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County of San Diego

CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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REGULAR MEETING AGENDA

TUESDAY, JULY 11, 2017, 4:00 P.M.

San Diego County Administration Center

1600 Pacific Highway, Room 302/303, San Diego, 92101

(Free parking is available in the underground parking garage, on the south side of Ash Street, in the 3-hour public parking spaces.)

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives or any member of the public wishing to address the Board on any of today's agenda items should submit a "Request to Speak" form prior to the commencement of the meeting.

DISABLED ACCESS TO MEETING

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

WRITINGS DISTRIBUTED TO THE BOARD

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

1. ROLL CALL

2. MINUTES APPROVAL

- a) Minutes of the June 2017 Regular Meeting (*Attachment A*)

3. BOARD CHAIR REPORT

4. PRESENTATION / TRAINING

- a) N/A

5. EXECUTIVE OFFICER'S REPORT

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

6. NEW BUSINESS

- a) N/A

7. UNFINISHED BUSINESS

- a) Establish CLERB’s regular meeting schedule
- b) CLERB Rules and Regulations Subcommittee Update

8. BOARD MEMBER COMMENTS

9. PUBLIC COMMENTS

- a) This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary. Each speaker will be limited to five minutes.

10. SHERIFF / PROBATION LIAISON QUERY

11. CLOSED SESSION

- a) PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE
Discussion & Consideration of Complaints & Reports: Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).
 - 15-119 / James – Policy Recommendation response

| 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 (4)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

16-058

1. Excessive Force –Deputies 2 and 3 allegedly “beat up” the complainant during a force incident.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputies 2 and 3 beat her up during a force incident. Deputies 1 and 2 were escorting an agitated psychiatric inmate to a holding cell when the complainant began yelling at the inmate, further agitating her. Deputy 1 instructed the complainant to stop, but she ignored these instructions and continued yelling at the deputies and the other inmate. Attempting to keep the situation from escalating, Deputy 2 removed the complainant from the holding cell and spoke with her about her misconduct, but the complainant would not listen and continued to argue with Deputy 2. Deputy 2 ended the conversation and while placing the complainant back into the holding cell, the complainant reached through the closing cell door and struck Deputy 2 in the face with a bundle of rolled up court papers. When Deputy 2 entered the holding cell in order to remove the complainant from the cell for striking her, the complainant began swinging at Deputy 2, precipitating a force incident. Deputy 2 struck the complainant and Deputy 3 pulled her to the ground while defending themselves and attempting to control the combative inmate. 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 and 3 utilized department-approved force to control an assaultive inmate, and their actions were lawful, justified and proper. This entire incident was captured on surveillance video and clearly showed the complainant initiating the physical confrontation and the level of force required to control her.

2. Misconduct/Medical – Unidentified personnel allegedly failed to provide proper medical treatment for the complainant after being beaten up.

Recommended Finding: Summary Dismissal

Rationale: The complainant alleged that she did not receive proper medical treatment for her injuries. Medical treatment provided to inmates is a function performed by medical staff. Sworn members of the sheriff's department are not involved in the decisions related to an inmate's medical treatment, and as such, the Review Board lacks jurisdiction over this allegation of the complaint. That withstanding, medical records document that the complainant was seen and treated by nursing staff immediately following this force incident, and followed up by a doctor the same day.

16-066

1. Discrimination – Deputy 1 allegedly racially profiled the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 racially profiled him when he conducted a traffic stop. Racial profiling refers to the illegal practice by law enforcement officials of targeting individuals for suspicion of crime or determining which drivers to stop for minor traffic violations based on the individual's race, ethnicity, religion or national origin. Deputy 1 reported that he contacted the complainant when he observed that the vehicle he was driving did not display any tabs, in violation of VC§ 5204, Registration Tabs, which requires that tabs indicating the month and year of expiration be displayed on the rear license plate of the assigned vehicle. This requirement, however, does not apply to fleet vehicles, one of which the complainant was driving. The complainant, however, also had a dark tinted front window, in violation of VC§ 26708, Material Obstructing or Reducing Driver's View, which prohibits the application of any material upon the windshield or side windows of a vehicle. While Deputy 1 had reasonable suspicion to contact the complainant on the basis of the tinted windshield and denied that race factored into his decision to conduct this traffic stop, it cannot be fully ascertained as to Deputy 1's motives and mindset prior to conducting this traffic stop. Complicating this allegation is that Deputy 1 conducted this traffic stop outside his area of patrol for a relatively minor traffic offense. That withstanding, there was insufficient evidence to prove or disprove the allegation.

2. Illegal Search – Deputy 1 searched the complainant's vehicle without consent.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 searched his vehicle without his permission. Upon being contacted by Deputy 1, the complainant disclosed that he had a gun in the vehicle located under the driver's seat. Deputy 1 reported that the complainant did not provide any documentation that authorized him to carry or

possess a firearm, so after having him exit his vehicle, Deputy 1 searched the driver's area of the vehicle where the gun was reported to be located, but no weapon was found. The complainant stated that he must have left it in his locker at work. Case law provides for the limited search of a vehicle for weapons during a detention in situations where the circumstances justify it. The complainant reported that he had a gun in the vehicle, but did not produce any documentation that authorized him to carry a concealed weapon. Deputy 1 conducted a limited search of the complainant's vehicle to determine if he was in possession of a gun, and this action was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 1 confiscated the complainant's Dealer Plate and his registration card.

Recommended Finding: Action Justified

Rationale: Deputy 1 confiscated the complainant's Dealer Plate and registration card after observing that the registration card affixed to the vehicle's windshield with the number 1A, did not correspond to the Dealer Plate with the number 2A assigned to it. This was a violation of VC§ 4462, Presentation of Evidence of Registration, which prohibits the display upon a vehicle, of any registration card, identification card, temporary receipt, license plate, device issued pursuant to Section 4853, or permit not issued for that vehicle or not otherwise lawfully used thereon under this code. VC§ 4460, Seizure of Documents and Plates, in part authorizes law enforcement officers to confiscate any license plate or card which is not attached to the vehicle for which it has been issued. Deputy 1 confiscated the complainant's Dealer Plate and registration card pursuant to this vehicle code, and his actions were lawful, justified and proper.

4. Misconduct/Procedure – Deputy 1 cited the complainant for an expired driver's license.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 cited him for an expired driver's license when his license was current. Deputy 1 reported that while conducting a traffic stop on the complainant, he ran his driver's license through Sheriff's Inquiry, the result of which indicated that the complainant's driver's license was expired as of 7/23/2014. Attempts were made to contact the complainant to assess his claim that his driver's license was current, but were unsuccessful. Pursuant to VC§ 12500 which makes it unlawful for a person to drive a motor vehicle upon a highway unless the person then holds a valid driver's license, Deputy 1 issued a citation to the complainant for violation of this code. This act was lawful, justified and proper.

5. Misconduct/Procedure – Deputy 1 cited the complainant for an expired Dealer Plate.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 cited him for an expired Dealer Plate, when in actuality the complainant was cited for having an expired registration, made so by special plate misuse. VC§ 11713(j), Unlawful Acts, prohibits the use of an assigned special plate for any purpose other than as permitted by Section 11715. This section, in part, requires that the registration card issued for an assigned special plate, correspond with the vehicle bearing the special plate. The number on the registration card affixed to the complainant's windshield did not correspond to the number on the Dealer Plate attached to the complainant's vehicle. Per DMV requirements, the registration reverted back to the original registration for the vehicle, which when ran through Sheriff's Inquiry, was found to be expired as of 07-28-2014; this was in violation of VC§ 4000(a) (1), Expired Registration. Deputy 1 acted within law in issuing the complainant a citation for operating a vehicle with an expired registration, and this act was lawful and proper.

6. Misconduct/Discourtesy – Deputy 1 allegedly stated to the complainant, "I am in charge; I do whatever I want," or used words to that effect.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 stated to him, "I am in charge; I do whatever I want," or used words to that effect. Deputy 1 denied making this statement and absent an audio recording of this contact or independent witnesses, there was insufficient evidence to either prove or disprove the allegation.

7. Misconduct/Intimidation – Deputy 1 allegedly stated to the complainant, “Get in your car and leave before I have your car towed,” or used words to that effect.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 stated to him, “Get in your car and leave before I have your car towed,” or used words to that effect. Deputy 1 did not recall the exact words he used during this contact, but believed he probably explained to the complainant that given the length of time the vehicle’s registration had been expired, he had a legal basis to have the vehicle towed. Attempts were made to contact the complainant to ferret out a more precise description of the words and tones used by Deputy 1, but these attempts were unsuccessful. Absent an audio recording of this contact or independent witnesses, there was insufficient evidence to either prove or disprove the allegation.

8. Misconduct/Discourtesy – Deputy 1 was allegedly rude and disrespectful to the complainant during a traffic stop.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 was rude and disrespectful to him while conducting a traffic stop. Deputy 1 denied this allegation. Absent an audio recording of this contact or independent witnesses, there was insufficient evidence to either prove or disprove the allegation.

16-067

1. Misconduct/Procedure – PO’s 1 and 2 allegedly denied the complainant use of medical marijuana despite a court order granting its legal use.

Recommended Finding: Action Justified

Rationale: The complainant alleged that PO’s 1 and 2 denied her use of medical marijuana despite a court order granting its use. The probationer was released from State Prison in February 2015 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 to be provided by the San Diego County Probation Department. General and special conditions of release were outlined and explained to the complainant, and her signature endorsed agreement to comply with the stated conditions. One significant condition of the complainant’s probation required that she not possess or use any controlled substances without a valid prescription. In July 2015, the court granted the complainant permission to use medical marijuana while on probation; however, the complainant continued to use illegal drugs and abuse prescription drugs. This prompted PO 1 to submit a request to the court, asking that the complainant no longer be allowed to use medical marijuana in order for her to receive treatment for her illegal drug use. A Modification Hearing was calendared to address the complainant’s use of medical marijuana, and while the complainant was observed outside the courtroom on this date, when her case was called, the complainant had left. In her absence the Court ordered that the complainant was no longer able to use medical marijuana under her PRCS conditions. PO’s 1 and 2 followed this court order and their actions were lawful, justified and proper.

2. Misconduct/Procedure – PO’s 1 and 2 allegedly “forced” the complainant to sign a waiver depriving her of the legal use of marijuana.

Recommended Finding: Action Justified

Rationale: The complainant alleged that PO’s 1 and 2 “forced” her to sign a waiver which prohibited her from the legal use of marijuana. The complainant signed a “Revocation Recommendation Waiver Form” agreeing to a custodial sanction of 60 days in jail and a modification of her probation conditions because of probation violations. This modification would require that the complainant complete a residential treatment program (RTP) following her custodial sanction and follow the court’s previous order prohibiting the use of medical marijuana. The complainant initialed this waiver form stating that her attorney had reviewed the waiver with her, and that she understood its content. The complainant was not “forced” to sign the waiver, but did so under the guidance

of legal counsel and of her free will. PO's 1 and 2 acted within policy brokering this agreement, and their actions were within policy.

3. Misconduct/Procedure – PO's 1 and 2 allegedly failed to respond to the complainant's complaint regarding her denied marijuana use.

Recommended Finding: Unfounded

Rationale: The complainant alleged that PO's 1 and 2 failed to respond to her complaints regarding her denied marijuana use. The Probation Contact Reports documented several conversations between the complainant and PO 1 in which the complainant's medical marijuana issues and complaints were addressed. On multiple occasions, the complainant was directed to follow the courts directive regarding marijuana use and was informed that she could schedule a Modification Hearing and address this issue with the court. A Modification Hearing was scheduled, but the complainant failed to attend. The complainant was further provided a Request for Condition Relief/Modification form. On 08/12/16, the complainant provided her documentation, and on 08/23/16 and 08/29/16 respectively, PO's 1 and 2 provided their responses and denied the complainant's request. The evidence showed that the alleged act did not occur.

4. Misconduct/Procedure –PO 2 allegedly refused to transfer the complainant's case to its proper jurisdiction.

Recommended Finding: Action Justified

Rationale: The complainant continued to be out of compliance with her probation conditions. PO 1 informed the complainant that her case would be transferred to a probation office closer to her residence once she was in compliance with her conditions of supervision. PO 2 informed the complainant that any issues on her caseload (i.e. medical marijuana, illicit narcotic use) needed to be addressed before her case could be transferred. The complainant struggled with maintaining compliance for several months, but once she was in compliance, her case was transferred to a probation office near her home. PO 2 acted within policy and supervisory authority in managing the complainant's community supervision.

5. Illegal Seizure – PO's 1 and 2 seized one-eighth of an ounce of marijuana from the complainant's home during a probation search.

Recommended Finding: Action Justified

Rationale: While conducting a Fourth Waiver/Compliance Check in the complainant's home, two small containers of marijuana were found in her residence. This was a violation of her probation conditions which in part, prohibited the complainant from "knowingly using or possessing any controlled substance without a valid prescription." During the Modification Hearing held earlier that day, the court had ordered the complainant not to use marijuana. The marijuana was confiscated as it was deemed illegal contraband per the court's orders, and this action was lawful, justified and proper.

6. Misconduct/Intimidation – PO 1 allegedly stated to the complainant that she would "find a way to violate her," or used words to that effect.

Recommended Finding: Unfounded

Rationale: The complainant alleged that PO 1 stated to her that she would "find a way to violate her," or used words to that effect. A probationer is "violated" when their probation officer finds that they have disobeyed a condition of their probation. PO 1 denied this allegation. During this investigation, it was found that the complainant made several false statements related to her drug use and violations of her probationary conditions. The complainant also used her mother's email address to impersonate a message from her mother which would have resulted in another probation violation, further impacting her credibility. Preponderance weighs the balance of probabilities and the likelihood of a statement being true or not true. Given the complainant's credibility issues, the preponderance of evidence indicates that the alleged statement was not made.

7. Misconduct/Procedure – PO's 1 and 2 allegedly placed 'Stay Away' orders in the complainant's probation conditions prohibiting her from contacting her children and her mother.

Recommended Finding: Action Justified

Rationale: The complainant alleged that PO's 1 and 2 placed 'Stay Away' orders in her probation conditions prohibiting her from contacting her children and mother. The complainant's mother and children were victims in her instant offense in which the complainant was convicted of PC§ 368, Elder Abuse; Dependent Adult Abuse, and PC§§ 664 and 278, Attempted Child Abduction. The probationary condition prohibiting the complainant from "knowingly contacting or attempting to contact, annoy or molest, either directly or indirectly" her children and mother, was established by the Court and endorsed by the complainant prior to PO 1's involvement in the case. PO 1 was following the conditions that were previously established by the Court and Probation Department and she did not place any additional Stay Away orders on the complainant. The complainant was provided with the opportunity to address these orders in a Modification Hearing, but failed to attend. PO's 1 and 2 acted within policy in supervising the complainant's probationary conditions.

17-006

1. Misconduct/Procedure – Deputy 1 allegedly “racked” inmates of different races together.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 inappropriately housed an inmate in a housing module with inmates of another race. According to Deputy 1, because of jail house politics, deputies try to accommodate inmates by housing races together to prevent tension; White inmates are housed together, Hispanic inmates are housed together and Black inmates and “Others” are housed together. Others is any race other than White, Hispanic or Black. While deputies attempt to house similar races together, there is no policy that requires this. The inmate being housed was housed in a module consistent with his classification level and there were no hazards or alerts prohibiting where he was housed. Moreover, housing assignments are determined by a Classification Deputy; Deputy 1 was assigned as a Module Deputy on the incident date. The inmate in question was housed appropriately and within policy.

2. Misconduct/Discourtesy - Deputy 1 allegedly stated to the complainant and other inmates, “I don’t give a flying fuck,” or used words to that effect, when informed that inmates of different races are not “racked” together.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 stated, “I don’t give a flying fuck,” or used words to that effect, when informed that inmates of different races are not “racked” or housed together. Deputy 1 denied making this statement. There were no independent witnesses to this alleged statement and absent an audio recording of this comment, there was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Discourtesy – Deputy 1 allegedly stated to the “dorm representatives” of the involved races, “You can suck my big fat dick,” or used words to that effect.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 stated to inmates, “You can suck my big fat dick,” or used words to that effect when speaking to “dorm representatives” about the housing of an inmate. Deputy 1 denied making this statement and there were no independent witnesses or an audio recording of this alleged statement. There was insufficient evidence to either prove or disprove the allegation.

End of Report