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# County of San Diego

## CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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### REGULAR MEETING AGENDA TUESDAY, MAY 12, 2015, 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 March and April 2015 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. NEW BUSINESS

- a) Status of Sheriff's Department use of body-worn cameras.

-continued on next page-

**6. UNFINISHED BUSINESS**

- a) March 2015 meeting minutes.

**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) **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).
  - 14-023 / Hagins (Misconduct/Procedure – Sustained, PO 1)
  - 15-006 / Vega (Misconduct/Discourtesy x3 – Sustained Deputy 1)

<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**

**13-025**

1. Death Investigation/Overdose – Deputies 1 and 2 found the decedent non-responsive as the dorm was cleared for inmate breakfast.

Recommended Finding: Action Justified

Rationale: There was no complaint of wrongdoing, and a review was done in accordance with CLERB Rules & Regulations. Upon discovery of the non-responsive inmate, Deputies 1 and 2 requested medical assistance, and life-saving measures were initiated. Paramedics arrived and transported the decedent to the hospital, where he was pronounced deceased two days later. The Medical Examiner determined that the decedent died of resuscitated arrest due to acute morphine and meperidine intoxication, with contributing factors of hypertensive

cardiovascular disease and obesity, and the manner of death was determined to be accidental. The decedent's well-being was observed during security checks and inmate counts prior to his discovery. Sheriff's investigations did not determine how or from whom the decedent obtained the contraband; however, the Sheriff's Department reviewed and updated a number of Department/Facility Policies and Procedures to prevent contraband from entering detention facilities, and to ensure inmate safety. Updated procedures included: Social Visits, Security Checks of Housing Units and Holding Cells, and Inmate Count Procedures. The evidence showed the actions taken by Deputies 1 and 2 were lawful, justified and proper.

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## 14-037

1. Misconduct/Procedure – Deputy 2 housed the complainant “on the main line.”

Recommended Finding: Action Justified

Rationale: The complainant alleged that he was improperly housed in general population, and as a result, he was attacked by two inmates, because of the elder abuse charges against him. The complainant was initially classified with a level 2 security designation, corresponding to a “Minimum” security risk. While in custody, the complainant was rebooked on the additional charges of 211 PC, Robbery; and 245(A)(4) PC, Assault W/Force: Great Bodily Injury Likely, requiring the complainant to be re-classified at a level 4 security designation. A level 4 classification corresponds to a “High Medium” security risk, where the inmate has a current assaultive charge or a prior assaultive or escape history. Detentions Green Sheet Policy R.11.G, Inmate Facility Assignment Criteria, requires that inmates with levels 4 and 5 security designations are only housed together in houses 4, 5 & 6; the complainant was housed in the lowest of these housing options. Moreover, there were no administrative alerts, hazards and instructions, or special conditions documented in the Jail Information Management System (JIM's) that indicated a need for special housing consideration. The complainant did not request Protective Custody placement prior to being attacked, and did not automatically qualify for placement in Protective Custody, based on his elder abuse charges. The complainant was appropriately designated a General Population Inmate and cleared for mainline housing. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

2. Excessive Force – Deputy 3 beat the complainant on the back of his head, while unidentified deputies held him down.

Recommended Finding: Summary Dismissal

Rationale: The complainant alleged that a specific deputy beat him on the back of his head, while unidentified deputies held him down. This same deputy reportedly stated to the complainant, “I need you to kill yourself,” and “You have to kill yourself,” or used words to that effect. A review of the Sheriff's Sworn & Professional Staff Roster failed to produce the name of the deputy specifically identified by the complainant. When informed, the complainant stated that the deputy's name could have been an alternate name, or a name that started with the letter “M”. The complainant also failed to identify a specific date and location of this alleged incident; however, a review of the complainant's history and medical records from the general time frames identified, did not reveal any incident involving use of force by Sheriff's deputies. CLERB Rules and Regulations: Section 15(c), Summary Dismissal, provide for the summary dismissal of complaints or allegations that lack the merit to sustain a finding based on the facts. This allegation cannot be properly investigated without an identified deputy, nor specific dates and locations by which deputies can be located and identified.

3. Misconduct/Discourtesy – Deputy 3 stated to the complainant, “I need you to kill yourself,” and “You have to kill yourself,” or used words to that effect.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #2

4. Misconduct/Discourtesy – Deputy 1 taunted the complainant and repeatedly asked him if he was gay.

Recommended Finding: Not Sustained

Rationale: The complainant reported that Deputy 1 taunted him, and repeatedly questioned him regarding his sexual orientation. Deputy 1 recalled contacting the complainant on two occasions: while in a Sobering Cell, and while being placed in a Safety Cell for suicidal actions. Deputy 1 was questioned regarding the allegations against him, and denied that he taunted the complainant or questioned him about his sexual orientation during his contacts with him. There was no audio recording of these alleged remarks, leaving insufficient evidence to prove or disprove the allegation.

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**14-045**

1. Illegal Search & Seizure - Deputies 1-11 circumvented the complainant's locked driveway gate, entered without a warrant, and searched the property without permission.

Recommended Finding: Action Justified

Rationale: The complainant reported that deputies entered and searched her two acre property, including garages and other buildings, without permission. Sheriff's Communications records documented that deputies escorted Child Welfare Services (CWS) workers onto the complainant's property three different times in May 2014. According to deputies and witnesses that were present, on two occasions the gate to the property was unlocked and provided unimpeded access to the property. On the third visit, CWS was in possession of a warrant, which provided lawful access to the locked property. Deputies reported that they conducted only cursory protective sweeps, as permitted by law. The evidence showed the alleged conduct that occurred was lawful, justified and proper.

2. Misconduct/Procedure - Deputies took pictures of family member's tattoos and their profiles.

Recommended Finding: Not Sustained

Rationale: The complainant said that a deputy took pictures of four males, including their tattoos and both front and side profiles, as well as pictures of vehicles. Sheriff's Communication records documented that Field Interviews were conducted on scene, however, the Sheriff's department was subsequently unable to produce the associated documentation. By law, field interviews may only be conducted for the purpose of obtaining information, or photographs, if there is consent, or a specific basis for believing the person is involved in criminal activity. Two of the four identified males, acknowledged that pictures were taken, and one indicated consent was provided. Other witnesses did not respond to CLERB's request for information. Because the investigation could not determine who took the photographs, and whether all of the field interviews were conducted with consent, there was insufficient evidence to either prove or disprove this allegation.

3. Misconduct/Procedure – Deputies 1-11 went to the complainant's property three different times for a “bogus” CPS report.

Recommended Finding: Action Justified

Rationale: The complainant objected to the number of deputies that responded to her property. Sheriff's Communication records confirmed that Child Welfare Services (CWS) requested law enforcement assistance to preserve the peace on three separate occasions. Informants and complaints of child abuse are confidential and unavailable for CLERB review; however, the complainant confirmed that minor children were placed into her custody. Deputies responded to keep the peace, and because there was a documented history of law enforcement activity on this property. The evidence showed that the deputies' response to CWS calls for assistance, were lawful, justified and proper, and that the number of deputies that responded to each call (3, 7, & 5) was appropriate.

4. Misconduct/Procedure – The Sheriff's Department is holding/using illegally obtained evidence.

Recommended Finding: Not Sustained

Rationale: The complainant requested that all pictures and information obtained illegally, be returned to her family. The Sheriff's Department denied the collection, or holding, of any evidence from the complainant's

property. Deputies acknowledged that photographs were taken for Field Interview Reports, and for referral to County Code Compliance; however, the investigation could not produce those records. There was insufficient evidence to either prove or disprove this allegation.

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#### **14-091**

1. False Reporting – PO 1 reported to the Court that a probationer only attended two (2) treatment classes when he had actually been to six (6).

Recommended Finding: Action Justified

Rationale: The complainant, parent to an adult probationer, reported that PO 1 never offered drug treatment or provided test results, and that her son was only given credit for attending two classes. Probationers agree to conditions set by the Courts, in exchange for their freedom, and violations of those specified conditions will effect an arrest. The probationer failed to attend self-help groups, and did not comply with GPS charging requirements. When randomly drug tested, the probationer tested positive for marijuana or methamphetamine on 6 separate occasions. Finally, a service provider reported that the probationer attended only one treatment session (4/29/14,) and his absences were the cause of his termination from that program. PO 1 actually gave the probationer credit for attending 2 classes because he was at class the day of his arrest after already being terminated from the program. The evidence showed that the probationer’s documented termination from treatment for unexcused absences, was lawful, justified and proper, and the Probation Report accurately reflected the above stated information.

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#### **14-111**

1. Criminal Conduct – PO 1 “grabbed and squeezed” the complainant’s penis while conducting a search of his person.

Recommended Finding: Unfounded

Rationale: During a face to face meeting with his probation officer, the complainant alleged that PO 1 intentionally “grabbed and squeezed” his penis while conducting a 4<sup>th</sup> waiver search of his person. The complainant is formally supervised by the San Diego County Probation Department, assigned to the Adult Field Services, High Risk Sex Offender Unit. As such, he is subject to a 4<sup>th</sup> waiver search provision that allows his probation officer to search his home, vehicle, personal property and person, at any time or for any reason. PO 1 denied that she grabbed the complainant’s penis while searching him, detailing the search method utilized. PO 1’s supervisor was present, observed the search, and denied that PO 1 conducted the search in an inappropriate manner. The supervisor further stated that PO 1 conducted herself with the utmost professionalism throughout the appointment, and reported no concerns with PO 1’s search techniques or her interactions with the complainant. Given the complainant’s significant credibility issues resulting from his unsupported allegations against PO 1 and her supervisor, as well as his implausible excuses for his probation violations, the preponderance of evidence showed that the alleged act did not occur.

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#### **15-014**

1. False Reporting – PO 1 submitted a false report to the court, detailing the complainant’s crime and confession that were untrue.

Recommended Finding: Action Justified

Rationale: The complainant said that PO 1 never asked about the crime during their interview, and that because he chose to go to trial, his PO said he was looking at an extended period of incarceration (18 years). PO 1 verified the accuracy of evidence in the report, and denied any false information. After the complainant was found guilty at trial, PO 1 conducted a Pre-sentence interview, specifically for the purpose of gathering a factual, unbiased, accurate and complete report to support the recommendation offered to the Court. The PO did

not discount the effect that childhood trauma had on the complainant, but also noted that he failed to take advantage of services/assistance to remain law abiding. The complainant was ineligible for a grant of probation due to the charges for which he was being sentenced, and also his extended criminal history over a period of 30 years. The Penal Code supported the recommended sentence, and the complainant was found not to be credible with this complaint. The evidence showed PO 1's report was truthful and accurate, and the resulting sentencing recommendation was lawful, justified and proper.

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### **15-033**

1. Misconduct/Discourtesy – Deputy 1 was rude and nasty, and told the complainant, “If I lived next door to you, I would have a problem too.”

Recommended Finding: Action Justified

Rationale: The complainant called 911, but requested that deputies not respond to her home, so Deputy 1 contacted the complainant by telephone. The complainant said she soon realized that this was the same deputy she had spoken to previously, and reported that she was rude and condescending both times. Deputy 1 was dispatched for a trespasser call. Deputy 1 and a ride-along (independent witness,) both disputed that the deputy was rude or nasty, which are subjective descriptors. Information presented by all involved parties did not constitute a violation of Sheriff's Policy & Procedure 2.22, Courtesy.

2. Misconduct/Procedure – Deputy 1 refused to take a report or do anything when neighbors racially and religiously harassed the complainant.

Recommended Finding: Action Justified

Rationale: The complainant said her neighbors have been harassing her and that Deputy 1 made it clear to her, that she was in full support of the neighbors harassment. The complainant said she videotaped an armed white male trespass onto her property, but failed to produce any evidence in support of her assertion. Deputy 1 said she attempted to explain that propaganda posted by the complainant on her home, was a violation of HOA rules, and when they hired private security to remove the material, it was a civil issue. Deputy 1 further explained that due to the complainant's uncooperative behavior and lack of information, she was unable to complete a crime report, because there was no evidence that a crime had actually occurred. The evidence showed that Deputy 1 response to this incident was lawful, justified and proper.

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*End of Report*