

MH vs. Findley

Case Number: 12-cv-08523

Independent Monitor: David Muhammad

Consent Decree Quarterly Compliance Report (May – August 2016)

September 6, 2016

Less than two years after its issuance, the spirit of the MH Consent Decree is being fulfilled and Defendants are in substantial compliance. Youth are being represented by competent and zealous attorneys at all phases of the revocation process and mandated notification and hearing timeframes are adhered to by Defendants. Revocation proceedings now reflect a deliberative process where youth have their due process rights maintained.

As highlighted in previous Monitoring Reports, reforms to the Illinois juvenile justice system have also contributed to successful compliance with the Consent Decree. In addition to Senate Bill 1560 enacted in January 2016, which resulted in a reduction of the state juvenile justice system, another omnibus bill was passed by the Illinois legislature that will take effect in January 2017. Senate Bill 2777 will continue to “right size” the system (although there is one provision of the bill that could slightly increase the population within state juvenile facilities that is not germane to the MH Consent Decree).

With the significant reduction of the total number of youth committed to the Illinois Department of Juvenile Justice (IDJJ) and the appropriate use of graduated sanctions and diversion, the number of violations filed and revocation hearings held has dropped dramatically. This reduction has also made the revocation process more manageable, which is another factor that has led to substantial compliance.

There is a concern that the significant progress made in the past nineteen months may be in jeopardy due to the many transitions occurring in the administration of both IDJJ and the Parole Review Board (PRB). The dynamic Director of IDJJ, credited for many recent reform efforts, resigned in June, as did IDJJ’s General Counsel. Additionally, PRB’s Chief Legal Counsel left his position and the terms of several PRB members expire at the end of the year. There is also the on-going state budget impasse that threatens progress as well. While some of these transitions present welcome opportunities, they also highlight the need for consistent monitoring.

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.

Case Summary

Although the following case may not reflect technical non-compliance with any provision of the Consent Decree, it illustrates continued implementation challenges:

DH

Fifteen-year-old DH was brought into IDJJ custody for suspicion of being in violation of parole after being initially released on parole/after care only one week prior. DH was charged with four violations, but only one of those charges, Failure to Report to After Care Specialist (ACS), was found to have probable cause and was the subject of a Final Revocation Hearing.

At the Revocation Hearing, it was acknowledged by his ACS that the allegation of Failure to Report was based on a single incident where the ACS made a surprise visit to the youth's house; the youth was not home and the ACS instructed his mom to ensure he was at the home the following day for an in-person visit. Although the ACS acknowledged that she never communicated directly with the youth, the next day when she came to the house, the youth was not present which constitutes the sole basis of the violation.

During the Revocation Hearing, the three Parole Review Board (PRB) members hearing the case quickly came to the conclusion that a violation had occurred. During the finding phase of the hearing, neither DH or his attorney presented any rebuttal to the ACS testimony except to point out that it was extremely rare for a revocation to be found based on one instance of a youth not being available for a meeting with his/her ACS. During the disposition phase of the hearing, however, DH made a fairly compelling argument that a violation had not occurred. DH testified that he waited at the house for his ACS until 2 pm, did not hear from her and he did not know what time she was supposed to arrive. DH had no other restrictions on his movement other than an 8pm curfew. DH said that at 2 pm he assumed the ACS was not coming that day so he left the house.

As outlined above, there is a question about the very limited evidence supporting a finding of violation in this case, but there were additional concerns with how the disposition phase discussion unfolded. During the disposition phase of the hearing, the IDJJ Attorney introduced aggravating factors for the PRB to consider. This information had been received the morning of the Revocation Hearing and was only shared with the youth's attorney less than two hours before the Hearing, and was not included in the Violation Report or presented during the Preliminary Hearing. The youth's attorney objected to the information being introduced but the PRB denied the request to prevent the information from being presented. The IDJJ Attorney proceed to inform the PRB that DH apparently had a new pending juvenile charge based on an email from a State's Attorney; there was no documentation to review. The PRB offered DH and his attorney a two-week continuance but since DH would remain in custody during that time and the basis of his violation was so minor, the youth's attorney decided to go forward with the hearing.

In addition to the new information being introduced about the possible pending charges, the PRB also asked about a copy of a photo in the Revocation Hearing packet. The print out was of an alleged photo taken from a social media account of the youth holding a firearm. The very grainy photo was deemed inadmissible at the Preliminary Hearing but it was still included in the Revocation Hearing packet and it appeared that the PRB took it into consideration.

After deliberation, the PRB maintained the finding that DH violated his parole but decided to resume his parole/aftercare and place him on electronic monitoring.

Consent Decree Compliance

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

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.”

This paragraph of the Faheem Consent Decree has been a provision Defendants have not been in compliance with in the past. Youth are now routinely afforded the opportunity to request the withdrawal of the parole violation warrant pending the final parole revocation hearing and a very 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.”

This paragraph of the Downie Consent Decree has been a provision Defendants have not been in compliance with in the past. As mentioned in prior reports, Senate Bill 1560 has drastically reduced the number of IDJJ youth facing revocation hearings based on new law violations.

The Monitor has not observed, found any documentation, or received any reports from youth attorneys that this provision has been violated by Defendants. 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 key dates in the MH Consent Decree. When reviewing the individual physical files of youth, which include 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 most 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? **Yes**

Status: The Know Your Rights brochure developed by Plaintiffs' Counsel and reviewed and approved by Defendants and the Monitor has been finalized. Although the Know Your Rights material have not yet been provided to youth, Defendants are in the process of printing the brochures and have shared the distribution plan with the Monitor. Know Your Rights brochures are due to be distributed to all youth leaving IDJJ facilities and all youth being admitted to IDJJ facilities for revocation proceedings.

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. Although the issue of payments to attorneys seems to have been resolved, the Monitor notes that the state has fallen back to a three month backlog in attorney payments.

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 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 most the dates on which Preliminary Hearings (PH) were held. Of the cases reviewed, there were no PHs held beyond the 10-day timeframe. In interviewing youth attorneys and staff, the practice of holding PHs 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: Although Defendants are considered to be in substantial compliance with this provision of the Consent Decree, the highlighted case of DH raises concerns that will continue to be monitored.

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 two quarters. 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 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 two quarters. 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 initially agreed to allow the Monitor to conduct a series of trainings for PRB members. The first training for PRB members in the southern region of the state was conducted in April of this year and a second training was tentatively scheduled but not finalized by the PRB. PRB's new Chief Legal Counsel has pledged to schedule the training before the end of the year.

Variances in how some PRB members complete the forms remain however. Two Final Revocation Hearing Findings reports completed during this monitoring period are included in the appendix as examples of the continued training the PRB needs.

Even though there had been consistent and serious violations of this provision, there is a finding of compliance based on 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."

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 been very few appeals filed since the appeals process was established.

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? **Yes**

Status: After nearly a year of payments and reimbursements being up to six months late, in June Defendants rectified the issue and all payments were made up to date. Although this development has resulted in a finding of substantial compliance with this provision, payments have fallen back to being three months late as of the writing of this report.

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 instituted a new practice earlier this year 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. PRB has taken the position that the Monitor is not allowed to observe these deliberations. Although the Monitor believes that he should be allowed to observe, this provision of the Consent Decree does not specify, or appear to contemplate, the Monitor's access to PRB deliberations. Based on the lack of clarity regarding this matter and the Monitor's current position that observation is not critical, this PRB practice is not deemed to result in non-compliance with the Consent Decree.

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.