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(VACANT)

County of San Diego

CITIZENS' LAW ENFORCEMENT REVIEW BOARD

555 W BEECH STREET, SUITE 505, SAN DIEGO, CA 92101-2940
TELEPHONE: (619) 238-6776 FAX: (619) 238-6775
www.sdcounty.ca.gov/clerb

REGULAR MEETING AGENDA

TUESDAY, MAY 9, 2017, 4:00 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 to the Administrative Secretary 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 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 April 2017 Regular Meeting (*Attachment A*)

3. CONTINUED ITEMS

- a) Amend CLERB Rules and Regulations 3.9 (*Attachment C*)

4. PRESENTATION / TRAINING

- a) Presentation on County Board of Supervisors Board Policy on Defense of Advisory Committees

5. EXECUTIVE OFFICER'S REPORT

- a) Workload Report - Open Complaints/Investigations Report (*Attachment B*)

-continued on next page-

6. BOARD CHAIR REPORT

7. NEW BUSINESS

- a) Introduction of new Board Members
- b) 2015 Annual Report Draft

8. UNFINISHED BUSINESS

- a) Executive Officer Search Subcommittee Update
- b) CLERB Rules and Regulations Subcommittee Update

9. BOARD MEMBER COMMENTS

10. 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 five minutes.

11. SHERIFF / PROBATION LIAISON QUERY

12. CLOSED SESSION

- a) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Section 54956.9: (22).
- b) 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 (9)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

15-125

1. Death Investigation/Inmate Suicide – Deputy 1 was summoned and responded to the dayroom where they found the decedent on the ground with blood near his head. Inmate Christopher Cook had climbed upon the second tier railing and dove head-first onto the concrete floor below.

Recommended Finding: Action Justified

Rationale: There was no complaint of wrongdoing in this death investigation; a review was conducted in accordance with CLERB Rules & Regulations, 4.6 Citizen Complaint Not Required: Jurisdiction with Respect to Actions Involving Death. On November 10, 2015, Christopher Cook was booked into Vista Detention Facility (VDF) on numerous drug related charges. During medical intake, Cook reported to medical staff that he was not suicidal or homicidal, nor had he had any previous suicide attempts. He reported having used heroin as recently as the day before his arrest, but per medical staff, Cook was alert, oriented, with normal speech and thought processes, and was not shaking or experiencing any nausea, vomiting or any other symptoms associated with drug withdrawal. Classification screened, assessed and cleared Cook for general population housing, as there were no hazards or alerts or risk indicators supportive of specialty housing placement. The decedent's cellmate and other inmates on the module reported that Cook kept to himself and slept most of the 6 days while at VDF. He was not known to be in possession of any illegal drugs while incarcerated, nor had he made any suicidal statements or presented as being emotionally distraught in any way. On November 15, 2015, Cook stepped over the stair rail and climbed onto the outer safety guardrail on the upper tier, where he jumped from the railing in a diving motion. He landed head first on the cement flooring of the first level of the module, suffering multiple skull fractures, a fractured neck and a fractured back. Upon being alerted by inmates, detentions staff responded quickly to secure the unit and allow medical staff to begin resuscitative efforts. Cook was subsequently transported to Palomar Medical Center with obvious signs of head trauma, where on 12/1/2015 he died from his injuries. The decedent made no suicidal threats prior to jumping and no suicide notes were found in his cell. The Medical Examiner attributed the cause of death to complications of blunt force injuries of head and neck, and the manner of death to be suicide. Detentions staff classified, housed, monitored and supervised the decedent's activities according to Department policies and procedures, and the evidence showed that the actions of the deputies were lawful, justified and proper.

16-020

1. Misconduct/Procedure – Deputy 1 allegedly moved the complainant to an upper bunk, despite being informed that the complainant had been prescribed a lower bunk by medical.

Recommended Finding: Summary Dismissal

Rationale: The complainant failed to specify a date and time frame of an alleged incident upon submittal of his signed complaint, preventing CLERB staff from identifying the involved member. Attempts were made to contact the complainant for clarification through a search of the State Prison system and local custody data base, but these efforts were met with negative results. The complainant had also failed to provide an out of custody address as required. Upon opening of all investigations, complainants are duly informed that they are obligated to cooperate fully with our investigation, and that failure to maintain current contact information with our office may result in their case being submitted to the Review Board for closure. The complainant's current whereabouts are unknown, preventing a thorough review and investigation of this complaint.

16-028

1. Excessive Force – Deputy 2 allegedly punched the complainant when he turned to clarify his instructions.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 2 punched him when he turned around to clarify instructions given to him. The complainant had been communicating with an inmate in another module against inmate rules when Deputy 2 gestured for him to stop. The complainant ignored these instructions, prompting Deputy 2 to

inform the complainant and the inmate with whom he was communicating, that they were going to be moved to another module where they could no longer directly see each other. While Deputy 2 was handcuffing the complainant to escort him from the module, he suddenly turned and began striking Deputy 2 in the face, fracturing his nose and cutting him above his right eye. Deputies 1 and 2 struck the complainant several times defending themselves and attempting to control the combative inmate. This entire incident was captured on surveillance video and clearly showed the complainant initiating the physical confrontation. Detentions Policy I.89, Use of Force, allows detentions deputies to use any physical force necessary and objectively reasonable in the defense of self or others, and to overcome resistance. Deputy 2 utilized department-approved force to control an assaultive inmate, and his actions were lawful, justified and proper.

2. Excessive Force – Deputies 1, 2 and 3 allegedly punched and kned the complainant while he was on the ground.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputies 1, 2 and 3 punched and kned him while he was on the ground. The complainant initiated physical confrontation with deputies when he turned and aggressively struck Deputy 2 in the face while being handcuffed. The complainant was taken to the ground, but continued fighting with deputies while trying to get to his feet. Deputies 1, 2 and 3 applied fist strikes and knee strikes to the complainant’s face and body until they were able to control him. Detentions Policy I.89, Use of Force, allows detentions deputies to use any physical force necessary and objectively reasonable in the defense of self or others, and to overcome resistance. Surveillance video captured this incident and showed that appropriate department approved force was used to control a combative inmate, and these actions by deputies were lawful, justified and proper.

16-046

1. Misconduct/Discourtesy – Deputy 1 allegedly stated to the complainant, “Go down there and look, you fuckin’ stupid”, or used words to that effect.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 instructed him to “Go down there and look, you fuckin’ stupid”, or used words to that effect, after he accused Deputy 1 about lying regarding running out of soup to distribute to inmates during meal time. Deputy 1 reported that he did instruct the complainant to go to the dayroom to view the empty soup containers, but denied using the language alleged by the complainant. There were no independent witnesses to this exchange and absent an audio recording of this conversation, there was insufficient evidence to either prove or disprove the allegation.

2. Excessive Force/Fists – Deputy 1 allegedly punched the complainant in his eye.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 entered his cell and punched him in the eye after he complained about not receiving soup with his meal. Deputy 1 reported that following a rules violation in which the complainant allegedly used expletives while shouting at him, he instructed the complainant to exit his cell in order to remove him from the module. The complainant refused and when Deputy 1 grabbed his shirt to pull him from the cell, the complainant knocked his hand away and retreated to the back of his cell. Deputy 1 followed the complainant into the cell and approximately eight seconds later, Deputy 1 is observed pushing the complainant out of the cell onto the tier walkway where he is handcuffed and then escorted out of the module. Deputy 1 and the complainant were out of camera view during these eight seconds in the cell so the events during that time are unknown and in dispute. Deputy 1 denied punching the complainant in the eye or striking him in any manner. There were no independent witnesses to this alleged incident and medical records and photos were inconclusive. There was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Truthfulness – Deputy 2 reported that the complainant made a suicidal statement when he allegedly hadn’t, causing him to be placed in a Safety Cell.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 2 misrepresented his statement, causing him to be placed in a Safety Cell. The complainant reported that while being placed in an “extremely dirty cell,” he stated, “I would rather die than to be in this cell.” Deputy 2 did not remember the complainant’s exact words, but recalled the complainant stating that he wanted to hurt himself. Deputy 2 reported that any threat to life or self-harm, whether it be a true statement or not is taken seriously by detentions staff. Pursuant to Detentions Policy J.1, Safety Cells; Definition and Use, inmates who display behaviors which result in the destruction of property or reveals intent to cause physical harm to self or others, must be placed in a Safety Cell until they can be evaluated by medical staff. The complainant made a statement that Deputy 2 reasonably construed as being suicidal. His action in placing the complainant in a Safety Cell then was lawful, justified and proper.

16-047

1. Misconduct/Procedure – Deputy 1 classified the complainant for mainline housing while he was allegedly “incapacitated,” placing his safety in danger.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 housed him in mainline housing despite being “incapacitated” and unable to protect himself. During medical intake, the complainant reported no health conditions or illnesses that rendered him to be incapacitated. He reported to medical staff three different time frames, ranging from 4 months to 2 weeks, during which he had been shot in his leg. However, when seen by medical staff on several occasions, his gunshot wound was observed to be well-healed, and he was able to walk easily and with a steady gait, with a minimal limp. Medical did not order specialty housing for the complainant and there were no hazards or alerts documented in the complainant’s record that prevented Deputy 1 from housing him in general population. This act did occur, and was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 2 allegedly ignored the complainant’s “Man down” call for help.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that his calls for help during a medical emergency were ignored by several deputies. The complainant reported that this alleged incident took place on or around March 19th or 20th of 2016, without providing a specific time period during which this incident occurred. During this unspecified time frame, the complainant could have come into contact with a number of deputies. Efforts to contact the complainant to clarify the approximate times of this alleged incident were unsuccessful, leaving insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Medical – Medical staff allegedly refused to provide pain medication to the complainant and treat his significant medical needs.

Recommended Finding: Summary Dismissal

Rationale: The complainant alleged that medical staff refused to provide him pain medication and treat his medical needs. Medical records document several sick call contacts between the complainant and both nursing and doctor staff. That withstanding, allegations against medical staff and their practices are not within CLERB’s purview. CLERB lacks the jurisdiction to investigate this allegation of this complaint based upon the following CLERB Rules & Regulations:

4.1 Citizen Complaints: Authority. Pursuant to Ordinance #7880, as amended, (Article XVIII, Section 340 340.9 of the San Diego County Administrative Code), 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...

1. Misconduct/Procedure – Deputy 1 allegedly threatened to taze the complainant if she didn't give him her purse.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 threatened to taze her if she did not relinquish her purse. Deputy 1 had been dispatched to investigate an argument over a parking space, during which the complainant allegedly ran over the other party's foot. While questioning the alleged victim, the complainant approached Deputy 1 angry and visibly agitated. Deputy 1 requested the complainant's identification, but she refused. Deputy 1 informed the complainant that if she did not provide identification, she would need to be seated in his patrol unit until the traffic deputy arrived. The complainant again refused and struggled with Deputy 1 while being escorted to his patrol unit. Deputy 1 reported that he threatened to taze the complainant to gain compliance in order to avoid using additional force to seat her in the back of his patrol unit. The department's force guidelines authorize the use of a Conducted Energy Device (tazer) under circumstances where it is deemed reasonable and necessary to minimize the potential for human injury. The policy requires, however, that deputies first warn suspects that force will be used if there is not compliance in situations where any force used is capable of causing serious injury or death. Deputy 1 reported that he provided this warning and his actions were lawful, justified and proper.

2. Illegal Search or Seizure – Deputy 1 allegedly “grabbed” the complainant's purse from her without the complainant's permission.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 “grabbed” her purse from her without consent. Deputy 1 reported that the complainant was a suspect for PC§ 245, Assault with a deadly weapon, and for officer safety purposes, he needed to secure the complainant's purse prior to detaining her in his patrol unit. Detainees are never allowed to retain purses or backpacks while in patrol units as they may contain weapons or items that can be used as weapons. When Deputy 1 attempted to seize the complainant's purse, she refused to relinquish it and Deputy 1 was required to forcibly remove the purse from the complainant's possession. This act did occur and was lawful, justified and proper.

3. Excessive Force/Handcuffs – Deputy 1 allegedly handcuffed the complainant excessively tight.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 handcuffed her excessively tight. Deputy 1 denied this allegation stating that the complainant had thin wrist requiring him to tighten the handcuffs down to the smallest setting. Additionally, the complainant struggled with Deputy 1 when he attempted to handcuff her and at one point slipped out of the cuffs. During transport, the complainant stated to Deputy 1 that her handcuffs were too tight, but because of the complainant's physical resistance at the scene and he was transporting her alone, he did not feel comfortable pulling over on the side of the road to adjust the handcuffs. Photos of the complainant's wrists taken at the substation showed no marks or bruises, but there was insufficient evidence to either prove or disprove the allegation.

4. Excessive Force/Other – Deputy 1 allegedly threw the complainant to the ground injuring her head.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 threw her to the ground injuring her head. The complainant struggled with Deputy 1, even slipping out of his control, when he attempted to arrest her for PC§ 148(a) (1), Resisting a peace officer. In order to regain full control of the complainant, Deputy 1 reported that he forced her to the ground using his body weight. He reported executing this maneuver slower than usual in order to avoid unnecessary injury to the complainant. Sheriff's Policy 6.48, Physical Force, authorizes deputies to utilize force believed to be necessary and objectively reasonable to effect an arrest, prevent escape or overcome resistance. Deputy 1 used department-approved force to control a resistant subject and his actions were lawful and within policy.

5. Misconduct/Procedure – Deputy 1 allegedly placed the complainant in his patrol unit for over an hour.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 retained her in his patrol unit for over an hour. After seating the complainant in his patrol unit, Deputy 1 interviewed witnesses and attempted to locate the complainant's minor daughter. The complainant had refused to provide any information to Deputy 1 regarding her daughter's identity, age, team name or whereabouts, prolonging the length of time she was detained in the vehicle. Deputy 1 sought this information about the complainant's daughter so that he could ensure that someone was available to care for her in her mother's absence. Case law 2.18, Search and Seizure – Persons, requires that a detention lasts no longer than necessary to resolve the circumstances that justified its initiation, and does not place a time limit for an investigative detention. The complainant's lack of cooperation in helping Deputy 1 locate her daughter, prolonged the time she was detained in the patrol unit. Deputy 1 reported that including transportation time, the complainant was in his vehicle for approximately one hour. Given the circumstances, his actions were lawful, justified and proper.

6. Misconduct/Procedure – Deputy 1 allegedly refused to tell the complainant why she was being arrested.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 refused to tell her why she was being arrested. Deputy 1 denied this allegation, stating that he informed the complainant when asked that she was being arrested for violation of PC§ 148(a) (1), Resisting a peace officer. He reported providing this information to the complainant while transporting her to a substation. The details of this conversation are in dispute and absent an audio recording of this contact, there was insufficient evidence to either prove or disprove the allegation.

7. Misconduct/Procedure – Deputy 1 allegedly questioned the complainant without reading the complainant her rights.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 questioned her without providing a Miranda admonishment. Deputy 1 reported that he did question the complainant, but only asked for identifying information, such as her name, address, date of birth etc., and information to identify her daughter. These types of questions do not require Miranda admonishment. Miranda warnings are only required where there is both custody and interrogation – questions specifically related to the crime in question. Deputy 1 reported that he advised the complainant of her Miranda rights when he tried to interview her about the incident, but she refused to speak with him. Deputy 1's actions were within policy.

16-049

1. Misconduct/Procedure – Deputy 1 allegedly failed to respond in a timely manner to the complainant's multiple grievances.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that unidentified deputies failed to respond in a timely manner to his multiple grievances. A request was made to the department for all grievances filed by the complainant during the time period reported. The department responded stating that there were no grievances documented in the complainant's record for the time period in question. Efforts were made to obtain from the complainant duplicate copies of the grievances filed, but the complainant did not respond to the undersigned's requests. When an inmate files a grievance, a copy is retained by detentions staff and a copy is provided to the inmate. Without copies of these alleged grievances from either source, there is insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Medical – Sheriff's medical staff failed to provide the complainant adequate medical services.

Recommended Finding: Summary Dismissal

Rationale: The complainant alleged that medical staff failed to provide him adequate medical services. Medical records document several sick call contacts between the complainant and both nursing and doctor staff. That withstanding, allegations against medical staff and their practices are not within CLERB's purview. CLERB lacks the jurisdiction to investigate this allegation of this complaint based upon the following CLERB Rules & Regulations:

4.1 Citizen Complaints: Authority. Pursuant to Ordinance #7880, as amended, (Article XVIII, Section 340 340.9 of the San Diego County Administrative Code), 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...

16-064

1. Criminal Conduct – Deputies 1-8 allegedly ignored an “Automatic Stay” order and evicted the complainant.

Recommended Finding: Action Justified

Rationale: The complainant reported she was forcibly evicted from her home, and that the Sheriff's Department denied her due process when she produced evidence that an “Automatic Stay” was in place. On May 25, 2016, the Sheriff's Department posted a Notice to Vacate (eviction) at the complainant's residence and subsequently on June 3rd, served a Notice of Restoration - which is when execution of the lockout is completed and the property is restored to the plaintiff/landlord. The complainant filed an amended petition, which her attorney faxed to the Sheriff's Department at 1:43 pm, after the lockout had already occurred at noon. Additionally, the amendment did not appear to meet all the elements required by U.S. Code Title 11, Bankruptcy. This civil issue is really between the complainant and the Courts, and the deputies' actions to enforce legal court orders were lawful, justified and proper.

17-023

1. Misconduct/Medical – The complainant alleged that his medical needs were neglected while he was incarcerated.

Recommended Finding: Summary Dismissal

Rationale: The complainant alleged that his medical needs were neglected while in custody for ten days. The complainant submitted a signed complaint on March 30, 2017, but has not been in Sheriff's custody since March 4, 2016; therefore, this complaint was not timely filed. Also, allegations against medical staff and their practices do not reside within CLERB's purview. CLERB lacks the jurisdiction to investigate his complaint based upon the following CLERB Rules & Regulations:

4.1 Citizen Complaints: Authority. Pursuant to Ordinance #7880, as amended, (Article XVIII, Section 340 340.9 of the San Diego County Administrative Code), 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...

4.4 Citizen Complaints Jurisdiction. The Review Board shall have jurisdiction in respect to all citizen complaints arising out of incidents occurring on or after November 7, 1990; provided, however, that 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 complainant shall bear the burden of demonstrating that he/she was incarcerated or physically or mentally incapacitated from filing a complaint within one year from the incident giving rise to the complaint by submitting a written statement to the Review Board...

End of Report