



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JUL 31 2015

The Honorable Jay Nixon
Governor
201 W Capitol Ave
Jefferson City, MO 65101

The Honorable Steve Stenger
County Executive
St. Louis County, Missouri
41 South Central Avenue
Clayton, MO 63105

The Honorable Thea A. Sherry
Administrative Judge
St. Louis County Family Court
Family Court Center
501 S. Brentwood
Clayton, MO 63105

Re: Investigation of the St. Louis County Family Court

Dear Governor Nixon, Mr. Stenger, and Judge Sherry:

The U.S. Department of Justice's Civil Rights Division has completed its investigation of the Family Court of the Twenty-First Judicial Circuit of the State of Missouri ("St. Louis County Family Court") regarding the administration of juvenile justice for children facing delinquency charges. We conducted our investigation pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141"). Section 14141 authorizes the Department of Justice ("DOJ") to seek remedies for a pattern or practice of conduct that violates the constitutional or federal statutory rights of children in the administration of juvenile justice.

We have concluded that the St. Louis County Family Court fails to provide children appearing before it on juvenile justice matters constitutionally-required due process, and fails to administer juvenile justice in a non-discriminatory manner. Our findings are detailed in the accompanying Report.

We want to extend our thanks to the Judges, Commissioners, and Court staff who spoke with us and provided us with a variety of documents and other information, and to the Missouri Office of State Courts Administrator, which provided us with statistical data and transcripts of Court proceedings. We were pleased to meet many dedicated individuals, who shared with us their pride in the recognized innovations of the Missouri juvenile justice system. Missouri has been at the forefront of a community-based approach to juvenile corrections, closing its training schools – large prison-like institutions located away from most communities – and replacing them with smaller, treatment-focused facilities located closer to youths' homes. We do not disregard those innovations in issuing these findings; rather, our goal is to ensure that juvenile justice in St. Louis County is administered in a manner that is consistent with children's due process rights and provides equal opportunity to all children.

Since opening this investigation in November 2013, we have analyzed data provided by the Missouri Office of State Courts Administrator regarding more than sixty variables for nearly 33,000 cases, including all delinquency and status offenses resolved in St. Louis County Family Court between 2010 and 2013. We also have reviewed over 14,000 pages of documents, including Family Court records; transcripts of delinquency proceedings; court policies, procedures, and other operational documents; and a number of external reports. We visited the Family Court in June 2014, and interviewed a number of court personnel, including all of the judges and commissioners, the Juvenile Officer, Legal Director, the Directors of Delinquency Services, Court Programs, and the Detention Center, as well as deputy juvenile officers. We met with representatives of both the state and local public defender's offices, and interviewed private attorneys with experience as appointed attorneys for delinquency proceedings in the Family Court. We also spoke to the parents of several youth who had been involved in delinquency proceedings with the Family Court.

Based on our review of all of this information, we find that the St. Louis County Family Court violates the due process rights of children facing delinquency proceedings. Specifically, we find:

- St. Louis County Family Court fails to provide adequate representation for children in delinquency proceedings, in violation of the Due Process Clause of the Fourteenth Amendment. *In re Gault*, 387 U.S. 1, 34-43 (1967). Several factors contribute to this denial of constitutionally-adequate representation by counsel, including the staggering caseload of the sole public defender assigned to handle all indigent juvenile delinquency cases in St. Louis County, an arbitrary system of determining eligibility for public defender representation and appointing private attorneys for children who do not qualify for public defender services, the flawed structure of the St. Louis County Family Court, and significant gaps in representation between detention hearings and subsequent court appearances.
- St. Louis County Family Court fails to adequately protect children's privilege against self-incrimination. For example, the Family Court's requirement that a child admit to the allegations to be eligible for an informal processing of his case is coercive, and potentially forces a child to be a witness against himself in subsequent proceedings.

Gault, 387 U.S. at 55 (“[T]he constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults.”).

- St. Louis County Family Court fails to provide adequate probable cause determinations to children facing delinquency charges. *Schall v. Martin*, 467 U.S. 256 (1984); *Gerstein v. Pugh*, 420 U.S. 103, 114 (1974); *R.W.T. v. Dalton*, 712 F.2d. 1225, 1227 (8th Cir. 1983). Probable cause determinations are made on an *in camera*, *ex parte* basis, and children have no opportunity at any stage of the proceedings to challenge probable cause.
- St. Louis County Family Court fails to provide children facing certification to be criminally tried in adult criminal court with adequate due process. In particular, the Family Court’s failure to consider, and permit adversarial testing of, the prosecutive merit of the underlying allegations against the child at the certification hearing fails to “measure up to the essentials of due process and fair treatment,” in violation of the Fourteenth Amendment. *See Kent v. United States*, 383 U.S. 541, 562, 567 (1966).
- St. Louis County Family Court also fails to ensure that children’s guilty pleas are entered knowingly and voluntarily, in violation of children’s rights under the Fifth, Sixth and Fourteenth Amendments. *See Boykin v. Alabama*, 395 U.S. 238 (1969). Judges and commissioners do not adequately examine whether children understand the rights they give up when pleading guilty to an offense, nor the potential collateral consequences of doing so.
- The organizational structure of the Family Court, wherein both prosecutor and probation officer are employees of the court, the prosecutor is counsel for the probation officer, and the probation officer acts as both an arm of the prosecution as well as a child advocate, causes inherent conflicts of interest. These conflicts of interest are contrary to separation of powers principles and deprive children of adequate due process. U.S. Const., art. I, art. II, § 2, cl. 5; art. III, § 2.

Additionally, we find that the St. Louis County Family Court engages in conduct that violates the constitutional guarantee of Equal Protection under the law. Black children are disproportionately represented in decisions to: formally charge youth versus handle matters informally; detain youth pretrial; commit youth, under existing Court supervision, to Division of Youth Services custody; and place youth in a secure Division of Youth Services facility after conviction. The data shows that in certain phases of the County’s juvenile justice system, race is

– in and of itself – a significant contributing factor, even after factoring in legal variables (e.g., nature of the charge) and social variables (e.g., age). In short, Black children are subjected to harsher treatment because of their race. Specifically, we found:

- Black children are almost one-and-a-half times (1.46) more likely than White children to have their cases handled formally, even after introducing control variables such as gender, age, risk factors, and severity of the allegation. This ratio means that Black children have a lower opportunity for diversion when compared with White children.
- Race has a significant and substantial impact on pretrial detention. Even after controlling for the severity of the offense, the risks presented by the youth and the age of the youth, Black youth have two-and-a-half times (2.50) the odds of being detained (held in custody) pretrial than do White children.
- When Black children are under the supervision of the Court and violate the conditions equivalent to probation or parole, the Court commits Black children almost three times (2.86) more to the Missouri Division of Youth Services than White children who are under similar Court supervision. This disparity exists even when we control for past referrals and treatment. Children committed to Division of Youth Services custody are placed in restrictive out-of-home settings.
- After controlling for severity of the offense and other variables, the odds of the Court placing Black youth in Division of Youth Services custody after adjudication (the juvenile equivalent of an adult conviction) are more than two-and-a-half times (2.74) the odds of White youth placement. White youth are significantly more likely to be placed in a less restrictive setting -- such as on probation with in-home services or in a residential treatment facility that is not operated by the state -- rather than in Division of Youth Services custody.

Based on these data, and the fact that the disparities are unexplainable on grounds other than race, we find Equal Protection violations at each of these decision points.

The Department of Justice is committed to seeking a voluntary resolution with you to address the deficiencies discussed in the accompanying Report. We have a shared interest in ensuring that children appearing before the Court receive their constitutionally guaranteed rights to due process and equal protection under the law. Given the substantial infrastructure already in existence in the Missouri juvenile justice system, and the commitment to children articulated by the Court officials and other stakeholders with whom we spoke during this investigation, we believe that the remedial measures identified in the Report are attainable. The attorneys assigned to this investigation will be contacting you soon to initiate negotiations to resolve this matter.

Please note that this letter and the accompanying Report are public documents and will be posted on the Civil Rights Division's website.

If you have any questions, please contact Judy C. Preston, Acting Chief of the Special Litigation Section, at Judy.Preston@usdoj.gov, or (202) 514-6258, Shelley Jackson, Deputy Chief, Special Litigation Section, at Shelley.Jackson@usdoj.gov or (202) 305-3373, or Jacqueline Cuncannan, Trial Attorney, at Jacqueline.Cuncannan@usdoj.gov or (202) 616-2556.

Sincerely,



Vanita Gupta
Principal Deputy Assistant Attorney General

Enclosure: Department of Justice Findings Report

cc: The Honorable Chris Koster
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Supreme Court of Missouri

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