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# County of San Diego

## CITIZENS' LAW ENFORCEMENT REVIEW BOARD

1168 UNION STREET, SUITE 400, SAN DIEGO, CA 92101-3819  
TELEPHONE: (619) 238-6776 FAX: (619) 238-6775  
[www.sdcounty.ca.gov/clerb](http://www.sdcounty.ca.gov/clerb)

### REGULAR MEETING AGENDA TUESDAY, JULY 9, 2013, 5:30 P.M. San Diego County Administration Center 1600 Pacific Highway, Room 302/303, San Diego, 92101

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives or any member of the public wishing to address the Board on any of today's agenda items should submit a "Request to Speak" form to the Administrative Secretary prior to the commencement of the meeting.

#### DISABLED ACCESS TO MEETING

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to Ana Becker at (619) 238-6776 at least 24 hours before the meeting.

#### WRITINGS DISTRIBUTED TO THE BOARD

Pursuant to Government Code 54957.5, written materials distributed to CLERB in connection with this agenda less than 72 hours before the meeting will be available to the public at the CLERB office located at 1168 Union Street, Suite 400, San Diego, CA.

#### 1. ROLL CALL

#### 2. MINUTES APPROVAL

- a) Minutes of the June 2013 Regular Meeting (*Attachment A*)

#### 3. PRESENTATION / TRAINING

- a) N/A

#### 4. EXECUTIVE OFFICER'S REPORT

- a) Workload Report - Open Complaints/Investigations Report (*Attachment B*)
- b) CLERB Role in Jail Death Investigations
- c) August 2013 Regular Meeting

**5. NEW BUSINESS**

- a) Swearing in of new Board Members: Sandra Arkin & Delores Chavez-Harmes.

**6. UNFINISHED BUSINESS**

- a) N/A

**7. BOARD MEMBER COMMENTS**

**8. PUBLIC COMMENTS**

- a) This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary. Each speaker will be limited to three minutes.

**9. SHERIFF / PROBATION LIAISON QUERY**

**10. CLOSED SESSION**

- a) **Discussion & Consideration of Complaints & Reports / Officer Discipline Recommendation:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).
- b) **Evaluation of Executive Officer** – Notice pursuant to Government Code Section 54957.

<b>DEFINITION OF FINDINGS</b>	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

**CASES FOR SUMMARY HEARING (7)**

**ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE**

**11-089**

- 1. Death Investigation / Inmate Suicide – Deputy 1 found Inmate Chad Reese in his cell hanged by the neck with a sheet attached to the bed frame.

Recommended Finding: Action Justified

Rationale: Chad Reese was booked into San Diego Central Jail after being arrested by the San Diego Police Department for violation of PC§ 148, Resist, Obstruct, Delay of Peace Officer or EMT. During Medical Intake, Reese denied that he had any psychological or mental health problems, or that he had any suicidal ideation or

history of suicide attempts. During booking, Reese became destructive and while being moved to another cell, assaulted detentions staff, necessitating placement in Administrative Segregation. Throughout this entire process, and in the days leading to his death, the decedent demonstrated no suicidal propensities that were observed or brought to the attention of detentions staff. Reese was found hanged during an hourly security check and was unresponsive to the resuscitative efforts of deputies and medical staff. He was pronounced deceased at the scene. The Medical Examiner attributed the death to hanging, and the manner to be suicide. Detentions staff monitored and supervised the decedent's activities according to Department policy and procedure, and the evidence showed that the actions of the deputies were lawful, justified and proper.

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## 12-049

1. False Arrest – Deputy 1 arrested the complainant on March 28th for driving with a suspended license that the DMV did not notify her of until March 30th.

Recommended Finding: Sustained

Rationale: Deputy 1 conducted a traffic stop and arrested the complainant for violation of Vehicle Code § 14601.2, Driving When Privilege Suspended or Revoked for Driving Under the Influence. The complainant had recently been convicted of violation of Vehicle Code § 23152, Driving Under Influence of Alcohol or Drugs and the San Diego Superior Court notified the Department of Motor Vehicles (DMV) of the conviction. Vehicle Code § 14601.2 states that a person shall not drive a motor vehicle when that person's driving privilege is suspended or revoked...if the person so driving has knowledge of the suspension or revocation. The complainant denied knowledge that her driving privilege had been suspended, there was no Court documentation of a suspension, and the DMV mailed notice was dated March 30, 2012; two days after the traffic stop. Deputy 1 acknowledged he was aware the DMV mailed notice date was March 30, 2012, and proceeded to arrest the complainant. The complainant had no knowledge of the suspension, therefore the evidence supports the allegation, and the act was not justified.

2. Illegal Seizure – Deputy 1 impounded the complainant's vehicle for 30 days.

Recommended Finding: Sustained

Rationale: Deputy 1 cited the complainant for violation of Vehicle Code § 14601.2, Driving When Privilege Suspended or Revoked for Driving Under the Influence, and towed the complainant's vehicle under Vehicle Code § 14602.6, Vehicle Impoundment: Suspended, Revoked, or Unlicensed Driver. The complainant denied having knowledge of the suspension, and Deputy 1 was aware that the DMV records indicated the mailed date of the notification to be two days after that date of the traffic stop. The arrest for violation of Vehicle Code § 14601.2 was not justified and therefore the seizure was not conducted incident to a lawful custodial arrest. The evidence supports the allegation, and the act was not justified.

3. Illegal Search – Deputy 1 searched the complainant at the Sheriff's Station.

Recommended Finding: Sustained

Rationale: Deputy 1 cited the complainant for violation of Vehicle Code § 14601.2, Driving When Privilege Suspended or Revoked for Driving Under the Influence, transported her to the Poway Station, and conducted a search per departmental arrest and booking procedures. The complainant denied having knowledge of the suspension, and Deputy 1 was aware that the DMV records indicated the mailed date of the notification to be two days after that date of the traffic stop. Sheriff's Department Policies and Procedures require arrestees be searched prior to transporting them to jail facilities in order to prevent contraband and weapons from entering into the jails. The arrest for violation of Vehicle Code § 14601.2 was not justified and therefore the search was not conducted incident to a lawful custodial arrest. The evidence supports the allegation, and the act was not justified.

4. Misconduct/Procedure – Deputy 1 placed the top of his hands under each of the complainant's breasts.

Recommended Finding: Action Justified

Rationale: The complainant alleged that the search of her person was improper. Sheriff's Department Policies and Procedures require arrestees be searched prior to transporting them to jail facilities in order to prevent entry of contraband or weapons into the jail. Deputy 1 used an approved search technique for males searching females. He advised the complainant he would search using the blade and back of his hand to come around the side and underneath each of her breasts. The complainant confirmed Deputy 1 twice repeated his instruction and conducted the search as described. The evidence shows the alleged act did occur, but was justified per departmental procedure.

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## 12-065

1. Criminal Conduct – Deputy 1 accessed the complainant's records and released confidential personal information to an unauthorized person.

Recommended Finding: Unfounded

Rationale: Deputy 1 denied that he pursued the complainant on a misdemeanor warrant, and did not recall speaking to the complainant's ex-husband/employer. The complainant's ex-husband/employer recalled talking with a deputy and denied any confidential personal information was revealed. Sheriff employees are not to use any computerized informational source(s) for anything other than the performance of official duties. There were no departmental records to show that Deputy 1 accessed the complainant's records in violation of Sheriff's Policy 7.6, Use of CLETS-NCIC-ARJIS and Local Information. An audit of law enforcement databases to determine if Deputy 1 accessed the complainant's information yielded negative results. The evidence showed that the alleged act did not occur.

2. Misconduct-Harassment – Deputy 1 contacted the complainant's co-workers and employer on at least six occasions during the period March 1-12, 2012.

Recommended Finding: Unfounded

Rationale: Deputy 1 denied any contact with the complainant's co-workers or employer. The complainant provided six dates where Deputy 1 allegedly contacted her co-workers at their place of business, and two dates that he allegedly spoke with the complainant's ex-husband/employer. Deputy 1 worked four of the eight dates identified, and department vehicle locator records did not reflect any stops at the addresses provided by the complainant. The evidence showed that the alleged act did not occur.

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## 12-085

1. Illegal Seizure – Deputy 2 stated to the complainant that he was “not free to leave” after telling the complainant that he was “not under arrest or being detained”.

Recommended Finding: Action Justified

Rationale: Deputy 2 lawfully detained the complainant when he responded to Deputy 1's request to assist in taking the complainant into custody for violating Penal Code § 148 (a), Resist, Obstruct, Delay of Peace Officer or EMT. In a video recording of the contact between Deputy 2 and the complainant, Deputy 2 is heard stating that the complainant was not under arrest, but he was not free to leave; effectuating a lawful detention. At no point in their recorded dialogue did Deputy 2 make the alleged conflicting statements as reported by the complainant. The recorded evidence showed that the act did occur, but was lawful justified and proper.

2. Misconduct/Discourtesy – Deputy 1 stated to the complainant, “What a stupid turd” and/or “What an idiot,” or used words to that effect.

Recommended Finding: Not Sustained

Rationale: Deputy 1 denied stating to the complainant, “What a stupid turd” and/or “What an idiot,” or that he used words to that effect. Deputy 2 was present during portions of the interaction between Deputy 1 and the complainant, and to his recollection, did not hear Deputy 1 use derogatory terms toward the complainant.

Although portions of the contact between law enforcement and the complainant were recorded on video by the complainant that day, there is no video or audio recording of these alleged statements and therefore insufficient evidence to either prove or disprove the allegation.

3. Excessive Force – Deputy 2 placed handcuffs on the complainant too tightly

Recommended Finding: Not Sustained

Rationale: Deputy 2 reported that he was not aware of the complainant's handcuffs being placed on him too tightly, nor did the complainant inform him of such. Deputy 2 reported that as a practice, when he places handcuffs on a subject, he generally places the tip of his finger from either hand between the wrist and bracelet to ensure the application is not too tight. The complainant failed to provide photographs of injuries to his wrists; therefore there was insufficient evidence to either prove or disprove the allegation.

4. False Arrest – Deputy 1 arrested the complainant for disobeying a deputy's order and resisting.

Recommended Finding: Action Justified

Rationale: Deputy 1 was conducting a field interview with a potentially dangerous subject when he was accosted by the complainant and queried as to what was going on. Deputy 1 instructed the complainant three separate times to stop interfering with him during this contact and to leave the premises, but the complainant delayed obeying this order, which created an officer safety issue. Pursuant to California Penal Code § 148 (a), Resist, Obstruct, Delay of Peace Officer or EMT, "Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician . . . in the discharge or attempt to discharge any duty of his or her office or employment" is guilty of a misdemeanor and subject to arrest. Deputy 1 acted within the law in effectuating this arrest. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

5. Misconduct/Discourtesy – Deputy 1 stated to the complainant, "If you tense up, I'm going to put your head through the fucking drywall," or used words to that effect.

Recommended Finding: Sustained

Rationale: Deputy 1 admitted on two separate occasions that he stated to the complainant, "If you tense up, I'm going to put your head through the fucking drywall," or used words to that effect. He explained that he used this language in response to the complainant clenching his fists and tensing his body, and to avoid having to escalate the force used against the complainant. That withstanding, it is a violation of Sheriff's Department Policy 2.22, Courtesy, which prohibits employees from using violent and profane language during the performance of their duties. The evidence supports the allegation and the act or conduct was not justified.

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## **12-093**

1. Illegal Search or Seizures – Unidentified probation officers conducted a Fourth Waiver Search on the complainant's home.

Recommended Finding: Summary Dismissal

Rationale: The Jurisdictions Unified for Drug and Gang Enforcement (JUDGE), assisted by a Drug Enforcement Agency Task Force and the Chula Vista Police Department, was the authorizing authority during a Fourth Amendment Waiver Search of the complainant's home. These agencies are not within the jurisdiction of the Review Board. CLERB does not have authority to investigate this complaint based upon the following CLERB Rules & Regulations: Section 4: Authority, Jurisdiction, Duties, and Responsibilities of Review Board, Section 9: Screening of Complaints, and Section 15: Summary Dismissal.

2. False Arrest – An unidentified probation officer arrested the complainant.

Recommended Finding: Summary Dismissal

Rationale: The Chula Vista Police Department was the arresting agency in this case. This agency is not within

the jurisdiction of the Review Board, therefore CLERB does not have authority to investigate this complaint based upon the following CLERB Rules & Regulations: Section 4: Authority, Jurisdiction, Duties, and Responsibilities of Review Board, Section 9: Screening of Complaints, and Section 15: Summary Dismissal.

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## **12-120**

1. Misconduct/Procedure - Deputy 1 entered the complainant's cell with a knife.

Recommended Finding: Summary Dismissal

Rationale: Deputy 1 retired in May 2013 and is no longer a member of the San Diego County Sheriff's Department. The Review Board, therefore, no longer has jurisdiction over the subject matter of the Complaint. CLERB does not have authority to investigate this complaint based upon the following CLERB Rules & Regulations: Section 4: Authority, Jurisdiction, Duties, and Responsibilities of Review Board, Section 9: Screening of Complaints, and Section 15: Summary Dismissal.

2. Misconduct/Procedure - Deputy 1 entered a Pro Per's cell after 11:00 pm.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

3. Misconduct/Procedure - Deputy 1 ransacked the complainant's cell and confiscated information posted on the complainant's cell wall.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

4. Misconduct/Procedure - Deputy 1 "Rummaged through" and/or destroyed legal documents belonging to a Pro per inmate.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

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## **13-047**

1. Misconduct/Procedure – Deputy 1 delayed medical treatment for the complainant upon arrest.

Recommended Finding: Summary Dismissal

Rationale: The involved member was identified as Department of Homeland Security (DHS) officers over whom CLERB does not have jurisdiction per CLERB Rules & Regulations 4.1 Citizen Complaints: Authority.

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*End of Report*