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County of San Diego

CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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REGULAR MEETING AGENDA

TUESDAY, JANUARY 12, 2016, 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. SWEARING IN OF NEW BOARD MEMBERS

- a) Courtney Chase & Kim-Thoa Hoang

2. ROLL CALL

3. MINUTES APPROVAL

- a) Minutes of the November 2015 Regular Meeting (*Attachment A*)

4. PRESENTATION / TRAINING

- a) Stops/Detentions/Arrests/Field Interview Reports/Photographs: Damon Mosler, Deputy District Attorney

5. EXECUTIVE OFFICER'S REPORT

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

-continued on next page-

6. NEW BUSINESS

- a) N/A

7. UNFINISHED BUSINESS

- a) Committee for the 2016 CLERB Executive Board

8. BOARD MEMBER COMMENTS

9. 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.

10. SHERIFF / PROBATION LIAISON QUERY

11. 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.
 - 14-072 / Giles
 - 14-075 / James
- b) **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). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).
 - 14-074 / Foster (Sustained – Deputy 3)
 - 14-075 / James (Sustained – Deputy 6 & the Sheriff’s Department)
 - 14-114 / Morales (Sustained – Deputy)
- c) **Evaluation of Executive Officer:** Notice pursuant to Government Code 54957

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 (11)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

14-005

1. Death Investigation/Medical - Deputy 1 discovered Dennis Lane unresponsive in his cell on January 28, 2014.

Recommended Finding: Action Justified

Rationale: There was no complaint of wrongdoing for this incident; a review was conducted in accordance with CLERB Rules & Regulations, 4.6 Citizen Complaint Not Required. The 62-year old decedent had been incarcerated since December 28, 2013, in mainline psychiatric housing, with a number of medical issues to include bipolar disorder, alcohol and drug abuse, hepatitis, and kidney stones. The day before his death, Lane attempted to assault a deputy and was forcibly restrained; medical staff evaluated Lane and there were no injuries or adverse effects noted. Additionally, the night prior to his death, Lane had a skirmish with his cellmate. Then, while delivering lunch, Deputy 1 discovered the decedent unresponsive and initiated emergency procedures. The medical examiner determined the complainant died from natural causes - acute gastrointestinal hemorrhage due to hepatitis C, with hypertensive cardiovascular disease listed as contributing - and that there were no recent injuries. Detentions staff monitored and supervised the decedent's activities according to Department policy and procedure, and the evidence showed that the actions of the deputies were lawful, justified and proper.

14-121

1. False Arrest – Deputy 2 arrested the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated that Deputy 2 arrested him for allegedly making threats. Deputies responded to multiple reports that the complainant brandished a baton and a firearm, and threatened the apartment leasing consultant and maintenance personnel. The leasing consultant signed a Citizens Declaration to effect the complainant's arrest. Deputy 2 reviewed video evidence provided by security personnel, went to the complainant's residence, and arrested him for violation of Penal Code § 22210, Possession of a Billy Club. A search warrant was served for the complainant's apartment, and deputies recovered a number of firearms, ammunition and other weapons, and the complainant was charged with multiple violations of Penal Code §§ 22210, Sap and Similar Weapons; Prohibition Against Manufacture, Importation, Sale or Possession, 417(a)(1) Brandishing a Weapon other than a Firearm, and 417(a)(2) Brandishing a Firearm. The evidence showed that the complainant was arrested, and the arrest was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 2 failed to provide an interpreter for the complainant.

Recommended Finding: Action Justified

Rationale: The complainant said he requested a German interpreter during his interview, and when none was provided, he spoke only in German. Deputy 2 reported that he attempted to provide the complainant with Miranda advisements in English prior to interrogation, and the complainant responded only in German. Although Deputy 2 did not understand German, he stated that the complainant did not request an interpreter. At no time during the recorded interview was Deputy 2 heard to deny the complainant an interpreter. Case law, with respect to Miranda advisements, indicates that everyone about to undergo custodial interrogation is entitled to Miranda advisements, and the courts consider the "totality of the circumstances," including the suspect's age, background, intelligence, experience, and conduct, in determining whether the waiver was valid. Further, when dealing with a suspect who does not speak English, the warnings are to be provided in a language the suspect understands. Similarly, a suspect's difficulty in understanding the language in which the warnings are given impact whether a Miranda waiver was knowing and intelligent. Video and audio evidence obtained by Sheriff's detectives prior to the complainant's arrest showed that the complainant, a U.S. military veteran, understood the

English language. Deputy 2 was aware of the complainant's English-speaking abilities prior to the interview, and was under no obligation to provide the uncooperative complainant with an interpreter. Because of the complainant's failure to cooperate, Deputy 2 terminated the interview and the complainant was processed into jail. Deputy 2's conduct was lawful, justified and proper.

3. Misconduct/Discourtesy – Deputy 2 mocked the complainant for wearing fingernail polish.

Recommended Finding: Not Sustained

Rationale: The complainant stated he was mocked for wearing fingernail polish, because of some items found in his apartment. Deputy 2 reported that he noticed all of the complainant's fingernails were painted black, and asked if the women's apparel found in the residence belonged to the complainant. Deputy 2 denied that the complainant was mocked during the conversation. There was no audio recording of this encounter and therefore, there was insufficient evidence to prove or disprove the allegation.

4. Misconduct/Procedure – Deputy 3 played an internet video of “Adolf Hitler” hate speeches.

Recommended Finding: Sustained

Rationale: The complainant stated that Deputy 3 played video and audio of speeches from Adolf Hitler talking about killing Jews, and other non-Germans, while he was being processed for booking. Deputy 3 reported that the complainant was very agitated and yelling loudly in German while at the Patrol Station, so he elected to play a YouTube video of Adolf Hitler speaking to a large crowd. Deputy 3 said he did not understand German, and therefore did not know the content of the speeches. The act, which served no legitimate purpose, was in violation of Sheriff's Policies and Procedures 2.4, Unbecoming Conduct; 2.22, Courtesy; 2.30, Failure to Meet Standards; 2.36, Use of Department Equipment; 2.48, Treatment of Persons in Custody; and 2.53, Discrimination. The act did occur and was not justified.

5. Misconduct/Discourtesy – Deputy 4 called the complainant a “Fucker” and a “Faggot.”

Recommended Finding: Not Sustained

Rationale: The complainant said that Deputy 4 called him a “Fucker” and a “Faggot.” All deputies involved in the complainant's apprehension denied that they made, or heard, any such statements. No evidence directly linked any deputy to the alleged statements, but it was plausible that one or more of those deputies present used the purported language. There were no audio/video recordings available or independent witnesses; therefore, there was insufficient evidence to prove or disprove the allegation.

6. Misconduct/Procedure – Deputy 1 dissuaded the complainant from filing a complaint.

Recommended Finding: Not Sustained

Rationale: The complainant stated that he attempted to file a complaint about the Hitler and Nazi audio/video, and a female deputy dissuaded him from making the complaint. Deputy 1 acknowledged that the complainant had requested to file a complaint, and that he was subjected to a pat down search because of his prior history with weapons. Deputy 1 denied that she attempted to dissuade the complainant from filing a complaint, but did not recall if she provided the complainant with a complaint form. After the pat down search Deputy 1 said she would take the complaint, but the complainant reportedly was no longer comfortable with the situation and departed. There were no independent witnesses or audio recordings of this encounter; therefore, there was insufficient evidence to prove or disprove the allegation.

7. Misconduct/Procedure – Deputy 2 failed to comply with court orders to release property.

Recommended Finding: Action Justified

Rationale: The complainant stated that Deputy 2 failed to release his military identification card and \$121 dollars in cash when requested, in accordance with a court order. The complainant reported to the Station with a court order and requested that the property identified in the court order be released. The property in question was not physically located at the station and needed to be requested from central evidence/property, with delivery expected the following week. On the following day, the complainant sent a friend to the Patrol Station

with a note authorizing the pick-up of his property, but the property could not be released at that time. Deputy 2 did not immediately release the complainant's property when presented with court orders, because the property was not physically located at the Patrol Station. One week later, Deputy 2 facilitated the release of the complainant's property after it was received from central evidence/property. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

14-129

1. Misconduct/Procedure – Deputy 1 failed to immediately notify the complainant when her 12-year-old child was taken into temporary custody.

Recommended Finding: Sustained

Rationale: The complainant alleged that Deputy 1 questioned her child without her permission regarding his alleged involvement in a crime. Witnesses identified the complainant's son as the primary suspect in a felony vandalism crime. Deputy 1 had reasonable cause to believe that the complainant's child had violated the law and was a person described in Section 602 of the Welfare and Institution code, so he contacted the minor at school, and without Mirandizing him (advising a person of their constitutional rights), questioned the minor regarding his involvement in the crime being investigated. Deputy 1 acknowledged that he did not contact the complainant until after he had completed his interview with the minor. The minor was in temporary custody at the time of this questioning, as he was not free to leave. Welfare and Institutions Code Section 627 requires that when an officer takes a minor into custody and to any place of confinement, he shall take immediate steps to notify the minor's parent, guardian, or a responsible relative that such minor is in custody, and the place where he is being held. Deputy 1 did not provide this notification, and his actions were not justified.

2. Misconduct/Procedure – Deputy 1 failed to provide telephone calls to the complainant's 12-year-old child when he was taken into temporary custody.

Recommended Finding: Sustained

Rationale: Deputy 1 had reasonable cause to believe that the complainant's child had violated the law and was a person described in Section 602 of the Welfare and Institution code, and took the minor into temporary custody for questioning. Welfare and Institutions Code Section 627 requires that a minor is allowed the right to make at least two telephone calls from the place where he is being held, immediately after being taken into custody. Deputy 1 acknowledged that he did not provide the minor these telephone calls and his actions were not justified.

3. Misconduct/Procedure – Deputy 1 questioned a minor regarding his involvement in a crime, without Mirandizing him.

Recommended Finding: Sustained

Rationale: The complainant reported that Deputy 1 questioned her 12-year-old child regarding his involvement in a crime, without advising the minor of his constitutional rights. Deputy 1 acknowledged that he did not advise the minor prior to questioning him, nor at any time while the minor was in temporary custody. Welfare & Institution Code § 625, Temporary custody by peace officer; advisement of constitutional rights, requires that when a minor is taken into temporary custody on the ground that there is reasonable cause for believing that such minor has violated any law, he shall receive a Miranda advisement. Deputy 1 had reasonable cause to believe that the complainant's 12-year-old child had violated the law, and did not advise the minor of his rights upon taking him into temporary custody. The evidence supports the allegation, and the act was not justified.

4. Misconduct/Intimidation – Deputy 1 told the complainant's 12-year-old child to confess to a crime or go to jail, or used words to that effect.

Recommended Finding: Not Sustained

Rationale: The complainant was informed by her child that during questioning, Deputy 1 told the minor to confess to a crime or go to jail, or used words to that effect. Deputy 1 denied making this statement, and school

officials present while the minor was being questioned, denied that they heard Deputy 1 make this alleged statement. Absent the presence of independent witnesses, and an audio recording of Deputy 1's interview with the minor, there is insufficient evidence to either prove or disprove the allegation.

5. Misconduct/Discourtesy – Deputy 1 shouted at the complainant to “Get off the phone” when she tried to contact her lawyer for legal advice.

Recommended Finding: Not Sustained

Rationale: The complainant reported that Deputy 1 exclaimed, “Get off the phone!” when she attempted to contact her attorney for legal advice. Deputy 1 denied that he shouted to the complainant to “Get off the phone,” but rather asked her to hang the phone up or at least set the phone down so that he could continue his investigation. There were no independent witnesses or audio recording of this statement in order to assess the content and tone of what Deputy 1 specifically stated to the complainant. Absent this evidence, it cannot be determined if the actual statement could be construed as discourteous, leaving insufficient evidence to either prove or disprove the allegation.

14-141

1. Misconduct/Procedure – Deputy 1 designated the complainant an improper housing classification, despite a doctor's order for medical housing.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 improperly classified him and assigned him to general population housing, despite a doctor's order for medical housing. The purpose of the Inmate Classification System is to screen, assess and house inmates in a manner that will protect the safety of the community, staff and other inmates, while assisting detention managers and staff in making sound decisions regarding inmate population management. During intake, the complainant underwent a classification evaluation, which included a classification interview, a review of the complainant's criminal history, and a review of all hazards and instructions related to the complainant, to determine his appropriate security level and housing assignment. Based on this evaluation, the complainant was classified a Level 3-Medium Security inmate and cleared for General Population housing. Contrary to the complainant's assertion, there existed no medical or psychiatric doctor's orders directing that he be moved to medical housing. Deputy 1 classified and housed the complainant according to his security level, and this action was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 2 failed to respond to the complainant's numerous grievances and inmate requests regarding his housing assignment.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that he filed numerous grievances regarding his housing assignment, to which Deputy 2 failed to respond. Detentions Policy N.1, Grievance Procedure, requires that when a written grievance is delivered to a deputy or staff, he or she will sign it so that the signature is recorded on both pages of the two-part NCR form, and the second page of the grievance form is to be given back to the inmate as a signed receipt. If the grievance is collected from a grievance box, the deputy will sign it and ensure that the second page of the grievance form is returned to the inmate concerned. The complainant reported that he did not have any grievance receipts in his possession. Moreover, a review of the Jail Information Management System (JIMS) showed that the only grievances on file related to medical issues and jail conditions – issues outside the purview of sworn staff - and none were found related to the complainant's housing assignment. Absent this documentation, there is insufficient evidence to prove or disprove the allegation.

3. Misconduct/Procedure – Deputy 2 failed to mail out the complainant's letters to his attorney and Veteran Justice Outreach personnel.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 2 failed to mail out his letters to his attorney and Veteran

Justice Outreach personnel. During the course of the investigation, however, the complainant subsequently reported that his attorney and Veteran Justice Outreach personnel had received his letters, but they were delayed 2-3 weeks from the time they were sent. The length of the delay of the complainant's mail cannot be determined, nor whether the delay was caused by detentions staff or by the U.S. Postal Service. That withstanding, the complainant acknowledged that mail sent was received, showing that the actions of Deputy 2 were lawful, justified and proper.

15-003

1. Excessive Force/Pepper Spray – Deputy 2 responded to an inmate-on-inmate assault with a use of force against the complainant.

Recommended Finding: Action Justified

Rationale: The complainant reported that the victim initiated a fight with her. Video evidence documented the complainant repeatedly and violently striking the victim in the head with her fist. Deputy 2 reportedly responded to the assault and issued commands, but the complainant continued to fight until two-short bursts of pepper-spray were applied to her face. Video evidence corroborated that the force used was proper and necessary to prevent further injury to the victim.

2. Misconduct/Procedure - Deputy 1 placed the complainant in lock-up without providing medical care for a wrist fracture.

Recommended Finding: Action Justified

Rationale: The complainant was unavailable for further clarification in this matter. Sheriff's medical records confirmed the complainant was treated by medical staff, who followed protocol for pepper spray removal, and issued her an ice pack for an unspecified strain. There was no documentation associated with a wrist injury. Deputy 1 conducted a Disciplinary Hearing with the complainant following the use of force for an inmate-on-inmate assault. Based upon comments, actions and observations of video evidence, he determined the complainant was in violation of the following Inmate Rules & Regulations - assaulted an inmate, interfered with jail operations, and disobeyed staff instructions. Deputy 1 imposed five days of disciplinary isolation in accordance with policy. The complainant then sought medical treatment following her release from custody and hospital records confirmed assessment and treatment for wrist, neck, back, and leg pains. The evidence showed the actions taken by medical and sworn staff at the time of the incident, were lawful, justified and proper.

15-016

1. Illegal Search & Seizure – Deputy 1 searched the aggrieved's property without her permission.

Recommended Finding: Action Justified

Rationale: The complainant reported that Deputy 1 searched her house guest's property without her permission. The complainant was on searchable probation, which in part required that she submit her person, vehicle, residence and property to search by her Probation Officer or law enforcement officers, at any time, with or without a warrant, and with or without reasonable cause. Deputies were conducting a Fourth Waiver search at the residence of the complainant, when during a protective sweep, the aggrieved was contacted while in the complainant's bedroom and escorted to the kitchen area downstairs. The aggrieved's backpack was located in the complainant's bedroom and searched by Deputy 1. It is disputed as to whether or not consent was given for the search, however during probation searches, any property under a probationer's control is subject to search, without consent. The backpack was located in the complainant's bedroom, a person who was on searchable probation, and as such the actions of Deputy 1 were lawful, justified and proper.

2. False Arrest – Deputy 1 arrested the aggrieved without cause.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 arrested her house guest without cause. Deputy 1 contacted the aggrieved while conducting a protective sweep during a probation search in the complainant's home. The aggrieved's personal property was searched, and illegal contraband was located. Pursuant to PC§ 836, Peace Officer Arrests, a peace officer may arrest a person if the officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence. The aggrieved was found in possession of drug paraphernalia containing a small amount of a controlled substance. Deputy 1 arrested the aggrieved pursuant to HS §§ 11364, Possession of Controlled Substance Paraphernalia, and 11377, Unlawful Possession of Restricted Dangerous Drug, and this action was lawful, justified and proper.

3. Illegal Search & Seizure – Deputy 2 searched the complainant's vehicle without authorization or permission.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 2 searched her vehicle without authorization or consent. During the conduction of a Probation Search at the home of the complainant, the complainant's vehicle was located in the garage and searched. The complainant was on searchable probation at the time of this search, and as such was required to submit her person, vehicle, residence and property to search by Probation Officers or law enforcement officers, at any time, with or without a warrant, and with or without reasonable cause. Deputy 2 searched the complainant's vehicle pursuant to the complainant's probation conditions, and his actions were lawful, justified and proper.

15-017

1. Excessive Force – Deputies 2 and 3 “attacked” and threw the complainant to the ground, causing serious injuries.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputies 2 and 3 “attacked” and threw him to the ground during an incident involving the use of force. The complainant was observed purposely exposing his genitalia to the entire module during laundry exchange. Deputies 1 and 2 instructed the complainant multiple times to cover himself with his blanket, but he ignored their instructions in violation of the facilities' rules and regulations. Deputies 2 and 3 attempted to handcuff the complainant in order to escort him from the module, when the complainant grabbed the upper tier railing and actively resisted the deputies' efforts to control him. Deputies 2 and 3 used their combined body weight to take the complainant to the ground, and applied several knee strikes to his ribcage area, until the complainant surrendered his hands and was controlled. The complainant was seen by medical following this incident, and x-rays taken later did not show any fractures or serious injuries. 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. Deputies 2 and 3 utilized department approved Use of Force control compliance techniques, and their actions were lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 placed the complainant in a cell with no clothing or bedding.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 placed him in a cell while naked, and did not provide clothing or bedding for over 24 hours. Following a force incident, the complainant was escorted to the Medical Dispensary for treatment of his injuries and then to Disciplinary Isolation, pending a Disciplinary Hearing for his rules violation. During a use of force involving deputies, the complainant's blanket fell off, and because of his aggressive behavior, it was not safe to remove the handcuffs to allow the complainant to dress prior to moving him. Furthermore, when the complainant was placed in the Disciplinary Isolation cell, deputies were unable to open his cell door to provide clothing because the complainant acted violently, spat on the cell door window, and informed deputies that he had MRSA and AIDS, threatening to infect them with these diseases. Deputy 1 reported that the cell door was not opened due to the complainant's aggressive behavior and to prevent any further use of force. Deputy 1 further reported that it would have been the responsibility of deputies assigned to the complainant's new temporary housing to provide clothing and bedding, and she was unaware as

to when these items were provided. Deputy 1 acted properly in placing the complainant, while naked, into a cell because of significant safety issues, and this action was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 4 failed to provide the complainant clothing and bedding for over 24 hours.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 4 failed to provide him with clothing and bedding for over 24 hours after he was placed in a Disciplinary Isolation cell. The complainant was placed in Disciplinary Isolation following an incident in which force was used. The complainant was aggressive and acted violently during this placement, informing deputies that he had MRSA and AIDS, and threatened to spit on deputies to infect them with these diseases. Sheriff's records do not document how long the complainant's aggressive behaviors persisted, or when the situation had settled sufficiently so that housing deputies could provide clothing and bedding. Absent this documentation, there is insufficient evidence to prove or disprove the allegation.

4. Misconduct/Procedure – Deputy 4 failed to respond to the complainant's grievances regarding a use of force incident, and the "cruel and unusual treatment" he allegedly received.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 4 failed to respond to multiple grievances filed regarding a force incident, and other "cruel and unusual treatment" by deputies. The complainant reported being in possession of grievance receipts filed against these deputies, but failed to provide this documentation for CLERB's investigation when requested. The grievances filed by the complainant that are documented in sheriff's records, related only to medical issues, over which CLERB has no jurisdiction. Absent documentation of filed grievances against subject deputies, there was insufficient evidence to either prove or disprove the allegation.

15-021

1. Misconduct/Procedure – Deputy 1 failed to investigate a crime and apprehend a criminal after the complainant supplied investigative leads.

Recommended Finding: Action Justified

Rationale: The complainant reported that the Sheriff's department had a total lack of interest for investigating this case, identifying what happened and why, and apprehending the criminal. Witnesses provided information concerning a female and unknown male who reportedly fled out of state immediately following this incident. Deputy 1 reported that he pursued this information and attempted to locate and/or interview the female, who was uncooperative. He also contacted out of state police detectives for information on the suspect's whereabouts, but was unsuccessful in developing any leads. An arrest is valid only if supported by probable cause. The involved deputies were in compliance with Sheriff's Policy & Procedure, and the ongoing investigation was re-assigned when Deputy 1 transferred to a different station.

15-026

1. Illegal Search or Seizure – Deputy 2 detained the complainant.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 2 detained him without cause. The complainant was seated in his car in a parking lot at approximately 11:00 pm waiting for a friend, when he was contacted by Deputy 2. Deputy 2 reported that he noticed a lone vehicle parked at the mall at an hour when all of the mall's stores were closed, so he contacted the complainant to further inquire. While speaking with the complainant, Deputy 2 noticed in plain sight what appeared to be an opened alcohol container in the back seat of the vehicle, in violation of Business & Professional Code Section 25620, Possession of Open Container in Park or Other Public Property, and Poway Municipal Code 8.10.010(a) which prohibits possession of open alcoholic

containers on or near premises where liquor is sold. Deputy 2 asked the complainant to exit his vehicle and detained him pending investigation of the alcohol container, to determine if the seal had been broken and contents partially removed. Case law holds that a detention is valid if law enforcement officers have "reasonable suspicion" that a crime has been committed, or is afoot; and the person being detained is connected with that activity. Deputy 2, having seen an open alcohol container in the complainant's vehicle, had reasonable suspicion to detain the complainant, and his actions were lawful, justified and proper.

2. Misconduct/Discourtesy – Deputy 4 stated to the complainant, “Get the hell out of the car, or we’ll drag you out,” or used words to that effect.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 4 stated to him, “Get the hell out of the car, or we’ll drag you out,” or used words to that effect. Deputy 4 was dispatched to the scene at 11:00 pm, with a report that a suspicious, occupied vehicle had been located parked in the parking lot of a closed mall. When Deputy 4 arrived on scene, he heard Deputy 2 repeatedly order the complainant to step out of his vehicle, while the complainant continually argued and refused. In an attempt to avoid having to use physical force to gain compliance, Deputy 4 reported that he made the alleged statement, as experience had shown him that the use of strong language was helpful in avoiding the use of physical force when dealing with uncooperative subjects. The complainant immediately exited the vehicle without further incident. Sheriff’s Policy 2.22, Courtesy, prohibits the use of coarse, profane or violent language, except when necessary to establish control during a violent or dangerous situation. The complainant was seated in a dark vehicle and had repeatedly refused to follow Deputy 2’s orders to exit his vehicle. The complainant’s refusal to cooperate created a potentially dangerous situation, as the complainant possibly had access to concealed weapons while seated in his vehicle. Moreover, it is an atypical mindset that would blatantly disobey a lawful order given by law enforcement, and caution is paramount while dealing with such a person. Deputy 4’s language, while strong under normal conditions, was used within policy given the totality of the circumstances, and was justified and proper.

3. Misconduct/Discourtesy – Deputy 4 stated to the complainant, “Shut the hell up,” or used words to that effect.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 4 stated to him to, “Shut the hell up,” or used words to that effect during a law enforcement contact. Deputy 4 denied making this statement, and other deputies on scene denied that they heard Deputy 4 make the alleged statement. Absent independent witnesses or an audio recording of this contact, there was insufficient evidence to prove or disprove the allegation.

4. Illegal Search or Seizure – Deputy 2 searched the complainant’s vehicle without permission.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 2 searched his vehicle without permission. When Deputy 2 contacted the complainant, he noticed in plain sight what appeared to be an opened alcohol container in the back seat of the vehicle. The complainant was parked in a lot adjacent to a liquor store. Deputy 2 detained the complainant pending investigation of the alcohol container, and conducted a probable cause search of the complainant's vehicle for additional contraband. Under the "Automobile Exception," case law authorizes law enforcement officers to search any part of a vehicle (including the trunk and closed containers) if there is probable cause to believe that the vehicle contains evidence of criminal activity, and the evidence may be located in the area searched. Deputy 2 observed an open bottle of an alcoholic beverage inside the complainant’s vehicle, and conducted a limited search of the vehicle to ensure that no other contraband was present. This search was within policy and was lawful, justified and proper.

5. Misconduct/Procedure – Deputies 2, 3 and 4 refused to provide the complainant their names and badge numbers when requested.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that he requested the names and badge numbers of Deputies 2, 3 and 4, but was declined. All three deputies reported that they had no recollection of being requested this information, and

further stated that if asked, they would have provided this information to the complainant. There are no independent witnesses to this incident and absent an audio recording of this contact, there was insufficient evidence to prove or disprove the allegation

6. Misconduct/Procedure – Deputy 1 failed to take a complaint.

Recommended Finding: Not Sustained

Rationale: The complainant reported that he contacted Deputy 1 by phone following this incident with Deputies 2 and 4, but he would not take a complaint, informing the complainant that he would need to speak directly with the subject deputies' supervisor when he was on duty. Deputy 1 did not recall this contact with the complainant, but stated that in situations where a citizen would call and complain about a deputy's actions, customarily he would try to handle the complaint himself, and if that did not suffice, he would notify the deputy's immediate supervisor, who would contact the complainant once back on duty. If, however, a person wanted to file a formal complaint, Deputy 1 stated that he would inform the person about the process. To his recollection, the complainant never requested to file a formal complaint. The contact between Deputy 1 and the complainant took place over the phone with no independent witnesses present, leaving insufficient evidence to prove or disprove the allegation.

15-062

1. Misconduct/Discourtesy – Deputy 1 “scolded” and “berated” the complainant for interfering during a contact involving his neighbor.

Recommended Finding: Summary Dismissal

Rationale: The complainant alleged that Deputy 1 “scolded” and “berated” him in front of his family during a contact involving a hallucinating neighbor. The complainant contacted sheriff's dispatch after a neighbor was observed outside wielding a machete, while stating that “people” were attempting to rob him and others in the neighborhood. Deputies arrived on scene, and while attempting to control the troubled neighbor, instructed the complainant to “stop talking and leave” when the complainant attempted to assist deputies with the neighbor. The complainant complied, but felt that later in the contact, Deputy 1 spoke to him discourteously, and demonstrated an “attitude” and “tone” that he felt to be unprofessional and unnecessary. The complainant confirmed that Deputy 1 did not yell at him nor use any expletives during this contact. The complainant's subjective feelings about the deputy's “attitude” and “tone” are acknowledged; however, the complaint lacked a prima facie showing of misconduct. Such complaints are referred to the Review Board for Summary Dismissal, pursuant to CLERB Rules & Regulations: Section 9: Investigation of Complaints; Subsection 9.2: Screening of Complaints.

15-105

1. Misconduct/Discourtesy – Deputy 1 sent “hate mail” correspondence to the complainant.

Recommended Finding: Sustained

Rationale: The correspondence sent by Deputy 1 did not target a protected class associated with race, religion, ethnicity/national origin, sexual orientation, disability, or gender, and therefore, could not be legally termed as “hate mail.” However, the written comments expressed by Deputy 1, violated Sheriff's Policy & Procedure 2.4, Unbecoming Conduct and 2.22, Courtesy, in that no member shall use coarse, profane or insolent language in the performance of his or her duties. The evidence supported the allegation and the act or conduct was not justified.

2. Misconduct/Procedure – Deputy 1 misused departmental equipment.

Recommended Finding: Sustained

Rationale: Sheriff's deputies are prohibited from utilizing departmental computers for anything other than business related matters. Deputy 1 violated Sheriff's Policy & Procedures 2.36, Use of Department Equipment, and 6.21, Automation: Departmental Systems, when he used Sheriff's department equipment to send electronic correspondence to the complainant, which expressed his personal opinion(s). The evidence supported the allegation and the act or conduct was not justified.

End of Report