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# County of San Diego

## CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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### REGULAR MEETING AGENDA

#### TUESDAY, December 11, 2012, 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 November 2012 Regular Meeting (*Attachment A*)

#### 3. PRESENTATION / TRAINING

- a) N/A

#### 4. EXECUTIVE OFFICER'S REPORT

- a) Workload Report - Open Complaints/Investigations Report (*Attachment B*)

#### 5. BOARD MEMBER COMMENTS

**6. NEW BUSINESS**

- a) 2013 CLERB Executive Board Election

**7. UNFINISHED BUSINESS**

- a) 11-119 / NIETO – Response to Policy Recommendation (Misconduct/Procedure)

**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) **Officer Discipline Recommendation** - Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation.
  - 09-127 / Thornton (Sustained – Deputy 2)
- b) **Discussion & Consideration of Complaints & Reports:** 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).

Table with 2 columns: Finding, Definition. Rows include Sustained, Not Sustained, Action Justified, Unfounded, Summary Dismissal.

**CASES FOR SUMMARY HEARING (9)**

**ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE**

**11-027**

- 1. Death Investigation/Officer Involved Shooting – Deputies 1, 2, 3 and 4 opened fire on Marquin Anthony Hendrix who ignored repeated commands to drop a weapon as he advanced toward them.

Recommended Finding: Action Justified

Rationale: The San Diego Police Department (SDPD) determined that Marquin Hendrix was a suspect in the murder of his wife. Deputies were dispatched to a trouble call on Dehesa Road in Alpine, and discovered Hendrix’s crashed vehicle down in a ravine. While waiting for SDPD to arrive, deputies searched the area and

discovered the “dazed” suspect in a carport. Saying nothing, Hendrix took a shovel and advanced toward Deputy 4 who retreated, while repeatedly ordering the suspect to stop and drop the weapon. Hendrix fixated on and continued to advance toward Deputy 4, and swung the shovel toward Deputy 4’s head. The deputy fell to one knee to avoid the blow. Hendrix then focused his attention on Deputy 3, and again proceeded to move toward deputies with his weapon, while ignoring their directives. Deputies 3 and 4 feared deadly injury for themselves, as did their partners. Deputies 1 - 4 all reacted to the threat by discharging their duty weapons, striking Hendrix several times. Hendrix was declared deceased at the scene. The evidence shows the actions taken by all involved deputies were lawful, justified and proper.

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## **11-135**

1. Misconduct/Procedure – P.O. 2 “interrogated” the complainant about her current case(s).

Recommended Finding: Action Justified

Rationale: The complainant said she repeatedly told P.O. 2 she did not want to talk about her new court case, but P.O. 2 continued “prying and interrogating,” which the complainant felt was inappropriate. P.O. 2 believed the complainant to be elusive and non-compliant with court-ordered conditions. The Probation Department’s purpose is to appropriately supervise and assist probationers with becoming law-abiding individuals. Probation Officers are required to submit in-depth reports to the Courts with detailed information about the Probationers. Questioning and/or giving directives to a probationer is lawful, justified and proper.

2. Misconduct/Procedure - P.O. 2 imposed Probation orders on November 30, 2011, that were previously “thrown out.”

Recommended Finding: Action Justified

Rationale: The complainant said P.O. 2 “imposed orders that were previously thrown out.” The complainant and P.O. 2 met on 11/30/11, specifically for review of the court ordered conditions. P.O. 2 conducted a review of minute orders (7) and the complainant’s booking records; all of which concurred that her gang conditions were still in place. P.O. 2 also spoke with the complainant’s attorney on 12/6/11 and confirmed there was no action taken on his behalf to have the gang conditions stricken. A minute order dated 12/23/11, by “ex parte and not reported,” declared certain conditions were deleted and previously stricken at the time of sentencing by *Nunc Pro Tunc*. The new minute order was produced effective late December 2011, and after, the complainant’s case was reassigned to the Gang Suppression Unit “with reasonable cause.” P.O. 2 acted on and was in compliance with orders imposed by the Court; her actions were lawful, justified and proper.

3. Misconduct/Discourtesy - P.O. 2 told the complainant to “seek an education” when they were in disagreement and/or “slandered” her by saying that her cash business was illegal.

Recommended Finding: Action Justified

Rationale: Slander is defined as a malicious, false, and defamatory statement. P.O. 2 denied the allegation as alleged. The Court stipulated full-time employment, schooling or a combination of both, as a standard condition of probation and is a requirement meant to entice probationers into becoming more productive members of society. The complainant admittedly was not attending school and also failed to provide proof of her employment. P.O. 2 said the complainant also made several self-incriminating claims for failing to file taxes and/or report her income. The evidence shows the alleged conduct occurred and was lawful, justified and proper.

4. Illegal Seizure - P.O. 2 confiscated the complainant’s merchandise and/or tax receipts.

Recommended Finding: Action Justified

Rationale: The complainant said 2 confiscated a CD, t-shirt and an envelope of business receipts. During a random drug test on 12/6/11, the complainant was found to have contraband on her person. Due to this unlawful activity, a 4<sup>th</sup> waiver search was ordered by a unit supervisor. The compact disc and shirt were in violation of the complainant’s gang provisions and were confiscated as evidence. The Unit Supervisor also chose to retain

the complainant's receipts for review and documentation after they raised suspicion about the complainant's activities being in violation of her Court orders. The evidence shows the Probation Department's actions were lawful, justified and proper.

5. Misconduct/Procedure - P.O. 2 requested information from the complainant that "invaded her employee's privacy."

Recommended Finding: Action Justified

Rationale: The complainant said P.O. 2 requested "overly excessive information" that invaded others privacy. P.O. 2 denied inquiring about other employees at the complainant's alleged business; however, P.O. 2 did request employment verification stipulated by the complainant's Court orders. The complainant's refusal to produce confirmation because "others" would not allow it is invalid and the evidence shows the alleged conduct was lawful, justified and proper.

6. Misconduct/Intimidation - P.O. 2 threatened to violate the complainant if she did not provide a list of names, bank statements and a business license.

Recommended Finding: Action Justified

Rationale: The complainant said P.O. 2 threatened to violate her if she did not provide a list of artist's names, bank statements, and a business license. P.O. 2 denied threatening the complainant, but stated she clearly conveyed her probation conditions, one of which is proof of employment. P.O. 2 asked for authentication through a variety of means such as tax returns, business application and/or license, bank statements, etc, which the complainant repeatedly refused to produce. P.O. 2's conduct was lawful, justified and proper.

7. Misconduct/Procedure – P.O. 1 told the complainant "if her job wasn't to his liking, he would not allow her to keep it."

Recommended Finding: Action Justified

Rationale: The complainant said after a brief conversation, P.O. 1 said if her employment was not to his liking, she would not be permitted to keep her job. P.O. 1 denied the complainant's assertion as stated, but said he informed the complainant of Court Condition 10g which states, "Obtain P.O. approval as to employment." P.O. 1's order was lawful, justified and proper.

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## **12-003**

1. Excessive Force – Deputies 1, 2, 3, 4, and 5 used force on the complainant causing injury.

Recommended Finding: Action Justified

Rationale: Deputies 1, 2, 3, 4, and 5 used force on the complainant. After the complainant requested information from the Tower Deputy, Deputies 3 and 4 escorted him to the Rec Yard to determine the nature of the complainant's grievance. Video evidence showed the complainant in conversation with deputies when it appeared he became argumentative. Deputy 3 stated the complainant had balled his fists up in an assaultive manner which resulted in Deputies 3 and 4 guiding him toward a Rec Yard wall where he was handcuffed. While being escorted back into the housing module the complainant stopped his movement on two occasions, appeared to be yelling at the deputies, and attempted to turn toward Deputy 3 which resulted in the use of force. While in medical the complainant continued to resist deputy control which again required the use of force. Deputies 1, 2, 3, 4, and 5 utilized reasonable physical force to counter the complainant's active resistance and assaultive behavior in accordance with Department Policy I.89, Use of Force, and Addendum F Section, Use of Force Guidelines. The evidence showed the alleged acts did occur but were lawful, justified, and proper.

2. Misconduct/Discourtesy – Deputy 3 was discourteous when he called the complainant a bitch.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 3 called him a bitch while taking him into custody. Deputy 3

denied making any derogatory comment toward the complainant. Deputies 1, 2, 4, and 5 stated they did not hear Deputy 3 or any other deputy make such a statement. Absent audio or visual evidence, there was insufficient evidence to either prove or disprove the allegation.

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### **12-011**

1. Misconduct/Procedure – Deputy 1 failed to provide the complainant his prescription medication.

Recommended Finding: Summary Dismissal

Rationale: The complainant did not cooperate with CLERB's investigation by failing to provide requested evidence or information required to initiate and proceed with an investigation.

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### **12-019**

1. Death Investigation/Suicide – Deputy 1 discovered inmate Michael David Robles unresponsive at the Vista Detention Facility.

Recommended Finding: Action Justified

Rationale: There was no complaint of misconduct in this case. The decedent was a 43 year-old Hispanic male who was incarcerated at the Vista Detention Facility. During a routine security check Deputy 1 found him in a sitting position hanged by the neck from a sheet. First aid was rendered, 9-1-1 called, and paramedics initiated advanced cardiac life support measures to no avail. Death was pronounced via radio by a physician from a local hospital. The Medical Examiner certified the manner of death to be suicide, and the cause of death to be hanging. The evidence showed that the actions of Deputy 1 were in compliance with applicable Sheriff Policies and Procedures.

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### **12-026**

1. Misconduct/Procedure – Deputy 1 failed to accommodate the complainant's health condition in a timely manner.

Recommended Finding: Action Justified

Rationale: Deputy 1, as the primary deputy in the Hall of Justice weapons screening area, was tasked to screen for weapons and/or contraband and monitor all individuals passing through the magnetometer at the Hall of Justice. The complainant's metal hip replacements triggered the magnetometer requiring a female deputy to be called for further screening. The complainant requested a stool while waiting for the female deputy and Deputy 1 could not immediately accommodate her request. A witness deputy and supervisors reviewing video evidence of the contact indicated that a stool was provided within 30 seconds to one minute from the complainant's initial demand; a reasonable lapse of time considering Deputy 1's screening responsibilities. A witness deputy stated that Deputy 1 conducted himself professionally and courteously throughout his contact with the complainant. The evidence shows that the alleged act did occur, but was lawful, justified and proper.

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### **12-030**

1. Illegal Search or Seizure – Deputy 1 searched the co-complainant's cell without videotaping the search and/or having the complainant present on April 1, 2012.

Recommended Finding: Sustained

Rationale: Deputy 1 conducted a scheduled Hygiene Inspection to ensure cleanliness standards compliance and to evaluate adherence to rules and regulations regarding inmate property. Upon returning to his cell the co-complainant noticed his privileged communications had been opened and moved from their boxes. San Diego

Central Jail Directive #10, Pro Per Inmate Cell Searches, does not require videotaping of routine Hygiene Inspections provided the inspection is a visual inspection where no physical inspection or search takes place; however, any activity beyond a visual inspection requires the same procedures delineated for Cell Searches. Department Policy I.41, Inmate Cell Searches, states that privileged communications may not be scanned or read, and that privileged communications may be examined for contraband only and while in the presence of the inmate. Deputy 1 denied that the inspection activity elevated to the level of a cell search; however, video evidence showed that the inspection took much longer than other cell inspections, and Deputy 1 removed bed linens and searched under mattresses, activities more properly conducted during a cell search. The evidence supports the allegation and the conduct was not justified.

2. Illegal Search or Seizure – The Sheriff’s Department searched the co-complainant’s cell without video-taping the search and/or having the complainant present on April 12, 2012.

Recommended Finding: Sustained

Rationale: The Sheriff’s Department permitted deputies to conduct a cell search, for the purpose of locating contraband, without the inmate being present. During the conduct of the search the co-complainant’s privileged communications were examined for contraband. The search was videotaped; however, the inmate was not present as required by Department Procedure I.41, Cell Searches. The evidence supports the allegation and the conduct was not justified.

3. Illegal Search or Seizure – The Sheriff’s Department searched the co-complainant’s cell without video-taping the search and/or having the complainant present on May 12, 2012.

Recommended Finding: Not Sustained

Rationale: The Sheriff’s Department conducted an unscheduled cell search without the inmate being present. Department Policy I.41, Inmate Cell Searches, states that privileged communications may not be scanned or read, and that privileged communications may be examined for contraband only and while in the presence of the inmate. Video evidence showed deputies gathered the inmate’s possessions and passed them through an X-ray machine in search of contraband. The camera angle did not show whether or not deputies inside the cell scanned or examined privileged communications prior to passing the privileged communications through the X-ray machine. Those deputies that were in camera view did not open, scan, or examine any of the co-complainant’s privileged communications. The video did not provide sufficient evidence to either prove or disprove the allegation.

4. Misconduct/Procedure – Deputies 2, 3, 4, 5 and/or 6 disposed of items the co-complainant was authorized to have in his cell.

Recommended Finding: Not Sustained

Rationale: Deputies 2, 3, 4, and 5 denied disposing of any authorized items. The co-complainant reported that deputies disposed of a deck of cards (except for the box and one Joker), one unopened bag of Lays Potato Chips, one unopened bag of Cheetos, one unopened bag of Jolly Ranchers, and one Snickers bar. Video evidence documented the search but there is no evidence to show that Deputies 2, 3, 4, 5, or 6 disposed of the complainant’s commissary items. There was insufficient evidence to either prove or disprove the allegation.

**POLICY RECOMMENDATION:**

**Cell Inspections and Searches:** San Diego Sheriff’s Department is requested to issue a Training Bulletin to all Detentions sworn personnel to ensure that cell inspections and searches conducted are consistent with an inmate’s right to maintain privileged communications.

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**12-045**

1. Death Investigation/Traffic Pursuit – Deputy 1 initiated a vehicle pursuit of a stolen vehicle, which resulted in the death of David Lopez.

Recommended Finding: Action Justified

Rationale: There was no complaint of wrongdoing in this death investigation. Deputy 1 initiated a pursuit in compliance with Sheriff's Policy & Procedure 6.43, Vehicle Pursuit, after a suspected stolen vehicle refused to yield to emergency lights and siren. Deputy 1 acted appropriately and within the law when he attempted to stop the suspect. The 1.1 mile pursuit reached speeds of 80 mph in light to moderate traffic, and the suspect, on his own volition and while under the influence of alcohol or drugs, sped away, drove onto the wrong side of the highway without regard for his own or anyone else's safety, crashed into oncoming traffic resulting in the death of David Lopez. The evidence shows Deputy 1's conduct was lawful, justified and proper.

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**12-133**

1. Misconduct/Procedure – Deputy 1 arrested the complainant without showing him a warrant.

Recommended Finding: Summary Dismissal

Rationale: The complainant filed outside of the one year time limitation. The Review Board does not have jurisdiction because the complaint was not timely filed.

2. Misconduct/Procedure – Deputy 1 executed a warrant arrest on the complainant at 2:00 AM.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

3. Misconduct/Procedure – Deputy 1 arrested the complainant without providing him an opportunity to put on a shirt and a pair of shoes.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

4. Excessive Force/Handcuffs – Deputy 1 placed handcuffs on the complainant too tightly.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

5. Misconduct/Procedure – Deputy 1 left the complainant's property unsecured.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

6. Misconduct/Procedure – Deputy 1 failed to provide an Incident Report on a call.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

7. Misconduct/Procedure – Deputy 1 failed to file a report on the complainant's 11-26-2011 arrest.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

8. False Reporting – Deputy 1 reported that the complainant's 11-26-2011 arrest took place on Mission Avenue.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1