

Summary and Key Points
From Third Report from Independent Court Monitor
***Remick v. City of Philadelphia*, 20 Civ. 1959 (E.D. Pa)**

Introduction

The Independent Court Monitor (“Monitor”) issued her third report evaluating compliance with the settlement in the class action lawsuit, *Remick v. Philadelphia*, No. 20-cv-1959 (E.D. Pa.), relating to conditions at the Philadelphia Department of Prisons (“PDP”) through June 30, 2023. In this third report, the Monitor notes that PDP remains unable to comply with the vast majority of areas covered under the *Remick* settlement agreement. PDP cannot properly staff its facilities and does not have a plan for a return to normal, pre-pandemic operations, as required by the agreement and contemplated by several court orders.

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 fourth report, the final of the initial reporting period, on March 29, 2024.

Overview of the Monitoring Process

The *Remick* settlement agreement between Plaintiffs and the City of Philadelphia requires system-wide reform of PDP as prescribed in 18 substantive provisions. The Monitor issues regular reports to the Court and attorneys that assess the City’s compliance with each substantive provision of the agreement. In addition, the Monitor makes site visits to PDP facilities; interviews staff, incarcerated persons, and advocates; and reviews policies and procedures at the jails. The Monitor addresses the City’s implementation progress and issues “Substantial Compliance,” “Partial Compliance,” or “Non-compliance” findings for each substantive provision. The Agreement requires the City to implement reforms in areas such as staffing, healthcare, mental health, and use of force. The Monitor also makes specific recommendations to improve the City’s compliance with the agreement where necessary.

The Monitor calls for local and state justice entities to curtail pretrial detention and expedite criminal cases to reduce the jail population in light of the staffing crisis

The report notes that the staffing crisis in the Philadelphia prison system has led to unsafe working conditions and inadequate out-of-cell time for incarcerated persons.¹ According to the Monitor, PDP Commissioner Blanche Carney has acknowledged that conditions in PDP are unsafe for incarcerated individuals and staff.² Furthermore, the Monitor reports that Commissioner Carney “maintains that without an influx of new staff or a significant population reduction to no more than 3,500 Class Members, PDP will be unable to implement many Agreement requirements and will struggle to sustain changes implemented so far.”³

¹ Monitor’s Third Report at 3, *Remick v. City of Philadelphia*, No. 20-cv-1959 (E.D. Pa.), ECF No. 193.

² *Id.*

³ *Id.*

As of June 30, 2023, the prison system had a staffing vacancy rate of 40%, which represents an increase as compared to earlier reporting periods.⁴ The report notes that PDP does not stand to attract new staff sufficient to implement the Agreement in the short term, and without additional and highly coordinated efforts to reduce the use of and reliance upon incarceration, the population will not decrease to lower levels. The situation is so dire, that the Monitor weighed the option of suspending intake for specified groups of new arrestees, but noted that this could result in other constitutional violations at earlier stages in the criminal justice process.⁵

“Profound Trauma” experienced by incarcerated persons at the Philadelphia jails will likely have lifelong effects

The report highlights the profound trauma experienced by incarcerated persons at the Philadelphia jails, which, the Monitor notes, is “clearly observable to all who work in, enter, or reside in PDP facilities.”⁶ As the Monitor explains, “[e]xposure to extended periods of isolation, institutional violence, squalor, and neglect breach all standards for humane confinement and is certain to have lifelong effects for many.”⁷

The report notes that the use of solitary confinement remains high, with over 260 people in solitary confinement as of June 30, 2023.⁸

Insufficient Staffing and Staff Negligence likely led to emergency situations at PDP Including Jail Escapes and at Least One Jail Death

The Monitor briefly references the pending investigation into what led to the escape of two individuals from one of the PDP jails, Philadelphia Industrial Correctional Center (PICC), on May 8, 2023. The Monitor states that PDP “does not have enough personnel at the ranks of lieutenant and sergeant to maintain a consistent presence inside facilities and to monitor all housing units.”⁹

Six class member patients died while in PDP custody in the first six months of 2023.¹⁰ PDP identified at least one Class Member death in this reporting period where inadequate housing unit supervision occurred at the time of the incident.¹¹ Though PDP has taken steps to address these areas, the Monitor “is not confident ... that PDP can remediate all of the identified deficiencies ... with limited personnel.”¹² “The situation is dire, and PDP should expect more critical

⁴ *Id.* at 12.

⁵ *Id.* at 3.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 41.

⁹ *Id.* at 14.

¹⁰ *Id.* at 32

¹¹ *Id.* at 14.

¹² *Id.* at 14.

incidents as long as it persists.”¹³

Out-of-Cell Time Not Meeting Minimum Requirements of Settlement

The Monitor worked with PDP to recommend new protocols for tracking out-of-cell time, and PDP implemented a new system in April 2023 that tracks individual out-of-cell time in segregation units and group out-of-cell time in non-segregation unit.¹⁴ While additional staff training is necessary to improve reporting accuracy, the new system confirms that not all Class Members are offered out-of-cell time every day, and that when out-of-cell time is offered, the duration frequently does not meet the minimum requirements of the Agreement.¹⁵ For example, during one week in April 2023, 27% of recreation groups in general population at CFCF did not receive any out of cell time. During the week in May 2023 that was reviewed, the number had increased to 47%.¹⁶ The Monitor reports that the lockdowns are due to inadequate security coverage and are worse on weekends and holidays.¹⁷ While Class members do report that they receive more out-of-cell time now than during earlier periods since the COVID-19 pandemic began, the conditions in this reporting period still reflect harmful conditions that inflict immeasurable injury upon Class Members.

PDP Not in Compliance with Providing Out-of-Cell Time to Those in Segregation

This Third Monitor’s Report reflects the first time where the Monitor has adjusted PDP’s performance from “Partial Compliance” to “Non-Compliance” in providing out-of-cell time to those in segregation (*i.e.*, solitary confinement or restrictive housing).¹⁸ The Monitor reviewed out-of-cell tracking reports for those in segregation which revealed that only 38% of Class Members on segregation units received daily out-of-cell opportunities.¹⁹ The Monitor continues to make recommendations to increase the amount of out-of-cell time for those placed in segregation, including reducing the number of officers required to be present whenever there is any movement of an individual in segregation consistent with nationwide practice; at minimum permitting individuals to shower, use the phone, and law library when a full hour out of cell is not possible; and implementing schedules that are feasible for staff to follow.²⁰

Number of Incarcerated People Placed in Segregation Decreased

The Monitor reports that PDP reduced its reliance on punitive and administrative segregation, with fewer administrative and punitive segregation placements and shorter lengths of stay in segregation housing.²¹ PDP implemented the Monitor’s previous recommendation to discontinue

¹³ *Id.* at 16.

¹⁴ *Id.* at 18.

¹⁵ *Id.* at 19.

¹⁶ *Id.*

¹⁷ *Id.* at 19-20

¹⁸ *Id.* at 20.

¹⁹ *Id.* at 21.

²⁰ *Id.* at 22.

²¹ *Id.* at 23.

the automatic placement of state-sentenced Class Members into administrative segregation based solely on their state commitment status.²² The Monitor notes that segregation usage is down to approximately seven percent of its population, down from ten percent in the last reporting period but still higher than the national average of no more than six percent.²³

Significant Medical Backlog Still Persists

“PDP has reduced its average four-week backlog [in on-site medical appointments] by 50 percent, or more than 700 appointments in this reporting period.”²⁴ However, most of this reduction is due to the reduction in what was a substantial backlog in re-entry planning appointments.²⁵ The backlog for some types of services has actually increased.²⁶ For example, the backlog in appointments for medication for opioid-use disorder has increased by 33%.²⁷ And, “excluding re-entry planning successes, the overall on-site backlog is largely unchanged from the previous reporting period.”²⁸

The behavioral health backlog has not changed significantly in the last reporting period. “[P]atients are not receiving care within policy timelines. Delays are reportedly due to healthcare and custody staffing deficiencies.”²⁹

Finally, the Monitor notes that due to the shortage of security staff, PDP is still failing to complete intake screenings of individuals newly incarcerated in the jails within the four hours required by policy.³⁰ In June 2023, such screenings were only completed within four hours 24% of the time.

Visitation

PDP administered a survey and held focus groups to receive feedback from incarcerated persons, their visitors, and corrections staff.³¹ The feedback included a number of concerns about the current scheduling process via the PDP website, requests to expand visiting hours, PDP staff working with family members to facilitate visit scheduling and other matters.³² PDP will provide updates in the next reporting period.³³

²² *Id.* at 24.

²³ *Id.* at 26.

²⁴ *Id.* at 30.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 33.

³⁰ *Id.* at 32.

³¹ *Id.* at 54.

³² *Id.*

³³ *Id.* at 55.

Regarding official and attorney visitation, the Monitor requested that PDP revisit its official visiting policies and “prioritize changes that are most likely to improve access to counsel by significantly reducing wait times”.³⁴ The Monitor requested that PDP work directly with Defender Association of Philadelphia to strategize regarding solutions to official visiting delays and stressed the importance of timely access to counsel.³⁵

Use of Force

The Monitor reports that “correcting PDP’s use of force deficiencies requires dramatic cultural redirection of personnel at every rank in PDP’s security chain of command. It requires systems for intensive supervision, instruction, mentorship, support, incentives, and rigid accountability that PDP does not currently possess the capacity to execute”.³⁶ The Monitor notes that PDP’s “use of force policy is too permissive and lacks clarity.”³⁷ Indeed, all use of force incidents reviewed for this reporting period demonstrated the need for additional training for personnel and some required additional investigation into personnel conduct for excessive or unnecessary force.³⁸

Other Issues

PDP plans to provide tablets to all eligible class members by mid-2025.³⁹ Currently, the report notes, Class Members struggle to access existing tablets and PDP leadership recognizes that tablets are often not charged or available as they should be.⁴⁰

With population increases, the Detention Center has been repopulated with more than 500 incarcerated persons in both renovated and unrenovated housing units, and many have experienced significant sanitation and maintenance issues, including pests, rodents, possible mold, and other unsanitary and dangerous conditions.⁴¹ The Monitor’s Report includes several recommendations for all PDP facilities regarding deep cleaning, increased guidance for personnel, and additional oversight and maintenance.⁴²

³⁴ *Id.* at 56.

³⁵ *Id.* at 56.

³⁶ *Id.* at 14.

³⁷ *Id.* at 64.

³⁸ *Id.* at 64-65.

³⁹ *Id.* at 50.

⁴⁰ *Id.*

⁴¹ *Id.* at 61.

⁴² *Id.* at 61-62.