

MH vs. Findley

Case Number: 12-cv-08523

Independent Monitor: David Muhammad

Consent Decree Quarterly Compliance Report (January – April 2017)

April 2017

Although Defendants largely remain in substantial compliance with the MH Consent Decree, there have been a few provisions that have fallen back into non-compliance or an unclear status and there continue to be concerns with individual cases that may not constitute non-compliance with a particular provision of the Consent Decree.

Overall, youth who have been accused of violating their parole in Illinois 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.

There are many provisions to the MH Consent Decree that Defendants have achieved substantial compliance with for 18 consecutive months, and in accord with paragraph 39 of the Consent Decree, those provisions will no longer be actively monitored. Included in the appendix of this report is a matrix that tracks each substantial provision of the Consent Decree and its status per Quarterly Monitoring Report. Five provisions of the Consent Decree had been deemed compliant for 18 consecutive months as of the last Quarterly Report in January 2017, and two additional provisions have been determined compliant for 18 months as of this report. In the next reporting period, eight relevant and substantive provisions of the Consent Decree will continue to be monitored.

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

Consent Decree Compliance

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

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. During this reporting period, the Monitor observed Preliminary Hearings, all of which allowed youth and their attorneys the opportunity to argue for the withdrawal of the warrant and the youth’s release pending the Final Revocation Hearing. In one such Preliminary Hearing, the youth was granted release. He returned for the Revocation Hearing as directed.

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 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: **Has been compliant for 18 consecutive months and is no longer actively monitored.**

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? **Unclear**

Status: It is unclear as to whether the “Know Your Rights” material is being distributed to the youth. During the Monitor’s visit to the IDJJ Harrisburg facility in February 2017, none of the youth interviewed had any recollection of receiving or reviewing the brochure developed by Plaintiffs’ Counsel and accepted by Defendants. When asked, the staff at the facility said they do provide youth with the Know Your Rights brochure but that they do not have the youth sign any type of acknowledgement. In the St. Charles facility, there was some confusion among staff about whether the Know Your Rights material was added to the Youth Handbook or whether youth were given the brochure separately. It was ultimately stated that the youth are separately receiving the brochure. Some youth files did in fact include a signed acknowledgement of receiving the material and other files did not have such documentation.

Defendants report that youth admitted for violations are receiving the Know Your Rights brochure upon admission to a IDJJ facility and moving forward that documentation will now uniformly be kept in the youth files.

Defendants argue they are in compliance with this measure since they were found in compliance before and they report nothing has changed. But with the combination of several youth reporting not receiving the material and the lack of documentation proving the material was distributed to youth, the Monitor does not have adequate proof that defendants are in fact in compliance. The Monitor will continue to review files and interview youth to ensure youth are receiving the required material.

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? **No**

Status: Youth are being represented at every stage of the parole revocation process, but youth attorneys have gone at least five months without receiving compensation from the State and some attorneys have gone nine months without receiving payment. Some of the attorneys operate solo practices and rely heavily on such payments. The State's consistently delayed payments threatens the ability for youth to receive appropriate representation.

Defendants argue that since youth are in-deed receiving representation at every stage of the process, that they are in compliance with this provision of the Consent Decree. But this provision of the Consent Decree specifically mandates "state-funded counsel" be provided to youth which is not occurring.

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: **Has been compliant for 18 consecutive months and is no longer monitored.**

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: **Has been compliant for 18 consecutive months and is no longer monitored.**

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 have not been 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 use of the 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.

There is a new concern regarding this provision. Since a new law that took effect in January 2017 that removed the PRB's authority to hear regular parole hearings and transferred that authority to IDJJ, it appears that the PRB has raised its standards for information on release plans in Revocation hearings. Prior to the new law's implementation, the PRB regularly accepted the word of a youth's attorney or their guardian regarding plans for certain services when the youth is released, like education or employment. Although the details of such plans are usually developed by the youth's Aftercare Specialist outside of the Revocation hearing, occasionally a youth's attorney will provide information about specific opportunities a youth may have available. The PRB has begun requesting documentation on such claims to verify their availability to the youth. While this in and of itself is not a problem, there have been occasions where such requirements have resulted in a continuance of Revocation hearings. These continuances have not resulted in exceeding the 45-day maximum of holding a Revocation

Hearing in accordance with this provision of the Consent Decree, but some have come close and there is concern that if they increase, the time limits could be affected.

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 use 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 has improved its documentation of the evidence presented in the hearings 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 Revocation Hearings themselves are also being held in a significantly different manner at the two main facilities that hold hearings. At the St. Charles facility, three PRB members sit as a panel and hear each case together. After arguments are made by the IDJJ attorney and then the youth's attorney, the PRB deliberates in private for a brief time and then calls the parties back into the room and delivers a decision that is then written up on the new forms. At the Harrisburg facility, although there are three PRB members who conduct hearings, only one member hears a case at a time. After the hearing, a decision is not made, but the one Board member confers with their other two colleagues and a final decision is made later in the day. Both of these approaches appear to comply with the Consent Decree, with a few possible exceptions.

In one case, a PRB member at Harrisburg asked the youth and the attorney to sign the Final Revocation Hearing Findings Report prior to a decision being made. When asked, the PRB member said he usual does this for expediency but that they always inform the youth of the outcome. Another more senior PRB member said he would discuss the issue with the PRB member who was doing this and the assumption is this practice would not continue. The Monitor will continue to assess this issue.

The second concern is that it was not clear whether youth were always being informed of the outcome of their hearings prior to being sent back to their living units. In the one case the Monitor tracked regarding this issue, the youth was informed of the outcome before leaving the reception area where the hearings were being held, but it was still unclear if other youth were informed of their outcomes.

One of the benefits of the Harrisburg hearing style is that the two PRB members not hearing a case are able to read the file of the case they are about to hear ahead of time, which is a luxury the PRB members at St. Charles do not have as they read the Revocation reports and other file material during the hearing.

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? **No**

Status: The Monitor has not received compensation or travel reimbursement from the State in more than five months. This extreme delay in payment is likely to effect the Monitor’s ability to provide on-going monitoring.

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**

Status: **Has been compliant for 18 consecutive months and is no longer monitored.**

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 report.

Additional Issues:

In several past Quarterly Monitoring Reports, the issue of Host Site delays has been highlighted. The case of JL in the non-public appendix of this report raises significant concerns.