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CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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April 7, 2023

CLERB Members
555 W. Beech Street
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San Diego, CA 92101

RE: Updated Overview of CLERB Rules and Regulations Draft Revision

CLERB Members,

On March 28, 2023, after considering a presentation from San Diegans for Justice (SDJ), SDJ's CLERB analysis report, and the 21 recommendations put forward in January and February, CLERB approved prioritizing the following categories of proposed revisions to CLERB's Rules and Regulations: (1) codify current practices, (2) expand CLERB's jurisdiction to include medical service providers, and (3) eliminate the one-year time limit for the receipt of certain Complaints.

These three categories of proposed revisions encompass the following 16 of the original 21 recommendations:

Codify Current Practices

1. The addition of CLERB's Vision Statement.
2. Defined "Specified Incident."
3. Added "including deaths determined to be due to natural causes."
4. Added to "such cooperation:"
 - o Notifying CLERB of the death of any individual:
 - arising out of or in connection with actions of Sheriff's Department or Probation Department employees, or Medical Service Providers, or
 - in custody.
 - o Notifying CLERB of the occurrence of Specified Incidents.
5. Mandated the prioritization of death cases above all other cases.
6. As it pertains to Findings included in CLERB's Final Report:
 - o changed "facts relating to any Case" to "facts relating to allegations set forth in the Complaint or potential misconduct discovered during the course of CLERB's investigation of the Case."
7. As it pertains to Findings included in CLERB's Final Report:
 - o added "the Final Report for Specified Incident investigations shall include an overall conclusion as to the Case."
8. Pertaining to Reconsideration of Final Report, added "or conclusions" as follows:
 - o there is a reasonable likelihood the new evidence will alter the Findings, recommendations, or overall conclusions contained in the Final Report.
9. Added that a Case may be re-opened for reconsideration by CLERB if the requirements of Government Code section 3304(g) are met, if applicable.

Expand CLERB's Jurisdiction to Include Medical Service Providers

10. Expansion of CLERB's jurisdiction to include any person providing medical care or mental health services in County detention facilities.
11. Changed "Subject Officer" to "Subject of Investigation."

12. Expanded the “Misconduct” definition to include “a deviation from standard of care, error, or omission related to medical care or mental health services” for “Medical Service Providers.”
13. Added “contract service providers” as persons from whom the Review Board shall receive complete and prompt cooperation.
14. Added “responses to CLERB’s written or oral inquiries,” “review of relevant of medical records,” and “consultation with medical subject matter experts, as needed” to “Scope of Investigation.”
15. Added a section entitled, “Procedural Rights and Protections.”

Eliminate the One-Year Time Limit for the Receipt of Certain Complaints

16. Eliminated the prohibition to investigate actions taken in respect to certain Complaints received more than one year after the incident giving rise to the Complaint. The types of complaints to be excluded from the one-year time limit will be discussed at CLERB’s Regular Meeting on April 11, 2023.

On April 5, 2023, I met with CLERB members Andrew Hayes and Bonnie Kenk and proposed that the complaints to be excluded from the one-year time limit for receipt include those involving the circumstances specified in Penal Code Section 832.7, as detailed below:

- (a) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
- (b) An incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or in great bodily injury.
- (c) An allegation of unreasonable or excessive force by a peace officer or custodial officer.
- (d) An allegation that a peace officer or custodial officer failed to intervene against another officer using unreasonable or excessive force.
- (e) An allegation that a peace officer or custodial officer engaged in sexual assault involving a member of the public.
 1. As used in this subparagraph, “sexual assault” means the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority. For purposes of this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault.
 2. As used in this subparagraph, “member of the public” means any person not employed by the officer’s employing agency and includes any participant in a cadet, explorer, or other youth program affiliated with the agency.
- (f) An allegation of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any false statements, filing false reports, destruction, falsifying, or concealing of evidence, or perjury.
- (g) An allegation that a peace officer or custodial officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.
- (h) An allegation that a peace officer or custodial officer made an unlawful arrest or conducted an unlawful search.

In addition, I propose there should be no one-year time limit for receipt of Complaints involving allegations of great bodily injury arising out of or in connection with actions of a peace officer or custodial officer.

The following five recommendations will not be brought forward at this time:

1. Expansion of CLERB’s jurisdiction to include all employees of the San Diego Sheriff’s Department (SDSD) and all employees of the Probation Department (Probation).
2. Expansion of CLERB’s jurisdiction to include audits, monitoring, and performing analyses of Sheriff’s Department and Probation Department policies and patterns in practice.
3. Expansion of CLERB’s jurisdiction to allow for CLERB staff to have direct access to Sheriff’s Department and Probation Department reporting systems for the purpose of auditing, monitoring, and conducting analyses of policies and patterns in practice.
4. Define “Audit” and “Monitoring.”
5. Remove “CLERB does not have jurisdiction because the Complaint was not timely filed” as a circumstance under which a Case may be summarily dismissed.

Sincerely,



Paul R. Parker III
Executive Officer, CLERB

cc: Ebony Shelton, Deputy Chief Administrative Officer, Finance and General Government Group
Joan Bracci, Chief Operating Officer, Finance and General Government Group
Holly Porter, Deputy Chief Administrative Officer, Public Safety Group
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Assistant Sheriff Theresa Adams-Hydar
SDSD Lieutenant David Perkins
SDSD Sergeant Michael Tingley
Chief Probation Officer Tamika Nelson
Assistant Chief Probation Officer Denise Huffhines
Probation Division Chief Irene Lilly
Supervising Probation Officer Brandon Abriel
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