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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 December 13, 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

10-043

- False Arrest – The Sheriff's Department transferred the complainant from State prison to Central jail and held him in custody post an alleged release date.

Board Finding: Action Justified

Rationale: Deputy 2 transported the complainant from state prison to local custody in response to Defendant/Case #CD225060: "Prisoner released to you for trial or witness in a criminal case or civil proceedings in a parental or marital case." Subsequent to that, he was also charged with other various crimes to which he pled guilty in part, was convicted, and is currently serving additional time. The evidence shows the transfer and extended incarceration was lawful, justified and proper.

- Misconduct/Procedure – Deputy 1 fingerprinted the complainant, "so he could go home."

Board Finding: Action Justified

Rationale: Verbal exchanges between inmates and jail staff are unrecorded. Sheriff's Detention Policy Q.33 Fingerprinting, is required to ensure accurate identification of the individual being fingerprinted. Upon release, one index finger is captured and verified to ensure the correct inmate is being released. Fingerprinting of inmates as part of the booking and/or release process is lawful, justified and proper.

3. Misconduct/Procedure – Deputy 5 confiscated then lost the complainant’s legal mail.

Board Finding: Not Sustained

Rationale: Sheriff’s Policy & Procedures, Q.63 Lost Inmate Property requires that a Watch Commander be notified and a crime report taken. The complainant submitted an Inmate Grievance on 11/18/10, which Deputy 3 responded to the following day. Deputy 3 attempted to locate the missing property, but was unable. While the evidence indicates the complainant’s property was lost, there was no evidence presented to indicate this was an intentional act of deputy misconduct. The complainant did not respond to further requests for information and it is unknown if his property was ever located.

4. Misconduct/Procedure – Deputy 4 improperly instructed the complainant to waive his bail.

Board Finding: Not Sustained

Rationale: Deputy 4 refuted this allegation. Defendants are assigned legal counsel and court documentation supports that an Alternate Public Defender (APD) was assigned to the complainant throughout his court proceedings. The complainant did not respond to further requests for information and there is insufficient evidence to either prove or disprove the allegation.

10-098

1. Discrimination/Racial – Deputy 2 racially profiled the complainant in a traffic stop.

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. Discrimination/Racial – Deputy 3 and Deputy 4’s “demeanor changed dramatically” after reading the complainant’s last name on his Driver’s License.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

3. Misconduct/Procedure – Deputy 2 “tailgated” the complainant.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

4. Misconduct/Procedure – Deputy 2 told Deputy 3 that the complainant was, “You know, just another drunk.”

Board Finding: Summary Dismissal

Rationale: See Rationale #1

5. Misconduct/Intimidation - Deputy 3 screamed at the complainant and attempted to intimidate him for asserting his constitutional rights to remain silent.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

6. Illegal Search & Seizure – Deputy 3 conducted an “unwarranted search of the complainant’s possessions.”

Board Finding: Summary Dismissal

Rationale: See Rationale #1

7. False Arrest – Deputy 3 accused the complainant of being on “Methamphetamine, OxyContin and/or other unidentified substances,” and arrested him for DUI.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

8. Misconduct/Discourtesy – Deputy 3 disbelieved that the complainant was on his way to school and started quizzing him from his textbook.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

9. Misconduct/Procedure – Deputy 3 forced the complainant to perform a balancing sobriety test on an injured foot with a broken toe.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

10. Misconduct/Procedure – Deputy 1 “did not respect” the complainant’s belongings and dumped them on the curb.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

11. Misconduct/Procedure – Deputy 3 and Deputy 1 failed to return the complainant’s registration and insurance for which he incurred penalty fees.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

12. Misconduct/Procedure – Deputy 3 would not allow the complainant to contact his mother to pick-up their vehicle and avoid towing fees.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

13. Misconduct/Procedure – Deputy 3 returned the complainant’s property damaged (interior vehicle door) and/or in non-working order (a watch).

Board Finding: Summary Dismissal

Rationale: See Rationale #1

10-099

1. Misconduct/Procedure – Deputy 1 performed a forced blood draw on the complainant against his will.

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. Discrimination/Racial – Deputy 2 used racially charged language, “boy, Spic and Mexi-cant.”

Board Finding: Summary Dismissal

Rationale: See Rationale #1

3. Misconduct/Procedure – Deputy 2 failed to properly supervise inmates, resulting in the complainant being attacked and beaten while in custody.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

4. Misconduct/Procedure – Deputy 2 failed to properly supervise inmates that prevented the complainant from using toilet facilities while incarcerated.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

10-107

1. False Arrest - P.O. 1 violated the complainant for failure to appear for a drug test when he had not been informed of the date and time of the test, resulting in his arrest.

Board Finding: Action Justified

Rationale: P.O. 1 re-arrested the complainant for multiple probation violations in accordance with Penal Code 1203.2(a) and Probation Department policies and procedures. P.O. 1 learned that the complainant had been arrested by the San Diego Police Department on October 17, 2010 for a domestic violence incident and was in custody in San Diego Central Jail. P.O. 1 documented three probation violations which resulted in a recommendation to revoke the complainant’s probation. The evidence shows the alleged act did occur but was lawful, justified and proper.

10-111

1. Misconduct/Procedure – Deputy 4 delayed the complainant’s arraignment more than 48 hours past his booking date of October 2, 2009.

Board Finding: Action Justified

Rationale: Deputy 4 took custody of the complainant at approximately 3:30 am, Friday October 2, 2009. Arrests occurring between 12:00 a.m. and 5:00 p.m. on a Friday, require that arraignment take place not later than the court's regular session the following Tuesday. The complainant was arraigned in San Diego Superior Court on Tuesday, October 6, 2009 in compliance with California Penal Code 825. The evidence shows the alleged act did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Deputies 2, 3, and 4 placed the complainant on “KSA” status from January through October 2010.

Board Finding: Action Justified

Rationale: Deputy 3 interviewed the complainant upon entering San Diego Central Jail on October 2, 2009 and Board placement in protective custody. Deputy 2, further evaluated the complainant on December 13, 2009 and determined that the complainant displayed a continual inability or willingness to conform to the minimum standards expected of those in mainline housing, and had shown a propensity for violence towards other inmates and/or staff, resulting in the complainant being placed in Administrative Segregation - Keep Separate Always. Deputy 4 responded to a series of grievances regarding the Administrative Segregation and Keep Separate Always status advising the complainant of his classification. The complainant remained in the Keep

Separate Always classification until release from custody in October 2010. The evidence shows that the alleged conduct did occur but was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 4 denied the complainant access to legal counsel during normal business hours in October 2010.

Board Finding: Not Sustained

Rationale: Deputy 4 did not deny the complainant access to legal counsel; however, during the 17 days in custody during October 2010 the complainant's dayroom scheduled provided access during normal business hours on two days during this period, he was locked down for two days, and two days were documented with no entry. Additionally, inmates are provided unlimited collect telephone use for communication with their attorneys and legal assistance may be coordinated through the Facility Correctional Counselor. There is no documentation available to demonstrate that the complainant requested additional telephone access during this period. There is insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Procedure – Deputy 4 refused to release records because of the complainant's inability to pay fees/bills/taxes while in jail.

Board Finding: Not Sustained

Rationale: Deputy 4 did not refuse to release records because of the complainant's inability to pay fees, bills, and taxes while in jail. Deputies referred the complainant to appropriate offices to process records requests (attorney of record, medical, and/or Facility Correctional Counselor). Additionally inmates are provided unlimited collect telephone use for communication with their attorneys and legal assistance may be coordinated through the Facility Correctional Counselor. There is no documentation available to demonstrate that the complainant requested assistance through these offices during his period of incarceration. There is insufficient evidence to either prove or disprove the allegation.

5. Misconduct/Procedure – Deputy 4 did not investigate the complainant's Internal Affairs complaint(s).

Board Finding: Not Sustained

Rationale: Deputy 4 responded to the complainant's request for Internal Affairs investigations noting that concerns had been properly addressed through the Grievance Process as San Diego Central Jail. A Facility Commander review reported that complaints and staff responses were determined to have been adequately addressed as to the complainant's basic needs and conditions of confinement. The complainant failed to provide documentation to facilitate further investigation of the Internal Affairs complaints filed and whether or not each complaint was satisfactorily resolved. As such, there was insufficient evidence to either prove or disprove that all of the Internal Affairs were properly addressed.

6. False Report – Deputy 1 falsely recorded the time of arrival at San Diego Central Jail when booked on October 2, 2009 following Safety Cell placement.

Board Finding: Action Justified

Rationale: Deputy 1 documented the arrival of the complainant at San Diego Central Jail. Booking records indicated the complainant was booked at 3:30 am, October 2, 2009. Deputy 1 documented that the complainant arrived at San Diego Central Jail at approximately 3:40 am, October 2, 2009 and was immediately taken to a Safety Cell at the direction of County Mental Health Officials. Safety Cell placement had no impact on the recorded time for arrival at San Diego Central Jail. The actions of Deputy 1 were lawful, justified and proper.

7. Misconduct/Procedure – Deputy 4 failed to deliver court documents to the complainant.

Board Finding: Not Sustained

Rationale: The complainant alleged that a multitude of court documents were withheld or undelivered by Deputy 4. Inmate Grievance Responses directed the complainant to submit requests to the Corrections Counselor for assistance with legal mail, and to his attorney for records requests and other legal matters. The

investigation did not reveal any requests for assistance of the Corrections Counselor or his attorney. There was insufficient evidence to either prove or disprove this allegation.

8. Misconduct/Procedure – San Diego Sheriff’s Department failed to display in a conspicuous place the arrestees right to telephone calls.

Board Finding: Action Justified

Rationale: San Diego Sheriff’s Department intake facilities conspicuously display all information required by Penal Code 851.5. The complainant was placed into a safety cell upon arrival at the San Diego Central Jail and later given access to telephones once cleared to complete the booking process. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

10-112

1. Illegal Search & Seizure – Probation Officers 1, 2, and 3 detained the complainant without cause.

Board Finding: Action Justified

Rationale: Probation Officers 1, 2, and 3 were present when the complainant reported for a scheduled office visit on November 10, 2010. The complainant became disruptive and argumentative when placed in a random drug testing program and demanded to submit the drug test sample in violation of department testing protocol. The complainant’s behavior and refusal to comply with testing protocol resulted in re-arrest for failure to follow the direction of probation officers and failing to submit to a drug test. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

2. Illegal Seizure – Probation Officer 1 seized the complainant’s property (purse and papers) without cause.

Board Finding: Action Justified

Rationale: Probation Officer 1 took custody of and logged the complainant’s property that could not accompany the complainant to jail. Property was retained by the Probation Department until the complainant’s mother was designated to receipt for and pick up the property. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

3. Misconduct/Procedure – Probation Officers 1, 2, and 3 failed to provide the complainant with written terms of probation.

Board Finding: Action Justified

Rationale: Probation Officers 1, 2, and 3 did not provide the complainant with written terms of probation. The complainant was present at the June 29, 2010 Pre-Sentence Hearing and the October 18, 2010 Sentencing Hearing in the Superior Court of California, County of San Diego, Department 14. Superior Court documents indicate that the complainant was provided a copy of the Felony Minutes, Pronouncement of Judgment, and Order Granting Probation. Additionally, Probation Officers 2 and 3 met with the complainant and his mother on October 20, 2010. Probation Officer 3 explained Probation, the department’s expectations, general reporting instructions and offered a number of resources and services available. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

4. Misconduct/Intimidation – Probation Officer 1 forced the complainant to sign documents with the threat of jail.

Board Finding: Action Justified

Rationale: Probation Officer 1 denied forcing the complainant to sign documents under a threat of jail. The complainant refused to sign the chain of custody testing slip required for the urinalysis sample collection and submission to the lab for processing. This refusal was a violation of the complainant’s probation terms which resulted in his re-arrest. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

5. Discrimination/Sex-Gender – Probation Officer 3 refused to allow the complainant to conduct urinalysis while sitting down.

Board Finding: Action Justified

Rationale: Probation Officer 3 directed that the complainant participate in the urinalysis testing in accordance with Probation Department policies and procedures. The complainant objected to following prescribed drug testing procedures which require that the officer who tests a probationer must be of the same sex as the probationer, and comply with testing protocol. Testing protocol does not allow male probationers to conduct urinalysis while sitting down. The evidence shows the alleged act did occur but was lawful, justified and proper.

10-113

1. Excessive Force – Deputies 1 and 2 hit, kicked, and threw the complainant to the ground when he could not comply with their instructions to get on his knees due to his disability.

Board Finding: Not Sustained

Rationale: Deputies 1 and 2 deny hitting, kicking or throwing the complainant to the ground. Witness deputies deny observing Deputies 1 and 2 mistreat the complainant as alleged. Video footage of the incident was inconclusive, but viewed frames did not show that excessive force was used. There was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Discourtesy – Deputies 1 and 2 yelled and cursed at the complainant while they were beating him.

Board Finding: Not Sustained

Rationale: Deputies 1 and 2 deny cursing at the complainant, with Deputy 2 stating that he did yell to the complainant to “Stop resisting.” Witness deputies on scene deny that expletives were used toward the complainant or that deputies were heard yelling at him. There was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Procedure – Deputies 1 and 2 failed to provide appropriate medical treatment to the complainant after he had been beaten and complained of being in pain.

Board Finding: Action Justified

Rationale: Deputies 1 and 2 escorted the complainant to the 3rd floor where he was evaluated by jail medical staff immediately following the use of force. The complainant was evaluated and treated with no exceptional injuries noted. The evidence shows the alleged act did occur, but was lawful, justified and proper.

11-011

1. Misconduct/Discourtesy – Deputy 1 yelled at the complainant, “What are you doing in my town” and/or, “What are you doing, get out of my town”.

Board Finding: Summary Dismissal

Rationale: The complainant failed to establish a prima facie showing of misconduct and the allegation is so clearly without merit that no reasonable person could sustain a finding based on the facts. 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/Harassment – Deputy 1 “harassed” the complainant who feels unsafe in her community.

Board Finding: Summary Dismissal

Rationale: The complainant failed to establish a prima facie showing of misconduct and the allegation is so clearly without merit that no reasonable person could sustain a finding based on the facts. 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.

11-014

1. Misconduct/Intimidation – Deputy 1 intimidated the aggrieved when he raised his voice and asked her, “You don’t know why I pulled you over?”

Board Finding: Not Sustained

Rationale: Deputy 1 denies raising his voice during his contact with the complainant and states that he typically asks the question, “Do you know why I pulled you over?” during all of his traffic stops. In the absence of witnesses, video surveillance or audio recordings, there is insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Discourtesy - Deputy 1 was condescending when he stated to the aggrieved, “Everybody is clapping for me to pull you over and you don’t even know why I did it.”

Board Finding: Not Sustained

Rationale: Deputy 1 denies speaking to the complainant in any manner that could have been misconstrued to be condescending or discourteous. His comments regarding the responses of the other drivers affected by her infraction were made to refute her assertion that she proceeded through a green light. There is insufficient evidence to prove or disprove the allegation.

3. Misconduct/Discourtesy- Deputy 1 stated to the aggrieved, “You’re a housewife who can sit at home in your pajamas without leaving your house.

Board Finding: Not Sustained

Rationale: Deputy 1 denies making the statement as reported by the complainant. He reported that, in context, his comment involving the use of the word pajamas is one that he tells everyone when discussing the option of attending traffic school in lieu of paying a fine. He informs that the entire eight hour class can be taken at home, online, without ever having to “change out of your pajamas.” There is insufficient evidence to prove or disprove the allegation.

11-052

1. Misconduct/Procedure – Deputy 1 improperly documented the complainant’s adult credits for time served resulting in the complainant serving additional time without court orders.

Board Finding: Summary Dismissal

Rationale: The complainant was transferred to San Diego from a State facility and later returned to that State facility. Credits for time served are computed by Sheriff’s non-sworn professional staff and the Review Board lacks jurisdiction in this matter. The complainant was referred to the Sheriff’s Department.

11-071

1. Illegal Search and Seizure – PO 1 and PO 2 entered the complainant’s residence without cause.

Board Finding: Action Justified

Rationale: Probation Officers 1 and 2 were conducting an announced home visit to ensure that a probationer was in compliance with probation terms. The complainant opened the door to the probation officers and told them the probationer no longer lived there. Probation Officer 1 advised that the probationer had listed the complainant's residence as his home and that it was subject to a 4th Amendment Waiver search. The evidence shows the alleged conduct did occur but was lawful, justified, and proper.

2. Illegal Search and Seizure – Probation Officer 1 searched the complainant's bedroom without cause.

Board Finding: Action Justified

Rationale: Probation Officer 1 did a protective sweep of the entire residence to conduct a cursory search for the probationer or other persons who could present a danger to the officers or interfere with the lawful process. A protective sweep is a limited, quick, visual inspection of those places where a person who poses a danger to officers or others might be hiding; this sweep can include looking into closets and other spaces. A more thorough Fourth Amendment Waiver search was not conducted. The evidence shows the alleged conduct did occur but was lawful, justified, and proper.

3. Misconduct/Procedure – Probation Officer 1 did not allow the complainant to get properly dressed prior to entering her residence.

Board Finding: Not Sustained

Rationale: Probation Officer 1 advised the complainant that she could return to her bedroom and dress in something she felt more comfortable in but she would need to leave the door open. Probation Officer 2 confirmed this account. However, the complainant denies being given an opportunity to put on a robe while the probation officers were in her residence. There was insufficient evidence to either prove or disprove the allegation.

11-104

1. Misconduct/Procedure – Deputy 4 kept the complainant in solitary confinement for extended periods of time between August 27-November 2, 2010.

Board Finding: Summary Dismissal

Rationale: Complainants are advised of the following upon submittal of a signed complaint: "As a complainant, you are obligated to cooperate fully in the investigation of your case. Please be advised that cases may be submitted to the Review Board for closure for failing to maintain a current mailing address..." The complainant failed to maintain contact with CLERB after release from local custody and current whereabouts are unknown.

2. Misconduct/Procedure – Deputy 4 failed to maintain sanitary conditions in the Las Colinas Detention Facility during the period August 27-November 2, 2010.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure - Deputy 4 used and replaced some of the complainant's personal property while she was incarcerated in April 2011.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Procedure - Deputy 4 failed to properly document personal property confiscated upon arrest on or about July 8, 2011 resulting in the loss of property.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Illegal Search and Seizure – Deputy 1 inappropriately touched the complainant during a pat down search on August 8, 2011 by grabbing her in a sexual way.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Discourtesy – Deputy 3 made inappropriate remarks while observing a pat down search on August 8, 2011.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

7. Misconduct/Procedure - Deputy 4 failed to properly document personal property confiscated upon arrest on or about August 8, 2011 resulting in the loss and substitution of property.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

8. Sexual Harassment – Deputy 2 made inappropriate sexual comments toward the complainant.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.
