

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA



L.H, et al.,

Plaintiffs,

vs.

NO . CIV . S - 06 - 2042 LKK / GGH

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

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FIFTH REPORT OF THE SPECIAL MASTER
ON THE STATUS OF
CONDITIONS OF THE STIPULATED ORDER

Background

In orders dated September 19, 2007 and January 29, 2008, this Court found that California's juvenile parole revocation system violated juvenile parolees' due process rights, the Americans with Disabilities Act (ADA), and the Rehabilitation Act.

The Court approved a Stipulation and Order for Permanent Injunctive Relief on October 7, 2008 (hereafter "Stipulated Injunction"), which sets forth detailed requirements for attorney representation, revocation system procedures, effective communication and reasonable accommodations, and consideration of alternatives to incarceration.

During implementation, stipulated orders have been entered concerning Plaintiffs'

monitoring, the tracking of parolees with disabilities and effective communication needs, policies and procedures, and the revocation extension penalty matrix.

Chase Riveland was appointed as Special Master on May 22, 2008. Virginia Morrison assumed the role of Special Master, and Patricia Gray was appointed Deputy Special Master, effective June 1, 2010. The Mastership has submitted four reports during that time, and offers this fifth report assessing progress toward providing due process and complying with this Court's orders.

Special Master Activities

The Special Master's team observed the Defendants' task force and Board training, and met with the divisions concerning upcoming training. The team assisted in the parties' negotiations concerning standards and criteria for compliance, policies and procedures, alternatives to incarceration, decision review, and mentally ill parolees, as well as in the identification and creation of a plan for addressing disputed items.

The Mastership interviewed headquarters staff, and staff onsite, including ten parole agents, along with five parolees. The team observed hearings at Preston Youth Correctional Facility; Lerdo Detention Facility; NA Chaderjian Youth Correctional Facility; Southern Youth Correctional Reception Center and Clinic; and in the jails of Los Angeles, Contra Costa, Tulare, Fresno, Bob Wiley, and Napa counties. Those proceedings were conducted by five hearing officers and consisted of 21 probable cause hearings, four revocation hearings, and one revocation extension hearing. In addition, the team examined seven Decision Review matters. The team observed the service of notice on five parolees in county jails in five distinctly different locations.

In addition to the proceedings seen in person, the Mastership analyzed recorded and written materials for another 13 revocation hearings and two not in custody hearings, conducted by five hearing officers.

Scope and Approach

This report discusses observations and activities spanning April through October 2010, collectively referred to as “the Round.” References to the Special Master’s activities frequently include the actions of a member of her team.

A number of mandates consist both of procedural due process requirements and substantive ones; all these aspects are included in the Special Master’s assessment. The term “mainstream cases” refers to revocation actions that follow the normal course; it excludes cases with special circumstances, such as not in custody hearings, extradition, parolee time waivers, optional waivers, and postponements.

For many of the requirements, the Special Master’s team conducted a study based on revocation packets, hearing documents, and recordings provided in Defendants’ monthly document productions, in combination with those same documents produced for the hearings observed during the team’s site visits. For other requirements, the team studied records selected from the relevant population as identified by electronic reports. Since some of these samples were not randomly chosen, there are limitations on their representativeness. In other instances, the team relied on reports generated by Defendants’ revocation database, Plaintiffs’ monitoring reports and analyses, reports or studies conducted by the California IPAP attorney panel administration, and sometimes documents underlying these sources.

Substantial Compliance

Defendants continue to show strong commitment in working toward fulfilling their obligations in this action. An infrastructure is well-established. To the credit of conscientious staff, and to the credit of the infrastructure design, systems have remained running consistently through furloughs; difficult economic news and staff losses; and major changes in leadership. No backsliding has been apparent on any accomplishment, which is both impressive and unusual in institutional reform litigation.

To the extent that a Stipulated Injunction requirement has been conducted well for a sustained period, the Mastership will consider that requirement to be in substantial compliance.

In some institutional litigation, “substantial compliance” has been used as an umbrella term for ultimate success. The *LH* Defendants argue that it should be the standard for relief from judgment in this case; Plaintiffs strongly contest that substantial compliance should serve as that standard.

As used in this report, substantial compliance indicates a sustained period of meeting a high standard. Substantially compliant items will remain within the Stipulated Injunction, but the Special Master and Plaintiffs will discontinue review of such items unless and until a significant decline in performance surfaces. Defendants are expected, and have made plans, to continue to review these items at regular intervals to prevent such a decline.

The Special Master considers the following requirements to be in substantial compliance, as described *supra*. The bases for reaching these conclusions are detailed in

the Stipulated Injunction Requirements section, *infra*.

Current Round:

- Timely appointment of counsel (§ 16)
- At the time of attorney appointment, provision of a copy of all the evidence on which the State intends to rely or which may be exculpatory; evidence not provided with at least two days' notice shall be excluded unless the state shows good cause (§ 16, 19)
- Attorney will be informed of Return to Custody Assessment by the 10th business day after the hold (§ 30)
- Adequate time for representation ; reasonable access to clients and files; confidential phone calls and space in which to meet; observing staff cannot participate in proceedings (§ 20, 23)
- Not accepting waivers of hearing rights or the right to counsel made prior to the juvenile parolee meeting with counsel; waivers of hearings and requests for continuance must be made in writing in the presence of counsel (§ 17, 31)
- Not in custody hearings within 60 days after service and with all due process and ADA protections (§ 45)
- Revocation may be extended only after a revocation extension hearing (no time-adds or DDMS time extensions) (§ 35)

Previous Round:

In the Fourth Round, the Mastership found these requirements to be in substantial compliance:

- Provision of counsel during revocation proceedings (§ 15)¹
- At the time of attorney appointment, provision of date, time, and location of the hearing (§ 16)
- Defendants shall take all reasonable steps to allow counsel to meet with client at least 24 hours prior to the probable cause hearing (§ 16)
- State-appointed counsel for juvenile parolees shall be appropriately compensated for hearings and appeals (§ 24)

- Defendants shall develop standards, guidelines, and training for effective assistance of state-appointed counsel (§ 21)
- Parole revocation hearings to be held within a 50-mile radius of the alleged violation (§ 36)

For the most part, Defendants and CalPAP maintained these requirements at or above prior levels. There was somewhat of a decline concerning revocation hearings being held within a 50-mile radius of the alleged violation. During the Round, there were three cases held beyond that distance and over parolees' objections; with the small number of revocation hearings, this constitutes 5% of the total.² It appears that one contributor is county jails that do not permit Defendants to hold hearings, a problematic issue. When Defendants must identify another location, it sometimes is further than 50 miles from where the alleged violation occurred. While the Mastership will consider the 50-mile requirement as remaining in substantial compliance, Defendants should be mindful of the increase in hearings outside the geographic limit and take further steps to prevent these in the future.

Issues for Priority Attention to Provide a Fair, Just Revocation Process

With the infrastructure in place and well-managed, it is time for Defendants to turn their attention to strengthening the substance of what they do, concentrating on whether what they accomplish is substantively and procedurally fair, meeting all due process standards.

The Special Master encourages Defendants to emphasize improving the following practices in the coming Round:

- Providing factual summaries in the minority of Charge Reports where the alleged conduct is not described
- Factual bases for each probable cause finding
- Consideration of alternatives to incarceration as an outcome of probable cause hearings
- Determination of probable cause to continue to detain
- More clarity and consistency in following the law when determining whether hearsay can be used as evidence
- Rigor on procedures that can impact fairness and impressions of neutrality, such as considering evidence not in the record; making findings on, or considering, charges that have been dismissed; and presiding over hearings where there may be a perception of a conflict of interest
- ADA and effective communication reviews at hearings
- Lengthiest delays when hearings are postponed or reopened by decision review

The Environment – Assembly Bill 1628

Late in the Round, the legislature passed Assembly Bill 1628, a bill that reduces and ultimately eliminates parole supervision of juvenile parolees by the state.³ On its effective date in January 2011, juveniles currently supervised on parole by the state will remain so, and will be subject to revocation by the Juvenile Parole Board.⁴ Those released from Division of Juvenile Justice facilities for the first time after the bill's effective date will be discharged to the counties for supervision. The bill provides that all such juveniles, if supervised, will be under county jurisdiction by July 2014, and the parties anticipate that, by attrition, this will likely occur sooner.

Certainly, this will reduce the population currently subject to *LH* both in the short- and medium term. During the Round, five parole offices closed, though certainly not only because of this bill, while seven remain open. A decision was made to close a juvenile

facility in June 2011. Any other implications for *LH* are unclear. Defendants have convened an inter-divisional workgroup to plan for changes and it has had initial talks with county counterparts. Plaintiffs have requested information and meetings to learn about the transition and to ensure that the rights of the *LH* class are adequately provided for. The Mastership encourages the parties to pursue these measures to create a fair and orderly transition.

Policies and Regulations (Stipulated Injunction)

The Stipulated Injunction requires sufficiently specific draft policies, procedures, and plans to:

- ensure that revocation proceedings are in continuous compliance with all of the requirements of the Constitution and applicable statutes,
- address a method for accurately tracking the timeliness of hearings and other steps in the parole revocation process,
- include the timely provision of accommodations for juvenile parolees' disabilities and effective communication needs,
- provide for not in custody hearings, dual commitments, and parole exit meetings; and,
- address such disputed issues as telephonic probable cause hearings, circumstances constituting good cause for delayed hearings, and remedies for untimely hearings.

The parties agreed on policies covering the broad outlines of a system and many of its details. Defendants have distributed extensive policies and procedures concerning revocation extension, attorney standards, revocation proceedings for the Board, the revocation process for the Division of Juvenile Parole Operations, ADA and effective communication, and exit interviews. These policies were recently updated in

the annual revision process with input from Defendants' divisions, Plaintiffs, and the Special Master. These serve as one of key features of an infrastructure necessary for a sustainable, well-functioning system.

Of the above-listed requirements, these disseminated policies address tracking methods, accommodations, not in custody hearings, dual commitments, and parole exit meetings. Various aspects of compliance with the Constitution and statutes are included, and the parties disagree about whether more is needed in this regard.

Disputed issues, such as those specified above, remain for resolution. Others have arisen as a natural consequence of interpretation during implementation. Plaintiffs undertook an extensive review to identify all such issues known to them, and the parties began a regular practice of negotiation and dispute resolution. They catalogued the issues and they assigned relative importance and preferred processes for addressing each. They have worked in earnest on those identified as immediate priorities. As a result, in a short time, one of the identified issues was resolved, the parties are nearing completion of a basic set of criteria for assessing Stipulated Injunction requirements, they have further negotiated several policies, and they have increased information exchange to help shape negotiations on upcoming topics. Policy negotiations during the Round concentrated on decision review and mentally ill parolees, as well as party input into the annual revision of the comprehensive policies and procedures.

Notice of terms: As described in prior reports of the Special Master, Defendants have provided posters and notices long-term.

Regulations: The parties continue to work through the lengthy, complex revision and approval process on many regulations affected by the *LH* remedy. The Office of

Administrative Law published notice of the regulations during the Round.⁵ The comment period closed shortly before the issuance of this Special Master's report, and Plaintiffs were among those contributing comments.⁶

Additional steps anticipated include a possible public hearing, a review by the Office of Administrative Law, another round of review by each level of DJJ and CDCR administration, and finally an Administrative Procedure Act review. Defendants project that this could be completed in 10 months or less.⁷ Plaintiffs object to the protracted process required to adopt or revise regulations.

Stipulated Injunction Requirements

The Stipulated Injunction requires a variety of practice changes and a system of revocation steps in which due process must be delivered according to specified timelines. The status of implementing these requirements will be discussed in this section.

Previous reports of the Special Master have detailed the difficulty Defendants have in demonstrating the timeliness aspects of the Stipulated Injunction requirements because of information system issues. Defendants went to extraordinary lengths to demonstrate their timeliness numbers during this Round, improving certain information system reports and adding studies to capture previously unknown populations. As a result, the Mastership feels confident in reporting compliance rates for most requirements, as detailed below.

Parole Agent and Supervising Parole Agent conference within two business days (§ 27):

Nature of the practice

Plaintiffs express concern that they do not know the extent of the information and conversation on which this decision is based, and whether the standards are being applied correctly. The parties recently agreed to components necessary to this conference.⁸ They will next develop audit tools and begin assessing performance in 2011.

Timeliness

Closed cases indicate that the vast majority are timely at this step and there was continued improvement.⁹ Open cases were timely at the same rate.¹⁰ Among the very few known late cases, all were completed the following day.¹¹

The consistency of these numbers, taken together with Defendants' careful oversight, gives the Mastership confidence that timeliness on this task is an extraordinary 99%.

Notice of charges and rights within three business days (§ 28):

Nature of the practice

To satisfy due process standards, the notice must contain a summary of the conduct underlying the charges sufficient for the parolee to prepare a defense. In the large sample of notices the Special Master reviewed, about 80% of summaries were sufficient, and most of those were very well done.¹² The San Jose parole unit was particularly skilled in this area; the Bakersfield and Watts parole units have the most work to do to improve. With 20% of cases having insufficient summaries, it should be a priority for Defendants

to work with those units and staff to improve their performance in this area. The charge report serves a core due process function, and is critical for communicating fairly with parolees and for compliance with *LH* requirements.

The Special Master and Plaintiffs observed service during this Round conducted by 10 parole agents in as many locations, almost all of them county jails.¹³ All locations described had sight and sound privacy. Plaintiffs express ongoing concern that the physical limitations of certain county jails may prevent the provision of ADA accommodations and effective communication during service of notice. Agents went over the forms in detail, describing rights and often providing context and definitions, and orienting the parolees to what to expect in the revocation process and its interaction with the legal system. At least half of the agents expressly warned the parolees not to speak about the charges because of legal ramifications; in another case, when the parolee volunteered his story, the agent neither encouraged nor discouraged it.¹⁴ Plaintiffs' counsel have registered ongoing objections to the practice of allowing a parolee to make any evidentiary statements during this interaction.

ADA/effective communication assessments were limited at times, perhaps because the agents felt familiar with their caseload and confident about knowing the needs. Nevertheless, each went over the disability form and its choices in detail, generally with explanations and helping the parolees to make genuine choices. One trend observed by the Special Master was a tendency to discourage parolees from choosing the form's option seeking an accommodation.¹⁵ At the same time, several agents clearly provided accommodations for learning disabled and mentally ill parolees they were serving, so the reasons for steering parolees away from choosing help were unclear. All agents the

Special Master observed offered and explained the ADA grievance form. Agents had complete ADA kits including large print and Spanish forms. In one or more instances, Plaintiffs were concerned that agents leaving a kit in the car might be a disincentive to using it if a need was discovered once inside the facility.

It appears that agents might improve some practices related to ADA and effective communication at this step, but overall, agents were informative and due process was well advanced.

Timeliness

At this step, 97% were completed timely, with only 12 late cases in six months.¹⁶ Open cases met or exceeded this rate. Nearly all were completed the following day, and the longest time to service was an additional two days, in cases with a timely attempt but delayed completion due to a lockdown or a transfer. These are exceptional numbers and Defendants should be justifiably proud.

Not accepting written admissions to a violation of parole made prior to the juvenile parolee meeting with counsel (§ 17):

Defendants assert that they have ceased the routine practice of asking parolees to sign written admission forms. The Special Master has not encountered these forms in more than 200 revocation packets reviewed in 2009 and 2010, and none has been identified by monitors.

Plaintiffs object to parole agents taking oral statements before revocation counsel is appointed or retained, for example, at the service of notice of rights and charges or during the investigation.¹⁷ Plaintiffs' monitoring discusses two cases in which charges

were added based on information learned during service.¹⁸ The parties disagree as to whether these practices are permissible under the Stipulated Injunction.

Not accepting waivers of hearing rights or the right to counsel made prior to the juvenile parolee meeting with counsel; waivers of hearings and requests for continuance must be made in writing in the presence of counsel (§ 17, 31):

Neither the Special Master nor monitors have encountered waivers made without counsel throughout 2009 and 2010. CalPAP attorneys confirm they have seen no instances of parolees waiving rights prior to conferring with counsel. They could only recall one waiver of counsel, and in that case the attorney remained in the room and the parolee consulted with the attorney periodically.¹⁹ Attorneys reported that all requested continuances have been granted.

Given Defendants' sustained good compliance with these requirements, the Special Master considers these items to be in substantial compliance.

Violation report within six business days (Exh. A):

Nature of practice

The Special Master was unable to review this practice during this Round.

Timeliness

Defendants do not currently measure the date the violation report is submitted. Rather, they go the extra mile, using the six-day period for continuing conversation about whether to refer the case for revocation or to handle the behavior in the community. It is

this latter decision that is memorialized in the database. Parole agents are also expected to generate reports during this time unless the revocation action is dropped.

Closed cases met the timeframe 98% of the time.²⁰ Among open cases, only one case was late in the months studied.²¹ All late cases were concluded on the following business day.²² This is tremendous performance on timeliness.

The parties dispute whether this step is a requirement of the Stipulated Injunction.²³

Supervising Parole Agent review of packet within seven business days (Exh. A):

Nature of the practice

The Mastership has not developed information about Supervising Parole Agents' practices when reviewing the revocation packet for probable cause and for completeness.

Timeliness

Mainstream cases appear to be timely 99% of the time.²⁴ All not in custody cases were timely according to their standards, as were all but one of the extradition cases.²⁵ All cases were completed by the following business day. Among open cases, only one appeared late in the studies; it concluded two days late because staff was relying on an incorrect communication from the California Law Enforcement Telecommunication System. Again, timeliness was exceptional at this step.²⁶

The parties dispute whether this step is a requirement of the Stipulated Injunction.²⁷

Requirements concerning attorney representation

Provision of counsel during revocation proceedings (§ 15)

At the time of attorney appointment, provision of date, time, and location of the hearing (§ 16)
Defendants shall develop standards, guidelines, and training for effective assistance of state-appointed counsel (§ 21)
State-appointed counsel for Juvenile Parolees shall be appropriately compensated for hearings and appeals (§ 24)

These requirements were found to be in substantial compliance in Round IV, and all indications are that they remain so.

Timely appointment of counsel (§ 16):

The Juvenile Parole Board demonstrated timely practice during the previous Round and there were further improvements during this Round, with 98% of CalPAP appointments being timely. The seven late cases were completed within an additional two business days, which is sufficient time to prepare a defense.²⁸ With this sustained performance, the Special Master considers this requirement to be in substantial compliance.

At the time of attorney appointment, provision of a copy of all the evidence on which the State intends to rely or which may be exculpatory; evidence not provided with at least two days' notice shall be excluded unless the state shows good cause (§ 16, 19):

Throughout Defendants' implementation of the Stipulated Injunction, attorney interviews have indicated that they receive the state's evidence timely, and this was confirmed during the writing of this report.²⁹ Five objections came to the Special Master's attention during this Round;³⁰ this constitutes less than 1% of the cases that went to any type of hearing. Four objections were granted while the other was denied.³¹

With this sustained level of compliance, the Special Master considers this requirement to be in substantial compliance.

In addition to the questions of timely provision, there has been a concern that the quality of some photocopies of photographic evidence is so poor that it gives counsel an inadequate ability to judge the quality of the evidence and prepare a defense. CalPAP reports that a system to address this has been in place for several months and is working effectively.³² Defendants have issued instruction to address the problem and have committed to issuing a policy.

At the time of attorney appointment, provision of relevant educational, mental health and disability identification and source documents (¶ 16):

During the previous Round, Defendants initiated use of a summary form to provide educational, mental health and disability information to attorneys and those making use of the field files. A dispute remains about what is sufficient to satisfy the requirement to provide source documents.

Right to be represented by counsel of choice; process for timely notifying of the counsel of record of the imposition of a parole hold (¶ 18):

Defendants have in place a system to notify counsel of record. The Special Master's team conducted a large review and found that the notifications occur routinely, with 82% being completed by the deadline the parties agreed upon.³³ Those delayed took an additional one to five business days to complete. This is a much lower timeliness rate than with many of the Stipulated Injunction requirements.

Documents indicate that only three attorneys outside of CalPAP represented youth in the revocation proceedings during the Round.³⁴ Plaintiffs reinforce that while the number may be small, parolees' right to be represented by attorneys of their own choosing is an important right conferred by the Stipulated Injunction. Each of these attorneys was timely notified of the parole hold and it appears that the Board provided them material – the revocation packet, the return to custody assessment, and the attorney standards policy and procedure -- on a timely basis as well.³⁵

Attorney will be informed of Return to Custody Assessment by the 10th business day after the hold (§ 30):

As discussed *infra*, there were almost no return to custody assessments known to be late during the Round. Printouts show timeliness was 95% in the previous Round and nearly 100% during this Round. Since CalPAP has simultaneous access to this information when it is entered, it appears there was good practice in timely notifying CalPAP, and CalPAP attorneys confirm timely receipt of this information throughout 2010.³⁶ Defendants have a routine for timely providing the return to custody assessments to non-CalPAP attorneys at the time the substitution is requested; this also appeared to be working.³⁷

Given this sustained performance, the Special Master considers this requirement to be in substantial compliance.

Adequate time for representation ; reasonable access to clients and files; confidential phone calls and space in which to meet; observing staff cannot participate in proceedings. (§ 20, 23):

Over several Rounds, counsel have described adequate time for representation, access to files, and conditions for client meetings. CalPAP recently surveyed the ten attorneys most frequently representing juvenile parolees, and they confirmed that each of these requirements is well met. This was affirmed by attorneys interviewed during site visits, as well.

Additionally, the parties negotiated policies and procedures governing attorney access to files.³⁸ While the parties reached agreement, Plaintiffs note that the policy is silent on whether review can be denied for reasons of safety and security, and whether parolees can be restrained, if present during the review, or excluded; Plaintiffs would consider all of these potential practices problematic if they were to occur.³⁹

There are no known instances of security staff giving testimony about attorney-client communications they observed, according to the Mastership's and monitors' onsite reviews, and there have been no related objections documented.⁴⁰

Although no systematic review has been undertaken, concerns about any violations of these requirements would, by their nature, almost certainly have been raised in one of the venues noted above.

Given this sustained performance, the Special Master considers these requirements to be in substantial compliance.

Return to custody assessment within nine business days (¶ 29):

Nature of practice

The Special Master was unable to observe hearing officer practice in assessing at this stage probable cause and the need for continued detention. It appears that 14 cases were continued on parole at this step, and three were dismissed, supporting an inference that hearing officers are applying these criteria.⁴¹ The parties recently agreed to components necessary at this step. They will next develop audit tools and begin assessing performance in 2011.

Timeliness

Timeliness was extraordinary. Only one case was late, and it was completed the following business day.⁴² Open cases, extradition, and not-in-custody cases were consistent with this trend.⁴³

Probable cause hearing requirements

Expedited probable cause hearings (¶ 26): There have been no requests for expedited probable cause hearings in any Round to date.⁴⁴

Probable cause hearings within 13 business days after the hold is placed, including written bases for findings (¶ 32, 40):

Nature of Hearings

The Mastership had the opportunity to review 26 probable cause hearings conducted by four hearing officers during the Round.⁴⁵ Both good hearing practices and those needing improvement were evident. The areas of greatest concern were:

- ADA interactive interviews
- Specifying the factual basis for probable cause findings
- Considering alternatives to incarceration
- Assessing probable cause to detain pending the revocation hearing

A more universal understanding of due process itself, including the ways in which it applies to every aspect of the revocation process, may prove helpful to hearing officers, especially when the situation calls upon them to independently think through a fairness issue. Constitutional mandates for due process, both substantive and procedural, are complicated and can take years of practice to integrate into personal and professional practice. Focused training on fundamental fairness in process and evidentiary interpretation may prove invaluable to hearing officers.

In several respects, the Defendants have greatly improved their skills and it has become standard practice for probable cause hearings to start with an interactive ADA interview, a review of the parolee's appellate rights, and an explanation of the hearing itself. Most hearing officers have become adept at reciting rights and the appellate process from memory. The Mastership and Plaintiffs have observed procedural rights still being read too quickly – decreasing the likelihood that parolees will understand. In some cases, no mention of appellate rights was made during the entire proceeding. It is improper to assign the duty of ensuring due process to the defense during the proceeding, as was stated in some hearings.

The ADA interviews during this round were generally inconsistent in their execution as observed in 26 probable cause hearings audited by the Mastership, and continue to be one of the least effective aspects of the hearings overall. For the ADA

interview to be meaningful, the interviewer must ask open-ended questions, use common language and non-medical terms, and invite an interactive conversation.⁴⁶ Due process is at risk when there is failure to properly assess physical and mental health issues and to establish effective communication before the hearing proceeds. If either is in question, or if a necessary accommodation is overlooked, the important nature of the proceeding may be lost on the person whose liberty is at stake, and it is akin to not having them there at all.

When the ADA review is an issue, generally, the problem comes from hearing officers speaking too rapidly and asking questions that suggest an affirmative answer that may chill an informative response. In addition, the Mastership routinely observed hearing officers move on as soon as they received a “yes” or “no” answer, even when there were indications that the response may not have been truthful or complete and that this may affect the hearing. For example, if a juvenile answers that he no longer takes medications for mental illness, asking him how he is different today from when he took them could develop needed information about whether effective communication can be accomplished.

In too many cases, the hearing officer did not seem familiar with the disability summary before asking about the parolee’s overall health or accommodation needs. An additional, troubling observation is that it was not unusual to find that the ADA summary did not carry forward important historical health information. The Plaintiffs and the Mastership observed discrepancies among revocation packets, hearing orders and health summaries, including mental health and accommodation recommendations.

The hearing officers are working to expand their ability to improve interactive interviews with parolees. It is anticipated that additional training on ADA interactive interviewing skills is scheduled for the annual training and should lead to improved assessment.

Attorneys comment that hearing officers clearly respect *Valdivia* issues. Overall, hearing officers appropriately limit their inquiry and decision making to the record and testimony. On occasion, they reach outside to the on-duty hearing officer, legal counsel, or other staff for advice and direction during a hearing. The Plaintiffs reportedly observed confusion by an attorney and the hearing officer in handling a parolee who may have been too mentally ill to participate in the revocation proceedings. This prompted the hearing officer to excuse the parties and telephone the on-call hearing officer, outside the presence of the attorney and parolee. The Mastership observed similar activity with respect to time credits related to extradition during a hearing. Procedural due process risks are inherent when a hearing officer seeks advice from a person who is not present, recites the facts to him or her, and then relies on the third party's feedback in formulating decisions that impact a parolee's personal liberty, all outside the presence of the accused and his or her counsel. Consistent with fair hearing practice, the Plaintiffs and the Mastership would prefer to see complete transparency when hearing officers seek outside opinions during a hearing.

On some occasions, hearing officers find probable cause without inviting or appearing to consider counsel's arguments. Hearing officers appropriately require corroborating evidence in conjunction with an admission. The majority dismissed all or some of the charges when the evidence at the hearing did not support probable cause and

ordered the parolee released to continue on parole. The second area of greatest concern is that, too often, hearing officers do not cite the evidence that supports a probable cause finding. Citing a general document, such as the violation report, is not sufficient; the parolee is entitled to know what facts within the document the hearing officer is relying upon.

The Mastership and Plaintiffs noticed insufficient articulation of probable cause to detain pending revocation hearings across the samples monitored. In addition, alternatives to incarceration were routinely not mentioned during the hearing, although findings were included in the orders as if to say they were considered. The Mastership and the Plaintiffs also noticed incomplete or exaggerated reasons documented for not considering alternatives to incarceration. There continues to be a practice of collapsing consideration for alternatives to incarceration with probable cause to detain pending the revocation hearing. This is problematic⁴⁷ and more training on this issue could prove valuable.

In general, there continues to be significant difficulty with written records accurately and completely capturing aspects of the proceedings. In review of the records, the Mastership and Plaintiffs observed that objections, and rulings on objections, were not always recorded; the presence of participants, witnesses, and observers were not always recorded; and the presence or absence of restraints were sometimes omitted from the written record. In addition, the Mastership experienced events that were not alluded to or recorded in the orders. The failure to accurately record the events in a hearing may substantially affect appellate due process rights, future parole conditions, and permanent

records. It also interferes with credible statistical data, effective training, and monitoring exercises.

Although much improved in terms of connectivity, staff did not have access to a printer or online service in a minority of hearings, which prevented them from providing copies of the hearing orders to the parolee and attorney at the close of the hearings. In those instances, staff and the attorney described the follow-up methods that would be employed to provide the record to the parolee. CalPAP reports show very few occasions on which orders were not immediately provided – an average of three per month – with significant improvement in recent months. These orders were each reportedly provided within one to two days.⁴⁸

Timeliness

With substantially better data reporting capability, Defendants can now more definitely demonstrate that the timeliness of their probable cause hearings is quite strong, at 97%.⁴⁹ The principal problem for Defendants to address is lengthy time to rescheduling in some cases.

Both extradition cases and the completed cases that followed the usual course continued to show a very high rate of success. Both open cases and CalPAP data are consistent with these numbers.⁵⁰ This rate is diminished minimally by cases that are postponed but do not return for rehearing in a reasonable time. This particularly occurred when a parolee missed a hearing because he was out of court or not transported. Similarly, there can be lengthy times to rescheduling when a new hearing is ordered by decision review.

Among postponements, $\frac{1}{4}$ were parolee time waivers, all of which were heard within the time waived. Another $\frac{1}{4}$ were postponements that were reheard within one week. The remaining half of cases, however, took additional days to weeks, meaning that the total time to probable cause hearing was 30 to 45 days.⁵¹ With the requirement being 13 business days, this is unreasonable, even if this only affected 3% of the parolees at this step.

Reasons for postponements commonly include, the parolee being out to court, quarantine, medical and psychiatric crises, parolee request, failure of transportation, lack of jail access, evidence availability, and Defendants' decision review. While the parties have agreed to a general definition of good cause for delay, they have not decided about its specific application to all of these topics, and Plaintiffs have asserted their objections to postponements based on the latter four. Defendants have offered to prepare a summary of any restrictions on access to county jails, which will be useful in examining one of the causes of delays and postponements.

Definition of presumed prejudice (§ 32): Defendants assert that the parties negotiated one definition to be used for both types of hearings, while Plaintiffs indicate that a definition applying to probable cause hearings remains to be developed.

Mechanical restraints at hearings (§ 46):

The Stipulated Injunction requires Defendants to develop policies, procedures, and training concerning restraints that are consistent with the ADA, the Rehabilitation Act, due process standards, and Title 15 California Code of Regulations section 4034.4.

The Stipulated Injunction prohibits any policy requiring universal use of restraints in revocation proceedings. Defendants did distribute a policy and has held related training.

Plaintiffs continue to express concern about the use of restraints at hearings. For the time being, it seems the Defendants are compelled to defer to local sheriff and police policy concerning restraining juveniles. The sampling indicated that the majority of parolees who were restrained at hearings were in county jail facilities, some of which require universal restraints while others do not. Overall, hearing officers typically overruled objections to restraints, even in Defendants' facilities.

The Special Master's team observed restraints practices onsite and in hearing records, and interviewed staff concerning them. Among 36 cases reviewed, 12 parolees were not restrained. Staff did not record restraints use in about 17% of this sample.

Defendants' staff exercised discretion to restrain 13 parolees; about half of these were restrained according to the agreed criteria, while it was not clear that the stated reasons met required criteria in the remaining instances. In one not-in-custody hearing that the mastership audited, for example, the otherwise compliant juvenile, with no violent history, was restrained when he appeared for a revocation hearing. The hearing officer explained on the record that it was necessary because the return to custody assessment recommendation was to detain him, and there was a concern that the parolee would "act out" if he was ordered incarcerated. In response to the defense objection to the restraints, and to his credit, the hearing officer interviewed the parolee and ordered his restraints removed. The concern here is that it is not clear that the factors to be considered when weighing the necessity for restraints were activated; the decision seemed to be fear-based, rather than evidence-based. Additional training on this issue could help to

highlight the reasoning invoked when considering the appropriateness of restraints during a hearing. There is also a potential disagreement in interpreting the criteria; the parties should determine, in the coming Rounds, whether the decision should be based on the totality of the parolee's circumstances, or whether the presence of one or more of the factors is sufficient.

Another 11 parolees in the Special Master's study were restrained in deference to county jail or CDCR policy. Plaintiffs strenuously object to Defendants deferring to the policies of county jails and CDCR adult institutions, some of which require universal use of restraints, contrary to the terms of the Stipulated Injunction. Reviews have not been comprehensive, but have identified 14 county jails and all CDCR adult institutions as requiring universal restraints; in another five, Defendants may exercise discretion or the parolees are physically separated from others and are therefore not restrained. Plaintiffs are also concerned that Defendants' juvenile facilities may not be following this Stipulated Injunction requirement; examples to date surfaced solely at one institution that has since closed.

Additionally, Los Angeles County Jail's routine practice of restraining prisoners to furniture and the floor is objectionable and is counter to the parties' stipulation and order entered in September 2009. The parties agreed in 2009 to approach the jail to address this but, to the Special Master's knowledge, this has not been undertaken.

There is a particular requirement in the Stipulated Injunction concerning pregnant parolees; the Special Master does not have current information on point as no such cases came to her attention.

Requirements related to revocation hearings:

Final revocation hearing on or before 35 calendar days after the parole hold is placed (§ 33):

In assessing this requirement, there are a number of considerations. The system must consistently provide timely hearings in the usual course of revocation proceedings. It must also function to provide hearings timely to special populations, sometimes small groups whose circumstances dictate counting timelines differently or suspending and resuming proceedings once conditions have been met. In operation, the hearings must provide due process, satisfying questions such as fairness, opportunity to be heard, elements of the violation proved sufficient for the applicable standard, and consideration of appropriate sanctions.

Nature of Hearings

Many of the practices observed in probable cause hearings also take place in revocation hearings. The hearing officers have become more comfortable with advisement of parolee rights, assessment of accommodation needs, review of mental health and cognitive status, and orientation to the hearing process.

Attention to effective communication carries both ADA and due process implications. The persistent weakness in hearings comes in talking too fast, cursory explanations, and what appear to be assumptions that what hearing officers are saying is being understood.

Among the hearing officers assigned to hear probable cause hearings and revocation hearings, a minority openly rely on the mental health assessment from the

hearing weeks before instead of conducting a new assessment. This applies to all disabilities, but mental health status is of particular concern as one most likely to change in the interim. More than once the ADA interview consisted of “Can you hear, see, and understand what we are doing here so far?” When the parolee answered “yes,” that concluded the ADA/effective communication interview. After reviewing the parolee’s mental health history, a better practice would be to ask follow-up questions to ascertain his or her current abilities.⁵²

Hearing officers manage procedural protections well, such as the taking of pleas, inviting narrative testimony and cross-examination, and preserving distinct phases for fact-finding and disposition. There are several ways in which hearing officers demonstrate skill with substantive due process issues, including routinely dismissing charges for which the State’s evidence is incomplete or the charges are otherwise vague and cumulative. During this Round, for example, hearing officers dismissed 16 matters at hearing for insufficient evidence, lack of witness testimony, and lack of jurisdiction.⁵³ Several hearing officers have been observed conscientiously researching crime elements and relevant law during recesses to ensure that they make informed and legally supportable decisions.

There are some issues of due process that require attention. Some are discussed *supra* in conjunction with probable cause hearings. A few more are unique to revocation hearings. The treatment of proffered hearsay is a due process area of substantial concern. The Special Master reviewed the Board Orders capturing all known *Comito* objections during the Round, a total of 32 objections occurring across 66 revocation hearings. Fewer than one-third of the written orders applied the test correctly, explicitly or implicitly.⁵⁴

Recordings indicated that some hearing officers were more effective in their oral discussion of this test. Nevertheless, admitting unverified and untested information can be unfairly prejudicial to a parolee, risking significant harm. The confrontation balancing test is an area that requires substantial work if Defendants are to provide fair hearings and reach findings “based on verified facts and ... an accurate knowledge of parolees’ behavior,” as discussed in *Morrissey*.

There were a few trends when *Comito* practice was not up to standard. Hearing officers would consider the diligence with which the state sought to produce the witness, but did not discuss whether there was a good reason for the witness’ absence nor did they express a conclusion about whether there was good cause to deny confrontation. Hearsay was sometimes used to corroborate hearsay. Factors are commonly omitted from the analysis. Frequently, no balancing was conducted, and occasionally, the test was not used at all. There were also a variety of other practices at variance with the usual application of this law. The Mastership looks forward to Defendants providing more guidance to increase hearing officers’ knowledge and solidify their practices in this critical due process area.

The parties continue to grapple with policy and practice concerning confrontation rights. While they agree on major components, there are disagreements about these rights as it concerns a substitute parole agent as opposed to the agent of record, incarcerated youth as witnesses, disposition witnesses, and witnesses during revocation extension hearings. Addressing these issues has been subject to starts and stops; most recently, the parties are considering mediation of these disputed issues.

Another problematic practice is that, unfortunately, information is sometimes factored into decisions that is not part of the hearing record, or is associated with dismissed charges. This has an unfair impact on the process and poses a risk to due process and the integrity of the hearing. This is an area that would benefit greatly from interactive training.

Overall, the hearing officers continue to approach disposition issues openly and with considerable deliberation. Undermining this good practice, however, was a minority of cases observed or audited in which hearing officers took matters into account that were uncharged, historical, or otherwise unrelated to the charges before them.

On one occasion, a hearing officer considered the injury from a dismissed charge to support the disposition order. In another, a mentally challenged young man was reincarcerated, not because of the admitted violations, but primarily because it was felt that he did not have the cognitive capacity to manage on the outside.

In another case, the parole agent was allowed to testify, as a basis for a return to custody disposition, that he was “concerned about what the parolee was doing when not being observed” and suspected but could not prove any wrongdoing. The disposition order seemed somewhat severe in response to the sustained charges. In an interview with the parole agent afterwards, it was learned that the same hearing officer had presided at the probable cause hearing and dismissed two weapons charges. The parole agent seemed confident that the hearing officer had properly taken the dismissed weapons charges into account when sentencing. The attorney was interviewed by the mastership and confirmed that she, too, believed that the weapons charges influenced the disposition.⁵⁵

Plaintiffs have expressed a longstanding concern about hearing officers' facility with legal issues, such as those described above, and advocate for more training on point.

Another practice can be inconsistent with the Stipulated Injunction requirement to consider alternatives to incarceration. While the Mastership recognizes there is no obligation to follow the parole agent's recommendation, in some instances, and largely unexplained, the hearing officers seemed not to consider the agent's recommended disposition, especially if it recommended release. For instance, in one matter, good cause was found on a substance abuse violation and the agent testified that the local police had requested that the parolee be released to treatment in their program, and the parole agent concurred that it would be a good result. The hearing officer incarcerated the individual without reference to the treatment program or other alternatives, or otherwise stating a basis for the decision. The written order employed a basis that was inconsistent with the evidence and recommendation. The parole agents clearly value their jobs as advocates for change in their parolees' lives, and are generally frustrated by the process that interrupts their ability to work with the parolees while, at the same time, they have limited influence on the process itself.

Timeliness

To understand this population and timeliness, one must be able to assess:

- Mainstream cases⁵⁶ completed within 35 days
- Mainstream cases pending to be completed within 35 days
- Extradition cases completed according to the *LH* standards calculated from arrival in California, rather than hold date
- Activated optional waiver cases, completed within 35 days after receipt of activation request

- Activated optional waiver cases, pending within 35 days after receipt of activation request
- Hearings held while the parolee is not in custody and within 60 days after notice service
- Postponed revocation hearings reheard within the requested time or a reasonable time
- Postponed probable cause hearings and optional waivers that subsequently go on to revocation hearing⁵⁷

Among the 66 revocation hearings in the Round, only 8 were late, for a total of 88% compliance.⁵⁸ This rate is comparable to the previous two Rounds. Open cases are consistent with closed in the analysis that follows.⁵⁹

Defendants ensure that the hearings of several populations remain on time despite the need for special handling. Extradition cases, not in custody cases, and activated optional waivers were all timely according to their adjusted timeframes.⁶⁰ Performance on optional waivers represents a significant improvement over the prior Round.

There was an occasional late case in each of the other populations. One time waiver was quite late because the private attorney was unavailable, while all other time waiver cases were rescheduled within the time waived.⁶¹ When the State reopens cases through “decision review,” the parolees’ right to a *final* hearing within 35 days is no longer fulfilled. A handful of mainstream cases were late, generally because witnesses failed to appear or the parolee was not transported. Plaintiffs, CalPAP and the Mastership have questioned whether postponement under these conditions is reasonable, particularly if preventable.⁶²

In each of these situations, the rehearing usually occurred within two weeks but, rarely, it was as much as one month later. The parties have taken a step toward remedying

one cause – rescheduling time for the decision review rehearing – by agreeing to timeframes in recently distributed policies.

Parole revocation hearings to be held within a 50- mile radius of the alleged violation (§ 36):

This requirement remains in substantial compliance, but some slippage was evident as described *supra*.

Evidence on the same terms as the state (§ 33):

In observations and on hearing recordings, parolees generally put on evidence without obstacle. There were occasions when the parolee’s defense or mitigation relied in part on questioning his parole agent, and this was frustrated when a substitute agent appeared. In general, however, the system to satisfy this requirement appears to be functioning well.

Supplemental charges (§ 34):

During this Round, it appears there were nine cases with supplemental charges.⁶³ The parties agreed that supplemental charges may not be made based on evidence contained in the field file at the time the notice of rights is completed; no party reviewed these cases for consistency with this agreement or for other aspects of their handling.

Definition of good cause for delay, remedy for timeframe violation (§ 33):

The parties have agreed to define good cause as “justifiable, legitimate and unforeseeable reason for the delay, asserted in good faith and caused by factors that are beyond the control of the State.” They have also agreed that, for any revocation or revocation extension hearing timeframe violation, and for any probable cause hearing held after 35 days, any return to custody will be reduced by the number of days the hearing is late. There were few late revocation hearings during the Round, and Defendants found nearly all of them were delayed for good cause. Three cases were exceptions. In one, the parolee was continued on parole; the remedy was provided in the second case, but not the third.⁶⁴

Prejudice is presumed, and the case will be dismissed, if, absent good cause, a revocation hearing has not been held by the 90th day after the hold. The parties negotiated the reduction of the previous threshold for presumed prejudice down to 90 days, but Plaintiffs maintain that the Injunction is violated whenever the 35-day timeframe is not met without a showing of good cause, and that a case should be dismissed if the hearing has not been held within 60 days after the hold.⁶⁵ To the Special Master’s knowledge, all cases were resolved before the 90th day.

Not in custody hearings within 60 days after service and with all due process and ADA protections (§ 45)

During this Round, 16 parolees’ revocation actions were handled as “not in custody”; all were initiated at the parole unit. Among them, 12 were concluded without ever taking the parolee into custody.⁶⁶ Three were subsequently taken into custody and their matters were concluded at a probable cause hearing. Only two not-in-custody

actions proceeded to revocation hearing and they were held timely.⁶⁷

The Special Master's team reviewed the two hearings. Due process and ADA protections were comparable to those in Defendants' revocation hearings held in custody, although there was a concern about the handling of restraints (see Mechanical restraints section).⁶⁸

There has been consistent, timely practice, with equivalent protections provided, over at least one year's time. The Mastership considers this requirement to be in substantial compliance.

Requirements related to disposition

Alternatives to Incarceration (¶27)

The Stipulated Injunction requires Defendants to "consider whether alternatives to incarceration are warranted [at the initial case conference]. The advisability of alternatives to incarceration shall be considered again at the Probable Cause Hearing and at the Revocation Hearing." Revocation proceedings do appear to have consideration for alternatives to incarceration built in at every step and according to the State, everyone is eligible for consideration.

It is undisputed that when a parolee is removed from the community for any appreciable time, there is a risk that any positive gains in school, employment, and personal support systems are interrupted and perhaps lost. It is also undisputed that these types of support systems are essential for successful performance on parole. Yet, it continues to be highly unusual to release a parolee to await revocation hearing after a probable cause finding at a probable cause hearing -- in this Round, there was one such

person -- and there is no policy prohibiting it. Parole practices may be strengthened when there is an assessment for probable cause that establishes a right to maintain a charge against the parolee, and separate consideration for release pending further proceedings.

On more than one occasion during this Round, a hearing officer openly discussed detaining a parolee after a finding of probable cause, for “his own good” or to await placement in a treatment program. The hearing officers and the agents of record clearly make these decisions with the best interests of the parolee in mind and the outcome can seem reasonable and also realistic under given circumstances. That said, incarceration for these purposes raises substantial questions.

When giving alternatives to incarceration as the disposition at hearing, hearing officers do not formally place parolees in treatment or work programs, but can recommend that these be considered as a condition of parole. Parole agents sometimes make recommendations for alternatives to incarceration at revocation hearings, and the hearing officers leave it to them to choose the program or other alternative to incarceration, once a decision has been made to release the parolee.

One compilation shows that alternatives to incarceration were executed in 66% of all revocation proceedings in the Round.⁶⁹ Another of Defendants’ sources shows 47% of proceedings were concluded with an alternative.⁷⁰ The reasons for these differences are unclear. In either event, this is substantial usage of options other than incarceration.

Consideration of alternatives to incarceration appears to be systemic in the process and is not necessarily captured or appropriately measured by looking only at the revocation stage. The parties are currently involved in sorting out what alternatives are considered and when. The State is actively working with the Plaintiff class to

demonstrate compliance with this aspect of the Stipulated Injunction. Activities to date have centered on deciding the scope of information necessary to do this. Plaintiffs have sought, for several years, detailed information based on the contention that they and CalPAP must know the universe of alternative programs available to be able assess compliance. Defendants see reasonable monitoring of this topic to be much more limited. They have not provided documentation, but recently arranged descriptions of staff practices in order to provide context and to illustrate the methods of consideration. Resolution of this dispute is ongoing.

Limiting return to custody time to one year; use of a matrix of ranges of revocation terms (§ 35):

A matrix routinely guides decisions concerning violation terms, although Plaintiffs and some system actors assert that it carries more harsh penalties than in the adult system and in the previous juvenile system.

The revocation matrix reflects the highest penalty to be one year. Hearing officers routinely inform parolees during proceedings that this is the maximum term. No penalty exceeded one year in the hearings observed by the Special Master in 2009 and 2010; while not systematically chosen, these total well over 100 in person, in Board Orders, and on recordings. Likewise, no such problem has been discussed in Plaintiffs' monitoring reports.

There is an issue, however, with the handling of in-custody misconduct during the period in which the parolee is pending revocation. Policy indicates that, when such cases involve violence, they will be charged separately from the original violation allegations

and a separate penalty can attach, which could extend the revocation term beyond one year. Similarly, the parties have encountered cases in which supplemental charges for parolees not in custody carried the risk of separate sentences whose total could exceed one year. Plaintiffs strongly object to these policies. It is difficult to imagine, with the information currently available, that these practices are consistent with the Stipulated Injunction.

Release within three days if time has been served (¶ 38): No information came to the Special Master's attention during the Round.

Requirements related to ADA and effective communication

ADA and effective communications accommodation (¶ 23, 48, 50, 51, 52, 53):

ADA and effective communication issues have been detailed in previous reports of the Special Master. To summarize, the parties negotiated, and Defendants distributed, revised policies and procedures on point; Defendants have summarized relevant field file information; and parole agents and hearing officers routinely seek to identify accommodations needs and offer to fulfill them at different steps of the revocation process, including volunteering magnifiers and assistive hearing devices. There has been training for staff in all divisions and plans are to incorporate similar materials in the upcoming annual refresher trainings. Plaintiffs would very much like to see more training concentrated on these issues.

An electronic database is in routine use, however, forms do not always accurately record known disabilities. In small snapshot studies, for example, Plaintiffs identified 18

cases that did not carry forward known disability information.⁷¹ An additional trend is parole agents documenting a significant limitation, such as a learning disability, but indicating that the parolee would not need accommodation or effective communication assistance. Because of this, and because the available printouts capture limited useful information, centralized tracking of disabilities and accommodations provided is only partially implemented.

Forms in alternative formats (§ 55): During the Round, Defendants made available in Spanish and large print those forms given to parolees during service of the notice of rights and charges. The parties have agreed that, rather than providing forms in audio format, Defendants will read the forms aloud when needed. Defendants previously ensured that there was equipment available at each of their facilities for parolees needing to listen to materials on recordings; the status of providing this support to parolees housed in jails is unknown, and Plaintiffs assert that it is necessary.⁷²

Prohibition of discrimination in parole placements and referrals to services (§ 27):

Information concerning this requirement did not come to the Special Master's attention during the Round. The parties disagree concerning documentation that may be necessary to demonstrate compliance with this provision.

Develop an ADA grievance procedure (§ 54): Defendants have put in place an ADA grievance procedure and began, during this Round, to routinely distribute the form when parole agents serve the notice of rights and charges.⁷³ The Special Master has also

observed Defendants' staff making parolees aware of the ADA grievance procedure during some hearings.

Defendants report receiving no ADA grievances the last two Rounds.⁷⁴

Development of an appeal process (§ 43):

Defendants have also developed an appeal process with the components required in the Stipulated Injunction, much of which is operating well. Hearing officers generally informed parolees of their right to appeal, including the assistance of counsel and timeframes; however, this was missed in enough hearings that this practice needs more attention.

The system employs one level of appeal that requires parolees, or their attorneys, to file with the Juvenile Parole Board Executive Officer within 20 days of receiving the Board Order. Defendants' documents reflect 18 appeals handled during the Round.⁷⁵ The Special Master did not review the content of the appeal decisions; previously, she has found them to be of good quality, but Plaintiffs were concerned that they did not provide sufficient information regarding the basis for decision. By policy, the Executive Officer does have the ability to grant release, discharge or continuation on parole, consistent with the Stipulated Injunction. In terms of timeliness, Defendants' and CalPAP data show that, in all cases, the Board issued a decision within 10 business days of receipt, as required, and CalPAP received notice of decisions within the required five business days. This timeliness represents further improvement. It is unknown whether decisions also reached parolees in this time.

Defendants document nine requests for tapes in the Round. All but one of these requests reportedly were filled in two weeks or less, as required.⁷⁶ In one case, the recording failed and the parolee was granted a new hearing in accordance with policy.

There is an additional mechanism termed Decision Review, which has some features similar to an appeals process. Defendants review each Board Order for mistakes of fact, law or policy. Parolees and the Parole division can also request that a decision be reviewed using these criteria. Plaintiffs continue to strenuously object to this system in both concept and practice. Interviewed CalPAP attorneys also expressed the sense that decision review was conducted unfairly and arbitrarily. The parties initiated a dispute resolution process for this topic. They negotiated some of the standards and timeframes and memorialized those in policy. They have agreed to defer work on the dispute while these new practices are put into place.

Decision review has invaluable potential as a tool for training and monitoring and, as such, can complement the appeals process. It is of concern, however, when necessary oversight extends parolees' time in custody, especially when reaching the same result, and when the lines are blurred between quality control and substituting judgment. Additionally, this Round's cases raise a note of caution about appropriate staffing for Defendants to consider.

Current practice subjects all hearing records to decision review within ten business days of the hearing and sets out procedures for notice. All cases ordering rehearing were timely in the review and notice given.⁷⁷ The executive officer or designee is *not* permitted to substitute his or her own judgment or discretion for that of the hearing officer.

Where a mistake is identified and its correction would be beneficial to the parolee, it is enacted. To the Special Master's knowledge, these changes are not tracked. Any action that would be adverse to the parolee requires notice to be given and a new hearing to be scheduled.⁷⁸ The State exercised discretion to reverse final decisions and order new hearings in four cases during the Round and CalPAP requested another three; about two-thirds involved probable cause decisions and the remainder were revocation decisions.

Reversal orders improved during the Round by stating the basis for the reversal, a new and welcome development. After reviewing these decisions, however, the Mastership notes the following concerns. It appears as though, in some cases, the automated protocols of the computer record-keeping system may still be erasing original notes in the hearing orders and replacing them with the reviewing notes, and the course of the proceedings is not always apparent from the record.

In one case, it appears that contradictory drafting led to a subsequent probable cause finding on a charge that had been dismissed.⁷⁹ In one matter, it is unclear whether the evidence used to reverse the decision on review was available at the initial probable cause hearing.⁸⁰

In several matters, the person who reviewed the cases and reversed the decisions was assigned to hear the case *de novo*. When defense counsel objected, the hearing officer asserted that professional acumen could overcome any potential for bias and overruled the objection.

In one case, the hearing officer dismissed attempted murder charges when the State's witnesses failed to appear without good cause. The remaining charges were disposed of for time served, and the parolee was ordered released to continue on parole.

As a result of decision review, however, he was held in custody for another month to await a second hearing at which the same result was obtained, and for the same reasons. After seven months, the parolee was released to continue on parole.

These examples point to the need to continue to refine decision review policy and practice to protect against the appearance of, and potential for actual, substituted judgment, conflict of interest, and unfairness to parolees. When decisions are disturbed under such circumstances, it raises the risk of violating due process.

Comprehensive annual training on ADA and effective communication, the Stipulated Injunction's requirements, policies and procedures, due process (§ 56):

Defendants have provided strong training for staff. In addition to annual training, during most months, Defendants distribute instructional memoranda clarifying Stipulated Injunction mandates and setting out procedures where previous interpretation had been unclear or not well-executed. Both the Parole division and the Board have provided agendas for annual training anticipated close in time to the filing of this report; they reflect each of the broad topics required by the Stipulated Injunction.

Plaintiffs attend trainings and provide feedback on content. Defendants made great improvement during the Round in providing materials in sufficient time to comment. Plaintiffs would particularly like to see more training so that hearing officers and parole staff become more skilled in disability and effective communication issues and legal analysis.

Tracking mechanism for timeframes and reasons for delay (¶ 13, 32, 33):

Defendants employ a complex information system that facilitates many aspects of compliance and tracking performance. As detailed in previous reports of the Special Master, it is built on the programming initiated more than 10 years ago, based on the *Valdivia* Defendants' projection of how the revocation system would operate and the functions and data that would be needed. It has a great many capabilities, but it is inflexible and was not designed for various functions that it has since become apparent are needed. Some of the operational rules by which it handles data create the impression of inaccuracy, which is often disproved after investigation. Taken together, the system has significant limitations in serving management and compliance reporting.

During the Round, Defendants and information system contractors took meaningful strides toward remedying some of the effects of these limits. Programmers wrote reports that capture several populations previously undemonstrated. They improved data capture so that hearing officers' work is more accurately reflected on Board Orders - making for a more accurate hearing record and appeal record - and reduced some possibilities for inaccurate hold dates generated by the interaction of this system and the California Law Enforcement Teletype System. They revised some reports, thereby making certain information more manageable and reducing the appearance of inaccuracies. These are all important improvements.

And still, staff and the contractors must run up against the limits of the system's design. At regular intervals, staff had to conduct labor-intensive studies on topics that would ordinarily be automated. To produce accurate and complete numbers, staff and the Special Master had to piece together information from a series of reports and,

through multiple hand calculations, adjust for various irregularities. The required tracking mechanism is in place, but it places significant limits on Defendants' ability to demonstrate compliance.

Monitoring process

In previous Rounds, the parties reached agreement concerning a detailed monthly production of documents and recordings by which Plaintiffs may review some aspects of the remedy's implementation. Defendants have provided those materials monthly. Plaintiffs have raised concerns about the accuracy and utility of some documents.

The parties have also agreed to a number of onsite visits by Plaintiffs' counsel independently and in conjunction with the Mastership. There are occasional difficulties in access at local jails, but the parties are working to resolve them. For the first time, Plaintiffs were able to observe notices of rights and charges during this Round. The parties anticipate renegotiating the monitoring agreements for 2011.

The Stipulated Injunction requires Defendants to develop self-monitoring to ensure compliance with its terms and with relevant policies and procedures (§ 57). The Office of Audits and Compliance, an office external to the Division of Juvenile Justice but within CDCR, will serve to conduct monitoring. Plaintiffs doubt that an office within CDCR can be sufficiently independent to produce results that can be relied upon.⁸¹ The Mastership's contacts with this office to date raise no concerns about its objectivity.

As discussed *supra*, the parties have been negotiating "standards and criteria," which detail components necessary to fulfilling the court's requirements at each revocation step.⁸² These standards and criteria will be used as the basis for audit tools,

with which this office will conduct reviews.

To date, the parties have worked cooperatively on designing the initial audit tools and soliciting Plaintiffs' input. The Special Master has significant reservations about some of the methodology and Plaintiffs maintain substantial concerns, as much of their input was rejected and they are concerned that non-quantifiable aspects are not sufficiently covered. As audit tool development is still underway, particularly with the introduction of standards and criteria, the Mastership is hopeful that these concerns will be addressed.

In addition to formal audits, Defendants have a number of oversight mechanisms integrated into operations. From the outset, Defendants have maintained a multidisciplinary team that meets at regular intervals to design, oversee and troubleshoot implementation; to share information; and to jointly create policy and regulation. Members of this body examine late cases at every revocation process step; investigate the reasons; implement and check on corrective action; and report to the full task force on the substance and outcome of these efforts monthly.

Headquarters staff reportedly check open case reports daily for timeliness at each step and follow up to remedy any appearing late. Defendants indicate that field supervisors also frequently check database reports concerning timeliness. These are all excellent measures to ensure that the system becomes established and that systemic and individualized obstacles are identified and addressed early. The widespread and consistent nature of these practices make it more likely that oversight will become and remain institutionalized.

Revocation may be extended only after a revocation extension hearing (§ 35):

Revocation extensions replaced Defendants' previous system of increasing parolees' in-custody time through "treatment and training time-adds" and the disciplinary system called "DDMS."⁸³ Defendants' staff report they carefully and frequently monitored the disciplinary system in 2009 to ensure it was no longer being used to extend parole violators' time in custody. They recently verified that no time adds or DDMS time extensions have been issued to youth serving a parole violation term during the last two Rounds.⁸⁴

This demonstrates that this requirement has been fulfilled for an extended period, and the Special Master will consider it to be in substantial compliance.

Revocation Extensions shall only be issued for serious in-custody misconduct or willful program failure and after a hearing timely conducted by a hearing officer with attorney representation and a copy of the decision and tape and appeal rights

(§ 35, 40):

DJJ is operating a revocation extension system, which handled 20 cases during the Round, all of which were timely at each step except one notice of rights and charges.⁸⁵ Open and closed cases are consistent on these measures.⁸⁶ Only one case involved an incident within the month before the parolee was set for release. In that case, the probable cause hearing was held eight days after the incident, far ahead of the deadline and only one day after his planned release.⁸⁷ Defendants are to be particularly commended for the quick work in arranging this hearing and minimizing the potential for unnecessary time in custody.

Information about the conduct of hearings is limited. The Special Master's team recently observed one onsite for the first time, as these are rare occurrences. The conduct of the hearing and its due process protections were consistent with Defendants' other hearings. The Special Master does not have information concerning whether parolees are receiving copies of their written hearing records.

Policies and procedures governing dual commitments (§ 45):

Defendants distributed in 2009 a policy governing dual commitments and have designated a responsible staff member in headquarters.⁸⁸ Some interviewed parole agents asserted that communication and coordination with parole agents in the adult system operates well. A dispute remains concerning good time credits for dual commitments who opt to be housed in adult institutions.

Elimination of "temporary detentions"; immediate rescission of relevant regulation (§ 39):

The Stipulated Injunction requires Defendants to "immediately rescind Title 15, California Code of Regulations § 4985," which concerns this practice. Defendants report that this regulation and Title 15, California Code of Regulations § 4826 were repealed in prior Rounds. During this Round, Plaintiffs observed cases in which the parolee was detained and the parole agent's disposition recommendation was to continue on parole, or the agent recommended detention but made plans for community placement, or the hearing officer ordered a continuation of parole; in each of these scenarios, Plaintiffs are concerned that Defendants' staff are intending to circumvent the prohibition on

temporary detentions. The Mastership does not see these actions as running afoul of this requirement.

In interviews with the Mastership, parole agents expressed concern that the Stipulated Injunction had imposed unreasonable limitations on their ability to take immediate and short-term measures to make parole adjustments and reduce long term jail time. Although all indicated that temporary detentions had been seriously abused in the past, they all agreed that, used correctly, it served as an immediate and valuable tool for short-term consequences. This, they asserted, unnecessarily resulted in interrupted employment, missed school, and more incarceration time for parolees.

Summary

In a period of significant disruption – including staff departures, prolonged uncertainty, the expected major losses of parole responsibilities, and substantial leadership changes – Defendants' staff have done a remarkable job conscientiously maintaining a well-designed system. How those continuing changes will affect *LH* is an open question to which the parties should devote attention in the immediate term.

In this cauldron, Defendants previously achieved substantial compliance on six requirements, and the Special Master is recommending another seven in this Round. With one relatively minor exception, Defendants have maintained high performance both on the items found in substantial compliance and on those for which they assumed exclusive monitoring responsibility.

Attorneys and clients work together under conditions conducive to good representation. Juveniles no longer waive their rights or accept dispositions without

advice of counsel. Revocation terms do not stretch out indefinitely, although lawyers and parole agents do view the terms as too harsh, perhaps the subject of continuing conversation. The steps in a revocation process occur predictably and timely.

Based on this solid foundation, the parties must proceed with the remaining hard work that lies ahead. Principally, that work is of two characters: (1) building up the revocation documents and hearing practice, so that what is delivered accomplishes effective communication and satisfies due process standards, and (2) establishing the policies, procedures, regulations, and internal systems needed to deeply root due process protections for juveniles in the state's system.

In the realm of revocation documents and hearing practice, this will concentrate on eliminating the occasional practices that undermine the integrity of the process as a whole – relying on external evidence or conjecture, overlooking perceptions of conflict of interest or arbitrariness, finding cause when an element is missing or based on evidence that could be neither verified nor disproved, paying insufficient attention to whether a parolee understands his or her charges and choices, wide variations in outcomes depending on the hearing officer who presides.

In terms of the system's sustainability, internal oversight and drafted regulations are well underway. Policies have been formulated to get a system established and to give staff clear guidance about its operations. They are by no means complete. A number of the outstanding and reserved policy issues are not extraneous refinements, but core due process issues that necessarily follow initial implementation, and which require thought, attention, and application if due process is to be accomplished and the *LH* orders satisfied.

The Special Master commends the parties, along with the attorney panel administration of CalPAP, on their many accomplishments to date. She looks forward to their continued collaboration – so critical to the successes to date -- in achieving the remaining goals necessary to fulfilling the *LH* mandates.

Recommendations

The Defendants have demonstrated compliance with several requirements of the Stipulated Injunction. I therefore recommend that the Court order that the following requirements are substantially compliant, and that the subjects will therefore no longer be a primary focus of Plaintiffs' or the Special Master's monitoring unless and until it comes to the parties' or the Special Master's attention that there has been a significant decline in compliance. These orders should apply to the following requirements:

- Timely appointment of counsel (¶ 16)
- At the time of attorney appointment, provision of a copy of all the evidence on which the State intends to rely or which may be exculpatory; evidence not provided with at least two days' notice shall be excluded unless the state shows good cause (¶ 16, 19)
- Attorney will be informed of Return to Custody Assessment by the 10th business day after the hold (¶ 30)
- Adequate time for representation ; reasonable access to clients and files; confidential phone calls and space in which to meet; observing staff cannot participate in proceedings (¶ 20, 23)
- Not accepting waivers of hearing rights or the right to counsel made prior to the juvenile parolee meeting with counsel; waivers of hearings and requests for continuance must be made in writing in the presence of counsel (¶ 17, 31)
- Not in custody hearings within 60 days after service and with all due process and ADA protections (¶ 45)

- Revocation may be extended only after a revocation extension hearing (no time-adds or DDMS time extensions) (§ 35)

Respectfully submitted,

/s/ Virginia L. Morrison

Decem

ber 22, 2010

Virginia L. Morrison
Special Master

¹ This is distinguished from the separate requirement for counsel of choice, which remains subject to full Court oversight

² 50 Mile Report for each of April through September 2010; Closed Case Summary Apr. 1 through Sept. 30, 2010

³ Assembly Bill No. 1628, enrolled Oct. 11, 2010

⁴ If revoked, there are currently differing interpretations of whether, upon the subsequent release, they would be under the jurisdiction of the state or counties.

⁵ California Regulatory Notice Register, Sept. 17, 2010

⁶ Correspondence by S. Cooppan, Nov. 1, 2010

⁷ Correspondence by C. Chen, Sept. 3, 2010

⁸ The parties refer to these as “Standards and Criteria.” While there is agreement on a basic set of components for each step, in most cases there are additional components the Plaintiffs assert are necessary to satisfy the Stipulated Injunction’s requirement.

⁹ Closed Case Summary, Apr. 1 through Sept. 30, 2010

¹⁰ Spreadsheets titled Open Case Summary capture all open cases at a point in time in each of five months; there were an average of 48 in each study. In these studies, Defendants reviewed and recorded the timeliness of every step of every case. Among these 240 cases examined, two were late at this revocation process step, less than 1%, just as with the closed cases.

This method controls for the two ways that cases were previously not visible. To the Special Master’s knowledge, there are no other populations pulled out of reporting at this step.

¹¹ Five cases appeared late; three were completed one day later and two were not-in-custody cases subject to a different timeline. Closed Case Detail, Step PCD, Apr. 1 through Sept. 30, 2010, and related drilldowns

¹² Source for this analysis is a sample of 101 Charge Reports, mostly drawn through random method, and constituting almost 30% of the notices in the Round. See documents titled Charge Reports sample.pdf, Charge Reports – all Oct list.pdf, and Closed Case Detail by JPB every 4th REFER.pdf

¹³ Special Master’s observations; Plaintiffs’ monitoring letters dated May 21 and June 30, 2010. Not all data points commented on herein were recorded by all monitors.

¹⁴ Plaintiffs object to this having occurred.

¹⁵ Plaintiffs object to this practice.

¹⁶ The analysis begins with Closed Case Summary, but it incorrectly includes 33 cases that were closed before service was necessary. See electronic file titled Email explaining apparently missed NORs.docx. Thus, among the cases shown in Closed Case Summary, 8 were 1 business day late, 2 were 2 business days late, and 1 is an extradition case that was closed out after an extended period because the parolee never returned to California (a total of 10 late cases). Closed Case Detail – Late NORs. For reasons for the cases taking two additional days to serve, see NOR Unsuccessful, Will Retry.

Finally, among extradition cases, two were late for one day and a third appeared to be late but was not. Closed Case Summary – Extradition. Similarly, service on all not-in-custody cases was timely, with one incorrectly appearing late.

All of the reports referenced in this endnote were run for Apr. 1 through Sept. 30, 2010. They can be found, along with certain individual cases, in the electronic folders titled NOR, Extradition or NIC.

CalPAP keeps statistics for a population defined slightly differently; it found 99% compliance with all cases completed within an additional 2 business days. See DJJ Notice of Rights Compliance Report for each of Apr. through Sept. 2010

Defendants examined each open case at a point in time in each of five months, recording the timeliness of each step that had been completed or was pending. In the open cases studied, all but one had timely service. See spreadsheets titled Open Case Summary and dated May 17, Jun. 8, Jul. 14, Aug. 18 and Oct. 12, 2010, in electronic folder titled Timeliness reports. This method controls for the two ways that cases were previously not visible. To the Special Master's knowledge, there are no other populations pulled out of reporting at this step.

¹⁷ The investigation occurs before CalPAP attorneys are appointed. Parolees may or may not have counsel in concurrent criminal proceedings.

¹⁸ See Plaintiffs' letters assessing monthly document productions for Jul. and Aug. 2010

¹⁹ Informal communications with CalPAP

²⁰ Closed Case Summary, Apr. 1 through Sept. 30, 2010 shows 21 cases late, but on examination, 10 of those cases were extradition cases that had not returned or not in custody cases subject to a different timeline. See individual cases in the electronic folder titled Referral Decision. Thus, 11 of 458 cases were late, for a total of 2%. Each was concluded the following day. See Closed Case Detail – Refer.

²¹ See spreadsheets titled Open Case Summary and dated May 17, Jun. 8, Jul. 14, Aug. 18 and Oct. 12, 2010, in electronic folder titled Timeliness reports. This method controls for the two ways that cases were previously not visible. To the Special Master's knowledge, there are no other populations pulled out of reporting at this step.

²² See *Id.* and Closed Case Detail – Refer

²³ It is contained in the flowchart attached as an exhibit to the Stipulated Injunction. Defendants contend that the Stipulated Injunction expressly excluded this step as a requirement by the language "The flowchart does not create any rights beyond those expressly set forth in ¶¶ 1 to 57."

²⁴ Closed Case Summary, Apr. 1 through Sept. 30, 2010 shows 18 cases late. After drilling down on those, only 5 were late; the remainder were NIC and in the community prior to this step, and extradition cases dropped deferring to other jurisdictions, and a 2009 case incorrectly captured. Thus, 349 of 354 cases is a 99% timeliness rate. See contents of electronic folder titled Supervisor Review (Violation Report step)

²⁵ NIC Referrals and Extradition Cases, each run for Apr. 1 through Sept. 30, 2010.

²⁶ See individual case in electronic folder titled Supervisor Review (Violation Report step), as well as spreadsheets titled Open Case Summary and dated May 17, Jun. 8, Jul. 14, Aug. 18 and Oct. 12, 2010, in electronic folder titled Timeliness reports. This method controls for the two ways that cases were previously not visible. To the Special Master's knowledge, there are no other populations pulled out of reporting at this step.

²⁷ Defendants contend that the Stipulated Injunction expressly excluded this step as a requirement by the language "The flowchart does not create any rights beyond those expressly set forth in ¶¶ 1 to 57." It is Plaintiffs' position that the steps in the flowchart are part of the Stipulated Injunction because it "incorporate[d] by reference" the flowchart and the flowchart is attached as an exhibit.

²⁸ DJJ Date Case Assigned Compliance Report for each of Apr. through Sept. 2010. CalPAP confirms that these figures capture mainstream, extradition and NIC cases.

²⁹ CalPAP surveyed the 10 attorneys who represent the most juvenile clients. The figures in this report do not include the opinions of the 3 attorneys parolees chose from outside the CalPAP panel.

³⁰ Other Objections reports dated Mar. 1 through May 31, 2010 and Jun. 1 through Aug. 31, 2010, individual cases in electronic folder titled Substantive Due Process; Special Master's onsite observation on Oct. 26, 2010

³¹ Where the objection was denied, it appears that the bases were that the information was being used in the disposition phase and that at least one aspect of the evidence *had* been provided to counsel.

³² CalPAP reports that Defendants more frequently provide color photos at the outset. CalPAP clerical staff check packets on arrival; if the copies are inadequate, they notify designated people at Defendants' headquarters and replacement copies have always been provided in time for the probable cause hearing.

³³ The team reviewed 96 revocation packets (approximately a 27% sample) chosen principally by random method and supplemented by recent cases. Among them, 79 notices were issued within four business days of the hold.

³⁴ Document Production Itemization for each of Apr. through Sept. 2010

³⁵ *Id.*; Case Status Reports and revocation packet excerpts contained in electronic file titled Attorneys

³⁶ According to the 10 attorneys who most commonly represent juvenile parolees, in response to informal questioning by CalPAP administration

³⁷ Defendants indicate that non-CalPAP attorneys have expressed their intention to represent parolees after CalPAP attorneys were appointed, so the return to custody assessments had already been generated and were provided with the revocation packets at the time the substitution was signed. Defendants say there was one exception where the attorney communicated the substitution earlier, and the return to custody assessment was provided when the revocation packet was generated.

³⁸ Access to Youth Files and Information by Legal Counsel and Authorized Representatives, CN-297

³⁹ Informal communications with Plaintiffs October 2010

⁴⁰ The Southern California women's facility has particular vulnerability on this point, since counsel may be in northern California if events occurred there, and may need to consult with clients by phone before a revocation hearing. The parties are aware of one 2009 case in which it was known that security staff was present during such phone calls. Predictably, this would occur for other women, as well. However, with no known security staff testimony, it does not appear that the risk of using confidential attorney-client communications in hearings has been actualized.

⁴¹ See electronic file titled 10-15 email explaining NIC report and individual records in electronic folder titled RTCA

⁴² Closed Case Summary, Apr. 1 through Sept. 30, 2010 shows 11 cases late. After drilling down on those, only 1 was late; the remainder were NIC and in the community prior to this step, or 2009 cases incorrectly captured. See Closed Case Detail – RTCA for the same date range and individual records in electronic folder titled Supervisor Review (Violation Report step) (the cases appearing late at RTCA are a subset of the cases appearing late at that step)

Closed Case Summary includes all populations. For verification of the subpopulations, the Closed Case Summary – Extradition and NIC Referrals reports also show 100% compliance at this step.

⁴³ Closed Case – Extradition and NIC Referrals Apr. 1 through Sept. 30, 2010; spreadsheets titled Open Case Summary and dated May 17, Jun. 8, Jul. 14, Aug. 18 and Oct. 12, 2010, in electronic folder titled Timeliness reports. This method controls for the two ways that cases were previously not visible. To the Special Master's knowledge, there are no other populations pulled out of reporting at this step.

⁴⁴ CalPAP Requested Expedited Hearings, Apr. 1 through Sept. 30, 2010; see prior reports of the Special Master

⁴⁵ See contents of electronic folder titled Hearings

⁴⁶ For instance, asking if the parolee is prescribed any medication, or if he is taking all prescribed medication, would likely prove more interactive and productive than asking about "psychotropic medication," a medical term.

⁴⁷ Plaintiffs register a strong objection to this occurring.

⁴⁸ Missing Board Orders, run for each of May through Sept. 2010

⁴⁹ Closed Case – *LH* Timeliness Rules, Apr. 1 through Sept. 30, 2010 shows 319 cases. Although 317 appear timely, this includes 19 postponed cases that are automatically counted as timely regardless of when the rehearing occurs, so these are subtracted from the total (to 298). Closed Case Postponements for those dates reveals 5 were timely time waivers, 5 were timely postponed probable cause hearings, and 9 were postponed probable cause hearings whose rescheduling was delayed, so 10 were added to 298 timely cases. Closed Case Extradition shows all 11 cases timely. Thus, of 330 cases, 308 were timely, or 97%

⁵⁰ See spreadsheets titled Open Case Summary for each of five dates in electronic folder titled Timeliness reports; Open Case Summary – Time Waiver and Open Case Postponements for sample dates; individual records; and DJJ Probable Cause Hearing Compliance Report for each of Apr. through Sept. 2010 -- all in electronic folder titled PCH

⁵¹ Closed Case – Postponement, Apr. 1 through Sept. 30, 2010

⁵² These might include health history, most recent medical examination, whether the parolee is taking prescribed medications for mental health issues, and how the presence or absence of that medication affects his ability to concentrate and express himself.

⁵³ Juvenile Revocation Scheduling and Tracking System, Hearing Decision Dismiss, Apr. 1 through Sept. 30, 2010. Not all of these occurred at revocation hearing.

⁵⁴ CalPAP reports concerning *Comito* objections and individual records contained in electronic file titled *Comito*

⁵⁵ The attorney acknowledged she did not raise the issue or object.

⁵⁶ This term is used to describe those revocation actions that follow the normal course. The concept excludes cases with special circumstances, such as not in custody hearings, extradition, parolee time waivers, optional waivers, and postponements.

⁵⁷ These do not appear in the information system reports otherwise referenced here and must be accounted for separately.

⁵⁸ Closed Case Summary, Apr. 1 through Sept. 30, 2010. While this report shows 11 cases late, 3 were not late because they were not in custody or a time waiver was in effect and the system did not reflect these correctly. See document titled JPB Late Cases April 10-September 30 (20101028).xls

⁵⁹ See spreadsheets titled Open Case Summary for a date in each of five months of the Round; Open Case – Time Waiver and Open Case – Postponement for Oct. 14 and Oct. 28, 2010; activated open cases on Optional Waiver Timeliness, Apr. 1 through Sept. 30, 2010

⁶⁰ Defendants' Compliance Report; DJJ Optional Waiver Activated Cases for each of Apr. through Sept. 2010; and Closed Case Summary – Extradition, NIC Referrals, Optional Waiver Timeliness, each run for Apr. 1 through Sept. 30, 2010. In the latter report, blanks indicate optional waivers taken but not yet activated.

The optional waiver timeline is one Defendants are applying. Plaintiffs contend that counting the days to hearing should resume at the point when the optional waiver was exercised (for a total of 35 days in the revocation process, not including the period of the optional waiver

⁶¹ Closed Case Summary - Postponement Apr. 1 through Sept. 30, 2010; document titled JPB Late Cases April 10-September 30 (20101028).xls

⁶² See, e.g., Plaintiffs' monitoring letter dated Jul. 28, 2010; informal communications with CalPAP

⁶³ Closed Case Summary – Supplemental Charge Cases, Apr. 1 through Sept. 30, 2010; Open Case Summary -- Supplemental Charge Cases Oct. 28, 2010

⁶⁴ DJJ Revocation Hearing Cases-Over 35 Days, for each of Apr. through Sept. 2010; Closed Case Detail – RevH; and individual records contained in the electronic folder titled RevH. Defendants have since agreed to provide the remedy for the third case.

⁶⁵ Joint Stipulation Regarding Modifications to Division of Juvenile Justice Parole Revocation Policies and Procedures, Sept. 10, 2009

⁶⁶ Closed Case – NIC Referrals Apr. 1 through Sept. 30, 2010; electronic file titled 10-15 email explaining NIC report

⁶⁷ *Id.* and individual cases in electronic folder titled NIC

⁶⁸ See individual hearing recording and board order in electronic folder titled NIC

⁶⁹ 2010 Alternatives to Revocation, Nov. 1, 2010, based on a review of the system Compstat

⁷⁰ Closed Case – Alternatives to Incarceration Summary, Apr. 1 through Sept. 30, 2010

⁷¹ See, e.g., Plaintiffs' letters assessing cases in the monthly document production, letters dated May 21, Jun. 28 and Jul. 28, 2010

⁷² Informal communications with Defendants Mar. and Nov. 2010

⁷³ Special Master's observations

⁷⁴ Document Production Itemization for each of Oct. 2009 through Sept. 2010

⁷⁵ Appeals documents within monthly document productions Apr. through Aug. 2010

⁷⁶ Document Production Itemizations, Apr. through Sept. 2010

⁷⁷ DJJ Decision Review Cases for each of Apr. through Sept. 2010

⁷⁸ Agreed sections of DJJ Decision Review policies – see, e.g., redlined copy exchanged by parties Jul. 30, 2010

⁷⁹ This charge had *not* been reinstated by the decision review order

⁸⁰ See Plaintiffs' monitoring letter dated Jul, 28, 2010 and Defendants' response dated Aug. 3, 2010

⁸¹ See correspondence from Plaintiffs, dated Oct. 19, 2010, in response to Defendants' Compliance Report

⁸² A basic set of standards and criteria appears to be nearing completion. The parties remain in disagreement about additional components that Plaintiffs aver should be included, and the parties intend to address these in dispute resolution processes.

⁸³ The latter is still used for wards in custody and to for corrections for parolees' behavior other than extending their time in custody.

⁸⁴ Staff conducted a study in which they identified all youth whose parole was revoked during that period (using the OBITS database) and merged it with data of DDMS actions (drawn from the WIN database). In this comparison, they were able to determine that no parole violator showed additional time as a DDMS outcome. See electronic documents titled Merged PV Roster to WIN DDMS_10142010.xls and Email exchange re DDMS study 10-2010.docx; also informal communications with Defendants to learn methodology and interpret codes

⁸⁵ Revocation Extension, Apr. 1 through Sept. 30, 2010

⁸⁶ See, *e.g.*, Revocation Extension Open Case Summary run on each of Jun. 25, Jul. 8, and Nov. 3, 2010. These do not capture the timeliness of steps preceding the steps reflected on the report, but there are so few open cases at any time that this absence is *de minimis*.

⁸⁷ DJJ Rev. Extension Cases Closed, each of Apr. through Sept. 2010

⁸⁸ Source for this paragraph is informal communications with parties