

Summary and Key Points

Second Report from the Independent Court Monitor (dated March 3, 2023) **From *Remick v. Philadelphia*, 20 Civ. 1959 (E.D. Pa)**

The Independent Court Monitor (“Monitor”) issued its second report evaluating compliance with the settlement in the class action lawsuit, *Remick v. Philadelphia*, 20 Civ. 1959 (E.D. Pa.), relating to conditions at the Philadelphia Department of Prisons (“PDP”). The class members are represented by the Pennsylvania Institutional Law Project, Kairys Rudovsky Messing Feinberg & Lin, Abolitionist Law Center, and Dechert LLP. The Monitor will produce a third and fourth report on September 15, 2023 and March 29, 2024, respectively.

Here are some key points from the second report:

Monitoring Process Overview

The Monitor’s Second Report evaluates Defendants’ (City of Philadelphia and Commissioner Blanche Carney) compliance with the terms of the settlement agreement through December 31, 2022. The Monitor’s reports address Defendants’ implementation progress and issue “Substantial Compliance,” “Partial Compliance,” and “No Compliance” findings. The Monitoring Team meets regularly with incarcerated persons, jail staff, and advocates and conducted three site visits to all PDP facilities during this monitoring period.

PDP’s Staffing Crisis Will Likely Require Years to Resolve

PDP’s Hiring Practices Insufficient to Address Crisis and Some Practices are Inconsistent with Monitoring Team Recommendation

With a reported vacancy of 800 officers, the City has failed to implement the necessary strategies to resolve the staffing crisis at PDP. The Monitor writes that “(t)hus far, the City’s actions are not responsive to the enormity of PDP’s staffing crisis and fail to acknowledge the duty imposed on Defendants by this Court to improve working conditions for more than 1,600 employees and reduce the suffering of more than 4,200 people confined in PDP facilities” (p. 13).

PDP data reflects the following:

- Since February 2021, only 225 new staff have entered the training academy. Of those 225, **only 79 were still employed as of December 23, 2022, a 34% attrition rate within the first year of employment.**
- Approximately 8% of applicants complete the orientation, interview, background check processes and are ultimately hired as PDP correctional officers.
- In order to fill the current vacancies, the City would need to attract more than 15,000 applicants for officer positions.
- PDP failed to implement continuous-fill hiring lists to maximize the number of applications received.

The Monitor’s report also notes that the City has hired consultants to complete a staffing analysis which they anticipate will be completed in the next reporting period.

In the Absence of a Resolution of the Staffing Crisis, PDP Should Reduce PDP's Population by at Least 800 Incarcerated Persons

The Monitoring Team met with criminal justice partner organizations in Philadelphia, and there is agreement that some portion of the necessary reductions can be achieved through greater efficiency and improvements in existing criminal justice processes and other measures, such as enhancements to the procedures for bail review and consistent review of cases where individuals are detained on minor or technical violations of probation or parole. Further, removing financial barriers and reevaluating eligibility restrictions for those who can be safely released on electronic monitoring can also be implemented by other City agencies and partner organizations. However, there is also agreement among justice partners that greater criminal justice reform is necessary beyond these measures.

No PDP Housing Units Provide Sufficient Amounts of Daily Out-of-Cell Time

The Monitor reports that most PDP housing areas are not consistently offering the required 5 hours of out-of-cell time daily, and none are offering 6 hours of out-of-cell time daily. Therefore, PDP is not in compliance with this provision in the settlement agreement, which called for a presumptive expected increase to 6 hours of out-of-cell time by October 15, 2022, and a return to normal operations of the PDP that included 8-10 hours of out-of-cell time daily.

Individuals Placed on Segregation Severely Injured by Extreme and Extended Isolation

The Monitoring Team observed first-hand Class Members who were in extreme distress, including crying, pacing, pleading with passersby to open cell doors, anger, experiencing symptoms such as confusion, despondence, unwillingness or inability to engage, incessant muddled communication, talking to oneself, and psychiatric decompensation requiring hospitalization. PDP has failed thus far to meet the one-hour daily requirement for out of cell time, and PDP admits that **Class members on some units receive no out-of-cell opportunities for extended periods up to 50% of the time.**

The Monitoring Team has concerns about the quality of behavioral health rounds on segregation units based on observations during site visits of Class Members who were held in segregation units for weeks or months and appeared to be in acute psychiatric distress. The Monitor noted that some patients were too acute for isolated segregation environments and should have been flagged for removal to higher levels of care.

PDP is Over-reliant on Segregation when Compared with National Trends

PDP currently segregates 10% of its incarcerated population, much higher than other national estimates of 3-6%. The Monitoring Team found that incarcerated people with serious mental illness continue to be overrepresented in segregation, and that PDP has historically tracked whether patients may be safely diverted from segregation to more appropriate treatment environments. The Monitoring Team states that patients should not be placed on segregation based solely on behavioral health status, charges or case disposition, non-violent infractions, or higher security needs.

The Monitoring Team Found That 10 people Died at PDP in 2022

There were 3 suicides, 4 substance use overdoses, and 2 deaths from purported natural causes (one of which was COVID-19 related). One cause of death is still pending. The Monitoring Team calls upon PDP to convene a workgroup following each death in PDP facilities, which is fundamental to identifying any lapses in security or healthcare that require corrective action or additional investigation.

Some PDP Living Conditions are Unsafe, Unsanitary, and Fail to Meet Basic Correctional Standards

The Monitoring Team reports that the physical plant issues at PICC and occupied units at DC remain unresolved. Emergency and routine maintenance is not occurring, and the older jail facilities are not being deep-cleaned with sufficient frequency.

Troubling Use of Force Practices Indicate the Need for Profound Operational and Cultural Shifts

The Monitoring Team's review of 24 use of force incidents revealed "troubling, deeply flawed use of force practices in which oleoresin capsicum (OC) spray and other types of force are too often used without attempts to de-escalate or resolve issues through verbal communication" (p. 61). The team also described inadequate reporting and investigations, poor quality use of force reviews, and ineffective training that "foster a culture of complacency toward instances of unnecessary or excessive uses of force" (p. 61).

The Monitoring Team notes the limits of current written PDP policies on the use of force, but even with those limitations, PDP's use of force review process should have identified the need for additional investigation and training in 100% of cases reviewed. In at least a quarter of the incidents reviewed, the Monitoring Team suggests that force could have been prevented had personnel used de-escalation or verbal communication. In at least 2 cases, highly problematic uses of force passed initial reviews without any policy violations noted. In fact, one member of the Monitoring Team noted that the conduct displayed in those incidents should have resulted in the immediate removal of that employee from contact with incarcerated persons, and immediate referral of that employee for administrative investigation and criminal charges, but that no one at PDP flagged any issue until weeks later.

Compliance Not Met in Meeting Benchmarks Related to Reducing Backlog of Healthcare Appointments

The Monitoring Team reports that the current backlog remains significant and is not yet approaching the required 85% reduction of 1,587 medical appointments used to evaluate compliance. Security staff shortages and patient refusals remain the most frequent reasons for non-attendance.¹

¹ The Monitoring Team reports that Class Members describe "being awakened pre-dawn and waiting for hours in holding areas for transport to appointments that are not scheduled until the afternoon. Patients reported wanting to attend the appointments but growing tired of waiting, ultimately requesting to return to housing units over attending appointments" (p. 28).

Grievance System Overwhelmed and Ineffective

As a mechanism to protect the legal rights of incarcerated persons, and one of the sole means by which they can document their needs and seek to have them met, the grievance system is critical to achieving a return to normal operations as outlined in the settlement agreement. However, Class Members reported the following to the Monitor:

- Grievances being ignored;
- PDP failing to provide copies of grievances so that incarcerated persons can retain copies of their filings;
- Unavailability of grievance forms on units; and
- Being unable to submit a grievance because the grievance box is full.

PDP reports that it is currently exploring expanding tablet capabilities to include the submission of Class Member requests and grievances.

PDP's Data Collection Practices are Flawed and Inadequate

PDP's current data tracking systems, via manual data entry and the Jail Management System, are antiquated and prone to inaccuracies. The flawed data processes inhibit tracking of individual access to services including visits to the law library, official and non-official visits, and out-of-cell time.

Other Items

PDP has not yet implemented a mental health treatment program for those in segregation.

The Monitor will develop recommendations that prioritize improving remote meeting attendance.

As of December 2022, proof of vaccination is no longer required for Class Members or their visitors.

In an effort to assess individual Class Member phone usage, PDP reports that it is exploring whether initiated calls can be tracked and randomly sampled. Alternatively, individually issued tablets may be configured to replace telephone calls.