

**Memorandum of Agreement Between the
United States Department of Justice and the
St. Louis County Family Court**



December 14, 2016

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**MEMORANDUM OF AGREEMENT BETWEEN THE DEPARTMENT OF JUSTICE
AND THE ST. LOUIS COUNTY FAMILY COURT**

INTRODUCTION

- A. This Memorandum of Agreement (“Agreement”) is entered into by the United States of America through the Department of Justice (“United States”) and the Family Court of the Twenty-First Judicial Circuit of the State of Missouri (“Family Court” or “St. Louis County Family Court”) (collectively, the “Parties”); to address the administration of juvenile justice for juveniles facing delinquency charges before the Family Court.
- B. This Agreement addresses the findings made during the United States’ investigation of the Family Court’s administration of juvenile justice pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 (“Section 14141”).
- C. On November 18, 2013, the United States opened an investigation into the administration of juvenile justice at the Family Court. The United States visited the Family Court in June 2014 with consultants in the fields of juvenile representation and statistical analysis, and interviewed judges, commissioners and other Family Court personnel, as well as public defenders, private defense attorneys, parents and children. On July 31, 2015, the United States issued its Report of Findings (See <https://www.justice.gov/crt/special-litigation-section-cases-and-matters0#juv>).
- D. While the Family Court disagrees with and disputes the findings made by the United States in its July 2015 report, the Parties share the same interest in protecting the constitutional rights of juveniles in St. Louis County and have worked together cooperatively to develop this Agreement.
- E. Nothing in this Agreement shall be construed as an admission of any findings or claims of legal violation made by the Department of Justice against the St. Louis County Family Court, which denies any wrongdoing or violation of law.
- F. This Agreement shall constitute the entire integrated agreement of the Parties. No prior contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provisions herein in an enforcement proceeding.

I. DEFINITIONS

- A. “Certified counsel” means a licensed attorney in good standing of the Missouri Bar who is not employed by the state or county to represent juveniles in St. Louis County Family Court delinquency proceedings and who has met the juvenile defense training requirements in this Agreement.

- B. “Chief Juvenile Officer” or “Juvenile Officer” means the individual appointed by the Presiding Judge of the St. Louis County Circuit Court pursuant to Mo. Rev. Stat. § 211.351 to execute the duties of the office as set forth in Mo. Rev. Stat. § 211.401.
- C. “Juvenile” refers to all persons subject to the jurisdiction of the St. Louis County Family Court pursuant to Mo. Rev. Stat. §§ 211.031.1(2) and (3).
- D. “Closed delinquency proceedings” means delinquency proceedings held at the St. Louis County Family Court that are not open to the public pursuant to Mo. Rev. Stat. § 211.171.6.
- E. “De-identified” means information or records that do not identify any single juvenile by name, or are redacted so as to only reveal a juvenile’s initials. De-identified aggregated information or records may include other demographic variables such as age, race, and gender.
- F. “Delinquency proceedings” means all proceedings held in the St. Louis County Family Court pursuant to Mo. Rev. Stat. §§211.031.1(2) and (3).
- G. “Deputy Juvenile Officer” or “DJO” means all staff appointed pursuant to Mo. Rev. Stat. § 211.351 to serve under the direction of the Chief Juvenile Officer or the Family Court Administrator and to assist the Chief Juvenile Officer or Family Court Administrator in carrying out the duties of the office as set forth in Mo. Rev. Stat. § 211.401.
- H. “Disproportionate Minority Contact” or “DMC” is the term used to describe the overrepresentation of minority juveniles in the juvenile justice system.
- I. “DOJ” or “United States” means the United States Department of Justice, which represents the United States in this matter.
- J. “Effective Date” means the date that this Agreement is signed by the Parties.
- K. “Family Court,” “Court” or “St. Louis County Family Court” refers to the Family Court of the Twenty-First Judicial Circuit of the State of Missouri.
- L. “Family Court Administrator” means the individual employed by the St. Louis County Family Court pursuant to Mo. Rev. Stat. §487.060.1 to perform the duties set forth in Mo. Rev. Stat. §487.060.2.
- M. “Family Court En Banc Meeting” means the bi-monthly meetings held by a quorum of the St. Louis County Family Court in accordance with Local Twenty-First Judicial Circuit Court Rule 100.7.
- N. “Include” or “Including” means “include, but not limited to” or “including, but not limited to.”

- O. “Informal Adjustment” means the process through which juveniles are diverted from formal adjudication in the Family Court, consistent with Missouri Supreme Court Rule 112.01.
- P. “Judge,” “Judges,” “Family Court Judge,” or “Family Court Judges” means the Judges and/or Commissioners of the St. Louis County Family Court.
- Q. “Open delinquency proceedings” means proceedings held at the St. Louis County Family Court that are open to the public pursuant to Mo. Rev. Stat. § 211.171.6.
- R. “Open records” means records of juvenile court proceedings held at the St. Louis County Family Court that are available to the public pursuant to Mo. Rev. Stat. § 211.321.
- S. “Policies and Procedures” means the guiding principles or processes that staff are required to follow.
- T. “Publicly-funded juvenile defense counsel” means a licensed attorney who is employed by the state or county to represent juveniles in St. Louis County Family Court delinquency proceedings and who has met the juvenile defense training requirements in this Agreement.
- U. “Provision” means each paragraph designated by an Arabic numeral within this Agreement.
- V. “Relative Rate Index” or “RRI” means the method selected by the Department of Justice’s Office of Juvenile Justice and Delinquency Prevention (“OJJDP”) for the identification of DMC. This method compares the relative volume (rate) of activity for each Decision Point in the juvenile justice system for minority youth with the volume of that activity for majority youth. The RRI provides a single index number that indicates the extent to which the volume of that form of contact or activity differs for minority youth and majority youth.
- W. “Staff” means all individuals working at the Family Court, whether they are compensated by the County of St. Louis or the State of Missouri, and who are involved in the implementation of this Agreement.
- X. “Youth-accessible language” means language suitable for a juvenile’s developmental stage, age, education and cognitive abilities.

II. DUE PROCESS AND EQUAL PROTECTION

A. Court-Appointed Counsel

1. In delinquency cases, the St. Louis County Family Court (“Court”) will implement a revised protocol for a juvenile’s retention of appointed defense counsel consistent with the following:

a. For a juvenile who is detained and not represented by counsel, the Court shall appoint the Office of the Missouri State Public Defender no later than the following business day after the juvenile is detained. The Public Defender’s representation shall continue until such time as the Court terminates jurisdiction over the juvenile or grants a well-taken motion to withdraw. The Court shall not appoint such attorney “for detention hearing only.” If prior to disposition, the appointed attorney files a motion to withdraw based on financial ineligibility, the Court shall not grant the motion until new counsel is retained or appointed.

b. For a juvenile who is not detained and not represented by counsel, following a submission by or on behalf of the juvenile of appropriate financial forms to the Court and a request for appointment of counsel, the Court shall determine the juvenile’s eligibility for the appointment of publicly-funded juvenile defense counsel, or for the appointment of certified counsel as described in Section II.A.5. If the Court receives these forms and this request less than seven days before the juvenile’s first hearing before the Court, then the Court shall grant a continuance so that the determination is made at least seven days before that hearing.

i. If the Court determines that a juvenile who is not detained and not represented by counsel is financially eligible for representation by the publicly-funded juvenile defense counsel, then such counsel shall be appointed immediately after that financial eligibility determination is made.

ii. If the Court determines that a juvenile who is not detained and not represented by counsel does not qualify for representation by the publicly-funded juvenile defense counsel, but is financially eligible for representation by certified counsel as described in this Agreement, then the Court shall appoint the counsel whose name is at the top of the list.

c. The Court shall notify all appointed juvenile delinquency defense counsel of his or her appointment within 48 hours of the appointment.

d. The Court shall incorporate into its written policies and procedures an expectation that appointed juvenile delinquency defense counsel will notify a juvenile of their appointment and provide their clients with contact information within 24 hours of receipt of notice of their appointment.

2. The Court will secure the equivalent of at least two publicly-funded full-time juvenile defense counsel for the Court's delinquency cases.

3. The Court shall promulgate a Family Court administrative rule requiring that all appointed juvenile delinquency defense counsel, including juvenile public defenders and certified counsel as set forth in this Agreement, whose appointments occur after the rule's promulgation, be members in good standing of the Missouri Bar.

4. The Court shall promulgate a Family Court administrative rule requiring that all appointed juvenile delinquency defense counsel undergo juvenile delinquency defense training addressing matters of best practices and procedures for juvenile delinquency defense, including but not limited to juvenile trial and appellate practice and procedure, adolescent development, and other relevant issues consistent with this Agreement. This training will be offered through the Court, as set forth at Section II(A)(4)(b). In addition to this training, which must be completed once, the Court's administrative rule will also require that all appointed juvenile delinquency defense counsel annually complete three hours of CLE addressing juvenile law and accredited by the Missouri Bar.

a. Beginning six months after the Effective Date of this Agreement, all appointed juvenile delinquency defense counsel shall successfully complete all training requirements set forth in this Agreement no later than six months after their first appointment as juvenile delinquency defense counsel pursuant to the terms of this Agreement. The Court may extend the timing of an attorney's required training for good cause shown on a case-by-case basis. However, all appointed juvenile delinquency defense counsel must complete the training requirements set forth in Section II(A)(4) within one year after their first appointment as juvenile delinquency defense counsel.

b. The Court shall bi-annually notify the Missouri State Public Defender's Office and other juvenile defense counsel of the administrative rule requiring that all appointed juvenile delinquency defense counsel undergo juvenile delinquency defense training and request that the Missouri State Public Defender and other juvenile defense counsel ensure the attendance at training for any attorney who has not received training within the previous 12 months. In addition, the Court shall select certain attorneys with adequate juvenile defense experience and training as "juvenile defense trainers."

i. Juvenile defense trainers' duties shall include providing training to attorneys who wish to be added to the pool of certified counsel as set forth in Section II.A.5, as well as to public defenders who are newly assigned to represent juveniles in delinquency proceedings before the Court.

ii. The Court shall ensure that juvenile defense trainers are appropriately trained and qualified to offer training to attorneys providing juvenile delinquency defense, including appointed counsel, and to be available on an ongoing basis for follow-up. The Department of Justice's Office of Juvenile Justice and Delinquency Prevention ("OJJDP") will provide technical assistance

to the Court in the form of training consistent with this Agreement. OJJDP provided a separate communication about its commitment to the Court.

iii. The Court shall ensure that juvenile defense training consistent with the requirements of this Agreement is offered no less than every six months.

5. The Court will establish in writing and implement a uniform, transparent policy for determining a juvenile's financial eligibility for the appointment of private defense counsel in delinquency cases where the juvenile has claimed indigency and the Office of the Missouri State Public Defender has made a determination of financial ineligibility and declines to represent the juvenile. This policy shall be consistent with the following:

a. The Court will establish a pool of certified counsel from which these appointments will be made. To be included in the pool, an individual must be a member in good standing of the Missouri Bar who has fulfilled the training requirements set forth in Section II(A)(4).

b. Nothing in this Agreement prohibits the Court from permitting law students from representing children in delinquency proceedings in accordance with Missouri Supreme Court Rule 13.

c. The uniform policy will include a uniform fee schedule.

d. The Court will publish this policy on its website, and will provide this policy to all juveniles and their parents or guardians upon its receipt of notice that the Office of the Missouri State Public Defender will not represent the juvenile due to its determination of financial ineligibility.

e. The Court will make appointments for delinquency cases from the pool of certified counsel as set forth below:

i. The St. Louis County Family Court Administrator will maintain a master list of all certified counsel.

ii. When a juvenile is deemed eligible for appointment of certified counsel, the Family Court Administrator will select for appointment the individual whose name appears at the top of the master list of certified counsel.

iii. After selection, the name of the selected individual will go to the bottom of the list.

iv. The Court Administrator will maintain only one master list of certified counsel.

f. The Court will make the list of certified counsel available to the public.

6. The Court will incorporate into its written policies and procedures a requirement that individuals appointed to represent juveniles in delinquency proceedings have met the training requirements set forth in Section II(A)(4).

7. The Court will continue to support the Office of the Missouri State Public Defender's assessment of its juvenile defenders' caseloads, so as to determine whether requests to the Missouri General Assembly for additional budgetary resources are merited.

8. The Court and Staff will continue to provide as much notice and opportunity for attorney-client meetings prior to detention hearings as is practicable, and will institute a written policy for their personnel to this effect.

9. With regard to juvenile delinquency defense attorneys from the Office of the Missouri State Public Defender or otherwise appointed by the Court, the Court will maintain, to the extent feasible, a single attorney's representation of a juvenile until either the Court terminates jurisdiction over the juvenile or grants a well-taken motion to withdraw.

10. The Court will continue its efforts to ensure all juveniles' ability to receive representation at an initial detention hearing from the Office of the Missouri State Public Defender or from an attorney otherwise appointed by the Court.

11. All publicly-funded juvenile defense attorneys shall determine financial eligibility by using the standards of the Office of the Missouri State Public Defender.

B. Juveniles' Privilege Against Self-Incrimination

12. Within three months of the Effective Date, the Court shall revise its policies, procedures, and practices to prohibit police interrogations in the Juvenile Detention Center unless an attorney is present to represent the juvenile.

13. The Court and Staff will utilize the Statement of Rights and Waiver Form attached to this Agreement as Attachment A.

14. The Court will continue to prohibit the juvenile officer or his designee from speaking with the juvenile regarding the substance of allegations previously made in that juvenile's delinquency case without either the presence of the juvenile's counsel or the written consent from that counsel to speak with the juvenile outside of that counsel's presence, until such allegations are adjudicated or otherwise disposed of by the Court or the parties.

15. The Staff will continue to adhere to its practice that the juvenile officer or his designee not offer into evidence, in a later delinquency adjudication proceeding on such allegations, any statement made by the juvenile to the juvenile officer or his designee regarding the substance of allegations previously made in that juvenile's delinquency case that takes place outside of the presence of the juvenile's counsel and that was not consented to by the juvenile's counsel.

16. The Staff will continue its practice that the juvenile officer or his designee not offer into evidence, in a later delinquency adjudication proceeding where the same juvenile is the defendant, any prior statement made by a juvenile during an informal adjustment process.

17. The Staff will, at the initial informal adjustment conference, notify a juvenile of their right to counsel during the informal adjustment process. This notice will include notice of the availability of representation from the pool of certified counsel, subject to the applicable financial eligibility requirements and fee schedule. If a request for counsel is made, the conference will be adjourned until the Court rules on the request for counsel or the juvenile withdraws the request.

18. The Court will agree to provide, upon request from the juvenile or their parent or guardian, appointed counsel from the pool of certified counsel referenced in this Agreement, subject to the applicable financial eligibility requirements and fee schedule, to represent the juvenile during informal adjustment proceedings.

C. Detention Hearings

19. The Court will include a probable cause determination in its detention hearing procedure. The Court's probable cause determination may take into account information presented through informal modes of proof. However, the juvenile may challenge the evidence presented against him through cross-examination of witnesses who testify at the hearing for the juvenile officer, including deputy juvenile officers, and may call witnesses and offer evidence on his/her own behalf. If the Court orders a juvenile to be detained pending an adjudication hearing, the Court will continue to state on the record its reason for this detention decision and the available alternatives to detention that were considered and rejected. The Court will also state the factual basis for its probable cause determination. The Court will continue to conduct detention hearings on the record, and will continue to preserve such record in accordance with Missouri law.

D. Plea Colloquies

20. The Court has adopted a uniform plea colloquy for acceptance of a juvenile's plea to charges of delinquency, from which the judicial officers may in their discretion deviate when the circumstances of a particular proceeding merit such adjustment. In the event that a judicial officer deviates from the model colloquy, they will use youth-accessible language to ensure the juvenile understands the charges against them and the consequences of their plea. The model colloquy is attached as Attachment B to this Agreement.

E. Training for Court and Staff Regarding Due Process and DMC

21. The Court will develop, implement and maintain adequate attendance and curriculum documentation of a competency-based training program for all deputy juvenile officers who work on juvenile delinquency matters, addressing the role and responsibilities of, among others, juvenile defense counsel in delinquency proceedings, the due process rights of juveniles, including but not limited to juveniles' right to counsel and privilege against self-

incrimination, the potential consequences (including collateral consequences) for a juvenile who is adjudicated delinquent, and the provisions of this Agreement.

22. The Court and Staff will ensure personnel who are directly involved in decision-making processes of the Court or the Juvenile Office concerning juvenile delinquency will participate in accredited DMC trainings provided or funded by OJJDP. Accredited DMC trainings will occur in St. Louis County.

23. OJJDP will provide technical assistance in the form of training to the Court about DMC training strategy. The strategy will include training on at least: (1) formal petitions; (2) certifications; (3) pretrial detention; (4) findings of delinquency; (5) commitment to a confined facility as an initial disposition; and (6) commitment to a confined facility due to violation of conditions equivalent to probation. OJJDP provided a separate communication about its commitment to the Court. The training strategy will also be consistent with the requirements of this Agreement and coordinated with statewide initiatives and efforts to comply with the Juvenile Justice and Delinquency Prevention Act of 2002 (JJDP A).

24. The training shall be in person and Staff will document attendance of all staff who participate in the training.

25. DMC training for personnel from the Court and Staff shall occur on at least an annual basis. OJJDP's separate communication to the Court includes information about the development of curriculum and training based on the DMC-related needs.

26. The Court will invite personnel from the Office of State Court Administrator ("OSCA") to participate in any training on juvenile delinquency data collection.

F. Equal Protection Duties and Responsibilities

27. Within three months of the Effective Date, the Court shall expand the duties of the Family Court Administrator to include:

- a. oversight of the Court's efforts to monitor, evaluate, and minimize DMC; and
- b. responsibility for reporting on and evaluating these efforts and outcomes arising out of the efforts.

G. Data Collection and Reporting

28. The Court will use the Justice Information System (JIS) or some other approved statewide case management system to collect data on sex, race¹, age, and juvenile offense

¹ The Court will implement a self-identification process for juveniles regarding their race. This process currently provides juveniles with the opportunity to identify as one of the following: Hispanic, American Indian, Asian, Black, White, and Other. The process will also provide

information. The Court will develop and use the JIS or another approved statewide case management system to produce reports in standard file format.

29. The Court will make publicly available the data required by this Section through bi-annual reports of the Family Court Administrator and the Family Court en banc meeting process, as described in this Agreement.

30. The Court will continue to collect and make available data showing whether a juvenile delinquency matter referred to the Court was resolved informally prior to the filing of a delinquency petition and collect data on matters resolved through delinquency petition. This data will include disaggregation by sex, race, age, and the most serious charged offense.

31. The Court will continue to collect and make available data showing whether a juvenile delinquency case was certified to the criminal court and will, for each such case, record the sex, age, and race of the juvenile, the most serious offenses for which the Court certified a case to the criminal court, and the most frequent geographic areas (identified by zip code) within the county from which juvenile delinquency cases were certified.

32. The Court will continue to collect and make available data to monitor DMC regarding detention of juveniles awaiting adjudication hearings. This data will be disaggregated by age, sex, race, and most serious charged offense. This data will also track—for each juvenile so detained—the length of the juvenile’s detention.

33. The Court will collect and make available data on detention screening and detention criteria as performed and utilized by the Court’s Juvenile Office.

34. The Court will collect and make available data on its use of alternatives to detention.

35. The Court will collect and make available data showing the cases within a given date range where the Court made findings of delinquency in a juvenile’s case, disaggregated by age, sex, and race, and indicating the most serious offenses for which the Court found a juvenile delinquent.

36. The Court will collect and make available data showing the type or nature of the alternatives to commitment to the Division of Youth Services (“DYS”) that were available for consideration by the Court in cases where the Court’s initial dispositional ruling commits the juvenile to DHS. This data will be collected through JIS or some other approved statewide case management system.

37. The Court will continue to collect and make available data recording whether counsel was made available to the juvenile for dispositional proceedings. This data will be

juveniles with the opportunity to choose not to identify their race. When a juvenile chooses not to identify their race, or indicates that their race is unknown, their case will not be included in the DMC data collection or reporting discussed herein.

collected through JIS or some other approved statewide case management system.

38. The Court will, in collecting this data, include the number of cases in each of the following categories: cases where the Court's initial disposition committed the juvenile to DYS; cases where the Court's initial disposition placed the juvenile on conditions equivalent to probation, and later committed the juvenile to DYS due to violations of those conditions; and cases where the Court conditionally suspended an initial disposition committing the juvenile to DYS, and later executed that disposition due to violations of its conditional suspension. The data will include various date ranges, the most serious offenses for which the Court selected DYS commitment and the most frequent geographic areas (identified by zip code) within the county from which juveniles found delinquent were committed to DYS. This data will be disaggregated by age, sex, and race.

39. JIS or some other approved statewide case management system will maintain the capacity to summarize and analyze data to review DMC at the points identified by this Agreement and place that data in standard file and report formats.

40. Within six months of the effective date, the Family Court Administrator or his/her designee shall work with the Court's department heads responsible for delinquency matters to access and analyze the data available through the JIS system or some other approved statewide case management system at five decision points in the juvenile justice process. These decision points include: formal petitions; pretrial detention; findings of delinquency; commitment to Division of Youth Services as initial disposition; and commitment to Division of Youth Services due to a violation of conditions equivalent to probation.

41. The Family Court Administrator or his/her designee, with the assistance of the Court's department heads responsible for delinquency matters, shall conduct for the Court an analysis of this DMC data on a bi-annual basis, produce to the Court a report, and, when appropriate, provide suggestions to the Court for changes to policy, procedure, or practice to minimize DMC. The Court Administrator's analysis and report shall address each decision point identified by Section II.G(40) that reveals DMC.

42. Within 60 days of each bi-annual report, the Court, in collaboration with the Family Court Administrator, shall develop a proposed plan, including proposed changes to policy, procedure, or practice, as well as additional staff training, as needed, to address concerns found in the report. On a bi-annual basis, the Family Court will provide the data, report, suggestions (where applicable), and proposed plan (where applicable) to the Family Court en banc.

43. The Family Court en banc shall meet no later than 90 days after receipt of this material. The Court will add the bi-annual report, any proposed plan, and any suggestions to the proposed agenda for that meeting. The Court en banc meetings where the bi-annual report, any proposed plan or any other information related to the report is on the agenda will be open to the public. The Court will post an announcement of the meeting and add the final minutes of meetings en banc on its public website. The Court will post every bi-annual report, proposed plan and any related documents to be considered at the Court en banc meeting on its public

website. During the meeting the Family Court en banc will discuss these materials, and, where applicable, consider any suggestions from the Court Administrator as well as any proposed plan from the Court.

44. The Family Court Administrator's bi-annual analysis of and report on DMC data referenced in Section II.G(41) shall include a bi-annual professional statistical analysis of DMC in the Court's delinquency system, by the Office of State Courts Administrator. The DMC professional conducting the statistical analysis will have the following qualifications:

- a. understands statistical analyses such as logistic regression and odds ratios; and
- b. understands the range of factors which might contribute to DMC within St. Louis County.

45. This DMC professional statistical analysis shall refer to the OJJDP "Disproportionate Minority Contact Technical Assistance" Manual and analyze DMC by using the Relative Rate Index, logistic regression, and odds ratio formulas. This analysis will include an assessment of the collected DMC data referenced in this Agreement and proposals, if appropriate, for technical assistance and improvement of data collection/recording. The professional statistical analysis will be conducted with the award from the Department of Justice to collect and analyze data on DMC in Missouri's juvenile justice system.

III. COMPLIANCE

A. Implementation and Auditing

46. The Court and Staff shall begin implementing this Agreement immediately upon the Effective Date. Unless otherwise noted, the Court and Staff shall implement all substantive obligations contained in this Agreement within 60 days of the Effective Date. If the Court or Staff cannot implement the obligations in this Agreement with the allotted timeframes, the Court shall notify the United States in writing within 20 calendar days of becoming aware of the inability to meet the requirements of the Agreement. The notice shall describe the cause of the inability, the measures taken to prevent or minimize delay, and the requested extension date. The Court and Staff shall take all reasonable measures to avoid or minimize any such inability.

47. Within two weeks of the Effective Date, the Court shall communicate the requirements set forth in this Agreement to officials, staff, agents, and independent contractors who are involved in informal adjustments and juvenile delinquency proceedings at the Court.

48. Within two weeks of the Effective Date, the Court shall post a copy of this Agreement on the Family Court website.

49. Compliance with this Agreement shall be assessed by an independent Auditor and a DMC Subject Matter Expert. The Auditor shall be assisted by the DMC Subject Matter Expert.

The Due Process Auditor shall be the Honorable Arthur E. Grim (“Judge Arthur Grim”). The DMC Expert shall be Mr. Mark Greenwald.

50. The Auditor shall assess the Court’s compliance with the Agreement, with the assistance of the DMC Expert, who will provide expertise and compliance ratings for the assessment of Sections II.E.22–G of the Agreement (the “DMC Sections”). The Auditor and DMC Expert may share information and collaborate with each other in reviewing and assessing compliance with this Agreement.

51. In the event that Judge Grim or Mr. Greenwald are unable to serve or continue serving as Auditor or DMC Expert, or in the event that the Parties agree to terminate use of Judge Grim or Mr. Greenwald as Auditor or DMC Expert, the Parties shall confer within 45 days of the decision to discontinue use of Judge Grim or Mr. Greenwald to select a replacement. Any replacement Auditor shall have expertise in the area of due process in juvenile delinquency proceedings. Any replacement DMC Expert shall have expertise in the area of statistical analysis of disproportionate minority contact in a juvenile delinquency system. If the Parties are unable to agree upon a selection of a replacement within 45 days, each Party shall submit two names along with resumes or curriculum vitae and cost proposals, to a neutral party, selected with the assistance of the Federal Mediation and Conciliation Service, and the neutral party shall appoint a replacement from among the names submitted. The Parties agree to equally share the cost of the Federal Mediation and Conciliation Service.

52. The Auditor and the DMC Expert may be terminated if the Parties agree and upon good cause shown. Good cause shall include any violation of state or federal law that reasonably calls into question the individual’s fitness to continue serving. In the event the Parties do not agree upon the need for termination, the Parties agree to work in good faith to resolve their differences. If the Parties are unable to resolve the dispute regarding termination of the Auditor or DMC Expert within 45 days, the Parties shall present the dispute for resolution by a neutral party, selected with the assistance of the Federal Mediation and Conciliation Service. The Parties agree to equally share the cost of the Federal Mediation and Conciliation Service.

53. Within 30 days of the receipt of written questions from the United States or the Court regarding the Auditor and DMC Expert’s activities in assessing compliance with this Agreement and/or the Court’s compliance with this Agreement, the Auditor and DMC Expert shall provide all Parties with written answers. Any such question from a party shall be copied to all other Parties.

54. The Court shall bear all reasonable fees and expenses of the Auditor and the DMC Expert. Reasonable expenses shall not include overhead or support personnel. In addition, the Court shall pay for the Auditor’s time spent in assessing compliance, at an hourly rate of up to \$250. The Court shall pay for the DMC Expert’s time spent in assessing compliance with the DMC Sections of the Agreement, at an hourly rate of up to \$250. The Auditor and DMC Expert shall keep track of their time, travel and other expenses and request payment from the Court within one month of incurring the expense on forms provided by the Court. The Court or its designee shall promptly review the monthly statement and pay any reasonable fee or expense within forty-five days of submission.

55. The Auditor and DMC Expert shall be permitted to initiate and receive *ex parte* communications with all Parties.

56. Except for compliance reports issued pursuant to this Agreement, the Auditor and DMC Expert shall not disclose information – including but not limited to statements to the press, conference presentations, lectures, or articles – to those other than the parties to this Agreement with regard to: the status of the Court’s compliance or noncompliance with this Agreement; any act or omission of the Court or its agents, representatives, or employees; or the terms of employment as Auditor or DMC Expert unless authorized by the Parties. Nor shall the Auditor disclose to the United States information beyond the scope of its authorized access as set forth in this Agreement.

57. The Auditor and DMC Expert shall not testify in any litigation or proceeding brought by private parties regarding the status of the Court’s compliance or noncompliance with this Agreement; any act or omission of the Court or its agents, representatives or employees; or the terms of his or her employment as Auditor or DMC Expert, unless lawfully compelled to do so. The Auditor and DMC Expert may testify in the event of litigation between the Parties over this Agreement.

58. Unless such conflict is waived by the Parties, the Auditor and DMC Expert shall not accept employment or provide consulting services that would present a conflict of interest with his or her responsibilities under this Agreement or breach the highest ethical standards, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant or such litigant’s or claimant’s attorney, in connection with a claim or suit against the Court or its departments, officers, agents, or employees concerning matters relevant to this Agreement.

59. No Party, nor any employee or agent of any Party, shall have any supervisory authority over the Auditor or DMC Expert.

60. To assess the Court’s compliance with this Agreement, the Auditor, with assistance by the DMC Expert, may periodically conduct on-site compliance reviews, other than those set forth below, of the Court’s implementation of this Agreement. For any on-site reviews beyond those set forth below, prior to conducting an on-site review to obtain information or resolve an oversight issue, the Auditor or his assistant DMC Expert must first attempt to obtain the information or resolve the issue by telephonic or written means. The Parties and the Auditor shall consult with each other to schedule mutually acceptable dates for any on-site compliance review.

- a. The first compliance review will be conducted approximately four months following the Effective Date. Thereafter, routine compliance reviews will be conducted by the Auditor and DMC Expert approximately every six months until this Agreement is terminated.
- b. During each compliance review, the Auditor and DMC Expert shall have the responsibility and authority to independently review, assess and report

on the Court's implementation and compliance with the provisions of this Agreement. The Auditor and DMC Expert shall be responsible for independently verifying representations from the Court and Staff regarding progress toward compliance, examining supporting documentation where applicable.

- c. The Auditor shall conduct on-site reviews of the Court once every six months until such time as this Agreement is terminated. The Auditor shall spend a sufficient amount of time on-site to accurately assess compliance with this Agreement. The parties expect that for the first 18 months, the Auditor will spend no more than four days on-site during each biannual compliance review. After 18 months, if 60% of the provisions in the Agreement are in substantial compliance, the parties expect that the Auditor will spend no more than three days on-site during each biannual visit.
- d. The DMC Expert may, at his or her discretion, make on-site visits once every six months until such time as this Agreement is terminated. The parties expect that for the first 18 months, the DMC Expert will spend no more than two days on site during each biannual visit. After 18 months, if 60% of the provisions in the DMC Sections are in substantial compliance, the parties expect that the DMC Expert will spend no more than one day on-site during each biannual visit.
- e. To accurately assess the Court and Staff's progress, the Auditor shall engage in a sufficient number of each of the following activities to adequately assess compliance:
 - i. Independently observe court proceedings, programs and activities related to the juvenile delinquency process;
 - ii. Interview judges, administrators, relevant OSCA staff, and staff members, including but not limited to legal officers and deputy juvenile officers, public defenders and private attorneys on the list of certified counsel;
 - iii. Independently observe the Family Court en banc meetings where, pursuant to this Agreement, information is provided to the public regarding the Court's progress in satisfying the terms of the Agreement;
 - v. Review policies and procedures, training materials, and, as permitted by Mo. Rev. Stat. § 211.321, the following: records of juvenile court proceedings as well as all information obtained and social records prepared in the discharge of official duty, Justice Information System data and reports, and any other reports,

documents or other approved statewide case management system data of juveniles involved in all stages of juvenile delinquency proceedings; and

- vi. Privately interview juveniles and observe meetings between juveniles and deputy juvenile officers, consistent with Section III(A)(60)(g).
- f. The Court and Staff shall, consistent with Mo. Rev. Stat. § 211.321, grant the Auditor full and complete access to all documents, records and premises utilized in the delinquency process, and all judges, officials, employees, agents and contractors whose responsibilities are affected by this Agreement. However, the Auditor shall not have access to documents protected by the Court's attorney work product or attorney-client privileges regarding the Court's negotiations or potential litigation with the United States.
- g. The Court and Staff shall also grant the Auditor access to juveniles in any phase of the juvenile delinquency process, including the ability to meet privately with juveniles and to observe informal adjustment and other meetings between juveniles and DJOs.
 - i. Prior to observing meetings between DJOs and juveniles, as well as to conducting private interviews of juveniles, the Auditor shall notify the juvenile's defense attorney and confirm that the attorney does not object to such observations and interviews or, if requested, coordinate such observations and interviews so that the attorney may be present.
 - ii. Prior to any private meetings with juveniles, the Auditor shall advise the juvenile and, if possible, their counsel and parents that:
 - 1. The Auditor will not release the juvenile's identity to the public;
 - 2. Any information that the parent or the juvenile provides to the Auditor will be used solely for the purpose of assessing compliance with this Agreement and will not be used against the juvenile in any unrelated proceeding; and
 - 3. The Auditor does not have the authority to represent individuals in legal matters and cannot provide legal opinions or legal assistance.
 - iii. The Court and Staff shall not use any information obtained by the Auditor against juveniles in their individual proceedings.

- h. For purposes of this Agreement only, the Auditor is determined to be a “person[] having a legitimate interest []in” these records and proceedings Mo. Rev. Stat. § 211.321.1.
- i. To accurately assess the Court’s progress with the DMC Sections of this Agreement, the DMC Expert shall engage in a sufficient amount of each of the following activities to adequately assess compliance:
 - i. Interview administrators, relevant OSCA staff, JIS staff, and public defenders and private attorneys on the list of certified counsel;
 - ii. Conduct independent observations, either in person or by teleconference or videoconference of the Family Court en banc meetings;
 - iii. Review policies and procedures, training materials, de-identified court records, de-identified Justice Information System data and reports, and de-identified documents or other approved statewide case management system data of juveniles involved in all stages of juvenile delinquency proceedings; and
 - iv. Review disaggregated court records, Justice Information System data and reports, documents or other approved statewide case management system data of juveniles involved in all stages of juvenile delinquency proceedings. Such records, data, and reports will be de-identified.
- j. The Court and Staff shall grant the DMC Expert full and complete access to all DMC-related policies and procedures, training materials, de-identified Justice Information System data and reports, de-identified documents or other approved statewide case management system data of juveniles involved in all stages of juvenile delinquency, and will facilitate the DMC Expert’s access to this information through the cooperative efforts of OSCA, should JIS or another approved statewide case management system necessitate those efforts.
- k. Following each review, the Auditor, with the assistance of the DMC Expert regarding the DMC Sections, will produce a draft compliance report addressing the Court’s compliance with the requirements contained within this Agreement, and assigning a compliance rating to each provision. The DMC Expert shall assign a compliance rating to the provisions found in the DMC Sections of the Agreement. The Auditor shall submit a final draft version to the United States and the Court as prescribed below.

- l. Within 60 days after each compliance review, the Auditor shall provide the Parties a final report which includes independent assessments and compliance ratings, describes the steps taken by the Court to implement this Agreement, evaluates the extent to which the Court has complied with the Agreement, assigns a compliance rating consistent with Section III.A.60.m, below, to each provision of the Agreement, cites the evidence upon which such evaluation is based, and provides recommendations if needed. Each report shall be provided to the Parties in draft form for comment within 30 days after each compliance review, and the Parties shall have 20 days after receipt of the draft report to comment on the report before it is finalized by the Auditor. Neither Party, however, shall have authority over the compliance report, findings, or recommendations.
- m. In evaluating the Court's compliance with this Agreement, the Auditor, with the DMC Expert's assistance, shall assign one of the following ratings to each provision of the Agreement: substantial compliance, partial compliance, beginning compliance, and non-compliance.
 - i. "Non compliance" means that the Court has made no notable progress in achieving compliance on any of the components of the substantive provision.
 - ii. "Beginning compliance" means that the Court has made notable progress in achieving compliance with a few, but less than half, of the components of the substantive provision.
 - iii. "Partial compliance" indicates that the Court has made notable progress in achieving compliance with the components of the substantive provision, but substantial work remains.
 - iv. "Substantial Compliance" indicates that the Court has met or achieved nearly all the components of a particular substantive provision, that the deviation from the obligations set forth in the provision is slight, and that the United States received substantially the same benefit it would have from literal performance.
- n. Within two weeks of its issuance, the Court shall post each final report on the Family Court website.
- o. The Court shall appoint an official or employee to serve as the Settlement Agreement Compliance Coordinator. The individual selected to be the Settlement Agreement Compliance Coordinator shall be a Court employee or official with the authority, experience, and time available to ensure adequate implementation of this Agreement. The Settlement Agreement Compliance Coordinator's duties shall include:

- i. Coordinating and overseeing compliance with this Agreement, facilitating the scheduling of the Auditor and DMC Expert's on-site visits and serving as the point of contact;
- ii. Providing the United States with any reports prepared by the Family Court Administrator and professional statistician made pursuant to obligations set forth in this Agreement, and any other reports and documents routinely submitted by the Court regarding compliance with this Agreement and specifically requested by the United States, so long as that report or document is an open record and/or the United States otherwise has access to that document under this Agreement; and
- iii. Providing the Auditor with any documents or reports to which the Auditor is entitled under this Agreement.

61. Until such time as this Agreement is terminated in accordance with Section III.B, the United States and its staff and agents shall have the right to conduct visits to the Family Court and shall coordinate the timing of its on-site visits with the Court and the Auditor so as to minimize disruption of Court operations and staff work functions.

62. The Court and Staff shall grant the United States full and complete access to the following:

- a. Open records and delinquency proceedings;
- b. Policies and procedures, training materials, de-identified Justice Information System data and any other approved statewide case management system data of juveniles involved in all stages of juvenile delinquency proceedings;
- c. Judges, administrators, and staff members, including but not limited to legal officers and deputy juvenile officers; and
- d. Juvenile defense attorneys and juvenile public defenders.

63. The Court shall maintain all records kept in the normal course of business until such time as this Agreement is terminated, and make these documents available to the Auditor, DMC Expert, and the United States consistent with the respective rights of access provided to those entities in this Agreement.

64. No child, parent, staff, stakeholder, or any other person shall be subjected to retaliation in any manner for information shared with the Auditor or the United States in their efforts to determine compliance with this Agreement.

B. Enforcement and Termination

65. It is the Court's intention to make permanent the provisions set forth in this Agreement, many of which are already policies and practices of the Court, and all of which the Court acknowledges to be sound policies and in the interests of justice for all persons involved in the juvenile court system.

66. The Court also intends to make permanent, as sound policy, the Data Collection provisions set forth in Section II.G, and to continue to make available all data collected.

67. With those stated intentions in mind, this Agreement shall terminate when the Court has achieved substantial compliance with all substantive provisions of this Agreement and has maintained that substantial compliance for 12 consecutive months, as determined by the Auditor for Sections II.A–E.21 (the “Due Process Sections”) and DMC Expert for the “DMC Sections”. However, the legal obligations of the Court shall expire no more than 48 months from the Effective Date of this Agreement unless the Parties agree to extend the effective period of the Agreement under Section III(B)(69).

68. For purposes of determining eligibility for termination due to sustained substantial compliance, the Due Process Sections and the DMC Sections will be assessed separately and may terminate at different points in time due to substantial compliance, consistent with the sustained Substantial Compliance requirements set forth above.

69. After 48 months from the Effective Date of this Agreement, if the Auditor (for the Due Process Sections) and DMC Expert (for the DMC Sections) find the Court not in substantial compliance with this Agreement, then the Parties may agree to extend their obligations and rights under this Agreement for additional 12-month periods until the Auditor (for the Due Process Sections) and DMC Expert (for the DMC Sections) find the Court in substantial compliance with this Agreement.

70. After 48 months from the Effective Date of this Agreement, the United States may institute whatever legal action it would otherwise be permitted against the Court only if the Auditor (for the Due Process Sections) or DMC Expert (for the DMC Sections) find the Court not in substantial compliance with this Agreement.

71. If, during the operation of the Agreement, the United States deems the Court not to be acting in good faith to achieve substantial compliance with the applicable terms of the Agreement requiring such compliance, then the United States may bring whatever action against the Court that it would otherwise be entitled to bring.

Agreed to this 14th day of December, 2016

For the United States of America:

LORETTA E. LYNCH
Attorney General



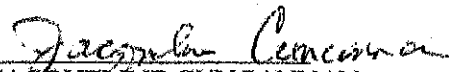
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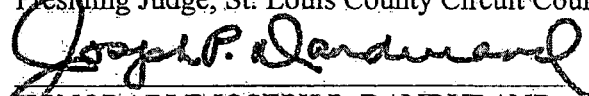


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For the FAMILY COURT OF THE
TWENTY-FIRST JUDICIAL DISTRICT OF THE STATE OF MISSOURI:


HONORABLE THEA A. SHERRY 12/14/16
Administrative Judge, Family Court of St. Louis County


HONORABLE MAURA MCSHANE 12/14/16
Presiding Judge, St. Louis County Circuit Court


HONORABLE JOSEPH P. DANDURAND
Deputy Attorney General
Missouri Attorney General's Office