

MH vs. Findley

Case Number: 12-cv-08523

Independent Monitor: David Muhammad

Consent Decree Compliance Report

Quarter 4 (November 2015 – January 2016)

Since the last Quarterly Monitoring Report, Defendants continue to make progress towards complying with the MH Consent Decree. The provisions of Senate Bill 1560, outlined below, appear to have succeeded in significantly reducing the number of youth being held in IDJJ facilities facing Aftercare/Parole revocation. Due to the mandates of the MH Consent Decree, on-going trainings for Parole Revocation Board members and Aftercare Specialists/Parole Agents, and other reforms: Youth consistently receive competent and zealous representation for all phases of the revocation process and Defendants adhere to most mandated timeframes.

Senate Bill 1560, effective January 1, 2016, contained a number of provisions which have accelerated the pace of reform, and, in turn, Defendants' compliance with the Consent Decree. Key provisions include:

- Youth on IDJJ Aftercare/Parole who are charged with new adult felony offenses are no longer held in IDJJ facilities pending their adjudication in adult court. While pending new adult felony charges, their IDJJ Aftercare/Parole is suspended. Youth on IDJJ Aftercare/Parole who are convicted and sentenced to the Department of Corrections will have their IDJJ jurisdiction terminated. This population accounts for a large number of youth who used to be held in IDJJ facilities pending violation proceedings.
- The length of IDJJ parole terms have been reduced in line with best practices and will no longer go beyond adult parole terms.
- Following the example of several other states, youth adjudicated for misdemeanors have been prohibited from being committed to IDJJ.

These series of reforms that seek to "right size" the system will result in continued improved outcomes for youth and much needed efficiencies in IDJJ. According to IDJJ figures, in January 2015, the number of youth on IDJJ Aftercare/Parole was just over 1200. As of the writing of this report, that number has been nearly cut in half, with less than 600 youth on active IDJJ Aftercare/Parole and another 61 youth whose parole status has been suspended while they are pending new adult felony charges.

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 respect to certain 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.

Review of Critical Issues

In the last Quarterly Monitoring Report, two critical issues were highlighted:

- 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.

Both issues continue to be of serious concern, however meaningful progress has been made by Defendants on the Host Site issue.

1. Assessment of Evidence and Preponderance of Evidence

Paragraph 29 of the MH Consent Decree mandates that: “Defendants will provide the youth or their attorneys with a written explanation of the PRB’s decision in the final parole revocation hearing. The written explanation must include a **description and assessment of the evidence** and a **brief statement describing how the evidence meets the preponderance of evidence standard.**” (emphasis added)

At the last quarterly status hearing, Defendants maintained that a new training for PRB members, and implementation of an updated form with a slightly expanded number of lines, would be enough to make substantial progress on this issue. Defendants therefore declined to use the new Revocation Hearing Report form prepared by the Monitor.

Although Defendants have made progress on this issue since the last report, both technical and substantive compliance issues remain. Technically, the PRB has improved in providing a written description of the evidence, though there are still numerous instances where that is not the case. However it is still very seldom, if ever, that the PRB provides a written statement describing how the evidence meets the preponderance of evidence standard. PRB members sometimes write “meets the preponderance of evidence standard” on the form, but do not describe how the standard is met. Additionally, in cases where the decision is to declare a youth a violator, but resume the youth on parole, the written explanation at times only includes new parole conditions or reasons why the youth’s parole should be resumed, but not any explanation of why the youth was declared a violator.

Many PRB members have improved their written explanations on the Final Revocation Hearing form, but these still do not comply with the provisions of Paragraph 29 of the Consent Decree. In the last two Quarterly Monitoring Reports, examples were provided reflecting a lack of detail in the explanations provided in the forms; three current examples are provided as an appendix to this Quarterly Report.

Beyond the technical compliance issue stemming from the PRB's failure to provide an appropriate written description and analysis of how evidence satisfies the preponderance standard, is a more substantive one – is the preponderance of evidence standard actually being met. This challenge is illustrated in the summary of the JC case, below.

JC:

JC was accused of violating Aftercare/Parole conditions as related to electronic monitoring requirements.

JC had been directed to stay home to be seen by electronic monitoring technicians and his Aftercare Specialist (ACS). His mother however, pressured him to attend school. JC, his mom, and his aunt all attest that they tried to reach JC's ACS to seek permission for JC to attend school, to no avail. It was acknowledged at the Final Revocation Hearing that the ACS has been on maternity leave and was therefore unavailable. JC and his family also claim that they called the AMS phone line provided to parolees to check in. JC says he was given permission by the AMS operator to attend school. There is no documentation of such permission being given. JC admitted he attended school, which the ACS determined to be a violation of his electronic monitoring and therefore his Aftercare conditions. A warrant was issued for JC, he was arrested, and he spent 28 days in custody before his Final Revocation Hearing.

At the Final Revocation Hearing, no ACS was present to testify regarding JC's violations. The IDJJ Staff Attorney acknowledged that there were communication challenges on the Department's part. Statements were made by JC, his aunt and mother, attesting that he indeed tried to reach his ACS, that he called the AMS system, and that he had been given permission to attend school.

The PRB member ruled that because he admitted to going to school in violation of Aftercare/Parole conditions he was AWOL and in violation. She declared him a violator but, due to the circumstances, did resume his parole. The preponderance of evidence standard was not met in this hearing. Additionally, on JC's Final Revocation Findings Report, there is no mention by the PRB of how evidence presented in the hearing of his violation met the preponderance standard as required by the MH Consent Decree. In fact, the PRB wrote that, "the state was not able to prove that youth did not contact the Aftercare Specialist", yet still found him to be a violator.

Recommendations and Defendants' Response:

After reviewing a draft of this Monitoring Report, Defendants sent the Monitor a new Final Revocation Hearing Findings Report form to be used by the PRB. The new form, included in the appendix of this report, incorporates most of the fields and formatting of the form recommended by the Monitor. Additionally, Defendants are planning to conduct further training of PRB members on this subject and have invited the Monitor to provide a training for the PRB. The PRB Chairman has also reported that two PRB members will now be required to attend each Revocation Hearing, which can increase the likelihood that the hearings and Findings report are completed appropriately.

The new form, the trainings, and the commitment by Defendants to correct these deficiencies will likely result in the Defendants coming into compliance with this provision of the Consent Decree. The Monitor does continue to recommend, however, that the new form be converted into a fillable PDF document for completion on a laptop with portable printers stationed at each hearing location.

Consent Decree Compliance

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

Substantial Compliance? **Unclear**

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.”

During the last Monitoring visit, Preliminary Hearings observed by the Monitor did not include any opportunity for youth to argue for release pending the Final Revocation Hearing. The Monitor has observed in the past that youth were able to argue for their release pending the Final Revocation Hearing, and in a few cases the PRB has granted release. It must also be noted that the sample size during this period was extremely small as there were only two preliminary hearings scheduled between two facilities visited by the Monitor. A summary of one of these cases is provided below.

DW:

DW was charged with six violations of his Aftercare conditions: a new law violation, not reporting his arrest for the new law violation, not reporting to his Aftercare Specialist (ACS), not allowing his ACS to visit his residence, changing his residence without permission, and not making himself available for electronic monitoring (EM) technicians to connect an EM device. DW denied all of the allegations except the reporting of the arrest. The new law violation, a city ordinance violation of disorderly conduct, was dismissed, so no probable cause was found on that violation allegation. The ACS did not appear at the hearing and did not answer his phone the two times the IDJJ Attorney tried to reach him during the hearing. DW, who had been on Aftercare for 11 months before this violation, testified during the hearing that his ACS never made an appointment to come see him, he had never changed his residence, and that he had already successfully completed three months of EM and was never instructed to go back on to EM.

The Hearing Officer found no probable cause on the new law violation, failure to report to ACS, refusal to allow ACS to make a residential visit, and failure to make facilitate EM connection. But probable cause was found on failure to report the arrest, and although there was no live

testimony to rebut DW's statements that he had not changed his residence, based on the ACS' violation report, the Hearing Officer did find probable cause on that charge as well.

Although standard opening comments made by the Hearing Officer indicated that the youth and his attorney would be allowed to argue for the warrant to be dropped pending the Final Revocation Hearing, no such opportunity was ever granted.

Recommendation: At every Preliminary Hearing where probable cause is found, the Hearing Officer should specifically ask if the youth is requesting to be released pending the Final Revocation Hearing and hear arguments on the matter.

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. The Monitor will continue to evaluate this situation and will determine by the next reporting period if Defendants are now compliant with this provision.

A new concern regarding this provision of the Consent Decree has been raised during this monitoring period. In the JC case summarized in an earlier section, the PRB relied solely on an Aftercare Specialist's report, despite live rebuttal testimony from the youth and statements provided by his aunt and mother to contradict the report. The ACS was not present at the hearing and the PRB found the youth to be a violator solely based on the ACS's report.

Defendants have reported that the PRB will now require the youth's ACS or the ACS's supervisor to attend all Final Revocation Hearings. The Monitor will continue to assess this issue and determine if this is a systemic violation of the Consent Decree.

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, a

small fraction were served later than one business day after being admitted into the facility and all of those were served within a day or two of the MH Consent Decree time frames. 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. Plaintiffs report that they are waiting on Defendants' feedback to finalize. Defendants report that they are reviewing the material and will submit final comments within two weeks.

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? **Unclear**

Status: Youth are being represented at every stage of the parole revocation process. Therefore there could be a finding of substantial compliance with this provision; however, there continues to be a question of resource sufficiency for attorney services.

As noted in the last Quarterly Monitoring Report, there has been a significant delay in attorneys for youth being paid by the state. Though some payments have been made since June, the state's budget impasse appears to continue to delay matters. Although payments to youth attorneys have been made in the last 30 days, payments remain five months past due to the attorneys.

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. The Monitor will continue to follow this issue closely to ensure compliance is on-going and systematic.

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

Substantial Compliance? **Unclear**

Status: Youth and attorneys are continuing to receive copies of the Preliminary Hearing Report of Findings which documents probable cause determinations. However, the "basis of finding" section of the report does not routinely include an explanation of all alleged violations. The Preliminary Hearing Report of Findings form appropriately lists out all of the alleged violations, but the narrative explanation completed by the Hearing Officers often does not explain the probable cause findings for each violation. (An example of such a Preliminary Hearing Report is included in the appendix)

Recommendation: The PRB should change the Preliminary Hearing Report of Findings form. As a part of this Quarterly Report, the Monitor has again included a draft recommended Preliminary Hearing Report of Findings Form Defendants' consideration. It is further recommended that this form be converted into a fillable PDF document for completion on a laptop after each hearing. It is often hard to make out the hand writing on the forms. Portable printers can be stationed near each hearing location so the forms can be printed and signed after each hearing. The Monitor recommends that Defendants initially conduct a pilot use of the new form at its St. Charles facility.

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. Though there continue to be cases where Final Revocation Hearing are held more than 45 days after a youth's entry into custody, the number of those cases has significantly declined, and in most instances the Monitor has been able to determine that the continuance pushing the Hearing out beyond 45 days resulted from a youth attorney's request.

Though there is a finding of Substantial Compliance with this provision, the following case illustrates an ongoing concern.

BH:

BH was admitted to IDJJ on an alleged parole violation on October 1, 2015. BH was scheduled for a Final Revocation Hearing on November 12 that was continued; a December 12 Hearing was also continued, over the objection of BH's attorney. On January 5, 2016, a Final Revocation Hearing was held, 97 days after BH's admission, which is more than double the amount of time allowed by the MH Consent Decree. When the hearing was finally held, BH was found to be a violator, resumed on Aftercare, but then totally discharged from IDJJ jurisdiction due to the new law which limits the length of Aftercare terms. BH's Final Revocation Hearing Findings Report, which listed her as a violator but resumed her parole, has no mention at all of any reasons or evidence of how she violated the terms of Aftercare/Parole (BH's Final Revocation Hearing Findings Report is included as an appendix to this Report.)

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? **No**

Status: The status of this provision is discussed in the Review of Critical Issues section, above.

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 days after receipt

Substantial Compliance? **Yes**

Status: Defendants have established an appeals process which is in compliance with the Consent Decree. To date, there have been only two appeals filed and none in the current monitoring period. Due to the process being established as required by the Consent Decree, there is a finding of compliance for this provision, but the Monitor will continue to evaluate this issue.

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 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 an additional older invoice has also not been paid. A total of five months of Monitoring service and three 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 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. Though the dates on the first report submitted to the Monitor by Defendants showed nearly half of the appointment dates falling outside the timeframe required by this provision of the Consent Decree, it did appear that there was a malfunction with the report. An updated report submitted to the Monitor shows the appointments occurring all within the mandated timeframe, which is consistent with what the attorneys represented.