

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

**Honorable Dan Michael  
Presiding Judge, Memphis-Shelby Juvenile Court**

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

**Katherine Pascover  
County Attorney**

**FROM: Sandra Simkins  
Due Process Monitor**

**DATE: January 3, 2018**

**RE: Compliance Report #10 - October 2017**

Juvenile Court Memphis Shelby County (Juvenile Court) entered into a Memorandum of Agreement (Agreement) with the United States Department of Justice Civil Rights Division (DOJ) on December 17, 2012. According to the Agreement, compliance shall be assessed by two monitors and a facility consultant. I was named the Due Process Monitor and have subject matter expertise in the area of due process and juvenile delinquency. The regularly scheduled compliance review and site visit occurred October 1, 2017 –October 5, 2017. This report evaluates the extent to which Juvenile Court has complied with each substantive provision of the Due Process sections of the Agreement. The original Agreement between Shelby County and the DOJ contained 15 separate sections and a total of 56 compliance provisions. Since the last compliance visit I am pleased to report that Shelby County has maintained substantial compliance in two additional sections, Probable Cause and Training, and these sections will no longer be under review. In addition, certain provisions within the remaining five sections have also been terminated, and will be indicated within this report.

## **Format**

1. Executive Summary
2. Remaining Areas of Concern
3. Discussion of Compliance Findings

## **Executive Summary**

In June of this year, longtime Settlement Coordinator Bill Powell resigned and a new coordinator, Judge Paul Summers, was appointed. In late October, the DOJ responded to two

letters from Shelby County<sup>1</sup> by agreeing to terminate several subsections of the Agreement that are relevant to this report, but declining the larger invitation to terminate the entire Agreement between the County and the DOJ stating: “Because more work needs to be done, it would be premature to terminate the entire Agreement at this time.”

Overall, progress in several areas seems to have stalled for this compliance period and there are several indicators of concern. There are still four key areas that prevent my recommending complete termination of the Agreement’s Due Process components. In addition, I have serious concerns about recent actions of Juvenile Court concerning the defense bar that not only impede progress under the Agreement but also suggest the danger of a return to the same practices – most prominently, judicial control over the defense bar – that made the Agreement necessary.

I am calling on Shelby County stakeholders to renew previous commitment to collaborative efforts toward meaningful progress, to forestall any backsliding, and ultimately to achieve substantial compliance with the entire Agreement.

Almost identical to the last report, the following are the remaining issues. In the course of discussing these issues, I will address my related concerns regarding rising judicial pressure on the defense bar.

1. Achieving independence for the Shelby County Public Defender through operationalizing the Mayor’s March 23, 2017 “Executive Order,” implementing the Public Defender’s “Blueprint to Achieve Compliance in Juvenile Defender Services,” and ensuring that public defenders are free of undue judicial influence and political pressure.
2. Providing for the independence of private assigned counsel. That independence is particularly important given the panel represents 39% of all delinquency complaints in which the accused is indigent.
3. Protecting the due process rights of youth in transfer hearings. I am particularly concerned about inconsistent discovery practices that can force juvenile defenders to defend youth against transfer to criminal court – where they face consequences ranging up to life in prison – without critical information of the case against them. The practice is especially problematic in light of the dramatic increase over the last two years in the number of youth subject to transfer in Shelby County.
4. Ensuring the availability of attorneys to advise youth at probation conferences. I remain concerned that youth may admit guilt in probation conferences without ever having an opportunity to talk to a lawyer.

The Court’s compliance status is as follows:

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<sup>1</sup> Shelby County wrote to letters two the DOJ regarding termination, one in June 2017 requesting termination of the entire agreement and another in September 2017 requesting partial termination of specific sections.

<b>Compliance Standards</b>	<b>April 2013</b>	<b>Oct.2013</b>	<b>April 2014</b>	<b>Oct. 2014</b>	<b>April 2015</b>	<b>Oct. 2015</b>	<b>April 2016</b>	<b>Oct. 2016</b>	<b>April 2017</b>	<b>Oct. 2017</b>	
Substantial Compliance	0	0	0	24	38	43	50	48	14	9	
Partial Compliance	1	26	44	23	16	11	3	5	4	5	
Beginning Compliance	25	17	10	5	1	1	0	0	0	0	
Non Compliance	3	0	0	1	0	0	2	2	2	3	
Insufficient Information/pending	5	2	1	2	0	0	1	1	1	0	
<b>Total Due Process Provisions Remaining in the Agreement</b>	<b>34</b>	<b>45</b>	<b>55</b>	<b>55</b>	<b>55</b>	<b>55</b>	<b>56*</b>	<b>56*</b>	<b>21*</b>	<b>17*</b>	

\*I have divided two compliance measures into two parts given nature of progress.

## **Remaining Areas of Concern**

### *1. Public Defender Independence*

The Agreement requires the County to “take action to ensure independent, ethical, and zealous” advocacy on behalf of children accused in delinquency cases in Shelby County Juvenile Court. This right to an independent, ethical, zealous lawyer is about basic, fundamental fairness for accused children. Effective defense counsel is essential to achieve just outcomes and also ensures that the adjudication process is actually fair and is perceived as fair by youth, their families, and the community at large.

In my last report, I congratulated Shelby County Mayor Mark Luttrell who signed an Executive Order on March 23, 2017, “Recognizing, Affirming, and Approving the Public Defender Office of Shelby County Tennessee as an Independent Ethical and Zealous Provider of Defender Services in Shelby County.” I also noted that the Order is a prerequisite for independence and that it is necessary to operationalize the Public Defender’s 2016 *Blueprint to Achieve Compliance in Juvenile Defender Services*.

Now, the Mayor and his administration should give real force to the Order, ensuring that it has both meaning and sustainability. And, with the County’s support and partnership, the Public Defender should take immediate steps to fully implement the *Blueprint*. In my last compliance report, I requested that the Public Defender provide a written update of progress under the *Blueprint*, including a detailed timeline and implementation plan. I have not received the requested written report. I am now repeating my request, and I hope to receive the report soon.<sup>2</sup> I also encourage active collaboration between the Public Defender and the County Administration to address unresolved issues related to the independent and ethical practice of law by the Shelby County Public Defender.

### *2. Disturbing Trend of Direct Judicial Control Over Defense Bar*

<sup>2</sup> The Public Defender advised me that he delayed responding to the prior request for a written report while Shelby County’s formal request to terminate was pending. He has indicated the requested report will be filed by February 1, 2018.

However, recent strides toward operational independence are empty if other pressures prevent public defenders from advocating ethically and zealously for their clients. In 2017 Juvenile Court filed three complaints with the Board of Professional Responsibility of the Supreme Court of Tennessee against three juvenile defense attorneys. Each of the three lawyers had over eight years of defense experience and had never before been the subject of a disciplinary action or ethical complaint. In addition, it is my understanding that such actions against defense counsel are extraordinarily rare in the other forums of Shelby County, such as adult criminal court proceedings.<sup>3</sup>

The filing of an ethics complaint against an attorney can result in long term negative consequences for the attorney's career. According to the Tennessee Board of Professional Responsibility, when an ethics complaint is filed against an attorney potential consequences include reprimand, suspension of the right to practice law and disbarment.<sup>4</sup> In addition, each time a complaint is filed with the Board of Professional Responsibility it triggers an investigation resulting in a recommendation by Disciplinary Counsel for the Board to a District Committee Member of the Board of Professional Responsibility. I have received information that following proper inquiry by the Board of Professional Responsibility of the Supreme Court of Tennessee, each of the three complaints filed by Juvenile Court against juvenile defense attorneys was dismissed by Disciplinary Counsel.

While the Court should take genuine ethical issues seriously,<sup>5</sup> the pattern of filing ethics complaints appears to be having a direct negative effect on a fledgling defense bar and compliance with the Agreement. I am advised that, in the past several months, the Public Defender has experienced an unusual number of departures from its juvenile unit.<sup>6</sup> The Agreement's mandate to create an independent defense function was motivated by the original DOJ investigation, which found a constitutionally-deficient and submissive juvenile defense culture in Shelby County Juvenile Court. To be independent, lawyers must be able to practice free of inappropriate pressure or the fear of judicial reprisal. The overuse of judicial sanctions against the juvenile defense community can harm due process and diminish access to quality

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<sup>3</sup> These types of complaints are rare in Shelby County. For seven years the current Public Defender has been supervising more than 80 lawyers, and this appears to be the first instance in which a judge has filed ethics complaints against assistant public defenders.

<sup>4</sup> Tennessee Board of Professional Responsibility of the Tennessee Supreme Court, <http://www.tbpr.org/>

<sup>5</sup> According to Rule 2.15 of the Tennessee Code of Judicial Conduct, judges have an obligation to address misconduct. "[The rules] impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer." However, the Comment to Rule 2.15 also details the following continuum of responses a judge may take when concerned about a lawyer's fitness: *Appropriate action may include, but is not limited to.....communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.* " *Id.*

<sup>6</sup> During my compliance visit I interviewed one of the lawyers who was the subject of a complaint and who has since left the Public Defender Juvenile Unit. The lawyer indicated that the complaint was a contributing factor in the decision to seek other employment.

counsel by creating a chilling effect on defense advocacy. High-quality lawyers are likely to find another place to work; others will hurt their clients by toning-down their advocacy.

The Agreement, and my reports to date, envisions a juvenile unit within the Public Defender that has the capacity to provide high-quality representation within reasonable workload limits. That capacity is damaged if the threat of undue judicial interference and reprisal leads, or contributes, to the departure of skilled and experienced counsel, or to difficulties in recruiting and retaining new counsel.

Going forward, I am committed to monitoring closely the interactions of Juvenile Court and the defense bar, to ensure that defense counsel are able to practice with the independence, zeal, and ethical high standards mandated by the Agreement.

### *3. Independence of Conflict Counsel and of the Broader Defense Bar*

Under the Agreement, the County is mandated to “(e)stablish[ing] a juvenile defender panel system, overseen by an independent body, to handle any delinquency cases that either pose a conflict for the specialized unit for juvenile defense or would cause the juvenile unit to breach workload restrictions required by this Agreement.” This has not happened.

Through September 30, 2017, members of the Juvenile Court’s “conflict panel” of attorneys had been appointed to represent indigent youth in 39% of delinquency complaints. The panel is overseen by the Panel Coordinator, an attorney who is appointed by, and serves at the pleasure, of the Juvenile Court Judge. The attorneys on the panel are assigned and supervised by the Panel Coordinator. This is substantially the same structure that was in place when the Agreement was signed. We have not achieved oversight by an independent body, as required under the Agreement.

The Agreement’s provision for eliminating judicial control over conflict counsel reflects a larger concern over the independence of the defense bar. Above, I discussed the ways in which judicial pressure can negatively influence defense practice. That is true for counsel employed by the Public Defender, and it is also true for members of the conflict panel and others who appear before the court – such as the juvenile defense clinic at University of Memphis School of Law (which appear as part of the “conflict panel” and is appointed cases from the Panel Coordinator) I am aware of instances over the past several months that demonstrate direct judicial control over the conflict panel. For example, case assignments to a conflict panel attorney were reduced and the Court directed the Panel Coordinator to stop assigning cases to an attorney when the Court found a panel attorney’s conduct objectionable. This conduct included the panel attorney’s decision to file an appeal, the release of a flier advertising a CLE event, and public statements unrelated to any specific cases before the court.

The independence of the panel attorneys has always been a central issue to the original Agreement. When the Court, through the Panel Coordinator, exercises power and sends a message about being displeased by prohibiting case assignments to an attorney it sends a strong message to other panel attorneys whose livelihood depends on case assignments. This example of Court power over panel appointment of cases is precisely the type of interference that raises

concerns. Above, I discussed how inappropriate use of the disciplinary process can chill due process and the effective exercise of the right to counsel. The Court's case assignment power should not be treated as a mechanism of control and punishment for the defense bar. The Agreement provided that panel attorney case assignment was to be overseen by an independent body *precisely to prevent* judicial interference with defense practice and undue control over the defense bar.

To date, I have not received any recommendations or proposed solutions from any source to address this continuing area of noncompliance. I am reiterating the request, with increased emphasis.<sup>7</sup> I am again requesting "that local stakeholders and the Public Defender continue collaboration within the indigent defense community to explore options and develop proposals for final solution of the panel independence problem."

#### *4. Transfer Issues*

The Agreement requires the provision of Due Process protections for youth who are facing transfer to criminal court for adult prosecution (a hearing to decide whether they will be held in adult jails and face serious adult consequences). Those protections include the basic right "to present evidence on their own behalf" and "to confront evidence and witnesses" presented by the prosecution. In the last compliance report I detailed many concerns related to transfer discovery practices, including: 1) Shelby County is out of step with the rest of Tennessee and is the only county I have found that does not routinely provide discovery to youth facing transfers, and 2) that there "are many inconsistencies in discovery practices [that] seem to depend on the individual personalities of defense attorneys and prosecutors." I remain concerned that, too frequently, children and their lawyers in Shelby County are not being given the information that they need to defend themselves in transfer hearings.<sup>8</sup>

Noting the "tremendous consequences" at stake, the first juvenile decision ever rendered by the Supreme Court of the United States involved due process protections for youth facing adult prosecution.<sup>9</sup> In my last report I noted the "significance of the [transfer] hearing and the wide range of issues under consideration."<sup>10</sup> I stated:

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<sup>7</sup> Many previous compliance reports have requested that stakeholders explore options under Rule 13. *See Generally*, Sandra Simkins Compliance Report #6 (2015) "During the past two and one-half years I have heard many ideas as to how independence might be advanced within the existing structure of Rule 13. Some of these ideas appear in the Public Defender's report of February 2015. I would like those ideas to be explored."

<https://www.justice.gov/crt/special-litigation-section-cases-and-matters0#juv>

<sup>8</sup> As I noted in Compliance Report #8 (2017), the routine disclosure of this information appears to be the rule in several Tennessee counties. Juvenile Defenders from Davidson County, Hamilton County and Knox County reported juvenile they routinely got discovery prior to transfer hearings, either directly from the District Attorney or by the Court ordering the prosecutor to provide discovery. <https://www.justice.gov/crt/special-litigation-section-cases-and-matters0#juv>

<sup>9</sup> *Kent v U.S.* 383 US 541, 554 (1966)

<sup>10</sup> Under T.C.A. section 37-1-134 and other applicable law, courts presiding over transfer hearings must consider questions that go far beyond a probable cause determination. The law of Tennessee requires that judges balance the seven *Kent*<sup>10</sup> factors prior to transfer: (1) the extent and nature of the Child's prior delinquency; (2) the nature of past treatment efforts and the nature of the Child's response thereto; (3) the Child's suitability for additional treatment; (4) the nature of the delinquent act alleged; (5) the Child's social factors; (6) the alternatives within the juvenile justice system which were considered and the rationale for rejecting those alternatives; and (7) whether the juvenile court and juvenile justice system can provide rehabilitation of the juvenile. Section: 37-1-134.

*Because of the issues at play in transfer hearings, and because of the extraordinary gravity of the consequences, I believe that considerations of fundamental fairness<sup>11</sup> and the necessities of adequately preparing a defense mean that Shelby youth should be provided full discovery.<sup>12</sup> Withholding discovery, by contrast, risks unfairness, inaccurate results, and ineffective assistance of counsel. It also implicates prosecutors' ethical responsibilities to promote justice and disclosure of favorable information to the defense. Tennessee, like the ABA Model Rules, imposes particular duties on defense attorneys to "provide competent representation,"<sup>13</sup> "communicate and explain matters to a client,"<sup>14</sup> and to ensure "candor to the tribunal."<sup>15</sup> Lack of discovery jeopardizes an attorney's ability to fulfill their ethical obligation to provide competent representation, including investigation and counseling a client as to whether or not the juvenile should admit to the charges.<sup>16</sup> Lack of discovery before transfer could result in the constructive denial of access to counsel<sup>17</sup> or create the impression of an arbitrary system of justice.*

I also noted the "unique structure of Shelby County's Juvenile court" (which preclude interlocutory appeals of transfer decisions<sup>18</sup> and limit "transfer back" provisions)<sup>19</sup> and cited to the National Juvenile Court and Family Court Juvenile Delinquency Guidelines on transfer hearings which note "the serious potential consequences involved" that require defense counsel to "seek disclosure of any reports or other evidence that will be submitted to, or may be considered by the court, in the course of transfer proceedings....[and] fully explain the nature of the proceedings and the consequences of transfer to the youth."<sup>20</sup>

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<sup>11</sup> There is a recent trend of cases that apply the requirements of the Due Process to find that the state must provide full discovery prior to a transfer hearing. *See State in the Interest of N.H.*, 141 A.3d 1178, 1186 (N.J. 2016) ("Because of the critical nature of juvenile waiver proceedings, and to ensure fairness at this essential stage, we conclude that the State should disclose all discovery in its possession soon after it seeks to waive jurisdiction in a juvenile matter and proceed in adult court.")

<sup>12</sup> *See* Tenn. R. Crim. P. 16, Tenn. R. Crim. P. 26.2.

<sup>13</sup> Tennessee Rule of Professional Conduct 1.1 Competence: A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

<sup>14</sup> Tennessee Rule of Professional Conduct 1.4 Communication: A lawyer shall explain a matter to the extent reasonable necessary to permit the client to make informed decisions regarding representation.

<sup>15</sup> Tennessee Rule of Professional Conduct 3.3

<sup>16</sup> *Missouri v. Fry*, 132 S.Ct. 1399 (2012) "plea bargains have become so essential to the administration of the criminal justice system that defense counsel have responsibilities in the plea bargain process that must be met to render the adequate assistance of counsel..." *Id* at 1407

<sup>17</sup> "The essence of this right ... is the opportunity for a defendant to consult with an attorney and to have him investigate the case and prepare a defense for trial." *Michigan v. Harvey*, 494 U.S.344, 348 (1990). *See also Kuren v. Luzerne*, 9-28-16; "[T]he Court has also recognized that the assistance of counsel cannot be limited to participation in a trial; to deprive a person of counsel during the period prior to trial may be more damaging than denial of counsel during the trial itself.

<sup>18</sup> Section 37-1-159(d) of the Tennessee Code.

<sup>19</sup> Section 37-1-134 (c) of the Tennessee Code.

<sup>20</sup> National Council of Juvenile and Family Court Judges, "Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases" (2005) at 105, <http://www.ncjfcj.org/content/blogcategory/346/411/> at 105

Tennessee law empowers judges to use their discretion in providing discovery for transfer hearings. The official comment to Rule 206 of the Tennessee Rules of Juvenile Practice and Procedure explains: “Please note that some discovery may be critical in a transfer hearing. The Court should use its discretion in granting access to information necessary to defend or prosecute a transfer case.” Tennessee state law hinges on judicial discretion, not the prosecutor’s preference. Judge Summers addressed this in his recent report stating that “District Attorney General follow long established State law—a transfer hearing is deemed a preliminary matter and the discovery available only after indictment in criminal court is not applicable.” Judge Summers also states that my downgraded compliance score “reflects my belief that State law should not control the discovery provided by the DA.” I respectfully disagree with Judge Summers, and note that District Attorney’s policy should not control the Court’s response. For example in Knox County, the Judge *orders* the DA to provide discovery prior to transfer. I also note that the Shelby County Prosecutor’s office has been reported to have an “open file” discovery policy for adults, and it appears inconsistent to restrict discovery for youth facing transfer.<sup>21</sup>

This issue is of particular importance because Shelby County transfers more youth to criminal court than any other county in Tennessee and unfortunately, numbers are increasing. Data provided by the Shelby County Juvenile Court show that transfer numbers declined for 7 consecutive years until 2016 when they increased 51% over 2015 (47 to 71). Both transfers and notice of transfers have continued an upward trend so far in 2017:

Shelby County	2008	2009	2010	2011	2012	2013	2014	2015	2016	Through Sept. 2017
<u># of children transferred to adult court*</u>	225	194	151	121	99	90	77	47	71	

\*Data provided by JCMSC

<b>Shelby County Notice of Transfers</b>	
2014	182
2015	153
2016	149
2017 (through September 2017)	154

<b>Outcomes of Transfer Notices, January –September 2017</b>				
	Black	Mixed Race	White	Total

<sup>21</sup> Emily Bazelon, *She was convicted of killing her mother, prosecutors withheld evidence that would have freed her*, New York Times Magazine, (Aug.1, 2017) [https://www.nytimes.com/2017/08/01/magazine/she-was-convicted-of-killing-her-mother-prosecutors-withheld-the-evidence-that-would-have-freed-her.html?\\_r=0](https://www.nytimes.com/2017/08/01/magazine/she-was-convicted-of-killing-her-mother-prosecutors-withheld-the-evidence-that-would-have-freed-her.html?_r=0)



Notice of Transfer	144	2	8	154
Notice of Transfer Denied	19	0	0	19
Notice of Transfer withdrawn	41	1	1	43
Waived criminal court-motion for transfer granted	60	1	8	69

In my last report, I asked that “a plan be developed to ensure consistent discovery prior to transfer hearings. Unfortunately, there has been no progress toward resolution of this important issue. I renew my request that stakeholders meet to agree on a consistent practice of routine disclosures that will allow the County to come into compliance with its obligation to ensure that children can fairly defend themselves in transfer hearings.”

#### *5. Lack of Attorneys at Probation Conferences*

Before being formally charged, many youth who are accused of a delinquent act in Shelby County are summoned to a “probation conference,” at which they meet with a Juvenile Court probation officer to discuss the possibility of an alternative disposition. Probation conferences are important tools for diverting youth away from formal prosecution – but it is critically important that fairness come first in these conferences, too, especially since admission to a diversion program can involve an admission of guilt. The Agreement requires that “children receive the advice of counsel about their rights against self-incrimination and the meaning of any waiver before signing a waiver, and that those children must acknowledge their waiver in writing in order for the probation conference to proceed.” The Agreement also includes a provision that probation conferences be open to defense attorneys, who must be given written notice of the conferences in advance.

Unfortunately, it appears from the Settlement Coordinator’s 9<sup>th</sup> Report that 99% of youth are not accompanied by lawyers at intake probation conferences. Many of these youth have special education needs, which call into question the integrity of youth decisions and argue strongly for the importance of having one available at probation conferences.

The Court has made attempts to resolve this issue over the years. Early on, there was an effort to have panel attorneys represent youth at probation conferences however the Tennessee Administrative Office of the Courts declined to pay for this representation citing Rule 13. More recently, the Court requested that the Law School Clinic handle probation conference representation, but the law school clinic declined the invitation due to concerns about limiting students’ experiential opportunities if the students only handled probation conferences.

There appears to have been some limited movement on this issue. The Public Defender reports responding to requests for counsel on an adhoc basis, and it was reported by the Panel Coordinator that Public Defenders receive letters inviting them to attend their client’s probation conferences and many of them do (although exact numbers were unavailable). I reiterate my prior request for “the Administration to consult with the Public Defender and other stakeholders, and take steps to meet this right to counsel obligation.”

## Discussion of Compliance Findings

### Methodology

The information for this compliance report was obtained using the same methods as the previous nine compliance reports. I have relied on information from a variety of Juvenile Court stakeholders. I requested and reviewed numerous documents before and during the site visit.

During the four-day site visit, I observed delinquency hearings, detention/probable cause hearings, and the major crimes docket. During the site visit I had meetings with the following: Juvenile Court staff, public defenders from the juvenile unit, the juvenile defender panel attorney coordinator, the Public Defender, the Settlement Coordinator, and others. I also reviewed the ninth compliance report prepared by Settlement Coordinator Judge Summers. All of the above provided useful information about current Juvenile Court operations, the progress that has been made toward compliance with the Agreement, and the areas where continued attention is needed.

The Agreement does not conceptualize or require specific compliance levels; however experience in other jurisdictions suggests that the following levels are useful in evaluation. Note, “significant period” of time means longer than one year.

Substantial Compliance means that Juvenile Court has drafted the relevant policies and procedures, has trained the staff responsible for implementation, has sufficient staff to implement the required reform; has demonstrated the ability to properly implement the procedures over a significant period of time and has ascertained that the procedures accomplish the outcome envisioned by the provision.

Partial Compliance means that Juvenile Court has drafted policies and procedures and has trained staff responsible for implementation. While progress has been made toward implementing the policy, it has not yet been sustained for a significant period of time.

Beginning Compliance means that the Juvenile Court has made initial efforts to implement the required reform and achieve the outcome envisioned by the provision, but significant work remains. Policies may need to be revised, staff may need to be trained, procedures may need continued implementation to accomplish outcome envisioned by the Agreement.

Non –Compliance means that Juvenile Court has made no notable compliance on any of the key components of the provision.

Insufficient Information/pending means that it is not possible to assess compliance at this moment.

Transfer Hearings	April 2013	Oct. 2013	April 2014	October 2014	April 2015	October 2015	April 2016	October 2016	April 2017	October 2017
Within 90 days: require Transfer Hearings comport with due process requirements. Specifically, shall insure all Transfer Hearings include:	BC	PC	PC	SC	SC	SC	SC	SC	SC	SC
<i>a.</i> Asst DA presents evidence in support of petition for transfer										
<i>b.</i> Children have right to attorney whose role is to represent their stated interest	BC	PC	PC	SC	SC	SC	SC	SC	SC	SC
<i>c.</i> Children, through their attorney, are provided opportunity to present evidence on their own behalf	NC	II	BC	PC	PC	SC	SC	PC*	PC	PC
<i>d.</i> Children, through attorney, provided opportunity to confront evidence & witnesses	NC	BC	PC	PC	SC	SC	SC	PC*	PC	PC
<i>e.</i> Children are protected from self-incrimination	BC	PC	PC	SC	SC	SC	SC	SC	SC	SC
<i>f.</i> Judge or Magistrate makes written findings that: child committed delinquent act, child is not committable to an institution for persons with developmental disability or mental illness and interests of community require Child be put under legal restraint or discipline	BC	BC	PC	PC	PC	SC/P C	SC**	SC	SC	SC
<i>g.</i> Judge or Juvenile Court Magistrate considers & documents consideration of factors relevant to findings including 7 factors	NC	BC	PC	PC	SC	SC	SC	SC	Completed	

\*See “Remaining Key Areas of Concern.” Lack of discovery curtails the youth’s lawyer ability to provide representation and impacts due process.

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

### Comments

*Transfer Issues: See “Remaining Key Areas of Concern”*

<b>Protections Against Self-incrimination</b>	<b>April 2013</b>	<b>Oct 2013</b>	<b>April 2014</b>	<b>Oct 2014</b>	<b>April 2015</b>	<b>Oct 2015</b>	<b>April 2016</b>	<b>Oct 2016</b>	<b>April 2017</b>
Within 90 days: prevent POs or other staff from eliciting info about Children's involvement in alleged delinquent act outside presence of Child's defense attorney	BC	PC	PC	SC	SC	SC	SC	SC	Complete
Within 90 days: notify Child's attorney in writing of any probation conference or interview which shall be open to defense attorney.	BC	BC	PC	PC	PC	PC	PC	PC	PC
Within 90 days: insure POs advise Children of Miranda rights. Shall include	BC	BC	PC	PC	SC	SC	SC	SC	Complete
a. Description of role of defense attorney									
b. Statement Child is entitled to attorney & maybe at no cost	BC	BC	PC	PC	SC	SC	SC	SC	Complete
c. Statement that Child's statements regarding offense can be included in Probation report	BC	BC	PC	PC	SC	SC	SC	SC	Complete
d. Statement that Child's statement can be used against them.	BC	BC	PC	PC	SC	SC	SC	SC	Complete
POs have Children document understanding of rights against self-incrimination & must receive advice of attorney before waiving it.*	BC	BC	PC	PC	PC	SC	SC	SC*	SC/PC*
Consider partnership w/non-profit or academic organization to provide advice and support to children during the probation intake process	S/ NR	S/ NR	S/ NR	S/ N R	S/ N R	S/ NR	S/ N R	S/N R	Complete
Within 30 days: prohibit adverse use of information obtained from child during probation conference	BC	PC	PC	SC	SC	SC	SC	SC	Complete
Within 30 days: insure Magistrates do not permit the govt to call Children as witnesses in Child's own Adjudicatory or Transfer Hearing	BC	PC	PC	SC	SC	SC	SC	SC	Complete
Within 30 days: Magistrates required to give oral advisement of rights against self-incrimination to any Child wishing to testify at own hearing	BC	PC	PC	SC	SC	SC	SC	SC	Complete
Each month the Judge or designee shall review sample of files to determine rights against self-incrimination are	II	II	BC	PC	PC	SC	SC	SC	Complete

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										
Immediately cease providing Visit & Contact forms to Magistrates prior to Adjudicatory Hearings.	PC	PC	PC	SC	SC	SC	SC	SC	Complete	

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

## Comments

See “Remaining Key Areas of Concern”

Juvenile Defenders	April 2013	Oct. 2013	April 2014	Oct. 2014	April 2015	Oct. 2015	April 2016	Oct. 2016	April 2017	Oct 2017
Within 1 year insure independent, zealous advocacy by juvenile defenders. This shall include: h. Creation of specialized unit for juvenile defense within Office of the Public Defender	N/A	N/A	BC	BC	PC	PC	PC	PC	PC	PC
i. Support Juvenile Public Defender Training	N/A	N/A	BC	PC	PC	SC	SC	SC	SC	SC
j. Insure Juvenile Public Defender has appropriate administrative support, reasonable workloads & sufficient resources. Representation shall cover all stages of case as long as juvenile court has jurisdiction	N/A	N/A	BC	BC	PC	PC	PC	PC	SC	SC
k. Implement attorney practice standards for juvenile defenders	N/A	N/A	BC	BC	PC	PC	SC	SC	SC	SC
Within 1 year insure independent advocacy including: a. Appoint juvenile defender to represent children at detention hearings & probable cause determinations as soon as possible	N/A	N/A	BC	BC	PC	PC	SC/ NC **	SC/ NC **	SC /NC	SC/NC
b. Establish Panel System Overseen by independent body to handle conflicts	N/A	N/A	II	NC	BC	BC	NC	NC	NC	NC
c. Support attorney practice standards for juvenile defenders including training and evaluation.	N/A	N/A	BC	BC	PC	PC	I/I ***	I/I ***	I/I	NC

d. Insure juvenile defender has confidential meeting space to confer with clients within the facility	N/A	BC	PC	PC	SC	SC	SC	SC	SC	SC
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\*\* SC for timely appointment, NC because not independent, \*\*\*unclear if new PC can enforce defense standards due to structure

Comments

*See “Remaining Key Areas of Concern”*