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

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**REGULAR MEETING AGENDA**  
**TUESDAY, JUNE 11, 2019, 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 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**

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** (*Attachment A*)

**4. PRESENTATION/TRAINING**

- a) Dr. Steven Campman, Chief Deputy Medical Examiner – In Custody Death

**5. EXECUTIVE OFFICER'S REPORT**

- a) Overview of Activities of CLERB Executive Officer and staff for the month of May
- b) Workload Report – Open Complaints/Investigations Report (*Attachment B*)
- c) Case Progress and Status Report (*Attachment C* – to be distributed at meeting)
- d) SDSD Sustained Finding Response(s) (*Attachment D*)
  - 17-066/Stevenson
  - 17-102/Gill
  - 17-127/Kenyon
  - 18-092/Baker

**6. BOARD CHAIR’S REPORT**

- Recognition of outgoing Board members

**7. NEW BUSINESS**

- a) N/A

**8. UNFINISHED BUSINESS**

- a) Three Board vacancies June 2019: D-3 and D-5
- b) CLERB Rules and Regulations
- c) Jail Inspection subcommittee update

**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>	
Action Justified	The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Sustained	The evidence supports the allegation and the act or conduct was not justified.
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

#### 17-110

1. Death Investigation/Taser – Deputies 3 and 5 deployed Tasers and other force was utilized by Deputies 1-8 to gain control of Kristopher Birtcher who appeared to be under the influence of drugs.

Recommended Finding: Action Justified

Rationale: Deputy 3 and a PERT (Psychiatric Emergency Response Team) Clinician responded to a call for evaluation of a subject under the influence of drugs. Deputy 3 attempted to de-escalate the situation verbally as he evaluated and subsequently concluded that Birtcher was under the influence of a controlled substance. When he attempted to place Birtcher in handcuffs for officer safety, the suspect became resistant and struggled. The PERT clinician then placed a radio call for immediate assistance. Deputy 5 arrived and deployed his Taser, which was ineffective. As reported by independent civilian witnesses, Birtcher lunged toward Deputy 3's holstered pistol. Birtcher ran into the parking lot and fought with deputies as they tried to handcuff him. Birtcher displayed "super strength" and an immunity to Taser deployments, as well as, fist, baton and sap strikes. The deputies were unable to independently control Birtcher and were assisted by nearby citizens. Several additional deputies arrived and managed to physically restrain Birtcher with their bodyweight and the use of handcuffs and cord cuffs. Deputies then placed Birtcher in the recovery position and administered doses of Naloxone in an attempt to counteract a possible drug overdose. Emergency Medical personnel responded to the scene and found Birtcher's pulse to be weakening. EMT's assumed control over his medical care and began administering CPR while en route to a hospital. Soon after arrival, a doctor pronounced Birtcher deceased. According to a Medical Examiner report, there were multiple abrasions, contusions, and superficial lacerations of the head, face, torso, and extremities; none of which contributed to Birtcher's death. There were also several injuries on the left side of his chest; consistent with the eight taser barbs that were deployed. Based on the autopsy findings, the cause of death was sudden cardiac arrest while restrained, and the manner of death was homicide. Acute methamphetamine intoxication was listed as a contributing factor. The autopsy and toxicological testing show that Birtcher had consumed methamphetamine which caused acute intoxication. His level of methamphetamine intoxication combined with his active resistance, combativeness and the duration of the struggle, all contributed to his death. The evidence showed that actions taken by all involved deputies was lawful, justified and proper.

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#### 18-080

1. Misconduct/Procedure - Unidentified deputies took the complainant's legal mail and personal property and failed to return them to him.

Recommended Finding: Not Sustained

Rationale: According to the complainant, unidentified Sheriff's deputies took his personal property and failed to return them to him. The complainant alleged that when he was transferred from one jail to the next, his personal property was lost in transit. After he was transferred to the second location and discovered his property did not arrive with him, the complainant filled out an Inmate Grievance on 04-14-18, The complainant reported the following, "My legal mail and personal property are missing. You guys took my stuff and never returned it. I am missing stores [commissary items], Bible, envelopes, probation papers." According to jail documents, on 02-08-18, the complainant was transferred from one jail to another. It was noted that one property bag was sent with the complainant. Per jail documents, it was not noted if the complainant's property was distributed to him upon his arrival to the second location. The complainant's property was noted to leave one jail; however, after that point, it was unaccounted for; there was no record of the property being checked into the second location. Multiple attempts to contact the complainant for an update to his allegation went unanswered. According to SDSD P&P Section 2.39 entitled, "Processing Property," property which has been discovered, gathered or received in connection with Departmental responsibilities will be processed in

accordance with established Departmental procedures. According to the SDSD Detention Services Bureau's Policies and Procedures (DSB P&P) Section Q.66, entitled, "Transfer of Inmate Property," when transferring inmate property between facilities/agencies, employees shall observe proper handling procedures to minimize damage or loss. When an inmate is transferred out of a facility, the following procedure will be followed: All inmates transferring to another facility will receive a brown paper bag with their name, booking number and facility destination printed legibly on the outside of the bag. All the inmate's module property will be placed in the bag and secured to prevent property from falling out and mixing with other inmates' property. The deputy will make a JIMS entry within each inmate's "inmate history." According to SDSD DSB P&P Section Q.63 entitled, "Lost Inmate Money or Property," whenever an inmate claims to be missing personal and/or module property (such as commissary), the watch commander shall be notified. If the claim regarding personal property is not immediately resolved, a crime report shall be completed. Per jail documents, no crime report was written. The grievance process should be followed for claims of missing module property (to include commissary and hygiene products). Whenever an inmate claims lost/missing personal or module property, the watch commander will be advised. The watch commander will ensure an investigation is conducted into the claim and a lost property crime report will be completed for lost/missing personal property within the shift hours. The grievance process will be used for claims of lost/missing module property or commissary items. At the time of the claim, every effort will be made to resolve claims of lost or missing personal property. The complainant supplied CLERB with a copy of an Inmate Grievance, dated 04-15-18. The Inmate Grievance had not been submitted or reviewed by a jail staff member, and therefore, had not yet been signed or processed. When a request for copies of all the complainant's Inmate Grievances was requested from the SDSD, a copy of that same Inmate Grievance was not supplied to CLERB; the complainant did not submit the Inmate Grievance for loss of property into jail staff. Additionally, the complainant supplied CLERB with a copy of email which was dated 10-28-08. The email stated that inmates can file a claim with the Sheriff's Department for lost or damaged personal property. According to an electronic mail correspondence from CLERB's SDSD liaison, dated 05-20-19, the complainant had not submitted an Inmate Property Claim with the SDSD. It was suggested that County Counsel be questioned if a claim had been filed with them. According to an electronic mail correspondence from a Senior Deputy County Counsel member, the complainant had not filed a claim with County Counsel. Numerous calls were made to the complainant and letters were mailed to him requesting additional follow-up information; however, no phone calls or response letters were returned to CLERB. As of the time of this reporting, it is unknown if the complainant considered the matter resolved. There was insufficient evidence to either prove or disprove the allegation that unidentified deputies took the complainant's legal mail and personal property and failed to return them to him

2. Misconduct/Procedure - Unidentified deputies "messed with or played with" the complainant's legal mail.

Recommended Finding: Not Sustained

Rationale: In the complainant's written statement, he reported that unidentified deputies "messed with, played with, and /or threw away" his legal mail. In the complainant's written letter to CLERB, he alleged that while he was jailed, he sent legal mail on 03-06-18 and 03-16-18, but did not received a response from the recipient. He stated, "Officers [deputies] throwing my legal mail away." Attempts were made to contact the complainant to clarify and elaborate his statement; to question if he actually witnessed deputies discard his mail; however as previously stated, the complainant failed to respond to CLERB. According to jail documents, the complainant wrote an Inmate Grievance on 03-03-18, and advised, "I am not getting my mail I got legal mail and other mail you guys are holding can I please get my mail I should be back to me if I sent it out on February 7<sup>th</sup> I should have a response back from the court about my legal civil mail thank you very much have a blessed day friends." On 03-03-18, a facility sergeant responded to the complainant in writing stating, "Mail is sent out on a nightly basis. Once the mail leaves the facility, staff no longer has control over or the ability to track the mail. If mail is returned to the facility by the post office, it is rejected and sent back to the post office. We cannot determine the response time from the courts." According to SDSD DSB P&P Section P.3 entitled, "Inmate Mail," detention facilities shall provide for the reasonably prompt delivery of incoming materials and outgoing correspondence. All staff shall work for the reasonably prompt and correct delivery of all inmate mail. Unless the inmate is absent from the floor, the housing unit deputy shall see that all mail is delivered to the inmate prior to the end of his/her shift. All acceptable incoming and outgoing mail and packages shall be sent or delivered as soon as possible and shall not be held more than 24 hours, excluding weekends and holidays. It shall be the sender's [inmate's] responsibility to clearly identify confidential/legal

mail on the front of the envelope with the words "legal mail," "confidential mail," or similar descriptor. All incoming U.S. mail that comes within the purview of confidential/legal mail, shall be opened and inspected for contraband in the presence of the inmate. The mail shall then be given directly to the inmate. Outgoing mail that comes within the purview of confidential/legal mail may be sealed by the inmate in the presence of a deputy after the deputy has inspected the envelope to ensure there is no contraband in it. Under no circumstances will a deputy accept a piece of sealed confidential/legal mail from an inmate. There was insufficient evidence to either prove or disprove the allegation that unidentified deputies "messed with, played with, and /or threw away" the complainant's legal mail.

3. Misconduct/Medical - Unidentified deputies and/or professional staff failed to give the complainant his medications.

Recommended Finding: Summary Dismissal

Rationale: In the complainant's written statement, he alleged that unidentified deputies and/or professional staff failed to give him his prescription medications. The complainant allegedly asked for his newly prescribed psychiatric medications, but did not received them. According to SDSA DSB P&P Section M.18 entitled, "Medication Pass Security," deputies will provide security and control during medication distribution in Sheriff's detention facilities. Deputies and nurses will collaborate to ensure inmates receive medications in an organized and supervised manner. Deputies will assist nurses during medication distribution by providing supervision. According to SDSA DSB P&P Section M.19. entitled, "Emergency Medication Administration," deputies will not distribute or administer medication to inmates except in emergency situations; in the event of medical staff shortages or other emergency situations. According to jail documents, there were not emergent situations where deputies would have administered medications to inmates. The evidence showed that the alleged act did not occur. Moreover, Medical staff and their decisions reside outside of CLERB's purview as they are non-sworn personnel over which CLERB has no authority per CLERB Rules & Regulation 4.1 Citizen Complaints: Authority. The Review Board lacks jurisdiction.

4. Misconduct/Procedure - Deputies 1-4 and an unidentified deputy denied the complainant urgent medical treatment.

Recommended Finding: Action Justified

Rationale: In the complainant's written statement, he reported that Deputies 1-4 and an "unidentified Japanese deputy" denied him medical treatment when he requested it. The complainant detailed that on 04-12-18, while jailed, he allegedly informed Deputies 1-4 and a fifth unidentified deputy that he needed medical attention, but he was denied medical treatment. He informed the deputies that he had a "heart condition" and had "sharp pains in his heart." The complainant stated, "They were trying to hurt me with a pre-existing injury that I already have. Could of [have] made me cripple. Deputies 1-4 responded to a Sheriff's Employee Response Form (SERF) with signed statements and provided relevant information in response to CLERB questions. According to SDSA DSB P&P Section M.16, entitled, "Sick Call," Inmates shall have access to appropriate medical and mental health services on a daily basis. Sick call request forms (J-212) are available to all inmates on a daily basis in their housing units. Inmates with a serious medical complaint shall be referred to the medical staff at any time. The medical staff shall triage the sick call requests and schedule with providers for treatment as indicated. According to SDSA DSB P&P Section M.6 entitled, "Life Threatening Emergencies: Code Blue," Any life-threatening medical emergency shall trigger a 911 request for a paramedic emergency response team. A code blue is described as a cardiac and/or respiratory arrest or any other serious medical emergency. This includes, but is not limited to cardiac, respiratory, and trauma emergencies. The complainant's medical history was remarkable for illicit drug use and some psychiatric ailments; however, during his intake process and during his routine medical appointments, the complainant did not advise that he had a cardiac issue. During the complainant's incarceration, he submitted 29 Inmate Medical Request Forms. 24 of those Inmate Medical Request Forms were requesting medications directly or indirectly. Additionally, the complainant was caught "cheeking." Cheeking is when one pretends to swallow medication, but actually hides the pills in the part of the mouth between the gum and the cheek. On 04-13-18, the complainant advised medical staff, via a Medical Request form, that he was experiencing "heart pains" due to his medications. Nursing staff informed the complainant that psychiatric physician would review his medication list. The evidence indicated that the complainant did not experience an emergent, life-

threatening incident and did not need immediate medical attention. The evidence shows that the alleged act did occur but was lawful, justified and proper.

5. Misconduct/Procedure - Unidentified deputies failed to ensure that the complainant received his allotted weekly recreation/yard time.

Recommended Finding: Not Sustained

Rationale: In the complainant's written statement, he advised that unidentified deputies failed to ensure that he received his allotted weekly three hours of recreation yard time. The complainant was incarcerated from 01-09-18 and was released on 04-24-18. During the 15 weeks of his incarceration, the complainant underwent numerous movements that would affect his ability to utilize the Recreation Yard on certain scheduled days. During his incarceration, the complainant went to court, was transferred between facilities for various reasons, was placed in Enhanced Observation Housing, was placed in Lockdown on numerous occasions, was placed in the Safety Cell on numerous occasions, and was transported to the hospital. On certain days, it was noted that the Rec Yard was unavailable "due to rain." The complainant was offered and given Dayroom/Phone Time in accordance with SDSA DSB P&P throughout his incarceration. On 03-17-18, the complainant was offered Rec Yard, but refused. On 03-18-18, the complainant was again offered Rec Yard, but refused. According to SDSA DSB P&P Section J.4 entitled, "Enhanced Observation Housing (EOH); Definition and Use," showers, dayroom, social phone calls, and recreation yard time will be offered in accordance with Title 15 guidelines. Contrary to this policy, and according to an email from a facility deputy, while housed in EOH, the complainant would not have received any dayroom time or time on the recreation yard. In an email dated 05-29-18, CLERB's liaison with the SDSA explained, per Title 15, Rec Yard time is offer twice per week, for a total of 3 hours. For those inmates housed in EOH, the typical stay in that module is less than three days, thus Rec Yard would not have been offered. They would get their Rec Yard time when they get back to their usual housing. With only one Rec Yard available to the Medical Unit and only one EOH inmate allowed on the Rec Yard at a time, it was not feasible to get individual EOH inmates to the Rec Yard during their stay in EOH. It is more practicable to give an entire module Rec Yard time, versus one inmate. Though the complainant was housed in EOH on more than one occasion, he was only in EOH for two days on separate occasions. The applicable content of SDSA DSB SDCJ Green Sheet Section J.4.C.1 entitled, "Enhanced Observation Housing (EOH)," Dayroom hours will begin at 0700 hours and will conclude once all cells have been offered dayroom time. Inmates housed in EOH not on high risk status will be given the opportunity to receive one hour of dayroom every day. The cell doors of those in the dayroom will remain locked in the open position until the conclusion of their dayroom time. Due to the layout of the 3rd Floor Medical Isolation area, dayroom will not be offered to those EOH inmates housed in a Medical Isolation cell. Inmates who have been housed for a minimum of 48 hours and have not had an opportunity to utilize the dayroom will be offered the opportunity to shower. Due to the short duration of stay, inmates housed in EOH will NOT be offered razors, church services or programs (i.e., ABE, AA, and NA). The Green Sheet does not notate EOH inmate's availability and use of the Rec Yard. The activity log for Module 7A showed no Rec Yard during the time the complainant was housed in that module and within the dates specified. Module 7A was scheduled for rec yard on Thursday, 04-12-18, but no yard was logged, and no explanation was detailed as to why it was not logged. There was insufficient evidence to either prove or disprove the allegation that unidentified deputies failed to ensure that he received his allotted weekly three hours of recreation yard time.

6. Misconduct/Procedure - Unidentified deputies failed to ensure that the complainant received his daily meals.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that unidentified deputies failed to ensure he received his daily meals. While he was jailed, the complainant claimed that he was "skipped" during meal distribution. The complainant did not specify what day or date he was skipped over at meal time. Attempts to contact the complainant for clarification and follow-up were futile. According to jail documents, per SDSA JIMS Inmate History Report and the Inmate History Summary Report, on 03-22-18, at 3:36pm, it was documented that the complainant was offered a meal, which he refused. There are no other documented notations that the complainant did not take a meal during his incarceration. During the complainant's incarceration, he submitted a number of Inmate Grievances for various complaints; however, he did not grieve about being skipped-over at meal time. The complainant may have submitted an Inmate Request; however, Inmate Request are not usually retained

by the SDSD and are returned to the inmate once they are addressed. There was insufficient evidence to either prove or disprove the allegation that unidentified deputies failed to ensure he received his daily meals.

7. Misconduct/Procedure - Deputies 6 and 7 housed a mainline inmate with the complainant who was classified as "Protective Custody."

Recommended Finding: Unfounded

Rationale: In the complainant's written statement, he reported that Deputies 6 and 7 "forcefully" placed [housed] a mainline inmate in with the complainant who was in Protective Custody. The complainant detailed that on 02-05-18, while in Protective Custody a mainline inmate was forcefully placed in his jail cell. The complainant claimed there were three witnesses to the event; three inmates who were housed in the jail cell next to him. According to the complainant, he was on lockdown when a cellmate was added to his cell. A request for evidence/documents was submitted to the SDSD on 07-03-18. All requested records were provided to CLERB. Additional records/evidence requests were submitted to the SDSD. The additional records requests were submitted at later times as the complaint was being investigated and during the process, additional evidence was needed. On 05-03-19, CLERB sent the SDSD a request for evidence (jail surveillance video recording). Specifically, CLERB requested jail surveillance video of the complainant's jail cell on 02-05-18. On 05-07-18, CLERB's liaison with the Sheriff's Department advised that the jail surveillance video recordings were no longer available because the SDSD retention for video is not that long; jail surveillance video records are not kept for over a year. As such, there is not jail surveillance records available to confirm or refute the complainant's allegation that that Deputies 6 and 7 "forcefully" placed [housed] a mainline inmate in with the complainant who was in Protective Custody. According to an Inmate Grievance written by the complainant on 03-07-18, the complainant advised, *"I've been putting grievance since February 20, 2018 to March 2018 about me being in my cell. Deputy 7 was their that day they try to throw in a mainline in with the PC that was me. You guys keep throwing my grievances away about this issue why? 5th grievances I turned in about this have a blessed day friends. I will be contacting a higher power now. Thanks I hope this one makes it in."* On 03-08-18, a facility sergeant responded to the Inmate Grievance. The sergeant acknowledged the Inmate Grievance regarding a staff complaint. Per his response, "Per our conversation on 03-08-18, at 0101 hours [1:01am], this matter has been resolved. No other notations were noted. On 05-28-19, SDSD supplied CLERB with an 'Inmate Roster by Facility/Area' document. The document illustrated inmates who were housed by cell on specified dates. In the facility where the complainant was housed, there are multiple modules. On 02-05-18, eighteen of the cells in his module were used as Lockdown cells. According to jail records, the complainant was not housed in any of the modules in at that particular facility on 02-05-18 or 02-06-18. According to the complainant's Inmate History Report, the complainant had transferred from one jail to another on 02-04-18 when he was placed in a Safety Cell. He was removed from the Safety Cell on 02-05-18. The complainant was transferred back to the other jail on 02-08-18. The allegation that Deputies 6 and 7 "forcefully" placed [housed] a mainline inmate in with the complainant who was in Protective Custody was unfounded.

8. Misconduct/Procedure - Unidentified deputies threw away the complainant's grievances.

Recommended Finding: Not Sustained

Rationale: In the complainant's written statement, he alleged that unidentified deputies threw away his Inmate Grievances. The complainant stated, "I seen Sheriff thrown them in the trash over and over." The complainant did not specify the date of occurrence and a timeframe; he was incarcerated for 184 days. The jail modules are equipped with jail surveillance and 24-hour recordings were available; however, without additional information and specific dates or timeframes, CLERB was unable to concentrate the amount of available evidence. A review of jail documents revealed three Inmate Grievances were submitted by the complainant over the span of his incarceration. The documented Inmate Grievances were dated 03-03-18, 03-05-18, and 03-07-18. The three Inmate Grievances were processed properly, according to SDSD DSB P&P Section N.1, entitled, "Grievance Procedures," Inmate Grievances can be submitted in writing by any inmate. Inmates may submit written grievances directly to deputies or other employees at any time. Absent exigent circumstances, any deputy or other staff member who is presented with a written grievance will accept it. The deputy or other employee who initially receives a grievance will sign his or her name and ARJIS number on the J-22 form along with the date and time. The second page of the J-22 form will immediately be given to the inmate as a signed receipt for the grievance. As an alternate means for submitting grievances, secured

boxes may be provided for inmates to deposit their grievances into. Any grievance retrieved from one of these dedicated grievance boxes will be signed by the sergeant or designee who collected it, and the signed second page of the J-22 form will be returned to the corresponding inmate as soon as practical. The deputy or other staff member who receives and signs for a grievance will be responsible for entering it into JIMS, making sure to link the inmate(s) to the grievance report. If the complainant handed his Inmate Grievance to a deputy, then the complainant would have immediately received the carbon copy of the Inmate Grievance as a receipt. Attempts to contact the complainant for follow-up and clarification were futile. There was insufficient information to either prove or disprove the allegation

9. Misconduct/Procedure - Unidentified deputies never addressed the complainant regarding his numerous grievances.

Recommended Finding: Unfounded

Rationale: In the complainant's written statement, he stated that unidentified deputies never addressed him regarding his numerous grievances. The complainant reported, "I turned in multiple grievances, which were never addressed. I put grievances in over and over and never got talked to about anything I put in." A review of jail documents revealed three Inmate Grievances were submitted by the complainant over the span of his incarceration. The documented Inmate Grievances were dated 03-03-18, 03-05-18, and 03-07-18. The three Inmate Grievances were processed properly, according to SDSD DSB P&P Section N.1, noted below. According to documents submitted by the complainant, he claimed four additional Inmate Grievances were submitted by him, but were not processed by jail staff. The complainant submitted copies of Inmate Grievances which he claimed were submitted to the Sheriff's Department on 04-12-18, 04-14-18, 04-14-18, and 04-15-18. The copies of the Inmate Grievances that were submitted by the complainant as evidence had not be received by any member of the Sheriff's Department and it was unclear if they had been submitted at a later time to any jail staff member. This was evident being that the "Official Use Only" portion of the grievance and not been signed as received by any staff member. Attempts to contact the complainant for follow-up and clarification were futile. According to SDSD DSB P&P Section N.1 entitled, "Grievance Procedures," the deputy or other employee who initially receives a grievance will sign his or her name and ARJIS number on the J-22 form along with the date and time. The second page of the J-22 form will immediately be given to the inmate as a signed receipt for the grievance. Any grievance retrieved from a dedicated grievance boxes will be signed by the sergeant or designee who collected it, and the signed second page of the J-22 form will be returned to the corresponding inmate as soon as practical. The deputy or other staff member who receives and signs for a grievance will be responsible for entering it into JIMS. Once the grievance has been entered into JIMS, the JIMS generated grievance number will be entered on the J-22 form, along with the date and time that the grievance is entered into JIMS. After investigating the nature of the grievance, a written response to the inmate will be entered in the "narrative" area of the grievance in JIMS. Two copies of the response shall be printed out. The action officer will deliver the response to the inmate. The inmate will sign and date one copy of the response. The signed copy will serve as an acknowledgement that a written response was delivered to the inmate. In the event the inmate refuses to sign the response, the action officer and a witness will notate the refusal on the copy of the grievance. The signed copy of the response along with the original J-22 form shall be filed in the inmate's custody record. The evidence shows that the alleged act did not occur.

10. Misconduct/Discourtesy - Deputy 5 placed the complainant in a transportation vehicle for 90 minutes.

Recommended Finding: Action Justified

Rationale: In the complainant's written statement, he reported that Deputy 5 placed him in a transportation vehicle for 90 minutes. In the complainant's written statement, he detailed, "Officer Sheriff 5 put me in the car for 30 minutes, with the windows rolled up, then walked back into the jail [took] another hour downtown." Additionally, the complainant advised that when Deputy 5 returned to the transportation vehicle, he was seen laughing. The complainant was transported from the one jail to another, which is located in the downtown area of the City of San Diego. The complainant estimated that the trip took approximately one hour. A request for evidence/documents was submitted to the SDSD on 07-03-18. All requested records were provided to CLERB. Additional records/evidence request was submitted to the SDSD on 07-10-18, 05-03-19, 05-03-19, and on 05-13-19. The additional records requests were submitted at later times as the complaint was being investigated and during the process of investigation, additional evidence was needed. On 05-02-19, an

electronic mail request was sent to CLERB's liaison with the SDSA requesting "Jail Surveillance video illustrating the complainant being readied for transported from the jail facility on 02-04-18." On 05-07-18, CLERB's liaison with the SDSA advised that the jail surveillance video recordings were no longer available because the SDSA retention for video is not that long; jail surveillance video records are not kept for over a year, unless there is a use of force and the video was secured as evidence. As such, there is no jail surveillance records available to confirm or refute the complainant's allegation that he was left unattended in the county transportation vehicle for 30 minutes with the windows rolled up. The decision to transfer the complainant from one jail to another was made on the early morning of 03-16-18, after he notified staff that he was sexually assaulted by another inmate. According to the complainant's Inmate History Report, on 03-16-18, the complainant was transferred from one jail facility to another. According the complainant's Inmate History Summary Report, the complainant departed one facility on 03-16-18, at 5:48am. He arrived to the second facility on 03-16-18, at 7:03am. According to Google.com/maps, the distance between the one jail and the next is 26 miles. Without traffic, the commute would be approximately 33 minutes. Calculated with weekday, morning traffic commute, departing the jail at 6:00am, Google estimated a 55-minute travel time. It would be reasonable that the trip would take approximately one hour of drive time. According to SDSA DSB P&P Section 1.57 entitled, "Transportation of Inmates," all personnel responsible for transporting inmate(s) shall obtain pertinent security and/or classification information in order to determine appropriate security measures necessary to complete the transport. According to SDSA DSB P&P Section J.7 entitled, "Emergency Transportation of Mentally Disordered Inmates," all inmates shall be provided with adequate and timely transportation services to meet their health needs. According to SDSA P&P Section 2.22 entitled, "Courtesy," employees shall be courteous to the public and fellow employees. They shall be tactful in the performance of their duties, shall control their tempers, exercise patience and discretion even in the face of extreme provocation. According to SDSA P&P Section 2.48 entitled, "Treatment of Persons in Custody," employees shall not mistreat, nor abuse physically or verbally, persons who are in their custody. Employees shall handle such persons in accordance with law and established Departmental procedures. Lastly, according to SDSA P&P Section 5.2 entitled, "Vehicle Coordination and Usage," whenever a member of this Department leaves a County-owned vehicle unattended, he/she shall close all windows and lock all doors of the vehicle. The evidence shows that the alleged act did occur but was lawful, justified and proper.

### **Policy Recommendation:**

1. It is recommended that the SDSA revise its DSB P&P Section J.4, entitled, "Enhanced Observation Housing," as well as its DSB SDCJ Green Sheet Section J.4.C.1, also entitled, "Enhanced Observation Housing, to mandate that inmates housed in EOH be offered Recreation Yard time. Though the DSB P&P states that "showers, dayroom, social phone calls, and recreation yard time will be offered in accordance with Title 15 guidelines," through CLERB's investigation, it appears that this policy is not practiced and not feasible given the layout of the facility's recreation yard. Per Title 15, Rec Yard time will be offered twice per week, for a total of 3 hours. Though the "typical stay" in the EOH module is less than three days, this might not always be the case as it is the medical staff's discretion as to when an inmate is cleared to return to their usual housing.

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### **18-084**

1. Death Investigation/Natural – Alan Christopher Washam was found unresponsive in his cell. Sworn personnel witnessed him stop breathing while being assessed. Medical personnel was summoned to the cell and cardiopulmonary resuscitation was initiated. Despite aggressive resuscitative efforts, death was pronounced while at San Diego Central Jail. The cause of death was listed as Acute Peritonitis due to a Perforated Duodenal Ulcer. The manner of death was natural.

Recommended Finding: Action Justified

Rationale: The evidence supported that Alan Christopher Washam was properly classified upon his entry into the SDSA jail system after his 06-07-18 custodial transfer from Atascadero State Hospital. During his medical intake screening, he was evaluated and transported to the University of California San Diego (UCSD) Medical Center for medical treatment and stabilization of his heart disease. Although Washam was not compliant with his medications and he refused to eat, there is no evidence that he expressed any concerns

about his physical well-being to his cellmate or any member of the SDSD, sworn or professional. A subsequent autopsy revealed that the cause of his death was Acute Peritonitis (inflammation of the thin layer that covers the abdominal organs) due to Perforated Duodenal Ulcer and contributing cause Hypertensive Heart Disease. The manner of death was determined, Natural. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel in relation to his death.

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## **18-094**

1. Misconduct/Procedure – Deputy 1 attempted to talk the complainant out of filing a complaint.

Recommended Finding: Summary Dismissal

Rationale: While investigating the complaint and the allegations against Deputy 1, CLERB's liaison with the San Diego Sheriff's Department (SDSD) advised, via email, that Deputy 1 separated from the SDSD on 11-06-18. At the time of this incident, Deputy 1 was an active member of the Sheriff's Department; however, he is no longer employed by the SDSD. CLERB does not have authority to investigate per CLERB Rules and Regulations 4.1, entitled, "Citizen Complaints: Authority," 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. As such, CLERB lacks jurisdiction.

2. Misconduct/Procedure – Deputy 1 refused to properly investigate or act upon a noise complainant.

Recommended Finding: Summary Dismissal

Rationale: See rationale #1.

3. Misconduct/Procedure – Deputy 1 did not enforce the local ordinances or penal code sections to effect peace.

Recommended Finding: Summary Dismissal

Rationale: See rationale #1.

4. Misconduct/Procedure – Deputy 1 twice refused to accept custody of a person placed under Citizen's Arrest.

Recommended Finding: Summary Dismissal

Rationale: See rationale #1.

5. Misconduct/Procedure – Deputy 1 had an "association" with the offender and "protected or shielded the offender from any law enforcement complaints."

Recommended Finding: Summary Dismissal

Rationale: See rationale #1.

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## **18-098**

1. False Arrest – Deputy 1 arrested the complainant.

Recommended Finding: Action Justified

Rationale: The complainant reported that on "July 22, 2017, she attended a Celebration of Life event. Sometime between 6 and 7pm, there was an altercation and the complainant found herself tending to an injured person who had hit his head and could not speak. The complainant repeatedly requested that bar staff contact 911, but they were reluctant. An EMS unit responded and the complainant 'poked her head' into the side door of the ambulance to provide medical information pertaining to the injured person's LOC (level of consciousness) immediately following his injury to the first responders. However, the four First Responders (FR) were busy, so she immediately turned to walk away or find another FR to give the information. As she turned to find another FR or walk away, Deputy 1 confronted her and 'violently' began to yell at the

complainant to get away, and instantaneously began threatening arrest. As the complainant stood in shock attempting to determine what she had done, and what was happening she told Deputy 1 twice, 'You're being a bitch!' As complainant realized Deputy 1s' violent yelling was only about [Deputy] 1 threatening an arrest, even though there was zero FR activity occurring in the immediate area, complainant walked away. However, Deputy 1 continued to follow and 'violently' yell at the complainant. At some point, Deputy 1 violently pushed the complainant against a nearby vehicle and she subsequently fell backwards. The complainant was then taken to the ground and placed under arrest for 'resisting arrest.'" An arrest report by Deputy 1 documented the events leading to the complainant's arrest. As documented, the complainant was reportedly intoxicated, as evidenced by her "glossy eyes that had a sleepy look about them, loud and slurred speech, and the odor of alcohol coming from her person." Deputy 1 asked the complainant to leave the area and wait elsewhere, but instead she rooted herself in place and refused to leave. The complainant was asked several other times to leave by Deputy 1, as well as paramedics, but she refused and grew increasingly aggressive and confrontational. Deputy 1 gave one final directive to which the complainant retorted with a profanity. Based on the many chances the complainant had to leave the scene, as well as her continued interference with the investigation and refusal to comply with commands, Deputy 1 placed the complainant under arrest for 148(A)(1)PC, Obstructing and Resisting a Peace Officer or Emergency Medical Technician. Deputy 1 said she grabbed the complainant by her arm and instructed her to turn around and place her hands behind her back, but the complainant, pulled her arm away and faced off with the deputy, who was at a physical disadvantage. Per the Arrest Report, the inebriated suspect was approximately 6 inches taller and 30 pounds heavier than the deputy. The deputy grabbed tighter onto the suspect's arm and used body weight to push her up against a nearby vehicle, but the complainant refused to be handcuffed. A struggle ensued and the complainant pushed the deputy onto the asphalt. By law, a suspect has "no right to resist" a lawful detention and a peace officer may use whatever physical force is necessary to effect arrest. Deputy 1 got up, grabbed the complainant by her hair, and forced her to the ground, while the complainant resisted and flailed her body about. Deputy 1 applied a rear wrist lock which was ineffective, likely due to the complainant's intoxication level. A paramedic assisted and utilized body weight to hold the complainant down while Deputy 1 called for cover. Deputy 2 responded, assisted in handcuffing, and also held the complainant down while she continued to shout and thrash her body about. As the complainant was escorted to a patrol vehicle for transport, she sat down but then argued and refused to place her feet inside the vehicle. Deputy 1 lifted and pushed her legs into the back seat of the vehicle to secure the door. While the complainant and Deputy 1 reported the same incident from opposing points of view, the law is clear that one must submit to authority and the evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

2. Excessive Force/Handcuffs – Deputy 1 placed tight handcuffs on the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant said she was "handcuffed and detained in a patrol vehicle where she complained that her handcuffs were too tight." The purpose of handcuffs is to restrain the movements of a subject in a manner that provides a safe means of transportation for officers and others and to control further physical resistance from a subject. No general rule says handcuffs must be loose or at what level the handcuffs become too tight, but a standard of practice is to be able to stick one finger in between the cuff and the wrist. An evidentiary photograph was taken of the handcuffed complainant and did not corroborate any wrist welts or other injuries, furthermore, Sheriff's medical records did not corroborate any injuries attributed to handcuffs. However, there was insufficient evidence to either prove or disprove that they were "too tight."

3. Misconduct/Retaliation – Deputy 2 tightened the complainant's handcuffs.

Recommended Finding: Summary Dismissal

Rationale: The complainant said she was "handcuffed and detained in a patrol vehicle where she complained that her handcuffs were too tight. In response, an unknown male deputy tightened her handcuffs further." Deputy 2 assisted in the complainant's arrest and transported her to a detention facility. Deputy 2 wrote an Arrest and Use of Force Supplemental reports, in which he stated that due to the circumstances of the complainant's arrest, he did not feel it was safe to release one of her hands to sign the EVID-7 (property) form, and notated so on it. There was no further evidence to corroborate or refute this allegation. Deputy 2 terminated employment with the SDSO prior to the complainant submitting her complaint to CLERB. Per CLERB Rules & Regulations 4.1 and 5.8, the Review Board lacks jurisdiction.

4. Misconduct/Procedure – Deputy 2 detained the complainant in a patrol vehicle without adequate ventilation.

Recommended Finding: Summary Dismissal

Rationale: The complainant said she was “handcuffed and detained in a patrol vehicle where she complained about inadequate ventilation.” There was no evidence to corroborate or refute this allegation. Deputy 2 terminated employment with the SDSA prior to the complainant submitting her complaint to CLERB. Per CLERB Rules & Regulations 4.1 and 5.8, the Review Board lacks jurisdiction.

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**18-099**

1. Misconduct/Procedure – Unidentified deputies and/or staff ignored the complainant’s medical condition.

Recommended Finding: Summary Dismissal

Rationale: The complainant reported that she was wearing a heart monitor for a medical condition, but said that her medical needs were completely ignored by deputies and medical staff. “The medical person told me that to have my medical needs met, I would have to be ‘completely booked,’ and put in with general population. Something to that point, She also belittled my condition telling me, as though she was a doctor, that all I needed was aspirin.” In accordance with Sheriff’s Policy M.9, Intake Medical Screening, when booked into custody every inmate is medically screened. Medical records confirmed that the complainant had an external heart monitor for an upcoming scheduled procedure. In non-emergency situations, sworn personnel defer to medical staff for medical/health-related issues. Medical staff, medical protocol, and health decisions are made by non-sworn personnel over whom CLERB does not have jurisdiction. The Review Board lacks jurisdiction per CLERB Rules & Regulations 4.1, Authority.

2. Misconduct/Procedure – Unidentified deputies locked the complainant in a room without a telephone.

Recommended Finding: Action Justified

Rationale: The complainant said “she was locked in a little room where the telephones did not work and when she voiced that she wanted to make a call, staff to include deputies expressed ‘violent behavior’ toward her.” The complainant provided no identifying information for the involved personnel. Surveillance video captured the complainant’s movements throughout her incarceration and she was placed into two different holding cells in which there was a commode, bench and telephone. The video review did not corroborate the complainant’s reports of staff reacting “violently” toward her. While in Intake Holding Cell #4 for approximately two minutes, the complainant did not touch the telephone. While in Intake Holding Cell #3 for at least 90 minutes or longer, the telephone was inoperable. Sheriff’s Policy & Procedure N.5, Access To Courts/Attorneys/Legal Advice, in accordance with PC§ 851.5., Arrestee Phone Calls, mandates that inmates have the availability of unlimited collect telephone use for communication with their attorneys. P.2, Telephone Access, stipulates that all inmates will be provided reasonable access to a telephone beyond those telephone calls required by section 851.5 PC. Surveillance video corroborated that the complainant utilized the telephones while in the General Intake area on three separate occasions and subsequently secured bond to bail out of the detention facility. The evidence showed that the complainant had access to a telephone in accordance with case law and policy, and the conduct was lawful, justified, and proper.

3. Misconduct/Procedure – Unidentified deputies and/or staff ignored the complainant’s request for food.

Recommended Finding: Not Sustained

Rationale: The complainant said she was in Sheriff’s custody for approximately twelve hours or longer, and reported that staff to include deputies were “violent” when she asked for something to eat. “I attempted to inform staff, deputies and such about the phone, my medical needs, and food; but I was treated with very hostile behavior and/or repeatedly ignored.” The complainant provided no identifying information for the involved personnel. Sheriff’s records confirmed that the complainant was held in custody for just under 12 hours; from 8:29 in the evening until 8:23 the following morning. Surveillance video review did not corroborate the complainant’s reports of staff reacting “violently” toward her. According to Detentions Policy K.15, the Food Service staff serves meals three times in any 24-hour period with a maximum of 14 hours between the evening meal and the breakfast meal. The complainant arrived after dinner was served and was released

prior to lunch. However, K.15, Serving Times and Distribution of meals states that a sack lunch will be offered to each inmate in the intake and search area at the scheduled mealtimes. An Area Activity Report for the Intake Area for July 22, 2017 to July 23, 2017, documented the specific time breakfast was served at 3:47am. It was unknown if the complainant was offered a sack lunch at that time. There was no other available evidence and insufficient evidence to either prove or disprove this allegation.

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## **19-040**

1. Misconduct/Truthfulness - PO 1 lied to the complainant when she said she submitted the transfer request.

Recommended Finding: Summary Dismissal

Rationale: While initiating the investigation and notifying the San Diego Probation Department of the complaint, it was learned that PO 1 is a Federal Probation employee and not a County Probation employee. CLERB does not have authority to investigate lacks jurisdiction per CLERB Rules and Regulations 4.1, entitled, "Citizen Complaints: Authority," the Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department. The complainant was referred to an outside agency.

2. Misconduct/Procedure – PO 1 failed to submit a transfer request to the courts at the complainant's request.

Recommended Finding: Summary Dismissal

Rationale: See rationale #1.

3. False Reporting - PO 1 falsified a report when she reported that the complainant committed aggravated assault on another person.

Recommended Finding: Summary Dismissal

Rationale: See rationale #1.

4. False Reporting - PO 1 falsified a report when she reported that the complainant violated the terms of his probation.

Recommended Finding: Summary Dismissal

Rationale: See rationale #1.

5. Misconduct/Procedure - PO 1 forced the complainant to take medication and seek therapy.

Recommended Finding: Summary Dismissal

Rationale: See rationale #1.

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*End of Report*