

MH vs. Findley

Case Number: 12-cv-08523

Independent Monitor: David Muhammad

**Consent Decree Quarterly Compliance Report (September – December 2016)
December 28, 2016**

Defendants remain in full substantial compliance with the MH Consent Decree. Youth are represented by competent and zealous attorneys at all phases of the revocation process and mandated notification and hearing timeframes are adhered to by Defendants. Most often, revocation proceedings reflect a deliberative process where the due process rights of youth are maintained.

While Defendants are complying with the provisions of the Consent Decree, there are continuing concerns regarding the institutionalization of the reforms efforts that have been made which may jeopardize long-term compliance. In addition, there are on-going incidents that may not constitute systemic non-compliance, but raise concerns.

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;
- Observations of Preliminary and Final Revocation Hearings; and
- Training of members of the PRB.

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.”

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.”

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 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, only a small number of violation reports were served later than one business day after the youth being admitted into the facility, in those cases they were served the next day. 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. Defendants report that Know Your Rights material is now being provided to youth and the Monitor has observed signed acknowledgment forms in youth files when youth are given the information at intake.

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 payments to attorneys are currently up to date, during this Monitoring period the payments have been as late at five months backlogged.

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: The 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 of 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, there continues to be concerns with information regarding pending court cases being presented at Revocation Hearings that was not shared as part of the Preliminary Hearing process. It appears that Defendants provide this information to the youth's attorneys soon after they receive it, but there is a question about the appropriate use of this information in Revocation Hearings. The Monitor will continue to observe hearings and develop recommendations for resolving this challenge.

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 as to this provision. 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. The PRB is much more consistently and appropriately documenting the evidence, and how that evidence meets the preponderance standard, on the Findings Report of the Final Revocation Hearing. There remains significant variation in how PRB members document the findings on the forms, with some providing detailed, very helpful information, and others providing very limited information.

The Monitor conducted a training for PRB members in the northern section of the state in November 2016. Most of the training had to do with this provision of the Consent Decree, which has been the most challenging for Defendants. It is anticipated that over time, and with additional training, greater consistency will be achieved among all PRB members.

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: At one point during the Monitoring period, payments and travel reimbursements were four months behind. After accounting for recent payments, the backlog is now only two months.

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? **Yes**

Although the Monitor is not granted access to observe PRB deliberations, the Monitor continues to receive full access to all Preliminary and Revocation Hearings.

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 document the appointment dates of counsel on a spreadsheet that is occasionally provided to the Monitor. That report reflects appointments occurring all within the mandated timeframe, which is consistent with what the attorneys represented.