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**County of San Diego**  
**CITIZENS' LAW ENFORCEMENT REVIEW BOARD**

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**REGULAR MEETING AGENDA**  
**TUESDAY, AUGUST 14, 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. 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 but not an item on today's open session agenda. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary. Each speaker will be limited to three minutes.

**3. MINUTES APPROVAL**

- a) Minutes of the July 2018 Regular Meeting (*Attachment A*)

**4. PRESENTATION/TRAINING**

- a) N/A

**5. BOARD CHAIR'S REPORT**

**6. EXECUTIVE OFFICER'S REPORT**

- a) Overview of Activities of CLERB Executive Officer and Staff Since Last Meeting
- 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*)

- 17-112/Gilchrist

**7. NEW BUSINESS**

- a) Selection and Appointment of Executive Officer

**8. UNFINISHED BUSINESS**

- a) San Diego County Grand Jury Report: San Diego County Citizens’ Law Enforcement Review Board (CLERB), dated May 31, 2018: Proposed Responses to Findings and Recommendations (*Attachment E*)
- b) CLERB Board Member Policies and Procedures Manual (*Attachment F*)
- c) Update Provided by Jail Inspection Subcommittee: Jail Inspection Handbook – Draft (*Attachment G*)

**9. BOARD MEMBER COMMENTS**

**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 APPOINTMENT  
 Notice pursuant to Government Code section 54957(b)  
 Title: Interim 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 (19)**

**ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE**

**17-038**

1. Death Investigation/Natural Death – On 03-18-17, while as an inmate at the Vista Detention Facility (VDF), Bruce Stucki was found lying unresponsive in his cell. Sworn personnel summoned medical attention and subsequently initiated cardiopulmonary resuscitation (CPR). Despite aggressive resuscitative efforts, death was pronounced while at VDF. The cause of death was complications of chronic alcoholism. The manner of death was natural.

Recommended Finding: Not Sustained

Rationale: On 03-16-17, Mr. Stucki was noted walking through traffic with an unsteady gait, slurred speech, and an inability to stand on his own. His eyes were watery and he smelled of an alcoholic beverage. He was arrested for public intoxication and transported him to VDF where he was booked. During Mr. Stucki's medical screening it was determined that he was a chronic consumer of vodka and would "shake" when he stopped consuming it. For unknown reasons, an alcohol withdrawal program was not initiated until he was found hallucinating and withdrawing from alcohol in his cell on 03-18-17, or two days later. In addition, Stucki's preliminary chest x-ray on 03-16-17 did not entirely exclude tuberculosis (TB) but the results were not reviewed until 03-18-17. As such, Stucki was apparently placed in mainline housing from 03-16-17 to 03-18-17. Medical decisions made and actions taken by medical personnel are not under CLERB's jurisdiction; the failure to initiate an alcohol withdrawal protocol and the delayed chest x-ray interpretation issues were referred to the San Diego Sheriff's Department (SDSD) for review. During the early evening hours of 03-18-18, Stucki was found unresponsive in his cell during a Security Check. Sworn personnel summoned medical attention and subsequently initiated CPR. There was insufficient evidence to determine whether the failure to initiate an alcohol withdrawal protocol or a sooner initiation of CPR would have prevented the death.

2. Misconduct/Procedure – Deputies 1 and/or 2 did not provide emergency medical care with "efficiency" and "speed."

Recommended Finding: Not Sustained

Rationale: A review of video, audio, reports, and confidential statements indicated it was unclear when Stucki stopped breathing. Deputies 1 and 2 provided information during the course of CLERB's investigation that was used when determining the recommended finding. The Policy section of SDSD Detentions Services Bureau Policies and Procedures (DSB P&P) Section M.5 mandated "in any situation requiring medical response, emergency medical care shall be provided with efficiency and speed without compromising security." The terms "efficiency" and "speed," as used to describe the method in which emergency medical care (basic life support and first aid) shall be provided are subjective. As such, there was insufficient evidence to support a finding that Deputies 1 and/or 2 did not provide basic life support and first aid with "efficiency" and/or "speed."

#### **POLICY RECOMMENDATION:**

In an attempt to ensure deputies working in the detention facilities have the appropriate equipment readily accessible to provide emergency medical care to inmates as expeditiously as possible, it is recommended that the San Diego Sheriff's Department (SDSD) revise its Detention Services Bureau Policy and Procedures (DSB P&P) to require deputies in the detention facilities to have disposable protective gloves and a protective airway mask on their persons when interacting with inmates.

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#### **17-068**

1. Misconduct/Procedure – Deputies 1, 2 and 3 placed inmates on an extended lockdown.

Recommended Finding: Action Justified

Rationale: The complainant stated that he and 29 other inmates were placed on a 20 day lockdown from 09-21-16 through 10-09-16. San Diego Sheriff's Department (SDSD) records documented three different incident reports that led to the complainant and other inmates being placed on lockdown. On 09-21-16, Deputy 1 reported a major incident involving 17 Hispanic inmates. Inmates disobeyed staff instructions, interfered with jail operations, and disrespected staff, all of which were violations. It was determined, based on this incident, that all inmates involved, including the complainant, were locked down for 10 days. The complainant was ordered locked down from 09-22-16 until 10-02-16. During the lockdown period, another incident occurred on 09-29-16 involving all of the inmates who were on lockdown. Deputy 2 stated inmates yelled at each other in Spanish and attempted to intimidate other inmates by causing tension between races. This incident initiated another 10 day disciplinary isolation for the inmates, including the complainant. The complainant was locked down from 09-30-16 until 10-10-16. Due to the nature of the violations, and the SDSD policy regarding lockdown, which stated "Security lockdown is a management prerogative and may be used as necessary," the evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure - Deputy 4 placed inmates on an extended lockdown.

Recommended Finding: Summary Dismissal

Rationale: At the time of this incident, Deputy 4 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 – Unidentified deputies did not provide the complainant and inmates with soap and denied their basic right to shower.

Recommended Finding: Sustained

Rationale: The complainant reported from 09-21-16 until 10-09-16, showers were denied for a period of 96 hours. The complainant asked for soap which was denied. The complainant stated he, and other inmates, had to take makeshift showers on top of their toilets. The complainant was placed on lockdown from 09-22-16 until 10-02-16. Based on a second incident, an extended 10-day lockdown was issued on 09-30-16 until 10-10-16. Title 15 states a shower must be allowed at least three times a week regardless of whether an inmate is on lockdown. San Diego County Sheriff's Department policy states that an inmate will be provided a shower at least every 48 hours. Inmates held longer than 24 hours will also be provided with items necessary for adequate personal hygiene. The reports revealed two periods where it appeared showers were not made available for over 48 hours. Deputies 1, 2 and 3 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. There was no evidence that showed a specific deputy was responsible for not allowing the inmates to take showers. The evidence did indicate, however, that showers were not provided for periods longer than 48 hours and this act was not justified.

4. Misconduct/Procedure - Deputy 4 did not provide the complainant and inmates with soap and denied their basic right to shower.

Recommended Finding: Summary Dismissal

Rationale: Refer to Rationale #2.

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## **17-071**

1. Illegal Search & Seizure – Deputies 1 and 4 “deployed Stop and Frisk tactics” on the complainant and the aggrieved when they stopped, unlawfully detained, and questioned them “for no reason.”

Recommended Finding: Unfounded

Rationale: The complainant stated that he and the aggrieved were walking down a residential street when they were stopped, detained, and questioned, without just cause or reason, by Deputies 1 and 4. The complainant questioned Deputy 4 on why they were stopped. Deputy 4 explained that he was investigating a call for service referencing two suspicious persons. A person had called the SDSD Communication Center and reported that two Black males, were walking in the area. The two suspects were peering into vehicles and had attempted to open the reporting party's vehicle, as well as other vehicles that were parked on the street. The two suspects were last seen walking eastbound. Deputies 1 and 4 were dispatched to investigate. Upon their arrival to the scene, Deputy 4 observed the complainant and the aggrieved walking eastbound. They fit the description of the suspects and the conditions of the call. As such, Deputy 4 attempted to contact the complainant and the aggrieved to determine their possible involvement regarding the call of service. When the complainant and the aggrieved refused to stop walking, Deputy 4 developed justification to detain the complainant and the aggrieved pending his investigation. Deputy 4 had reasonable suspicion that: (1) criminal activity may be afoot and (2) the persons he had detained may have been connected with that possible criminal activity. When Deputy 4 announced to the complainant and the aggrieved that they were not free to leave, the contact became a detention, which was permissible based upon the nature of the call and the complainant's and the aggrieved's unwillingness to cooperate with deputies. Deputy 4's stop, detention, and questioning the complainant and the aggrieved was lawful, justified, and proper. The complainant and the aggrieved were not unlawfully detained, nor were they questioned without reason. The evidence shows that the alleged act did not occur.

2. Misconduct/Intimidation – Deputies 1-4 “moved closer and eventually surrounded” the complainant and the aggrieved.

Recommended Finding: Action Justified

Rationale: The complainant said that during his detention, Deputies 1-4 “moved closer and eventually surrounded us in a threatening manner.” During the course of CLERB's investigation, Deputies 1-4 provided information that was

considered in arriving at the recommended finding. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

3. Illegal Search & Seizure – Deputy 4 searched the aggrieved.

Recommended Finding: Action Justified

Rationale: The complainant alleged that his friend, the aggrieved, was unjustly searched. The complainant and the aggrieved were stopped by Deputies 1 and 4 as they fit the description of the suspects and the conditions of a call for service. In the course of the stop, the deputies learned that the aggrieved had a 4<sup>th</sup> waiver. Pursuant to the terms of the aggrieved's 4<sup>th</sup> waiver, Deputy 4 had legal justification to search the aggrieved. No illegal items were found on the aggrieved and after his contact with the deputies, both the complainant and the aggrieved were free to leave. The evidence showed that the act did occur, but was lawful, justified and proper.

4. Misconduct/Misconduct - Deputies 1-4 attempted to “provoke” the aggrieved by “verbally attacking him.”

Recommended Finding: Not Sustained

Rationale: In a written statement, the complainant said, “The deputies attempted to provoke him [the aggrieved] by verbally attacking him.” During a telephonic interview, almost one year after filing the complaint, the complainant could not recall what the deputies said in an alleged attempt to provoke the aggrieved. CLERB staff was unable to contact the aggrieved during the course of this investigation. Deputies 1-4 provided information during the course of CLERB's investigation that conflicted with information reported by the complainant. Absent any video or audio recording of this contact, or an independent witness to this conversation between the aggrieved and the deputies, there was insufficient evidence to show that the alleged act or conduct occurred.

5. Misconduct/Retaliation – Deputy 4 kept the aggrieved's personal property in retaliation for him asserting his rights.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that the deputies “kept his [the aggrieved's] personal property in retaliation for asserting his rights.” When the deputies initially stopped the complainant and the aggrieved, they asked for their identification. The aggrieved provided deputies with his identification card. After their contact, the complainant and the aggrieved were dismissed from their detention and allowed to leave the scene. Shortly thereafter, the aggrieved realized that his identification card was not returned to him. He contacted the Sheriff's Communication Center and arrangements were made to have the aggrieved's property returned to him less than an hour later. Deputy 4 provided information during the course of CLERB's investigation that conflicted with information reported by the complainant and was supportive of the recommended finding. Absent a video or audio recording of this contact, or an independent witness to this incident between the complainant and Deputies 1 and 4, there was insufficient evidence to either prove or disprove the allegation.

6. Excessive Force – Deputies 4 and/or 1 “slammed” the aggrieved up against their patrol car.

Recommended Finding: Unfounded

Rationale: The complainant alleged that Deputy 4 or 1 “slammed” the aggrieved up against his patrol vehicle. According to SDSO P&P Section 2.49, “Employees shall not use more force in any situation than is reasonably necessary under the circumstances. Employees shall use force in accordance with law and established Departmental procedures, and report all use of force in writing.” There was no documentation that a Use of Force occurred. Additionally, it was alleged that the complainant was not present during the second contact between the aggrieved and the deputies. Moreover, the aggrieved could not be located or contacted to either confirm or deny the allegation. Deputies 1-4 denied the allegation and provided information during the course of CLERB's investigation that conflicted with information reported by the complainant. Based on preponderance of evidence and absent a video or audio recording of this contact, or an independent witness to this conversation between the complainant and the deputies the evidence shows that the alleged act or conduct did not occur.

7. Misconduct/Intimidation - Deputies 1-4 threatened the aggrieved and his father by saying they would “kick his door in.”

Recommended Finding: Not Sustained

Rationale: The complainant stated that when the deputies returned to provide the aggrieved his identification card, they made numerous threats to the aggrieved and his father, stating that they would “kick in their door.” CLERB staff was unable to contact the aggrieved or the aggrieved's father during the course of this investigation to either confirm or deny the allegation. Additionally, the complainant was unwilling to cooperate with CLERB's investigation. Deputies 1-4 denied the allegation and provided information during the course of CLERB's investigation that conflicted with information reported by the complainant. Absent a video or audio recording of this contact, or an independent witness

to this conversation between the complainant and the aggrieved and Deputies 1-4 there was insufficient evidence to either prove or disprove the allegation.

8. Discrimination/Racial - Deputies 1-4 are a threat to African-Americans.

Recommended Finding: Summary Dismissal

Rationale: The complainant alleged "...all four deputies were a threat, not only to the community, but specifically African Americans." The complainant stated that "the brashness of their conduct, combined with their unlawful acts" renders all four deputies inept to perform the duties as unbiased public servants. The complainant did not provide additional clarifying information and did not cooperate with CLERB's investigation by not returning calls made to obtain additional information. As there was no prima facie showing of misconduct, this allegation was referred to the CLERB for Summary Dismissal.

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### **17-078**

1. Death Investigation/Overdose – On 08-12-17 while as an inmate at the San Diego Central Jail (SDCJ), Ivan Prieto was found unresponsive inside of a court holding cell. He was later pronounced deceased. Investigation revealed he died from acute cocaine and methamphetamine intoxication and the manner of death was ruled an accident.

Recommended Finding: Action Justified

Rationale: The evidence indicated that Mr. Prieto was properly classified upon his entry into the SDCJ jail system after his 08-11-17 arrest. Since he was a "book and release" he was kept in holding cells to sober up. Based on his responses to the medical intake questionnaire there appeared no need to classify him as a medical patient. No strip search was conducted because, per SDCJ Detention Services Bureau Policies and Procedures Section 1.52, searches are not conducted on "book and release" inmates. Upon being advised that Mr. Prieto was found unresponsive in a holding cell, sworn personnel expeditiously responded and immediately initiated life-saving measures. A small baggy of cocaine was found in close proximity to Mr. Prieto; it was unknown whether Mr. Prieto brought the baggy into SDCJ or obtained it after entry. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

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### **17-080**

1. Death Investigation/In-Custody Death – On 08-15-17, while in the custody of the San Diego Sheriff's Department at the San Diego Central Jail, Inmate Wellington Robert Kemplin experienced a seizure then collapsed unresponsive. Sheriff's deputies, Sheriff's medical personnel, and paramedics were summoned to the scene. Advance cardiac life support measures were initiated, but when Kemplin did not respond, his death was pronounced on scene. The cause of death was seizure disorder with an undetermined manner.

Recommended Finding: Action Justified

Rationale: The evidence indicates that Kemplin was properly classified upon his entry into the SDCJ jail system after his 08-15-17 arrest. During his medical intake screening and subsequent interactions with SDCJ medical personnel, Kemplin never expressed a medical emergency. There was no evidence that Kemplin expressed any concerns about his mental or physical well-being to his cellmate or any member of the SDCJ, sworn or professional. Upon being advised that Kemplin was found down and unresponsive in his cell, sworn personnel expeditiously responded and immediately initiated life-saving measures. The Medical Examiner was responsible for determining the cause and the manner of Kemplin's death. It was unknown whether Kemplin's known brain abnormalities were genetic and/or traumatic. No matter their origin, whether natural or accidental in nature, they contributed or directly caused change in his neurological functions that resulted in his death. The Medical Examiner was unable to determine a clear preponderance of evidence to support a specific manner of death. The determination of "undetermined" for manner of death was appropriate as the known information regarding Kemplin's past medical history, equally supported and/or conflicted with more than one manner of death (accident vs. natural). There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

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### **17-087**

1. Misconduct/Discourtesy – Deputy 1 "disrespected" PC (Protective Custody) inmates.

Recommended Finding: Not Sustained

Rationale: The complainant initially reported that Deputy 1 disrespected inmates when he rolled his eyes and slammed doors. He then elaborated that deputies abused their authority by the way they talked to inmates and that they were “cussed at.” The complainant reported that their property was disrespected during searches and unidentified deputies were careless with inmate property. Two Inmate Grievances filed by the complainant about his issues were responded to by supervisory staff on 09-05-17 and 09-06-17, in which they reported that they spoke to the complainant and to the deputy, and that the issues were resolved. Deputy 1 also provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Absent any audio or video recordings, there was insufficient evidence to either prove or disprove this allegation.

2. Misconduct/Procedure – Unidentified deputies delivered inmate mail up to two weeks after its dated postmark.

Recommended Finding: Not Sustained

Rationale: The complainant reported that inmate mail was delivered up to two weeks after its postmarked date, and in the middle of the night when inmates were sleeping and did not accept it. Detentions Policy & Procedure P.3, Inmate Mail states that detention facilities shall provide for the reasonably prompt delivery of incoming materials and outgoing correspondence and all staff shall work for the reasonably prompt and correct delivery of all inmate mail. According to the Division of Inspectional Services, jail records only records inmate mail that is rejected, and there was no documentation of rejected mail associated with the complainant. The complainant did not provide any evidence to support his assertion and did not respond to CLERB’s request for further information; there was insufficient evidence to either prove or disprove this allegation.

3. Discrimination/Sexual – Deputy 2 “harassed” homosexual inmates.

Recommended Finding: Summary Dismissal

Rationale: The complainant reported that Deputy 2 “picks and chooses which inmates he wanted to harass, which were mostly homosexual inmates.” The complainant did not provide any additional details about the alleged harassing behaviors and did not respond to our requests for further information. It should be noted that CLERB did not receive any other complaints of this nature that involved Deputy 2. As there was no prima facie showing of misconduct, this allegation was referred for Summary Dismissal.

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**17-090**

1. Misconduct/Intimidation – Deputy 1 “intimidated” the complainant during a traffic stop.

Recommended Finding: Action Justified

Rationale: The complainant reported that Deputy 1 approached her vehicle and immediately asked if she was just released from prison, was on parole, and also asked if she had anything to drink. The questions as described by the complainant are standard queries made by law enforcement officers during contacts. Deputy 1 and a witness deputy provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper; how the complainant felt was subjective and did not equate to any violation of policy.

2. Misconduct/Truthfulness – Deputy 1 issued the complainant a citation.

Recommended Finding: Action Justified

Rationale: The complainant stated that on 08-25-17, at 11:40pm, while waiting at the 4th street eastbound light heading north to Euclid Avenue, she saw the lights of a Sheriff vehicle in her rear view mirror. She said she waited for the light to change and then made her left hand turn. She said that she stopped immediately beyond the red curb and let down the window completely. The complainant then reported that Deputy 1 asked if she knew that she had just went through a red light and she responded that she did not go through a red light, “show me the film,” and Deputy 1 replied that he did not have any film. Citation #871512 documented a violation of VC§ 21453, Circular Red or Red Arrow, and included contemporaneous notes. Deputy 1 and a witness deputy provided information during the course of CLERB’s investigation that was also considered in arriving at the recommended finding. A preponderance of evidence found that the alleged act or conduct did occur and was lawful, justified and proper. Traffic Court was the appropriate place for the complainant to contest her citation, however, she failed to appear and her license was suspended.

3. False Reporting – Deputy 1 “pre-wrote” a citation and also reported an inaccurate location.

Recommended Finding: Unfounded

Rationale: The complainant reported that “the Citation was written prior to her being stopped on 4<sup>th</sup> street and Euclid. Citation: An illegal left hand turn on 8th Street to Euclid and stopping on 7th & Euclid. That location is in front of ‘Paradise Valley Hospital’. I was pulled over at 4th Street & Euclid, to my left was a well lit park. The ticket clearly shows a lighter ‘hand’ writing on the bottom portion of the ticket (prewritten). The Sheriff’s vehicle lights were turned on **PRIOR** to my making a left turn on Euclid Ave & 4th Street. My only ‘crime’ was the smoke emanating from the emergency brake on a newly purchased vehicle.” Citation #871512 and contemporaneous notes recorded an incident location of 8<sup>th</sup> Street/Euclid Avenue in National City. Deputy 1 and a witness deputy provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. A preponderance of evidence indicated that the citation was not “prewritten” and that the reported incident location was accurate. Traffic Court was the appropriate place for the complainant to contest her citation, however, she failed to appear and her license was suspended.

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**17-093**

1. Death Investigation/In-Custody Overdose – On 08-30-17, while in the custody of the San Diego Sheriff’s Department (SDSD) at the San Diego Central Jail (SDCJ), Kenneth Rice was found unresponsive inside of his cell. Mr. Rice was transported to Mercy Hospital where he was pronounced brain dead on 09-04-17. The cause of death was anoxic encephalopathy (brain deprived of oxygen) due to methamphetamine, opiates and benzodiazepines intoxication and the manner of death was accident.

Recommended Finding: Action Justified

Rationale: The evidence indicated that Mr. Rice was properly classified upon his entry into the SDSD jail system after his 08-28-17 arrest. During his medical intake screening it was determined that Mr. Rice used heroin and alcohol on a daily basis. He was medically classified and put on an alcohol detoxification protocol which included daily medication. The last time Mr. Rice was seen was approximately one hour before he was found unresponsive. During that time, a nurse provided him with his detoxification medication. The deputy was diligent and proper when he conducted the security check in Mr. Rice’s cell. This created an opportunity to resuscitate Mr. Rice. Upon finding Mr. Rice in his cell, sworn personnel immediately initiated life-saving measures. A pulse was re-established and he was transported to the hospital where he subsequently died four days later. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of SDSD sworn personnel.

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**17-106**

1. Criminal Conduct – Deputy 1 “trespassed” on the complainant’s property on 06-05-17.

Recommended Finding: Unfounded

Rationale: The complainant alleged that on 03-23-17, a deputy “committed criminal trespass...” when he entered the property located in the City of San Diego. California Penal Code 602 prohibits criminal trespass. One may commit the crime of trespassing when you enter or remain on someone else’s property without permission or a right to do so. The complainant had previously resided at the aforementioned property; however, the property had since been foreclosed on and on 03-21-17, it was purchased by a third party. On 06-05-17, per the new owner’s request and per the court ordered eviction notice, Sheriff deputies responded to the property to serve/post the eviction notice. The deputies had the property owner’s permission and a court ordered, legal right to be on the property. Deputy 1 went to the property to serve/post the notice. Based on the circumstances, Deputy 1 did not trespass onto the property and they had a legal right to be there. The evidence showed that the alleged act did not occur.

2. Criminal Conduct – Deputy 3 “trespassed” on the complainant’s property on 06-05-17.

Recommended Finding: Summary Dismissal

Rationale: Deputy 3 is no longer employed by the SDSD as he retired on 03-29-18 As such, CLERB does not have jurisdiction per CLERB Rules and Regulations 4.1, “Citizen Complaints: Authority.

3. Procedure/Misconduct – Deputy 1 served the complainant with an eviction notice.

Recommended Finding: Action Justified



Rationale: According to the complainant, on 03-24-17, Sheriff deputies, “armed with deadly firearms and other weapons authorized agent for the Sheriff, violated their rights, in the private, and in the public, [when they] unlawfully and illegally posted an eviction notice, and threatened bodily and property harm, without cause.” The complainant had previously resided at the aforementioned property; however, the property had since been foreclosed on and on 03-21-17, it was purchased by a third party. The third party filed for an eviction order from the San Diego Superior Court. The court ordered eviction was to be executed on 06-06-17. On 06-05-17, per the new owner’s request and per the court ordered eviction notice, Deputy 1 responded to the property to serve/post the eviction notice. On 06-06-17, Deputies 1 and 4 responded to the property to execute the eviction notice. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

4. Procedure/Misconduct – Deputy 3 served the complainant with an eviction notice.

Recommended Finding: Summary Dismissal

Rationale: Deputy 3 is no longer employed by the SDSO as he retired on 03-29-18. As such, CLERB does not have jurisdiction, per CLERB Rules and Regulations 4.1, “Citizen Complaints: Authority.

5. Illegal Search & Seizure – Deputies 1 and 4 “trespassed” onto the complainant’s property on 06-06-17.

Recommended Finding: Unfounded

Rationale: According to the complainant, on 06-06-17, Deputies 1 and 4 “without consent, willfully, illegally, unlawfully, committed criminal trespass” when they entered the property located in San Diego. California Penal Code 602 prohibits criminal trespass. One may commit the crime of trespassing when you enter or remain on someone else’s property without permission or a right to do so. The complainant had previously resided at the aforementioned property; however, the property had since been foreclosed on and on 03-21-17, it was purchased by a third party. On 06-06-17, per the new property owner’s request and per the court ordered eviction notice, Sheriff deputies had responded to the property to execute the eviction. Deputies 1 and 4 did not trespass onto the property; they had consent and had a legal, mandated right to be on the property. The evidence showed that the alleged act did not occur.

6. Illegal Search & Seizure – Deputies 2 and 3 “trespassed” on the property onto the complainant’s property on 06-06-17.

Recommended Finding: Summary Dismissal

Rationale: Deputies 2 and 3 are no longer employed by the SDSO as they retired on 03-29-18. As such, CLERB does not have jurisdiction, per CLERB Rules and Regulations 4.1, “Citizen Complaints: Authority.

7. Criminal Conduct - Deputies 1 and 4 “committed grand theft and burglary of property.”

Recommended Finding: Unfounded

Rationale: According to the complainant, on 06-06-17, Deputies 1 and 4 committed “grand theft and burglary of property when they acted upon the fraud...” and took possession of the property located in San Diego. According to a SDSO Arrest/Juvenile Contact Report, the complainant resided in a bank foreclosed home. On 03-21-17, the property, was purchased by a third party. After which, the third party filed for an eviction order from the San Diego Superior Court. The court ordered eviction was executed on 06-06-17 when Deputies 1 and 4 responded to the property, forcefully gained entry into the home, and removed the complainant from the home. The property was then turned over to the property owner. According to California law, grand theft is defined as the unlawful taking of someone else’s property and when the property taken is valued at more than nine hundred fifty dollars (\$950). Deputies 1 and 4 had the property owner’s permission to be on the property. Additionally, Deputies 1 and 4 were legally mandated, by a San Diego Superior Court ordered, to assist the property owner with taking possession of the property. The deputies did not “unlawfully” take someone else’s property. According to California law, burglary is defined as entering any residential or commercial building or room with the intent to commit a felony or a theft once inside. Deputies 1 and 4 entered the property to remove the complainant from within the property that belonged to another. Evidence indicated that the deputies had no intent to commit a felony or a theft once inside the property. The evidence showed that the alleged act did not occur.

8. Criminal Conduct - Deputies 2 and 3 “committed grand theft and burglary of property.”

Recommended Finding: Summary Dismissal

Rationale: Deputies 2 and 3 are no longer employed by the SDSO as they retired on 03-29-18. As such, CLERB does not have jurisdiction, per CLERB Rules and Regulations 4.1, “Citizen Complaints: Authority.

9. Criminal Conduct - Deputies 1 and 4 “kidnapped” the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated Deputies 1 and 4 “armed with deadly firearm, and other weapons, acted upon the fraud” and was “kidnapped her from her private property.” The complainant said she was “dragged from her home without shoes or being properly dressed, was willfully, maliciously and violently abducted/kidnapped/seized, handcuffed, forced into the back of a police car, and was falsely imprisonment” at the Las Colinas Detention and Re-Entry Facility. According to California law, kidnapping is defined as “forcibly, or by any other means of instilling fear, steals or takes, or holds, detains, or arrests any person in this state [State of California]. For the sake of executing a court order, as authorized by state law, the complainant was forcibly removed from the property of another.” Though the act by the deputies was not criminal and the deputies acted in accordance with state law, the definition of the law correlated with the actions executed by the deputies. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

10. Criminal Conduct - Deputies 2 and 3 “kidnapped” the complainant.

Recommended Finding: Summary Dismissal

Rationale: Deputies 2 and 3 are no longer employed by the SDSO as they retired on 03-29-18. As such, CLERB does not have jurisdiction, per CLERB Rules and Regulations 4.1, “Citizen Complaints: Authority.

11. Excessive Force – Deputy 4 “stomped” on the complainant’s neck.

Recommended Finding: Unfounded

Rationale: According to the complainant, Deputy 4 “violently stomped” on her neck “several times” while Deputies 1, and two other deputies, who have since retired, assisted in attempting to subdue her for arrest. The complainant claims she was on the floor, lying atop of clothes, and the force executed by Deputy 4 was “unreasonable and unwarranted.” The complainant stated that she is “a small 126-pound woman and did not pose a threat of harm to the deputies, all of which were at least, twice the size” of the complainant. The complainant claimed injury to her body, face, neck, arms, and back and sustained “extreme swelling [and] bruising to her wrist and pain in [her] body.” According to the Officer Reports submitted by Deputies 1, 4 and two other deputies, who have since retired, the complainant had barricaded herself in a locked bedroom. Upon forcing entry into the locked bedroom, the complainant fled from deputies, refused to comply with their orders, and “wedged” herself between objects in an attempt to elude arrest. Deputy 1 quoted the complainant as saying, “I ain’t leaving. You’re gonna have to shoot me. You’re gonna have to kill me.” Deputies used force on the complainant to subdue her and take her into custody. According to Deputy 4’s Officer Report, in an effort to distract the complainant away from kicking him or his partners, Deputy 4 placed his right foot against the complainant’s upper chest area, just below her chin. Once handcuffed, Deputy 4 removed his foot from off the complainant’s upper chest. Deputy 1 assisted the complainant to her feet and checked her for injuries. He did not observe any injuries to her face or upper torso area. There was no dispute that Deputy 4 did apply his shoed foot to the complainant’s upper chest and/or neckline, but there was no evidence indicating that Deputy 4 “stomped” on the complainant’s neck. Absent information provided by an independent witness to the incident or video or audio recordings of the interaction or medical records, and based upon a review of SDSO Use of Force Guidelines and the deputies reports, it appears the deputies’ use of force was within guidelines and there was no evidence to support any allegation of misconduct or excessive force on the part of the Sheriff’s Department sworn personnel. The deputies’ actions were lawful, proper and justified and the allegation of excessive force was unfounded.

12. Misconduct/Procedure – Deputies 1 failed to intervene when Deputy 4 “stomped” on the complainant’s neck.

Recommended Finding: Action Justified

Rationale: According to the complainant, Deputy 4 “violently stomped” on the complainant’s neck “several times” while Deputy 1 assisted in attempting to subdue her for arrest. The complainant claimed she was on the floor, lying atop of clothes, and the force executed by Deputy 4 was “unreasonable and unwarranted.” The complainant stated that Deputy 1 had a “duty to protect her from constitutional violations.” The complainant stated that Deputy’s 1 “failure to intervene as they all witnessed fellow Deputy 4 stomp [on her] neck approximately three or more times, failed to intervene, and instead, beat her. [The deputy was in] violation of their duty fiduciary duty, failure to intervene, and Constitutional duty, and violation of her rights.” According to deputies’ Officer Reports, all four deputies were attempting to execute an eviction notice. During their interaction with the complainant, a use of force ensued as the deputies attempted to subdue the complainant. During the use of force, and per his written statement, Deputy 4 placed his right foot against the complainant’s upper chest area, just below her chin. According to his written statement, Deputy 4’s advised that he “placed his right foot against the complainant’s upper chest area, just below her chin in an effort to distract the complainant away from kicking him or his partners.” There is no dispute that Deputy 4

applied his shoed foot to the complainant's upper chest and/or neckline, but there was no evidence indicating that Deputy 4 "stomped" on the complainant's neck. The allegation that Deputy 1 failed to intervene was justified, as the excess force was unfounded. Absent information provided by an independent witness to the incident or video or audio recordings of the interaction or medical records, and based upon a review of SDDS Use of Force Guidelines and the deputies reports, it appeared the deputies' use of force was within guidelines and there was no evidence to support any allegation of misconduct or excessive force on the part of the Sheriff's Department sworn personnel.

13. Misconduct/Procedure – Deputies 2 and 3 failed to intervene when Deputy 4 "stomped" on the complainant's neck.

Recommended Finding: Summary Dismissal

Rationale: Deputies 2 and 3 are no longer employed by the SDDS as they retired on 03-29-18. As such, CLERB does not have jurisdiction, per CLERB Rules and Regulations 4.1, "Citizen Complaints: Authority.

14. False Arrest – Deputy 1 arrested the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated Deputy 1 "lacked probable cause or facts sufficient to cause a reasonable person to believe a crime had been committed" when he arrested her for resisting arrest. The complainant claimed that Deputy 1 arrested her "when no felony had been committed in his presence." The complainant said she was charged with felony and that Deputy 1 commenced a criminal proceeding, which concluded with no conviction. According to Deputy 1's Arrest Report, as well as his Probable Cause Declaration for Warrantless Arrest, Deputy 1 arrested the complainant for violation of California Penal Code Section 69 – Resisting Arrest. California Penal Code Section 69 is defined, in part, as every person who attempts to deter or prevent an executive officer from performing any duty imposed upon the officer by law, or who knowingly resists, by the use of force or violence, the officer, in the performance of his or her duty. The complainant attempted to deter and prevent Sheriff deputies in performing their duties when she refused to comply with their orders or cooperate with allowing the Sheriff's deputies access to the residence. Furthermore, Sheriff's deputies were compelled to use force to gain entry into the residence. Upon entering the bedroom, the complainant ran away from deputies and purposely wedged herself between a bed and a wall in an attempt to elude arrest. The complainant continually refused to comply with the Sheriff's deputies' instruction. As a result, the deputies were obligated to use force to subdue the complainant and take her into custody. Lastly, the complainant aggressively resisted officers by using force and violence. According to Deputy 1's report, the complainant kicked Deputy 1 in the groin area and tensed her body and pulled away from the deputies' grasp. The complainant's actions of physically resisting arrest were in violation of California Penal Code Section 69 and Deputy 1 arresting her was lawful, justified and proper.

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## 17-116

1. Death Investigation/Barricade – On 10-21-17, Jimmie Sellars attempted to burn down his San Marcos residence. Upon the arrival of San Diego Sheriff's Department (SDDS) deputies, Sellars was barricaded inside of his residence and reportedly armed with a handgun. The house was surrounded by SDDS deputies who attempted to talk to Sellars. SDDS Special Enforcement Detail (SED) and Crisis Negotiation Team (CNT) responded to assist. Several single gunshots were heard inside of the residence. Later that evening, one final single gunshot was heard, after which Sellars ceased communications with SDDS personnel. After midnight on 10-22-17, SED personnel deployed a robot inside of the residence and found Sellars lying obviously dead inside with a self-inflicted gunshot wound. The cause of death was perforating intraoral (inside of the mouth) gunshot wound of head and the manner of death was suicide.

Recommended Finding: Action Justified

Rationale: San Diego Sheriff's Department (SDDS) deputies responded, surrounded the apartment, evacuated the surrounding area, and attempted to communicate with Mr. Sellars. SED and CNT were subsequently requested and responded to the scene. CNT personnel communicated with Sellars in an attempt to resolve the situation without incident. Deputies expeditiously responded to this incident and despite their timely, lawful and proper actions, Sellars took his own life. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

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## 18-021

1. Misconduct/Discourtesy – Probation Officer (PO) 1 "treated me like I'm nothing, put me down and hurt me in every way and it's as if she is laughing in my face".

Recommended Finding: Not Sustained

Rationale: According to the complainant, PO 1 “treated me like I’m nothing, put me down and hurt me in every way and it’s as if she is laughing in my face”. PO 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. There was no evidence showing that PO 1 treated the complainant as was alleged in the complaint or was in violation of either San Diego County Probation Department (SDCPD) P&P Section 1306.4.C entitled, “Probation Department Code of Ethics” or Section 1306.5 entitled, “Standards of Conduct-Courtesy”. 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.

2. Misconduct/Harassment – PO 1 made it her goal to “lock up” the complainant.

Recommended Finding: Unfounded

Rationale: The complainant stated it was PO 1’s “only goal to lock me up”. PO 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. According to contact reports provided by the SDCPD, it was clear that the complainant continually violated the terms of her probation. There were numerous failures to appear at appointments. Based on the reports from the SDCPD and the information from PO 1, the arrests of the complainant were valid and the complainant’s allegation that PO 1 “made it her goal to lock her up” was unfounded.

3. Misconduct/Procedure – PO 1 threw away the complainant’s medical records.

Recommended Finding: Not Sustained

Rationale: The complainant stated that during the last week of 10-2016 her nose and teeth were broken and she was hit in the head with a tire iron or crow bar. She reported to her PO with medical records in hand and they were thrown in the trash can. PO 1 and another PO provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. According to a contact report provided by the SDCPD, it stated on 11-03-16 at the time of the complainant’s re-arrest she was in possession of a notebook, medical paperwork and other court documents. Since the items were too bulky to be taken to jail, they were placed in a manila envelope and retained by PO 1 until the complainant’s release from custody. The envelope was sealed and labelled with the complainant’s name and kept above a filing cabinet at PO 1’s desk. Though there appears to be conflicting information between what is documented in the contact report and PO 1’s SERF response, it appeared that PO 1 did take possession of the complainant’s paperwork. It is just not clear what happened to the paperwork afterward, though there was no evidence showing that it was thrown away. 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 whether the medical records were thrown away. NOTE: The apparent conflicting information and possible mishandling/improper processing of the complainant’s documentation were referred back to the SDCPD for review.

4. False Arrest – PO 1 arrested the complainant on 11-02-16.

Recommended Finding: Action Justified

Rationale: The complainant stated that she was arrested after requesting and informing her PO that she was told by her doctor to seek medical attention as soon as possible. PO 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. SDP&P Section 300.6 entitled, “Medical Consideration” stated that “Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed.” Section 300.6 typically applies to probationers who were subject to use of force prior to their arrest. No use of force was used prior to or during the complainant’s arrest. According to a contact report provided by the SDCPD, the complainant sustained a head injury that prevented her from reporting. There were no notes that the complainant showed any visible signs of physical distress at the time she met with her PO. The complainant also stated the district attorney said she would not be arrested. PO 1, in her notes, wrote she sympathized with the complainant but explained the district attorney did not have control over the SDP&P and based on a no bail warrant, PO 1 had no choice but to arrest the complainant. Evidence showed the arrest of the complainant was lawful, justified and proper.

5. Misconduct/Discourtesy – PO 1 “expressed joy” when the complainant was placed under arrest on multiple occasions.

Recommended Finding: Not Sustained

Rationale: The complainant said she noticed “joy” from PO 1 when she locked her up. PO 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. There was no

evidence showing that PO 1 “expressed joy” or was in violation of either SDCPD P&P Section 1306.4.C entitled, “Probation Department Code of Ethics” or Section 1306.5 entitled, “Standards of Conduct-Courtesy”. 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.

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### **18-028**

1. Misconduct/Procedure – Unidentified deputies failed to protect the aggrieved from injury while in Sheriff’s custody.

Recommended Finding: Unfounded

Rationale: The complainant reported, “My brother was severely injured in Sheriff custody on or about Jan 31-Feb 1 2018. He has fractures in his face and a damaged eye socket he spent 12 days in ICU. All of his family is at his bedside and he has no memory he doesn’t know who he is his mentality post incident at Central jail is that of someone which is consistent of mental retardation. He did not enter the (jail) in this state but left in such. We the family demand a full investigation on behalf of our loved one.” According to Sheriff’s records, the aggrieved was arrested on 01-31-18, and during the booking process reported that he had a seizure disorder. Medical staff notated the need for a lower bunk assignment in his medical file, but then failed to place the order in the Jail Information Management System (JIMS). This documentation in JIMS was necessary to alert deputies; without it they had no knowledge of the special housing requirement. The aggrieved was assigned to a top bunk per jail records and witness testimony. According to witness interviews, the aggrieved fell from a height of approximately six feet, lost consciousness, and experienced a seizure. It was unknown if a seizure also caused the aggrieved’s initial fall. Cellmates attempted to alert deputies through the cell intercom, but the touchscreen at the deputy’s station did not provide a sound indicator to signal deputies when the intercom was pressed. Deputies who were conducting a cell check responded to the calls of “Mandown” and summoned medical assistance within a fifteen minute timeframe; nursing staff were on scene within six minutes, followed by paramedics approximately nine minutes later. According to hospital records, the aggrieved suffered a brain bleed, facial fractures, and respiratory failure. The evidence showed that the aggrieved experienced a medical emergency, and was not injured through any actions of Sheriff’s deputies.

NOTE: Potential misconduct discovered through the course of investigation included: 1.) Medical personnel’s failure to properly document the need for a bottom bunk in JIMS medical instructions. 2.) A deputy’s station touchscreen did not provide a sound indicator from an intercom used by inmates; it was not specified if this was due to human error or a malfunction. 3.) Sheriff’s Policy & Procedure M.5 Medical Emergencies states that when an inmate is admitted to a hospital for treatment of a serious illness or injury, the Watch Commander shall contact the inmates emergency contact person. These issues discovered through the course of CLERB’s investigation were referred back to the Sheriff’s Department for review.

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### **18-037**

1. False Arrest – Imperial Beach deputies arrested the complainant for PC§ 148 on 11-10-15.

Recommended Finding: Summary Dismissal

Rationale: The complainant reported that on 11-10-15 Imperial Beach Sheriff’s Department arrested him for a charge of PC 148(a)(1) Resisting Arrest, which was dismissed 01-04-18. The Review Board lacks authority in this matter per CLERB Rules & Regulations 4.4: Jurisdiction, because the complaint was not received within the one year timeline required and tolling exemptions did not apply.

2. Excessive Force – Imperial Beach deputies attacked the complainant and injured his son.

Recommended Finding: Summary Dismissal

Rationale: The complainant reported that the Imperial Beach Sheriff’s Department attacked him and his son was also injured. The Review Board lacks authority in this matter per CLERB Rules & Regulations 4.4: Jurisdiction, because the complaint was not received within the one year timeline required and tolling exemptions did not apply.

3. Misconduct/Harassment – Imperial Beach deputies began to harass the complainant on 11-10-15.

Recommended Finding: Summary Dismissal

Rationale: The complainant reported that the Imperial Beach Sheriff's Department began their harassment of him on 11-10-15. The Review Board lacks authority in this matter per CLERB Rules & Regulations 4.4: Jurisdiction, because the complaint was not received within the one year timeline required and tolling exemptions did not apply.

4. Illegal Search & Seizure – Imperial Beach deputies “snatched” and threw the complainant’s phone, breaking it.

Recommended Finding: Summary Dismissal

Rationale: The complainant said that as he recorded video of the police attack against his family, the attackers broke his phone when it was “snatched” from his hands. The Review Board lacks authority in this matter per CLERB Rules & Regulations 4.4: Jurisdiction, because the complaint was not received within the one year timeline required and tolling exemptions did not apply.

5. Excessive Force – Imperial Beach deputies hit the complainant’s son in the face.

Recommended Finding: Summary Dismissal

Rationale: The complainant reported that the attackers hit his son in the face (with the phone) which sent his crying children running toward the street to be saved by the neighbors he had called for help. The Review Board lacks authority in this matter per CLERB Rules & Regulations 4.4: Jurisdiction, because the complaint was not received within the one year timeline required and tolling exemptions did not apply.

6. Discrimination/Racial – Imperial Beach deputies were hostile toward the complainant and his family because of their skin color and ethnicity.

Recommended Finding: Summary Dismissal

Rationale: The complainant said deputies acted hostile toward his girlfriend who was carrying their two month old daughter and believed that it was because of his skin color and ethnicity that they were more hostile toward them. The Review Board lacks authority in this matter per CLERB Rules & Regulations 4.4: Jurisdiction, because the complaint was not received within the one year timeline required and tolling exemptions did not apply.

7. False Arrest – Deputy 1 arrested the complainant on 07-18-17.

Recommended Finding: Action Justified

Rationale: The complainant said that since his first case (11-10-15 arrest) was dismissed, he filed a separate civil suit pertaining to an arrest on 07-18-17, in which he said he was wrongfully arrested and charges were stacked against him. PC§ 11167, Contents of Child Abuse Report, precluded CLERB from accessing protected material to include the complainant’s arrest report. However, Computer Aided Dispatch (CAD) records were provided and verified that deputies were dispatched to the report of the complainant threatening a family member with a machete. An arrest is valid when supported by probable cause, which exists when the totality of circumstances leads one to believe a crime occurred. Deputy 1 also provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. And finally, court records were reviewed and reported that the complainant was convicted of an assault with a deadly weapon. A preponderance of evidence showed that the arrest occurred and was lawful, justified and proper.

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## **18-041**

1. Death Investigation/Vehicle Pursuit – On 03-18-18, Gabriel Gomez-Gutierrez was the driver of a stolen vehicle that collided with another vehicle while being pursued by San Diego Sheriff’s Department (SDSD) personnel. Death was confirmed at the scene without resuscitative efforts. The cause of death was multiple blunt force injuries and the manner of death was accident.

Recommended Finding: Action Justified

Rationale: On 03-18-18, a Be-on-the-Lookout (BOL) was broadcast to Valley Center deputies for a stolen vehicle. Approximately eight minutes later, SDSD deputies located the vehicle, as it was driven on a Valley Center roadway. The vehicle entered a parking structure of Harrah’s Casino but failed to yield to deputies after they activated overhead lights and sirens while inside of the structure. The vehicle exited the structure, drove through casino property, and turned northbound on Valley Center Road. Prior to initiating the pursuit, deputies began coordinating spike strip usage and immediately requested ASTREA support. Despite the planning, the rapid unfolding of events did not permit spike strips to be deployed. Because of the planning, ASTREA, occupied by Deputies 2 and 3, was overhead when the stolen vehicle exited the parking structure. Due to poor weather and road conditions, as well as the knowledge the road ahead of him was about to become curvy, Deputy 7 decided that the risk of pursuing the stolen vehicle was too

dangerous. At that time, Deputy 7 broadcast that all units were going to “hang back and let them (ASTREA) follow.” Almost immediately thereafter, the driver of the stolen vehicle lost control, crossed the double-yellow line, and collided head-on with another vehicle. Upon arrival at the collision, Deputies 1 and 4-7 drew their Department-issued firearms and pointed them at the occupants of the stolen vehicle or in the direction of the stolen vehicle. Deputies holstered their weapons when they individually determined that the occupants no longer posed a threat. The deputies immediately requested medical assistance and assessed the condition of the four people involved in the collision. Due to the condition of the stolen vehicle and its occupants, neither deputies nor medical personnel could provide medical attention to its lone surviving occupant until extrication procedures were undertaken. Deputies stood by with the driver of the other vehicle and monitored her condition until the arrival of medical personnel. The audio, video, and written evidence indicated SDSD sworn personnel exercised due diligence and considered the safety of themselves, the occupants of the stolen vehicle, and the general public during the entire situation. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of SDSD sworn personnel.

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## **18-042**

1. Death Investigation/Vehicle Pursuit – On 03-18-18, Mario Lemus-Garcia was a passenger of a stolen vehicle that collided with another vehicle while being pursued by San Diego Sheriff’s Department (SDSD) personnel. Death was confirmed at the scene without resuscitative efforts. The cause of death was craniocervical blunt force injuries and the manner of death was accident.

### Recommended Finding: Action Justified

Rationale: On 03-18-18, a Be-on-the-Lookout (BOL) was broadcast to Valley Center deputies for a stolen vehicle. Approximately eight minutes later, SDSD deputies located the vehicle, as it was driven on a Valley Center roadway. The vehicle entered a parking structure of Harrah’s Casino but failed to yield to deputies after they activated overhead lights and sirens while inside of the structure. The vehicle exited the structure, drove through casino property, and turned northbound on Valley Center Road. Prior to initiating the pursuit, deputies began coordinating spike strip usage and immediately requested ASTREA support. Despite the planning, the rapid unfolding of events did not permit spike strips to be deployed. Because of the planning, ASTREA, occupied by Deputies 2 and 3, was overhead when the stolen vehicle exited the parking structure. Due to poor weather and road conditions, as well as the knowledge the road ahead of him was about to become curvy, Deputy 7 decided that the risk of pursuing the stolen vehicle was too dangerous. At that time, Deputy 7 broadcast that all units were going to “hang back and let them (ASTREA) follow.” Almost immediately thereafter, the driver of the stolen vehicle lost control, crossed the double-yellow line, and collided head-on with another vehicle. Upon arrival at the collision, Deputies 1 and 4-7 drew their Department-issued firearms and pointed them at the occupants of the stolen vehicle or in the direction of the stolen vehicle. Deputies holstered their weapons when they individually determined that the occupants no longer posed a threat. The deputies immediately requested medical assistance and assessed the condition of the four people involved in the collision. Due to the condition of the stolen vehicle and its occupants, neither deputies nor medical personnel could provide medical attention to its lone surviving occupant until extrication procedures were undertaken. Deputies stood by with the driver of the other vehicle and monitored her condition until the arrival of medical personnel. The audio, video, and written evidence indicated SDSD sworn personnel exercised due diligence and considered the safety of themselves, the occupants of the stolen vehicle, and the general public during the entire situation. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of SDSD sworn personnel.

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## **18-054**

1. Misconduct/Procedure – Unidentified deputies failed to respond to a complaint about video cameras at Las Colinas Detention and Reentry Facility.

### Recommended Finding: Unfounded

Rationale: The complainant expressed her concerns regarding the “electronic magnetic cameras” that were set-up in the housing units. She informed deputies that the video recordings were a form of intimidation and “inmate terrorizing.” According to the San Diego Sheriff’s Department (SDSD) Detention Services Bureau Policy and Procedure (DSB P&P) Section I.19, entitled, “Facility Closed Circuit Television (CCTV),” Each facility equipped with closed circuit television cameras and monitors will ensure proper placement for viewing purposes. This equipment will be used for surveillance only. It is common knowledge that surveillance camera use in a jail facility is to assist deputies with security, operations, and management within the jail. The use of CCTV in the jails promotes safety and security, not only for inmates, but for jail staff as well; they assist in maintaining the integrity of the department by monitoring staff. Having CCTV within the jails allows the deputies to monitor and better manage inmates without

having to be in direct contact with the inmates. The unidentified deputies responded to the complainant's complaint by providing her with an Internal Affairs complainant form. The evidence showed that the deputies did respond to the complainant's complaint by providing her a complaint form. The alleged act or conduct did not occur, as such, this allegation was unfounded.

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### **18-059**

1. Misconduct/Procedure – The complainant did not receive emails and/or responses to Court correspondence while in custody.

Recommended Finding: Summary Dismissal

Rationale: The complainant reported that he believed the mail was somehow being “affected” in some cases because emails were not delivered and he did not get a response from the South County Courthouse. The complainant did not produce any evidence to support his theory and he failed to submit an Inmate Grievance while in custody to address this issue. Sheriff's records documented 94 incoming emails to the complainant beginning on 07-22-17 and ending on 03-02-18; the complainant was booked into custody on 07-18-17, and transferred to prison on 03-08-18. As there was no prima facie showing of misconduct, this allegation was referred for Summary Dismissal.

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### **18-074**

1. Misconduct/Retaliation - Deputy 1 had a grudge and retaliated against the complainant based on a prior case from 2016.

Recommended Finding: Unfounded

Rationale: The complainant stated that he was charged with carjacking in 2016, which then became kidnapping, false imprisonment and auto theft. The case “got dropped” and the complainant pled to a misdemeanor. He believed that Deputy 1 has some type of grudge for him. The complainant also said Deputy 1's actions were retaliatory. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. There was no evidence to show that Deputy 1 had a grudge or retaliated against the complainant and therefore the allegation was unfounded.

2. Misconduct/Procedure - Deputy 1 offered the mother of the complainant's children money to provide the deputy with the complainant's whereabouts.

Recommended Finding: Action Justified

Rationale: The complainant stated that while talking with the mother of his children Deputy 1 offered her money in efforts to coerce her to give up his whereabouts. The complainant doesn't believe the offer of money was “okayed” through the proper chain of command. Police use various tactics in order to gain information from witnesses and suspects. SDSD P&P Section 3.30 entitled, “Sheriff's Special Funds,” states the following: “Payments will only be made to informants that have been properly documented and are currently in “active” status.” According to the Department of Inspectional Services (DIS), it is standard practice to offer money to informants for information. An offer is not a promise of funds. If the informant accepts the offer, the detective or deputy would go to his supervisor to get it cleared and authorized. Then the detective or deputy would need to fill out proper paperwork to get the informant signed up. The complainant's mother of his children was only offered money for information, which she refused to accept, so there was no exchange of funds and therefore no violations of policy or procedure. Evidence showed that Deputy 1's actions were lawful, justified and proper.

3. Misconduct/Discourtesy - Deputy 1 “slandered” and made “retaliatory” comments about the complainant.

Recommended Finding: Unfounded

Rationale: The complainant stated, according to a friend of his, Deputy 1 “slandered” and made “retaliatory comments” towards him. Also while speaking to the mother of his children the deputy allegedly “slandered” him continuously and told her she should not be in a relationship with him. Numerous attempts were made to contact the complainant's friend at the number provided in the police report. She returned one voice mail and left a message. After multiple follow up calls, voicemails and texts, no contact was made. Police use various techniques in order to gain information from witnesses and suspects. The SDSD Detective Procedures Manual, Section E.2, in effect at the time of the allegations describes interviews and interrogations. Interrogations can be used when questioning witnesses and informants. One of the objectives is to develop information which will lead to the recovery of stolen



property. Another objective is to learn the facts and circumstances surrounding a crime. There were no policies or procedures limiting or prohibiting certain lines of questioning. According to a phone interview, with the mother of the complainant's children, she felt nothing that was said by Deputy 1 was a "big deal." Therefore there was no evidence to show that Deputy 1's statements about the complainant were "slander" or "retaliatory" and the allegation is unfounded.

4. Misconduct/Procedure - Deputy 1 issued a "be on the lookout" (BOL) for the complainant with a prior booking photo when he was not authorized to do so.

Recommended Finding: Action Justified

Rationale: The complainant stated that Deputy 1 put out a bulletin with a previous booking photo when he was not authorized to do so. A bulletin commonly referred to as a BOL was issued on 10-16-17 for the complainant in reference to a vehicle allegedly stolen on 10-14-17. This BOL was disseminated to law enforcement only and was not issued to the public. A copy of the bulletin was provided to our office. Section 7.6 of the SDSD P&P stated that "Only authorized Sheriff's Department personnel shall access Law Enforcement computer information. Information derived from this source shall only be used within the course of official duties as designated by the Sheriff's Department." In this matter Deputy 1 utilized a booking photo on file with the SDSD. An arrest report showed Deputy 1 prepared the BOL and sent it to all North County law enforcement agencies and posted it on the Vista e-briefing web page. Section 2.37 of the SDSD P&P stated "Information regarding official business shall be disseminated only to those for whom it is intended, in accordance with established Departmental Procedures." The BOL was only disseminated to law enforcement as specified on the bulletin. There was no violation of any policy or procedure and therefore the use of the complainant's prior booking photo by Deputy 1 was lawful, justified and proper.

5. Misconduct/Procedure – Deputy 1 had no basis for stating on the BOL that the complainant was "possibly in possession of a stolen firearm. He should be considered armed and dangerous".

Recommended Finding: Unfounded

Rationale: The complainant stated that a bulletin, commonly referred to as a BOL, had in red letters that the complainant "is possibly in possession of a stolen firearm. He should be considered armed and dangerous". He further stated there was absolutely no basis in his synopsis on the BOL to back up this information. The BOL, a copy of which was provided to CLERB, was issued on 10-16-17 for the complainant in reference to a vehicle stolen on 10-14-17. This BOL was disseminated to law enforcement only and was not issued to the public. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Since the evidence showed there was a basis for the use of the verbiage in the BOL, the allegation was unfounded.

6. Misconduct/Procedure - Deputy 1's probable cause for arrest of the complainant was not signed by a judge.

Recommended Finding: Unfounded

Rationale: The complainant did not believe that Deputy 1's probable cause to arrest him was supported by a declaration. So, according to the complainant, the search for him at his residence, where he stayed with the mother of his children, was invalid. On 10-17-17, Deputy 1 issued a BOL that listed the complainant as a suspect from the stolen vehicle incident. According to an arrest report Deputy 1 also spoke with the Deputy District Attorney (DDA) about the case. The deputy told the DDA he believed there was probable cause for the arrest of the complainant. The DDA agreed with the deputy. No warrant was issued and a probable cause declaration for warrantless arrest was provided to the judge after the complainant's arrest. No warrant was needed prior to the complainant's arrest since probable cause was determined by Deputy 1 and the DDA. Therefore evidence showed this allegation was unfounded.

7. Misconduct/Procedure – Unidentified deputies searched the complainant's residence without a warrant or probable cause.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated the search for him at his residence was invalid. Evidence showed that Oceanside Police Department conducted the search of the complainant's residence and his subsequent arrest. As CLERB has no authority over Oceanside Police Department per CLERB Rules & Regulations 4.1 Citizen Complaints: Authority, CLERB lacks jurisdiction.

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**18-096**

1. Criminal Conduct – Unidentified deputies assaulted the aggrieved and denied her medical attention after the incident.

Recommended Finding: Summary Dismissal

Rationale: CLERB received a signed complaint on 07-12-18 regarding two incidents. One occurred on 05-31-17 and the other on 06-08-17. The complainant was advised of the tolling exemptions and provided paperwork showing that the aggrieved was taken to a hospital on 06-08-17 on a 5150 hold. Even with the aggrieved being under the care of the hospital until approximately 06-19-17 it was not enough to toll the matter to place it under CLERB's jurisdiction. The Review Board lacks jurisdiction because it cannot take any action in respect to complaints received more than one year after the date of the incident giving rise to the complaint.

2. False Arrest – Unidentified deputies arrested the aggrieved.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

3. False Arrest – Unidentified deputies detained the aggrieved on Welfare and Institutions code 5150 hold.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

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***End of Report***