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CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its July 12, 2022, meeting held via the Zoom Platform. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at www.sdcounty.ca.gov/clerb.

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).

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (11)

ALLEGATIONS, BOARD FINDINGS & RATIONALES

21-055/FROST

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

Board 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.

Board 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. SDSA 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 SDSA 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 SDSA 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.

Board 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 SDSA 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. SDSA 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.

Board 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. SDCJ 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 – Deputy 3 placed the transgender female complainant in a cell with three "cisgender" men.

Board Finding: Sustained

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. After processing on the first floor, Frost was transported to the second floor. Upon arrival on the second floor, Deputies 3 and 6 directed the transgender female complainant into a protective custody (PC) cell with three cisgender male incarcerated persons. Video surveillance showed the complainant stopped at the entrance to that cell and, while looking into it, appeared to say something to Deputies 3 and 6, which she indicated was an attempt to verbalize her concern about being placed into the cell with three cisgender men. According to Detentions Services Bureau (DSB) Policy and Procedure (P&P) R.13, titled, "Transgender, Intersex, and Non-Binary Inmates," in effect at the time of the incident, "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 identified the complainant as protective custody (PC), and she had a yellow wristband on her wrist. SDSD records showed the three incarcerated persons in the cell in which she was assaulted by one of them were also PC inmates. At the time of the incident, it was not against policy to place PC incarcerated persons in a cell together, regardless of their gender identity. Despite the lack of specific policies or procedures prohibiting the placement of transgender incarcerated persons with opposing cisgender incarcerated persons, placing a transgender female in a cell with three cisgender men is not consistent with providing a “secure, safe and humane custody” of transgender persons, thus in violation of SDSD DSB R.13. It can also be considered mistreatment, thus in violation of SDSD P&P 2.48, titled, “Treatment of Persons in Custody,” which prohibits mistreatment of persons in custody. The evidence supports the allegation, and the act or conduct was not justified.

6. Misconduct/Procedure – Deputy 6 placed the transgender female complainant in a cell with three “cisgender” men.

Board Finding: Sustained

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. After processing on the first floor, Frost was transported to the second floor. Upon arrival on the second floor, Deputies 3 and 6 directed the transgender female complainant into a protective custody (PC) cell with three cisgender male incarcerated persons. Video surveillance showed the complainant stopped at the entrance to that cell and, while looking into it, appeared to say something to Deputies 3 and 6, which she indicated was an attempt to verbalize her concern about being placed into the cell with three cisgender men. According to Detentions Services Bureau (DSB) Policy and Procedure (P&P) R.13, titled, “Transgender, Intersex, and Non-Binary Inmates,” in effect at the time of the incident, “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 identified the complainant as protective custody (PC), and she had a yellow wristband on her wrist. SDSD records showed the three incarcerated persons in the cell in which she was assaulted by one of them were also PC inmates. At the time of the incident, it was not against policy to place PC incarcerated persons in a cell together, regardless of their gender identity. Despite the lack of specific policies or procedures prohibiting the placement of transgender incarcerated persons with opposing cisgender incarcerated persons, placing a transgender female in a cell with three cisgender men is not consistent with providing a “secure, safe and humane custody” of transgender persons, thus in violation of SDSD DSB R.13. It can also be considered mistreatment, thus in violation of SDSD P&P 2.48, titled, “Treatment of Persons in Custody,” which prohibits mistreatment of persons in custody. The evidence supports the allegation, and the act or conduct was not justified.

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

Board 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.

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

Board 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.

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

Board 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.

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

Board 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."

11. Discrimination/Gender – Deputy 3 used masculine pronouns to identify and/or address the transgender complainant.

Board Finding: 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 SDCJ 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 SDCJ, "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." Deputy 4 provided information during CLERB's investigation that was considered in arriving at the recommended finding, however, it is confidential and cannot be publicly disclosed. Jail surveillance video does not include audio, so the actual verbal interactions between the complainant and Deputy 4 are unknown. However, Deputy 4 clearly referred to the complainant as "he" in the Crime/Incident Report he authored in which he documented the assault of the complainant. The documentation in the report is sufficient to lead a reasonable person to believe there is a preponderance of evidence that Deputy 4 also referred to the complainant with masculine pronouns, in violation of P&P 2.1 by failing to familiarize himself and comply with the May 2020 Line-Up Training and the guidance detailed in a March 2017 Training Bulletin. The evidence supports the allegation, and the act or conduct was not justified.

12. Discrimination/Gender – Deputy 6 used masculine pronouns to identify and/or address the transgender complainant.

Board Finding: 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 SDCJ 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 SDCJ, "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 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.” During CLERB’s investigation, Deputy 6 provided answers in a Sheriff’s Employee Response Form (SERF) that were sufficient to lead a reasonable person to believe there is a preponderance of evidence that Deputy 6 also referred to the complainant with masculine pronouns, in violation of P&P 2.1 by failing to familiarize himself and comply with the May 2020 Line-Up Training and the guidance detailed in a March 2017 Training Bulletin. The evidence supports the allegation, and the act or conduct was not justified.

13. Misconduct/Procedure – The San Diego Sheriff’s Department (SDSD) did not provide a “secure, safe, and humane” custodial setting for a transgender female incarcerated person.

Board Finding: Sustained

Rationale: Upon booking into San Diego Central Jail, the complainant, a transgender female, was asked to complete a J-350 form (Voluntary Gender Identity Statement of Preference). On the form, the complainant indicated her gender identity was female, search preference was female, and housing preference was female. At the time of the incident, Detention Services Bureau (DSB) P&P J.3, DSB P&P R.13, and SDSD P&P 6.127 discussed safety of and precautions to be taken for incarcerated persons as they pertain to housing. The J-350 form apparently created for the specific purpose of documenting the gender identity and search and housing preferences of incarcerated transgender persons was completed by the complainant, even though the J-350 form’s housing preference item did not apply to Book and Release incarcerated persons. Regardless, it was not only reasonable but common sense and expected that the information contained within the form pertaining to transgender incarcerated person preferences and all other references to ensuring the safety of an incarcerated person would be utilized to take reasonable and necessary precautions to safeguard the wellbeing of a transgender incarcerated person. The Prison Rape Elimination Act (PREA) of 2003 was also considered when evaluating the circumstances surrounding this case. Placing a transgender woman in a cell with three cisgender men is not an action that would tend to prevent sexual misconduct or mitigate danger to a detainee, as mandated by PREA. Frost’s physical characteristics and her previous jail documentation as transgender were not considered, nor was apparently her perception of vulnerability. Deputy 2 also provided additional information during CLERB’s investigation that was considered in arriving at the recommended finding. Placing a transgender female in a cell with three cisgender men resulted in subsequent assault by one of the men and great bodily injury to the complainant. The assault and injury were the result of a systemic failure on the part of SDSD exemplified by insufficient policies and procedures, a lack of sensible and appropriate communication among numerous staff members, and no apparent forethought by several employees as to the ramifications of placing a transgender female in a cell with three cisgender men. The evidence supports the allegation, and the act or conduct was not justified.

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.

21-070/MITTEN

1. Misconduct/Procedure – An unidentified employee failed to assist the complainant.

Board Finding: Unfounded

Rationale: In the complainant's written statement, she reported, "On June 12, 2021, I called Sheriff's dispatch for help. I called them today and spoke with a lady named [Unidentified] who answered the phone Internal affairs is where [Unidentified] said she was too busy to handle my complaints. I told her on 06-24-21, I called sheriffs none [non] emergency number and stated please do not send Deputy 1 answered. That was the reason I called Internal Affairs and [Unidentified] said she was too busy. Also [Unidentified] even answer than 911 calls, non-emergency and others when residents try call to try and help me there is almost daily mental and physical abuse. I am a 65-year-old disabled woman who lives alone. I am requesting someone assist me, as Sheriff's Communication Center employee [Unidentified] said she was too busy to assist me and that Deputy 1 would be dispatched to my home anyway." In review of Deputy 1 arrest report, dated 06-14-21, Deputy 1 documented that he had arrested the complainant for 5150 psychiatric hold three times. He described the complainant as "a chronic caller" and reported that she had called the Sheriff's Department over 50 times in the past year. In review of numerous San Diego Sheriff's Department (SDSD) Communication Center's audio recordings and Background Event Chronology Events, it was noted that the complainant called the Communication Center approximately 11 times in July of 2021; each time the dispatcher was courteous. Additionally, it was noted that an emergency 911 call was made from the complainant's neighbor on 06-14-21, versus 06-12-21. In the phone call, the neighbor expressed concern and worry for the complainant who was "acting bizarre." The neighbor described the complainant as being "off her meds, schizophrenic, and threatening to harm herself." The neighbor requested a deputy respond to their location and conduct a welfare check. There were no records or audio recordings dated 06-12-21 where the complainant called the Sheriff's Communication Center. There was no evidence to support the allegation that a Sheriff's employee failed to assist the complainant when she called the Sheriff's Communication Center. The evidence showed that the alleged act or conduct did not occur

2. Misconduct/Procedure – Deputy 1 frequented the mobile home park where the complainant resided.

Board Finding: Action Justified

Rationale: In the complainant's written statement, she stated, "Deputy 1 is here at the community park even when he's not working. I called to advise that Deputy 1 is always at RV Community Park. Though my complaint is regarding Deputy 1, Sheriff's Communication Center staff still dispatch him to my calls for service. According to a SDSD Rural Law Enforcement Division Deployment Log, Deputy 1 was one of two deputies assigned to the rural substation. He was a "resident deputy" meaning he resided in the community he served. A resident deputy would patrol the communities where they reside and routinely visit residences, mobile home parks, and other establishments in their assigned areas during their routine patrol, as they are active community members. Rural deputies are encouraged to socialize with the communities they patrol in, to maximize peace officer presence and law enforcement efficiency and effectiveness. The SDSD substation is approximately 20 miles from the complainant's mobile home park. It would not be unreasonable for the patrol deputy to frequent the mobile home park where the complainant resided. The evidence showed that the alleged act or conduct did occur, and it was lawful, justified, and proper.

3. Misconduct/Intimidation - Deputy 1 threatened the complainant's life and her dog's life.

Board Finding: Unfounded

Rationale: In the complainant's written statement, she advised that, "Deputy 1 has threatened my life and my dog's life." In review of the BWC recordings, neither Deputies 1 nor the other deputy who responded to the call, were heard to threaten the complainant's life nor the life of her dog. Contrary to what the complainant reported, it was the complainant who was heard to threaten to behead her dog in

Deputy 1's BWC recording. Additionally, BWC recordings captured numerous neighbor's interviews where they confirmed that the complainant had threatened numerous times to harm her dog while she was under the influence of methamphetamine. The evidence showed that the alleged act or conduct did not occur.

4. Excessive Force – Deputy 1 used force when he arrested the complainant.

Board Finding: Unfounded

Rationale: In the complainant's written statement, she reported, "*Sheriff 1 came to my door two hours later, me and Baby were in bed when I open the door and he threw me against the wall and handcuffed me so tight it cut into my wrist. He also threw me in the back of his car knowing that I need a total right hip replacement.*" In review of Deputy 1's Arrest Report, dated 06-14-21, upon responding to a call for service, Deputy 1 determined that the complainant was a danger to herself and others. Deputy 1 took the complainant into custody for a 72-hour psychiatric hold. During the arrest, the complainant "became verbally uncooperative and stated she would not go to the hospital." In response, Deputies 1 and another deputy handcuffed the complainant and escorted her to a patrol vehicle. At the patrol vehicle, the complainant refused to sit in the back of the patrol vehicle. Deputy 1 assisted her into the vehicle by lifting her legs and her body into the patrol vehicle. Deputy 1 did not report that any force was used during the incident. In review of BWC recordings, no force was used during the complainant's arrest. The complainant flung open the door to her mobile trailer and met Deputy 1 in the threshold. She was not in bed, but was arrested in the kitchen area, a few feet within the trailer. Prior to being placed in handcuffs, the complainant dropped her weight and fell to the floor. Deputy 1 assisted the complainant to a standing position. After she was placed in handcuffs, the deputies used arm guidance to escort her out of her mobile home trailer and to their waiting patrol vehicle. The complainant walked without assistance and was not witnessed to resist their efforts. Once at the patrol vehicle, the complainant refused to get into the car without knowing that her dog was safe. Additionally, she complained that she was unable to get in. As such, Deputy 1 lifted her up and sat her in his vehicle. The complainant was found not to be credible in her recall of this event and the evidence showed the alleged act or conduct did not occur.

5. False Arrest – Deputy 1 arrested the complainant

Board Finding: Action Justified

Rationale: In the complainant's written statement, she stated, "*Sheriff 1 came to my door two hours later...he threw me against the wall and handcuffed me. He also threw me in the back of his car.*" In review of Deputy 1 Arrest Report, he documented that the complainant was "bi-polar/schizophrenic and had experienced delusional thoughts" as well as audio hallucinations. On the date of the incident, the complainant believed someone was trying to harm her. The complainant reported that she believed her neighbor and Deputy 1 had "hacked" her cellular phone and that they were "trying to "kill her." Deputy 1 determined that the complainant was a danger to herself and others. Deputy 1 took the complainant into custody for a 72-hour psychiatric hold. The complainant was transported to the County Mental Health Hospital (CMH) and released to their staff for treatment and evaluation. As stated above, Deputy 1 had arrested the complainant twice before for psychiatric holds, and with each hold, she had remained hospitalized after she was initially evaluated. The evidence showed that the alleged act or conduct did occur, and it was lawful, justified, and proper.

6. Misconduct/Procedure – Deputy 1 did not give the complainant her purse and he failed to secure and/or protect the complainant's property.

Board Finding: Action Justified

Rationale: In the complainant's written statement, she advised, "*I screamed for my purse the whole time, I know it is my right [and] he ignored me. Deputy 1 has held my car keys. My pain pills gone, money, cash gone, and my cards including my direct express card or my Social Security goes, all out of my purse.*" In review of the BWC recording, the complainant was heard to request her purse prior to leaving the scene. Deputy 1 did not retrieve her purse from her home prior to transporting her to the County

Mental Health facility. In both Deputies 1's and a second deputy's BWC recordings, neither deputy was viewed to lock the complainant's mobile home upon their departure. The complainant instructed a neighbor to go into her home and retrieve her dog, leaving the neighbor in her home when she departed the residence. According to SDSD P&P Section 2.39 titled, "Processing Property," property which has been discovered, gathered, or received in connection with departmental responsibilities will be processed in accordance with established departmental procedures. Employees shall not convert to their own use, manufacture, conceal, falsify, destroy, remove, tamper with or withhold any property found or obtained in connection with the performance of their duties, except in accordance with department procedures. According to SDSD P&P Section 6.29 titled "Property Control System," safekeeping property in accordance with California Civil Code Section 2080.10, when the Sheriff's Department takes possession of personal property from an arrestee for temporary safekeeping, the arrestee will be provided a copy of the Safekeeping Notification and Release Form. California Civil Code Section 2080.10 advises what a public agency must do when they obtain possession of personal property from a person for temporary safekeeping. Neither California law, nor SDSD policy and procedure articulate or dictate that a peace officer will/must take possession of an arrestee's property for safekeeping. The evidence showed that the alleged act or conduct did occur, and it was lawful, justified and proper.

7. Misconduct/Procedure – Deputy 1 failed to make arrangements for the complainant's dog upon her arrest.

Board Finding: Unfounded

Rationale: In the complainant's written statement, she reported "*Also, he is supposed to ask me where I want Baby to go. The power was off. Not only was my Baby left in 120° home for five days unlocked, we're in all right she should have died, but she was molested in those five days.*" In review of the BWC recording, upon being taken into custody, the complainant immediately made arrangements for her dog. The complainant instructed her neighbors to enter her home and collect her dog, and to care for it until she returned home. Ultimately, a neighbor who took possession of the dog. Prior to entering his patrol vehicle, Deputy 1 verified that the neighbor removed the dog from the complainant's home. The complainant was found not to be credible in her recall of this event and the evidence showed the alleged act or conduct did not occur.

8. Misconduct/Procedure – Deputy 1 did not don a Body Worn Camera while on-duty.

Board Finding: Unfounded

Rationale: In the complainant's written statement, she stated, "[Deputy 1] *He never wears a body camera.*" Deputy 1's BWC recordings were requested from the SDSD for the timeframe (6 weeks) of the investigated incident. The SDSD provided numerous BWC recordings for all calls of service where Deputy 1 responded to the complainant's residence. Deputy 1's BWC recordings revealed that he was on scene, he had donned his department issued BWC, and his camera was turned on. The evidence showed that the alleged act or conduct did not occur.

21-076/PADILLA

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

Board Finding: Action Justified

Rationale: The complainant stated, "On July 22, late morning, I had a personal crisis, the need to call my Work Comp doctor. My doctor, while we were on the phone, informed she called 911, minutes passed, doctor and I continued to talk, until medical help had arrived: No ambulance-just deputies. The Hispanic deputy did all the talking and questioned, 'Are you a danger to yourself and other?' I answered yes." Deputies 1 and 4 were dispatched to respond to the call for service at the complainant's residence. Upon arrival, both deputies engaged their body worn cameras (BWC), which included audio. California Welfare & Institutions Code WIC§ 5150, states in part, "When determining if probable cause exists to take a person into custody, any person who is authorized to take that person into custody shall consider available

relevant information as to whether the person is a danger to others, or to himself or herself, or is gravely disabled as a result of the mental disorder.” Deputy 4 asked the complainant if he felt like hurting himself or someone else, the complainant responded, “I know who I am and I would never intentionally hurt myself or anyone else.” When asked again if he felt that he might hurt himself or someone else the complainant responded “yes.” Deputy 4 asked, “Do you want to go to the hospital to talk with the psychiatrist or psychologist? He stated, “My spirit is broken,” and Deputy 4 replied, “that is a good place to go then to talk with someone about it.” Deputy 1 stated, “Let me help you, I’m going to help get you there.” The evidence showed Deputy 4’s questioning of the complainant was legal, justified and proper.

2. Misconduct/Procedure – Deputy 1 transported the complainant to a hospital in a patrol vehicle.

Board Finding: Action Justified

Rationale: The complainant stated, “From my bed, I was escorted out, into the back of a secured deputy patrol vehicle.” According to Sheriff Communication Center recordings, the complainant’s psychologist requested an ambulance, however, dispatch informed her that deputies would have to respond. SDDS Patrol Procedures Policy 1, Use of Discretion, states in part, “When deputies are faced with a situation where discretion can be exercised, they must evaluate the circumstances, consider the available resources, and rely on their training and supervision in making the appropriate decision.” Deputies 1 and 4 determined, after assessment, it would be appropriate to transport the complainant to the hospital for evaluation. Prior to Deputy 1 escorting the complainant outside, Deputy 4 asked the complainant, “Are you able to stand up and walk on your own or do you need paramedics to help you?” The complainant replied, “No, I can do it, I use my left leg for leverage.” According to WIC§ 5150, “When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, designated members of a mobile crisis team, or professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention. Deputy 1 also 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 the alleged act or conduct did occur and was lawful, justified and proper.

3. Misconduct/Discourtesy – Deputy 1 ignored the complainant’s health conditions.

Board Finding: Unfounded

Rationale: The complainant stated, “I asked for a pillow from my house-need to repose. Deputy 1 had no desire to walk 20 paces to ask my wife for a needed comfort pillow. 1 did not allow me to show him a cell-phone picture of my 4-level fusion. Deputy 1 serious cared less about my health condition. Rather than dignity and care of a mental patient in his moment of desperate need, total human detachment of sensitivity, empathy and feelings.” BWC video footage provided evidence that Deputy 1 displayed empathy for the complainant’s medical conditions. Deputy 1 also 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 the alleged act or conduct did not occur.

4. Misconduct/Discourtesy – Deputy 1 “ran a speed bump with deliberate intent.”

Board Finding: Action Justified

Rationale: The complainant stated, “I strongly believe Deputy 1 deliberately ran a speed bump with intend. He knew I was in pain. Speed bump revenge appears to be an unspoken policy.” According to SDDS Policy 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.” Upon arrival to the hospital, Deputy 1 drove over a speed bump, however, he was not speeding and it was on the route to where Deputy 1 needed to go. 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. The evidence showed that the alleged act or conduct did occur and was lawful, justified

and proper.

5. Misconduct/Discourtesy – Deputy 1 treated the complainant like a “suspect,” and “threatened” to handcuff him.

Board Finding: Unfounded

Rationale: The complainant stated, Here I am, in the back of a caged car, treated as a ‘suspect.’ When we arrived, my situation became worst. I ask Deputy 1 not to handcuff me, having arrived at the hospital, from my emotional outburst. Deputy 1 responded: ‘I won’t handcuff you...(one second silent)...yet.’ I honestly replied, ‘Why are you doing this? ...‘yet’ is a state of time. Why are you deliberately trying to piss me off? Why? Why are you treating me like a suspect?’ Deputy 1 responded, “You are not a suspect.” Patrol Procedures Policy 23, states in part, “Deputies must advise the detainee that they are not under criminal arrest and are being transported to a psychiatric health facility for an examination by mental health professionals.” Prior to transport to the hospital, Deputy 1 stated to the complainant, “You are not under criminal arrest, we are just going to take you to the hospital.” BWC evidence refuted the complainant’s allegation. 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. The evidence showed that the alleged act or conduct did not occur.

6. Misconduct/Discourtesy – Deputy 1 “argued with and provoked” the complainant.

Board Finding: Unfounded

Rationale: The complainant stated, “I tried to dialog with Deputy 1. At first he was professional, until we entered the freeway. Exiting freeway, I tried to continue our dialog. Then he became passionately argumentative. Wow! D. 1 serious enjoys arguing to complete strangers!” SDSD Policy 2.22 Courtesy, states, “Employees shall be courteous to the public and fellow employees. They shall be tactful in the performance of their duties, shall control their tempers, exercise patience and discretion even in the face of extreme provocation. Coarse, profane, or violent language is generally prohibited. Employees shall not use insolent language or gestures in the performance of his or her duties.” BWC video refuted the allegation. Deputy 1 also 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 conduct did not occur.

7. Misconduct/Discourtesy – Deputies 1, 2 and 3 “mocked and/or laughed at” the complainant.

Board Finding: Not Sustained

Rationale: The complainant stated, “Here I am, a patient in medical need, suffering a personal crisis, only to be mocked, laughed at. While waiting for the receiving nurse, I explained to the deputy my need to repose...prolong sitting, walking and standing aggravates my back and leg pain. I was ignored. I then told the deputies, “...look, I wake up like a 60 year old. I walk around the house like a 70 year old. When I have to run errands, groceries, gas and so on, I find myself walking and feeling like an 80 year old. Finally at the end of the day before I sleep, people have told me, I look and walk, feeling like a 90 year old...!” Deputy 3, she looked straight into my eyes, extended her finger up, and said, (not lying here): “...then why are you acting like a 5 year old?!” OMG! The others laughed.” Deputies 1, 2 and 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. Deputies 3 and 2 were on scene in response for a separate call/incident. Deputy 2’s BWC was reviewed. Due to patient confidentiality laws and in compliance with policy, his audio was muted. Furthermore, because of patient confidentiality, BWC video was limited to the bay, outside of the emergency room. There was no evidence to review once the deputies entered the hospital with their detainees. As such, the evidence was insufficient to either prove or disprove the allegation.

8. Misconduct/Procedure – Deputy 1 denied the complainant use of his cell phone.

Board Finding: Action Justified

Rationale: The complainant stated, "As time passed, I tried to ask Deputy 1 for my cell phone, a quick one minute. Denied." Initially, on the drive to the hospital, the complainant was heard on BWC video, when he asked Deputy 1 if he could use his cell phone when they got to the hospital. Deputy 1 responded that he would let the complainant use his cell phone, prior to going inside the hospital. Following the initial request, the complainant exhibited aggressive and boisterous behavior, evidenced on BWC. SDDS Patrol Procedures Manual, Policy 1 titled Use of Discretion, states in part, "When deputies are faced with a situation where discretion can be exercised, they must evaluate the circumstances, rely on their training in making the appropriate decision. The appropriate decision should be the least restrictive that still does not compromise Deputies safety." Deputy 1 also 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 the alleged act or conduct did occur and was lawful, justified and proper.

9. Misconduct/Procedure – SDDS failed to "acknowledge/confirm receipt" of correspondence submitted by the complainant.

Board Finding: Unfounded

Rationale: Following the incident, the complainant filed an Internal Affairs (IA) complaint. The complainant alleged that he never received a response from the SDDS, acknowledging receipt of his complaint. The complainant stated, "Letter describing my 072221 Two Deputies, experience, email to Sheriff Secretary (7/24/21) and Cover letter to Internal Affairs, related to my terrible treatment as a mental health patient. As of current, I have received absolutely nothing from the Sheriff's Office as acknowledgement or confirmation of receipt. My enclosed letter reads for itself, now on its third week. I need resolve please, which is first complimented with acknowledgement, an anticipated and profession confirmation-receipt." During a telephone conversation with the complainant, he advised that he had received a response from the SDDS, however, he failed to provide a copy when requested. Based upon his verbal acknowledgment, failure to cooperate with CLERB's investigation and lack of credibility, the evidence showed the alleged act or conduct did not occur.

21-094/WRIGHT

1. Death Investigation/In-Custody Medical – John Edward Wright, while an inmate at the Vista Detention Facility, was found unresponsive in his cell on 09-16-21. Despite aggressive resuscitative efforts, he was pronounced dead at the scene.

Board Finding: Action Justified

Rationale: The evidence supported that Wright was properly classified upon his entry into the SDDS jail system on 03-04-21, after his parole violation arrest. Safety checks and counts were conducted in accordance with policy. The last safety check prior to the incident was 09-16-21 at 2:26PM. Wright was housed with two cellmates, one of which was at court during the time of the incident. Wright's cellmate told Homicide Detectives that Wright collapsed off the toilet and he used the intercom to call for help. According to SDDS records, the intercom call was placed at approximately 2:56PM. A deputy responded at 2:56PM and medical was called to assist. An additional deputy arrived at 2:58PM and Wright was removed from the cell to allow more room for the deputies to perform lifesaving measures. Deputies began CPR at 2:59PM. VDF medical staff arrived at 2:59PM. Deputies traded off performing chest compressions until relieved by the Fire Department at 3:08PM. A total of four doses of epinephrine, and three doses of Narcan were administered. Wright was pronounced dead at 3:28PM. The cause of death was hyperglycemia and ketoacidosis due to diabetes mellitus with volvulus with thrombosis of superior mesenteric artery and atherosclerotic cardiovascular disease as contributing. The manner of death was natural. Toxicology testing of Wrights' blood specimens detected acetone, consistent with ketoacidosis. Vitreous chemistry studies detected elevated glucose, consistent with hyperglycemia. Furthermore, toxicology testing detected no ethanol or common drugs of abuse. According to all available evidence, deputies took immediate action when they recognized and responded to Wright'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.

21-100/RICHARDSON

1. Misconduct/Discourtesy – Deputy 1 refused to acknowledge the complainant.

Board Finding: Sustained

Rationale: The complainant stated, "I parked my car behind the Sheriff's car. I approached him. He looked at me and seemed to recognize my face (I am known by many deputies because I film the police). I attempted to ask my question, but he rolled up his window and drove away quickly. He did not voice any reason as to why he refused to walk with me." Richardson submitted a video clip of the incident which was Live via Facebook at 06:29PM, in the clip Richardson got out of her vehicle and approached the deputy in the patrol vehicle. Richardson stated, "excuse me sheriff", the deputy put his window up and drove away. Deputy 1's face remains forward during the encounter, and Richardson can be seen directly next to his driver's side window. Deputy 1 does not appear to look or hear the complainant. As per SDSO 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. SDSO P&P 2.22 entitled "Courtesy", states employees shall be courteous to the public and fellow employees. SDSO P&P 2.30 entitled "Failure to Meet Standards" states employees shall properly perform their duties and assume the responsibilities of their positions. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Deputy statements are confidential and cannot be publicly disclosed. There was a preponderance of evidence Deputy 1 heard and/or saw the complainant and refused to acknowledge her. The evidence supports the allegation, and the act or conduct was not justified.

2. Misconduct/Procedure – Deputy 1 exhibited "extremely dangerous and reckless" behavior.

Board Finding: Unfounded

Rationale: The complainant stated, "I find this behavior extremely dangerous and reckless." As per the Merriam-Webster dictionary, the legal definition of dangerous is "creating a risk of bodily injury". As per the Merriam-Webster dictionary, the legal definition of reckless is defined as "characterized by the creation of a substantial and unjustifiable risk to the lives, safety, or rights of others and by a conscious and sometimes wanton and willful disregard for or indifference to that risk that is a gross deviation from the standard of care a reasonable person would exercise in like circumstances." Deputy 1 driving away did not create a risk of bodily injury and/or an unjustifiable risk to Richardson's life. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Deputy statements are protected by the Peace Officer Bill of Rights and cannot be publicly disclosed. The evidence shows that the alleged act or conduct did not occur.

3. Discrimination/Other – Deputy 1 discriminated against the complainant.

Board Finding: Unfounded

Rationale: The complainant stated, "He cannot discriminate against me just because he doesn't like the fact that I film the police. He is not protecting my safety, and I want him removed from the I.B. substation". As per SDSO P&P 2.53 entitled "Discrimination", states "Employees shall not express any prejudice or harassment concerning race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, pregnancy, marital status, gender, age, political beliefs, sexual orientation, sexual or gender identity, 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." "Filming the police" is not a

protected characteristic under discrimination. The evidence shows that the alleged act or conduct did not occur.

POLICY RECOMMENDATION

This is the third incident over the past two years in which CLERB received complaints alleging that deputies assigned to the Imperial Beach Substation either failed to respond to community members while being videorecorded or attempted to interfere with a community member's right to videorecord law enforcement activity. In CLERB Case #20-025, there was insufficient evidence to determine whether, during nighttime hours, a deputy shined a flashlight toward the complainant for the purpose of interfering with his recording of the deputy's activities. In CLERB #21-024, CLERB sustained findings of a deputy refusing to acknowledge a complainant and provide identification upon request while being videorecorded. During that time, CLERB did not receive similar allegations about deputies assigned to any other station. As such, CLERB makes the following recommendation:

1. The San Diego Sheriff's Department (SDSD) update the Legal Affairs Update entitled "The Public Can Record the Police" dated 11-14-14, and document its review with all deputies, specifically those assigned to the Imperial Beach Substation.
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21-119/MITTEN

1. Misconduct/Procedure – Deputy 1 failed to provide medical aid to the complainant on 04-27-20.

Board Finding: Summary Dismissal

Rationale: In the complainant's written statement, she reported, "04-27-2020 When I woke up on the floor half naked, cuts, bruises and I could not control my bowels I called the paramedics and I could not stand I went to Pomerado hospital. I checked myself out because I was worried about my two dogs at home. I have heard Sheriff 1 say several times just stood there and watched but he never helped." The complainant had previously filed two other complaints with CLERB and did not mention this allegation. The complainant was found not to be credible in her recall of these events. She lacked credibility and her complaint was so clearly without merit that no reasonable person could sustain a finding based on the allegation; however, due to the severity of the allegation an investigation was performed. Additionally, an extended amount of time had lapsed since the date of the alleged incident and the date the incident was reported to CLERB. The complainant alleged that the incident occurred on 09-04-20, but she did not file this allegation with CLERB until 11-18-21. The complainant had the burden of demonstrating that she was unable to file a complaint within one year from the incident. The complainant was advised of the tolling exemptions, and none existed that would permit the invocation of CLERB jurisdiction. As such, CLERB did not have jurisdiction to investigate this complaint. The following CLERB rules apply: 4.4 Citizen Complaints: Jurisdiction - The Review Board 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, except that if the person filing the complaint was incarcerated or physically or mentally incapacitated from filing a complaint following the incident giving rise to the complaint, the period of incarceration or incapacity shall not be counted in determining whether the one year period for filing the complaint has expired. The Review Board lacks jurisdiction and the complaint clearly lacked merit.

2. Misconduct/Procedure – Deputy 1 failed to act on a report of animal abuse on 09-04-20.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

3. False Reporting – Deputy 1 filed false reports.

Board Finding: Unfounded

Rationale: In the complainant's written statement, she stated that she reported her neighbor to the

Sheriff's Department, but that [Deputy] "1 never arrested [neighbor] for all the times I have called. Also he has never ever made one police report but he makes false ones and give them to [neighbor], for her to keep." In a previous CLERB investigation, it was explained that Deputy 1 arrested the complainant three times for psychiatric holds. The complainant was a chronic caller and had called San Diego Sheriff's Department (SDSD) over 50 times in the past year. Deputy 1 explained that the complainant was "bi-polar, schizophrenic, has had delusional thoughts, and experiences audio hallucination. The complainant is a self-admitted drug user with her illicit drug of choice being methamphetamine." In review of the numerous BWC recordings, the complainant appeared to experience a schizophrenic episode and/or psychosis. She expressed delusional thoughts, was paranoid, had disordered thinking and incoherent speech, she experienced severe mood swings, and was acting unreasonably. She appeared to experience delusions and hallucinations. CLERB felt it was essential to recognize the complainant's psychiatric history, as it was considered in arriving at the recommended finding. The complainant was found not to be credible in her recall of these events. She lacked credibility and her complaint was so clearly without merit that no reasonable person could sustain a finding based on the allegation; however, due to the severity of the allegation a full investigation was performed. There was no prima facie showing of misconduct. The evidence showed that the alleged act or conduct did not occur.

21-127/PLASCENCIA

1. Use of Force Resulting in Great Bodily Injury – Deputies 1 and 2 utilized force during the booking process with Armando Plascencia.

Board Finding: Action Justified

Rationale: On 11-04-21, Plascencia was arrested by the San Diego Police Department and booked into the San Diego Central Jail (SDCJ), where deputies ultimately used force towards him during the booking process. SDSD documentation and jail surveillance video showed Deputy 1 conducted a "pat down" search, where Plascencia was non-compliant, and verbally and physically aggressive. Deputy 1 stated he provided verbal commands, but Plascencia ultimately attempted to assault the deputy when he tried to kick him and leaned his body weight back towards the deputy. Deputy 1 used both his hands to pull Plascencia down and dropped him to the floor. Deputy 2 assisted by placing pressure on Plascencia's legs once he hit the floor. Plascencia hit his head on a body scan machine which caused him to briefly lose consciousness. Plascencia regained consciousness when Deputy 1 conducted a sternal rub. Plascencia was transported to USCD Medical Center where he was treated for minor lacerations to his forehead and loss of consciousness. SDSD DSB P&P 1.52 Inmate Searches, states inmates shall be searched in order to provide a safe and secure environment for inmates and staff. SDSD P&P 2.49 Use of Force states employees shall not use more force in any situation than is reasonably necessary under the circumstances. Furthermore, Addendum F Use of Force Guidelines states 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. Evidence showed that Plascencia escalated from verbal noncompliance/passive resistance when he refused to follow the deputies' commands, to active resistance/assaultive behavior when he dropped his body-weight back towards the deputy. Deputies 1 and 2 responded with hands-on control to ensure the suspect was controlled and to maintain safety. The use of force applied towards Plascencia was reasonable and necessary given the totality of circumstances. The use of force was documented, a supervisor responded accordingly, and emergency medical care was provided in accordance with policy. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

22-035/ABNER

1. False Arrest – San Diego Police Officers arrested the complainant.

Board Finding: Summary Dismissal

Rationale: The complainant stated, "On 7-11-21 Police Officers arrested me. The Director of the FBI was

in a black Chevy Impala with black tinted windows. He was tracking me on a computer in his car. There is a beacon in my eyeglasses lenses. Officers drove his car and “Chris” got in the passenger side of the police car. Me and Chris was booked in the San Diego Central Jail on 7-12-21...” According to the complainant’s booking records he was arrested by members of the San Diego Police Department. Per CLERB Rules & Regulations 4.1, Authority, CLERB lacks jurisdiction.

2. Criminal Conduct – Unidentified personnel did not read the complainant his rights.

Board Finding: Summary Dismissal

Rationale: The complainant stated, “They did not read me my rights. Chris was in a different court room as me in front of a different judge different dates different charges under different credentials...” According to the Probable Cause Declaration for Warrantless Arrest dated 07-11-21, Abner made a spontaneous statement admitting to the crime of vandalism. The actions of the San Diego Police Department reside outside CLERB’s jurisdiction.

3. Excessive Force – An unidentified person “punched” the complainant in the face.

Board Finding: Summary Dismissal

Rationale: The complainant stated, “Chris punched me in my face in the S.D.C.J. and he again on 2-17-22...” Abner was interviewed by a CLERB investigator on 03-24-22 at which time he reported the Director of the Federal Bureau of Investigation morphed into a deputy and/or inmate who assaulted him. CLERB Rules and Regulations Section 15, Summary Dismissal: states that CLERB may summarily dismiss a case when the complaint is so clearly without merit that no reasonable person could sustain a finding based on the facts.

4. Misconduct/Intimidation – Unidentified personnel threatened to kill the complainant.

Board Finding: Not Sustained

Rationale: The complainant stated, “2 other deputy’s they threatened to kill me in G.B.D.F.” Abner was interviewed by a CLERB investigator on 03-24-22 at which time he attempted to explain the nature of his complaint. He appeared to be extremely confused and spoke in the second and third person. Abner believed that the Director of the FBI was after him and planted lasers in his glasses and that the Director was also impersonating a San Diego Deputy Sheriff and would sometimes impersonate an inmate. Abner believed that he was being followed by the FBI and the SDSD. Abner was irrational and displayed very erratic behavior during the course of the interview. Abner informed the CLERB investigator that he has mental illness and is administered medication for his condition on a daily basis. Without further identifying information, CLERB was unable to investigate this allegation further. There was insufficient evidence to either prove or disprove the allegation.

22-058/BLUE

1. Misconduct/Procedure – Deputy 1 “invaded” the complainant’s privacy.

Board Finding: Unfounded

Rationale: The complainant stated, “Deputy 1 arrived and started looking inside his motorhome and invading his privacy”. As per California Police Officers Legal Sourcebook sectioned entitled “Search and Seizure-Vehicles -Plain View”, an observation made from outside a vehicle, from a position where you have a right to be is not a search. BWC footage showed deputies outside of Blue’s Recreational Vehicle (RV) in front of Del Mar City Hall on a public street. The evidence showed that the alleged act or conduct did not occur.

2. Misconduct/Discourtesy - Deputy 1 was “dismissive” toward the complainant.

Board Finding: Unfounded

Rationale: The complainant stated, “Blue tried to explain to Deputy 1 that he was allowed to park there but Deputy 1 would not listen. Blue tried to show Deputy 1 a pamphlet and he was dismissive and did not care”. Body Worn Camera (BWC) audio starts with Deputy 1 telling Blue that his vehicle is going to be towed. Blue told Deputy 1, “I am going to call your boss”, and went inside of his RV. As Deputy 1 walked away, Blue exited the RV and offered to show Deputy 1 “the law”. Blue read from his cell phone regarding how state law preempts local ordinances when there is conflict in laws. Deputy 1 stepped back from Blue twice during Blue’s explanation. Deputy 1 stated he felt uncomfortable and called for backup. Blue grew agitated and became verbally aggressive. Deputy 1 remained calm during the interaction and was faced with extreme provocation. According to SDSO 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, shall control their tempers, exercise patience and discretion even in the face of extreme provocation.” The evidence showed the alleged act or conduct did not occur.

3. Misconduct/Procedure - Deputy 1 “advised” the complainant to move his vehicle.

Board Finding: Action Justified

Rationale: The complainant stated, “Deputy 1 advised Blue he had to leave and that the only thing his placard was good for is blue parking painted spots.” In BWC, Deputy 1 stated “they have designated handicap parking, and this is not one of the designated areas.” Deputy 1 told Blue he was over the 20-minute limit. According to VEH § 22511.5 Disabled Parking: Authorized Parking Zones, a disabled person is allowed to park for unlimited periods of time in any zone that that is restricted as to the length of time parking is permitted as indicated by a sign erected pursuant to a local ordinance. According to Del Mar Municipal Code 14.16.060 Prohibition of Parking of Oversized or Non-Motorized vehicles, “No person shall park or leave standing upon any public street or alley any oversized or non-motorized vehicle for a period longer than four hours.” As per Del Mar Municipal Code 14.16.070, an oversized vehicle is any vehicle that exceeds 20 ft in length. Furthermore, Del Mar Municipal Code 14.16.110 entitled “Vehicle Removal and Penalties”, states all vehicles parked in violation can be removed after 72 hours. BWC showed Deputy 1 made a phone call to his supervisor to obtain more information on parking laws. Following the phone call, Deputy 1 advised Blue that his placard does supersede the 20 minutes, but only for 4 hours. It was later determined, Blue’s handicap placard expired 05-08-22 and therefore, he was no longer exempt from the unlimited time exemptions. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

4. Misconduct/Procedure - Deputy 1 “showed a complete dereliction of duty”.

Board Finding: Unfounded

Rationale: The complainant stated, “Deputy 1 showed a complete dereliction of duty”. According to SDSO P&P 2.30 Failure to Meet Standards, “Employees shall properly perform their duties and assume the responsibilities of their positions. Employees shall perform their duties in a manner which will tend to establish and maintain the highest standards of efficiency in carrying out the mission, functions, and objectives of this Department. Failure to meet standards may be demonstrated by a lack of knowledge of the application of laws required to be enforced.” According to BWC, Deputy 1 was unsure about handicap parking regulations and contacted his supervisor to inquire and obtain more information. Deputy 1 was informed by his supervisor that the time exemptions do not apply to disabled parking placards, however the oversized vehicle limits apply. Deputy 1 then relayed this information to Blue. California case law precedence shows ambiguity in the interpretation of oversized vehicle restrictions as it relates to disabled parking laws. The evidence showed that the alleged act or conduct did not occur.

5. Misconduct/Discourtesy – Deputy 2 was “dismissive” toward the complainant.

Board Finding: Unfounded

Rationale: The complainant stated, “Both Deputy 2 and Deputy 1 would not look at the laws and were dismissive.” According to BWC, Deputy 2 arrived on scene and told Blue that his placard was expired. Blue said he will move on that basis. Deputy 2 said if you had a valid placard, it does supersede green and blue parking limitations. He then stated, 4 hour applies as well. BWC footage showed Blue standing

next to Deputy 2 and Deputy 2 asked Blue to step back. Blue told him he was ignoring state law, and state law trumps municipal code. Blue grew more aggressive and agitated during the interaction. As per the Law Enforcement Services Bureau Field Operations Manual, Policy 1 Use of Discretion indicates, "When deputies are faced with a situation where discretion can be exercised, they must evaluate the circumstances, consider the available resources, and rely on their training, Sheriff's Department policies and procedures, statutory law, information-led policing, and supervision in making the appropriate decision." Furthermore, SDSD P&P Use of Force Guidelines Addendum F states "De-escalation is defined as actions taken in an attempt to stabilize an incident or reduce the immediacy of a threat by obtaining more time, options or resources to resolve an incident. The goal is de-escalation is to gain voluntary compliance of subjects, when feasible, to potentially reduce or eliminate the need to use force on a subject." Deputy 2 provided confidential information during CLERB's investigation that was considered in arriving at the recommended finding. The evidence showed the alleged act or conduct did not occur.

6. Misconduct/Intimidation – Deputy 2 directed the complainant to move his vehicle.

Board Finding: Action Justified.

Rationale: The complainant stated that Deputy 2 said, "We don't really know, we don't want you here. Leave or you will be towed". According to BWC evidence, Deputy 2 stated "if your cars not moved in a few hours, I'm going to ticket it". During the interaction with SDSD, it was determined that Blue's handicap placard expired 05-08-22. Since Blue did not have a valid handicap placard, there was no exemption to the parking time limitations. As per VEH§ 21458 Curb Markings, a green curb indicates time limit parking specified by local ordinance. As per the Law Enforcement Services Bureau Field Operations Manual, Policy 1 Use of Discretion indicates, "When deputies are faced with a situation where discretion can be exercised, they must evaluate the circumstances, consider the available resources, and rely on their training, Sheriff's Department policies and procedures, statutory law, information-led policing, and supervision in making the appropriate decision." Deputies could have issued Blue a citation for already exceeding the 20 minutes due to his expired handicap placard but did not. Deputy 2 provided confidential information during 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.

7. Misconduct/Discourtesy – Deputy 2 told the complainant, "we don't want you here in this city".

Board Finding: Unfounded

Rationale: The complainant stated, "Deputy 2 told Blue that he couldn't park there, and they didn't want him in this city". Based upon review of BWC evidence, this statement was never made. The evidence showed that the alleged act or conduct did not occur.

8. Misconduct/Harassment – Deputy 1 and Deputy 2 harassed the complainant.

Board Finding: Unfounded

Rationale: The complainant stated, "he was harassed and discriminated against due to his disability by both officers". According to SDSD P&P 2.53 Discrimination, "Employees shall not express any prejudice or harassment concerning physical or mental disability. 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 evidence did not show any evidence of harassment or discriminatory acts. Deputy 2 provided confidential information during CLERB's investigation that was also considered in arriving at the recommended finding. The evidence showed the alleged act or conduct did not occur.

9. Discrimination/Racial – Deputy 1 and Deputy 2 discriminated against the complainant.

Board Finding: Unfounded

Rationale: See *Rationale #8*.

10. Misconduct/Harassment – Unidentified San Marcos, Encinitas, and Vista deputies “targeted” the complainant.

Board Finding: Not Sustained

Rationale: The complainant stated, “he has been targeted in San Marcos, Encinitas, Carlsbad, and Vista.” In a follow-up interview CLERB conducted with Blue on 06-17-22, Blue stated he received a ticket from San Marcos after he had filed this complaint. CLERB explained since the incident is new and different, Blue would need to submit a new complaint to investigate the new incident. Furthermore, Blue stated an unknown Encinitas deputy approached him and threatened to give him a ticket if he did not move his vehicle. Blue was unable to provide dates or deputy names and as such CLERB was unable to investigate further. Blue also alleged he received “notes” on his vehicle in Vista, but was also unable to provide dates or further details. There was insufficient evidence to either prove or disprove the allegation.

11. Misconduct/Harassment – Unidentified Carlsbad Police Officers “targeted” the complainant.

Board Finding: Summary Dismissal

Rationale: The complainant stated, “he has been targeted in San Marcos, Encinitas, Carlsbad, and Vista.” In a follow-up interview CLERB conducted with Blue on 06-17-22, Blue stated he submitted a separate complaint with the Carlsbad Police Department. As per CLERB rules and regulations 4.1 Complaints: Authority. Pursuant to the Ordinance, 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. The Review Board lacks jurisdiction.

POLICY RECOMMENDATION

1. CLERB recommends the San Diego Sheriff’s Department (SDSD) create a Training Bulletin on the subject of handicap parking law enforcement, to include but not limited to temporary and permanent handicap placards and parking restrictions, for distribution to all patrol deputies.
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22-059/BOJINOFF

1. Criminal Conduct – Unidentified “officers” “violated/raped” the complainant.

Board Finding: Summary Dismissal

Rationale: Bojinoff reported that six to seven “officers” violated her and her body and took away her “respect, confidence, and self-worth.” Bojinoff provided no evidence to support her claim. San Diego Sheriff Department (SDSD) Communication Records indicated on 02-08-22, Bojinoff was placed on a Welfare & Institutions Code Section 5150 psychiatric hold. Bojinoff contacted SDSD and reported that four strangers were in her nephew’s bedroom having sex. Deputies responded and determined Bojinoff was hearing voices and seeing people who were non-existent. They had probable cause to believe Bojinoff, as a result of a mental health disorder, was gravely disabled. Body Worn Camera (BWC) was also reviewed and corroborated the reported information. According to CLERB Rules and Regulations Section 15, Summary Dismissal: CLERB may summarily dismiss a case when the complaint is so clearly without merit that no reasonable person could sustain a finding based on the facts.

22-066/GATLIN

1. Misconduct/Procedure – A Parole Officer “dismissed” evidence presented by the complainant.

Board Finding: Summary Dismissal

Rationale: While initiating the investigation and notifying the San Diego Probation Department of the complaint, it was learned that the subject officer is a State Parole Officer/Agent and not a County Probation Officer. The aggrieved was under both jurisdictions; county probation and state parole

supervisions; however, the complainant did not reference County Probation in any allegations. As such, it is requested that this case be Summarily Dismissed. CLERB does not have authority to investigate per CLERB Rules and Regulations 4.1, entitled, "Citizen Complaints: Authority," the Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department. As such, CLERB lacks jurisdiction.

2. Misconduct/Discourtesy – A Parole Officer was "rude, dismissive, and insensitive" to the complainant.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

3. Misconduct/Procedure – A Parole Officer failed to provide a supervisor's name upon request.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

4. Misconduct/Procedure – A Parole Officer failed to provide an email address upon request.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

End of Report

NOTICE

In accordance with Penal Code Section 832.7, this notification shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court or judge of California or the United States.