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County of San Diego
CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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

REGULAR MEETING AGENDA
TUESDAY, SEPTEMBER 13, 2016, 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 to the Administrative Secretary prior to the commencement of the meeting.

DISABLED ACCESS TO MEETING

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

WRITINGS DISTRIBUTED TO THE BOARD

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

1. ROLL CALL

2. MINUTES APPROVAL

- a) Minutes of the June 2016 Regular Meeting (*Attachment A*)

3. PRESENTATION / TRAINING

- a) N/A

4. EXECUTIVE OFFICER'S REPORT

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

5. NEW BUSINESS

- a) 2014 Annual Report

6. UNFINISHED BUSINESS

- a) Executive Officer pending items: the 2015 Annual Report, Rules & Regulations updates, Records of Misconduct and Review Board questions from the May 10, 2016 meeting.

7. BOARD MEMBER COMMENTS

8. 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 three minutes.

9. SHERIFF / PROBATION LIAISON QUERY

10. CLOSED SESSION

- a) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (23)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

14-061

- 1. Death Investigation/Suicide – Inmate Christopher Carroll used a sheet tied to a bed frame to commit suicide.

Recommended Finding: Action Justified

Rationale: During the booking intake process on June 14th, 2014, Carroll was evaluated by medical personnel; he provided no indication of suicidal ideation during the medical and classification assessments. Two days later, Carroll requested psychiatric services and medical personnel assigned an Urgency Level of 4, indicating he would be referred for psychiatric evaluation within 4 days. Carroll was classified and housed alone in Administrative Segregation due to his physical and medical conditions, as well as his inability to get along with others. On June 18th, Deputy 1 spoke with the decedent at 11:45 a.m., when Carroll inquired about his dayroom time. Approximately 40 minutes later, Deputies 1 and 2 were conducting a security check and discovered his body hanging from a noose; a suicide note was also left in the cell. Life-saving measures were initiated by the deputies and taken over by medical personnel. Death was later pronounced and a medical examiner listed the cause of death as hanging, and the manner of death was classified as a suicide. A review of Sheriff's records and video surveillance determined that deputies conducted security checks in compliance with Policy & Procedures and followed protocol for medical emergencies.

15-002

1. Death Investigation/Suicide – Inmate Jason Stey was found unconscious and hanging from his bunk during a security check.

Recommended Finding: Action Justified

Rationale: The decedent was arrested and booked into custody for a high-profile sexual crime on January 5, 2015. The following day, during a security check, Deputy 2 found Stey with a sheet around his neck, and slumped forward in a sitting position in front of his bunk. The sheet was cut from Stey's neck and he was lowered to the floor by Deputies 1, 2, and 3 who determined that he was not breathing and unresponsive. Cardio Pulmonary Resuscitation was initiated by deputies and medical staff, followed by the Fire Department and paramedics who took over medical aid. Stey was transported to a hospital, then flown via Life Flight for critical care. Stey was pronounced deceased on January 6 at 10:10 pm, and an autopsy later determined the cause of death was hanging, and the manner of death was suicide. Toxicology results confirmed the presence of Cannabinoids. The evidence showed that the decedent was properly classified and that security measures and life-saving efforts made by deputies were within policy and procedure.

15-051

1. Illegal Seizure- Deputy 1 allegedly detained the complainant without cause.

Recommended Finding: Sustained

Rationale: The complainant alleged that Deputy 1 detained her as she re-entered a detention facility for a scheduled visit. Deputy 1, the facility Visit Deputy, had reviewed the Sheriff's Jail Information Management System (JIMS) and noted the complainant's previous arrest for possession and being under the influence of a controlled substance. As the complainant re-entered the facility, Deputy 1 reportedly initiated a consensual contact because of the prior history, and he also observed that the complainant was in possession of a purse, an item prohibited from the visit area. Department Policy and Procedure P.9, Social Visiting, authorizes deputies to run the visitor's name through the wants/warrants system for security purposes. Deputy 1 reported that the contact was consensual, and said the complainant was free to leave at any time. The complainant stated she asked Deputy 1 why she had been stopped, why she was being mistreated, and at one point overtly objected to the contact. For an investigative stop or detention to be valid, reasonable suspicion is needed to show that criminal activity may be afoot, and the person about to be detained is connected with that possible criminal activity. The complainant unwillingly conceded to the Deputy 1's authority because she did not feel free to leave, and the consensual contact transitioned into an unlawful detention. The evidence supported the allegation and the act was not justified.

2. Illegal Search – Deputy 1 allegedly searched the complainant's person and property.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 searched her person and her purse. Deputy 1 reported that he did a pat-down search of the complainant, with negative results. Per Deputy 1, the complainant consented to the search of her purse, a search which revealed cigarettes and a cell phone; items that are not permitted in the visit area. Signage posted on the detention facility door warns, "All persons, parcels, briefcases and other items entering the facility are subject to search," and facility Green Sheet, P.9.C.1, Social Visiting, states that all "Social visitors will be expected to submit to a pat-down and/or property search (at the discretion of the Visit Deputy) prior to entering the visit area." The investigation showed that Deputy 1 conducted pat-down and property searches per department policies and procedures, and the acts were lawful, justified and proper.

3. Misconduct/Procedure – Deputy 1 allegedly took pictures of the complainant's face and tattoos.

Recommended Finding: Sustained

Rationale: The complainant alleged that Deputy 1 took pictures of her face and tattoos. Deputy 1 reported that he took photographs of the complainant to complete a Field Interview Report, citing the complainant's prior arrest record and recent citation for possession of drug paraphernalia. The complainant initially complied with the photographs, but then objected, reportedly made profane statements to Deputy 1, and raised her middle finger in an obscene gesture, blocking her face. Video surveillance showed the complainant's initial compliance and then her objection as she raised her hand to block her face. Case law permits those that are lawfully detained to submit to being photographed for identification purposes. However, detaining someone for the purpose of obtaining information about them, or photographing them, is illegal unless there is a specific basis for believing the person is involved in criminal activity. Case law also acknowledges that Field Interview Reports perform a legitimate law enforcement function, if done expeditiously and in an appropriate manner after a lawful stop. Detaining someone for the purpose of obtaining information about them, or photographing them, is not authorized unless there is a specific basis for believing the person is involved in criminal activity. The investigation showed that Deputy 1 contacted the complainant as she re-entered the detention facility and took photographs of her prior to her release; however, there was no evidence that the complainant had committed or was presently involved in criminal activity. Deputy 1 retained the complainant's identification until after the photographs were taken, which required her to remain until the identification was returned. Once the complainant's identity had been verified for the visit, and the search of her property was completed, she should have been allowed to leave the facility. Therefore, the evidence supported the allegation and the act was not justified.

4. Misconduct/Procedure – Deputy 1 allegedly did not provide the complainant with his identification.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that she asked Deputy 1 for his badge number and he merely pointed to his badge. Deputy 1 reported that he provided the complainant with his name, pointed to his badge, and then verbally stated his badge number. Sheriff's Department Policy and Procedure, 2.20, Identification, requires deputies to furnish their first and last name and ARJIS number to any person requesting that information, except when the withholding of such information is necessary for the performance of police duties. There were no independent witnesses, nor was there any audio or video evidence to prove or disprove the allegation.

5. Misconduct/Procedure – Deputy 1 allegedly cancelled the complainant's inmate visit.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 cancelled her inmate visit. The complainant reentered detention facility with items which were not permitted in the visit area. Deputy 1 reported that the complainant became increasingly uncooperative during the contact, and stated that when the complainant used profanity and made an obscene gesture, he decided to cancel the scheduled visit. Social visits in San Diego detention facilities are considered a privilege, and any violation of rules by a visitor may subject them to loss of visiting privileges. The investigation showed that Deputy 1 cancelled the complainant's visit in accordance with department policies and procedures.

15-053

1. Illegal Seizure- Deputy 1 allegedly detained the complainant without cause.

Recommended Finding: Sustained

Rationale: The complainant alleged that Deputy 1 detained him without cause as he waited to pick up an inmate being released from Sheriff's custody. Deputy 1 reported he contacted the complainant for safety reasons after he was observed leaning over the rail of the 1st Floor Mezzanine, and attempted to determine the reason the complainant was at the jail facility. There was miscommunication and misunderstanding over the pronunciation and identification of the individual for whom the complainant said he was waiting. The complainant said that more than once he provided the proper name of the individual being released, but Deputy 1 could not understand the name, and asked the name again and again. Deputy 1 said that he was unsure of the complainant's response, and when he asked again the complainant became aggravated, causing him to become

loud and aggressive in his responses. Deputy 1 said he attempted to verify the name, using the mispronunciation, and achieved a negative result. The communications between Deputy 1 and the complainant worsened; Deputy 1 told the complainant to leave the facility, or he would be arrested for trespassing. The complainant acknowledged that he was told to leave, but was not given the opportunity before being placed in handcuffs. Deputy 1 decided to detain the complainant because of the refusal to leave had delayed him in his duties, and he believed the complainant was trespassing on jail property. The complainant was ultimately released and escorted out of the facility. For a detention to be valid, reasonable suspicion is needed to show that criminal activity may be afoot, and the person about to be detained is connected with that possible criminal activity. The complainant had a legitimate reason for being at the jail facility, and he had given Deputy 1 no reason to believe that he was trespassing. A Department Information Source revealed that the individual the complainant had come to meet had been in custody, and released shortly after the complainant was escorted out of the facility. The investigation supported the allegation, and the detention was not justified.

2. Excessive Force – Deputy 1 allegedly pulled the complainant’s arms behind his back and pushed him into a wall.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 pulled him roughly while trying to bring his arm behind his back, and forced him up against the wall. Deputy 1 reported that he had decided to detain the complainant, and placed the complainant’s right arm behind his back, when he experienced some resistance. The complainant complied when Deputy 1 ordered him to place his left arm behind his back or force would be used. Surveillance video did not capture the actions needed to place the complainant in handcuffs; video available did not show any excessive force was used to move the complainant toward the wall. There were no independent witnesses to this event; and, there were two periods where Deputy 1 and the complainant were not in camera view, leaving insufficient evidence to prove or disprove the allegation.

3. Excessive Force - Deputy 1 allegedly pressed his taser against the complainant’s body and threatened to tase him.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 pressed his taser against him, and threatened to tase the complainant if he resisted. Deputy 1 reported that the complainant resisted his efforts to place him in handcuffs, and he told the complainant that force would be used if he did not comply with instructions. Deputy 1 denied that he unholstered his taser, and there was no video evidence to demonstrate that the taser was or was not used. There were no independent witnesses to this event; and, there were two periods where Deputy 1 and the complainant were not in camera view, leaving insufficient evidence to prove or disprove the allegation.

4. Illegal Search - Deputy 1 allegedly searched the complainant.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 searched him during the contact. Deputy 1 reported that he did conduct a pat-down search of the complainant for weapons and contraband, with negative results. All persons entering jail facilities are made aware that they are subject to search. Signage posted on the jail entry warns, “All persons, parcels, briefcases and other items entering the facility are subject to search.” The investigation showed that Deputy 1 did search the complainant, and the act was lawful, justified and proper.

5. Misconduct/Procedure – Deputy 1 allegedly took the complainant’s picture without his consent.

Recommended Finding: Sustained

Rationale: The complainant alleged that Deputy 1 took pictures of him during the contact without his consent. Deputy 1 acknowledged that he took photographs of the complainant to document the contact in a Field Interview Report. Deputy 1 initially contacted the complainant to ensure his safety, and then suspected the complainant of trespassing in the jail facility when he refused to leave. Case law acknowledges that Field Interview Reports perform a legitimate law enforcement function, if done expeditiously and in an appropriate manner after a lawful stop. Detaining someone for the purpose of obtaining information about them, or

photographing them, is not authorized unless there is a specific basis for believing the person is involved in criminal activity, and there was no evidence to demonstrate that the complainant had committed, or was presently involved in criminal activity which would allow for the documentation in a Field Interview Report. Therefore, the evidence supported the allegation and the act was not justified.

6. Misconduct/Procedure – Deputy 1 allegedly failed to provide the complainant with his identification when requested.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that he asked Deputy 1 for his contact information and badge number. Deputy 1 denied that the complainant asked for his name and identification number. Deputy 1 and two witness deputies denied that the complainant asked for names and identification numbers. Deputy 2 and two other witness deputies reported hearing the request, and attested that Deputy 1 did provide his name and badge number. Sheriff's Department Policy and Procedure, 2.20, Identification, requires deputies to furnish their first and last name and ARJIS number to any person requesting that information. There is a dispute as to whether Deputy 1 provided his name and identification when requested. There were no independent witnesses, nor was there any audio or video evidence to prove or disprove the allegation.

7. Misconduct/Discourtesy – Deputy 2 allegedly responded to the complainant's request for deputy identification by stating, "That's your responsibility to get so if you need a pen there's a 7-Eleven down the street," or words to that effect.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that he asked Deputy 1 for his contact information and badge number and the complete names of all deputies involved, to which Deputy 2 made the alleged statement. Deputy 2 and a witness deputy heard the complainant ask that all deputies write down their names and identification; however, he did not recall making the alleged statement, nor could he attribute the comment to any other deputy, but did hear that the complainant referred to a nearby 7-Eleven. Deputy 1 and other witness deputies denied hearing the alleged statement. There were no independent witnesses, nor was there any audio or video evidence to prove or disprove the allegation.

15-057

1. Misconduct/Procedure – Deputy 3 allegedly entered the complainant's cell and confiscated the complainant's legal papers.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Excessive Force – Deputy 1 allegedly hit the complainant's arm with the food flap slot cover, fists, keys, and/or a pepper spray canister during an 11:13 pm security check on 2/7.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Excessive Force – Deputy 2 allegedly pepper sprayed the complainant.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Excessive Force – Deputies 1 and/or 2 allegedly again hit the complainant’s arm with the tray slot cover, fists, keys, and a pepper spray canister during a 3:50 am security check on 2/8.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

15-061

1. Misconduct/Discourtesy – Deputy 4 allegedly stated over the loud speaker that the complainant’s wife was in the lobby “Suckin’ dick,” or used words to that effect.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 4 stated over the loud speaker that his wife was in the lobby “Suckin’ dick,” or used words to that effect. Deputy 4 denied this allegation, stating that due to the nature of the inmates housed in Administration Segregation, he never uses the loudspeaker and only uses cell intercoms to communicate with inmates. He further reported that in the performance of his duties, he makes it a point not to be hostile or antagonistic toward inmates and had no recollection of speaking with the complainant at any time about his family. Other detentions staff on duty in the complainant’s housing module the day of the alleged incident denied hearing the alleged statements over the intercom system. Absent an audio recording of this alleged statement, there is insufficient evidence to either prove or disprove the allegation.

2. Sexual Harassment – Deputy 2 allegedly asked to see the complainant’s penis, and repeatedly made inappropriate sexual comments to him.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that a female sergeant, Deputy 2, repeatedly asked to see his penis and had repeatedly made inappropriate sexual comments to him. Deputy 2 adamantly denied these allegations, stating that she has never made any type of sexual comments to any inmates. Deputy 2 had vague recollections of the complainant and recalled him to be very angry, manipulative, disgruntled and a chronic complainer. Deputy 2 stated that she was a professional who conducts herself according to the department’s core value of integrity. There is no audio recording or independent witness to these alleged comments, leaving insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Procedure – Deputy 5 allegedly gave the complainant’s books to other inmates without his permission.

Recommended Finding: Not Sustained

Rationale: The complainant could not identify the deputies alleged to have been involved with giving his books to other inmates, nor the dates and times when these alleged infractions occurred. There is, therefore, insufficient evidence to either prove or disprove the allegations.

4. Misconduct/Procedure – Deputy 3 allegedly failed to retrieve the complainant for transportation to court and falsely stated that the complainant refused to go.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 3 came to his cell to retrieve him for transportation to court, “hung out” for a few minutes and then left, falsely reporting that the complainant refused to go. Deputy 3 vaguely recalled this incident, but recalled that the complainant was agitated when contacted for court and claimed that he was not given enough time to get ready for court, despite the House 5 practice of affording inmates an hour of preparation time before being retrieved for court. Numerous attempts were reportedly made to gain compliance from the complainant, but he reportedly stated that he was not going to court and he was not letting deputies take him anywhere. Deputy 3 denied that he falsely reported that the complainant refused to go to court. In the absence of an audio recording of this contact or independent witnesses, there is insufficient evidence to prove or disprove the allegation.

5. Criminal Conduct – Deputy 1 allegedly threatened to kill the complainant and “mess with” his food.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 threatened to kill him and to “mess with” his food. Deputy 1 denied these allegations, stating that he did not threaten to kill the complainant, nor would he threaten to kill any person. Deputy 1 reported that he conducted himself professionally and with fairness, and had no reason to bad mouth inmates or make threats toward them. There is no audio recording of these alleged threats and therefore insufficient evidence to either prove or disprove the allegation.

15-066

1. Misconduct/Procedure – Deputy 1 allegedly threw the complainant’s property in the trash.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that he saw inmate workers gather his property under Deputy 1’s supervision, and he never saw his property again. Deputy 1 reported that the complainant’s property became wet after his cell was flooded, and he directed inmate workers to gather the property and place it in a room in the housing module. Two days after the cell flooding incident, the complainant was relocated to Enhanced Observation Housing, and reports documented that his property was placed in the Medical Control Station; the investigation was unable to determine if the property placed in the Medical Control Station was the same property collected in the initial incident. There was no video evidence or documentation to show that the complainant’s property was thrown in the trash; however, there also was no evidence to show that it was ever returned to the complainant. The complainant failed to respond to U.S. Mail inquiries to clarify details of his complaint, and the telephone numbers provided are no longer in service. There was insufficient evidence to prove or disprove the allegation.

2. Excessive Force – Deputies 1 and 2 allegedly used excessive force to remove the complainant from his cell.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputies 1 and 2 used excessive force to remove him from his cell, twisting his ankles causing injury. Deputy 1 reported that the complainant was compliant when handcuffed and directed to leave his cell, and there was no need to use force. There was no video evidence or independent witnesses to show that the complainant was removed from his cell, with or without force. The complainant failed to sign a medical release, preventing any investigation into the alleged injuries or responding medical care. There was insufficient evidence to prove or disprove the allegation.

15-067

1. Discrimination/Gender – The complainants alleged that transgender inmates have been segregated from general population inmates.

Recommended Finding: Action Justified

Rationale: The complainant alleged that transgender inmates have experienced discrimination in housing assignments. The Prison Rape Elimination Act (PREA) requires all inmates to be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates. PREA also prohibits lesbian, gay, bisexual, transgender, or intersex inmates’ assignments in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such placement is for the purpose of protecting such inmates. Department Policy and Procedure 6.127, Prison Rape Elimination Act, is in conformance with PREA requirements, wherein Classification Deputies are directed to ask detainees for their own perception of vulnerability during intake, and to consider the detainee’s physical characteristics (build and appearance), age, previous assignments to specialized housing, alleged offenses and criminal history, or concerns expressed by the detainee. As a safety precaution, transgender inmates in Sheriff’s custody have been assigned protective custody status. During four of the five months

leading up to the complaint, classification deputies accommodated the primary complainant's housing requests with assignment to general population protective custody housing in four different housing modules at three separate detention facilities. The complainant's most recent assignment to specialized housing occurred only after other housing options, with the exception of administrative segregation, had been exhausted. During intake interviews of co-complainants, Classification Deputies reported that the inmates feared for their safety during previous periods in county custody, which resulted in their assignment to the specialized housing unit. As with the primary complainant, other transgender inmates have been assigned in housing assignments other than the specialized housing unit. In April 2016, transgender inmates assigned to the specialized housing unit were relocated to general population protective custody housing, and new inmates have since been assigned to available general population protective custody housing. Complainants were individually assessed and placed in the most suitable housing, with consideration to individual needs and the ability to maintain facility security. The evidence showed that transgender inmates have been classified as required by PREA and Department Policies and Procedures, and have been assigned to not only a specialized housing unit, but also assigned to general population protective custody units in multiple detention facilities.

2. Discrimination/Gender – The complainant alleged that transgender inmates are not allowed to participate in programs while in custody.

Recommended Finding: Summary Dismissal

Rationale: The complainant alleged that programs such as religious services, GED, education, and domestic violence classes were not available to transgender inmates because of their housing assignment. Department Green Sheet T.21.G, General Educational Development and Educational Programs, states inmates housed in specialized housing (i.e. Medical, SIM, PC and ADSEG) regardless of their classification will not be allowed to attend educational/recovery programs per the Correctional Counselors. Transgender inmates experienced some restrictions on program participation, not because of their transgender status alone, but because of their protective custody classification and housing assignment. According to a Department Information Source, programs specifically offered to the specialized medical housing unit included: religious services, transgender spiritual services, Affordable Care Act Workshops, Veterans Workshops, and Project in Reach (substance abuse); additionally, each inmate had access to counselors if in need of assistance. Since April 2016 transgender inmates have been assigned to general population protective custody housing, and while the new housing will allow access to more programs, the protective custody classification has its own inherent limitations. Inmates still must be screened to determine if there is any perceived security risk due to their classification. Acceptance into educational, vocational, volunteer/community-based program (AA, Planned Parenthood, etc.), and rehabilitative programs (anger management, substance abuse education, etc.) fall under the auspices of Correctional Counselors, over whom CLERB has no jurisdiction, and these counselors are ultimately responsible for determining the accessibility of inmate programs. Therefore, such complaints are referred to the Review Board for Summary Dismissal, pursuant to CLERB Rules & Regulations: Section 9: Investigation of Complaints; Subsection 9.2: Screening of Complaints.

3. Misconduct/Procedure – Deputy 3 allegedly failed to respond to the complainant's grievances pertaining to segregated housing and the lack of programs.

Recommended Finding: Sustained

Rationale: The complainant alleged that Deputy 3 repeatedly failed to respond to numerous grievances pertaining to separate housing of transgender inmates and their lack of programs. Grievances filed during the period July 3-8, the first of which stated the complainant had, "...continuously submitted grievances to return to mainline PC," were accepted on July 8, assigned one grievance number, and forwarded to Classification. There were no documented grievances located submitted prior to July 3, 2015. Further documentation indicated that facility Administration and Counseling would be notified to address programming matters, and SDSO (Sheriff's) Command would address housing matters with Sheriff's Legal. The grievances were received and documented as required by Department Policies and Procedures N.1, Grievance Procedures; however, the grievance report showed that the matter had been forwarded to Classification for further action. The evidence supported the allegation in that there was no record to show that the grievances were resolved to the complainant's satisfaction, or that the complainant received any response from the department relative to the housing assignment or limited programming access.

4. Misconduct/Procedure – Deputy 1 allegedly made inappropriate comments to the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 commented that the complainant was moved into a new housing unit, "...to get laid," and claimed he was the, "...dorm sex toy," or words to that effect. The complainant also submitted a grievance about the conduct, but was unsure of the exact date the statements were made. Deputy 1 denied making the statements on a specific date because he was not working, and further stated that he would not make any such statements. A witness deputy denied hearing Deputy 1 or any deputy make the alleged comments. Because the date of the incident could not be determined, there were no independent witnesses available, and no video/audio evidence, the allegation could not be proved or disproved.

5. Misconduct/Procedure – Deputy 3 allegedly failed to provide emergency medical assistance to the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant alleged Deputy 3 failed to provide emergency medical assistance after the complainant suffered an injury and waited hours before being seen by a medical doctor. There were no Jail Information Management System (JIMS) entries to document the complainant's reported medical emergency. The complainant's assigned housing unit was located within the facility medical area, and in close proximity to both the Deputy Control and Nurse Stations. Medical records documented that an attending nurse responded to a "man down," and referred the complainant to, "MDSC (*Doctor Sick Call*) immediately." The same responding nurse recalled adding the complainant to the Sick Call list, and advised oncoming medical personnel of the referral; however, the nurse could not remember if any deputy was advised to move the complainant from housing to MD Sick Call. Deputy 3 did not recall being told by medical personnel that the complainant needed to be escorted to sick call. Approximately four hours after the incident, the complainant submitted a grievance stating he should have been taken for medical evaluation, and less than one hour later the complainant was evaluated by a medical doctor. There was insufficient evidence to prove or disprove that Deputy 3 delayed medical attention or were told to take the complainant for medical evaluation.

6. Misconduct/Discourtesy – Deputy 2 allegedly yelled at the complainant saying, "You fucking called IA," or words to that effect, and stated, "We should throw you in ADSEG," or words to that effect.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 2 used profanity, stating, "You fucking called IA," and, "We should throw you in ADSEG," or words to that effect. Deputy 2 did not recall the contact or making any such statements. There was no independent witness available or video/audio evidence to support the allegation. There was insufficient evidence to prove or disprove the allegation.

15-070

1. Illegal Search or Seizure - Deputy 4 allegedly towed the complainant's vehicle.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. False Arrest – Deputy 6 arrested the complainant.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Illegal Search or Seizure – Deputy 6 allegedly confiscated the complainant’s cell phone and it has not been returned.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. False Arrest –Deputy 2 arrested the complainant.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

5. False Arrest – Deputy 3 arrested the complainant.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Illegal Search or Seizure – Deputy 1 allegedly confiscated the complainant’s cell phone it has not been returned.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

7. False Arrest – Deputy 5 arrested the complainant.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

15-072

1. Criminal Conduct - Deputy 1 allegedly watched the complainant masturbate on or about May 3, threatened to discipline the complainant if he did not catch him masturbating, and continued to sexually harass him.

Recommended Finding: Unfounded

Rationale: The complainant alleged that Deputy 1 “would stare and watch [him] masterbate, would threaten to write me [him] up for various offenses if he did not catch him masterbating,” and continued to sexually harass him during the period May 3-July 23. On the date of the alleged incident, the complainant was reported to have thrown liquid through a cell door food flap; liquid that made contact with the Deputy 1’s uniform and soaked to his skin. Deputy 1 documented the incident in a Rule Violation Report resulting in a disciplinary hearing. Subsequent to the disciplinary hearing, the complainant filed a grievance, stating that Deputy 1 had entered his cell and sexually assaulted him. In a later interview the complainant admitted to throwing water at Deputy 1 through the cell door food flap. Deputy 1 denied that he ever saw the complainant masturbating, or had made the alleged threats. Video evidence showed that no deputy entered the complainant’s cell at the time of the alleged harassment or assault; and, there was no medical evidence to support that a sexual assault occurred. The complainant also alleged that Deputy 1 continued to harass him throughout the remainder of his incarceration, an allegation that Deputy 1 denied. The inconsistency of the statements in the complaint and criminal investigations, combined with evidence disproving entry into the complainant’s cell, raise question as to the validity of the allegations and seriously impugn the complainant’s credibility. Based on the complainant’s lack of credibility, and video evidence which showed that Deputy 1 did not enter the complainant’s cell, it was determined that the alleged acts did not occur.

2. Excessive Force – Deputy 2 allegedly used excessive force while returning him to his cell after an interview, injuring his rotator cuff.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that he was physically assaulted by Deputy 2. Deputy 2 acknowledged that

it was necessary to use arm guidance while escorting the complainant. The Department's Use of Force Guidelines allows for the use of arm guidance or a firm grip to overcome resistance; however, there was no video evidence or independent witness to corroborate the amount of force used escort the complainant. Medical records did not reveal any injury which could be attributed to the allegation. There was insufficient evidence to prove or disprove the allegation.

3. Criminal Conduct - Deputy 3 allegedly entered the complainant's cell on May 14 and demanded oral sex.

Recommended Finding: Unfounded

Rationale: The complainant alleged that Deputy 3 entered his cell and demanded that he "perform oral sex on him." Two days later, the complainant filed a grievance alleging that Deputy 3 had "sexually assaulted" him. In a follow-up interview, the complainant stated that Deputy 3 stepped into his cell, put pepper spray to his head and demanded oral sex, or he would be pepper sprayed. Deputy 3 acknowledged that while he was outside the complainant's cell, the cell door opened briefly so that he could remove trash from the cell with a broom. While the cell door was open, he responded to the complainant's questions about an Inmate Request, but denied making any sexual demands. Deputy 3 also reported that he never entered the complainant's cell as alleged, a fact which was affirmed by video evidence. The inconsistency of the statements in the complaint and criminal investigations, combined with evidence disproving entry into the complainant's cell, raise question as to the validity of the allegations and seriously impugn the complainant's credibility. Based on the complainant's lack of credibility, and video evidence which showed that Deputy 3 did not enter the complainant's cell, it was determined that the alleged acts did not occur.

15-076

1. Excessive Force/Other – Deputy 1 allegedly grabbed the complainant by the arm and wrestled him to the ground.

Recommended Finding: Action Justified

Rationale: The complainant alleged that he was grabbed by the arm and thrown to the ground, causing injury to his shoulder. Deputy 1 reported that the complainant was being processed through the jail intake sally-port, when he became uncooperative and refused to follow instructions of the arresting officers. The complainant's cooperation deteriorated as he squared off toward the arresting officers and aggressively pointed his finger at one of the officers. The complainant initially complied with Deputy 1's orders to face the wall and cooperate, but then began to actively resist. Deputy 1 grabbed the complainant in a headlock and took him to the ground. Video evidence supported Deputy 1's report, and showed the complainant's uncooperative and active resistance, resulting in the use of force. The amount of force reported and observed was reasonable and necessary per Sheriff's Detentions Policy and Procedure I.89, Use of Force, and in compliance with department policy. The act did occur, but was lawful, justified and proper.

2. Excessive Force/Fists – Deputy 1 allegedly hit the complainant five times in the face.

Recommended Finding: Action Justified

Rationale: The complainant alleged that he was hit five times in the face, causing injury. Deputy 1 reported that, once taken to the ground, the complainant put his hands under his body and continued to resist. In order to gain compliance, Deputy 1 punched the complainant 3-4 times in the face in order to get the complainant to release his arms so he could be handcuffed. Sheriff's Department Policy and Procedure, Addendum F Section, Use of Force Guidelines, permits the necessary and objectively reasonable use of force, including fist strikes to a subject's head, in order to overcome resistance. Video evidence showed that the complainant was uncooperative and actively resisted deputy control; Deputy 1 hit the complainant twice, paused, and then hit him again three more times after which the complainant became compliant. The complainant was placed on a gurney, evaluated by medical personnel, and transported to a sobering cell. The act did occur, but was lawful, justified and proper.

15-081

1. Excessive Force – Deputies 2, 3, 5 and 6 allegedly punched and kicked the complainant while he was in leg and waist chains.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputies 2, 3, 5 and 6 punched and kicked him during a force incident. The complainant was seated in the medical hallway waiting to have his vital signs taken, when he began acting erratically; rocking back and forth in his chair, drooling, grunting, and pointing his finger in the direction of deputies standing near him. Surveillance video showed that the complainant suddenly stood up, and Deputy 1 placed his hand on the complainant's shoulder to seat him. The complainant then suddenly and violently threw approximately 4 punches at Deputy 1, making contact with some of them. Nearby deputies immediately stepped in and wrestled the complainant to the ground, with the complainant landing on Deputy 1. The deputies struggled to control the complainant while he continued to hold on to Deputy 1, who struggled unsuccessfully to extricate himself from the complainant's grasp. During this struggle, Deputies 2, 3, 5 and 6 applied multiple fist and knee strikes to the complainant's face and body until they were able to remove Deputy 1 from the complainant's grasp and control him. Detentions Policy I.89, Use of Force, allows detentions deputies to use any physical force necessary and objectively reasonable in the defense of self or others, and to overcome resistance. Deputies 2, 3, 5 and 6 utilized department approved Use of Force control compliance techniques in order to control a combative subject, and their actions were lawful, justified and proper.

2. Misconduct/Procedure – Deputy 4 placed the complainant into a Safety Cell.

Recommended Finding: Action Justified

Rationale: The complainant reported that he was placed into a safety cell when he was not a danger to himself or others. Following a force incident during which the complainant had violently assaulted Deputy 1 and would not release the deputy from his grasp, Deputy 4 received clearance from medical staff and placed the complainant in a safety cell. Detentions Policy J.1, Safety Cells; Definition and Use, authorizes the placement of inmates in a safety cell when they inflict physical harm on themselves or others, or reveal an intent to do so. The complainant attacked sworn staff, and on several occasions prior to this force incident had expressed a desire to hurt himself. Deputy 4 acted within policy in placing the complainant in a safety cell until he could be seen by a psychiatrist and cleared for release. The act did occur, and was lawful, justified and proper.

15-082

1. Misconduct/Procedure – Deputy 2 allegedly failed to confirm the address of a sought after subject before contacting the complainant.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 2 failed to confirm the address of the operation's targeted subject prior to contacting him, resulting in the complainant's erroneous detention and search of his apartment. The targeted subject was on Post Release Community Supervision (PRCS), pursuant to Penal Code Section 3450, Post Release Community Supervision Act of 2011, and was subject to community supervision which required, in part, that the probationer submit his person, vehicle, residence and property to search, at any time with or without a warrant, and with or without reasonable cause, when required by his Probation Officer or law enforcement officers. Deputy 2 reported that two weeks prior to this Probation Compliance operation in targeted locations in the North Coastal Command area, the sought probationer's address was confirmed by department personnel with his Probation Officer, but was later found to be a falsely reported address. Confirmation with the complex's leasing office was reported not to be a viable option, as the trustworthiness of this information would be questionable, posing risks to officers if leasing office personnel warned targeted subjects of law enforcement's queries. Deputy 2 reported that due diligence was exercised attempting to confirm the probationer's address, and there was a "reasonable belief" that the probationer resided at this reported address. The evidence showed that this act was lawful, justified and proper.

2. Excessive Force – Deputy 3 allegedly pointed a gun at the complainant upon entry into his apartment.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 3 pointed a gun at him upon entry into his apartment. Deputy 3 was the first officer to enter the complainant's apartment during this operation, but denied targeting the complainant with his weapon. Deputy 3 reported that he had his M4 rifle at low ready as he entered the residence, and that the complainant was cooperative, precluding the need to point his rifle at him. There is no surveillance video documenting the deputy's entry into the complainant's apartment, leaving insufficient evidence to either prove or disprove the allegation.

3. Illegal Search & Seizure – Deputies 1, 2 and 4 allegedly searched the complainant's apartment without consent.

Recommended Finding: Action Justified

Rationale: The complainant reported that Deputies 1, 2 and 4 searched his apartment without his consent. Deputies reported that they only conducted a "protective sweep" of the apartment, which is a quick and limited search of the premises, conducted to protect the safety of police officers, and to verify that the targeted subject or any other occupants were not located and possibly hiding in the apartment. Case Law permits protective sweeps to effect an arrest or perform other inherently at-risk duties. Deputies reported that only a limited search of the apartment was conducted to determine if there were other people in the residence, and that this search was in accordance to a probation search which did not require consent. The evidence showed the alleged act did occur, but was lawful, justified and proper.

4. Illegal Search & Seizure – Deputy 3 detained the complainant.

Recommended Finding: Action Justified

Rationale: The complainant alleged that he was detained by Deputy 3 during the search of his apartment. While conducting a protective sweep of the complainant's apartment during a Fourth Waiver Search, Deputy 3 asked the complainant to remain with him in the front room of his apartment, while deputies conducted a protective sweep and searched for the targeted subject. Case Law allows for the brief detention of others present in a residence during a probation search. The complainant was not handcuffed while being temporarily detained, and he was released once his apartment had been cleared. The evidence showed the alleged act did occur, but was lawful, justified and proper.

15-083

1. Misconduct/Procedure – PO 1 allegedly refused to transfer the complainant's case to North County when requested.

Recommended Finding: Action Justified

Rationale: The complainant alleged that PO 1 refused to transfer her case to North County when requested. Per PO 1, he had no recollection or documentation in his contact reports of the complainant making such a request. Additionally, during the time period in which this alleged request was made, PO 1 documented that the complainant had reported living with her mother in the southern area of the City of San Diego, and this residency was confirmed by the complainant's mother. During that same time period, the complainant reported residency at a Motel 6 in Oceanside, but staff reported that the complainant was not a registered guest there. According to PO 1, the complainant had a history of reporting false addresses and had violated the probation condition requiring her to report to probation a change of address within 72 hours. Probation supervises probationers on their verified region of residency; however, the complainant did not have stable, verifiable residency when she reported living in the North County region. During subsequent discussions regarding the complainant's planned residency in the North County region, PO 1 informed the complainant that her case would be transferred to that area once she could provide verifiable, stable residency. The evidence showed that the act did occur, but was within policy.

2. Misconduct/Procedure – PO 1 allegedly refused to provide paperwork to the complainant required to start her DUI classes.

Recommended Finding: Action Justified

Rationale: The complainant alleged that PO 1 refused to provide her the requisite paperwork to start her DUI classes. PO 1 reported and documented in his contact report, that he provided the complainant a referral to the SB38 DUI program during their 3/9/2015 appointment, and directed her to enroll in the program by 4/09/2015. On 3/30, the complainant reported to PO 1 that she was enrolled and attending the 18-month SB38 DUI Program in East County. As with regional supervision, probation refers probationers to regional DUI Programs. PO 1 delayed referring the complainant to a DUI Program in the North County area until she obtained a stable, verifiable residence. The evidence showed that the act did occur, but was lawful, justified and proper.

15-084

1. Misconduct/Discourtesy – Deputy 5 allegedly called the complainant an “Idiot.”

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 5 called him an “Idiot” after he voiced his complaints about several issues in the module. Deputy 5 denied this allegation, stating that he did not call the complainant an “Idiot” at any time. Absent an independent witness or an audio recording of this statement, there is insufficient evidence to prove or disprove the allegation.

2. Misconduct/Procedure – Deputy 7 allegedly refused to provide his badge number to the complainant when requested.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 7 refused to provide his badge number when requested. Deputy 7 reported that he had no recollection of the complainant requesting this information, and if asked, he would have provided it, per policy. There were no audio recordings or independent witnesses to any contacts between the complainant and Deputy 7 wherein this alleged request was made and refused, leaving insufficient evidence to prove or disprove the allegation.

3. Misconduct/Procedure – Deputies 2, 4 and 6 allegedly failed to respond to the complainant’s multiple grievances.

Recommended Finding: Action Justified

Rationale: The complainant alleged that unidentified deputies, later identified as Deputies 2, 4 and 6, failed to respond to his multiple grievances. The complainant submitted a 6 page complaint to CLERB in which several grievances were made. Inmate Policy N.1, Grievance Procedure, requires that deputies attempt to resolve inmate grievances in a timely manner, and document each grievance and action taken in the Jail Information Management System (JIMS). According to documentation in JIMS, Deputies 2, 4 and 6 responded to the complainant’s grievances, and took action on every grievance listed in the complainant’s letter to CLERB. The evidence showed that the deputies acted in accordance to policy, and their actions were lawful, justified and proper.

4. Excessive Force – Deputy 7 allegedly closed the food flap on the complainant’s hand.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 7 closed the cell door’s food flap on his hand while he was voicing his complaint about a facility lockdown. Deputy 7 denied this allegation, stating that he did not close the food flap on the complainant’s hand. In a report by Deputy 7 written at the time of the alleged incident, he documented that the complainant was yelling and demanding dayroom time during meal pass, and had stuck his arm out through the flap, preventing him from securing it. Deputy 7 reported at that time that he spoke with the complainant about his concerns and exited the module, leaving the food flap open. The food flap was reportedly

later secured by Deputy 3 approximately an hour later, without incident. There was no medical documentation of an injury to the complainant's hand or arm at the time of the incident, leaving insufficient evidence to prove or disprove the allegation.

5. Excessive Force – Deputy 3 or Deputy 7 allegedly placed handcuffs on the complainant too tightly.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 3 or Deputy 7 placed handcuffs on him too tightly. Both deputies denied the allegation, with Deputy 7 reporting that when he places handcuffs on individuals, he always ensures that the tip of his finger can pass underneath the secured handcuff. Deputy 7 did not recall the complainant stating that the handcuffs were placed too tightly. Deputy 3, however, recalled that the complainant complained about the cuffs being too tight while escorting him to medical, and informed the complainant that he would loosen them once they arrived at medical. There remained, however, insufficient evidence to prove or disprove the allegation.

6. Misconduct/Procedure – Deputy 1 allegedly searched the complainant's legal paperwork without him being present.

Recommended Finding: Not Sustained

Rationale: The complainant reported that when he was escorted back to his cell from medical, he observed Deputy 1 in his cell "going through" his legal paperwork. The complainant stated that he informed Deputy 1 and other deputies present that this was illegal and a violation of his rights. Deputy 1 reportedly instructed deputies to escort the complainant to a holding cell while he "collected evidence." Deputy 1 reported that he conducted an unscheduled search of the complainant's cell in response to a report of excess medication being hoarded by the complainant. He did not recall what was specifically searched within the cell, but stated that the search was a thorough and systematic search for weapons and contraband. Absent video surveillance of the cell search, there is insufficient evidence to prove or disprove the allegation.

15-091

1. Excessive Force – Deputy 1 allegedly used excessive force when he elbowed the complainant in the face multiple times, fracturing his jaw.

Recommended Finding: Not Sustained

Rationale: The complainant reported that Deputy 1 twice elbowed him in the face after he yelled for help while being handcuffed. The complainant had been contacted by Deputies 1 and 2 after he was seen riding his bicycle during the late evening hours without a red rear reflector - a violation of California Vehicle Code 21201(d) – and in a location where a series of gasoline thefts had recently occurred. While questioning the complainant, he reached into his right pocket, pulled out a red pocket wrench, and tossed it to the side. Deputy 2 asked the complainant not to reach into his pockets, but when this request was ignored and the complainant reached into his pocket a second time, Deputy 2 decided to handcuff the complainant for officer safety purposes. While attempting to handcuff the complainant, he pulled away and began to get up from the curb where he had been seated, requiring force to control him. The complainant began to yell for help, causing concern, as Deputy 1 believed that the complainant was perhaps trying to alert a criminal associate or companion to rescue him from deputies. Deputy 1 reported that he used his right triceps muscle and struck the left side of the complainant's face 3 times in rapid succession, causing the complainant to cease his resistance. Sheriff's medical records confirmed a mandibular fracture. Pursuant to Policy 6.48, Physical Force, and the Use of Force Addendum, deputies may use any physical force they deem reasonably necessary to overcome resistance and to effect an arrest. Without, however, the benefit of video surveillance or an independent witness, there was insufficient evidence to determine whether or not the force used by Deputy 1 was reasonably necessary.

15-093

1. Excessive Force – Deputies 1, 2, 3 and 5 allegedly “badly beat” the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that he was “badly beaten” by Deputies 1, 2, 3 and 5 while being escorted out of the module. Deputy 3 and Deputy 5 were conducting their nightly security check, when they observed the complainant’s bunk taped with newspaper around it, which is against facility rules, preventing deputies from seeing him and checking on his welfare. When Deputy 3 began removing the newspaper, the complainant reportedly woke up, yelled and cursed at deputies, and stood with clenched fist in Deputy 3’s face. The complainant allegedly threatened deputies, so fearing that the complainant’s behavior would incite other inmates, Deputy 3 removed him from the module and escorted the complainant to a holding cell. The complainant resisted the deputies’ efforts to control him and a use of force ensued. Detentions Policy I.89, Use of Force, allows detentions deputies to use any physical force necessary and objectively reasonable in the defense of self or others, and to overcome resistance. Video reviewed did not show events leading to the use of force and/or was obscured, providing no evidentiary value. Absent a more conclusive video recording of the incident or independent witnesses, there was insufficient evidence to determine the reasonableness of force used, leaving insufficient evidence to prove or disprove the allegation.

2. Misconduct/Procedure – Deputy 4 allegedly placed the complainant “in the hole” for 10 days.

Recommended Finding: Action Justified

Rationale: The complainant alleged that he was badly beaten by deputies, and placed by Deputy 4 “in the hole” for 10 days. A Disciplinary Hearing was held within 48 hours of this use of force incident, during which the complainant was found to be guilty of 3 rule violations: Threatening /Assaulting Staff, Boisterous Activity, and Interfering with Jail operations. Per Detentions Policy O.1, Disciplinary Action, inmates can be placed in disciplinary isolation for a period not exceeding 10 days for violation of facility rules. The complainant was found guilty of 3 rule violations, and placed in disciplinary isolation for a period of 7 days. The disciplinary isolation recommended by Deputy 4 was approved by the Disciplinary Review Officer per Detentions Policy J.3, Segregation, and the actions were lawful and within policy.

3. Misconduct/Medical - Medical staff allegedly failed to provide medical attention for the complainant’s injuries.

Recommended Finding: Summary Dismissal

Rationale: The complainant alleged that medical staff failed to provide him medical attention following a use of force incident. Medical records document that the complainant was seen and treated at the facility’s dispensary immediately following the force incident. That withstanding, pursuant to Section 15: Summary Dismissal; Section (a), the Review Board does not exercise jurisdiction over the subject matter of this complaint.

15-095

1. Excessive Force – Deputy 1 allegedly hit the complainant with his fist while he was handcuffed and shackled.

Recommended Finding: Summary Dismissal

Rationale: Deputy 1 retired in March 2016 and is no longer a member of the San Diego County Sheriff’s Department. The Review Board, therefore, no longer has jurisdiction over the subject matter of the Complaint. CLERB does not have authority to investigate this complaint based upon the following CLERB Rules & Regulations: Section 4: Authority, Jurisdiction, Duties, and Responsibilities of Review Board, Section 9: Screening of Complaints, and Section 15: Summary Dismissal.

2. Excessive Force – Deputy 1 allegedly “kneed” the complainant several times while he was handcuffed and shackled.

Recommended Finding: Summary Dismissal

15-109

1. Illegal Search – Deputy 1 allegedly conducted a body cavity search on the complainant.

Recommended Finding: Summary Dismissal

Rationale: The allegations in this complainant are against members of the San Diego Police Department, over whom the Review Board exercises no jurisdiction. CLERB does not have authority to investigate this complaint based upon the following CLERB Rules & Regulations: Section 4: Authority, Jurisdiction, Duties, and Responsibilities of Review Board, Section 9: Screening of Complaints, and Section 15: Summary Dismissal.

2. Misconduct/Discourtesy – Deputy 1 allegedly stated to the complainant while conducting the cavity search, “They are going to like you in there,” or used words to that effect.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

3. Misconduct/Procedure – Deputy 1 allegedly refused to provide his name and identification information to the complainant, when requested.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

15-111

1. Misconduct/Procedure – Deputy 1 allegedly conducted a pat down search of the complainant, with the side of his hand, into the complainant’s “crack,” on the outside of his clothes.

Recommended Finding: Summary Dismissal

Rationale: The complainant was released from local custody on an unknown date and failed to apprise CLERB of his whereabouts. Attempts to contact him at an out of custody address, and in prison were unsuccessful. The complainant was previously advised that he was obligated to cooperate fully in the investigation and that cases may be submitted to the Review Board for closure for failing to maintain a current mailing address and lack of cooperation. There was no identification of a named member, and the complainant was unavailable for clarification of the evidence produced by the Sheriff’s Department.

2. Misconduct/Discourtesy – Deputy 1 allegedly told the complainant it would be wise to “shut the fuck up.”

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure – Deputy 1 allegedly placed the complainant into isolation as punishment, when he complained about the search.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Procedure – Deputy 2 allegedly laughed at the complainant’s accusations against Deputy 1.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

1. Excessive Force/Taser – Deputies 2 and 3 allegedly threw the complainant to the ground and tasered him twice.

Recommended Finding: Action Justified

Rationale: The complainant reported that even though dazed, when given a command to get down he “proned out” on the ground, but was still tased. The complainant was found not to be credible in his recall of these events. Deputies responded to a minor’s call that his uncle was trying to kill his grandmother and that he had a history of violence. They determined the complainant was the suspect and believed he was under the influence of a controlled substance because his eyes were large, there was blood on his face and he had a blank stare. They began to issue commands for him to get down, but the complainant reportedly replied, “Just shoot me.” The complainant then advanced on deputies who retreated to create distance. When the complainant continued to advance, Deputy 3 deployed a taser that was ineffective. A Taser report corroborated the Deputy’s Report, confirming only one, five-second deployment. The evidence showed that the complainant was not compliant and the deputies’ actions were lawful, justified and proper.

2. Excessive Force – Deputies 1-3 allegedly beat the complainant with their fists, knees, and elbows.

Recommended Finding: Action Justified

Rationale: The complainant reported that he vaguely remembered being beaten for a while until the deputies tired. The complainant was found not to be credible in his recall of these events. Deputy 2 pushed the complainant down, but he attempted to stand and kicked at deputies while they grappled with his legs. The complainant was resistant to instructions and would not reveal his hands. Deputy 2 expended hammer strikes to the complainant’s face, upper chest and stomach, while Deputy 3 attempted palm strikes to the complainant’s face. Deputy 1 punched the complainant with a closed fist on his right abdomen area; Deputy 3 was then able to apply handcuffs. Deputies utilized necessary force against the complainant’s active resistance and assaultive behavior. Strikes are permissible and the deputies’ actions were lawful, justified and proper.

3. Excessive Force/K-9 – Deputy 2 allegedly deployed a K-9 to bite the complainant, before and after being beaten by deputies.

Recommended Finding: Action Justified

Rationale: The complainant stated he was face down on the ground when the dog initially attacked him, and then when deputies grew tired of beating him, the dog attacked again. The complainant was found not to be credible in his recall of these events. Deputy 2’s stated intention was to have his canine available at the scene as a psychological deterrent to any aggressive acts. To prevent the complainant from attacking or fleeing, Deputy 2 deployed a canine to apprehend the suspect. The canine took hold of the complainant’s jacket and pulled. The deputies and complainant all began to struggle with one another. Deputy 2 removed the canine from the complainant’s jacket and redeployed onto his right thigh until deputies assisted in handcuffing the still resistant suspect. The Use of Force Supplemental documented the duration of the canine’s contacts with the complainant as one minute. Law enforcement trained canines are a viable force option when employed under the direction of their handlers according to the department’s Canine Unit Manual, and are used for deputy protection and the apprehension of fleeing subjects.

4. Excessive Force/Kicks – Deputy 3 allegedly kicked the complainant’s body and head with her boot(s).

Recommended Finding: Action Justified

Rationale: The complainant said he remembered the woman taking her boot to him, and taking a few good shots to the head as well. While kicks are permissible, policy dictates that deputies should avoid using kicks to a subject’s head. Deputy 3 denied ever kicking the complainant’s head, but used her foot to kick the outside of his right thigh when hand strikes had no effect. The deputy also placed her knee on the side of his head to gain control so deputies could handcuff and secure him. The complainant was found not to be credible in his recall of these events, and the deputy’s actions were deemed to be reasonable and necessary to effect an arrest.

5. Misconduct/Medical – The complainant was allegedly placed into a safety cell for an extended period without medical care for open wounds.

Recommended Finding: Summary Dismissal

Rationale: The complainant said he was taken to a hospital where he was chained to a bed for 3 days without treatment, and then thrown into a safety cell for an unknown number of days with open wounds. The complainant was found not to be credible in his recall of these events. The investigation included a review of the complainant's medical records from UCSD Medical Center, County Mental Health and the Sheriff's Department, and found an extensive documented history of treatment for the complainant's medical and psychiatric care. While CLERB does not have jurisdiction over medical personnel and/or their plan of care, the complainant's allegation was determined to be unfounded based upon information as currently known.

16-045

1. Misconduct/Procedure – Deputy 1 allegedly failed to file a missing person's report when the complainant reported his children and wife missing from their residence.

Recommended Finding: Action Justified

Rationale: The complainant said that he contacted the Sheriff's Department for assistance when he discovered his wife and minor children absent from their shared residence. Deputy 1 responded, but was reportedly "resistant" to help and would not file a missing person's report, which the complainant believed was against the law. According to CAD records, Deputy 1 was dispatched to a missing persons call. He contacted the complainant who reported his girlfriend and two minor children were missing for over a week. Due to a documented history of domestic violence against the complainant, Deputy 1 believed the female and children escaped from an abusive home. Deputy 1 contacted family members who confirmed this suspicion. Deputy 1 spoke to the female and had another law enforcement agency perform a wellness check and verified their identity and safety. Deputy 1 did not file a missing person's report because he located all of the parties. The evidence showed the alleged act or conduct did occur, but was lawful, justified and proper.

2. Misconduct/Discourtesy – Deputy 1 allegedly said to the complainant, "Maybe you shouldn't beat your wife."

Recommended Finding: Not Sustained

Rationale: The complainant reported that Deputy 1 made the stated comment to him after he reported his family missing. The complainant and his girlfriend have been in an on-and-off relationship for approximately 15 years and have two children together. The complainant waited a week before contacting law enforcement to report his family absent. Deputy 1 believed, based on his experience, that the complainant's behavior was abnormal for this type of situation. Deputy 1 confirmed that he made the stated comment to the complainant, but it was factual and accurate and made with the intent for him to seek assistance. Deputy 1 felt he needed to be blunt with his statement of fact, because the complainant did not seem to understand and/or realize the consequences of his abusive actions. Absent an audio recording, there is insufficient evidence to support a violation of Sheriff's 2.22, Courtesy pertaining to insolence.

16-055

1. Illegal Seizure – Deputies 2 and 3 allegedly interfered in a civil matter and detained the complainant and his girlfriend for approximately 45 minutes.

Recommended Finding: Action Justified

Rationale: The complainant said he and his girlfriend were having an argument when Deputy 3 intervened. The complainant believed Deputies 2 and 3 were in violation of the law and that they "kidnapped him" by wrongfully interfering in a civil matter. Deputy 3 reportedly was en route to court, when he said he observed a male in the middle of the street, blocking a crying female in a car. Based on his training and experience, the deputy suspected domestic violence and initiated an investigation to determine if a crime had occurred; Deputy

2 responded as back-up. Case law permits an investigation and detention until a law enforcement officer resolves all suspicion of illegal activity. After interviewing both parties and a witness, Deputy 3 decided the verbal argument was not a domestic violence incident and released all parties. The length of the detention, approximately 18 minutes, would have been concluded sooner, had the complainant cooperated. The evidence showed the alleged conduct occurred, but was lawful, justified and proper.

2. Misconduct/Procedure – Deputies 2 and 3 allegedly neglected to check on the welfare of unattended minor children for approximately 45 minutes.

Recommended Finding: Action Justified

Rationale: The complainant said that he told the deputies his children were in their house unattended, but they did not care. According to CAD records, this incident was approximately 18 minutes in length. Deputy 2 reported that the children remained in the residence with extended family members. During the investigation, the female's father spoke to the deputies about a lengthy history of unreported domestic violence between the complainant and his daughter, and that he and his wife were forced to babysit the children on numerous occasions, keeping them from their own jobs. The female and her family did not respond to CLERB's request for information, but the evidence showed the complainant was not credible regarding this allegation.

3. Misconduct/Discourtesy – Deputy 3 allegedly told the complainant, “Get the Fuck out of my car!”

Recommended Finding: Action Justified

Rationale: The complainant said that Deputy 3 made the stated comment. Deputy 3 reported that during his investigation, the complainant was verbally argumentative, noncompliant and hostile. After concluding his investigation, Deputy 3 opened the patrol car door and ordered the complainant out, but he did not comply. Deputy 3 elevated his tone, but the complainant still did not comply. Deputy 3 again elevated his tone and made the stated comment using the explicit language and gained compliance. Deputy 3 reported that he used the language in lieu of reasonable force. Sheriff's Policy & Procedure 2.22, Courtesy, permits the use of profanity to establish control during a violent or dangerous situation. The evidence showed the alleged conduct did occur, but was within policy and procedure.

4. Misconduct/Intimidation – Deputies 2 and 3 allegedly threatened the complainant with force when asked if he was under arrest.

Recommended Finding: Action Justified

Rationale: The complainant said when he asked Deputies 2 and 3 if he was under arrest, Deputy 3 replied, “Put your hands on the hood when I release them and don't speak out of turn again or we will take you down.” The complainant then asked Deputy 3 if that was a threat and Deputy 2 responded, “It's a promise.” The deputies reported that they informed the complainant numerous times that he was merely detained based upon his actions and a reasonable suspicion that a crime was afoot. They informed the complainant that if the female reported a domestic violence incident, he would be placed under arrest. They said the complainant continued to be argumentative and asked if it was a threat. Deputy 2 further explained that the complainant was extremely angry and hostile. While Deputy 3 attempted to give instructions, the complainant continuously yelled over Deputy 3 and screamed, "You guys kidnapped me! This is a civil issue! Am I under arrest?!" Because of his agitated state, Deputy 3 told the complainant that if he removed his hands from the hood or made any sudden movements as the handcuffs were removed, he would be taken to the ground. Deputies are permitted to use force to gain compliance and their actions were lawful, justified and proper.

5. Misconduct/Procedure – Deputy 1 allegedly did not take the complainant's grievance/complaint, saying there were no forms.

Recommended Finding: Action Justified

Rationale: The complainant said after contacted by deputies, he went to the Sheriff's substation to file a grievance and was told by Deputy 1 that they did not have any forms. The complainant said he returned later and was given a form by a secretary and then he spoke to an unknown sergeant. Deputy 1 confirmed that he spoke to the complainant and verbally accepted his complaint by offering to have a sergeant come to the station

and meet with him concerning this matter. Deputy 1 did not remember discussing the form, but was told by the complainant that he would come back later and left without speaking to command staff. Sheriff's Policy & Procedure 2.21, Citizen Complaints reads in part, "The employee receiving the complaint must decide whether to handle it informally; i.e., verbally, or document the complaint in writing. Employees may attempt to resolve the complaint, but shall never attempt to dissuade any citizen from lodging a complaint." Deputy 1's actions were in compliance with policy.

End of Report