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**EXECUTIVE OFFICER**  
PAUL R. PARKER III

**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](http://www.sdcounty.ca.gov/clerb)

**REGULAR MEETING AGENDA**  
**TUESDAY, MAY 8, 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 April 2018 Regular Meeting (*Attachment A*)

**3. PRESENTATION/TRAINING**

- a) N/A

**4. EXECUTIVE OFFICER'S REPORT**

- a) Overview of Activities of CLERB Executive Officer and Staff for the Month of April
- b) Workload Report – Open Complaints/Investigations Report (*Attachment B*)
- c) Case Progress and Status Report (*Attachment C – to be distributed at meeting*)
- d) SDSD Sustained Finding Response (*Attachment D*)

- 17-030/Gerhart

**5. BOARD CHAIR’S REPORT**

**6. NEW BUSINESS**

- a) Disability Rights California Report entitled, “Suicides in San Diego County Jail: A System Failing People with Mental Illness (April 2018)”
- b) CLERB Board Member Policies and Procedures Manual - Draft

**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) 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).
- b) PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
 Notice pursuant to Government Code section 54957  
 Title: Executive Officer, CLERB

<b>DEFINITION OF FINDINGS</b>	
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 (6)**

**ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE**

**16-093**

1. Death Investigation/In-Custody Suicide – On 10-29-16, while in the custody of the San Diego Sheriff’s Department (SDSD) at the George F. Bailey Detention Facility (GBDF), Nicholas Helton intentionally jumped from the second tier, landing on the module floor below. Helton was transported to UCSD Medical Center where he was pronounced dead approximately 11 hours later. The cause of death was blunt force trauma of head and torso and the manner of death was suicide.

Recommended Finding: Action Justified

Rationale: The evidence indicates that prior to his booking into the SDSD jail system on 10-12-16, the arresting agency cleared him for booking through County Mental Health. Upon entry into the SDSD jail system, Helton was properly medically screened and initially placed into a Safety Cell. After psychiatric clearance from the Safety Cell, he was properly placed into the Enhanced Observation Housing (EOH) Module. After psychiatric clearance from the Safety Cell, he was properly placed into the Enhanced Observation Housing (EOH) Module. After psychiatric clearance from EOH, Helton was appropriately placed into protective custody due to his arrest charges. During his medical intake screening and subsequent interactions with SDSD medical personnel, to include psychiatric staff, Helton never expressed suicidal intent. There was no evidence that Helton expressed any concerns about his mental or physical wellbeing to any member of the SDSD, sworn or professional. Upon preparing to transfer to the San Diego Central Jail for extradition scheduled for the next day, Helton was allowed access to a module's unfenced second tier to give property to another inmate. Helton subsequently climbed atop the second tier railing and indicated he was going to intentionally jump from it. Deputies attempted to convince him not to hurt himself but Helton jumped from the railing a short time later, at which time they immediately initiated life-saving measures.

The transferring of property from one inmate to another inmate upon transferring from one facility to another is not expressly prohibited. The deputy who allowed Helton to gain access to the unfenced second tier was tasked with escorting Helton from the module for transfer and would not have known of his previous suicide attempt. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel and their actions were lawful, proper, and justified.

**POLICY RECOMMENDATION:**

1. It is recommended that the San Diego Sheriff's Department (SDSD) revise Detention Services Bureau Policy and Procedures Section I.47 entitled, "Inmate Wristbands and Clothing," to provide, via the identifying wristband, a visual indicator that the inmate had a prior suicide attempt.

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**17-029**

1. Misconduct/Discourtesy – Deputy 2 accused the complainant of being a child molester on April 5, 2017.

Recommended Finding: Not Sustained

Rationale: The complainant reported that he was called a sex offender by deputies and they accused him of being a child molester. Deputy 2 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Absent an audio recording and/or other witness testimony there was insufficient evidence to either prove or disprove this allegation.

2. Misconduct/Procedure – Deputy 2 informed the entire module that the complainant was in jail for pimping a child on April 5, 2017.

Recommended Finding: Not Sustained

Rationale: The complainant reported the entire unit was told that he was in jail for pimping on a child 14 years of age. Deputy 2 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Absent an audio recording and/or other witness testimony there was insufficient evidence to either prove or disprove this allegation.

3. Misconduct/Procedure – Deputy 2 allowed inmate trustee's unsupervised access to the complainant's cell resulting in some of the complainant's personal and legal property being thrown away on April 5, 2017.

Recommended Finding: Action Justified

Rationale: The complainant claimed that while at the Law Library, his cell was cleaned and his property thrown away by inmate workers. He said that Deputy 2 left two inmate trustees in his cell, unsupervised for an hour with all of his personal and legal property. The complainant reported the deputy told him, "I fucked up" and he put in a grievance, but was denied a County Claims form. Deputy 2 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Grievance Report #174000509 documented that a sergeant spoke with the complainant, then deputies, who described the complainant's cell as covered in trash and feces. The complainant was subsequently provided with a County Claims form by the sergeant as required by Detentions Policy Q.63 Lost Inmate Money or Property. The biohazardous materials that were disposed of for the safety of the complainant and the facility, was lawful, justified and proper.

4. Misconduct/Discourtesy – Deputy 3 laughed at the complainant while he was experiencing a seizure and stated that he hoped he died on April 13, 2017.

Recommended Finding: Not Sustained

Rationale: The complainant reported that he called "man down" because he was having an "oral." The deputy laughed in his face and told him, "I hope you have a seizure and die." Deputy 3 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Deployment logs confirmed Deputy 3 was working on this date and medical records specified that after the complainant was pepper-sprayed he experienced a seizure and was subsequently sent to a hospital. Absent an audio recording and/or other witness testimony there was insufficient evidence to either prove or disprove this allegation.

5. Misconduct/Discourtesy – Deputy 3 said, "Get your fake ass up nigger," while he was experiencing a seizure on April 13, 2017.

Recommended Finding: Not Sustained

Rationale: The complainant said that as he was coming out of a seizure he witnessed deputies standing over his body laughing and told him, "Get your fake ass up nigger." They also said, "If you're having a real seizure you won't remember this." Deputy 3 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. The complainant had a well-documented history of seizure activity, but it was determined by medical staff that he also had a history of faking seizure activity. Absent an audio recording and/or other witness testimony there is insufficient evidence to either prove or disprove this allegation.

6. Excessive Force – Deputy 3 hit and kicked the complainant while he was on the ground and in handcuffs on April 13, 2017.

Recommended Finding: Not Sustained

Rationale: When asked for specific information about this allegation, the complainant responded "that was Deputy 3 at SDCJ on 4/13/17." Deputy 3 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Deployment logs confirmed Deputy 3 was the Fourth Floor Housing Deputy on the date of the incident. Video surveillance was reviewed and correlated to Deputy Reports after the complainant was removed from his cell and transported for medical care. However, absent recordings of the complainant's cell there was insufficient evidence to either prove or disprove this allegation.

7. Misconduct/Procedure – Deputy 1 "pig tied" the complainant and placed him in a cell for hours on April 16 and 17, 2017.

Recommended Finding: Unfounded

Rationale: The complainant said, "they pig tied a person they witnessed having a seizure. With hands behind back, (pig tie) hands and feet, and carried me down the stairs without a medical gurney (carry out bed)." Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Deployment records corroborated that Deputy 1 was working on the identified dates as a Security Deputy. However, Medical records verified that the complainant was hospitalized from

April 13 through 23, 2017. The evidence showed that the alleged act or conduct did not occur. (NOTE: During CLERB's investigation, it was discovered that a situation similar to that as described by the complainant but involving different sworn personnel occurred in the beginning of May 2017. A cursory review indicated that the actions taken by sworn personnel during that situation were lawful, justified, and proper.)

8. Excessive Force/Specialty Munitions – Deputy 1 shot the complainant with plastic bullets on April 16 and 17, 2017.

Recommended Finding: Unfounded

Rationale: The complainant said that deputies came to his cell threatening to shoot him if he did not talk and he remained silent. Next thing he remembered was being shot at with plastic bullets, three to four times. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Deployment records corroborated that Deputy 1 was working on the identified dates as a Security Deputy. However, Medical records verified that the complainant was hospitalized from April 13 through 23, 2017. The evidence showed that the alleged act or conduct did not occur. (NOTE: During CLERB's investigation, it was discovered that a situation similar to that as described by the complainant but involving different sworn personnel occurred earlier in April 2017. A cursory review indicated that the actions taken by sworn personnel during that situation were lawful, justified, and proper.)

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## **17-057**

1. Misconduct/Procedure–Deputy 1 prematurely terminated the complainant's legal phone call.

Recommended Finding: Unfounded

Rationale: The complainant stated the he was in an enclosure, in the dayroom at George Bailey Detention Facility, speaking with someone on the phone regarding legal matters when Deputy 1 told him time was up and he needed to come out. After being told by the complainant that he was consulting on a legal matter, Deputy 1 hung up the phone. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Also according to reports provided by the Sheriff's Department the complainant's dayroom time went over his allotted time by approximately 45 minutes. Since the complainant was in the enclosure in excess of his allotted dayroom time, the call was not terminated prematurely and the evidence shows this allegation was unfounded.

2. Misconduct/Discourtesy–Deputy 1 called the complainant a "J Cat"

Recommended Finding: Not Sustained

Rationale: The complainant stated the Deputy 1 called him a "J Cat," which is prison slang for a psychiatric patient. The complainant stated that other inmates began calling him this after hearing the deputy do so. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Absent information provided by an independent witness to the incident or video or audio recordings of the interaction there was insufficient evidence to prove or disprove the allegation.

3. Misconduct/Discourtesy–Deputy 1 threw the complainant's property off the upper tier to the dayroom floor.

Recommended Finding: Unfounded

Rationale: The complainant stated that Deputy 1 told him he was moving him to another cell and began throwing his personal property (mattress and bedding) off the upper tier. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Video provided by the Sheriff's Department, for the timeframe in question, did not show any items being thrown from, or falling from, the upper tier. Therefore the claim is unfounded.

4. Excessive Force-Deputies 2-6 used excessive force on the complainant while conducting a cell extraction.

Recommended Finding: Unfounded

Rationale: The complainant stated after refusing to leave an enclosure, at George Baily Detention Facility, an extraction team came in and used force which he felt was excessive to remove him from the enclosure. The complainant further alleged that the force resulted in a dislocated shoulder and that deputies punched him, kicked him and banged his head against the ground. Medical reports showed no evidence of a dislocated shoulder as claimed by the complainant. Based upon a review of SDSD Use of Force Guidelines, the deputies' reports, video surveillance and medical records, there is no dispute that deputies struck the complainant but there is no video evidence or documentation in officer reports that his head was "banged on the ground". It appears the deputies' use of force was within guidelines and there was no evidence to support any allegation of misconduct or negligence on the part of the Sheriff's Department sworn personnel. The deputies' actions were lawful, proper and justified and the allegation of excessive force is unfounded.

5. Misconduct/Procedure—Unidentified deputies ignored grievances filed by the complainant.

Recommended Finding: Unfounded

Rationale: The complainant stated that he continued to file grievances on the misconduct and appeal of discipline and they were ignored. Copies of the complainant's grievances were provided by the Sheriff's Department. There were 15 total grievances from 2016 and 2017 included in the documents provided by the Sheriff's Department. Thirteen of these were responded to either by letter or another form of a written response. The remaining two were logged into JIMS. Therefore there was no evidence to support the complainant's claim that his grievances were ignored and his claim is unfounded.

6. Discrimination/Religion—Deputy 1 and/or unidentified deputy(s) refused the complainant's request for religious counsel.

Recommended Finding: Action Justified

Rationale: The complainant stated that he requested counsel, because he is a Muslim, and since counsel was not provided his rights were violated. The complainant filed a grievance on 06-23-17 and asked for counsel. He stated in the grievance that Deputy 1 prevented him as an inmate effective communication/participation in a legal hearing. According to the evidence, and in reviewing video from the day of the incident, the complainant requested a deputy to contact his attorney and that he was in violation of the law. The deputy demanded the complainant comply with his requests to allow himself to be handcuffed and to leave the enclosure in the dayroom. The complainant refused to leave the enclosure and the tactical team was called to remove him. There is no known policy or procedure allowing for the right to counsel with regards to filing a grievance. Therefore the complainant's request for counsel was denied and it is deemed proper, lawful and justified.

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**17-062**

1. Death Investigation/Natural Death – On 04-25-17, while as an inmate at the Vista Detention Facility (VDF), Stephen George was found lying unresponsive in a Medical Observation Unit cell. Despite aggressive resuscitative efforts, death was pronounced while at VDF. The cause of death was acute and chronic aspiration pneumonia with an abdominal neuroendocrine tumor contributing to the death. The manner of death was natural.

Recommended Finding: Action Justified

Rationale: There was no evidence that George requested medical attention from any member of the SDSD, sworn or professional, above and beyond what he received (to include his refusal of offered appointments/treatment). On the morning of 04-25-17, upon being advised that George was not feeling well, sworn personnel immediately arranged for assessment/treatment by medical personnel. Later that day, after being notified George was unresponsive in his cell, sworn personnel immediately summoned assistance from medical personnel and initiated life-saving efforts. The evidence indicated that the response to the medical emergency was clearly within policy, as it was efficient and expedient. There was

no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel and their actions were lawful, proper, and justified.

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### **17-111**

1. Death Investigation/Natural Death – While as an inmate at the Las Colinas Detention Re-Entry Facility (LCDRF), Barbara Antos was transported to Sharp Grossmont Hospital (Grossmont Hospital) after experiencing dizziness and exhibiting symptoms of gastrointestinal bleeding. She was diagnosed with non-traumatic gastrointestinal bleeding and, despite medical intervention, she died the next day. The cause of death was upper gastrointestinal hemorrhage, due to probable peptic ulcer disease, due to chronic nonsteroidal anti-inflammatory (NSAID) use. The manner of death was natural.

Recommended Finding: Action Justified

Rationale: There was no evidence that Antos expressed any concerns about possible gastrointestinal bleeding to any member of the SDDS, sworn or professional, prior to the day she was transported to Grossmont Hospital. Upon being advised that Antos was not feeling well, sworn personnel immediately notified medical staff and Antos was transported to Grossmont Hospital. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel and their actions were lawful, proper, and justified. As "chronic NSAID use" was listed as an underlying cause of death, it should be noted that Antos had been prescribed an NSAID while at LCDRF. The prescription of an NSAID to Antos was made by medical staff and, as such, does not fall under CLERB's jurisdiction. CLERB is noting the prescription of an NSAID for background purposes only and is not inferring the prescription contributed to the death.

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### **18-062**

1. Misconduct/Procedure – La Mesa Police Department (LMPD) Officer 2 failed to file a police report regarding the complainant's allegations of a sexual assault.

Recommended Finding: Summary Dismissal

Rationale: The complainant called LMPD to file a report of a sexual assault and spoke with Officer 2. He said he called the hospital and talked with them. He called the complainant 10 minutes later and said "No worries, no crime" and hung up. The date of the incident giving rise to the complaint occurred on 11-05-16 and involved the LMPD. CLERB lacks jurisdiction per CLERB rules and regulations 4.1 Citizen Complaints: Authority and 4.4 Citizen Complaints: Jurisdiction.

2. Criminal Conduct – LMPD Officer 2 told the complainant not to worry about her complaint about the sexual assault.

Recommended Finding: Summary Dismissal

Rationale: Officer 2 told the complainant "oh yeah I know what they did don't worry I've been a witness to it before." The complainant believes this cannot be done since it is against the law. The date of the incident giving rise to the complaint occurred on 11-05-16 and involved the LMPD. CLERB lacks jurisdiction per CLERB rules and regulations 4.1 Citizen Complaints: Authority and 4.4 Citizen Complaints: Jurisdiction.

3. Misconduct/Procedure – LMPD Officer 1 and other unidentified officers said they sent the case to the District Attorney's office who said they did not receive it.

Recommended Finding: Summary Dismissal

Rationale: The complainant said Officer 1 and/or other officers stated the case was sent to the District Attorney's Office but when she contacted the DA they kept saying "No sorry we don't have it." The date of the incident giving rise to the complaint occurred on 11-05-16 and involved the LMPD. CLERB lacks jurisdiction per CLERB rules and regulations 4.1 Citizen Complaints: Authority and 4.4 Citizen Complaints:

Jurisdiction.

4. Misconduct/Procedure – LMPD Officer 6 did not respond to the complainant’s calls or letters.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated Officer 6 never responded to any of her letters or messages. The date of the incident giving rise to the complaint occurred on 11-05-16 and involved the LMPD. CLERB lacks jurisdiction per CLERB rules and regulations 4.1 Citizen Complaints: Authority and 4.4 Citizen Complaints: Jurisdiction.

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***End of Report***

Rec'd  
4-9-18



# San Diego County Sheriff's Department

Post Office Box 939062 • San Diego, California 92193-9062



*William D. Gore, Sheriff*

April 4, 2018

Sandra Arkin, Board Chair  
Citizens' Law Enforcement Review Board  
555 West Beech Street, Suite 505  
San Diego, CA 92101-3819

**CLERB CASE NUMBER: 17-030 / Susan Gerhart**

Dear Chair Arkin:

The Sheriff's Department welcomes and supports the Citizens' Law Enforcement Review Board's independent review of complaints alleging improper actions by members of this organization. We continuously strive to respond with professionalism and concern to the citizens we serve and the CLERB process provides invaluable input to that end.

After reviewing the CLERB investigator's report and the Review Board's advisory recommendation letter for this case, the Sheriff's Department understands the concerns expressed by the CLERB members and we will review the findings accordingly.

Your findings that a deputy disclosed confidential information when responding to a child welfare check will be shared with the Fallbrook Substation Commander. If deemed appropriate, the case will be referred to the Sheriff's Department Internal Affairs Unit.

Thank you for your service to the citizens of the County of San Diego.

Sincerely,

WILLIAM D. GORE, SHERIFF

David Gilmore, Lieutenant  
Office of the Sheriff  
Division of Inspectional Services

DG: js