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**EXECUTIVE OFFICER**  
JULIO ESTRADA

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

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[www.sdcounty.ca.gov/clerb](http://www.sdcounty.ca.gov/clerb)

**REGULAR MEETING AGENDA**  
**TUESDAY, January 14, 2020, 5:30 P.M.**

**\*\*Please note the temporary relocation\*\***  
**San Diego County Operations Center**

**5520 Overland Avenue, Campus Center Chambers, San Diego, 92123**  
(Free parking is available in the parking garage, on Farnham 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. 220, 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) N/A

## 5. EXECUTIVE OFFICER'S REPORT

- a) Overview of Activities of CLERB Executive Officer and staff for the month of December
- b) Workload Report – Open Complaints/Investigations Report (*Attachment B*)
- c) Case Progress and Status Report (*Attachment C*)
  - 18-141/Bryson – Sustained allegation against Unidentified (Pending)
  - 18-150/Morris – Sustained allegation against Deputy 1 (Pending)
  - 18-150/Morris – Policy Recommendation (Pending)

## 6. BOARD CHAIR'S REPORT

## 7. NEW BUSINESS

- a) 2020 CLERB Officers Election
  - Report of Nomination Subcommittee for the 2020 CLERB Officers
  - Election of 2020 CLERB Officers
- b) Board of Supervisors Minute Order: Approve Amendments to CLERB Rules & Regulations

## 8. UNFINISHED BUSINESS

- a) 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).

DEFINITION OF FINDINGS	
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 (8)

### 18-117

1. Death Investigation/Natural – Isaac Tirona Martinez was found unresponsive in his cell at San Diego Central Jail on 08-21-18.

Recommended Finding: Action Justified

Rationale: Martinez was incarcerated at San Diego Central Jail. On 08-21-18, when deputies entered Martinez's cell to obtain his signature and prints on a document, they discovered Martinez unresponsive. Martinez was housed in the cell with two other inmates. Martinez slept in the bottom bunk with the other two inmates occupying the middle and top bunks. When discovered unresponsive deputies immediately began CPR and summoned the assistance of jail medical staff. Detentions Medical staff responded and continued cardiac life-support measures. Fire/Paramedics arrived on scene and took over advanced cardiac life support measures; however, despite medical intervention, Martinez failed to respond and his death was pronounced at 12:57 a.m. via radio by UCSD Medical Center, Doctor Randolph. The evidence supported that deputies conducted cell safety checks per policy. The evidence supported that sworn Sheriff deputies responded per policy when Martinez was found unresponsive in his cell and expeditiously initiated life-saving measures. As per SDSL DSB P&P's Section M.5 Medical Emergencies, All facility staff shall be responsible for taking appropriate action in recognizing, reporting or responding to an inmate's emergency medical needs. In any situation requiring medical response, emergency medical care shall be provided with efficiency and speed without compromising security. If the inmate's condition is believed to be life threatening, sworn staff shall immediately notify on duty medical personnel and provide basic life support (BLS) and/or first aid care. The Medical Examiner's Office was notified of the death and invoked jurisdiction; an autopsy was performed on Martinez's body. Martinez's cause of death was listed as End Stage Renal Disease and Renal Failure due to Chronic Glomerulonephritis and the manner of death was natural. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

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### 18-146

1. Misconduct/Harassment – Deputy 8 left the housing unit lights on after breakfast.

Recommended Finding: Action Justified

Rationale: In the complainant's written statement, she reported, "Deputy 8 irritates inmates by leaving lights on for a very long time after breakfast. A departmental source stated that there was no policy addressing the time the lights should be turned off at the various detention facilities: "Typically, the lights are turned off when inmates are sleeping, but there may be safety issues that required the lights on." The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Deputies 1 and 8 ate snacks that were intended for inmates.

Recommended Finding: Not Sustained

Rationale: The complainant said, "Deputies 8 and 1 apparently have a "contact" with the kitchen. They also hide in the deputy station and eat snacks that should be served with breakfast." The complainant submitted numerous grievances expressing her "views and her recollection." In numerous grievances and in consultations with medical personnel, she demanded additional snacks, to the point of refusing her medications unless they were dispensed with a snack. In response to an Inmate Grievance, written by the complainant, dated 09-07-18, Deputy 9 advised "I spoke to the deputies working your housing unit and to medical staff. The deputies told me you were getting medically approved snacks a couple of times per day, but then that stopped to only once per day. The housing deputies can only give you what they are given. With that said, I spoke to medical and was told you were only prescribed one snack a day (for your medications) it is to be given to you during PM medication pass." Deputy 9 responded to a similar grievance on 11-30-18: I have looked into your claims and see no indication of staff withholding snacks from you.

Mainly because "snacks" are not given to inmates unless there is a medical reason. In your case you receive a snack once a day and that is at the dinner meal. This snack is for you to take with your evening medications. The evidence showed that the complainant's snacks were reduced to one a day. Despite her numerous grievances, the complainant did not file any grievances related to deputies eating her snacks. There was insufficient evidence to either prove or disprove the allegation.

3. Criminal Conduct – Deputy 8 “stole” two bags of coffee from the property room.

Recommended Finding: Not Sustained

Rationale: The complainant wrote: “Please remember that Deputy 8 possibly stole two bags of coffee from the property room area. This coffee is still not accounted for...I'd like my coffee or a refund/replacement of the item. Petty theft is a serious problem and official misconduct.” Deputy 9 responded to the grievances in accordance with Detention Services Policies and Procedures Section N.1 Grievance Procedure, he wrote: Part of your grievance was missing module property specifically coffee. In talking with staff, we did identify some coffee (an open package nearly empty), however since you are housed in administrative segregation, it has already been determined all inmates in this area will not have normal access to coffee [a stimulant] because of its medical properties and interactions with other medications or for those who are challenged with managing their own behavior/emotions. As per the grievance response, an investigation ensued, and a search located a nearly empty open package of coffee. Inmates placed in Administrative Segregation occupy a cell by themselves and they have control of their belongings. There was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Property – Unidentified deputies did not provide inmates with complete newspapers.

Recommended Finding: Action Justified

Rationale: The complainant said, “I was not given a complete newspaper (fully) for my day room hour. I continuously reminded an on-duty officer, yet no paper was given to me.” Per Detention Services Policies and Procedures Section P.7, Newspaper, Facilities may purchase newspapers for inmate's enjoyment provided the newspapers are in compliance with policy. Newspapers purchased by the facilities must be distributed to the inmates in such a way as to provide equal access. Related to other allegations in this complaint, hours of surveillance video were reviewed. In it, inmates were seen reading newspapers in the day room. A departmental source stated that the newspapers are delivered daily in the morning. They are placed in the day room, and the inmates access them directly. The number of newspapers is limited, and it is not the deputies' responsibility to deliver newspapers to each inmate. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

5. Misconduct/Harassment – Deputies 6 and 8 entered the inmate shower area without announcing their presence.

Recommended Finding: Action Justified

Rationale: In the complainant's written statement, she reported, “Deputy 6 looked at me while I was in the shower and I recall Deputy 8 did also. Numerous deputies bring males into dayroom while I shower. They do check and do not announced themselves; this is a very serious problem. I feel this is harassment.” Per Detention Services Policies and Procedures Section I.64 Safety Checks of Inmates in Housing Units and Holding Cells: Sworn staff will conduct safety checks of inmates through direct visual means (does not include video monitoring), observing each inmate for any obvious signs of medical distress, trauma or criminal activity. Safety checks shall be conducted at least once within every hour (60 minute) time period. In addition to observing the safety and welfare of inmates, sworn staff shall also be attentive to security and maintenance issues as well as environmental factors (e.g., temperature, odors, cleanliness, etc.) while conducting safety checks. The policy also notates that as per Penal Code § 4021, which in part mandates, it is unlawful for a deputy to enter into the room or cell occupied by an inmate of the opposite sex, except when accompanied by a deputy of the same sex as the inmate. This does not preclude sworn staff of either sex from assisting each other or excuse them from ensuring a check is completed. Jail Closed Circuit Television (CCTV) Surveillance Videos of the Administrative Segregation Unit 5A at LCDRF recorded between 12-11-17 and 12-15-18 were reviewed. In order to understand the layout of the detention facility, CLERB staff visited the Administrative Segregation (Ad-Seg) unit 5A L on December 20, 2019. The showers

are isolated from view of the jail surveillance video cameras and separated from the main day room. Additionally, the windows in the shower area have a film on them preventing one from viewing from the outside. At no time during the review of these videos a male deputy entered or approached the shower area. A review of jail surveillance video recordings did not reveal a male deputy entering the segregation area, while in the process of conducting mandatory Safety Checks. Whereas most of the safety checks were conducted by female deputies, there were two instances when a male entered the area: One was a male nurse dispensing medication and in the second time was a male deputy assisting two female deputies conducting safety checks. In this case, the complainant was sitting at the day room table and was not inside the shower. Although the surveillance videos have no sound, there always appeared to be a pause prior to entering the unit, presumably deputies announcing their presence. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

6. Misconduct/Procedure – Deputy 3 failed to enter a grievance into JIMS.

Recommended Finding: Unfounded

Rationale: The complainant said, “Misuse of authority does appear to be a serious issue. A grievance response from Deputy 3 shows that he is not thinking clear. There shouldn’t be a grievance response without a JIMS number.” Per Detention Services Policies and Procedures N.1, Grievance Procedure: Each facility shall attempt to resolve inmate grievances in compliance with CCR Title 15, Section 1073 Informal resolution of an issue before it becomes a written grievance is both desirable and recommended. Furthermore, written grievances can often be resolved without the intervention of a supervisor, and every effort should be made by a deputy or staff member who receives a grievance to handle it at his or her level. Grievances alleging that an inmate is subject to a substantial risk of imminent sexual abuse shall be referred to as an "Emergency Grievance" and immediately forwarded to the watch commander or designee. Grievances can be submitted in writing by any inmate. 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. The complainant only provided page two of the grievance report. The evidence provided by SDSD DIS contained the complete grievance document and in it, the grievance report response properly listed the number entered in JIMS. The evidence showed that the alleged act or conduct did not occur.

7. Criminal Conduct – Deputy 3 “interfered with,” and/or misused mail, deposits, checks, etc.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, “Deputies appear to also be stealing and misusing mail and deposits. [please HIV and STD test all staff and officers].” Per SDSD DSB P&P Section P.3 entitled, “Inmate Mail,” inmates shall be allowed to receive and possess U.S. mail, incoming letters, confidential/legal mail and mail from official government agencies. Inmates may also receive electronic email messages, periodicals, magazines, and new books. The complainant submitted numerous Inmate Grievances regarding her mail that were properly investigated. On 06-27-18 Deputy 9 responded to the Inmate Grievances in accordance with SDSD DSB P&P Section N.1 entitled, “Grievance Procedure.” In the responses to the complainant, command staff documented, “Lieutenants are not stealing your legal mail. More than likely there has been no legal mail mailed to you.” On 08-25-18, Deputy 9 responded to another grievance, “Ms. [the complainant], this is in response to your grievance submitted on 8/24/2018, regarding LCDRF staff stealing "deposits." I have looked into this and there is no evidence to support your claims. I looked at your account specifically and you have only had one deposit of \$10 placed on your account. You then bought \$8.05 of commissary. Your balance has been the same for a few weeks. I'm not sure why you believe deposits are being taken by staff. Like I said there is nothing to support your claims, therefore I consider this matter closed.” A departmental source provided the following information in response to CLERB inquiry, the Facility Commissary is staffed by civilian workers. Deputies ensure commissary is delivered and they check to make sure there is no contraband. Deputies do not have access to the money on the inmate's "books." Deputies could have access to the commissary while doing cell searches or inspections. They would also check for contraband upon the transfer of an inmate to another facility. CLERB Rules & Regulations 9.2 Screening of Complaints, states that complaints not alleging facts establishing a prima facie showing of misconduct may be referred to the Review Board for Summary Dismissal. Section 15: the complaint is so clearly without merit that no reasonable person could sustain a finding based on the facts; the allegation clearly lacks merit.

8. Criminal Conduct – Deputy 9 “interfered with,” and/or misused mail, deposits, checks, etc.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, “Deputies appear to also be stealing and misusing mail and deposits. [please HIV and STD test all staff and officers].” Per SDS DSB P&P Section P.3 entitled, “Inmate Mail,” inmates shall be allowed to receive and possess U.S. mail, incoming letters, confidential/legal mail and mail from official government agencies. Inmates may also receive electronic email messages, periodicals, magazines, and new books. The complainant submitted numerous Inmate Grievances regarding her mail that were properly investigated. On 06-27-18 Deputy 9 responded to the Inmate Grievances in accordance with SDS DSB P&P Section N.1 entitled, “Grievance Procedure.” In the responses to the complainant, command staff documented, “Lieutenants are not stealing your legal mail. More than likely there has been no legal mail mailed to you.” On 08-25-18, Deputy 9 responded to another grievance, “Ms. [the complainant], this is in response to your grievance submitted on 8/24/2018, regarding LCDRF staff stealing “deposits.” I have looked into this and there is no evidence to support your claims. I looked at your account specifically and you have only had one deposit of \$10 placed on your account. You then bought \$8.05 of commissary. Your balance has been the same for a few weeks. I'm not sure why you believe deposits are being taken by staff. Like I said there nothing to support your claims, therefore I consider this matter closed. A departmental source provided the following information in response to CLERB inquiry, the Facility Commissary is staffed by civilian workers. Deputies ensure commissary is delivered and they check to make sure there is no contraband. Deputies do not have access to the money on the inmate's "books." Deputies could have access to the commissary while doing cell searches or inspections. They would also check for contraband upon the transfer of an inmate to another facility. CLERB Rules & Regulations 9.2 Screening of Complaints, states that complaints not alleging facts establishing a prima facie showing of misconduct may be referred to the Review Board for Summary Dismissal. Section 15: the complaint is so clearly without merit that no reasonable person could sustain a finding based on the facts; the allegation clearly lacks merit. Moreover, Deputy 9 had separated from the department: It was advised that on 03-01-19, Deputy 9 separated from the Department and was no longer an employee of the SDS. At the time of this incident, Deputy 9 was an active member of the Sheriff's Department; however, he is no longer employed by the SDS. 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.

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**19-003**

1. Excessive Force – Deputy 1 pushed the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 “pushed” him into the recreation yard, making him fall into the recreation yard door. The complainant was on razor restriction and per policy was removed from the module during razor distribution, along with other razor restriction inmates. As per SDS Green Sheet Procedure Section L.7.G entitled, “Razors,” prior to razor distribution, deputies shall review the JIMS Web Report, “Active Inmates with Selected Hazards: Razor Restriction.” Any inmates found on this list will not be offered a razor. The Facility Commander or his/her designee may also suspend razor distribution to any inmate that is considered to be a danger to themselves or others. Once reviewed, deputies shall make an entry in the JIMS Area Activity Log using the Event Type Razor Restriction List Reviewed. **If razors are to be distributed during dayroom time, those inmates with "Razor Restriction" should be removed from the module until razors are collected (emphasis added).** When the complainant saw that the rec yard was wet due to rain, and to avoid going out into the rain, he stated he was not going out there because he had problems with some of the inmates. When the deputy commented that he never had problems before, the complainant stated he was suicidal. The complainant alleged, Deputy 1 got mad, used excessive force and “pushed” him. Deputy 1 provided in his Use of Force (UOF) Report that the complainant refused to enter the House 2 Recreation Yard and was handcuffed by Deputy 3 for escort to House 5 Recreation Yard, to “calm down.” Deputy 3 provided in his UOF Report that the complainant stated, "I'm not going out, you can

handcuff me and take me to lockdown." After refusing to go out into the recreation yard, and to prevent the situation from escalating, Deputy 3 instructed the complainant to put his hands behind his back so he could handcuff him. Deputy 3 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however it cannot be publicly disclosed due to confidentiality statutes per the Peace Officer Bill of Rights. The video footage, that was provided to CLERB, for the House 2 Recreation Yard was for the day prior to the incident. Video footage was requested for the House 2 Recreation Yard and immediate area around the yard, for the time of the incident, however, it was not available. In the absence of video and/or audio of the alleged incident, the evidence is insufficient to either prove or disprove the allegation.

2. Misconduct/Procedure – Deputies 1 and 3 failed to respond to an inmate claiming to be suicidal.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputies 1 and 3 failed to take him to medical for evaluation after telling them he was suicidal, and instead, handcuffed him and escorted him to House 5 Recreation Yard. The complainant stated he told the deputies he was suicidal so they would take him to medical and he would not have to go out into the rain. The complainant stated in his complaint that "deputys are supposed to take any inmate who says they are suicidal to mental health and safety cell for evaluating." According to SDSD Detentions P&P Section J.5 entitled, "Inmate Suicide Prevention Practices and Inmate Safety Program," the following are identified high suicide risk factors ("automatic triggers") that when identified, require further medical staff assessment for consideration of placement into an ISP housing: the inmate states he/she is suicidal and/or made suicidal statements to sworn staff, medical, family, etc. In review of the deputies reports on the alleged incident, there was no documentation found supporting the complainant verbalized that he was suicidal or behaved as such prior to arriving at the House 5 Recreation Yard. Upon arrival to House 5 Recreation Yard, and as the deputies were securing the recreation yard door, the complainant began banging his head against the chain link fence and stated he was going to "kill himself." According to their Use of Force (UOF) Reports, Deputies 1 and 3 immediately intervened to prevent the complainant from further injuring himself. The complainant wrote in his complaint, "I started banging my head against the cage to make myself bleed because in Jail you have to make yourself bleed before they call mental health." In his UOF Report, Deputy 1 stated, "I stepped into the enclosure and grabbed a hold of the complainant's left forearm and bicep and guided him towards the chain link fence. I did this in order to ensure that he would no longer attempt to strike his head against the fence. I was effective in stopping him from continuing to strike his head. If I had not stepped into to prevent the complainant from striking his head against the fence the complainant could have seriously injured himself or jail staff. Deputy 3 provided in his UOF Report, "Deputy 1 guided the complainant towards the fence to prevent him from continuing to hit his head against the fence. After being guided towards the fence, the complainant stopped banging his head, dropped his weight and subsequently went to his knees. Due to the complainant's agitated demeanor and him displaying self-harming behavior; I feared he might head-butt me or my partner. To prevent the complainant from becoming confrontational, I placed my right hand on the upper portion of his left arm to gain better control of the complainant. At no point, did I push or use any type of force against the complainant. While in the kneeling position, the complainant complied with instructions to be guided to the floor into a prone position (face down). Before being guided to the floor, I removed my right hand from the back of the complainant's left arm; I then placed my right hand on the back of the complainant's right shoulder to prevent the complainant from getting up from this position. While the complainant was on the floor, I called House 5 Control via radio and requested an additional deputy, a supervisor, medical staff and a gurney. According to medical staff documentation, they were summoned to evaluate the complainant due to his agitated state and verbalization of suicide. After learning the complainant had been banging his head, the detentions nurse assessed the complainant for injuries and notated, no injuries were visible. When the complainant arrived at medical and was assessed for the Inmate Safety Program, the complainant claimed he was suicidal and planned to jump off the tier. Detentions nurse reported the complainant was uncooperative and cursing at staff. Detentions nurse recommended Safety Cell placement due to "danger to self." DSB P&P Section J.5 entitled, "Inmate Suicide Prevention Practices and Inmate Safety Program," was set forth for detention staff to identify those inmates who may be an elevated risk for suicide. According to the policy, inmates who are recognized and observed as being a potential suicide risk shall be assessed for consideration of placement into one of the defined Inmate Safety Program (ISP) housing options. Suicide risk assessment for the ISP will be conducted by the facility gatekeeper or designee. According to the SDSD, the gatekeeper can be the charge nurse or designee. The classification

deputies are not responsible for assessing mental health or suicide risk, absent witnessing behaviors or hearing verbalized threats of self-harm. The purpose of the gatekeeper is to ensure suicidal inmates are placed in the ISP after speaking directly with them following actions or verbalizations of suicidal thoughts. The evidence that was reviewed supports that once the deputies were aware of the complainant's suicidal behavior and verbalization, they acted per policy and took appropriate steps to prevent the complainant from further injuring himself. The evidence shows that the alleged act or conduct did occur and was lawful, justified and proper.

3. Excessive Force – Deputy 1 “slammed” the complainant into a gate.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 “slammed” him into the House 5 Recreation Yard gate after being escorted from House 2 Recreation Yard. According to Deputy 1's Use of Force (UOF) Report he stated that he and Deputy 3 placed the complainant into House 5 enclosure #6 and when they prepared to secure the door, the complainant “began violently banging his head against the chain link fence and claimed he was going to kill himself.” In his UOF Report, Deputy 1 stated, “in order to prevent the complainant from further injuring himself, he stepped into the enclosure and grabbed a hold of the complainant's left forearm and bicep and guided him towards the chain link fence.” Deputy 1 stated he did this in order to ensure that he would no longer attempt to strike his head against the fence. In his UOF Report, Deputy 3 stated, “Deputy 1 guided the complainant towards the fence to prevent him from continuing to hit his head against the fence. After being guided towards the fence, the complainant stopped banging his head, dropped his weight and subsequently went to his knees. Due to the complainant's agitated demeanor and him displaying self-harming behavior; I feared he might head-butt me or my partner. To prevent the complainant from becoming confrontational, I placed my right hand on the upper portion of his left arm to gain better control of the complainant. At no point, did I push or use any type of force against the complainant.” As per SDS DSB P&P Section I.89 entitled, “Use of Force,” If the employee determines that the use of force is necessary, he/she shall use only that force which is reasonable and necessary for the situation. The complainant stated he “banged his head on the cage” to make himself bleed. The complainant wrote in his report to CLERB, “you have to make yourself bleed before they call mental health.” Deputy 3 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however it cannot be publicly disclosed due to confidentiality statutes per the Peace Officer Bill of Rights. In the absence of video and/or audio recording, the evidence is insufficient to either prove or disprove the allegation.

4. Misconduct/Procedure – Deputies 1 and 3 placed the complainant in a Safety Cell.

Recommended Finding: Action Justified

Rationale: The complainant alleged he was placed in a safety cell. As per SDS DSB P&P Section J.1 entitled, “Safety Cells,” Inmates who have been assessed for Inmate Safety Program housing and approved by the watch commander for placement, may be temporarily placed in a safety cell when necessary to prevent the inmate from imminently inflicting physical harm on themselves or others, or destroying property. A safety cell is a single occupancy temporary housing unit constructed with a padded surface and other security features. Deputies 1 and 3 indicated, in their Use of Force (UOF) Reports, the complainant was displaying self-harming behavior, and they intervened to prevent the complainant from seriously injuring himself. A Sheriff's Detentions Nurse, provided in her Medical Chart Encounter Detail Notes that she encountered the complainant in the House 5 Recreation Yard when she was summoned to evaluate the complainant due to his agitated state and verbalization of suicide. After learning the complainant had been banging his head on the recreation yard fence, and prior to transporting the complainant to medical, the detentions nurse assessed the complainant for injuries and notated in her report that no injuries were visible. When the complainant arrived at medical and was assessed for the Inmate Safety Program, the complainant stated, he was “suicidal and planned to jump off the tier.” The detentions nurse reported, “the complainant was uncooperative and cursing at staff.” The detentions nurse recommended Safety Cell placement due to “danger to self.” The complainant, in his written statement to CLERB, stated, “I was saying all kinds of way out Stuff Because I was Scared so at that Point The medical Staff said for me to be put into The Safety Cell.” As per SDS DSB P&P Section J.5 entitled, “Inmate Suicide Prevention Practices and Inmate Safety Program,” was set forth for detention staff to identify those inmates who may be an elevated risk for suicide. According to the policy, inmates who are recognized and observed as being a potential suicide risk shall be



assessed for consideration of placement into one of the defined Inmate Safety Program (ISP) housing options. Suicide risk assessment for the ISP will be conducted by the facility gatekeeper or designee. According to the SDSD, the gatekeeper can be the charge nurse or designee. The classification deputies are not responsible for assessing mental health or suicide risk, absent witnessing behaviors or hearing verbalized threats of self-harm. The purpose of the gatekeeper is to ensure suicidal inmates are placed in the ISP after speaking directly with them following actions or verbalizations of suicidal thoughts. Deputies assisted in placing the complainant in the Safety Cell without incident. In review of medical documents, deputy reports and the complainant's statements, placement of the complainant into the Safety Cell was appropriate. The evidence shows that the alleged act or conduct did occur and was lawful, justified and proper.

5. Excessive Force – Deputy 2 “rammed” the complainant into the metal detector.

Recommended Finding: Unfounded

Rationale: The complainant stated Deputy 2 “rammed” him into the metal detector when he was being escorted by Deputy 2, back to 2C housing. The complainant stated, “I Saw The metal Dector and Tried To move Two Steps troward deputy 2 When he Then Pushed me Back Toward the metal-Dector Ramming me Into the metal Dector making me and the metalDector almost hit the Ground.” On 11-29-19 at approximately 12:52 p.m., based on the Qualified Mental Health Professional’s (QMHP) evaluation, recommendation and the admission by the complainant to the QMHP that he was not suicidal, the complainant was cleared from SC #116 to housing. While waiting to be escorted back to House 2C, the complainant was in the breezeway with Deputy 4. Deputy 4 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding, however it cannot be publicly disclosed due to confidentiality statutes per the Peace Officer Bill of Rights. At approximately 01:05 p.m., Deputy 2 was escorting inmates returning from court, when he heard the complainant ask Deputy 4 if he could have an extra lunch. In his Inmate Status Report (ISR), Deputy 2 reported that he told the complainant that he could not have an extra meal because they were for the inmates returning from court. Deputy 2 noted in his report, the complainant turned toward him, began cussing and yelling at him and stated, “Fuck you” and “why are you disrespecting me.” Deputy 2 stated, “due to the complainant’s hostile behavior and boisterous activity, I secured the complainant in handcuffs behind his back.” When Deputies 2 and 4 proceeded to escort the complainant to House 2C, the complainant continued his boisterous behavior and was trying to “bait” the deputies into using unnecessary force against him. Deputy 2 stated in his ISR Report, the complainant stated, “Please hit me, I already have a lawsuit against you guys. I am going to be rich.” The following excerpts are from Deputy 2’s ISR; As we approached the metal detector in the Processing Breezeway, I turned my head towards the complainant and asked him to stop talking. Due to the complainant’s behavior, I was distracted and did not see how close we were to the metal detector. I tried to guide the complainant away from the metal detector, but he purposefully walked into it. After the complainant collided with the metal detector he stated, “I am going to be a millionaire, you shoved me into the metal detector.” In viewing the video footage of the alleged incident, the complainant can be seen walking into the metal detector. The video footage showed that after walking into the metal detector, the complainant did not stop and continued walking. The complainant was observed to look up into the camera as he passed, with a smile on his face. The video showed no evidence that force was used and does not support the complainant’s allegation that he was “rammed” into the metal detector. The evidence shows that the alleged act or conduct did not occur.

6. False Reporting – Deputy 2 wrote a false report.

Recommended Finding: Unfounded

Rationale: The complainant alleged that Deputy 2 “lied” on an incident report. The complainant wrote in his complaint to CLERB, “The deputys Stick Together Well deputy 2 Lied on His Incident Report and Put me into 6 housing Hole for something he did and Trun The whole story around making me Look Bad I stayed In 6 housing 9#days.” According to his Inmate Status Report (ISR), Deputy 2 stated, “As we approached the metal detector in the Processing Breezeway, I turned my head towards the complainant and asked him to stop talking. Due to the complainant’s behavior, I was distracted and did not see how close we were to the metal detector. I tried to guide the complainant away from the metal detector, but he purposefully walked into it. As per SDSD P&P Section 2.41, entitled, “Departmental Reports,” Employees shall submit all necessary reports on time and in accordance with established Departmental procedures. Reports submitted by

employees shall be truthful and complete; no employee shall knowingly enter or cause to be entered any inaccurate, false, or improper information, nor omit pertinent information reasonably expected to be included. The video footage viewed corroborates what Deputy 2 wrote in his report. Evidence of the alleged incident, including Deputy 2's ISR, shows that the alleged act or conduct did not occur.

7. Misconduct/Retaliation – Deputy 2 placed the complainant in lockdown.

Recommended Finding: Action Justified

Rationale: The complainant alleged that deputy 2 placed him in lockdown for nine days as retaliation. Based on Sheriff's records, the complainant had numerous rule violations that preceded his being placed in disciplinary separation. On 11-29-18 the complainant was written up for aggressive behavior towards staff. During the incident the complainant claimed he was suicidal and wanted to be placed into a safety cell so he could be transferred to another facility. During the escort from House 2 to Medical the complainant attempted to bait the deputies into a UOF. After attempting to aggravate the deputies the complainant yelled, "Please hit me!" According to JIMS Hearing Report #400066748, a hearing was held on 12-01-18 for the following rule violations; Disrespect to Staff, Boisterous Activity, False Info to Staff and Interfering with Jail Operations. The report stated that the complainant refused to appear before the hearing officer. The complainant was found to have committed the listed violations and it was recommended he receive seven days disciplinary separation. As per SDS DSB P&P Section J.3 entitled, "Segregation; Definition and Use," Subsection V. Disciplinary Separation, disciplinary separation may be used when other less stringent methods have failed to correct behavior or when the violation is of such a nature that other methods would be ineffective or inappropriate. The use of separation as a disciplinary measure should be reserved for major sanctions and/or multiple of cumulative offenses. An example would be assaultive behavior or violence towards staff. Inmates placed in disciplinary separation status may lose all privileges as ordered on the Incident Report by the Disciplinary Hearing Officer except legal mail, attorney/professional visits, sick call and phone calls to an attorney. All disciplinary separation actions against inmates must be approved by the disciplinary review officer prior to the discipline being imposed. A Detentions Lieutenant approved the disciplinary recommendation on 12-01-18. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

8. Misconduct/Procedure – Unidentified deputies did not provide the complainant with an Internal Affairs form.

Recommended Finding: Unfounded

Rationale: The complainant alleged that while he was in lockdown, he repeatedly requested an Internal Affairs (IA) Form from numerous unidentified deputies, all of whom said they would bring the complainant a form during their next walk through, however the complainant alleged he never received it. The complainant stated, "I was asking every deputy that walked by my Door for a Internal Affair Unit Form never Did They get me one I had To Put in a Inmate Grievance To even get one." The complainant's grievances were provided to CLERB and reviewed, however, there was no grievance submitted by the complainant for the request of an IA form or alleging that he requested the form and was not provided one. CLERB inquired with SDS CLERB liaison and learned that the complainant did file a complaint with IA, however it is not known how he obtained the complaint form. The evidence does not support the complainant's allegation, that he repeatedly requested an IA complaint form and never received it. The evidence shows that the alleged act or conduct did not occur.

9. Misconduct/Retaliation – Unidentified deputies denied the complainant a clipper shave.

Recommended Finding: Action Justified

Rationale: The complainant alleged that on 12-18-18 unidentified deputies denied him a clipper shave. When the complainant requested a clipper shave, he was informed he was not on the authorized clipper shave list and would not be able to have a shave. The complainant alleged that he was denied a shave as retaliation for having filed an Internal Affairs (IA) complaint against Deputies 1 and 2. The SDS CLERB liaison provided that inmates who are on razor restriction are placed on the clipper shave list through a medical authorization. As per SDS DSB P&P Section L.7 entitled, "Razors," all inmates will have access to a razor on a daily basis except those inmates who have a razor restriction for health and/or safety reasons. Prior to razor distribution, deputies shall review the Jail Information Management System (JIMS) Web report, "Active Inmates with

Selected Hazards: Razor Restriction." Any inmate represented on this report will not be offered a razor. Inmate's with a red "M" next to their name indicates a Medical Instruction placed by medical/psychiatric staff. These inmates may be offered an electric razor (clipper shave) in lieu of a razor during scheduled barber days. The complainant stated in his complaint to CLERB that on the morning of 12-18-18 he was supposed to get a clipper shave because of his razor restriction status. The complainant alleged that he was denied the clipper shave. The complainant wrote in his complaint, "It's 12-18-18 morning Tuseday hair cutts But Deputy 1 is working and Im on Razor Restriction I'm Posse to get a face Shave Today well gusse what They Lost The List so I said to deputy it Because Deputy 1 is working Thats why you deputys ARE doing This TRying to get me upset I was Talking Low But deputy I gusse heard me and came up to me and Said what did you Say I Said This is Because I Put a Internal Affairs on deputys 2 and 1." According to an Administrative Segregation Report, on 12-18-18 at 08:00 a.m., the complainant was in the House 2 Recreation Yard when he began arguing with deputies. The complainant stated he deserved to have his face shaved because he was on razor restriction. Deputies informed the complainant that because he was not listed on the Clipper Shave list he could not receive the Clipper Shave. The complainant refused to cooperate and continued to argue with deputies. Deputies warned the complainant to stop arguing and informed him if he would cooperate they would help him out. The complainant then faced the other inmates in the Recreation Yard and continued to talk back. Fearing the complainant might be trying to incite the other inmates in the yard, deputies instructed the complainant to face the wall and proceeded to handcuff him. The complainant was escorted to Processing Cell #112, pending disciplinary action. SDSD DSB Green Sheet Section L.9.1G entitled, "Haircuts," states, Facial haircuts will be prohibited unless the inmate possesses a written medical status report given by medical staff. Once the razor restriction report is reviewed, deputies shall make an entry in the JIMS area activity log using the event type, Razor Restriction Review. According to the complainant's medical records obtained during CLERB's investigation, the complainant was placed on the clipper shave list via medical instructions beginning on 01-01-19. There was no prior medical authorization prior to this date, therefore the complainant was not authorized for a clipper shave on the date of his allegation. The evidence shows that the alleged act or conduct did occur and was lawful, justified and proper.

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## **19-022**

1. Criminal Conduct – An ultrasound technician sexually assaulted the complainant during an examination.

### Recommended Finding: Summary Dismissal

Rationale: According to the complainant's written statement, she alleged that an ultrasound technician sexually assaulted her during an examination while she was incarcerated. The complainant reported, "I was sexually assaulted by a doctor during a vaginal ultrasound at the Vista Detention Facility. The doctor should obviously be reprimanded. I wish to press charges for his misconduct and criminal sexual abuse. I also wish to sue the doctor and the Sheriff's Department for misconduct, discrimination, and criminal conduct." The complainant's allegation against the ultrasound technician did not describe any deputy misconduct and the technician was a non-sworn employee over whom CLERB lacks jurisdiction per CLERB Rules and Regulations 4.1.2 and 4.4. The complainant did not identify any sworn personnel or provide clarification regarding the allegations of misconduct, discrimination and criminal conduct against the Sheriff's Department. An investigation was performed and revealed that the actions of medical staff appeared to fall within policy and procedure and that there was no prima facie showing of misconduct against any sworn personnel. The complainant was found not to be credible in her recall of these events and the complaint clearly lacked merit.

2. Misconduct/Procedure – Deputies 2, 5, 6, and a registered jail nurse failed to act when the complainant notified them that she had been sexually assaulted.

### Recommended Finding: Unfounded

Rationale: According to the complainant's written statement, she reported that deputies failed to act when she notified them that she had been sexually assaulted. In her written statement, the complainant reported, "I was sexually assaulted by a doctor [ultrasound technician] during a vaginal ultrasound while in jail. I wrote an Inmate Request and informed the Sheriff's deputies who did nothing.... The deputies at the jail would not

help me at all.” Through the course of CLERB’s investigation, Deputy 6 was identified as the deputy who stood by while the complainant underwent her procedure and also escorted the complainant back to housing after her abdominal/pelvic ultrasound and transvaginal examination. In Deputy 6’s interview with a deputy from the SDSA Family Protection Unit, Sexual Assault Unit, Deputy 6 advised that she stood by during the complainant’s abdominal/pelvic ultrasound and transvaginal examination and provided security. After the appointment, Deputy 6 advised that the complainant was “laughing and joking” with the ultrasound technician. Deputy 6 advised that the complainant did not have any complaints about the procedure and did not notify her of being sexually assaulted during or after the examination. According to a SDSA Incident Report, (on another occasion and regarding a different sexual assault) Deputy 2 reported that the complainant explained her concerns and grievances to Deputy 2. The complainant was concerned that the SDSA needed to write a report on her PREA incidents, which she said she already reported to numerous police agencies. Another deputy attempted several times to explain that because the complainant had reported the incident to law enforcement agencies that they would not create a new report, which did not occur while she was in the SDSA custody. Deputy 2 supplied the complainant’s housing module with a copy of Title 15 for the complainant to use in order to put her mind at rest with some policies and procedures she claimed were not adhered to. Deputy 2 also informed the Detentions Investigation Unit (DIU) in the event they wanted to talk with the complainant about the human trafficking allegation. According to a SDSA Inmate Grievance Report response, a jail nurse advised that the complainant claimed a PREA report had not been taken. The complainant claimed the jail medical and sworn staff were negligent and had lost her paperwork. The jail nurse reported that the Medical Records Unit had already followed up on her request and responded to the complainant. According to another SDSA Inmate Grievance Report by the complainant, the complainant wanted an explanation as to why she had not received responses to her reports. Deputy 1 instructed a deputy to document the complainant’s claims while he contacted the Detentions Investigative Unit for direction. According to the another SDSA Inmate Grievance Report written by the complainant, the complainant claimed she was a sexual assault victim and was unable to file a report of human trafficking. She claimed to have made numerous attempts to file a "Human Trafficking report." Deputy 1 reported that the complainant was given the hotline phone number to Human Trafficking and a copy of Title 15. On 01-17-19, the complainant submitted a grievance reporting the following: “Upon transfer from Vista I reported a sexual crime done by a medical nurse while in jail. I feel I’m being retaliated against. I need medical attention.” In response, and according to a SDSA Inmate Grievance Response Report, a deputy reported that Medical was notified and the complainant was scheduled to be seen. According to another SDSA Incident Report, Deputy 5 reported that the complainant told her she had been sexually assaulted in June of 2018 while out of custody. Deputy 5 asked the complainant if she had reported the incident, and the complainant said she did; the complainant advised that did reported the assault. A jail nurse scheduled the complainant to see a Mental Health Clinician. The complainant signed a PREA Incident Consent Form and a sergeant was notified. In each incident that the complainant informed a staff member that she was sexually assaulted, staff members acted appropriately on the allegations. A SDSA Incident Report was written, the complainant was treated and seen in medical and underwent numerous psychiatric appointments. The complainant was interviewed by a deputy from the Family Protection Unit’s Sexual Assault Unit and a full investigation was conducted. According to SDSA P&P Section 2.23 entitled, “Request for Assistance,” when any person requests assistance or advice, all pertinent information will be obtained in an official and courteous manner, and will be properly and judiciously acted upon consistent with established Department procedures. According to SDSA P&P Section 2.27 entitled, “Neglect of Duty,” employees shall not engage in any activities or personal business which would cause them to neglect or be inattentive to duty. According to SDSA P&P Section 6.125 entitled, “Sexual Assault,” the responsibility of the Sexual Assault Unit is to thoroughly investigate those qualifying criminal cases which occur in the jurisdiction of, or in the areas served by, the San Diego County Sheriff’s Department. The responding deputy will conduct the initial investigation; this includes identifying the victim(s), suspect(s), and all other involved parties’ information. The deputy should conduct a preliminary interview to determine where the incident occurred, and which law enforcement agency has jurisdiction at that location. According to SDSA P&P Section 6.127 entitled, “Prison Rape Elimination Act,” The Prison Rape Elimination Act (PREA) of 2003 is a federal law that provides guidelines to detect, prevent, identify and deter incidents of sexual abuse and sexual assault in detention facilities. The law was enacted to establish a zero-tolerance standard for incidents of sexual assault/rape in correctional facilities and establishes national standards for the detection, prevention, reduction, and punishment of sexual assault/rape in a correctional setting. The San Diego Sheriff’s Department has zero tolerance for all forms of sexual abuse, conduct and assault. This includes sexual harassment between clients, staff, volunteers,

contractors, visitors and inmates. The zero tolerance on sexual conduct applies to all facilities and programs providing services to clients under the jurisdiction of the San Diego Sheriff's Department. All allegations of sexual conduct will be investigated, as follows: Reporting: All staff is required to immediately or as soon as reasonably practical report any knowledge, suspicion, instances of retaliation, staff neglect or violation of responsibilities, or information regarding an incident of sexual harassment or sexual abuse that occurred in a facility or program providing services to detainees/inmates under the jurisdiction of the San Diego Sheriff's Department. Responsibilities include: Staff shall accept reports made verbally, in writing, anonymously and/or from third parties, and promptly document any of these verbal reports. Detainees/Inmates: Detainees/inmates can privately report sexual harassment and sexual abuse, retaliation by other detainees or staff for reporting sexual harassment and abuse and staff neglect or violation of responsibilities that may have contributed to such incidents. Investigation: All allegations of sexual abuse and harassment will be conducted promptly, thoroughly and objectively, including third-party and anonymous reports. The Detentions Investigation Unit (DIU) will investigate and conduct criminal investigations conducted within detention facilities. The evidence showed that the allegation that Deputies 2, 5, 6, and a registered jail nurse failed to act when the complainant notified them that she had been sexually assaulted did not occur.

3. Misconduct/Retaliation – Deputies 3 and 4 placed the complainant into Administrative Segregated housing.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputies 3 and 4 “retaliated” against her by placing her in Administrative Segregated housing. In the complainant’s written statement, she reported, “I was sexually assaulted by a doctor [ultrasound technician] during a vaginal ultrasound while in jail. I wrote an Inmate Request and informed the Sheriff’s deputies who did nothing but put me in Ad-Seg [Administrative Segregation] as retaliation to this incident which occurred 12-31-18.” In review of jail records, it was documented that Deputy 4 made the decision to place the complainant into Administrative Segregation housing. While conducting a security/safety check in the complainant’s housing unit/module, Deputy 4 found the complainant causing a boisterous disturbance; the complainant was making verbal threats towards other inmates. Due to the complainant’s verbal threats to several inmates in the housing unit/module, coupled with her extensive history of her inability or unwillingness to adjust and conform to the minimum standards expected of those in mainline housing, Deputy 4 recommended the complainant be placed into Administrative Segregation for the remainder of her incarceration. In the audio recording of a deputy, the deputy confirmed that the complainant was involved in a physical altercation when she returned to her housing unit/module after her ultrasound examination. According to the complainant’s documented jail history, the complainant had 32 Inmate Status Reports and Hearing Right Reports accumulated during her incarceration, which were documented to illustrate the complainant’s extensive history of not following staff instructions, instigating tension in module, and her continued inability to follow jail operations. In a SDSD Incident Report, written by Deputy 4, the deputy explained that the complainant had “exhausted all high-power housing” at the jail and “had six Keep Separate Inmates at LCDRF.” Deputy 4 spoke with a Classification Deputy and informed her of the situation. A sergeant reviewed and approved the change in housing order . Additionally, it was noted in a SDSD Segregated Housing Order, written by Deputy 3, that the complainant was previously placed into Administrative Segregation on 12-07-18, pending a hearing or investigation for a rule violation or criminal act, as well as for her continual failure to adjust and conform to minimum standards. The housing order was signed on 12-07-18, weeks before the complainant’s alleged incident of retaliation date of 12-31-18. Lastly, according to the complainant’s medical records, the complainant advised a medical staff member that, “I was moved to Ad-Seg because I was angry and fighting with people.” According to SDSD DSB P&P Section J.3 entitled, “Segregation: Definition and Use,” segregation shall be used only for those inmates who are classified for safety and/or security reasons, are pending disciplinary action or for investigative purposes. Segregation is a general term used to encompass separate housing for inmates who cannot remain in the general inmate population. Administrative segregation shall consist of separate and secure housing, but shall not involve any other deprivation of privileges other than is necessary to obtain the objective of protecting the inmates, staff, or public. The following are types of inmates who may be placed into administrative segregation: Those pending a hearing or investigation for a rule violation or criminal act, and/or those who have displayed a continual failure to adjust and conform to the minimum standards expected of those in mainline housing or designated special housing. The inmate’s behavior is either criminal in nature or disruptive to the safe operation of the facility. All inmates placed in administrative segregation will require an Incident Report or rule violation report and a Segregated Housing Order (J-72 form). The evidence indicated

that the allegation that Deputies 3 and 4 placed the complainant in Administrative Segregated housing did occur but was lawful, justified and proper.

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## **19-023**

1. Multiple Allegations to include Criminal Conduct, Excessive Force, False Reporting, Misconduct: Procedure and Retaliation.

### Recommended Finding: Summary Dismissal

Rationale: The complainant reported, "On or about December 21st, 2011 I was being escorted from the 1st floor to the 5th floor at SDCJ. Prior to getting on the elevator Deputy 2 was I exchanged words in regards to me being provided a meal. Even though this is a mandated service (Deputy) 2 cuffed me up and placed me in a holding cell claiming I was being disruptive. He went on to say "you might as well get comfortable because I'm here until 1:00." Being that it was only around or about 5:00 pm I decided to flip my cuff in an attempt to do just that. (get comfortable) since the handcuffs were left on me. While in the holding cell I saw Deputy 2 walk by multiple times. Being that I was hungry and frustrated I decided to insult Deputy 2 every time he walked by. Deputy 2 became angry to the point where he racked the cell door, grabbed me by the neck with one hand, and punched me in the face with the other. In an attempt to protect myself from the death grip (Deputy) 2 had on my neck, I raised my handcuff hands knocking (Deputy) 2's hand off my neck. I then started to retreat into the cell. Deputy 2 continued his assault on my by pursuing me into the cell and continuously striking me with both hands. At that time I ran for the door and was struck in the back of the head. I must have been temporarily unconscious because all I remember is coming to while (Deputy) 2 continued his assault on me outside the cell where I must have fall from the blow to my head. I recall spitting blood as other officers arrived to the scene. (Deputy) 2 was still in rage at this time striking me in the back of the head while forcing his knee into my back. I heard someone yell "that enough". At that time (Deputy) 2 stoped his assualt. I was escorted to medical were deputies informed medical staff that I refused treatment. As I was being dragged out I told the medical employees multiple time that I did not refuse. However, no one acknowledged my cries. I was placed in AdSeg and receive a R.V.R. (rule violation). After a few days a Sgt. came to conduct a hearing a hearing on that RVR. He asked "How do you plea". I said "Not Guilty". He then asked if I wanted to make a statement. I said yes and gave him my account of the incident. I informed him that (Deputy) 2's report was falsified and the camera footage will prove my innocents. The Sgt. told me that he reviewed the footage and could not determine who anniciated the fight. I told him it was simple! If (Deputy) 2's statements were right he would see my hand on tape comming outside the cell in an attempt to assault (Deputy) 2. I told him he would not see that. He would see (Deputy) 2 racking the door and immediately reaching in the cell grabing me by the neck. The Sgt. again told me reviewed the footage and could not determine who annitiated it and for that reason he finding me guilty of the R.V.R. I filed a Grievance as well as a I.A. report. Prior to Internal Affairs comming to see me I had already received all reports related to the incident. When I met with Internal Affairs they provided me with a copy of all reports related to the incident as well. I immediately started reading the reports and noticed that it was the same report written by the same deputies on the same date and time. However, these reports had things added that wasn't in the originals. I informed Internal Affairs of this while at the same time pulling out the original copies I had in my possession. They appeared to be shocked that I not only was aware of what was in the reports but also had copies myself. Six to eight months had already passed since the incident and I was never charged. Even though (Deputy) 2 admitted to putting his hands on me first and there was overwhelming evidence to prove my innocents., Internal Affairs recommended that I be the one charged with assault on a peace officer. The DA's office pick up the case and I went to trial where the case was ultimately thrown out after receiveen a hung jury (6-6). I then went to prison on a robbery I was convicted of. While in prison I continued my civil case against (Deputy) 2. Around or about 2015 they settled. I was later released from prison in September 2018. Two and a half months later I was back in custody at SDCJ. I was put in AdSeg greens once again for the same case I won at a criminal trial as well as in a civil suit. [Claimed the cameras was not operable because an outside camera crew was working on the cameras at the time of the incident. A investigator spoke to the outside camera crew and they said they were working on the cameras in the institution but they were on the 9th floor which had nothing to do with the cameras on the first floor. After receiving this information 6 months later the deputy who stated the cameras were no operable due to the outside camera crews working on them made another

report justifying why he said that. He then went on to say during his time monitoring the cameras he notice that they tend to go out from time to time. (what a coincidence)] I was escorted to the 7th floor without seeing classification. I ask the deputy why was I not seen by classification. He told me deputies claimed that I refused. However, I received a report claiming that I not only saw classification (which I did not) but also that I was pulled out of a cell with other inmates and answered most of classification questions. While on the 7th floor prior to December 26th I believe I was being subjected to cruel and unusual punishment as retaliation for the civil suit. I believe this because the deputies would call my intercom telling me they were going to kill me. There were also time deputies told me they would make sure I got struck out. They did everything in their power from giving my mail to other inmates, tampering with my food, waiting for my friends and family to accept collect calls then hang up costing them \$20 for the call. On the morning of December 26th a deputy attempted to give me another open tray. I informed them my tray was open and he said there all the same. The trusty who was with him exchanged the tray and the deputy caught an attitude calling me all kinds of names and making harsh statements to the trusty. I was then taken out for court.” In 2018, the complainant reported misconduct that allegedly occurred in 2011. After review of the complainant’s local bookings, three in 2011 and one in 2018, it indicated he was incarcerated for 614 days and did not meet an exemption for tolling the 2011 incident(s). The complainant was transferred to the Department of Corrections in 2013 and allegedly remained until September 2018, although the complainant has not provided verification as required by CLERB Rules & Regulations. Additionally, Deputy 2 retired in 2016 and was no longer subject to investigation from that point forward. The complaint(s) from 2011 were untimely filed and could not be investigated per CLERB Rules & Regulations 4.4, Citizen Complaints: Jurisdiction, and 5.8, Termination, Resignation or Retirement of Subject Officer.

2. Misconduct/Intimidation – Deputy 3 threatened to taser the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated, “On December 26, 2018 I returned to my cell from court. I was later let out for my 1 hr of dayroom. I was placed in leg and waist chains prior to getting on the phone like I normally do when I first come out. I was on the phone for 15-30 minutes when Deputy 3 and Deputy 1 walked in and told me that my dayroom time was up. I informed (Deputy) 3 that I only made one phone call so my dayroom can’t be up because the phones don’t stay on for an hour. At this time we got into a confrontation and I waived (Deputy) 3 off and pick the phone up once again. (Deputy) 3 then state that whether my time was up or not I still had to lock it up so they can conduct a security check. I hung the phone up and told (Deputy) 3 that I still had to shower. I then walked into my cell. (Deputy) 3 told me to exit the cell so he can take the chains off. I again told them that my dayroom time wasn’t up. I went on to tell him once their security check was done I would be let of to complete my dayroom time so there’s no need to remove the chains which was normal protocall. At that time Deputy 3 pulled out his tazer and stated ‘If you don’t come out I’m a tases your ass.’ I followed his instructions and came out the cell so he can remove my leg chains.” According to classification records, the complainant was housed in Administrative Segregation (Ad-Seg) and dressed in “greens.” The color-coded clothing is an indicator that an inmate is assaultive or an escape risk, and who is required to wear leg and waist chains when outside their cell. During this incident, the complainant was alone in the dayroom utilizing the telephone and video chat box. Upon review of Title 15 guidelines and Detention policies, it was discovered that there was no requirement for a one hour dayroom allowance for Ad-Seg inmates. However, it was confirmed that it was common practice at the detention facilities to grant this daily allotment. According to video surveillance, the complainant was in the dayroom for almost 50 minutes when told to lockdown so that Deputies 1 and 3 could conduct a mandated hourly security check. The complainant was in violation of Inmate Rules and Regulations for delaying jail operations and disobeying staff instructions. Deputies are authorized to use defensive devices to gain compliance. The evidence showed that Deputy 3’s conduct was lawful, justified and proper.

3. Excessive Force – Deputies 1 and 3 forcefully pulled the complainant’s chains through the tray slot.

Recommended Finding: Action Justified

Rationale: The complainant stated, “When I tried to enter my cell again (Deputy) 3 grab the back of the chain forcing me down until his arm lined up with with the opening in the food flap. While the door was closing we were both exchanging words back and forth. I must have got under his skin because next thing I know he’s trying forcefully pull me through the tray slot. He yanks at the chain four or five time before (Deputy) 1 joins

in doing the same.” According to Deputy 3’s Crime Report, the complainant was argumentative and angry that his dayroom time ended, but he subsequently complied with their orders to return to his cell. The complainant entered his cell still wearing chains and was ordered out for their removal. The complainant reportedly stated he was going to remove the chains himself and said he would use them as a weapon when threatened with a cell extraction. Deputy 3 reported, “Inmate exited the cell and leaned against the wall. I removed the chains and inmate walked into the cell. I grabbed the chain and told inmate to not walk away. As the door began to secure, I reached around and into the door’s food portal and maintained my grasp of the chain. Inmate then turned and began to try and push away from the door. I pulled inmate to the door, in order to maintain control. Deputy 1 was able to also grab part of the chain to assist in controlling inmate.” Surveillance video corroborated the reported information. The complainant was in violation of Inmate Rules and Regulations for delaying jail operations and disobeying staff instructions. The evidence showed that the deputies conduct was lawful, justified and proper.

4. Excessive Force – Deputy 3 tasered the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated, “I’m stuck against the tray slot when I feel something sharp pierce my waist band and hit my upper buttox. I jump from the pain as I’m hit another time. I feel the electrical currents flowing through me. As I loss control of my own body. Even though I’m being tased I’m still being held up by both deputy by my waist chain. They eventually let me go, As I’m on the ground I feel the the currents getting stronger. I believe (Deputy) 3 did this to inflict more pain. I beganed to feel faint and believed that (Deputy) 3 was trying to kill me. At this time I willed myself to grab hold of the were yanking it from the barb that was stuck in my butt. This ended the tasing but the barb was still stuck in my butt.” According to Deputy 3’s Crime report, “Inmate exited the cell and leaned against the wall. I removed the chains and inmate walked into the cell. I grabbed the chain and told inmate to not walk away. As the door began to secure, I reached around and into the door’s food portal and maintained my grasp of the chain. Inmate then turned and began to try and push away from the door. I pulled inmate to the door, in order to maintain control. Deputy 1 was able to also grab part of the chain to assist in controlling inmate. Inmate then dropped his weight by lifting his legs off the ground. Inmate also began to grab Deputy 1’s wrist or hand. In order to prevent injury to Deputy 1, I drew my CED (Conductive Energy Device) and drive stunned inmate in the lower right of his back. Inmate’s sudden movement caused my left index finger to slip from the arc button and into the trigger well. As we struggled my CED deployed and both barbs hit inmate in the waist on the right side. Although the CED was deployed on inmate, neuromuscular incapacitation (NMI) was not achieved.” The complainant was in violation of Inmate Rules and Regulations for delaying jail operations and disobeying staff instructions. Deputy 3 was authorized to use a CED, more commonly known as a Taser, per Detentions Policy I.85, Use of Defensive Devices to gain compliance, and his use of force was reasonable and necessary per Detentions Policy I.89, Use of Force. The evidence showed that Deputy 1’s conduct was lawful, justified and proper.

5. Misconduct/Procedure – Deputies 1 and 3 did not follow policy for removing a taser barb.

Recommended Finding: Action Justified

Rationale: The complainant stated, “(Deputy) 3 told me to come to the door again and I stated, “You just tried to fucking kill me” But I still complied. Once he took the chains off I attempted to take the barb out. I couldn’t take it out so (Deputy) 3 asked if I wanted him to remove it. I told him hell no! (Deputies) 3 and 1 then walked away leaving me trying to figure out how to get the barb out. I eventually succeeded. A Sgt. came asking for the barb. I told him I don’t have it. He heard the toilet flush as he was approaching and he asked if I flushed it. I said yeah.” According to Deputy 3’s Crime Report, “I instructed Deputy 1 to let go of the chain, I also let go of the chain. Inmate went to the ground for approximately 3 seconds. Inmate immediately began to reach for one of the probes in his body. I yelled at him to stop moving, but he continued to pull on the probe. I cycled the CED for another 5 seconds. I told inmate to stop and follow my exact commands. Inmate complied with my instructions. I told inmate to get up slowly and place his back against the food flap. I then told him to push his hands through the food flap as well. Inmate complied. Deputy 1 and I were able to successfully remove the waist chains from him. I was able to retrieve one of the probes inmate had pulled out, however inmate would not give back the other one. As we backed away from the cell, I checked myself for injuries. I left to seek medical treatment and had no further contact with inmate.” Per Sheriff’s records, a tactical team was assembled to extract the inmate from his cell in order to recover the barb, ensure he was medically



evaluated by medical personnel, and to transfer him to a different facility. The tasks were completed with inmate's compliance and no force was needed. The barb was not located and was believed to have been flushed down the toilet. Inmate was evaluated and cleared by nursing personnel prior to being transferred. The evidence showed that the actions taken were lawful, justified and proper.

6. Misconduct/Procedure – Unidentified deputies lost the complainant's property after transfer, and then failed to respond to his grievances about the missing items.

Recommended Finding: Not Sustained

Rationale: The complainant stated, "...Till this day I never receive the property that was left behind in my cell. Mail, pictures, commissary and documentation as well as grievances I wrote in regards to the cruel and unusual punishment I was subjected to prior to this incident." Detentions Policy Q.66, Transfer of Inmate Property, states that 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 (either stapled or taped) to prevent property from falling out and mixing with other inmates' property. A deputy will then make a JIMS entry within each inmate's "inmate history," and specify the number of bags belonging to the inmate. According to Inmate History documentation, the complainant was transferred following the aforementioned event, with one bag of property, however, it was unknown what items were transferred. Additionally, there were no Inmate Grievances/Responses produced by either the complainant or SDSO concerning missing property. There was insufficient evidence to either prove or disprove what property may have been lost, and/or that grievances went unanswered.

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**19-039**

1. Misconduct/Procedure – Deputy 5 refused to provide the complainant with a meal.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 5 refused to provide her with a meal. In the complainant's written statement, she wrote, "[Deputy] 5 refused to provide a meal to me and after repeated incidence of verbal racial attacks and harassment, I experienced mental distress." In a second follow-up letter, the complainant detailed the following, "The date Deputy 5 refused to provide me a meal was August 11, 2018. The meal was lunch. Jail surveillance video recordings of when the complainant was served lunch on 08-11-18 were reviewed. The complainant's cell was viewed in the recording and two deputies, Deputy 5 and a second male deputy, and an inmate worker made their way around the housing module delivering lunches to the inmates through their food flaps. Deputy 5 arrived at the complainant's cell. As observed, the deputy was prepared to open the food flap locking mechanism, but stopped as she stood at the inmate's cell door addressing her. The jail surveillance video recording was without audio and it was unknown what the deputy and the complainant said to each other. Deputy 5 stood at the complainant's door for approximately one second, before turning away and continuing down the hallway. The second deputy followed behind Deputy 5 and stopped at the complainant's cell door for approximately eight seconds as he addressed her, before he continued delivering lunches to the remaining inmates. The distribution of lunches took approximately three and a half minutes and appeared to be without incident. According to the complainant's Jail Information Management System, Inmate History Summary Report, on 08-11-18, at 10:34am, Deputy 5 made a log entry reporting, "[The complainant] refused to allow Deputy 5 to give her food. [The complainant] was informed she cannot choose the deputy that feeds her." According to SDSO P&P Section 2.48 entitled, "Treatment of Persons in Custody," employees shall be courteous to the public. 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 SDSO DSB P&P Section K.1 entitled, "Provision of Nutritionally Adequate Diet," all inmates shall be provided a diet, which meets or exceeds Title 15 regulations. According to SDSO DSB P&P Section K.15 entitled, "Serving Times and Distribution of Meals," the Food Service Division staff will serve meals three times in any 24-hour period. The policy does not specify sworn staff members duties; however, in SDSO LCDRF's Green Sheet, Section K.15.I entitled, "Serving Times and Distribution of Meals" the LCDRF meal serving times are: Breakfast 0400 hours, Lunch 1030 hours, and Dinner 1600 hours. Ad-Seg Housing deputies will ensure all inmates are offered a meal in their assigned cells at each scheduled mealtime.

Additionally, according to applicable SDSD DSB LCDRF Post Orders, the House 5 Housing Deputy will ensure all inmates have had an opportunity to eat during each meal. Inmate meals will be conducted cell to cell to ensure safety of staff. With the assistance of inmate workers, the housing deputy will push chow carts into the module and begin serving the lunch meal. The House 5 Control Deputy will supervise inmate meals and ensure all inmates are given an opportunity to eat during each meal. Inmate meals will be conducted cell to cell to ensure safety of staff. The evidence indicated that the complainant was offered, but reportedly did not accept a meal from Deputy 5. The allegation that Deputy 5 did not give the complainant a meal did occur but was lawful, justified and proper.

2. Discrimination - Deputy 5 made racial comments to the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 5 made “inappropriate” racial comments to her. In the complainant’s written statement, she reported, “[Deputy] 5 has on several occasions made inappropriate comments in regards to my race, such as, “her mom was not like my people and her black boyfriend is not like your people.” When asked to elaborate on the inappropriateness of the comments, the complainant was unable to provide additional information. According to the complainant’s jail medical records, the complainant reported that she had an ongoing conflict with a certain deputy. In the complainant’s medical records, the complainant was described as “agitated; demanding; hostile; disrespectful to deputies and paranoid (fixated on one particular deputy).” In another medical record, the complainant was visited/evaluated by the jail “Gatekeeper.” During her interaction with the Gatekeeper, the complainant advised that the cause of her agitation was “that she was having a difficult time with a particular deputy,” relaying that the deputy was “causing her lots of problems.” The complainant made multiple demands to remove the deputy. Through the course of CLERB’s investigation, the deputy was identified as Deputy 5. The complainant constantly complained about Deputy 5. According to SDSD P&P Section 2.53 entitled, “Discrimination,” employees shall not express any prejudice or harassment concerning race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, pregnancy, marital status, gender, age, political beliefs, sexual orientation, lifestyle or similar personal characteristics. The evidence showed that the complainant had a vendetta against Deputy 5 and the allegations against her were found to be non-credible. There was insufficient evidence to either prove or disprove that Deputy 5 made inappropriate racial comments to the complainant.

3. Misconduct/Procedure – Deputies 1, 4, 6, 11, 12, 13 and 14, placed the complainant in a Safety Cell.

Recommended Finding: Action Justified

Rationale: In the complainant’s written statement, she alleged that unidentified deputies placed her in a Safety Cell. In the complainant’s written statement, she reported, “On August 11, 2018, I was placed in a safety cell after an incident involving Deputy 5 and a second deputy.” Through the course of CLERB’s investigation it was revealed that the following deputies placed the complainant into a Safety Cell on 08-11-18: Deputies 1,4, 6, 11, 12, 13 and 14. According to an Incident Report, Deputy 5 was conducting a security/safety check in the complainant’s housing unit when she found the complainant with a piece of material tied around her neck. The complainant was described as pulling the material tight. The complainant was escorted to the Medical Observation Unit where she was seen by medical staff. The decision was made to place the complainant into a Safety Cell for her “suicidal actions.” The complainant resisted the Safety Cell placement and a use of force ensued. According to SDSD P&P Section J.1 entitled, “Safety Cells; Definitions and Use,” inmates who have been assessed for Inmate Safety Program housing and approved by the watch commander for placement, may be temporarily placed in a safety cell when necessary to prevent the inmate from imminently inflicting physical harm on themselves or others, or destroying property. Safety cells are not to be used for punishment or a substitute for treatment. The evidence showed that the allegation that Deputies 1,4, 6, 11, 12, 13 and 14 placed the complainant in a Safety Cell did occur but was lawful, justified and proper.

4. Misconduct/Medical – Unidentified medical staff administered an unknown medication to the complainant.

Recommended Finding: Summary Dismissal

Rationale: In the complainant’s written statement, she alleged that on 08-11-18, unidentified medical staff administered an unknown medication to her. In the complainant’s written statement, she reported, “When

*placed in the Safety Cell, prior to that, I was given some type of medication by the nurse/doctor.”* In the complainant’s jail medical records, it was documented that the complainant “was given one-time dose of Ativan 2mg which she took.” On another medical document, it was documented that on 08-11-18, the complainant was noted as being “agitated, crying yelling cursing and argumentative with all staff.” Due to the complainant’s agitated state, a facility physician authorized the complainant for a STAT dosage of 2mg of Ativan. The complainant took the medication.” The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper. Moreover, the allegation against the jail medical staff member did not describe any deputy misconduct. As contracted personnel are not sworn staff, CLERB lacks jurisdiction as it cannot take any action in respect to complaint against non-sworn SDSO employees, per CLERB Rules and Regulations 4.1 and 4.4.

5. Misconduct/Procedure – Deputy 11 failed to document/photograph all the complainant’s injuries.

Recommended Finding: Unfounded

Rationale: The complainant alleged that Deputy 11 failed to document/photograph all of her injuries. In the complainant’s written statement, she reported, “The staff only took certain photos through the door not the actual bruising on my body. Medical staff stated it was up to the deputies if they wanted to do anything.” In Deputy 11’s Officer Report documenting the complainant’s placement into the Safety Cell, and the subsequent use of Force, it was noted that Deputy 6 took four digital photographs of the complainant’s body at the safety cell door. Additionally, it was noted that the complainant refused medical treatment. According to a medical related Inmate Grievance, on 08-18-18, the complainant reporting the following: A nurse did not document my injuries on 08-12-18 and lied stating I refused. Look at my Safety Cell video. I tried to tell her and show her my injuries she said, “Well you have to take that up with the deputies.” On 08-17-18, she came back to my door due to a sergeant escorting me to medical to tell medical staff my medical problems due to staff beating me. On 08-11-18, 1 [first] watch she said your bones are not broken you are OK and staff that was with her rushed her from my door. I told her I had bruises and knots behind my head. She refused me my proper documentation of my injuries she didn’t even look at my body. On 08-18-18, a deputy responded to the Inmate Grievance and reported, “Already re-evaluated by MD SC [Medical Doctor Sick Call] on 08-16-18. According to SDSO P&P Section 2.41 entitled, “Departmental Reports,” employees shall submit all necessary reports on time and in accordance with established Departmental procedures. Reports submitted by employees shall be truthful and complete; no employee shall knowingly enter or cause to be entered any inaccurate, false, or improper information, nor omit pertinent information reasonably expected to be included. According to SDSO P&P Section 2.46 entitled, “Truthfulness,” when asked by the Sheriff, the Sheriff’s designee or any supervisor, employees will always answer questions, whether orally or in writing, truthfully and to the fullest extent of their knowledge. All written and verbal reports shall be truthful and complete. The evidence showed that the allegation that Deputy 11 failed to document/photograph all the complainant’s injuries did not occur.

6. False Reporting – Deputies 1, 4, 6, 11, 12, 13, and 14 falsified information in their reports.

Recommended Finding: Unfounded

Rationale: The complainant alleged that Deputies 1, 4, 6, 11, 12, 13, and 14 falsified information in their reports. In the complainant’s written statement, she reported, “It is a constant practice of the report are written in a matter which contain false information and internal affairs constantly fails to properly, thoroughly investigate claims of misconduct when I submit them even if the evidence exists.” As stated below in Allegation #8, the complainant was involved in a use of force when she was placed in the Safety Cell. In accordance with SDSO P&P Section 2.41 entitled, “Departmental Reports,” employees shall submit all necessary reports on time and in accordance with established Departmental procedures. Reports submitted by employees shall be truthful and complete; no employee shall knowingly enter or cause to be entered any inaccurate, false, or improper information, nor omit pertinent information reasonably expected to be included. According to SDSO P&P Section 2.46 entitled, “Truthfulness,” when asked by the Sheriff, the Sheriff’s designee or any supervisor, employees will always answer questions, whether orally or in writing, truthfully and to the fullest extent of their knowledge. All written and verbal reports shall be truthful and complete. According to SDSO P&P Section 2.40 entitled, “Abuse of Process/Withholding Evidence,” employees shall not con3I, falsify, or make false accusations of a criminal or traffic charge. A review of the jail surveillance video recordings of the complainant’s Safety Cell placement coincided with the documentation of the uses of force. Upon viewing the jail surveillance video recordings and reading the involved deputies written reports, it was found that the written

reports clearly articulated the chronological sequence of events that was viewed in the surveillance video recordings; Each deputies' report corroborated with the jail surveillance video recordings. The allegation that Deputies 1, 4, 6, 11, 12, 13, and 14 falsified information in their reports was found to be untrue.

7. Misconduct/Procedure – Medical staff refused to inspect the complainant's injuries.

Recommended Finding: Summary Dismissal

Rationale: The complainant alleged that Medical staff refused to inspect her injuries unless authorized by deputies. In the complainant's written statement, she reported, "Medical staff inquired if I had injuries and I tried to show her. She stated it was up to the deputies if they wanted to do anything. *A sergeant in fact, upon seeing the severity of my bruises a week later, escorted me to medical to have medical document the bruises and injuries.*" According to the complainant's jail medical records, after the complainant was placed in Safety Cell with the use of force, jail medical staff conducted rounds and checked on the complainant. The complainant approached a nurse and advised her of the injuries she sustained from the use of force. In the medical records, a nurse documented that the complainant cursed at her and said, "Fuck you bitch" and spat on the Safety Cell door/window. The complainant began kicking the cell door and continued screaming and cursing. The nurse documented, "SC [Safety Cell] placed w UOF [with use of force] refused to answer about injuries." In another Encounter Detail: Encounter Notes in her jail medical records, another nurse reported, "Seen in intake Safety Cell. The complainant had complaint of pain in her right thumb where she had surgery. Also, complaint of pain in her right foot. No injuries, seen through door window. The complainant informed the nurse that she was "hit with fist into neck and pushed into lower back area." The interviewing nurse noted "no skin brakes or bruises noted. No red flags, no serious injuries noted." Lastly, according to a medical related Inmate Grievance, on 08-18-18, the complainant submitted an Inmate Grievance reporting the following: *The nurse did not document my injuries on 08-12-18 and lying stating I refused. Look at my Safety Cell video. I tried to tell her and show her my injuries she said, "Well you have to take that up with the deputies." On 08-17-18, she came back to my door due to a sergeant escorting me to medical to tell medical staff my medical problems due to staff beating me. On 08-11-18, 1 [first] watch she said your bones are not broken you are OK and staff that was with her rushed her from my door. I told her I had bruises and knots behind my head. She refused me my proper documentation of my injuries she didn't even look at my body. On 08-18-18, a deputy responded to the Inmate Grievance and reported, "Already re-evaluated by MD SC [Medical Doctor Sick Call] on 08-16-18. The allegation that Medical staff refused to inspect her injuries was found to be untrue. Moreover, the allegation against the jail medical staff member did not describe any deputy misconduct. As contracted personnel are not sworn staff, CLERB lacks jurisdiction as it cannot take any action in respect to complaint against non-sworn SDSD employees, per CLERB Rules and Regulations 4.1 and 4.4.*

8. Excessive Force – Deputies 1, 4, 6, 11, 12, 13, and 14 assaulted the complainant while she was in the Safety Cell.

Recommended Finding: Action Justified

Rationale: The complainant alleged that unidentified deputies assaulted her while she was in the Safety Cell. In the complainant's written statement, she reported, "Several deputies assaulted me in the Safety Cell after I was already placed inside the cell. It was unnecessarily and excessive force." Through the course of CLERB's investigation, it was revealed that the following deputies were involved in using force to place the complainant into a Safety Cell on 08-11-18: Deputies 1, 4, 6, 11, 12, 13, and 14. According to an Incident Report Deputy 5 was conducting a security/safety check in the complainant's housing unit when she found the complainant with a piece of material tied around her neck. The complainant was escorted to the Medical Observation Unit where she was evaluated by medical staff. The decision was made to place the complainant into a Safety Cell for her own safety; however, the complainant resisted the Safety Cell placement and a use of force ensued. In the complainant's written statement, she further alleged, "*In the Safety Cell, Deputy 4 jumped on my back, while I am handcuffed, with the shield and I am completely naked. I had recently had surgery on my hand/thumb from initial arrest injury and Deputy 4 busted my hand open again at the bottom due to her jumping excessively on my back with a shield. I have multiple bruises on my body.*" A review of the jail surveillance video recordings of the complainant's Safety Cell placement, and the subsequent documentation of the use of force, revealed that the physical force used was deemed necessary and objectively reasonable to overcome the complainant's resistance. The involved deputies utilized appropriate control techniques and tactics which employed maximum effectiveness with minimum force to effectively

afforded the deputies to control the complainant. The use of force, and subsequent written reports were in accordance with the Department's procedures set forth in its Addendum F Use of Force guidelines. According to SDSD 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. According to SDSD P&P Section 2.49 entitled, "Use of Force," employees shall not use more force in any situation than is reasonably necessary under the circumstances. Employees shall use force in accordance with law and established Departmental procedures, and report all use of force in writing. According to SDSD P&P Section 2.50 entitled, "Use of Lethal/Less Lethal Weapons," employees shall not use or handle lethal or less lethal weapons (including chemical agents, saps, batons, taser guns, etc.) in a careless or imprudent manner. Employees shall use these weapons in accordance with law and established Departmental procedures. According to SDSD P&P Section 6.48 entitled, "Physical Force," it shall be the policy of this Department whenever any Deputy Sheriff of this Department, while in the performance of his/her official law enforcement duties, deems it necessary to utilize any degree of physical force shall only be that which the Deputy Sheriff believes necessary and objectively reasonable to effect the arrest, prevent escape or overcome resistance (per 835(a) PC). Deputies shall utilize appropriate control techniques or tactics which employ maximum effectiveness with minimum force to effectively terminate, or afford the Deputy control of, the confrontation incident. The allegation that Deputies 1, 4, 6, 11, 12, 13, and 14 assaulted her while she was in the Safety Cell did occur but was lawful, justified and proper.

9. Misconduct/Procedure – Deputy 8 observed deputies assault the complainant and failed to act or intervene.

Recommended Finding: Summary Dismissal

Rationale: The complainant alleged that Deputy 8 observed deputies assault her, and he failed to act or intervene. In the complainant's written statement, she reported, "Deputy 8 observe the whole incident and allowed it to occur. It was unnecessarily and excessive force." As stated above in Allegation #8, the complainant was involved in a use of force when she was placed in the Safety Cell. According to the involved deputies Officer Reports and jail surveillance video recordings, Deputy 8 was present and did witness the use of force. The force used was deemed reasonable and necessary, per the SDSD policy and procedure. Per the policy, a supervisor or designee will respond to the scene to investigate uses of force that result in a complaint of injury or an injury that necessitates medical treatment and investigate the circumstances surrounding the incident. The supervisor will ensure that all witnesses were identified and interviewed, proper photographs were taken of all injuries and damage, and legal means of obtaining records of medical treatment is accomplished. Additionally, and according to SDSD 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. The allegation that Deputy 8 observed deputies assault the complainant and he failed to act or intervene did occur but was lawful, justified and proper. Moreover, it was advised that on 03-01-19, Deputy 8 separated from the Department and was no longer an employee of the SDSD. At the time of this incident, Deputy 8 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.

10. Misconduct/Procedure – Deputy 7 failed to investigate the complainant's grievances.

Recommended Finding: Unfounded

Rationale: The complainant alleged that Deputy 7 failed to investigate her grievance of deputy misconduct. In the complainant's written statement, she reported, "Internal Affairs Deputy 7 fails to act when I filed a complaint. I have filed various internal affairs complaints and the internal affairs department and the San Diego Sheriff's Department constantly refuses to impartially investigate the nefarious and illegal misconduct of the deputies and upper command. No action has been taken to rectify the issues." The complainant claimed to have filed a grievance with the SDSD's Internal Affairs and was concerned that her grievance was not properly investigated by the SDSD Internal Affairs Department. The complainant was dissatisfied with the SDSD Internal Affairs Division, Deputy 7's handling of her complaint. According to SDSD P&P Section 2.21 entitled,

"Citizen Complaints," employees shall courteously and promptly accept any complaint made by a citizen against any employee or any Department policy or procedure. The Internal Affairs Unit is the central controlling point for logging, assigning, investigating, and filing complaints. According to SDSD P&P Section 2.23 entitled, "Request for Assistance," when any person makes complaints, all pertinent information will be obtained in an official and courteous manner, and will be properly and judiciously acted upon consistent with established Department procedures. According to SDSD P&P Section 3.2 entitled, "Complaints Against Sheriff's Employees Policy," the Sheriff's Department will accept complaints of inadequate service or alleged employee misconduct, and process those complaints according to procedure. Complaint investigations shall be conducted in a fair, thorough, impartial, and timely manner. The Internal Affairs Unit is the central controlling point for logging, assigning, investigating, and filing complaints. All formal complaints shall be forwarded immediately to Internal Affairs. Investigations shall be conducted into off-duty criminal allegations. At the conclusion of the investigation, it shall be the responsibility of the Internal Affairs Deputy to notify the complainant of the complaint conclusion. Complaint Conclusion; the burden of proof in an administrative investigation is "preponderance of evidence," which is defined as such evidence, when weighed with that opposed to it, has more convincing force and the greater probability of truth. According to the SDSD Internal Affairs P&P Manual Section 2.4 entitled, "Complaints," the Internal Affairs Unit is responsible for the administration of all formal complaints which includes review the complaint for classification and assignment, review of the completed investigations, filing of completed investigations, and maintaining an index of all complaints. It is the responsibility of the Internal Affairs Unit to notify the complainant in writing that their complaint has been received and if the allegations will be investigated. Details of investigations will not be discussed with complainant. At the conclusion of an investigation, the Internal Affairs Unit will notify the complainant in writing of the disposition. According to the SDSD Internal Affairs P&P Manual Section 2.5 entitled, "Investigations," the Internal Affairs Unit has the primary responsibility for the investigation of all complaints. The Internal Affairs Deputy will make the determination where the complaint will be investigated. Internal Affairs Unit will typically investigate complaints alleging criminal or serious misconduct, complaints alleging misconduct by officers holding the rank of Deputy or above, and complaints that could be compromised by a conflict of interest. Due to California's Police Officer's Bill of Rights, the details of the complainant's investigation were not disclosed to CLERB. In accordance with State law, the complainant was given written notification of the disposition of her complaint. The letter advised that "state law restricts the extent that additional information may be disclosed concerning citizen's complaints and law enforcement personnel records. For that reason, the San Diego Sheriff's Department may only disclose the final disposition of the complaint." The allegation that Deputy 7 failed to investigate the complainant's grievance was untrue/unfounded. The evidence showed that the alleged act or conduct did not occur.

11. Misconduct/Procedure - Deputies 2, 3, and 9 allowed inmates to harass, intimidate, and verbally attack the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputies 2, 3, and 9 allowed inmates to verbally harass, intimidate, and verbally attack her. In the complainant's written statement, she reported, "On January 21, 2019, Deputies 2, 3, and 9 allowed an unsafe and inhumane environment for me while I was in their custody by the conduct they exhibited and allow to occur during their shift. Inmates were addressing me in racially offensive matters such as "nigger" and Deputy 2, 3, and 9 did nothing to address the problem. In fact, they escalated the situation and further racially profiled me. In an Inmate Grievance, that complainant reported that two inmates yell racial slurs without at her with consequences. A sergeant conducted an investigation and dismissed the allegation, due to lack of supportive evidence. In a Grievance Response, a sergeant wrote, "On 12-22-18, I reviewed your grievance you submitted on 12-21-18. In your grievance, you wrote that an inmate went to the door of your living area and called you, "Niggers, not once but three different occasions ..." You also stated in your grievance that deputies in your housing unit informed you they "can't do anything about it" after expressing your complaint to them." The sergeant spoke with the deputies mentioned the complainant's Inmate Grievance. The deputies advised that they are unable to control other inmate's behaviors and/or actions (e.g. offensive language). The deputies also informed the complainant that they spoke with the other inmate, who denied addressed the complainant by the aforementioned offensive term. The deputies informed the sergeant that they attempted to resolve the complaint, but the complainant was displeased with their response. The sergeant attempted to explain to the complainant that at that time, her allegations are "hearsay" and there were no articulable facts surrounding her allegations. The sergeant also explained to the complainant that

deputies are able to take administrative actions against inmates only if there is enough evidence to substantiate an Inmate Rule violation. There was not enough evidence to substantiate staff misconduct, and as such, the sergeant considered the matter closed. According to SDSD P&P Section 2.4 entitled, "Unbecoming Conduct," employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on this Department. Unbecoming conduct shall include that which tends to bring this Department into disrepute or reflects discredit upon the employee as a member of this Department, or that which tends to impair the operation and efficiency of this Department or employee. According to SDSD 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. Employees shall not use insolent language or gestures in the performance of his or her duties. According to SDSD 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. There was insufficient evidence to either prove or disprove the allegation that that Deputies 2, 3, and 9 allowed inmates to verbally harass, intimidate, and verbally attack the complainant.

12. Misconduct/Procedure – Deputy 2 did not provide the complainant with "basic necessities."

Recommended Finding: Unfounded

Rationale: The complainant alleged that Deputy 2 did not provide her with "basic necessities." In the complainant's written statement, she reported, "[Deputy] 2 was very unprofessional and failed to even provide the basic necessities need to survive here in custody. According to SDSD DSB Section L entitled, "Sanitation and Hygiene," in addition to safety, security, set emergency procedures, and food, the SDSD recognizes "basic necessities" as clean laundry, providing sanitation and personal hygiene items, mattresses, linens, trash removal, razors, haircuts and hair care, pest and vermin control, distribution of medications, and access to medical and dental care. In review of the complainant's JIMS Area Activities Summary Report, there were no documented instances where the complainant was denied clean laundry, sanitation and personal hygiene items, mattresses, linens, trash removal, razors, haircuts and hair care, medications, or access to medical and dental care. A review of all records provided from the SDSD revealed that the complainant was provided with safety, security, and food during her incarceration, not just by Deputy 2, but by all deputies assigned to her housing unit. According to SDSD 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. The evidence showed that the alleged act or conduct did not occur.

13. Misconduct/Retaliation – Deputy 9 retaliated against the complainant for filing a grievance.

Recommended Finding: Unfounded

Rationale: The complainant alleged that Deputy 9 retaliated against her for filing an Inmate Grievance. In the complainant's written statement, she reported, "Deputy 9 retaliated against me for my use of a grievance procedure and furnished other inmates with confidential information about my case details and why I am in custody. She [Deputy 9] stated, "You can't prove it, stop complaining, deal with it." [Deputy] 9 constantly degrades and abuses her position of authority to make racially derogatory statements or allow others to. Deputy 9 retaliated against me for filing a grievance in the following manner; she wrote me up an RVR every time I filed a grievance against her and created a hostile living environment. Deputy 9 had no reason to write me up when another inmate called me a derogatory term and falsely reported rule violations against me." Over the course of the complainant's incarceration, from 06-21-18 until CLERB submitted a request for records in 04-2019, the complainant had received 14 rule violation reports. Of the 14 rule violation reports against the complainant, only one was written by Deputy 9. The complainant had a documented history of disobeying staff instruction, disrespecting staff, throwing objects, threatening to gas deputies, interfering with jail operations, engaging in boisterous activities, threatening and/or assaulting staff and/or inmates, obstructing her jail cell doors, windows, and food flaps, and falsely providing information to staff. During the aforementioned ten-month timeframe, the complainant received verbal reprimands and a total of 44 days in disciplinary isolation. In the instances of Deputy 9's reports, the complainant's violations were reviewed and investigated by a sergeant, and the complainant was given a verbal reprimand by the sergeant. According to SDSD P&P Section 2.4 entitled, "Unbecoming Conduct," employees shall conduct themselves at all times,

both on and off duty, in such a manner as to reflect most favorably on this Department. Unbecoming conduct shall include that which tends to bring this Department into disrepute or reflects discredit upon the employee as a member of this Department, or that which tends to impair the operation and efficiency of this Department or employee. According to SDSD 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. Employees shall not use insolent language or gestures in the performance of his or her duties. According to SDSD 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. The allegation that Deputy 9 retaliated against the complainant for filing an Inmate Grievance was found to be untrue.

14. Misconduct/Procedure – Deputy 9 furnished inmates with the complainant's confidential information.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 9 furnished inmates with confidential information about her case. In the complainant's written statement, she reported, "It occurred on December 21, 2018. I was assigned to Ad-Seg. The inmates who Deputy 9 supplied my information to were inmate #1 and inmate #2. The info Deputy 9 provided to other inmates is the following; I was in here for life, facing murder, three strikes, and I was not getting out because I "stabbed my best friend's baby daddy." A review of the complainant's Inmate Grievances did not document any prior complaints about Deputy 9 disseminating the complainant's personal information or information regarding her case. According to SDSD P&P Section 2.37 entitled, "Dissemination of Information," employees shall treat the official business of this Department as confidential. Information regarding official business shall be disseminated only to those for whom it is intended, in accordance with established Departmental procedures. Absent information provided by an independent witness to the incident or additional video or audio recordings of the interaction, there was insufficient evidence to prove or disprove the allegation that Deputy 9 furnished inmates with confidential information about her case.

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## 19-124

1. Misconduct/Procedure – Deputy 1's "unbecoming and immoral conduct," in his personal affairs, reflected poorly on the San Diego Sheriff's Department (SDSD).

Recommended Finding: Summary Dismissal

Rationale: The complainant alleged that Deputy 1 had an approximately one-year affair with the complainant's wife. The complainant alleged Deputy 1 sought the complainant's wife out at the gym and "used his position of authority as Sheriff employee to prey on her vulnerability." The complainant reported his wife suffered from depression, which made her a target for Deputy 1. Deputy 1 went on a trip, on "official business" and invited the complainant's wife to fly out and meet him, to spend the weekend with him. The complainant reported, "this is not a singular incident and Deputy 1 has been having affairs with several women." The complainant reported that the husband of another "victim" previously sent an anonymous complaint to CLERB, and that the complainant has had contact with this individual, as his wife was also one of Deputy 1's "victim's." At the time of this incident, Deputy 1 was an active employee of the Sheriff's Department; however, he is no longer employed by the SDSD. As per CLERB's Rules and Regulations Section 5.8, Termination, Resignation or Retirement of Subject Officer, The Review Board shall have the discretion to continue or terminate an investigation, if, after a complaint is filed and before the Review Board completes its investigation, the subject officer terminates employment with the Sheriff's Department or the Probation Department. The Sheriff or the Chief Probation Officer or the subject officer shall notify the Review Board when the subject officer's employment is terminated. CLERB was notified, via e-mail communication with SDSD CLERB liaison, that Deputy 1 retired from the SDSD on 10-15-19.



1. Misconduct/Procedure – Deputy 1 “evicted” the complainant from his residence.

Recommended Finding: Action Justified

Rationale: The complainant stated, “On January 22nd 2019 a Sheriff’s Deputy knocked on my door and informed me that I was to immediately exit my home. I asked if I could gather a few things and he responded with “get your backpack.” I found this strange as I did not own a “backpack” or utilize a “backpack” in my daily routine. As I searched my bedroom for items I may need and feeling confused and bewildered as I had been assaulted/victimized days before and was now being technically evicted without cause.” According to Sheriff’s records, on 01-22-19, Deputy 1 served the complainant with Proof of Service for a Temporary Restraining Order (TRO) filed by his wife. Deputy 1 instructed the complainant to gather some of his personal items and that he must remain at least one hundred yards away from his wife and their residence until after a court hearing scheduled for 02-07-19. Deputy 1 also explained that the complainant could expedite the process by petitioning the Court for an Ex Parte Hearing to present his side of the story. The Body Worn Camera (BWC) evidence verified that Deputy 1 properly served the complainant and escorted him away from the residence in compliance with a valid court order. The evidence showed that the conduct that occurred was lawful, justified and proper.

2. Excessive Force/Taser – Deputy 1 tasered the complainant.

Recommended Finding: Unfounded

Rationale: The complainant stated, “As I returned to the dining room next to the Sheriff I immediately felt a sensation of what I can only describe as a dull electric shock run through my body that caused me to become weak, nauseous and lose my balance and I then immediately drop to the floor. I recovered and exited my residence and later discovered a line across my forehead that appeared to be a burn of some sort. The exchange between the Sheriff deputy and I was civil and without discord as I have always followed the direction of law enforcement my entire life.” This incident was captured on BWC and verified that the complainant fell to the floor twice on his own accord. Deputy 1 inquired if he (the complainant) needed medical assistance and also inquired if he had a medical condition that caused him to fall. The complainant laughingly stated, “I’m just tripping cuz I had to leave. It’s just hitting me that I gotta leave right this minute.” Based upon video evidence, the complainant’s actions and responses presented as those of a malingerer; a person who deliberately pretended to have an illness or disability in order to avoid responsibility. BWC evidence disputed any use of a Taser (or other device) and the alleged conduct did not occur.

3. Misconduct/Procedure – Deputy 1 failed to provide an eviction order to the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated, “I was not provided with a copy of the (eviction) order used to remove me from my home in which I had lived for NINE years...” As required by CCP§ 527 - Preliminary Injunction and Temporary Restraining Order (TRO), Deputy 1 served the complainant with Proof of Service for a TRO, not an Eviction Order on 01-22-19. BWC evidence corroborated that Deputy 1 provided the complainant with the legal paperwork, and instructed him to put it into his backpack. The evidence showed that Deputy 1’s actions were lawful, justified and proper.

4. Misconduct/Procedure – Deputy 1 failed to provide his name and/or business card to the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated, “I was not provided with a business card or name of the San Diego Sheriff Deputy that ordered me to exit my residence.” Sheriff’s Policy 2.20, Identification, states that sworn employees shall carry their identification cards on their persons at all times, except when impractical or dangerous to their safety or to an investigation. While on duty, all employees shall furnish their first and last name and ARJIS number to any person requesting that information, except when the withholding of such information is necessary for the performance of police duties. Per BWC evidence, the complainant asked for the deputy’s name and it was provided; the complainant repeated the deputy’s name and thanked him by

name. Per the BWC evidence, a business card was never requested and was not required to be provided per policy. Deputy 1 was in compliance with policy and his actions were lawful, justified and proper.

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*End of Report*