliance	Partial Compliance	Partial Compliance
b. Children have right to attorney whose role is to represent their stated interest	Beginning Compliance	Partial Compliance	Partial Compliance
c. Children, through their attorney, are provided opportunity to present evidence on their own behalf	Non – Compliance	Insufficient Information	Beginning Compliance
d. Children, through attorney, provided opportunity to confront evidence & witnesses	Non – Compliance	Beginning Compliance	Partial Compliance
e. Children are protected from self-incrimination	Beginning Compliance	Partial Compliance	Partial Compliance
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	Beginning Compliance	Beginning compliance	Partial Compliance
g. Judge or Juvenile Court Magistrate considers & documents consideration of factors relevant to findings including 7 factors	Non – Compliance	Beginning Compliance	Partial Compliance
Each month, Judge, or designee, shall review all files related to Transfer Hearings to insure Hearings followed Agreement. Review shall	Insufficient Information/	Beginning Compliance	Partial Compliance

include periodic observations of Transfer Hearings to insure Magistrates follow policies.	Pending		
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## Transfer Hearings

Overall, the policies that have been implemented by JCMSC are being followed and implemented. The prosecutors are presenting evidence in support of transfer petitions, children have attorneys appointed to represent them, children are protected from self-incrimination, judges and magistrates are making written findings regarding developmental disability and documenting consideration of the seven factors, and periodic review continues to occur.

Concerns regarding juvenile defender practice: I have made extensive comments in the Executive Summary of this report regarding my concerns in this area. In addition to juvenile defenders not consistently requesting psychological evaluations, data revealed that juvenile defenders are still not consistently presenting evidence at transfer hearings.

### *Juvenile Defenders Not Presenting Evidence*

As I previously stated in my second compliance report,

*There are many types of evidence juvenile defenders could present at Transfer Hearings. It is unclear if the lack of evidence presented is a result of inadequate time, inability to access resources, inadequate training, or the receptiveness of the court to certain kinds of evidence.*

Transfer hearings are critical and practice must be thorough. At this point I am still unconvinced that the level of practice meets attorney ethical requirements or the terms of the Agreement.

National Practice Standards for juvenile defenders highlight the critical nature of transfer hearings and the high level of preparation and skill required:



NJDC standard 8.4 Advocate Against Transfer to Adult Court, says in part (e),

At the hearing, counsel *must*:*[emphasis added]*

1. Challenge any defect in the charges that would deprive the adult court of jurisdiction;
2. Raise any credible facial or “as applied” state or federal constitutional challenges to adult prosecution;
3. Present all facts, mitigating evidence, and testimony that may convince the court to keep the client in juvenile court, including the client’s amenability to treatment and the availability of tailored treatment options in juvenile court; and
4. Consider use of expert witnesses to raise the client’s capacity to proceed in adult court, amenability to rehabilitation in juvenile court, and related developmental issues.

The comment to standard 8.4 goes on to state:

*“Counsel should present testimony to prevent transfer, including testimony by people who can provide insight into the client’s character, such as teachers, counselors, psychologists, community members, probation officers, religious affiliates, family members, friends, employers, or other persons with a positive personal or professional view of the juvenile. Counsel must ensure that evidence is presented under oath and as part of the record at the hearing.”*

I am aware that juvenile defender training on transfer hearings was conducted on April 24-25. It was reported that 16-30 attorneys attended the training. Unfortunately, as I mentioned in the Executive Summary, not all attorneys were able to attend the training and the juvenile defender panel coordinator did not attend.

I have the following specific recommendations in this area:

1. Develop data collection tools to assess quality of attorney representation at transfer hearings
2. Implement attorney practice standards for transfer hearings
3. Require mandatory JTIP training on transfer hearings as a qualification for all attorneys who handle transfer hearings.
4. Mandatory JTIP training on transfer hearings as a qualification for all attorney supervisors.

<b>PROTECTIONS AGAINST SELF-INCRIMINATION</b>	<b>COMPLIANCE RATING</b>	<b>COMPLIANCE RATING</b>	<b>COMPLIANCE RATING</b>
	<b>APRIL 2013</b>	<b>OCTOBER 2013</b>	<b>APRIL 2013</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	Beginning Compliance	Partial Compliance	Partial Compliance
Within 90 days: notify Child's attorney in writing of any probation conference or interview which shall be open to defense attorney.	Beginning Compliance	Beginning Compliance	Partial Compliance
Within 90 days: insure POs advise Children of Miranda Rights. Shall include	Beginning Compliance	Beginning Compliance	Partial Compliance
a. Description of role of defense attorney			
b. Statement Child is entitled to attorney & maybe at no cost	Beginning Compliance	Beginning Compliance	Partial Compliance
c. Statement that Child's statements regarding offense can be included in Probation report	Beginning Compliance	Beginning Compliance	Partial Compliance
d. Statement that Child's statement can be used against them.	Beginning Compliance	Beginning Compliance	Partial Compliance
POs have Children document understanding of rights against self-incrimination & must receive advice of attorney before waiving it.	Beginning Compliance	Beginning Compliance	Partial Compliance
Consider partnership w/non-profit of academic organization to provide advice and support to children during the probation intake process	Suggested, Not required	Suggested Not required	Suggested Not required
Within 30 days: prohibit adverse use of information obtained from child during probation conference	Beginning Compliance	Partial Compliance	Partial Compliance
Within 30 days: insure Magistrates do not permit the govt to call Children as witnesses in Child's own Adjudicatory or Transfer Hearing	Beginning Compliance	Partial Compliance	Partial Compliance

Within 30 days: Magistrates required to give oral advisement of rights against self-incrimination to any Child wishing to testify at own hearing	Beginning Compliance	Partial Compliance	Partial Compliance
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	Insufficient Information	Insufficient Information	Beginning Compliance
Immediately cease providing Visit & Contact forms to Magistrates prior to Adjudicatory Hearings.	Partial Compliance	Partial Compliance	Partial Compliance

## Protections Against Self-Incrimination

### Comments

#### *Self-Incrimination during In Court Hearings:*

The policies created to address self-incrimination during court hearings continue to be implemented and institutionalized. During detention/probable cause hearings and adjudicatory hearings, magistrates consistently took the time to inform children of their right to remain silent. Sample file review is also occurring and the data collection system reveals uniform compliance with the new policies.

#### *Self-Incrimination during Probation Conferences:*

##### *Training regarding Miranda Rights*

Since the last compliance report, the probation department has worked hard to improve the Miranda Rights form used during probation conferences. I cited concerns in my previous report that some probation officers were simply “reading a script” and it was clear that the child did not understand their legal rights. Since my last report there have been several significant changes. First, the Miranda Rights form has been revised to include child friendly language and an interactive format. Second, all staff participated in a training. The training explained the importance of the new child-friendly forms and the importance of asking the child to “repeat back” what was explained to test understanding.

During the visit I had the opportunity to observe several probation conferences and I was consistently pleased to see how the training had been incorporated into practice.

*Example:* I observed a probation conference where the child's mother was from Cambodia and did not speak English. The child's older brother was serving as a translator for the mother. The child, who was 14, did speak English. The probation officer used the interactive training format and asked the child to explain what each right meant.

When the probation officer asked: *"What does the "right" to remain silent mean?"*  
Child said: *"It means I should be quiet and not talk."*

The probation officer tried to explain it again, and when re-asked,  
The child said: *"It means I don't have to say anything."*

When the probation officer asked *"What does the "right" to an attorney mean?"*  
The child said, *"It means I can talk to someone about my problems."*

After several more exchanges, the probation officer said to the family, *"I'm not comfortable that he understands his rights. I want to make sure he has a lawyer."*

At this point, the probation officer left in search of a panel attorney. The panel attorney then entered the room and took over the representation of the child. I was very pleased that the probation officer took so much time to test the child's understanding, and that the probation officer stopped the conference and made the decision to find an attorney.

Increase requests for attorneys at probation conferences: The probation department reported to me that since the training and the implementation of the new form, more children are requesting attorneys at probation conferences. During my compliance trip it was reported that prior to the training, attorneys were rarely, if ever, requested. However, in the week preceding my visit there were 8-10 requests for attorneys.

It is exciting to see so many positive changes. I am hopeful that all new probation hires will be similarly trained and that the recent gains will be maintained. As I stated in my second compliance report, I think the probation department should consider eliminating probation conferences for cases where diversion is not an option. When a probation officer knows that the case must go to court, the purpose of the probation conference is not clear.

#### *Probation Conference Monthly Data Collection*

This is an area that needs continued focus. In the past several months the data collection form has gone through multiple revisions. At this point, I believe a revised data collection system has been created to capture the sampling required by the Agreement. I hope to see the outputs of this new system in the coming monthly reports. Once all data collection systems are established and routinized, substantial compliance can be achieved.

#### *Graduated Sanctions Grid*

As I stated in my Executive Summary, March 2014 was the first month the Graduated Sanctions Grid was placed into effect. The importance of this structured decision-making tool cannot be over emphasized. Given the large number of children who go through the probation department and who are eligible for diversion, it is paramount that management ensure

consistency, particularly to prevent bias. This tool separates offenses into four levels and there is a corresponding sanction list for each level.

While the Grid may need to be validated at some later point in time, the data from the first month is very encouraging. Of the 439 cases captured on the Graduated Sanctions Grid, 331 (75%) were handled non-judicially. Of the 439 cases, deviations from the grid occurred on 14% of the cases. Of these 14%, 10% of the deviations were downward overrides (meaning the child received a sanction that was *less* than recommended by the grid) and only 4% of the deviations were overrides for higher sanctions.

I find the very low number of overrides for higher sanctions very encouraging because it is an indication that the grid is a tool that can be consistently implemented and that there is consensus among the staff about the appropriateness of sanctions. I also think the small number of higher overrides indicates that the process for creating the grid was sound and that training regarding how to use the grid has been effective. Finally, I want to note the incredible amount of effort it took to build a data collection system to track this information. I am hopeful that this tracking can become automated and that data from the grid will become part of the JCMSC culture.

<b>JUVENILE DEFENDERS</b>	<b>COMPLIANCE RATING</b>	<b>COMPLIANCE RATING</b>	<b>COMPLIANCE RATING</b>
	<b>APRIL 2013</b>	<b>OCT. 2013</b>	<b>APRIL 2014</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	Beginning Compliance
i. Support Juvenile Public Defender Training	N/A	N/A	Beginning Compliance
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	Beginning Compliance
k. Implement attorney practice standards for juvenile defenders	N/A	N/A	Beginning Compliance

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	Beginning Compliance
b. Establish Panel System Overseen by independent body to handle conflicts	N/A	N/A	Insufficient Information
c. Support attorney practice standards for juvenile defenders including training and evaluation.	N/A	N/A	Beginning Compliance
d. Insure juvenile defender has confidential meeting space to confer with clients within the facility	N/A	Beginning Compliance	Partial Compliance

## Juvenile Defenders

As I noted in my Executive Summary, a specialized juvenile unit within the Office of the Public Defender has been created. JCMSC is also appointing juvenile defenders to represent children at detention hearings and probable cause determinations as soon as possible. JCMSC has provided juvenile defenders a confidential meeting space to confer with clients within the courthouse.

*Memphis Public Defender Creates Specialized Juvenile Unit (See also Executive Summary)*

The transition of the new juvenile unit into the delinquency practice at JCMSC has been very smooth and there has been a great level of respect and professionalism from all involved. There have been no major disruptions. I am hopeful that this will continue throughout the adjustment process.

Much progress has been made in the short amount of time since the unit was created in December of 2013, all of which is promising:

1. Permanent office space has been secured at 600 Adams Avenue (which is adjacent to juvenile court) and the physical space is being refitted to provide workspace for lawyers and meeting space for juvenile clients and caregivers. This will be a significant improvement over the current temporary space. The current space, 160 N. Main Street, lacks parking and signage and creates accessibility issues for children and caregivers.

2. The juvenile unit was recently awarded the MacArthur SAMHA Policy Academy grant to address unmet behavioral health needs of children at the diversion stage.
3. The juvenile unit will attend Dr. Kirk Heilbrun's adolescent development training to be offered in June 2014.
4. Supervisor Donna Armstard recently received JTIP "trainer's" training in Ohio which will hopefully benefit the entire unit.
5. Two juvenile unit defenders have been accepted into the *Juvenile Training Immersion Program, Summer Academy at Georgetown University Law School* for a weeklong training. (See <http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/our-clinics/JJC/new-projects/jtip-summer-academy.cfm>)
6. Attorneys from the unit hope to participate in Georgetown University's Center for Juvenile Justice Reform, *Reducing Racial and Ethnic Disparities* certificate program. (See <http://cjjr.georgetown.edu/certprogs/racialdisparities/racialdisparities.html>)
7. Data collection systems are being implemented; however at this early stage data is too limited to be indicative. As I stated in my executive summary, I recommend that Chief Defender Bush provide a report prior to my next compliance visit which assesses the capacity of the unit in the context of juvenile defense standards.

*A note about juvenile training:* Historically, juvenile court practice has been extremely inadequate for a variety of reasons, including lack of training in this specialized area of the law. In many jurisdictions, juvenile court is used as a "training ground" for new attorneys at the expense of children. Even those public defender offices that have juvenile units are often not sufficiently trained and supervised. I am pleased to see the attention paid to thorough training at the beginning of this process. Existing national standards and guidelines for juvenile defenders are very specific regarding the types of training that is required. For example, *National Juvenile Defender Standards 1.3* states as follows:

### **National Juvenile Defender Standards 1.3**

Specialized and comprehensive training, preparation, and education are required to provide effective representation of young people. At a minimum:

- a. Counsel should be familiar with and utilize state juvenile delinquency statutes, criminal statutes, case law, rules of procedure, rules of evidence, and rules of appellate procedure that impact juvenile practice;
- b. Counsel should be knowledgeable about the key aspects of developmental science and other research that informs specific legal questions regarding capacities in legal proceedings, amenability to treatment, and culpability; counsel should recognize when to consult experts;
- c. Counsel must be properly trained in effective adolescent interviewing techniques;
- d. Counsel must have training in the specialized skill of communicating with young clients in a developmentally appropriate and effective manner;
- e. Counsel should be up-to-date on the consequences of juvenile adjudication; and
- f. Counsel should be proficient with the operations of, and laws regarding, child-serving institutions, including schools, social service agencies and mental health agencies.

In addition, principle seven of the *Ten Core Principles for Providing Quality Delinquency Representation through Public Defender Delivery Systems* state as follows:



## **Principle 7**

The Public Defense Delivery System Provides and Requires Comprehensive, Ongoing Training and Education for All Attorneys and Support Staff Involved in the Representation of Children.

- A. The public defense delivery system recognizes juvenile delinquency defense as a specialty that requires continuous training in unique areas of the law. The public defense delivery system provides and mandates training on topics including detention advocacy, litigation and trial skills, dispositional planning, post-dispositional practice, educational rights, appellate advocacy and procedure and administrative hearing representation.
- B. Juvenile team members have a comprehensive understanding of the jurisdiction's juvenile law and procedure, and the collateral consequences of adjudication and conviction
- C. Team members receive training to recognize issues that arise in juvenile cases and that may require assistance from specialists in other disciplines. Such disciplines include, but are not limited to:
  - 1. Administrative appeals
  - 2. Child welfare and entitlements
  - 3. Special Education
  - 4. Dependency court/abuse and neglect court process
  - 5. Immigration
  - 6. Mental health, physical health and treatment
  - 7. Drug addiction and substance abuse
- D. Training for team members emphasizes understanding of the needs of juveniles in general and of specific populations of juveniles in particular, including in the following areas:
  - 1. Child and adolescent development
  - 2. Racial, ethnic and cultural understanding
  - 3. Communicating and building attorney-client relationships  
    With children and adolescents
  - 4. Ethical issues and considerations of juvenile representation
  - 5. Competency and capacity
  - 6. Role of parents/guardians
  - 7. Sexual orientation and gender identity awareness
  - 8. Transfer to adult court and waiver hearings
  - 9. Zero tolerance, school suspension and expulsion policies
- E. Team members are trained to understand and use special programs and resources that are available in the juvenile system and in the community, such as
  - 1. Treatment and problem solving
  - 2. Diversionary programs
  - 3. Community-based treatment resources and programs
  - 4. Gender-specific programming

### *Areas of concern*

While recognizing the progress made, I have the following concerns:

1. Lack of JCMSC accommodation for juvenile defender training. (See Executive Summary) ;
2. Lack of attorney practice standards: At this point I have not seen any practice standards, though it is my understanding that practice standards are in progress. I have rated this section with “beginning compliance” because it is clear that Chief Defender Bush spent the past eighteen months disseminating the National Juvenile Defender Standards, and has been involved in several JTIP trainings which train juvenile defenders to the National Juvenile Defender Standards.
3. Lack of independent body to oversee panel system: I have rated this section with “insufficient information” because I have not yet received any information for this aspect of the Agreement.
4. Concerns regarding existing panel structure: I have several concerns about the existing structure of the panel attorneys: a) whether or not true independence has been achieved from the judiciary, b) inherent limitations of the fee cap structure, c) lack of leadership and oversight, and d) lack of a data collection system.

a. *Lack of Independence: (See Executive Summary)*

Independence issues were raised during the recent juvenile defender trainings. As I noted in my Executive Summary, when juvenile defenders had scheduled trainings in January and April of this year, the court was uncooperative. When, at least two weeks in advance, the court became aware of the training dates, the court stated that it would not relist the cases.

In a healthy system, when there is an impasse such as this, I would expect vigorous dialogue between juvenile defender management and the court. I would hope that both the juvenile defender coordinator and the Chief Defender of juvenile unit supervising attorney would approach the court and explain why this training is critical, and propose some kind of compromise. I would also hope that the court would appreciate why it is important, and seek to find a mutually beneficial solution. For example, even if the court did not want to completely close the court room, it could have better accommodated the training by telling the attorneys on both sides that all case continuances would be granted whenever requested. This compromise would allow essential hearings (such as those involving children in detention) to be heard, while in other cases, witnesses for the state and defense could have been given advance notification of the relisting to avoid missing school or work. I was also later told that the panel coordinator believed that she couldn't attend the training because of the court's expectations.

The lack of independence may also be the root cause of an inability to address concerns raised in my previous compliance reports, such as the failure to present evidence at probable cause and transfer hearings.

b. *Limitations of Fee Structure: Rule 13:*

While most of the counties in the state of Tennessee are part of a statewide public defender system, two counties, Shelby and Davidson, are not. Clearly, the current structure does

not adequately compensate the panel attorneys. I learned that panel attorneys are reimbursed by the state of Tennessee at the low rate of \$40/hour. In addition, there is the limitation of Rule 13’s “fee cap.” Further, there can be significant delays in panel attorneys receiving reimbursement and the amount may be reduced despite approval by JCMSC. I believe this process is counterproductive to the intention of the agreement and unnecessarily penalizes defense attorneys. I am hopeful that more detail regarding these issues will be provided by Chief Defender Bush in the report to be provided before the next compliance tour. (*See Executive Summary*).

*c. Lack of Panel Attorney Leadership and Oversight*

As mentioned in my previous compliance report and above, there is a clear lack of panel leadership. There are obvious communication issues and confusion among the panel. This was most recently demonstrated at the transfer hearing training that was conducted by national experts. It was reported to me that not all the panel attorneys were invited to the training, that some attorneys who were not invited attended, and that the panel coordinator was not present. The lack of leadership may be connected to independence issues raised above. This is particularly disconcerting given that issues surrounding transfer hearings have been repeatedly raised in my reports for the past 18 months.

In addition, the panel attorney selection and evaluation process remains unclear. While some attorneys are obviously very skilled and zealous advocates, others appear ineffective.

*d. Lack of data collection system*

Current leadership does not have a way to accurately assess the quality of representation of individual panel attorneys. I have raised this issue and am hopeful that results from a new data collection system will be available at my next visit.

<b>CONFIDENTIALITY OF JUVENILE DELINQUENCY PROCEEDINGS</b>	<b>COMPLIANCE RATING APRIL 2013</b>	<b>COMPLIANCE RATING OCTOBER 2013</b>	<b>COMPLIANCE RATING APRIL 2014</b>
Within 30 days: revise policies to protect confidentiality in delinquency proceedings	Beginning Compliance	Partial Compliance	Partial Compliance
Insure only person properly concerned with child’s case are admitted into any delinquency proceeding	Beginning Compliance	Partial Compliance	Partial Compliance

**Confidentiality of Juvenile Delinquency Proceedings**

Comments

The policies continue to be incorporated into practice without incident.

<b>PLEA COLLOQUIES</b>	<b>COMPLIANCE RATING</b> <b>APRIL 2013</b>	<b>COMPLIANCE RATING</b> <b>OCTOBER 2013</b>	<b>COMPLIANCE RATING</b> <b>APRIL 2014</b>
Within 6 months: establish procedure for plea colloquies that is age-appropriate and clear to the Child	N/A	Partial Compliance	Partial Compliance
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	Partial Compliance	Partial Compliance
Within 6 months: insure children have a right to counsel whenever entering a plea of guilty	N/A	Partial Compliance	Partial Compliance

Comments

Observations and recording indicate that judges and magistrates are conducting interactive oral colloquies that include all of the above requirements. It appears that JCMSC has incorporated the new policies into practice.

<b>RESTITUTION GUIDELINES</b>	<b>COMPLIANCE RATING</b> <b>APRIL 2013</b>	<b>COMPLIANCE RATING</b> <b>OCTOBER 2013</b>	<b>COMPLIANCE RATING</b> <b>APRIL 2014</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. At a minimum the restitution guidelines shall: <ul style="list-style-type: none"> <li>i. Require documentation to support the restitution request</li> <li>ii. Allow children adequate time to review the restitution request &amp; opportunity to introduce evidence opposing the amount</li> <li>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</li> </ul>	N/A	Partial Compliance	Partial Compliance

Comments

During this compliance visit I reviewed twenty files where restitution was ordered. In each case it appeared that the policy was followed and that restitution was ordered only after appropriate documentation was obtained.

<b>BOND SETTING GUIDELINES</b>	<b>COMPLIANCE RATING</b> <b>APRIL 2013</b>	<b>COMPLIANCE RATING</b> <b>OCTOBER 2013</b>	<b>COMPLIANCE RATING</b> <b>APRIL 2013</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	Partial Compliance	Partial Compliance

Comments

During my third compliance visit, I reviewed twenty files where bond was set. Bond amounts appear to be set in accordance to the guidelines.

<b>LANGUAGE ACCESS PLAN</b>	<b>COMPLIANCE RATING</b> <b>APRIL 2013</b>	<b>COMPLIANCE RATING</b> <b>OCTOBER 2013</b>	<b>COMPLIANCE RATING</b> <b>APRIL 2014</b>
Within 6 months: develop language access plan that complies with Title VI. Make summons & other crucial documents available in appropriate languages	N/A	Partial Compliance	Partial Compliance
Implement language access plan within 1 year	N/A	Beginning compliance	Partial Compliance

Comments

The language access plan has been in effect since April 15, 2013. During my third compliance visit I did not observe any hearings where a court interpreter was available. However, in discussing language access issues with various JCMSC stakeholders, I was told that there are some challenges with “Language Line” (which is the service the court occasionally uses for interpretation issues). Over the next six months I will request court recordings where the language line was used.

<b>TREATMENT OF WITNESSES</b>	<b>COMPLIANCE RATING</b> <b>APRIL 2013</b>	<b>COMPLIANCE RATING</b> <b>OCTOBER 2013</b>	<b>COMPLIANCE RATING</b> <b>APRIL 2014</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	Partial Compliance	Partial Compliance

Comments

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

<b>JUDICIAL BENCH CARDS</b>	<b>COMPLIANCE RATING</b> <b>APRIL 2013</b>	<b>COMPLIANCE RATING</b> <b>OCTOBER 2013</b>	<b>COMPLIANCE RATING</b> <b>APRIL 2014</b>
<p>Within 6 months: develop bench cards Bench cards shall be readily accessible documents. Should be available upon request</p> <p>JCMSC shall produce bench cards for the following:</p> <ul style="list-style-type: none"> <li>a. Detention Hearing, PC determinations and bond settings</li> <li>b. Adjudicatory Hearings</li> <li>c. Plea colloquies</li> <li>d. Transfer Hearings</li> <li>e. Disposition hearings, including procedures for setting restitution</li> <li>f. Post-dispositional hearings</li> </ul>	N/A	Beginning Compliance	Partial Compliance

Comments

The policy regarding bench cards was created June 17, 2013 and bench cards have been created. During my third visit I observed judges and magistrates utilizing the bench cards. It is my recommendation that the bench book be made available online for attorneys who practice at JCMSC.

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

Comments

During my third site visit I reviewed the files of all transfer hearings and 40 randomly selected adjudicatory hearings files. Each file contained a written finding of fact that appeared sufficient.

<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>
<p>Within 6 months: all hearings shall be recorded by electronic means, Private court reporters may provide written transcripts</p> <p>JCMSC shall insure recordings are complete &amp; of good quality</p> <p>JCMSC shall make recordings accessible at no cost to defense counsel representing indigent children</p> <p>Recordings shall be stored for 2 years</p>	N/A	Beginning Compliance	Partial Compliance

Comments

I had the opportunity to listen to recordings of court proceedings. I found the recordings to be clear and of good quality.

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

Comments

Training plans continue to be implemented for all JCMSC employees per the agreement.

**Attachment “A”**

**Graduated Sanctions Grid**

**Structured Decision Making Tool Used at JCMSC Probation Conferences**



## Graduated Sanctions Grid

Corrective Services • Juvenile Court of Memphis and Shelby County

Level I Offenses	Level I Sanctions
<ul style="list-style-type: none"> <li>• <b>Status Offenses</b></li> <li>• Traffic</li> <li>• Misdemeanors (A-C)</li> <li>• DUI (Refer to DUI Memo)</li> <li>• Failure To Appear</li> <li>• Denial</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Warning Letter</b> or Warning Letter In Lieu Of APC *</li> <li>• NPF*</li> <li>• Verbal Warning*</li> <li>• Warn/Counsel</li> <li>• Non-Custodial Diversion (MARRS, Youth Court &amp; APS Summons Project)</li> <li>• BYPASS</li> <li>• Defensive Driving School or Alive at 25</li> <li>• Forfeiture</li> </ul>
Level II Offenses	Level II Sanctions
<ul style="list-style-type: none"> <li>• Felony (C, D &amp; E) &amp; Amended Offenses ↑ ↓</li> <li>• Misdemeanor History</li> <li>• Violation Of Probation-New Charge or Technical</li> <li>• Failure To Appear</li> <li>• Denial</li> </ul>	<ul style="list-style-type: none"> <li>• Non-Custodial Diversion* (Youth Crt, Operation Hope, Com Serv &amp; MARRS)</li> <li>• Agreed Decree**</li> <li>• JC-180* (Comm Serv &amp; Continued Probation) (Refer to CSP Memo)</li> <li>• APC*</li> <li>• Petition</li> <li>• NPF**</li> </ul>
Level III Offenses	Level III Sanctions
<ul style="list-style-type: none"> <li>• Felony (A &amp; B) &amp; Amended Offenses ↑ ↓</li> <li>• Chronic Offender -Misdemeanor &amp; Felony</li> <li>• Subsequent Violation Of Probation – New Charge</li> <li>• Serious Property Damage, Violent, Extensive Injuries</li> <li>• Gun-Related</li> <li>• Failure To Appear</li> </ul>	<ul style="list-style-type: none"> <li>• Petition</li> <li>• APC*</li> <li>• NPF**</li> </ul>
Major Crimes (Level IV) Offenses	Level IV Sanctions
<ul style="list-style-type: none"> <li>• Class X Felonies (Murder 1<sup>st</sup> &amp; 2<sup>nd</sup> Degree, Kidnapping, Agg Robbery, Rape and Attempts &amp; Agg Offenses); Carjacking</li> <li>• Offenses Where Death Occurred</li> <li>• Failure To Appear</li> </ul>	<ul style="list-style-type: none"> <li>• Petition</li> <li>• APC*</li> </ul>

\*Sanction requires administrative approval by Supervisor or above (Refer to Memo on Level II offenses)

\*\*Requires administrative approval by Manager and above; may be reviewed for prosecutorial approval