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County of San Diego
CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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AMENDMENT TO REGULAR MEETING AGENDA

TUESDAY, SEPTEMBER 9, 2014, 5:30 P.M.

San Diego County Administration Center

1600 Pacific Highway, Room 302/303, San Diego, 92101

(Free parking is available in the underground parking garage, on the south side of Ash Street, in the 3-hour public parking spaces.)

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 555 W Beech Street, Ste. 505, San Diego, CA.

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).

| 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. |

AMENDED CASES FOR SUMMARY HEARING (5)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

13-063

1. Misconduct/Procedure – Deputy 1 left a door open between housing units, which allowed inmates to enter a protective custody unit and attack another inmate.

Recommended Finding: Not Sustained

Rationale: The complainant stated Deputy 1 intentionally left the door open between two George Bailey Detention Facility (GBDF) housing modules after he passed through the door during a security check. Shortly after the security check was completed, two inmates from the adjacent housing module were able to enter the complainant's module and assault unidentified inmates before both modules were locked down. Deputy 1 stated he closed the crossover door between housing modules, and the Tower Deputy reported that Control Panel Indicator Lights on the panel turned green, which indicated the door closed properly. Video surveillance captured the incident; however, because the video was grainy and of poor quality, it could not be determined which inmates were involved, or the method inmates used to breach the door and move between the modules. GBDF Maintenance was notified of the security breach and investigated the crossover doors. There were no reports of mechanical failures to the door. There was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Discourtesy – Deputy 2 told the complainant, “I hope you die,” or used words to that effect.

Recommended Finding: ~~Not Sustained~~ Sustained

Rationale: The complainant stated Deputy 2 approached him without provocation, and made a statement such as, “I hope you die.” Deputy 2 acknowledged making such a statement; however, he indicated the statement was made in a humorous manner and tone. Detentions personnel reportedly use humor with the inmates as a means to develop rapport and a working relationship. ~~There is dispute over the context and the manner in which the statement was delivered. Absent an audio recording of Deputy 2's statement, the context and tone cannot be ascertained, and therefore it cannot be determined whether or not this statement rises to the level of a discourtesy.~~ However, Department Procedure 2.22, Courtesy, requires Deputies to be tactful and not use coarse, violent, or insolent language in the performance of their duties. The evidence supported the allegation and the conduct and was not justified.

13-066

1. Criminal Conduct – Deputy 2 “forged” an illegal Arrest Warrant.

Recommended Finding: ~~Unfounded~~ Summary Dismissal

Rationale: The complainant said Deputy 2 created a false warrant which resulted in his arrest. The complainant and aggrieved were present in San Diego Superior Court at a Postrelease Community Supervision Revocation Hearing, and the defendant's Probation Officer requested that the Courtroom Clerk check to see if the complainant had any wants/warrants. The warrant check revealed a 2012 warrant abstract initiated by Vista Superior Court, and the Court Clerk relayed the information to Deputy 2, who then passed it to Deputy 7. Further review of the warrant showed that the warrant had been posted; however, it had not been activated because the complainant had appeared in the matter. ~~The evidence showed that Deputy 2 did not prepare an illegal arrest warrant. The investigation revealed that the function of warrant data entry is normally performed by clerks who are non-sworn personnel, over whom CLERB has no jurisdiction. CLERB lacks authority to investigate this complaint due to the following CLERB Rules & Regulations: Section 4: Authority, Jurisdiction, Duties and Responsibilities of Review Board. 4.1, Citizen Complaints, Authority.~~

2. Excessive Force – Deputies 3, 4, 6, and 7 used excessive force to take the complainant into custody.

Recommended Finding: Action Justified

Rationale: The complainant said a Deputy contacted him and told him to turn around because he was under arrest. When the complainant asked why he was being arrested, Deputies used force to take him into custody. Deputy 7 had been provided information which indicated the complainant may have been the subject of an arrest warrant, and attempted to detain him to investigate. Video surveillance showed the complainant backed

away as Deputy 7 approached and actively resisted the deputy's contact. Deputies 3, 4, 6, and 7 utilized Department-approved verbal commands, empty hand control, control hold, knee strikes, and takedown techniques, to gain compliance and overcome the complainant's resistance. The evidence showed that force was used, but was lawful, justified and proper.

3. False Arrest – Deputy 7 arrested the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated Deputy 7 arrested him based on an inaccurate arrest warrant. Deputy 7 was notified by Deputy 2 that the complainant may have had a warrant for his arrest. Deputy 7 attempted to detain the complainant to investigate the warrant abstract provided by the Courtroom Clerk; the complainant resisted the Deputy's efforts, resulting in a use of force. Subsequent investigation revealed that the arrest warrant had been filed, but had never been activated. Deputy 7 did not arrest the complainant because of the arrest warrant; the arrest was effected because the complainant resisted contact and was cited for violation of Penal Code § 148(a)(1), Obstructing/Resisting a Peace Officer. The evidence showed that an arrest did occur, but was lawful, justified and proper.

4. Excessive Force – Deputy 5 used force in moving the aggrieved.

Recommended Finding: Not Sustained

Rationale: The aggrieved said that she sustained bruises from the force used by Deputy 5 during the altercation in the Courthouse corridor. Deputy 5 denied using any force during his contact with the aggrieved. Video surveillance showed Deputy 5 in close contact with the aggrieved as he attempted to keep her from approaching deputies trying to take her son into custody. Deputy 5 moved from side-to-side with his arms spread wide to prevent the aggrieved from contacting the complainant or the deputies. Deputy 5 steered the complainant toward a corridor wall, out of camera range for approximately 4 seconds, and his actions could not be confirmed. There was insufficient evidence to prove or disprove the allegation.

5. Misconduct/Procedure – Deputy 1 demanded that the aggrieved delete photographic evidence from her cell phone.

Recommended Finding: Action Justified

Rationale: The aggrieved stated she was approached by a deputy and told she must delete a photograph from her cell phone which had been taken in the Courthouse. Deputy 1 acknowledged he directed the aggrieved to delete a photograph taken in the Courthouse from her cell phone. General Order of the Presiding Department 010213-03, prohibits photography in any Superior Court of California, County of San Diego Courthouse facilities (including lobbies and hallways), unless authorized by a judicial officer or in specifically designated areas. Violation of the General Order may result in a citation for contempt, confiscation of the personal electronic devices, and/or an order imposing monetary or other sanctions. The aggrieved did not have authority to take photographs in the Courthouse, and Deputy 1 directed the aggrieved to delete the photograph rather than confiscate the telephone. The evidence showed that the act did occur, but was lawful, justified and proper.

13-067

1. Misconduct/Procedure – Deputy 3 assigned the complainant to a top bunk contrary to medical orders.

Recommended Finding: ~~Not Sustained~~ Sustained

Rationale: The complainant said he was assigned to a top bunk contrary to medical orders. Medical record review noted a Lower Bunk order, however, that same order did not appear in the Jail Information Management System (JIMS) Hazards & Instructions available to Classification and/or Housing Deputies. As such, the complainant was assigned to top bunks on more than one occasion throughout his incarceration. A review of the complainant's booking jacket did not reveal any instances where he objected to a top bunk assignment, or that he reported the lower bunk requirement to detentions personnel. ~~There was insufficient evidence to prove or disprove Deputy misconduct in designating the complainant's bunk assignment.~~ The Lower Bunk order was

properly documented in medical records, and Deputy 3 did assign the complainant to a top bunk contrary to the order. The investigation did not reveal why the medical orders were not shown in the JIMS Hazards and Instructions, and/or how to prevent this from occurring in the future; therefore, this matter has been referred to the Sheriff's Department for follow-up. The evidence supported the allegation and the act was not justified.

2. Misconduct/Procedure – Deputies 1 and 2 ~~and 3~~ failed to take action after watching the complainant fall, which resulted in injury.

Recommended Finding: Not Sustained

Rationale: The complainant said Deputies watched him fall from the top bunk and failed to take any action. Deputies 1 and 2 ~~and 3~~ reported that they heard a loud noise come from the complainant's cell as they were conducting night count at the adjacent cell. The complainant's cellmate stated that he was at the cell door and told Deputies the complainant had fallen. Deputies denied seeing the complainant fall from the top bunk, but did observe him on the cell floor when they arrived. Deputies spoke with the complainant about his foot injury, and advised him they would contact medical at the conclusion of the Night Hard Count. The complainant and his cellmate also contacted House Control to report the injury; the House Control Deputy contacted Medical and was advised they were attending an inmate injured earlier and would respond when completed. Deputy 2 ~~3~~ and Medical personnel returned to the complainant's cell approximately 34 minutes after the incident occurred, and transported the complainant for medical evaluation. There is dispute as to whether the Deputies observed the complainant fall from the top bunk, and if the injury, later determined to be a fracture dislocation of his foot, required emergency medical treatment; therefore, there was insufficient evidence to prove or disprove the allegation.

3. Misconduct/Medical – The complainant did not receive follow-up medical care after a serious injury.

Recommended Finding: Summary Dismissal

Rationale: Sheriff's medical records were reviewed and detailed the complainant's medical treatment received after his fall, as well as medical care following this incident. However, medical care and treatment are performed by non-sworn personnel over whom CLERB has no authority. Since the Review Board lacked jurisdiction, this matter was referred to the Sheriff's Department at the onset of this investigation.

13-070

1. Criminal Conduct – Deputies 1 and 2 violated the law when they failed to comply with subpoenas to appear in Superior Court in San Diego.

Recommended Finding: ~~Unfounded~~ Action Justified

Rationale: The complainant stated Deputies 1 and 2 violated the law when they failed to comply with subpoenas to appear in San Diego Superior Court, and desired the issuance of warrants for their arrest. Deputies 1 and 2 notified superiors upon receipt of the subpoenas per Department Policy and Procedure, and were advised by Sheriff Legal Advisors not to comply because the subpoenas were not valid. Court records revealed that the complainant failed to submit proper documentation and his request subsequently denied. San Diego Superior Court later confirmed the complainant had not properly completed and served a Summons, and again, the hearing was denied. No further subpoenas were issued related to this matter. The Courts determined that filing procedures had not been followed; and the evidence showed that Deputies 1 and 2 were not in violation of the law when they did not comply with the subpoenas. The Deputies were not required to be present, ~~and the alleged act did not occur;~~ the evidence showed that the alleged acts did occur, but were lawful, justified and proper.

13-071

1. Misconduct/Procedure – Deputies 1 and 2 allowed a restrained party to violate a Restraining Order and vandalize property belonging to the complainant's family.

Recommended Finding: ~~Not Sustained~~ Sustained

Rationale: The complainant stated Deputies saw the subject of a Restraining Order vandalize and access his property in violation of the Restraining Order. The Sheriff's Analysis Driven Law Enforcement (SADLE) team, were conducting a warrant search on property adjacent to the complainant's, when a restrained party in a Civil Harassment Restraining Order approached the deputies and requested assistance in serving legal documents to the complainant. The restrained party was advised to wait until the warrant service was complete and was later contacted by SADLE Deputies 1 and 2. Deputies denied they saw the restrained party vandalize the complainant's property, and reported they were unaware of a Restraining Order until the complainant and his fiancé were contacted at the residence. Once the Restraining Order was presented, Deputies 1 and 2 directed the restrained party away from the residence, and a Patrol Unit was reportedly requested to take over case processing. There were no records to indicate what, if any, Patrol Unit was assigned to take the restrained party into custody, and there was no documentation that Sheriff's Communications was requested to confirm the Restraining Order was valid. The restrained also party left the scene without further contact, and the complainant and his fiancé proceeded to a Sheriff's Station later that day and reported the incident. ~~Because of the large number of Deputies present at the warrant service, the number of arrests, and the large amount of evidence impounded, there was insufficient evidence to either prove or disprove that Deputies 1 and 2 allowed the restrained part to vandalize and access the complainant's property.~~ The investigation showed that Deputies 1 and 2 were aware that the restrained party was in violation of a Civil Harassment Restraining Order and failed to take action in accordance with Department Policy and Procedures. The evidence supported the allegation and the acts were not justified.

PATRICK A. HUNTER
Executive Officer

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