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CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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FINAL NOTICES

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its May 10, 2011 meeting, held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at www.sdcounty.ca.gov/clerb.

CLOSED SESSION

- a) **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).

DEFINITION OF FINDINGS	
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 (12)

ALLEGATIONS, FINDINGS & RATIONALE

09-118

- Misconduct/Procedures – Deputy 1 moved the aggrieved from Mainline housing to Protective Custody.

Board Finding: Action Justified

Rationale: In accordance with Department Policies and Procedures, and upon the recommendation of Medical Staff, Deputy 1 moved the aggrieved from Mainline housing to Protective Custody. The evidence shows the Deputy 1 did place the aggrieved in Protective Custody, but the act was lawful, justified, and proper.

- Discrimination/Other – The Sheriff's Department discriminated against the complainant's son who is mentally challenged.

Board Finding: Unfounded

Rationale: The Sheriff's Department did not discriminate against or deny the aggrieved of any legal rights because of his developmental disability while in custody. California State law has mandated that careful attention be considered in the identification, classification, evaluation, and housing of developmentally disabled inmates. Department Policies and Procedures which implemented these laws are consistent in their determination of appropriate classification and housing of developmentally disabled inmates. The evidence shows that the alleged act or conduct did not occur.

10-019

1. Misconduct/Discourtesy – Probation Officer 8 chastised the disabled complainant for taking too long to answer the door.

Board Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Illegal Search & Seizure – Probation Officers 1-8 searched the complainant's entire house and garage.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Discrimination/National Origin - Probation Officer 8 mistook Native American apparel for gang related items.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. False Arrest – Probation Officer 8 arrested Julian Walker with no explanation to the complainant.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

5. False Reporting – Probation Officer 8 falsely documented finding two “roaches” in the complainant's home.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

6. False Reporting – Probation Officer 1's Pre-Sentencing report contained errors and/or mistruths.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

7. Misconduct/Procedure – Probation Officer 1, a former juvenile probation officer, is not qualified to handle the aggrieved's adult probation case.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

10-021

1. Misconduct/Procedure - Deputy 1 failed to follow protocol in checking for outstanding wants/warrants when citing the complainant's daughter for a traffic violation.

Board Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Procedure - Deputy 1 failed to follow protocol when contacting a vehicle registered to person(s) under investigation for harboring a runaway and contributing to the delinquency of a minor.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

10-022

1. Misconduct/Procedure - Deputies 1 and/or 2 rejected books the complainant ordered for her inmate husband.

Board Finding: Action Justified

Rationale: The complainant placed three separate book orders from Borders.com. On two occasions all books were shipped and returned to the book distributor. According to evidence two of the ordered books were paperback or soft cover and were delivered to the inmate; one was "semi-concealed wire-o binding," and was rejected. Title 15 Regulations states that facility commanders may exclude publications or writings based on the physical composition of the material or packaging, or to restrict the sources from which the jail will receive such materials where there is a valid security reason to justify such action. The evidence shows that the alleged act or conduct did occur but was lawful, justified, and proper.

2. Misconduct/Procedure - Deputy 3 signed for books, but one book is still outstanding – not provided to her husband or returned to the complainant.

Board Finding: Not Sustained

Rationale: The *Merriam Webster's Pocket Dictionary* and the *Law Dictionary* were delivered to GBDF on February 26, 2010. The third book, *Code Check for California*, shipped under FedEx tracking #439102053310, could not be tracked. Queries to FedEx Customer Service were unsuccessful noting that the tracking number provided was "not found or invalid. Please verify it with your shipper..." Queries to Borders Customers Service revealed a problem determining FedEx shipment and delivery status, resulting in an offer to re-ship to the customer. Shipment receipt could not be verified, nor could the book title of the item returned March 3, 2010 be identified. There was insufficient evidence to either prove or disprove the allegation.

POLICY RECOMMENDATION

It is recommended that the Sheriff's Department review and re-issue San Diego County Sheriff's Department Detention Services Bureau – Manual of Policies and Procedures P.3 – Inmate Mail to address the receipt of books by inmates in detention facilities. Updated procedures should consider identifying the exclusion of compact disks, soft cover books with wire/spiral binding, or any other new media which may pose a threat to the safety and security of detention facilities. Facility Commanders should then be directed to review facility Green Sheets supplementing Department Procedure P.3 to ensure compliance.

It is also recommended that the Sheriff's Department review procedures for receipt, acceptance, rejection, and return of inmate books to ensure sufficient accountability and tracking of returned materials; and to ensure that document retention procedures are in consonance with department procedures.

10-023

1. Misconduct/Intimidation - Deputy 2 threatened to arrest the aggrieved for lying to him about harboring an alleged runaway.

Board Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Excessive Force - Deputy 1 pushed the complainant's minor daughter against a window without cause when searching the girl's bedroom for the alleged runaway.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Intimidation - Deputy 2 shouted at the aggrieved and her minor daughter threatening to take them to jail.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Excessive Force - Deputy 1 pulled down a curtain and began to draw his gun at the alleged runaway.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Discourtesy - Deputy 2 repeatedly tried to interrupt the aggrieved's phone call to her attorney.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

10-030

1. Illegal Search & Seizure – Deputies 1 and 2 detained the complainant for over forty minutes causing her to be late for work.

Board Finding: Action Justified

Rationale: Deputies 1 and 2 and were dispatched by Sheriff's Communications to investigate a reported stalker. The complainant had been identified in a stalking report filed one week prior to this incident, therefore Deputies 1 and 2 had reasonable suspicion to detain the complainant. Upon completion of a field interview it was determined that there was no probable cause for arrest and the complainant was released. The evidence shows the alleged act or conduct did occur but was lawful, justified, and proper.

10-031

1. Misconduct/Procedure – Deputy 1 improperly classified the complainant at San Diego Central Jail.

Board Finding: Not sustained.

Rationale: At the complainant's request all arrest, booking, and detention records for this incident were sealed. Intake sergeants and deputies assigned to San Diego Central Jail on the date of the booking do not recall the complainant and cannot confirm the classification during the booking and intake process. There was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Procedure – Unidentified deputies failed to release the complainant in a timely manner after posting bail.

Board Finding: Not sustained.

Rationale: At the complainant's request all arrest, booking, and detention records for this incident were sealed. Deputies assigned to San Diego Central Jail on the date of the booking and release did not recall the complainant and could not confirm whether any delays in the bail were experienced in the release process. There was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Medical – Deputy 1 failed to provide the complainant with needed medication.

Board Finding: Summary Dismissal

Rationale: The Review Board has no jurisdiction over complaints involving jail medical personnel or issues, only over complaints involving Sheriff's deputies and Probation officers employed by the County of San Diego. (County Charter § 606 (f)(1); San Diego County Administrative Code, Article XVIII, §§ 340, 340.9 (a)) The complainant was referred to the Internal Affairs Unit of the San Diego Sheriff's Department. The Review Board lacks jurisdiction.

10-045

1. Excessive Force – Deputy 1 lifted the minor approximately 12 inches off the ground and dropped him onto his face and body, while he was handcuffed.

Board Finding: Not Sustained

Rationale: Deputy 1 denies this allegation. Additionally, an Assistant Principal observed the scuffle and subsequent arrest of Logan and reported that Deputy 1 conducted himself in a professional and appropriate manner throughout his contact with Logan. Efforts to contact several witnesses who were present during the arrest, and may have corroborated the aggrieved's account, were unsuccessful. There is then insufficient evidence to prove or disprove this allegation.

2. Excessive Force – Deputy 1 grabbed the aggrieved by his hair and the back of his shirt while escorting him to the Assistant Principal's office.

Board Finding: Not Sustained

Rationale: Deputy 1 denies this allegation and without the benefit of witnesses or surveillance cameras, the allegation cannot be proved or disproved.

3. Excessive Force – Deputy 1 lifted the aggrieved's arms over his head while they were handcuffed behind his back, causing a tremendous amount of pain.

Board Finding: Not Sustained

Rationale: While Deputy 1 denies this particular allegation, a written statement from a witness corroborates Logan's account. However, efforts to contact this witness to confirm this statement have been unsuccessful. As such, there is insufficient evidence to either prove or disprove the allegation.

4. Excessive Force – Deputy 1 kept the aggrieved bent over and forced him to walk to the Assistant Principal's office in a painful and humiliating position.

Board Finding: Action Justified

Rationale: Deputy 1 admits to maintaining Logan in a bent over position while escorting him to the Assistant Principal's office due to safety concerns. This is an acceptable practice utilized by deputies to move uncooperative suspects. There was a height differential between Deputy 1 and Logan which favored Logan, and because he was still struggling, Deputy 1 maintained this position to make it difficult for Logan to attack or escape, while causing no injuries. Deputy 1's actions then, were lawful, justified and proper.

5. Misconduct/Procedure – Deputy 1 repeatedly kicked the aggrieved's back foot while escorting him to the Assistant Principal's office, causing him to stumble.

Board Finding: Not Sustained

Rationale: Deputy 1 denies this allegation, however a student witness observing this escort commented that it was unnecessary the way he was treating Logan. Efforts to contact this witness to clarify his observations were unsuccessful. In the absence of this witness and other witnesses, there is insufficient evidence to prove or disprove this allegation.

6. Excessive Force – Deputy 1 intentionally steered the aggrieved's head into a fire extinguisher box.

Board Finding: Not Sustained

Rationale: Deputy 1 denies this allegation, but admits that Logan could have inadvertently contacted the fire extinguisher box due to the narrow hallways in the Assistant Principal's office. Efforts to reach witnesses who may have observed this incident have been unsuccessful. As such, there is insufficient evidence to either prove or disprove the allegation.

7. Excessive Force – Deputy 1 intentionally steered the aggrieved's hip into a counter.

Board Finding: Not Sustained

Rationale: See Rationale #6.

8. Misconduct/Procedure – Deputy 1 failed to provide the aggrieved with medical care for injuries sustained during his arrest.

Board Finding: Not Sustained

Rationale: Deputy 1 reported that he asked Logan if he had been injured during their struggle, and Logan allegedly said that he had not. No injuries were visible, per Deputy 1, nor did Logan mention being injured when the deputy spoke with his father. Logan, however, reported that Deputy 1 did not inquire about his injuries. The medical report from Sharp Rees-Stealy indicates no significant injuries from this arrest. There is insufficient evidence to either prove or disprove the allegation.

10-115

1. Criminal Conduct – Deputy 1 disclosed confidential information provided by the complainant.

Board Finding: Summary Dismissal

Rationale: The complainant formally withdrew his complaint against Deputy 1 on March 11, 2011. CLERB no longer has authority to investigate this complaint based upon the following CLERB Rules & Regulations: 5.7 Withdrawal of Complaints. A complaint may be withdrawn from further consideration at any time by a written

notice of withdrawal signed and dated by the complainant. The effect of such withdrawal will normally be to terminate any further investigation of the complained of conduct, unless the Executive Officer or a Review Board member recommends that the investigation continue and the Review Board, in its discretion, concurs.

11-012

1. On February 2, 24, 26, 28, and March 2, 2011, the complainant submitted written testimony describing allegations of sexual abuse against unidentified individuals he came into contact with in public areas. The Sheriff's Department responded to CLERB's request for documentation with two cases related to the San Diego Police Department in 2009.

Board Finding: Summary Dismissal

Rationale: The following CLERB Rules & Regulations apply: 4.1 Citizen Complaints: Authority, 4.4 Citizen Complaints: Jurisdiction, and Section 15: Summary Dismissal (c) The Complaint is so clearly without merit that no reasonable person could sustain a finding based on the facts.

11-018

1. False Arrest – P.O. 1 arrested the complainant in 2004, for a probation violation, and alleges he is currently incarcerated by the California Department of Corrections past his scheduled release date.

Board Finding: Summary Dismissal

Rationale: P.O. 1 ceased employment with the Probation Department in 2007 and the California Department of Corrections is a state run agency. The following CLERB Rules & Regulations apply : 4.1 Citizen Complaints: Authority. Pursuant to Ordinance #7880, as amended, (Article XVIII, Section 340 340.9 of the San Diego County Administrative Code), the Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department...

11-030

1. Excessive Force/Taser - Deputy 1 used a taser on the complainant when she was incarcerated at the Vista Detention Facility (VDF) in 2005.

Board Finding: Summary Dismissal

Rationale: Pursuant to Section 4.4 of the Citizen's Law Enforcement Review Board (CLERB) Rules and Regulations, the Review Board shall not have jurisdiction to take any action in respect to complaints received more than one year after the date of the incident giving rise to the complaint, except that if the person filing the complaint was incarcerated or physically or mentally incapacitated from filing a complaint following the incident giving rise to the complaint. Efforts to contact the complainant to clarify incident dates, and to determine if the complainant was unable to file within the proscribed time limit due to incarceration or incapacitation, were unsuccessful.
