



PRISON LAW OFFICE



Aaron J. Fischer
LAW OFFICE

October 17, 2023

VIA EMAIL

Rick Heyer
Deputy County Counsel
heyerr@saccounty.gov

Dear Mr. Heyer,

As class counsel in *Mays v. County of Sacramento*, we write to alert you to a troubling recent incident at the Sacramento County Jail and to emphasize the urgency of ensuring auditory privacy during the intake process.

On September 27, 2023, a class member was booked into the Main Jail. Consistent with jail protocols, a nurse conducted an initial screening of the class member once he entered the booking loop of the jail. As part of the standard medical intake process, the nurse asked the class member about his history of substance use. The jail intake protocol includes questions about current and historical substance use.

As all parties are aware, the *Mays* Consent Decree requires that the medical screening be conducted confidentially. See Dkt. 85-1 at 30 (“Health care intake screening shall take place in a setting that ensures confidentiality of communications between nurses and individual patients. Custody staff may maintain visual supervision but may not be close enough to overhear communication . . .”).

Yet it appears, based on the attached charging documents, that the arresting officer situated himself within earshot of this intake assessment. The officer not only overheard this exchange of medical information, but used it against the class member in charging documents. Specifically, the officer’s narrative states that “[w]hile being evaluated by a medical examiner at the jail, [the class member] told the nurse that he does not use methamphetamine very often” and that he “used methamphetamine twice in the last month.” The officer used this health information, disclosed to a nurse, as evidence against the class member: “Based on this statement, it appears that the amount of methamphetamine that was in [the class member’s] possession was far more than he would be expected to use in several months”—ostensibly suggesting that he had engaged in distribution of the controlled substance.

This incident underscores the critical importance of ensuring privacy in the jail intake process. Jail health care staff do not and cannot meet the health care needs of people in the jail without accurate and complete information about their health histories and current needs. This is

particularly true when it comes to the use of alcohol and controlled substances, as people who use these substances are at serious risk of overdose and withdrawal when they enter the jails. Many require immediate medical intervention and ongoing monitoring in order to avoid serious adverse health consequences, and even death.

Patients cannot be expected to disclose private health information within earshot of officers who use their statements against them in the criminal process. When officers can overhear the medical intake process, people entering the jail have reason to conceal critical personal information, such as substance use, mental health needs, and suicide risk factors. This places medical staff in an untenable position and increases the risk of preventable harm and death in the jails.

The Sacramento Sheriff's Office (SSO) has been on notice of this serious deficiency for nearly seven years. Reports by subject matter experts produced in late 2016 cited the failure to provide auditory privacy in the intake process as a dangerous deficiency in jail practices. *See, e.g.*, Expert Report on Suicide Prevention Practices at Sacramento County Jail (Nov. 22, 2016), Dkt. 1-4 at 23. In 2018, the class action complaint in the *Mays* case identified inadequate confidentiality in the booking loop as a source of liability with respect to the provision of medical and mental health care in the jails. *See* Dkt. 1 at 31, 24.

For these reasons, the Consent Decree in this matter is unequivocal about the SSO's obligation to provide auditory confidentiality in the intake screening process. *See* Dkt. 85-1 at 30. This requirement is consistent with prevailing standards of care. *See, e.g.*, NCCHC Standards for Health Services in Jails (2018), Standard J-A-07, Privacy of Care ("Compliance Indicator 1: Discussion of protected patient health information and clinical encounters are conducted in private." And Discussion: "Health staff must ensure that all encounters with exchanges of health information, starting with the receiving screening, remain private . . . Such efforts foster necessary and candid conversation between the patient and health staff.").

This has been an area of ongoing failure in the Sacramento County Jail, as documented in recent reports by the court-appointed suicide prevention and medical care experts. *See* Fourth Monitoring Report of Suicide Prevention Practices (Sept. 14, 2023), Dkt. 169-1 at 22-23 (describing lack of auditory privacy in the booking loop and concluding that "the intake screening process in the booking area of the Main Jail remains dysfunctional and very problematic."); Fourth Monitoring Report of the Medical Consent Decree (Aug. 14, 2023), Dkt. 168-1 at 27.

There is no justification for this failure, particularly in the midst of an overdose crisis in the jails.¹ To avoid senseless and preventable deaths in its custody, the SSO should facilitate, and not undermine, the robust exchange of information between patients and medical providers. Situating arresting officers within earshot of the medical intake process violates the *Mays* Consent Decree and undermines the SSO's own health and safety objectives.

¹ Theresa Clift, *Six Sacramento jail inmates have died this year. They won't be independently investigated*, SacBee (Aug. 29, 2023), <https://www.sacbee.com/news/local/article277971593.html#storylink=cpy>.

We understand that the County is in an ongoing process of determining the scope of physical plant renovations it wishes to make in the Main Jail to bring it into compliance with the *Mays* Consent Decree and governing federal and state law. However, ongoing noncompliance with the intake privacy provisions of the Consent Decree will not be tolerated. Please devise and produce a plan within 30 days to ensure auditory privacy in the booking process. This could include using a trailer or other external structure for medical intake or renovating existing cells or rooms in the booking loop to provide for private medical screening. Absent such a plan and timely implementation thereof, class counsel will move forward with the Consent Decree's dispute resolution and court enforcement processes. *See* Consent Decree ¶¶ 32-35.

We look forward to your response.

Sincerely,

Margot Mendelson
Patrick Booth
Prison Law Office

Aaron J. Fischer
Law Office of Aaron J. Fischer

cc: Eric Jones
Mays court-appointed experts

Attachment



DA Key No:

Docket:

Misdemeanor Facesheet

Victim Name:

Address: _____

SA NC REST
Victim Name:

Address:

SA NC REST
Victim Name:

Address: _____

SA NC REST

TRC:

1538/Serna:

TRC

IT



Defense Attorney/PH.

1591204

STATE OF CALIFORNIA
NARRATIVE/SUPPLEMENTAL
DATE OF INCIDENT 09/27/2023 TIME 1201 NCIC NUMBER [REDACTED]

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OFFICER I.D. [REDACTED] NUMBER [REDACTED]

SUMMARY (continued):

me, he shook his head, "No." The suspected methamphetamine was confiscated as evidence and later booked at the CHP Capitol Protection Section's (CPS) area office evidence locker under Property Control Number E20230476-025. A picture of the suspected methamphetamine is attached to this report. See the Evidence section for further details.

Sewell's

[REDACTED] was then seated and seat-belted in the right rear seat of Officer [REDACTED] patrol vehicle.

The red prisoner securement strap was then attached to [REDACTED] handcuffs. Officer [REDACTED] then transported [REDACTED] to the Sacramento County Main Jail where I met them.

While being evaluated by a medical examiner at the jail, [REDACTED] told the nurse that he does not use methamphetamine very often. [REDACTED] stated he uses methadone daily but will only occasionally use methamphetamine when someone else offers it to him to smoke in a social setting. When asked, he said he estimated that he used methamphetamine twice in the last month. Based on this statement, it appears that the amount of methamphetamine that was in [REDACTED] possession was far more than he would be expected to use in several months, but without other indicators of drug sales, it would be difficult to prove [REDACTED] was selling methamphetamine based on the quantity alone. I then booked [REDACTED] for the warrants and a fresh charge of 11377(a) HSC at approximately 1528 hours.

EVIDENCE:**Item Amt. Description**

#2 (17.6 grams) Two clear plastic bags containing a white crystalline substance. Suspected methamphetamine. Located in [REDACTED] left front pant pocket.

Item (net) weight: approximately 17.6 grams

Package (gross) weight: approximately 31.1 grams

Evidence tape serial number 000000207574.