

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

Fifth Compliance Report – Equal Protection

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Submitted July 3, 2015

## INTRODUCTION

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

The Parties selected Dr. Michael J. Leiber as the Equal Protection Monitor of the Agreement. The Agreement requires the Monitor to assess the level of compliance by the juvenile court every six months and to produce reports. The first Monitor's report was submitted on June 12, 2013; the second Equal Protection Monitor Report was submitted on January 16, 2014, the third was submitted on June 17, 2014, and the fourth on January 12, 2015. This is the Equal Protection Monitor's fifth report on movement toward compliance on the items stipulated in the Agreement as pertaining to Equal Protection. The time-frame assessed is November 19, 2014 to May 20, 2015. However, it is important to note that from the time of the Agreement until May 20, 2015, as a whole is also taken into consideration. The evidentiary basis for his opinions are based on document reviews (policies, data, compliance report by the Settlement Agreement Coordinator, reports provided by the Disproportionate Minority Contact Coordinator or DMC Coordinator, meeting notes, emails, etc.), an on-site visit (April 27, 2015 through April 29, 2015), interviews and phone-calls with Staff, the DMC Coordinator, the Settlement Agreement Coordinator, and conference calls with Staff and the Office of Juvenile Justice & Delinquency Prevention (OJJDP) and the Department of Justice (DOJ).

In the determination of racial disparity in JCMSC's administration of juvenile justice, evaluations were conducted of the level of the disproportionate minority contact (DMC) at various stages or points of contact within the juvenile court (referral to court, cases diverted, secure detention, petition, findings of delinquency, probation, placement in secure confinement, waiver to adult court). In addition, a DOJ study was conducted of decision-making at each stage of juvenile justice proceedings. Results from that examination of the extent of DMC and the DOJ study that examined the possible causes of DMC showed the following: minority youth overrepresentation at almost every stage in the proceedings and evidence of discriminatory treatment of Black youth.

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

## OVERALL SUMMARY AND IMPRESSIONS UP TO THIS POINT IN THE AGREEMENT

There exists a serious lack of progress in addressing DMC and equal protection that were the focus of the findings and conclusions by the Department of Justice (DOJ). A stronger focus and commitment on these issues on the part of the Court is necessary to make the required improvements to insure all youth are treated equitably.

In the sections to follow, a discussion of what the Court has accomplish since the MoU is presented followed by the detailing of areas in need of improvement, a summary of DMC findings, compliance ratings and recommendations to reach compliance. The summary and impressions discussed reflect activities up to May 20, 2015.

**Positives:** Since the Agreement, the Juvenile Court and the County have been cooperative with DOJ, the Monitor and the adoption of the MoU and have taken a number of steps toward attempting to comply with the Agreement. These have been outlined in greater detail in the prior Equal Protection Monitor Reports. Over all, it is evident that on many fronts movement has occurred— for example, the hiring of a DMC Coordinator, the gathering of information/data, the distribution of data via the website and involvement with community agencies and activities, the implementation of objective decision-making tools, the formation of committees, the signing of an MoU with the Memphis Police Department to establish and implement a “Call in Program” (LEAP), discussions with the Memphis Police Department to establish another pilot program whereby a caseworker would be located at the Old Allen precinct to assist with referrals and services and coordinating with established programs, the use of a day/evening reporting center for those on probation and the expansion and use of SHAPE are all noteworthy strategies and activities to reduce DMC. In addition to this activity, the overall numbers of youths being referred to court and secure detention have decreased.

Despite these positives, there is still room for improvement. Many of these areas of improvement have continued to exist over the last 29 months since the MoU. Most important is that DMC measured by the relative rate AND in terms of equity for similar offenders, irrespective of race, HAS NOT CHANGED and continues to be a problem for the Court.

**Need For Improvement:** First, it is important to point out that the relative rates and various studies that have been reported on over the last 2-3 years, including the results from the 4th assessment study to be discussed within this report, continue to show, for the most part, that

- DMC continues to exist due to differential offending, bias (e.g., overcharging), and procedural or administrative factors (e.g., police referrals especially for minor offenses and domestic assaults, admission of these minor offenses into detention, etc.).

Thus, strategies and initiatives need to be implemented with this mind and the areas cited below for improvement attempt to do this. These have been previously discussed in each of the four Equal Protection Compliance Reports and reiterated here again in this fifth Equal Protection Report, and detailed as well as in the Settlement Agreement Coordinator Reports.

More specific, consistent findings reveal:

- While the number of referrals has declined over time, the racial breakdown continues to remain high.
- Likewise, although the overall number of youth held in secure detention has decreased, a racial gap remains and in fact has increased AND race still matters once all other factors are considered. More specific, Blacks charged with domestic assault and other person offenses are likely to be detained than similarly situated Whites.
- Black youth continue to be underrepresented in diversion.
- Blacks charged with person offenses at the non-judicial stage are having increased odds of receiving harsher outcomes relative to their similar situated White counterpart.
- Black youth are overrepresented in cases adjudication and resulting in confinement in secure facilities. But, evidence of race being an influential factor once relevant legal and extralegal considerations are taken into account is not present at adjudication and judicial disposition.
- Last and although overall numbers appear to have declined, significant overrepresentation of Black youth exist for receiving Notice to Transfer to adult criminal proceedings (these numbers are high) and actual waiver to adult court.

Some of these results can be explained by Black youth being charged with more crime, more serious crime, problems at school, etc. AND bias in the treatment of Black youth (overcharging, reliance on tainted decision-making criteria) AND simply as by-products of existing procedures (unnecessary police referrals to court and detention, no one to pick up the youth, aggressive prosecutorial recommendations, etc.). To address these varied but interrelated factors, the following are once again recommended:

- (1) Existing programs need to be used and/or used more effectively address a larger number and range of youth, such as SHAPE, Porter Leath, JIFF, Operation Safe Community and the Defending Childhood Initiative grant.
- (2) Furthermore, while the Summons program and the pilot programs with the Sherriff's Department and the Memphis Police Department are initiatives that are reducing the number of youth referred to secure detention, the Juvenile Court needs to continue to develop policies and programs to reduce the racial disparity in referrals in general and in the use of secure detention. Once again, it is recommended that **the Court implement a policy directing its facility staff to refuse to receive youth involved in minor activity, including minor domestic assaults. The Court could also continue to support the development of diversion alternatives to court referral for a number of minor offenses.** Essentially, the Court needs to examine ways to reduce the flow of youth, especially Blacks, into the juvenile justice system, truly keeping it as a mechanism of last resort.
- (3) While information has been gathered, **there is still a need to interpret the data; determine what it means for DMC, what can be done to reduce DMC, what barriers or challenges exist and how these can be addressed.** This applies to not only the Points of Contact (POC) but as well to those in charge of the gathering of information that lists programs and services used by the court to treat/intervene into the

lives of youth and whether those most in need are being served. Further, there is a need for all parties to also take into consideration not only the data, say from the RRI's, but the results from the assessment studies. **Personnel are not using this information to address DMC issues.**

- (4) As stated throughout each Equal Protection Compliance report, there is a need for involvement by all parties at all levels – the Court Administrators, the DMC Coordinator, those involved with the detention initiative, staff and in particular, those involved as the Points of Contact, attempt to reduce DMC to gain compliance with the Agreement. Again, **the Court MUST take the lead on this and have a more active role in leadership and ownership** in this process. A step in this direction could be the hiring of a DMC Coordinator who has the backing of the Court as well as experience with DMC issues. The Court is aware of this recommendation and need for such a person - indicated in person while on the last onsite visit and in the response to the last Settlement Agreement Coordinator Report whereby someone will be hired or appointed to spearhead the DMC problem. I strongly encourage the Court to follow through on this.
- (5) While technical assistance has been requested and used (visited) for various training, the Juvenile Court needs to continue to move on the following:
- The operationalization and implementation of the strategic plan,
  - Implementation of objective tools to structure decision making at what is referred to non-judicial outcomes (often referred to as intake) and the graduate sanction grid.
  - Although the validation of the **DAT** has been in place since January, 2014, validation needs to continue and include all instruments. The validation of the DAT (Field Test and Validation Test) is still in the process of being conducted by Dr. Burt Burraston and colleagues at the University of Memphis (U of M) Department of Criminology and Criminal Justice. A report has been generated involving 300 field tests and 100 validation test for the time-frame of Oct. 1, 2012 through June 30, 2013. Additional testing is underway. DOJ approved the YASI as an objective decision making tool on or about April 3, 2014, at which point juvenile court began a purchase contract process. **While the YASI is a validated tool, it and the Graduated Sanctions Grid need to be validated as applied to the Court.** This will ensure that the tools are capturing accurate data, encouraging race-neutral decision-making, and improving overall fairness in court proceedings.

**Justification for this recommendation** rests on findings from the initial Field and validation of the DAT and findings from the assessments studies. For example, **Burraston and colleagues recommended that the Court restrict Danger to the community to assaultive felonies** and to combine categories of 'Current Status' and 'Violation of Probation' to eliminate redundancy as well as the item 'two or more prior adjudications of delinquency for prior felony offenses' should be returned to its original point value of 5. These changes would reduce the detention rate. Picking up on this recommendation, **results from the Assessment studies reveal** that the racial

gap in detention still exists as does inequity in detention decisions involving Black youth relative to similarly situated White youth, especially for Blacks charged with domestic assault and person offenses. Race effects also exist at the non-judicial stage where Black youth charged with a person offense increases the chances of moving forward in the court proceedings.

Thus, there is a need not only to validate the instruments used to structure decision-making at detention (DAT) and the non-judicial stage (YASI, Graduate Sanction Grid) but to **make improvements/adjustments to the criteria used by decision-makers. In actuality, these tools and the use of over-rides could be accounting for DMC and inequitable decision-making at detention and the non-judicial stage.** A focus on race, domestic assaults, person offenses and want constitutes danger to the community would be starting points in this adjustment process. In essence, the Court needs to address the following questions: (1) are the structured decision-making tools being administrated properly (e.g., overrides)? And (2) are the tools and the criteria comprising the tools designed to reduce DMC and ensure decision-making that results in equal protection.

- (6) As previously noted, while efforts are being made to reform detention decision making and especially by the working relationship with JDAI, **it is important to understand that detention reform that results in the reduction in the number of youth detained by itself does not mean a reduction in DMC or increased equitable treatment irrespective of race as evidenced over time by the racial gap in the relative rates and the results from the Assessment studies.**
- (7) **Notice of Transfer and actual waivers to criminal court has remained a DMC problem.** While the number of waivers has decreased – which is good – the number of notice of transfer remains high and most of the youth involved in both (notice, transfer) are Black. Greater effort is needed to address this issue to reduce DMC.
- (8) **The Strategic Planning Committee** needs to continue to meet and evolve its mission.
- (9) Although having some growing pains, **The Points of Contact Committee** needs to continue to meet, interpret/discuss the data, and develop recommendations to reduce DMC. Plenty of data exists to show that problems exist with referrals, detention, and decision-making at the non-judicial stage and notice to transfer. The Points of Contact showed continue to look at this information and attempt to make recommendations for changes especially at these stages. For example, questions to be addressed could center on: How can we curb court referrals? Since DAT is used at detention, why is it that a racial gap remains? That Blacks charged with domestic assault and person offenses are being detained yet similar Whites are not? At the non-judicial stage, why are Blacks referred for further court proceedings while alike Whites are not? These are just a few questions that should guide The Points of Contact as well as Administration.

(10) Because the Consortium was having difficulty and under-utilized, DOJ has become more active in terms of providing assistance and direction. Further the Consortium, the Court, and the DMC coordinator need to have a working relationship. In fact, the DMC coordinator and someone from the Court need to attend meetings and be participants. The Consortium should also be able to request and receive in a timely manner, information from the Court and with some conditions, the ability to visit the Court, hearings, and detention.

- Both the DMC Coordinator and the representative working with JDAI have been very active in the community in terms of DMC. **Although there has been some activity over the last 6 months including a community meeting, the Court needs to do a much better job of engaging with and providing information to the community.**
- In response to the Settlement Coordinator's 5<sup>th</sup> Compliance Report, the Court put forth a Community Out Reach Plan that details among other things a number of community outreach initiatives. **It is hoped that over the next 6 months, the Court will follow their Community Out-Reach Plan and accomplish even more.**

(11) Per the Agreement, a community survey and survey of the Court should have already been conducted. A contract was in place for someone to conduct the study but there have been delays in working with OJJDP. A group contracted with OJJDP and will be working with Dr. Laura Harris and the Court to do this sometime within the next month or so.

The need for the continuation of the positive things that have occurred as well as improvement in the areas cited above is accentuated by a review of the Relative Rate Index (RRI) and the assessment study conducted by the Equal Protection Monitor. A summary of these findings is provided below. See Appendix 1 for the full report.

#### Examination of the Level and Causes of DMC

The Relative Rate Index (RRI) provides an indication of the extent of over-representation of youth of color in the juvenile justice system during a specified time-frame and at stages in the system. For the Juvenile Court, the RRI was used to measure the level of DMC at stages for Black youth as compared to White youth. While valuable, the relative rate index can only provide insight on the level of DMC at stages and cannot tell us WHY DMC is occurring. Instead, an assessment study using multivariate statistics in the form of logistic regression permits such an inquiry. Logistic regression is a statistical technique that takes into consideration a variety of factors to predict the likelihood of a case outcome. In essence, there is an attempt to model what legal (e.g., crime severity, prior record) and extra-legal (e.g., age, school performance) considerations used by decision-makers to arrive at an outcome. Legal factors and to some extent extra-legal factors can be relied upon to make a juvenile justice outcome due to its *parens patriae* foundation. Race, an extralegal factor, however, should not be predictive of a stage outcome once all legal and other extralegal factors are considered. If race does not have a statistically significant presence, then DMC is explained by differences, for example, in legal characteristics such as crime severity and prior record. If race is a statistically significant

indicator, then something else in addition to legal and other extra-legal factors account for DMC, for example, possibly bias.

Relative rate indexes were examined for the years 2009 through 2014. Data for 2009 was taken from the Investigation of the Shelby County Juvenile Court (2012) which was based on data submitted by Shelby to the state of Tennessee. Data for 2010 through 2014 was provided by the Juvenile Court of Memphis and Shelby County (Juvenile Court). A relative rate index of 1 is neutral or 1 White per 100 youth to 1 Black per 100 youth. Anything above indicates minority overrepresentation; anything below, under- representation.

In summary, **Black youth are disproportionately represented in 5 of 7 stages:** referral to the juvenile court, secure detention, cases petitioned, cases resulting in delinquent findings, and those placed in confinement in secure facilities. Black youth are underrepresented in cases diverted. Due to the relatively small numbers, the RRI was not calculated for transfer to adult court and although the numbers have declined **most of the youth given a notice of transfer and waived to adult court were Black.**

#### **RRI Results:**

Referrals. The relative rate index involving **referrals to court** remains high at 4.38. In other words, a little over 4 Black youth per 100 youth are referred relative to 1 White youth per 100 youth. Thus, the number of referrals for both Whites and Blacks are down which is good. But, the relative overrepresentation of Black youth to White youth in **court referrals continues to be an issue that has shown relatively no change over the last 6 years.**

Diversion. **Black youth continue to be underrepresented for cases diverted.** In 2009, the RRI was .90, in 2014, the RRI is .92.

Secure detention. RRI values pertaining to secure detention initially showed a decline from 2.1 in 2009 to 1.32 in 2012. But in 2013 and through 2014, an increase in disparities related to secure detention is evident at 1.64 and 2.02, respectively. Although the overall number of youth involving secure detention has reduced significantly over the years for both White and Black youth (2009 to 2012 compared to 2013 and 2014), **Blacks are still being detained more so relative to Whites.** This is an area that the Court will need to continue to address.

Petitioned. For 2013 and through 2014, the RRI's for **cases petitioned shows overrepresentation** and has been steady at 1.46 and 1.69, respectfully.

Delinquent findings. The relative rate resulting in **delinquent findings show a decline** - for 2013, 1.16 and 1.18 for 2014 compared to 2.11 in 2012.

Secure confinement. Rates for cases resulting in confinement in secure juvenile facilities began to show a decline from 1.7 in 2009 to 1.30 in 2012 and 1.05 in 2013. The reduction in the RRI's overtime and in particular for 2013 is especially noteworthy. **In 2014, the relative rate shows an increase to 1.50.**



Transfer. In terms of the relative rate, youth waived to adult court has remained relatively the same from 2009 to 2012 (2.3 in 2009, 2.23 in 2012). RRI analyses for this decision stage were not conducted for the year 2013 or 2014 as the number of cases was insufficient. It is important to point out that based on data from the Court while the disparity between Whites and Blacks appears to have stayed relatively the same over the years, the number of youth waived to adult court has declined from 225 in 2008, to 199 in 2009, 151 in 2010, 121 in 2011, 99 in 2012, 90 in 2013 and 77 in 2014. But, the number of youth recommended for a waiver is high at 256 in 2013 and 190 for 2014. **More specific, of the 190 youth, 13 were White and 2 Whites were waived to adult court compared to 73 Blacks.**

Recall that the RRI provides information concerning the extent of DMC and does not inform us of the causes of DMC. Next, following the pattern used in the DOJ findings report and the previous assessment study conducted by the Equal Protection Monitor, multivariate analysis, in the form of logistic regression, was used to give added insight into the predictors of case outcomes or the underlying causes of DMC, in order to assist the Court and County in developing strategies to reduce racial disparities.

For the purpose of this study, data was obtained directly from the Juvenile Court. This data was cleaned for the objective of conducting the research. More specific, raw data of all delinquent referrals in Shelby County from July 1, 2013 through June 30, 2014 (N=107,313) were provided. The dataset was converted from Excel to SPSS format and all analyses were conducted using the SPSS statistical software. The final data consists of N=7,214 distinct referrals for the one year period of 2014. The sample parallels the Juvenile Court data by distinct complaints.

### **Assessment Results:**

Detention. While race does not have a statistical significant main effect with detention outcomes, there is once again the presence of an interaction effect involving race and being charged with a person offense.

- **White youth charged with a person offense are likely not to be detained while Black youth involved in a person offense increased the likelihood of being detained by over 1½ times.**
- **Blacks who have multiple charges increased the odds of being detained by 36% than similarly situated Whites.**
- White youth involved in domestic assaults have a **decreased** likelihood of being detained by 93% **whereas** for Blacks, domestic assault **increased** the likelihood of being detained by 44%.
- Last, being White and charged with drug offending substantially **decreased** the chances of being detained (by 95%).

**Overall, in 4 of 5 assessment studies race has been found either individually or in combination with other factors, such as person offense, to influence the decision to detain**

**net considerations of other variables.** Recall that the DOJ study reported a strong relationship between race and detention in that Black youth were almost 2¾ times more likely to be detained than similarly situated White youth.

Non-judicial. Race is a statistically significant predictor of non-judicial decision-making and a warning.

- Being **Black increased the odds of receiving a recommendation for further court proceedings (by 62%)** once controls were considered.
- **Blacks charged with a person offense increased the odds by 3.42 of receiving the more severe case intake outcome.**
- If a non-judicial outcome is given, **Blacks are more likely to receive a warning** by the odds of .34 than Whites net controls.
- **For Whites**, residing with a single-parent decreased the likelihood of receiving a warning while being charged with a drug offense increased the odds of receiving such an outcome.
- While there is no direct race effect with the decision to grant diversion, **Whites who come from such a household increased the odds of receiving diversion.**

In the DOJ assessment study, Blacks were found to be less likely than similarly situated Whites to receive a warning and a fine, restitution or public service sanction. Or, in other words, Blacks were more likely than Whites to be referred for further juvenile court proceedings once controls were considered. **Thus, in 3 of 5 assessment studies, race had a direct relationship with the non-judicial decision.**

Adjudication. In the present assessment study, **race once again does not have a statistical direct effect on adjudication outcomes.** Further, tests involving coefficient comparisons **also failed to produce evidence of race differences in the relative effects of the independent variables with adjudication.**

The DOJ study did not report adjudication decision-making as a problem area. In the first assessment study by Leiber, race by itself was not a significant predictor once controls were considered. Comparisons of coefficients revealed the existence of a race interaction relationship with the number of charges and the odds of being adjudicated. For Whites, the number of charges had an inverse or negative relationship with the dependent variable and was not statistically significant. For Blacks, the relationship was positive and statistically significant. Black youth with a greater number of charges increased the likelihood of adjudication by 2.15 relative to other youth net considerations of legal severity and other variables. In the second assessment study, race once again did not have a direct effect on the dependent variable. But, two race interaction relationships were found. Black females and White youth charged with a person offense were found to have an increased likelihood of adjudication. In the present study, again, no race effects of statistical significance were discovered.

Judicial Disposition. In the present assessment study and consistent with the previous three assessment studies, **race is not a statistically significant determinant of judicial decision-making.** Tests for the presence of race combination relationships with independent variables also failed to show the existence of such effects with the dependent variable.

In the first assessment study by Leiber, race had no main relationship with the dependent variable. However, two race interaction relationships were reported. Older Whites had a reduced probability of a receiving an out-of-home placement than older Blacks who had an increased odds of such an outcome. Being detained had also significant positive relationship with the dependent variable (increased odds of being taken out of the home). This effect was conditioned by race. Blacks held in detention had an increased likelihood of receiving the more severe judicial outcomes than similarly situated White youth once controls were taken into account. In the second assessment study, once again race was not a statistically significant determinant of judicial disposition decision making. Differentiating the results by race, tests comparing coefficients produced two statistically significant interaction relationships. As in the first assessment study, older Whites had decreased odds of receiving an out-of-home placement than other youth, including Blacks. White youth from a single-parent home were found to be less likely to receive the more severe judicial disposition outcome than similarly situated Black youth. Again, these relationships were not found in the present study.

Transfer. Logistic regression analyses were not conducted for Transfer to adult court due to the lack of variability. That is, there were too few Whites to conduct the analysis for the year 2014 or over the last four years. **Almost all youth that received a notice of transfer and are waived are Black.** Recall that **of the 190 youth that received Notice, 13 were White; 2 Whites were waived to adult court compared to 73 Blacks for 2014.**

See next Page for summary

## Summary

### Leiber- 4th Assessment Study (2014 data)

	RRI		Multivariate Results
Referral to Court	Overrep.	steady/high	
Secure Detention	Overrep.	increase	Blacks with greater number of charges more likely to be detained Blacks involved in person crime more likely to be detained Blacks/domestic assault more likely to be detained while Whites/domestic assault less likely to be detained Whites/drug offense less likely to be detained
Diversion	Underrep.	steady	Blacks more likely to be warned White/drug offender more likely to be warned White/single parent home less likely to be warned White/single parent home likely to receive diversion
Petition	Overrep.	steady	Blacks petitioned more so than Whites Blacks/person offense petitioned
Adjudication	Overrep.	steady	No race effect
Confinement in secure facilities	Overrep.	increase	No race effect
Out-of-Home Placement			
Waiver/Transfer to Adult Court	Mostly Black		Lack of variation to examine

Note: Overall referrals to court and secure detention are down but significant race gaps continue to exist. Reference to relative rate in terms of steady, increase, decrease involves comparison over time from 2009 through 2014.

Overall, while the Court has shown awareness and sensitivity to greater equity in the treatment of similar youth, irrespective of race, problems continue to exist:

- DMC has remained quite **high for referral**, with rates of referral for Black youth being at over four times higher than the rates of referral for White youth. This is a pattern that really has not changed and this issue needs to be addressed.

Although structured decision- making tools are being used at **detention and the non-judicial stages**, Blacks continue to be more likely to be detained and to receive a recommendation for further court proceedings. At detention this relationship is enhanced if the Black youth is charged with a person offense or domestic assault. At petition or the non-judicial stage, Black youth charged with a person offense increases the chances of moving forward in the court proceedings. There is a need not only to validate the instruments used to structure decision-making at detention (DAT) and the non-judicial stage (YASI, Graduate Sanction Grid) but to **make improvements/adjustments to the criteria that are used to address why Blacks in general and in particular, Blacks charged with person offenses and domestic assault at detention and Blacks charged with person offenses at the non-judicial stage, are having increased odds of being disadvantaged relative to their similar situated White counterpart.** As stated

previously, the Court needs to address the following questions: (1) are the structured decision-making tools being administrated properly (e.g., overrides)? And (2) are the tools and the criteria comprising the tools designed to reduce DMC and ensure decision-making that results in equal protection.

The Court needs to reach out to the District Attorney to address notice to transfer and the actual waiving of Black youth to adult court. Although not studied through the use of logistic regression and similar to court referral in that the numbers are declining, there is a **continuing problem** involving the significant overrepresentation of **Blacks transferred to adult court**. Further, **notice to transfer to adult court** remains high and involves predominately Black youth.

Thus, in terms of answering the question *why* DMC exists, the findings from the logistic regression show that factors associated with the differential offending explanation (e.g., more offending behavior, more serious crime, more problems at school, etc.) AND selection bias or the discrimination explanation (e.g., race still matters after considering differences in legal and extralegal factors) AND administrative policies (e.g., police referrals involving minor offenses, detention admissions of minor offenders, responding differently to Whites and Black charged with the same offense, etc.) still account for DMC at referral, detention, and at the non-judicial stage. Court action, either in the form of additional programs, modified policies or cooperation with other agencies (principally law enforcement and the District Attorney) need to address these multiple causes of DMC. Significant Black overrepresentation exists involving the notice to waiver and transfer to adult court. Legal and extralegal factors predict decision-making at every stage. Race was not found to be a determinant of decision making at adjudication, and confinement in secure facilities involving out-of-home placement. The Memphis/Shelby County Court is to be commended for making efforts to reduce DMC and disparity at these stages. Decision processes can be designed which are race neutral. Indeed, in the initial DOJ report as well as subsequent analyses, race was not found to be a determinant of decision making at adjudication, and confinement in secure facilities involving out-of-home placement. The Memphis/Shelby County Court has demonstrated that it can operate in a race neutral fashion, however, that laudable accomplishment needs to be applied to a much wider range of court and juvenile justice processes in the County. A lot of work still remains to be done most notably at stages of referral, detention, non-judicial and notice of transfer to adult court to address DMC.

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

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

**Partial Compliance (PC)** means that the Juvenile Court has implemented policies, procedures and programs; has trained staff and personnel; has sufficient staff to implement the required reform; has demonstrated a commitment toward reform; has identified points of contact, have met, collected data, analyzed the data, and attempted reform; has addressed data needs; has developed and utilized mechanisms to disseminate information; has identified and developed areas and stages in the system in need of reform; has developed a plan to evaluate and monitor reform, and has ascertained if reform achieved desired outcomes. **However**, while progress has been made toward stated above items, performance has been inconsistent and/or incomplete throughout the monitoring period and additional modifications are needed to ensure a greater level of compliance.

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

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

**Compliance Level to Be Determined (CLTBD)** means that a decision on the compliance level is pending in light of deadlines of specific reforms as stated in the Agreement have not yet come or arrived – Nine-Months, One- Year- or have been given an extension.

Table 1. Compliance Rating by Provision

Identifier	Provision	Compliance Rating
1a	Identify all data collection needs at each major Decision Point	<b>PC</b>
1c	Identify staffing needs to collect, evaluate & report data	<b>PC</b>
1e	JCMSC shall identify and designate a point of contact within each department to reduce DMC	<b>PC</b>
1f	Collect data and information required to determine where DMC occurs	<b>PC</b>
1d	Shelby County Mayor shall appoint a coordinator responsible for oversight of the progress on reducing DMC	<b>SC</b>
1b (9 months) i-vi	JCMSC shall augment the appropriate data collection method to assist in its evaluation of its DMC levels, causes, and reduction.... This includes information on points of contact, the RRI's, and available diversion options for youth appearing before JCMSC	<b>PC – Assessment – Leiber</b> <b>PC – Staff reports</b>
1g (9 months)	Assess impact policies/procedures/programs on DMC levels at each decision point and conduct inventory of services and options...	<b>NC</b>
1h (9 months)	Complete and implement strategic plan to reduce DMC	<b>PC</b>
2a	Revise policies, procedures, practices, and existing agreements to reduce DMC at each Decision Point and encourage objective decision making in all departments relating to its delinquency docket (i) Collection of sufficient	<b>NC</b>  <b>BC</b>  <b>BC/CLTBD</b>

	<p>data</p> <p>(ii) Provision requiring least restrictive options and alternatives to a detention setting</p> <p>(iii.) Guidelines identifying a list of infractions for which a child shall NOT be detained</p> <p>(iv.) Guidelines identifying a list of infractions for which a child may be detained</p> <p>(v.) Training and guidance on the use of existing and new objective decision making tools</p> <p>(vi.) Requirement that a supervisory authority review all overrides within each department on, at minimum, a monthly basis</p>	<p><b>BC/CLTBD</b></p> <p><b>BC/CLTBD</b></p> <p><b>BC/CLTBD</b></p> <p><b>BC</b></p> <p><b>BC/CLTBD</b></p>
2c	Reassess the effectiveness of its policies, procedures, practices and existing agreements annually and make necessary revisions to increase DMC reduction	<b>NC</b>
3a-h (9 months)	<p>Use of objective decision-making tools, etc.</p> <p>Refine decision-making tools, etc.</p> <p>Pilot program – Sheriff’s department – transport</p> <p>Pilot program – Memphis Police Department – day/evening report center</p> <p>Monitor Transfer</p> <p>Annual review of objective tools</p>	<p><b>BC</b></p> <p><b>NC</b></p> <p><b>BC</b></p> <p><b>BC</b></p> <p><b>BC/CLTBD</b></p>
4	<p>Training on a number of pts (i-vii)</p> <p>Staff involved with the delinquency docket should receive training of at least 4 hours.</p>	<p><b>PC</b></p> <p><b>PC</b></p>
5	Develop and implement a community outreach program	<b>NC</b>



	<p>to inform community of progress toward reforms.</p> <p>This should include a county-wide consortium that includes but is not limited to six to nine citizens selected by the Mayor and approved by the County Commission.</p> <p>Open meeting every six months</p> <p>There is a need for summaries of reports to be posted</p> <p>JCMSC shall publish on its website annual reports in accordance with the Agreement.</p> <p>The Community Outreach program should include a data dashboard that communicates compliance on the part of JCMSC with the Agreement.</p> <p>A community survey shall be conducted (<b>one year</b>)</p>	<p><b>BC/CLTBD</b></p> <p><b>PC</b></p> <p><b>PC</b></p> <p><b>SC</b></p> <p><b>PC</b></p> <p><b>BC/CLTBD</b></p>
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1. DMC Assessment

- (a) Identify all data collection needs at each major Decision Point (p. 21)  
**STATUS-PARTIAL COMPLIANCE (PC)**  
DISCUSSION-collection needs have been identified for each data point  
But more needs to be done with the data, interpretation, action
- (c) Identify staffing needs to collect, evaluate & report data (p. 22)  
**STATUS-PARTIAL COMPLIANCE (PC)**  
DISCUSSION-listing of staffing; issues concerning data have been resolved with the hire of a new data analyst but work needs to be done to make data useable for purposes to address DMC.
- (e) JCMSC shall identify and designate a point of contact within each department to reduce DMC (p. 22).  
**STATUS-PARTIAL COMPLIANCE (PC)**  
DISCUSSION-points of contact have been identified. Although monthly meetings have taken place, problems continue to exist with understanding purpose and assuming an active role. Administration has indicated once again that it will take an active part in taking charge of the Points of Contact in terms of objectives and use of data and information to address DMC, including results from assessment studies and information contained in compliance reports.
- (f) Collect data and information required to determine where DMC occurs (p. 22)  
**STATUS-PARTIAL COMPLIANCE (PC)**  
DISCUSSION-information has been collected and examined in general and by zip code among other things (e.g., referring agency, schools, etc.). Specific information on detention, alternatives to detention, and to some degree, transfer recommendations, has been collected and analyzed. While data has been collected, lacking is a discussion of what the data means and what can be done to address DMC. Notice of transfer and actual transfers need to be studied in greater detail, especially the former.
- (d) Shelby County Mayor shall appoint a coordinator responsible for oversight of the progress on reducing DMC (p. 22).  
**STATUS-SUBSTANTIAL COMPLIANCE (SC)**  
DISCUSSION-the DMC Coordinator was hired in February of 2013. Work has been done with Staff, the Points of Contact, development of reports and to some degree has been involved in community outreach. As stated in the first report, the DMC Coordinator and the Court Community Liaison need to work together more often as part of the community outreach stipulation.

1.DMC Assessment

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

**STATUS-PARTIAL COMPLIANCE FOR EQUAL PROTECTION  
MONITOR (PC), PARTIAL COMPLIANCE FOR STAFF (PC)**

DISCUSSION-the 4th assessment study was conducted by Leiber, process will continue with working relationship with Court to improve data examined. Staff has produced many documents using data and RRI. Listing of diversion programs has occurred. Interpretation and action with the data is needed.

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

**STATUS-NON-COMPLIANCE (NC)**

DISCUSSION-Listing of diversion alternatives, intra-agency agreements, and collection of data, especially from The Points of Contact, the DMC Coordinator and the Court have occurred. HOWEVER, linkage, interpretation and steps taken to use this data as well as from the Assessment Studies has not occurred even though informed numerous to times to do so (e.g., Compliance Reports).

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

**STATUS-PARTIAL COMPLIANCE (PC)**

DISCUSSION-a strategic plan has been developed. Technical assistance was requested and provided as to how to proceed in November of 2013 and March, 2014. Implementation should continue. Committee members need to be replaced as needed and they should not be the same as those residing on the POC.

2.DMC Policies and Procedures

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

**STATUS-NON COMPLIANCE**

DISCUSSION- while the DAT is being validated, there has been no other movement to evaluate decision-making, policies and procedures and to make CHANGE as relates to DMC. This must be done to ensure the stated objectives of fairness are being attained, especially in light of the Relative Rate information and results from the Assessment studies and the Field and Validation Tests of DAT.

**STATUS-BEGINNING COMPLIANCE (BC)**

DISCUSSION-Structured decision-making tools have been adopted and implemented.

- (b) Revision of the above to include: (p. 23)
- (i) Collection of sufficient data
  - (ii) Provision requiring least restrictive options and alternatives to a detention setting
  - (iii.) Guidelines identifying a list of infractions for which a child shall NOT be detained
  - (iv.) Guidelines identifying a list of infractions for which a child may be detained

(vi.) Requirement that a supervisory authority review all overrides within each department on, at minimum, a monthly basis.

**STATUS-BEGINNING COMPLIANCE/COMPLIANCE LEVEL TO BE DETERMINED (BC/CLTBD)**

DISCUSSION-information has been collected; adoption of objective instruments has occurred. DAT is being validated, the Sanction Grid has been implemented; and training began for the adoption of YASI and is being implemented. It is important that all 3 instruments be validated. This will ensure that the tools are capturing accurate data, encouraging race-neutral decision-making, and improving overall fairness in court proceedings.

(v.) Training and guidance on the use of existing and new objective decision making tools

**STATUS-BEGINNING COMPLIANCE (BC)**

DISCUSSION- training, adoption, and implementation of objective tools has occurred.

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

**STATUS-NON COMPLIANCE (NC)**

DISCUSSION-already discussed -see above – 2(a).

3.DMC Reduction: Evaluation and Tools (pg. 24-26)

(a) Use of objective decision-making tools, etc.

**STATUS-BEGINNING COMPLIANCE (BC)**

DISCUSSION-already discussed

(b) Refine decision-making tools, etc.

**STATUS-NON COMPLIANCE (NC)**

DISCUSSION-little movement has been done in the regard – see 2(a).

(c) Implementation of a pilot program involving sheriff, police and the summons program

**STATUS-BEGINNING COMPLIANCE (BC)**

DISCUSSION-agreement in place and implementation, training and evaluation needs to be part of effort

(d) Use of alternatives, including a pilot diversion program to secure detention, day/evening reporting center, etc.

**STATUS-BEGINNING COMPLIANCE (BC)/COMPLIANCE TO BE DETERMINED (CLBTD)**

DISCUSSION-discussions with Memphis Police Department to implement day/evening reporting centers has taken place. Other alternatives have been discussed. These arrangements could help reduce the number of referrals to juvenile court and detention if done correctly. Continued discussions need to translate into action – programs, alternatives, policies. Use of SHAPE, JIFF and the agreement with Georgetown University may help in this regard.

- (e) Monitor and evaluate Transfer Process
- (f) Continued collection of data to assess DMC and its causes
- (g) Points of Contact to evaluate monthly RRI and numbers at each point in the system and generate a management report
- (h) Annually review objective decision-making tools....

DISCUSSION-these items have discussed previously

#### 4. Training (p. 26-27)

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

##### **STATUS-PARTIAL COMPLIANCE (PC)**

DISCUSSION-several training sessions have occurred, training on certain programs is still in progress. Overall, the Court is commended for their effort in this regard.

#### 5. Community Outreach as stated in Agreement

- (a) Develop and implement a community outreach program to inform community of progress toward reforms.

##### **STATUS-NON COMPLIANCE (NC)**

DISCUSSION- over the 29 months or so since the MoU and in particular in the last 6 months while some activity has occurred, including the development of a Community Out Reach Plan (I received May 15, 2015), the Court has not done enough to inform and engage with the community on DMC and what is being done to address it. Over the last year, the Court was informed of this lack of activity and commitment (in person while onsite visits and in Compliance Reports). In response to this concern, on the last site visit, I was told that a change would occur. Nothing changed and again I was informed on the last site visit (early May, 2015) that this concern regarding the lack of engagement will be addressed.

This should include a county-wide consortium that includes but is not limited to six to nine citizens selected by the Mayor and approved by the County Commission who are reflective of the cultural and ethnic diversity of the County. The consortium should also include at least two parents of children who have had children before the Court for a delinquency matter; a person under age 21 who had direct contact with the juvenile justice system and community advocates. (p. 33)

##### **STATUS-BEGINNING COMPLIANCE (BC)/COMPLIANCE TO BE DETERMINED (CLTBD)**

DISCUSSION-a county-wide Consortium has been formed and appears to be representative of the community; a relatively new Chair is in place as well as a County Attorney, the Consortium needed direction and technical assistance as well as more direct involvement from DOJ has been undertaken to develop a strategy and goals. The DMC Coordinator and the Court need to play an active role but not

control the Consortium. Members should be removed and/or added based on willingness to be an active participant.

- (b) A number of other criteria that focus on at least one open meeting every six months and the publicizing of the meeting and the posting. (p. 33)

**STATUS-PARTIAL COMPLIANCE (PC)**

DISCUSSION-public meetings have been held. The date for the next public meeting is planned for some time in June, 2015. Meetings need to be held every 6 months or so.

- (c) There is a need for summaries of reports completed pursuant to the Agreement and made available to the community prior to the meeting- to be posted (p. 34)

**STATUS-PARTIAL COMPLIANCE (PC)**

DISCUSSION-this appears to have occurred

- (d) JCMSC shall publish on its website annual reports in accordance with the Agreement.

**STATUS-SUBSTANTIAL COMPLIANCE (SC)**

DISCUSSION-these activities have occurred

- (e) The Community Outreach program should include a data dashboard that communicates compliance on the part of JCMSC with the Agreement. (p. 34)

**STATUS-PARTIAL COMPLIANCE (PC)**

DISCUSSION-a dashboard has been developed and placed on the Court website. Postings exist as well as the agreement and reports. Additional data is also presented. Postings should occur at least monthly, if not sooner, following after an event, activity, etc. Likewise, announcements should be posted as soon as possible to provide sufficient notice to the public. Further, a Facebook page and other social mechanisms have been created – pamphlet, Twitter account. Presentations have also occurred within the community. A Summit was held in late June 2014. The DMC Coordinator and the JDAI contact person have been very active in the community in terms of presentations, sitting on committees, and seeking out working relationships with community agencies and programs with the police. Central people involved in establishing working relationship with Georgetown University. The current community outreach person representing the Court has done some activity but relatively very little in the last 6 months. (see discussion above - 5(a).

- (f) A community survey shall be conducted (**one year**) (p. 34)

The survey should measure public satisfaction, attitudes among court personnel and community members both within Memphis and the County and should be representative of gender, race/ethnicity.

**STATUS-BEGINNING COMPLIANCE (BC)/COMPLIANCE LEVEL TO BE DETERMINED (CLTBD)**

DISCUSSION- a survey of the community was to have already taken place per the MoU; however, delays by OJJDP have slowed the development and implementation of studies of the community and Court personnel. A contract has been awarded to Dr. Laura Harris and she is in the process of working with a group contracted by OJJDP. At least one of the required studies needs to be completed by the time of the next onsite visit in late fall of 2015.

## **SUMMARY AND WHAT TO DO TO RAISE COMPLIANCE RATINGS**

The Shelby Court has made many significant efforts to comply with the MoU and to reduce DMC. These efforts and initiatives have been highlighted at the start of this 5<sup>th</sup> Equal Protection Monitor Report. The Court is to be commended for this activity. Further, the numbers of court referrals, detention referrals, and youth transferred to adult court have declined. In addition, results from the 4 Assessment studies have generally NOT found evidence of differential treatment of Blacks relative to similar Whites at adjudication and judicial disposition. Thus, differences in the relative rates at these stages in the proceedings may be due to differences in legal and extralegal considerations and not bias. The task for the Court then is to come up with strategies as to how then address this overrepresentation that meet the needs of both Black youth and the community.

At the same time, over the last 29 months or so since the MoU, patterns of concerns exist. A constant finding from the initial DOJ study and the 4 Assessment studies and the Compliance Reports by the Settlement Coordinator, as relate to DMC and the MoU, are: the overrepresentation of Black you at court referral, detention, and notice for waiver to adult court (as well as those waived to adult court). At the same time, the Assessment studies, for the most part, reveal that Blacks are treated differently than alike Whites at detention and at the non-judicial stage (Blacks more likely to be detained and referred for further court intervention). These relationships are often related to domestic assault and other person offense charges. Without and With the use of DAT and the Graduated Sanctions Instruments these racial differences in outcomes have remained. Enough information and data exists that further change is warranted to address these racial differences at detention and change in decision-making is needed at the non-judicial stage.

Up to this point in time, the Court has not fully embraced these consistent results that indicate Court procedures and relied upon criteria (the DAT, the Graduated Sanctions Assessment Tool, etc.) are disadvantaging Blacks in general and specifically relative to similarly situated Whites. These effects are enhanced due to the overrepresentation of Blacks in terms of police referrals – entry into the court and the compiling of a prior record.

The need for greater ownership of the DMC issue and the use of existing data and the need for action steps to reduce DMC underlie the noncompliance ratings given for DMC assessment and DMC policies and procedures. To achieve compliance with the MoU, the Court is encouraged to do the following:

- Hire or appointment someone to lead the DMC initiative. This person needs to be experienced with DMC in general, embraces the DMC issue, and has the backing of the Court (Judge). He or she can then lead the charge by working with The Points of Contact and the Judge and the Strategic Planning Committee to interpret the data and develop and implement methods to address DMC at these various stages – police referral, detention, non-judicial decision-making and notice to transfer to adult court. In addition to discussing and implementing change on the basis of the relative rates and the Assessment studies, as required by the MoU, data can be also analyzed to examine what services are and are not being provided to Black youth and by areas of the community. The hiring of a “Court DMC Coordinator or Monitor” could not only aid in interpreting the data and enacting changes in procedures and policies but address the consistent concern of greater ownership on the part of the Court and the lack of change to reduce DMC and insure equity in court outcomes. By the time of the next onsite visit (late fall of 2015), I would like to be informed of what activities have occurred, what changes have been explored and implemented.

Another area where a rating of noncompliance was given dealt with Community Out-Reach. Similar to the above discussion, the lack of Community Out-Reach has been expressed as a concern as evidenced in the prior Equal Protection Monitor Reports. Again, some activity has occurred (e.g., community talks, radio appearances, the development of the website, dashboard, etc.). However, the intent of the MoU is not being met. I have expressed this concern with the Court and during the last two onsite visits, I was told by the Court that change would occur. Based on actual activity, change in the amount and kind of activity has not been evident. Thus, the rating of noncompliance for this segment of the MoU. To achieve compliance with the MoU, the Court is encouraged to do the following:

- Either hire or appoint someone to lead the Community Out-Reach or have this component part of the responsibilities of the hire or appointment of the “DMC Coordinator or Monitor” discussed above. He or she is strongly encouraged to work with the Shelby County DMC Coordinator and the representative for JDAI as well as the Consortium. By the time of the next onsite visit (late fall of 2015), I would like to be informed of what activities have occurred and being explored.

As stated previously, the Memphis/Shelby County Court is to be commended for making efforts to reduce DMC and race disparities. A lot of work, however, still remains to be done most notably at stages of referral, detention, non-judicial and notice of transfer to adult court to address DMC.