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ARON S. HERSHKOWITZ

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

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**REVISED REGULAR MEETING AGENDA**  
**TUESDAY, DECEMBER 11, 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 November 2018 Regular Meeting (*Attachment A*)

**4. PRESENTATION/TRAINING**

- a) N/A

**5. EXECUTIVE OFFICER'S REPORT**

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

- b) Workload Report – Open Complaints/Investigations Report (*Attachment B*)
- c) Case Progress and Status Report (*Attachment C – to be distributed at meeting*)

**6. BOARD CHAIR’S REPORT**

**7. NEW BUSINESS**

- a) 2019 CLERB Officers Election
  - i. Report of Nomination Subcommittee for the 2019 CLERB Officers
  - ii. Election of 2019 CLERB Officers

**8. UNFINISHED BUSINESS**

- a) Report from the Executive Officer (EO) Selection Committee
- b) Update regarding Rules and Regulations and Jail Inspection Ordinance

**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 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).

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

**CASES FOR SUMMARY HEARING (7)**

**ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE**

**17-036**

1. Death Investigation/Officer Involved Death – Mr. Mark Roshawn Adkins was a 54-year-old male who was a transient. On the morning of 05-20-17, Sheriff’s deputies were summoned to an apartment/condo complex referencing a prowler; Mr. Adkins was observed to jump over fences within the complex and attempt to break into cars and homes. Sheriff’s deputies engaged Mr. Adkins in a use of force, subject to arrest. Deputies 1 and 2 deployed their conductive energy devices (CED, also known as a Taser). Mr. Adkins was arrested, and paramedics were summoned to the scene. Moments later, Mr. Adkins was noted to become unresponsive. Cardiopulmonary resuscitated was initiated and Mr. Adkins was transported to the hospital. Upon his arrival to the hospital, cardiopulmonary resuscitated was continued, but when he failed to respond, his death was pronounced.

Recommended Finding: Action Justified

Rationale: On the morning of 05-20-17, condo complex residents called 911 referencing a prowler; Mr. Adkins had been observed to jump over fences and attempt to break into cars and homes. Sheriff deputies responded to the location and confronted Mr. Adkins. Prior to their arrival on scene, Sheriff deputies were advised that Mr. Adkins was possibly under the influence of Phencyclidine (PCP). Upon responding to the location, Deputies 1 and 2 located and confronted Mr. Adkins. During their interaction, deputies suspected that Mr. Adkins was under the influence of an illicit drug(s) and was exhibiting pre-assaultive behavior. Additionally, Mr. Adkins refused to comply with the deputies' commands. Both deputies deployed their CED, which initially did not have an effect on Mr. Adkins. Eventually, after using force, deputies were able to restrain Mr. Adkins for arrest. Mr. Adkins was taken into custody, and paramedics were summoned to the scene to medically access him. Once paramedics arrived on scene, they administered a sedative intravenously on Mr. Adkins. Moments later, Mr. Adkins was noted to become unresponsive. Paramedics initiated advanced cardiac life support measures and Mr. Adkins was transported, via ambulance, to Sharp Grossmont Hospital. Upon Mr. Adkins' arrival to the hospital, advanced cardiac life support measures were continued, but when he failed to respond, his death was pronounced. The Medical Examiner's Office performed an examination on Mr. Adkins. The cause of death was, "Resuscitated cardiopulmonary arrest in the setting of acute methamphetamine and phencyclidine toxicity, and recent physical altercation / physical exertion with history of conductive energy device use." The manner of death was homicide. The evidence indicated that Mr. Adkins was properly restrained for arrest given the situation. The force used by deputies to restrain Mr. Adkins, who was under the influence of PCP, used in order to effect the arrest. The force used was in accordance with law and established Departmental procedures and was documented in writing. The evidence indicated that the force used was not executed in a careless or imprudent manner. According to the Investigation Report and the Department's Policy and Procedures, the physical force used was deemed necessary and reasonable to effect the arrest, prevent escape, and to overcome resistance. Deputies utilized control techniques and tactics which were effective. After Deputies 1 and 2 deployed their CED and restrained Mr. Adkins for arrest, they immediately summoned paramedics to the scene to medically assess him. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

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**17-076**

1. Death Investigation/Officer Involved Shooting – On 08-04-17, while Deputy 2 was serving an eviction notice at James Lacy's home, Mr. Lacy stated he had a gun and made threats to the deputy. Upon entry Mr. Lacy brandished a gun and was shot by Deputy 2. Mr. Lacy was transported to Scripps Medical Center where he subsequently died from his injuries.

Recommended Finding: Action Justified

Rationale: An Investigative Report provided by the Medical Examiner's Office stated during the morning hours of 08-04-17 the San Diego Sheriff's Department Court Service deputies arrived at James Lacy's house to serve him an eviction notice. Deputies knocked on the door and Mr. Lacy stated to them, "Go away or I'll shoot you." The deputies informed him they were unable to leave. Mr. Lacy refused to open the door and deputies forced their entry into the home. Upon entering, Mr. Lacy brandished what reportedly appeared to be a firearm and deputies fired their weapons towards him. Paramedics were summoned to the scene and the San Diego Police Department was called for backup. Mr. Lacy was transported to Scripps Mercy Hospital, where he was taken into the operating room for surgery. Mr. Lacy died from his injuries. According to the SDSD P&P Section Addendum F, deputies shall use deadly force only after the deputy reasonably believes that the force used is necessary. This force can be used in defense of human life, including the deputy's own. It also can be used in defense of any person in immediate danger of death, or the threat of serious physical injury. In this matter deputies were performing an eviction on Mr. Lacy's residence. They had the proper paperwork from the court signed by a judge and were present on the day listed on the forms. Mr. Lacy was served with an eviction notice prior to the date of the incident. They were at the correct apartment. The deputies had a legal right per penal code (PC) 166 to place anyone at Mr. Lacy's home under arrest for violating a court order. The court order granted the deputies authority to enter Mr. Lacy's residence. They

also were entitled to remove and arrest him. When the deputies first made contact with Mr. Lacy, he stated he did not know anything about an eviction and said he was not going to open the “fucking door”. According to Deputy 1, Mr. Lacy made threats that he was going to kill the deputies. Deputy 2 concurred with Deputy 1’s statement and added that Mr. Lacy said he was going inside to get his gun. A witness was at his home during the incident and heard the deputies tell Mr. Lacy to open the door or they would break it down. Mr. Lacy responded by saying he did not know anything about a lockout order. Then the witness heard Mr. Lacy say something along the lines of “I have a gun don’t come in” or “I have a gun”. Shortly after that he heard three shots. Another witness, the handyman, said Mr. Lacy kept using the word “attack.” Mr. Lacy was yelling and angry and said that he had a weapon. The deputies made entry into Mr. Lacy’s apartment. According to Deputy 2, Mr. Lacy approached the deputies, flailing his arms like he was punching at them. The deputies backed out of the apartment. When they re-entered, Deputy 2 saw Mr. Lacy in the hallway with a silhouette of a gun in his hand. Deputy 2 saw the barrel and the slide of the gun. Mr. Lacy held the gun with two hands at chest level. Deputy 1 said upon entry Mr. Lacy said he was going to get his gun and “fucking kill us”. Then he turned and ran into the hallway. While Deputy 1 was about five feet from Mr. Lacy, he saw what appeared to be a silhouette of a gun in Mr. Lacy’s hand. He pulled his weapon and fired at Mr. Lacy. Deputy 2 also fired at Mr. Lacy. Both stated they fired because there were in fear of their lives. A detective was the first additional deputy to arrive on scene. When he arrived, Mr. Lacy was already handcuffed and was lying on the floor. The detective located a gun which appeared to be a black semi-automatic handgun. The deputies had a right, per SDDS P&P Addendum F, to utilize appropriate control techniques or tactics which employ maximum effectiveness with minimum force to effectively terminate or afford the deputy control of the incident. Upon entry the deputies both initially had their Tasers ready to confront Mr. Lacy. Once Mr. Lacy returned with what the deputies perceived as a weapon, the Taser was no longer an option and they both drew their service weapons and fired. Both stated, in a later interview, that they fired their weapons because they were in fear for their lives. After Mr. Lacy was shot, the deputies handcuffed him and placed him on his side in a recovery position. Deputies provided first aid and waited for the paramedics to arrive and take over. It should be noted that Mr. Lacy was determined to be under the influence of amphetamines at the time of the incident. Based on the evidence, the deputies had a legal right to evict Mr. Lacy and remove him from his home. Once the deputies made entry and saw Mr. Lacy holding what they perceived to be a handgun, and felt their lives were in danger, they shot Mr. Lacy. It was not possible to determine if the outcome would have been different if they deputies had not made an expeditious entry into Mr. Lacy’s apartment. A review of SDDS Policies and Procedures did not reveal any violations by the deputies. The evidence showed the deputies’ actions were lawful, justified and proper. The facts, evidence, and perceptions of each deputy justified the use of deadly force against Mr. Lacy. 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.

2. Death Investigation/Officer Involved Shooting – On 08-04-17, while Deputy 1 was serving an eviction notice at James Lacy’s home, Mr. Lacy stated he had a gun and made threats to the deputy. Upon entry Mr. Lacy brandished a gun and was shot by Deputy 1. Mr. Lacy was transported to Scripps Medical Center where he subsequently died from his injuries.

Recommended Finding: Summary Dismissal

Rationale: At the time of this incident, Deputy 1 was an active member of the Sheriff’s Department, but he separated from the department on 03-29-18. Per CLERB Rules and Regulations 4.1, entitled, “Citizen Complaints: Authority,” CLERB lacks jurisdiction.

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## **18-003**

1. Excessive Force – Deputies 1-5 “assaulted” the complainant on 02-24-17.

Recommended Finding: Action Justified

Rationale: The complainant said he was assaulted with extreme force by numerous deputies on 02-24-17, while incarcerated. Crime Report #17110130 documented this event in which the complainant and his cellmate viciously assaulted another inmate. Deputies responded and the complainant reportedly refused to

comply with deputies' commands, then took a fighting stance and kicked Deputy 2 in the abdomen. In response to the complainant's assault, force was utilized to overcome the resistance in compliance with Detentions Policy I.89, Use of Force. Deputies 1, 3, 4, and 5 pushed the inmate against a cell wall, but the complainant purportedly thrashed about until Deputies 3 and 5 used fist strikes to his face and torso. The complainant reportedly continued to resist and was taken to the ground where hands-on control was utilized in an attempt to restrict his movements. The complainant allegedly continued to resist and threaten deputies while being handcuffed, so Deputy 4 applied a spit sock to prevent him from spitting. During evaluation by medical personnel, the complainant continued to display disruptive and hostile behavior. At the time of the incident, the complainant was in possession/under the influence of Pruno ("prison wine," or jail-made alcohol from fermented fruit) in violation of Inmate Rules & Regulations O.3, Section 305; he did not make for a credible witness. The deputies use of force was necessary and reasonable to overcome the complainant's resistance. During a physical confrontation, subjects must not gain the advantage, therefore force which exceeds the subject's force level is lawful, justified and proper.

2. Misconduct/Procedure – Deputies placed the complainant into “greens” and housed him in Solitary Confinement.

Recommended Finding: Action Justified

Rationale: The complainant reported that he was placed into “greens” and housed in “Solitary Confinement” for about five months. Inmates who are unable to conform to minimal standards required for general population are placed into segregated housing. An Incident Report documented the complainant's violations and Segregation Housing Order. Sheriff's records confirmed that following a Use of Force on 02-24-17, the complainant was housed in Administrative Segregation (Ad Seg) from 02-24-17 through 07-26-17, in accordance with Detentions Policy J.3 Segregation: Definition and Use; the complainant's housing classification was reviewed at least every seven days. As an alert to staff, the complainant was dressed in “greens.” Greenbanders are inmates who wear green clothing/wristband to indicate they are an escape risk, display assaultive behavior, or have threatened staff. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

3. Misconduct/Truthfulness – Deputies 1 and 2 were untruthful about the 02-24-17 incident.

Recommended Finding: Unfounded

Rationale: The complainant stated he was charged with Battery on an Officer and Resisting Arrest., but when he went to trial he was only found guilty of resisting, “which means they used excessive force to begin with.” He said he never hit or kicked any of them (which was proven in trial.) “They lied to justify their use of force.” Deputies 3-5 did not testify at the complainant's trial. Trial transcripts were obtained for Deputies 1 and 2 and corroborated the actions taken and documented in the deputies' reports. The complainant later told a classification deputy that he did not remember what happened because he was drunk on Pruno. Admittedly, the complainant did not make for a credible witness in his recall of these events. The evidence refuted that deputies were untruthful.

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## 18-011

1. Misconduct/Procedure - Deputy 1, the subject of a lawsuit, guarded the complainant during his deposition with County Counsel on 01-16-18.

Recommended Finding: Action Justified

Rationale: The complainant said, “I believe the deposition yesterday and the manner it was taken in front deputies, which at least Deputy 1 was Team 1, on Lt. X's team from 2014-2016 when I was here at SDCJ. I have a history with 1. He was present during the deposition. County Counsel asked me about the 288, which was dismissed. (PC§ 288. Lewd Act upon a Child) She did in front deputy 1 and other deputy(ies) on the 9<sup>th</sup> floor, while the door to the hallway was open.” Deputy 1 was on-duty and provided security during a professional visit on 01-16-18. A review of Court records and inquiries made with the County Claims division, who handles lawsuits filed against the County and its personnel, yielded negative results with regard to the

named deputy. A Departmental Information Source reported that deputies named in lawsuits are routinely kept away/apart from a petitioner so that there is no potential for misconduct. Deputy 1 was assigned as the Visit Deputy at the time of the incident. and had a primary responsibility to provide security to the professional visit room; his actions were lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 and/or unidentified deputies disclosed information to unknown inmates who then threatened the complainant’s life.

Recommended Finding: Not Sustained

Rationale: The complainant said that on “01-17-18 at 12:30pm on the 8<sup>th</sup> floor two inmates gave him a death threat, motioning with his thumb slitting his throat on camera, on the camera pointing towards 8/E that is by the deputies desk on the wall connected to the rec yard. They came back a second time ‘mouthing’ ‘lip-sinking’ what appeared to look like ‘piece of shit.’ I did nothing to provoke it. I don’t know them... You need to look at the cameras to get a view of who was present and follow those deputies until you see any engagement with the inmates that made the threat. The connection is there, you just have to find it. I know that some John Doe Deputy(ies) told them or even showed those inmates a printout of past charges in my file. You can track it electronically possibly if you look for who accessed my file. Somebody accessed it possibly in the last 24 hours. You want to look for deputies showing these inmates or any inmates at all my file on the computer. If you see a deputy showing an inmate anything on the 8<sup>th</sup>, 7<sup>th</sup>, 6<sup>th</sup>, 5<sup>th</sup>, 4<sup>th</sup> floor than you’ll know what was happening. It may not have just been those inmates, it could be others... I’m telling you, the deputies are using trustees to dissuade me from suing.” The complainant provided no evidence other than his assumptions. Sheriff’s Policies 2.37 Dissemination of Information, and 6.24, Law Enforcement Database Use and Criminal Record Dissemination, prohibits unauthorized access and/or use of the complainant’s information. Surveillance video was reviewed, but it provided no conclusive evidence to support or refute the allegation. Deputy 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. The complainant is a Protective Custody inmate, and that classification is routinely targeted in the jail hierarchy. There was insufficient evidence to either prove or disprove the allegation.

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**18-014**

1. Misconduct/Procedure – Deputies 2 and 3 stood outside the module and “did nothing to prevent the attack” by inmates on 08-09-17.

Recommended Finding: Action Justified

Rationale: The complainant stated that on 08-09-17, while housed in 5D medical at the SDCJ, he was severely attacked by three inmates. He stated deputies stood outside the module and did nothing to prevent the attack. A Crime Report stated that at approximately 4:33pm a physical altercation occurred on the 5<sup>th</sup> floor in Module D Cell #7 between the complainant three other inmates. Two of those inmates were seen entering the complainant’s cell. A fourth inmate closed and stood in front of the cell door. According to the complainant the three men went in and attacked him. The entry into Cell #7 was confirmed by a review of the surveillance video. The complainant exited the cell and was chased around the module by at least one other inmate. At some point the module was locked down and the inmates returned to their cells. According to an Incident Report, the complainant sustained a broken nose and a scrape to the back of his head. He was taken to the hospital for further evaluation. Hospital medical records showed the complainant had a small skin tear on the back of his head, superficial abrasions on both knees and his left cheekbone was swollen. There was also a note of a closed fracture of the nasal bone. A report by Deputy 2 documented the incident from 08-09-17. According to the report, Deputy 2 and 3 entered Module D and instructed inmates to return to their cells and lockdown. Once all the doors were secured, they entered the module to speak with the complainant. The deputies removed him from his cell and escorted him to the third floor clinic for further evaluation. He was later transported to a hospital for further treatment of his injuries. Deputies 2, 3, and three other deputies provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Evidence showed that Deputies 2 and 3, after becoming aware of an altercation in the complainant’s module, initially stood outside the module for safety reasons. A lockdown

was issued and the deputies entered after it was safe and all the inmates were locked down. Therefore, the actions of the deputies were lawful, justified and proper.

2. Misconduct/Procedure – Deputies 1, 6, and 8 failed to “keep separate” inmates who had previously assaulted the complainant.

Recommended Finding: Unfounded

Rationale: According to the complainant, after his return from the hospital, from being treated from the 08-09-17 assault, he was sent to medical housing unit 8C and then transferred to medical unit 5D where the inmate who ordered the attack was housed. An inmate history report provided by the Sheriff’s Department, after the assault from 08-09-17, stated the complainant was moved to housing unit 8C. A “Keep Separate” report was filed on 08-10-17 in order to keep the complainant and his attackers away from each other. Deputies 1 and 6 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. On 12-01-17, the complainant was moved back to unit 5D. On 12-03-17, the complainant addressed safety concerns with Deputy 6 regarding a man from 5D who supposedly “put a hit on him” and he wanted to return to the eight floor. An Incident report determined that the man was not one of the complainant’s attackers from the 08-09-17 assault. On 12-05-17, the complainant told deputies he was being threatened by individuals in module D and he was moved to 8C. When he was set to be moved again from medical on 12-30-17, since he had no medical restrictions that qualified him to be housed there, he was moved back to unit 5D after a check was made to see if any “keep separates” were housed there. It was determined there were no restrictions on the complainant being housed in 5D. Based on the complainant’s refusal to go to 5D he was then moved to housing unit 5A. The evidence showed that the complainant was kept away from his attackers following the assault and his safety concerns were addressed. Therefore, the allegation was unfounded.

3. Misconduct/Procedure – Deputy 1 said it was “not his problem” and failed to act when informed of the risk to the complainant’s safety.

Recommended Finding: Not Sustained

Rationale: Sometime around 12-03-17, according to the complainant, Deputy 1 stated it was not his problem and failed to act when informed about a safety hazard of moving from housing unit 8C to 5D. Deputy 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Evidence showed that there was contact between the complainant and the deputy regarding the complainant’s safety concerns. There was no evidence to prove or disprove that Deputy 1 stated it was not his problem to the complainant. There was not enough evidence to prove or disprove whether the complainant was moved because he expressed his safety concerns to Deputy 1, since he was not moved until 12-05-17. There was also no documentation to prove or disprove whether the complainant actually spoke with Deputy 1 on 12-03-17 or if it was another day. It appeared Deputy 1 spoke with the complainant about his concerns, but absent more evidence there is no way to prove or disprove the allegation.

4. Misconduct/Procedure – Deputy 4 “threw away a grievance” submitted by the complainant on 12-05-17.

Recommended Finding: Not Sustained

Rationale: The complainant stated he filed a grievance against Deputy 1 for his deliberate indifference and failure to follow jail policy and procedures in preventing a safety hazard and safety of all inmates confined in the County Jail. The complainant handed the grievance to Deputy 4, explained the volatile situation, and then proceeded to go to court. When he returned, Deputy 4 told the complainant to get his belongings and “roll up”. He was escorted out of module 5D by Deputy 4 and sent to medical housing. He stated that Deputy 4 then threw out his grievance and disregarded his complaint about Deputy 1 and other deputies. An incident report dated 12-05-17 stated that the complainant spoke with Deputy 4 regarding safety concerns if he stayed in module 5D. He said there were several people that gave him problems and threatened him in the module. He said if he stayed in the module he would be assaulted. The complainant could not identify any inmates who threatened him and said he did not want to be a “snitch.” He told Deputy 4 that he believed inmates in the module were orchestrating an attack against him. The complainant was moved to the 8<sup>th</sup> floor to avoid a possible assault. Deputy 4 addressed the complainant’s concerns about his safety. An incident report was

filed detailing the complainant's safety concerns and the subsequent actions taken by Deputy 4. There was no evidence showing Deputy 4 addressed the complainant's complaint against Deputy 1. Yet since there was no copy of the grievance, to review, it was not possible to verify whether the complainant did file a grievance about Deputy 1. If the complaint was lodged on a grievance form, per policy, Deputy 4 should have logged the grievance and forwarded it to his supervisor. Then the supervisor should have followed up with the complainant about his complaint against Deputy 1. Deputy 4 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. The bottom of the SDDS grievance form stated, "if one of the following two conditions is alleged by the inmate, this grievance must be answered within 4 days." The first box stated that "The inmate's health or safety is unfairly impacted by a condition of confinement." In this matter, the complainant was concerned about his safety if he remained in the module. He requested to be moved but this request was due to his safety concern. Therefore, this appeared to have been a legitimate grievance and not just an inmate request. Per P&P N.1 a grievance may relate to any condition of confinement and is not limited to the list provided in the P&P. Yet according to reports provided by the SDDS, the deputy followed up on the "request" by moving the complainant and logging the information in JIMS. Since the SDDS policy was not clear regarding what was or was not a "request", and what a deputy is allowed to do with a grievance form received from an inmate that is only a request, it will be referred to the department as a policy recommendation to clarify these issues. Because the material submitted by the complainant was discarded, there was no way to verify the contents and therefore, there was insufficient evidence to either prove or disprove the allegation.

5. Misconduct/Procedure – Deputies 7 and/or 8 removed the disabled complainant from medical housing and took away his cane on 12-31-17.

Recommended Finding: Action Justified

Rationale: The complainant stated his medical status was removed because he could not be housed with a certain inmate in 5D at the SDCJ. Deputies 1, 7 and 8 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Evidence, including medical reports, showed that there were no medical issues allowing for the complainant to be housed on the eighth floor medical module. There was no evidence that showed a certain inmate was the reason for the complainant's move. There was also no evidence that the deputies were responsible for removing the complainant's medical status or that they took his cane. Yet, at some point the cane was taken away from the complainant. Since the complainant had no medical instructions allowing him use of the cane, there was no violation of policy and the allegation is action justified.

6. Misconduct/Procedure – Deputy 5 disregarded the complainant's complaint/grievance.

Recommended Finding: Not Sustained

Rationale: The complainant stated Deputy 5 disregarded his complaint and grievance. Deputy 5 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Absent information provided by an independent witness to the incident or video or audio recordings of the interaction there was insufficient evidence to prove or disprove whether Deputy 5 disregarded the complainant's complaint/grievance.

7. Misconduct/Procedure – Unidentified deputies failed to respond to the complainant's grievances on 12-03-17, 12-31-17, and/or other unidentified dates.

Recommended Finding: Not Sustained

Rationale: The complainant stated that deputies failed to respond to his grievances. Eight grievances were on file from the complainant and included in reports provided by the Sheriff's Department. Six were medical related grievances. All the medical grievances were followed up on and actions were taken by deputies and medical staff. Two other grievances were determined not to be grievances. One was an appeal of discipline and a complaint against staff. The second was also a complaint against staff. Evidence showed that eight grievances filed by the complainant were logged into JIMS and followed up on. Those determined by deputies to be personnel complaints, or related to an appeal of discipline, had the appropriate boxes checked on the grievance forms and were closed out in JIMS as per policy. Yet, based on the fact that Deputy 4 threw away

one of the complainant's grievances, without further information it is not possible to determine if other grievances were thrown away or not followed up on and therefore the allegation is not sustained.

8. Misconduct/Procedure – Unidentified deputies were in collusion with medical staff on a host of medical issues.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated that jail deputies and medical staff were in collusion and violated his rights to medical treatment and safe and adequate medical housing. He stated deputies and medical staff colluded and disregarded his medical status. During the course of investigation there was no evidence uncovered that led to any indication of collusion among the deputies and medical staff. Therefore, per CLERB's Policy and Procedures Section 9, Category V, the complainant did not allege facts establishing a prima facie showing of misconduct. Therefore the allegation is summarily dismissed.

9. Misconduct/Medical – Unidentified medical staff colluded on a host of medical issues.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated that jail deputies and medical staff were in collusion and violated his rights to medical treatment and safe and adequate medical housing. He stated deputies and medical staff colluded and disregarded his medical status. As CLERB has no authority over medical personnel per CLERB Rules & Regulations 4.1 Citizen Complaints: Authority, this allegation of medical misconduct will be referred to the Sheriff's Department.

## **PROPOSED POLICY RECOMMENDATION**

It is recommended that the SDSD review Detention Policy and Procedures (DSB P&P) section N.1, entitled "Grievance Procedure," and section N.3, entitled "Inmate Request Forms," to require any and all Inmate Request forms received from an inmate, whether it is a grievance or a request, be documented in JIMs.

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## **18-015**

1. Misconduct/Procedure – Deputies 2, 3, 5, 6, and/or 7 placed the complainant into a safety cell and Deputy 6 cut off his clothing.

Recommended Finding: Action Justified

Rationale: The complainant reported that he is mentally ill and he self-harmed. He said he was ignored by detentions staff, and it caused him to act out and resulted in his removal by a "tac team" (Tactical Response Team) from his cell to a Safety Cell. Once he was placed in the Safety Cell, his clothes were cut off and he was left naked on the floor. The complainant said there was no need to cut off his clothes because he did not resist and was compliant. He said, "Deputies abused their authority by doing this with the intent to degrade." Per Sheriff's Medical Records, although the complainant was not gravely disabled, a facility Psychologist ordered a safety cell placement because the complainant reported that he stabbed himself with a pencil causing the skin to break, punched a window/wall causing a swollen knuckle, and threw a "substance" at a deputy. According to Officer's Report #18100272, during Safety Cell placement, Deputy 6 removed the complainant's leg chains and handcuffs, followed by his pants and underwear. As Deputy 6 cut off the complainant's jail issued shirt with safety scissors, the complainant became agitated and thrashed his body about. Per Detentions Policy & Procedure J.1, Safety Cells; Definition and Use, an inmate placed into a safety cell shall have all their clothing removed. Inmates are placed into a safety cell face down and their clothing is cut-off and removed as a precautionary measure. A safety garment is provided unless there is cause not to issue one. If the garment is removed or not issued, medical personnel and the Watch Commander must be notified, and the reason must be articulated in an Incident Report. There was no documentation that this occurred. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

2. Excessive Force – A “Tactical Team” slammed the mentally ill complainant’s head into the ground and/or punched him in the face.

Recommended Finding: Action Justified

Rationale: The complainant reported that he suffered from mental illness and extreme stress due to prior mistreatment and that he “acted out.” He said he put his arms in a “pushup position, pushing up,” when he was unarmed and naked. He further reported that numerous “Tactical Team” deputies were present with a shield pushing down on his back, then grabbed him by his head, and slammed his head into the ground repeatedly, and punched him in the face. The complainant believed, “This was excessive, unreasonable, and amounted to cruel and unusual and corporal punishment by deputies of a mentally ill inmate.” The complainant believed “the size and sheer number of deputies who wore protective gear, and had shields and weapons, made this use of force ‘excessive under reasonable standards,’ and was ‘extreme and unnecessary.’” The complainant believed that “beating his arms with department approved fist strikes and holds would have been the appropriate use of force given all the factors circumscribing the incident.” The complainant said he lost consciousness from the trauma to his head and experienced issues with his brain and memory afterward. According to Crime Report #18100272, the complainant initially refused to leave his cell so a Tactical Team was assembled that primarily consisted of Deputies 2-7. When the complainant became compliant, the Tac Team provided escort as a precaution. After being cleared by medical personnel for Safety Cell placement, the complainant reportedly became uncooperative and resisted deputies’ efforts to remove his restraints. The complainant struck Deputy 3 in the chest and face area approximately three times with a fist, which caused the shield to come off of his helmet. Deputy 2 fist-punched the right side of the complainant’s head a total of eight times, and he and Deputy 7 attempted pressure points to the complainant’s jawline and ankles but these actions were unsuccessful. A carotid restraint was applied by Deputy 2 which rendered the complainant unconscious for a few seconds. A facility doctor evaluated and cleared the complainant for continuation of safety cell placement. The deputies use of reasonable force in compliance with Detentions Policy & Procedure I.85 Defensive Devices, and I.91 Carotid Restraint, was in response to the complainant’s noncompliance and assaultive behavior. The evidence showed that the alleged acts or conduct did occur and were lawful, justified and proper.

3. Excessive Force – A Tactical Team tasered the mentally ill complainant.

Recommended Finding: Unfounded

Rationale: The complainant reported that “at some point while in the safety cell the deputies tasered me.” According to all documentation related to Case #18100264, a Tactical Team was assembled, including a taser, but it was never utilized. Video evidence also corroborated deputy reports and refuted the complainant’s allegation. However, following the complainant’s physical assault on Deputy 3, Deputy 4 deployed an electrical current with a NOVA shield for a four second duration. Use of the NOVA shield was in compliance with Detentions Policies I.85 Use Of Defensive Devices and I.89 Use of Force. The evidence showed that the alleged act or conduct alleged by the complainant never occurred, but that other force utilized was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 1 failed to process and/or respond in a timely manner to a grievance submitted by the complainant on 01-06-18.

Recommended Finding: Not Sustained

Rationale: The complainant said, “I sent grievance in with Deputy 1 on Monday 01-06-18 but have yet receive copy what should I do.” The complainant’s JIM’S history did not show any grievances filed by the complainant on or near the date he provided. 01-06-18 was a Saturday, and a date when the deputy was assigned to an area different from the complainant. However, on 01-08-18, a Monday, Deputy 1 was assigned to the complainant’s housing unit. Deputy 1 provided information during the course of CLERB’s investigation that was taken into consideration. Sheriff’s Policy & Procedure N.1, Grievance Procedures states that informal resolution of an issue before it becomes a written grievance is both desirable and recommended and that every effort should be made by a deputy or staff member who receives a grievance to handle it at his or her level. Because the complainant did not provide any evidence, and there was no record of any grievance filed in the JIMS system, there was insufficient information to either prove or disprove the allegation.

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**18-136**

1. Misconduct/Harassment – San Diego Police Department (SDPD) Officers “harassed” the complainant.

Recommended Finding: Summary Dismissal

Rationale: CLERB lacks jurisdiction to investigate per CLERB Rules & Regulations 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...

2. False Arrest – SDPD Officers arrested the complainant.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Illegal Search & Seizure – SDPD Officers “threw my (complainant’s) entire vehicle apart.”

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Illegal Search & Seizure – SDPD Officer handcuffed, searched, and “threw me (complainant) around like a ragdoll.”

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Illegal Search & Seizure – SDPD Officers impounded the complainant’s vehicle.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Procedure – SDPD Officers sped (85 mph) during transport of the complainant.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

7. Misconduct/Procedure – SDPD Officers did not place a safety belt on the handcuffed complainant during transport.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

8. Criminal Conduct – SDPD Officers did not provide a Miranda admonishment prior to interrogation.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

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***End of Report***