

Correcting the Constitutional Crisis and Corresponding “Culture of Criminalization” in the Memphis and Shelby County Juvenile Court

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In April 2009, the Department of Justice (DOJ) utilized its federal authority to launch an investigation to uncover evidence of a “systemic pattern or practices that causes harm” within the Juvenile Court in Memphis and Shelby County (JCMSC).<sup>1</sup> Although this institution has been subject to criticism and scrutiny in the past, the investigation exposed judicial, legal, and administrative weaknesses within the Court’s delinquent procedures. After three years of intensive oversight, the results released in April 2012 revealed failures to safeguard children and protect their constitutional rights. Experts collected data and studied delinquent cases from 2005 to 2009, disclosing evidence of discrimination. Based on the results from the Relative Rate Index (RRI) analysis, the DOJ concluded that black juveniles had suffered more systemic harms than their white counterparts due to violations of rights guaranteed by the Fifth and Fourteenth Amendments.<sup>2</sup> Specific violations included inadequate notice of charges, limited protections against self-incrimination, and failure to provide timely probable cause hearings.<sup>3</sup> Furthermore, the report discovered unsafe jail conditions, including high rates of attempted suicide in the

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<sup>1</sup> U.S. Department of Justice, *Department of Justice Activities Under the Civil Rights of Institutionalized Persons Act Fiscal Year 2011*, at 11-12 (2012). The Civil Rights of Institutionalized Persons Act (“CRIPA”) authorizes the Department of Justice to investigate conditions and practices within juvenile justice institutions across the nation.

<sup>2</sup> Sandra Simkins, “Roadmap to Systemic Juvenile Reform,” *The University of Memphis Law Review* 44, no. 4, (Summer 2014): 730. The Relative Rate Index provides an indication of the extent of over-representation of youth of color in the juvenile justice system. The relative rate index can isolate for legal and extra-legal factors throughout the delinquency process. Race, an extralegal factor, should not be predictive of a stage outcome once all other legal and extralegal factors are considered. The Relative Rate Index measures if race is a statistically significant indicator during the specific stage in the system.

<sup>3</sup> DOJ Document.

county detention center and unsafe use of restraint chairs. Issues such a minimal warnings for infractions, extended detainment, and increased transfers to adult court were also exposed.<sup>4</sup>

The severity and urgency of the DOJ report cannot be denied. In response to these allegations, the Juvenile Court, along with the support of Memphis City Council and Shelby County Commission, entered a Memorandum of Agreement with the United States Department of the Civil Rights Division on December 17, 2012 to implement reforms.<sup>5</sup> In order to implement these changes, the Juvenile Court has initiated dialogue and cooperation with city government, the legal and judicial community, faith-based organizations, and non-profit entities. This process will hopefully produce greater transparency within the Court and breakdown a culture of racial discrimination and distrust that has historically haunted Memphis. The results from the Department of Justice (DOJ) confirm that a ‘culture of criminalization’ based on race exists here.<sup>6</sup> A reconfiguration of this criminalizing mentality that permeates not only Memphis, but also the nation, must occur and ultimately translate into preventative, as opposed to punitive, measures of social justice. While critics have declared the DOJ’s unprecedented interference in the Juvenile Court be a system “overhaul”, the intrusion has incentivized momentum for juvenile reform in Memphis and beyond. It is the Department’s first attempt to directly tackle systemic

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<sup>4</sup> Juvenile Court Investigation, Roadmap to Juvenile Reform, 730.

<sup>5</sup> Sandra Simkins, The U.S. Department of Justice, Civil Rights Division, *Compliance Report Three* (Washington D.C: June 16, 2014), 1. Had an Agreement not been reached between the Juvenile Court, City Council, County Commission, and the Department of Justice, the Department of Justice would have had to obtain oversight via federal lawsuit. The financial burden of an expensive lawsuit along with the risk of national public scrutiny motivated all parties to expedite the negotiation and agreement process.

<sup>6</sup> Victor M. Rios, *Punished: Policing the Lives of Black and Latino Boys*, (New York: New York University Press, 2011), xiv.

Sociologist Victor M. Rios defines ‘criminalization’ as the process by which styles and behaviors are rendered deviant and are treated with shame, exclusion, punishment, and incarceration, and often occurs in social contexts beyond the law.

issues within a juvenile court.<sup>7</sup> As a result, the Juvenile Court strives to become a model-court for the nation.

This analysis extends beyond the concrete facts of the DOJ report and examines the historically supported and racially entrenched perception that black youth, especially black males, are predisposed to criminal activity. This mentality perpetuates a culture of criminalization that stigmatizes and marginalizes minority youth. Factors such as socioeconomic status, inadequate education, and exposure to traumatic environments often influence delinquent behavior. Increased awareness of the relationship between these sociological factors and contemporary juvenile justice policy will reduce disproportionate marginalization. First, I will contextualize the DOJ report within the larger context of juvenile justice reform, bridging the Court's historical development on a local and national scale. Secondly, I will synthesize the report's provisions and assess the validity of the new changes based on observations, interviews, and legal scholarship. Thirdly, I will explore alternative solutions to minimize disproportionate contact and emphasize the Juvenile Court's crucial contribution to the greater Memphis community.

### **The Structure of the Juvenile Court**

The Juvenile Court is a highly specialized legal, judicial, and administrative institution with specific jurisdiction over minors.<sup>8</sup> The first court originated in Cook County, Illinois in 1899 to serve as a separate system of justice for children.<sup>9</sup> Its inception was premised on a civil court model and the *parens patriae* philosophy, granting the state the power to assume the role as

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<sup>7</sup> Simkins, "Roadmap to Systemic Juvenile Reform," 729.

<sup>8</sup> Children eighteen years of age or younger are considered minors.

<sup>9</sup> Jennifer Trost, "Gateway to Justice: Juvenile Court and Progressive Child Welfare in a Southern City," (Athens: University of Georgia, 2006), 43.

parent and therefore gain the authority to intervene in the private sphere of the family.<sup>10</sup>

Although there is a great degree of diversification among juvenile court structures across the nation, all courts oversee cases of dependency, neglect, and delinquency.<sup>11</sup> Its design as a civil court prohibits the right to a trial by jury for the accused and places ultimate discretion with the judge.<sup>12</sup> In order to instigate a juvenile delinquent proceeding, the probation officer or prosecutor must sign a civil petition charging the juvenile for violating a criminal statute.<sup>13</sup> However, unlike civil courts, juvenile delinquency proceedings operate according to a high standard of proof; the child must be found guilty “beyond a reasonable doubt” based on sufficient evidence and testimony.<sup>14</sup> After this determination is made, then the juvenile offender comes under the court’s broad powers. The mission of the juvenile court, according to the Office of Juvenile Justice and Delinquency Prevention, is to “protect public safety, hold offenders accountable, and provide treatment and rehabilitative services tailored to the needs of juveniles and their families.”<sup>15</sup> In other words, all parties involved in the juvenile court proceeding contribute to this comprehensive mission. While the prosecutor represents the best interest of the state and the victim and promotes public protection, the juvenile defender represents the expressed interests of the child.<sup>16</sup> The judge balances these perspectives and considers the best interest of the child according to legal and constitutional statutes. Ideally, it is the juvenile court’s purpose to find a

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<sup>10</sup> Thomas J. Bernard and Megan C. Kurlychek, *The Cycle of Juvenile Justice*, 2<sup>nd</sup> ed., (Oxford: Oxford University Press, 2010), 143.

<sup>11</sup> Kathleen Michon, JD, “Juvenile Court: An Overview. The Basics of Juvenile Court When a Youth or Minor Commits a Crime,” Accessed online. <http://www.nolo.com/legal-encyclopedia/what-s-the-standard-proof-juvenile-delinquency-cases.html>. Delinquency is defined as minors who have been accused of committing a criminal statute. However, do to their status and age, minors are not formally charged with formally committing a crime, but instead accused of committing a delinquent act.

<sup>12</sup> Bernard, Kurlychek, 139.

<sup>13</sup> Ibid.

<sup>14</sup> Kathleen Michon, JD, “Juvenile Court: An Overview. The Basics of Juvenile Court When a Youth or Minor Commits a Crime,”<http://www.nolo.com/legal-encyclopedia/what-s-the-standard-proof-juvenile-delinquency-cases.html>

<sup>15</sup> Department of Justice, Office of Juvenile Justice and Delinquency Prevention: <http://www.ojjdp.gov/about/missionstatement.html>

<sup>16</sup> Bernard, 144.

middle ground that provides justice for the victim and community without endorsing purely punitive repercussions.<sup>17</sup> The juvenile court serves as an institution of social accountability without sacrificing the humanness of the child.

According to state law, all Tennessee courts with juvenile jurisdiction are required to follow the guidelines established by the Tennessee Rules of Juvenile Jurisdiction.<sup>18</sup> Because there is little standardization in juvenile court size, case management procedures or court administrative practices, the systems and practices of the juvenile courts in Tennessee vary greatly.<sup>19</sup> The individual courts tend to reflect the needs and preferences of each county's local population and community. This diversification partially explains the discrepancies in the Shelby County transfer rates compared to Davidson or Knox County. Likewise, procedural changes that are effective in Davidson County may not translate to Shelby County as the sheer volume of cases distinguishes the Memphis and Shelby County Juvenile Court from other juvenile courts.<sup>20</sup> Some judges may choose to prioritize a specific agenda and develop creative ways to promote this agenda. For example, in Knox County, the judge personally visits middle and high schools to express the importance of school attendance. While this approach is suitable for Knox County, it is not tailored for the larger urban public schools in Shelby County, nor can the judge habitually sacrifice time away from court to make these personalized visits.<sup>21</sup> In addition, there is no guarantee of program sustainability if the reform is largely incumbent upon the elected judge. Thus, while some of the problems highlighted in the DOJ report reflect nationwide weaknesses

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<sup>17</sup> Ibid., 145.

<sup>18</sup> "Juvenile and Family Courts," Tennessee State Courts, <https://www.tncourts.gov/courts/juvenile-family-courts>. There are currently 98 juvenile courts in Tennessee with 109 juvenile court judges and 45 magistrates. Of these 98 courts, 17 are designated "Private Act" juvenile courts while the remaining 81 are general session courts with juvenile jurisdiction. All 95 counties have at least one administrative juvenile court.

<sup>19</sup> Ibid.

<sup>20</sup> Tom Coupe, personal communication by Lanier Flanders, July 2, 2014.

<sup>21</sup> Dan Michael, personal communication by Lanier Flanders, July 16, 2014.

in juvenile courts, other issues specifically apply to Memphis and Shelby County due to its urban dynamic.

### **The History of the Juvenile Court in Memphis**

The Juvenile Court in Memphis and Shelby County was established in 1910 as a product of the Progressive era. Its early judges were primarily white, upper-class females who utilized their maternal skills to implement therapeutic, child-oriented court proceedings.<sup>22</sup> Their local involvement in the Juvenile Court and greater social welfare network mirrored the national trend of social policy as a new “female dominion” and source of empowerment.<sup>23</sup> Judge Camille Kelly described herself as a “friend in court” to all Memphians and saw her role as a helper, caretaker, and maternal figure.<sup>24</sup> Her lengthy tenure established the Juvenile Court as the central node to a greater social service network.<sup>25</sup> However, rumors circulated that Kelley’s Court assisted illegal, for-profit adoptions associated with the Tennessee Children’s Home scandal overseen by Georgia Tann. Although she was never officially prosecuted, Kelley resigned from her position in 1950 and Mayor Watkins appointed professional Elizabeth Cain in her place.<sup>26</sup>

This trend of maternal leadership halted in 1964 with the election of Judge Kenneth A. Turner. The native Memphian dominated the operations of Juvenile Court for nearly fifty years, attracting both admiration and criticism. Turner was intimately acquainted with the criminal justice system due to his service as a police captain. His early years as Juvenile Court judge

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<sup>22</sup> Jennifer Trost, “Gateway to Justice: The Juvenile Court and Progressive Welfare in a Southern City,” (Athens: University of Georgia, 2005), 32.

<sup>23</sup> Jennifer Trost, 70.

<sup>24</sup> *Ibid.*, 74.

<sup>25</sup> *Ibid.*, 75.

<sup>26</sup> “100 Years of Juvenile Court,” The Juvenile Court of Memphis and Shelby County, produced by Willy Bearden, 35 minutes, 2010. <http://www.shelbycountyttn.gov/index.aspx?NID=2075>

substantially impacted the court's trajectory and development. In the midst of the Civil Rights movement, Turner desegregated the Juvenile Court and its corresponding detention facilities—the first public institution in Shelby County to do so.<sup>27</sup> In addition, he merged the county and city juvenile justice systems in 1968, generating greater efficiency and consistency in juvenile oversight. Turner created the Auxiliary Probation Services program that continues to operate today. This volunteer-based program recruits and trains applicants to be auxiliary probation officers for juveniles placed on supervised parole. It received national publicity and notoriety as an innovative strategy for juvenile reform because it not only reduced local costs, but also connected fellow Memphians with troubled youth in a mentor-like capacity.

Despite these notable contributions, the DOJ Report serves as confirmation that some of Turner's policies and procedures produced long-term consequences for the Juvenile Court. He has been scrutinized for operating an insular, independent Juvenile Court in which he retained vast judicial discretion.<sup>28</sup> This unchecked oversight was problematic considering Turner was never admitted to the Bar, and therefore lacked the legal credentials required by the state of Tennessee. To circumnavigate this technical dilemma and validate his position, Turner relied on political connections for support. He devised a system of referees whom he appointed that possessed the legal qualifications to hear juvenile cases.<sup>29</sup> Critics consider his judgeship to be an emblem of paternalism and power. Although *In Re Gault* extended due process rights to children, Turner resisted its complete implementation like other conservative judges.<sup>30</sup> Because he appointed many friends and family as clerks of courts, prosecutors, defense counsel, and bailiffs,

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<sup>27</sup> Sandra Newcombe, "The DOJ Comes to Town: An Argument for Legislative Reform When the Juvenile Court Fails to Protect Due Process Rights," *The University of Memphis Law Review*, 44, no. 4, (Summer 2014): 947.

<sup>28</sup> *Ibid.*

<sup>29</sup> Bernstein, Nina, "Misery Funds a Legal Fiefdom," *Alicia Patterson Foundation*, 1994.

<http://aliciapatterson.org/stories/misery-funds-legal-fiefdom>

<sup>30</sup> Christina Zawisza, personal communication by Lanier Flanders, June 26, 2014.

the court was essentially subject to his dominance and control, and its' administrative hierarchy reflected a "plantation state" confirms a former Memphis Area Legal Services lawyer.<sup>31</sup> Turner essentially built an empire of patronage and political clout, and his court punished poverty with jail.<sup>32</sup>

In addition to this creation of political clout, the lack of administrative checks and balances consolidated Turner's 'empire'. He favored detention to treat juvenile offenders and drafted transfer laws that sent youth to criminal court.<sup>33</sup> These authoritarian-like practices correspond with the privatization of the juvenile detention facility in the 1980's. In 1984, Corrections Corporation of America assumed management of the Tall Trees juvenile facility in Shelby County.<sup>34</sup> Then, in 1986, the first privatized juvenile center called Shelby Training Center opened. Privatized facilities, critics argue, prioritize profit over public accountability because the prisons are controlled by stockholders and investors as opposed to child advocates or juvenile justice experts.<sup>35</sup> This transition mirrored the national push to "get tough" on juvenile crime; privatized-prisons were seen as one way to reduce state and local costs incurred from increased inmate populations due to more stringent policies.<sup>36</sup> Due to severe illness, Turner retired from his coveted position as judge in 2006.<sup>37</sup> The Court's preference for punitive treatments and harsher sanctions during Turner's tenure, coupled with the lack of proper court documentation, enabled patterns and policies that ultimately crippled the constitutional integrity of the Juvenile Court.

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<sup>31</sup> Bernstein, "Misery Funds a Local Fiefdom".

<sup>32</sup> Ibid.

<sup>33</sup> Newcombe, "The DOJ Comes to Town: An Argument for Legislative Reform When the Juvenile Court Fails to Protect Due-Process Rights," 947.

<sup>34</sup> Corrections Corporation of America, "The History of Corrections Corporation of America," <http://cca.com/our-history>

<sup>35</sup> "Progress or Profit: Positive Alternatives to Privatization and Incarceration in Shelby County", TN. 2006 Joint Report Issued by Coalition against Private Prisons (CAPP) and Grassroots Leadership, 11.

<sup>36</sup> Bernard, 142- 143.

<sup>37</sup> Lawrence Buser, "Turner Set Course for Juvenile Court," *The Commercial Appeal*, February 13, 2008.



Internal political tension continued to escalate upon the retirement of Judge Turner and election of his successor, State Senator Curtis Person in 2006. The two had collaborated professionally on the creation of juvenile court legislation in Tennessee.<sup>38</sup> Indeed, this close affiliation did little to minimize concerns about unchecked judicial control within the Juvenile Court.<sup>39</sup> Senator Person's election created controversy amongst the Shelby County Commission. A lawsuit was filed by the Commission with the goal of appointing a second judge and the hope of reducing any possibilities for internal Court bias. In response, Person's sued to overturn the Commission's actions and eventually succeeded at the Tennessee Court of Appeals. The appellate court ruled that the Commission is not authorized to create a second division of the Juvenile Court and this right is reserved exclusively for the General Assembly.<sup>40</sup> Finally, Commissioner Henri Brooks and former JCMSC employee filed an official complaint with the DOJ in 2007 prompting the three-year federal investigation.<sup>41</sup> Thus, the DOJ investigation and subsequent "overhaul" was rooted in a legacy of "legal fiefdom" with Judge Turner presiding as the all-powerful monarch, as well as internal political factions sparked by local alliances.<sup>42</sup>

### **National Juvenile Justice Trends**

The Department of Justice investigation, findings, and subsequent Memorandum of Agreement with the Memphis and Shelby County Juvenile Court did not occur in a vacuum. This degree of federal intervention mirrors a national conversation regarding the urgency for juvenile justice reform. Not only are these changes a backlash to the "tough on crime" mentality of the 1980's and 1990's, but they are also prompted by landmark Supreme Court cases and supported

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<sup>38</sup> Newcombe, 948.

<sup>39</sup> Newcombe, 948.

<sup>40</sup> *Person v. Board of Commission*, No. W2007-01346-COA-R3-CV, 2009 WL 3074616, (Tenn. Ct. App. Sept. 28, 2009).

<sup>41</sup> Newcombe, 949.

<sup>42</sup> Bernstein.

by an enhanced understanding of adolescent development.<sup>43</sup> Together these factors combine to serve as the impetus for juvenile justice reform.

Beginning in the 1980's, public perception of juvenile delinquency dramatically shifted. Punitive measures such as detention, isolation, confinement, and transfers to adult criminal court gained traction among law makers, politicians, media, and American citizens. Detention disposed the dangerous juvenile and kept him or her from harming the community. Teenage crime rates increased, convincing the public that a national epidemic of juvenile crime existed, and therefore tougher sanctions were required. Upon closer examination, the increasing crime rates were concentrated in very limited geographic sphere-- inner-city neighborhoods.<sup>44</sup> Some experts attribute this differentiation to the crack cocaine explosion and corresponding War on Drugs campaign. The War on Drugs movement increased sanctions for those caught in possession of crack cocaine. Because crack cocaine was more affordable than its rich relative, powder cocaine, these laws inherently targeted poor, minority communities. Juveniles living in these environments were recruited to join this lucrative business, offering incentives such as fast cash, street creds, and a sense of power.<sup>45</sup> Without other foreseeable economic or educational opportunities, the drug market provided an appealing outlet for marginalized youth. Juveniles started transporting both drugs and cash to customers and naturally started carrying guns for protection. Crime laws that cracked down on drugs transformed these juveniles into malicious offenders.<sup>46</sup> Indeed, the possession of firearms increased the likelihood of violence and armed conflict, and escalated the potential for public harm.<sup>47</sup> Policy makers chose to ignore the root

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<sup>43</sup> Simkins, 732.

<sup>44</sup> Bernard, 142.

<sup>45</sup> Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2012), 53.

<sup>46</sup> Bernard, 142.

<sup>47</sup> Ibid.

causes of this phenomenon and instead implemented Band-Aid solutions. The media sensationalized teenage crime, exacerbating the real and perceived threat of violence, crime, and delinquency.

Studies now demonstrate that an aggressive punitive system is largely ineffective. Detention alone rarely thwarts criminal activity and prevents future offenses, nor does it treat underlying behavioral, emotional, or mental issues that contribute to delinquency. Only rehabilitative and restorative treatment has the potential to interrupt the cycle of crime and stop the development of career criminals. In order to balance the individual needs of the child and collective safety of the public, several Supreme Court cases within the last decade have promoted legal compromises. Until 2005, the death penalty was a plausible sentence for juveniles convicted of felonies. *Roper v. Simmons* ruled that executing minors is considered “cruel and unusual punishment” prohibited by the Eighth Amendment. Furthermore, the Court considered the death penalty a disproportionate punishment for minors.<sup>48</sup> *Miller v. Alabama* declared life without parole for juveniles convicted of homicide another violation of the Eighth Amendment.<sup>49</sup> *Graham v. Florida* ruled that juveniles cannot be sentenced to life without parole for non-homicidal offenses.<sup>50</sup> Finally, *J.B.D. v. North Carolina* provides that law enforcement read minors their Miranda Rights prior to coercive custodial interrogations. Because youth perceive police to be indisputable authority figures, they are more susceptible to volunteer self-

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<sup>48</sup> "ROPER v. SIMMONS," The Oyez Project at IIT Chicago-Kent College of Law, [http://www.oyez.org/cases/2000-2009/2004/2004\\_03\\_633/](http://www.oyez.org/cases/2000-2009/2004/2004_03_633/) (accessed July 22, 2014).

<sup>49</sup> MILLER v. ALABAMA," The Oyez Project at IIT Chicago-Kent College of Law, [http://www.oyez.org/cases/2010-2019/2011/2011\\_10\\_9646](http://www.oyez.org/cases/2010-2019/2011/2011_10_9646) (accessed July 21, 2014). The Eighth Amendment prohibits the use of cruel and unusual punishment in a criminal trial. The sentence for the offender charged with a crime must be proportional to the convicted crime.

<sup>50</sup> GRAHAM v. FLORIDA," The Oyez Project at IIT Chicago-Kent College of Law, [http://www.oyez.org/cases/2000-2009/2009/2009\\_08\\_7412](http://www.oyez.org/cases/2000-2009/2009/2009_08_7412) (accessed July 15, 2014).

incriminating statements than adults.<sup>51</sup> These pivotal decisions recognize the sensitive cognitive, emotional, and psycho-social limitations of minors, and reflect a national consciousness to reduce punitive incarceration, eliminate the death penalty, and transform juvenile justice theory.

Contemporary science has also initiated these recent legal modifications for juveniles. Scientific research that concerns adolescent development demonstrates cognitive, emotional, and psychosocial vulnerabilities among teenagers. Neurological studies indicate that brain development is not complete until the age of twenty-five.<sup>52</sup> Structural changes in the frontal lobe occur during adolescence and impact one's ability to make advanced decisions and comprehend complex situations. In other words, minors simply lack the discretion of an adult to due biological, neurological, and psychological factors beyond their control. On a practical level, this research questions the child's level of comprehension during court procedures. The abstract nature of law coupled with reduced cognitive and psychosocial skills limits the minor's ability to fully grasp legal ramifications. Without the assurance of due process, youth who are scrutinized by the court fail to understand their Miranda Rights.<sup>53</sup> Research fellows from the Research Network on Adolescent Development and Juvenile Justice sponsored by the MacArthur Foundation concluded, "Youth tend to underestimate situational risks, focus heavily on the present without concern for future consequences, and struggle to regulate their emotions and moods".<sup>54</sup> Because delayed psychosocial development exacerbates juvenile culpability, the intersection between scientific research and juvenile justice policy is crucial. Juvenile justice laws and policies must adapt in accordance with scientific advancements in order to maximize the court's credibility.

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<sup>51</sup> "J.D.B. v. NORTH CAROLINA," The Oyez Project at IIT Chicago-Kent College of Law, accessed June 24, 2014, [http://www.oyez.org/cases/2010-2019/2010/2010\\_09\\_11121](http://www.oyez.org/cases/2010-2019/2010/2010_09_11121)

<sup>52</sup> Newcombe, 955.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

## The Department of Justice Declassified

Upon examining juvenile delinquent statistics and cases from 2005 to 2009, the DOJ's Report of Findings highlighted three major categories that violated constitutional standards: due process rights, equal protection of the law, and inadequate facilities.<sup>55</sup> According to the Report of Findings issued on April 26, 2012:

There was reasonable cause to believe that JCMSC failed to protect the constitutional rights of Children appearing before it on delinquent matters by failing to provide constitutionally required due process, administer justice in a non-discriminatory manner, and provide reasonably safe conditions of confinement.<sup>56</sup>

Although the provisions of due process of the law were originally extended to juveniles in the 1967 Supreme Court case *In Re Gault*, JCMSC has inconsistently applied them.<sup>57</sup> Due process rights for juveniles include the right to timely notification of the charge, the right to confront witnesses, the right against self-incrimination, and the right to counsel. These provisions should be visible throughout every stage of the delinquent hearings. The chart below outlines the six phases of delinquency.

Arrest	Detention Hearing	Probable Cause	Trial (Adjudication	Disposition	Post- Disposition
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<sup>55</sup> More than 66,000 files were examined according to the United States Department of Justice, Civil Rights Division, "Investigation of Shelby County Juvenile Court," April 26, 2012. Accessed online.

<sup>56</sup> United States Department of Justice Memorandum of Agreement regarding the Juvenile Court of Memphis and Shelby County, December 17, 2012, page 2, letter E.  
<http://www.shelbycountyttn.gov/DocumentCenter/Home/View/5759>.

<sup>57</sup> "IN RE GAULT," The Oyez Project at IIT Chicago-Kent College of Law, accessed July 17, 2014, [http://www.oyez.org/cases/1960-1969/1966/1966\\_116/](http://www.oyez.org/cases/1960-1969/1966/1966_116/). The opinion was written by Justice Abe Fortas, a major advocate for child rights and coincidentally a native Memphian.

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\*If notice for transfer is filed, a transfer hearing occurs before the adjudicatory hearing.<sup>58</sup>

At each stage in the process, juveniles are ideally provided due process rights and provisions. However, the DOJ found that probation officers failed to thoroughly advise minors of their Miranda Rights and held conferences without an attorney present, causing minors to share incriminating statements.<sup>59</sup> Unless specifically requested, Tennessee does not provide attorneys at the probation conferences to save costs. This shortcoming led probation officers to simply read a Miranda script without providing a complete explanation. The Agreement now requires probation officers to describe the role of a defense lawyer and inform the minor that he or she is entitled to an appointed defense attorney at no cost.<sup>60</sup> In addition, children must document in writing “their receipt and understanding of the right against self-incrimination.”<sup>61</sup> The Agreement stresses that constitutional rights be explained in “age-appropriate language” and attempts to be sensitive to the cognitive disadvantage of the minor.<sup>62</sup>

In addition to offering self-incriminating statements, many juveniles were issued “extended unlawful detentions” prior to the probable cause hearings. The 1991 Supreme Court case *County of Riverside v. McLaughlin* determined that warrantless arrests require a probable cause hearing within forty-eight hours; otherwise, it is the state’s burden to demonstrate extraordinary circumstances that caused the delay.<sup>63</sup> Weekends and complicated pretrial

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<sup>58</sup> Sandra Simkins, “Success in Shelby County: A Roadmap to Systemic Juvenile Reform,” *The University of Memphis Law Review*, vol. 44, no. 4: (Summer 2014), 736.

<sup>59</sup> *Ibid.*

<sup>60</sup> The U.S. Department of Justice, “Memorandum of Agreement”, 13.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> Simkins, 737. Reference to cases *County of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991) (requiring the government to prove that there was a “bona fide emergency” if a delay is longer than forty-eight hours).

proceedings are not legitimate circumstances.<sup>64</sup> Even so, data from DOJ indicated that the Court detained 815 children in a four-year period for more than three days.<sup>65</sup> Of the 815 children detained for an extended period, 37% were held for seven days or longer.<sup>66</sup> Several factors may contribute to the pattern of “extended unlawful detentions” prior to the probable cause hearing. Court personnel who work in the intake process first assess the juvenile’s allegations and determine whether or not to detain the child prior the hearing. Because the staff had no standardized system of evaluation, the decision to detain or not to detain greatly varied. In addition, even if children are dismissed until their court date, their official dismissal often depends on other social factors. Juveniles with parents working multiple jobs, lacking reliable transportation, or managing large households may accept detainment by default.<sup>67</sup> These obstacles certainly contribute to the high level of disproportionate minority contact (DMC) and will be examined in further detail. The intake office now utilizes a codified test to determine initial detainment, known as the Detention Assessment Test (DAT).<sup>68</sup> This test requires juveniles who score 16 points or higher to remain detained. Scores depend on the nature and number of offenses and can accumulate each visit.

### **Improving Juvenile Defense Counsel**

The DOJ report also identified weak juvenile defense as a significant barrier to adequate due process. The lack of zealous advocacy for indigent youth automatically handicaps their case and consequently increases the likelihood for detainment. An “indigent” juvenile is a minor who

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<sup>64</sup> "RIVERSIDE COUNTY v. MCLAUGHLIN," The Oyez Project at IIT Chicago-Kent College of Law, accessed June 23, 2014, [http://www.oyez.org/cases/1990-1999/1990/1990\\_89\\_1817/](http://www.oyez.org/cases/1990-1999/1990/1990_89_1817/).

<sup>65</sup> Juvenile Court Investigation, *supra* note 8, at 18 (footnote omitted). \* Simkins, 738.

<sup>66</sup> *Ibid.*

<sup>67</sup> Tom Coupe, interviewed by Lanier Flanders, July 2, 2014.

<sup>68</sup> Department of Justice, “Investigation of Shelby County Juvenile Court,” 7.

cannot afford a private defense attorney.<sup>69</sup> In this circumstance, quality advocacy depends on the socioeconomic status of the juveniles and their families, inevitably marginalizing some.

Considering the demographic make-up in Memphis, the majority of indigent youth are African American.<sup>70</sup> Youth with substandard defense attorneys are more likely to stay in the system once arrested.

Another pattern described as “role confusion” problematizes proper juvenile defense.<sup>71</sup>

When a juvenile defender misinterprets his or her role in the courtroom, he or she fails to provide ethical, independent and zealous advocacy for the child-client.<sup>72</sup> Unlike other parties present at the hearing, the juvenile defender is the only advocate that represents the *expressed* interest and position of the child. He or she has full access to investigate the child’s medical history, educational performance, home life, family dynamic, and exposure to trauma. The attorney cannot supplant the child’s wishes with his or her judgment according to the child’s “best interest”.<sup>73</sup> Lack of resources and professional experience has often hindered juvenile defenders from practicing zealous advocacy that promotes an adversarial system. Young attorneys who gain legal exposure and training as juvenile defenders may feel pressure to accommodate their

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<sup>69</sup>Indigent definition.

<sup>70</sup> U.S. Census Bureau, 2010, U.S. Department of Labor, 2013: Memphis demographics reported in 2010: 63.3% Black or African American, 29.4% White, 6.5% Hispanic or Latino, and 1.6% Asian or Pacific Islander. In addition, 42.1% of Memphis citizens under the age of eighteen live under the poverty level according to U.S. Census Bureau, 2010. Also note, the racial demographics of Memphis children differ from those of Tennessee and the United States. In Memphis, 71% of children are black and 17% are white. Urban Child Institute, 2013.

These statistics imply there is a strong likelihood that African American students live below the poverty line.

<sup>71</sup> DOJ Investigation of Shelby County Juvenile Court, *supra* note 8, 47-48.

<sup>72</sup> Stephen C. Bush and Laurie S. Sansbury, “Essence of Justice: Independent, Ethical, and Zealous Advocacy by Juvenile Defenders,” *The University of Memphis Law Review*, 44 no. 4 (Summer 2014), 817.

<sup>73</sup> Simkins, 740.



seniors and opposing counsel in the court.<sup>74</sup> Overall, lack of attorney specialization and poor compensation jeopardizes the rights of children to a fair hearing.<sup>75</sup>

In order to provide quality legal representation and correct these detrimental shortcomings, the DOJ mandated several solutions. First, it required the creation of a specialized juvenile defense unit within the Shelby County Public Defender's Office (SCPD).<sup>76</sup> Because the Public Defender's Office has not provided direct representation since the 1970's, this change requires additional resources, training, and programming.<sup>77</sup> Nevertheless, the Office was quick to respond and accumulated 2 million dollars of state and local funding.<sup>78</sup> It hired *eight* full-time, qualified juvenile defense attorneys to launch the unit in 2013. (confirm # of attorneys). SCPD will ensure that juvenile defenders have adequate training, appropriate administrative support, reasonable workloads and sufficient resources.<sup>79</sup> One juvenile defense attorney, Laurie Sansbury, arrived in Memphis as a Public Defender Corp fellow in 2012. She transitioned to the juvenile defense unit in December 2013 and received vigorous training at a national conference.<sup>80</sup> "Although the learning curve is very steep," reports Sansbury, "overall it has been a smooth transition and the Court has been very helpful and responsive."<sup>81</sup>

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<sup>74</sup> Simkins, 741.

<sup>75</sup> Simkins, 757.

Under Tennessee Supreme Court Rule 13, the hourly rate for appointed counsel is \$40 per hour out-of-court time and \$50 per hour for in-court time, with a cap of \$1000.

<sup>76</sup> U.S. Department of Justice, Civil Rights Division, "Memorandum of Agreement Regarding the Juvenile Court of Memphis and Shelby County, 2012," 14.

<sup>77</sup> Bush and Sansbury, "The Essence of Justice," 810.

<sup>78</sup> Linda A. More, "Public Defender Begins Work to Establish Juvenile Defense Unit," *The Commercial Appeal*, August 27, 2013, <http://www.commercialappeal.com/news/local-news/public-defender-begins-work-to-establish-defense> (accessed July 21, 2014).

<sup>79</sup> Bush and Sansbury, "Essence of Justice," 816.

<sup>80</sup> Laurie Sansbury, "2013 Juvenile Defense Conference Recap," *Just City Blog: Justice for a New Generation*, October 22, 2013, <http://justcity.org/2013/10/22/the-2013-juvenile-defender-conference-a-recap/> (accessed July 3, 2014).

Sansbury attended the 2013 Juvenile Defense Conference sponsored by the National Juvenile Defender Coalition in Bolder Colorado as the representative of Shelby County Public Defender Office.

<sup>81</sup> Laurie Sansbury, interviewed by Lanier Flanders, July 3, 2014.

Despite this new innovation, the Public Defender's Office cannot handle the demands of the Court alone. Instead, these permanent public attorneys will partner with a panel of private attorneys to form the collective "unified juvenile defense bar". The Court has utilized a panel of fifty-two private attorneys for decades, yet the internal oversight and management of this panel by the Court created conflicts of interest.<sup>82</sup> Although this structure not unconstitutional *per se*, it certainly questions the independence and autonomy of the defense attorneys. These structural changes require the fusion of both public attorneys and private counsel to meet the demand for juvenile defense in Memphis. On average, the Court processes 11,000 delinquent cases per year on a limited budget.<sup>83</sup> The panel attorneys are appointed according to Tennessee Supreme Court Rule 13 that enforces 1000-dollar cap for services.<sup>84</sup> Although these rules applied in the past, this shared infrastructure aims to correct former inconsistencies by uniting the juvenile defense bar under the umbrella of common training, practice standards, and accountability.<sup>85</sup> By establishing more internal checks and balances, this structural change raises the standard of advocacy. Ultimately, the quality of the defense protects the integrity of the Juvenile Court, improves the whole system, and reduces disproportionate minority contact.

Attorney Laurie Sansbury works for the Public Defender's Office as a juvenile defender and understands the critical nature of her job. She views herself as a zealous advocate for the child and believes that the uniqueness of each child demands personalized and individualized attention. Sansbury uses little steps to build a foundation of trust with her clients, recognizing that it is ultimately incumbent upon her to "get the child home". She makes small promises and keeps them, visiting her clients on Wednesday as agreed. The detention hearing, the first stage in

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<sup>82</sup> Memphis Law Review.

<sup>83</sup> Department of Justice, "Investigation of Shelby Count Juvenile Court", 7.

<sup>84</sup> Bush and Sansbury, "Essence of Justice," 819.

<sup>85</sup> Ibid.

the delinquent process, proves crucial to her strategy: “I fight for them in that hearing, and even if I lose, they will see me fighting for them.” A proper adversarial system, reasons Sansbury, empowers the child to make decisions and think about the relationship between actions and consequences.<sup>86</sup>

### **Transfer Hearings: The Complete Evaluation**

The DOJ report also discovered major procedural flaws and racial disparities in transfer hearings. In transfer hearings, the judge has the ability to waive jurisdiction and send the juvenile to adult criminal court. The following offenses qualify for a transfer hearing in JCMSC: first and second degree murder, rape, aggravated rape, rape of a child, aggravated kidnapping, and aggravated robbery.<sup>87</sup> Unless the offense is very severe, juveniles under the age of 15 are rarely prosecuted as adults.<sup>88</sup> In these hearings, the judge can revoke the Court’s obligation to rehabilitate the child due to the heinous nature of the offense. First, the juvenile receives a recommendation for a transfer hearing. Regardless of the offense, black children were disproportionately recommended for transfer over white children.<sup>89</sup> Even if both juveniles are charged with the same “offenses against persons” category, the black child more likely receives the recommendation.<sup>90</sup> Therefore, it is reasonable to conclude that the race of the offender, rather than the type of offender, directly affects the transfer determination. This evidence of criminalization based on race extends to the actual transfer hearing. Shelby County has the highest transfer rate of any county in the state of Tennessee. In 2012, the county contributed

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<sup>86</sup> Laurie Sansbury, interviewed by Lanier Flanders, July 3, 2014.

<sup>87</sup> Juvenile Court Frequently Asked Questions. <http://www.shelbycountyttn.gov/FAQ.aspx?FID=49&NID=226>

<sup>88</sup> Juvenile Court Frequently Asked Questions. <http://www.shelbycountyttn.gov/FAQ.aspx?FID=49&NID=226>

<sup>89</sup> DOJ, “Investigation”, *supra* note 20, 42.

<sup>90</sup> *Ibid.*

56.5% of the total transfer cases statewide.<sup>91</sup> Upon closer examination, 95% of all juveniles transferred in Shelby County were black.<sup>92</sup> These alarming statistics are a clarion call of unjust discriminatory practices induced by judicial and social factors that characterize Memphis. While the DOJ addresses the judicial flaws in transfer hearings, the problem extends above and beyond constitutional deviations.

The DOJ outlined several procedural methods to reduce unnecessary juvenile transfers and eliminate unconstitutional practices. The judge or magistrate must find probable cause that the child committed the offense, that the child does not have a mental illness or developmental disability and therefore does not qualify for an institution, and that the child threatens the public safety of the community.<sup>93</sup> Full justification of these three stipulations must be provided in writing. Chief Magistrate Dan Michael carefully communicated this process to the juveniles on the major crimes docket using the visual illustration of a three-legged stool.<sup>94</sup> All three legs of the stool, representing the three constitutional stipulations, must “fall” in order to be transferred. He explained probable cause as “proof that you [the juvenile] did something wrong” and reminded the defendant that ultimately, “the decision is up to me, and I am going to methodically discern what is best for you”.<sup>95</sup> Although ultimate jurisdiction does reside with the judge or magistrate, the DOJ outlines factors that must be considered and mandates full documentation of the judge’s consideration of these factors. Relevant factors include, but are not limited to, the extent and nature of the child’s prior delinquency, the nature of past treatment methods and the child’s response, the child’s suitability for additional treatment, nature of delinquent act alleged,

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<sup>91</sup> Simkins, 751.

<sup>92</sup> U.S. Department of Justice Civil Rights Division “Report of Findings on Juvenile Court of Shelby County,” 14.

<sup>93</sup> Memorandum of Agreement, 12, letter f.

<sup>94</sup> Personal Observation. Memphis and Shelby County Juvenile Court. Wednesday, July 9, 2014. Major Crimes Docket. Courtroom 1.

<sup>95</sup> Ibid.

the child's social factors, alternatives within the system that were considered and the reason for rejecting these alternatives, and whether the Court can provide for the rehabilitation of the child, in order to illustrate the most complete picture of the child as possible.<sup>96</sup> The standardization of these hearings provides greater oversight, accountability, and consistency across judicial discretion.

Two Major Crime cases demonstrate the complexity of transfer hearings. In the first case, the juvenile had allegations of aggravated robbery, unlawful possession of a weapon, and simple robbery.<sup>97</sup> The juvenile was a seventeen-year-old black male. He and three accomplices approached a B.P. Station at night and robbed a middle-aged truck driver at gunpoint. The victim appeared in court, identified the juvenile and affirmed his involvement in the violent incident. The prosecution also confirmed the victim's testimony with video surveillance. The juvenile's history revealed he failed to complete his rehabilitative counseling program for an earlier misdemeanor, but otherwise he had a clean record. The judge inferred that the mother failed to enforce the counseling program and suggested that prior intervention may have prevented the situation at hand. Unfortunately, the defense attorney never argued against this perception of indifference and apathy, in effect missing a key opportunity for zealous advocacy. In transfer hearings, juvenile defender Sansbury utilizes as much social information (i.e. medical history, family background, home-life, and educational reports) as possible to build a holistic picture of the child.<sup>98</sup> Yet limited details about this juvenile were volunteered during the hearing. A relative testified that the juvenile would be better off living with his father, "the true disciplinarian". Furthermore, the family member concurred that the juvenile's problems—his behavior, offenses,

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<sup>96</sup> The United States Department of Justice, "Memorandum of Agreement," December 17, 2012, g.

<sup>97</sup> Personal Observation. Memphis & Shelby County Juvenile Court. July 9, 2014.

<sup>98</sup> Laurie Sansbury, interviewed by Lanier Flanders, July 3, 2014.

and bad attitude—were a product of his environment. The juvenile had made the wrong friends in his neighborhood, an illusion to gang affiliation that was never officially proven. The magistrate waived jurisdiction and stated with a heavy sigh “There’s nothing left for you here. Carrying a weapon and threatening a man’s life with it are very serious offenses.”<sup>99</sup> Indeed, weapons exacerbate the severity of the incident and pose as clear and visible threats to public safety. Immediately the juvenile was escorted out of the courtroom by the police officer without a moment of privacy with his parents. Clearly distraught, the mother fumed “They already had him before we even started. They already had him,” implying the predetermined outcome of her son’s case. Like her son, she too felt cheated and betrayed by the juvenile justice system and marginalized by its corresponding culture of criminalization.

Studies demonstrate that juveniles who are transferred to adult criminal court suffer collateral consequences. Despite the myth that juvenile records can be expunged, actions committed as a juvenile bear heavy costs. Conviction in criminal court and subsequent incarceration increases the likelihood that a juvenile offender will transform into a career criminal.<sup>100</sup> Criminal records restrict future employment opportunities; prohibit enrollment in the military or civil service; revoke the right to vote; refuse access to public programs; and prompt permanent stigmatization.<sup>101</sup> These collateral consequences severely encumber inmates re-entering society after years of lock-up. Conviction in criminal court and subsequent incarceration increases the likelihood that a juvenile offender will transform into a career criminal.<sup>102</sup> Lock-up starting as a juvenile and continuing onto early adulthood stagnates the crucial period for

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<sup>99</sup> Personal Observation. Memphis & Shelby County Juvenile Court. Major Crimes. July 9, 2014.

<sup>100</sup> Nicholas Kristoff, “When the Juvenile Justice System Isn’t the Answer,” *New York Times*, June 29, 2014, web. Accessed July 1, 2014. <http://www.nytimes.com/2014/06/29/opinion/sunday/nicholas-kristof-when-the-juvenile-justice-system-isnt-the-answer.html?partner=rssnyt&emc=rss&r=0>

<sup>101</sup> Michelle Alexander, *Mass Incarceration in the Age of Colorblindness*, 2.

<sup>102</sup> Nicholas Kristoff, “When the Juvenile Justice System Isn’t the Answer.”

psychosocial development. Upon release, the inmate's stunted development hinders his or her ability to cope with the outside world. Conviction in criminal court and subsequent incarceration increases the likelihood that a juvenile offender will transform into a career criminal, because adult correctional system prioritizes punishment rather than treatment and rehabilitation.<sup>103</sup> Juveniles placed in this environment are vulnerable to sexual, verbal, and physical abuse and suffer psychological damage from incarceration.<sup>104</sup> As demonstrated in the previously discussed case, sixteen and seventeen year olds with multiple offenses are more vulnerable to transfers because the juvenile court's window of jurisdiction expires at the age of eighteen. Either the juvenile remains under the supervision of juvenile court for a few inconsequential months or risks the chance of incarceration in the penal system for many years. Neither option is ideal nor upholds the mission of the juvenile courts in Tennessee to provide "care, protection, and wholesome moral, mental, and physical development of children" while also ensuring the public safety of the community.<sup>105</sup>

To combat these inhumane realities, experts in juvenile justice have proposed "blended sentencing" to equalize this substantial discrepancy in sentencing. Blended sentencing combines elements of the juvenile justice system with adult punishments that balance treatment and punishment to create an optimal, constitutionally valid sentence.<sup>106</sup> These sentencing schemes empower juvenile and criminal courts to impose adult criminal punishment on certain categories of juvenile offenders, while in turn permitting the juvenile to remain under the umbrella protection of juvenile court.<sup>107</sup> Instead, the juvenile remains in a juvenile youth facility until the

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<sup>103</sup> Ibid.

<sup>104</sup> Naya Bedini and Arthur Horne, III, "Blended Sentencing in Tennessee Courts," *The Memphis Law Review*, vol. 44, no. 4, Summer 2014, 769.

<sup>105</sup> Bush and Sansbury, "The Essence of Justice", 805.

<sup>106</sup> Bernard, 152.

<sup>107</sup> Bedini and Horne, "Blended Sentencing in Tennessee Courts", 770.

age of twenty-one. Tennessee has not implemented any form of blended sentencing, although other Mid-South neighbors such as Arkansas, Missouri, and Kentucky have done so.<sup>108</sup> Chief Magistrate Dan Michael recognizes the value of blended sentencing in transfer hearings and hopes to facilitate more efforts on the legislative level for this development. He observed that “science is more advanced than the law, and we need to adapt our laws so that they are consistent with scientific discoveries and advancing neurological theories.”<sup>109</sup> Although there are three variations of blended sentencing, a contiguous juvenile sentence fosters leniency and flexibility for juveniles and expands the court’s jurisdiction to the age of twenty-one, thereby maximizing the potential for restorative justice.<sup>110</sup> This age adjustment corresponds with cognitive studies reflecting adolescent maturity and competence. While sound judicial discernment and strong juvenile defense are necessary, state and local legislation also dictate the direction of juvenile justice. Current laws and policies that enable patterns of constitutional deviations and racial discrimination only weaken juvenile institutions across the state.

Another transfer hearing in the Juvenile Court demonstrates the necessity of blended sentencing. A fifteen-year-old juvenile allegedly raped a thirteen-year-old girl.<sup>111</sup> Both the defendant and victim identified as African American. The victim testified that she left her house one afternoon and went to a nearby Walgreens to wait for a ride. She was sitting outside the store on the curb when two minors approached her and began targeting her with repeated questions about her age and her school. The harassment continued and escalated to physical control, such as hair pulling and pushing, until the victim was trapped in an abandon house behind the Walgreens. It was approximately ten o’clock at night. After various testimonies and presentation

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<sup>108</sup> Ibid.

<sup>109</sup> Dan Michael, interviewed by Lanier Flanders, July 9, 2014.

<sup>110</sup> “Blended Sentencing in Tennessee Courts,” 790.

<sup>111</sup> Personal Observation. Memphis and Shelby County Juvenile Court. July 9, 2014.



of evidence, the special judge postponed the hearing to a later date until a complete psychological analysis had been conducted. Underlying psychosexual development issues, or past exposure to trauma or abuse, may have influenced the juvenile's decision. According to the National Task Force of Children Exposed to Violence, "...the vast majority of children involved in juvenile justice system have survived exposure to violence and are living with the trauma of that experience".<sup>112</sup> Disclosing such trauma may illuminate the situational motives for delinquency and allow for greater insight regarding treatment.

Gang affiliation is another possible factor left undisclosed in this particular transfer hearing. A co-defendant approximately the same age as the juvenile defendant assisted in the offense. According to an Auxiliary Probation Officer Adrienne Parker, gang membership typically demands not only substance abuse and criminal activity, but also sexual exploits.<sup>113</sup> Perhaps these social pressures to meet membership expectations prompted this victimization. In reality, the juvenile and his co-defendant may be victims in a larger web of intimidation, power, and social allegiance. Gang threats in Memphis are real and dangerous, and gang membership proves to be all consuming. Operations: Safe Community asserts "the pressure to join gangs is unremitting" for many youth in Shelby County and "lure youth with the promise of safety, belonging, economic opportunity, and above all, a sense of identity".<sup>114</sup> Economic, emotional, and social needs intensify the appeal of gang membership for youth. In a neighborhood with minimal, if any, safe recreational options, job opportunities, or parental supervision and support, gang membership attracts youth looking to fill these voids. Gangs supplement acceptance,

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<sup>112</sup> "The Essence of Justice," 805.

<sup>113</sup> Adrienne Parker, interviewed by Lanier Flanders, July 17, 2014.

<sup>114</sup> "Program helps Youth Reject Gangs, Find Community," Operations: Safe Community A Memphis Fast Forward Initiative, November 4, 2013 <http://www.memphiscrime.org/news/posts/program-helps-youth-reject-gangs-find-community> (accessed July 23, 2014).

approval and identity that otherwise can be derived from families, teams, clubs, or other organizations. Initiation tasks prove the ‘toughness’ of the initiate, lead to criminal activity. Police report that gang criminal activity often induces/manifests in the form of compound offenses because juveniles are automatically “guilty by association” when found in a vehicle with a weapon and illegal possessions of marijuana.<sup>115</sup> The bonds of allegiance preserve the silence in these situations and prohibit individual ownership of one’s actions. Parker looks for signs of gang involvement when she meets with the juvenile. Physical appearance, such as clothes with specific colors or symbolic tattoos, is a common identifier. Other clues based on the child’s emotional state and attitude are strong indicators. Perhaps the child seems more withdrawn, defiant, or angry. Social media introduces a new level of gang exposure, presence and pressure that requires further exploration.<sup>116</sup> Parents, mentors, educators, and counselors must monitor sites such as Instagram, Facebook, Twitter, and iPhone activities early in the game. Because the interrelated cycles of gang membership and criminal activity are hard to break, Parker believes that early involvement in positive activities is the key to immunity.

### **Collaboration with Community Partners**

While the DOJ Report and Agreement corrects numerous constitutional deviations and has made strides to implement these changes, other efforts that extend beyond the internal scope of the Court are necessary to eliminate disproportionate minority representation. Multiple institutions, organizations, and individuals shape the policies and procedures of the Court. Initial contact with the justice system depends heavily on law enforcement protocol, as police are responsible for the arrest and determine whether or not to transport the juvenile to Court. Police

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<sup>115</sup> Daniel Irwin, interviewed by Lanier Flanders, Monday, July 21, 2014.

<sup>116</sup> Adrienne Parker, interviewed by Lanier Flanders, July 17, 2014.

incorporate their own sequence of escalating threats and coercive routines, such as pat-downs or warnings, prior to transportation.<sup>117</sup> In Memphis and Shelby County, police forces in the suburbs operated according to their own de-facto policies and failed to equally apply these policies to all minors.<sup>118</sup> Although the DOJ Report did not analyze the Memphis Police Department's policies or techniques regarding juvenile arrests, it acknowledges that the disparity in the number of children referred to the Court by other agencies raises concern.<sup>119</sup> This discrepancy indicates that other external agencies and institutions in the community also perpetuated and facilitated discrimination. In the past, police in suburban areas such as Shelby County, Bartlett, Collierville, and Millington who arrested juveniles typically issued summons as opposed to transporting juveniles to downtown Memphis. On the other hand, Memphis City Police arrested and transported juveniles within the city limits directly to Juvenile Court. This trend is problematic for many reasons. The demographic and socioeconomic dynamic of Memphis indicates a stark separation along suburban and city boundaries.<sup>120</sup> Nearly 71% of Memphis youth are black whereas 17% are white.<sup>121</sup> This demographic divide developed an inherently racial trend. The white youth living in the suburbs avoided Juvenile Court, while the black youth living in the city did not. The Urban Child Institute best describes this demographical tension: "Shelby County has a higher share of families with children, but proportionately fewer African American children, children in poverty, and children in single parent families" compared to Memphis.<sup>122</sup> This high concentration of poor, single-parent minority households confined within city limits, coupled

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<sup>117</sup> Bernard, 219.

<sup>118</sup> Tom Coupe, interviewed by Lanier Flanders, July 2, 2014.

<sup>119</sup> U.S. Department of Justice, "Report of Findings," 36, footnote 27.

<sup>120</sup> Urban Child Institute, *Urban Child Institute Data Book*, 2013, 4.

<sup>121</sup> *Ibid.*

<sup>122</sup> Urban Child Institute, *Urban Child Institute Data Book*, 2013, page 11.

with highly discretionary juvenile arrest tactics, likely exacerbated the ‘disproportionate minority contact’ phenomenon.

Thus, a collaborative effort between Memphis City Schools (MCS), the Shelby County Juvenile Court, the Memphis Police Department (MPD), the Shelby County Mayor’s Office, the District Attorney’s Office, and the Public Defender’s Office received grant funding through the Disproportionate Minority Contact Pilot Project to unify juvenile justice procedures. Known as the School House Adjustment Program, or simply SHAPE, this comprehensive diversion program unifies several customized agendas that seek to reduce youth contact with the Juvenile Court. It aims to breakdown the school-to-prison pipeline, a phenomenon that utilizes disciplinary policies to isolate at-risk students with behavioral infractions from the mainstream classroom setting, and essentially funnels students out of public schools and into the juvenile and criminal justice system.<sup>123</sup> Zero-tolerance policies reinforce the school-to-prison pipeline by criminalizing minor infractions of school rules and prioritizing incarceration over education.<sup>124</sup> An increased reliance on police or school-resource officer to patrol the hallways and enforce discipline further exacerbates this climate of criminalization. To counteract these subjective disciplinarian policies, SHAPE serves as both an “early intervention” and “true diversion” program.<sup>125</sup> Ultimately, this program seeks to remove all formal interaction with the Juvenile Court, eliminate school disciplinary policies and legal strategies that perpetuate criminalization, and thereby interrupt the cycle of crime.

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<sup>123</sup> American Civil Liberties Union, “School to Prison Pipeline”, <https://www.aclu.org/school-prison-pipeline>.

<sup>124</sup> Ibid.

<sup>125</sup> Department of Research, Planning, and Improvement. Shelby County Schools Office of Safety and Security. September 2013. “School House Adjustment Program Enterprise (SHAPE): 2012-2013 Outcome and Evaluation Study”, Angelica James-Garner, Ph.D.

One facet of the SHAPE program includes the “summons in lieu of transport” option. In 2010, the Juvenile Court partnered with law enforcement in Shelby County to establish a consistent arrest protocol for juveniles. Judge Persons spearheaded this initiative with the support of Mayor A.C. Wharton to reduce unnecessary traffic at the Juvenile Court. The police are not obligated to arrest and transport juveniles who commit minor offenses, such as disorderly conduct, theft of property under \$500, simple possession of marijuana, criminal trespass, vandalism under \$500, simple assault with no serious injuries, and gambling.<sup>126</sup> Instead, officers have the option of issuing a summons. If the juvenile agrees to comply with the terms of the summons, he or she will meet with a local minister from the Memphis Baptists Ministerial Program for counseling and mentorship.<sup>127</sup> This partnership between the Court, police, religious organizations, and City Council strives to minimize interactions between adolescents and the juvenile justice system, thus reducing the odds of repeated appearances. SHAPE has been an integral part of shifting and reconfiguring the culture of detention, or more exactly, the culture of criminalization.

Memphis and Shelby County schools were another outside agency historically responsible for sending an exponential number of youth to the Juvenile Court. Reasons for appearance ranged from unruly behavior to minor disciplinary infractions, typically sent at the discretion of the teacher, counselor, or principle. The zero-tolerance policies in schools, police presence, and constant surveillance construct a criminalizing environment for students. Tom Coupe, director of Community Outreach at the Juvenile Court, reported that in the past Memphis

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<sup>126</sup> The U.S. Department of Justice, “Investigation of the Juvenile Court of Shelby County”, 6.

<sup>127</sup> Kontji Anthony, “New Juvy Court Policy Issues Summons in Lieu of Being Detained,” WMCActionnews5, July 10, 2012, <http://www.wmcactionnews5.com/story/12793164/new-juvy-court-policy-issues-summons-in-lieu-of-being-detained> (accessed July 23, 2014).

schools were sending children to the detention center for any and every behavioral issue.<sup>128</sup> Attorney Christina Zawisza, director of the Child and Family Law Clinic confirms this observation: “I would take my law students down in the afternoon to tour the detention center, and there would be a long line of little bitty kids waiting to be detained because schools were sending every offense to Juvenile Court. Once, this little seven year old kid was immediately hauled downtown for throwing a pencil at his teacher”. Local schools viewed the Court as the catch-all solution for minor behavioral infractions, in turn creating a backlog of cases and unnecessary internal traffic. But, the Department of Justice’s Report emphasized the need to re-educate the police department and school system when and why kids come to Juvenile Court.<sup>129</sup> Representing the Court’s perspective, Coupe shares “We really started to focus on the detention facility and policies... We did not want to house one hundred kids per day” for minor skirmishes.<sup>130</sup> Thankfully, the Juvenile Court and Shelby County Schools have taken tremendous strides to correct this fundamental misunderstanding of their institutional relationship.

Another component of SHAPE employs a preventative strategy to reduce truancy amongst elementary and middle school students, and simultaneously foster educational aspirations. The Mentoring Based Truancy Reduction program started in 2006 as collaboration between the Juvenile Court, the District Attorney’s Office and Shelby County schools. Its inception was a direct response to juvenile crime patterns from 2005-2006. Nearly twenty-five percent of juvenile crime occurred between school hours and this correlation is no accident.<sup>131</sup> Students who are absent from school are separated from a constructive, positive environment that provides adult supervision. High poverty levels in Memphis certainly influence the Memphis

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<sup>128</sup> Personal communication. July 2, 2014. Tom Coupe. Juvenile Court Memphis and Shelby County.

<sup>129</sup> Personal communication. Tom Coupe. July 2, 2014. Juvenile Court Memphis and Shelby County.

<sup>130</sup> Ibid.

<sup>131</sup> <http://www.scdag.com/preventingcrime/mentoring>

school system and the culture of public education.<sup>132</sup> Certain cultural attendance barriers contribute to the pattern of truancy amongst Memphis students, especially those living in impoverished conditions.<sup>133</sup> While lack of transportation and safety serve as logistical barriers, peer pressure, bullying, and gang violence pose as social obstacles for school attendance. To sustain a living wage for the family, some youth assume roles as family caretaker or breadwinner, making it difficult to maintain academic responsibilities as well. Economic necessity demands that working-class students assume roles such as family caretaker or breadwinner, making it difficult to maintain academic responsibilities as well. Students with five or more absences qualify as truant. This program takes a preventative approach by working closely with elementary and middle school students and their families. The school identifies students with a truant record and refers them to the program. Then students and their parents or custodians sign an agreement with the D.A.'s Office enforced as a court order by Juvenile Court. Volunteer mentors supervise, manage, and counsel students on school attendance, performance, and conduct. Mentors may also recommend appropriate community service or faith-based activities designed to incorporate positive, constructive outlets beyond the traditional classroom. A comprehensive team comprised of the mentor, a case advocate who represents the school, and an assistant district attorney from Juvenile Court assesses the student's progress.<sup>134</sup> Over the past eight years, the program has grown and now operates in seven Shelby County middle schools and six elementary schools. To encourage a positive relationship with education and incentivize school attendance, the District Attorney's office gave free bicycles to eligible elementary and

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<sup>132</sup> Jennifer E. Bitzer, Abby S. Lewis, "Policy versus Reality: Understanding Attendance in Memphis Urban Schools", Rhodes Institute for Regional Studies, 2013, 12.

<sup>133</sup> Ibid., 15.

<sup>134</sup> Ibid.

middle school students without any absences or tardies.<sup>135</sup> Three-hundred and three students had a perfect record, nearly double from last year.<sup>136</sup> Indeed, this cooperative program unites major Memphis institutions in a collaborative fashion and has implemented creative, preventative ways to circumnavigate a pathway to juvenile delinquency.

However, for those youth already involved in the juvenile justice system, there are a few hybrid programs that fuse internal Court staff and external local volunteers. The Auxiliary Probation Services program allows Memphian to apply for a position as an auxiliary probation officer. The Court reserves supervised probation status for the more serious cases. During this period of probation, the juvenile is supervised and encouraged to perform certain functions such as community service or attend counseling.<sup>137</sup> Volunteers commit to personally visit the juvenile one hour per week and have several phone calls. In reality, the impact and success of this program depend on time beyond this minimal one-hour interaction. Three local volunteers, Adrienne Parker, Daniel Irwin, and Sam Sehnert, dedicate their time and energy in this manner. Their personal and professional background influenced their decision to get involved. Both Sehnert and Irwin are young, white males from Memphis with a passion for the city's youth. Sehnert personally encountered the Juvenile Court as a high school student, and commends the support of friends and family for his recovery from substance abuse. Now, he prioritizes 'giving back' to the organizations that helped him and shared, "A lot of people reached out and helped me. I grew up with ample opportunities and I still almost didn't make it. I guess my thought

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<sup>135</sup> Katie Fretland, "Students Earn Free Bikes for Perfect Attendance", the Commercial Appeal, May 24, 2014. Accessed online. <http://www.commercialappeal.com/news/local-news/students-earn-free-bikes-for-perfect-school>

<sup>136</sup> Ibid.

<sup>137</sup> Berndard, 219.



process is that it's everyone's responsibility to help a kid..."<sup>138</sup> Daniel Irwin shares these same sentiments and utilizes his professional skills as a behavioral psychologist to provide a clinical perspective for more complicated probation cases.<sup>139</sup> These cases typically involve drug abuse, with underlying mental disabilities and psychological disorders. Psychiatric treatment is often required to rehabilitate and restore normalcy for the juvenile. During the workday, Adrienne Parker counsels incarcerated adults at the Shelby County Corrections Facility re-entry department. She devotes her free time to build relationships with youth on probation in hopes of preventing career criminals. Parker was born and raised in Memphis, and is intimately familiar with the detrimental effects of drug abuse on families. Her father consistently resorted to drugs and alcohol, a path Parker deliberately chose to reject. Yet, she identifies these same struggles with the juveniles she supervises; homes fragmented by drugs, dysfunctional relationships, gang threats, and gut-wrenching poverty often characterize the juvenile's emotionally deficient background.

Parker and the other volunteers serve as advocates for the child and try to build a trusting, inclusive relationship that instills self-esteem. Parker thinks self-esteem is a crucial quality that many of these juveniles lack because no one has told them or provided them with choices and opportunities.<sup>140</sup> Sehnert reiterates this belief, stating that the reality "...can be heart-breaking... If a child is not taught to value himself, he certainly won't value you or your property".<sup>141</sup> That is exactly why the little acts of kindness count. Irwin agrees that the best part of the volunteer job is building connections with the kids. Keeping promises, cheering at basketball games or track meets, or tutoring for class are simple ways to build connections. Irwin has written

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<sup>138</sup> Personal Communication. Sam Sehnert. July 19, 2014.

<sup>139</sup> Personal communication. Daniel Irwin. July 24, 2014.

<sup>140</sup> Personal Communication. Adrienne Paker. July 21, 2014.

<sup>141</sup> Personal Communication. Sam Sehnert.

recommendation letters, provided references and job connections, helped complete applications to Duke University, and even attended a wedding thanks to these relationships. These volunteers invest their time and energy in these kids because present activism ensures hope for the future of Memphis. While Sehnert recognizes that the disproportionate minority contact of black youth in Juvenile Court indicates a difference in opportunity. After all, “if you don’t have a ride home, you’ve got to stay. Some situations that you encounter there [Court] are horrendous.”<sup>142</sup> Instead of complaining about crime rates in Memphis, these volunteer officers actively pursue ways to interrupt cycle of crime. In a city handicapped by historic racism and socioeconomic disparity, these individual efforts to reach across racial, economic, and cultural differences collectively make a substantial difference.

The upcoming judicial election for Juvenile Court Judge reflects the current reformation of the Memphis and Shelby County Juvenile Court. Memphians have the power to shape the Court’s direction and elect civic leaders who prioritize due process and equal protection of the law for all youth. This election presents another opportunity for external activism to intersect with internal institutional change. Chief Magistrate Dan Michael and Judge Tarik Sugarmon are running for Juvenile Court Judge. Dan Michael emphasizes the necessity of ultra-transparency for the Juvenile Court in light of the criticism surrounding the Department of Justice Report. He has fully supported and endorsed the provisions of the Agreement, and if elected, hopes to foster more open lines of communication with the Memphis public. Judge Sugarmon’s campaign motto advocates for a “New Vision” for Juvenile Court and he plans to establish a family outreach center as a networking center for community programs and faith-based resources. Regardless of

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<sup>142</sup> Personal Communication. Sam Sehnert.

the elected candidate, Memphis and its juvenile justice institution call for localized solutions that equally invests in the future of all youth.

### **Reverse the Contemporary Racial Caste System**

The overhaul of the Memphis and Shelby County Juvenile Court coincides with the national crisis that recognizes mass-incarceration as another racial caste system. Michelle Alexander's provocative book *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* pinpoints the stigmatization of African Americans, especially African American males, in the penal system. Alexander argues "We have not ended the racial caste system in America, we have merely redesigned it" and astutely links mass incarceration with earlier forms of racial control such as slavery and Jim Crow laws.<sup>143</sup> For minority youth who encounter crime, poverty, and violence on a daily basis, the literal and symbolic presence of prison bears more resonance than college, and Memphis is no exception. Although the exposure of discriminatory policies within the Juvenile Court exacerbated an already tense relationship between minority communities and government institutions, the painful truth also catalyzed change. The Juvenile Court has been quick to establish more administrative walls, retrain staff and personnel, and raise the standard of legal advocacy and judicial accountability. Yet, this analysis demonstrates the necessity of extended collaboration and cooperation among institutions, neighborhoods, politicians, and individuals to replace punitive measures with restorative justice. Unless all youth in Shelby County have access to quality education, job opportunities, and city amenities, the environmental origins of delinquent behavior will remain. Because the current justice system permanently locks a huge percentage of the African American community out of the mainstream

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<sup>143</sup> Michelle Alexander, "The New Jim Crow: Mass Incarceration in the Age of Colorblindness", (New York: The New Press, 2012), 12.

society and economy, these families and their children are automatically marginalized.<sup>144</sup> The application of restorative justice in the Juvenile Court that guarantees constitutional procedures for all children and replaces criminalization with cultural competency is the first and foremost step to reverse the current race-based cycle of crime.

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<sup>144</sup> Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, (New York: New Press, 2012), 13.

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