

MH vs. Findley

Case Number: 12-cv-08523

Independent Monitor: David Muhammad

Consent Decree Compliance Report

Quarter 3 (July 2015 – October 2015)

Over the last Quarterly Monitoring Report, Defendants have made significant progress towards complying with the MH Consent Decree and, as described below, soon to be enacted legislation will serve to further these gains in the near term. Due to the mandates of this Consent Decree, on-going trainings for Parole Revocation Board members and Aftercare Specialists/Parole Agents, and other reforms: Youth are consistently represented by attorneys in all phases of the revocation process (although there have not been any appeals at this point); youth attest and observations confirm that representation is often competent and zealous; most timeframes are generally being adhered to; and the Defendants continue to be responsive to areas of concern raised by the Monitor and Plaintiffs' Counsel.

Championed by IDJJ Director Candice Jones, passed by the Illinois legislature and signed into law by the Governor, Senate Bill 1560 will go into effect January 2016. This bill will have a significant impact on both the Defendants' ability to comply with the Consent Decree, as well as the Illinois juvenile justice system as a whole. Key bill provisions include:

- Beginning January 2016, youth on IDJJ Aftercare/Parole who are charged with new adult offenses will no longer be held in IDJJ facilities pending their adjudication in adult court. This population accounts for a large number of youth pending violation proceedings. Due to the pending charges, these cases often result in long continuances of Final Revocation Hearings, beyond the 45 day requirement of this Consent Decree. Youth on DJJ Aftercare/parole who are convicted and sentenced to the Department of Corrections will have their IDJJ jurisdiction terminated.
- The length of IDJJ parole terms will be reduced in line with best practices and will not be longer than adult parole terms.
- Following the example of several other states, youth adjudicated for misdemeanors will be prohibited from being committed to IDJJ.

These series of reforms that seek to "right size" the system should result in improved outcomes for youth and much needed efficiencies in IDJJ.

Despite the commendable progress that Defendants have made during the course of the current monitoring period, as well as the promise of greater improvements to be realized, it is important to note that, as outlined in this report, Defendants remain non-compliant with respect to major provisions of the Consent Decree.

Monitoring Process

This report is based upon the following activity that occurred during the reporting period:

- Staff and attorney interviews, IDJJ and PRB;

- Interviews of youth who have gone through the revocation process;
- Reviews of case files and corresponding revocation paperwork for youth going through the revocation process;
- Interviews of attorneys appointed to represent youth going through the revocation process; and
- Observation of Final Revocation Hearings.

The Monitor has now observed hearings, reviewed files, and interviewed staff and youth in all IDJJ facilities that hold hearings.

Review of Critical Issues

In the last Quarterly Monitoring Report, two critical issues were highlighted:

- 1) Failure to comply with the requirement for Assessment of Evidence and Preponderance of Evidence Standard; and
- 2) Delay in Host Sites keeping youth in custody.

Unfortunately, there has been minimal progress in both of these areas and they remain critical issues. In addition, a new Issue has been added to this section which, while perhaps not Critical, warrants inclusion due to its significance.

1. Assessment of Evidence and Preponderance of Evidence

Paragraph 29 of the MH Consent Decree mandates that: “Defendants will provide the youth or their attorneys with a written explanation of the PRB’s decision in the final parole revocation hearing. The written explanation must include a **description and assessment of the evidence** and a **brief statement describing how the evidence meets the preponderance of evidence standard.**”

At the last quarterly status hearing, Defendants maintained that a new training for PRB members and an updated form with a slightly expanded number of lines would be enough to make substantial progress on this issue. Defendants therefore declined to use the new Revocation Hearing Report forms prepared by the Monitor.

Although Defendants have made progress on this issue since the last report, both technical and substantive compliance issues remain. Technically, the PRB is not regularly providing a written description and assessment of the evidence and it seldom, if ever, provides a written statement describing how the evidence meets the preponderance of evidence standard. PRB members are now regularly writing that the evidence meets the preponderance of evidence standard, but not “how” it does. In cases where the decision is to declare a youth a violator, but resume the youth on parole, often the written explanation only includes new parole conditions or reasons why the youth’s parole should be resumed, but not any explanation of why the youth was declared a violator.

Many PRB members have improved their written explanations on the Final Revocation Hearing form, but these still do not comply with the provisions of Paragraph 29 of the Consent Decree.

In the last Quarterly Monitoring Report, a few examples were provided reflecting a lack of detail in the explanation given on the Revocation Hearing Reports. Again, four Reports completed during the review period are provided as an Appendix to this report. Three of these reports reflect woefully inadequate written explanations while the fourth, which is better, includes no assessment of the evidence and no explanation of how the evidence meets the preponderance standard. In most of the cases involving the Revocation Reports contained in the appendix, the Monitor was present for the hearings and the preponderance standard was actually met, the written reports which constitute the record was just inadequate.

Beyond the technical compliance issue stemming from the PRB's failure to provide an appropriate written description and analysis of how the evidence satisfies the preponderance standard, there continues to be a substantive, and more problematic question of whether the preponderance of evidence standard is actually being met.

In a recent Final Revocation Hearing observed by the Monitor, The youth's appointed counsel said because his client has pending charges, he wanted to have the revocation proceedings completed so he can return to Cook County to focus on the new case. On behalf of the youth, the Attorney then stipulated to the fact that the youth was pending a "serious charge in Cook County" and was okay with a finding of violation and then revocation. The youth seemed confused as he thought he would be resumed, not revoked. The very quick hearing ended with a finding of a violation and a revocation, although there seemed to be no basis for the finding. The PRB member wrote on the Final Revocation Hearing Findings Report that the evidence used to make the decision was "youth has pending charges in Cook County" (this particular Report is included in the Appendix).

Recommendation: The PRB should change the Final Revocation Hearing report form entirely. As a part of this Quarterly Report, the Monitor has again included a draft recommended Final Revocation Hearing Form for Defendants' consideration. It is further recommended that this form be converted into a fillable PDF document for completion on a laptop after each hearing. It is often difficult to make out the hand writing on the forms; transition to fillable PDF forms, to be implemented in conjunction with portable printers stationed at each hearing location, would mitigate the legibility problem that currently exists.

2. Host Site Delays:

There appears to be little change in the Host Site delay issue since the last Quarterly Monitoring Report. Youth who are being resumed on parole often have to wait several days, if not weeks, for IDJJ to approve their release plans, including their own residence, which is known as a "Host Site". This may be one of the biggest problems delaying Aftercare/Parole, unnecessarily keeping youth incarcerated after they have been approved for release.

Despite statements made by Defendants in the last quarterly hearing that a new policy was implemented to begin investigating Host Site approval of each youth at the time of admission into the facility, this does not appear to have been implemented. During observations of Revocation Hearings in September at the Kewanee facility, in every case observed by the

Monitor where a youth was resumed on parole pending Host Site approval, the Host Site investigation had not yet begun. All the youth had been in custody at least 30 days and would have to remain in custody for several days, and more likely weeks, pending approval of the residence or placement to which they would be released.

During the Monitor's observation of Revocation Hearings at the St. Charles facility in October, of the 11 Revocation Hearings observed, 10 of them resulted in the youth being declared a violator but being resumed on parole. Of these 10 cases:

- the Host Sites in five seemed to have been identified but had not been approved and the youth would remain in custody until approval;
- in 3 the Host Site approval process had clearly not even started with the After Care Specialist responsible for approving the Host Site stating: "this is the first I am hearing about this Host Site". Note that this was a location the youth was in the process of moving into even before coming into custody; and
- for three the Host Site had been approved by the time of the hearing (the fact of which reflects that Defendants have made some minimal progress on this issue).

The following summary of the case of youth MA was in the last Quarterly Monitoring Report to illustrate challenges with meeting Final Revocation Hearing timelines; an updated version of the summary is included here to illustrate Defendants' ongoing Host Site issues.

MA

MA, who is 16 years old, was brought into custody for a violation stemming from a dispute that occurred at his residential placement, which resulted in a new charge being filed against him. He was admitted to IDJJ on April 15, 2015. On April 29, 2015, a Preliminary Hearing was held to determine if there was probable cause on the six alleged violations of parole/aftercare. Even though the Violation Report alleged a series of violations, MA's Aftercare Specialist testified that MA's new offense had been dropped, that he had been reporting regularly and that mostly everything had been fine except MA's not attending school and not always following the residential center's rules. Therefore, probable cause was only found on one of the six violations, which was condition number 15, failure to follow additional instructions "school and rules of placement."

A Final Revocation Hearing was held for MA on May 5, 2015, but the hearing was continued. According to the Final Revocation Hearing report, the hearing was continued due to the youth having lost his Host Site and needing to find a new placement. There is no documentation as to whether or not the youth and his attorney agreed to this continuance, nor does failure to have a Host Site appear to be a legitimate reason to postpone the Final Revocation Hearing. Another Final Revocation Hearing was scheduled on June 2, 2015. This hearing was also continued and the notes on the Final Revocation Hearing report states that the reason for this continuance was that a new offense was pending. This was the very same new offense for which no probable cause was found at the April 29, 2015, Preliminary Hearing, making it wholly inappropriate to serve as the basis for a second continuance of the Final Revocation Hearing.

The new hearing was set for June 16, 2015, far beyond the 45 calendar post-admission timeline for such hearings mandated by the MH Consent Decree.

At the June 16, 2015, hearing, MH was declared a violator and a new Host Site was being sought. MA was not released from IDJJ custody to his new Host Site until September 24, more than five months after his admission. Though MA was involved in an assault on staff during this time, which is totally unacceptable, that incident also exhibits why youth who have been cleared for release and simply awaiting a new Host Site should have an alternative to being incarcerated while awaiting placement.

Recommendation: The above issue may be the subject of a separate consent decree to which IDJJ is a party. If IDJJ successfully addresses this issue under the terms of that consent decree, these recommendations would be moot. Until that time, the following recommendations remain:

It is still unclear if IDJJ has modified its policy of postponing investigation of a Host Site for youth who are admitted to IDJJ facilities for revocation proceedings until after their revocation hearings. IDJJ should begin investigating appropriate Aftercare plans upon each youth's entry into the facility. This should allow youth to be released the day of their Final Revocation Hearing if they are resumed on parole. Also, in those instances where a youth's parole is resumed, the youth is returning to the same location they were residing in prior to coming into custody for revocation proceedings, and where there are no known changes or challenges to that Host Site, youth should be immediately released to the site pending IDJJ re-investigation and approval. Further, a maximum time, five days for example, should be given to IDJJ to finalize/approve Host Sites after a PRB Hearing results in a decision to parole/release a youth (this would be assuming IDJJ has already had 30 plus days prior to the hearing to investigate the Host Site as well).

IDJJ should strongly consider opening its own group home or non-secure transitional living program so that youth who have been resumed on parole and are awaiting a Host Site can be immediately transferred out of the juvenile institution. With the continual reduction in population in IDJJ facilities, it is feasible that IDJJ custody staff could be reassigned to operate a community based transitional group home. When faced with the exact same circumstances, Washington, DC's youth commitment system successfully instituted this very strategy.

3. IDJJ Staff Attorney

IDJJ has recently hired new Staff Attorneys to assist with the revocation proceedings process and present violations on behalf of IDJJ in Preliminary and Revocation Hearings. The first new Staff Attorney was initially perceived and referred to as the "prosecuting attorney," a term IDJJ objected to, indicating that serving in a prosecutorial capacity was not the intention of the position.

However, when the Monitor first observed the Staff Attorney, she was acting in the role of a prosecuting attorney, presenting the charges (violations) and encouraging PRB members to consider certain facts that would lead to a finding of violation. The Staff Attorney also examined the Aftercare Specialist during the hearings, eliciting testimony that further supported a finding of violation.

Plaintiffs' attorneys vehemently opposed the introduction of this new position into the process, claiming it unfair to the youth and a violation of the spirit of this Consent Decree. The Monitor was surprised by this new addition and subsequent change in the revocation process, but was unsure if it amounted to a violation of the Consent Decree. The Monitor sent the Director of IDJJ a series of recommendations on how the role of the Staff Attorney could be amended and in fact be helpful to the process and amenable to all parties.

A conference call was held between the parties on September 22, 2015, and IDJJ maintained that the Staff Attorney position was not intended to be a prosecuting attorney and there should not be any concern about the new addition to the process.

The Monitor interviewed attorneys for the youth about the issue. Some of the attorneys said they were both concerned by, and welcomed, the IDJJ Staff Attorney role in the process, noting a benefit of improved coordination and communication. One of the youth attorneys stated that the IDJJ Staff Attorney was critical to the process.

When the Monitor most recently observed revocation hearings earlier this month, the Staff Attorney had modified her approach, and did not appear to be playing a prosecutorial role. The staff attorney was clearly helpful to the process, occasionally jumping into the discussion to support the youth's attorney. In a number of cases, the Staff Attorney and youth's attorney would come into the hearing having made an agreement on the case, which the PRB always agreed. The Staff Attorney was also no longer being referred to as the "prosecutor", although one PRB member in his opening statements to youth always said, "the burden of proof is on DJJ represented by Ms. Dixon" to prove your violations.

The Monitor will continue to investigate this issue to determine if the participation of IDJJ Staff Attorneys in the hearings constitutes a violation of the Consent Decree. It may also be necessary to have certain written commitments or policies that codify that the Staff Attorney shall not present evidence that was not provided to the youth's attorney or there not be a Staff Attorney present for cases where youth are not represented.

Consent Decree Compliance

Paragraph 9: All proceedings conducted in compliance with Constitution, state statutes, *Faheem-El*, and *Downie v Klincar*.

Substantial Compliance? **No**

Status: Paragraph 5 of the Faheem Consent Decree states:

“In determining whether the parole violation warrant should be withdrawn pending a final revocation hearing, the hearing officer and the Chairman of the Prisoner Review Board, or a member thereof, shall consider, among other factors, whether the parolee appears to present a risk of danger to any person or the community, whether it appears likely that the parolee may flee, or such other reasonable factors as the Prisoner Review Board deems appropriate.”

During the Preliminary Hearings, the Hearing Officers are routinely giving youth and their attorneys the opportunity to argue for the withdrawal of a warrant and for the youth to be released pending the Final Revocation Hearing (FRH). There have now been a few instances where youth have been granted release pending the FRH.

However, as noted in the last Quarterly Monitoring Report, youth attorneys have reported that there continues to be an issue with PRB members considering whether a youth's residence is too far from the IDJJ facility where the FRH will be held as a reason not to grant the release. Though this could arguably be a factor to consider under the Faheem Consent Decree (“whether it appears likely that the parolee may flee”), determining that a youth cannot be released pending FRH solely based on where they reside seems inappropriate and unfair.

Recommendation: A large number of youth facing revocation proceedings live in Cook County, primarily in Chicago. The two facilities that hold hearings for youth from Cook County are many miles away without public transportation access. IDJJ does have a facility in Chicago. The Defendants should consider holding out of custody FRHs in the IDJJ Chicago facility to make it easier for youth and families to attend and to assuage concerns by PRB members about the distance between a youth's residence and the FRH location.

Paragraph 8 of the Downie Consent Decree states:

“A police or parole agent report which summarizes the statements or observations of a citizen (non-police) witness may bear sufficient reliability upon which to find a violation of parole, absent confrontation, if, and only if, some additional extrinsic factor is presented which adequately enhances the reliability of the police or parole agent report. Such a report, standing alone, unenhanced by any additional extrinsic factors, does not bear sufficient indicia of reliability to revoke parole absent confrontation.”

In nearly every revocation hearing, the sole piece of evidence being considered is the Parole Violation Report (PVR) prepared by the Aftercare Specialist (formerly known as parole agent). And in most of these cases, the PVR is based primarily on a police or arrest report stemming from a new alleged offense by the youth. Attorney interviews and Monitor case file reviews suggest that youth facing revocation hearings are not afforded the opportunity to confront the law enforcement officers whose reports are often the sole or main basis for the revocation proceedings.

Remedy: As mentioned above, due to the new law to take effect January 2016, this issue will be nearly eliminated. There will continue to be the issue of new pending juvenile offenses, which are rare, but the vast majority of violations stemming from new offenses will no longer occur after the New Year.

Paragraph 10: Defendants shall serve all youth with a copy of his/her Parole Violation Report (PVR) within 1 business day of IDJJ entry.

Substantial Compliance? **Yes**

Status: Defendants maintain a spreadsheet at each IDJJ facility of youth admitted for an aftercare/parole violation, which includes the key dates in the MH Consent Decree. When reviewing the individual physical files of youth, which includes their signatures and dates on different forms, the Monitor cross references the dates on the spreadsheet as a random verification process. The dates on the signed forms almost always match the spreadsheet, even when a particular date falls outside of the compliance timeframe. During the last reporting period, the Monitor reviewed PVR service dates for 108 cases. Of those 108 cases, only five youth were served later than one business day after being admitted into the facility and most of those five were served within a day or two of the MH Consent Decree time frames. In interviewing youth and staff, this practice of timely serving youth with their PVR's appears to be consistent and systematic.

Paragraph 11: Class Counsel shall develop Know Your Rights materials and provide to DJJ. DJJ shall provide Know Your Rights material to each youth.

Substantial Compliance? **No**

Status: Plaintiffs submitted a draft of the Know Your Rights material to Defendants and the Monitor on June 29, 2015. The Monitor provided edits to the materials but no updates have been given at this point and the Know Your Rights pamphlets have not yet been distributed.

Paragraph 14: Defendants shall provide sufficient resources so that each youth is represented by appointed counsel at every stage of the parole process including Preliminary Parole Hearings (PPH), Final Parole Revocation Hearings (FPRH), and appeals or requests for reconsideration.

Substantial Compliance? **Unclear**

Status: Youth are being represented at every stage of the parole revocation process. Therefore there could be a finding of substantial compliance with this provision; however, there continues to be a question of resource sufficiency for attorney services. As noted in the last two Quarterly Monitoring Report and as raised by Plaintiffs, the compensation structure for attorneys representing youth may pose a barrier to zealous representation. The Monitor continues to look into this issue.

A new related issue has arisen; attorneys for youth have not been paid in four months. Although some IDJJ vendors have reportedly been paid, attorneys for youth have not been provided any resources since June of this year. If this continues, some attorneys may no longer be able to represent youth, causing a major setback.

Paragraph 14: Defendants shall accommodate youth requests to communicate confidentially with retained or prospective counsel.

Substantial Compliance? **Unclear**

Status: In the last Quarterly Monitoring Report, the status of this provision was upgraded from Unclear to Yes. Unfortunately, the status is back to unclear. At most of the facilities, attorneys are able to call their clients, meet with their clients in private, and are provided with adequate time with them. At the Kewanee facility, however, where there are a large number of revocation hearings occur, these accommodations do not exist.

The hearing process at Kewanee is chaotic. On the day the Monitor visited, there was a very high volume of revocation hearings, nearly 30. Though this is somewhat unusual, staff at the facility reported that the number of hearings is always high, at least 20 or more. The environment affected the ability to hold appropriate hearings. Attorneys had to meet with clients in an open room with staff and other attorneys and youth present.

Revocation hearings were also held in an open room simultaneously with other regular parole hearings. So two hearings were going at once in the same room, not only making it hard to hear but extremely inappropriate, in that very personal information about youth could be heard by all others in the room (in one instance discussing a youth's sex offense that the youth in the other hearing could clearly hear). Even when there were not two hearings going on in the same room, there were staff unassociated with the hearings in the back of the room talking loudly and laughing, which was disturbing the hearings. At one point, a staff person who just seemed to be walking through the room had his facility radio on very loudly.

Even though the Kewanee facility was by far the most problematic, even at the St. Charles facility, where most revocation hearings occur, hearings are often held in rooms with the doors open where staff chatter and radios can be easily heard and are sometimes distracting.

Recommendation: IDJJ should ensure that youth and their attorneys are always provided private, closed rooms to talk before, and if need be, after hearings. IDJJ should also ensure that preliminary and revocation hearings are held in closed rooms with no other concurrent activity. At the Kewanee facility, Defendants should consider having two hearing days per month for revocation proceedings or separate the days for revocation proceedings and regular parole hearings so the chaos and large numbers of people are reduced.

Paragraph 15: Youth are not permitted to waive appointed counsel unless private counsel has been retained.

Substantial Compliance? **Yes**

Status: Monitor is not aware of any attempts to waive appointed counsel.

Paragraph 19: Preliminary Parole Hearings (PPH) occur within 10 business days of DJJ entry pursuant to a Parole Violation (PV) report to determine whether there is probable cause to believe the alleged PV was committed.

Substantial Compliance? **Yes**

Status: Defendants maintain a spreadsheet at each IDJJ facility of youth admitted for an aftercare/parole violation, which includes the key dates in the MH Consent Decree. When reviewing the individual physical files of youth, which includes their signatures and dates on different forms, the Monitor cross references the dates on the spreadsheet as a random verification process. The dates on the signed forms almost always match the spreadsheet, even when a particular date falls outside of the compliance timeframe. During the last reporting period, the Monitor reviewed the dates on which Preliminary Hearings (PH) were held. Of the 108 cases reviewed, the PH was held beyond the 10 day timeframe in only two instances. In interviewing youth attorneys and staff, the practice of holding PH within 10 business days of youth entry into IDJJ appears to be consistent and systematic.

Paragraph 20: Defendants will provide youth and counsel all evidence to be used against youth during Parole Revocation proceeding, within 2 business days of appointment of counsel or receipt of evidence, whichever occurs later.

Substantial Compliance? **Unclear**

Status: Although significant progress has been made in this area, there remains a few challenges. Attorneys continue to report routinely receiving evidence within two business days after appointment, which is almost always the Parole Violation Report. Attorneys are also receiving copies of corresponding police reports. There continues to be problems with pictures contained in police reports. When the reports are scanned and emailed, the quality of the pictures can be very distorted. There also continues to be a question as to drug related violations. When drug use is alleged, the drug analysis documentation rarely, if ever, accompanies the PVR. Although the Aftercare Specialist writing the report often is the one who has tested the youth, that is not the case in all instances.

In a few Revocation Hearings recently observed by the Monitor, information in the youth's file being reviewed by PRB members included material not made available to the attorney and not even discussed at the Preliminary Hearing. Two such instances involved unclear court documents from other jurisdictions seeming to indicate that the youth had pending charges or a detainer. This information was being discussed and considered by PRB members at the Final Revocation Hearing though the information itself could not be verified, had not been disclosed to the youth's attorney, and had not had a probable cause finding at a preliminary hearing.

Another related concern that has been raised in previous Monitoring Reports is Defendants' consistent inability to get updated and accurate information from other jurisdictions regarding pending juvenile, or even criminal, matters.

Recommendation: Defendants should ensure, and it could be an additional role of the new Staff Attorney position, that the file reviewed by the PRB at the Final Revocation Hearing never contains information that has not been provided to the youth's attorney or evidence regarding an alleged violation which was not determined to have probable cause at a Preliminary Hearing.

Paragraph 24: Defendants shall provide youth and counsel with a written probable cause determination.

Substantial Compliance? **Unclear**

Status: Youth and attorneys are continuing to receive copies of the Preliminary Hearing Report of Findings which documents the probable cause determinations. However, the “basis of finding” section of the report does not routinely include an explanation of all the alleged violations. The Preliminary Hearing Report of Findings form appropriately lists out all of the alleged violations, but the narrative explanation completed by the Hearing Officers often does not explain the probable cause findings of each violation.

Recommendation: The PRB should change the Preliminary Hearing Report of Findings form. As a part of this Quarterly Report, the Monitor has again included a draft recommended Preliminary Hearing Report of Findings Form in the appendix for Defendants’ consideration. It is further recommended that this form be converted into a fillable PDF document and be completed on a laptop after each hearing. It is often hard to make out the hand writing on the forms. Portable printers can be stationed near each hearing location so the forms can be printed and signed after each hearing.

Paragraph 26 & 28: Each youth shall receive a Final Parole Revocation Hearing (FRH) within 45 calendar days of entry into custody to determine if PV occurred and if revocation is appropriate.

Substantial Compliance? **Unclear**

Status: Defendants maintain a spreadsheet at each IDJJ facility of youth admitted for an aftercare/parole violation, which includes the key dates in the MH Consent Decree. When reviewing the individual physical files of youth, which includes their signatures and dates on different forms, the Monitor cross references the dates on the spreadsheet as a random verification process. The dates on the signed forms almost always match the spreadsheet, even when a particular date falls outside of the compliance timeframe. During the last reporting period, the Monitor reviewed the dates for FRHs that occurred.

Of the 108 cases reviewed, Final Revocation Hearings were late 12 times. Of those 12 instances, there was always an initially scheduled hearing within the 45 day standard, but the hearing was continued beyond the time frame. There is not always documentation in the files that indicates whether or not the youth requested or agreed to the postponement. In reviewing files and interviewing appointed counsel, it is clear that nearly all instances of postponed hearings had to do with pending new criminal charges against the youth.

The following is a summary of the hearing for youth TO, a troubling case that exemplifies this challenge:

TO

The only violation that made probable cause was a pending criminal charge. The youth’s attorney complained that there had been prior continuances on this case but that his client wanted to have his Final Revocation Hearing. TO was supposedly released on the new offense and wanted to go home to fight the case for which he maintains he is innocent.

The attorney represented that his client wanted to have his revocation hearing as he believed there is no evidence of violation. The PRB member by stating, "I'll declare him a violator if you want to move forward." The attorney asked, "what is the preponderance of the evidence?" The PRB member responded, "The preponderance of the evidence is the fact that he was arrested." The PRB member also stated, "they have shown probable cause" and "I have nothing else to go on but the violation report."

The youth's attorney explained that a prior consent decree, also covered by the MH Consent Decree, stipulated that an arrest and a probable cause finding is not sufficient to make a violation and revocation finding. The IDJJ Staff Attorney jumped in suggesting that the youth's attorney was correct, saying a pending charge could be used to determine what the PRB does once they have found that the youth was guilty of another violation, but not as a basis for a determination of a violation itself.

The PRB member gave a long pause and then asked if the youth had received any tickets (behavior violations) while in custody. The youth's attorney reminded the PRB member that institutional behavior was inappropriate to consider in the revocation hearing. Even though the youth had already been in custody for 36 days, the PRB member decided to continue the hearing until the next Kewanee docket, at which point they youth will have been in custody for 64 days, 19 days longer than the Consent Decree mandates a Final Revocation Hearing to be completed. The IDJJ Attorney stated her objection to the continuance and the PRB member noted the objection on the Final Revocation Hearings Findings Report.

The continuance of the hearing was a blatant violation of the MH Consent Decree.

Remedy: As mentioned above, due to the new law to take effect January 2016, the example cited above will be moot. There will however continue to be the issue of new pending juvenile offenses, which are the rare case, but the vast majority of violations stemming from new offenses will no longer occur after the New Year and therefore the number of revocation hearings being continued should greatly diminish.

Paragraph 29: Defendants shall provide youth and counsel with a written explanation of PRBs decision in the FPRH to include a description and assessment of evidence and brief statement describing how evidence meets preponderance of evidence standard.

Substantial Compliance? **No**

Status: The status of this provision is detailed in the above section, Review of Critical Issues.

Paragraph 30: The PRB will establish an appeals process and will include in Parole Revocation decisions a notice that revocation may be appealed. A panel of three PRB members not involved in the original Parole Revocation decision are to hear the appeal and the appeal is to be decided no later than 21 days after receipt

Substantial Compliance? **Unclear**

Status: Defendants have developed an appeals process. The PRB routinely informs youth of their

right to appeal and notice of their right to appeal is also stated on the Final Revocation Hearing report provided to the youth. To date, there have been no appeals filed and therefore the Monitor is unable to make a final determination as if Defendants are compliant with this provision of the Consent Decree. For there to be no appeals filed by youth is surprising and cause for inspection itself, which the Monitor will follow up on.

Paragraph 32: An independent monitor will be selected and “reasonable cost for the Monitor’s fees and expenses will be borne by the Defendants.

Status: The Monitor has understood the slow and bureaucratic process of Illinois procurement, which has resulted in invoices being paid 60 days after submission and therefore sometimes up to 90 days after work or expenses have been incurred. Now, as it is with the youth attorneys, the Monitor has not had fees or even travel expenses reimbursed for more than three months. It was initially assumed that the delay in payment was due to the budget impasse in the Illinois government because no official communication had been provided to the Monitor. But after reviewing a draft of this report, IDJJ informed the Monitor that the delay was not due to the budget impasse, but to a process in the state Comptroller’s office. If this problem persists, it may affect the Monitor’s ability to travel to the state for monitoring visits.

Paragraph 42: Defendants shall appoint counsel no later than 5 business days after service of PVR or DJJ entry.

Substantial Compliance? **Unclear**

Status: Based on interviews with appointed counsel, Defendants do appear to be routinely appointing attorneys within five business days after youth’s entrance into IDJJ. Most appointments are done via email. The Monitor has previously reported that no other documentation is kept and therefore have been unable to confirm appointment timelines. Defendants have now added a column to the spreadsheets held at each facility that documents the other pertinent Consent Decree timelines to capture the date of attorney appointment. This being a new practice, the Monitor is going to assume there is a glitch, as nearly all the appointment dates reflect counsel being appointed far beyond the required five days after a youth’s entry into an IDJJ facility. Being inconsistent with what youth attorneys report, the Monitor will continue to investigate this issue to determine compliance status.