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

Craig E. Willis,
Assistant County Attorney

FROM: **Sandra Simkins**
Due Process Monitor

DATE: **December 12, 2013**

RE: **Compliance Report #2**

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 second regularly scheduled compliance review and site visit occurred October 7, 2013 through October 11, 2013. This report evaluates the extent to which JCMSC has complied with each substantive provision of the Due Process sections of the Agreement.

Format

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Executive Summary

This report documents observations from the second compliance visit as required by the Agreement. Overall, JCMSC has continued to improve and make progress. JCMSC is becoming a healthy court environment where due process rights of children are protected and public safety concerns are addressed. While challenges still remain, there have been many changes. I observed advocacy by juvenile defenders who were advancing issues on behalf of their clients at each stage of the delinquency process. I observed defense witnesses at detention hearings, arguments on behalf of restitution, and a trial with six witnesses that lasted until 6:30 p.m. I was particularly encouraged by the large number of defense motions that had been filed by juvenile defenders since April 2013, the continued implementation of recently enacted policies, detailed written findings of fact, the use of bench cards, the additional time taken to prepare for transfer hearings and the beginnings of a new data collection system. This data collection system is an important development, as diligence in documentation and monthly reporting will ensure continued progress. All of the above indicate to me that JCMSC has embraced the Due Process components of the Agreement and have worked diligently to meet the Agreement's obligations.

Overall, of the 47 Due Process Provisions required to be completed, I find that JCMSC's compliance status is as follows:

Compliance Standards	**1st Compliance Report April 2013**	**2nd Compliance Report October 2013**
Substantial Compliance	0	0
Partial Compliance	1	26
Beginning Compliance	25	17
Non Compliance	3	0
Insufficient Information/pending	5	2
Total # of Required Due Process Provisions in Agreement	**34**	**45**

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

JCMSC's Excellent Innovation: Creation of Pre-Transfer Report

I want to highlight a particular innovation that was developed to increase information about the child when facing transfer to adult court. As mentioned in the first compliance report, there were many concerns regarding transfer procedures at JCMSC. Of particular concern was the lack of information about the child's prior court involvement and prior placements.

Since the first compliance tour, JCMSC has created a solution. The JCMSC has decided to use its subpoena power to order the Department of Children's Services (DCS) and the Youth Services Bureau (YSB) to provide information regarding the child's history in both the foster care system and delinquency treatment programs.[1] Information is compiled by the probation department and prepared as the "Pre Transfer Report." The report is then distributed to all parties prior to the hearing. This innovative strategy could serve as a model for other jurisdictions. During my visit I observed the immediate impact of additional information when the Pre-Transfer Report was relied upon by a judge who decided against transfer, and kept a 15 year old in juvenile court.

Areas of Ongoing Due Process Concerns

Transfer Hearings: Continued High Rate of Transfer

Below are the transfer statistics that were provided by JCMSC:

2013 Transfer Cases (January – September)	
# of Cases where "Notice of Transfer" was Filed	191
# of Cases on the Transfer Docket that are heard by Special Judge[2]	84
# of Transfer Petitions Granted	65
# of Transfer Petitions Denied	19

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, 91 cases or 56% of the transfer cases came from Shelby County.[3] While it is clear that there has been a significant decline in transfer cases since 2008,[4] and the above chart reveals that not all of the cases that receive "Notice of Transfer" make the "Transfer Docket," the transfer numbers presented still appear high.

[1] See sample redacted Order for Pre-Transfer Report in Attachment "A."
[2] According to data provided, in 2013 there were 107 Cases where "Notice of Transfer" was withdrawn after District Attorney Review.
[3] *See* http://www.tncourts.gov/courts/juvenile-family-courts/statistics at 82.
[4] See page 3 for 2010-2013 transfer comparison chart.

Transfer Hearings: Fundamental Problems with Clinical Services Evaluation Reports

During my visit I was able to review all of the Clinical Service Evaluation reports completed in 2013 for children facing transfer hearings. Each of these reports was ordered by a judge and was be considered by the court in making a transfer determination. I reviewed 61 reports from four evaluators.[5] I have serious concerns as to the evaluation process and the recommendations made in the reports. Overall, the reports appear cursory, unsupported, and biased. Overwhelmingly, the evaluators recommend transfer with boilerplate language. In addition, evaluators showed limited recognition of the appropriate functions and limitations associated with the role of a mental health professional evaluating juveniles. For example, many evaluations contained legal arguments and disposition recommendations that one would expect from a district attorney[6] and contained legal determinations that would only be the purview of a judge.[7] As this is not my area of expertise, I consulted with a forensic evaluator[8] and National Best Practice Standards.[9] Accordingly, there are fundamental problems with the evaluations, including the following:

1. Purpose of the evaluation was apparently not identified within the evaluation process and not documented in the report.[10] In all the evaluations I reviewed, from four different evaluators, the evaluator **never** identified the purpose of the evaluation in the report. The purpose of the evaluation should drive the format. For example, were the evaluators solely conducting a screening regarding the appropriateness of commitment to a facility for mentally ill juveniles or

[5] See chart on page 17 of this report.

[6] In the recommendation section of KJ's evaluation (#42) , it states: *[KJ] is aggressive, destructive, and defiant; has a poor academic record; is a known gang member, has a longstanding history of substance abuse, and shows a blatant disregard for the rights of others and the rules of society. He has demonstrated an inability to benefit from the programs and resources provided by the court, YSB has indicated that they are not willing to accept him into their program. Given his age, delinquency history with the court, and the gravity of the alleged offenses, Clinical Services recommends that the Court consider the full range of dispositions for him if the current charges are sustained."* See evaluation of KJ, #42, provided to Due Process Monitor.

[7] For example, in a case where a 17 year old was charged with intent to sell marijuana, the evaluator's recommendation was "*given his age and the fact that he was already on supervised probation for a drug related charge, there is little the juvenile system can offer this young man.*" See evaluation of DB, #10, provided to Due Process Monitor.

[8] I spoke with Dr. Kirk Heilbrun, see http://www.drexel.edu/psychology/contact/facultyDirectory/KirkHeilbrun/

[9] Toward Developmentally Appropriate Practice: A Juvenile Court Training Curriculum Module 2, 2009. See http://www.modelsforchange.net/publications/255

[10] For example, at the top of the reports, it read as follows: *John Smith was told that the information he provided during this evaluation was not confidential and would be presented to the court in a written report. He was told he could choose not to answer any questions or stop the evaluation at any time. John Smith said that he understood the limits of confidentiality and participated in the evaluation on X/X/XXX and X/X/XXX at the JCMSCMSC.* Without the evaluation indicating the purpose of the report, we don't know what the evaluator told the juvenile. It could be something as general as "the judge wanted this" or "this is for court purposes," which is insufficient.

developmentally disabled youth? Or were the evaluators attempting to give information to the court regarding the legal question at hand, i.e. whether or not to transfer?

2. Reports did not cite the source of information relied on. For example, in one evaluation there was a paragraph on the first page given a detailed description of an incident that had occurred while the juvenile was in detention. However, the evaluator never stated from whom she received the information or why she was seeking out information from the detention center worker.
3. Reports ignored significant mental health issues. Even when significant problems were identified (i.e. a child who is hearing voices, or who has significant mental health diagnosis, etc.), the evaluator did not request additional tests or information, but rather, determined that the child "appeared stable" and proceeded to recommend transfer.[11]

For more detailed information about the problems related to Clinical Services evaluations, specific case examples, and a best practice checklist of the minimum requirements of an evaluation, see pages 17-19.

Transfer Hearings: Juvenile Defenders Not Presenting Evidence

Data revealed that juvenile defenders are not presenting evidence at transfer hearings. This is an issue of great concern, particularly, since the transfer evaluations done by clinical services reveal that many clients have suffered extensive trauma.

It is the juvenile defender's duty to present evidence against transfer, if the client has expressed an interest to stay in juvenile court.[12] There are also relevant practice standards for juvenile defenders relating to transfer.[13] Tenn. Code Ann. § 37-1-134, specifically refers to seven *Kent* factors a judge should consider prior to transfer. Now that the Pre-Transfer Report is being provided, there are many ways to use the information contained in the report for mitigation. However, given the lack of evidence presented at transfer hearings, I question whether juvenile defenders know how to interpret and use information found in the Pre-Transfer Report, specifically information about trauma and the effect trauma can have on behavior.

Nationally there has been much attention on how trauma affects youth. This awareness has led to an effort to educate judges and attorneys about the effects of childhood trauma. For example, the National Council of Juvenile and Family Court Judges published "Ten Things Every Juvenile Court Judge Should Know About Trauma and Delinquency" to empower judges to be able to "best assist traumatized youth who enter the juvenile justice system."[14] The

[11] See case example RL page 17 of this report.

[12] Tenn. Code Ann. § 37-1-134 and the Tennessee Rules of Juvenile Procedure, R. 24(b), modeled after *Kent*, require Transfer Hearings that comport with due process prior to waiving jurisdiction and ordering transfer of a child's case to adult court.

[13] National Juvenile Defense Standards, 8.4 Advocate Against Transfer to Adult Court, National Juvenile Defender Center (2012), available at http://www.njdc.info/publications.php. See page _____

[14] Kristine Buffington et al., *Ten Things Every Juvenile Court Judge Should Know about Trauma and Delinquency*, NAT'L COUNCIL OF JUVENILE & FAMILY COURT JUDGES (JULY 1, 2010), http://www.ncjfcj.org/sites/default/files/trauma%20bulletin_0.pdf.

National Child Traumatic Stress Network (NCTSN) has created several projects and publications that explore how judges understand and approach children with trauma histories.[15] The American Bar Association Center on Children and the Law has launched a project on Polyvictimization and Trauma-Informed Advocacy, and has published a trauma assessment tool for lawyers. The Attorney General of the United States and the Justice Department have devoted significant resources to better understand childhood exposure to trauma across the country, and have begun to address it through the Defending Childhood Initiative.[16]

Amenability to juvenile court is at the heart of the decision to transfer. The impact of trauma should be a critical factor to consider. Hopefully, juvenile defenders will begin to incorporate relevant trauma information into their transfer hearings and JCMSC will consider how juvenile court might better respond to the needs of youth who have experienced trauma.

Probation Conference Concerns: Balancing JCMSC's impressive diversion program with Protections Against Self-Incrimination

I want to highlight the excellent diversion work that is being done by probation. Many cases that would proceed to juvenile court in other jurisdictions are being resolved without a petition. This focus on diversion is commendable and should continue. Of particular note is the new "Graduated Sanctions" grid which outlines which cases are eligible for diversion.[17] I look forward to reviewing the data from this grid on my next compliance visit.

The Agreement requires that attorneys be present at probation conferences. However, since the last compliance visit, the Administrative Office of the Courts has determined that under Rule 13, they are not required to pay for lawyers at probation conferences *unless* a lawyer is specifically requested. In light of this decision, and according to the data kept by JCMSC, no attorneys have been present at probation conferences since July 2013. This situation has created the following problems:

1. Probation officers are simply reading a *Miranda* "script" and it is clear the child does not understand the "waiver of rights" form he is being asked to sign.
2. Probation officers seem confused about their role. Specifically, they do not know what they can say and what they cannot say. This confusion leads to missed opportunities with families that may need services.

Juvenile Panel: Concerns regarding leadership and failure to present evidence

This report will identify several concerns regarding the juvenile panel and their ability to provide zealous representation. First, although the position of the Juvenile Panel Coordinator no

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

[16] *Taskforce on Children Exposed to Violence*, DEP'T OF JUSTICE, http://www.justice.gov/defendingchildhood/task-force.html (last visited Oct. 14, 2013).

[17] This grid was implemented on August 16, 2013. No data is yet available regarding how the grid is being implemented.

longer reports to JCMSC and now is part of the Mayor's office, I am concerned about the Coordinator's ability to effectively respond to the concerns of the juvenile defender panel. For example, there has been a failure to request an interim investigator, a failure to request administrative support, delay in obtaining documents from an investigator who is a direct report, and inability to follow up on issues presented by panel attorneys, such as a central place for filing motions. Second, as noted in the report, data reveals that juvenile defenders are not presenting evidence, both at the probable cause stage and at the transfer hearing stage.

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 in a variety of ways. Since my first visit in April, I have maintained contact with a variety of stakeholders from JCMSC. I have reviewed "Committee A" minutes and have maintained email correspondence with JCMSC. Approximately one month prior to the site visit, I requested a list of documents to review before and during the site visit.

During the five-day site visit I observed an array of court hearings, including 15 delinquency hearings (two trials, three dismissals, ten admissions), nine detention hearings, six probation conferences, two full transfer hearings and three partial transfer hearings. During the site visit I had meetings with the following: JCMSC court staff, two judges, three individual probation officers, a group of 16 panel attorneys, three individual panel attorneys, the juvenile defender coordinator, the public defender, and the chief juvenile District Attorney. I reviewed the following documentation: all policies and corrective service procedures, the second compliance report prepared by Settlement Coordinator Bill Powell, the first compliance reports prepared by the DMC and Facilities monitors. 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.

PROBABLE CAUSE DETERMINATIONS	**COMPLIANCE RATING APRIL 2013**	**COMPLIANCE RATING OCT. 2013**
Within 90 days: revise policies to require prior to detaining a child Magistrate makes proper probable cause determination	Beginning Compliance	Partial Compliance
Within 90 days: insure PC determination within 48 hours of warrantless arrest	Beginning 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
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	Beginning Compliance	Partial Compliance
b. Require govt to prove existence of PC with reliable evidence or affidavit of complaint	Beginning Compliance	Beginning Compliance
c. Allow defense attorneys opportunity to challenge PC	Beginning Compliance	Partial Compliance
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	Insufficient Information/Pending	Beginning 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

Probable Cause

Comments

Overall there is much progress in this area. I observed nine probable cause determinations over five days. It is clear that the new policies and practices are being implemented. In every case the magistrate read the child his rights before the proceeding.

I reviewed data to insure that no child was held in detention more than 48 hours before a probable cause determination was made.

For this compliance period I was able to utilize the newly created data collection system. Information revealed that in 96% of the cases an attorney was appointed, but in delving deeper, the two cases where an attorney wasn't appointed, the child had hired a private attorney. Therefore, it appears that 100% of children at JCMSC had lawyers during probable cause hearings.

In regard to the Affidavit of Complaint (AOC), observations revealed that the District Attorney had provided AOCs at probable cause hearings.

In regard to the level of detail in the AOC's, results appear mixed. During my site visit when there was insufficient detail in the AOC, I observed a judge make a determination that probable cause did not exist. However, I also received emails from individual juvenile panel attorneys before and after my visit complaining about the lack of detail contained in certain AOCs. For example, probable cause was found based on the below AOC:

> *On ____ 2013, in front of _____, JS and OS were robbed at gunpoint and several items to include cash, wallets, an iPhone, and an iPad were taken from them. During this robbery JS was shot and a short time later died as a result of his injuries. His death has been ruled a homicide by the medical examiner's officer. On ___ CS turned himself in and gave a statement of admission to planning a robbery with DC and to pointing a pistol and taking items from one of the victims while DC robbed the other victim. The offense occurred in Shelby County, TN.*

In the above AOC it is unclear what "robbery" CS admitted too. There appears to be inconsistency in this area. This was an issue I raised in my first compliance report.[18] The Agreement requires that the government prove the existence of probable cause with reliable evidence or a sufficiently detailed ACO. Further discussion among JCMSC seems warranted.

[18] As I indicated in my first report, many factors will impact whether or not the evidence is reliable. For example, evidence will be less reliable if 1) the witness is unidentified, 2) the witness has a motive, 3) there is a lack of corroborating evidence, 4) there is a lack of physical evidence when, given the facts, it should exist, and 5) when there are inconsistencies on the face of AOC.

The data collection system has begun to track issues related to contesting an AOC. An issue that deserves further consideration is the failure of juvenile defenders failing to contest the AOC. The data collected revealed the following:

Juvenile Defenders Contesting Affidavit of Compliant	% of cases
Oral argument	17%
Written documents	0%
Live Witnesses	0%

It is unclear why there are so few challenges to the AOC by juvenile defenders. This could be a function of the limited resources made available from the county, Tennessee Supreme Court Rule 13,[19] or a lack of training. I will follow up on this issue with the soon to be created Public Defender Juvenile Unit and the panel attorneys. While I did not observe a juvenile defender challenge probable cause with witnesses, juvenile defenders repeatedly argued zealously for the release of their clients from detention.

While visiting JCMSC, I had the opportunity to randomly review adjudicatory hearing files. In the files were forms indicating timely appointment of defense counsel, and signed forms indicating that the child had been read his rights prior to the probable cause hearing. I was also able to review the documents indicating that the judge had reviewed a sampling of files to ensure that the requirements regarding notice of charges were being followed and that periodic observations of detention hearings were occurring.

NOTICE OF CHARGES	**COMPLIANCE RATING APRIL 2013**	**COMPLIANCE RATING OCT. 2013**
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
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
When changes are made to charges as set forth in petition prior to adjudicatory hearing that could reduce	Beginning Compliance	Partial Compliance

[19] See Rule 13: Appointment, Qualifications, and Compensation of Counsel for Indigent Defendants. http://www.tsc.state.tn.us/rules/supreme-court/13

the penalty, JCMSC shall provide notice of final charges by providing copies of new Petition within 24 hours of change in charges.		
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

Notice of Charges

Comments

Partial Compliance

With regard to the Notice Provisions of the Agreement, JCMSC continues to make progress. Policies continue to be incorporated into practice. During the site visit, I observed nine detention hearings and defense counsel always had a copy of the AOC in advance. I did not observe any situations where the District Attorney amended the charges to increase the potential penalty. In my meeting with the panel attorneys, there were no complaints regarding notice of charges.

Status of Discovery Issues

In my earlier report I mentioned concerns about discovery protocols and made specific suggestions.[20] I am pleased to report that from April 1 - September 11, 2013, 87 discovery motions were filed with the court. However, in regard to the discovery protocols, the juvenile defender Coordinator did not follow through on this issue so it remains unresolved. During my meeting with the 16 panel attorneys, I was told that getting discovery the day of the hearing remains a problem. Receiving discovery on the day of trial is a significant issue because without advance discovery, a defense attorney cannot be adequately prepared as required by the Tennessee rules of professional conduct.[21] I discussed this with JCMSC and the juvenile defender coordinator at my exit interview.

Status of Access to Social Files

Although information regarding the frequency that juvenile defenders access the child's social file was unavailable, I was informed by JCMSC that much effort has gone into resolving

[20] In my first compliance report I made the following specific suggestions: 1) JCMSC should routinize discovery practices and access to social files to ensure that every child's attorney has equal access to information, 2) The Juvenile Defender Coordinator should create a standard discovery letter for all panel attorneys that is kept on file indefinitely, 3) Training and standards be implemented (and a manual provided) so that panel attorneys can be trained to access the social file and request discovery. Attorneys should also be trained as to memorializing those requests.

[21] *See* RPC 1.2(c). TENN. SUP. CT. R. 8, TENNESSEE RULES OF PROFESSIONAL CONDUCT, *Amended September 29, 2010, and October 12, 2010; Effective January 1, 2010.*

this issue. It is a positive step that portions of the social file are being incorporated into the Pre-Transfer Report.

TRANSFER HEARINGS	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCT. 2013
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
b. Children have right to attorney whose role is to represent their stated interest	Beginning Compliance	Partial Compliance
c. Children, through their attorney, are provided opportunity to present evidence on their own behalf	Non –Compliance	Insufficient Information
d. Children, through attorney, provided opportunity to confront evidence & witnesses	Non –Compliance	Beginning Compliance
e. Children are protected from self-incrimination	Beginning 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
g. Judge or Juvenile Court Magistrate considers & documents consideration of factors relevant to findings including 7 factors	Non –Compliance	Beginning Compliance
Each month, Judge, or designee, shall review all files related to Transfer Hearings to insure Hearings followed Agreement. Review shall include periodic observations of Transfer Hearings to insure Magistrates follow policies.	Insufficient Information/Pending	Beginning Compliance

Transfer Hearings

Comments

Positive Developments

As I mentioned in the executive summary, there is progress in this area. Since my first compliance report, I have noticed the following positive developments:

1. More time taken to prepare for Transfer Hearings. I expressed concern in my first report that 14 days was not enough time to adequately prepare for a Transfer Hearing. During my visit I reviewed files for all transfer hearings that occurred between April 2013 and October 2013. In each case there was at least one month between the date of "Notice of Transfer" and the date of the Transfer Hearing.
2. Innovation of the Pre-Transfer Report is extremely positive. As mentioned above, ensuring that information from the social files and programs is given to the court and the attorneys prior to the hearings is a great improvement.
3. Defender Advocacy Observed: In the two transfer hearings that I observed, the juvenile defenders did an excellent job of cross examining the state's witnesses and arguing on behalf of their clients.
4. Consideration of factors is Documented: There is additional progress in the area of "consideration of factors relevant to the findings including the 7 factors". In each case, a detailed written findings of fact was prepared by the judge after the transfer hearing indicating his consideration of the seven *Kent* factors. In my discussions with JCMSC, the format of the written findings should be slightly altered because in some cases it was not clear how many witnesses had been presented.
5. Periodic Review is Occurring: There is also beginning compliance in the periodic review of transfer files to insure magistrates are following the policies. While on site, I reviewed the records documenting the periodic observations and file review.

Ongoing Concerns

However, the following concerns remain: 1) high rate of transfer, 2) juvenile defenders not submitting evidence in transfer hearings and 3) evaluations prepared by Clinical Services have fundamental problems

1. Continued High Rate of Transfer (despite steady decline since 2008)

	2008	2009	2010	2011	2012	2013
# of children transferred to adult court	225	194	151	121	91	65*

*as of September 30, 2013

2013 Transfer Cases (January – September)	
# of Cases where "Notice of Transfer" was Filed	191
# of Cases on the Transfer Docket that are heard by Special Judge[22]	84
# of Transfer Petitions Granted	65
# of Transfer Petitions Denied	19

Given the above numbers, of the cases on the Transfer Docket that are heard, 65 out of 84 (or 77%) are granted. Possible explanations for this high rate of transfer include the following:

1. District Attorney's office policy decision to file "Notice of Transfer" on every eligible case, to the point where half are withdrawn without a hearing;
2. Clinical services staff that provide deficient evaluations;
3. Judges/Magistrates who may view transfer as the best judicial option (due to a lack of rehabilitation options in Tennessee for youth who need long term secure care, or a reluctance to retain certain serious cases in juvenile court);
4. Juvenile Defenders who lack skills or resources to effectively challenge transfer (this could be a result of the limitations of Rule 13 or the lack of training/supervision provided by the juvenile defender coordinator).

[22] Data provided revealed in 2013 there were 107 cases where "Notice of Transfer" was withdrawn after District Attorney Review.

2. Juvenile Defenders are not Presenting Evidence at Transfer Hearings

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."

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. I am encouraged to know intensive juvenile defender training has been coordinated by Stephen Bush, Memphis Public Defender, and will be conducted by the National Juvenile Defender Center beginning in December of 2013.

Fundamental Problems of Clinical Service Transfer Evaluations

As I indicated in the executive summary, there are many concerns regarding the evaluations including the following fundamental problems:

1. Purpose of the evaluation was not identified within the report.
2. Evaluations did not cite the source of information.
3. Evaluations ignored significant mental health issues.[23]

[23] Case of RL serves as an example of an evaluator ignoring problems: *"Medical records were also unavailable for review, however, the defendant stated that he suffers from asthma and that he had several back and neck surgeries after he was assaulted when he was 15 and sustained several serious injuries. He could not recall any further details. He also reported that he was placed with Lakeside Hospital two or three years ago, because he was hearing voices and he was "quick tempered". He believed he had been diagnosed with schizophrenia or bipolar, but was unsure. "I got a messed up memory" he complained. He also believed he had received several medication trials, but was unable to provide any details. He medication list in the detention center included oxcarbazepine (a mood stability drug) and quetiapine (an*

Clinical Services Evaluations

Evaluators Reviewed	Total # of Evaluations reviewed	# of Evaluations that identified purpose	# of Evaluations that cited reports from school/court/medical	Page Length of Evaluations			Evaluator Recommendations	
				1-2	2.5	3+	Transfer	Do Not Transfer
#1	28	0	1	19	8	1	18	10
#2	12	0	0	8	4	0	12	0
#3	4	0	1	4	0	0	3	1
#4	6	0	1	5	1	0	4	2
#5	2	0	0	1	1	0	0	1
#6	1	0	1	1	0	0	1	0
#7	1	0	1	0	0	1	1	0
#8	7	0	2	6	1	0	7	0
TOTALS	61	0	7	44	15	2	47	14

In addition to the fundamental problems mentioned above, I am also concerned about the following:

a. Evaluations appear cursory. They were rarely more than two pages regardless of the complexities presented. School records were rarely available (even though I have been told by probation that school records can be viewed online). Family members were rarely interviewed to corroborate information or provide background. Medical records and social files were rarely, if ever, reviewed.
b. Boilerplate language was routine, the exact same phrases were used over and over.
c. Language was biased against the juvenile.[24]
d. Evaluators went outside the scope of appropriate role boundaries in juvenile forensic evaluations. For example evaluators recommend that the juvenile

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atypical antipsychotic drug). .....The defendant's protocol revealed that his Angry-Irritable and Somatic Complaints were elevated to the caution range that his Depressed-anxious, Through Disturbance and Suicide Ideation scales were in the warning range and his Traumatic Experiences scale was highly elevated. Such a wide ranging symptom endorsement pattern could be indicative of significant mental illness, exaggeration, or a possible reading disability,

Summary & Recommendations: *The juvenile was a 17 year old African-American male charged with aggravated assault. He is operating in the borderline range. He is prescribed and while in the detention center does take psychotropic medications typically used to treat mood disorders or psychotic disorders. However, the screening indicated he is stable at this time. Therefore, there were no reasons found to recommend against out of home placement or transfer to adult court. Further, he is not committable to an institution for the emotionally disturbed. If the charge is sustained, the following interventions are recommended: Given his age, extensive history with this Court, and nature of the charge, there is little the juvenile justice system can offer this young man.*

[24] *See supra* note 5.

should write an apology letter to the victim or that the juvenile should pay full restitution.

If the evaluation was solely for the purpose of screening for commitment as a mentally ill or developmentally disabled juvenile, then the evaluation should contain the following:

a. Indicate in the first paragraph that the evaluation would address the criteria for commitment as a mentally ill or developmentally disabled juvenile,
b. Focus the history part on any indication of such disorders or handicaps (for example, a reliance on medical, mental health, and school history),
c. Focus the clinical section on whether symptoms or cognitive impairment was present (if the latter, most likely would need IQ testing),
d. Focus the next section (commitment) on whether the functional-legal criteria for commitment were present (some form of dangerous to self or others),
e. Exclude information not relevant to commitment to institution for mentally ill or developmentally disabled.

If the purpose of the evaluation is to give the court information to use in evaluating the transfer decision, than the psycholegal issues typically include "the emotional and cognitive maturity of the youth, the risk he presents to the public, and whether the youth shows a likelihood of reasonable rehabilitation."[25] In a transfer evaluation, The Minimum Criteria for a Good Forensic Evaluation is as follows: [26]

[25] Toward Developmentally Appropriate Practice: A Juvenile Court Training Curriculum Module 2, 2009. See http://www.modelsforchange.net/publications/255, Page 14
[26] *Id.*, at 43 Appendix B.

THE MINIMUM CRITERIA FOR A GOOD FORENSIC EVALUATION

Inclusion of relevant identifying information (including)

___ *Individual who referred the youth for evaluation*
___ *Whether completed via court appointment or confidential/ex parte*
___ *Examinee's age*
___ *Examinee's grade in school*
___ *Basis of examinee's involvement with the legal system*
___ *Examinee's history of involvement with the court*
___ *Current charges*
___ *Examinee's current place of residence*
___ *Identification/attribution of all sources of information sought and considered*
___ *Dates/duration of all interviews and tests*
___ *List of procedures used/tests administered to conduct evaluation*
___ *Reason for evaluation (e.g., competence evaluation, evaluation for treatment options, etc.)*
___ *Notification to youth of reason for evaluation, lack of confidentiality*

Statement of legal question(s) to be addressed

Description of mental states, capacities, abilities, knowledge, and/or skills that are relevant to the legal question at hand.

Description of the relationship between the mental states, capacities, abilities, knowledge, and/or skills assessed and their causal connection to the youth's abilities or issues about which the court is interested.

Information qualifying the conclusions drawn. An explanation of the external limitations that should be taken into account when relying on the evaluator's conclusions, for example:
___ *testing conditions*
___ *the tests themselves*
___ *amount of time evaluator was given to interview the relevant parties*
___ *amount of background information that the evaluator was able to collect and review*

Specific recommendations for intervention (when appropriate) including specific interventions that are available in the community.

I have the following recommendations for JCMSC regarding Clinical Services:

1. JCMSC should create a policy governing Clinical Services Evaluations and establish a template for minimum criteria
2. JCMSC should seek technical assistance and require all Clinical Services staff to be retrained
3. Clinical Service reports should be monitored to ensure fundamental problems have ceased.
4. Magistrates should require more thorough reports prior to transfer hearings in order to appropriately evaluate a youth's amenability for juvenile court.

PROTECTIONS AGAINST SELF-INCRIMINATION	**COMPLIANCE RATING APRIL 2013**	**COMPLIANCE RATING OCTOBER 2013**
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
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
Within 90 days: insure POs advise Children of Miranda rights. Shall include a. Description of role of defense attorney	Beginning Compliance	Beginning Compliance
b. Statement Child is entitled to attorney & maybe at no cost	Beginning Compliance	Beginning Compliance
c. Statement that Child's statements regarding offense can be included in Probation report	Beginning Compliance	Beginning Compliance
d. Statement that Child's statement can be used against them.	Beginning Compliance	Beginning Compliance
POs have Children document understanding of	Beginning	Beginning

rights against self-incrimination & must receive advice of attorney before waiving it.	Compliance	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
Within 30 days: prohibit adverse use of information obtained from child during probation conference	Beginning 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
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
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
Immediately cease providing Visit & Contact forms to Magistrates prior to Adjudicatory Hearings.	Partial Compliance	Partial Compliance

Protections Against Self-Incrimination

Comments

Court Hearing Compliance: There continues to be progress in this area. In my observations of probable cause hearings, adjudicatory hearings and transfer hearings, judges and magistrates consistently took time to inform children of their rights. In addition, my review of files from adjudicatory hearings and transfer hearings revealed executed rights forms completed by the child and his attorney. It is clear to me that the judges and magistrates have been trained on these issues and that policies related to protections against self-incrimination are being incorporated into practice. At the probable cause/detention hearing, adjudicatory hearing and transfer hearing, the child has access to counsel. Counsel has the opportunity to explain rights before the hearings and to consult with the child during the hearing. Access to counsel promotes understanding of self-incrimination rights prior to a child signing a Notice of Rights form. I

believe that JCMSC has reached partial compliance in this area. In addition, it is permissible for a magistrate to confirm that an attorney has gone over the rights against self-incrimination, rather than have the magistrate read the child their rights prior to every probable cause hearing.

JCMSC is a Leader in Juvenile Diversion: Probation conferences at JCMSC serve an important function because at the probation conferences many low level charges are diverted out of the system and never go to juvenile court. During my visit I saw many types of minor offenses diverted, including school fights, thefts and trespassing. This is impressive, because in many jurisdictions these types of cases would have been petitioned to juvenile court. I believe the JCMSC diversion program should certainly be retained. I am also pleased with JCMSC's "Graduated Sanctions" grid which I hope will expand and routinize diversion for youth.

Lawyers are no longer present at Probation Conferences: However, despite the Agreement to have counsel at probation conferences, the recent decision not to pay for counsel at probation conferences has resulted in attorneys rarely if ever being present. (This may be an area that the forthcoming juvenile defender unit could assist with and I look forward to evaluating this next time). Currently, however, the absence of lawyers creates significant challenges for probation officers. As noted in the executive summary, I have significant concerns about protection against self-incrimination at the probation conferences. (At the writing of this compliance report, JCMSC is working to negotiate this issue with the AOC).

Children Do Not Understand Miranda Rights

The Agreement requires that children understand their legal rights. Therefore, *Miranda* warnings must be given in an age appropriate manner. Of the six probation conferences I observed, four had significant problems. In one conference, I witnessed a child and parent sit down in a probation conference and before any pleasantries were exchanged; the probation officer read complicated legal language from a piece of paper. The parent and child were silent, asked no questions and simply signed the paper. At the end of one conference, I followed a family out into the hall and asked the 15 year old juvenile if he knew what the "right to remain silent" meant. He responded, "It means I can't be rude."

Since there is no lawyer present to ensure the understanding of rights, it is critical that *if* probation officers are going to ask about the charges, they must be trained to ensure the child understands. Legal "rights" are complex legal ideas. For an analysis of research related to the ability of juveniles to comprehend *Miranda*, I have relied on the analysis of Naomi E. Goldstein, Ph.D.[27]

> Over 30 years of research findings indicate that juveniles frequently misunderstand their legal rights.[28] At the most fundamental level, many juveniles misconstrue the concept of a right, believing that it is

[27] Naomi E. Goldstien, Ph.D, *Comments to the Supreme Court of Pennsylvania Juvenile Court Procedural Rules Committee, June 15, 2011.* Excerpted with permission from her (*hereinafter, "Comments"*) See also http://www.drexel.edu/psychology/contact/facultyDirectory/NaomiGoldstein/

[28] 5 *See* ALAN GOLDSTEIN & NAOMI E. S. GOLDSTEIN, EVALUATING CAPACITY TO WAIVE MIRANDA RIGHTS (2010); THOMAS GRISSO, JUVENILES'WAIVER OF RIGHTS: LEGAL AND PSYCHOLOGICAL COMPETENCE (1981).

> conditional and can later be revoked by a judge.[29] In the context of Fifth Amendment rights, research has shown that juveniles often believe that the right to remain silent is a command that they should not talk until instructed to speak.[30] Even when juveniles demonstrate an adequate factual understanding of their rights and the legal process, they often fail to appreciate how the rights apply to their own circumstances and the consequences of waiving their rights. For instance, juveniles often fail to grasp the seriousness of the potential penalties in their own cases. In one study, researchers found no differences in adolescents' decisions to plead guilty based on the seriousness of charges, suggesting a profound lack of awareness about the implications for punishment.[31]

Professor Goldstien goes on to explain how environmental factors also impact a juvenile's decision to waive her rights:

> Despite the deficits in juveniles' decision-making processes and legal capacities, environmental factors can either enhance or diminish abilities. For example, time-pressured decision-making; the influence of peers; the absence of consultation with an informed, objective adult; and heightened emotional arousal all detract from a juvenile's ability to engage in rational decision making. In contrast, time to deliberate, consultation with legal counsel, lack of peer influence, and lower emotional arousal are factors that can enhance a juvenile's cognitive and psychosocial abilities to provide an informed, well-reasoned, independent decision.[32]

Finally, it is well documented that youth in the justice system face additional challenges including linguistic delays, special education needs, mental health issues, trauma, and other adverse childhood experiences.[33] All of these factors impact how youth understand their *Miranda* Rights.

Missed Opportunities in Probation Conferences

In addition to the rights not being understood by youth, I believe there is so much fear of making a mistake that probation officers are afraid to follow up on issues that arise. For example, in once conference I observed the following exchange:

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[29] *See* GOLDSTEIN, ZELLE, & GRISSO, *supra* note 5; GRISSO, *supra* note 5; Jodi L. Viljoen, Patricia A. Zapf, & Ronald Roesch, *Adjudicative Competence and Comprehension of Miranda Rights in Adolescent Defendants: A Comparison of Legal Standards*, 25 BEHAV. SCI. & L. 1 (2007).

[30] GRISSO, *supra* note 5.

[31] Michele Peterson-Badali & Rona Abramovtich, *Grade Related Changes in Young People's Reasoning About Plea Decisions*, 17 L. & HUM. BEHAV. 537 (1993)

[32] See *Comments.*

[33] MacArthur Models for Change, "Washington Judicial Colloquies Project: a Guide for Improving Communication and Understanding in Court" Page 6-7. http://www.modelsforchange.net/publications/343.

Probation Officer:	"Do you admit you had the weapon"
Child:	"Yes. I had it because I'm afraid at school."
Probation Officer:	"You still want to admit the charge?"
Child: "	"Yes."

At no point did the probation officer acknowledge the child's statement about being afraid. Rather, the child just signed the forms, admitted to the charge and left. Maybe the child was being bullied. Maybe resources were available for the family. Unfortunately, because of the lack of conversation, opportunities to provide services to the family were missed.

On a positive note, I witnessed two outstanding probation conferences at which the probation officers were able to take the legal concepts and break them down into understandable pieces. Of particular note, I observed a conference where the probation officer ensured that the child understood his due process rights and the officer also responded to the grandfather's concern about the child's anger since the child's father was killed. The family left with a referral for services, the case was resolved without a petition, and the conference lasted 22 minutes. I believe that JCMSC has some great resources within its staff to draw upon to address these concerns. I recommend the following:

1. Additional training and supervision. I recommend a formal training for all staff that will be annualized to ensure that when staff turnover occurs, new employees are trained. I recommend that the training be videotaped so that I may review and that a curriculum be created. It is important to set up a system to sustain these innovations.
    a. In addition, All probation staff should be familiar with the following materials:
        i. Toward a Developmentally Appropriate Practice: A Juvenile Court Training Curriculum, Module 5, Communicating with Youth: Interviews and Colloquies, part 31-37
        ii. MacArthur Models for Change, "Washington Judicial Colloquies Project: a Guide for Improving Communication and Understanding in Court."[34]
        iii. Relevant portions of this compliance report
2. The Probation officer I identified while on site should model effective language for the rest of the staff, followed by role play and supervision to ensure all probation officers are able to communicate with youth. Again, this should be videotaped for my review.
3. Consider re-writing Miranda Form for better understanding.[35] This was discussed previously in my first compliance report and I encourage JCMSC to make adjustments prior to my next visit. Specifically:
    a. Should be written at a reading level of fifth grade or below. The average juvenile offender reads at the fifth grade level, indicating that even a fifth

[34] *Id., at* 6-7. The document provides guidance on how to consistently use developmentally-appropriate language in court that youth can understand. http://www.modelsforchange.net/publications/343.

[35] For full list of empirically based recommendations, See "attachment B" excerpted from Dr. Goldstein's *Comments*.

grade reading level may be too high for many juvenile suspects to comprehend. The form, in its entirety, as well as individual colloquy items, must be written at a level that is comprehensible to most juvenile suspects.

b. Include only simple sentences without elements such as clauses or double negatives. The written colloquy must be easy to read and comprehend. Certain features of sentences that make them more difficult to understand, such as clauses and double negatives, should be avoided.

c. Include questions that call for "yes" *and* "no" responses. Because children and adolescents tend to answer "yes" when they do not understand a question or are uncertain about an answer, it is critical to include a substantial number of colloquy questions for which "no" is the appropriate answer. This will allow judges to better determine whether accurate responses reflect actual knowledge or are merely the product of chance or suggestibility.

4. Work to increase requests for attorneys at probation conferences by collaborating with the Juvenile Defender Coordinator and the forthcoming Public Defender's Juvenile Unit while JCMSC continues to negotiate with the AOC.
5. Consider eliminating Probation Conferences for cases where diversion is not an option. When a probation officer knows that the case must go to court, it is not clear if the probation conference serves a purpose, and the conference creates a danger that the child will give incriminating evidence.

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

Confidentiality of Juvenile Delinquency Proceedings

Comments

JCMSC submitted two policies to address this provision. These policies are being incorporated into practice without issue. The policies appear sufficient and there are no complaints. The prior issue regarding allowing lawyers in the courtroom has been resolved, and lawyers are permitted to be in the courtroom during non-client hearings.

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

Comments

The policy regarding Plea Colloquies was submitted in June of 2013. My observations during my first and second site visit indicate that judges and magistrates are conducting interactive oral colloquies that include all of the above requirements. It appears that JCMSC has incorporated this policy into practice.

RESTITUTION GUIDELINES	**COMPLIANCE RATING APRIL 2013**	**COMPLIANCE RATING OCTOBER 2013**
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: i. Require documentation to support the restitution request ii. Allow children adequate time to review the restitution request & opportunity to introduce evidence opposing the amount iii. Allow opportunity to request adjustment to restitution amount by introducing evidence of family income or obligations that would render the restitution an undue hardship	N/A	Partial Compliance

Comments

The restitution policy was submitted in June of 2013 and has been incorporated into practice. Upon request from a community member, I reviewed a specific file where a parent complained about the restitution amount ordered. My review of the child's file revealed a thoughtful determination was made, that the particulars of the family and the child's situation were taken into account and that the payment plan was reasonable. Although my review of restitution issues has been limited, it appears that this policy is being implemented.

BOND SETTING GUIDELINES	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013
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

Comments

This policy was submitted in June of 2013 and has begun to be implemented. At this point, my court observations and discussions with panel attorneys indicate that this policy is being followed.

LANGUAGE ACCESS PLAN	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013
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
Implement language access plan within 1 year	N/A	N/A

Comments

The language access plan has been in effect since April 15, 2013. During my site visit I observed two hearings where a court interpreter was available. It appears that the language access plan is being incorporated into practice.

TREATMENT OF WITNESSES	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013
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

Comments

This policy was submitted in June of 2013. I did not observe any issues relating to the treatment of witnesses on my first or second compliance visit and it appears that this policy is being incorporated into practice.

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

Comments

The policy regarding bench cards was created June 17, 2013 and bench cards have been created. During all of my court observations it appears that judges and magistrates were utilizing the bench cards. Since the bench cards were based on national guidelines, particularizing them to the specifics of Tennessee Law would be ideal.

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

Comments

This policy was submitted in June of 2013. During my site visit I reviewed the files of all 2013 transfer hearings and 40 randomly selected adjudicatory hearings files. In each file there was a written finding of fact that appeared sufficient.

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

Comments

Unfortunately, I did not have the opportunity to listen to any recordings of juvenile delinquency hearings. I will make this a priority next time.

TRAINING	COMPLIANCE RATING APRIL 2013	COMPLIANCE RATING OCTOBER 2013
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	Beginning Compliance

JCMSC shall implement 1st training plan within 12 months & shall create subsequent training plans on an annual basis thereafter	N/A	N/A

Comments

A training plan has been submitted. In reviewing the plan it appears that the topics listed above will be covered. JCMSC should ensure that all employees and the Magistrates have been trained.

Attachment "A"

Redacted Order for Pre-Transfer Report

IN THE JUVENILE COURT OF MEMPHIS AND SHELBY COUNTY, TENNESSEE

IN THE MATTER OF:

C.C.

DOB: 8/7/1995

A child under eighteen years of age

ORDER FOR PRE-TRANSFER REPORT

On 6-6-13, the above named individual was charged with delinquent acts. The District Attorney has provided notice in this case of its intent to seek transfer of this individual to adult court pursuant to TCA Sec 37-1-134. The Court is in need of information regarding amenability to treatment and previous treatment history as contemplated in TCA Sec 37-1-128(a). The court, therefore, ORDERS the Department of Children's Services to investigate and report regarding the following:

1. The youth's previous delinquency commitments to DCS custody, if any;
2. The treatment, if any, the youth received while in DCS custody pursuant to the commitments; and
3. The scope of services available to the youth if the youth were committed to the custody of DCS as a delinquent.

The Court further ORDERS that said report be filed under the seal with the Court on or before _____. The report shall remain under seal until opened by the Court. The Court shall review the report, then provide both the District Attorney and counsel for defense with a copy of the report.

ENTERED this the _____ day of _____, 2013

_____

Judge

Attachment "B'

Empirically-based Recommendations for the Colloquy Process[36]

Based on research findings on juveniles' decision-making capacities and the environmental factors that can enhance these abilities, we offer specific recommendations for improving the colloquy process to increase the likelihood that juveniles' admissions of delinquent acts are provided knowingly, intelligently and voluntarily. Specifically, we provide recommendations about the structure of the colloquy and critical content for inclusion.

Structure of the Colloquy: Recommendations

- Should be written at a reading level of fifth grade or below. The average juvenile offender reads at the fifth grade level,[37]indicating that even a fifth grade reading level may be too high for many juvenile suspects to comprehend. The form, in its entirety, as well as individual colloquy items, must be written at a level that is comprehensible to most juvenile suspects.
- Include only simple sentences without elements such as clauses or double negatives. The written colloquy must be easy to read and comprehend. Certain features of sentences that make them more difficult to understand, such as clauses and double negatives, should be avoided.
- Include questions that call for "yes" *and* "no" responses. Because children and adolescents tend to answer "yes" when they do not understand a question or are uncertain about an answer, it is critical to include a substantial number of colloquy questions for which "no" is the appropriate answer. This will allow judges to better determine whether accurate responses reflect actual knowledge or are merely the product of chance or suggestibility.
- Emphasize juveniles' options to respond with "I don't know" and "I don't understand the question." With juvenile defendants' low IQ scores and high rates of school failure, many have spent years attempting to hide their lack of understanding and poor academic abilities.[38]Consistent with this approach, juvenile defendants, particularly during times of stress and heightened suggestibility, may be unwilling to admit that they do not know answers or do not understand the questions. To promote forthrightness in the colloquy process, juvenile defendants should explicitly be provided with options to indicate their lack of knowledge or understanding of critical information.

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[36] From Naomi Goldstein's *Comments*

[37] Abbe D. Davis, Dixie D. Sanger, & Mary Morris-Friehe, *Language Skills of Delinquent and Nondelinquent Adolescent Males*, 24 J. COMM. DISORDERS 251 (1991); Texas Youth Commission, *Commitment Profile for New Commitments: Fiscal Years 2005-2009*, http://www.tyc.state.tx.us/research/profile.html

[38] Mark W. Lipsey & James H. Derzon, *Predictors of Violent or Serious Delinquency in Adolescence and Early Adulthood, in* SERIOUS AND VIOLENT JUVENILE OFFENDERS: RISK FACTORS AND SUCCESSFUL INTERVENTIONS 86 (1998)

- Provide open-ended follow-up questions in the oral colloquy that allow individuals to explain concepts in their own words. Yes/no questions, by definition, have a limited universe of responses ("yes" or "no") that do not express *how well* an individual understands an idea. In contrast, open-ended questions force individuals to communicate ideas in their own words and provide more accurate representations of their understanding of a concept. For instance, compare the utility of possible answers to "*Do you understand what it means to be found delinquent?*" with "*What does it mean to be found delinquent?*" Including this latter, open-ended type of follow-up question in the oral colloquy would increase the amount of information available to the Court about a juvenile defendant's understanding.
- The process should be designed to enhance juveniles' decision-making processes. To enhance juveniles' rational decision-making abilities, juvenile defendants should have sufficient time to complete the written colloquy form and should not feel pressured to complete it in a set amount of time. Similarly, the oral colloquy should be conducted at a slow pace using sentences constructed at a low reading level (the average juvenile offender's listening comprehension abilities are significantly lower than those of non-delinquent peers).[39] Further, the juvenile defendant should be given multiple opportunities to consult with an adult; a lawyer is well-suited for this role, as parents may be emotional and place pressure on the youth, thereby heightening the youth's stress level and increasing suggestibility.

[39] Eugénie Humber & Pamela C. Snow, *The Oral Language Skills of Young Offenders: A Pilot Investigation*, 8 PSYCHOL. PSYCHIATRY & L. 1 (2001); Rene L. Olvera et al, *Neuropsychological Deficits in Adolescents with Conduct Disorder and Comorbid Bipolar Disorder: A Pilot Study*, 7 BIPOLAR DISORDERS 57 (2005).