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County of San Diego
CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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www.sdcounty.ca.gov/clerb

REGULAR MEETING AGENDA
TUESDAY, MARCH 10, 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) DOJ Death Data Review 2018 – Julio Estrada

5. EXECUTIVE OFFICER'S REPORT

- a) Overview of Activities of CLERB Executive Officer and staff for the month of February
- b) Workload Report – Open Complaints/Investigations Report (*Attachment B*)
- c) Case Progress and Status Report (*Attachment C*)
 - 17-150/Horsey – Sustained allegations Deputies 1-3 (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) 2019 Annual Report
- b) Civil Service Commission Appeal on CLERB Case 17-150/Horsey

8. UNFINISHED BUSINESS

- a) Jail Inspection Subcommittee Update - Discussion and adoption of the Detention Facility Inspections Handbook
- b) Allegations/Recommended Findings Review Subcommittee

9. BOARD MEMBER COMMENTS

10. SHERIFF/PROBATION LIAISON QUERY

11. CLOSED SESSION

- a) Performance Evaluation of Executive Officer - Notice pursuant to Government Code Sections 54957.
- b) 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 (7)

19-018

1. Misconduct/Procedure – The Probation Department arranged for the complainant to be housed in sober living homes which were not ADA accessible.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that the Probation Department placed him in sober living homes that were not ADA accessible and therefore, unable to accommodate for his mobility issues. According to the complainant's written statement, he alleged that on or about 03-21-18, he was placed into a sober living home by the Probation Department that was not ADA accessible. The complainant stated, "The problem with this housing is that it is not ADA accessible at all. No porch ramp, no ADA shower steps anywhere. On 04-30-18, I was placed into another home again, not ADA compliant at all." In his written statement, the complainant stated that he was "mobility impaired, paroled with a walker, a cane and was part of the class ADA under Armstrong." The following was obtained from the California Department of Corrections and Rehabilitation website: Armstrong is a federal class action lawsuit filed on behalf of inmates and parolees with various disabilities. The Armstrong class refers to inmates housed in State or local jails and advocates for ADA compliance in those facilities but does not apply to sober living facilities. According to Probation documents received and reviewed during CLERB's investigation, the complainant never communicated his need for ADA accommodations. Documentation also indicated that the complainant did not have a walker or cane with him when he transferred from State Prison to the Community Transition Center. Additionally, when the complainant met with the intake Probation Officer (PO) and his assigned PO, he did not have any assistive ambulation devices with him. A Department Probation Information Source provided that when a Post Release Community Supervision (PRCS) offender is released from custody, they are evaluated by officers at the Community Transition Center (CTC). They are also evaluated by behavioral health staff for any mental health and/or physical medical issues. "These issues should be noted in their prison packet that our department receives but it is also expected that any individual coming into the program be forthcoming with their medical and mental health needs." In a phone interview on 01-28-20, the complainant reported to CLERB that he did not discuss his need for ADA accommodations and never talked with his PO about the sober living homes not being ADA compliant because he assumed they already knew. California Department of Corrections and Rehabilitation (CDCR) forms that were received in the transfer packet from State Prison, are contradictory in addressing the complainant's accommodation needs. Form DPP Disability / Accommodation Summary, documents the complainant as needing the following accommodations: ground floor-no stairs, lower/bottom bunk only, cane and walker, whereas the Disability Placement Program Verification (DPPV) form 1845 states the complainant's disability for mobility, may or may not require an assistive device accommodation to ambulate but the disability is not severe enough to require special housing or level terrain. The Medical Classification Chrono form indicated that the complainant had single tip cane and a 4 wheel walker with seat. Institutional environment restrictions indicated no stairs. During his initial intake at CTC, the complainant admitted that he did not discuss any needs he had for ADA accommodations and when asked why he did not communicate that need, he stated, "no reason." Senior Probation Officer (PO) 1 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. Due to conflicting evidence, there was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Procedure – The Probation Department housed probationers in "unfit homes."

Recommended Finding: Not Sustained

Rationale: The complainant alleged that the Probation Department utilized taxpayer dollars to house probationers in "unfit homes." While under supervision with the Probation Department, the complainant never discussed the homes as being "unfit," until he was arrested and made statements that he was going to the media to report the Probation Department. In a phone conversation with the complainant, on 01-28-20, the complainant admitted that he never discussed with probation the condition of the homes and when asked why, he replied, "I figured they knew." The sober living facilities where the complainant was housed, were under County contract with the San Diego County Probation Department (SDCPD). In both contracts, Section

8 Facility Requirement, sub-section 8.3 states, all areas shall be kept clean and sub-section 8.4 states, all areas shall be free of vermin, bed bugs, and their residue, contaminated water, noxious odors, and accumulated dirt. A SDCPD Information Source provided the following information when CLERB inquired into the process of placement of probationers in housing: "there is not a specific policy in place regarding placing AB109 offenders. Where offenders are placed is based on a multitude of factors and is ultimately case plan driven. The Probation Department assigns a Division Chief to be the Contracting Officer Representative (COR) who ensures the contracted facilities are adhering to their requirements." Furthermore, the SDCPD Information Source provided that one of the Sober Living Facilities was given a corrective action notice, on 03-18-19, due to violating the terms of their contract. The violations included discarded belongings throughout the property, property has overgrown vegetation in the yard and unsafe hazards: broken windows, broken tiles, and electrical cords going from outside of residence to an adjacent bedroom inside the residence. The corrective action requirements were not adhered to and resulted in the Probation Department terminating any further placement of probationers in the home. PO 1 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. Although violations were noted several months after the complainant occupied the residence, there were no violations recorded for the timeframe when the complainant was housed at this facility and therefore, the evidence was insufficient to either prove or disprove the allegation.

3. Misconduct/Intimidation – PO 1 told the complainant if he went to the media the Probation Department would lose housing for sex offenders.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that when he informed PO 1 that he was going to the media and report the Probation Department for housing probationers in "unfit homes," PO 1 told him if he did that the Probation Department would lose their contract to house sexual offender probationers. On 01-28-20, during a phone interview, the complainant reported to CLERB that he did tell his PO that he was going to go to the media. The complainant also reported to CLERB that he never discussed the condition of the homes with his PO because he assumed they already knew. A review of correspondence sent by the complainant to his PO, while he was in custody, documented his request to be able to go back into sober living upon his release. In one of the letters, the complainant requested to be placed back into one of the sober living homes, that he has included in these complaint allegations, stating, "I ask you to 'please' try to get me back into the sober living." PO 1 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 any audio of the alleged incident, and opposing statements from the complainant and PO 1, the evidence is insufficient to either prove or disprove the allegation.

PROPOSED RECOMMENDATION

1. It is recommended that the Probation Department implement a set schedule for home inspections of facilities contracted to house probationers, to include a check list to address the facilities housing requirements that will ensure the facility adheres to the terms of the contract.

19-024

1. Death Investigation/Barricade – On February 16, 2019, Paul Kerr committed suicide in his apartment while communicating with the Sheriff's Department Crisis Negotiation Team.

Recommended Finding: Action Justified

Rationale: On February 17, 2019, around 3 a.m., deputies responded to a report from a woman who said her husband threatened her with a gun. Deputies arrived and began communicating with Paul Kerr. Due to the fact the subject was armed, in order to minimize the threat to public safety, and to achieve safe resolution of the situation, the Sheriff's Department Crisis Negotiation Team (CNT) and Special Enforcement Detail

(SED/SWAT), responded to the scene. CNT made every effort to establish a dialogue with the subject and once they did, they were in communication with him for several hours. Kerr reportedly “sounded very hopeless and helpless.” CNT made every effort to convince Kerr to surrender and to resolve the incident safely. Shortly before 12:00 p.m., it was determined by CNT and SWAT that the subject had shot himself. Upon entry into the home, deputies found Kerr deceased; he was alone and no one else was hurt. An autopsy was conducted and determined the cause of death to be a perforating intraoral gunshot wound, and the manner of death was suicide. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff’s Department sworn personnel.

19-043

1. Misconduct/Procedure – Deputy 2 mandated the complainant’s presence at the SDSD.

Recommended Finding: Action Justified

Rationale: The complainant stated, “In multiple communications with Deputy 2, he has made claims that are apparently contrary to the law. His actions make complying with the law very difficult if not impossible. Citizens must be able to rely on accurate information from law enforcement, and if the law enforcement officer doesn’t know he should check with reliable sources. On two occasions, I asked Deputy 2 to verify his claims. He did not do so. I now have two residences, one in Cardiff and one in Egypt, so I need clear information and guidance from the Sheriff as to how to proceed. In each case, I notified the detectives and the licensing division of my plans with the information I believed was required. Deputy 2 has asserted that I must come into the Sheriff’s station in person to file travel reports, but no such requirement appears to exist (and would be impossible to comply in many cases).” According to Sheriff’s documents the complainant was required to register as a sex offender for his lifetime, in the State of California due to a conviction of 243.4 PC, sexual battery in 2006. When a registered sex offender in the State of California changes any information or completes any type of update, a California Department of Justice 8102 form is completed. The 8102 form is completed by the offender and the official responsible for completing registrations in the jurisdiction of registration. On 03-14-18, the complainant went to the San Diego County Sheriff’s Department Licensing Division and completed an 8102 form along with a licensing clerk. The complainant signed and placed his right thumb print on page one of the form. Page one contained all of the complainant’s personal information including a home address within the Sheriff’s jurisdiction. The complainant also signed and placed his right thumb print on page two of the form and confirmed that he had read and understood all 23 requirements, to include annually updating his registration in person, within five working days before/after his birthday, at the law enforcement agency having jurisdiction over his residence. The complainant also confirmed in writing that he did not have any questions about the mandated requirements. By signing his name on the 8102 form, placing his thumb print twice on the 8102 form and placing his initials on each of the 23 registration requirements, the complainant was aware of his duties as a 290 PC sex registrant. The evidence showed the alleged act or conduct did occur and was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 2 ordered the complainant to report annually for PC 290.

Recommended Finding: Action Justified

Rationale: The complainant stated, “He (Deputy 2) has also asserted that I must report for an annual update at great expense per PC290 even though I am not physically in the state of California but maintain a residence there.” See Rationale #1. By signing his name on the 8102 form, placing his thumb print twice on the 8102 form and placing his initials on each of the 23 registration requirements, the complainant was aware of his duties as a 290 PC sex registrant to include registering annually, in person, at SDSD; the law enforcement agency having jurisdiction over his CA residence. The evidence showed the alleged act or conduct did occur and was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 2 was “unable or unwilling” to provide policies and/or supporting documentation to the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated, “He (Deputy 2) was unable or unwilling to provide policies and other supporting documentation that indicate I must do so. A reasonable person would assume that on my return to California I should report in, and not before. In any case, Deputy 2 knows exactly where I am and what I am doing.” See Rationale #1. A sex offender registration law requires offenders convicted of specified offenses to register with their local law enforcement agency. Furthermore, the Sex Offender Registration and Notification Act (SORNA), requires registered sex offenders to inform registry officials of any intended travel outside of the United States at least 21 days prior to the start of that travel. By signing his name on the 8102 form, placing his thumb print twice on the 8102 form and placing his initials on each of the 23 registration requirements, the complainant was aware of his duties as a 290 PC sex registrant. The evidence showed that the complainant was informed of his requirements and acknowledged by signature that he understood those requirements; the conduct was lawful, justified and proper.

4. False Reporting – Deputies 1 and/or 2 provided “misleading” information to the Court.

Recommended Finding: Action Justified

Rationale: The complainant stated, “Deputies 1 and 2 provided misleading information to the court Dept. 2024 via the District Attorney’s office recently. Their reports identify facts without context and omit facts that support my claims, facts they know but chose not to share. For example, Deputy 1 very well knew I had informed the licensing division that I had travel plans in August and September of 2017, and he knew that I could and would provide documentation of those plans (within the US). Nevertheless, he seems to believe I was somehow evading him even though I am the one that initiated the contact. He may have misrepresented the actual period I was on the road trip as August to December in order to make it look like I had established a residence somewhere else. In actuality is was mid-August to late September, as he knows because I told him. On the trip, I was never in one place for more than two days, and as (Deputy) 1 knew, I could have proven that fact with ease if he needed it. Should you need further information, please let me know. I look forward to your response, and that Deputy 2 receives corrective discipline for his dishonesty.” The complainant included as evidence, two different Deputy’s Reports; one by Deputy 2 dated 12-27-18 and one by Deputy 1 dated 12-29-18, along with a multitude of email correspondence. As reported in Rationale #3, the Sex Offender Registration and Notification Act (SORNA), required the complainant to inform registry officials of his intended travel outside of the United States 21 days prior to the start of his travel. By signing his name on the 8102 form, placing his thumb print twice on the 8102 form and placing his initials on each of the 23 registration requirements, the complainant was aware of his duties as a 290 PC sex registrant, and was out of compliance with those mandated conditions. The evidence showed that the complainant was informed of his obligations and acknowledged by signature that he understood those requirements; and the conduct was lawful, justified and proper.

19-049

1. Misconduct/Procedure – An unidentified deputy moved the complainant to a medical cell.

Recommended Finding: Action Justified

Rationale: The complainant stated, “I was moved to one man-med cell because of Koshers tray – it all on film.” Deputies provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. A review of the complainant’s Inmate History, from January through May 2019, revealed numerous moves throughout the detention facility that were in compliance with Detentions policy R.1, Classification. Inmates are assigned to the most appropriate housing location based on their classification designation, and medical/psychiatric treatment can cause reclassification. Medical records verified the complainant’s transfer to a medical observation bed (MOB) when he was issued a medical device/”boot” for a broken toe. When the complainant removed the boot and an x-ray confirmed his toe was healed, the complainant was returned to mainline housing. The evidence showed that the conduct that occurred was lawful, justified and proper.

2. Misconduct/Intimidation – An unidentified deputy told the complainant he would kill him.

Recommended Finding: Not Sustained

Rationale: The complainant stated, "He STATE He would kill me in holing cell." Deputies provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Absent an audio recording and without further identifying information from the complainant as to who, where, and when, there was insufficient data to properly investigate the allegation. There was insufficient evidence to either prove or disprove the allegation.

3. Excessive Force – An unidentified deputy slammed the handcuffed complainant's wrists on "bars".

Recommended Finding: Not Sustained

Rationale: The complainant stated, "He move me, put me in cell that had water in deep – with it still running, in handcuffs- he slamed my wrist on BARS-with cuffs on and stated he would kill me, again had problems to day again with him He's un professional." The complainant submitted a medical request dated 04-23-19, in which he reported there was water all over the floor of the cell (as alleged in his complaint to CLERB) and that he had a swollen knee. Deputies provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Whenever a deputy utilizes force, documentation is required per Detentions policy I.89, Use of Force, however, there were no documented uses of force concerning the complainant per the Division of Inspectional Services query. A review of surveillance video for 24 hours on the date of 04-23-19, did not disclose anything of evidentiary value. Without further clarifying information from the complainant as to who, where, and when, there was insufficient data to properly investigate the allegation and insufficient evidence to prove or disprove the allegation.

4. Misconduct/Discourtesy – An unidentified deputy asked the complainant about his wrist and said, "I thought I broke it."

Recommended Finding: Not Sustained

Rationale: The complainant stated, "Stated again how was my wrist, He said I thought I Broke it." Deputies provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Absent an audio recording and without further clarifying information from the complainant, there was insufficient evidence to properly investigate the event. There was insufficient evidence to either prove or disprove the allegation.

5. Misconduct/Procedure – An unidentified deputy refused to provide a kosher meal to the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant stated, "Also on April, 29, He refuse to get me my Kosher meal." Per Sheriff's records, the complainant was approved to receive Kosher meals in compliance with Detentions policy K.8, Religious Diets. Religious diet arrangements are provided by the Sheriff's Department for inmates of the Jewish faith, Muslim faith and/or any proclaimed faith that require special meals. The complainant also submitted five grievances related to food which were responded to by kitchen staff who are non-sworn personnel. According to an Incident Report, on 04-23-19, the complainant threw his meal at a deputy and received a rule violation. Deputies provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Without further clarifying information from the complainant, there was insufficient evidence to either prove or disprove the allegation.

6. Misconduct/Medical (IO) – Unidentified staff failed to respond to the complainant's medical request(s).

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, "I've tried to get to Medical – Filed three requests, - getting NO where with that." A review of Sheriff's medical records from January through April 2019, revealed a multitude of medical requests submitted by the complainant that refuted this allegation; however, medical staff/decisions reside outside CLERB's jurisdiction as they are non-sworn personnel, per CLERB Rules & Regulations 4.1, Complaints: Authority. Pursuant to the Ordinance, CLERB shall only have authority to receive, review, investigate, and report on complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department; the Review Board lacks jurisdiction.

19-051

1. Illegal Search & Seizure – Deputy 3 “patted down” the complainant on February 25, 2019.

Recommended Finding: Action Justified

Rationale: The complainant stated, “On Monday February 25 at 8:15 a.m., with my jacket removed and juror's badge located in the center of my chest, I proceeded through the security checkpoint as directed. As I approached Deputy 3, I informed him of the metal that was surgically implanted in my left hip. Confused as to what he wanted me to do, Deputy 3 initially instructed me to face him and put my arms out. He then changed his mind and instructed me to turn around and face the people entering the security checkpoint area and put my hands behind my back and lock my fingers together. I reiterated to him I had metal in my left hip. But, my words were ignored. As he proceeded, he held my hands together with his left hand and began patting my legs and waist with his right hand. Again, I informed him about my medical condition. My comments were ignored. He remained stone-faced and refused to engage. *I soon realized I was having an anxiety attack. I thought I was being arrested for having surgically implanted metal in my left hip.* After the pat down was over, I quickly gathered my belongings and proceeded toward the bench to readjust my clothing and repacked my computer. I felt humiliated and embarrassed.” Video evidence corroborated the complainant's pat down search. According to Deputy 1's Officer's Report, the complainant reported he had a hip replacement after he triggered the magnetometer. As instructed to by Deputy 1, Deputy 3 conducted a pat down search for contraband with negative results. Deputy 3 recorded the following documentation pertaining to his search, as detailed in his Deputy's Report: “I performed the pat-down using my left hand to pat-down his left hip then the inside, front, and outside of his left leg. I then used my right hand patting-down his right hip area then the inside, front, and outside of his right leg. As I was patting the complainant down, I used my opposite hand to hold the fingers of his hands at the lower portion of his back.” Court Services Bureau (CSB) Policy F.6-Weapons Screening, is required by order of the Superior Court to provide weapons screening at the designated public entrances to all county court facilities. The legal basis for the screening is a standing general court order of the San Diego Superior Court Presiding Department and Section 171(b) of the California Penal Code, which states in part, “All persons entering county court facilities are subject to screening.” There were no exemptions for citizens serving jury duty. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

2. Discrimination/Gender – Deputy 3 treated a female differently from the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated, “Nevertheless, I waited several minutes to see if the pat down procedure was standard protocol. Shortly thereafter, a female entered the security checkpoint causing the metal detector to activate. Deputy 3 summoned her to come forward and immediately directed her to extend her arms out parallel to the floor. He grabbed the scanning wand and scanned her body. He did not direct her to put her hands behind her back nor did he conduct a pat down [**Gender Profiling**]. After witnessing his interactions with the female, I approached Deputy 1, Deputy 3's Training Officer and asked him for the Sheriff Deputy's name. I did not tell him what I had experienced a few minutes earlier. Before I could explain what had happen, Deputy 1 stated, "It is my fault. I apologize. I am his Training Officer. He is just getting out of the Academy." I responded, "I understand. Your apology is accepted, but you are not going to be his Training Officer when he is patrolling the streets." With hesitancy, Deputy 1 stated, "His name is Deputy 3 [Caucasian]." I reported my humiliating experience to the courtroom Bailiff, Judge and their [deputies] supervisor, Deputy 4.” According to Deputy 1's Officer's Report, Deputy 3 was a recent graduate of the San Diego Regional Academy and had adequate instruction with regard to the technical aspect of performing pat-downs. Deputy 1 and Deputy 3 discussed when and how to use the Garrett brand metal detecting wand, and also discussed using the wand on female subjects when a female deputy was not available to perform a pat-down, or on subjects who were too medically frail or disabled for a standard pat-down to be feasible. While there were female Community Service Officers (blue uniformed) nearby, two male deputies were assigned to the weapons screening station. Furthermore, clothing was taken into consideration for use of the hand-held electromagnetic wand for the female wearing a sleeveless and fitted dress, versus a pat down search

for the complainant wearing clothing that could conceal contraband. The evidence supported that the pat down of the male complainant and use of a wand for an unidentified female were for training purposes and not due to gender discrimination. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

3. Illegal Search & Seizure – Deputy 2 “patted down” the complainant on March 4, 2019.

Recommended Finding: Action Justified

Rationale: The complainant stated, “On Monday March 4, 2019 at 9:25 AM, I encountered more embarrassment and humiliation. While approaching the security checkpoint, I noticed a change in the deputies' physical appearance. Their chests began to protrude outward, as I approached. One of the three deputies immediately instructed me to come forward. I touched my left hip to inform the deputy [Hispanic?] about the metal in my hip. Ignoring my statement, he instantly instructed me to turn around and put my arms behind my back and lock my fingers, as he proceeded with his pat down. Still recovering from the embarrassment and humiliation I experienced the week prior, my anxiety level increased two-fold.” According to Deputy 1’s Officer’s Report, on 03-04-2019, at about 9:39am, Deputy 2 and I conducted a pat down of a black male adult who verbal identified himself. He had triggered the magnetometer in the region of his waist. He told Deputy 2 and I that he had a hip replacement as he walked towards us. Deputy 2 conducted a pat down search for contraband with negative results. In Deputy 2’s report, he stated he did not know and had never met the complainant previously. When asked to place his hands behind his back, the complainant reportedly said, “You are doing it all wrong, you don't do it this way you are going to hear about this.” Deputy 2 proceeded to conduct a pat down and said that he took his age into consideration, and gently held his fingers during the pat down as trained at the Regional Academy, but did not make the complainant lean back to get him off balance because of his age even though they are taught to always have a subject in a position of disadvantage. Deputy 2 patted the complainant in four quadrants, using his right hand to pat down and left hand to hold the complainant’s fingers. Deputy 2 patted down around his right upper chest and then his right lower front and back waist area going all the way down to his legs. He switched hands and sides and used his right hand to hold the complainant's fingers and left hand to pat down. He patted down his left upper chest and then his left lower front and back waist area and all the way down to his legs. The deputy also patted down on the inside of his legs on both sides. The pat down took approximately 17 seconds. Court Services Bureau (CSB) Policy F.6-Weapons Screening, is required by order of the Superior Court to provide weapons screening at the designated public entrances to all county court facilities. The legal basis for the screening is a standing general court order of the San Diego Superior Court Presiding Department and Section 171(b) of the California Penal Code, which states in part, “All persons entering county court facilities are subject to screening.” There were no exemptions for citizens serving jury duty. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

4. Misconduct/Discourtesy – Deputy 1 attempted to “instigate an argument” with the complainant.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, “After collecting my belongings, Deputy 1 immediately approached me and attempted to instigate an argument. He asked, "Do you have a law enforcement background?" I responded, "No, I taught employment law at San Diego State University." He then sarcastically stated, "I thought you were a Doctor." I considered Deputy 1’s actions and the actions of the three deputies to be [reprisal], because I reported my negative experience I encountered the week prior to their supervisor, Deputy 4 and the Judge [**Racial Profiling**]. Nonetheless, I refused to engage in the confrontation and reported this second incident to their supervisor Deputy 4, courtroom Bailiff, and the Judge.” Deputy 1’s report documented the following interaction, “While we were guiding the public through the weapons screening process the following occurred. A black male adult who I recognized as the complainant passed through the magnetometer, and triggered the alarm in the waist region of his body. The complainant told us that he had a hip replacement, and that was why the machine triggered. Deputy 2 directed the complainant off to the side, and conducted a pat-down of the complainant's person for contraband with negative results. The complainant left the lobby area, and I had no further contact with him.” There was no audio evidence to corroborate or refute this allegation. Deputy 1 terminated employment with the SDSO prior to the complainant submitting his complaint to CLERB and was unavailable for further questioning. Per then CLERB Rules & Regulations 4.1 and 5.8, the Review Board lacks jurisdiction.

5. Misconduct/Retaliation – Deputies 1-3 “acted out” against the complainant because he reported his negative experiences to supervisory staff.

Recommended Finding: Action Justified

Rationale: The complainant stated, “I considered Deputy 1’s actions and the actions of the three deputies to be [reprisal], because I reported my negative experience I encountered the week prior to their supervisor, Deputy 4 and the Judge [Racial Profiling].” According to Deputy 4’s Incident Report, after the incident on 02-2-19, the complainant said he was not happy reporting for jury duty as it interfered with his business. The complainant said he was embarrassed by having to place his hands behind his back, not all pat-down’s were conducted in the same manner, and deputies needed “Social Intelligence” training. Deputy 4 discussed the importance of screening every person who entered the courthouse for safety and security. They discussed the metal detecting wand and same sex versus opposite sex pat-downs, as well as the pat-down technique taught at the POST-certified Regional Law Enforcement Academy. Deputy 4 emphasized that hundreds of guests are screened daily, and while they make every effort to be as minimally invasive as possible, a proper search is needed to ensure public safety. The complainant replied that while he understood safety, he was still upset by the experience. After the 03-04-19 incident, the complainant told Deputy 4 he felt it was excessive to have his fingers held behind his back while being patted-down. He felt that after being to court several times as a juror, the deputies should recognize him and not subject him to such an intrusive search each time. The sergeant explained that deputies rotate shifts/positions and cannot recognize every juror, and that every person entering the courthouse was subject to a thorough search to ensure public safety. Deputy 4 reported that during neither interaction with the complainant did he request/indicate that he wanted to file a complaint against any specific or group of deputies. The evidence determined that deputies were forced to conduct pat-down searches of the complainant due to an implanted surgical device and their conduct was lawful, justified and proper.

6. Misconduct/Procedure – Deputies 2 and 3 actions caused the complainant to terminate jury duty prematurely.

Recommended Finding: Action Justified

Rationale: The complainant stated, “Each morning as I entered the courthouse checkpoint, my anxiety level increased. During my daily 90-minute lunch break, for example, I refused to leave the courthouse. I felt mentally incarcerated. I did not want to experience additional humiliation, harassment, and embarrassment from having to re-enter the security checkpoint and interact with the deputies after lunch. After my jury duty ended each day, my anxiety lingered. I was unable to remain focus while exercising. I had difficulty sleeping at night. Therefore, due to the continuous harassment, humiliation and embarrassment I encountered, the Judge granted my request to prematurely terminate my jury service. In essence, as a United States citizen, I was denied my right to complete my civic responsibility. The deputies’ impervious behavior should not be tolerated neither in our communities, nor in today’s society.” According to the evidence, the complainant’s medical device triggered the magnetometer. Deputies were mandated by law to perform a search, either by pat down or with a hand-held electromagnetic wand. Based on the complainant’s clothing and same sex personnel assigned to the area, pat down searches were conducted in accordance to techniques taught at the Regional Law Enforcement Academy. The deputies’ actions were lawful, justified and proper.

COMPLAINANT’S PROPOSED RECOMMENDATIONS:

The following recommendation(s) were proposed by the complainant:

“The San Diego County Sheriff’s training program should be updated to reflect a 21st century humanistic environment that focuses more on building relationships and not destroying them. I understand there are some bad/dangerous people in this world, but as a 60-year old black man who had metal surgically implanted in my left hip, I was not a threat to the deputies. I was only trying to perform my civic duty. I should not have been unjustifiably gender and racially profiled. Moreover, to build a more positive relationship between Sheriff Deputies and the communities they serve, I recommend incorporating six (6) critical competencies into the department’s training program.”

1. Increase size of deputy name(s) on badges.

2. Incorporate critical competencies into SDDS training program: Personal Intelligence (PI), Emotional Intelligence (EI), Common-sense Intelligence (CSI), Decision-making Intelligence (DMI), Cultural Intelligence, and Bias Awareness Intelligence (BAI).
 - The first is **personal intelligence** (PI) training. Personal intelligence is about understanding self and others. Those who can better figure out themselves and the people they serve have an advantage. They have a clearer understanding of the people's needs well enough to know how to interact with them. If their perceptions are strong, they can develop a readiness to cope with how others may act. Assessing the deputies' PI will allow them to become more understanding of themselves and the people they serve.
 - **Emotional intelligence** (EI) training should be included in the Sheriff's department training curriculum. Even though Sergeant Vega-Armenta informed me that emotional intelligence is integrated into the deputies' training program, it should not only focus on their physical reactions, but should include an emotional trait assessment. This assessment can be used as a proactive tool to help measure their emotional intelligence competency level. It would help to proactively detect their strengths and areas for improvement. This assessment should be administered by a certified emotional quotient professional. The assessment should also include seasoned members of the Sheriff Department.
 - **Common-sense intelligence** (CSI) training will help save lives. Understanding and having this very important competency will help guide a person's decision-making process. This requires measuring each person's common-sense approach to dealing with problems at home, at work, and the communities they serve.
 - Integrating **decision-making intelligence** (DMI) training into the deputies' training curriculum will help them make better decisions moving forward. Making split-second decisions can be difficult/detrimental for our young deputies.
 - **Cultural Intelligence** (CI) is key to understanding and working effectively across multi-cultural environments. It helps to bring about awareness of other cultures and not just the one or two they associate with during off-duty hours. Knowledge of different cultures [facts and cultural traits] plus awareness [of yourself and others] plus specific skills [behaviors] equals cultural intelligence.¹
 - Finally, **bias awareness intelligence** (BAI) training will expose deputies to their conscious and/or unconscious beliefs that may influence their perceptions or actions that would cause them to become partial or prejudiced toward others. If implemented, it can help adjust their habitual patterns of thinking, which will ultimately help eradicate discriminatory behaviors.
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19-127

1. Misconduct/Procedure – Deputy 1 failed to investigate a crime reported by the complainant.

Recommended Finding: Summary Dismissal

Rationale: The complainant contacted CLERB and lodged a complaint on 11-12-19 for an incident that occurred on 12-20-18. When the complainant failed to submit a signed complaint in a timely manner, her case was procedurally closed on 12-27-19. On 01-21-20, the complainant submitted her signed complainant packet to CLERB. CLERB does not have authority to investigate per CLERB Rules & Regulations 4.1.2, titled "Complaints: Jurisdiction," which states CLERB shall have jurisdiction in respect to all Complaints arising out of incidents occurring on or after November 7, 1990. Notwithstanding the foregoing, CLERB shall not have jurisdiction to take any action in respect to Complaints received more than one year after the date of the incident giving rise to the Complaint, except that if the person filing the Complaint was incarcerated or physically or mentally incapacitated from filing a Complaint following the incident giving rise to the Complaint, the time duration of such incarceration or incapacity shall not be counted in determining whether the one year period for filing the Complaint has expired. The Complainant shall bear the burden of demonstrating that he/she was prevented from timely filing a Complaint by reason of incarceration or physical or mental

incapacity. Mental incapacity shall be proven by qualified medical opinion, and not based on the Complainant's unskilled observations or general averments. Physician's declarations should contain a comprehensive diagnosis of the Complainant's condition during the filing period and, additionally, should focus on whether the incapacity prevented the Complainant from filing a Complaint. The statement submitted to CLERB pursuant to this section shall be in writing and attested to under penalty of perjury as provided by Section 5.5 of these rules. Also, CLER Rules & Regulations: 5.4, titled "Time Limitations for Filing Complaints," which states all Complaints shall be received within one year after the date of the incident giving rise to the Complaint, except that if the person filing the Complaint was incarcerated or physically or mentally incapacitated from filing a Complaint following the incident giving rise to the Complaint, the time duration of such incarceration or physical or mental incapacity shall not be counted in determining whether the one year period for filing the Complaint has expired, subject to the provisions of Section 4.1.2 of these Rules and Regulations.

20-013

1. Death Investigation/In-Custody Suicide – On August 26, 2019, while in the custody of the Sheriff's Department at the Vista Detention Facility, "Julian Escalante" hanged himself by the neck with a towel.

Recommended Finding: Summary Dismissal

Rationale: On 02-05-20, CLERB received information from the Medical Examiner for an in-custody death under the name of "Julian Escalante" and Case #20-013 was assigned. However, after requesting documentation from SDSD, CLERB was notified that the death was previously reported to CLERB on 08-26-19 and assigned Case #19-101 for Julio Lopez. The decedent's true name is Julio Lopez with an alias of Julian Escalante. As 20-013 is a duplication of 19-101, this case will be closed and investigated under the prior case number.

End of Report