

**Memorandum of Agreement Regarding the Juvenile  
Court of Memphis and  
Shelby County**



United States Department of Justice  
Civil Rights Division  
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## I. Introduction

- A. This Settlement Agreement (“Agreement”) is entered into by the United States of America through the Department of Justice (“United States”), Shelby County, Tennessee through the County Mayor and the County Attorney, and the Juvenile Court of Memphis and Shelby County (“JCMSC” or “the Court”) (collectively, the “Parties”) to address the administration of juvenile justice for Children facing delinquency charges before JCMSC and the conditions of confinement of Children at the detention center operated by JCMSC.
- B. This Agreement addresses the findings made during the United States’ investigation of JCMSC’s administration of juvenile justice and conditions of confinement pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 (“Section 14141”) and JCMSC’s compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 (“Title VI”).
- C. On August 11, 2009, the United States notified JCMSC of its intent to investigate the Court’s administration of juvenile justice and conditions of confinement. The United States conducted investigative tours in January 2010 and January 2011 with consultants in the fields of juvenile representation, statistical analysis, and juvenile protection from harm.
- D. JCMSC’s leadership and staff fully cooperated with the investigation, providing access to court proceedings, staff, documents, recordings or hearings, and other necessary material.
- E. On April 26, 2012, the United States issued its Report of Findings, which concluded that there was reasonable cause to believe that JCMSC failed to protect the constitutional rights of Children appearing before it on delinquency matters by failing to provide constitutionally required due process, administer justice in a non-discriminatory manner, and provide reasonably safe conditions of confinement. JCMSC immediately responded by expressing its intention to thoroughly address each of the United States’ conclusions and to promptly correct any deficiencies in the areas of due process and conditions of confinement. Any deficiencies in the equal protection accorded to Children appearing before JCMSC will be addressed; however, JCMSC sought to maintain non-discriminatory practices in its administration of justice. JCMSC has actively pursued and participated in multiple efforts to reduce disproportionate minority contact (“DMC”) for several years.
- F. Prior to the issuance of the Report of Findings, JCMSC began taking steps to address the United States’ onsite recommendations, including working with the

local school systems and law enforcement agencies in early 2010 to implement a juvenile summons in lieu of arrest program for a limited number of offenses and significantly reducing its detention population. Beginning in 2007, JCMSC partnered with Memphis City Schools and the Tennessee Commission on Children and Youth (“TCCY”) in developing the Schoolhouse Adjustment Program Enterprise (“SHAPE”) to provide for the adjustment of four minor offenses at the school level, preventing entry into the juvenile justice system and further reducing the number of detainees. SHAPE originated as a program initiative to reduce DMC. In 2011, JCMSC contracted with the National Council of Juvenile and Family Court Judges to participate in its Juvenile Justice Model Courts Project. Also in 2011, JCMSC began working with the Annie E. Casey Foundation as a designated Juvenile Detention Alternatives Initiatives (“JDAI”) site. JDAI has had successes in focusing on the detention component of the juvenile justice system, promoting reduction in reliance on secure confinement while improving public safety, and addressing the reduction of racial and ethnic disparities in juvenile justice systems. The Parties expect JCMSC to continue its work in these areas in a manner that is consistent with this Agreement.

- G. As a result of the JCMSC’s substantial level of voluntary cooperation and willingness to implement meaningful change without the need for contested litigation, the Parties believe this Agreement, rather than contested litigation, represents the best opportunity to address the United States’ findings regarding the due process, equal protection, and facility challenges at the Court.
- H. The United States recognizes that JCMSC occupies an important role in the community, addressing daily challenges with respect to its delinquency, neglect, and dependency cases and providing leadership on issues of juvenile justice to the community. JCMSC is committed to continuing its leadership role and ensuring that the constitutional rights of the Children appearing before it are respected. This Agreement reinforces JCMSC’s commitment to ensuring that the Shelby County community promotes the general wellbeing of its Children.
- I. The County and JCMSC recognize that, while other county agencies are not named in this Agreement, their cooperation will be required to comply with this Agreement. In the event that the County or JCMSC enters into contracts with non-governmental third parties to perform any of the obligations identified in this Agreement, the County or JCMSC will incorporate by reference the terms and conditions of this Agreement into such contracts, and will take all actions reasonably necessary to enforce such terms and conditions.

- J. JCMSC is encouraged to, as has been its practice in the past, enter into agreements with other agencies to ensure that Children are being provided with sufficient alternatives to detention and that any encounters with the juvenile justice system are limited and include the safeguards of due process and equal protection.
- K. The Agreement includes provisions for the protection of Children's procedural and substantive due process rights as well as their right to equal protection. These provisions work together to ensure that Children appearing before JCMSC on delinquency matters are protected by the guarantees of the United States Constitution.
- L. This Agreement is not intended to have any preclusive effect except between the Parties. Should the issue of the preclusive effect of this Agreement be raised in any proceeding other than a civil action between the Parties, the Parties agree to certify that this Agreement was intended to have no such preclusive effect.
- M. This Agreement is not intended to be used to prove deficiencies in the level of care provided by the County and JCMSC at the detention facility in any proceeding other than an enforcement action between the Parties.
- N. No person or entity is intended to be a third-party beneficiary of the provisions of this Agreement for the purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement. This Agreement is not intended to impair or expand the right of any person or organization to seek relief against the County or JCMSC, or their officials, employees, or agents for their conduct; accordingly, this Agreement does not alter legal standards governing any such claims, including under Tennessee law.
- O. This Agreement shall constitute the entire integrated agreement of the Parties. With the exception of the Report of Findings, 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.

## **II. Definitions**

- A. "Adjudicatory Hearing" means the juvenile proceeding where the Court determines whether the allegations in the petition are true beyond a reasonable doubt.
- B. "Administrator" means the director of the Detention Facility.

- C. “Affidavit of Complaint” means a document executed under oath by a law enforcement officer with firsthand knowledge of the incident leading to the child’s arrest or by an officer who communicates with a reliable source who has firsthand knowledge of the incident leading to the child’s arrest and that contains the charge(s) placed against a juvenile and the facts on which the charge(s) are based.
- D. “Case File” means the entire record of a Child’s case in juvenile court. The case file shall include Court orders, complaints, pleadings or motions, petitions, and any other documents related to a Child’s delinquency proceeding.
- E. “Children” or “Child” refers to persons less than 18 years of age involved in a delinquency proceeding, formally or informally, before JCMSC. It also includes persons under 19 years of age who remain under the jurisdiction of the juvenile court in accordance with Tenn. Code Ann. § 37-1-102 (a)(4)(B).
- F. “Court” or “JCMSC” refers to the Juvenile Court of Memphis and Shelby County.
- G. “Decision Point” refers to the major stages of the juvenile justice process. This includes juvenile arrests, referrals to juvenile court, cases diverted, cases involving secure detention prior to adjudication, cases petitioned, cases resulting in delinquent findings, cases transferred to adult criminal court, cases resulting in probation, and cases resulting in confinement in secure juvenile correctional facilities.
- H. “Detention Hearing” means the juvenile proceeding where the Court accomplishes the following: arraigns the Child by informing the Child of the charges against him or her; informs the Child of the legal rights afforded him or her; and makes a decision about whether to detain the Child prior to the Adjudicatory Hearing. In order for the Court to detain a Child prior to the Adjudicatory Hearing, the Court shall find probable cause that the Child committed the delinquent act alleged.
- I. “Disproportionate Minority Contact” or “DMC” is the term used to describe the overrepresentation of minority youth in the juvenile justice system.
- J. “DOJ” or “United States” means the United States Department of Justice, which represents the United States in this matter.
- K. “Effective Date” means the date the Parties sign this Agreement.
- L. “Include” or “Including” means “include, but not limited to” or “including, but not limited to.”

- M. “Facility” means the Shelby County Juvenile Detention Center, currently located at 616 Adams Ave., Memphis, TN 38105, as well as any facility that is built, leased, or otherwise used, to replace or supplement the Facility.
- N. “Facility Consultant” means an expert selected by the United States to assess compliance with the protection from harm components of this Agreement.
- O. “Isolation” means any physical confinement initiated by a staff person that intentionally confines a Child alone in any area of the Facility, including housing or classroom areas.
- P. “Judge” means the Juvenile Court Judge elected to lead the Juvenile Court of Memphis and Shelby County, including all successors in office.
- Q. “Miranda rights” means the rights that protect a Child against self-incrimination as guaranteed by Miranda v. Arizona, 384 U.S. 436 (1966).
- R. “Monitor” or “Monitors” means expert(s) selected to assess compliance with this Agreement.
- S. “Override” means a permitted departure from the recommended action. It is particularly used when objective decision tools or decision guidelines are in place but permit the deciding official to take some action other than that recommended by the guideline or tool.
- T. “Petition” means the document that, when filed, formally commences proceedings against a Child in a delinquency case. It must set forth plainly the factual and other allegations relied upon in asserting the Child is within the Court’s jurisdiction and shall include a sworn statement that the allegations are true to the best of the petitioner’s knowledge, ability, and belief.
- U. “Policies and Procedures” means the guiding principles or processes that Court staff are required to follow. For the purposes of this Agreement, policies and procedures shall include JCMSC court rules, manuals, and administrative directives.
- V. “Probable Cause Determination” refers to the relevant portion of the Detention Hearing where the Court decides whether there is probable cause that the Child committed the delinquent act alleged.
- W. “Qualified Mental Health Professional” or “QMHP” means an individual with a minimum of a masters-level education and training in psychiatry, psychology, counseling, social work, or psychiatric nursing, who is currently licensed by the

State of Tennessee to deliver those mental health services he or she has undertaken to provide.

- X. “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.
- Y. “Restraint” means any method that restricts or limits an individual’s freedom of movement, including mechanical restraints (e.g. handcuffs, belly chains, leg shackles, and restraint chairs) and physical restraints (e.g. manual holds). The term “restraint” does not include verbal directives, room confinement or use of handcuffs or shackles for and during transport.
- Z. “Serious Suicide Attempt” means a suicide attempt that is either potentially life-threatening or that requires medical treatment for serious harm.
- AA. “Shall” means that the provision imposes a mandatory duty.
- BB. “Shelby County Government” or “SCG” means the administrative branch of Shelby County, Tennessee under the authority of the County Mayor.
- CC. “Staff” means all individuals employed by JCMSC.
- DD. “Substantial compliance” means that over 90% of the substantive requirements of a provision or the Agreement have been met for both quantitative (i.e. a performance measure) and qualitative measures (i.e. consistent with the larger purpose of the Agreement).
- EE. “Suicide Precautions” means any level of watch, observation, or measures to prevent self-harm to Children confined in the Facility.
- FF. “Train” means to instruct in the skills addressed to a level that the trainee has the demonstrated proficiency to implement those skills as, and when, called for in the training. “Trained” means to have achieved such proficiency.
- GG. “Transfer Hearing” means the juvenile proceeding where the Court considers whether to waive jurisdiction of a Child and to transfer the Child’s case to adult criminal court.



- HH. “Use of force” means any physical contact initiated by a staff person that intentionally restricts the movement of a Child, including a physical restraint.

### **III. Substantive Remedial Measures**

#### **A. Due Process**

The purpose of this section is to ensure that JCMSC makes the due process rights secured and protected by the United States Constitution available to all Children involved in juvenile delinquency proceedings. To that end, JCMSC shall develop and implement policies, training, and review mechanisms that will guarantee due process for Children. JCMSC shall also establish mechanisms that will identify and correct violations of those due process rights.

##### **1. Policies and Procedures**

###### **(a) Probable Cause Determinations**

- (i) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to require that prior to detaining any Child, Juvenile Court Magistrates make a determination that there is probable cause that: (1) a delinquent act was committed, (2) the named Child committed the delinquent act alleged, and (3) the alleged delinquent act is one for which Tennessee statutes and JCMSC policy permit the use of detention.
- (ii) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to provide Children arrested without a warrant a Probable Cause Determination to detain within 48 hours of the warrantless arrest.
- (iii) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to ensure that no Child is detained for more than 48 hours prior to the Detention Hearing if the Court has not made a Probable Cause Determination.
- (iv) Within 90 days of the Effective Date, JCMSC shall ensure that every Child has a meaningful opportunity to test the existence of probable cause during his or her Probable Cause Determination by revising its policies practices and procedures to:
  - a. Appoint a defense attorney to represent any indigent Child or Child whose indigence cannot be readily determined in advance of the Probable Cause Determination. Children must be presumed indigent unless information to the contrary is provided to JCMSC;

- b. Require the government to prove the existence of probable cause with reliable evidence such as a live witness or an Affidavit of Complaint completed and sworn to by a law enforcement officer with firsthand knowledge of the incident leading to the arrest of the Child or by an officer who communicates with a reliable source who has firsthand knowledge of the incident leading to the child's arrest;
  - c. Allow defense attorneys an opportunity to challenge the government's evidence of probable cause, by cross-examining witnesses, presenting alternative testimony, or by any other appropriate means; and
  - d. Require that a record be maintained, reflecting when defense counsel was appointed, the forms of evidence used, and whether the defense attorney challenged such evidence or presented alternative evidence. Such record should be accessible from the information and recording system.
- (v) Each month, the Judge, or his or her designee, shall review a sampling of Case Files to determine whether the procedures for Probable Cause Determinations are being followed as required by this Agreement. The review shall include periodic observations of Probable Cause Determinations to ensure that Juvenile Court Magistrates and other staff follow policies, procedures, and practices required by this Agreement. If the review reveals that the procedures regarding Probable Cause Determinations have not been properly followed, the Judge shall take immediate corrective action, including a discussion with the responsible staff, to bring about compliance with the terms and requirements of this Agreement.

(b) Notice of Charges

- (i) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices in accordance with Tenn. Code Ann. § 40-10-101 to ensure that Children and defense counsel receive copies of the Affidavit of Complaint as soon as it is available, but at a minimum before the Detention Hearing. JCMSC shall also ensure that Juvenile Court Magistrates formally arraign Children at all Detention Hearings.
- (ii) When changes are made to a Child's charges as set forth in a filed Petition prior to the Adjudicatory Hearing that could increase the penalty, JCMSC shall provide notice of the final charges by providing

copies of the amended or new Petition upon the filing of same Petition at least 14 calendar days in advance of the hearing so that the Child and defense counsel have sufficient time to prepare for the hearing, unless the Child and defense counsel waive the advance notice. If defense counsel establishes that he or she has not had sufficient time to prepare for the hearing because of changes to the Child's charges and requests a continuance, JCMSC shall move the date of the Adjudicatory Hearing to provide counsel with a reasonable opportunity to prepare.

- (iii) When changes are made to a Child's charges as set forth in a filed Petition prior to the Adjudicatory Hearing that reduce the penalty or drop the charges, JCMSC shall provide notice of the final charges by providing copies of the amended or new Petition to the Child and defense counsel upon the filing of same Petition within 24 hours of the change in charges.
- (iv) Each month, the Judge, or his or her designee, shall review a sampling of Case Files to determine whether the requirements regarding notice of charges are being followed as required by this Agreement. The review shall include periodic observations of Detention and Adjudicatory Hearings to ensure that Juvenile Court Magistrates and other staff follow policies, procedures, and practices regarding notice of charges required by this Agreement. If the review reveals that the procedures have not been properly followed, the Judge shall take immediate corrective action, including a discussion with the responsible staff, to bring about compliance with the terms and requirements of this Agreement.

(c) Transfer Hearings

- (i) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices in accordance with Tenn. Code Ann. § 37-1-134 and the Tennessee Rules of Juvenile Procedure, R. 24(b) to require Transfer Hearings that comport with due process requirements prior to waiving jurisdiction and ordering transfer of a Child's case to adult court. Specifically, JCMSC shall ensure that all Transfer Hearings include the following:
  - a. The Assistant District Attorney presents evidence in support of the petition for transfer;
  - b. Children have a right to an attorney whose role is to represent their stated interest;

- c. Children, through their attorneys, are provided the opportunity to introduce evidence on their own behalf;
  - d. Children, through their attorneys, are provided the opportunity to meaningfully confront evidence presented against them, including cross-examining adverse witnesses;
  - e. Children are protected from self-incrimination;
  - f. The Judge or Juvenile Court Magistrate presiding as Special Judge makes written findings on whether there are reasonable grounds to believe that: (1) the Child committed the delinquent act as alleged; (2) the Child is not committable to an institution for persons with a developmental disability or mental illness; and (3) the interests of the community require that the Child be put under legal restraint or discipline; and
  - g. The Judge or Juvenile Court Magistrate presiding as Special Judge considers and documents his or her consideration of factors relevant to his or her findings, including, but not limited to: (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.
- (ii) Each month, the Judge, or a designee, shall review all files related to Transfer Hearings to determine if Transfer Hearings properly follow the requirements of this Agreement. The review shall include periodic observations of Transfer Hearings to ensure that Juvenile Court Magistrates and other staff follow policies, procedures and practices required by this Agreement. If the review reveals that the Transfer Hearing procedures have not been properly followed, the Judge shall take immediate corrective action, including a discussion with the responsible staff, to bring about compliance with the terms and requirements of this Agreement.

(d) Protections Against Self-Incrimination

- (i) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to prevent probation officers or any other staff

from eliciting information about Children's involvement in the alleged delinquent act or acts in question outside the presence of the Child's defense attorney.

- (ii) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to notify a Child's defense attorney in writing of any probation conference or interview. The probation conference or interview shall be open to the Child's defense attorney.
- (iii) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to ensure that probation officers appropriately advise Children of their Miranda rights. The probation officer's advisement of rights shall include:
  - a. A description of the role of a defense lawyer;
  - b. A statement that the Child is entitled to the appointment of a defense attorney and that a defense attorney may be provided at no cost if the Child is eligible;
  - c. A statement that the Child's statements regarding the alleged offense can be included in the probation report; and
  - d. A statement that the Child's statement could be used against him or her by the prosecutor, probation officer, or the Magistrate Judge in further proceedings, including disposition.
- (iv) JCMSC shall require probation officers to have Children document in writing their receipt and understanding of their rights against self-incrimination. JCMSC shall consider the Child's ability to understand his or her rights and ensure that the rights are explained in age-appropriate language. Children must receive the advice of counsel about their rights against self-incrimination and the meaning of any waiver before signing a waiver. Children must acknowledge their waiver in writing in order for the probation conference to proceed.
- (v) JCMSC shall consider developing a partnership with a non-profit or academic organization to provide advice and support to Children during the probation intake process. Participants in this program shall be trained on the appropriate role of probation officers, the Child's right against self-incrimination, and the policies, procedures, and practices regarding protections against self-incrimination developed as part of this Agreement.

- (vi) Within 30 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices in accordance with Tenn. Code Ann. § 37-1-127(b) and(e) to prohibit the adverse use of information obtained from a Child during his or her probation conference.
- (vii) Within 30 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices in accordance with Tenn. Code Ann. § 37-1-127(b) to ensure that Juvenile Court Magistrates do not permit the government to call Children as witnesses in the Child's own Adjudicatory or Transfer Hearing.
- (viii) Within 30 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices in accordance with Tenn. Code Ann. § 37-1-127(b) to require Juvenile Court Magistrates to give an oral advisement of rights against self-incrimination to any Child who wishes to testify at his or her own Adjudicatory or Transfer Hearings.
- (ix) Each month, the Judge, or his or her designee, shall review a sampling of Case Files to determine whether the requirements of this Agreement regarding protections against self-incrimination of Children are being properly followed. The review shall include periodic observations of probation conferences by appropriate supervisory staff of the Court's Probation Department as well as periodic observations of Adjudicatory and Transfer Hearings by the Judge or his or her designee. If the reviews reveal that the procedures regarding protection against self-incrimination have not been properly followed, the Judge shall take immediate corrective action, including a discussion with the responsible staff, to bring about compliance with the terms and requirements of this Agreement.
- (x) JCMSC shall immediately cease the practice of providing Visit and Contact forms to Juvenile Court Magistrates prior to Adjudicatory Hearings.

(e) Juvenile Defenders

- (i) Within one year of the Effective Date, SCG shall take action to ensure independent, ethical, and zealous advocacy by the juvenile defenders representing Children in delinquency hearings. This action shall include:
  - a. Creating a responsibility for the supervision and oversight of juvenile delinquency representation to the Shelby County Public

Defender's Office ("SCPD") and supporting the establishment of a specialized unit for juvenile defense;

- b. Supporting SCPD training for juvenile defenders, including training on trial/advocacy skills and knowledge of adolescent development;
  - c. Ensuring that juvenile defenders have appropriate administrative support, reasonable workloads, and sufficient resources to provide independent, ethical, and zealous representation to Children in delinquency matters. Representation of Children shall cover all stages of the juvenile delinquency case, including pre-adjudicatory investigation, litigation, dispositional advocacy, and post-dispositional advocacy for as long as JCMSC has jurisdiction over a Child; and
  - d. Implementing attorney practice standards for juvenile defenders; supporting the training of attorneys within the SCPD specialized unit and the independent panel system on the practice standards; and supporting supervision and evaluation of said attorneys against such practice standards.
- (ii) Within one year of the Effective Date, JCMSC shall take action to ensure independent, ethical, and zealous advocacy by the juvenile defenders representing Children in delinquency hearings. This action shall include:
- a. Appointing juvenile defenders to represent children at Detention Hearings and Probable Cause Determinations as early as possible, including immediately after intake staff completes required paperwork where possible;
  - b. Establishing a juvenile defender panel system, overseen by an independent body, to handle any delinquency cases that either pose a conflict for the specialized unit for juvenile defense or would cause the juvenile unit to breach workload restrictions required by this Agreement;
  - c. Supporting the promulgation and adoption of attorney practice standards for juvenile defenders; supporting the training of attorneys within the SCPD specialized unit and the independent panel system on the practice standards; and supporting supervision and evaluation of said attorneys against such practice standards; and

- d. Ensuring that juvenile defenders have a confidential meeting space to confer with their clients within the Facility.

(f) Plea Colloquies

- (i) Within six months of the Effective Date, JCMSC shall revise its policies, procedures, and practices to establish a procedure for conducting plea colloquies that is age-appropriate and clear to the Child.
- (ii) JCMSC shall also ensure that Juvenile Court Magistrates conduct an interactive oral colloquy with the Child that includes:
  - a. The nature of the delinquent act charged;
  - b. The Child's right to an attorney;
  - c. The Child's right to plead not guilty and to have an Adjudicatory Hearing instead where he or she would have the right to cross-examine adverse witnesses and the right to remain silent;
  - d. The Child's waiver of a right to trial on the merits and an appeal by entering a guilty plea;
- (iii) Within six months of the Effective Date, JCMSC shall revise its policies, procedures, and practices to ensure that Children have a right to counsel whenever entering a plea of guilty.

(g) Restitution Guidelines

- (i) Within six months of the Effective Date, JCMSC shall revise its policies, procedures, and practices to establish guidelines for assigning restitution to any Child adjudicated delinquent that provides the Child a meaningful opportunity to challenge the evidence of restitution.
- (ii) At minimum, the restitution guidelines shall:
  - a. Require documentation to support the restitution request;
  - b. Allow Children adequate time to review the restitution request and the opportunity to introduce evidence opposing the restitution amount; and
  - c. Allow Children an opportunity to request an adjustment to the restitution amount by introducing evidence of any family income and/or obligations that would prevent the ability to pay the restitution amount or render the restitution amount an undue hardship.



(h) Bond-Setting Guidelines

- (i) Within six months of the Effective Date, JCMSC shall revise its policies, procedures, and practices to establish guidelines for the setting of bonds for Children charged with delinquent acts.
- (ii) At minimum, the guidelines regarding bonds shall:
  - a. Prevent excessive bonds for Children;
  - b. Reasonably assure the Child's appearance for court;
  - c. Take into account the presumptive indigence of Children and recognize that parental income may not be available to the Child; and
  - d. Allow parents to file statements of indigence where appropriate.

(i) Confidentiality of Juvenile Delinquency Proceedings

- (i) Within 30 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to protect the Children's confidentiality in delinquency proceedings.
- (ii) The Court shall ensure, in accordance with Tenn. R. Juv. P. 27 and Tenn. Supreme Court Rule 30. C. (5) that only persons who are properly concerned in a Child's case or in the Court's discretion, only persons with a direct interest in the case, are admitted into any delinquency proceeding.

(j) Language Access Plan

- (i) Within six months of the Effective Date, JCMSC shall develop a language access plan that complies with Title VI of the Civil Rights Act of 1964, as amended, (42 U.S.C. § 2000d et seq.) to ensure that persons with limited English proficiency have a meaningful access to Court proceedings. JCMSC shall assess the language needs of the Shelby County population and make summonses and other crucial court documents available in appropriate languages.
- (ii) JCMSC shall implement the language access plan within one year of the Effective Date.

(k) Treatment of Witnesses

- (i) Within six months of the Effective Date, JCMSC shall revise its policies, practices, and procedures on treatment of witnesses to ensure

that the integrity of witness testimony is preserved. The policy shall, at minimum, require that prior to testifying at any delinquency proceeding:

- a. All witnesses are placed under oath; and
- b. All witnesses are appropriately sequestered.

(l) Judicial Bench Cards

- (i) Within six months of the Effective Date, JCMSC shall develop bench cards containing specific guidelines to inform Juvenile Court Magistrates about the substantive issues they need to cover during hearings in order to comply with due process requirements of the United States Constitution.
- (ii) The bench cards shall be readily accessible documents that contain due process requirements, relevant case law and statutory references, and written findings Juvenile Court Magistrates shall make at the culmination of each hearing. The bench card should be made available to counsel upon request.
- (iii) JCMSC shall produce bench cards for the following type of hearings and proceedings:
  - a. Detention Hearing, Probable Cause Determinations, and bond-settings;
  - b. Adjudicatory Hearings;
  - c. Plea Colloquies;
  - d. Transfer Hearings;
  - e. Disposition Hearings, including procedures for setting restitution; and
  - f. Post-dispositional Hearings;

(m) Written Findings

- (i) Within six months of the Effective Date, JCMSC shall revise its policies, procedures, and practices to require Juvenile Court Magistrates to produce court orders containing written findings of fact for each judicial decision made.
- (ii) The written findings of fact shall include the relevant statutory requirements, the legal reasoning that formed the basis for the court's decision, and a narrative of the facts that the Juvenile Court Magistrate considered in reaching its conclusion.

(n) Recordings of Juvenile Delinquency Hearings

- (i) Within six months of the Effective Date, JCMSC shall have all delinquency hearings, including initial Detention Hearings, Adjudicatory Hearings, Transfer Hearings, and probation revocation hearings recorded by electronic means. Privately engaged court reporters may provide written transcripts.
- (ii) JCMSC shall ensure that the recordings are complete and of sufficient quality to ensure a meaningful review.
- (iii) JCMSC shall make recordings accessible at no cost to defense counsel representing indigent Children.
- (iv) JCMSC shall make arrangements to store each recording for two years.

2. Training

- (a) Within six months of the Effective Date, JCMSC shall develop a training plan for all employees involved with its delinquency docket and submit the training plan to the Monitor and the United States for review and approval.
- (b) JCMSC's training plan shall ensure that appropriate staff are trained on topics relevant to their role and responsibilities in juvenile delinquency proceedings including:
  - (i) Trial advocacy;
  - (ii) Constitutional due process requirements;
  - (iii) Adolescent development;
  - (iv) Disposition planning;
  - (v) Best practices in social service and therapeutic options for Children and families, including evidence-based practices;
  - (vi) The functional and practical purposes of the juvenile court, including the Court's ability to handle cases involving Children charged with serious or violent delinquent acts; and
  - (vii) The appropriate professional role of different players within juvenile proceedings.
- (c) JCMSC shall implement its first training plan within 12 months of the Effective Date and shall create subsequent training plans on an annual basis thereafter.

3. Performance Metrics for Due Process Reforms

- (a) In order to ensure that JCMSC's due process reforms are conducted in accordance with the Constitution, the Due Process Monitor shall assess JCMSC's progress in implementing these provisions and the effectiveness of these reforms. In addition to assessing the JCMSC's procedures, practices, and training, the Monitor shall analyze the following metrics related to due process reforms:
- (i) Conduct a study measuring the length of time between arrest and, where required, a probable cause hearing over a six-month period;
  - (ii) Review of data maintained for probable cause hearings, including the forms of evidence used, the appointment of counsel, and whether defense counsel challenged the government's evidence or presented alternative evidence;
  - (iii) Review a representative sampling of Petitions, including when Petitions were made available to the defense attorney, whether changes were made to the charges, and when the defense attorney was notified of such changes;
  - (iv) Review of a sampling of Transfer Hearings, including whether defense counsel was present, whether defense counsel was allowed to introduce and challenge evidence, and whether the Juvenile Court Magistrate appropriately documented the bases of transfer findings as required by this Agreement;
  - (v) Review of the number of transfer recommendations, number of transfers ordered, and number of written findings directing transfer;
  - (vi) Review of the probation officer advisement of rights document, the number of Children provided with that document, whether a Child's attorney was notified about the probation conference, the number of Children who signed waivers, and whether such waivers were signed upon the advisement of counsel;
  - (vii) Review of the number of Children represented by counsel, the number of Children represented by the Juvenile Defender Officer or SCPD, the number of Children represented by private counsel, the stage of the juvenile justice process where counsel was appointed, and the average caseload of each Juvenile Defender representing Children at JCMSC; and

- (viii) A qualitative review of the monthly supervisory reviews required for the Probable Cause Determinations, Transfer Hearings, and protections against self-incrimination. This review shall include an assessment of the number of supervisory reviews and the steps taken to address the supervisor's concerns, including informal and formal measures.
- (b) JCMSC shall maintain a record of the documents necessary to facilitate a review by the Due Process Monitor and the United States in accordance with Section VI of this Agreement.

## **B. DMC and Equal Protection**

JCMSC shall administer juvenile justice in a manner that is consistent with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. In addressing delinquency matters, JCMSC shall ensure that Children appearing before the Court receive equal protection. This shall be done in a manner that promotes community engagement and the integrity of the juvenile justice system. To accomplish this goal, JCMSC shall transform its policies, procedures, practices, and training, as they relate to all stages of the administration of juvenile justice. JCMSC shall lead the community's efforts to promote fairness in the administration of juvenile justice. To achieve this outcome, JCMSC shall develop and implement the following provisions:

### **1. DMC Assessment**

- (a) Within six months of the Effective Date, JCMSC shall identify all data collection needs to engage in a thorough evaluation of DMC at each major Decision Point along of the stages of juvenile justice.
- (b) Within nine months of the Effective Date, JCMSC shall augment the appropriate data collection method to assist in its evaluation of its DMC levels, causes, and reduction. The method shall include an assessment of the following areas within JCMSC and Shelby County related to comparisons of white and African-American children, as well as any additional population groups which constitute five percent or more of the juveniles referred to JCMSC in the preceding year:
  - (i) Relative rate index for each Decision Point, including, but not limited to, pre-adjudication detention, diversion, and transfers;
  - (ii) A comparison of JCMSC, the County's, and the State's RRI with the national RRI data;

- (iii) Referring agencies, types of offenses referred by each particular agency; offense severity referred by the agency; and resources offered to Children within the referring agency's jurisdiction;
  - (iv) Number of Children in detention over a set period of time, their risk assessment scores, the component parts of their risk assessment scores, the recommended actions from their risk assessment scores, their social factors, whether they were placed in alternative programs, and the outcomes of those alternative programs;
  - (v) Available diversion options for Children appearing before JCMSC. This shall account for the options available in different geographic regions of the County; and
  - (vi) Number of youth formally considered for transfer to adult court and the number actually certified for transfer.
- (c) Within six months of the Effective Date, JCMSC shall identify staffing needs to collect, evaluate, and report DMC data as required by this Agreement. JCMSC shall assign additional staff required within nine months.
- (d) Within six months of the Effective Date, the Shelby County Mayor shall appoint a coordinator responsible for oversight of the progress on reducing DMC on the part of JCMSC and other departments and agencies of Shelby County Government that he may select in the exercise of his sound discretion.
- (e) Within six months of the Effective Date, JCMSC shall also identify and designate a point of contact ("POC") within each department responsible for delinquency matters before the court – including, but not limited to, probation, detention, and the Juvenile Court Magistrates – to report on and evaluate the department's DMC reduction efforts.
- (f) JCMSC shall collect data and information required by this Agreement to determine where DMC occurs. This collection effort shall begin within nine months of the Effective Date. In particular, JCMSC shall determine the specific Decision Points where DMC occurs. This shall include geographic regions, referring agency (including individual schools) and the Decision Points noted in the DOJ Report of Findings, namely, detention, alternatives to detention, and transfer recommendations. An analysis of this data shall be conducted on an annual basis.
- (g) Within six months of the Effective Date, JCMSC shall assess the impact of its current policies, procedures, and programs on DMC levels at each Decision Point. JCMSC shall conduct an inventory of the available services and diversion options

by race, ethnicity, and geographic region. The inventory shall measure, at minimum, the availability of family therapy, parent training, cognitive-behavioral treatment, mentoring, academic skills enhancement, afterschool recreation, vocational/job training, and wraparound services. This assessment shall include an analysis of JCMSC's current agreements with law enforcement, schools, social services agencies, and the cities and towns within Shelby County.

- (h) Within nine months of the Effective Date, JCMSC shall complete and implement its strategic plan to reduce DMC. A committee shall be formed to oversee the execution of the strategic plan. The committee shall consider further development of diversion programs including community service, informal hearings, family group conferences, victim impact panels, victim-offender mediation, mentoring, teen courts, restitution, and other restorative justice strategies. The committee shall recommend changes to the plan based on experience of success or failures in implementation.

## 2. Policies and Procedures

- (a) Within six months of the Effective Date, JCMSC shall revise its policies, procedures, practices, and existing agreements to reduce DMC at each Decision Point along the stages of juvenile justice and to encourage objective decision-making in all departments relating to its delinquency docket.
- (b) JCMSC's revision of its policies, procedures, practices, and existing agreements shall include the following:
  - (i) Collection of data sufficient to evaluate whether the relevant policy, procedure, practice, or agreement results in DMC reduction;
  - (ii) A provision requiring the least restrictive options and alternatives to a detention setting to ensure DMC reductions;
  - (iii) Guidelines expressly identifying a list of infractions and reasons for which a Child may not be detained. This list shall prohibit detention for punishment, treatment, to meet the demands of the community, the police, a victim, or school administrators, to provide convenient access to the Child, to arrange for services, to satisfy the demands of the Child's parent(s) or guardian(s), or to facilitate the interrogation of the Child or investigation of the offense;
  - (iv) Guidelines expressly identifying the reasons for which a Child may be detained. This list shall include the requirement that the Juvenile Court Magistrates make a determination that there is probable cause to

believe that the Child has committed a delinquent offense for which he or she may be detained;

- (v) Training and guidance on the use of existing and new objective decision-making tools; and
  - (vi) A requirement that a supervisory authority review all overrides within each department on, at minimum, a monthly basis.
- (c) JCMSC shall reassess the effectiveness of its policies, procedures, practices, and existing agreements annually. JCMSC shall make necessary revisions to increase the effectiveness of JCMSC's DMC reduction efforts within the County.

### 3. DMC Reduction: Evaluation and Tools

- (a) Within nine months of the Effective Date, JCMSC shall commence use of objective decision-making tools to assess necessary court services for Children, including, but not limited to, alternatives to detention, referrals for social services, and prevention and early intervention services. This requirement may not replace the necessary steps to ensure compliance with due process described in the above Section.
- (b) Within nine months of the Effective Date, JCMSC shall refine its objective decision-making tools for determining whether pre-adjudication detention is necessary for a particular Child. In addition to due process considerations outlined above, JCMSC shall expressly identify a list of reasons for which a Child may not be detained. This list shall include, but is not limited to: punishment; treatment; meeting the demands of the community, the police, a victim, or school administrators; providing convenient access to the Child; arranging services for the Child; satisfying the demands of the Child's parent(s) or guardian(s); or facilitating the interrogation of the Child or investigation of the offense.
- (c) Within nine months of the Effective Date, JCMSC shall implement a pilot program allowing law enforcement to phone in information about a recently arrested youth, which could lead to more youth being released with a summons and fewer transports by law enforcement to JCMSC.
- (d) Within nine months of the Effective Date, JCMSC shall develop objective tools for providing pre-and post-adjudication alternatives to secure detention, probation recommendations (including initial placement, technical violations, and the level of supervision), and transfer recommendations. To assist with the expansion of services, JCMSC shall partner with other County departments and agencies as necessary to increase access to direct services within the community (including the



implementation of a pilot diversion program). JCMSC shall use the inventory of the available services and diversion options by race, ethnicity, and geographic region to inform its decision to provide or expand the required services. In particular, JCMSC shall assess the availability of house arrest, day/evening treatment centers, intensive probation, shelter care, specialized foster care, and attendant or holdover care.

- (e) Within nine months of the Effective Date, JCMSC shall develop and implement a process to statistically review all transfer recommendations. The objective measure and the Transfer Hearing bench card (referenced in the due process section above) shall be evaluated to determine if there are any patterns contributing to DMC in transfer recommendations, identify the departments and particular decision-makers contributing to DMC in transfer recommendations, and develop an action plan for eliminating the pattern and reducing the factors contributing to DMC in transfer recommendations.
- (f) Within nine months of the Effective Date, JCMSC shall begin implementing the revised data collection mechanism to assist in its continued evaluation of DMC levels, causes, and reduction.
- (g) Within nine months of the Effective Date, each designated DMC point of contact shall begin to use the department's data to evaluate the following on a monthly basis:
  - (i) The relative rate index relating to the department's area of review;
  - (ii) A review of overrides using the objective factors developed for the department, including whether permissible overrides should be revised;
  - (iii) A review of the number of Children detained, in part, due to the department's actions;
  - (iv) A review of any explanations of such detention actions;
  - (v) A review of the number of Children offered non-judicial options by the department; and
  - (vi) A review of the effectiveness of the decision-making tools developed to ensure that decisions are not based on a Child's race or proxies for a Child's race or ethnicity.

Each month, the designated DMC point of contact shall provide a management report to the department head and to the Judge identifying conduct or decision-making that increases DMC or frustrates efforts to reduce DMC. The DMC point

of contact, department head, and Judge shall address these concerns. The DMC point of contact shall ensure that suggestions for addressing inconsistencies and overrides are communicated to the responsible JCMSC employee.

- (h) On an annual basis, JCMSC shall evaluate and revise all objective decision-making tools listed above to minimize the extent, if any, to which the tool uses racial or ethnic differences (or proxies for racial and ethnic differences) as a basis for decision-making.

#### 4. Training

- (a) Within one year of the Effective Date, JCMSC shall provide all staff involved in any fashion in its delinquency docket with a minimum of sixteen hours of training on DMC in the juvenile justice system. The training shall emphasize the role of the Court, Juvenile Court Magistrates, probation, detention, and other Court personnel in reducing DMC in the juvenile justice process. The training shall include an interactive component with sample cases, responses, feedback, and testing to ensure retention. Training for all new staff shall be provided bi-annually. The training shall also address:
  - (i) Understanding the potential causes of DMC, including, but not limited to, institutional resources, individual decision-making, differential handling of Children based on race or ethnicity, programming options, availability of prevention and treatment options, and eligibility criteria for court services;
  - (ii) Using data collection methods to inform DMC reduction progress;
  - (iii) Understanding how bias – implicit or explicit – may impact the decision-making process;
  - (iv) Evaluating the availability of programs and services that take into account community resources;
  - (v) Using decision-making tools in a fair manner and evaluating any decision to override objective outcomes;
  - (vi) Understanding the importance of community engagement and awareness of racial or ethnic disparities in the treatment of Children appearing before the Court; and
  - (vii) Understanding the Court’s oversight role on community issues impacting juvenile justice.

- (b) JCMSC shall ensure that all staff involved in any fashion in the delinquency docket shall complete a minimum of four hours of refresher training on an annual basis. This refresher training shall include updates related to JCMSC's challenges and progress in reducing DMC over the prior year.

5. Performance Metrics for Equal Protection and DMC Reforms

- (a) In order to ensure that JCMSC's equal protection and DMC reforms are conducted in accordance with the Constitution, the Equal Protection Monitor shall assess JCMSC's progress in implementing these provisions and the effectiveness of these reforms. In addition to assessing JCMSC's procedures, practices, and training, the Monitor shall analyze the following metrics related to the equal protection and fairness in the administration of juvenile justice:

- (i) Annual analysis of the effectiveness of the data collection system;
- (ii) Annual assessment of the Shelby County RRI for each Decision Point and comparison of the Tennessee and national RRI data;
- (iii) Annual analysis of the factors relied upon in the pre-adjudication detention, diversion, and transfer determinations and the extent to which race remains a statistically significant factor at each of these Decision Points;
- (iv) Review of the strategic plan to reduce DMC;
- (v) Review of the objective decision-making tools implemented in accordance with this Agreement and a sampling of matters in which the tools were used;
- (vi) Review of JCMSC's statistical review of transfer recommendations; and
- (vii) Review of a representative sampling of monthly management reports generated by each department.

- (b) JCMSC shall maintain a record of the documents necessary to facilitate a review by the Equal Protection Monitor and the United States in accordance with Section VI of this Agreement.

**C. Protection from Harm: Detention Facility**

JCMSC shall provide Children in the Facility with reasonably safe conditions of confinement by fulfilling the requirements set out below.

1. Use of Force

- (a) No later than the Effective Date, the Facility shall continue to prohibit all use of a restraint chair and pressure point control tactics.
- (b) Within six months of the Effective Date, the Facility shall analyze the methods that staff uses to control Children who pose a danger to themselves or others. The Facility shall ensure that all methods used in these situations comply with the use of force and mental health provisions in this Agreement.
- (c) Within six months of the Effective Date, JCMSC shall ensure that the Facility's use of force policies, procedures, and practices:
  - (i) Ensure that staff use the least amount of force appropriate to the harm posed by the Child to stabilize the situation and protect the safety of the involved Child or others;
  - (ii) Prohibit the use of unapproved forms of physical restraint and seclusion;
  - (iii) Require that restraint and seclusion only be used in those circumstances where the Child poses an immediate danger to self or others and when less restrictive means have been properly, but unsuccessfully, attempted;
  - (iv) Require the prompt and thorough documentation and reporting of all incidents, including allegations of abuse, uses of force, staff misconduct, sexual misconduct between children, child on child violence, and other incidents at the discretion of the Administrator, or his/her designee;
  - (v) Limit force to situations where the Facility has attempted, and exhausted, a hierarchy of pro-active non-physical alternatives;
  - (vi) Require that any attempt at non-physical alternatives be documented in a Child's file;
  - (vii) Ensure that staff are held accountable for excessive and unpermitted force;
  - (viii) Within nine months of the Effective Date ensure that Children who have been subjected to force or restraint are evaluated by medical staff immediately following the incident regardless of whether there is a visible injury or the Child denies any injury;

- (ix) Require mandatory reporting of all child abuse in accordance with Tenn. Code. Ann. § 37-1-403; and
  - (x) Require formal review of all uses of force and allegations of abuse, to determine whether staff acted appropriately.
- (d) Each month, the Administrator, or his or her designee, shall review all incidents involving force to ensure that all uses of force and reports on uses of force were done in accordance with this Agreement. The Administrator shall also ensure that appropriate disciplinary action is initiated against any staff member who fails to comply with the use of force policy. The Administrator or designee shall identify any training needs and debrief staff on how to avoid similar incidents through de-escalation. The Administrator shall also discuss the wrongful conduct with the staff and the appropriate response that was required in the circumstance. To satisfy the terms of this provision, the Administrator, or his or her designee, shall be fully trained in use of force.

## 2. Suicide Prevention

- (a) Within 60 days of the Effective Date, JCMSC shall develop and implement comprehensive policies and procedures regarding suicide prevention and the appropriate management of suicidal Children. The policies and procedures shall incorporate the input from the Division of Clinical Services. The policies and procedures shall address, at minimum:
- (i) Intake screening for suicide risk and other mental health concerns in a confidential environment by a qualified individual for the following: past or current suicidal ideation and/or attempts; prior mental health treatment; recent significant loss, such as the death of a family member or a close friend; history of mental health diagnosis or suicidal behavior by family members and/or close friends; and suicidal issues or mental health diagnosis during any prior confinement.
  - (ii) Procedures for initiating and terminating precautions;
  - (iii) Communication between direct care and mental health staff regarding Children on precautions, including a requirement that direct care staff notify mental health staff of any incident involving self-harm;
  - (iv) Suicide risk assessment by the QMHP;
  - (v) Housing and supervision requirements, including minimal intervals of supervision and documentation;

- (vi) Interdisciplinary reviews of all serious suicide attempts or completed suicides;
  - (vii) Multiple levels of precautions, each with increasing levels of protection;
  - (viii) Requirements for all annual in-service training, including annual mock drills for suicide attempts and competency-based instruction in the use of emergency equipment;
  - (ix) Requirements for mortality and morbidity review; and
  - (x) Requirements for regular assessment of the physical plant to determine and address any potential suicide risks.
- (b) Within 60 days of the Effective Date, JCMSC shall ensure security staff posts are equipped with readily available, safely secured, suicide cut-down tools.
- (c) After intake and admission, JCMSC shall ensure that, within 24 hours, any Child expressing suicidal intent or otherwise showing symptoms of suicide is assessed by a QMHP using an appropriate, formalized suicide risk assessment instrument.
- (d) JCMSC shall require direct care staff to immediately notify a QMHP any time a Child is placed on suicide precautions. Direct care staff shall provide the mental health professional with all relevant information related to the Child's placement on suicide precautions.
- (e) JCMSC shall prohibit the routine use of isolation for Children on suicide precautions. Children on suicide precautions shall not be isolated unless specifically authorized by a QMHP. Any such isolation and its justification shall be thoroughly documented in the accompanying incident report, a copy of which shall be maintained in the Child's file.
- (f) Within nine months of the Effective Date, the following measures shall be taken when placing a Child on suicide precautions:
- (i) Any Child placed on suicide precautions shall be evaluated by a QMHP within two hours after being placed on suicide precautions. In the interim period, the Child shall remain on constant observation until the QMHP has assessed the Child.
  - (ii) In this evaluation, the QMHP shall determine the extent of the risk of suicide, write any appropriate orders, and ensure that the Child is regularly monitored.

- (iii) A QMHP shall regularly, but no less than daily, reassess Children on suicide precautions to determine whether the level of precaution or supervision shall be raised or lowered, and shall record these reassessments in the Child's medical chart.
  - (iv) Only a QMHP may raise, lower, or terminate a Child's suicide precaution level or status.
  - (v) Following each daily assessment, a QMHP shall provide direct care staff with relevant information regarding a Child on suicide precautions that affects the direct care staff's duties and responsibilities for supervising Children, including at least: known sources of stress for the potentially suicidal Children; the specific risks posed; and coping mechanisms or activities that may mitigate the risk of harm.
- (g) JCMSC shall ensure that Children who are removed from suicide precautions receive a follow up assessment by a QMHP while housed in the Facility.
  - (h) All staff, including administrative, medical, and direct care staff or contractors, shall report all incidents of self-harm to the Administrator, or his or her designee, immediately upon discovery.
  - (i) All suicide attempts shall be recorded in the classification system to ensure that intake staff is aware of past suicide attempts if a Child with a history of suicidal ideations or attempts is readmitted to the Facility.
  - (j) Each month, the Administrator, or his or her designee, shall aggregate and analyze the data regarding self-harm, suicide attempts, and successful suicides. Monthly statistics shall be assembled to allow assessment of changes over time. The Administrator, or his or her designee, shall review all data regarding self-harm within 24 hours after it is reported and shall ensure that the provisions of this Agreement, and policies and procedures, are followed during every incident.

### 3. Training

- (a) Within one year of the Effective Date, JCMSC shall ensure that all members of detention staff receive a minimum of eight hours of competency-based training in each of the categories listed below, and two hours of annual refresher training on that same content. The training shall include an interactive component with sample cases, responses, feedback, and testing to ensure retention. Training for all new detention staff shall be provided bi-annually.

- (i) Use of force: Approved use of force curriculum, including the use of verbal de-escalation and prohibition on use of the restraint chair and pressure point control tactics.
- (ii) Suicide prevention: The training on suicide prevention shall include the following:
  - a. A description of the environmental risk factors for suicide, individually predisposing factors, high risk periods for incarcerated Children, warning signs and symptoms, known sources of stress to potentially suicidal Children, the specific risks posed, and coping mechanisms or activities that may help to mitigate the risk of harm.
  - b. A discussion of the Facility's suicide prevention procedures, liability issues, recent suicide attempts at the Facility, searches of Children who are placed on suicide precautions, the proper evaluation of intake screening forms for signs of suicidal ideation, and any institutional barrier that might render suicide prevention ineffective.
  - c. Mock demonstrations regarding the proper response to a suicide attempt and the use of suicide rescue tools.
  - d. All detention staff shall be certified in CPR and first aid.

The Administrator shall review and, if necessary, revise the suicide prevention training curriculum to incorporate the requirements of this paragraph.

#### 4. Performance Metrics for Protection from Harm

- (a) In order to ensure that JCMSC's protection from harm reforms are conducted in accordance with the Constitution, JCMSC's progress in implementing these provisions and the effectiveness of these reforms shall be assessed by the Facility Consultant on a semi-annual basis during the term of this Agreement. In addition to assessing the JCMSC's procedures, practices, and training, the Facility Consultant shall analyze the following metrics related to protection from harm reforms:
  - (i) Review of the monthly reviews of use of force reports and the steps taken to address any wrongful conduct uncovered in the reports;



- (ii) Review of the effectiveness of the suicide prevention plan. This includes a review of the number of Children placed on suicide precautions, a representative sample of the files maintained to reflect those placed on suicide precautions, the basis for such placement, the type of precautions taken, whether the Child was evaluated by a QMHP, and the length of time the Child remained on the precaution; and
- (b) JCMSC shall maintain a record of the documents necessary to facilitate a review by the Facility Consultant and the United States in accordance with Section VI of this Agreement.

#### **IV. Community Outreach**

- A. Within six months of the Effective Date, JCMSC shall develop and implement a community outreach program to keep the community informed about the progress of its reforms. The community outreach program shall include a process for updating and receiving input from a countywide juvenile justice consortium comprised of the Memphis/Shelby Juvenile Justice Board and other key stakeholders, including, but 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 to include no less than two parents of children who have had delinquency matters before JCMSC, a person under the age of twenty-one (21) who has had direct contact with the juvenile justice system, and community advocates.
- B. The community outreach program shall require at least one open meeting every six months for the first three (3) years of this Agreement and at least one time annually thereafter. The open meetings shall inform the public about the requirements of this Agreement, discuss JCMSC's progress in each substantive area of the Agreement, and address community concerns related to the fair administration of juvenile justice. The meetings shall be held in a location with easy access to public transportation. At least one week before the open meetings, JCMSC shall widely publicize the meetings using print media, radio, and the internet.
- C. The community outreach meetings shall include summaries of reports completed pursuant to this Agreement during the period immediately prior to the meeting and inform the public of any policy changes or other significant actions taken as a result of this Agreement.
- D. JCMSC shall publish on its website annual reports outlining its reform efforts in accordance with this Agreement. The annual report shall include a description of the

measures taken to address the due process and detention reforms and to reduce the level of DMC at different Decision Points.

- E. The community outreach program shall include a data dashboard that directly communicates JCMSC's compliance with the provisions of this Agreement. The data dashboard shall present a snapshot of JCMSC's progress toward complying with the due process, equal protection, and protection from harm goals identified in the Agreement. JCMSC shall ensure that the data dashboard is available on a publicly accessible website that is updated on a monthly basis at minimum.
- F. Within one year of the Effective Date, JCMSC shall conduct, or retain an individual or entity approved by the DOJ with expertise in social science research and statistics to conduct, a representative survey of members of the Shelby County community regarding their experiences with and perceptions of JCMSC. The community survey shall be conducted annually until the termination of this Agreement. The individual or entity conducting the annual community survey shall:
  - 1. Develop a baseline of measures on public satisfaction with JCMSC, attitudes among court personnel, and the quality of encounters with the court by Children and their families;
  - 2. Conduct baseline surveys of County residents, JCMSC personnel, and Children appearing before JCMSC on delinquency matters, and follow-up surveys on at least an annual basis; and
  - 3. Ensure that the community surveys are designed to capture the opinions of community members in each demographic group and geographic region of Shelby County.

## **V. Technical Assistance**

The United States shall, at its discretion, provide technical assistance to JCMSC for policy and procedure development in general, and in particular, for policy and procedure development for instituting a DMC assessment system and developing initial training on DMC in juvenile justice.

## **VI. Implementation and Monitoring**

- A. Implementation. JCMSC shall begin implementing this Agreement immediately upon the Effective Date. If JCMSC cannot fully implement the reforms required by this Agreement within the allotted time, JCMSC shall notify the United States in writing. All training and reform attempts initiated following issuance of the Report of

Findings, but before the Effective Date, shall be considered in the Monitors' and Facility Consultant's compliance assessments.

- B. Notification. Within two weeks of the Effective Date, JCMSC shall communicate the provisions set forth in this Agreement to officials, staff, agents, and independent contractors who are involved in juvenile delinquency proceedings at the Court or who have contact with Children at the Facility.
- C. Monitors and Facility Consultant. Compliance with this Agreement shall be assessed by two Monitors and a Facility Consultant. The Due Process Monitor shall be Professor Sandra Simkins and the Equal Protection Monitor shall be Professor Michael Leiber. The Facility Consultant shall be Professor David Roush. In the event that Professor Simkins or Professor Leiber is unable to serve or continue serving as a Monitor, or in the event that the Parties agree to discontinue the use of Professor Simkins or Professor Leiber as a Monitor, the parties shall confer within forty-five (45) days of being notified of the decision to discontinue use of Professor Simkins or Professor Leiber to select a new Monitor. The Monitors shall be subject matter experts, one in the area of due process in juvenile delinquency proceedings and one in the area of equal protection. If the Parties are unable to agree upon a selection of a new Monitor 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 the Monitor from among the names submitted. The Parties agree to equally share the cost of the Federal Mediation and Conciliation Service. The Facility Consultant shall be a subject matter expert in the area of juvenile protection from harm.
1. SCG shall bear all reasonable fees and costs of the Monitors.
  2. The Monitors shall be permitted to initiate and receive ex parte communications with all Parties.
  3. The Monitors shall not make any oral or written public statements – including but not limited to statements to the press, conference presentations, lectures, or articles – with regard to: the status of JCMSC's compliance or noncompliance with this Agreement; any act or omission of JCMSC or its agents, representatives, or employees; or the terms of their employment as the Monitors unless authorized by all Parties.
  4. The Monitors shall not testify in any other litigation or proceeding with regard to the status of JCMSC's compliance or noncompliance with this Agreement; any act or omission of JCMSC or its agents, representatives or employees; or the

terms of his or her employment as the Monitor, unless otherwise lawfully compelled to do so. The Monitors may testify in the event of litigation concerning JCMSC's compliance or noncompliance with this Agreement.

5. Unless such conflict is waived by both Parties, the Monitors 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 JCMSC or its departments, officers, agents, or employees concerning matters relevant to this Agreement.
  6. No Party, nor any employee or agent of any Party, shall have any supervisory authority over the Monitors activities, reports, findings, or recommendations.
  7. The Monitors 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 Monitors' 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 a Monitor within forty-five (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.
  8. Within 30 days of the receipt of written questions from the United States, the County, or JCMSC regarding the Monitors' activities in assessing compliance with this Agreement and/or JCMSC's compliance with this Agreement, the Monitors shall provide the United States, the County or JCMSC with written answers.
- D. Monitors' access to JCMSC and records. To assess JCMSC's implementation of each substantive provision of this Agreement, the Monitors and Facility Consultant will regularly conduct compliance reviews to ensure JCMSC's implementation of this Agreement.
1. The first compliance review will be conducted approximately four months following the Effective Date. Thereafter, routine compliance reviews will be conducted by the Monitors and Facility Consultant approximately every six months until this Agreement is terminated. Such routine compliance reviews will assess JCMSC's compliance with each of the substantive remedial measures set forth above. The United States, the Monitors, and the Facility Consultant shall

consult with JCMSC to schedule mutually acceptable dates for the compliance reviews.

2. The United States and JCMSC may determine that additional compliance reviews are necessary due to emergent issues within JCMSC. If the United States or JCMSC believe that such additional compliance reviews are necessary, the United States, the Monitors, and the Facility Consultant shall consult with JCMSC to schedule mutually acceptable dates for such additional compliance reviews.
  3. At each compliance review, the Monitors and the Facility Consultant shall have the responsibility and authority to independently observe, assess, review, and report on JCMSC's implementation and compliance with the provisions of this Agreement. To accurately assess JCMSC's progress, the Monitors and Facility Consultant shall: conduct on-site inspections; observe programs and activities; interview pertinent administrators, professional staff, direct care staff, and contractors; individually interview a sample of Children privately; and conduct detailed reviews of Children's records, case files, or other pertinent documents. The Monitors and Facility Consultant shall spend a sufficient amount of time on-site in order to accurately assess day-to-day operations and conditions. The Monitors and Facility Consultant shall be responsible for independently verifying representations from JCMSC regarding progress toward compliance, examining supporting documentation where applicable.
  4. Within 60 days after each compliance review, the Monitors shall file with the Parties a final consolidated report which describes the steps taken by JCMSC to implement this Agreement, evaluates the extent to which JCMSC has complied with each substantive provision of the Agreement, cites the evidence upon which such evaluation is based, and provides recommendations. 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 Monitors. Neither Party, however, shall have authority over the Monitors' reports, findings, or recommendations. The Reports shall be made publicly available on JCMSC's website.
- E. Settlement Agreement Coordinator. JCMSC or the County shall appoint an official or employee to serve as the Settlement Agreement Coordinator, whose duties shall include:
1. Developing reports regarding compliance with this Agreement and providing such reports to the United States, the Monitors, and the Facility Consultant every six

months until this Agreement is terminated. The first report shall be provided four months after the Effective Date.

2. Providing to the United States, the Monitors, and the Facility Consultant the raw data upon which each compliance report is based upon request and any reports prepared by JCMSC's technical consultants regarding compliance with this Agreement, and any other reports routinely submitted to the Settlement Agreement Coordinator regarding compliance with this Agreement.
- F. United States' Access to JCMSC and Records. The United States and its staff and agents shall have full and complete access to:
1. JCMSC courtrooms, meeting rooms, and the Facility;
  2. JCMSC documents and records;
  3. JCMSC officials, employees, agents, and independent contractors; and
  4. Children detained at the Facility, including the right to meet with Children privately.

Such access shall continue until this Agreement is terminated in accordance with the termination provisions herein. The United States shall have the right to conduct unannounced visits to the JCMSC; however, the United States shall generally coordinate the timing of its on-site visits and requests for documents so as to minimize disruption of Court operations and staff work functions.

## **VII. Enforcement and Termination**

- A. Notice Prior to Judicial Action. With the exception of conditions or practices that pose an immediate and serious threat to the life, health, or safety of a Child, if the United States believes that JCMSC has failed to substantially comply with any obligation under this Agreement, the United States shall give thirty (30) days written notice of the failure and an opportunity to take immediate steps to attain substantial compliance prior to seeking judicial enforcement of the Agreement. If the change requires approval from SCG and/or the County legislative body, the United States shall give forty-five (45) days written notice of the failure and an opportunity to take immediate steps to attain substantial compliance prior to seeking judicial enforcement of the Agreement.
- B. Termination. This Agreement shall terminate in accordance with the following provisions:

1. This Agreement shall terminate when JCMSC has achieved substantial compliance with all substantive provisions of this Agreement and has maintained that substantial compliance for 12 consecutive months.
2. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure by the JCMSC to maintain substantial compliance. However, intermittent compliance during a period of sustained noncompliance shall not constitute substantial compliance. The United States, in its good faith discretion, will determine whether JCMSC has maintained substantial compliance for the one year period and any finding of substantial compliance may not be unreasonably withheld.
3. Subsections of this Agreement pertaining to specific subject matter areas may be terminated separately and independently from the provisions of the Agreement that have not yet reached substantial compliance, if JCMSC maintains substantial compliance in these areas for a period of one year.

## **VIII. General Provisions**

### **A. Policies and Procedures**

1. **Policy and Procedure Review.** All existing Policies and Procedures shall be reviewed and/or revised to ensure compliance with the substantive terms of this Agreement. Where JCMSC does not have a policy in place to comply with a substantive term, JCMSC shall generate such policy. The initial policy and procedures review shall be initiated by JCMSC officials and shall be subject to review by the United States and the Monitor.
2. **Schedule for Policy and Procedure Review.** Unless otherwise stated in Section III of this Agreement, JCMSC shall complete its policy review and revision within six months of the Effective Date. To accomplish this goal, JCMSC shall adhere to the Agreement regarding each substantive provision. After JCMSC completes its initial revision, JCMSC shall immediately submit the revised policies to the Monitor for review and approval. The Monitor shall, as soon as practicable but in no event more than sixty (60) days submit to JCMSC any suggested revisions to the proposed policies. Within thirty (30) days after receiving the Monitor's revisions, JCMSC shall revise the policies to incorporate the Monitor's revisions and shall resubmit the procedures to the Monitor for review and approval. The Monitor, or Facility Consultant, shall submit to JCMSC any suggested revisions to the proposed policies and procedures within thirty (30) days. This review

process shall continue until the Monitor, or Facility Consultant, has approved of all policies and procedures.

JCMSC shall provide all such documents to the United States for its review within thirty (30) days of the review and approval by the Monitors. Within forty-five (45) days of its receipt of the policies, procedures, and other written documents, the United States shall provide either written approval of each document, or written concerns or objections it has to the documents that include proposed revisions. Such approval shall not be unreasonably withheld. In the event that the United States asserts that policies, procedures, or other written documents are not in compliance with the terms of this Agreement, the Parties will confer on the matter for up to thirty (30) days.

3. The final policies and procedures shall be subject to further revision if, after review of the Internal Oversight documents, the Monitors or Facility Consultant, the United States, or JCMSC determines that the policies or procedures are not successfully solving the deficiency identified in the Report of Findings. Suggested changes made by JCMSC shall be reviewed and approved by the Monitors or Facility Consultant and the United States.
4. Policy Implementation. No later than three months after the Monitor's final approval of each policy or procedure, JCMSC shall formally adopt and begin implementing the policies and modify all orders, job descriptions, training materials, and performance evaluation instruments in a manner consistent with the revised policies and procedures. Following adoption and implementation, JCMSC shall annually review each policy and procedure and revise as necessary. Any revisions to the policies and procedures shall be submitted to the Monitor for review and approval. Unless otherwise stated, all policies and procedures shall be implemented within one year of the Effective Date.
5. Modification. Should the parties choose to modify this Agreement, they may do so by mutual agreement. Any such modifications or amendments to this Agreement shall be memorialized in writing and executed by representatives for the parties.

## B. Reporting Requirements

1. Comprehensive Action Plan. Within four months of the Effective Date, JCMSC shall submit to the United States a comprehensive action plan specifying the



measures it intends to take in order to bring JCMSC into compliance with the substantive requirements of the Agreement, including anticipated timeframes for completion of each measure.

2. Compliance Report. JCMSC shall submit a bi-annual compliance report to the United States, the first of which shall be filed within six months of the Effective Date. Thereafter, the bi-annual reports shall be filed 30 days prior to the Monitors' and Facility Consultant's bi-annual compliance tour until the Agreement is terminated. Each bi-annual compliance report submitted by JCMSC shall describe the actions JCMSC has taken during the reporting period to implement this Agreement and shall make specific reference to the Agreement provisions being implemented. To the extent any provision of this Agreement is not being implemented, the compliance report shall also describe what actions, including any additional revisions to policies, procedures and practices, JCMSC will take to ensure implementation, and the date(s) by which those actions will be taken.
  3. Records. JCMSC shall maintain sufficient records to document that the requirements of this Agreement are being properly implemented and shall make such records available to the United States at all reasonable times for inspection and copying. These records shall be maintained for three years. In addition, JCMSC shall maintain and submit upon request records or other documents to verify that it has taken such actions as described in the compliance reports (e.g., census summaries, policies, procedures, protocols, training materials and incident reports) and shall also provide all additional documents reasonably requested.
  4. Prohibition on Retaliation. No Child, parent, staff, stakeholder, or any other person shall be subjected to retaliation in any manner for information shared with the Monitors, the Facility Consultant, or the United States in their efforts to determine compliance with this Agreement.
- C. Legislative Approvals. Certain implementation provisions of the Agreement may require additional appropriation of funds and/or budgetary amendments, which shall require approval of the Shelby County Board of Commissioners. JCMSC and SCG agree to present such funding requests to the Shelby County Board of Commissioners within thirty (30) days of becoming aware of the need for such requests.

Agreed to this 17th day of December 2012

For the United States of America:

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EDWARD L. STANTON, III  
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County Attorney

/s/ Debra L. Fessenden  
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For the JUVENILE COURT OF MEMPHIS AND SHELBY COUNTY

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HONORABLE CURTIS S. PERSON

/s/ Larry Scroggs  
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