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# County of San Diego

## CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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### REGULAR MEETING AGENDA

### TUESDAY, NOVEMBER 8, 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 October 2016 Regular Meeting (*Attachment A*)

#### 3. PRESENTATION / TRAINING

- a) Inmate Programs at Detention Facilities

#### 4. EXECUTIVE OFFICER'S REPORT

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

#### 5. NEW BUSINESS

- a) Nomination Committee for the 2017 CLERB Executive Board

-continued on next page-

**6. UNFINISHED BUSINESS**

- Departmental responses to Sustained findings

**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).
- 15-051 / Andrade (Sustained – Deputy 1 x2)
  - 15-053 / McElrath (Sustained – Deputy 1 x2)
  - 15-067 / Sobel (Deputy 3)
- b) Performance of Executive Officer

| <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 (7)**

**ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE**

**15-107**

1. Excessive Force – Deputy 2 allegedly “Bent” the complainant’s arm back while applying handcuffs.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 2 “bent” his arm back so far while applying handcuffs, that he thought he was going to break it. Deputy 2 was in the process of handcuffing the complainant in order to relocate him to another holding cell, when he reported that the complainant suddenly pulled away, pulling his

left hand into the cell, with the handcuffs still attached to his right wrist. Deputy 2 denied that he “bent” the complainant’s arm back or twisted or turned it in any way while handcuffing the complainant. Deputy 2’s finger and arm were injured when the complainant pulled away, and the complainant was subsequently charged with PC §69, Obstructing/Resist Executive Officer With Minor Injury. Absent a video recording of this incident, there is insufficient evidence to prove or disprove the allegation.

2. Excessive Force – Deputy 1 allegedly “Shot” the complainant with “a painful gun” while attempting to remove him from his cell.

Recommended Finding: Summary Dismissal

Rationale: The complainant alleged that Deputy 1 “shot” him with a “painful gun” while attempting to remove him from his cell. Deputy 1 left the department in March, 2016 and is no longer subject to CLERB’s requests for information. The Review Board lacks jurisdiction based on CLERB Rule & Regulation 4.1, in that Deputy 1 is no longer employed by the Sheriff’s Department, and is not required to cooperate with this investigation.

3. Excessive Force – Deputy 3 tazed the complainant multiple times without cause, while placing him in a restraint chair.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 3 unnecessarily tazed him while he was already placed in a restraint chair. The complainant was extracted from his holding cell, but continued to demonstrate unpredictable and violent non-compliant behavior, necessitating placement in maximum restraint in a Pro Strain Chair. While placing the complainant into the chair, he continued to violently thrash his body out of the chair and kick his legs toward deputies attempting to secure his feet. Deputy 3 warned the complainant that if he continued kicking, he would be tazed, but the complainant failed to comply. Deputy 3 reported that he deployed his taser, striking the complainant in the upper mid-section of his chest, to prevent him from injuring a deputy with his violent movements and kicking. 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. After duly warning the complainant, Deputy 3 utilized a department approved Use of Force control compliance device, and his actions were lawful, justified and proper.

4. Misconduct/Procedure – Deputy 4 allegedly “Yanked” the darts from the complainant’s body.

Recommended Finding: Unfounded

Rationale: The complainant alleged that Deputy 4 “Yanked” the taser barbs from his chest. Following deployment of the taser, the complainant was wheeled via Pro-Strain Chair to a Sobering Cell, where medical staff evaluated him for any additional injuries and removed the taser barbs from his chest. A hand-held video camera captured medical staff removing the barbs, as this is a function to be performed only by medical staff. This indisputable evidence clearly showed that sworn staff was not involved in the removal of the taser barbs, and the alleged act did not occur.

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## **15-116**

1. False Arrest – The complainant was rearrested by PO 1 without cause.

Recommended Finding: Action Justified

Rationale: The complainant said that PO 1 arrested him for not informing the Probation Department of his change in residence. The complainant was released from custody under Penal Code § 1170 (h)(5)(B), and required to serve a period of mandatory supervision under San Diego County Probation. Probation records documented the complainant’s failure to return to a sober living residence, and his failure to advise probation that he intended to relocate to another residence. During a mandatory office compliance appointment, a 4<sup>th</sup> Amendment waiver search was performed, and the complainant was found to be in possession of a vehicle key. When questioned about the key, the complainant offered conflicting stories, which probation officers believed were intended to prevent a search of the vehicle. The vehicle was located and the resultant search revealed

documentation showing that the complainant owned the vehicle. PO 1 rearrested the complainant for failure to comply with curfew as directed by the PO, failure to follow such course of conduct communicated by the PO, and failure to submit his property for search at any time. The evidence showed that the rearrest did occur, but was lawful, justified and proper.

2. Discrimination – PO 1 allegedly used the derogatory phrase “You people,” repeatedly when addressing the African-American complainant.

Recommended Finding: Not Sustained

Rationale: The complainant reported that PO 1 had repeatedly used the term “you people,” when addressing him. PO 1 did not have any recollection of using the term “you people,” when referring to the complainant. There was no audio evidence or independent witnesses to confirm or deny that the alleged term was used. There was insufficient evidence to prove or disprove the allegation.

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### 15-117

1. Misconduct/Procedure – Deputy 1 allegedly threatened the complainant with arrest if he did not sign a citation.

Recommended Finding: Action Justified

Rationale: The complainant said he was pulled over for traffic violation and when he disputed the citation, Deputy 1 told him that if he did not sign the citation, he would go to jail. Deputy 1 reported that the complainant had been observed drifting into the bike lane and initiated a traffic stop, after which he presented with a citation, or Notice to Appear. The complainant initially refused to sign the citation, at which time Deputy 1 told the complainant he would be arrested for failing to sign a Notice to Appear. California Vehicle Code § 40302(b), Mandatory Appearance, states that whenever a person arrested refuses to give his written promise to appear in court, that person will be taken into custody. After Deputy 1 explained that the complainant could be taken to jail if he refused to sign the Notice to Appear, the complainant signed the citation and was released. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 allegedly failed to return the complainant’s driver’s license.

Recommended Finding: Not Sustained

Rationale: The complainant stated that Deputy 1 did not return his driver’s license. The complainant initially refused to sign a traffic citation, and refused to get out of the car when asked by Deputy 1. After the arrival of a backup deputy, the complainant signed the citation and left the scene, not realizing that he had not been given his license. Deputy 1 reported that the complainant’s license was used to document a traffic violation, and did not realize he had retained the license until the complainant had departed. Deputy 1 also stated that he attempted to return the license through the U.S. Mail; the complainant said that he has not received the license through the mail. At the conclusion of a traffic stop, deputies are to provide traffic violators with the Notice to Appear when cited, and then return their driver’s license, if appropriate; however, there is no policy, procedure or law, which delineates those actions required if the driver’s license was mistakenly or not immediately returned. While Deputy 1 did retain the complainant’s license upon departure, there was insufficient evidence to show that the license was kept intentionally, or that the attempt to return the license had actually occurred.

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### 15-120

1. Excessive Force – Deputies 1-4 allegedly used force to take the complainant to the floor without cause.

Recommended Finding: Action Justified

Rationale: The complainant reported that Deputy 2 grabbed the back of his shirt, causing him to be choked; he was then pushed against the wall and Deputies 1-4 slammed him to the floor. Deputy 2 removed the complainant from his cell in order to conduct a cell inspection. While Deputy 2 did a pat search of the complainant, the complainant turned his head toward the deputies, and said “Don’t grab my shirt like that.”

Deputy 2 maintained his hold on the complainant, and the complainant again turned toward deputies, and again yelled, “I told you don’t grab my shirt like that,” prompting Deputy 2 to place both hands on the complainant’s back and push him toward the wall. Deputy 2 reported that the complainant started to kick his legs back toward the deputies. Deputy 3 grabbed the complainant’s left arm, and Deputy 4 grabbed his head to assist Deputy 2 assisted in pulling the complainant to the floor, and Deputy 1 held the complainant’s legs and applied leg chains. Video evidence showed that the complainant first turned toward, and then actively jerked his body away from Deputy 2, before being taken to the ground. Video evidence showed that the complainant first turned toward, and then actively jerked his body away from Deputy 2, before being taken to the ground. Deputies 1-4 detailed in their Deputy Reports, the need to employ several department-approved Use of Force control compliance techniques, which included: grabbing, pushing or pulling; pressure points, and a takedown, in order to gain control of the complainant. 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. The complainant was immediately taken for medical evaluation, and reported that he did not suffer any injuries; later he was treated for a bruised knee. Video evidence captured this incident and corroborated the use of force as described by deputies. The video showed the actions of the complainant and involved deputies, and demonstrated that Deputies 1-4 used reasonable and necessary force per Department policies and procedures.

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### **16-010**

1. False Arrest – Deputy 1 arrested the complainant and placed her on a 72 Hour hold without cause.

**Recommended Finding:** Action Justified

**Rationale:** The complainant alleged that Deputy 1 arrested her and placed her on a 72 hour psychiatric hold based on insufficient reasons. Deputy 1 was dispatched to the home in which the complainant resided to investigate a report that the complainant was experiencing psychiatric issues. He arrived with a Psychiatric Emergency Response Team (PERT) member, and was informed by the reporting party (complainant’s mother) that the complainant had been acting erratically, yelling at her, and hiding kitchen knives in her bedroom. Deputy 1 spoke with the complainant and observed that she made no logical sense and was out of touch with reality. The complainant had not been taking her psychotropic medication and had a history of being violent toward others when not medicated. Concerned that the complainant was a danger to her mother, Deputy 1 arrested the complainant and transported her to a local psychiatric hospital for evaluation and treatment. The Welfare and Institution Code § 5150, authorizes a peace officer, upon probable cause, to take a person into custody and place him or her in a county designated facility for 72-hour treatment and evaluation if they determine that said person is a danger to themselves or others, or gravely disabled. Given the complainant’s behavior, Deputy 1 determined that for the safety of others, the complainant would be placed on a 72 hour hold pursuant to W & I Section Code 5150, and the evidence showed that his actions were lawful, justified and proper.

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### **16-017**

1. Misconduct/Procedure – Deputy 2 allegedly stated to the complainant, “I don’t have to tell you what happened,” or used words to that effect, when asked about the results of his initial investigation.

**Recommended Finding:** Action Justified

**Rationale:** The complainant witnessed a man abusing his dog at a local Veterinarian Hospital, and contacted sheriff’s dispatch to report the crime. Deputy 2 followed up with the complainant, informing her that a deputy had been dispatched to the hospital to investigate her report, but the hospital was closed by the time he had arrived. The complainant reported that she contacted the sheriff’s department again to follow up on her report, and when Deputy 2 returned her phone call, he informed her that he did not have to provide an update on his investigation; that he had already informed her as to what he was going to do, and that she should just trust him to do his job. Deputy 2 reported that the complainant had contacted him several times requesting an update while wanting to know if he did his job correctly. Deputy 2 stated that he told the complainant that she had to trust his judgment and know that he was doing his job correctly. The complainant had contacted sheriff’s

department personnel several times over a five hour period of time requesting updates. There is no policy or requirement for deputies to provide on-going updates of their investigation. Deputy 2 had provided sufficient information to the complainant regarding his investigative plans, and his actions were lawful, justified and proper.

2. Misconduct/Discourtesy – Deputy 2 allegedly “raised his voice in anger” during his telephone conversation with the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 2 “raised his voice in anger” during their telephone conversation. Deputy 2 denied this allegation, and absent an audio recording of this telephonic contact, there is insufficient evidence to prove or disprove the allegation.

3. Misconduct/Procedure – Deputy 1 allegedly failed to take a complaint when requested.

Recommended Finding: Not Sustained

Rationale: The complainant reported that she informed Deputy 1 of her desire to file a complaint against Deputy 2, but a report was not taken. Deputy 1 reported that the complainant did not inform him that she wanted to file a complaint. The complainant, he stated, was unhappy with Deputy 2’s investigation, but never expressed a desire to file a formal complaint. The complainant filed a subsequent complaint with the Sheriff’s Department Internal Affairs unit, and received a response from that office. The complainant and Deputy 1 presented conflicting information, and absent an audio recording of their conversation, there is insufficient evidence to prove or disprove the allegation.

4. Misconduct/Discourtesy – Deputy 1 allegedly “raised his voice in anger” during his telephone conversation with the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 “raised his voice in anger” during their telephone conversation. Deputy 1 denied this allegation, and absent an audio recording of this telephonic contact, there is insufficient evidence to prove or disprove the allegation.

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## **16-081**

1. Misconduct/Discourtesy – CSO 1 allegedly hit the complainant’s back and told him he was not moving fast enough, although no one else was behind him.

Recommended Finding: Summary Dismissal

Rationale: The identified personnel is a Community Service Officer (CSO) employed by the County of San Diego at the Sheriff’s Department. CSO’s perform a variety of paraprofessional law enforcement support duties in a non-sworn capacity within the Sheriff’s court services or in the field. This is a non-sworn class, which is limited to paraprofessional office, court and field support duties in the Sheriff’s Department. This class is distinguished from a Deputy Sheriff in that the Community Service Officer is not a peace officer and does not perform law enforcement duties or have contact with inmates. CLERB Rules & Regulations stipulate the following: 4.1 Citizen Complaints: Authority. Pursuant to Ordinance #7880, as amended, (Article XVIII, Section 340 340.9 of the San Diego County Administrative Code), the Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff’s Department or the Probation Department. The complainant was referred to the Sheriff’s Department for investigation of this complaint.

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*End of Report*