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County of San Diego

CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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REGULAR MEETING AGENDA

TUESDAY, OCTOBER 10, 2017, 5:30 P.M.

San Diego County Administration Center

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

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

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

DISABLED ACCESS TO MEETING

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

WRITINGS DISTRIBUTED TO THE BOARD

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

1. ROLL CALL**2. MINUTES APPROVAL**

- a) Minutes of the August 2017 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. BOARD CHAIR REPORT

6. NEW BUSINESS

- a) Introduction of new Board Member(s)
- b) Nomination Committee for the 2018 CLERB Officers
- c) 2017 NACOLE Conference Review
- d) 2016 Annual Report (Draft)

7. UNFINISHED BUSINESS

- a) CLERB Rules and Regulations Subcommittee Presentation of Proposed Changes to the CLERB Rules and Regulations

8. BOARD MEMBER COMMENTS

9. PUBLIC COMMENTS

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

10. SHERIFF / PROBATION LIAISON QUERY

11. CLOSED SESSION

- a) **Conference with Legal Counsel - Anticipated Litigation:** Significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Section 54956.9: (22).
- b) **Request for Reconsideration:** Pursuant to CLERB Rules & Regulations: 16.9 Reconsideration of Final Report. Upon request by the complainant, subject officer or their representatives, the Final Report may be re-opened for reconsideration by the Review Board provided that: (a) previously unknown relevant evidence is discovered which was not available to the Review Board before it issued its Final Report, and; (b) there is a reasonable likelihood the new evidence will alter the findings and recommendations contained in the Final Report.
 - 1. 16-027/Boulanger
- c) **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.

CASE FOR RECONSIDERATION (1)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

16-027

1. Death Investigation/Inmate Suicide –Richard Boulanger was found in his cell hanged by the neck with a sheet attached to the bed frame.

Recommended Finding: Not Sustained

Rationale: There was no complaint of wrongdoing in this death investigation; a review was conducted in accordance with CLERB Rules & Regulations, 4.6 Citizen Complaint Not Required: Jurisdiction with Respect to Actions involving Death. On February 12, 2016, Boulanger’s cellmate awoke to find him hanging from the bunk bed with what appeared to be a rope fabricated from a sheet around his neck. The cellmate reported that he pressed the intercom button 4-5 times to call for help. When no one answered the intercom, he stated that he started banging on the door and yelling for help. Per the cellmate’s account, it took approximately 10 to 20 minutes before deputies arrived. The cellmate was observed on surveillance video standing in front of his cell door for approximately 5 minutes before contacted by deputies during their opening shift count. Upon being alerted, detentions staff responded quickly to secure the unit and allow medical staff to begin resuscitative efforts. Boulanger was subsequently transported to UCSD Medical Center, but his condition continued to decline as he developed multisystem organ failure. On February 14, 2016, he became pulseless and apneic and his death was pronounced. The Medical Examiner attributed the cause of death to acute diffuse anoxic/ischemic encephalopathy, due to resuscitated cardiac arrest, due to ligature hanging, and the manner of death is classified as suicide. Detentions staff classified and housed the decedent according to Department policies and procedures; however, there is insufficient evidence to prove or disprove to what extent identified policy violations impacted Boulanger’s suicide death.

2. Misconduct/Truthfulness – Deputy 2 was untruthful when he reported conducting a well-being check on the module.

Recommended Finding: ~~Sustained-Unfounded~~

Rationale: Department Policy and Procedure 2.46, Truthfulness, requires all personnel, “...to answer questions, whether orally or in writing, truthfully and to the fullest extent of their knowledge.” Deputy 2 reported during an interview and in a written response to CLERB that he had conducted a Soft Count – which is an inmate count that “verifies each inmate’s well-being through verbal or physical acknowledgement from the inmate” – between the hours of 5:15 and 5:35pm. ~~Video surveillance of that time frame disproved the actions he described and Deputy 2 declined an interview to provide an explanation for his statement and actions. The evidence supported the allegation, and the conduct was not justified.~~ Video surveillance of that time frame confirms the actions described by Deputy 2 and provide clear evidence that the alleged act or conduct did not occur.

3. Misconduct/Procedure – Deputy 2 failed to conduct an end of shift Soft Count according to policy.

Recommended Finding: ~~Sustained-Unfounded~~

Rationale: Sheriff’s Detentions Policy I.43, Inmate Count Procedure, establishes a uniform procedure for physically counting and verifying the well-being of all inmates within the facility. A Soft Count is one of the three types of inmate counts and requires that detentions staff verifies each inmate’s well-being through verbal or physical acknowledgement from the inmate. Three Soft Counts are required each day and are to occur during the time periods of 1700-1800, 1830 – 1900 and 0400 – 0430 hours. San Diego Central Jail’s Green Sheet policy further requires that a Soft Count is conducted as a Closing Count for the Day-Shift Count. ~~at the beginning and end of every shift, and that a printed Operations Report (Count Sheet) is utilized while conducting these Soft Counts. Deputy 2 reported conducting a security check, also known as a Head Count, during his end of shift count, and did not conduct a Soft Count as required by policy. Moreover, Deputy 2 did not utilize a printed Operations Report during this count, which is also required by policy.~~ Deputy 2 conducted a Soft Count at 1718 hours, which was within the time frame required by policy and verified the well-being of the decedent and his cell mates. ~~Deputy 2 declined an interview to provide an explanation for his actions.~~ Surveillance video of Deputy 2’s end of shift count verifies that he conducted a Soft Count according to policy and shows clear evidence that the alleged act or conduct did not occur. ~~did not conduct a Soft Count as required, and this act was not justified.~~

4. Misconduct/Procedure - Deputy 1 failed to respond to an inmate's attempt to contact him through the jail's intercom system.

Recommended Finding: Sustained

Rationale: Sheriff's Detentions Policy I.1, Emergency Alarms Systems, provides a means for detention facility staff and inmates to summon emergency assistance. Alarm buttons located in inmate cells are required to be connected to a central control area to ensure a constant monitoring of the alarms with appropriate, timely assistance dispatched to the scene of any alarm. The Control deputy is tasked to monitor this alarm system and is required to dispatch assistance when the alarm is activated. Boulanger's cellmate reported that upon discovering the decedent's body hanging from the bunk bed with what appeared to be a rope fabricated from a sheet around his neck, he pressed the intercom button 4-10 times to call for help, but no one answered. Per the cellmate's account, it took approximately 10 to 20 minutes before deputies arrived. The cellmate was observed on surveillance video standing in front of his cell door for approximately 5 minutes before contacted by deputies during their opening shift count. Deputy 1 was the assigned Control deputy at the time of this incident. He reported that sometime prior to his shift; the audio alert function of the inmate intercom system had been muted, with the volume turned all the way down. This prevented him from hearing the cellmate's attempted contact. Visual alerts from the decedent's cell, however, had been triggered and were observable on the intercom monitor; but according to Deputy 1, he customarily does not check the monitor until approximately 30 minutes after arriving in the control room, and after performing his pre-check duties. On this particular day, he had not observed the monitor prior to being contacted by housing deputies requesting that he open the decedent's cell door. When opening the cell door, Deputy 1 then observed the flashing red light on the monitor that corresponded to the decedent's cell. Deputy 1 declined an interview to provide an explanation for his actions. Policy requires that the Control deputy monitors the emergency alarm system and immediately dispatch assistance when an alarm is activated. The decedent's cellmate activated the alarm, but Deputy 1 failed to respond and this act was not justified.

CASES FOR SUMMARY HEARING (14)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

16-015

1. Illegal Search & Seizure – Deputy 3 broke into the complainant's bedroom and damaged the door.

Recommended Finding: Action Justified

Rationale: The complainant alleged that an unidentified deputy broke into her bedroom and damaged the door while executing a search warrant at her home. The Poway Criminal Apprehension Team (PCAT) assisted the High Intensity Drug Traffic Area/Tactical Narcotics Team (HIDTA/TNT) with serving a search warrant at the home of the complainant, where the subject of the search warrant – a known narcotics dealer - resided. The subject was contacted and detained in the garage while deputies conducted a protective sweep of the residence. A "protective sweep" is a limited, quick, visual inspection of those places where a person who poses a danger to officers or others might be hiding and are generally conducted when officers are inside a residence to effect an arrest or perform other inherently at-risk duties. The complainant's bedroom door was locked and subsequently forced open as officers needed to clear the room for potential safety threats. Penal Code Section 1531, Entry into House, authorizes officers to break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a warrant. Thirteen deputies were involved in this operation, and those queried could not identify the deputy who actually breached the door. That withstanding, the evidence showed that the act did occur but was lawful, justified and proper.

2. Illegal Search & Seizure – Deputy 2 confiscated \$500 that the aggrieved had reportedly won at a casino.

Recommended Finding: Action Justified

Rationale: The complainant alleged that deputies confiscated \$500 during their search of her home that the aggrieved had won at a casino, and this money was reportedly not related to any drug activity. The complainant's 49-year-old son resided with her in her home and was the subject of a search warrant. The aggrieved was a known drug dealer and the signed search warrant authorized deputies to search and seize any controlled substances, currency and other contraband named in the warrant. During the search of the aggrieved's bedroom closet, deputies found together drugs, numerous

Ziploc baggies and \$548 in mixed currencies believed to be associated with drug sales. This money and other contraband were confiscated as evidence. According to Title 21 of the United States Section Code 881 (a) (6), subject to government forfeiture are *all moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance... all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter*. A court order is required for the release of evidence taken under a warrant. The evidence showed that Deputy 2 confiscated money and other contraband during the execution of a search warrant, and this act was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 2 failed to document items seized from the complainant’s home.

Recommended Finding: Unfounded

Rationale: The complainant alleged that deputies failed to document items seized from her home while executing a search warrant. The complainant was not home during this search, and in a subsequent conversation with the CLERB Investigator, reported that she was unsure as to whether or not a receipt for property seized had been provided; she had not discussed this with the aggrieved who was present during the search. Deputy 2 documented on a Superior Court Receipt and Inventory sheet by sworn assertion, the specific items seized during the search of the complainant’s home. This sworn documentation is evidence that shows that the alleged act did not occur.

4. Misconduct/Procedure – Deputy 2 failed to return the complainant’s security camera.

Recommended Finding: Action Justified

Rationale: The complainant reported that Deputy 2 did not return a security camera confiscated while executing a search warrant. During the search of the complainant’s home and areas of the home commonly shared by the subject of the search warrant, Deputy 2 observed a security camera which provided a live feed to a television monitor. This monitor was not hooked up to a recording device in typical fashion to retain video for security purposes. From his training and experience, Deputy 2 knew that security cameras hooked up in this manner were typically used by narcotics dealers to alert them to police activity taking place outside their home. The wire to the camera was cut, and the camera was seized as evidence. According to Title 21 of the United States Section Code 881 (a) (6), *any appurtenances which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this subchapter, is subject to government forfeiture*. Deputy 2 believed that the security camera attached to the front of the complainant’s home was being used to facilitate the commission of crimes. He confiscated the camera as evidence, and this act was lawful, justified and proper.

5. Misconduct/Procedure – Deputy 1 broke into the complainant’s front door without giving her adequate time to respond to deputies’ knock and notice.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that deputies broke into her front door without allowing her ample time to respond to their knocks. While conducting a 4th Waiver Search on the aggrieved who resided in the complainant’s home, the Poway Criminal Apprehension Team (PCAT) breached the front to gain entry into the complainant’s home. A 4th Waiver Search authorizes Peace Officers to search any person on searchable probation, and any property under his or her control. Before entering the home, however, officers must: knock (or do something else that will alert the people inside to your presence); identify themselves as a police officer; explain the purpose of the contact, and demand entry, waiting a reasonable period before entering. A member of the criminal apprehension team documented in an arrest report that he knocked on the front door of the complainant’s residence several times and announced in a loud, clear voice, "Sheriff's Department, 4th Waiver search, demanding entry!" He reportedly knocked and made this complete announcement three times before Deputy 1 was authorized to breach the door. Case law authorizes officers to force entry into a home when they are refused admittance; an unreasonable delay in responding qualifies as a refusal. The response time afforded the complainant could not be determined without an audio or video recording of this contact; there is insufficient evidence to either prove or disprove the allegation.

6. Misconduct/Procedure – Deputy 3 damaged the complainant’s security camera during the search of her home.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that an unidentified deputy damaged a security camera during the search of her home. An arrest report from this incident documented that only the front door and a padlock on a storage shed were damaged during this probation search. Deputy 1 was unaware of damage to the complainant's security camera, and the complainant stated in a subsequent conversation with the CLERB Investigator, that a neighbor glued and repaired the crack reportedly found on the security camera. The complainant did not provide photos of the alleged damage, leaving insufficient evidence to either prove or disprove the allegation.

16-036

1. Death Investigation/Drug Overdose – Brandon Moyer was found unresponsive during medical staff's morning welfare check.

Recommended Finding: Action Justified

Rationale: There was no complaint of wrongdoing in this death investigation; a review was conducted in accordance with CLERB Rules & Regulations, 4.6 Citizen Complaint Not Required: Jurisdiction with Respect to Actions Involving Death. On October 7, 2015 Brandon Moyer was arrested by the San Diego Sheriff's Department on numerous drug related charges. He was booked into San Diego Central Jail and later transferred to George Bailey Detention Facility where he was classified and housed appropriately. During medical intake, Moyer reported to medical staff that he was not suicidal or homicidal, nor had he had any previous suicide attempts. He also denied using drugs or alcohol despite his drug-related charges. Moyer's cellmates denied that drugs were present in their cell or on the module, and denied that Moyer expressed any suicidal ideation. On March 11, 2016 at approximately 2:40AM, deputies responded to Moyer's cell to check on him after his cellmates reported that Moyer had been vomiting and was now unresponsive. Medical staff and Paramedics responded, provided treatment and once revived, recommended to Moyer that he be transported to a local hospital for further treatment. Moyer refused to be transported to the hospital, but was moved to the facility's Medical Isolation Unit where he could be closely monitored every half hour. Later that morning at approximately 8:30 AM, medical staff was conducting their welfare checks on the inmates in medical isolation, when a nurse arrived at Moyer's cell and found him unresponsive. Cardiopulmonary resuscitation was initiated by medical staff, and paramedics began advanced cardiac life support upon arrival at 8:44AM. Despite their efforts, Moyer could not be revived, and his death was pronounced at 9:03AM. The Medical Examiner attributed Moyer's death to acute heroin intoxication with aspiration pneumonia included as contributing, and the manner of death was accidental. There is no evidence to support an allegation of misconduct or negligence on the part of Sheriff's Department personnel. The actions of deputies were lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 failed to conduct a meal time Soft Count according to policy.

Recommended Finding: Not Sustained

Rationale: Sheriff's Detentions Policy I.43, Inmate Count Procedure, establishes a uniform procedure for physically counting and verifying the well-being of all inmates within the facility. A Soft Count is one of the three types of inmate counts and requires that detentions staff verifies each inmate's "well-being" through verbal or physical acknowledgement from the inmate. There is however, no specific definition of "well-being" that includes objective criteria for the assessment of an inmate's condition. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Surveillance video of this Soft Count was grainy and inconclusive, leaving insufficient evidence to either prove or disprove the allegation.

POLICY RECOMMENDATION:

1. It is recommended that the San Diego Sheriff's Department modify Policy I.43, Inmate Count Procedure, as it specifically relates to the Soft Count definition, to include an expanded, specific and objective definition of "well-being" that would include objective criteria for the assessment of an inmate's condition. This modified definition would serve to eliminate random subjectivity in the analysis of an inmate's well-being, and standardize detentions staff's evaluation processes.
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16-074

1. Misconduct/Discourtesy – Deputy 2 stated to the complainant, “What the fuck are you doing?”, or used words to that effect.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 2 stated to him, “What the fuck are you doing?”, or used words to that effect, when he was returning to his bunk as instructed. Deputy 2 and other deputies responded to the complainant’s quad after a fight between two other inmates was reported. Inmates had been instructed to lie on their assigned bunks in order for deputies to investigate the incident, when Deputy 2 reported in a Crime/Incident Report that he observed the complainant walking out of the bathroom. Deputy 2 reported that he and other deputies instructed the complainant to go to his assigned bunk, but the complainant refused to comply and allegedly stated to deputies, “fuck off” and “go to hell.” Deputy 2 again instructed the complainant to get on his bed, but he reportedly continued to yell disrespectful comments toward the deputy. Per Deputy 2, the complainant’s behavior began to incite other inmates, necessitating his removal from the quad to prevent further incidents from occurring. Sheriff’s Policy 2.22, Courtesy, permits the use of coarse, profane or violent language when necessary to establish control during a violent or dangerous situation. Deputy 2 was concerned that the complainant’s statements and conduct were incendiary, requiring an immediate response. The investigation of this complaint yielded insufficient evidence to assess the danger level and potential for violence present in the complainant’s quad following this inmate conflict. There was also insufficient evidence to assess the propriety of Deputy 2’s responses to the complainant’s behavior, leaving insufficient evidence to determine if there was a violation of sheriff’s policy.

2. Excessive Force – Deputy 2 “rammed” the complainant into a module door while escorting him out of the module.

Recommended Finding: Sustained

Rationale: The complainant alleged that Deputy 2 rammed him into a module door to open it while escorting him out of the module. Deputy 2 reported in a Crime/Incident Report that as he and Deputy 1 were escorting the complainant out of the module, he tried to turn toward them and began to rock his upper body back and forth. As the complainant pulled his body forward, Deputy 2 reported, he pushed the complainant through the module door to escort him out of the module. Surveillance video of the incident showed the complainant look toward Deputy 2 as he was being escorted, but his body appeared to remain facing forward and he appeared to be fully controlled by Deputy 2 at that time. Surveillance video did not show the complainant rocking back and forth and pulling his body forward as reported by Deputy 2. The video did appear to show Deputy 2 control the complainant and use the complainant’s body to open the module door. The complainant’s chest, and possibly his face, was observed contacting the module door and Deputy 2 is observed continuing to push Williams after they pass through the door. Deputy 2 provided confidential information to CLERB that was considered in arriving at the recommended finding. 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. Sheriff’s Policy 2.49, Use of Force, further states that “Employees shall not use more force in any situation than is reasonably necessary under the circumstances, and shall use force in accordance with law and established Departmental procedures.” Video evidence showed that Deputy 2 used excessive force in pushing the complainant into the module door to open it, and this force was unreasonable and not justified.

3. Excessive Force – Deputy 2 threw the complainant to the ground when he was not resisting deputies.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 2 threw him to the ground when he was not resisting deputies. Both deputies reported that the complainant continued to threaten them and attempted to break free of their grasp while being escorted to a processing area. They reported that in an effort to maintain control of the complainant, Deputy 2 pushed him into a nearby fence and then took him to the ground. Surveillance video of this incident was grainy and captured from a distance which limited its evidentiary value in determining whether or not the force used by Deputy 2 was reasonable. There is insufficient evidence to either prove or disprove the allegation.

4. Excessive Force – Deputy 1 threw the complainant to the ground when he was not resisting deputies.

Recommended Finding: Unfounded

Rationale: The complainant alleged that Deputy 1 threw him to the ground when he was not resisting deputies. Both deputies reported that the complainant continued to threaten them and attempted to break free of their grasp while being escorted to a processing area. They both reported that in an effort to maintain control of the complainant, Deputy 2 pushed him into a nearby fence and then took him to the ground. Once on the ground, Deputy 1 secured the complainant's legs by crossing his ankles and pinning them to the ground. Surveillance video of this incident was grainy and captured from a distance, however it showed that Deputy 1 was not involved in taking the complainant to the ground. The video evidence showed that the act as attributed to Deputy 1 did not occur.

16-075

1. Misconduct/Procedure – Deputy 2 allegedly “did nothing” when the complainant’s neighbor was physically violent toward her.

Recommended Finding: Unfounded

Rationale: The complainant alleged that Deputy 2 failed to act when she reported that her neighbor had physically attacked her. The complainant and her neighbor became engaged in a physical altercation after their dogs began to fight. The complainant reported using a water hose to separate the pets when her neighbor reportedly grabbed her by the wrist and began screaming at her. The complainant’s neighbor offered a different account of this incident alleging that the complainant attacked him first. After taking their respective statements, Deputy 2 determined that the complainant’s neighbor was the primary aggressor, and after securing a signed Citizen’s Arrest Declaration from the complainant, he arrested the neighbor for PC § 243(a) Simple Battery. The neighbor was released from the scene based on his promise to appear in court. Deputy 2’s Arrest Report documented this arrest and showed that the alleged act or conduct did not occur.

2. Misconduct/Procedure – Deputy 1 allegedly failed to take a report and/or act when the complainant’s property was vandalized.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 failed to take a report or act when her neighbor allegedly vandalized her property. Deputy 1 contacted the complainant and her husband at their home and was shown glue that was allegedly placed on their fence by their neighbor. The complainant’s husband informed Deputy 1 that the substance could be cleaned off with no permanent damage and he declined filing a report on the alleged vandalism. This declination was documented by Deputy 1 in the dispatch record and confirmed by the CLERB Investigator during a phone conversation with the complainant’s husband. Deputy 1 provided the complainant an incident number documenting the call and contacted their neighbor regarding the restraining order. Deputy 1 did not take a report of this incident because the complainant’s husband declined filing a report. Deputy 1’s actions during this contact were lawful, justified and proper.

3. Misconduct/Procedure – Deputy 1 allegedly failed to properly file the proof of service of a Temporary Restraining Order (TRO) against the complainant’s neighbor.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 failed to properly file a proof of service of a TRO, resulting in the department’s inability to cite the neighbor when he later violated conditions of the TRO. After speaking with the complainant and her husband, Deputy 1 contacted the restrained party and served a TRO on 8/6/2016. He attempted to contact Sheriff’s Records and Inquiry to have the TRO documented as served; however, Inquiry was unable to locate a TRO on file related to the complainant and her neighbor. The supervisor of Records reported documentation of Deputy 1’s attempts for a proof of service, but the restraining order was not in the system due to clerical errors related to the courts. Deputy 1’s attempt for proof of service was also documented in sheriff’s dispatch records. It was not until 8/17/2016 that a re-scanned TRO was placed in the system by the court and available for confirmation. Deputy 1 exercised due diligence in his attempt to file for proof of TRO service through a means prescribed by Policy 6.55, Protective Orders, and his actions were lawful, justified and proper.

16-084

1. Misconduct/Procedure – Deputy 1 told the complainants that the grand theft crime they reported was a civil matter.

Recommended Finding: Action Justified

Rationale: The complainants are business owners who stated that their gift shop items were given away by their landlord without permission. Deputy 1 responded to the call, gathered information, and determined there was not probable cause to make an arrest, because the merchandise was not missing, but being stored while the complainants were unavailable to conduct business. A landlord/tenant dispute is a civil matter and the evidence showed that Deputy 1's actions at the time of this incident were lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 failed to investigate a crime and refused to review evidence presented by the complainants.

Recommended Finding: Action Justified

Rationale: The complainants stated that immediately after responding to their call, Deputy 1 determined their report of theft was a civil matter. They said the deputy refused to look at their video recording, would not interview their employees, and would not allow them to show him where the missing items were located. There was no dispute that the complainants produced receipt evidence, identified witnesses, and proffered video for the deputy's review. CAD records corroborated this incident as lasting for over an hour and notated that it was cleared as a civil matter. Because an investigation is not warranted in a civil matter, Deputy 1's actions were lawful, justified and proper.

3. Misconduct/Procedure – Deputy 1 changed his report.

Recommended Finding: Action Justified

Rationale: The complainants stated that Deputy 1 was asked to rewrite his report by higher officials. All submitted reports are reviewed by command staff and routinely rewritten. County personnel were informed of the situation and the District Attorney's office requested that a Grand Theft case be written. Deputy 1 was then asked to write a theft report, which he did, and it was subsequently rejected for prosecution. The evidence showed the alleged act or conduct did occur, but was lawful, justified and proper.

16-085

1. Misconduct/Procedure – Deputy 1 refused to move the complainant who reported he was in danger. The complainant was then beaten by other inmates and hospitalized for his injuries.

Recommended Finding: Not Sustained

Rationale: The complainant stated that he asked Deputy 1 to assist him with a cell change because he felt threatened, but the deputy refused in retaliation for the complainant's grievance against him. Crime Report #16144412 documented this inmate-on-inmate battery. The report documented the complainant's request for a "convenience move" that was reportedly denied prior to deputies conducting a hard count. The complainant's cellmates were identified as the suspects, but invoked their Miranda rights and declined to comment. Deputy 1 refuted the allegation as stated by the complainant. There was no other evidence available to corroborate either the complainant's or the deputy's version of events and therefore insufficient evidence to prove or disprove the allegation.

2. Misconduct/Retaliation – Deputy 1 retaliated against the complainant for filing a complaint against him.

Recommended Finding: Not Sustained

Rationale: The complainant said that Deputy 1 "held grudges and retaliated against those citizens who exercised their freedom of impartiality and independent and unbiased citizen complaints." The complainant did not provide any further clarification, (other than allegation stated above) or evidence to support his assertion. Deputy 1 refuted the allegation as stated by the complainant; and with no further evidence known at this time, there was insufficient evidence to render any other finding.

1. Illegal Search & Seizure – Deputy 1 detained the complainant.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 detained him without cause. The complainant reported that he was walking home through a commercial district at approximately 4:00 AM, when he was contacted by Deputies 1 and 2. The complainant had earlier been consuming a few beers with friends but reported that he was not intoxicated. Photographs were taken during this incident and documented that the complainant was not wearing a shirt when contacted. According to Case Law 2.8, Search and Seizure – Persons, for an investigative stop or detention to be valid, a law enforcement officer must have "reasonable suspicion" that: (1) criminal activity may be afoot and (2) the person you are about to detain is connected with that possible criminal activity. Deputy 1 provided information during the course of this investigation that supported the complainant's report of his alcohol consumption prior to this contact and raised concerns with respect to PC § 647(F), Disorderly Conduct, as it specifically related to public intoxication. Additionally, Sergeant 3 stated to the complainant in a recorded conversation, that there was activity at the same time and in the same area where he was contacted that led deputies to believe that he may have been associated with a subject pulled over in a traffic stop. This particular subject had an active bench warrant and an extensive criminal history, and may have been involved in committing burglaries in the area. Deputy 1 had legal justification to detain the complainant based on possible PC § 647(F) implications and his possible association with this other subject. The evidence showed that the act did occur but was lawful, justified and proper.

2. Illegal Search & Seizure – Deputy 1 patted down the complainant and searched his person during a contact.

Recommended Finding: Not Sustained

Rationale: The complainant reported that Deputy 1 patted him down and searched his person during a subject stop. Pursuant to Case Law 2.20, Search and Seizure – Persons, specifically as it relates to searches during detentions (Patdowns/Frisks), in potentially dangerous situations, officers are authorized to conduct a pat down or limited weapons search of the outer clothing of someone who has been detained, but (1) only for weapons, (2) only of his outer clothing, and (3) only if they have specific facts that would make a reasonable officer feel in danger. During a detention, officers have no power to conduct a general, full, exploratory search of the suspect. The complainant reported that during this contact, Deputy 1 emptied the contents of his pockets and placed them on the hood of his patrol vehicle. This level of search is only permissible if the person is subject to a search clause or voluntary consent is given. The complainant could not recall the events from a year ago when he had admittedly been drinking, and was ambiguous as to whether or not he gave consent for the search of his person. Deputy 1's account conflicted with the information provided by the complainant, leaving insufficient evidence to either prove or disprove the allegation.

3. Excessive Force – Deputy 2 forced the complainant's arms near his head while removing his cuffs, causing tremendous pain and possibly dislocating his shoulders.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 2 forced his arms up near his head while removing his handcuffs, causing tremendous pain and possibly dislocating his shoulders. During the course of this investigation, Deputy 2 provided an account that conflicted with information reported by the complainant. The complainant failed to provide medical information supportive of his allegations; however, any medical information provided would have in all likelihood lacked evidentiary value as the complainant had reported that the problems with his shoulder pre-existed this incident and was reportedly exacerbated by Deputy 2's alleged actions. Absent a video recording of this incident or an independent witness, there was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Discourtesy – Deputy 3 stated to the complainant that he was "looking for a hand out," or used words to that effect.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 3 accused him of "looking for a hand out" as the reason behind his complaint related to Deputies 1 and 2's conduct. Deputy 3 was not heard making this comment during the review of two audio recordings of conversations between him and the complainant. Furthermore, Deputy 3 provided information

during the course of CLERB's investigation that conflicted with information reported by the complainant. Absent an audio recording of this conversation, there was insufficient evidence to either prove or disprove the allegation.

16-094

1. Illegal Search & Seizure – Deputies 1 and 2 entered and searched the complainant's apartment without her consent.

Recommended Finding: Action Justified

Rationale: The complainant reported that Deputies 1 and 2, along with members of a Fugitive Task Force “unlawfully entered” and searched her apartment while neither she nor a probationer residing in her home, were present. The probationer had been released 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. One probationary condition required that the probationer submit his person, vehicle, residence, property, personal effects, computers and recordable media 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. The complainant's home had been surveilled over numerous days, and despite the complainant's assertion to the contrary, the probationer was found to be living in the home of the complainant. Pursuant to 4th waiver provisions, case law allows for the entry and search of a probationer's home even if no one is present, and where there is a joint tenant or roommate involved, all shared areas of the residence are permitted to be searched; consent is not required. The evidence showed that Deputies 1 and 2 entered the complainant's home to execute a 4th Waiver Search, and this act was lawful, justified and proper.

2. Misconduct/Procedure – Deputies 1 and 2 damaged some of the complainant's furniture during the search of her apartment.

Recommended Finding: Unfounded

Rationale: The complainant alleged that her couch, a dresser and two beds were broken when Deputies 1 and 2 and other members of a Fugitive Task Force entered and searched her apartment. An arrest report from this incident documented that no property was damaged during this search; photos of the complainant's apartment taken the date of the incident confirmed this report. The complainant was to provide photos of the broken furniture, but at the time of this report, had not done so. Absent photographic evidence of this alleged damage, coupled with information provided by Deputies 1 and 2 and other members of the task force; in addition to credibility issues associated with the complainant, the preponderance of evidence – which weighs the balance of probabilities and the likelihood of a statement being true or not true – shows that the alleged act or conduct did not occur.

17-001

1. Illegal Search & Seizure – PO 1 entered and searched the complainant's apartment without her consent.

Recommended Finding: Action Justified

Rationale: The complainant reported that PO 1, along with members of the San Diego County Sheriff's Department “unlawfully entered” and searched her apartment while neither she nor a probationer residing in her home, were present. The probationer had been released 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. One probationary condition required that the probationer submit his person, vehicle, residence, property, personal effects, computers and recordable media 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. PO 1 had surveilled the complainant's apartment for numerous days, and despite the complainant's assertion to the contrary, the probationer was found to be living with the complainant. Pursuant to 4th waiver provisions, case law allows for the entry and search of a probationer's home even if no one is present, and where there is a joint tenant or roommate involved, all shared areas of the residence are permitted to be searched; consent is not required. The evidence showed that PO 1 entered the complainant's home to execute a 4th Waiver Search, and this act was lawful, justified and proper.

2. Misconduct/Procedure – PO 1 damaged some of the complainant’s furniture during the search of her apartment.

Recommended Finding: Unfounded

Rationale: The complainant alleged that her couch, a dresser and two beds were broken when PO 1 and other members of a Fugitive Task Force entered and searched her apartment. An arrest report from this incident documented that no property was damaged during this search; photos of the complainant’s apartment taken the date of the incident confirmed this report. The complainant was to provide photos of the broken furniture, but at the time of this report, had not done so. Absent photographic evidence of this alleged damage, coupled with information provided by PO 1 and other members of the task force; in addition to credibility issues associated with the complainant, the preponderance of evidence – which weighs the balance of probabilities and the likelihood of a statement being true or not true – shows that the alleged act or conduct did not occur.

17-047

1. Misconduct/Procedure – An unidentified deputy asked the complainant’s son about the nature of his crime while in front of other Protective Custody inmates.

Recommended Finding: Summary Dismissal

Rationale: The complainant reported to CLERB on behalf of her son, that an unidentified deputy approached him, and in front of other Protective Custody inmates, asked the aggrieved about the nature of his crime. According to the complainant, this frightened her son and endangered his life. The complainant provided no specific date and time of this alleged incident. An email and complaint packet was sent to the aggrieved requesting the date, time and details of this incident. He was informed at that time and in a subsequent email that CLERB could not proceed without more specific information related to this alleged incident. To date, however, the aggrieved has not responded. This complaint could not be investigated because the aggrieved failed to cooperate with the investigation by providing pivotal information. Such complaints are referred to the Review Board for Summary Dismissal.

17-053

1. Misconduct/Retaliation – Unidentified deputies acted in a “cruel and biased” manner against the complainant.

Recommended Finding: Summary Dismissal

Rationale: CLERB received a signed complaint on July 3, 2017, regarding an incident that had occurred in 2012. The complainant was contacted and reported that there was no contact with law enforcement within the past year. The Review Board lacks jurisdiction because the Review Board cannot take any action in respect to complaints received more than one year after the date of the incident giving rise to the complaint.

2. Misconduct/Procedure – Deputy 1 alleged that a minor in the complainant’s custody had bruises.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

17-084

1. Misconduct/Procedure – Deputy 1 failed to provide legal assistance for the complainant’s son.

Recommended Finding: Summary Dismissal

Rationale: The complainant alleged on behalf of her son, that members of the Office of Assigned Counsel failed to provide required assistance in processing her son’s legal mail. The complainant also alleged that medical personnel at San Diego Central Jail withheld her son’s medication without disclosing a reason. 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. CLERB does not have jurisdiction over the subject matter of the Complaint.

2. Misconduct/Medical – Medical staff at San Diego Central Jail failed to provide medication for the aggrieved.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

17-085

1. Misconduct/Procedure – An unidentified deputy failed to provide to the complainant a copy of her son’s police report.

Recommended Finding: Summary Dismissal

Rationale: The complainant reported that a member of the Office of Assigned Counsel failed to provide her a copy of her son’s police report. 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. CLERB does not have jurisdiction over the subject matter of the Complaint.

17-097

1. Excessive Force/Canine – Deputy 1 deployed his canine unit on the complainant without issuing any warnings, causing severe injuries.

Recommended Finding: Summary Dismissal

Rationale: The complainant alleged that Deputy 1 deployed his canine unit on him without issuing any warnings. This incident took place in July, 2016 which is outside of the one year jurisdictional limit for filing complaints with the Review Board (CLERB). 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. CLERB does not have jurisdiction because the Complaint was not timely filed.

End of Report