Exhibits to Accompany Testimony & Statement of Dean Hill Rivkin before the Senate Judiciary Committee (21 April 2015)

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Juvenile Justice

**Juvenile injustice: truants face courts, jailing without legal counsel to aid them**

Tennessee court procedures highlight national debate over minor offenders' rights

By Susan Ferriss

**Key findings**

- Thousands of minors go to juvenile courts annually for so-called status offenses only the underage can commit — infractions such as truancy, running away, curfew violations and tobacco possession.

- But since these are technically not crimes, even indigent youth have no constitutional right to the appointment of defense counsel before pleading guilty.

- For states to get federal delinquency-prevention grants, courts must abide by federal law prohibiting the jailing of status offenders as immediate post-trial punishment. But it’s not clear these rules are respected.

- A post-trial federal exception allows jailing of status offenders if they have been issued “valid court orders” setting conditions for their behavior and have failed to comply. However, minors must be afforded appointment of a defense attorney before they reach the point of being jailed.

- Despite the federal guidelines, there is little uniformity in state procedures regarding status offenders and their rights, and confusion over interpretation of those procedures.
KNOXVILLE, Tenn. — She was barely 15 and scared at the prospect of being in court. She agreed to plead guilty to truancy. But when Judge Tim Irwin announced what he planned to do with her, the girl known as A.G. screamed in disbelief.

Guards forced the sobbing teen out of the Knox County Juvenile Court and clapped shackles on her legs. She had been struggling with crippling anxiety and what she said was relentless bullying at school. Now she was being led through a county juvenile detention center to a cell with a sliver of a window and a concrete slab with a mattress. For truancy.

“I cried all night long,” A.G. said. “It seemed like everyone was against us in court.”

Like tens of thousands of kids every year, A.G. was in court to answer for a non-criminal infraction that only a minor can commit. These infractions are called “status offenses,” and they can include skipping school, running away, underage drinking or smoking or violating curfews. But since status offenses aren’t technically crimes, indigent minors don’t benefit from the constitutional right to the appointment of defense counsel before they plead guilty.

That meant A.G, whose family couldn’t afford to hire a lawyer, was left with no trained defense counsel to argue that there might be justifiable reasons why she was having so much trouble going to school.

It also meant the girl had no counsel to object to her abrupt jailing in April 2008 — a jailing that lawyers who reviewed A.G.’s file argue exceeded the court’s statutory power during the teen’s first appearance in court.
“A.G.’s incarceration immediately following her guilty plea for truancy, a status offense, was illegal under state and federal law,” asserted Dean Rivkin, a law professor at the University of Tennessee who later represented A.G. and oversees the Knoxville campus’ Education Law Practicum.

Due to litigation that’s pending, Irwin declined repeated request to comment on A.G.’s case or those of other prosecuted truants, some of whom were also jailed.

A.G.’s lockup has never been investigated or reviewed on appeal. But it’s the type of allegation that’s put Tennessee at the center of a national debate over whether status offenders should be guaranteed immediate legal counsel once in court — to ensure minors’ basic rights are respected — and under what conditions they can be incarcerated.

In late February, the nation’s top juvenile justice official quietly asked the Justice Department’s civil rights division to investigate whether Tennessee status offenders were wrongly deprived of legal counsel.

A.G., who was already in counseling, was so shattered by her shackling and detention that when she was released at 7 a.m. the next day her parents took her to a doctor rather than straight to school, as they said they were ordered to do. Their daughter had become suicidal, and she spent the next week in a psychiatric hospital.

**Unraveling the rules**

Forty years ago, a federal law — the Juvenile Justice and Delinquency Prevention Act— actually barred states that receive federal juvenile-justice funds from sending status offenders into detention, reflecting the widespread belief that incarcerating these minors exposes them to danger and bad influences. In 1980, though, Congress amended the 1974 federal Act to allow judges a significant federal exception to the lockup ban. It’s called the “valid court order” exception.

The exception permits jailing as a last resort to try to control status offenders once they’ve pleaded guilty and gone on to violate instructions from the court: the valid court order. But if states want federal funds, lockup as a punitive response is only supposed to occur after courts hold multiple formal proceedings, give children time to comply with instructions, consider alternatives to jail — and take great care to ensure kids benefit from full due process rights, including right to appointment of defense counsel for indigent children.

This chance to obtain defense counsel must be afforded before status offenders face formal accusations that they’ve disobeyed valid court orders and could potentially face jailing or removal from parents’ custody.

This same federal law does allow status offenders to be held in detention before trial for less than 24 hours or over a weekend, but only under limited circumstances — such as credible concern that minors might not appear at a scheduled hearing or because police have found kids wandering on streets and no non-jail shelter space is available, or because parents are not immediately available to pick them up.

If states don’t ensure courts follow these requirements to provide legal counsel and limits on detention, they can get their federal delinquency-prevention grants pulled.

In A.G.’s case, “nobody said anything about an attorney,” said A.G.’s mother, who had no idea what her daughter’s rights were before A.G. pleaded guilty and was taken away and put into detention.

The Knox County District Attorney’s office, which prosecutes truants, said children’s privacy rights prohibit staff from commenting on specific cases like A.G.’s.
“Research has … shown that the minute a youth sets foot in detention or lockup, he or she has a 50 percent chance of entering the criminal justice system as an adult.”

- Robert Listenbee, administrator of the Office of Juvenile Justice and Delinquency Prevention

**A continuing controversy in Knox County**

Since late last year, the Center for Public Integrity has been reviewing previously sealed documents that suggest a vigorous pattern of locking up status offenders in Knox County. Families and attorneys here have also alleged that accused truants with diagnosed mental-health and other difficulties were shackled and jailed straight from court.

Children whose only infraction was struggling with a loathing for school were pulled into the criminal-justice system, branded with permanent delinquency records and jailed with kids who had actually committed crimes, parents complained. All this happened without their kids having lawyers, some parents said, and some children dropped out rather than getting back to an education.

Patricia Puritz, executive director of the nonprofit National Juvenile Defender Center in Washington, D.C., said that across the country there is a disturbing shortage of timely legal representation to ensure kids’ rights are respected when they’re pulled into courts for crimes and for status offenses.

“Little people, little justice,” Puritz said.

In Knox County, a behind-the-scenes disagreement over providing access to counsel continues. Judge Irwin, the county’s elected and sole juvenile court judge, has refused to allow volunteer lawyers to set up a project at the courthouse to offer free counsel to accused truants as they arrive with their parents for hearings, according to Harry Ogden, a Knoxville business attorney who wants to participate in such pro bono representation.

“This project can be a ‘win-win’ for the court, the school system, the D.A.’s office … and — most of all — at-risk children and youth,” wrote Rivkin, the University of Tennessee law professor, in a December 2012 letter to Judge Irwin.

Irwin did not respond to Rivkin’s plea, and has also declined to speak to the Center about his decision not to endorse the pro bono idea, which remains in limbo.

On the court’s behalf, Knox County Law Director Richard Armstrong sent a letter to the Center for Public Integrity that said: “Children and their families are welcomed and encouraged to retain counsel in all matters brought before the juvenile courts of this state.”

But in March of last year, “know your rights” brochures that the volunteer lawyers had left in the court lobby for families of accused truants were removed, according to an email that Rivkin wrote to Irwin and sent to him via the judge’s administrative assistant.

“Needless to say,” Rivkin wrote, “we were surprised to learn that the brochures had been removed from the rack shortly after they were placed there.” Irwin did not respond to Rivkin’s email and an offer to meet to talk about the brochures.

In February, Rivkin also requested that the Tennessee Supreme Court review an appeal of one truant’s conviction; for the last two years, as part of a series of appeals, Rivkin has also been trying, so far in vain, to convince a state court to issue an opinion that would guarantee faster appointment of defense for accused truants.
University of Tennessee law professor Dean Rivkin argues that prosecuted truants should have right to appointed counsel earlier in the process. Lincoln Memorial University/Flickr CC

Heavy penalties, confusing courts

Whether all kids in courts, including status offenders, should automatically benefit from defense counsel is part of a broader national debate over just what legal rights children have, and whether the country’s confusing patchwork of state and local regulations is enough to ensure children are treated fairly.

The National Juvenile Defender Center is leading an ongoing project that dispatches observers to juvenile courts, so they can recommend, state by state, measures to improve proceedings that are supposed to be primarily rehabilitative.

Puritz said observers have witnessed kids facing serious repercussions with no lawyers to advise them, either because they were not afforded counsel, or because they waived rights with a casual shrug that belied their confusion over what was at stake. In 2006, observers reported that half the kids they saw in Indiana courts waived counsel even though the minors were accused of misdemeanors or felonies.

Agitated parents, Puritz added, sometimes hope a rough court experience will scare a kid straight. But parents often fail to grasp, Puritz said, how pleading guilty even to a status offense can lead to penalties that could bedevil minors for years.

In Texas, teen Elizabeth Diaz spent 18 days in an adult county jail when a judge in Hidalgo County began a campaign in 2009 to collect old truancy fines. The judge issued warrants to arrest minors once they turned 17 and force them to pay — or get thrown in jail.

Elizabeth’s $1,600 in fines had been imposed in a court where she had no counsel. She missed her high school exit exam while jailed, the American Civil Liberties Union said, and was traumatized by harassment in jail. A federal court in 2012 ruled that her detention for failing to pay fines she couldn’t afford was an unconstitutional violation of due process.
In Knox County, A.G. was required to return to court a month after being jailed and hospitalized, but she was still not afforded an attorney. Another five months went by before, on her third court appearance, as was then the practice, A.G. was appointed a public defender, for a fee of $100. After several more months, with A.G. continuing to miss school and warned she’d be jailed again, the family was referred to Rivkin at the University of Tennessee campus in Knoxville.

Rivkin was able to put a hold on the teen’s ongoing prosecution and began representing her in negotiations with her school.

A.G.’s case, her lawyers said, illustrates why they believe timely, trained counsel is in the child’s best interest: In spite of increasing difficulties at school, A.G. was not tested for special needs or offered an alternative education plan before her name was turned over for truancy prosecution. Instead, A.G.’s parents said, school staff advised them to ask police to force A.G. out of the house and into the school building. Reluctantly, they followed that advice, but it only deepened the family’s crisis.

School district staff said privacy rules prohibit them from discussing students’ histories. But Melissa Massie, executive director of student support services for the Knox County School District, said that she had not heard of staff advising parents to call police.

She did say, though, that she was critical of some past anti-truancy efforts.

In 2010, approximately 137,000 status offenders like A.G. were “petitioned,” or sent into courts nationwide, more than a third for truancy, according to statistics cited by the Vera Institute of Justice. In Tennessee alone in 2012, more than 9,600 minors were taken to court for truancy.
Robert Listenbee, administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP), supervises legal help to Knoxville area families seeking pro bono special-education services. Like the Vera Institute, Rivkin favors a “counter-narrative” on truancy: When counselors take the time, they find that most chronic truants are struggling with learning disabilities, emotional distress or mental-health illness, bullying, violence or financial or other crises.

Few of these kids or their parents, Rivkin said, can be expected to understand that kids have more options than just pleading guilty in court.

In Tennessee, as in many states, statutes theoretically limit juvenile courts to initially responding to truants who plead guilty by issuing them monetary fines, ordering them to perform community service and putting them on probation, with instructions to follow, and initiating the valid court order process.

States are also expected to conduct audits to monitor how well courts are complying with the limits on putting status offenders in detention. Periodically, federal justice authorities review these state audits to look for patterns of violations.

Last November, Rivkin wrote to Robert Listenbee, the head of the Justice Department’s Office of Juvenile Justice and Delinquency Prevention, suggesting a hard look at the lockups of status offenders in Knox County and the rest of Tennessee. He suspected federal officials — while signing off on grants to the state — were not getting the full story.

In a reply to Rivkin, dated Feb. 28 of this year, Listenbee explained that he had asked the Justice Department’s Civil Rights Division for an “investigation.”

Failure to provide counsel to kids potentially facing incarceration, Listenbee wrote to Rivkin, if true, “would be of great concern to all of us here … and is not in keeping with the best practices outlined by this office.”

**Appealing to higher courts**

In 2011, Rivkin began a prolonged and complex attempt to overturn convictions of four students’ truancy convictions, in an attempt to clarify some of these issues.

He first lost before Irwin, then before the state’s Fourth Circuit and then before a state Court of Appeals panel. He submitted a final appeal this year to the Tennessee Supreme Court on behalf of only one plaintiff. As of May, his review request was still pending.

Along the way, the battle has revealed that judges, lawyers and other officers of juvenile courts can have strikingly different interpretations of laws that can end up critical to a child’s life: Do indigent status offenders have a right to appointed counsel before valid court orders are issued to them, or only after they are accused of violating orders and are thus vulnerable to judges legally jailing them or removing them from their parents’ custody?
In essence, Rivkin has argued that accused truants have the constitutional right of appointment of counsel if not before pleading guilty, then before judges begin imposing court orders that could pave the way to incarceration.

“There may be compelling reasons why the [valid court order] is not warranted due to the juvenile’s mental health condition, due to educational disabilities, due to family circumstances such as lack of transportation, etc.,” Rivkin wrote in his appeal to the Fourth Circuit.

“Without an attorney it is unrealistic to expect a juvenile to make these arguments,” he wrote. Waiting to afford children attorneys until they face imminent potential jailing, Rivkin wrote, is “too little, too late.”

The four original plaintiffs were Knox County students who, like A.G., suffered from significant mental-health stress and had no legal counsel at their side when they pleaded guilty. None could afford to hire attorneys, and some parents said they didn’t dream they would need legal counsel.

None were jailed the same day they pleaded guilty, but they were threatened with jailing, Rivkin’s appeal alleged, if they violated any of a litany of instructions given to them under the label of probation or, in some cases, valid court orders.

The plaintiffs were admonished not to miss another day of school, unexcused, or face jail. They were also told not to get into any trouble at school, and to pay for and attend court-selected counseling programs. They were also ordered to submit to and pay for random, mandatory drug testing, although none faced drug charges.

One plaintiff, a 13-year-old middle school student identified as T.W., was jailed twice, without the benefit of legal counsel first appointed to represent him, according to the appeal.

On a February 2009 mandatory return to court after pleading guilty, T.W. was jailed overnight directly from court because his school reported he had accumulated more unexcused absences after pleading guilty. During another return to court in January 2010, T.W. was given a drug screen that registered positive for marijuana and he was immediately taken into juvenile detention again for several days.

Some kids Rivkin eventually represented at the Practicum were appointed public defenders during their third visit to court.

But Rivkin argued that there was nothing in T.W. or the other plaintiffs’ files proving in writing, as required by state regulation, that they’d agreed to waive the right to defense. Like other parents, T.W.’s mother, Debbie Jones, submitted an affidavit declaring that her son was not informed of his full rights to counsel.

As his appeal moved through courts, Rivkin submitted an affidavit signed by Knox County Public Defender Mark Stephens in 2012 noting that the public defender’s office had no record of a single request from the court between 2010 and fall of 2012 to represent a truant before valid court orders were imposed.

In some cases, including T.W.’s, the court assigned truants lawyers known as guardians ad litem, who advise judges on what they believe is best for children, including removal from the home. But these lawyers are distinct from defense counsel. Minors interviewed by the Center said that their guardians ad litem didn’t object to them being jailed or drug tested, and didn’t raise questions about their schools’ responsibility to evaluate them for special needs — issues Rivkin later raised for truants after he began representing them.

“There is no way of knowing how many children and youth have suffered the consequences our clients did before we began representing them.”

- Dean Rivkin, University of Tennessee law professor
Setbacks

In 2011, in his rejection of Rivkin’s appeal, Judge Irwin upheld his own convictions. In a written order, he said that the four truants entered court and after being advised of “the right to remain silent, the right to confront witnesses against them, and the right to an attorney, chose to enter a plea immediately, without the advice of counsel and offered no justification for … excessive absences.”

But, again, while truants in Tennessee must be informed of the rights that Irwin recited, indigent status offenders don’t have the right to the appointment of a defense attorney if they decide not to plead guilty and want a trial.

After Irwin’s initial ruling, the state of Tennessee and the Knox County D.A.’s office took on the defense of the juvenile court’s practices.

As part of that defense, the state argued that the juvenile court had adhered to proper procedure, including by jailing T.W., and that T.W. had missed a 10-day deadline for appealing his 2009 detention order. The state’s lawyers submitted forms identified as court notes with identical language on them declaring that T.W., during each of his court appearances, was “advised of rights.”

But as Rivkin noted in a filing, the state didn’t challenge the argument that there were no signed waivers in the files of his plaintiffs.

In 2012, in a second rejection for Rivkin, Judge Bill Swann of the Fourth Circuit found that the juvenile court’s actions were generally proper. He didn’t opine on whether he thought T.W. had been appropriately afforded an opportunity for appointed counsel before he was jailed. But Swann did reject Rivkin’s interpretation of federal law, arguing that existing law requires appointment of counsel only after indigent truants have already violated valid court orders and face possible incarceration.

“The constitutional right to counsel only attaches at that point, and not before,” Swann wrote. But he added that the plaintiffs “laudably urge the advancement of a social policy” that only the state’s legislators could change.

Last December, when a Court of Appeals panel also rejected Rivkin’s arguments, the judges found that the plaintiffs didn’t meet the burden of new evidence to justify a review of their convictions.

Knox County District Attorney Special Counsel John Gill told the Center for Public Integrity that the D.A.’s office acknowledges that state and federal law do not permit jailing truants except when valid court orders are issued and kids are informed that they have a right to the appointment of an attorney.

Asked about general allegations that kids were put into detention frequently in recent past years perhaps without understanding their rights, Gill did say: “There were some practices that hadn’t been scrutinized.”

“I’m not saying it hasn’t happened,” Gill said, referring to truants being jailed.

He said that he doesn’t believe that valid court orders are currently being issued in the court to handle truants or that they are being jailed. The D.A.’s interest, he said, is “getting kids back to school, not convictions and not in locking them up.”
How many were shackled, handcuffed and jailed?

In his appeal filings, Rivkin noted that by Knox County’s own count, more than 600 accused truants were called to the juvenile court between 2008 and 2012. But it’s hard to determine who among them was locked up because the court refuses to release detailed detention data that could include reasons for jailing, and whether detention was pre-trial or post-trial and if the kids had counsel.

Without transparent data, Rivkin said, “there is no way of knowing how many children and youth have suffered the consequences our clients did before we began representing them.”

In 2011, Rivkin filed public record act requests asking for lockup information, with juveniles’ names redacted. Irwin declined the request. The judge retained a lawyer for himself, Robert Watson of Knoxville, who has since died. Watson argued in a letter that the records were “confidential and inspection is allowed only if the judge so chooses.”

A Center associate in Tennessee filed a request for redacted juvenile detention records and was told in January that she would have to provide $17,500 in processing costs to Knox County first.

In the meantime, Rivkin was able to obtain, though an unofficial channel, an internal Knox court compilation tracing status offender histories over several years; the document contains no information about whether lawyers were appointed. But it is illuminating nonetheless.

The Center reviewed the compilation, which was submitted to the Fourth Circuit Court. The review found that in 2009 alone more than 50 status offenders identified only by “client” numbers were put into detention. The only charge listed in connection with some lockups was truancy. Most followed a succession of prior appearances and prior detentions for a mix of infractions no greater than truancy, running away, cigarette possession, curfew violation and probation revocation or valid court order violations.

One minor, the records show, appeared in court twice for truancy in 2006 and 2007, and then had probation revoked in 2008 and was put into detention that same year. The same minor was back in court again for tobacco possession in 2008, followed by revocation of probation again and detention again. In 2009, the minor was in court again for revocation of probation and again put into detention.

A young woman, who asked to be identified as K.P., also has a history of cycling through court in Knox County during this time frame.

In February 2008, when she was 15, she pleaded guilty to truancy, without the benefit of an attorney. She was arrested twice later that year and put into detention both times. She was accused of disobeying truancy probation, but she had no valid court order in her file, lawyers at the Practicum who later represented her said.

In September 2008, K.P. was held for several days in detention. There was nothing in her file to indicate that she was being held to ensure she would appear for a court hearing that had been scheduled. In December 2008, K.P. was arrested by police again, this time in front of classmates, while she was attending classes at the same school she was accused of failing to attend.
“Defendant was picked up at [redacted] High School on an outstanding petition for revocation of probation. She was transported to Knox County Juvenile Center,” an arrest report says.

In an interview, K.P. said that being put into handcuffs, shackles and prison garb “only made me want to rebel more.”

She said she originally began refusing to go to classes because of sexual harassment — she was attacked on the school bus she rode daily — and because she had developed anxiety and bladder problems at school. She said her complaints were not addressed at school, and she was not offered an alternative learning option.

“These are not all kids with chains hanging off their belts, in gangs,” said attorney Brenda McGee, who is Rivkin’s wife and collaborates with the Education Practicum, and much later represented K.P.

**State proposal to ensure truants get counsel fails**

In 2012, a fledgling attempt to pass state legislation establishing an immediate right to appointment of counsel for truants quickly died.

The measure failed to get out of a subcommittee after it was estimated the state indigent defense fund would require an additional half a million dollars a year; that sounds modest, said its sponsor, former Sen. Andy Berke, now mayor of Chattanooga. But the increase was too much for some legislators, Berke said, given that less than $2 million out $37 million spent from the fund in 2010 went to juvenile defense.

Because of this failure, Rivkin believes it’s more important than ever to provide pro bono counsel to accused truants.

States’ rules and statutes all vary, and there’s virtually no formal data on the issue, but Rivkin estimates based on his own research that 33 states now ensure a relatively early right to counsel for truants during court proceedings.

In some states, such as Pennsylvania, counsel is automatic and can only be waived after multiple steps to ensure children grasp what they are doing. Pennsylvania was rocked by a scandal a couple of years ago when two juvenile court judges in Wilkes-Barre were found guilty of taking bribes for sending kids who had waived counsel to do time at private detention camps.

Puritz, of the National Juvenile Defender Center, remains concerned that minors, who are being processed through crowded courts, too frequently waive rights even in states with expansive rights to counsel on paper.

The idea to offer pro bono counsel to accused truants in Knox County is modeled after a similar project in Atlanta. Judge Irwin privately confided to lawyers that he didn’t think accused truants had extensive unmet legal needs, according to Harry Ogden of Knoxville’s prominent Baker Donelson firm, one of those attorneys who tried to personally persuade the judge to support the project.
Debbie Jones, a daycare worker, said her 13-year-old son T.W. was jailed twice without a lawyer in Knox County in connection with truancy. Shackling and jailing him, she said, didn't help T.W. overcome his psychological aversion to school and only pushed him away from formal schooling as a teen.  

“He’s a great guy,” Ogden said of the judge, “but when you’re 14 years old, and standing in front of the juvenile judge, then you are probably about as tongue-tied as I was as a third-year law student in front of a judge.”

**Unnecessary drug rehab, diagnoses ignored**

Irwin, 55, is a 6-foot-7 former University of Tennessee football hero who went on to a more than 14-year-pro football career, 13 of those years as a tackle for the Minnesota Vikings. He has plenty of fans in Knoxville who admire his strong support for the local Boys and Girls Club, and gestures like passing out stuffed animals to small kids in court who could be taken from parents due to neglect.

But A.G. and other truants said that the judge, who’s been on the bench since 2005, was intimidating. A.G. said that when she returned to court after her stay in a psychiatric hospital, she tried to tell him about a diagnosis she was given of “school phobia” and bipolar disorder.

“He said, ‘I have a phobia, too. It’s a phobia of kids not going to school,’” according to A.G.

K.P. and her mother today believe that a hostile court environment forced the family into a decision they regret and believe could have been avoided if they’d had legal counsel.

When K.P. tested positive for marijuana while on truancy probation, her mother feared the court would take her child into state custody and foster care. The mother panicked, and scrambled to find space in a secure drug and behavior rehab facility — for nine months — even though she didn’t believe K.P. required such treatment. The move satisfied the court, K.P.’s mother said, but “nearly tore us apart.”

“They walked all over us because we didn’t have a representative,” said K.P.’s mom.

K.P. said, “I lost a year of my life. Being at that rehab center didn’t help at all. It was awful. I felt like I didn’t belong there.”

Debbie Jones, T.W.’s mom and a daycare worker, has stuck with Rivkin’s appeal because she feels the court’s treatment of her son made his problems worse.

Jones told the Center that T.W. loved school as a young boy. “I couldn’t pay him to stay home when he was sick,” she said. But at 13, he became reclusive, and struggled with classroom learning. He pretended to board his school bus and hid out instead of going to classes.

“He said he felt smothered at school,” Jones said.
For all the punitive treatment he received, T.W. never graduated and now he’s too old to be prosecuted. Rivkin is looking for a suitable adult school for T.W., whose phobias make it difficult for him to sit among large groups.

John Gill, the D.A.’s special counsel, said that office has been working more diligently with educators and social workers to address roots of truancy and avoid putting kids into court.

About 80 percent of initial truancy complaints the D.A. gets are resolved now, he said, after families attend the mass meetings warning them to straighten out problems. New petitions — not including ongoing petitions — to prosecute these kids declined to 65 in 2012 compared to 76 in 2011.

Knox County Assistant Public Defender Christina Kleiser said the court’s reaction to truancy seems to have softened. But not long ago, when police were referring to truancy as a “gateway crime,” Kleiser said many truants were getting locked up over weekends to show toughness.

Massie, who leads the school district’s student support services, admits to inconsistent intervention in the past to help struggling students who were frequently absent. Educators, she said, are now required to follow an intervention checklist and convene meetings more promptly with parents so specialists can evaluate students and plan targeted support.

“I think the truancy program is much better than it was before,” she said.

But she said that by statute, the district is still required to provide the D.A.’s office with names of students when they reach more than 10 unexcused absences.

Although his pro bono services remain little known, Rivkin said, two parents did contact him this year complaining that children with emotional problems were threatened at school with jailing if they missed more school. Last fall, Rivkin also met, by chance, Carla Staley, a mom who received a warning letter from the D.A. accusing her son Lowell, 13, who has cerebral palsy, with excessive absences that could land them in court.
National trends, federal teeth

Knox County isn’t the only region where truancy has galvanized community crackdowns. Communities want to increase graduation rates, boost collection of attendance-based funding schools lose when kids are absent, and keep kids off the streets. But aggressive campaigns involving prosecution are attracting scrutiny, especially when minors are not afforded counsel.

In Washington state, another lawsuit over truants’ right to counsel led — briefly — to expansion of that right. In the state’s Bellevue School District, a 13-year-old girl, a Bosnian refugee, appeared at an initial truancy hearing in 2006 with no counsel and signed a promise to attend school or face penalties ranging from community service to “house arrest, work crew and possibly detention,” according to the American Civil Liberties Union. The girl was appointed an attorney only when found in contempt because her absences continued and she then faced imminent punishment.

Asked to weigh in, that state’s Courts of Appeals found that all accused truants had a constitutional right to counsel from the onset of hearings that could lead to penalties. The Washington State Supreme Court overturned that ruling in 2011, favoring the state’s argument that truancy statutes protect a child’s right to education, so no counsel is initially required.

Last December, the board of trustees of the National Council of Juvenile and Family Court Judges took another approach by urging Congress to eliminate the valid court order exception as part of a long-overdue reauthorization of the 1974 federal juvenile justice act. Back in 1980, it was this same judges’ group that urged Congress to include the valid court order exception.

In 2009, Sen. Patrick Leahy, D-Vt., proposed eliminating this exception in the reauthorization of the act — which Congress has still failed to do. And in March of this year, Rep. Tony Cardenas, Democrat from California’s San Fernando Valley, also introduced legislation to get rid of the valid court order.

Federal official Listenbee, a former defense attorney, is also starting to speak out more in his new role as the nation’s top juvenile-justice official.

In a speech he gave last August, he warned that detention should not be taken lightly. “Research has … shown,” Listenbee said, “that the minute a youth sets foot in detention or lock-up, he or she has a 50 percent chance of entering the criminal justice system as an adult.”

In March, Listenbee responded to Center for Public Integrity’s inquiries about when his office believes status offenders’ right to appointment of counsel begins.

Language in the federal regulations does not specifically address whether judges must afford appointment of counsel to kids before they are issued valid court orders, Listenbee acknowledged. But he believes that this is the intent. He also said he doesn’t believe states can claim they’re following the rules unless they ensure that courts provide counsel before valid court orders are meted out.

“All attorneys should be appointed in advance so they can have an opportunity to meet with their clients and properly prepare for the hearings,” Listenbee said. “We make this clear in our training [for state officials] and do our best to emphasize this expectation in communicating with states around compliance matters.”

In January, auditors on a visit from Listenbee’s office found that Tennessee must “prioritize training and technical assistance” to ensure respect for due process and the valid court order process. But auditors only examined 2012 data.
As for A.G. and K.P., they’re both 20 now. It was only last summer, after both young women turned 19, that Rivkin and McGee were legally able to request that Irwin expunge delinquency records the young women said they didn’t even know the judge had given them back when they were teens. The judge granted the requests to expunge the records.

Delinquency records equate status offenders with kids who’ve committed crimes. And they remain on file, if they aren’t expunged. A delinquency record can follow a youth, surfacing to jeopardize job, college and other applications, lawyers warn.

After the Practicum began to represent A.G., more than a year after she was jailed, A.G.’s school finally designed a learning plan that shielded her from crowds of students and bullying and enabled her to graduate in 2011.

Looking back, K.P. said the adults who ultimately helped her finish high school in 2011 were the lawyers at the Practicum, who pushed for the school district to evaluate her for special needs and provide her a special-education plan — after she was twice jailed and put into unnecessary rehab for nine months.

With lawyers’ help, she said, “I actually graduated a year early. So much for being the bad kid.”
Missing class means jail time?
Suit questions Knox court practice for dealing with truancy. LOCAL, 1B

Do truancy punishments fit?

Pair fights to end lockups of young offenders

By Matt Lakin
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865-342-6306

The girl walked to the front of the courtroom alone with no parent or lawyer at her side.
She left court for jail.
"They didn't ask me (any) questions," said her mother. "We went in together, they put her at the front desk and that's when they started doing all the talking. The judge starts talking. The prosecutor starts talking about how she should be put in there every weekend. I was crying with a surprised look on my face. She was screaming, 'Mama, Mama, don't let them take me.' They put her in shackles. There wasn't nothing I could do."

Her crime? Skipping school.
Knox County Juvenile Court officials have locked up more than 140 children over the past four years for truancy, two lawyers claim in an appeal on behalf of four teenagers. All four either went to juvenile detention or ended up on probation, threatened with jail, for failure to attend school.

Lawyers Dean Hill Rivkin and Brenda McGee argue that Juvenile Court Judge Tim Irwin's handling of the cases violated Tennessee law and the children's constitutional rights.
"The petitioners suffered stark consequences," the attorneys wrote in the appeal. "They included limitations on their liberty ... threats of confinement, compelled attendance in fee-based programs, recursive court appearances, random drug screenings and other consequences ... The informality of the proceedings in which these and other youth are prosecuted for alleged truancy has led to the abuses cataloged by the legal claims in these cases. ... The claims elaborated below have infected all truancy prosecutions of students for many years. If left unremedied, these violations will continue unabated."

Rivkin, a professor at the University of Tennessee College of Law, and McGee want to expand their case into a class-action suit to cover other teens they believe were jailed for truancy. The husband-wife team has waged various See TRUANCY, BB
lawsuits over the years on behalf of students, inmates and environmental groups. Irwin said he had nothing to say about the cases. Ethics rules don’t allow judges to discuss pending appeals.

“It wouldn’t be proper,” Irwin said. “This is an official ‘no comment.’”

Fourt District Court Judge Bill Swann, who hears most appeals from juvenile Court, hasn’t ruled on the case or said whether he’ll certify it as a class action.

Kno County prosecutors say nothing done was for the children’s benefit.

“What’s in the best interest of the children is to get them back in school,” Assistant District Attorney General Ken Irvine said in court.

The girl’s parents talked about her case on the condition that neither she nor they be identified by name. She ultimately graduated from high school, and the parents say she doesn’t want her case following her for the rest of her life.

They still wish the law was different.

“I think everyone deserves a chance,” the mother said. “They need to be educated about what rights they have and don’t have. This can happen to anybody. The last time they go to court, they shouldn’t be thrown in jail.”

A SEPARATE STANDARD

Tennessee law treats all residents as equals, at least in theory, unless they’re younger than 18.

Adults can smoke, drink alcohol, stay out late and ignore their parents with little fear of legal consequences. Skip a few days of college classes, and your only worry might be a failing grade.

Elementary, middle and high school students can’t do the same. For them, skipping school means breaking the law, though it’s not technically a crime.

Tennessee law classifies truancy — defined in Knox County as more than five unexcused absences from school — as a status offense, meaning illegal only because of the offender’s age. Chronic offenders can be hauled into Juvenile Court but can’t be jailed solely for missing class.

That’s because state law sets out two standards of guilt for juvenile offenders. Delinquent offenders — those found guilty of what would be a crime for an adult — can face fines and jail. Unruly offenders — those found guilty of status offenses such as truancy or violating a curfew — can face fines, probation, community services, removal from home and referrals to counseling, but not jail.

Various state laws spell out the distinction, and a Tennessee Supreme Court opinion nearly 25 years ago called illegal status acts criminal because they “introduce children who are not just illegal, but unconstitutional.”

“Each person would be a status offense if committed by a child,” the court wrote in 1983. “They have not committed acts such as committing a felony, breaking away from home and being truant from school. Some of these children have also been sexually abused, some have severe emotional problems, and some have emotional disorders caused by family crises. They have not committed any acts that violate the criminal statutes of this state. The only time the status may punish anyone individual is when the state has tried and convicted the individual as a criminal.”

A state attorney general’s opinion restated that rule as recently as 2008.

The only exception to that rule involves what’s known in Juvenile Court as a valid court order — a loophole authorized by federal law and intended as a last resort that allows judges to jail chronic status offenders under specific circumstances. Such orders essentially allow a judge to jail a status offender for ignoring an order — stop skipping school, keep a curfew, don’t run away from home — rather than for the status offense itself.

Even then, state and federal law requires such offenders to be told of their rights, including the right to a lawyer and to an appeal. Critics, who include U.S. Attorney General Eric Holder, have suggested too many courts abuse such orders by using them as first instead of last resorts.

A MURKY LINE

Rydkin and McGee argue in their appeal that well-meaning officials in Knox County somehow lost sight of that distinction and crossed the line from rehabilitation to punishment.

“Almost 150 students were illegally incarcerated,” Rydkin said at the last hearing on the case. “Incarceration is not an appropriate disposition under Tennessee or federal law.” The range of these claims, if upheld, would show a system that while well-intentioned, perhaps, has become unmoored.

Complete details on just what happened in each case remain cloudy because state law seals most juvenile Court records from public view, except in severe criminal cases such as murder or rape. Rydkin and McGee asked Supreme Court, the 4th Circuit Court judge, to unseal portions of the appeal record in the truancy cases at the request of their clients — and over the Initial objections of prosecutors — saying the public deserves to know.

“They are happy to have these pleadings unsealed and open to the public,” Rydkin said.

The records available don’t identify any of the students or list their ages.

In each of the four cases, the student appeared before Irwin, the Juvenile Court judge, without a lawyer and pleaded guilty to truancy, according to court records. That by itself doesn’t break the law.

Unguarded defendants accused of truancy have no right to a lawyer in Tennessee. Remember, a status offense is a status offense.

Officials prosecuted more than 8,300 such cases against Tennessee students last year, according to the Tennessee Council of Juvenile and Family Court Judges.

State Sen. Andy Berke,
D-Chattanooga, introduced a bill earlier this year that would have granted truancy defendants the right to a lawyer. The bill stalled in a Senate subcommittee after a fiscal note placed its potential cost at more than a half-million dollars statewide.

"With a bill like the truancy bill, sometimes what happens is that you need to educate people about both the problem and the solution," said Berke, who's now running for Chattanooga mayor. "When there's a cost involved, that definitely complicates the solution. The problem with truancy is that the punishments tend to compound the issue."

PETITIONS AND PLEAS

Upon hearing the guilty pleas, Irwin declared each of the four students unruly and placed each on probation, according to court records. He went further by placing at least three of the four under valid court orders, threatening all four with jail and locking up at least one, the appeal claims.

Rivkin and McGee say the students weren't offered a lawyer or told they had a right to appeal the judge's decision until well after pleading guilty. They say they can't know for sure how many other students have endured the same treatment because of the secretive nature of Juvenile Court records.

"We filed a subpoena (for records) with Juvenile Court," Rivkin said at the last court hearing. "They fought it."

The average teenager — even the average parent — can't be expected to understand the legal terms used in court or in a truancy petition, let alone the potential consequences, without help from a professional, Rivkin said.

"The petition isn't a simple statement," he argued in court. "It doesn't identify an offense. It's a matter of notice and a matter of plain language. It's incomprehensible to teens."

Prosecutors say that if the students want a lawyer, they should say so. If they don't understand the charge, they shouldn't plead guilty.

"That's why we have parents and guardians come to court with children," Irvin said. "If they don't understand what is meant by unexcused absences, they should ask, and they should ask early. Otherwise they've waived any objection."

Irvin suggests in court briefs that the appeal records don't tell the whole story. All four of the students involved had missed at least 17 days of school, with one showing up for class only three days out of the 2010-11 school year, Irvin wrote. That same student failed drug tests and admitted to a history of smoking marijuana, according to the court briefs.

The probation orders issued by Irwin contain clear and fair warning that "failure to comply with your probation ... could lead to your being placed in confinement," Irvin wrote. "None of the petitioner(s) or their counsel have ever filed a motion for a more specific statement alleging that they did not understand the charges."

A LONG ROAD

Rivkin and McGee moved last year to dismiss the four students' cases. Irwin heard the argument in January 2011 and turned it down.

The judge wrote in his order that each teenager was told of the right to a lawyer, to remain silent and to confront witnesses.

"Each child chose to enter a plea immediately, without the advice of counsel," according to the order. "None of the children offered any justification for their excessive absences."

Rivkin and McGee argue nothing in the original court record supports the judge's claim he offered lawyers to the students. They claim the students, whose cases stretch from April 2008 to January 2010, didn't get to talk to lawyers until fall 2010, when Rivkin and McGee were appointed. If the students agreed to give up their rights, no one wrote it down at the time, they argue.

"The appointment of counsel at this late stage, however, is too little, too late," Rivkin wrote.

Rivkin and McGee appealed Irwin's decision to Swann, the 4th Circuit judge. Swann held the first hearing on the appeal in August and said he'll review each side's briefs. He hasn't set a date for the next hearing.

"Each of you have laid out a landscape very nicely, and now I must navigate every corner," he told the attorneys.
Linda O'Neal, Executive Director  
Tennessee Commission on Children & Youth  
601 Mainstream Drive  
Nashville, Tennessee 37243-0800

Dear Ms. O'Neal:

This letter serves as a follow-up to the Compliance Monitoring Field Audit conducted in Tennessee on September 16 - 20, 2013.

The purpose of the audit was to determine the extent to which Tennessee's system for monitoring compliance with the deinstitutionalization of status offenders, sight and sound separation of adult and juvenile offenders, and jail removal provisions of the Juvenile Justice Delinquency Prevention (JJDP) Act of 2002 satisfy the requirements for monitoring contained in Federal Regulation 28 CFR Part 31. The audit was carried out as an on-site verification of the written materials provided by the State.

Please review the enclosed full audit report and the associated findings and recommendations. If you concur with these findings and recommendations, please respond and describe any corrective action that will be taken, by whom, and within what time period the action will be implemented. If you disagree with a particular finding or recommendation, please let us know your concerns so we can address them. Pursuant to OJJDP policy, the Tennessee Commission on Children & Youth must provide a written response to all findings within 60 business days of receiving this correspondence. At that time, OJJDP will make a final determination as to the adequacy of Tennessee's compliance monitoring system.

We thank you and the staff, specifically, Pat Wade, [REDACTED] and [REDACTED] for assisting the audit team throughout the visit. We look forward to a continued partnership with Tennessee to ensure that the core protections of the JJDP Act of 2002.

Sincerely,

Tina Borner  
Compliance Analyst  
Audit and Compliance Team
cc: Brenda Davis, SAG Chair
     Juvenile Justice Specialist/Compliance Monitor
     DMC Coordinator
     OJJDP State Program Manager

Enclosure
COMPLIANCE MONITORING
AUDIT REPORT

Tennessee Commission on Children and Youth
September 16-20, 2013

Julie Herr
OJJDP Audit and Compliance Team

Tina Borner
OJJDP Audit and Compliance Team

Date of last Compliance Monitoring Audit: July, 2005
TENNESSEE COMPLIANCE MONITORING AUDIT

PURPOSE

A Compliance Monitoring Field Audit was conducted in Tennessee on September 16-20, 2013, to review the State's monitoring practices and procedures as required in Sections 223(a)(11), (12), and (13) of the Juvenile Justice and Delinquency Prevention (JJDPA) Act of 1974, as amended, and to determine the adequacy of State monitoring systems as required in Section 223(a)(14).

The purpose of the field audit was to determine the extent to which Tennessee's system for monitoring compliance with the deinstitutionalization of status offenders (DSO), sight and sound separation of adult and juvenile offenders, and jail and lockup removal provisions of the JJDPA Act satisfies the requirements for monitoring contained in Regulation 28 CFR Part 31 and subsequent guidance provided in the Guidance Manual for Monitoring Facilities under the Juvenile Justice and Delinquency Prevention Act.

The OJJDP Compliance Audit Team consisted of Julie Herr and Tina Borner. Henceforth designated as "OJJDP's Compliance Audit Team", both OJJDP staff conducted multiple tasks during the audit, including: data verification at a range of law enforcement facilities; discussions with officials in localities reporting compliance data; and providing technical assistance to the Tennessee Commission on Children and Youth (TCCY) in its efforts to ensure an adequate system for compliance monitoring in Tennessee. The compliance audit team also advised TCCY on ways to reduce potential violations and maintain compliance with the JJDPA Act.

The field audit was preceded by a review of Tennessee's 2012 compliance monitoring report and written description of its compliance monitoring system. In keeping with generally accepted auditing principles, this field audit was carried out as an on-site verification of the written materials provided by the State.

FIELD AUDIT SCHEDULE

Pat Wade, Tennessee’s Juvenile Justice Director, TCCY Compliance Monitoring Coordinator and [redacted] Northwest Regional Coordinator, were present with the OJJDP Compliance Monitoring Audit Team, at meetings conducted and facilities inspected throughout the course of the week. The following is a description of the persons contacted and the facilities visited during the field audit.

Monday, September 16:

Tennessee Commission on Children and Youth (TCCY)
601 Mainstream Drive
Nashville, Tennessee 37243-0800

Linda O’Neal, Executive Director, TCCY
Brenda Davis, SAG Chair
Rob Mortenson, SAG Vice Chair
Pat Wade, Juvenile Justice Director, TCCY
[Redacted] State DMC Coordinator, TCCY
[Redacted] Compliance Monitor, TCCY
[Redacted] Northwest Regional Coordinator, TCCY
[Redacted] Regional Coordinator, TCCY
Tina Borner, Compliance Audit Team, OJJDP
Julie Herr, Compliance Audit Team, OJJDP

Purpose:
Entrance interview
Review state policy and procedures

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Tuesday, September 17:

North Precinct Police Department (Non-Secure Lockup)
2231 26th Avenue North
Nashville, Tennessee 37208

[Redacted] Sergeant, Metropolitan PD
Pat Wade, Juvenile Justice Director, TCCY
[Redacted] Compliance Monitor, TCCY
[Redacted] Northwest Regional Coordinator, TCCY
Tina Borner, Compliance Audit Team, OJJDP
Julie Herr, Compliance Audit Team, OJJDP

Purpose:
Tour facility;
Review and verify policies/procedures on juvenile holding;
Confirm sight/sound separation;
Verify compliance data

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Tuesday, September 17:

Woodland Hills Youth Development Center
(Juvenile Correctional Facility)
3965 Stewarts Lane
Nashville, Tennessee 37243

[Redacted] Senior Manager, Woodland Hills YDC
[Redacted] Senior Manager, Woodland Hills YDC
Pat Wade, Juvenile Justice Director, TCCY
[Redacted] Compliance Monitor, TCCY
[Redacted] Northwest Regional Coordinator, TCCY
[Redacted] Regional Coordinator, TCCY
[Redacted] Ombudsman, TCCY
Tina Borner, Compliance Audit Team, OJJDP
Julie Herr, Compliance Audit Team, OJJDP

Purpose:
Tour facility;
Review and verify policies/procedures on juvenile holding;
Confirm sight/sound separation;
Verify compliance data

Wednesday, September 18:  
**Sumner County Juvenile Detention (Collocated Facility)**
117 West Smith Street
Gallatin, Tennessee 37066

.records clerk, Sumner County Jail
Pat Wade, Juvenile Justice Director, TCCY
Compliance Monitor, TCCY
Northwest Regional Coordinator, TCCY
Regional Coordinator, TCCY
Tina Borner, Compliance Audit Team, OJJDP
Julie Herr, Compliance Audit Team, OJJDP

Purpose:
Tour facility;
Confirm sight/sound separation;
Verify compliance data

Wednesday, September 18:  
**Cookeville Court Holding Facility (Court Holding facility)**
421 East Spring Street
Cookeville, Tennessee 38501

Asst. Jail Administrator, Putnam County Sheriff Dept.
Pat Wade, Juvenile Justice Director, TCCY
Compliance Monitor, TCCY
Northwest Regional Coordinator, TCCY
Regional Coordinator, TCCY
Tina Borner, Compliance Audit Team, OJJDP
Julie Herr, Compliance Audit Team, OJJDP

Purpose:
Tour facility;
Confirm sight/sound separation.
Wednesday, September 18:

**Putnam County Adult Jail (Jail)**
421 East Spring Street
Cookeville, Tennessee 38501

- Asst. Jail Administrator, Putnam County Sheriff Dept.
- Pat Wade, Juvenile Justice Director, TCCY
- Compliance Monitor, TCCY
- Northwest Regional Coordinator, TCCY
- Regional Coordinator, TCCY
- Tina Borner, Compliance Audit Team, OJJDP
- Julie Herr, Compliance Audit Team, OJJDP

**Purpose:**
- Tour facility;
- Confirm sight/sound separation;
- Verify compliance data

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Thursday, September 19:

**Richard L. Bean Juvenile Service Center**
(Juvenile Detention Center)
3321 Division Street
Knoxville, Tennessee 37919

- Richard L. Bean, Superintendent, RLB Juvenile Service Center
- Pat Wade, Juvenile Justice Director, TCCY
- Compliance Monitor, TCCY
- Northwest Regional Coordinator, TCCY
- Regional Coordinator, TCCY
- Tina Borner, Compliance Audit Team, OJJDP
- Julie Herr, Compliance Audit Team, OJJDP

**Purpose:**
- Tour facility;
- Review and verify policies/procedures on juvenile holding;
- Verify compliance data

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Thursday, September 19:

**Loudon County Juvenile Temporary Holding Facility**
(Juvenile Temporary Holding Facility)
12665 East Lee Highway
Lenoir City, Tennessee 37771

- Detention Manager
- Pat Wade, Juvenile Justice Director, TCCY
- Compliance Monitor, TCCY
Purpose:
Tour facility;
Review and verify policies/procedures on juvenile holding;
Verify compliance data

Friday, September 20:
Tennessee Commission on Children and Youth (TCCY)
601 Mainstream Drive
Nashville, Tennessee 37243-0800

Linda O'Neal, Executive Director, TCCY
Brenda Davis, SAG Chair
Rob Mortenson, SAG Vice Chair
Pat Wade, Juvenile Justice Director, TCCY
State DMC Coordinator, TCCY
Compliance Monitor, TCCY
Regional Coordinator, TCCY
Tina Borner, Compliance Audit Team, OJJDP
Julie Herr, Compliance Audit Team, OJJDP

Purpose:
Exit interview

MONITORING SYSTEM

The Tennessee Commission on Children and Youth (TCCY) is the State agency responsible for administering the Formula Grants Program and for monitoring compliance with the JJDP Act in Tennessee. TCCY currently allot’s a portion of one full-time, central office position to coordination and oversight of the compliance monitoring function. At the time of OJJDP’s audit, this position was filled by [redacted]. Per the State’s three-year plan, [redacted] dedicates 70% of her time to Title II functions, including both compliance and other grant-related activities. She reports to the agency’s Juvenile Justice Director. In addition, the State employs nine Regional Coordinators, who dedicate between 5 and 20 percent of their time to monitoring facilities in their respective regions. All Regional Coordinators report to the Director of Field Operations. For FY2013, TCCY allocated $110,000 in Title II Formula Grant dollars to the compliance function, including $20,000 for Compliance Monitoring and $90,000 for Jail Removal.
Recommendation #1: The decentralized nature of Tennessee’s compliance monitoring system is somewhat unusual and offers both advantages and disadvantages. Should the State opt to maintain its current structure, OJJDP recommends addressing the following:

1) **Training** is a critical component to the operation of an effective system for compliance monitoring. Monitors who spend only a small percentage of their time on compliance activities are, by design, less experienced and apt to be less knowledgeable about compliance-related issues. How will the State work to ensure that all 10 Monitors are consistently and adequately trained?

2) **Similar to the above,** how will TCCY ensure consistency of monitoring practice across all 10 of its Monitors?

3) **A critical function of the Compliance Monitor is to collect information about statewide compliance trends such that emerging issues may be expeditiously identified and addressed at a macro level. How will the State work to ensure that such information is consistently captured and funneled to the central office for consolidation/analysis?**

*Policies and Procedures*

A State must document, in writing, that it has policies and procedures governing the implementation of an adequate compliance monitoring system.

The State of Tennessee has developed a policies and procedures manual for compliance monitoring, which was provided to the OJJDP Audit team prior to the on-site visit. The manual was not organized effectively and does not present a step by step guide to compliance monitoring in the State of Tennessee. The TCCY manual was last revised in December 2010 and appears out of date in many areas. Per the Compliance Monitor and Juvenile Justice Director, there is no regular schedule for updates to the manual’s content. Included in the current version is a section covering each of the 10 elements for an adequate system of compliance monitoring, however, many of these sections are very brief and lacking in detail. OJJDP’s review of the manual revealed some deficiencies, including; missing citations for those State laws that comport with Federal definitions of key compliance monitoring terms, no section dedicated to the State’s recordkeeping and filing system and the section on identification of the monitoring universe includes only a list of facilities, with no description of the actual identification process.

Finding #1: Tennessee’s Compliance Monitoring Manual must be updated to reflect the current compliance monitoring policies and procedures to ensure that it fully details and describes State activities pursuant to how TCCY fulfills each of the ten elements of an adequate compliance monitoring system, including the manner in which compliance information is documented/maintained, both at the regional and State levels. An annual schedule for updates should be developed.
Monitoring Authority

A State must document and describe the authority under which the designated State agency tasked with compliance monitoring enters facilities to inspect and collect data from all facilities in the monitoring universe.

TCCY has historically relied upon a broad interpretation of Tennessee 37-3-103 as its primary source of authority for monitoring compliance with the core protections of the JJDP Act. As per this section, the commission shall:

"...implement the provisions of the Juvenile Justice and Delinquency Prevention Act of 1974; and distribute...such funds as the general assembly shall direct."

Tennessee statute does not provide TCCY with explicit authority to enter, inspect and collect data from facilities for the purpose of monitoring compliance with the core requirements of the JJDP Act; nor does it provide the agency with authority to sanction those facilities that incur repeated violations. Nonetheless, regional monitors indicate that access to facilities for the purposes of inspection or data collection has not been problematic to date.

Recommendation #2: A standardized letter, providing background on JJDP Act monitoring requirements and outlining TCCY’s—albeit limited—authority to implement those requirements, may be useful to regional monitors as they enter and attempt to establish relationships with facilities that are newly added to the State’s monitoring universe.

Recommendation #3: TCCY should consider the pursuit of legislative change or an executive order providing the agency with more explicit authority to inspect facilities for compliance with Section 223(a)(11), (12), and (13) of the JJDP Act, and to collect relevant data. Ideally, this expanded authority would provide access to all facilities (both secure and non-secure) that may hold juveniles pursuant to public authority and/or where violations of DSO, Separation or Jail Removal may occur. In addition, such authority would allow for sanctioning of those facilities that incur repeated violations of the JJDP Act core requirements.

Monitoring Timetable

A State must maintain an annual calendar demonstrating when and where compliance monitoring will occur.

A copy of TCCY’s compliance monitoring timetable is included in the State’s policies and procedures manual. The timetable summarizes the State’s schedule for inspection of various facility types, but does not provide a timeframe for performing identification, classification or other monitoring tasks and does not indicate who has responsibility for completing each task.

Finding #2: The State’s monitoring timetable must include all key compliance monitoring tasks, the party responsible for each, and target completion dates throughout the calendar.
year. *A more specific timeline for inspections that lists all facilities (both adult and juvenile) to be visited within the State's specified time frames and the projected month/year of each visit, is also recommended.*

**Violation Procedures**

A State's monitoring system must describe procedures established for receiving, investigating, and reporting complaints of violations of the DSO, Jail Removal, and Separation core requirements. This should include both legislative and administrative procedures and sanctions.

As per Tennessee's compliance monitoring policies and procedures manual, each regional monitor documents violations on TCCY's "Monitoring Violations Report" and "Detention Statistics Form". Copies of these forms are provided to the central office, with each facility also receiving a copy of the "Detention Statistics Form". In addition, the State's manual indicates that a follow-up letter may be sent to the facility supervisor and/or Juvenile Court Judge, although the Compliance Monitor has noted that violation letters are not utilized. Exact practice appears to vary by region and regional monitor.

As previously noted, Tennessee statute does not provide TCCY with specific authority to sanction violations of the JJDP Act, although staff indicate that Reimbursement Account funds (Title II Formula Grant funds provided to support alternatives to placement in adult jails) may be withheld from those counties with repeated infractions.

**Recommendation #4:** OJJDP strongly recommends documentation of all violations with a prompt follow-up letter to the facility contact, explaining the problem and detailing any corrective action required. Copies of this correspondence should be provided to the TCCY central office and maintained by regional monitors for documentation purposes.

**Recommendation #5:** Oversight of the State's adult jails and lockups is provided by the Tennessee Corrections Institute (TCI) which has been granted authority to decommission those facilities that fail to meet State standards. Although Tennessee statute limits the holding of juveniles in adult facilities, TCCY should consider development of an MOU that ensures its Monitors are promptly informed in the event that inappropriate holds are discovered by TCI inspectors, and provides for coordination of investigative/enforcement activities, as appropriate.

**Definitions**

States may have different definitions for juvenile and criminal justice terms than those provided in the JJDP Act. States must document and ensure that all State definitions that differ from Federal definitions have been identified and that federal definitions will be used in the monitoring process. Notably, States must certify that where State definitions differ from Federal definitions, in the monitoring process, Federal definitions will be utilized.
Although Tennessee has indicated that Federal definitions are used in its monitoring process, the State’s compliance monitoring manual does not include a listing of State definitions or an analysis of those areas where State and Federal law may differ.

Finding #3: A full understanding and awareness of State law and how it differs from Federal is a critical component of an adequate compliance monitoring system and such information should be clearly documented. Tennessee’s compliance monitoring manual must include a description of existing State definitions for key compliance terms and concepts as compared to Federal definitions. The State may find it useful to develop a crosswalk for this purpose.

In general, Tennessee statute was found to comport with the JJDP Act or to exceed Federal requirements for the following key terms/concepts:

- **Non-offender** ("neglected, dependent or abused child")
- **Status offender** ("unruly child")
- **Delinquent Act**
- **Separation**
- **Deinstitutionalization of Status Offenders**

*Pursuant to §37-1-114(b) a status offender (VCO violators excepted) may not be securely detained in excess of 24 hours total. Tennessee law does not allow for 24 hours before an additional 24 hours after an initial court hearing and, therefore, exceeds JJDP Act requirements in this regard.

Tennessee’s laws regarding jail removal are complex and somewhat contradictory. In general, §37-1-116 does not permit juvenile holds in adult facilities (transfer cases excepted) and the law does not allow for a 6 hour jail removal exception. In this respect, Tennessee statute is stricter than JJDP Act requirements. Nonetheless, §37-1-116(a)(4) does appear to permit the detention of delinquent or unruly children in adult facilities in the event that: 1) a juvenile facility is not available, 2) separation from adults is maintained, and 3) the court orders it as necessary for public safety and protection. In addition, §37-1-116(h) allows for a rural exception as provided in the JJDP Act. The extent to which either of these provisions is utilized remains somewhat unclear, although the State typically reports no violations of the jail removal requirement, and staff indicate that no jurisdiction has, thus far, sought certification from the Tennessee Corrections Institute to use the rural exception.

Identification of the Monitoring Universe

All facilities in the State that might hold juveniles pursuant to public authority must be identified and included in the monitoring universe. Every facility that has this potential, regardless of the purpose for housing juveniles, comes under the purview of the monitoring requirements. This also includes those facilities owned or operated by public and private agencies.

As previously noted, Tennessee’s compliance monitoring manual does not provide a description of the State’s identification process and, per discussions with State staff, the monitoring universe has not been updated in many years.
**Finding #4:** The following are facility types that were observed to be missing from the Tennessee monitoring universe: police sub-stations, State police barracks, campus police, and non-secure facilities of all types. In addition, the following facility types were found to be present but potentially underreported in the Tennessee monitoring universe: court holding facilities and prisons.

The State’s process for identification must be designed to ensure that all facilities—both secure and non-secure—that might hold juveniles pursuant to public authority and/or where violations of DSO, Separation or Jail Removal could occur, are promptly identified and incorporated into the monitoring universe. This process must be documented in the State’s Compliance Monitoring Manual. A strong and effective system for identification draws upon information from multiple sources. For example, entities such as the Tennessee Sheriffs’ Association, the Administrative Office of the Courts, the Tennessee Association of Chiefs of Police, and the Tennessee Department of Mental Health and Substance Abuse Services, should be contacted annually to obtain information about facilities within their purview. A comprehensive list of agencies/key personnel to be queried as a part of the annual identification process should be provided in the State’s manual with contact information for each. TCCY must update its monitoring universe such that the above-noted facilities are fully represented. Within 60 days of receipt of this report, the State must submit an updated monitoring universe to OJJDP.

**Classification of the Monitoring Universe**

Classification of all facilities in the monitoring universe is required in order to determine facility type (e.g. juvenile detention or correctional facility, adult correctional institution, jail, lockup, or other secure or non-secure facility). In addition, the classification process determines whether each facility is secure or non-secure, public or private, and whether the population is juveniles only, adults only or juveniles and adults. This information is critical to determining the applicability of each core requirement to each facility.

At the time of this audit, TCCY staff indicated that classification of the monitoring universe had not been recently updated. In addition, the State had not fully classified its facilities in accordance with OJJDP parameters, as noted above. While the State’s compliance monitoring manual includes a brief section on classification, a description of TCCY’s classification process is not provided.

**Finding #5:** All facilities in the monitoring universe must be classified as secure/non-secure, public/private, residential/non-residential and for juveniles only, adults only or for both juveniles and adults. When determining facility-type, the State must ensure that Federal definitions are utilized. This classification must be updated on an annual basis and verified through the on-site inspection process. The State’s process for the classification of facilities must be documented in its policies and procedures manual.

**Recommendation #6:** To better facilitate prompt and accurate classification of those facilities
that may not be subject to frequent inspection (for example, law enforcement facilities that are believed to be non-secure) OJJDP strongly recommends implementation of an annual survey/questionnaire by which such facilities may self-report their current classification. As noted above, this classification must subsequently be verified on-site within a reasonable timeframe.

Inspection of Facilities

Inspection of facilities is required to confirm classification and to verify that adequate Sight and Sound Separation is provided between juvenile and adult inmates. Such inspections are necessary to validate the protections required by the Act and to determine whether adequate data is maintained to show compliance with the core requirements.

Although the Tennessee compliance manual includes a list of tips for Monitors on how to prepare for facility inspections, standards for the actual process of inspection are not provided. As per the manual, all juvenile facilities are monitored monthly, while adult jails and lock-ups are subject to semi-annual inspection. However, conversations with the TCCY Compliance Monitor and a copy of the State’s 2013 monitoring plan suggest the following is a more accurate representation of the State’s inspection targets:

<table>
<thead>
<tr>
<th>Facilities</th>
<th>Frequency of TCCY Site Visits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jails &amp; Lockups</td>
<td>100% annually</td>
</tr>
<tr>
<td></td>
<td>(large facilities may be inspected more frequently)</td>
</tr>
<tr>
<td>Juvenile Detention Centers</td>
<td>quarterly or monthly (facility dependent)</td>
</tr>
<tr>
<td>Juvenile Correctional Facilities</td>
<td>annually or quarterly (facility dependent)</td>
</tr>
<tr>
<td>Temporary Holding Facilities</td>
<td>quarterly</td>
</tr>
<tr>
<td>Court Holding Facilities</td>
<td>unclear - no standard specified</td>
</tr>
<tr>
<td>Adult Correctional Facilities (prisons)</td>
<td>unclear - no standard specified</td>
</tr>
<tr>
<td>Non-Secure Law Enforcement Facilities</td>
<td>N/A - not included in the State’s universe</td>
</tr>
<tr>
<td>Shelter care facilities</td>
<td>N/A - not included in the State’s universe</td>
</tr>
</tbody>
</table>

**Finding #6:** As noted above, the TCCY monitoring universe does not include shelter care facilities or law enforcement facilities believed to be non-secure, and these facility types are therefore, not inspected. Inspection rates for court holding and adult correctional facilities are unclear. Per OJJDP policy, all non-secure facilities must be periodically spot-checked to verify their non-secure classification. In the case of prisons, the State should also perform spot checks to ensure facilities do not provide programming that violates the JJDP Act core requirements. Court holding facilities must be inspected at a minimum rate of 10% annually. OJJDP strongly recommends a rate of 33% annually and 100% over a three year period.
All inspection processes and target inspection rates must be clearly documented in the State’s compliance monitoring manual. TCCY should work to ensure that its written compliance materials are consistent and accurately reflect the State’s current practice.

TCCY performs all data collection and verification as a part of its on-site inspection process and, therefore, completes a “Detention Statistics” form to document each inspection. These forms are retained in the individual facility file.

Finding #7: The State’s on-site inspection form does not currently provide space to indicate how sight/sound separation is maintained at each facility or whether adequate data are maintained. This information must be documented as a part of the inspection process. Space should also be provided to note any non-secure areas that are used for status offender holds.

Recommendation #7: Although TCCY is to be commended for its diligent attention to on-site monitoring at the State’s juvenile detention facilities, in the future the agency may wish to consider decreasing its inspection frequency in these facilities to ensure sufficient staff time for inspection of other facilities (e.g. law enforcement sub-stations, court holding, etc.) that have not previously been included in the State’s monitoring universe. Implementation of a remote data-collection plan, would help to ensure that the State’s juvenile facilities maintain a low violation rate, even in the absence of monthly/quarterly inspections.

Data Collection/Verification

Data collection and on-site data verification are required to determine whether facilities in the State are in compliance with the applicable requirements of DSO, Separation, and Jail Removal. On-site data verification must involve the review of data self-reported by a facility, including a review of the facility’s admissions records and/or booking logs.

As previously noted, TCCY’s Regional Monitors collect and verify all compliance data from both juvenile and adult facilities during the course of on-site inspections, which occur at least annually (in some cases, juvenile facilities provide electronic data in advance of the Monitor’s visit). The exact procedures used for this data review appear to vary by Monitor.

TCCY’s written policies note that all usages (100%) of the Valid Court Order exception (VCO) are verified. To the extent possible, this verification is performed during facility inspections. Per two Regional Monitors, they did not know they had to review and verify the use of the Valid Court Order (VCO) in the facilities they monitor. This revelation does highlight the inconsistencies between Regional Monitors. OJJDP reviewed the 2012 Compliance Monitoring report where information indicated that the VCO was used 212 times. With 5 of the total 63 reported DSO violations attributable to a violation of a valid court order. Data not available in facility files is obtained from probation officers or at the local courthouse. For purposes of its VCO process, TCCY has also developed a checklist of due process requirements, however, it is not clear that this information is consistently verified. Again, both the method and extent of VCO verification appear to vary by Monitor.
Finding #8: TCCY must ensure that all Regional Monitors are verifying the usages of the VCO and other due process rights. The State, at a minimum, must also randomly verify 10% of all uses of the VCO exception statewide. The verification includes a hard file review to ensure compliance with VCO requirements. Violations of the VCO process, where noted, must be projected accordingly. TCCY should prioritize training and technical assistance for Regional Monitors in an effort to ensure all compliance monitoring duties are followed and understood.

Recommendation #8: A review of the “Data Collection and Verification” section of TCCY’s compliance manual reveals several areas where guidance is provided as per State law, rather than Federal requirements. For example, guidance on monitoring for Juvenile Detention facilities indicates that a status offender may not be held securely in excess of 24 hours. Federal rules permit an accused status offender to be held in a juvenile facility for 24 hours prior to and an additional 24 hours following an initial court appearance. It is important that data are reviewed in accordance with Federal requirements to avoid over-reporting of violations.

COMPLIANCE DATA VERIFICATION

This field audit included on-site, data verification at each of the following facility types: adult jail, non-secure law enforcement facility, juvenile detention center, collocated facility, and juvenile correctional facility. Data collected on-site was verified against the 2012 Compliance Monitoring Report for the reporting period of 1/1/2012 – 12/31/2012.

North Precinct Metropolitan Police Department of Nashville & Davidson County (Non-Secure Law Enforcement Facility)
2231 26th Avenue North, Nashville, TN 37208

The North Precinct Metropolitan Police Department is housed in relatively new building adjacent to a community center in the Northern part of Nashville. The facility, originally constructed in the 2004, primarily functions as administrative offices. It also includes a non-secure interview room and conference rooms.

A tour of the North Precinct Metropolitan Police Department was provided by SGT [Redacted]. All areas of the building were inspected. It was determined that there were no cells, secure holding rooms, cuffing rails or cuffing benches in the facility. No juvenile or adult offenders are brought to this facility for processing. All arrested juveniles are transported to the nearby juvenile detention center. Juveniles are only in the building for interview purposes.

Based upon the results of this facility inspection the OJJDP audit team verified that the North Precinct of the Police Department is a non-secure law enforcement facility. As such, there was no data to review. This facility is not currently a part of the TCCY monitoring universe.
See Finding #6 above.

Woodland Hills Youth Development Center (Juvenile Corrections Facility)
3965 Stewarts Lane, Nashville, Tennessee 37243-1297

Set in suburban Nashville, the Woodland Hills Youth Development Center was originally constructed in the 1990’s on the grounds of the former Spencer Youth Center facility, and is surrounded by a high fence, curved at the top. The facility currently serves a statewide population of post-adjudicatory males, ages 13-18, with an average stay of approximately 10 months. Run by the State’s Department of Children’s Services (DCS), Woodland Hills has a maximum capacity of 144. Its population on the date of this audit was 109.

A tour of the facility was provided by [redacted] and [redacted] Senior Managers, and included administrative areas, medical, a residential pod, and records. It was determined in the course of conversations with staff that Woodland Hills does make use of inmate trustees, although no violations of the Act’s separation requirement were observed during this visit. The facility’s written policy, WHYDC- 18.27-1 “Use of Adult Inmate Labor at Youth Development Centers,” was provided to the audit team. Adult trustees at Woodland Hills have one of two official job duties. “Inmate Maintenance Workers” perform lawn care in those areas beyond the facility’s fence and main gate. “Warehouse Inmate Workers” have responsibility for stocking the warehouse, also located beyond the fence’s perimeter, but within sight of some student areas. Although the facility’s policies directly address visual/verbal contact between inmates and students for the first of these identified positions, similar provisions are not included in the policies for warehouse workers.

Recommendation #9: The Woodland Hills YDC policy 18.27-1: “Use of Adult Inmate Labor at Youth Development Center,” contains separate written local procedures for both the Warehouse Inmate Worker and the Inmate Maintenance Worker. In general, OJJDP recommends against the use of adult trustee labor at juvenile facilities. Should the Woodland Hills facility opt to continue this practice, procedures for both positions should clearly prohibit contact of any kind between students and inmates. In addition, both should provide protocols for avoiding contact at those times when students are within sight lines of designated work areas. The presence of inmate workers within the facility and fence perimeter should also be clearly prohibited.

The OJJDP audit team reviewed admissions data for January, April, July and October of calendar year 2012 and verified that no status, non-offenders or adult offenders were held during the period in question. No unreported JJDP Act violations were noted.

Recommendation #10: In the interests of simplifying and reducing the time necessary to complete the State’s data verification process at Woodland Hills, the TCCY Regional Monitor should coordinate with the facility’s records clerk on the development of a more tailored admissions report that better specifies the information needed by the Monitor.
Sumner County Detention Center (Collocated Facility)
117 West Smith Street, Gallatin, Tennessee 37066

Administered by the Sumner County Sheriff’s Department, the Sumner County Juvenile Detention Center is collocated with the County Jail—a large and sprawling correctional facility, with a diverse male/female population of County, State and Federal prisoners. On the date of this visit, the jail housed 750 adult inmates, including two transferred youth. Situated in a separate wing of the same building, is the small, windowless Juvenile Detention Center, which features 5 cells and has a total capacity of 5 male and/or female juveniles. Only one juvenile was in custody on the date of this audit. Per facility staff, youth are held in the juvenile portion of the center for a maximum of three days. Educational services and other programming are not provided. In accordance with TCA 37-1-116, the Juvenile Detention Center employs its own separate staff.

[Redacted] Jail Records Clerk, provided a tour of both facilities for the OJJDP audit team. Youth enter the premises through a secure door in the administrative portion of the building and are led directly to the juvenile area. No program areas are shared by the two facilities and there are no windows between the juvenile and adult portions of the building. Those youth with felony charges who remain subject to juvenile court jurisdiction, are taken to the adult jail’s booking area for fingerprinting and photographing and subsequently returned to the Juvenile Detention Center. This booking area is, reportedly, the only portion of the building utilized by both juvenile and adult inmates. Per [redacted] jail staff are alerted in advance to ensure that all adult inmates have been removed prior to juvenile bookings, however, these protocols are not noted in the Juvenile Detention Center’s policies and procedures manual. Adult trustees are reportedly utilized for lawn care and for indoor tasks on only the jail side of the facility. Although no problems were observed on the date of the Audit Team’s visit, policies addressing trustee movements also appeared absent from the county’s written manual.

Recommendation #11: Time-phasing and other practices designed to ensure separation between adult inmates and juveniles en route to the adult booking area should be fully documented so as to ensure that all staff (both juvenile and adult) are familiar and compliant with proper procedures. Sumner County’s written policies should also clearly document all rules and procedures for maintaining separation between juveniles and adult inmates trustees.

Recommendation #12: In the course of the Audit Team’s visit, it was noted that the wall between an administrative portion of the juvenile facility and a jail corridor cuffing bench (utilized during the transport of adult inmates) provides for poor sound separation between the two areas. Although the possibility of communication between juvenile and adult inmates under these circumstances seems remote, staff should ensure that adults cuffed to the relevant cuffing bench remain silent and are fully supervised at all times.

The Sumner County Juvenile Detention Center utilizes a handwritten, paper log book to record all juvenile admissions. For the purposes of data verification, the Audit Team reviewed logs for the months of January, April, July and October of 2012. A similar sample of adult jail logs was also reviewed. Pursuant to this review, five juvenile files were pulled to verify unclear or ambiguous charges.
Cookeville Court Holding Facility (court holding facility)
421 East Spring Street, Cookeville, Tennessee 38501

The Cookeville Court Holding Facility is a part of the larger Putnam County Justice Center, which also includes the Putnam County Jail. A tour was provided by Assistant Jail Administrator. All court holding cells are located adjacent to the facility’s various court rooms and may be used by either adult or juvenile detainees, dependent on the type of hearings taking place at the time. Juvenile court is held on specific days and times that are different from the adult court hearings. All cells were found to be non-residential and, per staff, none are used for purposes other than court holding. The facility does not typically use logs to record time in or out of the court holding areas.

While the county’s practice of providing for separation through its hearing schedule is common and appears sound, it does not maintain a manual that documents these procedures in writing.

Recommendation #13: TCCY should work with the Putnam County Justice Center to ensure that practices (time phasing, etc.) utilized to maintain separation within the court holding area are clearly documented.

Putnam County Jail (Adult Jail)
421 East Spring Street, Cookeville, Tennessee 38501

Originally constructed in the early 1990s, the Putnam County Jail is located in the county’s Justice Center complex. Its current capacity is 252 adults, with 182 in residence on the date of this audit. Per staff, no youth under the age of 18 are held at this facility for any length of time. Juveniles bound over to the adult system are housed at the nearby juvenile detention center until they reach age of 18.

Data from the facility’s computerized admissions system was reviewed for the months of January, April, July and October, 2012. The review verified no juvenile holds for the period in question.

Richard L. Bean Juvenile Service Center (Juvenile Detention Center)
3221 Division Street, Knoxville, TN 37919

Located in the city of Knoxville, the Richard L. Bean Juvenile Service Center was originally constructed in 1975, with subsequent renovations occurring in 1990 and 2000. The facility’s current expansion will allow for all juvenile court proceedings to be collocated within the building. On the date of this audit, the Center’s capacity was 120 pre-/post-adjudicatory youth ranging in age from twelve to seventeen. A total of 24 juveniles were in residence. Per Superintendent, Richard L. Bean, alternatives to detention are utilized to keep the facility’s population low. A tour of the Center included residential pods, classrooms, the library, laundry,
and common areas. No adult trustees were observed during the course of this visit. As per staff, trustees are not utilized at the facility in any capacity.

Data from the Center's computerized admissions system was reviewed for the months of January, April, July and October of 2012. Pursuant to this review, a number of individual files were also pulled to verify unclear or ambiguous charges. In several instances, additional information was requested from court files maintained off-site. The audit team's review revealed no unreported violations at the facility for the 2012 reporting year.

The Bean Service Center reportedly contracts with the Tennessee Department of Children's Services (DCS) and 13 local counties to hold youth. It was noted that staff do not receive adequate charge information from the DCS or the contracted local counties on youth being held.

**Recommendation #14:** The Richard L. Bean Juvenile Service Center should write into their contracts with DCS and the local counties that originating offense information must be provided at the time of admission. In general, copies of all court orders and charging information relevant to a given youth's status as a delinquent or status offender, should be maintained on site within the youth detention files.

**Loudon County Temporary Holding Resource Facility (Juvenile Detention Center/THR)**

12665 E. Lee Highway, Lenoir City, TN 37771

The Loudon County Juvenile THR is located in a rural area of central Tennessee. A tour was provided by Detention Manager, [redacted] On the date of this visit, no juveniles were in residence at the facility, which limits all holds to a maximum of 72 hours by State statute. Per the Loudon THR's written policies and procedures, all status offender holds (excepting VCO violators) are limited to 24 hours, regardless of secure or non-secure status. The facility is very small, with a total capacity of 4 pre-adjudicatory youth (four cells). Two cells were identified by staff as secure and two as non-secure.

**Finding #10:** It was noted that the two holding areas identified by Loudon staff as non-secure do have hardware secure features that allow them to be locked and utilized for secure custody. Per Federal definitions, a youth held in either of these cells must be considered as securely detained. This is true even if the cell door remains open. Although OJJDP's audit revealed no evidence of status offenders held in excess of 24 hours in any portion of the facility, all four cells must be correctly labeled to reflect their secure status.

The Loudon THR had a total of 116 admissions for the 2012 calendar year. A review of the facility's admissions logs for January, April, July and October revealed no unreported violations.

**DOCUMENTS RECEIVED**

The following documents were received from the State of Tennessee in preparation for this field audit:
- Agenda, Tennessee Field Audit, September 16 – 20, 2013
- TCCY’s *Compliance Monitoring Manual*, revised 12/10
- Tennessee’s Juvenile Arrest Logs

The following documents were received on-site as part of the field audit:

- Richard L. Bean Juvenile Service Center, Facility Map
- Loudon County Government Policy and Procedures Manual for the Loudon County Juvenile Department
- Loudon County Juvenile Detention Center, Facility Map
- North Precinct Metropolitan Police Department, Facility Map
- Woodland Hills Youth Development Center, Policy on the Use of Adult Inmate Labor at Youth Development Center
February 28, 2014

Mr. Dean Hill Rivkin
College of Law Distinguished Professor of Law
Supervising Attorney, the UT Education Law Practicum
1501 W. Cumberland Ave.
Knoxville, TN 37996-1810

Dear Mr. Rivkin,

Thank you for your letter dated November 6, 2013 regarding your concerns with the Tennessee Commission on Children and Youth (TCCY) and the state of juvenile justice in Tennessee. It was a pleasure to meet you at the National Juvenile Defender Center Summit last fall and I very much appreciate the work that your group and Ms. Simpkins perform on behalf of children and families in your state. After some time, I have now had an opportunity to discuss some of the issues you raised with my staff and wanted to provide a response.

As you are aware, the state of Tennessee is a participating state with the Office of Juvenile Justice and Delinquency Prevention’s (OJJDP) Formula Grants program, as authorized by the Juvenile Justice and Delinquency Prevention Act (JJDPA) of 2002 (Public Law 107-273, 42 U.S.C. § 5601 et seq.). As such, each participating state must commit to achieve and maintain compliance with the following requirements of the JJDPA Act: Sections 223(a)(11) ("deinstitutionalization of status offenders" or "DSO"); Section 223(a)(12) ("separation"); Section 223(a)(13) ("jail removal"); and Section 223(a)(22) ("disproportionate minority contact" or "DMC"), the four "core" requirements.

The TCCY serves as the designated state agency in Tennessee to work in partnership with OJJDP to implement the requirements of the JJDP Act in the state. Pursuant to the JJDPA, the TCCY provides annual assurances through a written narrative and data that compliance with all core requirements is achieved and maintained in order to receive funding. Since 2006, the state of Tennessee been found to be in compliance with all of the requirements of the JJDPA and has provided all required documentation to OJJDP to verify the level of compliance achieved.

OJJDP is committed to ensuring that participating states work diligently and continuously towards achieving and maintaining the goals outlined in the JJDPA. Pursuant to Section 223(a)(15) and 28 CFR Part 31.303(f), this Office conducts detailed, on-site compliance audits to
determine the adequacy of each state’s compliance monitoring system and to verify the data submitted in the state’s compliance monitoring plan.

As outlined in the OJJDP Guideline Manual-Audit of Compliance Monitoring Systems-Dated August 2000, Chapter 2(14)(c), “The verification of compliance data proceeds at two levels. First, the OJJDP auditor should determine that the data collected by the state are compatible with the data presented in the state compliance monitoring report. The second level of data verification focuses on data collection by local facilities. Through the on-site facility visits, the OJJDP auditor will determine whether the sample facilities are correctly reporting compliance violations. The state should have from each facility a report giving the total number of admissions to that facility in violation of the JJDPAs.” OJJDP relies on this audit process to verify the accuracy of the data submitted in each state’s compliance monitoring plan.

On September 16-12, 2013, OJJDP conducted a Compliance Monitoring Field Audit in Tennessee. The audit included interviews with senior TCCY staff including Ms. Linda O’Neal, Executive Director, Ms. Pat Wade, Juvenile Justice Director, as well as Ms. Brenda Davis, Tennessee State Advisory Group Chair. As a result of that audit, OJJDP identified nine findings that TCCY is required to formally address. In addition, OJJDP identified a number of recommendations aimed at improving the state’s JJDPAs compliance monitoring system. With respect to the findings OJJDP identified during the audit, while deficiencies were noted in several areas, the compliance data presented and verified did not contain glaring inconsistencies and upon review, the integrity of the data appeared sound. Additionally, all of the facilities visited and participating agencies were reported to be fully compliant with the audit and provided all requested information and data. To date, we are pleased with how responsive the state of Tennessee has been in working to resolve the identified compliance audit findings and look forward to assisting the state resolve all outstanding issues. As my staff indicated, we would be happy to provide a full copy of the Tennessee Compliance Monitoring Audit Report at your request. To obtain a copy of this report, please submit a Freedom of Information Act (FOIA) request to Ms. Dorothy Lee, FOIA Coordinator, U.S. Dept. of Justice, Office of Justice Programs, Office of General Counsel, 810 7th Street NW, Room 5337, Washington, DC 20531. You may contact her at DorothyA.Lee@usdoj.gov.

In addition to working with each state to document the level of compliance achieved as demonstrated in the compliance monitoring reports submitted to receive Formula Grants funding, OJJDP provides training and technical assistance either directly from this office or through consultation with one of our contracted expert providers when needs are identified or when requested by the state. As you noted in your correspondence, OJJDP has been very engaged with the state of Tennessee and has worked in close concert with the Department of Justice’s Civil Rights Division to provide training and technical assistance aimed at improving the juvenile justice system. OJJDP, through our training provider, the State Training and Technical Assistance Center (STTAC), last provided compliance training via webinar during the summer of 2013; and we stand ready and committed to our continued work with the state of Tennessee to
help improve the conditions for all of the children and families who come into contact with the juvenile justice system.

In your correspondence, you noted what you believe to be the improper incarceration of juveniles in the state of Tennessee. You also mentioned a due process concern. You stated that "status/unruly offenders do not have a right to counsel." As you might imagine, should this allegation be true, it would be of great concern to all of us here at OJJDP and is not in keeping with the best practices outlined by this office. To address the due process issues you raised, OJJDP has made a referral to the Department of Justice’s Civil Rights Division, Special Litigation Section, for follow-up and investigation. The Civil Rights Division of the Department of Justice works to uphold the civil and constitutional rights of all Americans, and has expertise in working to resolve some of the issues you have mentioned. As a means to follow-up on this referral, you may direct your inquiry to Mr. Jonathan M. Smith, Chief, Special Litigation Section, at 1-877-218-5228. Once the Civil Rights Division has begun its formal process, OJJDP will work closely with it to address any issues raised. We welcome the opportunity to continue our work with our Civil Rights Division in the state of Tennessee, and, if your allegations are proven correct, are prepared to offer specific training and technical assistance as needed.

Again, thank you for your concern and service to the children and families in the state of Tennessee. Your commitment to those you serve should be commended and I truly appreciate your advocacy for those underserved, at risk, populations in need. OJJDP is committed to ensuring that all young people involved with the juvenile justice system receive all of the protections afforded under the Constitution. We are diligently working with states and localities to create an environment so that when children enter the juvenile justice system, it is a rare event; children receive a fair and balanced implementation of justice; and involvement is of benefit to the children and families that are served. We support your efforts aimed at juvenile justice system reform in Tennessee and hope we can work together to continue to support the efforts made by TCCY to reshape the current juvenile justice system for the benefit of the children of Tennessee.

Sincerely,

Robert Listenbee
Administrator
Office of Juvenile Justice and Delinquency Prevention

CC: Jonathan M. Smith, Chief, Special Litigation Section, Civil Rights Division, U.S. Dept. of Justice
November 6, 2013

Robert L. Listenbee  
Office of Juvenile Justice and Delinquency Prevention  
U.S. Department of Justice  
810 7th Street, N.W.  
Washington, DC 20531

Dear Administrator Listenbee:

Thank you for meeting with us and the Memphis group at the NJDC Summit on Saturday. We have been communicating with Sandra Simpkins about the state of juvenile justice in Tennessee and we have very much appreciated her efforts to understand and to improve the situation. Last spring, we recounted to Sandra our concerns about the continuing secure detention of status (“unruly” in Tennessee) offenders in our county (Knox, the third largest in the state). From anecdotal accounts from lawyers and others around the state, we believe that such incarcerations are also occurring in other counties around the state.

The majority of these lock-ups are post-adjudication, and not pursuant to Valid Court Orders (VCOs). In 2012 alone, there were 26,247 status/unruly offense petitions filed in Tennessee – 9,634 of which were for truancy. These statistics are taken from the website of the Tennessee Administrative Office of the Courts. In Tennessee, status/unruly offenders do not have a right to counsel.

For the last four years, our Education Law Practicum has represented select clients in truancy cases in Knox County. We took on these cases after our clients had pleaded guilty and had been in the juvenile truancy system for years. In reviewing their juvenile court files, we learned that several of them had been incarcerated in the local juvenile detention facility following their adjudications. Their incarceration was not pursuant to the VCO exception, which Tennessee has adopted in its Rules of Juvenile Procedure.

In investigating our clients’ cases, we learned (from several juvenile court staff members) that unruly offenders were routinely being incarcerated in Knox County. We also received statistical compilations, going back to 2007, which reflected the number of such detentions. We took this documentation to the Tennessee Commission on Children and Youth (TCCY) and urged the agency to amend its annual reporting to OJJDP, which we obtained, to reflect the true numbers of unruly incarcerations in Knox County.

In conversations and written communications with the Director of TCCY and her staff, we concluded that TCCY did not fully comprehend their monitoring responsibilities under the JJDPA. TCCY also was not adhering to its three-year plan to remediate DSO violations. TCCY did not provide satisfactory explanations of their practices, and we knew that lock-ups of unruly offenders continued in Knox County.
In January, 2013, we learned that OJJDP had conducted training for TCCY. We also learned that Tennessee would be audited sometime in the near future. In the spring of 2013, we expressed our concerns about this issue to Sandra Simpkins and conveyed our desire to contribute to the audit. We sent Sandra the attached newspaper story about unruly offenders being locked up in Knox County, and she said that she would convey our concerns to you.

In July, 2013, I received a call from Gregory Thompson, who said that he was responding to our concerns on your behalf. I offered to send him the data that we had accumulated and to brief him on the problem. He said that two OJJDP staff members would be assigned to the audit and would conduct their own review. In September, 2013, we also spoke to Will Bronson, whom we understood was over the audit. He said he would communicate the substance of our phone conversation to his team, but he did not take us up on our offer to send him the data that we had provided to TCCY nor our offer to meet with the team while they were in Tennessee. He also said that we could file a FOIA request in several months (no earlier than November, 2013) to obtain the results of the audit. Recently, we learned that the data that we gave to TCCY – which we believe should be an integral part of the audit – was no longer in TCCY’s possession. We assume that this data was not made a part of the audit.

We ask you to investigate the integrity of the data, supplied by TCCY to your auditors, and to ascertain why OJJDP was not interested in receiving the data and information that we possessed. At bottom, we want to see the incarceration of unruly offenders stopped for all the reasons that were so well-articulated at the NJDC Summit. We believe that Tennessee is ripe for: (1) intensive judicial and juvenile staff training on this issue; (2) corrective actions that should promptly be undertaken; (3) the appointment of an independent monitor to devise a system of data collection to assure transparency to interested parties; and (4) a system of meaningful monitoring and oversight.

We shall look forward to your response. Please let us know if we can provide you with further documentation of our communications with TCCY and your agency. Thank you very much.

Sincerely,

FOR THE PRACTICUM:

Dean Hill Rivkin
College of Law Distinguished Professor of Law
Supervising Attorney, The UT Education Law Practicum