Settlement Agreement – United States through the Department of Justice with Shelby County, Tennessee, the County Mayor and the County Attorney, and the Juvenile Court of Memphis and Shelby County (JCMSC).

First Compliance Report – Equal Protection

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INTRODUCTION

A Memorandum of Agreement regarding the Juvenile Court of Memphis and Shelby County was signed December 17, 2012 by the United States Department of Justice, Civil Rights Division, and the County Mayor and County Attorney, and the Juvenile Court of Memphis and Shelby County (JCMSC) to address the administration of juvenile justice for youth facing delinquency before JCMSC and the conditions of confinement of youth at the detention center operated by JCMSC.

The Parties selected Dr. Michael J. Leiber as the Equal Protection components of the Agreement. The Agreement requires the Monitor to assess the level of compliance by JCMSC every six months and to produce reports. This is the Monitor's first report on movement toward compliance on the items stipulated in the Agreement as pertaining to Equal Protection. The time-frame assessed is December 12, 2012 to May 10, 2013. The evidentiary basis for his opinions are based on document reviews (policies, data, meeting notes, emails, etc.), an on-site visit (April 8th through April 10th), and interviews and phone-calls with Staff and the members of the Community.

In the determination of racial disparity in JCMSC's administration of juvenile justice, evaluations were conducted of the level of the disproportionate minority contact (DMC) at various stages or points of contact within the juvenile court (referral to court, cases diverted, secure detention, petition, findings of delinquency, probation, placement in secure confinement, waiver to adult court). In addition, a study was conducted of decision-making at each stage of juvenile justice proceedings. The findings from each of these methods are briefly discussed to highlight the development and implementation of the provisions specified in the Agreement.

The relative rate index (RRI) that is used to capture disproportionate minority contact is a method used by the Office of Juvenile Justice & Delinquency Prevention (OJJDP). The RRI is a measure to give a description or snap shot of youth in the system during the time frame reported and at major stages of the juvenile justice system. The formula compares the rates of each measurable minority group to that of White youth. For Memphis/Shelby, the comparison involved the ratio of Blacks to Whites in juvenile proceedings. A numerical value of 1.0 is neutral (what is desired). A numerical value exceeding 1.0 means that Black youth have a higher rate of representation at a particular stage while a value below 1.0 means that Black youth have a lower, statistically significant, rate of contact in a stage as compared to White youth at that stage. For more information as to how to calculate the rate see *Investigation of the Shelby County Juvenile Court. United States Department of Justice Civil Rights Division, April 26, 2012*, page 27-28. It is important to note that the RRI is a tool to show presence or lack of presence of Blacks relative to Whites at particular stages.

The relative rate data presented in the *Investigation of the Shelby County Juvenile Court. United States Department of Justice Civil Rights Division, April 26, 2012* was for the year of 2009. Relative rates are also presented here for 2010 through 2012. As can be seen in Table 1 (located on the next page), Black youth are disproportionately represented in most stages and in particular at referral to the juvenile court, secure detention, cases resulting in confinement in secure juvenile facilities, and transfer to adult court.

Table 1. Rates of Juvenile Court Actions by Race, and Relative Rate Index, 2009-2012

	2009			2010			2011			2012		
Decision Stage (and base rate for calculation)	White[a]	Black	RRI	White	Black	RRI	White	Black	RRI	White	Black	RRI
1.Refer to Juvenile Court (per 1000 population)	48.4	166.9	**3.4**	39.1	142.6	**3.65**	32.4	137.6	**4.25**	26.1	115.4	**4.42**
2. Cases Diverted (per 100 referrals)	114.5	104.1	0.9	81.3	77.6	0.95	94.5	78.3	0.83	85.2	79.5	0.93
3. Cases Involving Secure Detention (per 100 referrals)	27.8	59.5	**2.1**	33.7	56.3	**1.67**	30.8	50.9	**1.65**	34.1	45.0	**1.32**
4. Cases petitioned (charge filed per 100 referrals)	29.9	36.4	1.2	41.4	35.3	0.85	27.5	41.1	1.49	59.6	43.4	0.73
5. Cases Resulting in Delinquent Findings (per 100 referrals)	54.3	72.2	1.3	25.2	50.4	2.00	31.7	45.8	1.44	22.7	48.0	2.11
6. Cases resulting in Probation Placement (per 100 found delinquent)	22.8	22.5	1.0	77.1	70.0	0.91	70.4	72.9	1.04	78.0	75.4	0.97
7. Cases Resulting in Confinement in Secure Juvenile Facilities (per 100 found delinquent)	14.2	23.9	**1.7**	6.4	7.6	**1.19**	4.1	7.2	**1.76**	6.5	8.5	**1.30**
8. Cases Transferred to Adult Court (per 100 referrals)	2.3	5.3	**2.3**	2.0	5.7	**2.86**	2.6	3.7	**1.42**	1.5	3.3	**2.23**

[a] Juvenile Justice Rates of Occurrence

Note: Data for 2009 taken from *Investigation of the Shelby County Juvenile Court*, April 26, 2012. Data for 2010-2012 provided by Juvenile Court of Memphis and Shelby County (JCMSC). How to read relative rate index (RRI), for example, refer to juvenile court 3.4 black to 1 white.

More specific in 2009, for every 1 White, 3.4 Blacks are referred to court; for every 1 White, 2.1 Blacks are held in secure detention; for every 1 White, 1.7 Blacks are confined in a secure facility, and for every 1 White, 2.3 Blacks are waived to adult court. Relative Rates for 2010, 2011, and 2012 are presented and for the most part, parallel the results of 2009. There are some exceptions. While the relative rates involving referrals to court have increased in 2010, 2011 and 2012, the rates pertaining to secure detention have declined form 2.1 in 2009 to 1.32 in 2012. Likewise, so too have the rates for cases resulting in confinement in secure juvenile facilities, from 1.7 in 2009 to 1.30 in 2012. Youth waived to adult court has remained relatively the same (2.3 in 2009, 2.23 in 2012). Recall that a relative rate of 1 is neutral or 1 White to 1 Black. Anything above indicates overrepresentation; anything below, underrepresentation. Overall, Black youth are and continue to be overrepresented in most stages relative to White youth in the JCMSC's juvenile justice system

Since the relative rate provides a descriptive picture and does not inform WHY the over-or-under-representation is evident, multivariate statistical analyses in the form of logistic regression were employed. This statistical method allows for the consideration of many factors or variables, such as race, age, gender, crime severity, etc., at one time to assess the impact on case outcomes. Even after consideration of the crime severity, prior delinquency, crime type and other factors, race was found to be an influential determinant of receiving a warning, restitution, detention, and adult transfer. Stated differently, Blacks were less likely to receive a warning and restitution; as well as more likely to be held in detention and transferred to adult court, than similarly situated Whites. Thus, while legal criteria explain some of the race differences at decision making stages, so too does being Black.

The Agreement indicates provisions (or things to do) and within time-lines to reduce the presence of Black youth in the juvenile justice process and to ensure greater equality for all youth. In general, the Agreement focuses on procedural changes as pertains to equal protection (e.g., objective decision making tools), cultural/gender sensitivity training, management of and evaluation of data to observe patterns at points of contact (referral, probation, detention, etc.) and inform possible changes to reduce DMC and the development and use of strategies to divert youth away from court referral and secure detention and transfer to adult court. There is also a requirement to develop linkages with the community for the purpose of informing the general public of the progress toward reform and to improve and further build relations between the community and JCMSC.

OVERALL SUMMARY AND IMPRESSIONS UP TO THIS POINT IN THE AGREEMENT

As pointed out by the JCMSC, attempts were implemented to address DMC prior to the Agreement being signed in December of 2012. These efforts included but not limited to: working with the Annie E. Casey Foundation in 2011 to examine juvenile detention practices; participation in the Memphis and Shelby County DMC Task Force, a JDAI initiative; the School House Adjustment Program (SHAPE), a program started as a DMC pilot project in 2007 to provide intervention other than juvenile court referral for students who commit minor offenses;

the Memphis Youth Violence Prevention Plan Project in the spring of 2011; the Urban Youth Initiative, a faith-based program designed to address and reduce juvenile crime and violence, and the Detention Assessment Tool (DAT) in 2004-06. Some of these efforts were specifically directed at DMC (e.g., SHAPE) while others indirectly impacted DMC (e.g., JDAI initiative). Since the Agreement, the JCMSC and the County have been cooperative and have taken a number of steps toward attempting to comply with the Agreement: (1) the appointment of a DMC Coordinator; (2) the use of the Summons program; (3) further use of the Schoolhouse Adjustment Program Enterprise (SHAPE); (4) the continuation of working with JDAI and the attempt to reform the detention process; (5) the establishment of the Community Consortium and other efforts involving community outreach (i.e., a Twitter account, Facebook, speaking engagements).

But, some of these steps need to be used more often, extended (e.g., SHAPE), and/or more effectively (e.g., DMC Coordinator). Furthermore, while the Summons program is an initiative to help possibly reduce entry to secure detention; JCMSC should consider initiatives to reduce referrals in general (e.g., do not take youth from police involved in minor activity, establish alternatives to court referral, etc.). Last, from my observations and examination of the evidence, more activity and movement toward compliance with the stipulations with the Equal Protection component should be evident. Furthermore, it appears that people are going through the motions to meet deadlines and checking off items rather than being committed to improving procedures, policies, and programs to ensure equality for all youth. There is a need for ownership of the DMC issue facing the JCMSC.

In the section to follow, specific provisions, action taken to address the provisions, the level of compliance, a discussion of the rating of compliance, recommendations, and expectations will be discussed. The following levels are useful for indicating movement toward compliance on the part of JCMSC that are first detailed:

Substantial Compliance (SC) means that JCMSC has implemented policies, procedures and programs; has trained staff and personnel; has sufficient staff to implement the required reform; has demonstrated a commitment toward reform; has identified points of contact, have met, collected data, analyzed the data, and attempted reform; has addressed data needs; has developed and utilized mechanisms to disseminate information; has identified and developed areas and stages in the system in need of reform; has developed a plan to evaluate and monitor reform, and has ascertained if reform achieved desired outcomes. All of this needs to be implemented and accomplished within time-lines as specified in the Agreement.

Partial Compliance (PC) means that JCMSC has implemented policies, procedures and programs; has trained staff and personnel; has sufficient staff to implement the required reform; has demonstrated a commitment toward reform; has identified points of contact, have met, collected data, analyzed the data, and attempted reform; has addressed data needs; has developed and utilized mechanisms to disseminate information; has identified and developed areas and stages in the system in need of reform; has developed a plan to evaluate and monitor reform, and

has ascertained if reform achieved desired outcomes. **But**, while progress has been made toward stated above items, performance has been inconsistent and/or incomplete throughout the monitoring period and additional modifications are needed to ensure a greater level of compliance.

Beginning Compliance (BC) means that JCMSC has made initial efforts to implement the required reform and achieve the desired outcome of equal protection for all youth within the stated time-lines **but** significant work remains on many of facets of stated above items.

Non-Compliance (**NC**) means JCMSC has not implemented policies, procedures and programs; has not trained staff and personnel; does not have sufficient staff to implement the required reform; has not demonstrated a commitment toward reform; has not identified points of contact, have not met, have not collected data, have not analyzed the data, and have not attempted reform; has not addressed data needs; has not developed and utilized mechanisms to disseminate information; has not identified and developed areas and stages in the system in need of reform; has not developed a plan to evaluate and monitor reform, and has not ascertained if reform achieved desired outcomes. This assessment is made within the context that the above stated actions or inactions has not occurred within time-lines as specified in the Agreement.

Decision of Compliance Level to Be Determined (**DCLTBD**) means that a decision on the compliance level is pending in light of deadlines of specific reforms as stated in the Agreement have not yet come or arrived – Six Months, Nine-Months, One- Year-. For example, for the Six-Month deadline the date for the determination of an achievement/objective is June 17, 2013.

Table 2 Compliance Rating by Provision

Identifier	Provision	Compliance Rating
1a	Identify all data collection needs at each major Decision Point	**DCLTBD**
1c	Identify staffing needs to collect, evaluate & report data	**DCLTBD**
1e	JCMSC shall identify and designate a point of contact within each department to reduce DMC	**DCLTBD**
1f	Collect data and information required to determine where DMC occurs	**DCLTBD**
1d	Shelby County Mayor shall appoint a coordinator responsible for oversight of the progress on reducing DMC	**BC**
1b (9 months)	JCMSC shall augment the appropriate data collection method to assist in its evaluation of its DMC levels, causes, and reduction.... This includes information on points of contact, the relative rates, and available diversion options for youth appearing before JCMSC	**DCLTBD**
1g (9 months)	Assess impact policies/procedures/programs on DMC levels at each decision point and conduct inventory of services and options...	**DCLTBD**
1h (9 months)	Complete and implement strategic plan to reduce DMC	**DCLTBD**

Table 2 continued

Identifier	Provision	Compliance Rating
2a	Revise policies, procedures, practices, and existing agreements to reduce DMC at each Decision Point and encourage objective decision making in all departments relating to its delinquency docket	**BC/ DCLTBD**
2b	(i)Collection of sufficient data (ii) Provision requiring least restrictive options and alternatives to a detention setting (iii.) Guidelines identifying a list of infractions for which a child shall NOT be detained (iv.) Guidelines identifying a list of infractions for which a child may be detained (v.) Training and guidance on the use of existing and new objective decision making tools (vi.) Requirement that a supervisory authority review all overrides within each department on, at minimum, a monthly basis	**BC/ DCLTBD**
2c	Reassess the effectiveness of its policies, procedures, practices and existing agreements annually and make necessary revisions to increase DMC reduction	**BC/ DCLTBD**
3a-h (9 months)	Use of objective decision-making tools,….etc. Refine decision-making tools, …etc.	**DCLTBD**

Table 2 continued

Identifier	Provision	Compliance Rating
4. Training	Training on a number of pts (i-vii) Staff involved with the delinquency docket should receive training of at least 4 hours.	**PC/ DCLTBD**
5. Community Outreach	Develop and implement a community outreach program to inform community of progress toward reforms. This should include a county-wide consortium that includes but is not limited to six to nine citizens selected by the Mayor and approved by the County Commission. Open meeting every six months There is a need for summaries of reports to be posted JCMSC shall publish on its website annual reports in accordance with the Agreement. The Community Outreach program should include a data dashboard that communicates compliance on the part of JCMSC with the Agreement. A community survey shall be conducted (**one year**)	**BC/ DCLTBD**

1. DMC Assessment (6 Months- June 17, 2013)

(a) Identify all data collection needs at each major Decision Point (p. 21)
(c) Identify staffing needs to collect, evaluate & report data (p. 22)
(e) JCMSC shall identify and designate a point of contact within each department to reduce DMC (p. 22).
(f) Collect data and information required to determine where DMC occurs (p. 22)

Compliance Rating: Decision of Compliance Level to Be Determined on 1a, 1c, 1e, 1f
Discussion: As of now, little has been done on these to this point. The Points Of Contact have just recently been identified (in the first 2 weeks of May, 2013. Likewise, so too has data in terms of numbers and relative rates. As of the writing of the Report, the Points of Contact have only met a couple of times, have had limited discussion of the data and development of plans as to how to address DMC, etc.

(d) Shelby County Mayor shall appoint a coordinator responsible for oversight of the progress on reducing DMC (p. 22).

Compliance Rating: Beginning Compliance
Discussion: It is very significant that the DMC Coordinator (Lisa Hill) was hired in February of 2013. Yet, she has not been effectively utilized. When I visited in April 8th through April 10th, 2013, we had a discussion where her role was redefined to do the following: (1) work with the Points of Contact; (2) meet at least once a month with the Points of Contact; (3) work with Shannon Caraway, Debra Monroe, Dini Malone and Jerry Maness to develop a working structure for data to be generated (both numbers and relative rates, etc.) and disseminated to the Points of Contact each month; (4) work with Tom Coupe as part of the Community Outreach Component of the Agreement; (5) reach out to the Community and be a liaison for the JCMSC and the Community (attend and present at public forums, schools, sit on boards, committees, develop a DMC website, etc.). Little has been done in the way of implementing each of the 5 points.

Recommendations: Points 1a, 1c, 1e, 1f and 1d are linked. I strongly encourage JCMSC and the DMC Coordinator to move on each of these items BEFORE June 17 and thereafter. Monthly meetings should be occurring.

Expectations: Data on the points of contact – court referral, diversion, secure detention, petition, findings of delinquency, probation, placement in secure confinement and transfer to adult court- need to be collected at least monthly, discussed at least monthly among the points of contact, and plans and strategies developed as to how to address if DMC exists, documentation

of this occurring needs to be provided in writing to the Equal Protection Monitor by September 17, 2013. The Equal Protection Monitor will be given updates on these provisions by the DMC Coordinator at least bi-weekly. Failure to adhere to these expectations could constitute grounds for non-compliance.

1.DMC Assessment (9 Months- September17, 2013)

(b) Within nine months, JCMSC shall augment the appropriate data collection method to assist in its evaluation of its DMC levels, causes, and reduction.... This includes information on points of contact, the relative rates, and available diversion options for youth appearing before JCMSC... (p. 22)

(g) Assess impact of policies/procedures/programs on DMC levels at each decision point. and conduct inventory of services and options...(p. 22-23)

(h) Complete and implement strategic plan to reduce DMC... (p. 23)

Compliance Rating: Decision of Compliance Level to Be Determined on 1b, 1g, 1h
Discussion: I will be working with JCMSC and staff on 1b starting in the next few weeks. For 1g, this point will not be able to be addressed to reform takes place (e.g., detention). However, the inventory of available services and diversion options can be done almost immediately and discussions from the meetings involving the committee consisting of the Points of Contact, Lisa Hill and others as well as a working relationship with Tom Coupe (also tied to 1a, 1c, 1d, 1e, 1f) can begin to lay the foundation for a strategic plan.

Expectations: Evidence of at least a monthly meeting and inventory of available diversion services need to be documented. A discussion of plans concerning the development and implementation of diversion programs needs to be also documented. A strategic plan also needs to be in place and should be discussed during the monthly meetings, if not more frequently. Failure to adhere to these expectations by the September 17 time-frame could constitute grounds for non-compliance.

As part of the DMC Assessment, the examination and comparisons of the Relative Rates as detailed in Table 1 and including monthly data for 2013 will need to be presented and discussed as part of this provision. Lower RRI's at each point of contact is expected with the exception of diversion and probation where the RRI should be at a goal of 1. In addition, an assessment involving multivariate analyses will be conducted by the Equal

Protection Monitor and the results shared with JCMSC and should be used by the Points of Contact committee as part of their monthly discussions. This component of the assessment study will provide data to determine if the influence of race on case decision making has been reduced or eliminated, especially outcomes involving a warning, restitution, detention, and adult transfer. The data will be based on delinquent referrals from January, 2013 to September 1, 2013 and will involve comparisons to the results presented in the Agreement and for the year 2012. This format will allow for a comparison of results over three different time-frames.

2.DMC Policies and Procedures (6 Months- June 17, 2013)

(a) Revise policies, procedures, practices, and existing agreements to reduce DMC at each Decision Point and encourage objective decision making in all departments relating to its delinquency docket. (p. 23)

(b) Revision of the above to include: (p. 23)
- (i) Collection of sufficient data
- (ii) Provision requiring least restrictive options and alternatives to a detention setting
- (iii.) Guidelines identifying a list of infractions for which a child shall NOT be detained
- (iv.) Guidelines identifying a list of infractions for which a child may be detained
- (v.) Training and guidance on the use of existing and new objective decision making tools
- (vi.) Requirement that a supervisory authority review all overrides within each department on, at minimum, a monthly basis.

(c) Reassess the effectiveness of its policies, procedures, practices and existing agreements annually and make necessary revisions to increase DMC reduction. (p. 24)

Compliance Rating: Beginning Compliance/ Decision of Compliance Level to Be Determined

Discussion: The JCMSC has been working with the Juvenile Detention Alternatives Initiative (JDAI) and this will entail a review of at least detention procedures and utilization of services. Likewise, the Summons Program has been used in an effort to avoid secure detention. Time is needed to allow these programs to take hold and then data will have to be evaluated as to whether DMC in secure detention has been reduced. I also believe the committee involving the Points of Contact and others should provide information that could lead to the need to review policies and procedures at other stages in addition to secure detention; thus, the justification for withholding a decision of compliance as pertains to other points or stages in the system . Efforts are still needed to assess WHY minority youth are

less likely to be involved in diversion programs and accordingly, what can be done to achieve a reduction. Similar points pertain to Transfer to adult court.

Expectations: **An assessment of compliance will be based on the efforts by JCSMC to meet the above stated provisions that includes but is not limited to efforts toward complying with the JDAI initiative. Data on additional points of contact – court referral, diversion, petition, findings of delinquency, probation, placement in secure confinement and transfer to adult court- need to be collected at least monthly, discussed at least monthly among the points of contact, and plans and strategies developed as to how to address if DMC exists. Documentation of this occurring needs to be provided in writing to the Equal Protection Monitor by June 17, 2013. Failure to adhere to these expectations could constitute grounds for non-compliance.**

3.DMC Reduction: Evaluation and Tools (9 Months- September 17, 2013) (p. 24-26)

(a) Use of objective decision-making tools,....etc.
(b) Refine decision-making tools, ...etc.
(c) Implementation of a pilot program involving police and the summons program
(d) Use of alternatives, including a pilot diversion program, to secure detention...etc.
(e) Monitor and evaluate Transfer Process
(f) Continued collection of data to assess DMC and its causes
(g) Points of Contact to evaluate monthly RRI and numbers at each point in the system and generate a management report
(h) Annually review objective decision-making tools....

Compliance Rating: Decision of Compliance Level to Be Determined
Discussion: Meeting some of these points is related to addressing 1a through 1h
Expectations: Documentation of efforts striving to meet these provisions needs to be given to the Equal Protection Monitor by September 17, 2013. The compliance level will be determined on the EFFORT on the part of JCSMC toward implementing each of these provisions.

4. Training (One year) (p. 26-27)

(a) Training on a number of pts (i-vii)
(b) Staff involved with the delinquency docket should receive training of at least 4 hours.

Compliance Rating: Partial Compliance/Decision of Compliance Level to Be Determined
Discussion: JCMSC has had a number of trainings. These are listed in Appendix 1. However, more is needed that relate to DMC. The Office of Juvenile Justice & Delinquency Prevention (OJJDP) offers services that are at no cost to the JCMSC and this should be taken advantage of. Such requests could involve help on the identification and development of alternative treatment services, data collection, adoption of structured decision-making other than at detention, how to reach out to the community, etc.

Expectations: An increase in training specific to DMC and program change/development to address DMC needs to occur and documented. The Equal Protection Monitor needs to be informed of these requests and training efforts prior to occurring.

IV. Community Outreach as stated in Agreement (6 months, June 17, 2013)

A. Develop and implement a community outreach program to inform community of progress toward reforms. This should include a county-wide consortium that includes but is not limited to six to nine citizens selected by the Mayor and approved by the County Commission who are reflective of the cultural and ethnic diversity of the County. The consortium should also include at least two parents of children who have had children before the Court for a delinquency matter; a person under age 21 who had direct contact with the juvenile justice system and community advocates. (p. 33)
B. A number of other criteria that focus on at least one open meeting every six months and the publicizing of the meeting and the posting. (p. 33)
C. There is a need for summaries of reports completed pursuant to the Agreement and made available to the community prior to the meeting. (p. 34)
D. JCMSC shall publish on its website annual reports in accordance with the Agreement.
E. The Community Outreach program should include a data dashboard that communicates compliance on the part of JCMSC with the Agreement. (p. 34)

F. A community survey shall be conducted **(one year)** (p. 34)
The survey should measure public satisfaction, attitudes among court personnel and community members both within Memphis and the County and should be representative of gender, race/ethnicity.

Compliance Rating: Beginning Compliance/Decision of Compliance Level to Be Determined
Discussion: A County-wide Consortium has been formed and I believe has met two times at the time of the reporting of the report. The makeup of the Consortium meets the specified criteria. While a directive of special services related to public relations has been developed, a detailed plan has yet to be developed as to how to inform the public.

This plan can build-off the directive. As previously mentioned, a Twitter account and Facebook have been developed as well as participation in a number of presentations on behalf of the Court in the community. A Community Meeting was scheduled for Saturday, June 8th.

Expectations: **The DMC Coordinator (Lisa Hill) as well as other community members and advocates should be working with Tom Coupe in this process. In addition to a plan, substantive efforts need to have taken place in this regard by June 17, 2013, such as further development of Websites and postings of information- reports, dashboard. Documentation of these efforts, including feedback on the Community meeting – number of people in attendance, how received, what was raised and discussed, etc., needs to be provided to the Equal Protection Monitor. Compliance will be assessed on the basis of meeting these specified provisions.**