



PRISON LAW OFFICE



May 2, 2024

VIA EMAIL

Sarah Britton
Deputy County Counsel
brittons@saccounty.gov

Eric Jones
Deputy County Executive for Public Safety
and Justice
joneser@saccounty.gov

Re: Notice of Dispute, Failure to Provide Confidentiality During Jail Intake
***Mays v. County of Sacramento* (E.D. Cal., No. 2:18-cv-02081-TLN-KJN)**

Dear Ms. Britton and Mr. Jones,

We write regarding Sacramento County's ongoing failure to provide auditory privacy during the jail intake process, in direct violation of the court-ordered Remedial Plan. With this letter, we provide notice that class counsel has invoked the Dispute Resolution process set forth in Paragraphs 32-34 of the *Mays* Consent Decree.

The history of this issue is set forth most recently in an October 2023 letter from class counsel attached hereto as Exhibit A. In short, 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 . . .").

The need for basic auditory privacy for arrestees entering the Sacramento County Jails has been a core concern of the *Mays* litigation and pre-litigation investigation for many 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. *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. Nearly eight years after this issue was raised to the attention of Sacramento County in a published report, the circumstances are unchanged for arrestees entering Sacramento County Jails.

The *Mays* Consent Decree is unequivocal about the obligation of the Sacramento Sheriff's Office (SSO) to provide auditory confidentiality in the intake screening process. *See*

Dkt. 85-1 at 30.¹ Auditory privacy during the intake health screening process is essential so that arrestees can share critical health information that jail health care officials need in order to protect their health and safety. In the absence of auditory privacy, arrestees may conceal information about mental health needs, sensitive medical conditions, infectious diseases, and substance abuse disorders, without which jail officials cannot protect the health of arrestees or, in some cases, the jail population at large.²

The suicide prevention, medical care, and mental health care experts appointed by the *Mays* court have expressed serious concern about the ongoing lack of auditory privacy in the jail intake process. Just two weeks ago, the court-appointed expert in suicide prevention, Lindsay Hayes, toured the Main Jail and observed the jail intake process. As in previous monitoring tours, Mr. Hayes determined that the current arrangement lacks the elements of auditory privacy. He observed that arrestees undergo the intake health screening in a small room, often in the presence of other arrestees and arresting officers. The white noise machines recently installed in an effort to increase auditory privacy simply induce arrestees to speak more loudly in order to be heard, making their protected health information no less audible to the officers and arrestees around them. Mr. Hayes reiterated that the current arrangement for jail intake violates the Consent Decree and risks the health and safety of *Mays* class members. He described intake privacy as the lynchpin of suicide prevention in the jails.

Mr. Hayes' findings and concerns are consistent with the findings and concerns of the other court-appointed experts. For example, the medical experts recently issued a letter identifying the lack of auditory privacy in the intake process as a key area of serious noncompliance. *See* Exhibit B: Letter from Court-Appointed Medical Experts to County Officials, Ongoing Noncompliance with Key Consent Decree Provisions (March 11, 2024). The experts noted that the "[o]ngoing lack of privacy in the booking area[] caus[es] demonstrable harm to patients." *Id.* at 1.

In response to the medical experts' letter, the County produced a Corrective Action Plan that failed to propose an adequate solution. In the short term, the County intends to hang "two battery-operated sound machines . . . next to the officers' area where they sit." The County acknowledged that this approach "may not ensure complete auditory privacy for the arrestees" and, at best, would make "a slight difference." The long-term plan proposed by the County requires major construction that has not been designed or funded by County and for which an optimistic completion date is five years from now, in 2029.

¹ The Consent Decree requirement regarding auditory privacy in booking is consistent with 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: "Heath 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.").

² As detailed in our October 2023 letter (Exhibit A), the lack of auditory privacy for arrestees during the booking process also allows arresting officers to access patients' sensitive health information. In the incident recounted in our October letter, an arresting officer cited information disclosed during the arrestee's intake health screening in the charging documents to support the inference that the arrestee had engaged in additional criminal conduct. As we noted in the letter, "[p]atients cannot be expected to disclose private health information within earshot of officers who use their statements against them in the criminal process."

Most recently, the County has proposed a similarly vague “mid-term plan.” As part of the mid-term plan, the County intends to embark on an extensive, multi-step process that lacks timeframes and specifics. In particular, the County intends to issue a Request for Proposals (RFP) to hire a consulting firm to “identify” a solution to allow for auditory privacy in the booking process. After all of these steps, drawings will be created, permits will be issued, and construction of an unknown scope will take place. There are no timelines for any aspect of the plan nor any proposals about how privacy will be achieved.

In the absence of a concrete and expeditious plan to address this long-standing violation of the *Mays* Consent Decree, class counsel invokes the Dispute Resolution process in order to resolve this issue. This letter will be sent to Judge Nathanael Cousins with a request for a mediation session, at which we request the attendance of County Counsel, relevant county health officials, high-level SSO officials, and members of the Board of Supervisors. It remains our preference that the County assign the appropriate degree of urgency to this important issue to avoid enforcement litigation.

Sincerely,

Margot Mendelson
Patrick Booth
Prison Law Office

Aaron J. Fischer
Law Office of Aaron J. Fischer

cc: *Mays* Court-Appointed Experts
Board of Supervisors

Exhibit A



PRISON 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: "Heath 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

Defense Attorney/PH.

PREPARED BY
[REDACTED] / OFFICER

I.D. NUMBER
[REDACTED]

DATE
09/27/2023

STATE OF CALIFORNIA
NARRATIVE/SUPPLEMENTAL
DATE OF INCIDENT
09/27/2023

TIME
1201

NCIC NUMBER
[REDACTED]

OFFICER I.D.
[REDACTED]

NUMBER
[REDACTED]

PAGE 4 OF 5

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.

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

Package (gross) weight: approximately 31.1 grams

Evidence tape serial number 000000207574.

PREPARED BY
[REDACTED] / OFFICER

I.D. NUMBER
[REDACTED]

DATE
09/27/2023

REVIEWER'S NAME

DATE

Exhibit B

March 11, 2024

To: Mr. Timothy W. Lutz
Director
Department of Health Services

Mr. Noel Vargas
Deputy Director
Primary Health Division

Ms. Tianna Hammock
Health Services Administrator
Adult Correctional Health

Re: Ongoing Noncompliance with Key Consent Decree Provisions

Dear Mr. Lutz, Mr. Vargas, and Ms. Hammock,

The medical experts write to express our deep concern regarding ongoing noncompliance with key provisions of the Mays Consent Decree that result in ongoing harm to the patient population at Sacramento County Jail. These include:

- Lack of custody medical escorts to conduct health care operations;
- Custody obstructing access to care, resulting in harm and preventable hospitalization;¹
- RCCC inmates being empowered to control other inmates access to health services request and grievance forms;
-
- Failure of the access to care system (nurse sick call); and
- Ongoing lack of privacy in the booking area, causing demonstrable harm to patients.²

The Medical Experts discussed these problems during the debriefing, and understand that Adult Correctional Health (ACH) and the Sacramento Sheriff's Office (SSO), are working collaboratively to address these issues.

It is also our opinion that if custody was adequately resourced to provide medical escorts, that this would have already been done. Simply put, SSO does not have adequate custody staffing to provide for medical escorts and ensure timely access to care for patients at the jail. We

¹ Patient #9.

² See Class Counsel letter to Rick Heyer, County Counsel regarding lack of privacy in booking. October 17, 2023.

understand that custody has submitted a growth request for 8 officers designated to be custody escorts, however, these conditions have existed since the beginning of the Mays Consent Decree, are causing ongoing harm, and must be immediately and definitively corrected.

We discuss these issues below including contributing factors that the County needs to focus on to correct these systemic issues.

There continues to be profound lack of patient access to care due to insufficient custody escorts for health care appointments and activities.

Since the onset of the Mays Consent Decree, the County has consistently failed to provide enough officers dedicated to health care operations. We note that there is greatly improved cooperation and collaboration between health care and custody staff, but this has not resulted in sustained increase in the number of officers dedicated to health care. *On the first day of our site visit, only one officer was dedicated to health care at Main Jail, and during the week of 2/26 to 3/1/24, only two officers were dedicated to health care operations.* This effectively grinds health care services to a stop, including medical, nursing, dental, and mental health care and is unsustainable. In record reviews, we found documentation that medications are not administered timely, and as late as 2 am, or not administered at all, due to lack of custody escorts. In addition, we found that medical appointments were not kept, and nurses could not see patients who had submitted health requests.³ This has caused harm to patients.

Custody staff continues to interfere with access to care

Since the onset of monitoring, previous review shows ongoing custody interference with access to health care, including obstetrical appointments. During this review, we found an egregious case in which a patient self-declared an emergency multiple times over a 3-day period and officers denied him access to medical care despite his obviously worsening condition, stating that his condition was “not an emergency.”⁴ The patient was subsequently hospitalized for 9 days to receive antibiotics for periorbital (preseptal) cellulitis. This case is briefly described below.

On 11/18/23, the patient described having multiple wounds, submitting multiple health service requests, feeling ill, and needing medical assistance. He described pushing the emergency medical button in his cell and being told by the deputy she did not believe he had an emergency. He flagged a second deputy down, asking for assistance, and was told there were inmates in the jail “dying” and his condition was not an emergency. He reported on 11/19/23, his condition worsened, and he again activated the emergency button in his cell, only to be told by the deputy there were 240

³ ACH and custody discuss availability of officers daily, at morning huddles.

⁴ The patient wrote a letter to the Prison Law Office complaining of difficulty with accessing health services at the Main jail in November 2023.

people in line ahead of him. After being unable to sleep because of head pain and blurred vision, he again pushed the emergency button. On 11/21/23, he again activated the emergency button attempting to be seen after his face had swollen to the point his right eye was completely closed. Again, he was told by the deputy he did not have an emergency and to stop bothering the deputies. He waited until the next shift and again pushed the emergency button and “passed out” by the door. The deputy responded to his cell, and phoned the medical unit and he was then allowed to be seen. The following morning, the physician saw him in the housing unit exam room and sent him to the emergency department where he was admitted and diagnosed with orbital (preseptal) cellulitis. This patient was hospitalized for 9 days to receive intravenous antibiotics.

As reported by the patient, his access to care was blocked by several officers over a 3-day period. This indicates a culture where officers believe they are qualified to make decisions about who has an emergency and who does not. This is extremely dangerous, and results in negative outcomes as occurred with this patient. When patients declare an emergency, the officer’s only option is to call health care staff, who then need to see the patient.⁵ This case also involves failure of the nurse sick call system, further described below.

Inmates have been empowered to control other inmates access to care

A deeply concerning finding at the Branch Jail was that custody designated inmates in some housing units as the “House Man.” A deputy reported that the House Man was responsible for keeping order in the unit. However, we learned that the House Man also maintained control of access to health services request and Grievances forms. In addition, the House Man required inmates to submit their forms to him to review the contents of health requests and grievances, reportedly to look for “snitches.” The House Men threw away some inmates’ health requests and grievances.

We independently interviewed inmates from several housing units who confirmed what we were told. Inmates reported being bullied by the House Man, and feared for their life by speaking with the medical experts. *That some inmates were given control of other inmates access to health care is an egregious finding, as it violates patients’ fundamental right of access to care.* We discussed this with Captain Mathew Warren who immediately discontinued the practice.⁶ However, we are concerned that this was ever an established practice, whether obstruction to access to care was known, and why it was allowed to continue up until the site visit. We believe that close supervision will be necessary to ensure that this practice does not continue informally.

⁵ When informed by officers, nurses need to see the patient then, and either have the patient escorted to the medical clinic or go to the patient. Nurses should not schedule the patient for a nurse sick call appointment.

⁶ Captain Warren had been in his position only two weeks, and was not aware of this practice.

The access to care system (nurse sick call) is completely broken, resulting in ongoing delays in access to health care and preventable harm to patients.

The reasons for the broken system are multifactorial. The Access to Care/Nurse Sick Call policy builds in delays in the triage and scheduling process.⁷ Health Service Request (HSR) forms are not timely collected, triaged, and patients not timely seen. HSRs are not legibly signed and dated and include a disposition. HSRs are also not timely scanned into the electronic health record (EHR). These issues have resulted in inmates submitting multiple requests (e.g., 8 in one day), and large backloads of patients to be seen for nurse sick call. It also contributes to delays in medical provider referrals and access to a higher level of medical, dental, and mental health care.

At RCCC we found stacks of HSRs. Nursing leadership and supervisors were unaware whether these patients had been seen. As a result of delays in care, inmates submit multiple health services requests, that increase nursing workload and complicates scheduling.

There are insufficient numbers of nurses assigned to nurse sick call to keep up with the demand. And, as noted above, despite collaboration between health care and custody, there are not enough officers to escort patients for health care appointments, including nursing.

Both at Main Jail and RCCC, nurses do not have dedicated clinic space to see patients, and no set schedule to see patients each day. ACH and SSO are implementing a plan to have examination rooms for each housing unit to accommodate nurses and mental health staff, but implementation is not completed

Although there are several factors contributing to delays in access to care, the medical experts also believe that lack of effective nursing supervision is also a significant factor.

Privacy is not provided to patients during the intake screening process.

Despite the County's physical modifications to the booking area, patients are not provided auditory privacy during intake screening, due to the proximity of the arresting officer. Patients will often not disclose sensitive medical, mental health or substance use history in the presence of officers.

When patients do disclose information regarding substance use, it presents a risk that the arresting officer will use the information in the charging document. This happened September 27, 2023, when an arresting officer overheard a patient disclose use of methamphetamine, and it was added to the charging document.

⁷ We have discussed this with health care leadership and the policy is under revision. Re-engineering of the process is required including establishment of a comprehensive tracking system.

Patients are also able to overhear the conversations of other patients allowing them access to sensitive medical, mental health, or substance use histories.

To reiterate, the County's continued noncompliance with key Consent Decree provisions has caused and is continuing to cause ongoing harm to patients. A key factor is lack of adequate custody escorts. The medical experts believe that these Consent Decree provisions need to be brought into immediate and sustainable compliance to prevent future harm.

Respectfully,

Madie LaMarre, MN, FNP-BC
Angela Goehring RN, MSA, CCHP
Susi Vassallo MD

Copy via email:

Sarah Britton
Margot Mendelson
Patrick Booth
Aaron Fischer