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ARON S. HERSHKOWITZ

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

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**REGULAR MEETING AGENDA**  
**TUESDAY, NOVEMBER 13, 2018, 5:30 P.M.**  
**San Diego County Administration Center**  
**1600 Pacific Highway, Room 302/303, San Diego, 92101**

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

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

**DISABLED ACCESS TO MEETING**

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

**WRITINGS DISTRIBUTED TO THE BOARD**

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

**1. ROLL CALL**

**2. PUBLIC COMMENTS**

- a) This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction but not an item on today's open session agenda. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary. Each speaker will be limited to three minutes.

**3. MINUTES APPROVAL**

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

**4. PRESENTATION/TRAINING**

- a) Brown Act Training: County Counsel

**5. EXECUTIVE OFFICER'S REPORT**

- a) Overview of Activities of CLERB Executive Officer and Staff for the Month of October

- b) Workload Report – Open Complaints/Investigations Report (*Attachment B*)
- c) Case Progress and Status Report (*Attachment C – to be distributed at meeting*)
- d) SDDS Policy Recommendations and Sustained Finding Response (*Attachment D*)
  - i) 18-028/Greer: Medical Response

**6. BOARD CHAIR’S REPORT**

**7. NEW BUSINESS**

- a) N/A

**8. UNFINISHED BUSINESS**

- a) Consideration and Adoption of Revisions to Rules and Regulations (*Attachment E*) and Update on Board of Supervisors Approval
- b) Report from the Executive Officer (EO) Selection Committee

**9. BOARD MEMBER COMMENTS**

**10. SHERIFF/PROBATION LIAISON QUERY**

**11. CLOSED SESSION**

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

<b>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 (6)**

**ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE**

**17-019**

1. Death Investigation/Officer-Involved Shooting (OIS) – Deputy 1 fired two rounds from his department-issued service weapon at Isidro Bazan during the commission of a crime, striking him once in the chest.

Recommended Finding: Action Justified

Rationale: There was no complaint of misconduct and this case was reviewed in accordance with CLERB Rules & Regulations 4.6, Citizen Complaint Not Required: Jurisdiction with Respect to Actions involving Death. On 03-02-17, at 3:16am, deputies were dispatched to a family occupied residence regarding a

burglary in progress. Deputies arrived and set up a perimeter outside where they observed suspect Isidro Bazan inside of the home holding several items. Deputies entered the house and initially encountered Bazan, but then lost sight of him as he ran into an attached garage. Deputies followed and attempted to give Bazan verbal commands, but he refused to comply with instructions and told deputies he had a handgun, made suicidal statements, and threatened to shoot deputies. Bazan held an unknown object to his head and also pointed it at deputies; the object was later determined to be a torch lighter. Bazan then attempted to flee the garage with/in the homeowner's vehicle, but the exit was blocked by vehicles parked in the driveway, which he attempted to ram unsuccessfully. Bazan then got out of the vehicle and ran from the garage at which time Deputy 2 deployed one round from his less lethal shotgun and hit Bazan one time on the left side of his upper back. Deputy 1 heard what he perceived to be two gunshots and simultaneously observed Bazan with his arm extended toward deputies and believed that Bazan had shot at deputies in the house. Deputy 1 said he feared that Bazan would shoot him and that he posed a threat to the citizens in the surrounding neighborhood. Deputy 1 fired two rounds at Bazan with his department issued weapon. Bazan was hit once in the upper torso. As deputies attempted to take Bazan into custody, he continued to yell at them and refused to put his hands behind his back. Once handcuffed, deputies confirmed Bazan suffered a gunshot wound and carried him to the sidewalk to perform CPR. Paramedics were summoned and upon their arrival advanced cardiac life support measures were initiated, to no avail. Death was pronounced at the scene at 3:43am. The cause of death was thoracoabdominal (affecting the thorax and the abdomen) gunshot wound, and the manner of death was homicide. The evidence indicated that Mr. Bazan did not fire any weapons during the incident, but his actions posed a clear threat to on-scene deputies and nearby residents, thus resulting in the deputies' use of lethal force. Deputy's presence, verbal direction, and less lethal options were utilized prior to the discharge of a firearm; all which failed to deter Bazan from his efforts to escape. The facts, evidence, and perceptions of each deputy justified the use of deadly force against Bazan. Absent conflicting witness statements, there was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

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## **17-065**

1. In-Custody Death Investigation - Alan Weaver, an 84-year-old male, was incarcerated at the San Diego Central Jail (SDCJ). On the morning of 11-18-16, while in the jail infirmary, Mr. Weaver's health was noted to be declining. He was transported to the hospital; however, while en route, exigent circumstances required Mr. Weaver be re-routed to the nearest hospital. Upon his arrival to the hospital, Mr. Weaver experienced cardiac arrest. Advance cardiac life support measures were initiated, but when he failed to respond, his death was pronounced at the hospital. According to reports from the San Diego County Medical Examiner's Office, the cause of death was "Hypertensive and Atherosclerotic Cardiovascular Disease," and the manner of death was "Natural."

### Recommended Finding: Action Justified

Rationale: Mr. Weaver was arrested on 10-25-16 by the SDSD for numerous sex crimes against a minor. According to Mr. Weaver's SDSD booking jacket/file and classification documents, he was properly classified upon his entry into the SDSD jail system after his 10-25-16 arrest. He was placed into Protective Custody, was housed in the Medical Observation Unit, and was housed alone; he did not have a cellmate. There was no evidence that Mr. Weaver expressed any concerns about his mental or physical well-being to any member of the SDSD, sworn or professional. On the morning of 11-18-16, when Mr. Weaver was medically assessed by a jail physician and it was determined that he be transported to a hospital for a higher level of care due to his failing health, sworn personnel expeditiously responded, paramedics were summoned, and Mr. Weaver was transported to Tri-City Medical Center via ambulance. When his health further declined, paramedics made the decision to re-route to the nearest hospital. Upon his arrival to Scripps Memorial Hospital Encinitas, Mr. Weaver experienced cardiac arrest. Medical staff initiated advance cardiac life support measures, but when Mr. Weaver failed to respond, his death was pronounced. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

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## **17-141**

1. Excessive Force – An unidentified deputy “kicked” the complainant as he was having a seizure.

Recommended Finding: Not Sustained

Rationale: The complainant stated that on 11-27-17, around 9:00 p.m., he had a seizure in the “rec” (recreational) yard. He reported that a deputy “kicked” him while he was down instead of getting him medical attention. The complainant could not identify the responsible party and was unavailable for follow-up clarification. Medical records documented that the complainant suffered a medical emergency one day prior, which was also confirmed by an Incident Report dated 11-26-17, which verified a report of “man down” in the House 2 recreation yard. The House 2 Security Deputy, responded to the scene and found the complainant unresponsive and shaking. The complainant was placed on a gurney and taken to medical where he was evaluated by nursing personnel. In accordance with Sheriff’s Policy & Procedure, M.5 Medical Emergencies, the actions taken by deputies in response to the complainant’s distress, were lawful, justified and proper. While it appeared that the complainant was not credible in his recall of these events because the dates, personnel, and actions described by the complainant do not correspond to the available documentation, it is understandable that he may have been unintentionally wrong given his medical condition and because inmates do not have access to time/date mechanisms. Absent surveillance video, there was insufficient information to prove or disprove this allegation.

2. Excessive Force – Unidentified deputies “choked” the complainant as they picked him up by his shirt.

Recommended Finding: Not Sustained

Rationale: The complainant reported that on 12-15-17, he was in a holding tank waiting to be taken to the hospital when he started having chest pain and trouble breathing. He said that Deputy “X” and two other (unidentified) deputies started treating him like a ragdoll, “nearly choking me,” by the way they picked him up by his shirt. He said he was able to get the name of one deputy, Deputy “X” and there were other inmates present, but he did not get their names. There were no records to support the complainant’s assertions for the incident date or the deputy identified by the complainant; the complainant was subsequently unavailable for follow-up clarification. According to medical records, there were medical emergencies related to the complainant on 11-27, 12-09, 12-11, and 12-13-17. An Incident Report on 12-11-17, confirmed that the complainant was found lying on the floor, gasping for air while holding his chest. The complainant was placed on a gurney and taken to medical where he was evaluated by nursing personnel. In accordance with Sheriff’s Policy & Procedure, M.5 Medical Emergencies, the actions taken by deputies in response to the complainant’s distress, were lawful, justified and proper. While it appeared that the complainant was not credible in his recall of these events because the dates, personnel, and actions described by the complainant do not correspond to the available documentation, it is understandable that he may have been unintentionally wrong given his medical condition and because inmates do not have access to time/date mechanisms. Absent surveillance video, there was insufficient information to prove or disprove this allegation.

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**18-013**

1. Misconduct/Procedure – Unidentified personnel failed to return the complainant’s \$40 cash and a pair of pants upon her release from custody.

Recommended Finding: Unfounded

Rationale: Upon being approached by San Diego Police Department (SDPD) police officers, referencing a call for service, the complainant invited the police officers to check her bags. The complainant reported that the police officers did check her bags, but not in her presence. The police officers arrested and transported the complainant to jail for violations of the law. According to the complainant’s SDSD jail booking jacket/file, per her Booking Intake and Personal Property Inventory form, Sheriff’s employees, neither sworn or non-sworn professional staff, collected any U.S. currency [cash] from the complainant, nor a wallet or any other personal effects, other than clothes, upon her admission into the jail. The complainant advised that when she was arrested, she had \$40 in her wallet. According to the SDSD DSB P&P Section Q.55 entitled, “Property Received with Inmates,” It will be the responsibility of the arresting/transporting officer to accurately inventory

the arrestee's money. The officer will count and verify the money amount in the presence of the arrestee. Accurate inventory of currency amounts will be documented on the Booking Intake/Personal Property Inventory. It is the responsibility of the arresting/transporting officer to resolve all cash discrepancies prior to acceptance of the arrestee. The officer will place the money in a small plastic property bag. The complainant claimed that when she was released from jail, her money was not returned to her, nor were her pants. However, upon her discharge from jail, the complainant signed a two-page SDSA Inmate Personal Property Receipt. The form indicated that clothing items were released to her. The last page of the release form stated, "I have received all of my personal property at release from the facility." The complainant signed the form and she was released from jail on 01-27-17. The evidence indicated that no monies or pants were collected or impounded upon the complainant's admission into jail, therefore no monies or pants were given to her upon her release from jail. Additionally, upon her discharge from jail, the complainant acknowledged that all property was returned to her when she willingly signed the Inmate Personal Property Receipt. The evidence shows that the alleged act or conduct did not occur.

2. Excessive Force – SDPD police officers “roughly” placed handcuffs on the complainant’s ankles and hands, causing pain in her back and chest.

Recommended Finding: Summary Dismissal

Rationale: CLERB received a signed complaint on 02-12-18, regarding an incident that had involved police officers employed by the SDPD. The Review Board lacks jurisdiction because the Review Board cannot take any action in respect to complaints against other agencies not employed by the County in the Sheriff's Department or the Probation Department. The following CLERB rule applies: 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 police officers involved in this allegation worked for the San Diego Police Department and reside outside CLERB's jurisdiction.

3. False Arrest – SDPD police officers arrested the complainant for loitering in front of her motel room.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #2

4. Discrimination/Racial – SDPD police officer racially profiled the Black complainant.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #2

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## **18-110**

1. Misconduct/Procedure – Deputy 1 withheld the complainant’s mail.

Recommended Finding: Action Justified

Rationale: According to the complainant an unidentified deputy, later identified as Deputy 1, withheld delivery of his mail for no specific reason while he was in custody. The complainant said his family, including his mother, girlfriend and aunt mailed letters from Oceanside on 07-26-18, and at the time of the complaint, the mail had not yet been received. The complainant further stated his girlfriend wrote him from Tijuana and sent letters to his mother. His mother then sent the mail to the complainant from Oceanside. Per the complainant, a total of seven letters were sent to him that were not received at the time of his complaint. An Inmate History Summary Report stated on 08-08-18 mail to the complainant was rejected by Deputy 1 due to three letters were sent “inmate to inmate, via 3<sup>rd</sup> party, and contained stains and blank stationary”. The applicable content of SDSA P&P Section P.3 entitled, “Inmate Mail,” in effect at the time of the incident and not updated since the incident, stated mail can be rejected for containing stains. It also stated mail could be rejected if inmates incarcerated within the San Diego County Sheriff's Detention Facilities correspond with other inmates housed

in the San Diego County Sheriff's Detention Facilities directly or through a third party. The only way to confirm why a letter was rejected was by reviewing a J-320 (Contents Unacceptable Notice) form. In this matter the J-320 form, dated 08-08-18, stated mail was rejected and returned to the sender due to stains, blank stationary and for inmate to inmate correspondence sent via a third party. Therefore evidence showed three letters were rejected but it was lawful, justified and proper.

2. Misconduct/Procedure – Unidentified deputies withheld the complainant's mail.

Recommended Finding: Not Sustained

Rationale: According to the complainant unidentified deputies withheld delivery of his mail for no specific reason while he was in custody. The complainant said his family, including his mother, girlfriend and aunt mailed letters from Oceanside on 07-26-18 and at the time of the complaint they had not yet been received. The complainant further stated his girlfriend wrote him from Tijuana and sent letters to his mother. His mother then sent the mail to the complainant from Oceanside. Per the complainant a total of seven letters were sent directly to him that were not received at the time of his complaint. An Inmate History Summary Report stated on 08-08-18 mail to the complainant was rejected by Deputy 1 due to three letters sent inmate to inmate via 3<sup>rd</sup> party, stains and blank stationary. These letters were referred to in the previous allegation. There was no evidence to confirm if there were more letters sent to the complainant that were either received or not received. The complainant stated the letters he never received were from his girlfriend in Tijuana, sent via his mother, but without further evidence there was no way to confirm who the letters were from or if they were actually sent. Therefore there was insufficient evidence to either prove or disprove the allegation.

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#### **18-134**

1. Misconduct/Procedure – Unidentified staff “violated” the complainant.

Recommended Finding: Summary Dismissal

Rationale: The complainant reported, “I have been violated in this institution & am still being violated.” Upon request, the complainant ambiguously reported ongoing issues with unidentified staff, on unknown dates, at unknown locations. CLERB Rules & Regulation 9.2, Screening of complaints allows for Summary Dismissal with a complaint not alleging facts establishing a prima facie showing of misconduct.

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***End of Report***