

**A Summary of Final Department of Justice Recommendations, Juvenile Court of
Memphis and Shelby County Progress, and Remaining Concerns**

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Introduction

In 2012, the Juvenile Court of Memphis and Shelby County (JCMSC) entered into a Memorandum of Agreement (MOA) with the Department of Justice (DOJ) due to 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”. This MOA provided recommendations on how JCMSC could improve processes and conditions.

To gauge progress and compliance with the recommendations, DOJ appointed monitors followed up with visits, data analyses (when available), and additional suggestions. It was also suggested that the courts conduct an independent evaluation of their progress regarding the MOA changes.

In 2018, an effort to terminate the MOA was led by the former Mayor Luttrell, former Sheriff Oldham, and current JCMSC Judge Michael; and with little input from County Commissioners or public stakeholders, former U.S. Attorney General Jeff Sessions agreed to end the MOA, thus ending DOJ oversight of JCMSC. At that time, several practices, processes, and policies were not in “full compliance” to satisfy the MOA’s requirements and DOJ’s recommendations.

At the foundation of the DOJ recommendations is a movement for better and more transparency. We can see this across the three focus areas: (1) Due process, (2) Equal Protection, and (3) Facilities Compliance and Protection. This paper is based on publicly available documents written by DOJ compliance monitors, as well as the DMC evaluation report by Melissa Sickmund from 2019, and knowledge within the CJJC through conversations with community contacts.

We describe the DOJ final recommendations at the time the MOA was terminated, summarize progress made by the court since the MOA termination (to the best of our knowledge based on the previously mentioned sources), and list remaining CJJC concerns/questions. We break the remainder of this document down by the three major areas of concern from the DOJ. Below, you will find compelling evidence to conclude that the DOJ should return to Shelby County to conduct a new evaluation of the Court and reopen the Memorandum of Agreement.

Due Process

Recommendations from the DOJ

- Establish a dedicated juvenile defender unit in the public defender’s office that will be independent of the court and have the structure and resources to provide independent, ethical, and zealous representation for children. Require procedural safeguards against self-incrimination, to provide notice of charges, and to hold transfer hearings.

- Appoint counsel before children appear before a magistrate judge for a probable cause determination and provide the probable cause determination within 48 hours for all warrantless arrests.
- Make written findings for key judicial decisions, including transfer hearings.
- Implement policies in the court's detention facility that will prohibit the use of restraints, ensure a suicide prevention plan and require staff to receive training on adolescent development.

Progress made by Shelby County

- A dedicated juvenile defender unit has been established in the PD's office, and this unit remains independent from the Courts.
- JCMSC have changed policies around self-incrimination.
- JCMSC has maintained a yearly report and has created a data dashboard.
- Staff at JCMSC have received some training (see "Facilities" section for details).

Remaining Concerns/Questions

- It is unclear whether attorneys representing youth are given case records in a timely manner in order to actively and zealously represent youth at Court.
- There needs to be clarification of the state law regarding transfers. Based on transfer numbers, it appears that local courts take a stricter interpretation of the law compared to other juvenile courts across the state.
- It remains unclear how transfer hearings are managed. We do know that the number of transfers has remained above 2017 levels, and that almost all of those youth who are transferred are Black.
- It is also unclear if there are scheduling processes in place so that attorneys and youth are allowed enough time for adequate discovery and defense.
- It is unclear if and when youth are given psychological evaluations in time for their hearings, especially in transfer cases.
- The JCMSC Judge decides which attorneys are included in the "pool" for potential defense attorneys if a youth is not represented by the Public Defender's Office, and he can add or remove these attorneys at will. Our concern is that the list the Panel Coordinator must use to assign cases is decided by the Judge, therefore creating a potential conflict of interest and lack of a full independence to defend a youth at Court. Questionable situations may arise because the list of attorneys may feel they cannot fully perform to the best of their abilities in fear of removal from the list (also noted in Simkins; 2018).
- According to a December 2018 report by Sandra Simkins, the DOJ Due Process Monitor, there remained a culture of intimidation among JCMSC and potential juvenile defenders.
- There is a concern about the time a youth spends once transferred to adult facilities. Once transferred to adult court there is no expedited process for the youths' cases, meaning they can be detained for an unspecified amount of time.

Equal Protection

Recommendations from the DOJ

- Assess where and why disproportionate minority contact (DMC) in the juvenile justice system occurs, including analysis of referrals and the Court's decisions at key stages of a child's court case.
- Prohibit pre-adjudication detention for reasons that are not related to public safety or future appearance in court.
- Hire a DMC coordinator, who will be charged with gathering data, working with the court and other county agencies to develop alternatives to detention, and ensuring that children are not referred to juvenile court based on their race.
- Establish a pilot program allowing law enforcement to phone in information about a recently arrested youth and get guidance on whether the child should be immediately released and provided with an appearance summons or transported to juvenile court.

Progress made by Shelby County

- JCMSC implemented a summons review team and several decision-making tools, but it is unclear how often and to what extent these tools and the review team have been evaluated to understand the effectiveness.
- JCMSC convened a diversion team and a parent orientation program.
- Implemented a number of juvenile detention alternative programs, like CeaseFire, but it is unclear how often and to what extent these programs have been independently evaluated.
- Hired a DMC/RED coordinator at the county level - initially (Lisa Hill); additionally, they hired a DMC/RED at the court level. Both positions still exist. The court level DMC/RED coordinator position is currently filled, but the county level DMC/RED coordinator position has not *officially* been filled, but the work is still happening by Jessica Indignario.

Remaining Concerns/Questions

- The policies and practices to address DMC and Racial and Ethnic Disparities (RED) were not implemented by JCMSC until 2018, and there is no public knowledge that these policies and practices have been independently evaluated in order to understand their effectiveness.
- The effectiveness of the diversion programs, the decision-making tools, and the Summons Review Team is unclear.
- CJJC conducted interviews with youth and families in 2019 and discovered that both were still very unclear about the processes at the Court, and this has not improved.
- Overall referral numbers are down, but Black youth still disproportionately represent the number of cases *and* transfers. The rate of disproportionate contact is almost the same as it was in 2012 when the MOA was implemented.
- There is a lack of transparency on what policies and practices have been implemented in order to reduce DMC/RED.
- It is unclear what data are being collected; how frequently it is collected regarding DMC/RED; and there is a lack of transparency with these data for the public (ex:

transfers broken down by race have not been publicly reported on the data dashboard since 2017).

- There is concern with how quickly vacancies in the County-level DMC position are filled.
- It is unclear if data collection is still a responsibility of the court-level DMC/RED Coordinator.

Protection from Harm in Facilities

Recommendations from the DOJ

- Prohibit the use of all restraint chairs and pressure point control tactics.
- Secure suicide cut-down tools to be readily available to staff.
- Secure a qualified mental health professional that will be available to assess any child expressing suicidal intent or other symptoms of suicidal behavior in line with the Suicide Prevention Policy.

Progress made by Shelby County

- Decreased time from arrest to initial assessment for suicide risk (not a significant change).
- Detention staff report that the use of force instances continue to decrease.
- Staff has had training in positive behavior management systems, crisis intervention, and suicide prevention.
- Youth are allowed to have free telephone calls every day (implemented prior to the pandemic).
- Courts have decreased the number of youth at the facilities and kept the number low during the COVID-19 pandemic.
- Detained youth reported to the CJC in 2019 that they had positive relationships with some of the staff and felt that particular staff members were genuinely trying to help them be better.
- Abolished fees to youth detainment

Remaining Concerns/Questions

- The time between the youth assessed for suicide risk and being seen by a mental health professional is four hours.
- Physical facility: Space limits options for programming and activities that contribute to protection from harm; limits educational opportunities; general building issues (i.e., “institutional feel”, non-working facility amenities; stressful living environment; medical exam room inadequate; food safety and quality. Youth reported being particularly bored during COVID-19 and not able to attend educational classes.
- There are only four classrooms available to accommodate up to 60 youth for half days of educational instruction.
- Concerns remain that not all staff are on the same page regarding suicide risk and prevention policies; a lack of processes mentioned by staff existing in “Detainee Handbook”.

- Concerns regarding interactions with youth: room confinement for weekends, confusion about rules and behavior management/point system, Grievance forms not readily available to youth to document incidents or concerns.
- To the public's knowledge there are little to no mental health programs run by trained mental health professionals.
- The Facilities Monitor report mentioned that interviewed youth feared for their safety (2.75 average rating out of 10). There were discrepancies in report incidents and videos and staff points of view of Use of Force and Major Incidents. In fact, of those episodes that were selected 5 out of 7 had discrepancies from the video to the incident reports.
- Lack of or ineffective implementation of (1) PBMS and (2) The Prison Rape Elimination Act audit, and (3) mental health services for youth in the center.
- Youth are in solitary confinement for a month after transfer to adult facilities.
- There is very little information about the facilities where youth are held when transferred as adults.

Conclusion

These conclusions present a case to request that the DOJ return to Shelby County to conduct a new evaluation to examine the progress, identify where challenges remain, and if needed, provide court oversight. It is important to note that after reading multiple reports including the DOJ monitors, the “independent” evaluation, and the 2020 annual Court report¹, and after being denied requested data from the Court, we have concluded that there is far too little data to demonstrate that the JCMSC has made significant progress in transparency regarding court processes or data. This, therefore, leaves it unknown to the public if court-involved youth and families are being treated fairly to the extent agreed upon in the original MOA.

In the event that the DOJ is not able to return to Shelby County in order to conduct an evaluation for updates, we have generated a list of recommendations where local oversight could strengthen the needed transparency and the protection of youth at the Court. For each area of concern discussed above, we have the following list of recommendations (see below), broken out by DOJ investigation areas. Finally, there is a list of recommendations summarized in our CJJC 2019 Report ([linked here](#)) that should also be considered when developing strategies to reform the youth justice system.

Due Process

1. Begin conversations with several institutions that were left out of the original DOJ Memorandum of Agreement. These would include:
 - a. Memphis Police Department to discuss who the youth are that police are coming into contact with and make recommendations to decrease DMC/RED at this initial point of contact.

¹ The JCMSC released their 2020 annual report in July 2021. This CJJC document was completed prior to the 2020 document release.

- b. District Attorney General's office to address DMC/RED at the transfer point of contact.
 - c. Criminal Court to discuss processes when youth are transferred and how their cases are handled. Additionally, it would be useful to track the youth and case outcomes once they are transferred.
2. Court should develop and enforce timelines for discovery and evidence sharing between the Prosecutor's office and the Public Defender's office.
3. Court should develop and enforce timelines for pre-trial detention. Youth should be detained for as little time as possible.
 - a. Timelines should be reasonable based on the severity of the case
4. Clarify how JCMSC is interpreting the state law regarding transfers
5. There should be an independent investigation to follow-up on the "culture of intimidation" discussed in the final monitor report December 2018.

Equal Protection

1. Monitoring and evaluation of diversion programs is required to understand who is benefiting from these programs and tools and to ensure these are working to reduce DMC/RED.
2. Ensure contracts with out-of-court diversion programs require an evaluation report each year, which include racial and ethnic breakdowns. The contract should specify whether the evaluation is internally or externally conducted.
3. If parent orientations have not resumed since the beginning of the pandemic, we recommend that the Court reinstate these and make them more robust in order to clarify processes at the Court.
4. Ensure that DMC Coordinator positions are filled quickly to ensure consistency in the roll.
5. Consider making the court-appointed DMC coordinator position a "data driven" position that will require the coordinator to observe and collect race data at all points of contact in the court.

Protection from Harm - with a focus on the new facility

1. Incorporate community positions on the oversight and/or planning committee for the new facility to provide feedback regarding design and functionality.
2. Utilize bracelet tracking (free for youth) to keep the number of youth in detention low.

Recommendations provided by justice-impacted youth and families

1. Improvements to Juvenile Court of Memphis and Shelby County, detention services, and law enforcement.
2. Improve conditions at youth detention facility (i.e., food and basic needs, recreation time, and overall feel of the facility).

3. Improve JCMSC policies related to detained youth, such as allowing flexibility in family, friends, and community members to visit and decrease policies related to solitary confinement.
4. Specific training for law enforcement focused on youth interaction, such as de-escalation training and mental health training.
5. Incorporate program training for while they are in detention, including mentoring programs, community activities, and mental health.
6. Addressing post-release policies, such as allowing youth to live with their family instead of foster care (when safe to do so), reintegration programming for support once released.

We have outlined the major reforms recommended by the DOJ (taken from the JCMSC dashboard²) and then briefly described our conclusions regarding progress made by the court, generated through careful reading of public documents. However, we also feel that there is room for greater local oversight to happen at the Court both at the local government and at the community level. We recommend that those who have historically been directly affected be at the table in designing system-wide solutions that lead to sustainable changes in the justice system at every point of contact. These can be implemented to ensure that there is more transparency at the Court and youths' rights are protected when they come into contact with the juvenile justice system.

Juvenile Court of Memphis and Shelby County carries a history of racial disparities, as documented in the DOJ investigative reports, and continuous monitoring and improvements are essential to protect and care for vulnerable populations, including youth in Memphis and Shelby County. The CJJC and other Memphis organizations are concerned about the way our youth are impacted by the juvenile justice system, and we ask you: Are we doing enough to ensure they all have access to bright and safe futures?

Public Documents Used in Report

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<https://dashboard.shelbycountyttn.gov/content/moa>

Appendix A. Potential Data Sources for Clarification

The following are potential data sources that we have identified that will help the CJJC to better understand processes at the Courts and the detention facility. We have reached out to Chief Public Defender Aluko. We have also asked the Court numerous times to provide data, in the spirit of helping them better understand the data they have and make recommendations for additional data that would be necessary to track progress made towards DOJ recommendations.

1. Data provided directly by Juvenile Court of Memphis and Shelby County (JCMSC)
2. Any program evaluation data collected by the Court or diversion programs collaborating with the Court
3. Interviews with staff at the Shelby County Public Defender's Office that works with youth and families who are justice involved
4. Updated interviews with youth currently detained in the facility
5. Interviews with DOJ appointed Monitors and Winsome Gayle, US Department of Justice Civil Rights Division
6. Sheriff and sheriff office staff at JCMSC

7. Interview with Panel Coordinator