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CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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January 26, 2023

CLERB Members
555 W. Beech Street
Suite #220
San Diego, CA 92101

RE: Proposed Policy Recommendation to the San Diego Sheriff's Department to Publicly Release Reviews Conducted by the Critical Incident Review Board (CIRB)

CLERB Members,

From 2006 through 2020, 185 people died in San Diego County's jails. The rate of deaths in San Diego County's jails raised concerns about underlying systemic issues within the San Diego Sheriff's Department's (SDSD) policies, procedures, and practices.

The California State Auditor (CSA) conducted an audit of the SDSD to determine the reasons for in-custody deaths; concluded that the SDSD failed to adequately prevent and respond to deaths of individuals in its custody; and made several recommendations pertaining to intake screenings, medical and mental health care, safety checks, and responses to medical emergencies. On February 3, 2022, the CSA published its findings and recommendations in CSA Report 2021-109 entitled, "San Diego Sheriff's Department."

One CSA recommendation was as follows (emphasis added):

To increase the transparency of Sheriff's Department reviews of in-custody deaths, the Legislature should require the Sheriff's Department to either **make public the facts it discusses and recommendations it decides upon** in the relevant Critical Incident Review Board meetings **or to establish a separate public process for internally reviewing deaths and making necessary changes.**

In a March 14, 2022, SDSD Media Relations News Release entitled, "Investment in San Diego County Jails," one SDSD change to align with the recommendations was detailed as follows (emphasis added):

On February 4, 2022, Acting Sheriff Kelly Martinez directed that all in-custody deaths, including natural deaths, be reviewed internally by the Sheriff's Department Critical Incident Review Board (CIRB). She also directed **these reviews be made publicly available**, which will occur in the near future.

On January 25, 2023, SDSD released "Progress Report: Update on State Jail Audit," which included the following response to the above-listed recommendation (emphasis added):

Upon completion of the Critical Incident Review of an in-custody death, the Sheriff's Department will publish a **brief synopsis of the facts it discussed of the incident, any recommendations or action items, policy revisions from the incident review, and the dates those items were accomplished.** Currently, the Sheriff's Department is completing and posting these reviews for in-custody deaths that occurred beginning and after January 1, 2022.

Publicly releasing a "brief synopsis of the facts it discussed of the incident, any recommendations or action items, policy revisions from the incident review, and the dates those items were accomplished" will clearly result in less comprehensive and less transparent publicly accessible information from SDSD's Critical Incident Review Board (CIRB) review of in-custody deaths, as opposed to releasing "these reviews" as directed on February 4, 2022.

The overview of the Critical Incident Review Board (CIRB) detailed on the SDSD website at [Homicide, In-Custody Deaths, Officer Involved Shootings | San Diego County Sheriff \(sdsheriff.gov\)](https://www.sdsheriff.gov/Homicide-In-Custody-Deaths-Officer-Involved-Shootings) is as follows (emphasis added):

The CIRB is comprised of department leadership and the sheriff's legal advisor and performs a critical review of each incident. **This review aims to identify misconduct, criminal negligence or behavior, policy violations, training or equipment deficiencies, or other areas where we can make improvements to make our facilities safer for staff and individuals in our custody.**

In SDSD Policies and Procedures (P&P) Section 4.23 entitled, "Department Committees and Review Boards," last updated on April 21, 2022, the purpose and responsibility of CIRB is identified as follows (emphasis added):

The purpose of this board is to consult with department legal counsel when an incident occurs which may give rise to litigation. **The focus of the CIRB will be to assess the department's civil exposure because of a given incident.** The CIRB will carefully review those incidents from multiple perspectives, including training, tactics, policies, and procedures with the **goal of identifying problem areas and recommending remedial actions so that potential liability can be avoided in the future.**

The P&P further indicates that policy violations, opportunities for additional training, and policy issues will be identified and presumably documented in a Final Report, which will ultimately be routed to the Undersheriff and Sheriff for approval and subsequent filing in the Legal Affairs Section, Office of the Sheriff.

The website overview captures care and concern for the individuals in custody and SDSD staff, while the P&P's sole focus is on "civil exposure" and the avoidance of "potential liability...in the future." As P&P, and not a website overview, influences organizational culture, the CIRB purpose and responsibility listed in P&P should be clarified. While there is no dispute that litigation considerations are necessary, is the primary purpose of CIRB to assess civil exposure and avoid future liability (save money) or is it to make the facilities safer for all (save lives)? The purpose of CIRB as detailed on the website should be consistent with CIRB purpose and responsibility detailed in P&P. As the P&P was implemented prior to Sheriff Martinez's tenure as Sheriff, this is the perfect opportunity to communicate her consistent and overarching vision for CIRB.

Pursuant to Section 340.9(g) of the San Diego County Administrative Code, the Citizens' Law Enforcement Review Board (CLERB) shall have the authority to review and make recommendations on policies and procedures of the San Diego County Sheriff's Department and San Diego County Probation Department. As such, I am proposing the following recommendations to the SDSD for your consideration at the January 31, 2023, CLERB Special Meeting:

1. Upon completion of the Critical Incident Review Board (CIRB) proceedings of an in-custody death, publicly release the CIRB Final Report.
2. If unwilling to release the CIRB Final Report, consider establishing a separate public process for internally reviewing deaths and making necessary changes, as recommended in California State Auditor (CSA) Report 2021-109 entitled, "San Diego Sheriff's Department."
3. Clarify the role of CIRB, specifically reconciling what is listed on the SDSA website with SDSA P&P Section 4.23. Is CIRB's purpose to assess "civil exposure" and avoidance of "potential liability...in the future," is it to make the facilities safer for all, or is it both?

If you have any questions about these proposed recommendations prior to the Special Meeting, contact me at 619-301-9212.

Sincerely,



Paul R. Parker III
Executive Officer, CLERB

PRP:prp