

**MH vs. Findley**

**Case Number: 12-cv-08523**

**Independent Monitor: David Muhammad**

**Consent Decree Quarterly Compliance Report (February – April 2016)**

**May 1, 2016**

Since the inception of the MH Consent Decree the status of due process rights and quality of the parole revocation process for youth in the Illinois Department of Juvenile Justice (IDJJ) has vastly improved. Youth now consistently receive competent and zealous representation for all phases of the revocation process and Defendants now adhere to all mandated timeframes. Sixteen months since the implementation of the Consent Decree, and with some exception, Defendants are near substantial compliance.

As highlighted in previous Monitoring Reports, general reforms to the juvenile justice system in Illinois has also contributed to successful compliance with the Consent Decree. New laws that have sought to “right size” the system have resulted in continued improved outcomes for youth and much needed efficiencies in IDJJ. According to IDJJ figures, in the last four years, there has been a 60 percent reduction in the number of youth confined in IDJJ facilities, from more than 1000 in 2012 to 400 today. In January 2015, when the MH Consent Decree was enacted, more than half of all youth admitted into IDJJ facilities were for parole violations; today that number is down to 34 percent.

Despite the commendable progress that Defendants have made during the course of the current monitoring period, it is important to note that, as outlined in this report, Defendants remain non-compliant with a few remaining 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;
- Review 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
- Observations of Preliminary and Final Revocation Hearings.

All of the previous Quarterly Monitoring Reports included a section on “Critical Issues”. The main two issues have consistently been: 1) Failure to comply with the requirement for Assessment of Evidence and Preponderance of Evidence Standard; and 2) Delay in Host Sites approval resulting in youth remaining in custody. While these two issues remain a concern, progress on these items have modified their “Critical” status.

## Consent Decree Compliance

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

Substantial Compliance? **Yes**

Status: Paragraph 3 of the Faheem Consent Decree states:

“The parolee shall be afforded an opportunity at the preliminary parole revocation hearing to provide reasons why withdrawal of the parole violation warrant pending the final parole revocation hearing is appropriate.”

Defendants have made progress on this provision in the last quarter. It appears youth are routinely afforded the opportunity to request the withdrawal of the parole violation warrant pending the final parole revocation hearing and a small number of youth have had these requests granted.

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.”

As anticipated, Senate Bill 1560 has drastically reduced the number of IDJJ youth facing revocation hearings based on new law violations. But youth facing new juvenile delinquency charges still face the challenge of their violation reports being based primarily on police reports, with the police officer who authored the report not being present at their revocation hearings. Similarly, where parole violation reports are the only revocation hearing evidence, the Aftercare Specialist/Parole Agents who authored those reports are not always present.

In compliance with this provision of the Consent Decree, the PRB has implemented a new practice of entering a finding of no violation when an alleged violation is based on a police or parole violation report and the author of the report is not present at the hearing either in person or by telephone.

### **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 all hearings. Of the files reviewed, no violation reports were served later than one business day after the youth being admitted into the facility. 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. Defendants provided edits of the material to Plaintiffs in March 2016. Plaintiffs' attorneys accepted all edits on May 13, 2016. Defendants are in the process of printing and distributing material to youth. To date, Know Your Rights material have not been provided to youth.

**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? **Yes**

Status: Youth are being represented at every stage of the parole revocation process. There had been a concern over the past two quarters regarding attorneys not receiving payment. Those issues seem to have been resolved.

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

Substantial Compliance? **Yes**

Status: The Monitor observes and youth attorneys report that they have been able to regularly meet with their clients confidentially.

**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 all

the dates on which Preliminary Hearings (PH) were held. Of the cases reviewed, the PH was held beyond the 10 day timeframe in a small fraction of cases. 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? **Yes**

Status: Though there have been concerns regarding compliance with this provision of the Consent Decree as documented in previous monitoring reports, during this monitoring period, youth attorneys attest that evidence has been provided in accordance with the timeframes.

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

Substantial Compliance? **Yes**

Status: With the adoption of new forms requested by the Monitor and on-going training of PRB members, there has been tremendous progress made on this provision in the last quarter. Now each separate alleged violation receives its own written description and determination.

**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? **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 this last quarter, there were no hearings reviewed that were held more than 45 days after the youth's entry into IDJJ, unless there was documented agreement by the youth's attorney.

**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? **Yes**

Status: With the adoption of new forms requested by the Monitor and on-going training of PRB members, there has been tremendous progress made on this provision in the last quarter. The PRB is much more consistently and appropriately documenting on the Findings Report of the Final Revocation Hearing a description of the evidence and how the evidence meets the preponderance standard. The PRB has also agreed to allow the Monitor to conduct a series of trainings for PRB members. The first training for PRB members in the southern section of the

state was conducted in April and a second training will be scheduled for PRB members in the north.

Significant variances in how some PRB members complete the forms remain however. Even with the use of the new forms, several reviewed by the Monitor this period did not adequately meet the requirements of this provision. Two examples of such completed forms are attached along with two forms that are appropriately completed, showing the stark contrast in how the PRB is providing written documentation of the hearings.

Even though there has been consistent and systemic serious violations of this provision, which remains to a smaller degree, there is a finding of compliance of this provision based the Defendants implementation of the Monitor's recommendations and the significant progress made since implementation. This finding is based on Paragraph 40 of the Consent Decree, which states "there shall be a rebuttable presumption that the Defendants have achieved substantial compliance if the Defendants have implemented the Compliance Steps."

Recommendations:

The continued use of the new forms and the completion of the Monitor's training of PRB members will likely result in substantial compliance in the near future.

**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 calendar days after receipt of the appeal.**

Substantial Compliance? **Yes**

Status: Defendants have established an appeals process which is in compliance with the Consent Decree. There have only been three appeals filed since the appeals process was established. Of those three, one appeal was filed during this Monitoring period. An appeal was filed for youth KH on March 28, 2016, for a Revocation Hearing that was held on March 1, 2016. The PRB did not issues a decision on this appeal until 41 days after it was sent to the Chairman of the PRB.

Although the youth's attorney filed the appeal in an email to the Chairman of the PRB, which the Chairman acknowledged receiving in a response email the same day, the youth's attorney did not follow the appeal process protocol that the PRB established and distributed to all of the attorneys in August 2015. That process calls for the youth's attorney to file the appeal with the clerk of the PRB, which was not done. However, when the PRB was alerted to the time delay in not responding to the appeal, it made an immediate decision, which was to grant the appeal, and the youth was released from custody.

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

Substantial Compliance? **No**

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. As noted in the last two Quarterly Monitoring Report, the usual 60 day period has become much longer. Though the Monitor has begun to receive payments again, as of the writing of this report, the Monitor has not been compensated for the past four months of service and one additional older invoice has also not been paid. A total of five months of Monitoring service and four months of travel expenses have not been paid. If this problem persists, it may affect the Monitor's ability to travel to the state for monitoring visits.

**Paragraph 33: Defendants shall provide Monitor and Class Counsel reasonable access to all class members. The Defendants shall provide Monitor access to hearings governed by this Consent Decree and shall permit Class Counsel to observe such hearings unless the youth or a witness objects (partial quote of Paragraph 33).**

Substantial Compliance? **Unclear**

The PRB has recently begun a new practice where two to three Board members hear the same case and after evidence is presented by the IDJJ attorney and youth's attorney, the parties leave the room to allow the PRB to deliberate. During a recent series of hearings that the Monitor observed, the PRB did not allow the Monitor to sit in on their deliberations. Although the Monitor believes that he should be allowed to observe the deliberations, this provision of the Consent Decree does not specify, and or appear to contemplate, the Monitor's access to deliberations.

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

Substantial Compliance? **Yes**

Status: Based on interviews with appointed counsel, Defendants appear to routinely appoint attorneys within five business days after youth's entrance into IDJJ. Most appointments are done via email. Defendants have begun documenting the appointment dates of counsel on a spreadsheet that was provided to the Monitor. That report reflects appointments occurring all within the mandated timeframe, which is consistent with what the attorneys represented.