



# **Juvenile Corrections Monitor Semi-Annual Report**

**July 1, 2013 – December 31, 2013**

***Public Section***

## **Introduction:**

This report covers the activities of the Juvenile Corrections Monitor (JCM) from July 1, 2013, through December 31, 2013.

The JCM position began on April 10, 2000, and is administered by the Department of Human Services (DHS), Office of the Secretary. The JCM office is located in Hillview Plaza, on East Highway 34. The mailing address is c/o 500 East Capitol, Pierre, South Dakota 57501-5070. The telephone number for the JCM at DHS is 605-773-5990. DHS has a toll free number 800-265-9684, which also provides access to the JCM free of charge to the calling party.

DHS has prepared a brochure describing the duties and responsibilities of the JCM. These brochures are always available to all youth and visitors and can be viewed on the DHS website at the following link:

<http://dhs.sd.gov/monitor/monitor.aspx>

During the intake process in each program at STAR Academy, the JCM's position, responsibilities and availability is discussed with each new youth. Each new youth is given a copy of the JCM brochure at the time of his or her arrival on campus. This information is again brought to the attention of the youth by the JCM during any investigation or by the program staff during programming as the situation warrants.

All new and recommitted DOC youths' custodial parents or guardians are sent a letter from the JCM. The letter introduces the JCM and explains the JCM responsibilities; the confidential nature of all complaints made to the JCM whether by parents, guardians or youths; and includes a copy of the JCM brochure.

The Department of Human Services internet home page has a link the custodial parent(s) or guardian(s) or any member of the public may use to contact the JCM. Any contact to the JCM via this method will be treated confidentially, just as any telephone call or personal contact.

The confidentiality of all communications with the JCM is emphasized with each STAR Academy youth to ensure everyone understands there will be no repercussions, retaliation or harassment by staff for meeting with the JCM over any concern he/she might have.

The JCM conducts training on the JCM position including the legislative statute as defined with newly-hired employees. Abuse and neglect, as defined in the JCM statute are also discussed in detail. The confidentiality of any communications with the JCM is emphasized with the staff as it is with all youth at the STAR

Academy. It is also explained to the newly hired employees that this confidentiality provision applies to all youth, complainants, and/or other individuals who report violations, questionable practices or suspicions to the JCM. These classes occur randomly throughout the year depending on when new employees are hired and enter on duty. All newly hired STAR Academy employees, as well as other selected DOC employees and all contract employees providing services on the STAR Academy campus must attend these classes as part of their conditions of employment or terms of their contract.

The JCM also conducts Report Writing training during Pre-Service and In-Service training periods for all new staff as well as veteran staff. These classes occur randomly throughout the year depending on when new employees are hired as well as quarterly training for veteran staff.

Padlocked boxes are placed in each program in easily accessible places for the youth to use to initiate contact with the JCM. Any individual, including DOC staff or visitors, may use such a box to contact the JCM. Any individual may put his/her name on a piece of paper and place it in any one of these boxes. Anyone using the locked box may also write a summary of the complaint for the JCM to read prior to the meeting if they wish, but a name is all that is needed to initiate contact. The JCM checks the boxes a minimum of twice a week and will address all complaints and/or concerns immediately.

The JCM is available for consultation with any youth, staff or other interested person while present on the STAR Academy Campus. Immediate access to the JCM, whenever possible, is afforded to the requesting individual. It is important that the youth have their concerns addressed in as timely a manner as possible; therefore, there is no set procedure or requirement to be followed to initiate these meetings with the JCM.

### **Legislative History:**

The Juvenile Corrections Monitor (JCM) position was established by the legislature sitting in 2000; it is codified beginning at SDCL 26-11A-24.

The JCM is designated by the Governor to protect the rights of the individuals in the custody or care of juvenile corrections facilities (SDCL 26-11A-25). Any and all allegations of abuse or neglect of individuals within state-run juvenile corrections facilities will be investigated by the JCM.

**“Abuse”** is defined as “any act or failure to act by an employee of a juvenile corrections facility or by a contract person or entity providing services to a juvenile corrections facility, which act was performed or was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may

have caused, injury or death to an individual in the custody or care of a juvenile corrections facility.” (SDCL 26-11A-24 (1)).

“**Neglect**” is defined as “a negligent act or omission by any individual responsible for providing custody, care, or services in a juvenile corrections facility which caused or may have caused injury or death to an individual in the care or custody of a juvenile corrections facility or which placed such individual at undue risk of injury or death.” (SDCL 26-11A-24 (5)).

The JCM, as stated in SDCL 26-11A-27, is required to:

(1) Investigate incidents of abuse or neglect of such individuals within the juvenile corrections facilities, if the incidents are reported to the JCM or if there is reasonable suspicion to believe that the incidents occurred;

(2) Access any individual in the custody or care of juvenile corrections facilities and any employee in the employ of the State of South Dakota or any of its political subdivisions;

(3) Access any records of or relating to any individual in the custody or care of juvenile facilities;

(4) “Provide a semi-annual report to the Governor, the Legislature, the Corrections Commission established by § 1-15-1.13, the Secretary of the Department of Human Services, and the Secretary of the Department of Corrections. The report shall contain the activities of the JCM for the six-month period immediately prior to the report. Activities shall reflect the number of referrals to the JCM, the number of investigations completed, a brief description of any investigation that resulted in a finding of abuse or neglect, and a summary of other activities performed by the JCM;”

(5) Provide training and assistance to employees of the Department of Corrections in areas within the scope of the JCM's position;

(6) Review Department of Corrections' policies dealing with juvenile's rights to ensure compliance with federal and state laws, rules, and policy;

(7) Provide reasonable notification of the existence and role of the JCM to all individuals in the custody or care of a juvenile corrections facility and the custodial parent or guardian;

(8) Submit a confidential addendum to each semi-annual report to the Government Operations and Audit committee created in § 2-6-2, the Governor, the secretary of the Department of Human Services, and the Secretary of the Department of Corrections. This addendum shall contain a description of each case investigated, the specific findings and recommendations of the Juvenile

Corrections Monitor, and the Department of Corrections' response to the recommendations.

Prior to the release of the semi-annual report of the JCM as provided in subdivision 26-11A-27(4), the Attorney General shall certify that that report does not disclose the identity of any juvenile or other person in violation of the provisions of § 26-11A-30 or 26-11A-33. Upon such certification, the JCM's semi-annual report is deemed an open record. 26-11A-27.1

The JCM may not offer any testimony at any “audit, report, evaluation, or public testimony” that might disclose the identity of the complainant or any personal information, description or personal characteristic which might lead to the identification of any youth requesting assistance under the statute. The identity of the person or agency making a complaint or report to the JCM under this statute is kept confidential (SDCL 26-11A-30).

The JCM is required to immediately notify the Governor, the Department of Corrections Secretary, and the Government Operations and Audit Committee of the legislature in writing of any substantiated abuse or neglect, including the facts of the case and the identity of the perpetrator(s) (SDCL 26-11A-28).

Anyone knowingly hindering the lawful actions of the JCM is guilty of a misdemeanor. No state agency or anyone acting on their behalf may take any adverse action against an individual in retaliation because that person cooperated with, or provided information to, the JCM. Any state agency or any individual acting for a state agency that takes any adverse action against an individual in retaliation because the individual cooperated with or provided information to the JCM is guilty of a Class 1 misdemeanor (SDCL 26-11A-31 and 32).

The identity of the juvenile and of any person or agency making a report to the JCM is required to be kept confidential (SDCL 26-11A-33).

### Process of Complaints or Referrals

The current reporting period is from 07/01/2013 to 12/31/2013. In this reporting period, the JCM was contacted by individual juveniles with questions or complaints as well as DOC Staff. Some of these individuals used the lock-boxes to contact the JCM, while others contacted the JCM while on campus at STAR Academy. The JCM would then discuss that person’s particular question or issue as soon after receiving the request, or personal contact, as possible.

In addressing these inquiries, the JCM does not always conduct a complete investigation. Sometimes it is not necessary; providing a contact telephone number for program staff or a correct mailing address might be all that was necessary to answer the inquiry.

The JCM's locked boxes are placed in well used, easily accessible locations throughout the STAR Academy Campus.

Youth Challenge Center (YCC) is comprised of two separate programs divided according to a juvenile's risk level and the intensity of services required by that juvenile. YCC 1 has the higher risk level youth, as well as the youth requiring a higher level of services. YCC 2 has the lower risk level youth who needs a less intense level of services, such as "outpatient chemical dependency treatment." Each unit has a 24 bed capacity supervised by a Treatment Supervisor; each Treatment Supervisor reporting to the Program Manager.

The Patrick Henry Brady Academy (PHBA) is a Performance based program with two separate bed areas. Youth are assigned to them equally based on assessed needs and responsivity (barriers exhibited by the youth in responding to treatment) factors. Each bed area has the ability to house up to 24 youth as circumstances warrant. There is space to accommodate a maximum limit of 26 youth without violating any administrative rules or program guidelines.

The STAR Academy East Campus, which is comprised of the two girls' programs, QUEST and ExCEL, is located within the boundaries of Custer State Park.

QUEST (Quality Educational Services and Treatment) is a Department of Social Services (DSS) licensed group care facility. The program is typically five to six months long and serves girls who have been physically and/or sexually abused and/or have significant chemical dependency issues requiring a higher level of treatment than is generally available within a community setting.

ExCEL (Excellence in Counseling Education and Life Skills) is also a Department of Social Services (DSS) licensed group care facility organized under the same criteria as QUEST. The length of this program is approximately three to four months. ExCEL and QUEST provide an "Admissions Status" component within their programs. The newly admitted girls go through an evaluation and assessment process which determines their final placement in either QUEST or ExCEL; this period lasts from 7 to 10 days. The ExCEL Program is currently in hibernation and not accepting any youth into the program.

During the period **07/01/2013 to 12/31/2013**, the average daily population for the STAR Academy was **105.5** youths. This includes the boys' and girls' programs. The Patrick Henry Brady Academy is comprised of two units: BA1 averaged **22.0** youths and BA2 averaged **22.4** youths. The boys' chronic mental health/chemical dependency program, the Youth Challenge Center, is comprised of two units: YCC 1 which averaged **19.0** youths and YCC 2 averaged **18.6** youths.

The ExCEL program on the East Campus averaged **7.1** and QUEST averaged **16.4** youths.

In addition to receiving complaints in the lock-box or from interested third parties, parents or guardians, the JCM may also initiate investigations based on incidents personally observed or from information heard in comments or conversations with staff and/or youths. The JCM may also conduct an investigation after

receiving information directly from DOC/STAR Academy staff, program written reports, or from reviewing pass-down logs maintained in each program. These pass-down logs report the activities and other items of interest or information from the previous shift to the oncoming shift within that program. A review of the "Incident Report Forms," also provides information which the JCM may use to begin an investigation.

## STAR Academy Statistical Information Lock Boxes and Personal Contacts

**07/01/2013 to 12/31/2013**

There were a total of **97** contacts to the JCM during this reporting period; **90** notes from youths in the lock-boxes and **7** direct contact requests or questions from the youth to the JCM. The **7** personal requests or questions from the youth were handled in the same manner as the written requests or questions put in the lock-boxes. The statistical information from all contacts is set forth below.

### **Notes v. Personal Contacts**

<b>Lock-Box Notes</b>	<b>90</b>
<b>Personal Contacts by Juveniles</b>	<b>7</b>

### **Contacts by Program**

<b>1. Patrick Henry Brady Academy</b>	<b>53</b>
<b>2. Youth Challenge Center</b>	<b>37</b>
<b>3. ExCEL</b>	<b>5</b>
<b>4. QUEST</b>	<b>2</b>

### **Contacts by Month**

<b>1. July</b>	<b>35</b>
<b>2. August</b>	<b>25</b>
<b>3. September</b>	<b>15</b>
<b>4. October</b>	<b>12</b>
<b>5. November</b>	<b>7</b>
<b>6. December</b>	<b>3</b>

## **Contacts by Subject Matter**

<b>1. Program Problems</b>	<b>17</b>
<b>2. Peer Problems</b>	<b>5</b>
<b>3. Staff Behavior</b>	<b>55</b>
<b>4. Miscellaneous</b>	<b>20</b>

The "Miscellaneous" category consisted of 20 contacts. They were complaints about such things as reduction in the amount of food being served; privacy in bathrooms; conflicts between youth and JCA; and a few just wanting to talk about things bothering them from their life outside of STAR. These complaints were satisfactorily resolved through discussions with the JCM and/or by STAR Administration.

There was one contact from a youth's guardian/grandparent who alleged the youth's rights were severely compromised while at STAR Academy. The JCM did not discover any indication the youth's human rights had been violated. Prior to contacting the guardian with the results of the inquiry, the guardian withdrew the complaint. No further action was taken by the JCM.

## **Youth Contacts for the past 6 Reporting Periods**

<b><u>Reporting Period</u></b>	<b><u>Total</u></b>	<b><u>Notes</u></b>	<b><u>Personal</u></b>
<b>1. Jan. to June 2011</b>	<b>53</b>	<b>36</b>	<b>17</b>
<b>2. July to Dec. 2011</b>	<b>62</b>	<b>35</b>	<b>27</b>
<b>3. Jan. to June 2012</b>	<b>46</b>	<b>44</b>	<b>2</b>
<b>4. July to Dec. 2012</b>	<b>125</b>	<b>98</b>	<b>27</b>
<b>5. Jan. to June 2013</b>	<b>124</b>	<b>120</b>	<b>4</b>
<b>6. July to Dec. 2013</b>	<b>97</b>	<b>90</b>	<b>7</b>

## **Summary of Reports**

Three (3) investigative reports were completed and submitted during this reporting period. A summary of each investigation is below:

Investigation #1 – This investigation was generated by the JCM. It involved several youth becoming injured during an unsanctioned group activity. The staff involved permitted the unsanctioned activity to occur as an exercise to help the youth learn to defuse anger. The injuries were treated by staff, but not reported

as required in DOC/STAR policy. The injuries to the youth were deemed a direct result of the activity, but due to the youth being treated by staff for their minor abrasions, the incident was deemed a personnel action and unsubstantiated as abuse as defined in the JCM Statute.

Investigation #2 – This investigation was generated by the JCM due to a staff using unnecessary force during a verbal conflict to remove a youth from a common area. The investigation revealed that the staff did not cause injury to the youth nor was there likelihood the youth would have been gravely injured during the incident; however, it was determined the staff did not follow established protocol as required during such encounters. The incident was deemed a personnel action and therefore unsubstantiated as abuse as defined in the JCM Statute.

Investigation #3 - This investigation involved the death of a youth who was in a program at STAR Academy. The JCM conducted an investigation to insure STAR staff followed all established protocols with regard to the youth's care while at STAR prior to being transferred to the hospital. The investigation concluded that proper correctional health protocols were used and that there was no evidence of abuse and/or neglect by any STAR staff involved.

The JCM conducted one (1) formal inquiry in response to grievances filed by youth at STAR Academy to the JCM. The information gathered in this inquiry was forwarded to STAR Administrative Staff for their review and possible personnel action.

Formal Inquiry #1 – This inquiry involved two separate complaints against one specific staff. In the first complaint, the youth alleged the staff in question acted unprofessional and inappropriate during meal time. The youth alleged they requested the staff to stop the inappropriate behavior as it was offensive; however the staff just told the youth to sit down and not worry about what the staff was talking about.

The second complaint alleged the staff demeaned the youth during evening free time. STAR Administration conducted an internal investigation of this complaint and subsequently deemed a personnel action was warranted.

Although the staff's actions in both incidences appeared inappropriate as expressed to the JCM, there was not enough evidence to substantiate a full investigation. The incidents were deemed more of a personnel issue and not a case of abuse or neglect as defined in the JCM Statute.

The JCM also conducted four (4) minor inquiries of youth complaints that also did not require a full investigation. Those incidents are briefly described below:  
Inquiry #1 – STAR Administration notified the JCM they were conducting an internal investigation regarding a staff allegedly denying a youth an OTC (over

the counter) medication. The youth had been taking Mylanta and Pepcid. During their investigation, the staff's statement seemed inconsistent every time the staff was interviewed. The Program Manager asked the JCM if it would be appropriate for the JCM to check into the allegations against the staff. The JCM spoke to the staff and youth in question as well as other staff and found the allegation to be unfounded. The youth became frustrated and angry due to the staff questioning him about taking the OTC and subsequently the youth refused the OTC. The information was relayed to the Program Manager. No further action was taken by the JCM.

Inquiry #2 – The JCM received a confidential message from a youth alleging an overnight staff left the youth unattended three times during a specific night. The JCM first spoke to the Program Manager and Treatment Supervisor regarding the allegation. They stated no complaints of the sort had been reported by anyone prior to this current allegation. The JCM reviewed approximately four (4) hours of video footage of the previous night in question, the night in question, and the night after the night in question. There was no evidence that the staff left his post as alleged by the youth. The allegation was deemed unfounded and no further action was taken by the JCM.

Inquiry #3 - The JCM received a confidential note from a youth alleging a staff in the program treated the youth in a degrading and disrespectful manner. The youth alleged the staff was rude and unprofessional and that the staff would make demeaning remarks to the youth. The youth stated the youth felt emotionally and verbally abused by the staff's remarks. Subsequent to interviewing other youth and the staff in question, it was determined the allegation of verbal abuse was unfounded; however there were some policy violations that would need to be addressed. The information was forwarded to the program Treatment Supervisor to be discussed with the Program Manager for possible personnel actions. No further action was taken by the JCM.

Inquiry #4 – The JCM received several complaints from youth that the overnight staff was loud, sleeping on the job and leaving the building to smoke. The JCM watched video footage of specific nights and observed a staff sitting in an office chair and scooting around the bed area conducting foot locker searches. This was during the early hours of the morning while the youth were sleeping. There was no sound with the video footage, but it was clear the youth were being disturbed. Additionally, there was no indication that the staff were sleeping or leaving the building. The information was provided to STAR Administration. The JCM requested immediate resolve of the noise during the hours the youth were to be getting their 8 hours of uninterrupted sleep, per DOC Policy. The Administration communicated with staff regarding the importance of quiet during the night. The JCM will monitor the situation to insure compliance. No further action by the JCM at this time.

## **Summary of Reports Table**

<b>Program</b>	<b>Allegation</b>	<b>Investigation Outcome</b>	<b>Other Information</b>
<b>YCC1</b>	ABUSE	UNSUBSTANTIATED	Additional Training Personnel Action
<b>YCC1</b>	ABUSE	UNSUBSTANTIATED	Personnel Action
<b>PHBA 2</b>	NONE	UNSUBSTANTIATED	NONE

The following chart and table reflect a numerical comparison of the subject matter of the contacts by the youth at the STAR Academy over the past 5 years, as requested by the Government Operations and Audit Committee

### **5 Year - Comparison of Contacts by Subject Matter**

<b>Fiscal Year</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
<b>Program Problems</b>	<b>72</b>	<b>45</b>	<b>34</b>	<b>24</b>	<b>33</b>
<b>Staff Issues</b>	<b>75</b>	<b>94</b>	<b>50</b>	<b>85</b>	<b>115</b>
<b>Peer Problems</b>	<b>15</b>	<b>20</b>	<b>21</b>	<b>13</b>	<b>32</b>
<b>Misc.</b>	<b>38</b>	<b>2</b>	<b>6</b>	<b>48</b>	<b>41</b>

### **Other activities of the JCM**

The JCM randomly reviews the administrative remedy requests, commonly referred to as grievances by the youth, within all of the programs at the STAR Academy. The JCM may discuss the complaints and remedies or answers with program supervisors or staff and/or the complaining youth to seek further explanations and determine if the matters were resolved in a manner satisfactory to the youths. The JCM may also facilitate meetings with program staff to answer other youth's questions.

The majority of the grievances filed concern the administration of the program or the rules under which the program operates, which do not fall within the scope of the JCM's jurisdiction under the statutory definitions of abuse or neglect or violations of the youth's "legal rights" as stated in the JCM statute (SDCL 26-11A-24-(2)).

Sometimes these same questions may also be brought to the attention of the JCM by the youth through the lock-boxes, or during a personal conversation with the JCM before the formal program response is made. In these instances, with the permission of the youth, the JCM will contact the program manager or senior staff to personally convey the youth's concerns. The JCM has found that this approach leads to a mutually satisfactory resolution of the problem for both staff and the youths, with a minimum of misunderstandings by the youth. On other occasions, the youth may simply want to "rehash" the issue so that they completely understand the answer(s) given to them.

The JCM reviews all of the Use of Force reports generated within the STAR facility. While on site, the JCM also observes anyone in confinement and reviews the supporting documentation to ensure compliance with DOC policy and STAR Operational Memoranda.

Many youth are interviewed on a random basis by the JCM during these visits. These contacts are usually informal visits about conditions at the Star Academy, or other items of interest to the youth or the JCM. These random, unfettered contacts are crucial for the JCM to emphasize availability and accessibility, as well as the freedom each youth has to talk with the JCM at any time.

Respectfully submitted,

Kathleen Colson  
Juvenile Corrections Monitor