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*County of San Diego*  
**CITIZENS' LAW ENFORCEMENT REVIEW BOARD**

555 W BEECH STREET, SUITE 505, SAN DIEGO, CA 92101-2940  
TELEPHONE: (619) 238-6776 FAX: (619) 238-6775  
[www.sdcounty.ca.gov/clerb](http://www.sdcounty.ca.gov/clerb)

**REGULAR MEETING AGENDA**  
**TUESDAY, OCTOBER 14, 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.

**1. ROLL CALL**

**2. MINUTES APPROVAL**

- a) Minutes of the September 2014 Regular Meeting (*Attachment A*)

**3. PRESENTATION / TRAINING**

- a) Public Safety Realignment: Re-entry and the Community Transition Center; Dr. Geoffrey R. Twitchell, Director of Treatment, San Diego County Probation Department.

**4. EXECUTIVE OFFICER'S REPORT**

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

**5. NEW BUSINESS**

- a) November 2014 Board Meeting

-continued on next page-

**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) **Request for Reconsideration** – Pursuant to CLERB Rules & Regulations: 16.9 Reconsideration of Final Report. Upon request by the complainant, subject officer or their representatives, the Final Report may be re-opened for reconsideration by the Review Board provided that: (a) previously unknown relevant evidence is discovered which was not available to the Review Board before it issued its Final Report, and; (b) there is a reasonable likelihood the new evidence will alter the findings and recommendations contained in the Final Report.

- 14-022 / Thornton

b) **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).

- 12-110 / Victorianne (Sustained – SDSO, Deputies 1, 2, 3, and 4)
- 13-063 / Barrera (Sustained Deputy 2)
- 13-067 / Woodall (Sustained Deputy 3)
- 13-069 / Clark (Sustained Deputy 1)
- 13-071 / Griffin (Sustained Deputies 1, 2)

<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**

**13-087**

1. Misconduct Procedure – Deputy 4 kept the complainant housed in a booking cell without a mattress, blanket, and hot meals, for nearly 24 hours before sending him to a housing unit.

Recommended Finding: Action Justified

Rationale: The complainant stated he was held in San Diego Central Jail (SDCJ) booking/holding for nearly 24 hours before assignment to a housing unit. Sheriff's Department records confirmed that processing the complainant from Intake to Housing took nearly 24 hours. SDCJ processing time varies dependent upon circumstances, such as: volume of arrests, medical needs, criminal history, attempts to post bond, and housing requirements. Intake, Pre-Book, and Holding cells are designed for short term, temporary holding as individuals are processed through intake, fingerprinting, booking, medical assessment, and classification. Inmates typically transition through a number of holding cells for short periods of time prior to reaching their assigned housing unit, thus, they are not configured with bunks, and mattresses/blankets are not provided. All inmates progressing through SDCJ 1<sup>st</sup> and 2<sup>nd</sup> floor, including those returning from court, are provided only sack lunches. The complainant admittedly communicated with a bail bond company resulting in the bail bondsmen retrieving his personal property approximately 12 hours after booking; however, it could not be determined what information he communicated to Deputies relative to his attempt to bail out. The complainant's prior criminal history showed he had been housed in Protective Custody during prior incarcerations and required separation from the general population, which can cause delay in locating an appropriate housing assignment. Departmental Information Sources reported that, in some cases, processing from intake to housing may take as long as 18-24 hours. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

2. Misconduct/Harassment – Deputy 3 harassed the complainant because he filed grievances.

Recommended Finding: Not Sustained

Rationale: The complainant stated Deputy 3 harassed him when he refused to take a grievance, and blocked the complainant's view of inmate workers cleaning the module. Deputy 3 stated he declined to take the grievance, as authorized by Departmental policies, because he was preparing for night count; Deputies are not required to interrupt their assigned duties to accept grievances. Upon return to the module with inmate workers, Deputy 3 stated he attempted to retrieve the complainant's grievance, and it was not provided. The complainant said Deputy 3 blocked his view of the Dayroom after he complained that the inmate workers were not sufficiently cleaning the module, and he requested to clean the module himself; Deputy 3 stated he remained near the complainant's cell, but denied blocking the complainant's view as an act of harassment. The complainant and Deputy statements were in dispute, and there was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Procedure – Deputies 1 and 2 refused to accept grievances as required by Department Policy and Procedure.

Recommended Finding: Action Justified

Rationale: The complainant attempted to give Deputies 1 and 2 five to six grievances and they refused. Deputies 1 and 2 were conducting a security check in the housing module when the complainant attempted to slide the grievances under his door. Deputies are not required to interrupt their assigned duties to accept grievances. The complainant was advised that they were not collecting grievances at the time, and that he could insert the grievances into the Grievance Box or they would be collected at a later time. The evidence showed the alleged conduct did occur but was lawful, justified and proper.

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**13-090**

1. Misconduct/Procedure – Deputy 4 authorized the strip search of male inmates in the presence of a female deputy.

Recommended Finding: Unfounded

Rationale: The complainant alleged that Deputy 4 supervised the laundry exchange, and allowed a female deputy to observe the strip search of male inmates. Deputy 4 acknowledged that he assisted Deputies in House 6, but denied authorizing female deputies to be present as inmates were strip searched during laundry exchange. Female deputies on duty and assigned to the facility denied being present during the laundry exchange; and,

video surveillance did not show any female deputies in the housing unit or in position to view the strip search. The evidence showed that the alleged act did not occur.

2. Misconduct/Procedure – Deputies 2, 3, and 5 were on duty and failed to stop an inmate-on-inmate assault.

Recommended Finding: Unfounded

Rationale: The complainant stated that Deputies failed to intervene in an assault that took place in the housing module. Deputies 2, 3, and 5 denied they observed the inmate-on-inmate assault, but were unsure of their location at the time that it occurred. There were no Deputies visible in module video surveillance during the brief assault, and the Control Deputy denied observing the assault in progress. The assaulted inmate later gathered his bedding and property, proceeded to the module gate, and was moved to a new housing unit after investigation. The evidence showed that the alleged act did not occur.

3. Misconduct/Discourtesy – Deputy 2 told the complainant he would provide him supplies, “If you tell me why the fag got beat up,” or words to that effect.

Recommended Finding: Not Sustained

Rationale: The complainant stated he contacted the Tower to request toilet paper and Deputy 2 responded as alleged. Deputy 2 did not recall answering an intercom call from the complainant, and stated he would never use the type of derogatory language in communications with inmates. There was insufficient evidence to prove or disprove the allegation.

4. Misconduct/Procedure – Deputy 1 took photographs while inmates were being strip searched.

Recommended Finding: Not Sustained

Rationale: The complainant stated that Deputy 1 used a camera to take photographs of inmates when they were subject to a strip search. Deputy 1 acknowledged that he had a Department camera present in the module because information had been received that there was contraband in the module. A cell search was conducted while inmates were in the dayroom and strip searched. Deputy 1 stated he pointed a Department-issued camera toward inmates, to ensure the camera was operational, but denied taking any pictures of inmates during a strip search. There was insufficient evidence to prove or disprove the allegation.

5. Misconduct/Procedure – Deputy 6 failed to respond to the complainant’s grievance.

Recommended Finding: Not Sustained

Rationale: The complainant stated he was not provided a response to a grievance pertaining to the use of a camera during a strip search. The complainant did not provide evidence demonstrating the submittal of a grievance in this matter, and a review of Sheriff’s Department records did not produce any evidence that such a grievance was submitted. There was insufficient evidence to prove or disprove the allegation.

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## **13-092**

1. Misconduct/Procedure – SDSO’s notification system for stolen vehicles is “outdated” and caused the complainant monetary hardship.

Recommended Finding: Action Justified

Rationale: The complainant reported she was unable to reach the Sheriff’s Department in a timely manner because of their “outdated and overloaded telephone system.” There was no way to pinpoint and/or verify the telephone obstacles the complainant allegedly encountered. According to Sheriff’s Communication records, Deputy 1 located the complainant’s stolen vehicle at 9:26 a.m., and Sheriff’s Dispatch promptly contacted the registered owner. After the complainant was unsuccessful in having local family members respond to retrieve the vehicle, Deputy 1 requested that the recovered vehicle be towed at 10:01 a.m., and a message was left with the complainant at 10:09 a.m. Deputy 1 was authorized to tow the vehicle based upon VC§ 22651, Circumstances Permitting Removal of Vehicle, and his conduct was lawful, justified and proper.

2. Misconduct/Procedure – SDSO contracts with a towing company who was “untruthful” and/or “jacked-up” the out-of-state complainant’s fees.

Recommended Finding: Unfounded

Rationale: The complainant said “shame on the Sheriff’s Dept. for doing business with a shady towing company that took advantage of her and jacked up her fees.” Sheriff’s Policy & Procedure, 6.34, Establishing Towing Services outlines the Department’s methods for contracting with numerous towing agencies, including the one involved in this incident. The tow company was/is monitored by the Sheriff’s Department and is in good standing. The towing company also responded to this complaint and disputed the complainant’s assertion(s) based upon their tape-recorded telephone calls. The evidence showed the towing company charged standard rates, and the acts alleged by the complainant did not occur.

3. Misconduct/Procedure – SDSO failed to timely locate the complainant’s stolen vehicle that was parked in close proximity from where it was stolen.

Recommended Finding: Action Justified

Rationale: The complainant stated the Sheriff’s Department did not make any effort at all to initially find her car that was apparently parked for several weeks, only blocks from where it was stolen. The vehicle stolen off the street at 1140 Calla Ave. in Imperial Beach on July 01, 2013, was located in the back parking lot of 1597 Satellite Blvd in San Diego on September 12, 2013; a distance of approximately 2 miles, and in a neighboring law enforcement agency’s jurisdiction. Deputy 1 recovered the vehicle after he received a License Plate Reader (LPR) hit of a stolen vehicle. The stolen vehicle was properly entered into the database in compliance with Sheriff’s Policy & Procedure, 7.7, CLETS/NCIC, Stolen Vehicle Information, and there were no violations of Sheriff’s policy.

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### **13-095**

1. Misconduct/Procedure – Deputy 2 did not call for and/or provide medical aid after the shackled complainant fell and cut his knees.

Recommended Finding: Action Justified

Rationale: The complainant said he fell onto the concrete and sustained cuts/abrasions to both knees after getting off the transportation bus. Per policy, inmates are required to be transported in leg chains. The complainant’s alleged fall did not equate to a medical emergency and the transportation deputy was not required to halt his duties, and/or seek immediate medical attention for the complainant. The complainant requested examination and was seen at Sick Call by medical personnel within three days of the reported fall; however, there was no documentation to support his injuries as described. The complainant’s subsequent request(s) and/or grievances concerning the incident, were appropriately responded to by Deputy 1. The evidence showed the alleged act or conduct was lawful, justified and proper.

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### **13-096**

1. Excessive Force – Deputies “snatched” the complainant from a 6 ft. fence resulting in a broken foot.

Recommended Finding: Action Justified

Rationale: The complainant reported, “I was snatched over a 5 foot 11 fence while being snatched over fence I broke my main bone in my heel.” The complainant scaled two fences in an attempt to flee, but while hanging from a fence said, “Ok, I give up.” Case law specifies that a suspect has a duty to submit and may not resist an arrest. Reportedly, Deputy 3 grabbed onto the complainant’s legs, and Deputy 1 grabbed his upper body to assist him to the ground for handcuffing. The complainant complained of injury and was medically evaluated and treated for a broken heel. The deputies’ actions complied with departmental policy and were lawful, justified and proper.

2. False Reporting – Deputies 1, 2, and/or 3 justified utilizing force by reporting the complainant attempted to escape, which the complainant denied.

Recommended Finding: Unfounded

Rationale: The complainant maintained that since he was not wearing shoes, he could not run from deputies. The complainant's shoeless assertion is not plausible evidence, and he did not provide anything of evidentiary value to support this allegation. Communication and Medical records, along with Deputy Reports and a digital recording of spontaneous statements by the complainant, confirmed that the complainant fled from deputies, because he "did not want to go back to jail." Deputies are authorized by law to give chase and may utilize force to capture a fleeing suspect; hands-on guidance was applied during this event. The complainant's tape-recorded statement at the time of the incident refuted his own assertion, and the evidence showed that the alleged conduct subsequently reported by the complainant did not occur.

3. Misconduct/Medical – The complainant did not receive surgery and only minimal treatment for an injury that occurred during his arrest.

Recommended Finding: Summary Dismissal

Rationale: The complainant believed that surgery should have been performed immediately, and not almost a year after his arrest. Sheriff's documents confirm the complainant wrote numerous Inmate Requests concerning his medical issues. The medical records were reviewed in their entirety and corroborated that the complainant received responses to his inquiries and furthermore, that he was seen by medical staff on a regular basis. Medical staff and care reside outside CLERB's jurisdiction, and this matter was deferred to the Sheriff's Department upon notification of this complaint.

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**13-103**

1. Illegal Search or Seizure – Deputy 1 confiscated the complainant's inoperable firearm.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 confiscated what was reported to be a 115 year old, antique gun that was inoperable, but considered a family heirloom. The complainant stated that he was in the process of restoring what he termed a "Non gun," when deputies took it without permission, while in his aunt's home on a medical emergency. Deputy 1 reported that while responding to a call for service, he was invited into the residence by the homeowner to check on the welfare of the complainant, who was observed to be intoxicated and agitated at the time of the call. Deputy 1 observed a firearm in clear view on top of a living room table, and when questioned, the complainant was too intoxicated to give a statement. The complainant later stated in a call to Sheriff's Dispatch that he was not the owner of the gun; that the family owned the gun. The complainant was transported to the hospital for his medical condition, at which time the complainant's aunt and listed owner of the gun, asked Deputy 1 to take the gun because she feared that her nephew – the complainant- would use it to hurt himself. She reported that the complainant was "always drunk and unpredictable," and feared for his and her safety. Deputy 1 received the gun from the complainant's aunt, documenting it as Found Property and placed the gun into Sheriff's Department evidence for future disposition. Deputy 1 acted within policy, and his actions were lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 confiscated the complainant's inoperable firearm without providing a receipt.

Recommended Finding: Action Justified

Rationale: The complainant stated that Deputy 1 failed to provide a receipt for confiscated property. Deputy 1 was conducting a welfare check on the complainant, when he observed a firearm in clear view on top of a living room table. The complainant's aunt, the listed owner of the firearm, asked him to remove the gun from her residence because she feared for her and her nephew's safety. Deputy 1 received the property from the owner and did not provide a receipt for the firearm because the gun was not being seized, but voluntarily relinquished. The complainant's aunt was provided a business card and Case Number to facilitate gaining custody of the gun, should she desire. The actions of Deputy 1 were lawful, justified and proper.

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**13-104**

1. Misconduct/Procedure – Deputy 4 did not inform the complainant that he had been written up for a Rules Violation until 5 days after the infraction.

Recommended Finding: Action Justified

Rationale: The complainant reported that he committed an infraction on 10/17/2013, but was not informed about the Rules Violation until 5 days later. Deputy 4 advised the complainant of the Rule Violation and his Disciplinary Hearing Rights on 10/21/2013 – 4 days after the occurrence of the rule violation – and provided him a copy of the write up. Local policies and procedures do not define a reasonable time frame to deliver notice of rule violations to inmates. However, Penal Code § 2932, Loss of Credit, and California Code of Regulations Title 15, Rules and Regulations of Adult Institutions, Sections 3315 & 3320, state that with serious rule violations, the charges, “shall normally be provided to the inmate within 15 days from the date the information leading to the charges is discovered by staff.” Deputy 4 informed the complainant of his major rule violation within the statutory time frame allowed, thus his actions were lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 ignored the complainant’s request to speak to a Sergeant.

Recommended Finding: Summary Dismissal

Rationale: Deputy 1 retired January 22, 2014 and is no longer a member of the Sheriff’s Department. The Review Board 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.

3. Excessive Force – Deputy 1 “grabbed and twisted” the complainant’s arm that protruded out of the cell door’s food flap.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #2

4. Misconduct/Intimidation – Deputy 1 threatened to break the complainant’s arm.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #2

5. Excessive Force – Deputy 3 attempted to drive stun the complainant.

Recommended Finding: Action Justified

Rationale: The complainant alleged that during a struggle with detentions deputies over control of his cell door food flap, Deputy 3 attempted to drive stun him with a Taser. The complainant had seized control over the food flap by protruding his arms through the opening, which posed a significant security risk, as deputies walking by could be grabbed and/or stabbed by the complainant. Despite several warnings, the complainant refused to pull his arms back in. Deputy 1 deployed several charges of OC Spray onto the complainant’s arms and into his cell in an effort to gain control of the food flap, but his attempts were ineffective. Deputy 3 reported that he feared for his and Deputy 1’s safety, so he activated his Taser and advanced on the complainant intending to drive-stun his arms to gain control of the food flap. As Deputy 3 approached the cell door, the complainant immediately removed his arms from the flap and deputies were able to gain control of and secure the food portal. Deputy 3 never made contact with the complainant with the Taser, as its display and sound proved to be effective. The act did occur, but was lawful, justified and proper.

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*End of Report*