

MH vs. Findley

Case Number: 12-cv-08523

Independent Monitor: David Muhammad

Consent Decree Quarterly Compliance Report (May – July 2017)

August 2017

Defendants continue to be in substantial compliance with most provisions of the MH Consent Decree. However, there continue to be concerns with individual cases that may not constitute a violation of a particular provision of the Consent Decree. Further, Defendants remain in non-compliance with providing timely payments to both the Monitor and youth attorneys.

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 of the MH Consent Decree that Defendants have achieved substantial compliance with for 18 consecutive months, and in accordance with paragraph 39 of the Consent Decree, these provisions will no longer be actively monitored. Included in the appendix of this report is a matrix that tracks each substantive 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 April 2017, and five additional provisions have been determined compliant for 18 months as of this report. In the next reporting period, six (possibly seven) 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. In Preliminary Hearings observed by the Monitor, youth and their attorneys were provided the opportunity to argue for the withdrawal of the warrant and the youth’s release pending the Final Revocation Hearing.

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? **Yes**

Status: Plaintiffs’ Counsel developed the “Know Your Rights” material and Defendants and the Monitor edited and approved the material. Defendants reported that they have been distributing the “Know Your Rights” material to youth entering IDJJ facilities for parole revocation proceedings since January 2017, however there was no documentation of such distribution until March or April, 2017.

Although there is now documentation of receipt, youth interviewed by the Monitor do not recall receiving the Know Your Rights material. The Monitor will continue to review files and interview youth and their attorneys 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 one attorney has gone more than one year without receiving payment. Some of the attorneys operate solo practices and rely heavily on such payments. The State's consistently delayed payments threaten the ability of youth to receive appropriate representation.

Defendants argue that since youth are indeed receiving representation at every stage of the process, 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; the unduly delayed payments to counsel render Defendants non-compliant with this provision of the Consent Decree.

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. This portion of the Consent Decree has now been in compliance for 18 consecutive months and will no longer be monitored.

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 continue to be concerns with information presented at Revocation Hearings that has not been shared as part of the Preliminary Hearing process. In the past, the concerns have been regarding potential pending court cases that were not addressed and determined to meet probable cause at the Preliminary Hearing. An additional concern was recently observed in the case of IH below. After being immediately alerted about the case, Defendants responded by conducting a new training for Aftercare Specialists to reemphasize agency protocols on how staff are to represent at Parole Review Board hearings. If implemented, this solution would

rectify the particular issue raised in this case.

Although this provision of the Consent Decree has now been in compliance status for 18 consecutive months as of this Quarterly Monitoring Report, the Monitor requests that there be continued review of this provision for an additional quarter.

Case of IH:

Youth IH was in custody on his original commitment from January 18, 2017, to April 7, 2017. A few weeks after being released, IH was arrested for suspicion of a burglary that occurred on January 8, 2017, prior to his original commitment to IDJJ.

When he was arrested, IH's Aftercare Specialist filed a violation primarily for the arrest but also included in the violation report the fact that the youth had violated his Electronic Monitoring (EM) conditions and had not completed a GED program.

IH was sent to IYC St. Charles for revocation proceedings. At the onset of his Final Revocation Hearing, the youth's attorney stipulated to the violations regarding EM and not completing a GED program. The Parole Review Board (PRB) accepted the stipulations and went straight into arguments regarding mitigation and aggravation to determine if they would revoke or resume aftercare/parole. Although it was later reported that the youth, who is now 18, pled guilty to misdemeanor theft in the old case, received time served, and that the case was closed – no arguments were heard regarding the violation for a new offense (the old case). The violation for a new offense was also not listed on the Findings Report for the Revocation Hearing.

With the main reason for the violation no longer being an issue, the remaining items were violating EM and not completing a GED program. But during the Revocation Hearing, the youth's Aftercare Specialist (ACS) tried to introduce additional information, but the IDJJ Attorney stopped him before he presented the information, saying it had not been presented at the Preliminary Hearing. Toward the end of the hearing, the PRB members seemed to be favoring resuming IH's aftercare/parole. When the parties were dismissed to allow the PRB to deliberate, the youth's ACS remained behind. The Monitor was the last person out of the room other than the ACS and could hear the ACS telling the PRB members something to the effect of "what I was trying to say . . .". The Monitor did not hear any other details of the discussion. The ACS remained in the office with the PRB for approximately two more minutes then left the room. After approximately five minutes of deliberation, the PRB called the parties back into the room and announced they had decided to revoke IH's aftercare/parole. Given the discussion during the hearing, this decision was a significant surprise to both the Monitor and the youth's attorney. While the stipulation did in fact give the PRB grounds to revoke IH's parole, it did appear as if information provided by the ACS during the break may have contributed to the decision.

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. This provision of the Consent Decree has now been in compliance for 18 consecutive months and will no longer be monitored.

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.

This provision of the Consent Decree has now been in compliance for 18 consecutive months and will no longer be monitored.

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. But in all files reviewed, Defendants are now complying with this provision of the Consent Decree.

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. This

provision of the Consent Decree has been in compliance for 18 consecutive months and will no longer be monitored.

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: On August 7, the Monitor received three months of back payments from the state. These payments have finally brought the Defendants in compliance with this provision of the Consent Decree, with there being two months of payments due, which had been the established acceptable arrears balance.

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.

This provision of the Consent Decree has been in compliance for 18 consecutive months and will no longer be monitored.