

**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**

**EDMUND G. BROWN, JR., et al.,**

**Defendants.**

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**EIGHTH 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 effective June 1, 2010. Patricia Gray served as Deputy Special Master in 2010 and 2011, and Christine Toombs succeeded her in October 2011. The Mastership has submitted seven reports, and offers this eighth report assessing progress toward providing due process and complying with this Court's orders.

### **Special Master Activities**

During this Round, the Special Master's team conferred with Defendants regarding state budget issues and their effect on DJJ, and the Mastership assisted with negotiations regarding plaintiffs' monitoring and mechanical restraints. The team observed routine meetings of Defendants' task force, and training for hearing officers and parole agents.

The Mastership interviewed headquarters staff, parole agents, attorneys, and parolees. The team observed hearings and notices at N.A. Chaderjian Youth Correctional Facility; Ventura Youth Correctional Facility; Watts parole unit; Pitchess Detention Center; West County Detention Center; the jails of Sacramento, Alameda, Solano, Fresno, Monterey, Orange, Riverside, Los Angeles, San Diego, and San Bernardino counties; Temple City Jail; and the San Fernando and Riverside courthouses.

The team monitored proceedings conducted by all hearing officers, including 27 probable cause hearings or optional waiver reviews in person and 17 recorded or in-person revocation hearings. The team observed the service of notice on 18 parolees conducted by 8 parole agents.

### **Scope and Approach**

This report discusses observations and activities spanning January through May 2012, collectively referred to as “the Round.” Data includes that which became *available* during the Round, which might include reference to a somewhat earlier time.

References to the Special Master’s activities frequently include the actions of a member of her team. For some requirements, the Special Master’s team conducted studies 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. In other instances, the team relied on reports generated by Defendants’ revocation database; Plaintiffs’ monitoring summaries; and analyses, reports, or studies conducted by the CalPAP attorney panel administration, and sometimes documents underlying these sources.

### **The Environment**

Throughout this Round, policy and budget conditions remained much as they were during the Seventh Round. Juvenile parole continued its integration into the Division of Adult Parole Operations and parole agents participated in a 10-week academy in preparation. At any given time, half of the agents attended academy while the other half covered their caseloads. Some agents moved on to supervising adults; juveniles remained a discrete caseload exclusive to juvenile parole agents. The Board’s revocation processes continued on course.

Shortly before completion of this report, legislators passed a bill that ends juvenile parole supervision effective January 1, 2013.<sup>1</sup> The State may place parole holds through December 31, 2012 and revocations will continue only for those parolees pending revocation or on optional waiver as of that date.

For parolees in custody on the law's effective date, the State has determined that it will not employ revocation extensions in 2013. When those parolees are released from serving their revocation terms, they will be discharged from parole. Thus, it appears *LH* processes will end once proceedings are concluded for parolees pending revocation or on optional waiver as of January 1, 2013. The parties are in discussion about further details of this transition.

### **SUMMARY**

In the four years of implementation, Defendants have accomplished much. They have eliminated the actions that could appear coercive, committing juveniles to time in prison without advice of counsel. They have swept away the practices that could keep revoked parolees incarcerated indefinitely, rolling over terms repeatedly. They have systematized decisionmaking so that the steps are predictable, proceedings are based on evidence, and staff work to inform and involve the juveniles. All proceedings are provided with exceptional timeliness, and a substantial proportion of juveniles are channeled away from revocation into alternatives to incarceration.

Indeed, on many key features of the remedial plan, Defendants have achieved substantial compliance. To the extent that a Stipulated Injunction requirement has been conducted well for a sustained period, the Mastership considers that requirement to be in substantial compliance.<sup>2</sup> The Stipulated Injunction contains 44 numbered paragraphs of

substantive requirements, and a flowchart reflecting process steps; some state a single action while others reflect complex processes with multiple subparts. As of this report, the Special Master has recommended substantial compliance findings in the entirety for 30 of these major categories. The practices that can be considered in substantial compliance are:

- Parole agents and supervisors confer within two business days of holds concerning probable cause to detain and alternatives to incarceration. These staff address some parole violation behavior, designated as lower risk, at the parole unit level. (¶ 25, 27)
- Temporary Detentions – a short-term detention for behavior short of a parole violation, administered with limited process – have ceased. (¶ 39)
- Defendants no longer solicit written admissions forms and waivers without juveniles being advised by counsel. (¶ 17, 31)
- Attorneys represent all parolees from the eighth business day after a hold is placed. This includes providing adequate space, privacy and time for representation; payment for appeals and for additional time for effective communication; access to parolees and files; information about probable cause hearing logistics and clients' accommodations needs; providing the return to custody assessment and the evidence on which the State will rely; and guidelines and training for panel attorneys. (¶ 15, 16, 19, 20, 21, 22, 23, 24, 30)
- A system is in place for expediting probable cause hearings where the juvenile avers a complete defense. (¶ 26)
- Charges are brought by a reasonable time before hearing and are fully adjudicated at the revocation hearing; hearing officers do not find good cause on some charges and defer ruling on others. (¶ 34)
- Terms are not extended except by a revocation extension process with features similar to the revocation process, and only for limited types of behavior. (¶ 35)
- Alternatives to incarceration are considered at the parole agent-supervisor conference, the probable cause hearing and the revocation hearing. (¶ 27)
- Where a revocation decision results in no more time to be served, the parolees are released within three business days. (¶ 38)

- An information system is in place for tracking timeframes and reasons for delay (§§ 13, 32, 33)
- Defendants' staff receive regular training on *LH* requirements, due process and the ADA and effective communication (§§ 56)
- Certain aspects of providing reasonable accommodations and effective communication assistance: making such arrangements for attorney-client interviews, parolees' preferred accommodations being honored, and equipment being available. Forms are simplified and available in Spanish and alternate formats. Defendants also maintain a grievance system concerning ADA issues. (§§ 23, 49, 50, 51, 53, 54, 55)
- Parolees are informed of their right to a revocation hearing recording and there is a system to provide them timely. (§§ 41, 42)

There have also been major advances on the remaining requirements. In each instance, a system has been set in place, and staff work conscientiously to maintain and improve them. Each of these areas shows both strong practices and some features that do not fully satisfy requirements. These include:

- Parolees are served with notices of their rights and of their charges, described in a short factual summary (§§ 28)
- Parolees may opt for retaining their own counsel outside the attorney panel provided by the State. (§§ 18)
- Defendants provide a probable cause hearing, at which a parolee can testify and present documents, within 13 business days after the hold. The decisionmaker documents the factual basis for her finding and provides the parolee a written hearing record. (§§ 32, 40)
- Parolees are entitled to a full revocation hearing within 35 days after a hold, or within 60 days after notice if they remain in the community. Parolees may put on witnesses and evidence on the same terms as the State, and admission of hearsay is subject to controlling law. Hearings must take place within 50 miles of the alleged violation and must be physically accessible. (§§ 33, 36, 37, 45)
- There is an appeal process with specified procedures and timelines. (§§ 43)

- Defendants shall provide timely and reasonable accommodations for effective communication and shall take reasonable steps to identify and track parolees with such needs. (§ 48, 52)
- Defendants shall not use any blanket policy of requiring mechanical restraints in revocation hearings, and shall develop policies, procedures and training concerning restraints that is consistent with the disabilities law and due process. (§ 46)
- State contracts require program vendors to comply with anti-discrimination laws; information has not been developed regarding those vendors' compliance with this contractual provision. (§ 27)
- Defendants shall develop sufficiently specific policies and procedures to ensure continuous compliance with the Constitution and applicable statutes, and shall revise regulations, rules and procedures to be consistent with the policies. (§ 11)

All Stipulated Injunction mandates are at least in partial compliance; there are none that are noncompliant.<sup>3</sup>

This is the most rapid implementation that this Special Master has observed in her 21 years' experience. It was set in motion by Defendants' staff and Plaintiffs' counsel dedicated to improving the fair treatment of juveniles caught up in the criminal justice system. It has been refined and maintained through their efforts and that of large numbers of line staff committed to continuous improvement. A cadre of supervisory and central staff keep a close watch to sustain those systems' ability to run with effectiveness and integrity. There is much to be proud of in what *LH* has accomplished.

## **DISCUSSION**

The Stipulated Injunction requires a system of revocation steps in which due process must be delivered according to specified timelines, and reasonable accommodations and effective communication needs must be identified and provided. In

addition, the Stipulated Injunction calls for structures – procedures, policies, information systems – to sustain these changes. Details of the status of implementing these requirements will be discussed in this section.

### **Requirements having to do with systems**

#### Policies and Regulations (¶ 11)

During this Round, Defendants completed the laborious and intricate process to establish regulations for the *LH* process.<sup>4</sup> This has long been a priority for Plaintiffs and is a substantial accomplishment.

As to policies, the parties negotiated, and Defendants have had in place long-term, detailed, specific policies covering most elements required by the Stipulated Injunction. The agreed policies went forward while a substantial number of disputed items remained and have not been resolved to date. The most significant of these include restraints, anti-discrimination provisions related to alternatives to incarceration, the revocation term matrix, and remedies for parolees where revocation proceeding steps are late.

#### Policies and procedures governing dual commitments (¶ 45)

**The Special Master found this specific policy requirement to be in substantial compliance earlier this year**, and Defendants have maintained this status.

#### Tracking system (¶ 13, 32, 33)

Defendants were required to implement a system for tracking timeliness, reasons for delay, and other “business process requirements” attendant to the *LH* revocation



system. This was initiated in February 2009. Revisions addressed initial functionality limitations, additional data needs, and practice changes arising from policy negotiations. **The Special Master found this system to be in substantial compliance earlier this year**, and Defendants have maintained this status.

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

Both the Parole division and the Board have annually conducted comprehensive training on *LH* requirements, due process and ADA and effective communication, most recently in May 2012 and December 2011, respectively. Recent trainings have been well-designed to improve staff practice in addition to refreshing their knowledge. The Board also offers trainings as part of Board meetings or as unique sessions mid-year. These often concentrate on a specific *LH* topic such as ADA interactive reviews – a March 2012 subject – hearing record writing, or evidentiary issues.<sup>5</sup>

Staff at DJJ facilities received *LH* training in 2009 and 2010, and additional ADA and effective communication training in 2010.<sup>6</sup> This is less than the Stipulated Injunction calls for, but Facilities staff have very limited involvement in *LH* implementation -- principally revocation extension and releases within three days of certain orders. The training absence does not seem to have had a negative impact, as both of these responsibilities were found to be in substantial compliance in early 2012.

Although this was not perfect compliance, the spirit of the requirement is fulfilled and **the Special Master considers it sufficient for substantial compliance.**

Self-monitoring process.(¶ 57):

The Stipulated Injunction requires Defendants to conduct self-monitoring to ensure compliance with the injunction and with the policies and procedures implementing it. Long-term, Defendants have had a system that both concentrates oversight in designated individuals at headquarters and diffuses responsibility among field supervisors, an effective combination well-designed to accomplish the task.<sup>7</sup>

On a daily basis, both Board and Parole staff review lists of cases in process to determine their timeliness, and these staff follow up to identify and address the barriers for cases appearing late. Field supervisors are expected to conduct a similar review. To accomplish the timeliness reviews, Defendants draw on the main revocation database that provides multiple management reports, and they maintain several other electronic lists to organize their oversight.

Designated Board and Parole staff maintain regular communication to coordinate to remove barriers to case handling, and to share information after case completion. Board staff also serve as a check on the completeness of revocation packets compiled by Parole staff, and on the adequacy of evidence before it is transmitted to attorneys.

On a weekly basis, Board headquarters staff do a retrospective review of cases completed to monitor whether policy and procedures were followed, including provision of accommodations and timely and complete documentation. The Parole division regularly reviews revocation ADA documentation, with the ADA Coordinator applying her expertise and forwarding her analysis to headquarters staff responsible for all types of *LH* oversight.

An experienced hearing officer reviews every hearing order for consistency with policy and any mistakes of fact or law. If needed, orders are corrected in that process or, if adverse to a parolee, are rescheduled for a new hearing.<sup>8</sup> The results are communicated to the hearing officer for education, and the senior hearing officer conducts debriefs with hearing officers periodically and incorporates issues observed in these processes into training sessions.

In recent months, the Parole headquarters oversight team has been visiting parole units for localized training and mentoring on *LH* compliance issues spotted in these various reviews.

Where a revocation action is late at any step, Parole field supervisors are required to investigate the reason and institute a remedy to prevent recurrence. Designated staff follow up on whether the corrective actions have been implemented. The Board's headquarters staff perform a similar function. The analysis of all such cases are discussed at a monthly meeting of all involved divisions.

Staff also exercise oversight through annual reconciling of data and reporting to a centralized CDCR statistics office. Their routine self-monitoring is supplemented by occasional reviews of some aspects of the *LH* Stipulated Injunction by CDCR's Office of Audits and Court Compliance, with one such review having been published during this Round.

Oversight is exercised daily by extremely conscientious individuals who are dedicated to ensuring excellence in *LH* implementation. They have set up a number of detailed systems to ensure that revocation actions stay on track, that any barriers are identified early, and that retrospective analyses are conducted. Both key divisions have

investigated substantive issues as well as procedural ones and have communicated needed learnings to each other, and through field communications and trainings. They engage field staff in sharing responsibility for *LH* successes and remedies. Different oversight mechanisms are conducted daily, weekly, monthly and annually. Through these means, Defendants are conducting effective self-monitoring, and the **Special Master considers this requirement to be in substantial compliance.**

### **Requirements concerning revocation proceedings**

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

#### *Nature of the practice*

Where a parole agent has placed a hold, the Stipulated Injunction requires him or her to confer with a supervisor, on this timeline, to determine whether there is probable cause to retain the hold and whether alternatives to incarceration are warranted, and to document these decisions.

Parole agents and supervisors conducted case conferences long before *LH* implementation and, as such, it is well-established routine. This requirement and its particular purposes are reinforced in the policies and procedures that have been in place since 2010.<sup>9</sup> Staff regularly report that they use the conference to assess probable cause to detain, and the information system is now structured for them to record this decision. Defendants studied a sample of cases, reviewing the information available at this step.<sup>10</sup> The Mastership reviewed the majority of these cases and an additional, similar-sized sample.<sup>11</sup> While decisions about probable cause contain an element of subjectivity, the Special Master finds that it was a reasonable exercise of discretion to find probable cause

to detain in these cases. Additionally, this step resulted in staff dismissing four cases and releasing another 10 to await hearing in the community, a tangible reflection that they had found no probable cause to detain in some instances.<sup>12</sup>

It is also clear that agents and supervisors consider alternatives to incarceration at this step. Defendants' review, for example, found that 8% of parolees were given corrective action plans and removed from the revocation process at this step. Three times as many were released or recommended to be returned to parole supervision ("continued on parole") in the continuing discussions that take place between agent and supervisor in the initial days of a revocation action.<sup>13</sup>

*Timeliness*

As with all procedural steps completed by Parole staff, this step is exceptionally timely. Defendants' tracking reveals near-perfect compliance, with only one case completed one day late.<sup>14</sup> Open cases were consistent with this.<sup>15</sup>

This step has been conducted timely for several years under *LH* and these studies indicate that it is fulfilling its purpose. **The Special Master finds that this requirement is in substantial compliance.**

Level I and II behaviors can be handled at the parole unit (§ 25):

**Defendants were found to be in substantial compliance** with this requirement during prior Rounds. All indications are that this has been maintained.

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

*Nature of the practice*

The Mastership has much more ability to assess notice service, having accompanied eight parole agents while they served 18 parolees during this Round. These took place in 13 jail or courthouse settings.

There continued to be a wide range of practices concerning reviewing ADA and effective communication needs. Agents tended to ask broadly, “do you have any disabilities?” or to ask only about a single condition such as medication, sobriety or reading. A few asked good follow-up questions. Many tested a parolee by having him read aloud; about half then checked his understanding. It was common for agents to use various effective adjustments when it was apparent that the parolee had difficulty understanding, and to create an atmosphere encouraging of asking questions. Agents informed parolees about marking requests for help on the form. They had ADA kits with equipment and knew or learned how to arrange for interpretation; none had needed this service for a year or more.

All observed agents covered the notice of rights aloud in its entirety; one particularly nice approach was an agent having the parolee read it and paraphrase his understanding. The agents also went over the charges with the parolees.

Handling parolee statements about the allegations also varied widely. Some agents expressly warned the parolees not to give admissions and some did not talk about the allegations at all. The most common interactions were a parolee volunteering a statement that the agent accepted, or an agent inviting one but the parolee declining. At the other

end of the spectrum, an agent actively questioned the parolee directly but without pressure.<sup>16</sup>

The Stipulated Injunction requires the notice of charges to contain a short factual summary of the behavior for which the parolee is being charged. In the past, many notices accomplished this well, but 20% to 25% did not provide a description sufficient for a parolee to begin to prepare a defense. Similar practice continued during the Round.<sup>17</sup>

Defendants undertook to improve this, giving it particular emphasis in parole agent training in May 2012. In the short period since then, substantial improvement is apparent. The Mastership reviewed the charge reports for nearly all of the cases closed in June. Of the 31 cases reviewed, all but one – or 97% -- had a factual summary that sufficiently communicates the charges to the parolee.<sup>18</sup>

#### *Timeliness*

Of 180 parolees served notice during the Round, only three were served late. In each case, there was a timely attempt; completion was hindered by parolees being in court or refusing service, but it was accomplished within one additional day.<sup>19</sup> Open cases were consistent with this.<sup>20</sup>

Both timeliness, and charge report improvements, reflect an admirable rate of success for parole agents, particularly in the context of parolee movement, parole unit closures and consolidations, and caseload coverage during the academy.

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

In the period giving rise to *LH*, Defendants routinely presented parolees with written admission forms, which parolees commonly signed in the absence of counsel. The Special Master has not encountered these forms in hundreds of revocation packets reviewed since 2009, and none has been identified by monitors. Plaintiffs aver that this prohibition extends to agents taking oral statements during notice service and investigation, and they strongly object to this practice.

The taking of oral statements is intended to serve multiple purposes. If a statement is offered, it allows the agent to form recommendations and decisions based on the parolee's views as well as the accusers'. Agents often feel that parolees taking responsibility strengthens the agent-parolee relationship and furthers parolees' ability to behave as expected in the community. On the other hand, there are inherent problems in taking statements without counsel, particularly when an agent serves in joint roles of trusted advisor, investigator and prosecutor of the state's charges.

On its face, the Stipulated Injunction specifically refers to written admissions. It is uncontroverted that this has not taken place in years. Understanding Plaintiffs' concern about the related practice, it appears that **the Stipulated Injunction requirement is being met and Defendants are in substantial compliance with it.**

Violation report within six business days (Exh. A):<sup>21</sup>

*Nature of the practice*

Violation reports have undergone major changes since the reports generated in the early days of *LH*. They more clearly lay out the charges and recommended outcomes and



the evidence supporting them. The vast majority communicate to parolees and attorneys what they must prepare to defend against.

The parties and the Special Master have not systematically examined these reports for their adequacy. However, they are reviewed by a parole supervisor and twice by hearing officers, a control against proceeding on charges where probable cause is lacking in the report. Hearing officers occasionally do dismiss charges on this basis. With the quality of reports that the Special Master has observed, and these checks and balances in place, the effect of any deficiencies in violation reports is very unlikely to rise to the level of affecting due process.

*Timeliness*

There is no direct measurement of the timeliness of violation reports.<sup>22</sup> The subsequent step – supervisor review of this work product – is 100% timely. It thus appears that violation reports are either completed timely, or within one additional day, and do not adversely affect the overall timeliness of revocation proceedings. The Special Master is confident that parole agents are doing well in meeting this timeliness requirement.

**Given the foregoing, the Special Master considers this step to be in substantial compliance.**

Supervising Parole Agent review of violation report within seven business days  
(Exh. A):<sup>23</sup>

The Stipulated Injunction does not specify the purposes to be served during this review, requiring only “Violation Report Reviewed by Supervising Parole Agent.”<sup>24</sup> Signatures on the violation reports and data entry indicate that staff achieved 100%

timeliness for this requirement, another credit to their dedication in these turbulent times. Open cases were consistent with this.<sup>25</sup>

Absent any other measures to apply, the **Special Master will consider this requirement to be in substantial compliance.**

### **Requirements concerning attorney representation**

Timely appointment of counsel (¶ 16)<sup>26</sup>

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 10<sup>th</sup> 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)

Provision of counsel during revocation and revocation extension proceedings (¶ 15, 35)<sup>27</sup>

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 clients 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)

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)

Parolee waivers of timely hearings and continuances (¶ 31)

**Each of the 11 requirements above has been found in substantial compliance in previous Rounds.** All indications are that this has been maintained.

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

Defendants use a summary form to provide educational, mental health, and disability information to attorneys and those making use of the field files. At the time this form was negotiated, Plaintiffs reserved some objections concerning the sufficiency of the contents and whether the requirement to provide source documents was satisfied.

The form has been consistently in use since 2009.<sup>28</sup> CalPAP has not reported any failure to provide the disability summaries, any problems arising from their contents, nor any needed information that was missing.<sup>29</sup> Plaintiffs have not raised their objections for further dispute resolution.

Defendants now request a finding of substantial compliance.<sup>30</sup> **The Special Master agrees that this is reasonable and recommends such a finding.**

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

Defendants have had in place long-term a system to notify counsel of record. During the Mastership's last review of this requirement, the system operated consistently but with significant deficiencies in timeliness. Reportedly, no attorneys outside of CalPAP represented youth in the revocation proceedings during the Round.<sup>31</sup>

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

*Nature of the practice*

Defendants continued the practice, established for several years, of reviewing revocation packets for probable cause on the charges, consideration of alternatives to incarceration, and setting a preliminary assessment of revocation time that a parolee can accept, reject or attempt to negotiate at the probable cause hearing.

The Special Master does not have definitive means to assess the probable cause review at this step. The Mastership has employed several proxy measures in previous Rounds, which demonstrated reasonable practice. During this Round, after reviewing more than half of the cases reaching the probable cause hearing, the Special Master did not encounter any that reflected clear error in advancing beyond RTCA.

Hearing officers released eight parolees at this step during the Round, a rate consistent with prior Rounds.<sup>32</sup> This is one indication that they are considering alternatives during their review. In previous Rounds, Defendants have demonstrated substantial compliance as to setting and timely communicating the RTCA to attorneys.

*Timeliness*

Defendants’ tracking demonstrates that all RTCAs were completed timely, save one, which was one day late.<sup>33</sup> Open cases were consistent with this.<sup>34</sup> This is the first of several steps for which the Board is impressively timely.

**The Special Master considers this requirement to be in substantial compliance.**

## **HEARING PRACTICE**

### 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. It also mandates that “Defendants shall not use any blanket policy of requiring mechanical restraints for all juvenile parolees in parole revocation hearings.” The parties negotiated these policies, which include a determination of the need for restraints based on one or more specified indicia of recent likelihood of violence or flight risk.<sup>35</sup> Defendants have held related training.

Previous reports of the Special Master have documented that Defendants carry out this policy in DJJ facilities, and the parties have a dispute about Defendants deferring to jail policies that call for universal restraints. During the Round, Plaintiffs initiated dispute resolution. The parties agreed to defer it while Defendants negotiated with jails that have both universal restraints policies and the highest volume of juvenile revocation proceedings in jails. Efforts to obtain those jails’ policies, and to negotiate practice, are underway.

During this Round, the Mastership examined restraints practices in a large sample of proceedings. In it, parolees were restrained or not restrained in about equal numbers. Where DJJ staff used restraints according to their own discretion, the choice was consistent with policy, in the Special Master’s opinion.<sup>36</sup> More than 80% of the restraints were applied pursuant to a county jail’s requirements.<sup>37</sup>

Hearing space:

While not a specific term of the Stipulated Injunction, concerns were raised in the Seventh Round about using any hearing space in which a parolee is separated from other hearing participants. Counsel for the State confirmed, during the instant Round, that all DJJ hearings are held in barrier-free spaces.<sup>38</sup>

**Probable cause hearing requirements**

Expedited probable cause hearings (§ 26):

The Stipulated Injunction specifies requirements for providing an expedited probable cause hearing process for parolees who aver that they have a complete defense. These requirements are reflected in policy for Board staff, a separate policy concerning attorney standards that is shared with all attorneys, and the attorney panel contract.<sup>39</sup> Staff describe the procedures by which they would handle any such requests.<sup>40</sup>

There have been no requests for expedited probable cause hearings to date,<sup>41</sup> and Plaintiffs object to any findings when the system is untested. While this is an understandable position in the initial stages of implementation, there has now been ample opportunity for these defenses to have been raised. Defendants have set up an adequate system, and the detailed procedures give every indication that staff are able to carry it out. The Special Master has observed no barriers to use of this system that might have been created by Defendants. Under these conditions, Defendants have fulfilled their obligations despite others not making use of the available system.

**The Special Master recommends a finding of substantial compliance on the requirement.**

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

*Nature of Hearings*

Hearing officers continued to refine and improve their probable cause practice during the Round, a reflection of their conscientiousness even as revocations wind down. This improvement, in combination with greater information generated by a deeper examination than previously undertaken, gives the Special Master confidence that probable cause hearings are running well and serving their purpose.

As detailed in previous reports of the Special Master, hearing officers have developed strong practice in conducting interactive interviews to determine ADA accommodations and effective communication needs, encouraging questions and requests for help, and creating the climate of partnership in ensuring that parolees understand and participate in their hearings. Hearing officers orient parolees to the standard of proof and what to expect, and advise them of their rights. Occasionally, these objectives can be in tension; Plaintiffs point to two examples where they felt language meant to make legal concepts accessible was insufficiently precise. On the whole, however, these practices uphold due process and effective communication.

The Stipulated Injunction highlights parolees' right to present evidence in their defense, and this has been well preserved throughout implementation. It has been more difficult, in the past, to determine whether hearing officers were assessing each charge separately, and taking parolees' evidence and legal argument into account, when making probable cause determinations. New information makes this determination more possible, and there is good, solid practice in this regard.

The Mastership reviewed a large majority of the probable cause hearing orders for their treatment of probable cause arguments.<sup>42</sup> Challenges were raised in nearly one-half of the sample reviewed and the information appeared to be incorporated well in the record and the hearing officer's reasoning. Plaintiffs' monitoring raises a reasonable question about the absence of argument recorded in a handful of cases likely to have had one; on examination, CalPAP records reveal that the hearing records were correct in all but one case.<sup>43</sup> The Special Master also noted that the probable cause challenge was not recorded in one-quarter of the cases where CalPAP wrote that one did occur. However, the key is whether the challenge was taken into account before reaching a final decision. Since this was consistently done well in a much larger number of cases reviewed, the Mastership has confidence that hearing officers' reasoning is consistent and sound whether documented or undocumented.<sup>44</sup>

This all, of course, is in service of ensuring that parolees are not incarcerated when there is no probable cause at all, and that charges are not on their permanent record without probable cause. It has been true long-term that the system does not detain parolees with no probable cause on any charge, and that remained true in the Mastership's reviews this Round.

The cases where probable cause is present on some charges, and other charges appear to be swept in without sufficient examination, have steadily reduced in recent Rounds. In this Round, the Special Master had a significant question about probable cause on some charges in only five cases.<sup>45</sup> Moreover, the effect in those cases was limited as most were dismissed at a subsequent step, given an alternative sanction, or the parolee admitted to the questionable charges. Hearing officers also commonly dismiss



some of the charges at probable cause hearing, another indication that they are considering whether the evidence supports each charge separately.

The written record can also illustrate that this important analysis has occurred. The Stipulated Injunction separately cites the due process protections of recording a written, factual basis for probable cause findings, and providing that writing to the parolee. Previous reports of the Special Master have described hearing officers becoming more consistent, throughout 2011 and 2012, in offering the factual basis for findings. In this Round, the Mastership reviewed more than half of the probable cause hearing records and *all* of them cited the facts relied upon for each charge. This is an important gain by conscientious hearing officers. **The Special Master recommends a substantial compliance finding on this aspect of probable cause hearings, captured in ¶ 40 of the Stipulated Injunction.**

Plaintiffs' reviews generally comment on errors or omissions in hearing records; during this Round, there were one to two examples each of omitting a disability, an accommodation, or use of restraints; two typing errors; and a programming issue that permits correct description in text but contradictory information to remain in check-boxes. This low occurrence supports the Special Master's observations of great improvement in the accuracy and completeness of hearing records. As the only record of what occurred in probable cause hearings, fairness calls for a complete and accurate record. The Special Master encourages hearing officers to maintain these gains and to be mindful of improving missing elements such as challenges to probable cause.

Parolees also continued consistently to receive a written hearing record at the conclusion of the hearing. All but five were provided at the hearing; because of technological impediments, those five were provided within six days or less.<sup>46</sup>

This more clear hearing record also makes apparent the improvements in hearing officers basing decisions on the evidence alone. While no person is completely neutral, the current hearing officers clearly work to control for the assumptions and uncharged “facts” that would sometimes creep into hearings of years past. The potential effects of outside influences have also commendably been reduced.<sup>47</sup>

Finally, deciding and recording probable cause to continue to detain has also greatly improved. Among the more than half of hearing records studied, only three did not mention this analysis.

### ***Timeliness***

Defendants’ and CalPAP records show only one probable cause hearing held late and it was completed within one to two additional days.<sup>48</sup> For Optional Waiver Reviews, an action similar to probable cause hearings, printouts show that all were timely.<sup>49</sup> Open cases were consistent with this.<sup>50</sup> All postponements at these steps were rescheduled within the time negotiated by the *LH* attorneys, or were pending within those timeframes.<sup>51</sup> This continues to be exceptional work by Defendants’ staff.

### **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. This remained unchanged during the Round.

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

The parties have agreed on a definition of good cause for delay and day-for-day time credit remedies for probable cause hearings held after 35 days, revocation hearings, and revocation extension hearings. The Special Master verified that no probable cause hearing exceeded 35 days without a parolee-initiated waiver and no revocation or revocation extension hearing exceeded the timeframe without good cause under the negotiated definition.<sup>52</sup>

Prejudice is presumed, and the case will be dismissed, if, absent good cause, a revocation hearing has not been held by the 90<sup>th</sup> day after the hold.<sup>53</sup> Nearly all revocation hearings occurred in fewer than 50 days; the two exceptions exceeded 90 days pursuant to parolee time waivers.<sup>54</sup> This continues the good practice of several Rounds.

Defendants fulfilled their obligation to generate these definitions, with input from Plaintiffs' counsel, and have put them into practice. **The Special Master considers this requirement to be in substantial compliance.**

**Requirements related to revocation hearings**

Final revocation hearing on or before 35 calendar days after the parole hold is placed (¶ 33, 37):

*Nature of proceedings*

Revocation hearings run much as probable cause hearings do, with the amendments of a higher standard of proof, witnesses, related evidentiary protections, and a hearing officer decision rather than a negotiated one.

Hearing officers continued to provide thorough ADA interactive reviews, measures to support parolee understanding, and a review of parolee rights.<sup>55</sup> A few procedural

protections were not offered as consistently as in the past, such as taking pleas on the charges and, rarely, swearing in a witness. Plaintiffs object to the occasions in which the same hearing officer presides over the probable cause and revocation hearings; Defendants have offered case law supporting the practice in criminal trials.<sup>56</sup>

There was problematic handling of legal issues in a small number of cases.<sup>57</sup> Hearings were postponed, well into testimony, to allow absent State witnesses another chance to appear. Some rulings on objections did not respond to the substance of the objection. Occasionally, objections were not recorded. Fearful witness designation expressly omitted hearing officer inquiry and decision about the basis. These practices carry the risk of evidence being used unfairly against a parolee, delaying a final hearing, or affecting his or her success if there is an appeal.

Objections concerning production of evidence were handled well. Handling of hearsay objections was also much improved, with hearing officers correctly applying the case law factors in two-thirds of the cases.<sup>58</sup> This is an important achievement, as this is a difficult responsibility with little opportunity to master it. Moreover, in those cases that were not correctly handled, the impact was limited. In some, the evidence did not come in. Where it was admitted, there were also good cause findings on charges unrelated to the hearsay, so no parolees were returned to custody solely because of evidence that should not have been admitted under this balancing test.

Hearing officers did consider legal arguments; they both recorded these in the hearing records and, in two-thirds of the revocation hearings, some or all of the charges were dismissed. Alternatives to incarceration were discussed, included in the written order, or both, with only one exception. Indeed, alternatives were granted in one-quarter of the cases, in addition to another one-quarter that were dismissed.

As with probable cause hearings, orders were excellent in giving the factual basis for the findings and captured the legal arguments and most objections. Parolees were given copies at the conclusion of all hearings.<sup>59</sup>

*Timeliness*

CalPAP records show that all revocation hearings were held timely;<sup>60</sup> Defendants' tracking shows only a single exception to this and it was completed within three additional days.<sup>61</sup> Open cases were consistent with this.<sup>62</sup> This step, too, is exceptionally timely.

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

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

Parolees may put on evidence on the same terms as the state (§ 33)

**Each of the three requirements above has been found in substantial compliance in previous Rounds.** All indications are that this has been maintained.

**Requirements related to disposition**

Charges may not be split and known charges must be brought at a reasonable time prior to hearing (§ 34):

Defendants have had good practice in bringing charges in sufficient time ahead of hearing to prepare a defense and to meet *LH* process timeframes. During this Round, Defendants added charges after notice in only one case, and the additions were available as of the Return to Custody Assessment.<sup>63</sup> In the previous Round, a Special Master's study found that, in the rare instance that charges were added after notice, they, too, were

always included by the time the attorney received the revocation packet.

Defendants brought supplemental charges in four cases during the Round, two of which were handled quickly.<sup>64</sup> In two cases, the charge did not appear to have been pursued timely; in one of those cases, the hearing officer granted that objection and the charge was dismissed on other grounds. In the previous Round, all but one supplemental case were timely.<sup>65</sup>

Defendants also consistently adjudicate all charges in a single hearing. Because of database programming, if a hearing officer were to split charges, the hearing would be recorded as postponed. A review of the content of all orders for postponed cases in the Round revealed no instances of finding cause on some charges while preserving other charges for another date.<sup>66</sup> A review of CalPAP's database for this Round was consistent with this, as well.<sup>67</sup> No such cases have been cited in monitoring or have otherwise come to the Special Master's attention throughout implementation.

Thus, Defendants routinely bring charges in a reasonable time prior to hearing, the extremely rare occurrence of late additional charges notwithstanding. Additionally, there is every indication that they provide a final hearing for all charges and do not split charges. **The Special Master finds that Defendants are in substantial compliance with these requirements.**

Elimination of "temporary detentions" (§ 39):

Temporary detentions were employed for parolee behavior that did not rise to the level of a parole violation. They were used preemptively with the hope that a short incarceration would interrupt escalation of that parolee's behavior, or for medical or mental health treatment. They were designed to be administered informally and for up to

30 days.<sup>68</sup> In practice, agents' reports, Board reviews, and releases could all be extended well beyond the design.

The Stipulated Injunction requires Defendants to immediately rescind Title 15, California Code of Regulations § 4985, and this was accomplished in 2008.<sup>69</sup> Defendants report that they have reinforced repeatedly with staff that this practice is no longer permitted.

Throughout implementation, no clear cases have come to the Special Master's attention, although Plaintiffs have raised a few examples, through early 2011, where they were concerned that violation report language focusing on treatment and training, and/or stays in custody that were ultimately brief, were *de facto* temporary detentions.

The Mastership reviewed a large sample of revocation actions in this Round in which the parolee was incarcerated and released within 30 days.<sup>70</sup> None had any of the hallmarks of that alternate system: each involved parole violation behavior, counsel was universally provided, all revocation proceeding procedures were followed, and charges were dismissed or a set term was established. Moreover, the *LH* revocation process has become so routine for Facilities, Board and Parole staff, any alternate means of taking parolees into custody, or misusing the *LH* system to take them into custody but not continue in the revocation process, would surely be highly noticeable in the daily headquarters review of all pending cases, or by staff in daily operations.

**The Special Master considers this requirement to be in substantial compliance.**

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.”

In the initial days following the discovery of behavior that might constitute a parole violation, Defendants both conduct an agent-supervisor case conference (referred to as the Probable Cause Determination step) and make a final decision about whether to refer a case to the Board. Defendants recently studied nearly all cases for the Round and determined that one-quarter of such events are handled without initiating the revocation process.<sup>71</sup> A similar number had a hold placed and the parole unit subsequently dismissed the case and/or handled the behavior through a corrective action plan, or recommended such a result in cases where the law mandates that the Board make the decision. In total, then, the parole unit used or recommended alternatives to incarceration in 36% to 52% of cases that might otherwise have proceeded to revocation, depending on the definition one applies.

In the Mastership’s large study of probable cause hearings, more than 90% considered alternatives aloud in the hearing, in the written order, or both. Among these, 11% of the reviewed cases resulted in the granting of an alternative to incarceration.<sup>72</sup> There was similar practice in revocation hearings, with nearly all documenting consideration and an alternative being ordered in 24% of cases.<sup>73</sup>

In total, it appears that more than half of the juveniles who might have been revoked during the Round were diverted to alternatives.<sup>74</sup> High rates of consideration and



use of alternatives to incarceration have been apparent since at least 2010. Defendants have met the purpose of this requirement, and one of the parties' key goals, and the **Special Master considers it to be in substantial compliance.**

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

Defendants have adhered to a revocation matrix since 2009. Plaintiffs have asserted long-term that the penalties are too harsh, particularly in light of much shorter revocation terms for the same behavior for adult parolees, and have very recently provided case law regarding Equal Protection arguments.

To the Special Master's knowledge, no revocation terms have exceeded one year, with the exception of a handful of supplemental charges in some previous Rounds.

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

Revocation Extensions (§ 35, 40)

Release within three business days if time has been served (§ 38)

**Each of the three requirements above has been found in substantial compliance in previous Rounds.** All indications are that this has been maintained.

Development of an appeal process (§ 43):

Defendants operate an appeal process with the components required in the Stipulated Injunction. Defendants document 10 appeals during the Round.<sup>75</sup> Among them, two appeals were granted, resulting in the parolees' release, and eight were denied.

These were generally handled well, in the Special Master's opinion, although appeals did not respond to the legal arguments made in two of the appeals. All processing was handled timely.

There is an additional mechanism termed decision review, in which Defendants review each Board Order for mistakes of fact, law, or policy. Where the reviewer determines that a change is needed and it is potentially adverse to the parolee, a rehearing is ordered.

Records show three decision reviews resulting in a changed outcome during the Round.<sup>76</sup> All three accrued to the benefit of the parolees. Due to the lack of an element and/or probable cause, charges were dismissed or were amended and the penalty reduced. These cases were handled timely under Defendants' policy.

Informing parolees of the right to a copy of the hearing audio recording, and providing such recordings (¶ 41, 42)

**These requirements were found in substantial compliance in prior Rounds.** All indications are that this has been maintained.

### **Requirements related to ADA and effective communication**

#### ADA and effective communications accommodation

The Stipulated Injunction discusses accommodations<sup>77</sup> in five discrete components:

- Defendants shall make reasonable accommodations and effective communication assistance available in revocation proceedings, and a number of examples are specified (¶ 48)
- Defendants shall make this assistance available in preparing for hearings (¶ 23, 49)

- A parolee's requested accommodation will be given primary consideration (§ 50)
- Defendants shall ensure that proceedings are not delayed to obtain this assistance (§ 51)
- Defendants shall ensure that equipment is available for this assistance (§ 53)
- Defendants shall provide forms for parolees in simplified English, Spanish, and alternative formats (§ 55)

Defendants shall make reasonable accommodations and effective communication assistance available in revocation proceedings (§ 48)

The picture is incomplete as to providing needed accommodations. Parole agents are generally knowledgeable about the parolees they supervise, including their health conditions and cognitive limits. There have been increasing exceptions to this, though, with caseloads turning over during staff downsizing and agents covering for each other during the academy. The vast majority of agents and hearing officers are invested in ensuring good communication with parolees, and many good practices to attempt to increase understanding are evident. These staff and CalPAP attorneys have participated in multiple trainings concerning the ADA and the importance of accommodations, and it is unclear how much of this training has included methods of spotting undisclosed disabilities and effective adjustments to make. The Board has made inroads on point in recent trainings.

This point of undisclosed disabilities, and particularly undisclosed needs, is key. It is common knowledge that the DJJ population, as with many youth involved with the criminal justice system, has substantial rates of parolees with low education, a variety of cognitive limitations such as learning disability and developmental disability, and mental

illness. For example, the Mastership conducted an informal survey of parole agents during trainings in Spring 2012, which indicated that virtually all of them supervise parolees with developmental or learning disabilities and/or mental health issues. In contrast, for the last year statewide, agents could only recall supervising two parolees with a hearing impairment, none with vision impairments requiring more than glasses, none with limited mobility, and none requiring language or sign language interpretation.<sup>78</sup>

On the one hand, this indicates it is likely that few accommodations requiring equipment or external people – wheelchairs, SARA readers, amplification, interpreters – are needed. Defendants have in place good systems for providing those types of accommodations, including certain equipment being widely available to parole agents and present at hearings, staff made aware of designated persons who are responsible to arrange for other needed equipment or personnel, and computerized systems for tracking this information.

At the same time, there is the much larger group of parolees whose limitations are mentally based, a much more complex situation. This is a group much more likely to hide disabilities and feign understanding out of fear and shame; in the absence of understanding, there is a risk of a sense of coercion and forfeiting rights. While most staff attempt to speak more slowly and encourage questions, and some use rephrasing or parolee paraphrasing, it is unknown whether this is sufficient for some people. Paper and electronic revocation-related files do not usually contain the *type* of accommodation needed. Indeed, Defendants' ADA tracking system continues to have some constraints in general. For those conditions, observed among the DJJ population, where communication

is best effectuated through other means,<sup>79</sup> this information would be carried forward if the parolee voices it or the agent knows, but the likelihood of that happening, under these conditions, is uncertain.

On the other hand, some conditions, such as depression, may need no accommodation on many days. Some limitations may be in remission or, in the cases of reading comprehension and original languages, may have been addressed through education and no longer require assistance. Additionally, these parolees have attorneys looking to protect against an erosion of their rights. At the conclusion of hearings, hearing officers usually ask attorneys whether the parolees' ADA rights have been met, and attorneys do make that stipulation.<sup>80</sup>

As in prior Rounds, Plaintiffs offer examples of parolees who may not have received needed accommodations, a total of 11 during the Round.<sup>81</sup> Two young men originally spoke another language and documentation does not indicate whether the need for an interpreter was assessed. In most instances, accommodations were documented as provided in some revocation proceedings but were not noted, or staff marked that the parolees understood without assistance, at another process step. Plaintiffs' counsel question whether attorneys are sufficient accommodation for parolees with cognitive impairments, or whether the Facilities staff category of "staff assistant" is needed, as raised in one case during this Round. These examples carry the same uncertainties as described above – was an accommodation needed? If so, was it not provided or provided but not documented clearly? All comments on ADA interactive reviews in hearings were positive in Plaintiffs' monitoring throughout the Round.

At this stage, it can be said that Defendants have brought considerable attention to

setting up systems and staff training to provide accommodations, and these appear effective on many occasions. With the uncertainties that remain, the substantial proportion of the population possibly affected, and the nature of the issue being one that would not necessarily automatically surface, the Mastership cannot reach any conclusions about whether there is substantial compliance in providing accommodations consistent with the ADA and related law.

Defendants shall make available reasonable accommodations for attorney-client interviews and accommodations shall include additional hours of representation (§ 23, 49<sup>82</sup>):

The CalPAP contract does provide a payment rate that contemplates three more hours of representation than the hours of service covered by the *Valdivia* payment rate.<sup>83</sup>

Defendants have designated staff for attorneys to contact when needing assistance in arranging reasonable accommodations for attorney-client meetings. Internal monitoring determined that one such staff member had the usual equipment, and reported ease in securing sign language interpreters. Additionally, some attorneys confirmed that it is their experience that accommodations have been available.<sup>84</sup> As noted above, the Mastership's informal survey of parole agents indicated that extremely few parolees need accommodations that require arrangements. No complaints concerning accommodations during attorney-client interviews have been identified in monitoring, or have otherwise come to the Special Master's attention, throughout implementation.

It thus appears that few accommodations require assistance from Defendants to arrange, but there is a system in place to do so. CalPAP maintains regular contact with the Special Master and with Defendants, and includes topics needing resolution; the

nature of this concern makes it very likely that attorneys would have surfaced any difficulties they were encountering, and they have not done so. **For these reasons, it appears that Defendants are in substantial compliance with this requirement.**

A parolee's requested accommodation will be given primary consideration and granted unless unreasonable (¶ 50)

Parolees have an opportunity to request accommodations while interacting with their parole agents during notice service, by using a form request, and during hearings. A designated staff person receives accommodations requests from parolees, attorneys and staff, and she tracks the requests, communicates them electronically to hearing staff, and arranges for any accommodations that would not already be present in the hearing room. Defendants indicate that they have never been unable to provide a requested accommodation.<sup>85</sup>

Should Defendants refuse a parolee request, there are four likely places that information would be captured. Defendants' tracking system includes a data point for accommodations denied; that report is provided monthly and has reflected no denials for at least two years.<sup>86</sup> Notice service documents and hearing records could record such a request and denial; none have come to the Special Master's attention. Parolees have not reported any such events to Plaintiffs' counsel, Defendants or the Special Master during monitoring tours. Neither has this been the subject of any ADA grievances.

Because this requirement is conditioned on parolees already having verbalized their needs, it is reasonable to expect that parolees would also call attention if those needs were not met. Given the history described above, there is no reason to believe that parolees'

preferences for accommodations are not being honored. **The Special Master finds this requirement to be in substantial compliance.**

Defendants shall ensure that proceedings are not delayed to obtain reasonable accommodations or effective communication assistance (§ 51)

**Defendants were found to be in substantial compliance** with this requirement during the Seventh Round. All indications are that this status continues.

Defendants shall ensure that effective communication equipment is available at revocation proceedings (§ 53):

As discussed above and in previous reports of the Special Master, parole agents have been issued “kits” of magnifiers and assistive listening devices and routinely carry them to sites for service of notice.<sup>87</sup> The Special Master and party monitors have observed this same equipment consistently present at hearings for years. No instance of their absence, or that of any other needed equipment, has been brought to the Special Master’s attention through observation; monitors’ reports; Defendants’ tracking reports for accommodations denied, “planned vs. provided,” or “requested vs. provided”; CalPAP discussions; task force meetings; or ADA grievances. The offer of magnifiers, for example, is such a routine feature of hearings that a failure would have surfaced through one of these channels. **The Special Master finds that this requirement is in substantial compliance.**

Forms in alternative formats (§ 55)

**Defendants were found to be in substantial compliance** with this requirement during previous Rounds. All indications are that this status continues.



ADA and effective communications needs identification and tracking (¶ 52):

As detailed in previous reports of the Special Master, Defendants have put in place a number of mechanisms to identify and track disabilities and conditions that may give rise to accommodations needs. There are many paper and electronic sources storing different portions of parolees' health and education history; as a product of *LH* implementation, parole agents summarize them on a form for the field files that is carried forward in any revocation files.

When revocation is initiated, agents review this summary and original sources, and are to include that history on the revocation-related disability form ("3.260"), which they review with the parolee, and they are to add any accommodations requests the parolee makes at that time. The contents of the 3.260 are to be recorded in a database, which is also accessed by the Board's ADA Coordinator and hearing officers in anticipation of, and during, hearings. The paper revocation packet contains the field file summary form, the paper 3.260, and some source documents, and it is provided to the attorney and the hearing officer. The ADA Coordinator maintains tracking of accommodations, described in broad categories, that are planned, denied or provided.

This system has been in use since 2009. It centralizes, and makes much more easy to locate, disability and accommodations information. Hearing officers and parole agents regularly refer to that file information when speaking with the parolees during revocation proceeding steps.<sup>88</sup>

During Plaintiffs' close review each Round, there are a number of cases where the tracking is not as complete as the system was designed to be.<sup>89</sup> In this Round, for example, Plaintiffs encountered 16 parolees for whom one to three known conditions

were not recorded on the 3.260. Similarly, in five instances, the paper 3.260 recorded information that was not then made available in the electronic database. In these cases, the tracking did not operate as intended. Some of these could have a significant impact on the hearing if unknown, such as a learning disability; some would not, such as glasses for distance.

What effect this actually did have is an open question. Plaintiffs were able to make this determination based on other file documents – the same information regularly reviewed by staff and attorneys. Thus, it is quite likely that conditions were identified during those particular revocation proceedings, even if the tracking was managed incompletely. Plaintiffs make a valid point, however, when they write that if tracking information is missing, or inconsistencies are not explained, “the reliability of these versions is called into question, and it becomes difficult to determine whether the parolee did receive the necessary accommodations in these proceedings.”

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

It is difficult to prove discrimination in placements and services, and it is difficult to prove its absence. Defendants offer that there have never been complaints of discrimination. Plaintiffs note that discrimination may be apparent from the face of contracts or policies, or there may be discriminatory practices in the way the contract is applied by a program or Defendants.

The parties have invested a great deal in this requirement, as detailed in previous reports of the Special Master. It is an issue of great importance to Plaintiffs’ counsel and

it remains in dispute. There were no new developments during this Round.

Develop an ADA grievance procedure (§ 54):

Defendants put in place an ADA grievance procedure in 2008. After resolving initial difficulties with distributing the form, parole agents have routinely served it with the notice of rights and charges since 2010.<sup>90</sup> A staff member is designated to receive, record and respond to grievances, and to arrange accommodations. The procedures to effectuate the Stipulated Injunction's requirements are captured in policy.<sup>91</sup>

Defendants received a very small number of complaints on this form over the years, but the contents did not concern ADA issues. They report receiving the first ADA-related grievance in April 2012.<sup>92</sup> It was submitted ahead of hearings and requested a wheelchair for the hearing. It was problematic that grievance receipt was substantially delayed by the form containing an outdated mailing address, but Defendants were able to arrange for the requested accommodation at the hearing the following day and the hearing was not delayed to accomplish this.<sup>93</sup>

As with expedited probable cause hearings, Plaintiffs object that there is insufficient use of this system to reach any findings and that the sole evidence of the system's functioning is negative and carries the risk that other parolees will not receive needed accommodations when relying on this system. The Special Master agrees with this concern, but sees it as outweighed by the fact that a well-designed system has been in place for an extended period, and that it fulfilled its purpose when called upon to do so.

**Defendants have put in place the required system and should be considered in substantial compliance.**

## RECOMMENDATIONS

The Defendants have demonstrated compliance with several additional 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:

- Parole Agent and Supervising Parole Agent conference within two business days (¶ 27)
- Not accepting written admissions to a violation of parole made prior to the juvenile parolee meeting with counsel (¶ 17)
- Violation report within six business days (Exh. A)
- Supervising Parole Agent review of violation report within seven business days (Exh. A)
- At the time of attorney appointment, provision of relevant educational, mental health and disability identification and source documents (¶ 16)
- Return to custody assessment within nine business days (¶ 29)
- System for expedited probable cause hearings (¶ 26)
- Hearing officers shall provide the factual basis for their findings (¶ 40)
- Definition of good cause for delay, remedy for timeframe violation (¶ 33)
- Charges may not be split and known charges must be brought at a reasonable time prior to hearing (¶ 34)
- Elimination of "temporary detentions" (¶ 39)
- Alternatives to incarceration considered at agent-supervisor conference, probable cause hearing and revocation hearing (¶ 27)

- Defendants shall make available reasonable accommodations for attorney-client interviews and accommodations shall include additional hours of representation (§ 23, 49)
- A parolee's requested accommodation will be given primary consideration and granted unless unreasonable (§ 50)
- Defendants shall ensure that effective communication equipment is available at revocation proceedings (§ 53)
- Develop an ADA grievance procedure (§ 54)
- Comprehensive annual training on ADA and effective communication, the Stipulated Injunction's requirements, policies and procedures, due process (§ 56)
- Self-monitoring process (§ 57)

Pursuant to the Order of Reference to the Special Master, the Special Master's reports shall be final unless, no later than twenty (20) days after service of the final report, a party files written objections with the Court. If any party files objections, the opposing party shall have twenty (20) days to file a reply to the objections with the Court. If objections are filed, the Court will consider the matter and issue an order adopting the report in full or as modified, or rejecting the report.

Respectfully submitted,

/s/Virginia L. Morrison  
Virginia L. Morrison  
Special Master

August 3, 2012

## APPENDIX A

In previous Rounds, this Court has found the following specific requirements to be in substantial compliance. Defendants and CalPAP maintained these requirements at or above prior levels. These have been incorporated in the attached report, either as independent descriptions or as components of a larger requirement, as applicable.

- Notice of terms posted (§ 11)
- Tracking mechanism for timeframes and reasons for delay (§ 13, 32, 33)
- Level I and II behavior handled by parole units (§ 25)
- 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 10<sup>th</sup> 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)
- Provision of counsel during revocation and revocation extension proceedings (§ 15, 35)
- 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 clients 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)

- 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)
- Parolee waivers of timely hearings and continuances (§ 31)
- Not in custody hearings within 60 days after service and with all due process and ADA protections (§ 45)
- Parole revocation hearings to be held within a 50-mile radius of the alleged violation (§ 36)
- Evidence on the same terms as the state (§ 33)
- Providing hearing recordings (§ 42)
- Right to audio recording (§ 41)
- Revocation may be extended only after a revocation extension hearing (no time-adds or DDMS time extensions) (§ 35)
- Revocation Extensions (§ 35, 40)
- Release within three business days if time has been served (§ 38)
- Policies and procedures governing dual commitments (§ 45)
- No delays for accommodations (§ 51)
- Forms in alternative formats (§ 55)

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<sup>1</sup> Senate Bill 1021, enrolled Jun. 28, 2012

<sup>2</sup> The Mastership continues to acknowledge that the parties disagree as to whether “substantial compliance” is the legal standard for relief from court oversight. By the use of this term, the Special Master takes no position; it is being used as defined on page 4.

<sup>3</sup> Plaintiffs argue that the method of analysis above is incorrect; since the steps are designed to constitute an integrated whole, conclusions cannot be reached about components. The *LH* system should be assessed as a whole and, as such, is either compliant or noncompliant, and lack of compliance on any requirement is a serious violation of due process, they assert. Defendants wish to emphasize that substantial compliance does not require perfect compliance, and thus a party may be in substantial compliance with a consent decree notwithstanding some minimal level of noncompliance.

<sup>4</sup> [http://www.cdcr.ca.gov/Regulations/Juvenile\\_Justice/Adopted\\_DJJ\\_Rules.html](http://www.cdcr.ca.gov/Regulations/Juvenile_Justice/Adopted_DJJ_Rules.html)

<sup>5</sup> See, e.g., agendas from the December 2011, March 2012 and May 2012 trainings. Extensive materials were also provided, and the Mastership has observed most training sessions

<sup>6</sup> Informal communication with Defendants

<sup>7</sup> The sources for this section are *L.H. v. Brown*: Periodic Compliance Report, Jun. 22, 2012, Special Master's observations, informal communication with Defendants

<sup>8</sup> As discussed in previous reports of the Special Master, Plaintiffs object to this process, which is termed Decision Review. While it has had some issues in application, it is an excellent quality control mechanism, in the Special Master's opinion.

<sup>9</sup> See, e.g., Policy Bulletin, Subject: Parole Violation Process (CN 410), Oct. 7, 2010

<sup>10</sup> Defendants used good methodology, with a 15% sample of the period reviewed being of sufficient size to be representative. *L.H. v. Brown*: Periodic Compliance Report, Jun. 22, 2012 and related exhibits

<sup>11</sup> Closed Case Detail, Step RTCA, Dec. 2011 through May 2012; individual records in electronic folder titled PCD. This review drew on every fourth case from this printout, for a total of 34 cases (16% of the in-custody cases for the Round); exceptions were made for cases included in Defendants' sample and substitutes were chosen

<sup>12</sup> *L.H. v. Brown*: Periodic Compliance Report, Jun. 22, 2012

<sup>13</sup> *Id.*

<sup>14</sup> Closed Case Summary, Closed Case Detail, Step PCD, Closed Case Summary – Extradition Cases and Closed Case Summary - NIC Cases, each for Dec. 2011 through May 2012, and associated individual case. The italicized and highlighted entries reflect supplemental cases; the Mastership verified that these were handled within the expected timeframes after initiation

<sup>15</sup> Open Case Summary and Open Case Detail Step ALL, May 7, 2012; Defendants' analysis captured in spreadsheet titled open case summary 5 7 12.xls

<sup>16</sup> As discussed *infra* and in previous reports of the Special Master, Plaintiffs strongly object to parole agents soliciting or accepting parolee statements in the absence of counsel.

<sup>17</sup> See, e.g., individual records in the electronic file titled Incomplete NORs-examples.pdf

<sup>18</sup> Closed Case Detail, Step NOR June 2012; individual records with the electronic file names June charge reports 1.pdf, June charge reports 2.pdf, and Late May-June charge reports (NORs, observed).pdf

<sup>19</sup> Closed Case Summary, Closed Case Detail, Step NOR, Closed Case Summary – Extradition Cases and Closed Case Summary - NIC Cases, each for Dec. 2011 through May 2012, and associated individual cases. The italicized and highlighted entries reflect supplemental cases.

<sup>20</sup> Open Case Summary and Open Case Detail Step ALL, May 7, 2012; Defendants' analysis captured in spreadsheet titled open case summary 5 7 12.xls

<sup>21</sup> The parties dispute whether this step is a requirement of 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." 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.

<sup>22</sup> The revocation database appears to do so, but the date entered in that field reflects different activity.

<sup>23</sup> On the same basis as with the violation report, the parties dispute whether this step is a requirement of the Stipulated Injunction.

<sup>24</sup> This step is not mentioned in the body of the Stipulated Injunction, and it is not included in the listing of steps where Defendants are expected to consider alternatives to incarceration ("No later than two business Days after the Parole Hold is placed, the Parole Agent and Supervising Parole Agent will confer to ... 2) consider whether alternatives to incarceration are warranted. The advisability of alternatives to incarceration shall be considered again at the Probable Cause Hearing and at the Revocation Hearing.")

<sup>25</sup> Closed Case Summary, Closed Case Detail, Step VIOLATION, Closed Case Summary – Extradition Cases and Closed Case Summary - NIC Cases, each for Dec. 2011 through May 2012, and associated individual cases. Open Case Summary and Open Case Detail Step ALL, May 7, 2012; Defendants' analysis captured in spreadsheet titled open case summary 5 7 12.xls. Cases appearing late were extradition cases that the system did not calculate correctly or supplemental cases handled timely after initiation.

<sup>26</sup> DJJ Date Case Assigned Compliance Report for each of Dec. 2011 through Apr. 2012

<sup>27</sup> This is distinguished from the separate requirement for counsel of choice, which remains subject to full Court oversight

<sup>28</sup> See Third Report of the Special Master on the Status of Conditions of the Stipulated Order

<sup>29</sup> See, e.g., a recent survey of attorneys contained in *L.H. v. Brown*: Periodic Compliance Report, Jun. 22, 2012, Exh. F, Exh 4. While it is unclear whether respondents represented a large enough percentage of



attorneys for juveniles to be representative, the opinions were confirmed in further Special Master conversations with CalPAP administration.

<sup>30</sup> *L.H. v. Brown*: Periodic Compliance Report, Jun. 22, 2012

<sup>31</sup> Document Production Itemization for each of Dec. 2011 through Mar. 2012; informal communication with Defendants regarding Apr. through Jun. 2012

<sup>32</sup> Spreadsheet with electronic file name Disposed at RTCA Dec. 1 – May 31.xls

<sup>33</sup> Closed Case Summary, Closed Case Detail, Step RTCA, Closed Case Summary – NIC Cases, and Closed Case Summary – Extradition Cases for Dec. 2011 through May 2012; associated individual record. The italicized and highlighted entries reflect supplemental cases; the Mastership verified that these were handled within the expected timeframes after initiation.

<sup>34</sup> Open Case Summary and Open Case Detail Step ALL, May 7, 2012; Defendants' analysis captured in spreadsheet titled open case summary 5 7 12.xls

<sup>35</sup> CN416 Juvenile Parole Revocation Process, Juvenile Parole Board, , most recent revision provided to the Special Master is signed Oct. 7, 2010

<sup>36</sup> DJJ exercised discretion to apply restraints in nine cases; only one did not appear consistent with policy. Previous reports of the Special Master have detailed Plaintiffs' concerns that restraints based on the dangerous nature of the alleged violation is not a correct interpretation of the negotiated criterion of "present[s] a reasonable likelihood that he/she may become violent .... Such conditions may include behavior while on parole..." In this Round, Plaintiffs cite four such cases; these men were restrained on the basis of charges concerning a stabbing, attempted murder, battery (several months old), and evading and resisting police. The Special Master disagrees in principle as well as in the cited cases.

<sup>37</sup> The Mastership examined 79 probable cause hearings (54% of the total) and 17 revocation hearings (65% of the total). Among these, 46 were not restrained, 40 were restrained pursuant to county jail policy, 9 were restrained by DJJ discretion, and 1 could not be determined.

<sup>38</sup> Email from S. Wolff dated Mar. 6, 2012

<sup>39</sup> Standards for Attorneys in Revocation Proceedings, Juvenile Parole Revocation Process, both dated Oct. 7, 2010; Standard Agreement with University of Pacific, McGeorge School of Law, Mar. 24, 2009

<sup>40</sup> *L.H. v. Brown*: Periodic Compliance Report, Jun. 22, 2012

<sup>41</sup> CalPAP Requested Expedited Hearings, Feb. 1, 2009 through Jun. 27, 2012

<sup>42</sup> The Mastership reviewed 27 hearings onsite and their related orders, 52 orders randomly selected, and an additional 22 orders from CalPAP material identifying cases in which probable cause was challenged, for a total of 100 cases. This constitutes 68% of 149 probable cause hearings in the Round, although there may have been a handful of duplicates. DJJ Challenges to Probable Cause, Dec. 2011 though Apr 2012; Closed Case Summary and Closed Case – NIC Cases for Dec. 2011 through May 2012; Closed Case Detail, Step PCH for those months; associated individual records in electronic folder titled Probable Cause; individual records in electronic folder titled PCH-OWR

<sup>43</sup> See Plaintiffs' monitoring reports and letters analyzing document productions issued between January 2012 and July 2, 2012; DJJ Challenges to Probable Cause, Dec. 2011 though Apr 2012

<sup>44</sup> There were 58 such cases at issue; the rest of the sample did not have a probable cause argument, according to CalPAP and the hearing records. Of the 58 cases, 14 did not mention the argument, while 44 included the argument and other points the parolee wanted raised.

<sup>45</sup> When assessing whether probable cause was present for each charge, the Mastership reviewed a total of 79 cases, a little over half of the hearings.

<sup>46</sup> Missing Board Orders for each of Dec. 2011 through May 2012

<sup>47</sup> In the dozens of hearings the Mastership observed during the Round, only one call was placed to staff who were not hearing participants. That call was conducted in the presence of the parties, a practice that reduces outside influence on the outcome by allowing parties to take the call information into account and counteract it if they wish. This change is a helpful contribution to due process.

<sup>48</sup> DJJ Probable Cause Hearing Compliance Report for each of Dec. 2011 through May 2012; Closed Case Summary, Closed Case Detail, Step PCH, and Closed Case Summary – Extradition Cases for Dec. 2011 through May 2012; associated individual records. The one late case occurred because rooms at the jail were unavailable on the scheduled hearing date. The State's and CalPAP records concerning the final hearing date differ by one day. Other cases appearing late were time waivers and postponements heard within agreed timeframes or supplemental cases heard within 13 business days of initiation.

<sup>49</sup> Optional Waiver CalPAP, Dec. 2011 through May 2012; DJJ Optional Waiver Activated Cases for each of those months

<sup>50</sup> Open Case Summary and Open Case Detail Step ALL, May 7, 2012; Defendants' analysis captured in spreadsheet titled open case summary 5 7 12.xls

<sup>51</sup> Closed Case Summary – Postponement, Dec. 2011 through May 2012 and Open Case Summary – Postponement, run Jun. 30, 2012

<sup>52</sup> See contents of electronic folders titled PCH+RTCA, PPs, and RevHs, and DJJ Revocation Extension Cases for each of Dec. 2011 through May 2012

<sup>53</sup> These agreements are captured in Joint Stipulation Regarding Modifications to Division of Juvenile Justice Parole Revocation Policies and Procedures, Sept. 10, 2009. 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.

<sup>54</sup> See contents of electronic folders titled PPs, RevHs, and NICs

<sup>55</sup> For sources for this section, please see the data reports and individual records in the electronic folders titled OSM observations & reviews/RevH and RevHs

<sup>56</sup> See Plaintiffs' monitoring reports and letters analyzing document productions, and Defendants' letters in response, issued between January 2012 and July 2, 2012

<sup>57</sup> Individual records in the electronic folders titled OSM observations & reviews/RevH and RevHs; Other Objections for each of Dec. 2011 through April 2012

<sup>58</sup> See Denied *Comito* Objections and Granted *Comito* Objections for each of Dec. 2011 through May 2012 and associated individual records

<sup>59</sup> Missing Board Orders for each of Dec. 2011 through May 2012

<sup>60</sup> DJJ Revocation Hearing Cases-Over 35 Days, and DJJ NIC Cases Closed, for each of Dec. 2011 through May 2012

<sup>61</sup> Closed Case Summary, Closed Case Detail, Step RevH, Closed Case Summary – Extradition Cases and Closed Case Summary – NIC Cases, Optional Waiver CalPAP, and Closed Case Summary – Postponement, all for Dec. 2011 through May 2012, and associated individual cases. In the one untimely case, the parolee had requested a two-week time waiver and the rehearing took place three days after the time waived. Other cases appearing late were explained by time waivers, an optional waiver, and a postponement because the parolee was in court; each of these was reheard within the negotiated timeframe. Another three cases were concluded timely but appear late because they were reopened to record changes in the parolee's favor from the Decision Review process or Appeals process.

<sup>62</sup> Open Case Summary and Open Case Detail Step ALL, May 7, 2012; Defendants' analysis captured in spreadsheet titled open case summary 5 7 12.xls

<sup>63</sup> Closed Case Detail, Step NOR, Dec. 2011 through May 2012, and associated individual records

<sup>64</sup> Closed Case Detail reports for timely and late Probable Cause Determinations, Dec. 2011 through May 2012, and associated individual records. Supplemental cases are indicated by highlighted and italics.

<sup>65</sup> See Seventh Report of the Special Master on the Status of Conditions of the Stipulated Order

<sup>66</sup> Closed Case Summary – Postponement Dec. 2011; Closed Case Summary – Postponement Jan. through May 2012; and associated individual cases

<sup>67</sup> Informal communication with CalPAP

<sup>68</sup> Dept. of the Youth Authority Parole Services Manual, Ward Services Chapter, Subject: Temporary Detention 4190

<sup>69</sup> *L.H. v. Brown*: Periodic Compliance Report, Jun. 22, 2012, Exh. L

<sup>70</sup> Spreadsheet with the electronic file name Cases released within 30 days.xlsx and related individual records. Since some pre-*LH* temporary detentions were extended beyond 30 days, this list might not capture all potential temporary detentions, but it is a reasonable approximation. The study examined all cases in custody between 10 and 30 days, a 30% sample.

<sup>71</sup> *L.H. v. Brown*: Periodic Compliance Report, Jun. 22, 2012 serves as the source for this paragraph. It uses a slightly different timeframe than does the hearings analysis. While Defendants included referrals to not in custody hearings in their analysis, the Special Master declines to do so. It is a beneficial practice to maintain parolees in the community and minimize disruption to employment and relationships; it is not, however, a final disposition and should be discussed separately.

<sup>72</sup> As described above, the Mastership reviewed more than half of the probable cause hearings for this point, a total of 80 cases. Among those, consideration could not be determined in only six cases.

<sup>73</sup> Among the 17 cases examined (64% of the total), nearly all expressly documented consideration or it was rendered unnecessary because the case was dismissed or the parolee was given credit for time served. There was only one documentation exception. Four cases were granted an alternative.

<sup>74</sup> This reflects the total given corrective action plans with no holds placed (67), removed from the revocation process at the parole unit (76), and ordered at probable cause hearings (9) and revocation hearings (4). The parole unit numbers would be higher when including cases from December 2011. The hearings numbers are from a sample, so the totals are also undoubtedly higher. The numbers herein are based on cases continued on parole or given specific alternatives such as electronic monitoring or programs; it does not include dismissals at hearings or credit for time served, as these may have been ordered for other reasons.

<sup>75</sup> Appeals documents within monthly document productions, and report titled DJJ Appeals Cases, for each of Dec. 2011 through May 2012

<sup>76</sup> DJJ Decision Review Cases for each of Dec. 2011 through May 2012 and associated individuals' records

<sup>77</sup> Wherever the term "accommodations" is used in this report, it should be understood to include effective communication assistance.

<sup>78</sup> While the responses were spontaneous and not researched, they suggest general trends in the type and frequency of disabilities.

<sup>79</sup> Certain kinds of processing disorders, for example, require highlighting text; using as much visual material as possible, or no written material at all; limiting distractions; using only concrete terms, and so forth.

<sup>80</sup> Plaintiffs object to this practice, noting that, with some parolees likely to conceal accommodation needs, those needs may go unidentified by attorneys and hearing officers, and a stipulation does not cure that. They are concerned that a stipulation is not equivalent to a thorough ADA review and that stipulations may be given by rote. Defendants respond that parolees are appointed counsel specifically to ensure that their ADA needs are met and due process and equal protection rights are provided. Defendants assert that parolees' attorneys -- who have met with the parolees, observed them during hearings, and are familiar with their needs -- are in the best position to evaluate whether their clients' needs have been adequately addressed during parole proceedings.

<sup>81</sup> This paragraph summarizes all cases in which Plaintiffs raise a concern that an accommodation was not provided during the Round. *See* Plaintiffs' monitoring reports and letters analyzing document productions, and Defendants' letters in response, issued between January 2012 and July 2, 2012.

Counsel raise a similar concern about whether accommodations were provided when parole agents discussed the conditions of parole with three parolees with likely disabilities, as the accommodations are not marked.

<sup>82</sup> The exact language of Paragraph 49 is "Defendants shall make accommodations for Juvenile Parolees with Disabilities and effective communication needs in order to assist them in preparing for Revocation Proceedings. Such accommodation shall include up to three additional hours of representation by appointed counsel." Since there is a separate requirement for Defendants to provide reasonable accommodations in revocation proceedings, the Special Master interprets Paragraph 49's reference to "preparing for Revocation Proceedings" to mean attorney-client contacts.

<sup>83</sup> Standard Agreement with University of Pacific, McGeorge School of Law, Mar. 24, 2009, Exhibit A-1, p. 99; informal communication with CalPAP

<sup>84</sup> *L.H. v. Brown*: Periodic Compliance Report, Jun. 22, 2012, Exh. F, Exh 4.

There are a total of four designated staff in the state -- Wards With Disabilities Program Coordinators and the Juvenile Parole Board ADA Coordinator. In addition to providing equipment and arranging sign language interpreters, they provide phones for language translation and in-person interpreters. The audit report discusses this provision at DJJ facilities. Additionally, these staff provide these services for attorney-client meetings in jails, employing the same procedures as when the services are needed for hearings in the jails. Informal communication with Defendants.

Of the 77 attorneys authorized to represent juveniles, 8 responded to a survey on the points in this section. All survey answers confirmed that accommodations have been available.

<sup>85</sup> *L.H. v. Brown*: Periodic Compliance Report, Jun. 22, 2012; Special Master's observations

<sup>86</sup> Denial Report by facility or region for each of Jul. 2010 through May 2012

<sup>87</sup> Plaintiffs object that, to the extent an agent has a kit in the car, this is insufficient in that it is possible he or she could discover a need during service and need to return to the car to retrieve the equipment.

<sup>88</sup> Special Master's and monitors' observations

<sup>89</sup> For this section, see Plaintiffs' monitoring reports and letters analyzing document productions issued between January 2012 and July 2, 2012

<sup>90</sup> Special Master's observations onsite and in revocation packet reviews

<sup>91</sup> *L.H. v. Brown*: Periodic Compliance Report, Jun. 22, 2012

<sup>92</sup> *LH* Document Production (itemization) for each month from June 2009 through May 2012; ADA/EC Grievance Statistics Apr. 2012

<sup>93</sup> ADA/EC Grievance Statistics Apr. 2012, associated individual hearing record