

CIVIL SERVICE COMMISSION MINUTES

August 6, 2025

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in person in room 402-A at the County Administration Center; 1600 Pacific Hwy.; and via Videoconference/Teleconference.

Present:

Laura Bassett
P. Kay Coleman
Sam McGovern
Joe O. Montenegro
Will Rodriguez-Kennedy

Absent: None

Comprising a quorum of the Commission

Support Staff Present:

Todd Adams, Executive Officer
Morgan Foley, Commission Legal Advisor.

Approved
Civil Service Commission
September 3, 2025

**SAN DIEGO COUNTY CIVIL SERVICE COMMISSION
REGULAR MEETING MINUTES
AUGUST 6, 2025**

- 1:00 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation
- 2:30 p.m. OPEN SESSION: Attend in-person at the County Administration Center, 1600 Pacific Highway, 4th Floor, Room 402A, San Diego, California; or via videoconference/teleconference
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Notice pursuant to Government Code Section 54954.2.

CLOSED SESSION AGENDA

County Administration Center, Room 458

Members of the public may be present at this location to hear the announcement of the closed session agenda.

A. Commissioner Coleman: CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION (GOV. CODE SEC. 54956.9(a)) Rico J. Dominguez, Esq., on behalf of **2024-037P**, **2024-038P**, and **2024-039P**, Deputy Sheriffs, appealing the Citizens' Law Enforcement Review Board's sustained finding.

B. Commissioner Montenegro: CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION (GOV. CODE SEC. 54956.9(a)) Rico J. Dominguez, Esq., on behalf of **2024-040P** and **2024-041P**, Deputy Probation Officers, appealing the Citizens' Law Enforcement Review Board's sustained finding.

C. Commissioner Rodriguez-Kennedy: CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION (GOV. CODE SEC. 54956.9(a)) Rico J. Dominguez, Esq., on behalf of **2023-050P**, and **2023-051P**, Deputy Sheriffs, appealing the Citizens' Law Enforcement Review Board's sustained finding.

OPEN SESSION MINUTES

ORDER OF BUSINESS

A. ROLL CALL

Present: Bassett, Coleman, McGovern, Montenegro,
Rodriguez-Kennedy

Absent: None

B. WELCOME NEW COMMISSIONER LAURA BASSETT

Commissioner Rodriguez-Kennedy introduced the Civil Service Commission's new Commissioner, Laura Bassett. (Please see Commissioner Bassett's bio at [Civil Service Commissioners](#))

C. APPROVAL OF MINUTES: Regular meeting of June 4, 2025.

Motion by Commissioner Coleman to approve the minutes of the regular meeting of June 6, 2025; seconded by Commissioner Montenegro. Motion passed with all in favor.

D. NON-AGENDA PUBLIC COMMENT:

None.

E. AGENDA ITEM DISCUSSION:

None.

F. FORMATION OF CONSENT AGENDA

Agenda items 4, 5, and 6 are automatically pulled for discussion. Therefore, agenda items 1-3, 7-11 formed the Consent Agenda.

Motion by Commissioner Bassett to approve the Consent Agenda; seconded by Commissioner McGovern. Motion passed with all in favor.

G. DISCUSSION ITEMS

Items: 4, 5, and 6

AGENDA ITEMS

CONFIRMATION OF ASSIGNMENTS

1. Commissioner Coleman: Jennifer Spirit, Senior Advocacy Center Organizer, SEIU Local 221, on behalf of **2025-028**, former Sheriff Detentions Nurse, appealing an Order of Termination and Charges from the Sheriff's Office.
2. Commissioner Rodriguez-Kennedy: Miguel A. Peñalosa Jr., Esq. on behalf of **2025-029P**, Deputy Probation Officer, appealing a Final Order of Removal and Charges from the Probation Department.
3. Commissioner Montenegro: James J. Cunningham, Esq., on behalf of **2024-064P**, former Deputy Sheriff- Detentions/Court Services, appealing of an Order of Termination and Charges from the Sheriff's Office. (Previously assigned to Commissioner Rodriguez-Kennedy.)

Approved on the Consent Agenda

CITIZENS' LAW ENFORCEMENT REVIEW BOARD APPEALS

Findings

4. Commissioner Coleman: Rico J. Dominguez, Esq., on behalf of **2024-037P**, **2024-038P**, and **2024-039P**, Deputy Sheriffs, appealing the Citizens' Law Enforcement Review Board's sustained finding.

FINDINGS AND RECOMMENDATIONS:

Deputy 1 (2024-037P), Deputy 2 (2024-038P), and Deputy 3 (2024-039P), Deputy Sheriffs (collectively referred to as "Deputies"), appealed the Findings of the Citizens' Law Enforcement Review Board, ("CLERB"), in which it sustained allegations against the Deputies in the Sheriff's Department. The Commission appointed Commissioner P. Kay Coleman to hear the appeal and submit findings and a proposed decision to the Civil Service Commission. Thereafter, a hearing was held on May 29, 2025.

The Commission's authority to hear this appeal is derived from Civil Service Rule XV, Section 15.1.1, in that the CLERB Finding charges: Deputy 1 with use of excessive force and misconduct for failing to utilize de-escalation techniques; Deputy 2 with use of excessive force; and Deputy 3 with

misconduct for failing to provide identifying information upon request. Section 15.1.7 states as follows: "The burden of proof shall be on CLERB to demonstrate through a preponderance of the evidence that the incidents or acts, which are the basis for the complaints sustained by CLERB, occurred and did constitute improper conduct."

CLERB reviewed this case and found that on January 22, 2023, while driving by Richmar Park, in San Marcos, Deputy 3 heard a shout coming from the park, which he interpreted as a request for assistance. Alerted by this shout from the park Deputy 3 pulled over and initiated an investigation. Deputy 3 immediately observed two adult males engaged in an argument. In order to gain control of the situation, Deputy 3 used his radio to call in an "active 415 between two adult males," then attempted to speak with both of the individuals involved.

The person who alerted Deputy 3 of the confrontation, Person 1, was contacted by Deputy 3 along with the other individual involved, Person 2. From the start, Person 1 was uncooperative, pacing back and forth, yelling over Deputy 3, and seemed agitated. Within 25 seconds of Deputy 3's initial contact Person 1 asks Deputy 3, "What's your name? Identify your fucking self, man." Deputy 3 paused for approximately one second while Person 1 was pacing and talking loud and rapidly and never answered. Deputy 3 continued to seek Person 1's cooperation to find out what was going on between him and Person 2, and Person 1 would not answer questions or allow Deputy 3 the chance to de-escalate the situation. It appeared to Deputy 3 that Person 1 might be under the influence of a controlled substance. During the initial 48 seconds Deputy 3 remained calm and stated to both Person 1 and Person 2 to "sit down, so we could figure out what's going on." At 48 seconds from when he initiated the contact Deputy 3 told both Person 1 and Person 2, "I can't deal with both of you talking at the same time; if one of you wants to come talk. . ."

By this time Person 1 had walked away, still angry and talking loudly. Just over one minute had passed since Deputy 3's arrival and Person 1 was seen picking up a basketball and returned toward Deputy 3 and Person 2, switching the basketball from his left to right hand when he stopped to re-engage with Person 2. At one minute and 11 seconds following his arrival, Deputy 3 called in to dispatch, reporting, "I've got an active 415 going on."

At approximately one minute and 45 seconds after Deputy 3's arrival, Person 1 again walked away while Deputy 3 told Person 2, "I'm not going to mess with him. What's up with you?" Less than 15 seconds later Person 1 returned to where Deputy 3 and Person 2 were standing, continuing his rant the whole time.

It was at this point, within 45 seconds of Deputy 3's call to dispatch, Deputy 1 arrived on the scene, and after asking Deputy 3, "What happened," confronted Person 1, immediately ordering Person 1 to "sit down," "sit down you're gonna get tased!" then a third order to sit down. At that point Deputy 1 transferred his conducted energy device ("CED", commonly referred to as a "taser") from his left to his right hand.

After Deputy 1 again ordered Person 1 to sit down, Person 1 replied, "Hell no; dawg," while turning around and flexing his biceps as he walked away from Deputy 1 and Deputy 3. Deputy 1, with his CED in his right hand, then followed Person 1 away from Deputy 3, toward basketball courts located in the park.

At approximately two minutes and 20 seconds after Deputy 3 first made contact with Person 1 and Person 2, Deputy 2 arrives and joins Deputy 1 in following Person 1 to the basketball court. Deputy 1 continued to order Person 1 to "get on the ground," adding, "or you're going to get tased." Deputy 2 was positioned at an approximately 90-degree angle from Deputy 1 with Person 1 at the center of the compass. Person 1 still refused to comply, shooting the basketball once, and after getting the rebound, bouncing the basketball. For a brief moment, Person 1 appeared to comply with the commands to get on the ground, lowering himself cross-legged when he places his left hand on the ground and suddenly pushes himself back up. At this point Deputy 1 commands him to "get on the ground; on your stomach." When Person 1 stands up quickly Deputy 1 shouts, "Get down on the ground, now!"

Person 1 continues to ignore the commands, and yells at Deputy 1, "Identify yourself," to which Deputy 1 states, "Officer [omitted]." Deputy 1 and Deputy 2 begin circling Person 1 135 to 180 degrees from one another. Person 1 again asks the officers to identify themselves, and Deputy 1 replies that he already did, and Deputy 2 replies, "We're deputy sheriffs." Person 1 then shoots the basketball, and as Deputy 1 got closer Person 1 stiffens up, raising his arms away from his body, standing more erect and lifting his head up slowly, then slowly turning to face Deputy 1, stating, "Do what you're

going to do, bitch. Go ahead." Deputy 1 raises his CED, then discharges it toward Person 1, but it failed to work. Still standing and facing Deputy 1, Person 1 began to slightly shuffle his feet when Deputy 2 discharges his CED, which was effective in stopping Person 1's movements, as he dropped to the ground, onto his back. Both Deputy 1 and Deputy 2 then rushed in to take control of Person 1 as he lay on the ground. Only one second separated the discharge of the CEDs by the two deputies.

Person 1 later filed a complaint with CLERB, which investigated the complaint and determined that some of the allegations result in violations of policies of the San Diego Sheriff's Department's ("SDSO" or "Department").

San Diego County Sheriff's Department Policy and Procedure ("P&P") section 2.20 *Identification*, which provides, in part, "While on duty, all [sworn] employees shall furnish their first and last name or ARJIS number to any person requesting his or her identity, except when the withholding of such information is necessary for the performance of police duties."

P&P section 2.49 *Use of Force*, which provides, "Employees shall not use more force in any situation than is reasonably necessary under the circumstances. Employees shall use force in accordance with law and established Departmental procedures and report all use of force in writing."

Section 2.49 is further supplemented by Addendum F. Addendum F provides that deputies may use "objectively reasonable force" to effect an arrest of a person that the deputies have "reasonable cause to believe" that the person "has committed a public offense . . . to prevent escape, or to overcome resistance." Addendum F states that deputies "may only use a level of force they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance."

Addendum F also provides guidance on the use of "de-escalation" tactics with "[the] goal . . . to gain voluntary compliance of subjects, when feasible, and or [sic] to potentially reduce or eliminate the need to use force on a subject."

CLERB has evaluated the complaint and determined that Deputy 3 violated P&P section 2.20 by failing to identify himself

with his first and last name or ARJIS number when Person 1 had asked them to "identify themselves."

CLERB determined that Deputies 1 and 2 both violated P&P section 2.49, and Addendum F by using excessive force.

Finally, CLERB determined the conduct of Deputy 1, from his arrival to his discharge of his CED, as inconsistent with the de-escalation guidance set forth in Addendum F.

Deputy 1 - Excessive Force: It is important to note that Person 1 was given many opportunities to cooperate with the commands given to him to get to the ground from each of the Deputies. Deputy 1 ultimately discharged his CED directed at Person 1 while on the basketball court and while it malfunctioned in its operation or wasn't aimed yet to have both probes land on the body, it remains that it is what is defined as "use of force." In determining whether there was excessive use of force it is conceded that use of a CED is considered "less than lethal" force.

Immediately prior to the point that Deputy 1 discharged his CED, Person 1 was (for the first time in this entire event) quiet and standing in place, but then he straightened his body up, puffed up his chest, juttied his chin out, and stared down Deputy 1. These behaviors could be interpreted as preparing for an assault on Deputy 1, particularly when it was clear that at that time Deputy 1 was attempting to re-holster his CED while continuing his commands. Person 1's change in demeanor was sudden, not reflective of a concession that it was time to end his resistance and comply with the commands to sit (or get) down; rather, it was as if he was going to take a final stand.

Finally, when given a chance to sit and cooperate, Person 1 lowered himself toward the ground, reversed himself, continued his ranting, and when Deputy 1 attempted to re-holster his CED, Person 1 suddenly changed his demeanor to one of a threat with the stiffening of his body, puffing out his chest, sticking out his jaw, turning his head quickly to face Deputy 1, then making a slight movement in Deputy 1's direction with his feet while telling him, "Do what you're going to do, bitch. Go ahead."

Objectively, Deputy 1 reasonably believed that use of the CED at that point was necessary. Therefore, CLERB failed to meet its burden that Deputy 1 used excessive force.

Deputy 1 - Failure to De-escalate: While it can be argued, as Deputy 1 has, that under the totality of the circumstances his efforts to seek the cooperation of Person 1 through potential de-escalation tactics (e.g., following him to the basketball court from a distance, continuing to shout commands from a distance, providing warning of the possible use of his CED, and even re-holstering his CED just prior to Person 1's final act of defiance) could have worked, it is his initial conduct when arriving upon the scene that is most concerning.

Deputy 1's initial encounter and his initial tactics did not de-escalate the situation with Person 1, who continued his pacing, swearing, shouting, and verbal attacks on the deputies.

Therefore, CLERB has met its burden to prove that Deputy 1 did fail to de-escalate the situation.

Deputy 2 - Excessive Force: Deputy 2 only discharged his CED once Deputy 1's CED failed due to only one barb hitting Person 1, and Person 1, likely realizing that, shuffled his feet, which could reasonably be interpreted as the start of a movement after the CED failed in its purpose. Deputy 1 was too close to avoid any attack that might have come from Person 1 and, as his cover, Deputy 2 acted appropriately.

Therefore, CLERB's finding that Deputy 2's use of his CED was excessive force is not supported by the evidence and his actions are justified.

Deputy 3 - Failure to Identify Self: Deputy 3 agrees that shortly after his arrival, while he was attempting to determine why Person 1 had called out to him as he drove by, Person 1 asked for his name. It is clear, and Deputy 3 does not dispute, that he did not provide his name when requested. Deputy 3 testified that he took a pause - a quick pause - to make a decision whether to respond but felt to do so would give control of the scene to Person 1. He added that it was a conscious decision because he, himself, did not have control, and Person 1 was erratic and pacing back and forth.

The mandate that on duty sworn employees must furnish their name upon request from any person has an exception, which is "when the withholding of such information is necessary for the performance of police duties." Deputy 3 did not articulate why withholding his name was "necessary for the performance

of police duties," although he did explain that he didn't have control of the situation at that time, and that he didn't want Person 1 to gain control over the scene by providing his name.

CLERB has met its burden of proof that Deputy 3 did not identify himself to Person 1, in violation of P&P section 2.20.

Based on the findings set forth above, it is hereby recommended:

1. That the allegation sustained by CLERB in the Complaint against **Deputy 1** referred to as CLERB Case # 23-071 regarding Excessive Force be deemed **Not Sustained;**

2. That the allegation sustained by CLERB in the Complaint against **Deputy 1** referred to as CLERB Case # 23-071 regarding Misconduct (failed to utilize de-escalation techniques) be deemed **Sustained;**

3. That the allegation sustained by CLERB in the Complaint against **Deputy 2** referred to as CLERB Case # 23-071 regarding Excessive Force be deemed **Action Justified;**

4. That the allegation sustained by CLERB in the Complaint against **Deputy 3** referred to as CLERB Case # 23-071 regarding Misconduct (failed to provide identifying information upon request) be deemed **Sustained;** and

5. That this proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Commissioner Coleman to approve the decision; seconded by Commissioner McGovern. Motion passed with all in favor.

5. Commissioner Montenegro: Rico J. Dominguez, Esq., on behalf of **2024-040P** and **2024-041P**, Deputy Probation Officers, appealing the Citizens' Law Enforcement Review Board's sustained finding.

FINDINGS AND RECOMMENDATIONS:

Officer 1 (2024-040P) and Officer 2 (2024-041P), Probation Officers (collectively referred to as "Officers"), appealed the Findings of the Citizens' Law Enforcement Review Board, ("CLERB"), in which it sustained allegations against Officers in the Probation Department. The Commission appointed Commissioner Joe O. Montenegro to hear the appeal and submit findings and a proposed decision to the Civil Service Commission. Thereafter, a hearing was held on June 2, 2025.

The Commission's authority to hear this appeal is derived from Civil Service Rule XV, Section 15.1.1, in that the CLERB Finding charges: Officer 1 and Officer 2 used excessive force against a youth housed at the Youth Transition Campus.

Section 15.1.7 states as follows: "The burden of proof shall be on CLERB to demonstrate through a preponderance of the evidence that the incidents or acts, which are the basis for the complaints sustained by CLERB, occurred and did constitute improper conduct."

CLERB reviewed this case and found that on August 12, 2023, during the dinner time at Cottage Succeed at the Youth Transition Campus ("Facility"), Officer 1 and Officer 2, along with one other probation officer ("Officer 3"), were supervising 12 male youths in the day room setting ("Day Room") while the youths were eating dinner. The probation officers allowed the youths to watch television, mounted on one of the walls, during dinner time, and the television was on a channel showing the Padres baseball game being broadcasted at that time.

At all times pertinent to this incident, Officer 1 and Officer 3 were standing near two desks within or immediately adjacent to a smaller alcove where the desks are located, along with office equipment such as telephones, computer terminals, a printer, binder, etc. The desk immediately adjacent has one corner abutting the alcove wall and is positioned at a 45° angle off of the corner of the alcove. Both Officer 1 and Officer 3 positioned rolling desk chairs in front of themselves.

Officer 2 was located close by, with his back to the wall that is parallel to the wall at the further end of the Day Room, where the second television is located.

One of the youths ("Youth") finished his dinner, stood up, asked permission to throw out the disposable dinner container

and utensils, and after being given permission, left his table and threw away his dinner trash. Youth then continued walking to the television and, without asking permission, turned on an attached video gaming system that caused the television in the larger alcove to automatically change the input source away from the live television feed of the baseball game. Youth then sat down in a chair in front of the screen to play a video game.

Officer 1, having observed Youth turn on the video game, reached to a desk located to his right, opened a drawer, pulled out a remote control for the television, and turned the television off from across the room. Youth then got out of his chair, stood on the small table where the gaming device was housed, and manually pushed the power button for the television, without permission. Officer 1 then again used the remote control to turn the television off from across the room.

Youth then got up from his chair, stated "This is my TV, I can do what I want," and proceeded to walk with a deliberate stride, grasping his waistband with his right hand, across the Day Room and confronted Officer 3. He argued that he had the right to use the television, yelling profanities toward the officers. Officer 1 told Youth that it was he who turned it off. Youth then moved to Officer 1, continuing to yell profanities, and argue with Officer 1. While arguing with Officer 1 Youth made the comment, "This is my house, and you gonna find out . . . crack it off!" The phrase, "crack it off," is a slang term for an assault on an officer.

Officer 1 had a desk chair in front of himself, but off to his left, with his left foot resting on top of the base, and with his left hand on top of the chair back. Approximately 19 seconds into his argument with Officer 1, at least 8 of the other youths were now watching the argument. Eighteen seconds later Officer 1 takes his left foot off the base of the desk chair, stepping back and squaring his feet with his body but with his left hand remaining on the top of the back of the chair. This action created more space between him and Youth. Six seconds later Youth steps forward within less than two feet between them and one second later he takes another step moving to within four or five inches away from Officer 1. Officer 1 testified that he continued efforts to de-escalate the situation.

During much of the time that he was standing in front of, and arguing with Officer 1, Youth had one or both hands shoved into his waistband and kept them there until he and Officer 1 entered into a fight. Officer 1's initial movement was to place the palm of his left hand on Youth's chest, and to swing his right hand toward Youth's left shoulder. Youth's initial movement was to pull his right hand out of his waistband, swinging his right fist toward Officer 1's body, and ducking from Officer 1's right hand. Once the fight began, Officer 1 pushed the chair away toward Officer 2, Officer 3 (who has been watching the argument closely for the past 7 seconds) moved toward the fight, and Officer 2 (who had been watching Youth and Officer 1) grabbed the chair and moved it out of the way while at the same time he joined Officer 1 in wrestling Youth to the ground in an effort to subdue and control Youth. Officer 3 is seen following the three combatants, motioning to the other youths in what appears to be his command to "cover." It is clear that this "Cover" command was no later than 7 seconds after the fight began as by this time all 11 of the remaining youths have complied in the command.

While Officer 1 and Officer 2 worked to gain control of Youth, who was on his stomach with his arms tucked close to his body, with his right hand up around his head and face, Officer 3 remained alert as cover. In his efforts to gain control Officer 1 first placed pressure on the side of Youth's head while at the same time using his body and left arm to try to gain control of Youth's arms. To do so Officer 1 applied two (2) knee kicks to Youth's right torso. Officer 3 then moved to Youth's feet and grabbed them, spreading them apart to prevent body-twisting on the part of Youth.

San Diego County Probation Department Institutional Services Policy Manual ("Policy Manual") Policy 514, section 514.3 *Use of Force*, which provides, in pertinent part, "Officers may use force as reasonably appears necessary in the performance of their duties, but excessive force shall not be used. Officers must use only that amount of force that appears reasonably necessary under the circumstances in order to gain control of the youth; protect and ensure the safety of youths, staff, and others. . . obtain compliance with facility rules and staff orders; or ensure the institution's security and good order . . ."

Section 514.3 further provides, in its fifth paragraph, "Prior to resorting to the use of force, officers should,

when practicable, attempt verbal persuasion, order, or other tactics to avoid or mitigate the need for forceful action," citing to California Code of Regulations ("CCR") Title 15, section 1357.

Subsection 514.3.1 provides 20 examples of factors to be used to determine the reasonableness of force. Some of these factors relate to factors set forth in Penal Code section 835a.

CLERB has evaluated the complaint and determined that Officer 1 and Officer 2 both violated Policy Manual section 514 by using excessive force in their efforts to control Youth when he engaged in a fight with Officer 1 after continuing to argue with Officer 1 about changing the input to the television without permission. CLERB's determination also includes the actions on the part of Officer 1 when he attempted to gain physical control of Youth in attempting an "inside head takedown" as the two were arguing, implying that Officer 1's use of force, initially, was unnecessary and excessive.

Excessive Force - Officer 1: Youth was a resident at Cottage Succeed, at the Facility, on the date of the incident, where Officer 1 and Officer 3 were assigned. Cottage Succeed was described as housing for the most violent of juveniles, where the most serious of youths are housed. Youth had a known history of challenging authority, both in and out of the Facility.

On the day of the incident Youth had already stated to one officer, "What's Brackin" (where the term, "Brackin" is a gang slogan as a challenge to fight). On or around that day a routine weekly inspection of his room resulted in the discovery of an entry in Youth's journal, where he wrote, "the only thing that will make me smile is if [I kill] an Officer."

Having been rebuffed twice in his effort to take control of the television without permission, Youth then walked across the room to confront Officer 3 and Officer 1. He did not ask permission to approach, and his demeanor was such that it was clear a likely confrontation would follow. Youth did not like that he was told, "no," confronting Officer 1, shoving his hands into his waistband, yelling and arguing with the officer, then stepping closer when Officer 1 made a slight step back to create some distance. Finally, Youth shuffled even closer, to within approximately 5 inches of Deputy 1,

continued his arguing, and flinched, when Deputy 1 moved to restrain Youth with an "inside head takedown."

CLERB believes that de-escalation efforts were not sufficient to avoid the confrontation, pointing out that Officer 1 "could easily have taken a steps or steps back away from [Youth] to give space between himself and [Youth], and that [Officer 1] did not do so." But to do so would only embolden youths who are challenging the authority of officers, which could lead to even worse consequences. As pointed out by an expert witness, Officer 1 had no obligation to "retreat," and Penal Code section 835a (d), recognizes that there is no such obligation, but subdivision (d) does not equate "repositioning or other de-escalation tactics" to retreating.

The CLERB points out that there is inconsistency with Officer 1's statement, that he thought stepping back again was not possible due to the location of the nearby desk. The CCTV video showed that the desk was not directly behind Officer 1 but, instead, was to his right almost two feet away from him. Officer 1 maintained that at that time he thought that his position was such that the desk would impede additional movements back.

Finally, CLERB goes to length to question whether Officer 1 used the "Cover" command prior to the physical efforts to take Youth under control and while it is unclear from the CCTV video recording, as there is no audio element to the recording, there is no evidence, other than the timing of compliance with a Cover command when Officer 1, Officer 2, and Youth, were wrestling on the floor. Even then, the other youths were more interested in watching and not "covering," right away, and they didn't comply until Officer 3 points to the youths and appears to be addressing them to cover.

After CLERB considered the staff's recommendation the first time, it directed staff to go back and try to obtain interviews with Officer 1 and Officer 2, to try to clear up the inconsistencies it saw between statements and the video. Officer 1 and Officer 2 declined the request by CLERB staff to be interviewed, and it returned to CLERB with a recommendation that CLERB approve a finding of "not sustained," meaning there was insufficient evidence to either prove or disprove the allegation. CLERB did not agree with the recommendation and made changes to the findings as identified above.

It is the finding of the hearing officer that the use of force of Officer 1 was justified, and that the issue of whether Officer 1 gave the Cover command, prior to his efforts to take Youth under control using force, is not sustained by the evidence. Therefore, the finding of CLERB that Officer 1 used excessive force is overturned.

Excessive Force - Officer 2: Officer 2 was not involved in the arguments that Youth had with Officer 1 and Officer 3. His only involvement is that when the argument turned physical, with Officer 1 and Youth fighting, that he jumped in to assist Officer 1 in seeking to control Youth.

The expert witness's analysis and opinion of the fight supported Officer 2's use of force on Youth in efforts to take him into custody and control the situation. The strikes (if any) delivered by Officer 2 to Youth's body were "textbook" examples of how to gain control of a fighting youth. Likewise, using his hand or arm to press Youth's head to the floor are within Policy 514, and CLERB has not met its burden to support its finding that he used excessive force. Therefore, his actions are justified.

As with Officer 1, the finding of CLERB that Officer 2 used excessive force is overturned.

Based on the findings set forth above, it is hereby recommended:

1. That the allegation sustained by CLERB in the Complaint against **Officer 1** referred to as CLERB Case # 23-118 regarding Excessive Force be deemed **Action Justified;**
2. That the allegation sustained by CLERB in the Complaint against **Officer 2** referred to as CLERB Case # 23-118 regarding Excessive Force be deemed **Action Justified;** and
3. That this proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Commissioner Montenegro to approve the decision; seconded by Commissioner McGovern. Motion passed with all in favor.

6. Commissioner Rodriguez-Kennedy: Rico J. Dominguez, Esq., on behalf of **2023-050P**, and **2023-051P**, Deputy Sheriffs, appealing the Citizens' Law Enforcement Review Board's sustained finding.

FINDINGS AND RECOMMENDATIONS:

Deputy 1 (2023-050P) and Deputy 2 (2023-051P), Deputy Sheriffs (collectively referred to as "Deputies"), appealed the Findings of the Citizens' Law Enforcement Review Board, ("CLERB"), in which it sustained allegations against Deputies in the Sheriff's Department. The Commission appointed Commissioner Will Rodriguez-Kennedy to hear the appeal and submit findings and a proposed decision to the Civil Service Commission. Thereafter, a hearing was held on June 11, 2025.

The Commission's authority to hear this appeal is derived from Civil Service Rule XV, Section 15.1.1 g, in that the CLERB Finding charges Deputies as follows: "Illegal Search and Seizure - [Deputy 1] and [Deputy 2] forced entry into [the Restrained Person]'s residence."

Section 15.1.7 states as follows: "The burden of proof shall be on CLERB to demonstrate through a preponderance of the evidence that the incident or act, which was the basis for the complaint sustained by CLERB, occurred and did constitute improper conduct."

CLERB reviewed this case and found that Deputy 1 and Deputy 2 committed misconduct in the procedures they followed to serve a domestic violence ("DV") temporary restraining order ("TRO") with an Order for Removal ("Order") issued by a Superior Court upon the Restrained Person on February 1, 2022, at an apartment ("Residence"). CLERB accepted jurisdiction on the basis that the San Diego Sheriff's Office forwarded the incident due to the fact that (1) At one point, after leaving, the Restrained Person returned to the apartment and attempted to prevent the Deputies from reentering, resulting in force to gain entry and enforce the Order, and (2) the Restrained Person required medical treatment for a broken *digitus minimus manus* (commonly referred to as a "pinky finger") on his right hand, at its top knuckle, which he suffered in his struggle with the Deputies.

The Deputies first arrived at the Residence on February 1, 2022. Deputy 2 knocked on the door, paused, then shouted, "Sheriff's Department" and after a pause, repeated, "Sheriff's Department," and hearing a voice from within

added, "Can you come to the door? Please?" The Restrained Person opened the door approximately four (4) inches, and Deputy 1 asked, "Can we come in? Please?" Deputy 1 then confirmed that the person at the door was the Restrained Person, and told him "We have some paperwork for you, okay?"

The Restrained Person opened the door a bit wider and reached out the door with his right hand, indicating he wanted to receive the paperwork from Deputy 1. Deputy 1 then placed his fingertips on the door, saying to the Restrained Person, "Open the door for me." The Restrained Person raised his fingers up as if to indicate that they needed to remain outside, saying "You can't come in," to which Deputy 2 replied, "Yes we can." Deputy 1 also repeated, "Open the door for me." At all times the Restrained Person's left hand remained behind the door, not visible to the Deputies.

The Restrained Person then allowed the Deputies to enter, at which point Deputy 1 further elaborated on the nature of their visit as he went through the TRO and Order page by page.

Except when initially announcing their arrival through the closed door, at no other point were voices raised as Deputy 1 explained the purpose of their visit.

The Restrained Person remained uncertain of the legitimacy of the presence of the Deputies, and they allowed him to call 9-1-1 to confirm with dispatch that they were, in fact, present to serve him with the papers.

After going through the TRO and Order, the Restrained Person seemed reluctant to leave the Residence. Deputy 1 told him that there were two options, "One is, you can stay here, and we'll force you out, put you in handcuffs, and take you to jail, or two, you abide by the court order, which is temporary, get your stuff and just move out." After the Restrained Person continued to try to indicate that he wanted to stay at the Residence, Deputy 2 pointed out that a violation of the "terms and stipulations" of the TRO and Order is "an arrestable offense" and he agreed to collect his belongings and leave. The Restrained Person still stated that the Deputies could leave but was informed that they needed to stay there while he gathered his things and leaves, and that they would hand over the paperwork once he leaves the unit.

As the Restrained Person gathered his belongings, he appeared to be collecting everything of his to take. Deputy 1 explained

to him that it was only temporary, and that he doesn't need to take everything; that if he needed to return for something that he needed during the pendency of the Order he could call San Diego Police and tell them he needs a "preserve the peace" to assist in picking up more belongings.

Almost 15 minutes after he began collecting belongings, the Restrained Person steps out of the front door of the residence, and when he turns to return inside Deputy 1 blocks his entry, telling him, "You're out, you're out, you're not getting your bike, that's it. You're out." There were some personal belongings outside the door that the Restrained Person was unable to carry while holding a bundle of clothes.

Deputy 1 followed the Restrained Person as he walked along the common balcony/walkway, towards his car. He then stops, turns around, walks past Deputy 1 and walks back towards the Residence to retrieve a trash bag from his neighbor to hold his clothes and make it easier to carry. Deputy 1 also takes a trash bag from the neighbor. Walking past Deputy 2, Restrained Person is now in front of both Deputies and increases his pace so that he has made some distance from Deputy 2 by the time he reaches the front door of the Residence. Deputy 2 speeds up a bit when she sees the Restrained Person re-enter the Residence and attempts to shut the door on the Deputies. Deputy 2 places her foot across the threshold and stops the door from closing, pushing with her hands to get back in as the Restrained Person is now in violation of the TRO and Order.

After Deputy 1 and Deputy 2 regain entry into the Residence they quickly act to arrest the Restrained Person for violating the TRO and the Order. Resisting the arrest, the three wrestle around the Residence, ending up in a bathroom, where the Deputies are finally able to get handcuffs on him, two minutes and nine seconds after the Deputies forced their way back in. San Diego Police show up, and medical assistance is called when the Restrained Person complains of an injury to his hand.

All parties agree that the San Diego County Sheriff's Deputies are bound by the San Diego County Sheriff's Department Court Services Bureau Policy and Procedures Manual, Number D.3, "Order for Removal".

CLERB Jurisdiction and Sustained Findings: Initially, the Deputies argue that CLERB lacked jurisdiction from the start, contending that it never should have investigated the events

that occurred on February 1, 2022, since no complaint was ever filed (the Department regularly forwards all cases where use of force is reported) and arguing that without such a complaint, and because the Restrained Person's injury was a broken pinky finger, the arrestee, the Restrained Person, did not suffer a "great bodily injury."

CLERB argues that, first, this Commission does not have authority to resolve a question of CLERB's jurisdiction to review, investigate, and report on any complaint submitted to CLERB and, second, CLERB is required to review, investigate, and report on any incident involving County law enforcement where, *inter alia*, there is use of force that resulted in "great bodily injury".

Second, in addition to the jurisdictional question, CLERB (as a result of investigating the use of force, but without a complaint from the Restrained Person) reviewed, investigated, and reported on the factual circumstances related to the Deputies' initial actions to gain entry at the Residence. This resulted in a finding that their entry was non-consensual, and CLERB sustained a finding of misconduct for the violation of San Diego County Sheriff's Department Court Services Bureau Policy and Procedures Manual, Number D.3, "Order for Removal".

Use of Force Resulting in Great Bodily Injury: It is agreed that this Commission does not have the authority to determine the jurisdiction of CLERB. However, this Commission is allowed to evaluate the findings and conclusions of CLERB if appealed by a County employee under Rule XV. This appellate review is limited to reviewing a "sustained complaint," that a peace officer committed or engaged in nine (9) specifically described conduct including, at Section 15.1.1.

In the instant action CLERB found that the Deputies' use of force was justified. The question is: Can Restrained Person's injury, the fracture of the top knuckle of his right pinky finger meet the definition of "great bodily injury," supporting "Action justified," by CLERB? Our answer, *under these facts*, would be: yes.

Initial Entry into Restrained Person's Residence was not a Forced Entry: Even though there is the argument that CLERB should not have even considered this charge, since it normally wouldn't be within its jurisdiction without a "complaint," we respect the Board and the work they perform and will consider

this Rule XV appeal, as the alleged misconduct occurred during an incident that fell within CLERB's jurisdiction pursuant to CLERB's Rules and Regulations Section 4.3 which lay out the specific incidents which CLERB may ". . . review, investigate, and report on the following categories of incidents, regardless of whether a Complaint has been filed: . . . (C) The use of force by peace officers or custodial officers employed by the County Sheriff's Department or custodial officers employed by the County Sheriff's Department or the Probation Department resulting in great bodily injury."

In considering the body worn camera video of the initial entry into the Restrained Person's residence, it is clear that the Restrained Person, briefly, hesitated in allowing the Deputies entry. His "resistance," if any, was brief, and after the explanation provided by Deputy 1 and Deputy 2, he did not oppose their entry. Deputy 1 had his fingertips on the door; had Restrained Person truly opposed their entry he could have provided more resistance against Deputy 1's fingers so that the Deputies would have needed to resort to forced entry by other means. Further, at the time of this entry *the Restrained Person is the individual who opened the door*, allowing the Deputies to enter; this wasn't a situation where the door was closed but not locked, and the Deputies, finding the door unlocked, turned the doorknob and opened the door. Therefore, the initial entry into the residence was not a "Forcible Entry".

The injury in question occurred in a second entry which was lawful and compliant with relevant law: The Restrained Person did not sustain an injury during the initial entry, but rather as the result of a second entry. This entry occurred after the Deputies served the Restrained Person with the DV TRO, and after the Deputies had escorted the Restrained Person out of the residence. At this point, the Restrained Person had been identified, the purpose of the Deputies visit had been explained, the unlawfulness of his return to the Residence had been explained, and the Restrained Person decided to violate the Order and return to the Residence while attempting to prevent the Deputies from entering while he was in the active commission of a crime (Violation of Penal Code 273.6).

Penal Code Section 844 which reads "To make an arrest, a private person, if the offense is a felony, and in all cases a peace officer, may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing the person to be, after

having demanded admittance and explained the purpose for which admittance is desired." Thus, this second entry was lawful and compliant with Department policy. Finally, Commission finds that CLERB's evidence does not indicate a violation of Department policy or relevant law as the injury in question occurred during a second entry when all conditions of Penal Code 844 had been met and thus a forced entry was lawful and compliant with policy.

Therefore, the evidence supports a finding of "Unfounded," on the part of both Deputy 1 and Deputy 2.

Based on the findings set forth above, it is hereby recommended:

1. That the allegation sustained by CLERB against **Deputy 1 and Deputy 2** related to forced entry into Restrained Person's residence, referred to as CLERB Case #22-027 be deemed **Unfounded**; and
2. That this proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Commissioner Rodriguez-Kennedy to approve decision; seconded by Commissioner McGovern. Motion passed with all in favor.

REQUEST TO SEAL PERFORMANCE APPRAISAL

7. **2025-030**, Administrative Analyst II, Health and Human Services Agency, requesting the sealing of a performance appraisal covering the period May 18, 2024, to January 7, 2025.

RECOMMENDATION: Grant Request

Approved on Consent Agenda.

SELECTION PROCESS

Appeal

8. **2025-031**, Laboratory Assistant, appealing her non-selection for the classification of Toxicologist I in the Medical Examiner's Office.

RECOMMENDATION: Deny Request

Approved on Consent Agenda.

EXTENSION OF TEMPORARY APPOINTMENTS

9. Health and Human Services Agency

1 Administrative Analyst I: **2025-032**

RECOMMENDATION: Ratify

Approved on Consent Agenda.

INFORMATION

10. **2025-005**, former Criminalist I, withdrawing her appeal of an Order of Termination and Charges from the Sheriff's Office. (Commissioner McGovern)

Approved on Consent Agenda.

11. **2025-009P**, former Deputy Sheriff, withdrawing her appeal of an Order of Termination and Charges from the Sheriff's Office. (Commissioner Coleman)

Approved on Consent Agenda.

ADJOURNED: **3:35 p.m.**

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