



Juvenile Corrections Monitor Semi-Annual Report

January 1, 2013 – June 30, 2013

Public Section

Introduction:

This report covers the activities of the Juvenile Corrections Monitor (JCM) from January 1, 2013 through June 30, 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 01/01/2013 to 06/30/2013. 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 in person 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.

During the period 01/01/2013 to 06/30/2013, the average daily population for the STAR Academy was **116** youths. This includes the boys' and girls' programs. The Patrick Henry Brady Academy is comprised of two units: BA1 averaged **20.6** youths and BA2 averaged **21** youths. The boys' chronic mental health/chemical dependency program, the Youth Challenge Center, is comprised of two units: YCC 1 which averaged **23.1** youths and YCC 2 averaged **20.1** youths.

The ExCEL program on the East Campus averaged **14.9** and QUEST averaged **16.6** 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

01/01/2013 to 06/30/2013

There were a total of **124** contacts to the JCM during this reporting period; **120** notes from youths in the lock-boxes and **4** direct contact requests or questions from the youth to the JCM. The **4** 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

Lock-Box Notes	120
Personal Contacts by Juveniles	4

Contacts by Program

1. Patrick Henry Brady Academy	80
2. Youth Challenge Center	42
3. ExCEL	1
4. QUEST	1

Contacts by Month

1. January	14
2. February	23
3. March	17
4. April	27
5. May	27
6. June	16

Contacts by Subject Matter

1. Program Problems	16
2. Peer Problems	27
3. Staff Behavior	60
4. Miscellaneous	21

The "Miscellaneous" category consisted of 20 contacts. They were complaints about such things as reduction in the amount of food being served; unsanitary bathrooms; too cold in the dorms; uncomfortable mattresses; 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.

In addition to the contacts by the youth, there was one (1) telephone call to the JCM from a custodial parent who left a message alleging neglect at STAR Academy. There were no details in the message. The JCM checked into the activities of the youth and found no evidence to support the allegation nor did the youth initiate contact with the JCM or other staff regarding such an allegation. The JCM telephoned the custodial parent on two separate occasions, leaving a message each time. The custodial parent never returned a call to the JCM.

Youth Contacts for the past 6 Reporting Periods

<u>Reporting Period</u>	<u>Total</u>	<u>Notes</u>	<u>Personal</u>
1. July to Dec. 2010	68	38	30
2. Jan. to June 2011	53	36	17
3. July to Dec. 2011	62	35	27
4. Jan. to June 2012	46	44	2
5. July to Dec. 2012	125	98	27
6. Jan. to June 2013	124	120	4

Summary of Reports

Two (2) investigative reports were completed and submitted during this reporting period. A summary of each investigation is below:

The first was an investigation generated by the JCM. It involved a youth becoming injured during an unsanctioned, late reported activity. The staff involved engaged in and allowed the unsanctioned activity to occur and subsequently failed to report that the youth had been injured during the activity, as required in DOC/STAR policy. The injury to the youth was deemed a direct result of the staff's negligent behavior and therefore, the incident was substantiated as abuse as defined in the JCM Statute.

The second investigation was generated by the JCM due to a staff using a utility knife to remove a sliver from a youth's finger. The staff did not cause the injury and his intentions were to help, not harm. The removal of the sliver by the staff was not in line with established protocol; however it did not rise to the level of abuse or neglect and was therefore unsubstantiated.

The JCM also followed up on incidents that did not require a full investigation. Those incidents are briefly described below:

The first inquiry involved a staff member rubbing the back of a youth while sitting in the chow hall eating dinner. The JCM was reviewing video footage of a use of force during an unrelated incident. While watching the footage, the JCM noticed a staff member rub the back of a youth on three separate occasions over a ten minute period. Since STAR is a "no-touch" facility, the youth and staff were contacted and interviewed. The youth denied any inappropriate touching by staff and the staff alleged it was a "consoling" session with the youth. Due to the incident being a personnel issue, the JCM referred the incident to STAR Administrative Staff. No investigation was completed.

The second inquiry involved a very disruptive youth in cells. This was a case of what was depicted on video did not match what was written in the initial incident report. After viewing video footage and speaking with staff, it was determined that staff acted appropriately to keep the youth safe while being in confinement; however, staff was advised to remember to document everything that occurred within the incident report. No investigation was completed.

The third inquiry involved a youth claiming religious preference regarding his food. The youth was refusing to eat which was creating a potential health issue. A lot of research into the claimed religion of Rastafarian and the youth's background was conducted by the JCM and STAR staff. It was determined the youth was attempting to manipulate the system by claiming religious preference and once confronted, he began eating with no further issues. No investigation was completed.

Summary of Reports Table

Program	Allegation	Investigation Outcome	Other Information
QUEST	ABUSE	SUBSTANTIATED	Additional Training Personnel Action
QUEST	ABUSE	UNSUBSTANTIATED	Procedure Addendum Personnel Action

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

Fiscal Year	2009	2010	2011	2012	2013
Program Problems	72	45	34	24	16
Staff Issues	75	94	50	85	60
Peer Problems	15	20	21	13	27
Misc.	38	2	6	48	21

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