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County of San Diego

CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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REGULAR MEETING AGENDA

TUESDAY, JANUARY 9, 2018, 5:30 P.M.

San Diego County Administration Center

1600 Pacific Highway, Room 302/303, San Diego, 92101

(Free parking is available in the underground parking garage, on the south side of Ash Street, in the 3-hour public parking spaces.)

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives or any member of the public wishing to address the Board on any of today's agenda items should submit a "Request to Speak" form prior to the commencement of the meeting.

DISABLED ACCESS TO MEETING

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to CLERB at (619) 238-6776 at least 24 hours before the meeting.

WRITINGS DISTRIBUTED TO THE BOARD

Pursuant to Government Code Section 54957.5, written materials distributed to CLERB in connection with this agenda less than 72 hours before the meeting will be available to the public at the CLERB office located at 555 W Beech Street, Ste. 505, San Diego, CA.

1. ROLL CALL

2. MINUTES APPROVAL

- a) Minutes of the December 2017 Regular Meeting (*Attachment A*)

3. PRESENTATION/TRAINING

- a) N/A

4. EXECUTIVE OFFICER'S REPORT

- a) Overview of Activities
- b) Workload Report – Open Complaints/Investigations Report (*Attachment B*)
- c) Case Progress and Status Report (*Attachment C – to be distributed at meeting*)

5. BOARD CHAIR'S REPORT

6. NEW BUSINESS

- a) 2017 CLERB Year in Review and Look Ahead to 2018 presented by CLERB Chairperson Sandra Arkin and Executive Officer Paul Parker
- b) Policy Recommendation to San Diego Sheriff's Department: Protest/Public Demonstration Events (*Attachment D*)

7. UNFINISHED BUSINESS

- a) N/A

8. BOARD MEMBER COMMENTS

9. PUBLIC COMMENTS

- a) This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary. Each speaker will be limited to up to five minutes.

10. SHERIFF/PROBATION LIAISON QUERY

11. CLOSED SESSION

- a) **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 (4)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

16-019

1. Misconduct/Procedure – On January 23, 2016, neither Deputy 5 nor Deputies 1, 2, or 4 requested Psychiatric Emergency Response Team (PERT) assistance during a call for service involving Aurelio Perez.

Recommended Finding: Action Justified

Rationale: While Perez's actions and statements tended to indicate he was a danger to himself during the January 23, 2016 call for service, the option to request PERT Teams as detailed in the SDSD Patrol Procedures Manual was a permissive action, not a mandatory requirement. There was no evidence to support an allegation of misconduct or negligence on the part of Sheriff's Department sworn personnel

2. Misconduct/Procedure – On January 23, 2016, Deputy 3 did not request Psychiatric Emergency Response Team (PERT) assistance during a call for service involving Aurelio Perez.

Recommended Finding: Summary Dismissal

Rationale: At the time of this incident, Deputy 3 was an active member of the Sheriff's Department, but he has since retired. Per CLERB Rules and Regulations 4.1, entitled, "Citizen Complaints: Authority," CLERB lacks jurisdiction.

3. Misconduct/Procedure – On January 23, 2016, neither Deputy 5 nor Deputies 1, 2, or 4 requested Crisis Negotiation Team assistance during a call for service involving Aurelio Perez.

Recommended Finding: Action Justified

Rationale: While Perez's actions and statements tended to indicate Perez was a danger to himself during the January 23, 2016 call for service, the option to utilize Crisis Negotiation Teams as detailed in the SDSD P&P was a permissive action, not a mandatory requirement. There was no evidence to support an allegation of misconduct or negligence on the part of Sheriff's Department sworn personnel

4. Misconduct/Procedure – On January 23, 2016, Deputy 3 did not request Crisis Negotiation Team assistance during a call for service involving Aurelio Perez.

Recommended Finding: Summary Dismissal

Rationale: At the time of this incident, Deputy 3 was an active member of the Sheriff's Department, but he has since retired. Per CLERB Rules and Regulations 4.1, entitled, "Citizen Complaints: Authority," CLERB lacks jurisdiction.

5. Misconduct/Procedure – On January 23, 2016, during a call for service involving Aurelio Perez, neither Deputy 5 nor Deputies 1, 2, or 4 took him, or caused him to be taken, into custody for a period of up to 72 hours under authority of Welfare and Institutions Code Section 5150.

Recommended Finding: Action Justified

Rationale: While Perez's actions and statements tended to indicate Perez was a danger to himself during the January 23, 2016 call for service, the option of taking a person into custody as detailed in W&I Code Section 5150 was a permissive action, not a mandatory requirement. There was no evidence to support an allegation of misconduct or negligence on the part of Sheriff's Department sworn personnel

6. Misconduct/Procedure – On January 23, 2016, during a call for service involving Aurelio Perez, Deputy 3 did not take him, or cause him to be taken, into custody for a period of up to 72 hours under authority of Welfare and Institutions Code Section 5150.

Recommended Finding: Summary Dismissal

Rationale: At the time of this incident, Deputy 3 was an active member of the Sheriff's Department, but he has since retired. Per CLERB Rules and Regulations 4.1, entitled, "Citizen Complaints: Authority," CLERB lacks jurisdiction.

7. Death Investigation/Barricade – On January 24, 2016, after stabbing his wife numerous times and barricading himself inside of their apartment, which was subsequently surrounded by the San Diego Sheriff's Department and Special Enforcement Detail personnel, Aurelio Perez died from sharp force injuries. The manner of death was suicide.

Recommended Finding: Action Justified

Rationale: San Diego Sheriff's Department (SDSD) deputies responded, surrounded the apartment, and, using a department approved door ram, unsuccessfully attempted to breach the apartment door. Special Enforcement Detail (SED) was subsequently requested and responded to the scene. SED used various means to get Perez to exit the apartment but Perez never responded. After hours of no contact, SED used explosives to breach the barricaded front door and deployed a robot into the apartment, which returned images of Perez lying unresponsive on a hallway floor. A K-9 was deployed but Perez did not respond. Deputies entered and confirmed Perez's death without resuscitative efforts. Deputies expeditiously responded to this incident and despite their lawful and proper actions, Aurelio Perez took his own life. There was no evidence to support an allegation of misconduct or negligence on the part of Sheriff's Department sworn personnel.

POLICY RECOMMENDATIONS:

1. It is recommended that the San Diego Sheriff's Department (SDSD) revise its Patrol Procedures Manual, Policy 23, entitled, "Psychiatric Emergency Response Team (PERT)," to mandate a request for PERT Team whenever there is a belief that a person is a danger to himself, a danger to other, or gravely incapacitated.
 2. It is recommended that the SDSD revise its Patrol Procedures Manual, Policy 23, entitled, "Psychiatric Emergency Response Team (PERT)," to mandate a request for PERT-trained deputy assistance when a PERT Team is unavailable whenever there is a belief that a person is a danger to himself, a danger to others, or gravely incapacitated.
 3. It is recommended that the SDSD revise its Policies and Procedures Section 9.3 entitled, "Crisis Negotiations," to mandate the consideration of Crisis Negotiations Team assistance any time an individual threatens physical harm to himself or others and to document said consideration and final decision in the Crime/Incident Report or the Computer Aided Dispatch entry, if no report is created.
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16-098

1. Misconduct/Procedure – Deputy 2 "purposefully" housed the Protective Custody (PC) complainant with a mainline inmate.

Recommended Finding: Not Sustained

Rationale: The complainant stated that he was attacked by a mainline inmate and believed it was done on purpose by Deputy 2. Deputy 2 contacted Control for the complainant's housing assignment and relayed that information to Rover deputies who transported the complainant to the new cell. Deputy 2 denied any ill intent and provided information during the course of the investigation that was considered in arriving at the recommended finding. There was insufficient evidence to either prove or disprove this allegation.

2. Misconduct/Procedure – Deputy 4 "orchestrated" the Protective Custody (PC) complainant's placement with a mainline inmate.

Recommended Finding: Not Sustained

Rationale: The complainant stated that he was attacked by a mainline inmate and believed it was orchestrated by Deputy 4. Deputy 4 denied any ill intent and provided information during the course of the investigation that was considered in arriving at the recommended finding. There was insufficient evidence to either prove or disprove this allegation.

3. Misconduct/Procedure – Deputy 4 placed the Protective Custody (PC) complainant into a cell with a mainline inmate who assaulted him.

Recommended Finding: Sustained

Rationale: The complainant said that he was attacked by a mainline inmate and believed it was done on purpose by Deputy 2 and orchestrated by Deputy 4, because he had heard them bad-mouth him in the past. The deputies' intentions as alleged by the complainant were addressed in Allegations 1 and 2. According to a Crime Report, the suspect in the assault was to have been removed prior to the complainant's placement. Deputies provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Actions of other sworn personnel not identified by the complainant may have played a contributing role in this situation and were referred back to the Department for further review. The evidence showed that the complainant's placement with a mainline inmate was improper and Deputy 4 was in violation of Detentions Service Bureau Policy & Procedures and facility Green Sheets supporting the procedures. The evidence supported the allegation and the act or conduct was not justified.

17-002

1. Misconduct/Truthfulness – Deputy 1 was “dishonest, irresponsible and uncaring” when he lied to the Court about a lane change.

Recommended Finding: Unfounded

Rationale: The complainant said as his trial progressed Deputy 1 changed his story stating the whole group drove into the number one lane, which could be substantiated by Superior Court records. Deputy 1 provided information during the course of CLERB’s investigation that conflicted with information reported by the complainant. An audio recording of the traffic court proceedings was obtained, reviewed, and corroborated Deputy 1’s statements, and not those of the complainant. While it is true that the Court ruled in the complainant’s favor regarding the traffic violation for which the complainant was cited, this allegation pertains specifically to Deputy 1’s courtroom testimony. The evidence indicated that Deputy 1 did not “change his story about a lane change” during his courtroom testimony, and therefore the alleged conduct did not occur.

17-039

1. Misconduct/Procedure – PO 1 violated the aggrieved without due process.

Recommended Finding: Action Justified

Rationale: The complainant, acting on behalf of the aggrieved probationer, alleged that PO 1 violated the aggrieved without following a set of requisite procedures prior to initiating his arrest. The probationer had been released on May 7, 2015 on Postrelease Community Supervision (PRCS), pursuant to Penal Code Section 3450, Postrelease Community Supervision Act of 2011, and was subject to community supervision to be provided by the San Diego County Probation Department. One significant condition of the aggrieved’s probation required that he refrain from the unlawful use of force, threatening behaviors or acts of violence on another person. Failure to comply with this condition, among others, could result in an arrest, incarceration and revocation of his postrelease community supervision. On November 9, 2016, the aggrieved was involved in a domestic dispute with his wife during which he kicked in their bedroom door and threatened to hurt her if she did not leave. This incident was reported to PO 1 and Oceanside Police Officers who assisted in arresting the aggrieved pursuant to PC §3453, Postrelease Community Supervision; Conditions, after probable cause was found to believe that the aggrieved had violated the terms and conditions of his release. PO 1 followed proper procedures in initiating the aggrieved’s arrest, and his actions were lawful, justified and proper.

2. False Arrest – PO 1 violated the aggrieved.

Recommended Finding: Action Justified

Rationale: The complainant alleged that PO 1 violated the aggrieved without cause. During a domestic dispute between the aggrieved and his estranged wife, the aggrieved was found to have violated a significant term and condition of his release when he kicked in a bedroom door and threatened to hurt his wife. PC§ 3453, Postrelease Community Supervision; Conditions, authorizes the arrest, with or without a warrant, by any peace officer when there is probable cause to believe the person has violated the terms and conditions of his or her release. The aggrieved was found to be in violation of PC§ 422 for making criminal threats. Witnesses on scene attested to the aggrieved’s violations that warranted his arrest, and this arrest was lawful, justified and proper.

End of Report