

# **POTENTIAL PERCEIVED CONFLICT OF INTEREST FOR DEATH IN CUSTODY INVESTIGATIONS**

## **SUMMARY**

The potential liability to Santa Barbara County for in-custody deaths is significant and is comparable to any law enforcement-involved death. Mandating the participation of independent criminal investigators and medical examination teams would aid greatly in mitigating this risk. Based on the 2023-24 Santa Barbara County Civil Grand Jury findings, the cost to achieve this recommendation would be minimal when compared to either the overall budget of the Sheriff's Office or possible liability caused by lack of transparency and potential conflict of interest.

## **INTRODUCTION**

Santa Barbara County (SB) is one of 47 counties within the State of California with a Sheriff/Coroner system. Five counties have a Coroner system separate from the Sheriff and six have Medical Examiner departments. California (pop. >19 million) is one of three states by law that does not mandate the separation of the Sheriff and Coroner offices. The other states are Montana (pop. >800,000) and Nevada (pop. >400,000). The 2023-24 Santa Barbara County Civil Grand Jury (Jury) elected to compare and contrast two neighboring counties, Ventura and San Luis Obispo (SLO), to SB concerning how their Coroners' responsibilities are organized and executed.

SLO has the same type of Sheriff/Coroner organization as SB, but the pathology work is outsourced to a San Diego firm, NAAG Forensic. NAAG performs the required procedures in SLO at a county-provided facility. Since 1984, the Ventura's Medical Examiner Department (ME) has been separate from the Ventura County Sheriff. Ventura employs its own certified pathologists and forensic investigators within the ME Department.

The SB County Coroner Bureau is led by the Sheriff/Coroner. The Bureau is managed by a Sergeant and a staff of four Sheriff detectives along with a Forensic Pathologist, Pathology Technicians, and Administrative Support.

## METHODOLOGY

The Jury interviewed the individual who submitted the Request for Investigation (RFI), a representative from the Medical Examiner office of Ventura County, and members of the Sheriff/Coroner departments of SB and SLO counties. The Jury also visited the SB Coroner facility as part of its investigation.

## OBSERVATIONS

### Deaths in Custody and Resultant Medical Examinations

Per the California Department of Justice, the total number of Deaths in Custody (DICs) in SB County from 2006-2020 was 24 (<https://www.bsa.ca.gov/reports/2021-109/supplemental.html>). The total number of DICs from the beginning of 2021 through the end of 2023 in SB County has been 10. The information for post-2020 was requested and received from the California State Attorney General's office and was current at the time of the request (December 2023). The table below highlights the DICs in SB, Ventura, and SLO for comparative purposes:

### Deaths in Custody Pre and Post 2020

County Name	2006-2020	Post 2020
San Luis Obispo County	20	1
Santa Barbara County	24	10
Ventura County	47	7

One hundred percent of the DICs reported in those other counties resulted in autopsies being performed. The sole exception is when an inmate dies because of known natural causes (i.e.; pre-diagnosed terminal cancer). All of the DICs in SB had autopsies authorized by the Coroner's Bureau. In SB, a member of the Coroner's Detective Staff, in conjunction with the pathologist, decides whether to conduct an autopsy. It is not at the sole discretion of the pathologist. In each of the other counties, the medical staff decides whether to perform the autopsy or not.

### **Certification and Training of Staff**

Ventura and SLO counties mandate their pathologists be certified per the American Board of Medicolegal Death Investigators (ABMDI) standards and their facilities and equipment meet the standards set by the National Association of Medical Examiners (NAME). Neither the medical staff nor the facilities of the SB County Coroner's Bureau are certified to these standards. It should be noted that these standards are recommended by the U.S. Department of Justice but are not mandatory.

The Jury discovered that in SB both Pathology Technicians are retired Law Enforcement Officers, and, while they have had the required training to perform their jobs, there is no succession plan to fill those positions when needed. The training required for Medical Laboratory Technicians (aka Pathology Technicians) is listed on the California Department of Public Health website (<https://www.cdph.ca.gov/>).

### **Cross County Cooperation**

The Jury discovered that other counties collaborate on DIC investigations or request independent reviews/medical services for those cases. For example, Monterey County uses SLO's pathology group for DIC autopsies. However, SB does not seek the assistance of other counties. The Jury learned that SB does not request independent assistance with any DICs or other death investigations.

The company that provides forensic pathology services for SLO, NAAG Forensic, charges \$2,200-\$2,700/autopsy (not including toxicology), and they are willing to provide support to SB for DICs (see Exhibit A). Ventura also provides autopsy services to the public, and they charge \$5,000/case. It is not yet known whether they would be willing to provide this service to SB for DICs and mitigate any potential or perceived conflict of interest.

### **In-Custody Death Investigations (California Senate Bill (SB) 519)**

The SB County Sheriff/Coroner organization has a specific protocol that mandates a multiple discipline investigation for all DICs. Members of the Custody, Criminal, and Coroner investigator departments must participate jointly in every DIC occurrence. In some cases, there has been reluctance on behalf of the Criminal Investigation Department to participate in these reviews. This was the case in December 2023 when an inmate committed suicide at the County Main Jail. As a result, the Sheriff has specifically ordered that all departments comply with this policy with no exceptions.

In 2023, Governor Newsom signed Senate Bill 519 which will be effective July 1, 2024. This measure: (1) requires public disclosure of records relating to investigations conducted into local in-custody deaths, as specified; and, (2) establishes within the Board of State and Community Corrections (BSCC) the position of Director of In-Custody Death Review. That new position will be responsible for reviewing investigations of any death incident occurring within a local detention facility. All Coroner facilities and staff will be facing additional scrutiny regarding these incidents. With an increasing level of DICs, SB County may alert the recently appointed Director for an in-depth process review.

### **Coroner's Budget**

In the SB County Coroner Bureau budget for FY 2023-24, total expenditures are budgeted at \$2,480,900, comprised of \$1,979,600 in employee total compensation, \$312,000 in services and supplies (e.g., primarily removal/disposal costs, communications, operating supplies), and

\$189,300 in other charges (liability insurance, motor pool charges, and utility costs). The Coroner Bureau is predominantly (95%+) funded by the SB County General Fund, as well as a small amount of fees for services.

### **Potential Perceived Conflict of Interest**

There is a potential perceived conflict of interest for the Sheriff/Coroner to perform investigations and autopsies for DICs. Since Ventura's ME is a separate department, the perceived potential conflict of interest becomes a moot point. In SLO, while the investigative team remains under the direction of the Sheriff, any medical decisions associated with a DIC are made by the forensic pathologist. As previously mentioned, in SB the Coroner Detective Staff makes the medical decisions as to when to conduct autopsies, in conjunction with the Forensic Pathologist. Furthermore, SLO assists its neighbor to the north, Monterey, by performing autopsies for most or all their DIC cases.

California Government Code §27491.55, specifies the conditions when an independent medical examination or, in the instance of a potential criminal case involving a DIC, an investigation could be performed:

**§27491.55.** In any case where a coroner is required to inquire into a death pursuant to Section 27491, the coroner may delegate his or her jurisdiction over the death to an agency of another county or the federal government when all of the following conditions have been met:

- (a) The other agency has either requested the delegation of jurisdiction, or has agreed to take jurisdiction at the request of the coroner
- (b) The other agency has the authority to perform the functions being delegated.
- (c) When both the coroner and the other agency have a jurisdictional interest or involvement in the death.

The Jury was unable to uncover any instances where the Coroner staff had requested an independent investigative or medical exam from an outside source.

## CONCLUSION

The inherent risk and potential liability to the County are significant when Deaths-in-Custody occur and those numbers are rising. These conditions are exacerbated when the Sheriff's own Criminal Investigation Department is sometimes reluctant to engage in DIC investigations. Utilization of existing independent resources is readily available and easily implemented. These low-cost resources are a viable means to eliminate or significantly mitigate these risks and liabilities.

## FINDINGS AND RECOMMENDATIONS

**Finding 1:** There is a real or perceived conflict of interest in investigating and conducting pathological exams related to deaths in custody that can be avoided or mitigated by having a separate Medical Examiner's office (inclusive of a separate investigative detective unit) or outsourcing those specific cases to an independent agency.

**Recommendation 1a:** To avoid a potential conflict of interest in having the Sheriff/Coroner's office conduct deaths in custody investigations, the Sheriff/Coroner's office shall request another Santa Barbara County agency to conduct either an independent or parallel investigation for all deaths in custody events. This could be implemented immediately.

**Recommendation 1b:** All deaths in custody pathology investigations shall be conducted using an independent medical examination team. This policy shall be implemented no later than the end of December 2024.

**Finding 2:** The Sheriff/Coroner's office has no current succession plan to replace or train new staff if either or both are no longer available to provide the required support.

**Recommendation 2:** The Sheriff/Coroner shall develop and implement a succession plan for pathology technicians (including identification of potential candidates and ensuring training budget is available) following current California Department of Health standards, with a specific timeline by the end of September 2024.

**Requirements for Responses:**

Pursuant to California Penal Code §933 and §933.05, the Grand Jury requests each entity or individual named below to respond to the Findings and Recommendations within the specified statutory time limit.

**Elected Official: - Santa Barbara County Sheriff/Coroner - 60 Days**

Finding(s): 1, 2

Recommendation(s): 1a, 1b, 2

Responses to Findings shall be either:

- Agree
- Disagree with an explanation
- Disagree partially with an explanation

Responses to Recommendations shall be one of the following:

- Has been implemented, with a summary of the implementation actions taken
- Will be implemented, with an implementation schedule
- Requires further analysis, with an analysis completion date of fewer than 6 months after the issuance of the report
- It will not be implemented with an explanation of why

## EXHIBIT A

### Potential Pricing for Independent Medical Examinations



#### 2024 CALIFORNIA SHERIFF-CORONER ON DEMAND RATES

SERVICE	INCLUDES	FLAT RATE
Records review	All professional and paraprofessional time related to the review of investigative and medical records; offer opinion on COD and MOD	\$600
External examination	All professional and paraprofessional time related to the review of investigative and medical records, examination of the external aspects of the decedent with or without specimen collection; offer opinion on COD and MOD; report  <u>NOTE</u> – Does not include toxicology testing	\$600
Standard autopsy	All professional and paraprofessional time related to the review of investigative and medical records, examination of the external and internal aspects of the decedent with specimen collection; offer opinion on COD and MOD; report  <u>NOTE</u> – Does not include toxicology testing  <u>EXAMPLES</u> – Sudden cardiac death, suicidal violence, drug overdose, etc.	\$2200
Complex autopsy	All professional and paraprofessional time related to the review of investigative and medical records, examination of the external and internal aspects of the decedent with specimen collection; offer opinion on COD and MOD; report  <u>NOTE</u> – Does not include toxicology testing; does include histology and tissue consultation services  <u>EXAMPLES</u> – Delayed blunt head trauma, post-operative cardiac death, etc.	\$2700
Pediatric autopsy	All professional and paraprofessional time related to the review of investigative and medical records, examination of the external and internal	\$2750





	<p>aspects of the decedent with specimen collection; offer opinion on COD and MOD; report</p> <p><u>NOTE</u> – Does not include toxicology testing; does not include genetic studies, metabolic studies or molecular assays; does include histology and tissue consultation services</p>	
<b>Criminally suspicious pediatric death / homicide autopsy</b>	<p>All professional and paraprofessional time related to the review of investigative and medical records, examination of the external and internal aspects of the decedent with specimen collection; offer opinion on COD and MOD; report</p> <p><u>NOTE</u> – Does not include toxicology testing; does not include genetic studies, metabolic studies or molecular assays; does include histology and tissue consultation services</p>	<b>\$7500</b>
<b>Criminally suspicious death / homicide autopsy</b>	<p>All professional and paraprofessional time related to the review of investigative and medical records, examination of the external and internal aspects of the decedent with specimen collection; offer opinion on COD and MOD; report</p> <p><u>NOTE</u> – Does not include toxicology testing; does not include professional time related to depositions or trial</p>	<b>\$2750</b>
<b>Brain-only autopsy</b>	<p>All professional and paraprofessional time related to the review of investigative and medical records, examination of the external aspects of the decedent with specimen collection; formal neuropathology consultation; report</p> <p><u>NOTE</u> – Our pathologists perform limited autopsies in very few circumstances, examples include dedicated evaluation for dementia, and suicidal gunshot wounds deaths where the projectile is remained in the head</p>	<b>\$1700</b>