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County of San Diego

CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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MEETING AGENDA

Tuesday, June 14, 2022, 5:30 p.m.

Remote Meeting Zoom Platform

<https://us06web.zoom.us/j/85608890883?pwd=dGs3K0hvY1JiU0FHelZ4cGxMSnRXZz09>

Phone: +1 669 900 6833

Webinar ID: 856 0889 0883

Passcode: 956031

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 should submit a "Request to Speak" form 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 CLERB at (619) 238-6776 at least 24 hours before the meeting.

WRITINGS DISTRIBUTED TO THE BOARD

Pursuant to Government Code Section 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. 220, San Diego, CA.

1. ROLL CALL

2. PUBLIC COMMENTS

This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction but not an item on today's open session agenda. **Each speaker shall complete and submit an online "Request to Speak" form.** Each speaker will be limited to three minutes. This meeting will be held remotely via the Zoom Platform. Click the link in the agenda header above to access the meeting using the Google Chrome web browser. Contact CLERB at clerb@sdcounty.ca.gov or 619-238-6776 if you have questions.

3. MINUTES APPROVAL (Attachment A)

4. PRESENTATION/TRAINING

- a) CLERB 2022-2023 Operational Plan Presented by CLERB Executive Officer Paul Parker
- b) Overview of Causes and Manners of Death for San Diego County Detention Facility-Related Deaths: January 2020 to May 2022 by CLERB Executive Officer Paul Parker

5. EXECUTIVE OFFICER'S REPORT

- a) Overview of Activities of CLERB Executive Officer and Staff
- b) Workload Report – Open Complaints/Investigations Report (Attachment B)
- c) Case Progress and Status Report (Attachment C)
- d) Executive Officer Correspondence to Full CLERB (Attachment D)
- e) Policy Recommendation Pending Responses
 - i. 21-004 / Moreno (Death) – SDSD
 - It is recommended that the San Diego Sheriff's Department (SDSD) identify who answers the "Arresting Officer Questions" on the Receiving Screening Questionnaire during the Booking process.
 - ii. 21-060 / Meadows – SDSD
 - It is recommended that the San Diego Sheriff's Department (SDSD) create a policy that mandates conducting all Detentions Investigative Unit (DIU) interviews in a private area, out of view from other inmates.
 - iii. Reduction of Racially Disparate Policing Practices – SDSD
 - Reduce discretionary stops or contacts, traffic or otherwise, pertaining to low-level offenses that do not compromise actual public safety. Many of these stops are pretextual in nature and oftentimes used to make an initial contact with the primary goal of locating weapons, drugs, warrants, suspended licenses, etc.
 - Eliminate stopping or contacting people solely for lower-level traffic offenses, such as:
 - Expired registration,
 - Equipment violations, and
 - No seatbelt in use.
 - Eliminate contacting people solely for quality-of-life issues not jeopardizing public safety, such as loitering or jaywalking.
 - Add to Subsection B of Field Operation Manual Policy 1, "Use of Discretion," that discretionary decisions should be evaluated for whether they will result in racially disparate treatment or outcomes.
 - Provide justification for a stop or contact on body worn camera (BWC).
 - Proactively review BWC footage for the sole purpose of analyzing deputy interactions with people of color in comparison to interactions with white people.
 - Institute pre-employment screening for existing implicit and explicit bias.
 - iv. Create Fentanyl Canine Policy and Procedures – SDSD
 - Update Detentions Services Bureau Policy 1.87, entitled, "Detention Canine Program," and its Detentions Canine Manual to include said P&P. The P&P should indicate that the fentanyl canine will be used for searches of contraband in all areas; to conduct sniffs of all persons entering a facility to include visitors, inmates, and staff; and to conduct sniffs of persons already inside of a facility, to include visitors, inmates, and staff.
 - v. CLERB Staff Response to Death Scenes – Probation
 - Allow a CLERB staff member with extensive death investigation experience to be present at the initial death scene and any related incident scene and, without compromising or obstructing the law enforcement investigation, receive a briefing, participate in a scene walk-thru, and have any questions about the circumstances surrounding the events leading up to, and including the death, answered.
 - vi. Use of Technology to Monitor Health and Safety of Inmates – Probation
 - Research, and publicly report the results of its research efforts, i.e., associated costs, technology considered, reasons for not implementing, if applicable, etc., the use of technological devices to

- identify and subsequently aid inmates who may be in medical distress.
- Incorporate into policy the use of technological devices to identify and subsequently aid inmates who may be in medical distress.

f) Policy Recommendation Responses

- i. 20-113 / Alvarez (Death) – SDSD (Attachment E)
 - It is recommended that the San Diego Sheriff's Department (SDSD) revise its Detention Policies and Procedures Section I. 64, entitled, "Safety Checks: Inmates, Housing, and Holding Areas," to mandate proof of life verification through visual checks every 60 minutes during the booking process.
 - It is recommended that the San Diego Central Jail (SDCJ) only utilize cells with operable cameras unless all cells with operable cameras are in use.
- ii. 21-014 / Calhoun (Death) – SDSD (Attachment F)
 - It is recommended that SDSD modify P&P Section 6.43 – Vehicle Pursuit, to mandate that deputies shall not initiate or participate in a pursuit in which the only known offense at the time of the initiation or subsequent participation is a non-violent crime, to include a stolen vehicle.
 - It is recommended that SDSD modify P&P Section 6.43 – Vehicle Pursuit, to indicate that when initiating a pursuit, a deputy must not only consider all public safety factors applicable to the particular facts and circumstances, but "shall" (as opposed to the current standard of "may") consider the applicable public safety factors listed in the P&P.
- iii. 21-038 / Whitlock (Death) – SDSD (Attachment G)
 - It is recommended that the San Diego Sheriff Department update its Detention Services Bureau (DSB) P&P Section I.50 Body Scanners and X-Rays, as it pertains to Subsection III C and require that body scans be completed to include inmates transferred between facilities.
- iv. 21-078 / Blakeney – SDSD (Attachment H)
 - It is recommended that the San Diego Sheriff's Department (SDSD) change SDSD P&P Section 6.131 titled "Body Worn Camera," to direct that deputies shall begin recording prior to initiating any law enforcement related contact.
- v. Expansion of Family Liaison Program – SDSD (Attachment I)
 - It is recommended that the SDSD update P&P Section 6.134 entitled, "Family Liaison Protocol," to mandate that the Family Liaison, or designee, meet with the family at the conclusion of the investigation into a shooting, use of force resulting in significant injury or death, or an in-custody death. The purpose of the meeting will be to advise the family of the investigative outcome, answer questions, and provide information when appropriate. As currently stated in the P&P, when information cannot be released, the family will be provided with an explanation, follow-up, or referrals to appropriate agencies.
- vi. Provide Inmate Access to Naloxone – SDSD (Attachment J)
 - Make naloxone "readily available" to San Diego County Detention Facility inmates.
 - Educate inmates on opioid overdose and its signs, correct technique for administration of naloxone and, essential procedures, including performance of cardiopulmonary resuscitation.
- vii. Use of Technology to Monitor Health and Safety of Inmates – SDSD (Attachment K)
 - Research, and publicly report the results of its research efforts, i.e., associated costs, technology considered, reasons for not implementing, if applicable, etc., the use of technological devices to identify and subsequently aid inmates who may be in medical distress.
 - Incorporate into policy the use of technological devices to identify and subsequently aid inmates who may be in medical distress.

g) Sustained Finding Pending Responses

- i. None

- h) Sustained Finding Response
 - i. 21-028 / Gomez (Death) – SDS (Attachment L)

6. BOARD CHAIR’S REPORT

7. NEW BUSINESS

- a) Continuance of Teleconferencing Meeting Option Pursuant to Government Code Section 54953(e)
- b) Election of CLERB Officers
- c) Feasibility of Third-Party Jail Administration
- d) Overview of Improvement Opportunities Identified by San Diegans for Justice (Attachment M)

8. UNFINISHED BUSINESS

- a) Update: Authority for the Executive Officer to Work with County Staff to Pursue Legislation and/or to Add a Policy to the County Legislative Program in Support of Increased Transparency in Civilian Oversight of Peace Officers and Custodial Officers
- b) Update: Authority for the Executive Officer to Work with County Staff to Request that the County Board of Supervisors Expand CLERB’s Jurisdiction to Include Personnel Involved in Providing Medical Care in County Detention Facilities

9. BOARD MEMBER COMMENTS

10. SHERIFF/PROBATION LIAISON QUERY

11. CLOSED SESSION

- a) PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE
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).
- b) PUBLIC EMPLOYEE PERFORMANCE EVALUATION
 Notice pursuant to Government Code section 54957
 Title: Executive Officer, CLERB

DEFINITION OF FINDINGS	
Action Justified	The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Sustained	The evidence supports the allegation and the act or conduct was not justified.
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.

NOTICE: THE CITIZENS LAW ENFORCEMENT REVIEW BOARD (CLERB) MAY TAKE ANY ACTION WITH RESPECT TO THE ITEMS INCLUDED ON THIS AGENDA. RECOMMENDATIONS MADE BY STAFF DO NOT LIMIT ACTIONS THAT THE CLERB MAY TAKE. MEMBERS OF THE PUBLIC SHOULD NOT RELY UPON THE RECOMMENDATIONS IN THE AGENDA AS DETERMINATIVE OF THE ACTION THE CLERB MAY TAKE ON A PARTICULAR MATTER.

CASES FOR SUMMARY HEARING (11)

21-052/SMITH

1. Misconduct/Intimidation – Deputy 1 made intimidating phone calls and sent harassing text messages to the complainant.

Recommended Finding: Unfounded

Rationale: In a letter from the complainant, he advised that he had “*received a text message from [Protected Party] phone number and it read that MY best interest: was to walk away from [Protected Party] because she was in love with A WHITE COP emoji and that a restraining order was on file. Then there were calls from a private # always around 9:24pm which leads me to believe this officer is on duty at this time... One of the phone later revealed that Deputy 1 made the phone calls in which he threatened me, challenged me to fight him, and to meet him so he could arrest me. Deputy 1 was very animated, upset and seemed possessive of [Protected Party] calling and texting. Deputy 1 made the phone calls in which he threatened me, challenged me to fight him, and to meet him so he could arrest me.*” The complainant alleged that Deputy 1 threatened the complainant, challenged the complainant to fight, offered to meet the complainant for arrest, and sent racially charged text messages to him. Deputy 1 responded to a Sheriff Employee Response Forms (SERFs) with a signed statement and provided relevant and conflicting information. No evidence, including Body Worn Camera recordings, written reports, or submitted statements, supported the allegation that Deputy 1 sent the complainant any text messages, either from his department issued cell phone, [Protected Party] cell phone, or any other cell phone. The evidence showed that the alleged act or conduct did not occur.

2. Misconduct/Procedure – Deputy 1 used his authoritative position to pursue criminal charges against the complainant.

Recommended Finding: Action Justified

Rationale: In the complainant’s written statement, he wrote, “[Protected Party] and Deputy 1 interacted with me, but now they’ve pursued criminal charges, using the shield as a superior person.” The complainant had a domestic violence temporary restraining order against him, filed by his ex-girlfriend [Protected Party], where he was the restrained party. According to departmental reports, Deputy 1 responded to the protected party’s residence and investigated a report that the complainant had violated a domestic violence restraining order. The valid domestic violence restraining order prohibited the complainant from contacting the protected party, directly or indirectly, in any way. During his investigation, Deputy 1 interacted with the complainant, via phone call, to get a statement from the complainant. When Deputy 1 confirmed that the complainant had violated the domestic violence restraining order, that a crime had occurred, he communicated with him and attempted to arrest him. The evidence showed that the alleged act or conduct did occur, and it was lawful, justified, and proper.

3. Misconduct/Procedure – Deputy 1 engaged in a relationship with the victim of a criminal case he investigated.

Recommended Finding: Unfounded

Rationale: In the complainant’s written statement, he reported that while investigating the alleged violation of the domestic violence temporary restraining order against the complainant, Deputy 1 engaged in a romantic relationship with the protected party. The complainant stated that “*Deputy 1 engaged in a relationship with the victim of a criminal case he investigated.*” CLERB’s investigation revealed that the complainant and the protected party were previously involved in a relationship. The protected party had a domestic violence temporary restraining order against the complainant, and when he violated it, it was Deputy 1 who was dispatched to the protected party’s residence to investigate the crime. While investigating the incident, the complainant alleged that Deputy 1 engaged in a relationship with the protected party. Attempts were made to contact the protected party for interview; however, she was uncontactable. Deputy 1 responded to a SERF with a signed statement and provided the relevant and information that conflicted with what the complainant claimed. In review of Deputy 1’s written report, his SERF responses, and his BWC recordings of his interactions with the protected party, the allegation that he engaged in a relationship with the protected party was found to be untrue. The evidence showed that the alleged act or conduct did not occur.

4. Misconduct/Procedure - Deputy 1 threatened to fight, issue an arrest warrant, and/or threatened to arrest the complainant.

Recommended Finding: Not Sustained

Rationale: In the complainant's written statement, he reported, "*Deputy 1 threatened to physically fight [him]. Deputy 1 threatened to issue an arrest warrant against [him]. On another occasion, Deputy 1 threatened the complainant by advising him that if he saw him in the City of Lakeside, he would arrest him.*" According to the complainant in a follow-up telephonic interview, he further explained that in an attempt to harass and intimidate him, Deputy 1, while on duty, called him and text messaged him. On another occasion, Deputy 1 threatened the complainant by advising him that if he saw him in the City of Lakeside, he would arrest him. According to Deputy 1's written report, at the conclusion of his investigation, after taking statements and reviewing the details of the restraining order, Deputy 1 believed that the complainant was in violation of a Domestic Violence Restraining Order, an arrestable offense. Deputy 1 responded to a SERF with a signed statement and provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however, it is privileged information and cannot be publicly disclosed. According to San Diego Sheriff's Department Policy and Procedure Section 6.55 titled, "Protective Orders," (in part) personnel will thoroughly investigate reports of violations of court issued protective orders concerning domestic violence or other civil or criminal disturbances. Emphasis will be placed on strict enforcement of these laws to ensure the victim's safety as well as compliance with the law. Violation of a restraining order is a misdemeanor, and an arrest shall be made when there is reasonable cause to believe the subject of the restraining order has violated the order. In the event the suspect has left the scene prior to the deputy's arrival, the deputy shall determine if a crime has been committed. If evidence of a crime exists, which in this case it did, then a crime report will be prepared. According to the California Penal Code Section 273.6(a) violation of this section is a misdemeanor crime, as it is a violation of a court-issued protective order. Besides statements from both parties, there was no other available evidence to support or refute the allegation that Deputy 1 threatened to physically fight the complainant or that Deputy 1 threatened to issue an arrest warrant for the complainant. There was insufficient evidence to either prove or disprove the allegation.

21-055/FROST

1. Misconduct/Procedure – Deputy 4 questioned the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated, "I remember answering questions about my gender. Did I still have my genitals I was born with? How long have I been female? And so on. I was in female clothing, had makeup on and fingernail polish." Body Worn Camera (BWC) evidence was equipped with audio. Deputy 4's conversations with the complainant corroborated her allegation. According to SDSD P&P 10.6, Continued Professional Training, "All sworn personnel will participate in continuing professional training programs that reinforce their respective ranks and job assignments." In May 2020 a Line-Up Training, was required to be completed by sworn personnel, which emphasized professionalism in the workplace and directed that sworn staff are "expected to exude professionalism and respect in the course of their duties. When communicating with an individual, use the pronouns that match the individual's gender identity. A person who identifies as a certain gender, whether or not that person has taken hormones or undergone surgery, should be referred to using the pronouns appropriate for that gender identity. If you are not certain which pronoun to use, ask the individual how they would like to be addressed." BWC showed that Deputy 4 was tactful when he questioned the complainant. He was respectful and acknowledged her gender identity and used proper pronouns. Deputy 4 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. The evidence showed that Deputy 4 questioned/responded to the complainant appropriately and his actions were lawful, justified and proper.

2. Misconduct/Procedure – Deputy 5 changed the complainant's gender on her Booking/Intake form.

Recommended Finding: Action Justified

Rationale: According to the complainant's booking paperwork (Form J-15), her sex was originally recorded as "F" (female), however, the deputy that transported the complainant to SDCJ, Deputy 5, initialed a change of the complainant's sex from "F" (female) to "M" (male). At the time of the incident, and corroborated through review of BWC footage, the rule was, transportation of an individual to a detention facility was determined by "body parts," not gender identity. SDCSD Patrol Procedure Manual Policy 25 Prisoner Transportation, states in part, "the transporting deputy is required to document, on the Inmate Booking/Intake Form (J-15), any and all pertinent information regarding personal traits of the prisoner." According to SDCSD P&P 6.13, Inmate Intake Form (J-15), "deputies must be sure that the physical description on the Inmate Intake Form matches that of the inmate. The intake form is the initial identifier of the inmate in the detention facility and must be accurate." Furthermore, Policy 6.127 Prison Rape Elimination Act (PREA) states in part, "Lesbian, Gay, Bisexual, Transgender or Intersex (LGBTI) inmates will not be classified into facilities or housing units solely based on their identification as LGBTI, unless such a dedicated unit exists for the purpose of protecting such inmates." Deputy 5 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. The evidence showed the alleged act or misconduct did occur and was lawful, justified and proper. **Please Note: On 02-19-21, a training bulletin was disseminated to SDCSD sworn personnel, LGBTQ+ Procedures, which stated, "An arrestee should be taken to a facility that coincides with the arrestee's gender identity."**

3. Discrimination/Gender – Deputy 2 failed to alert intake deputies of the complainant's transgender identity.

Recommended Finding: Action Justified

Rationale: During the pre-booking process, the complainant expressed concerns for her safety. She stated, "I did express normal concerns about my housing, and they seemed to acknowledge those concerns at booking. I remember indicating I would only be comfortable with transgendered people like me or be kept in segregation alone. I do not remember any misunderstandings about my housing preference at booking." According to SDCSD Medical Intake Screening records, the complainant responded to the gender identity questions that she was a transgender female. Medical screening staff alerted the Jail Population Management Unit (JPMU), as required. SDCSD DSB P&P R.13, Transgender, Intersex and Non-Binary Inmates, states in part, "Upon identifying an individual as transgender, intersex or non-binary, based on the inmate's response to the gender identity intake screening question, medical staff will immediately notify the Jail Population Management Unit (JPMU). JPMU will respond immediately to conduct an individualized housing assessment with the inmate prior to the inmate entering the facility. JPMU staff will provide the inmate with a J-350 form (Voluntary Gender Identity Statement of Preference)." Deputy 2 met with the complainant and had her complete the J-350 form, in which the complainant confirmed her gender identity as female, search preference female and housing preference female. Policy R. 13, states in part, "An inmate's own views with respect to their safety shall be given serious consideration. A hazard and instruction will be added to document the inmate's stated gender identity in the Jail Inmate Management System (JIMS). The hazard informs staff of the inmate's gender identity and which pronouns are preferred by the inmate." According to DSB Policy R. 1, Inmate Classification, "Any person booked into a detention facility shall undergo a classification evaluation to determine an appropriate housing assignment, exceptions: inmates being processed through the Book and Release or similar programs." Per the policy, as the complainant was a Book and Release inmate, her JIMS record was not required to be updated, however, review of the complainant's JIMS records, from a prior incarceration, listed the following Hazards and Instructions/High Risk Indicators, Transgender and Protective Custody. At the time of the incident, the policy did not mandate that JPMU deputies alert Intake deputies to an inmates gender identity and/or that they should be kept separate from general population inmates. Deputy 2 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. The evidence showed, per the policy in place at the time of the incident, that the actions of Deputy 2 were lawful, justified and proper. **Please Note: Policy R.13 was updated, on 03-11-22, to include the following protective measures for LGBTQ+ inmates, "After the initial assessment is complete, the individual will be kept separate from other incarcerated persons for their safety during the intake process. The JPMU deputy will alert intake staff to the individual's gender identity. The JPMU deputy will notate this information along with the name and ARJIS of the deputy(s) they spoke with. Transgender, intersex and non-binary incarcerated persons who do not require a housing assessment by JPMU (e.g., Book and Release, 853.6 PC,**

Conditional Custody Program), will be kept separate from other incarcerated persons for their safety until released from custody.”

4. Misconduct/Procedure – Deputy 1 failed to notate the complainant’s Booking Intake (J-15) form.

Recommended Finding: Action Justified

Rationale: The San Diego Central Jail (SDCJ) Post Order, for Intake Control Deputy, directs that the deputy “Mark the Booking Intake (J-15) form with appropriate status: Book and Release (B&R), Protective Custody (PC), Keep Separate (KS), Administrative Segregation (Ad-Seg), etc.” The status indicators are hazards and instructions that are documented on an inmates JIMS record, and alerts deputies to the needs and/or precautions of inmates. Because the complainant was a Book and Release inmate, there was no requirement that her JIMS record be updated, however, her status/hazards and instructions, from a prior booking, identified her as a PC and transgender inmate. One of the responsibilities of the Intake Control Deputy is to make sure the inmate has the correct wristband according to their status. A yellow wristband identifies an inmate as “Protective Custody, (PC).” The complainant’s J-15 was not marked with any status indicators, however, she had a yellow wristband placed on her left wrist. SDSD DSB P&P J.3, Segregation: Definition and Use, states in part, “Protective custody (PC) is the voluntary or involuntary placement of an inmate into separate and secure housing when there is a verified threat against their life, whether stated or implied, or when an inmate’s circumstances render them a target for physical violence.” Deputy 1 was the assigned Intake Control Deputy when the complainant was booked. Deputy 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. According to a Department Information Source, although the Post Order directed that the Intake Control Deputy mark the J-15 with appropriate status, there was no policy that required an Intake Control Deputy to research such status indicators. As such, the evidence showed that Deputy 1’s actions were lawful, justified and proper.

5. Misconduct/Procedure – Deputies 3 and 6 placed the complainant in a cell with three “cisgender” men.

Recommended Finding: Action Justified

Rationale: The complainant stated, “Claimant, a transgender woman (whose gender is listed as female in DMV records), was placed in a cell against her wishes, with three cisgender men, in deliberate indifference to her safety. Claimant was assaulted in the cell, by one of the inmates, which resulted in her being severely injured, including her jaw being broken in two places.” Jail surveillance video showed the complainant was initially placed in a cell alone for approximately four hours. Intake Deputy 6 removed the complainant from that cell, fingerprinted her, and escorted her to the second floor. Upon arrival on the second floor, Deputies 3 and 6 directed the complainant into a cell with other inmates. Video surveillance showed the complainant stopped at the entrance to that cell. She reported, “I saw there was men in there and I froze and stopped moving. As I tried to say I wasn’t supposed to be in there, he said, ‘you get in there’. It happened fast so fast.” According to Detentions Policy R.13, “It is the policy of the San Diego County Sheriff’s Department to receive, evaluate, house, and provide secure, safe and humane custody of all persons, including transgender, intersex and non-binary which are committed or held for confinement by the Sheriff until their lawful and appropriate release or transfer to another authority.” The protective measures in place at the time, did identify the complainant as protective custody (PC), and she had a yellow wristband on her wrist. SDSD records showed the inmate that assaulted the complainant was a PC inmate and also had a yellow wristband. At the time of the incident, all PC inmates were placed in holding cells together, regardless of their classification status unless per the policy, “must be ‘kept separate’ for different reasons.” The complainant’s JIMS records, had no “keep separate” hazard. Deputies 3 and 6 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. According to the policies in place at the time, the evidence showed the alleged act or conduct did occur and was lawful, justified and proper.
Please Note: Policy R.13 has been updated since this incident. See rationale #3.

6. Misconduct/Intimidation – Deputy 6 was “mean and stern” with the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant alleged Deputy 6 was mean and stern when he removed her from the cell and

transferred her to another cell with three men. She stated, "I still don't understand why the officer moved me from a cell by myself to a cell with three men. He was mean and stern when he pulled me from my cell." According to SDSD P&P 2.48, Treatment of Persons in Custody, "Employees shall not mistreat, nor abuse physically or verbally, persons who are in their custody. Employees shall handle such persons in accordance with law and established Departmental procedures." Deputy 6 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. Jail surveillance video does not include audio. Conversations between the complainant and Deputy 6 were not recorded. As such, the evidence was insufficient to either prove or disprove the allegation.

7. Misconduct/Discourtesy – Deputy 3 was discourteous to the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant stated, "The officer who was taking me to medical was telling the whole story to another officer who didn't see it. He was saying how incredible it was that every time the guy hit me I came up off the ground. He said, 'it was incredible he looked just like a rag doll.'" Deputy 3 documented in his Crime Report that he observed the suspect strike the complainant approximately two times with closed fist to the face. Deputy 3 reported he escorted the complainant to medical to be evaluated. According to SDSD P&P 2.22, Courtesy, "Employees shall be courteous to the public and fellow employees. They shall be tactful in the performance of their duties. They shall exercise patience and discretion and shall not use insolent language or gestures." Additionally, one of the core values of the SDSD is "Respect", which states, "We treat everyone with dignity, honoring the rights of all individuals." Deputy 3 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. Jail surveillance video does not include audio. Conversations between the complainant and Deputy 3 were not recorded. As such, the evidence was insufficient to either prove or disprove the allegation.

8. Misconduct/Medical (I/O) – SDSD medical staff failed to summon paramedics and/or take the complainant to the hospital.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, "Despite Claimant's need for immediate medical attention, jail staff failed to summon paramedics and/or take Claimant to a hospital. I was escorted to medical and I said when I got there to the nurse, 'my jaw is broken I know it is broken.' She said they were about to let me go but if I wanted them to treat it, I would have to stay and I would not be released. I had to stay in jail if I wanted them to help me or I could go get help shortly myself. I was recklessly led to believe I would be immediately released and could go to the hospital myself." According to the complainant's UCSD medical records, following her release from custody she went directly to UCSD Medical Center. She was evaluated and found to have two mandible fractures. The complainant was admitted to the hospital and underwent surgery to repair her jaw. SDSD medical staff are non-sworn personnel. As such, CLERB lacks jurisdiction to investigate the complaint, per CLERB Rules and Regulations 4.1 titled, Citizen Complaints: Authority, which states, CLERB shall have authority to receive, review, investigate, and report on Complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department. Therefore, the allegation is summarily dismissed.

9. Misconduct/Procedure – Deputy 3 failed to release the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant stated, "I was left in a holding cell, waiting to be released for approximately 12 hours, in severe pain." According to his Crime Report, Deputy 3 placed the complainant in a cell alone, following the incident, where she remained until the end of his shift. According to the complainant's JIMS Inmate History Report, she was cleared to be processed for release on 11-26-20, at 12:58am. Deputy 3 documented in his Crime Report, the assault occurred at approximately 12:59am. According to San Diego Central Jail (SDCJ) Post Orders for Final Release/Book and Release Deputy, "Throughout the shift, the final release/book and release deputy will regularly monitor the release queue to ensure timely processing and release of all B&R inmates. In most cases B&R inmates should not exceed 12 hours in custody." SDSD

records and jail surveillance video recorded the complainant remained in custody approximately six hours following the incident. The complainant was booked at 7:07pm on 11-25-20, and released from custody on 11-26-20, at 6:58am. Per the Final Book and Release Post Order, "B&R inmates exceeding 12 hours in custody shall require an entry in their JIMS record explaining why the inmate's release is delayed." There was no entry in the complainant's JIMS record because she was released within the 12 hour window, however, the evidence was insufficient to justify why the complainant remained in custody another 6 hours. Deputy 3 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. There was insufficient evidence to either prove or disprove the allegation. **Please Note: On 06-10-21, the SDCJ Post Orders for Final Release was updated, as follows, "In most cases, B&R inmates should not exceed 8 hours in custody."**

10. Discrimination/Gender – Deputies 3 and 6 used masculine pronouns to identify and/or address the transgender complainant.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that deputies repeatedly insulted her. She stated, "The officers repeatedly called me 'he' and 'him' in front of me and I understand in their reports too. It seemed like they were going out of their way to insult me and that they believed they didn't have to treat me like a human being." According to SDSD P&P 2.53, Discrimination, "Employees shall not express any prejudice or harassment concerning race, religious creed, color, gender, age, political beliefs, sexual orientation, lifestyle or similar personal characteristics." Furthermore, per Policy 2.1, Rules of Conduct for Members of the SDSD, "It is the responsibility of all employees to familiarize themselves and comply with all policies, orders, directives, rules and regulations of the department. In March 2017, a Training Bulletin: *Working with Inmates who Identify as Lesbian, Gay, Bisexual, Transgender, Intersex, and Queer or are Questioning (LGBTIQ)* was disseminated to sworn personnel and directed that "All sworn personnel are responsible for providing professional detention services in a safe and humane environment. Treatment of all inmates, to include those that identify as LGBTIQ, shall be nondiscriminatory. The use of gender specific pronouns is a sensitive subject within the LGBTIQ community. It is their expectation that they be addressed by the pronoun of the gender they identify with." Additionally, in May 2020, a Line-Up Training, mandated for sworn personnel, emphasized professionalism in the workplace and directed that sworn staff are "expected to exude professionalism and respect in the course of their duties. Staff shall treat all inmates with respect. Deviation from equitable treatment can lead to criminal and civil liability as well as disciplinary action. When communicating with an individual, use the pronouns that match the individual's gender identity. A person who identifies as a certain gender, whether or not that person has taken hormones or undergone surgery, should be referred to using the pronouns appropriate for that gender identity. If you are not certain which pronoun to use, ask the individual how they would like to be addressed." Deputies 3 and 6 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. Jail surveillance video does not include audio, without audio of conversations between the complainant and deputies, the evidence was insufficient to prove or disprove the allegation.

POLICY RECOMMENDATION:

It is recommended that the San Diego Sheriff Department (SDSD) revise Patrol Procedures Manual Policy 25 Prisoner Transportation (and any other associated policies), as it pertains to Subsection C, Deputy's Responsibilities at Detention Facility to mandate that an arrestee **shall** be taken to a facility that coincides with the arrestee's gender identity. As such, an arrestee who identifies as being female **shall** be taken to Las Colinas Detention Re-Entry Facility or Vista Detention Facility, and an arrestee who identifies as being male **shall** be taken to San Diego Central Jail, or Vista Detention Facility. If the arrestee identifies as non-binary, the arresting officer **shall** inquire as to whether the arrestee would prefer to be booked into a male or female facility and transport accordingly.

21-056/RICHARDSON & RUELAS

1. Use of Force at Protest without Complaint – Deputies 1 and 2 used force on Margarita Ruelas at an Imperial Beach Protest on 06-06-21.

Recommended Finding: Action Justified

Rationale: This case was reviewed in accordance with CLERB Rules & Regulations 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents. During a protest rally at the Imperial Beach Pier Plaza, the victim reported a masked Ruelas punched his face and he requested that law enforcement place her under Citizen's Arrest. Per PC§ 837, a private person may arrest another for a public offense committed or attempted in their presence. Deputy 1 acted in compliance with San Diego Sheriff's Department (SDSD) Policy 6.110, Private Person Arrest, and obtained a Citizen's Arrest Declaration Form from the victim. Based upon the victim's statement and observable injuries, his identification of Ruelas, as well as his request for a Private Person arrest, Deputy 1 had "probable cause" to accept custody (receive) Ruelas for the victim. Deputies 1, 2, and another deputy contacted Ruelas who reported nothing happened and refused to provide a statement. Ruelas and other protestors began to yell at the deputies. Deputy 1 told Ruelas she was under arrest and grabbed her wrist for handcuffing. PC§ 835, states deputies may use reasonable force to effect an arrest, overcome resistance, or prevent escape. Ruelas immediately attempted to pull her wrist away from Deputy 1, while the other protestors grabbed Ruelas' arms to also pull her away. Other protestors rushed to their location and began fighting with deputies and a protester threatened to take away Deputy 1's firearm. While the melee continued, Deputies 1 and 2 handcuffed Ruelas and escorted her to a patrol vehicle while protestors blocked their pathway and surrounded them. Ruelas reportedly struck her head on the door frame when Deputy 2 attempted to place her inside the vehicle. Deputies reported the protestors largely outnumbered the few deputies on scene and displayed verbal non-compliance, passive resistance, active resistance, assaultive behavior, and aggravated active aggression. Deputy 1 used the minimum force necessary to gain control, overcome resistance, effect an arrest, and remove he and his prisoner from a highly dangerous and volatile situation. Due to the severity of the situation, the aggression the crowd showed, and the inherent dangers of a crowd mentality who showed extreme hostility toward all deputies present, the force utilized was not excessive and the actions that occurred were lawful, justified and proper.

2. False Arrest – Deputy 1 arrested Ruelas.

Recommended Finding: Action Justified

Rationale: Complainants Richardson and Ruelas reported Deputy 1 approached Ruelas and told her she was under arrest. They tried to explain that she was innocent and had camera footage to prove it, but the deputy refused to listen. Due to the volatile situation, deputies were unable to perform any investigatory duties. See Rationale #1.

3. Misconduct/Procedure - Deputy 1 "escalated" a volatile situation.

Recommended Finding: Unfounded

Rationale: Complainant Richardson stated when Deputy 1 grabbed Ruelas' arms, "it completely escalated the situation." SDSD's Use of Force Guidelines states, "De-escalation is defined as actions taken in an attempt to stabilize an incident in order to try and reduce the immediacy of a threat by obtaining more time, tactical options or resources to resolve an incident. The goal of de-escalation is to gain voluntary compliance of subjects, when feasible, and or to potentially reduce or eliminate the need to use force on a subject. De-escalation, crisis intervention tactics and alternatives to force techniques shall be used when it is safe and feasible to do so. De-escalation does not require that a deputy risk their safety or the safety of the public." The protestors involved in this incident attempted to prevent Ruelas' legal arrest. Deputy 1 had a legal right to make an arrest and used a reasonable amount of force to effect the arrest, overcome resistance and prevent escape. See Rationale #1.

4. Excessive Force – Deputies 1 and 2 injured Ruelas.

Recommended Finding: Action Justified

Rationale: Complainant Richardson stated Deputy 1 placed Ruelas face down on cement and pressed his

knee causing a very large bruise. Complainant Ruelas said she was handcuffed prone on the ground and deputies lifted her up by her arms causing injury to her shoulder(s). Ruelas did not produce supporting evidence of injury nor sign a medical waiver for CLERB to access any medical records associated with the purported injuries. Reportedly, Ruelas dropped her weight and pulled back while the protesters pulled Ruelas to the ground as they attempted to extract her from Deputy 1's grasp. Handcuffs are utilized for officer safety behind a subject's back; handcuffing Ruelas while prone on the ground was appropriate. Ruelas was photographed by SDSA and reportedly sustained swelling to her right wrist, swelling to the left side of her head (see Allegation #6), abrasions to her left and right arms, and bruising to the back of her left shoulder. Once at the Imperial Beach Station, Ruelas requested medical treatment for an injury to her head. Paramedics evaluated Ruelas who refused to go to a hospital and she was provided with an ice pack. Ruelas advised during her post-Miranda statement that her friends caused more injuries on her than the deputies. Medical staff rejected Ruelas at the detention facility due to her head injury and she was transported to a hospital for evaluation. Hospital medical staff determined Ruelas' injury was superficial, offered pain medication which Ruelas refused, and she was given another ice pack. Deputies 1 and another deputy also sustained abrasions during this incident and patrol vehicles were damaged by protesters. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

5. Excessive Force – Deputy 2 forced Ruelas into a patrol vehicle.

Recommended Finding: Action Justified

Rationale: Complainant Richardson stated, "Deputy 2 forced Ruelas' body into the backseat of the car and while doing so, slammed her head into the frame of the car. Ruelas was not being violent at the time nor was she resisting arrest. She walked with the sheriffs across the park to the car. (Deputy) 2 had no reason to put his hands on her head in order to put her into the backseat. Ruelas' hands were in cuffs at that time, and her safety was dependent on the arresting officers. I did not witness any reason as that would explain why (Deputy) 2 miscalculated his aim when he put Ruelas into the back seat. Ruelas told me that when her head hit the car door she felt like she nearly passed out from pain. She was taken to the hospital later that night because of this head trauma. A few days later, she saw a physician who diagnosed her with concussion." Complainant Ruelas said, "Deputy 2 got me to the car and after he opened the door, he immediately threw me inside and his force shoved my head into the car frame and then I hit my head again on the seat. (Deputy) 2 did not say anything to me during the entire arrest. He did not ask me to get into the car. He threw me into the car and I got hurt. Since I was thrown face down my feet were out of the car while I was sobbing from the pain in my head. (Deputy) 2 slammed my feet twice with the door before they were forced in." Deputy 2 documented his actions in an Officer's Report which stated, "When Deputy 1 and I got to his patrol vehicle, I opened the back-seat door. I immediately felt Ruelas pull away from me and resist getting into the vehicle. I could hear multiple people approaching from behind me, including Ruelas' boyfriend. Ruelas began to pull keys out of her back pocket and lean back towards her boyfriend. To prevent further force, escape, or injury to Ruelas, her boyfriend, or deputies, I used force to guide and place Ruelas into the backseat of the vehicle. Ruelas was not complying with verbal direction to get into the car and continued physical resistance of me trying to guide her into the car. I let go of her left arm and pushed her partially into the doorway of the vehicle with both of my hands on her back and the back of her arms. I guided her into the seat portion of the car into a partially seated position. She continued resisting and would not place her legs into the. I then took hold of Ruelas' legs with both my hands and guided her legs into the vehicle all of the way. I then closed the door and began assessing the crowd behind me who were still yelling profanities and displaying verbal non-compliance and aggressive yelling towards other deputies. If I had not pushed Ruelas into the vehicle I believe her boyfriend would have attempted to pull her away from deputies. Given the totality of the situation, being heavily outnumbered, already experiencing resistance from Ruelas and others, I feel the amount of force I used was necessary to affect a lawful arrest, to prevent escape or evasion, and to prevent any further injury. Although their testimony conflicted, video evidence supported the hostility of the crowd surrounding the deputies. Deputy 2 had the legal right to utilize force to effect an arrest and his actions were legal, justified and proper.

6. Misconduct/Retaliation – Deputy 2 retaliated against Ruelas.

Recommended Finding: Unfounded

Rationale: Complainant Richardson stated Deputy 2 inflicted unnecessary injury via excessive force while

involved in this false arrest. Complainant Richardson stated, "I also believe this may also be related to retaliation, because the crowd was already upset with the officers at that point." The complainant offered no evidence, other than a belief, to support this accusation. As outlined in Rationale #1, deputies had a legal right to effect an arrest. The injuries Ruelas incurred were due to her and the protesters non-compliance with law enforcement. The evidence showed the conduct that occurred was legal, justified and proper and the allegation as stated did not occur.

7. Misconduct/Procedure – Deputy 1 refused Ruelas' request for a supervisor.

Recommended Finding: Action Justified

Rationale: Complainant Ruelas said she asked for the deputy's name and he replied "(excerpted)". She then asked if there was a supervisor, commander, chief, she could speak to because she did not want to speak with him (Deputy 1) and he said no. Ruelas later said she was advised by a "cop" friend to always ask for a supervisor. The SDSO does not have a requirement that deputies must contact a superior officer upon request, however, a sergeant was on scene assisting deputies and aware of the situation. As there was no policy requirement for a supervisor to be called, and one did respond, the evidence confirmed the action that occurred was lawful, justified, and proper.

8. Misconduct/Procedure - Deputy 1 sped while driving Ruelas.

Recommended Finding: Action Justified

Rationale: Complainant Ruelas stated that (Deputy) 1 sped to Las Colinas. SDSO P&P 2.35, Operation of Vehicles, mandates that employees operate departmental vehicles in a careful and prudent manner, and they must obey all laws and departmental orders. VEH§ 22350, Basic Speed Law, states that no person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property. SDSO patrol vehicles are equipped with an Automatic Vehicle Locator (AVL) system that collects the location and speed of their vehicles. The AVL associated with this incident verified that Deputy 1 operated a patrol vehicle in excess of the speed limit. Deputy 1 also provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, but cannot be publicly disclosed due to applicable law(s). The evidence showed that the alleged act or conduct did occur but was justified and proper.

9. False Reporting – Deputy 1 charged Ruelas with assaulting an officer.

Recommended Finding: Unfounded

Rationale: Complainant Richardson stated Ruelas went to jail where they placed false charges on her and said she assaulted an officer which was impossible as she was in cuffs the entire time. According to the Arrest Report, Ruelas was charged with PC 69-Obstruct/Resist Executive Officer with Minor Injury (F). "Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, or who knowingly resists, by the use of force or violence, such officer, in the performance of his duty, is punishable by a fine or by imprisonment." Ruelas admittedly pulled away from Deputy 1 when he attempted to place her under arrest. The complainant and deputies were injured, and patrol vehicles damaged by protesters. The evidence showed the charge of resisting arrest was appropriate and the allegation as stated did not occur.

21-061/DOREY

1. Misconduct/Procedure – Deputy 1 prevented the complainant from obtaining medical services.

Recommended Finding: Unfounded

Rationale: The complainant stated, "Deputy 1-a man who cruelly and savagely bullies people with his unchecked outbursts of acute authority abuse disorder. He needlessly prevented me from obtaining desperately needed eye care from the jail's medical staff, furthering an ongoing pattern of medical

malpractice". As per Medical Services Division (MSD) M.15 entitled "Sick Call" provides a system to give inmates access to appropriate medical and mental health services daily. Sick call requests are made by inmates placing their requests in a secure medical mailbox in each housing unit. Facility Health Staff are responsible for collecting the requests and scheduling the treatment requested. M.15 states a deputy is present to provide security when inmates are being evaluated and/or treated by facility health staff or contract providers. SDSD records showed Dorey has been seen for approximately 40 sick calls from 10-13-19 to 07-22-21. Furthermore, Detention Service Bureau (DSB) P&P I.51 entitled "Inmate Movement" states, "when outside of their housing units, inmates must go directly to a designated destination with or without escort". While sworn members are responsible for escorting or transporting inmates to and from medical facilities, they are not responsible for making sick calls. There was no evidence that indicated Dorey was prevented from obtaining any medical services. The evidence shows the alleged act or conduct did not occur.

2. Misconduct/Procedure – Deputy 1 confiscated the complainant's personal folder during a medical consultation.

Recommended Finding: Action Justified

Rationale: The complainant stated, "Deputy 1 then grabbed the folder from me and wouldn't allow me to consult the list of questions and issues I'd prepared to discuss". SDSD records indicated on 06-22-21 Dorey was seen by a SDSD Medical Nurse for eye pain. During his medical visit, he took out a folder, gave it to the nurse, and went through different complaints, grievances, and other dates of documentation he had. Deputy 1 explained to Dorey that the visit was not to discuss complaints, but rather discuss his medical issue. Dorey then told Deputy 1 to mind his own business. In SDSD Medical Records, the nurse stated the patient brought paperwork copies of medical requests and grievances. As per MSD M.15, "A deputy shall be present in the dispensary area to provide security when inmates are being evaluated and/or treated by facility health staff or contract providers." The jail surveillance video showed the nurse had a folder and gave it back to Deputy 1, and during the exchange Dorey tried to reach for the folder. Sick call visits are to give inmates access to appropriate medical and mental health services. SDSD DSB P&P N.1 outlines the uniform procedures by which an inmate can file a formal complaint. The evidence showed that the alleged act or conduct did occur but was lawful, justified, and proper.

3. Misconduct/Procedure – Deputy 1 interrupted/obstructed the complainant's medical consultation.

Recommended Finding: Action Justified

Rationale: The complainant stated, "Deputy 1 cut me off repeatedly and kept interrupting my attempts to explain the problems to the nurse." SDSD records indicated Dorey was seen by a nurse at the clinic. During his medical visit, he took out a folder and went through different complaints, grievances, and other dates of documentation he had. Deputy 1 explained to Dorey that the visit was not to discuss complaints, but rather discuss his medical issue. Dorey then told Deputy 1 to mind his own business. During the medical visit, Dorey yelled at the nurse. The nurse told him he would have an outside eye appointment very soon but could not discuss the specifics due to security reasons. Due to Dorey continuing to yell, the nurse informed Dorey the appointment was over, and he could go back to his cell. In SDSD Medical Records, the nurse stated the patient brought with him paperwork copy of medical requests and grievances. The nurse wrote, "Pt was told that he has a pending appointment for optometry and did not accept that answer and continued to yell". The evidence showed the alleged act or conduct did occur but was lawful, justified, and proper.

4. Excessive Force - Deputy 1 used force on the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated, "Today I was assaulted, ripped from a chair, thrown to the ground and put in agonizingly painful pincher cuffs by the brutally sadistic and violently aggressive Deputy 1". According to SDSD records, Deputy 1 instructed Dorey to get out of the chair, but he refused. Dorey refused to walk and dropped his bodyweight to the floor. Dorey was lowered to the floor and detained by Deputy 1 and Deputy Whitaker. The complainant stated, "Deputy 1 could have easily, peacefully de-escalated tension during medical visit by being polite and reasonable, but instead he chose to be rude, disruptive,

and brutally sadistic“. According to SDCS Use of Force Policy 2.49, “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.” Video surveillance was reviewed and corroborated Deputy 1’s report. The use of force was in accordance with policy. The evidence showed that the alleged act or conduct did occur but was lawful, justified, and proper.

5. Misconduct/Procedure – Deputy 1 failed to follow de-escalation protocol.

Recommended Finding: Action Justified

Rationale: The complainant stated, “Deputy 1 could have easily, peacefully de-escalated tension during medical visit by being polite and reasonable, but instead he chose to be rude, disruptive, and brutally sadistic.“ Addendum F, Use of Force Guidelines, de-escalation is defined as actions taken in an attempt to stabilize an incident in order to try and reduce the immediacy of a threat. De-escalation techniques should only be used when it is safe and feasible to do so. The word “should” indicates that deputies were not mandated to use de-escalation techniques. Addendum F Use of Force Guidelines, De-escalation policy has since been updated on 12-31-21 to, “De-escalation techniques shall only be used when it is safe and feasible to do so.” There was no violation of policy. The evidence shows the alleged act did occur but was lawful justified, and proper.

6. Misconduct/Medical (IO) – Medical staff failed to respond to the complainant’s requests for service for 11 months.

Recommended Finding: Summary Dismissal Rationale: The complainant stated, “I’ve been trying to see an eye doctor for the last 11 months, but despite regular, routine, ongoing assurances that I’m “scheduled” this month over the past 11 months.“ Detentions Policies M.1 Access to Care, means that, in a timely manner, a patient is seen by a qualified health care professional, is rendered a clinical judgment, and receives care that is ordered, and M.15 Sick Call, specifies that this occurs on a daily basis. CLERB lacks jurisdiction to investigate the complaint, per CLERB Rules and Regulations 4.1 titled, Citizen Complaints: Authority, which states, CLERB shall have authority to receive, review, investigate, and report on Complaints filed against peace officers or custodial officers employed by the County in the Sheriff’s Department or the Probation Department. CLERB has no jurisdiction over medical personnel. The review board lacks jurisdiction.

7. Misconduct/Procedure – “Jail Staff” subjected the complainant to “medical malpractice, reckless endangerment, and gross criminal negligence.”

Recommended Finding: Not Sustained

Rationale: The complainant stated, “The jail staff knowingly subjected me to medical malpractice, reckless endangerment, and gross criminal negligence by deliberately contravening the eye care instructions of their contact lens solution provider, as labelled on the bottles form which they dispense contact lens solution to me“. CLERB lacks jurisdiction to investigate the complaint, per CLERB Rules and Regulations 4.1 titled, Citizen Complaints: Authority, which states, CLERB shall have authority to receive, review, investigate, and report on Complaints filed against peace officers or custodial officers employed by the County in the Sheriff’s Department or the Probation Department. Without further clarifying information from the complainant there was insufficient evidence to either prove or disprove this allegation was against sworn personnel. The evidence was insufficient to either prove or disprove the allegation.

8. Misconduct/Medical (IO) – SDCJ medical staff failed to follow sanitary protocol.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, “The medical staff here dispensed solution into temporary little personal unsanitary cups with no sterile seal, hence my repeated concerns and warnings. Nurses often touch the insides of the cups with dirty, unhygienic, contaminated gloves, spreading germs and bacteria into the lens solution we put in our eyes“. CLERB lacks jurisdiction to investigate the complaint, per CLERB Rules and Regulations 4.1 titled, Citizen Complaints: Authority, which states, CLERB shall have authority to receive, review, investigate, and report on Complaints filed against peace officers or custodial officers employed by

the County in the Sheriff's Department or the Probation Department. CLERB has no authority over medical staff. The review board lacks jurisdiction.

9. Misconduct/Medical (IO) – A nurse failed to treat the complainant's injured eye.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, "The nurse never offered any help of any kind. She told me to go back to waiting as I've done in futility for the past 11 months". Detentions Policies M.1 Access to Care, means that, in a timely manner, a patient is seen by a qualified health care professional, is rendered a clinical judgment, and receives care that is ordered, and M.15 Sick Call, specifies that this occurs on a daily basis. CLERB lacks jurisdiction to investigate the complaint, per CLERB Rules and Regulations 4.1 titled, Citizen Complaints: Authority, which states, CLERB shall have authority to receive, review, investigate, and report on Complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department. CLERB has no jurisdiction over medical personnel to include nursing staff. The review board lacks jurisdiction.

21-097/PATTON

1. False Arrest – The San Diego Police Department arrested the complainant.

Recommended Finding: Summary Dismissal

Rationale: Anthony Patton alleged "false arrest" and "illegal detention". The complainant's booking records verified Patton was arrested by the San Diego Police Department (SDPD) on 02-24-21 for Indecent Exposure and an outstanding felony warrant. The complainant was referred to the SDPD as CLERB only has authority to investigate the actions of sworn members of the San Diego Sheriff's Department (SDSD) per CLERB R&R 4.1, Authority, and lacks jurisdiction in this matter.

2. Illegal Search and Seizure – A "Booking Supervisor" refused to release the complainant.

Recommended Finding: Summary Dismissal

Rationale: Anthony Patton alleged, "The SDCJ Booking Supervisor refused to release me: 08-25-21 as court ordered." SDSD Detentions Policy Q.82, Possible Over-Detention, provides detentions personnel a procedure for responding to inmate claims that they are over detained on an arrest or booking. SDSD records showed, "Inmate Patton has a history of claiming he is being illegally held and demanding his immediate release. He has multiple grievances towards case workers, arresting officers, the director, and the District Attorney." Court records indicated Patton pled guilty to his charges on 08-24-21 and was sentenced to two years with concurrent terms. He was remanded to the CA Department of Corrections & Rehabilitation (CDCR) in September of 2021 and will first be eligible for parole in July of 2022. Booking personnel are non-sworn staff over whom CLERB has no authority and the Review Board lacks jurisdiction.

3. Misconduct/Procedure – Deputy "Halligan" permitted unsanitary food service.

Recommended Finding: Not Sustained

Rationale: Anthony Patton alleged, "Deputy Halligan who against the Title 15 on 09-15-21 allowed his food server to serve my illegal detention food to me without the Title 15, Section 3052(f) policy required sanitation cap or net. Halligan's displayed badge # is 7034." Title 15 requires food handlers to wear nets/caps entirely covering their hair and/or facial hair and conform to and comply with the CA Retail Food Code. The information as presented by the complainant could not be verified concerning the deputy's name and/or ARJIS number; deployment records were also reviewed and failed to identify like or similar names. A review of Patton's grievances while incarcerated at the San Diego Central jail (SDCJ) showed similar allegation(s) on different dates that were investigated by command staff and determined to be Unfounded. Without further identifying information there was insufficient information to investigate this allegation.

21-099/RICHARDSON

1. Misconduct/Procedure – Deputy 1 failed to investigate to a crime.

Recommended Finding: Unfounded

Rationale: According to the complainant, Deputy 1 failed to investigate an assault on a homeless woman named “Maria”. The complainant stated, “On September 6th around 5pm a well-known and well-loved community member in Imperial Beach named Maria called the police because she had been assaulted”. The CAD record showed there was a subject stop in which “Transient Maria Vega advised she was pushed. Stopped to contact her but she left the area.” This was not a call for service, it was an event created by a deputy due to Maria waving the deputies down. Deputy 1 stated Maria waved them down and told them she was pushed. When they pulled over to investigate, Maria walked away. As per SDSL P&P 2.23 entitled, “Request for Assistance”, When any person requests assistance or advice, or makes complaints or reports, either by telephone or in person, all pertinent information will be obtained in an official and courteous manner and will be properly and judiciously acted upon consistent with established Department procedures. Furthermore, SDSL P&P 2.30 entitled “Failure to Meet Standards” states employees shall properly perform their duties and assume the responsibilities of their positions. SDSL pulled over to take all pertinent information from Maria, but she left the scene. Furthermore, Deputy 1 investigated the statement and obtained information from two employees regarding the incident in which they were told Maria was not pushed. In BWC footage, Deputy 1 stated he was familiar with Maria who was known to have mental health issues. The evidence showed that the alleged act or conduct did not occur.

2. Discrimination/Racial – Deputy 1 discriminated against a “houseless” Mexican woman.

Recommended Finding: Unfounded

Rationale: According to the complainant, Deputy 1 discriminated against a “houseless” Mexican woman. As per SDSL P&P 2.53 entitled “Discrimination”, Employees shall not express any prejudice or harassment concerning race, national origin, ancestry, lifestyle or similar personal characteristics. Examples of discriminatory acts which will not be tolerated include the use of verbal derogatory comments, slurs, or jokes, derogatory pictures, cartoons or posters and actions which result in a person being treated unequally. BWC footage showed no evidence that Deputy 1 treated Maria differently due to her lifestyle and/or race. Furthermore, there was no evidence of any verbal derogatory comments. The evidence showed that the alleged act or conduct did not occur.

21-104/TUAZON

1. Death Investigation/In-Custody Medical – Teresita Manialung Tuazon, while an inmate at the Las Colinas Detention and Reentry Facility, was found unresponsive in her cell on 09-28-21. Tuazon was transported to Grossmont Hospital where she subsequently died soon after arrival.

Recommended Finding: Action Justified

Rationale: The evidence supported that Tuazon was properly classified upon her entry into the SDSL jail system on 09-04-21, after her violation of a criminal protective order. Safety checks and counts were conducted in accordance with policy. The last safety check prior to the incident was conducted in conjunction with soft count. As per DSB P&P 1.43 entitled “Inmate Count Procedure”, a soft count is a count of the number of inmates in a facility or housing unit which verifies each inmate’s well-being through verbal or physical acknowledgment from the inmate. According to SDSL evidence, during soft count Tuazon communicated that she was not feeling well but was coherent and able to communicate. This information was passed on to the next shift deputies. During shift change, a Mental Health Clinician (MHC) was in the process of speaking with all inmates (cell by cell) in the module. Tuazon was called through the intercom to see if she wanted to see the MHC, but no response was received. Deputies then went to Tuazon’s cell door to see if she wanted to see the MHC. Upon entering the cell and discovering Tuazon unresponsive, deputies immediately responded, called 911, and initiated basic lifesaving measures until relieved by medical and the emergency staff. Tuazon was transported to a hospital where she subsequently died soon after arrival.

The cause of death was complications of diabetes mellitus, with hypertensive and atherosclerotic cardiovascular diseases and cirrhosis of the liver as contributing and the manner of death was natural. It should be noted Tuazon refused medications days prior to the incident. According to all available evidence, deputies took immediate action when they recognized and responded to Tuazon's medical emergency. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

21-115/CARO

1. Use of Force Resulting in Great Bodily Injury – Deputies 1-5 used force to apprehend Caro.

Recommended Finding: Action Justified

Rationale: On 10-06-21 deputies were dispatched to a residence in San Marcos to extradite Hector Caro who had felony warrants. A family member contacted Sheriff's dispatch and asked them to remove Caro from the home due to his drug use. SDSA documentation confirmed Caro had outstanding felony warrants, was a documented gang member, deemed armed and dangerous, known to abuse drugs, and had a history of violent tendencies. Deputies were given consent by the family to enter the home and ultimately used force to subdue Caro. SDSA documentation and Body Worn Camera (BWC) evidence showed that several patrol vehicles arrived at the home along with Sheriff's (helicopter) Aerial Support to Regional Enforcement Agencies (A.S.T.R.E.A). ASTREA provided several warnings over the public address (PA) system that said, "Hector Caro this is the Sheriff's Department, exit the residence with nothing in your hands, contact the deputies or we are going to send in a dog, and he will find you and bite you." Deputies 1-5 made entry into the home and ultimately kicked down a bedroom door and deployed a canine, who found Caro on top of the bed, under a blanket. Deputies attempted to apprehend Caro while he was on the bed and commanded him to "stop resisting" and "give up his hands", but they were unsuccessful. Deputies were concerned Caro had a concealed weapon and reportedly "thrashed" his body making it difficult for deputies to subdue him. The canine latched onto Caro for approximately 1 minute 28 seconds until Deputy 1 handcuffed him. Deputy 3 explained that utilization of the canine was the safest option to prevent the potential of a fatal conflict. Use of Force Guidelines states canines certified and approved for department use may be used to locate, apprehend, or control a felony suspect when it would be unsafe for the deputies to proceed into the area. The use of a canine was appropriate for this situation. Addendum F, Use of Force Guidelines states, "Deputies shall not lose their right to self-defense by the use of objectively reasonable force to effect an arrest, prevent escape, or overcome resistance. Deputies shall utilize appropriate control techniques or tactics which employ maximum effectiveness with minimum force to effectively terminate or afford the deputy control of the incident. Given the suspect's history and status, deputies used a reasonable and necessary amount of force in accordance with policy. Deputies also provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. The evidence showed that the alleged act or conduct did occur, but it was lawful, justified and proper.

2. Excessive Force – Deputy 3 deployed his canine partner, who bit Caro.

Recommended Finding: Action Justified

Rationale: See Rationale #1. Through the course of investigation, it was discovered that the canine was latched onto Caro for one minute and twenty-eight seconds. While the canine was latched onto Caro, deputies attempted to apprehend him and gave him several commands to "stop resisting" and "give up his hands." Deputy reports stated that Caro "thrashed" his body and BWC showed Caro's legs flailing in the air. The canine was latched onto Caro until deputies secured and handcuffed the suspect. Deputy 3 explained that utilization of the canine was the safest option to prevent the potential of a fatal conflict. Use of Force Guidelines states canines certified and approved for department use may be used to locate, apprehend or control a felony suspect when it would be unsafe for the deputies to proceed into the area. The use of a canine was appropriate for this situation. Given the totality of circumstances, the use of force administered by Deputy 3's canine partner, was in accordance with SDSA P&P Section 2.49, Use of Force states, "Employees shall not use more force in any situation than is reasonably necessary under the circumstances." Deputy 3 also provided information during the course of CLERB's investigation that was considered in

arriving at the recommended finding. The evidence showed that the alleged act or conduct did occur, but was lawful, justified and proper.

3. Excessive Force – Deputy 5 kicked Caro while he was on the floor.

Recommended Finding: Action Justified

Rationale: See Rationale #1. Deputy 5 stated in his officer report, “To prevent Caro from gaining a position of advantage, he delivered two knee strikes to his right shoulder area.” SDSD documentation stated Caro “thrashed” his body while he was on the ground and BWC showed that deputies struggled to apprehend Caro. Given the totality of circumstances, the use of force administered by Deputy 5 was in accordance with SDSD P&P Section 2.49, Use of Force states, “Employees shall not use more force in any situation than is reasonably necessary under the circumstances.” Deputy 5 also provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. The evidence showed that the alleged act or conduct did occur, but it was lawful, justified and proper.

21-116/SMITH

1. Death Investigation/In-Custody Medical – Earl Benjamin Smith was incarcerated at the Vista Detention Facility until transported to Tri-City Medical Center where he tested positive for COVID-19; Smith died on 11-23-21.

Recommended Finding: Action Justified

Rationale: Earl Benjamin Smith was a 63-year-old white male who was arrested by the San Diego Police Department on 04-02-21 for an outstanding warrant and booked into San Diego Central Jail. According to San Diego Sheriff’s Department (SDSD) documentation, Smith refused the COVID-19 vaccine. Smith was classified and placed into Protective Custody (PC) for safety reasons due to his advanced age and limited physical abilities. Smith was later transferred to the Vista Detention Facility where he was housed in designated area for inmates who were medically at risk if exposed to COVID-19. Smith demonstrated mental health concerns and received an initial psychiatric evaluation, but the clinician ruled out psychosis. San Diego Superior Court dockets showed that Smith was scheduled for a mental competency examination, but he refused to attend his court hearings. SDSD documentation showed Smith was assessed frequently for COVID-19 symptoms. Smith was assessed daily from 10-30-21 to 11-06-21; on 11-06-21 he complained of body aches and had a low oxygen saturation level. Smith was placed on oxygen and transported to Tri-City Hospital via paramedics. Tri-City medical records stated that upon arrival, Smith presented with weakness, mild cough, fever and subsequently tested positive for COVID-19. Smith developed and was treated for COVID pneumonia. While hospitalized, Smith was diagnosed with Brief Psychotic Disorder. Hospital documentation showed that on 11-20-21, Smith was transferred to the Intensive Care Unit (ICU) as his condition worsened; Smith requested to be placed on do-not-intubate/do-not-resuscitate (DNI/DNR) status. As Smith’s condition deteriorated, he was placed on “comfort care” due to his DNI/DNR status. According to hospital documentation, Smith was ultimately pronounced deceased on 11-23-21. The San Diego Medical Examiner’s Office conducted an external examination and determined the cause of death was Complications of COVID-19 and the manner of death was natural. A review of all known evidence showed that there was no violation of policy & procedure on behalf of SDSD sworn staff. Smith was classified and housed properly in accordance with policy. SDSD documentation showed Smith was assessed frequently by Medical for COVID-19 symptoms and was immediately transferred to the hospital when symptoms were present. Smith tested negative for COVID-19 in August of 2021 and although it was apparent that he contracted COVID-19 while he was under the care of SDSD there is no evidence that any policies or procedures were violated. On 03-13-20, COVID-19 was declared a national emergency. The SDSD established several training bulletins as soon as April of 2020 that mandated the wearing of masks and Personal Protective Equipment (PPE), expedited intake and release procedures, daily cleaning recommendations, temperature checks, COVID-19 designated housing modules and offered the COVID-19 vaccine. Unfortunately, there were numerous COVID-19 related deaths in all of San Diego County and although the SDSD implemented safety protocols, the spread of this virus was and remains inevitable.

21-120/ALAMOS

1. Death Investigation/In-Custody Natural – Inmate Gumercindo Aldava Alamos died while in the custody of the Sheriff's Department.

Recommended Finding: Action Justified

Rationale: Inmate Gumercindo Aldava Alamos was booked into custody of the San Diego Sheriff's Department on 10-13-21, for three counts of Lewd and Lascivious Acts on a Child Under the age of 14. According to SDSD medical records, Alamos had a significant medical history and was prescribed numerous medications. He had been seen and treated in the jail's medical unit for his various ailments during his incarceration. Alamos was subsequently housed at the Vista Detention Facility. He had no cellmates. On the afternoon of 12-01-21, deputies entered the module to conduct a safety/security check. While doing so, one of the deputies found Alamos down and unresponsive in his jail cell. As viewed in the jail's surveillance video recordings, the deputies immediately entered Alamos' jail cell and begin performing life-saving measures. Jail medical staff arrived on scene and applied the Automated Emergency Defibrillator (AED) on Alamos' body. Naloxone and Epinephrine were administered in an attempt to resuscitate Alamos. The Vista Fire Department arrived at the jail. Once on scene, paramedics and fire officers took over life-saving measures. Life-saving measures were futile, and Alamos was pronounced dead by a physician from Tri City Medical Center, via radio. In review of jail documents and Alamos' booking file, the evidence supported that Alamos was properly classified upon his entry into the SDSD jail system after his 10-13-21 arrest. Alamos was housed in the jail's Protective Custody (PC) unit. According to jail documents, Alamos' body was transported to the San Diego Medical Examiner's Office (SDMEO) and an autopsy examination was performed. According to the SDMEO's autopsy report, the cause of death was atherosclerotic and hypertensive cardiovascular disease, with non-small cell lung cancer, COVID-19 infection, and diabetes mellitus noted as contributing factors. The manner of death was natural. In conclusion, in review of all evidence, deputies performed their safety/security checks in accordance with in SDSD policy and procedure and Alamos received medical care during his entire incarceration. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

22-013/RODRIGUEZ

1. Misconduct/Procedure – Deputies 2-6 failed to assist the complainant in recovering “stolen” property.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated that the San Diego Sheriff's Department (SDSD) refused to recover her “stolen real personal property.” The complainant reported that in 2019, her boyfriend/domestic partner was involved in a fatal accident. The complainant stated the couple owned a dog, but the decedent's parents took custody of the dog as their own. The complainant contacted the SDSD to help her retrieve and obtain custody of the dog. Pursuant to CLERB Rules and Regulations, Section 4: Authority and Jurisdiction; CLERB shall not have jurisdiction to take any action in respect to complaints received more than one year after the date of the incident giving rise to the complaint. The alleged incident occurred in 2019 and the complaint was untimely; CLERB lacks jurisdiction.

2. Misconduct/Procedure – Deputies 2-6 failed to acknowledge the complainant's domestic partnership.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated that deputies refused to acknowledge her rights as a “domestic partnership survivor.” See Rationale #1

3. Misconduct/Procedure – Deputies 2-6 “refused her (Rodriguez') rights.”

Recommended Finding: Summary Dismissal

Rationale: The complainant stated that deputies refused her rights and allowed her late boyfriend/domestic partner's parents to claim her “real personal property.” See Rationale #1

4. Misconduct/Procedure – Deputy 1 informed the complainant that the incident she reported was a civil matter.

Recommended Finding: Action Justified

Rationale: The complainant submitted an inquiry to the Sheriff's Webmaster account where she asked for help to recover her dog from her deceased boyfriend's/domestic partner's parents. The complainant stated deputies refused to help her in the past with this incident. Deputy 1 responded, SDDS could not intervene in civil matters without a court order. Deputy 1 went on to recommend the complainant go to court and obtain a judgement, and then SDDS could enforce the court order. Pursuant to SDDS P&P Section 3.2 Complaints against Sheriff's Employees states that complaints not subject to investigation include, "Matters that have more appropriate methods of resolution, such as civil action, etc." In addition, this matter in question falls under Assembly Bill No. 2274, Division of community property: pet animals, which authorizes a court to assign sole or joint ownership of a community property pet animal. Deputy 1 responded to the complainant and explained that the SDDS did not have jurisdiction to retrieve the dog on her behalf. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

5. Discrimination/Racial – SDDS treated the complainant differently because of her race.

Recommended Finding: Unfounded

Rationale: The complainant received a response from Deputy 1 that her matter was civil, and she responded, "I never heard of a widow that had to share ownership, or is it because I'm Hispanic and my in-laws are not?" SDDS P&P 2.53 Discrimination states, "Employees shall not express any prejudice or harassment concerning race, color, national origin, ancestry, etc." Examples provided of discriminatory acts include the use of verbal derogatory comments, slurs, jokes, derogatory pictures, cartoons or posters and actions which result in a person being treated unequally. The evidence showed no discriminatory statements and/or apparent differential treatment for this incident. Additionally, the complainant denied that Deputy 1 used racial slurs and/or made comments about her race. The complainant stated she was treated differently but did not provide any evidence. The evidence showed that the alleged act or conduct did not occur.

End of Report