

**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**

**Katherine Pascover
County Attorney**

**FROM: Sandra Simkins
Due Process Monitor**

DATE: June 13, 2017

RE: Compliance Report #9 - April 2017

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 regularly scheduled compliance review and site visit occurred April 3, 2017 – April 7, 2017. This report evaluates the extent to which Juvenile Court has complied with each substantive provision of the Due Process sections of the Agreement.

The original Agreement between Shelby County and the DOJ contained 15 separate sections and a total of 56 compliance provisions. I am pleased to report that Shelby County has successfully achieved and maintained substantial compliance for over a year in ten sections and on April 3, 2017, the DOJ terminated those sections of the Agreement. The following sections will no longer be under review: 1) Notice of Charges, 2) Plea Colloquies, 3) Restitution Guidelines, 4) Bond Setting Guidelines, 5) Confidentiality of Proceedings, 6) Language Access Plan, 7) Treatment of Witnesses, 8) Judicial Bench Cards, 9) Written Findings, and 10) Recordings of Juvenile Delinquency Hearings. As stated in the DOJ letter, “[t]he significant number of provisions meeting the termination requirement is a testament to the commitment and diligence of the Court, County and Sheriff’s office.”¹ In addition, certain provisions within the remaining five sections have also been terminated, and will be indicated within this report.

¹ DOJ letter April 3, 2017 from Steven H. Rosenbaum, Chief Special Litigation Section

Format

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2. Discussion of Compliance Findings
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Executive Summary

In the last several compliance reports I have highlighted the need for Shelby to develop an independent indigent defense system. This foundational issue has been a challenging topic since the signing of the Agreement. I am pleased to report that on March 23, Mayor Mark H. Luttrell, Jr., Mayor of Shelby County, signed an Executive Order “Recognizing, Affirming, and Approving the Public Defender Office of Shelby County Tennessee as an Independent Ethical and Zealous Provider of Defender Services in Shelby County.” I commend Mayor Luttrell and the County Attorney’s office for their commitment to seeking local solutions to this important issue. This step will allow the Shelby County Public Defender to implement recommendations consistent with the Executive Order as outlined in *The Blueprint to Achieve Compliance in Juvenile Defender Services*² (“Blueprint”).

For this reporting period, I am also pleased to report the following: 1) the continuation of the University of Memphis Cecil C. Humphreys School of Law Children’s Defense Clinic, 2) the percentage of children represented by the Public Defender Juvenile Unit has increased to 60% and 3) there has been progress regarding the filing and receiving of court motions and orders.

The remaining issues include: 1) Operationalizing the Executive Order through the *Blueprint*, 2) Independence of conflict counsel (panel attorneys) given the percentage of cases the panel attorneys handle, 3) Transfer issues (including problematic discovery practices and obstacles to defense attorneys obtaining psychological evaluations) and 4) Lack of attorneys at probation conferences (*see p.12*). The Court’s compliance status is as follows:

Compliance Standards	April 2013	Oct.2013	April 2014	Oct. 2014	April 2015	Oct. 2015	April 2016	Oct. 2016	April 2017	
Substantial Compliance	0	0	0	24	38	43	50	48	14	
Partial Compliance	1	26	44	23	16	11	3	5	4	
Beginning Compliance	25	17	10	5	1	1	0	0	0	
Non Compliance	3	0	0	1	0	0	2	2	2	
Insufficient Information/pending	5	2	1	2	0	0	1	1	1	

² *Blueprint* was attached as Exhibit “A” to compliance report #8.

Total # of Due Process Provisions in Agreement	34	45	55	55	55	55	56*	56*	21*	
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*I have divided one compliance measure into two parts given nature of progress, see p. ___.

Recent Positive Developments

1. Mayor Luttrell signed Executive Order Recognizing Public Defender Independence

The Executive Order³ articulates the importance of structural independence for the Shelby County Public Defender’s office, and includes provisions acknowledging the Public Defender’s prerogatives to “*advocate for funding and to participate fully in State and Shelby County budget proceedings, independently of undue political or judicial controls, and to seek, solicit, and advocate for funds for the operation of public defense services from any legal source whatsoever, public or private,*” and to “*recruit, retain, employ, supervise, evaluate and if necessary remove staff who delivers public defense services in Shelby County, as appropriate.*”

The independence to seek funds and hire/remove employees is vital to the ethical functioning of the Public Defender’s office. Also important is the Executive Order’s provision of “fall back rights” for the Public Defender.⁴ If terminated the Public Defender is now assured of another position in County government for which he/she is qualified. This protection mitigates the threat of political interference by ensuring the Public Defender is not forced to choose between advocacy and personal financial obligations.

The Executive Order is a prerequisite for full implementation of recommendations included in the Public Defender’s *Blueprint to Achieve Compliance in Juvenile Defender Services*, and a promising step towards structural independence required by the Memorandum of Agreement. I am requesting the Public Defender provide a written update of progress under the *Blueprint*, including both a detailed timeline and an implementation plan for ensuring that the Executive Order’s call for public defender independence is meaningfully and sustainably implemented, prior to the next compliance visit.

Remaining Issues of Concern

1. Operationalizing the Executive Order through the *Blueprint*

(See above comments)

³ Executive Order is attached as Exhibit “A” to this compliance report.

⁴ The “fall-back” protection in the Executive Order is a creative local solution toward establishing adequate assurances for the Chief Public Defender. I applaud the hard work on behalf of the County Attorney and other stakeholders to discern this option. This protection, in addition to supplemental information provided to me by the County Attorney that the Shelby County Public Defender holds the office in a *de jure* capacity, creates in my opinion an adequate level of independence, and adequately addresses concerns raised by the DOJ that protections were needed to ensure that the appointment and removal of the Chief Public Defender be shielded from political influence. See Winsome Gayle letter, October 30, 2014. Currently the public defender holds the office in a *de jure* capacity, and in order to be replaced, the Mayor must name an appointee and that appointee must be approved by a majority of the county commission before assuming office. This means that the Public Defender’s right to hold the office does not end until both conditions are met. See Memo from Kathryn Pascover and Marlinee Iverson, November 17, 2016.

2. *Independence of Panel Attorneys: Currently handling 40% of cases Panel Attorneys continue to be indirectly supervised by the Court*

Prior to the Memorandum of Agreement, juvenile defender services for indigent youth in Shelby County Juvenile Court were provided by a panel of private attorneys pursuant to Tennessee Supreme Court Rule 13. Those attorneys were selected, assigned, and supervised by the Court, with the assistance of a court employee serving as Panel Coordinator. The MOA, backed by legal and ethical standards, requires that all juvenile defense services be made independent of the Court. As an interim step toward full compliance, the *Blueprint* envisioned minimizing the impact of the appointed counsel panel by increasing capacity Public Defender capacity to provide all non-conflict representation. Panel Coordinator Scott Bearup reports that at this time the Public Defender is assigned all non-conflict cases for indigent youth. He reports, and data confirms, that the Public Defender's juvenile unit now represents 60% of the children requiring appointed counsel in delinquency cases and the panel currently represents 40%.

The Agreement requires that:

Within one year of the Effective Date, JCMSC shall take action to ensure independent, ethical, and zealous advocacy by the juvenile defenders representing Children in delinquency hearings. This action shall include:

b. Establishing a juvenile defender panel system, overseen by an independent body, to handle any delinquency cases that either pose a conflict for the specialized unit for juvenile defense or would cause the juvenile unit to breach workload restrictions required by this Agreement; (page 14)[Emphasis Added]

During my visit Mr. Bearup indicated he has consistently assigned all non-conflict assignments to the Public Defender, though he anticipates that the 40% may go down a little more, to 30 or 35%, when he is able to stop assigning panel lawyers to children based on prior representation. Assuming Mr. Bearup is correct, and if the numbers remain at 30% or above, there are still a significant number of children being represented by panel attorneys whose employment can be impacted by a judicial appointee. I will be discussing this issue with Mr. Bearup and Mr. Bush in an effort to see if additional adjustments could be made at this point (while maintaining workload controls).

I am requesting that local stakeholders and the Public Defender continue collaboration within the indigent defense community to explore options and develop proposals for final resolution of the panel independence problem.

3. *Transfer Issues: Problematic discovery practices and obstacles to obtaining evaluations.*

a. Problematic discovery practices: In my last compliance report I noted my concern that defense attorneys representing youth facing transfer were denied discovery until after the transfer decision was made by the Court. I heard this statement myself from several prosecutors during my October 2016 compliance visit, and it was confirmed in my conversations with defense attorneys. This is particularly important in Shelby County which transfers more youth than any other county in Tennessee.⁵ I also noted the recent release of the Tennessee Rules of Juvenile Practice and Procedure (“Rules”) including specific rules on discovery and transfer (Rules 206 and 208 respectively).⁶

Since October 2016 I have had the opportunity to do additional investigation and have learned there are many inconsistencies in discovery practices. These inconsistencies seem to depend on the individual personalities of defense attorneys and prosecutors. For example, in some cases prosecutors provide discovery such as defendant and witness statements, or allow attorneys to read statements prior to the transfer hearing, while others do not. When a defense attorney is not able to persuade the prosecutor to provide discovery, they rely on the affidavits of complaint (AOC’s). While the AOC is not discovery, in some cases a highly detailed AOC may mitigate the issue.⁷

Although information is incomplete, my research indicates that Shelby’s discovery practice is out of step with other Tennessee Counties, which provide discovery prior to transfer hearings. When I made inquiries to Davidson County, Hamilton County and Knox County juvenile defenders told me they routinely got discovery, either from the District Attorney or the Court ordered it be provided prior to transfer.

The official comment to Rule 206 of Tennessee’s Rules of Juvenile practice and Procedure explicitly notes that “some discovery may be critical in a transfer hearing,” and instructs that “the Court should use its discretion in granting access to information necessary to

⁵ See SANDRA SIMKINS, COMPLIANCE REPORT #3—APRIL 2014 (2014), page 7, available at https://www.justice.gov/sites/default/files/crt/legacy/2014/06/18/shelby_dueprocess3_6-16-14.pdf

⁶On July 1, 2016, the Tennessee Administrative Office of the Courts released the Tennessee Rules of Juvenile Practice and Procedure (“Rules”) *Rule 206 Discovery: (a) Each juvenile court shall ensure that the parties in delinquent and unruly proceedings have access to any discovery materials consistent with Rule 16 of the Rules of Criminal Procedure. (b) An informal request for discovery is encouraged, but if the parties cannot agree as to discovery, then a formal discovery request shall be made.*

Advisory Commission Comments. *In drafting this rule, the Commission was concerned with potential burdens and delays that might be caused if existing criminal discovery methods were applied without modification to juvenile court proceedings. This does not preclude adoption by each court of local rules of procedure to implement the discovery mechanisms found in the Tennessee Rules of Criminal Procedure. The Commission emphasizes the mandate of Supreme Court Rule 18, which limits local rules to those “not inconsistent with . . . the Rules of Juvenile Procedure[.]” State v. Willoughby, 594 S. W.2d 388 (Tenn. 1980) holds that discovery rules do not apply to preliminary examinations and hearings. Therefore, this rule would not apply to any probable cause hearing in juvenile court with the caveat that this rule is not the exclusive procedure for obtaining discovery. **Please note that some discovery may be critical in a transfer hearing.** The Court should use its discretion in granting access to information necessary to defend or prosecute a transfer case. The state must disclose any exculpatory evidence to the child’s attorney per Brady v. Maryland, 373 U.S. 83 (1963)..... (<http://www.tncourts.gov/rules/rules-juvenile-procedure/206>*

⁷I had the opportunity to review the AOC’s of all youth transferred in the past six months and found there was a wide range of specificity. Some of the AOC’s are very thorough and detailed (even containing partial statements) while others are more cursory.

defend or prosecute a transfer case.” The official comment also cites, State v. Willoughby, 594 S.W.2d 388 (Tenn. 1980). However, *Willoughby* does not involve a juvenile transfer case..

The question, then, is what “information” is “necessary” to defend a transfer hearing. The answer lies in the significance of the hearing and the wide range of issues under consideration. Under T.C.A. section 37-1-134 and other applicable law, courts presiding over transfer hearings must consider questions that go far beyond a probable cause determination. The law of Tennessee requires that judges balance the seven *Kent*⁸ factors prior to transfer: (1) the extent and nature of the Child’s prior delinquency; (2) the nature of past treatment efforts and the nature of the Child’s response thereto; (3) the Child’s suitability for additional treatment; (4) the nature of the delinquent act alleged; (5) the Child’s social factors; (6) the alternatives within the juvenile justice system which were considered and the rationale for rejecting those alternatives; and (7) whether the juvenile court and juvenile justice system can provide rehabilitation of the juvenile. Section: 37-1-134.

In addition, National Juvenile Court and Family Court Juvenile Delinquency Guidelines reinforce how critical it is for counsel to have resources in order to prepare:

*Because of the very serious potential consequences if the juvenile delinquency court decides to waive jurisdiction and transfer the youth to the criminal court, including lengthy incarceration, and possible abuse in adult prison of immature or special needs youth, it is critical that counsel has the time and resources to prepare for the probable cause hearing. Counsel must understand child and adolescent development, developmental disabilities, victimization and trauma, mental health, mental retardation and maturity issues, and the treatment services that are available in the juvenile justice system... counsel should investigate all circumstances of the case relevant to the appropriateness of transfer. Counsel should also seek disclosure of any reports or other evidence that will be submitted to, or may be considered by the court, in the course of transfer proceedings. If circumstances warrant, counsel should have requested appointment of an investigator or expert witness to aid in the preparation of the defense, and any other order necessary to protect the youth’s rights, during pre-trial proceedings. Counsel should also fully explain the nature of the proceedings and the consequences of transfer to the youth and the youth’s parent or legal custodian. [Emphasis added]*⁹

⁸*Kent v. United States*, 383 U.S. 541 (1966). Careful analysis is particularly important given the recent U.S. Supreme Court decisions of *Roper v. Simmons* 543 U.S. 551 (2003) and *Graham v. Florida* 130 S. Ct. 2011 (2010) (which refer to delays in adolescent brain development and the corresponding impact on culpability).

⁹ National Council of Juvenile and Family Court Judges, “Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases” (2005) at 105, <http://www.ncjfcj.org/content/blogcategory/346/411/> at 105

Because of the issues at play in transfer hearings, and because of the extraordinary gravity of the consequences, I believe that considerations of fundamental fairness¹⁰, and the necessities of adequately preparing a defense mean that Shelby youth should be provided full discovery.¹¹ Withholding discovery, by contrast, risks unfairness, inaccurate results, and ineffective assistance of counsel. It also implicates prosecutors' ethical responsibilities to promote justice and disclosure of favorable information to the defense. Tennessee, like the ABA Model Rules, imposes particular duties on defense attorneys to "provide competent representation,"¹² "communicate and explain matters to a client,"¹³ and to ensure "candor to the tribunal."¹⁴ Lack of discovery jeopardizes an attorney's ability to fulfill their ethical obligation to provide competent representation, including investigation and counseling a client as to whether or not the juvenile should admit to the charges.¹⁵ Lack of discovery before transfer could result in the constructive denial of access to counsel¹⁶ or create the impression of an arbitrary system of justice.

Finally, Tennessee laws combined with the unique structure of Shelby County's Juvenile court make it particularly important to afford full discovery in transfer hearings. The laws of Tennessee preclude interlocutory appeals of transfer decisions¹⁷ and once a juvenile is transferred to adult court there are very limited "transfer back" provisions.¹⁸ In addition, the Tennessee process for juvenile appellate review outside of Shelby County is complicated resulting in very few juvenile appellate decisions. Finally, this is an issue that disparately impacts youth of color. Of the 71 youth who were transferred in 2016, 66 were black. In the past six months, from 10/1/16-3/15/17, of the youth who received notice of transfer 77 of the 87 cases or 88% involved black youth.

I am requesting that as soon as possible a plan be developed to ensure consistent discovery prior to transfer hearings. I encourage Juvenile Court to convene a meeting (and

¹⁰ There is a recent trend of cases that apply the requirements of the Due Process to find that the state must provide full discovery prior to a transfer hearing. *See State in the Interest of N.H.*, 141 A.3d 1178, 1186 (N.J. 2016) ("Because of the critical nature of juvenile waiver proceedings, and to ensure fairness at this essential stage, we conclude that the State should disclose all discovery in its possession soon after it seeks to waive jurisdiction in a juvenile matter and proceed in adult court.")

¹¹ *See* Tenn. R. Crim. P. 16, Tenn. R. Crim. P. 26.2.

¹² Tennessee Rule of Professional Conduct 1.1 Competence: A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

¹³ Tennessee Rule of Professional Conduct 1.4 Communication: A lawyer shall explain a matter to the extent reasonable necessary to permit the client to make informed decisions regarding representation.

¹⁴ Tennessee Rule of Professional Conduct 3.3

¹⁵ The Tennessee Supreme Court noted in *Missouri v. Fry*, 132 S.Ct. 1399 (2012), "plea bargains have become so essential to the administration of the criminal justice system that defense counsel have responsibilities in the plea bargain process that must be met to render the adequate assistance of counsel..." *Id* at 1407.

¹⁶ "The essence of this right ... is the opportunity for a defendant to consult with an attorney and to have him investigate the case and prepare a defense for trial." *Michigan v. Harvey*, 494 U.S.344, 348 (1990). *See also Kuren v. Luzerne*, 9-28-16; "[T]he Court has also recognized that the assistance of counsel cannot be limited to participation in a trial; to deprive a person of counsel during the period prior to trial may be more damaging than denial of counsel during the trial itself.

¹⁷ Section 37-1-159(d) of the Tennessee Code.

¹⁸ Section 37-1-134 (c) of the Tennessee Code.

consider using outside resources to facilitate the meeting if necessary), to resolve this important issue.

b. obstacles to obtaining psychological evaluations prior to transfer hearing: Since my last compliance report there have been several changes in policies regarding psychological evaluations. First, in order to get a psychological evaluation prior to transfer, the attorney must now file a motion and demonstrate that the evaluation is necessary. Second, after the evaluation is complete, the attorney must file a motion to “receive defendant’s psychological evaluation.” Let me be clear that in my opinion overwhelmingly youth facing transfer would require an evaluation. For small number of cases that might not require an evaluation, it seems that the attorney could waive the evaluation. It is my understanding that the second change in policy was a result of an isolated incident where confidential information was given to the child’s parent. Unfortunately, these policy changes result in additional steps/obstacles defense attorneys must take to represent their clients. I encourage the court to consider more narrow solutions to address these issues.

Discussion of Compliance Findings

Methodology

The information for this compliance report was obtained using the same methods as the previous seven 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 including a transfer hearing. 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 Public Defender, the Clinical Services Director, and the chief of the District Attorney’s juvenile unit. I also reviewed the eighth 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.

PROBABLE CAUSE DETERMINATIONS	April 2013	October 2013	April 2014	October 2014	April 2015	October 2015	April 2016	October 2016	April 2017	
Within 90 days: revise policies to require prior to detaining a child Magistrate makes proper probable cause determination	B C	P C	P C	S C	S C	S C	S C	S C	Complete	
Within 90 days: insure PC determination within 48 hours of warrantless arrest	B C	P C	P C	S C	S C	S C	S C	S C	Complete	
Within 90 days: insure no child detained for more than 48 hours prior to Detention Hearing if Court has not made PC determination	B C	P C	P C	S C	P C	S C	S C	S C	Complete	
Within 90 days: insure every child has meaningful opportunity to test PC by revising practices to a. Appoint defense attorney to represent any indigent child. Indigence should be presumed unless information to contrary is provided	B C	P C	P C	S C	S C	S C	S C	S C	Complete	
b. Require govt to prove existence of PC with reliable evidence or affidavit of complaint	B C	B C	P C	P C	P C	P C	S C	S C	SC	
c. Allow defense attorneys opportunity to challenge PC	B C	P C	P C	P C	S C	S C	S C	S C	Complete	
d. Require record be maintained reflecting when defense counsel appointed, forms of evidence used, & whether defense attorney challenged evidence or provided alternative evidence. Such record should be accessible from the info system	II/ P	B C	P C	P C	S C	S C	S C	S C	Complete	
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	B C	P C	P C	P C	P C	S C	S C	SC	

Comments: As indicated in the Executive Summary, several provisions within this section have been terminated. The remaining provisions are also in substantial compliance.

TRANSFER HEARINGS	APRIL 2013	OCT. 2013	APRIL 2014	OCTOBER 2014	APRIL 2015	OCTOBER 2015	APRIL 2016	OCTOBER 2016	APRIL 2017
Within 90 days: require Transfer Hearings comport with due process requirements. Specifically, shall insure all Transfer Hearings include: <i>a.</i> Asst DA presents evidence in support of petition for transfer	BC	PC	PC	SC	SC	SC	SC	SC	SC
<i>b.</i> Children have right to attorney whose role is to represent their stated interest	BC	PC	PC	SC	SC	SC	SC	SC	SC
<i>c.</i> Children, through their attorney, are provided opportunity to present evidence on their own behalf	NC	II	BC	PC	PC	SC	SC	PC*	PC
<i>d.</i> Children, through attorney, provided opportunity to confront evidence & witnesses	NC	BC	PC	PC	SC	SC	SC	PC*	PC
<i>e.</i> Children are protected from self-incrimination	BC	PC	PC	SC	SC	SC	SC	SC	SC
<i>f.</i> 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	SC/P C	SC**	SC	SC
<i>g.</i> Judge or Juvenile Court Magistrate considers & documents consideration of factors relevant to findings including 7 factors	NC	BC	PC	PC	SC	SC	SC	SC	Completed

*See Executive Summary. Lack of discovery curtails the youth's lawyer ability to provide representation and impacts due process.

** (for written findings) However There is no place in TN for DD youth

Comments

In the Executive Summary, I detailed many issues relating transfer. The current data for transferred youth is as follows: Transfer numbers have declined for 7 consecutive years until 2016 when they increased 51% over 2015 (47 to 71).

Shelby County	2008	2009	2010	2011	2012	2013	2014	2015	2016
# of children transferred to adult court*	225	194	151	121	99	90	77	47	71

*Data provided by JCMSC

Shelby County Notice of Transfers	
2014	182
2015	153
2016	149

Protections Against Self-incrimination	APRIL 2013	OCTOBER 2013	APRIL 2014	OCTOBER 2014	APRIL 2015	OCTOBER 2015	APRIL 2016	OCTOBER 2016	APRIL 2017
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	SC	SC	SC	Complete
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	PC	PC	PC	PC
Within 90 days: insure POs advise Children of Miranda rights. Shall include	BC	BC	PC	PC	SC	SC	SC	SC	Complete
a. Description of role of defense attorney									
b. Statement Child is entitled to attorney & maybe at no cost	BC	BC	PC	PC	SC	SC	SC	SC	Complete
c. Statement that Child's statements regarding offense can be included in Probation report	BC	BC	PC	PC	SC	SC	SC	SC	Complete
d. Statement that Child's statement can be used against them.	BC	BC	PC	PC	SC	SC	SC	SC	Complete

POs have Children document understanding of rights against self-incrimination & must receive advice of attorney before waiving it.*	BC	BC	PC	PC	PC	SC	SC	SC*	SC*
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	S/ NR	S/ NR	S/ NR	Complete
Within 30 days: prohibit adverse use of information obtained from child during probation conference	BC	PC	PC	SC	SC	SC	SC	SC	Complete
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	SC	SC	SC	Complete
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	SC	SC	SC	Complete
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	SC	SC	SC	Complete
Immediately cease providing Visit & Contact forms to Magistrates prior to Adjudicatory Hearings.	PC	PC	PC	SC	SC	SC	SC	SC	Complete

*Children do document understanding, but do not receive advice of attorney before waiving.

Comments

Comments

Lack of attorneys at probation conferences

As I noted in my Executive Summary, a remaining issue is the lack of attorneys at probation conferences. Several years ago there was an attempt made to resolve this issue but at the time it was unsuccessful because the Tennessee Administrative Office of the Courts refused to reimburse panel attorneys for the representation. There have been significant changes since that time. I encourage parties to the Agreement to revisit this issue and explore options. I am requesting the Administration consult with the Public Defender and other stakeholders, and take steps to meet this right to counsel obligation.

Children's Defense Clinic at University of Memphis Cecil C. Humphreys School of Law

In the Fall of 2016, the University Of Memphis Cecil C. Humphreys School Of Law opened a new Children's Defense Clinic--a first for the state of Tennessee, and in my prior reports I wrote about the value of the clinic program toward sustaining long term reforms in Shelby County. While the creation of a clinic is not a requirement of the MOA, I am pleased to report on the clinic's progress.

During this past compliance period the clinic had enrollment of 5 students plus 2 advanced clinic students. I am also pleased to report that on April 21, 2017 there was a law school symposium celebrating the 50th anniversary of *In re Gault*. This symposium featured nationally known speakers and was attended by approximately 75 attorneys. A component of the symposium was a JTIP training for Shelby juvenile defenders focusing on Pre-Trial discovery that was attended by defense attorneys from Knox, Nashville, Tipton and Kentucky. On December 9, 2016 the clinic also hosted a JTIP training attended by 22 panel attorneys and juvenile public defenders. This training focused on Evidence and Objections and 4th Amendment Challenges. While overall the clinic seems to be going well, I did note that the numbers of cases assigned were significantly down (from 22 cases in the Fall semester to 7 cases in the Spring).

JUVENILE DEFENDERS	APRIL 2013	OCT. 2013	APRIL 2014	OCT. 2014	APRIL 2015	OCT. 2015	APRIL 2016	OCT. 2016	APRIL 2017
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	PC	PC	PC	PC
i. Support Juvenile Public Defender Training	N/A	N/A	BC	PC	PC	SC	SC	SC	SC
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	PC	PC	PC	SC
k. Implement attorney practice standards for juvenile defenders	N/A	N/A	BC	BC	PC	PC	SC	SC	SC
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	PC	SC/ NC* *	SC/ NC **	SC /NC
b. Establish Panel System Overseen by independent body to handle conflicts	N/A	N/A	II	NC	BC	BC	NC	NC	NC
c. Support attorney practice standards for juvenile defenders including training and evaluation.	N/A	N/A	BC	BC	PC	PC	I/I ***	I/I ***	I/I
d. Insure juvenile defender has confidential meeting space to confer with clients within the facility	N/A	BC	PC	PC	SC	SC	SC	SC	SC

** SC for timely appointment, NC because not independent, ***unclear if new PC can enforce defense standards due to structure

In the executive summary I congratulated the Mayor on signing the Executive Order ‘Recognizing, Affirming, and Approving the Public Defender Office of Shelby County Tennessee as an Independent Ethical and Zealous Provider of Defender Services in Shelby County.’ I look forward to the implementation of various components of the *Blueprint* to effectuate the intent of the Executive Order.

It is the Public Defenders goal to provide representation for 100% of all juvenile delinquency cases where there is no ethical conflict of interest. As for the recent site visit the Public Defender is now providing 60% of all delinquency defender services. In the executive summary I have detailed my independence concerns about the large number of cases that continue to be handled by the panel.

	2017 (to 3/27)
Juvenile Defender	234 40%
Public Defender	346 60%
Total Distinct Complaints	580

Progress: Motions, Orders, and Docket Numbers: In my last compliance report I asked settlement coordinator Bill Powell to address complaints regarding defense obstacles to filing motions, receiving court orders and obtaining docket numbers. I am pleased to report that much progress has been made and at present the problems seem to have been resolved. I would like to acknowledge that this success was a result of the persistence and collaboration of both the Court and the Juvenile Court Clerk.

Post Disposition Success Stories: One of the highlights of my visit was listening to public defender social workers recount success stories of youth who had been sent to the Department of Children’s Services (DCS) corrective at Wilder. I heard about the school, work and community connections that were made by social workers on behalf of Shelby youth that resulted in their successful reintegration into the community. Post Disposition representation supports the important rehabilitative goals of juvenile court.

TRAINING	April '13	October '13	April '14	Oct. '14	April '15	Oct. '15	April '16	Oct. '16	April '17
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	PC	SC	SC	SC
Juvenile Court shall implement 1 st training plan within 12 months & shall create subsequent training plans on an annual basis thereafter	N/A	N/A	BC	PC	PC	PC	SC	SC	SC

Comments

During the last compliance period the court has maintained substantial compliance.