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County of San Diego

CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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REGULAR MEETING AGENDA

TUESDAY, OCTOBER 13, 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 September 2015 Regular Meeting (*Attachment A*)

3. PRESENTATION / TRAINING

- a) Sheriff's Department Interim Policy & Procedure: Body Worn Cameras (BWC) Field Test/Evaluation, by Lieutenant George Calderon.
- b) NACOLE Debrief, Chair, Loren Vinson and Executive Officer, Patrick Hunter.

4. EXECUTIVE OFFICER'S REPORT

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

-continued on next page-

5. NEW BUSINESS

- a) Body Worn Cameras
- b) Allegations/Findings

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) **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).
 - 14-073 / Orozco (Sustained – Deputy 3)
 - 14-074 / Foster (Sustained – Deputy 3)
 - 14-075 / James (Sustained – Deputy 6 & the Sheriff’s Department)
 - 14-072 / Giles

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 (9)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

13-075

1. Death Investigation/Overdose – Deputy 1 discovered the decedent unresponsive in his cell after methamphetamine was confiscated from him during the booking process.

Recommended Finding: Action Justified

Rationale: The decedent was lawfully arrested on an outstanding warrant and processed for incarceration. During the booking process, deputies discovered and impounded methamphetamine that was in the complainant's possession. Medical personnel evaluated the inmate in accordance with screening procedures, at which time he denied using any street drugs and was cleared for booking. Inmate witnesses reported that the complainant exhibited signs of medical distress, but neither they nor the complainant alerted deputies and/or medical personnel. During a security check, Deputy 1 found the decedent face down and unresponsive in his cell. Emergency medical procedures were initiated in accordance with policy until death was pronounced by a doctor. An autopsy attributed Inge's death to "methamphetamine toxicity, from acute and chronic substance abuse." The investigation determined that deputies conducted the appropriate checks and did not violate any policies; the actions taken were lawful, justified and proper.

14-099

1. Misconduct/Procedure – Deputy 1 "demanded" that the complainant leave school property without the authority of a court order.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 "demanded" that he leave school property without the authority of a court order. There were contentious relations between the complainant and the school district over placement options involving the complainant's child. The complainant had engaged in offensive and threatening behavior toward school personnel, resulting in school officials and staff members fearing for their safety. The school district responded through their legal counsel, sending a cease and desist letter to the complainant, instructing him, in part, to cease harassing, intimidating and/or threatening district staff members, and to stay away from all district facilities, campuses, and employees. In violation of this directive, the complainant arrived on school campus and confronted the school principal in a threatening manner. Deputy 1 was contacted by the school principal and instructed to ask the complainant to leave school property, which he did. Deputy 1 acted within policy in carrying out a lawful order, and his actions were lawful, justified and proper.

2. Misconduct/Intimidation – Deputy 1 "intimidated" the complainant while forcing him to leave school property.

Recommended Finding: Unfounded

Rationale: The complainant alleged that Deputy 1 "intimidated" him while forcing him to leave school property. Deputy 1 denied that he intimidated or attempted to intimidate the complainant when, in response to a school administrator's request, he asked the complainant to leave the school campus. The complainant visited CLERB's office several months after this incident to clarify his complaint issues, and at that time, recanted his allegation of being intimidated by Deputy 1. The evidence, namely the complainant's retraction of this allegation, showed that the conduct did not occur.

3. Misconduct/Procedure – Deputy 1 prevented the complainant's wife from entering the school's campus.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 prevented his wife from entering the school's campus. The complainant and his wife arrived on school campus in violation of the district's directive to contact their attorneys for all contacts with the district or school. The complainant's wife began yelling and became argumentative with school administrators, causing concern for the safety of school staff. Deputy 1 was called to intervene, and reported that he did not allow the complainant's wife to enter school grounds while she was agitated and disruptive. Once calmed however, and with a promise from her not to create further disturbance at

the school, Deputy 1 allowed her to enter. Deputy 1 acted within his duty to ensure a safe workplace for school staff, and his actions were lawful, justified and proper.

14-100

1. False Arrest – PO 1 “violated” the aggrieved for having trace amounts of marijuana in his system, and failing to attend a program as directed.

Recommended Finding: Action Justified

Rationale: The complainant alleged that PO 1 “violated” the aggrieved for having trace amounts of marijuana in his system and failing to attend a program as directed. The aggrieved was released to Post Release Community Supervision (PRCS) pursuant to Penal Code section 3450, Post Release Community Supervision Act of 2011, and was subject to community supervision to be provided by the San Diego County Probation Department. General and special conditions of release were outlined and explained to the aggrieved during his first office visit with PO 1. The aggrieved understood these conditions, and was reported to have been receptive of all outlined conditions. Two significant conditions of the aggrieved’s probation required that he not possess or use any controlled substances without a valid prescription, and that he attend and successfully complete a program of therapy and substance abuse counseling. The aggrieved failed to comply with these probation conditions, testing positive for marijuana ingestion on multiple occasions, and failing to complete prescribed therapeutic programs. The aggrieved violated probation, and pursuant to Penal Code Section 3455, Post Release Community Supervision; Revocation, probation was revoked and a warrant was issued for his re-arrest. The evidence showed that the act did occur, but was lawful, justified and proper.

2. Misconduct/Procedure – PO 1 failed to assist the aggrieved in securing a medicinal marijuana prescription as promised.

Recommended Finding: Unfounded

Rationale: The mother of the aggrieved alleged that PO 1 stated that he would assist the aggrieved in obtaining a medical marijuana prescription, but failed to do so. PO 1 denied promising the aggrieved or any other relatives that he would assist in securing a medical marijuana card. Probation Department records documented the mother’s query regarding the process to obtain a medical marijuana prescription, and PO 1 reported that he provided the aggrieved and his mother a packet of information, detailing the process for acquiring a medical marijuana card from the County of San Diego. PO 1 was under no obligation to assist with this transaction, but did provide an information packet to the aggrieved and his mother regarding the process. The evidence showed that the alleged act or conduct did not occur.

3. Misconduct/Procedure – PO 1 failed to provide an alternate rehabilitation program for the aggrieved, when informed that the aggrieved was a victim of an employee at the referred program.

Recommended Finding: Unfounded

Rationale: The complainant alleged that PO 1 failed to provide an alternate rehabilitation program for the aggrieved, when informed that the aggrieved was a victim of an employee at the program to which he was referred. PO 1 stated that he attempted to refer the aggrieved to alternate programs, but was unable because the aggrieved failed to report to him as required, and his whereabouts were unknown. Additionally, the aggrieved had previously selected a treatment program on his own, and had the option of doing that again. Probation Department records documented the aggrieved’s enrollment in an alternative program, and also documented his discharge from the program 3 months later for non-compliance. Programs were offered to the aggrieved, and the evidence showed that the alleged act did not occur.

14-105

1. Misconduct/Procedure – Deputy 5 threw the complainant’s property and broke his glasses.

Recommended Finding: Not Sustained

Rationale: The complainant reported that Deputy 5 threw his commissary bag, causing damage to his property. Deputy 5 reported that he ‘dropped the bag’ a short distance in front of the complainant’s cell door during commissary delivery. There was no video evidence to show how Deputy 5 handled the complainant’s property, therefore, there was insufficient evidence to prove or disprove the allegation.

2. Misconduct/Procedure – Deputy 5 refused to accept and/or sign the complainant’s grievance.

Recommended Finding: Action Justified

Rationale: The complainant stated that he attempted to file a grievance concerning his broken glasses, but Deputy 5 refused to accept and/or sign the grievance. Detentions Policies & Procedure N.1, Grievance Procedures, states that inmates may submit written grievances, “at any time when they are in a place they have permission to be,” and, “absent exigent circumstances, any deputy or other staff member who is presented with a written grievance will accept it.” Deputy 5 reported that he did refuse to accept the grievance at that time, because deputies’ attention must remain focused on the laundry exchange. Deputy 5 said the complainant was told he could place the grievance in the grievance box, or it would be accepted at a later time. A Department Information Source confirmed that deputies are not required to handle requests or grievances during laundry exchange as a matter of officer safety. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

3. Excessive Force – Deputies 1, 3, 4, 5, 6, and 7 used force to include a chokehold, and blows to the complainant’s face, neck, back and legs.

Recommended Finding: Not Sustained

Rationale: The complainant stated that deputies put him in a chokehold, and then punched him in the face, neck, back and legs, causing him to lose consciousness. Deputy 5 reported that the complainant had become disruptive in the housing module, which necessitated his removal to the Rec Yard to separate him from other inmates. Video surveillance showed that the contact between the complainant and Deputy 5 had attracted the attention of inmates and deputies, which ultimately led to the complainant being escorted to the Rec Yard. Deputy 5 stated that the complainant disobeyed orders when he returned to his cell to retrieve a property bag, and then upon entering the Rec Yard, he again ignored orders to place the property bag at the door. The complainant resisted Deputy 5’s attempt to take the property bag, and avoided Deputy 5’s attempt to pull him forward, causing Deputy 5 to lose balance and fall to the floor. Deputy 1 assisted by using four fist strikes to the complainant’s face, and Deputy 3 unsuccessfully attempted a carotid restraint and used body weight to push the complainant to the ground. Deputy 4 placed his knee on the complainant’s shoulder and used his body weight, Deputy 6 used hand controls and body weight, and Deputy 7 used hand controls and elbow strikes to the complainant’s left thigh. Medical records indicated the complainant had abrasions and contusions, but there was no reported loss of consciousness during the use of force. There was no video surveillance of the use of force incident, therefore, there was insufficient evidence to prove or disprove whether the force used was reasonable and necessary.

4. Misconduct/Procedure – Deputy 2 conducted a “biased” investigation.

Recommended Finding: Unfounded

Rationale: The complainant stated that Deputy 2 conducted a biased investigation because he did not interview all parties. Deputy 2 stated that he interviewed the complainant, Deputy 5, and a Sheriff’s Department Senior Storekeeper. All other deputies involved documented their use of force in accordance with Detentions Policies and Procedures I.89, Use of Force, and Deputy 2 considered those reports during the course of his investigation.

5. Criminal Conduct – Unidentified deputies tampered with surveillance video.

Recommended Finding: Unfounded

Rationale: The complainant stated that unidentified deputies tampered with and/or altered surveillance video of a use of force incident. There was no video evidence of the use of force because the camera in the Rec Yard was inoperable prior to the incident. County Electronics Security and Systems Technician personnel replaced the

camera six weeks after the incident, but did not distinguish the period of time the camera was inoperable. Sheriff's Department review of the Rec Yard camera recordings determined that there had been no recorded activity in the Rec Yard for approximately two months.

14-114

1. Misconduct/Procedure – Deputy 2 assigned the complainant a top bunk when he had a medical order for a lower bunk.

Recommended Finding: Sustained

Rationale: The complainant said Deputy 2 assigned him to a top bunk contrary to medical orders, and he later sustained injury when he fell from the top bunk. Sheriff's Department records showed that medical personnel properly documented a lower bunk order in the complainant's Jail Information Management Systems (JIMS) record, but he was still reassigned to a top bunk by Deputy 2 in violation of the order. The evidence supported the allegation, and the act was not justified.

2. Misconduct/Procedure – Deputy 1 failed to ensure that an incident was properly documented.

Recommended Finding: Sustained

Rationale: Detentions Policies and Procedures Section F.5, Inmate Incident Report (JIMS), requires the proper documentation of inmate injuries and medical transfers, and Section F.9, Major Incident Documentation, further directs the Watch Commander to ensure that all necessary reports are written and processed. Sheriff's Department records confirmed that the complainant was injured after a fall from a top bunk, and subsequently transferred to a local hospital for treatment; however, there the required incident reports to document the fall from the top bunk, or the medical transfer to a local hospital were not prepared. Deputy 1 did not recall the incident, but did acknowledge the responsibility to ensure the proper documentation of the incident/emergency. The evidence supported the allegation, and the conduct was not justified.

3. Misconduct/Medical – Sheriff's Medical did not follow the medication regime prescribed by the hospital.

Recommended 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)), and the complaint was referred to the San Diego Sheriff's Department. The Review Board lacks jurisdiction.

14-115

1. Criminal Conduct - PO 1 fondled the complainant 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 "fondled his private parts" while conducting a 4th waiver search of his person. The complainant is subject to a 4th Amendment waiver search provision that allows his probation officer to search his home, vehicle, personal property and person, at any time or for any reason. Pat down searches are intrusive by nature, and PO 1 denied that he touched the complainant inappropriately while searching him, detailing the search method utilized. PO 1 stated that he conducted the pat down search per department policy, as he moved up the complainant's inner thigh toward his groin area, using the blade of his hand to feel if the complainant had any contraband in that area. A witness officer observed the search and denied that PO 1 conducted the search in an inappropriate manner, and further stated that the complainant screamed that he was being touched in the groin area, when no active search was being conducted. Given the complainant's credibility resulting from unsupported allegations, the preponderance of evidence showed that the alleged criminal conduct did not occur.

- Misconduct/Procedure – PO 2 replied, “You only have the right to go to jail,” when the complainant protested inappropriate contact by his PO.

Recommended Finding: Not Sustained

Rationale: The complainant objected to a pat down search and believed his rights had been violated, when PO 2 stated, “You only have the right to go to jail,” or words to that effect. PO 2 denied that he made any such comment. Probation Officers present did not hear PO 2 make the alleged statement. One witness officer reported he heard PO 2 tell the complainant that if he continued to refuse to submit to 4th Waiver searches of his person that he was subject to rearrest for his failure to comply. Absent independent witnesses or audio evidence, there was insufficient evidence to prove or disprove the allegation.

- Misconduct/Procedure – PO 3 failed to investigate the complainant’s verbal complaint against PO 1.

Recommended Finding: Not Sustained

Rationale: The complainant stated PO 3 failed to investigate his verbal complaint concerning PO 1’s conduct. PO 3 was not present and did not observe the incident involving the complainant and PO 1. As PO 1’s supervisor, he was advised of the incident upon his return to the office that same day, and immediately initiated discussions with all probation officers present during the search of the complainant. One week after the incident, PO 3 met with the complainant and explained the pat down search procedures, and how they might be considered intrusive by nature. PO 3 also advised the complainant that there was no evidence of any inappropriate contact or grabbing of the complainant while handcuffing or during the pat down search. Absent independent witnesses or audio evidence, there was insufficient evidence to prove or disprove the allegation.

- False Arrest – PO 1 arrested the complainant for missing a drug test, when the complainant said he had not been informed.

Recommended Finding: Action Justified

Rationale: The complainant stated that he was unaware that he needed to appear for a drug test, and PO 1 arrested him for probation violations. PO 1 confirmed that the complainant was arrested because he failed to appear for random drug testing. The complainant signed an acknowledgement of understanding, which required him to call daily to determine if he was scheduled to report for random drug testing on the following day. The complainant stated that he called as directed, but was not provided reporting information, and therefore did not report. Probation Department records confirmed that the complainant was scheduled and failed to appear for a drug test. PO 1 arrested the complainant for his failure to appear for drug testing, which was a violation of the complainant’s probation terms, and the evidence showed that the arrest was lawful, justified and proper.

- Misconduct/Retaliation – PO 1 had the complainant arrested after he caused a scene complaining about inappropriate touching.

Recommended Finding: Unfounded

Rationale: The complainant stated the PO 1 arrested him in retaliation for an earlier incident during a probation visit. The complainant had signed and acknowledged his understanding of the random drug testing procedures, and then failed to appear for testing as required. PO 1 denied that the complainant was arrested in retaliation, stating that the complainant was arrested because of his failure to appear for a random drug test, which was a violation of his probation terms. The evidence showed that the alleged act or conduct did not occur.

- Criminal Conduct - PO 1 fondled the complainant 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 “rubbed his nipples and privates,” while conducting a 4th waiver search of his person. PO 1 denied that he had any contact with the complainant on the alleged date, and Sheriff’s records documented that the complainant was incarcerated on the date in question. Given the complainant’s credibility resulting from his unsupported allegations, the preponderance of evidence showed that the alleged act did not occur.

14-118

1. Excessive Force – Deputies 1 and 2 used “Block Guns” on the complainant and other inmates, causing the complainant to suffer a concussion and persistent dizziness.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputies 1 and 2 used “Block Guns” on him and other inmates resulting in injury. The complainant and another inmate were engaged in a fight with several inmates surrounding them, when Deputies 1 and 2 were dispatched to the module to intervene. When deputies arrived on scene, they observed the complainant applying knee strikes to the motionless and defenseless body of another inmate, and ordered the two to stop fighting and lie on the ground. Surveillance video documented the complainant continuing to knee the other inmate for approximately 20 seconds after other inmates in the module dispersed and began lying on the floor. The complainant ignored the deputy’s verbal commands, necessitating the deployment of less lethal munitions in order to prevent further injury to either inmate. Less lethal specialty munitions are projectiles used to stop aggressive behavior which, if not stopped, may result in injury or death. There was no video or medical evidence to show that the complainant was struck with the less lethal munitions deployed. Detentions Policy I.89, Use of Force, allows detentions deputies to use any physical force necessary and objectively reasonable in the defense of self or others, and to overcome resistance. After providing sufficient warning to the inmate combatants, Deputies 1 and 2 utilized department approved Use of Force control compliance munitions, and their actions were lawful, justified and proper.

14-132

1. False Arrest – Deputy 1 arrested the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated that Deputy 1 arrested him based on a false arrest warrant that had not been issued prior to his arrest. Deputy 1 recognized the complainant as a felony warrant suspect and initiated contact with him. The complainant’s identity and warrant status were verified, and he was taken into custody. The evidence showed that the act did occur, but was lawful, justified and proper.

15-022

1. Misconduct/Procedure – Deputy 2 failed to inform the complainant of his charges.

Recommended Finding: Not Sustained

Rationale: The complainant stated that he was not informed of his charges while in custody. Detentions Bureau Policies and Procedures Manual 8.7, Inmate Processing, requires all inmates to be wrist banded by a deputy and advised of their charges. Deputy 2 stated that he did not notify the complainant of his charges, the amount of bail, scheduled court date, and telephone use procedures. Video surveillance confirmed that the complainant had a wristband applied at the San Diego Central Jail (SDCJ) during intake; however, there was no audio recording of the communications between Deputy 2 and the complainant. Absent an audio recording, there is insufficient evidence to prove or disprove the allegation.

2. Misconduct/Procedure – Deputy 1 demanded that the complainant provide a DNA sample prior to his release from custody.

Recommended Finding: Action Justified

Rationale: The complainant stated that he was told if he refused to provide a DNA sample, that he would not be released from custody. Persons taken into custody for felony violations of the Penal Code are subject to DNA sample collection in accordance with California Penal Code § 296(a)(2)(C)), Offenders Subject to Sample Collection, which provides for the warrantless collection of a buccal swab (inner cheek scraping) DNA sample, for every adult arrested for, or charged with, a felony. The complainant was in custody for multiple felony

counts which required the sample collection. Inmates that refuse to submit to DNA testing will be arrested and charged with Penal Code § 298.1, Refusal to Provide Specimens, Samples or Prints. Deputy 1 advised the complainant that a DNA sample was required prior to his release from SDCJ. The complainant subsequently provided the DNA sample and was released from custody. The evidence showed that the alleged acts did occur, but were lawful, justified and proper.

(CLERB Investigator's Note: The complainant filed additional allegations of excessive force, discourtesy, and procedural misconduct against an arresting agency over which CLERB has no authority. Those allegations were referred to the appropriate law enforcement and civilian oversight agencies.

End of Report