

Death on Electronic Monitored Home Release

SUMMARY

California Penal Code Section 919(b) directs the Grand Jury to “inquire into the condition and management of the public prisons within the county.” Per this statute, the 2022-2023 Santa Barbara County Grand Jury (Jury) investigated the circumstances surrounding the death of NM, a 40-year-old male who was participating in the Alternative Sentencing Bureau Electronic Monitored Home Release Program (EM Home Release), a program operated by the Santa Barbara County Sheriff’s Office (Sheriff’s Office). This program is designed to reduce jail overcrowding by allowing nonviolent offenders to serve their county jail and state prison sentences outside of the jail facility (AB 109). Inmates placed in EM Home Release are still considered to be in the custody of the Sheriff’s Office.

NM had a history of incarceration in Santa Barbara County dating back to 2014. His medical-mental health file noted longstanding struggles with substance abuse and mental health issues. NM applied for EM Home Release, and the Sheriff’s Office custody staff made the decision to approve him for the EM Home Release program. In arriving at its decision, the custody staff was not privy to his substantial history of mental health issues. Citing concerns for medical records privacy laws, even in cases where such information could be critical to determine inmate housing, programming, and suitability for the EM Home Release program, the contracted provider of medical service at the Jail, Wellpath, does not share detailed medical and mental health information with custody staff. NM

was released with a list of clinical providers. No one monitored NM to see whether he contacted any of those providers.

On September 23, 2021, just 21 days shy of completing his sentence, NM was found at his home dead from a fentanyl overdose.

METHODOLOGY

The 2022-2023 Jury investigated the circumstances surrounding the death of NM, a 40-year-old male, researched the facts, and interviewed staff who had personal knowledge of his situation, as well as those in charge of the jails and the EM Home Release program. The Sheriff's Office provided the Jury with written reports and other relevant documents. The Jury interviewed Wellpath¹, Sheriff's Office senior administrators and custody staff. The Jury also reviewed Sheriff's Office and Wellpath's policy and training/procedure manuals/videos.

CHRONOLOGY

April 19, 2021

NM was arrested for felony burglary, identity theft, possession of stolen property, and had two outstanding warrants for probation violations. He was booked into the Santa

¹ Under contract with the County of Santa Barbara, Wellpath provides comprehensive physical and mental healthcare for approximately 800 jail inmates in the two county jails, one in Santa Barbara and the other in Santa Maria.

Barbara County Main Jail. NM's record revealed during many prior arrests that he had a history of early alcohol and tobacco use.

June 3, 2021

NM submitted a "Jail Discharge Planning/Programs Request" to complete his sentence at home. According to EM Home Release policies, the most important quality an inmate can exhibit to qualify for EM Home Release is compliance with all the rules and orders of jail staff. Having a home environment that accepts the inmate is also desirable, but not required. NM planned to work with his father renovating houses. Custody staff viewed this as a positive indicator of probable success in the EM Home Release program.

June 4, 2021

Custody staff approved NM's application for home release, and he was credited with serving 46 days of his sentence. NM was given a list of local clinical program service providers. The Custody staff monitoring MN did not know if he had contacted or entered any of those clinical programs. The Jury was unable to confirm his participation in any of them.

June 9, 2021

NM was placed on electronic monitoring and began serving his sentence at home. The custody staff randomly tested NM for certain types of drug use but did not test him for fentanyl.

September 23, 2021 3:40 a.m.

The custody deputy who was monitoring NM received a "no motion" alert from NM's ankle monitor, an indicator that the individual had not moved for an extended time. This usually indicates the inmate has allowed the battery to run down, removed the ankle monitor, or has become unconscious. The custody deputy made repeated attempts to contact NM by cell phone and pinged the electronic monitoring device. All attempts to reach NM or a family member were unsuccessful. The deputy continued to leave voice messages on all phone contacts listed.

September 23, 2021 7:37 a.m.

NM's mother returned the call and said her son wasn't moving and was cold and stiff. An officer responded and found that NM had died. He was moved to the morgue.

ANALYSIS

NM was not tested for fentanyl

The Coroner's toxicology report states NM's death was caused by "Accidental Fentanyl Poisoning." The Sheriff's Office randomly drug tested NM but did not test for fentanyl. The Jury learned that the drug test protocol used by the Sheriff's Office prior to NM's death detected the presence of opioids, methamphetamines, and marijuana, but not fentanyl, a synthetic opioid. The Jury further learned that given the current widespread fentanyl overdose crisis, fentanyl testing is now routine.

NM's physical and mental health information was not shared with custody staff

The Jury learned that NM had an extensive history of substance abuse and severe mental illness, including suicidal ideations, one attempted suicide, and taking prescribed psychotropic medication.

Sheriff's Office custody staff did not have access to NM's physical and mental health history when deciding whether to approve his EM Home Release application. If the Sheriff's Office had known of NM's mental health history, it indicated it would have more closely monitored him to ensure meaningful participation in effective substance abuse and mental health clinical programs.

The Jury learned that the Sheriff's Office and Wellpath believe that under HIPAA² Sheriff's Office personnel are not permitted to view an inmate's personal medical and mental health records.³ Custody staff often have a need to know this information to be able to make informed decisions regarding inmate housing, programing, and EM Home Release program.

NM did not seek mental health clinical support and was not monitored while on EM Home Release

The Jury learned that the Sheriff's Office imposed no conditions on NM that he seek substance abuse or mental health services. The Sheriff's Office rated NM an average 7.5 out of 10 on the reoffend scales, part of a multifactor, computerized risk assessment

²Public Law 104-191. Health Insurance Portability and Accountability Act of 1996. Source: <https://aspe.hhs.gov/reports/health-insurance-portability-accountability-act-1996> Last reviewed June 2, 2023.

³ There are also applicable state privacy laws that apply. Confidentiality of Medical Information (CMIA), Cal. Civil Code sec.56 - 56.37
Source: https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=56.10.&lawCode=CIV June 2, 2023.

program. The Sheriff's Office did not know if NM had contacted or entered any of the clinical programs on the list it provided to him when he was sent home. The Jury was unable to confirm his participation in any local program(s).

The Jury learned that inmates on EM Home Release as of July 1, 2022 are supervised by the Santa Barbara County Probation Department.

CONCLUSION

EM Home Release program participants will more likely succeed if they have a robust support system in place, especially for those who have substance abuse and mental health issues. Additionally, the Santa Barbara Sheriff's Office and the Santa Barbara County Probation Department will make better informed decisions if they have access to an inmate's medical and mental health records. Currently, Wellpath and Sheriff's Office personnel believe that federal and state medical record privacy laws prohibit such disclosure.

FINDINGS AND RECOMMENDATIONS

Finding 1a

A list of mental health and addiction treatment program contacts was offered to NM upon his discharge to the Electronic Monitored Home Release program, but the Sheriff's Office did not monitor whether NM contacted or participated in any of those programs.

Finding 1b

Beginning July 1, 2022, the Sheriff's Office transferred the Electronic Monitored Home Release program monitoring responsibility to the Santa Barbara County Probation Department.

Recommendations 1a and 1b

That the Sheriff's Office and the Santa Barbara County Probation Department ensure that participants in the Electronic Monitored Home Release program, especially those with mental health and substance abuse issues, enter appropriate clinical programs and closely monitor such participation.

Finding 2

If the Sheriff's Office had known of NM's mental health history, it indicated it would have more closely monitored him to ensure meaningful participation in effective substance abuse and mental health clinical programs.

Recommendation 2a

That the Santa Barbara County Sheriff's Office and the Santa Barbara County Probation Department promptly request that Santa Barbara County Counsel prepare a legal opinion as to whether, consistent with Federal and California law, Wellpath or any successor may provide critical inmate mental health information to Sheriff's Office personnel who need to know that information for inmate housing, programming, and Electronic Monitored Home Release program decisions.

Recommendation 2b

That if Santa Barbara County Counsel determines that Wellpath does have legal authority to provide inmate mental health information to Sheriff's Office personnel and Santa Barbara County Probation Department, then the County and the Santa Barbara County

Sheriff's Office shall amend the existing agreement with Wellpath to require such sharing to the full extent of the law.

REQUEST FOR RESPONSE

Pursuant to *California Penal Code Section 933 and 933.05*, the Santa Barbara County Grand Jury requests each entity or individual named below to respond to the enumerated findings and recommendations within the specified statutory time limit:

Responses to Findings shall be either:

- Agree;
- Disagree wholly; or
- Disagree partially with an explanation.

Responses to Recommendations shall be one of the following:

- Has been implemented, with brief summary of implementation actions taken;
- Will be implemented, with an implementation schedule;
- Requires further analysis, with analysis completion date of no more than six months after the issuance of the report; or
- Will not be implemented, with an explanation of why.

Santa Barbara County Board of Supervisors – 90 days

Findings 2b

Recommendations 2a and 2b

Santa Barbara County Sheriff's Office – 60 days

Findings 1a, 1b, 2a, and 2b

Recommendations 1a, 1b, 2a, and 2b