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JULIO ESTRADA

# County of San Diego

## CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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### REGULAR MEETING AGENDA

#### TUESDAY, MAY 12, 2020, 5:30 P.M.

Remote Meeting via BlueJeans Platform

<https://primetime.bluejeans.com/a2m/live-event/pccvgjkc>

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 an online "[Request to Speak](#)" form. Each speaker will be limited to three minutes. This meeting will be held remotely via the BlueJeans Platform. Click this link <https://primetime.bluejeans.com/a2m/live-event/pccvgjkc> to access the meeting. You will need to download the BlueJeans application prior to participating in the meeting or you may copy and paste the link using the Google Chrome web browser. Please contact CLERB at [clerbcomplaints@sdcounty.ca.gov](mailto:clerbcomplaints@sdcounty.ca.gov) or 619-238-6776 if you have questions.

#### 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 April
- 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)
  - 19-018/Thornton – Policy Recommendation (Pending)

**6. BOARD CHAIR’S REPORT**

**7. NEW BUSINESS**

- a) N/A

**8. UNFINISHED BUSINESS**

- a) Allegations/Recommended Findings Review Subcommittee
- b) 2019 Annual Report
- c) Civil Service Commission Appeal on CLERB Case 17-150/Horsey

**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) Reconsideration of Final Report per CLERB Rules & Regulations 16.5:
  - 17-150
- c) PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE  
**Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).

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

Sustained	The evidence supports the allegation and the act or conduct was not justified.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

## **CASES FOR SUMMARY HEARING (19)**

### **17-148**

1. Death Investigation/Officer Involved Shooting – Deputy 1 shot and killed Javier Miguel Gomez on 12-20-17.

Recommended Finding: Action Justified

Rationale: On 12-20-17, Deputy 1 witnessed a hit and run vehicle collision in a parking lot of a business involving the decedent, Javier Gomez. Deputy 1 activated his overhead lights to stop Gomez. Instead of stopping, Gomez exited the parking lot, and a high-speed vehicle pursuit ensued. Gomez stopped his vehicle, after hitting a parked recreational vehicle, and fled on foot. Deputy 1 gave chase on foot, giving Gomez repeated verbal commands to stop. Gomez ignored the deputy’s commands and continued running in a residential neighborhood. Gomez suddenly stopped and turned to face Deputy 1 while simultaneously pulling a gun from his waistband. Deputy 1 feared Gomez was going to shoot him, drew his department-issued weapon and fired at Gomez. Gomez collapsed to the ground. Additional Sheriff’s deputies arrived at the scene and immediately initiated life-saving measures. Despite all resuscitative efforts, Gomez was pronounced dead at the scene. The cause of his death was listed as Multiple Gunshot Wounds; the manner of death was determined a Homicide. The actions of Deputy 1 were justified and reasonable under SDSD Policy and Procedure guidelines Section 8.1 entitled, “Use of Firearms/Deadly Force:” It is the policy of the San Diego County Sheriff’s Department that deputies shall use deadly force only as a last resort and only after the deputy reasonably believes that the force used is necessary, was in defense of human life, including the deputy’s own. The facts, evidence, and perceptions of Deputy 1 justified the use of deadly force against Javier Gomez. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. Excessive Force/Drawn Firearm – Deputy 1 pointed his gun at a witness.

Recommended Finding: Unfounded

Rationale: A complaint was filed in conjunction with this death investigation. The complainant reported that the suspect in an officer-involved shooting was unarmed. Additionally, the complainant claimed that a witness confronted the deputy, after the shooting, and that unidentified witness claimed that the deputy pointed his gun at her. Review of Deputy 1’s Body Worn Camera footage, filmed moments after the shooting took place, revealed Deputy 1 held his weapon in his right hand. The video footage did not include the entire incident; however, the recording did not reveal Deputy 1 point his gun at any other person. Several attempts were made to locate the witness of the incident to no avail. Deputy 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Absent any other witnesses to the incident, coupled with a lack of conclusive evidence, and review of the available documentation, the evidence showed that the alleged act or conduct did not occur.

3. Misconduct/Discourtesy – Deputy 1 told a witness, “Get the fuck back.”

Recommended Finding: Unfounded

Rationale: A complaint was filed in conjunction with this death investigation. The complainant claimed that a witness confronted the deputy after the shooting and asked him, “why did you shoot him?” The complainant reported that Deputy 1 pointed his gun at the witness and angrily yelled, “Get the fuck back!” Review of Body Worn Camera footage, filmed moments after the shooting, revealed Deputy 1 briefly talking with two males while still pointing his gun at Gomez. During these brief conversations, Deputy 1 was firm in his tone and did not use foul language during the interaction. The audio on the Body Worn Camera did not reveal a female’s voice. One of the witnesses asked Deputy 1 if he was “OK” and Deputy 1 replied, “Yes, stay back.” The other witness was heard describing to Deputy 1 the direction in which the passenger of Gomez’s vehicle took off

running. San Diego Sheriff's Department Policy 2.22, titled "Courtesy," states that 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. Except when necessary to establish control during a violent or dangerous situation, no member shall use coarse, profane or violent language. Employees shall not use insolent language or gestures in the performance of his or her duties. Several attempts were made to locate the witness of the incident, to verify her statements, however, CLERB was not able to make contact with her. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Absent any other witnesses to the incident, or other available documentation, the evidence showed that the alleged act or conduct did not occur.

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## **17-150 RECONSIDERATION**

1. Misconduct/Procedure – Deputies 1, 2, and 3 violated Detentions Policies I.43 Inmate Count Procedure and I.64 Security Checks of Housing Units and Holding Cells.

Recommended Finding: Sustained **Action Justified**

Rationale: Inmate Joseph Carroll Horsey was found unresponsive in his bed inside the San Diego Central Jail Psychiatric Security Unit. DSB P&P Section I.43, mandates a hard count be conducted. A Hard Count is a count which verifies each inmate's well-being, and uses a Bar Code Reader, an Emergency Evacuation List, Face Cards or Floor Sheets to confirm the identity of the inmate. Likewise, DSB P&P Section I.64, mandates that sworn staff will observe each inmate for any obvious signs of medical distress, trauma, or criminal activity. During safety checks in cell style housing modules, sworn staff will physically enter each module and look in each cell; sworn staff are required to stop at, or enter a cell/holding area, to properly observe the inmate(s). Additionally, the policy states, "During safety checks in dorm style housing, sworn staff will walk by each bunk in a manner that permits them to observe each inmate for any obvious signs of medical distress, trauma, or criminal activity. This may require sworn staff to stop at a bunk to properly observe the inmate(s)." A review of the Jail Information Management Systems Area Activities Reports indicated that on 12-23-17 and 12-24-17, Deputy 1 documented that all safety/security checks were logged. However, the jail surveillance video recordings showed sworn staff and nursing personnel walking by the module, versus physically entering the unit to observe each inmate for obvious signs of medical distress. The jail surveillance video recordings did not reveal any deputy entering the module to conduct a Hard Count; counting inmates with the use of a Bar Code Reader, an Emergency Evacuation List, Face Cards or Floor Sheets to confirm the identity. Deployment logs confirmed that Deputies 1, 2, and 3 were assigned/responsible for performing and logging in all security and safety checks. The video evidence supported the allegation and the act or conduct was not justified. After this investigation had concluded, CLERB obtained new evidence related to different and unpublished standards that apply to the psychiatric inmate population. These standards state the Sheriff's Deputy need not physically enter each cell, or wake up each inmate, given the security concerns, and due process concerns, waking up sleeping psychiatric inmates every thirty minutes to verify their identity, and signs of life. The argument was that because of the type of windows the PSU has, there was no need to follow any of the steps above, however, that is not written in any policy. The new evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. False Reporting – Deputies 1, 2, and 3 falsified Jail Information Management System entries.

Recommended Finding: Sustained **Action Justified**

Rationale: Inmate Horsey was found unresponsive in his bed in the San Diego Central Jail Psychiatric Security Unit (PSU). According to the JIMS Area Activities Report all security/safety checks were documented as being conducted in accordance with DSB P&P. However, a review of jail documents and in reviewing jail surveillance video recordings, the investigation revealed that the security/safety checks were not performed in accordance with DSB P&P 1.43 and I.64. The deputies' actions were in violation of SDSD P&P Section 2.41, Departmental Reports, Employees shall submit all necessary reports on time and in accordance with established Departmental procedures. The policy mandates that all San Diego Sheriff's Department 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 evidence supports the allegation and the act or conduct was not justified.~~ After this investigation had concluded, CLERB obtained new evidence related to different and unpublished standards that apply to the psychiatric inmate population. These standards state the Sheriff deputy need not physically enter each cell, or wake up each inmate, given the security concerns, and due process concerns, waking up sleeping psychiatric inmates every thirty minutes to verify their identity, and signs of life. Further analysis of the video surveillance indicates that someone, whether a nurse of a Sheriff deputy, did walk by the PSU every 30 minutes: The safety checks took place at the times recorded in the Sheriffs' log indicating a Sheriff deputy walked by at the times marked in the log, which was consistent with policy. The new evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

#### **POLICY RECOMMENDATION:**

1. It is recommended that the San Diego Sheriff's Department review and clarify the contents of Policy 1.43 and I.64 to better explain hard counts and security checks at the Psychiatric Security Unit.
  2. It is recommended that Sheriff's deputies stop outside each PSU cell long enough to observe breathing patterns – specifically the rise and fall of inmates' chests, between the hours of 10:00 pm and 3:45 am when hallway lights are turned off, and signs of life are more difficult to spot. Unless the policies are clarified, future violations of the written policy, even if conforming to the unwritten policy, could result in allegations to be sustained.
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#### **18-058**

1. Death Investigation/Natural Death – On 04-21-18, while in the custody of the Sheriff's Department at the San Diego Central Jail (SDCJ), Inmate George Young Gallegos was found down and unresponsive in his jail cell.

Recommended Finding: Action Justified

Rationale: The evidence indicated that Gallegos was properly classified upon his entry into the SDSD jail system after his 02-13-18 arrest. Gallegos was admitted into custody from Metropolitan State Hospital, and was admitted to the psychiatric unit at SDCJ. During his medical intake screening and subsequent interactions with SDSD medical personnel, Gallegos never expressed a concern for his medical well-being. There was no evidence that Gallegos expressed any concerns about his mental or physical well-being to his cellmate or any member of the SDSD, sworn or professional. Upon being found down and unresponsive in his jail cell, sworn personnel expeditiously responded and immediately initiated life-saving measures. 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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#### **18-118**

1. Death Investigation/Restraint Related – Deputy 2 deployed his Taser and other force was utilized by Deputies 1 and 3-8 to gain control of Marco Napoles Rosales who appeared to be under the influence of drugs. Rosales became unresponsive and his condition declined until his death.

Recommended Finding: Action Justified

Rationale: On 08-16-18, at approximately 4:30am, a call came in to SDSD Communication Center, reporting a male subject trespassing and refusing to leave the Circle K Store located on Highway 76 in Fallbrook. Deputy 1 responded to the scene and made contact with the subject, later identified as Marco Napoles Rosales. Deputy 1 advised Rosales that he was trespassing and told him he needed to leave. Rosales eventually left and Deputy 1 drove to another area of the parking lot to wait and make sure Rosales did not return. As Rosales walked away, Deputy 2 arrived on scene and was briefed by Deputy 1. Rosales began walking back toward the Circle K and Deputy 1 re-contacted him to detain him for trespassing and to evaluate him for being under the influence. Deputy 1 attempted to detain Rosales but Rosales resisted and became

combative. At around the same time, Deputy 2 got out of his patrol vehicle and joined Deputy 1, in his attempt to detain Rosales. Rosales and both deputies ended up on the ground fighting. Deputy 2 used his Department-issued Taser aka Conducted Energy Device (CED) to “Drive Stun” Rosales; however, it was ineffective. “Drive Stun” is “the process of using a Taser as a pain compliance technique. This is done by activating the Taser and placing it against an individual's body. This can be done without an air cartridge in place or after an air cartridge has been deployed.” Two off-duty officers arrived and assisted Deputy 1 and Deputy 2 in trying to detain Rosales. Rosales bit Deputy 1. In response, Deputy 2 deployed his Taser in probe mode twice, at Rosales, but it was not effective. Deputy 1 put out a “code cover” call requesting additional deputy assistance. Six deputies arrived on scene and assisted Deputies 1 and 2, however, Rosales continued to resist attempts to safely detain him. Throughout Rosales’ active resistance, deputies repeated over and over, “Stop resisting,” “Stop fighting,” “Give us your hands,” “Put your hands behind your back...” Rosales remained resistant and the WRAP restraint was utilized to restrict his movements in an attempt to de-escalate the situation and facilitate safe transport. SDDSD Policies and Procedures Addendum F Section – Use of Force Guidelines, states in part, It shall be the policy of this Department whenever any Deputy Sheriff, while in the performance of his/her official law enforcement duties, deems it necessary to utilize any degree of physical force, the force used shall only be that which is necessary and objectively reasonable to effect the arrest, prevent escape or overcome resistance. Deputies shall not lose their right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or overcome resistance (per 835(a) P.C.). 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 incident. Furthermore, Addendum F Section entitled, “Equipment Used In Force Techniques – Conducted Energy Device,” states in part, as a force option, the CED shall only be used as a means of subduing and gaining control of a subject displaying assaultive behavior. Use of the CED shall be restricted for use under circumstances where it is deemed reasonable and necessary to minimize the potential for human injury. Deputy 1 called North County Fire to the scene to evaluate Rosales. North County Fire responded to the scene to render aid and to transport Rosales to the hospital. Prior to placement in the ambulance, paramedics removed the CED barbs from Rosales’ back. When Rosales was placed in the ambulance, he became unresponsive and life-saving measures were initiated. Rosales was transported to Tri-City Medical Center where he was admitted with a poor prognosis. Rosales’ condition declined and on 08-17-18, brain death was confirmed. The Medical Examiner Toxicology report indicated Rosales was under the influence of methamphetamine and exhibited signs of “excited delirium.” Excited delirium syndrome is an entity recognized by forensic pathologists and emergency medicine physicians, which include agitation, altered mental status, combative, aggressive assaultive behavior, excessive strength and insensitivity to pain, and hyperthermia associated with the use of stimulant or hallucinogenic drugs (i.e. methamphetamine) and leading to sudden death. The Medical Examiner determined that although the methamphetamine/amphetamine level, on its own, can cause death, the contribution of physical exertion, contribution of the application of electronic control devices and the forcible restraint could not be definitively determined. Based on the autopsy findings and the circumstances surrounding the death, the cause of death was sudden cardiopulmonary arrest associated with methamphetamine intoxication and physical exertion during law enforcement restraint, and the manner of death was undetermined. Upon review of all available documentation, there was no evidence to support an allegation of procedural violation, misconduct or negligence on the part of Sheriff’s Department sworn personnel. The evidence showed that the force utilized to effect an arrest was reasonable and necessary and the conduct that occurred was lawful, justified and proper.

## **ADDENDUM:**

1. Misconduct/Procedure – Fire Department personnel delayed Rosales’ transport to a hospital.

### Recommended Finding: Summary Dismissal

Rationale: On 08-16-18, paramedics responded to a call for service and assessed Deputy 8 and suspect Rosales prior to transport to a hospital. After Rosales was placed in the ambulance and prior to departing the scene, Rosales became unresponsive and life-saving measures were initiated. The distance from the incident scene to the hospital was 15.3 miles. According to the evidence, the ambulance departed at 0:26:09 and arrived at Tri-City Medical Center at 0:49:10, a total of 23 minutes and one second. BWC footage revealed that one stop was made at a fire station, to exchange personnel, thus delaying Rosales’ transport by approximately twenty-one seconds. 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 over Fire Department personnel. This matter was referred to the Fire Authority for follow-up.

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## **19-020**

1. Death Investigation/Natural – Michael Richard Wilson was witnessed to collapse while in the custody of the Sheriff's Department. Wilson was transported to UCSD Medical Center where despite medical intervention, he failed to respond and his death was pronounced.

### Recommended Finding: Action Justified

Rationale: Wilson was incarcerated at San Diego Central Jail. Evidence supported that Wilson was properly classified upon his entry into the SDSD jail system after his 02-05-19 remand to custody. During the intake medical screening, Wilson informed the intake nurse that he was diagnosed with Congestive Heart Failure, Asthma, Cardiomyopathy, Schizophrenia and Bipolar Disorder. Due to Wilson's medical and psychiatric diagnosis, which were flagged on his classification record, Wilson was placed in the Enhanced Observation Housing (EOH) Step-down Unit for closer supervision. On 02-14-19, deputies were alerted by inmates of a "man down," in the B Module on the 6<sup>th</sup> floor. Deputies responded and discovered Wilson in his cell, unresponsive. Jail surveillance video showed Wilson slid off his top bunk and collapsed to the ground as soon as his feet reached the floor. In the video, it appeared that Wilson attempted to get up, however, was unable to do so. Medical and sworn personnel responded to his aid and initiated cardiopulmonary resuscitative efforts. Fire/Paramedic emergency personnel responded and took over advanced cardiac life-support measures and transported Wilson to UCSD Medical Center. Upon his arrival to the hospital, advance cardiac life-support measures were continued; however, despite medical intervention, Wilson succumbed to his natural disease and his death was pronounced while at the hospital. Review of the jail surveillance video indicated that safety and wellness checks were performed by deputies at the required times per policy. SDSD Information Source provided that the EOH Step-down Unit followed the same safety check policy as the Mainline Housing Unit. The evidence supported that deputies conducted cell safety checks per policy. Additionally, Wilson was observed in his cell, awake and moving about, just prior to the incident. SDSD DSB P&P's Section M.5 titled, "Medical Emergencies," states in part, 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 evidence supported that Sheriff deputies responded per policy when Wilson was found unresponsive in his cell and expeditiously initiated life-saving measures. The Medical Examiner's Office was notified of the death and invoked jurisdiction; an autopsy was performed on Wilson. Wilson's cause of death was listed as sudden cardiac death due to acute congestive heart failure and hypertrophic cardiomyopathy. The manner of death was classified as natural. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

2. Misconduct/Procedure – Unidentified deputies failed to house Wilson in the medical unit.

### Recommended Finding: Action Justified

Rationale: A complaint was filed in conjunction with this death investigation. The complainant alleged that deputies failed to house Wilson appropriately and stated, "Jail placed Michael in a psychiatric unit rather than in the medical ward, despite the Jail having knowledge of his advanced heart condition." The complainant stated in her complaint that on 02-06-19, she and her granddaughter called the jail and talked with an unidentified woman and asked her if Wilson was in the medical unit. The woman informed the complainant that she could not go over the specifics, but that if Wilson brought up his medical history when he was booked then he would be placed accordingly. According to jail records, at the time of his booking, Wilson informed the nurse he was diagnosed with Congestive Heart Failure (CHF), Asthma, Cardiomyopathy, Schizophrenia and Bipolar Disorder. Wilson's classification record was flagged due to his medical and psychiatric conditions,

and was therefore housed in the Enhanced Observation (EOH) Step-down Unit for enhanced supervision. The evidence supported that Wilson was properly classified upon his entry into the SDSJ jail system after his 02-05-19 remand to custody. Verification was sought from a Classification deputy source who reviewed and reported that Wilson was appropriately classified. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

3. Misconduct/Procedure – Unidentified deputies failed to transport Wilson to the hospital.

Recommended Finding: Action Justified

Rationale: The complainant alleged that after repeated calls to jail staff about Wilson's distress, deputies failed to transport Wilson to the hospital and failed to provide the medical care Wilson needed. According to jail medical records, after his mother's calls, Wilson was either summoned to medical for evaluation or medical staff went to see him in the module for evaluation. In his Investigative Follow-Up Report, Deputy 1 reported that the complainant stated that she was upset that Wilson was not forced to go to the hospital when he refused while he was in custody. CLERB reviewed recorded jail telephone conversations. In one of his phone calls with his mother, Wilson stated, "Well they were trying to take me to the hospital but I told them no." During his phone conversations with his mother and sister, Wilson repeatedly said that he did not need to go to the hospital and that he would go the next day if he was not feeling better. During that phone call, Wilson stated, "I actually know my body best and when I know I need to go to the hospital or not and I don't." Medical records indicated, when questioned by medical staff, Wilson denied any acute distress and informed medical staff he was fine and just wanted his medication. During one of the evaluations, a physician reported, "Wilson was calm and in no distress whatsoever." Additionally, a physician asked Wilson if he was experiencing shortness of breath or chest pains and Wilson replied no. SDSJ Detentions Policy and Procedures Section M.5 titled, "Medical Emergencies," states in part, an inmate may not refuse to be transported to an emergency department (ED) **if deemed necessary by medical personnel and/or sworn staff (emphasis added)**. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

4. Misconduct/Procedure – Unidentified deputies failed to respond to Wilson's medical emergency and failed to arrange transport to a hospital.

Recommended Finding: Action Justified

Rationale: The complainant alleged that unidentified deputies failed to provide medical aid and transport to the hospital in a timely manner when Wilson was found unresponsive. In her complaint, the complainant stated, "Deputies attempted CPR for 45 minutes before transporting Michael to the hospital." According to jail records, when deputies were alerted to Wilson's condition, they responded expeditiously to his aid. When deputies were alerted to a "man-down," they acted swiftly, and along with jail medical staff, they provided aid to Wilson within minutes. Jail surveillance video showed Wilson slid off his bunk and collapsed on the floor at 08:16am. Deputy 2 and a Detentions Nurse were at Wilson's side by 08:18am. When interviewed by Homicide detectives, Deputy 2 and a Detentions Nurse informed a detective that they placed Wilson on his back and began CPR right away. At 08:22am the Control Deputy activated 911 for a medical emergency. SDSJ DSB P&P's Section M.5 titled, "Medical Emergencies," states in part, 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. Additionally, SDSJ DSB P&P's Section M.6 titled, "Life Threatening Emergencies," states in part, any life threatening medical emergency shall trigger a 911 request for a paramedic emergency response team. The evidence supported that Sheriff deputies responded per policy when Wilson was found unresponsive in his cell and promptly initiated life-saving measures. The evidence showed that the conduct that occurred was lawful, justified and proper.

1. Misconduct/Harassment – Deputies 4, 5, 6, 8, 9, 10, 11, 14, 18, and 19, as well as other unidentified deputies “targeted” and harassed the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant claimed that Deputies 4, 5, 6, 8, 9, 10, 11, 14, 18, and 19, as well as other unidentified deputies “targeted” and harassed him in separate incidents during his incarceration. Per the complainant’s written statement, he stated, “I am being targeted by a group of Sheriff’s deputies. I believe I am being targeted because the charges I’m accused of including the self-defense shooting of an off-duty Sheriff’s deputy. Since the beginning of my incarceration I have constantly been harassed by various deputies.” Through the course of CLERB’s investigation, the aforementioned deputies were identified as those deputies who interacted with the complainant and for whom the complainant filed an Inmate Grievances against during his incarceration. Each subject officer was involved in separate incidents, which required separate investigation for each incident. Each deputy provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding, however, due to confidentiality statues per the Peace Officer Bill of Rights (POBR), it cannot be publicly disclosed. There was a prolonged length of time from when the alleged incident occurred, to when the complaint filed a complainant and the investigation commenced. As such, the availability of evidence was limited; jail surveillance video recordings were no longer available. Additionally, CLERB was not privy to the evidence or documents that were associated with the Internal Affairs investigation. Absent an audio or visual recording, there was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Intimidation – Deputy 7 “targeted” and harassed the complainant.

Recommended Finding: Sustained

Rationale: Per the complainant’s written statement, he stated, “I am being targeted by a group of Sheriff’s deputies. I believe I am being targeted because the charges I’m accused of including the self-defense shooting of [against] an off-duty Sheriff’s deputy. Since the beginning of my incarceration I have constantly been harassed by various deputies.” In an Inmate Grievance filed by the complainant, he further detailed that Deputy 7 harassed him about his charges while he was at court. The complainant alleged that Deputy 7 made reference to the victim in his criminal case; the victim was a friend and fellow co-worker to Deputy 7. The complainant alleged that as he exited the court from his criminal case, that Deputy 7 questioned him about the court proceedings, asked if the fellow deputy was in court, and threatened him with violence in retaliation and harassment for the charges that were pending against him at that time. Deputy 7 was questioned during the course of the investigation and provided relevant information, which was considered in arriving at the recommended finding, however, due to confidentiality statues per the Peace Officer Bill of Rights (POBR), Deputy 7’s response cannot be publicly disclosed. Though there are no specific policies that restrict a deputy from asking an inmate about their court proceedings, Deputy 7’s questioning the complainant proliferated the incident which ultimately escalated to an altercation. By engaging the complainant, Deputy 7 became negligent and inattentive of his duties as a court deputy. Deputy 7’s actions were in violation of SDSO P&P Section 2.4 titled, “Unbecoming Conduct,” which states that employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on this Department. Deputy 7’s actions were in violation of SDSO P&P Section 2.22 titled, “Courtesy,” which states that 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. Lastly, Deputy 7’s actions were in violation of SDSO P&P Section 2.27 titled, “Neglect of Duty,” which states that employees shall not engage in any activities or personal business, which would cause them to neglect or be inattentive to duty. The evidence supported the allegation and the act or conduct was not justified.

3. Misconduct/Procedure – Deputies 1, 5, 12, 13, 15, 21, and 22 failed to process the complainant’s Inmate Grievances.

Recommended Finding: Action Justified

Rationale: According to the complainant, Deputies 1, 5, 12, 13, 15, 21, and 22 failed to process his Inmate Grievances. Per the complainant’s written statement, he alleged, “*I have written countless grievances, many of which have gone on answered, ignored, and undocumented. The few which were heard were brushed off and handle with the least amount of concern.*” and “*I have copies of many of the grievances and complaints*

*I filed. I am afraid to send them with his complaint for fear they will be lost as many other copies were.”* According to the complainant’s jail documents, seven grievances were documented and responded to by the aforementioned deputies. Numerous attempts were made to contact the complainant for follow-up information regarding this allegation; however, he was un-contactable. According to SDSA DSB P&P Section N.1 entitled, Grievance Procedure, the purpose of the policy was to establish uniform procedures for the resolution of inmate grievances relating to disciplinary actions and/or conditions of incarceration. Grievances can be submitted in writing by any inmate. Inmates may submit their grievances on a regular Inmate Grievance (J-22 form) or any other writing material. The evidence revealed that the aforementioned deputies processed the complainant’s Inmate Grievances according to SDSA policy. The allegation that Deputies 1, 5, 12, 13, 15, 21, and 22 failed to process the complainant’s Inmate Grievances was found to be untrue. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

4. Misconduct/Procedure – Unidentified deputies failed to process the complainant’s Inmate Grievances.

Recommended Finding: Not Sustained

Rationale: According to the complainant, unidentified deputies failed to process his Inmate Grievances. Per the complainant’s written statement, he alleged, *“Since the beginning of my incarceration I have constantly been harassed by various deputies. I have written countless grievances, many of which have gone on answered, ignored, and undocumented. The few which were heard were brushed off and handle with the least amount of concern.”* and *“I have copies of many of the grievances and complaints I filed. I am afraid to send them with his complaint for fear they will be lost as many other copies were.”* According to the complainant’s jail documents, seven grievances were documented and responded to by deputies. Though seven Inmate Grievance forms were noted in the complainant’s booking file, it was unclear if the complainant submitted other Inmate Grievances which were not processed according to SDSA Policies and Procedures. Numerous attempts were made to contact the complainant for follow-up information regarding this allegation; however, he was un-contactable. According to SDSA DSB P&P Section N.1 entitled, Grievance Procedure, the purpose of the policy was to establish uniform procedures for the resolution of inmate grievances relating to disciplinary actions and/or conditions of incarceration. Grievances can be submitted in writing by any inmate. Inmates may submit their grievances on a regular Inmate Grievance (J-22 form) or any other writing material. CLERB was unable to certify that all Inmate Grievances the complainant submitted during the span of his incarceration were process properly. There was insufficient evidence to either prove or disprove the allegation that unidentified deputies failed to process the complainant’s Inmate Grievances.

5. Misconduct/Procedure – Unidentified deputies tampered with the complaint’s outgoing mail.

Recommended Finding: Action Justified

Rationale: The complainant claimed that unidentified deputies tampered with the complaint’s mail. Per the complainant’s written statement, he reported, *“I try to file a previous complaint with CLERB back in February, but never received a response. Leading me to believe that my outgoing mail is being intercepted and destroyed; my mail torn to pieces or disappearing altogether. I pray this complaint reaches you as other attempts have been thwarted!”* According to SDSA documents, it was documented that the complainant’s mail was held, monitored, and was recorded pursuant to an investigation. Additionally, according to jail documents, the complainant claimed that the mail received was damaged or never received. Deputy 13 responded to the grievance and explained that the complainant’s missing card was not rejected, and it was unknown why it was not received. It was explained that normally, mail is intact; however, sometimes mail is torn when it is inspected for contraband or sorted. Lastly, according to the complainant’s Incoming and Outgoing Property Receipts, the complainant received books and certified mail which was placed in his property. Though the following was documented, not all incidents may have been notated. For this reason, CLERB was unable to confirm or refute that the complainant’s mail was tampered with during his incarceration. According to SDSA P&P Section 2.39 titled, “Processing Property,” property which has been discovered, gathered or received in connection with Departmental responsibilities will be processed in accordance with established Departmental procedures. Employees are not to convert to their own use, manufacture, conceal, falsify, destroy, remove, tamper with or withhold any property found or obtained in connection with the performance of their duties, except in accordance with Department procedures. According to SDSA P&P Section P.3 Inmate Mail, inmates are be allowed to receive and possess U.S. mail, incoming letters, confidential/legal mail. Inmates may also receive electronic email messages, periodicals,

magazines, and new books. All incoming non-legal inmate mail will be routed to the Mail Processing Center (MPC) warehouse where it is inspected. The evidence showed that the allegation that unidentified deputies tampered with the complainant's mail did occur but was lawful, justified and proper.

6. Misconduct/Procedure – Deputies 2, 3 and 16 placed the complainant in Administrative Segregation.

Recommended Finding: Action Justified

Rationale: According to the complainant, Deputies 2, 3 and 16 placed him in Administrative Segregation (Ad-Seg). Per the complainant's written statement, he stated, "*My complaint is that I have been constantly targeted and harassed, to the point of being placed in administrative segregation illegally. Confined to myself illegally...*" According to a SDSD Segregated Housing Order, an inmate can be placed in Ad-Seg for the following reasons: Pending a hearing or investigation for a rule violation or criminal act, continual failure to adjust and conform to minimum standards, propensity for violence towards other inmates and or staff, has parole from or is anticipated to be held in a restrictive housing environment, high profile case for extreme acts of violence which jeopardizes public safety, demonstrated influence over other inmates, suspected juvenile, sentenced to death, or other reasons as described per the Jail Population Management Unit (JPMU) training manual or JPMU unit detectives. According to numerous SDSD Incident Reports, the complainant was initially placed in Ad-Seg for his high-profile case. Over the course of the complainant's incarceration, he was re-placed into Ad-Seg housing for his numerous rule violation, his numerous in-custody criminal acts, his continued failure to adjust and conform to minimum standards, his propensity for violence towards other inmates and staff, and his demonstrated influence over other inmates. Inmates in a mainline population are expected to conduct themselves in an appropriate manner. The complainant continued to display negative and disrespectful behavior towards sworn staff and other inmates. Since the complainant had continually demonstrated an unwillingness to adjust and conform to the minimum standards expected of inmates in mainline housing, the decision was made, on numerous occasions, to place the complainant in Ad-Seg. Each of the placements of the complainant into Ad-Seg was proper, according SDSD DSB Section J.3 titled, "Segregation: Definition and Use." The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

7. Misconduct/Procedure – Deputy 17 placed the complainant in Administrative Segregation.

Recommended Finding: Summary Dismissal

Rationale: According to the complainant, Deputy 17 placed him in Ad-Seg. Per the complainant's written statement, he stated, "My complaint is that I have been constantly targeted and harassed, to the point of being placed in administrative segregation illegally. Confined to myself illegally..." Deputy 17 was one of the deputies identified as authorizing the complainant to be placed in Ad-Seg; however, Deputy 17 separated from the Department on 07-05-19. According to CLERB Rules and Regulation 4.1, titled "Complaints: Authority," pursuant to the Ordinance, CLERB shall 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. As such, CLERB lacked jurisdiction to investigate the allegation.

8. Misconduct/Harassment – Unidentified deputies harassed the aggrieved's family during their visits with the complainant.

Recommended Finding: Summary Dismissal

Rationale: According to the complainant, unidentified deputies harassed the aggrieved during their visits with the complainant. Per the complainant's written statement, he reported, "*...my family harassed at visit...*" Attempts were made to contact the complainant for follow-up information on how his family was harassed; however, the complainant was un-contactable. Additionally, the complainant's wife was unable to provide information regarding this allegation. According to an SDSD Incident Report, it was documentation that the complainant's social visits would be monitored and recorded as evidence for an ongoing investigation at that time. According to SDSD DSB P&P Section P.9 titled, "Social Visiting," inmates shall have access to social visits according to the following procedures in accordance with statute and case law. This allegation is Summarily Dismissed as the complainant could not be located, the key witnesses did not cooperate with investigation, and no accused members were identified.

9. Misconduct/Intimidation – Deputies 5, 6, 18, 19, and other unidentified deputies threatened the complainant with physical harm.

**Recommended Finding:** Not Sustained

**Rationale:** The complainant claimed that Deputies 5, 6, 18, 19, and other unidentified deputies threatened him with physical harm. Per the complainant's written statement, he stated, "...*even threatened by officers to do physical harm to me.*" In review of the complainant's Inmate Grievances filed during the duration of his incarceration, it was learned that, on different occasions, the complainant alleged that the aforementioned deputies threatened him with physical harm. Each subject officer was involved in separate incidents, which required separate investigation for each incident. Each deputy provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however, due to confidentiality statutes per the Peace Officer Bill of Rights (POBR), it cannot be publicly disclosed. There was a prolonged length of time from when the alleged incident occurred, to when the complainant filed a complaint and the investigation commenced. As such, the evidence was limited; jail surveillance video recordings were no longer available. Additionally, CLERB was not privy to the evidence or documents that were associated with the SDSA Internal Affairs investigation. Absent an audio or visual recording, there was insufficient evidence to either prove or disprove the allegation.

**Policy Recommendation:**

According to SDSA P&P Section 2.53 titled, "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.

1. CLERB recommends that the SDSA also include retaliation and sexual harassment.
2. Additionally, CLERB recognizes that the wording in the policy recognizes "gender and sexual orientation;" however, the policy fails to include "sex identity." It is recommended that the policy be changed to reflect all discrimination types.

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**19-028**

1. Death Investigation/Natural – On 02-16-19, while in the custody of the Sheriff's Department at the Tri-City Medical Center, Derek Oak King stopped breathing and his death was pronounced. He had a medical history of colon cancer and developed complications while in custody.

**Recommended Finding:** Action Justified

**Rationale:** Inmate King was incarcerated at the San Diego Central Jail on 01-17-18. On 01-25-19, he was admitted to Tri-City Medical Center to be treated for complications of colon cancer. His condition rapidly declined, and a "do not resuscitate order" (DNR) were filed. When deputies conducted a security check in King's hospital room, he was discovered unresponsive. Deputies immediately summoned hospital nurses without leaving him alone and based on his DNR, no resuscitative efforts took place. His death was pronounced on 02-16-19. The evidence supported that deputies conducted hospital safety checks per policy. The evidence supported that Sheriff deputies responded per policy when King was found unresponsive in his hospital room and expeditiously summoned nursing staff. As per SDSA 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. A departmental source stated that deputies assigned to a hospital guard unit, follow the same policies pertaining to medical emergencies unless the inmate has pre-existing do not resuscitate orders. The Medical Examiner's Office was notified of the death and invoked jurisdiction; an external examination of King's body was performed. King's cause of death was listed as Metastatic Colon Carcinoma 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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## **19-046**

1. False Arrest – Deputies 3 and 5 placed the complainant under arrest.

### Recommended Finding: Action Justified

Rationale: According to the complainant, "On September 16, 2017 at approximately 15:00 hours, I was at a nail salon and had a verbal confrontation in which law enforcement was called and within minutes responded. There were two officers one Hispanic officer (female) and one Black officer (male). There was a female officer who had asked me to explain the incident initially, when the black male officer who asked if I was on parole or probation then approached me. I told him that indeed I was on parole. I gave him my name and he then began to run my information. The female officer was questioning me when the male officer came back over to me and asked if I had been drinking. I let him know that I had not been. He insisted that I had and told me he could smell it on my breath. He also asked if drinking was a stipulation of my parole. I let him know that even though I have not been drinking, it was not a stipulation of my parole. He asked for the name of my agent. He told me that he was going to call him to see what he wanted to do. A supervisor approached me, asked for my identification, and then proceeded to ask the same questions as the female officer. Moments later during the line of questioning of the Sergeant, the black male officer once again came, interrupted the Sergeant, and told me that I was being placed under arrest. I asked him "for what reason"? He told me that my agent was requesting an arrest." According to an Arrest Report, the complainant was contacted following a disturbance with a business owner. During their investigation, the complainant was reportedly boisterous, slurring, and the odor of alcohol emitted from her person, leading deputies to believe she was under the influence of alcohol. Procedurally, the complainant's Parole Agent was notified of the incident and ordered that she be "violated" for being drunk in public. While the complainant reported that the terms of her parole did not prohibit alcohol consumption, her Parole Agent confirmed that the general condition for all parolees is to remain law abiding and obey all laws/ordinances. Based upon the objective symptoms the complainant displayed of being under the influence, a parole hold was issued, and she was violated (arrested). The complainant's arrest for violation of PC§ 3056, Legal Custody in conjunction with PC§ 1203.2, Violation of Probation Terms, was lawful, justified and proper.

2. Excessive Force – Deputy 3 "roughly slung around" the complainant.

### Recommended Finding: Action Justified

Rationale: According to the complainant, "The Hispanic female officer had told the male officer that she would put me in her vehicle. The Black male officer insisted to take me in his. He slung me around roughly and told me to comply. I let him know that he was being too rough. He proceeded with the unnecessary roughness." As documented in an Arrest Report, the complainant was placed in handcuffs and escorted to Deputy 5's patrol vehicle, where she refused to place her legs and feet inside the vehicle. The complainant resisted and force was used to gain compliance. Video evidence corroborated the complainant's refusal to comply with deputies' commands. Penal Code 835(a), and Sheriff's Policy, 6.48, Physical Force, authorized deputies to utilize force to overcome resistance and effect an arrest; video evidence corroborated the written documentation and also confirmed the force that was used was necessary and reasonable. The evidence showed that the actions that occurred were lawful, justified and proper.

3. Misconduct/Intimidation – Deputy 3 threatened to "hog-tie" the complainant.

### Recommended Finding: Action Justified

Rationale: According to the complainant, "The Black male officer then began to make threats about hog tying me. I had asked him why would he do that I was already inside the vehicle to please not do that because I was complying. He kept making threats of other restraints." According to Deputy 3's report, he assisted Deputy 5 because the complainant was uncooperative, boisterous and irate. While talking, alcohol emitted from her breath and she commented on Deputy 3's nationality and stated he was a homosexual. Although

the complainant was the primary party demanding a report, she would not cooperate and delayed deputies in their duties, necessitating response by a supervisor. Deputies 1, 3 and 5 escorted the complainant to a patrol vehicle, where she threw herself against the car and yelled, "you just want to kill black people." Deputy 3 explained that the situation was "intense, unpredictable, and began to rapidly evolve." The complainant sat down on the seat and wedged herself in the door. She continued to be belligerent and directed the majority of her hostility toward Deputy 3. In accordance with the Sheriff's Use of Force policies and guidelines, when a deputy needs to make an arrest or restrain an in-custody subject and the individual's actions are actively resistant or assaultive, reasonable compliance techniques can be used to obtain control and compliance. A Cordcuff restraint is used around a subject's ankles to prevent kicking, or around their waist to prevent transferring cuffed wrists from the back to the front of the body. Body Worn Camera (BWC) evidence refuted the complainant's testimony that she was compliant. Deputies were authorized to take reasonable and necessary actions to effect an arrest and overcome resistance. Commands were given instructing the complainant to comply or maximum restraint would be utilized. The evidence showed that the actions that occurred were lawful, justified and proper.

4. Excessive Force – Deputies 1, 3, and 5 battered the handcuffed complainant, and then hog-tied her.

Recommended Finding: Action Justified

Rationale: According to the complainant, "He then drove me to the substation in which he threw me inside of the holding tank with handcuffs and shouted out "we got one" At this point multiple male officers opened the tank and came inside. The black male officer and a white officer pulled me up and threw me against the wall of the tank. I looked over my shoulder to tell them that they were hurting me and that was all uncalled for, and at that point the black male officer said "she is going to try to spit on me" the officer said as he took his gloved hand, put it on the right side of my face on and smashed the left side which of my face against the wall, screaming "she's trying to spit on me, she's trying to spit on me!" At this point, several officers slammed me to the floor of the holding tank while I was still handcuffed and proceeded to initiate the hog tie. I begged and screamed for them to not do that because my knees can't take it I said 'please I just had a shot of cortisone in my knees, they are bad, they hurt, and I'm already hand-cuffed', all while there were two male officers holding my hands, one officer had his foot on my head and another officer had his hand pressing on the upper part of my back in between my shoulder blades. I could not breathe at this point. One officer was bending my knees back up toward my buttocks in my medical condition does not allow my knees to move in that direction without further damage in addition to excruciating, and agonizing pain. I screamed very loudly 'please stop, you're hurting my knees!' I diligently tried to keep my legs as straight as I could and plead with them because I was already hand cuffed. When I was being manipulated into that position, my knees popped..." As documented in the Arrest Report, the complainant was transported to a substation for processing where additional force was used as she continued to "resist and kick" deputies. Due to the complainant's assaultive and threatening behaviors, she was placed in maximum restraints. Specific uses of force were documented by each individual deputy in their Officer's Report; and in accordance with force guidelines as corroborated by video evidence. The complainant was able to loosen her restraints and refused to comply with deputies' commands. Minimal, reasonable, and necessary force was used to safely and effectively get her into a vehicle to safely transport her to jail. Video evidence corroborated the written documentation and confirmed that the complainant was given ample/every opportunity to comply, but repeatedly refused to follow command staff's instructions and escalated her assaultive behavior. Per the Use of Force Guidelines, the Cordcuff/Ripp restraint device may be used on violent subjects who, by kicking, pose a threat to themselves, others, or to equipment. Maximum restraints were applied to prevent the complainant from injuring herself and/or destroying property after she began to kick the cell window with her bare foot and then escalated the intensity and speed when told to stop. Corroborated by video evidence, deputies made allowances during the restraint process to accommodate the complainant's disability. The evidence showed that the actions taken by deputies to overcome the complainant's resistance were lawful, justified and proper.

5. Misconduct/Procedure – Deputies 1, 3, 4 and/or 5 dropped the restrained complainant.

Recommended Finding: Not Sustained

Rationale: According to the complainant, "...Once they had forcefully implemented the hog tie mechanism, my body was lifted up off the floor of the holding tank inside of the substation, and dropped on the ground in

the alley outside in the back of the substation. The pain was too much to sustain in that position and before I entered the exit to the alley in the back of the substation, I had to recover from that agonizing position and straightened out my legs. The ankle restraints were then unbuckled. An officer yelled out ‘she got out of the restraints’ I attempted to explain to him again what my medical condition was and that the pain was excruciating, I begged him to not implement that procedure, that I had on wrist restraints and that the other mechanism was redundant it was to no avail. I was pulled to the back of the substation in the alley by the wrist restraints.” According to the documentation, and corroborated by video evidence, “deputies escorted the complainant to the patrol vehicle by lifting her off the floor while the front of her body was facing the ground, and she was placed in the rear of the patrol vehicle.” Deputy 3 reported, “Once she was restrained my partners and I carried her out to the patrol vehicle. While carrying her I held her feet until we arrived at the car (approximately 10 seconds).” Deputy 1 reported, “Once she was properly placed into Maximum Restraints, I helped carry her to the marked patrol car parked outside the station doors, so she could be transported. I grabbed and carried her by her upper right arm to the car and then also pushed her feet into the interior of the car so that doors could be secured.” While video evidence did not corroborate the complainant’s allegation, the view was partially obstructed, and therefore, there was insufficient evidence to disprove the allegation.

6. Excessive Force – Deputies 1, 3, and 5 “slung and/or slammed” the complainant to the ground while handcuffed.

Recommended Finding: Action Justified

Rationale: According to the complainant, “At that point several more officers and a Sergeant had then surrounded me. There was an excess of eight officers and a Sergeant from what I could see within my vision. I was slung around like a rag doll and slammed to the ground, where I landed on my stomach. All of this was while I was still hand cuffed.” Video evidence and documentation confirmed five deputies on scene, with hands-on control by Deputies 1, 3, and 5, due to the complainant’s non-compliance. Video evidence did not support the complainant’s assertion and did not capture any abuse of authority. The force utilized to gain compliance was lawful, justified and proper.

7. Excessive Force – Deputies 1, 3, and 5 held the complainant down and compromised her breathing.

Recommended Finding: Action Justified

Rationale: According to the complainant, “I was slung around like a rag doll and slammed to the ground, where I landed on my stomach. All of this was while I was still hand cuffed, then an officer placed his foot on my temple, in between my eye and ear on the same side that my head was smashed against the wall previously by the black male officer in the holding tank inside of the Substation. I had asked him why he was stepping on my head and how necessary that really was. In addition to that officer, several more officers accompanied that officer. One of the others had his knee in the upper part of my back to where I was asphyxiated and could only take short bursts of breaths just to sustain. Another officer then jumped on my lower back on top of my buttocks. Seconds later, an officer had took my legs up high and attempted to bend them from the back while in the air.” As documented in the Officer’s Reports and corroborated by video evidence, the complainant was held down with force for re-application of the Cordcuff restraint. Video evidence corroborated that the complainant complained that she could not breathe as Deputy 1 responded that she was yelling just fine. The complainant continued her expletive-laced tirade against Deputy 3. The reasonable and necessary force utilized to gain compliance was lawful, justified and proper.

8. Excessive Force – Deputies 1, 3, and 5 “bashed” the complainant’s head multiple times on a patrol vehicle door and/or “continuously slammed the door on her knees.”

Recommended Finding: Action Justified

Rationale: According to the complainant, “...Instantly about three or four officer had lifted me off the ground and the black officer opened the back door to the police cruiser. The officers that had me lifted off the ground, attempted to put me inside of the cruiser. In their attempt, my head was bashed against the outside of the door about four times before the officers were capable to navigate my body onto the back seat of the vehicle. Once inside, the officer attempted to close the back door, but continuously slammed the door on my knees because they were hanging out of the door. One officer went over to the opposite door, began pulling the

handcuffs at my wrists and dragged me inside the vehicle to enable the officer to close the door on my knees hardly unrestricted. I screamed in agony while I was face down with my knees firmly pressed against the door. Once I was inside of the vehicle, I heard the officers laughing and cheering hysterically.” Video evidence refuted much of the complainant’s testimony. The complainant was found not to be credible in her recall of these events as no deputies were observed or heard laughing/cheering. Upon each entry into and while exiting from the patrol vehicle, the complainant was uncooperative and did not obey commands, which necessitated uses of force to gain compliance. During the complainant’s initial placement into a patrol vehicle at the site of arrest, she refused to place her legs and feet inside the car. Deputy 3 pulled her from one side while Deputy 5 pushed her from the other side. Once at the station, force was used to pull her from the vehicle when the complainant refused to exit. For transport from the station to jail, the complainant straightened her legs to obstruct the door from closing. Deputies readjusted the maximum restraint cord to prevent her from straightening her legs. While maximally restrained, the complainant was placed on her side and seat-belted in. Deputy 1 patted her head and instructed the complainant, “watch your head, tuck it in.” He slowly closed the door, she screamed, and Deputy 1 secured the door more firmly with a push. The complainant then loosened and slipped out of the Cordcuff restraint again. As notated by Deputy 1, the amount of time that force was actually utilized on the complainant added up to a total of around forty minutes over several different contacts with the suspect. The minimum amount of force was utilized at each contact, solely to overcome her efforts to thwart them from placing her into restraints, holding cells and vehicles; the complainant did not sustain any injuries during those encounters. All of the actions taken by various deputies to overcome the complainant’s resistance were lawful, justified and proper.

9. Excessive Force/OC Spray – Deputy 5 sprayed the complainant with Oleoresin Capsicum (OC).

Recommended Finding: Action Justified

Rationale: According to the complainant, “The male officer promptly told the female officer ‘she got out of the restraints, pull over!’ The female officer pulled over onto the side of the freeway and took out her o.c. spray. The black male officer said ‘give it to me, I’ll get her, let me get her, let me get her’ He exclaimed. The Hispanic female officer handed the black male officer the can and opened the rear door where I was sitting and moved out of the range of the o.c. spray. The male officer then shook the can and released the spray for no less than three minutes directly into my eyes, hair, ears, and chest area. I tried to hide my face from the excessive amount but he would not stop spraying. The female officer had called the officers name to gain his attention, it was at that point he stopped. The fumes were so toxic that the female officer began to cough profusely from the two to three yards she was standing. The male officer coughed and said, ‘Whew this is military certified stuff here.’ I could not see, and the burning was so terrible I begged them to give me some water for my face. The male officer laughed and the female officer was completely silent. At that point, I was coughing so hard that my chest started to burn. My eyes felt like they were set on fire and I could not see for a period of ten minutes. When I finally could see it was blurry and burned to where my eyes would not stop watering.” According to the Use of Force Guidelines, OC is used to subdue subjects by spraying the agent, within three feet, onto the face for contact with the eyes and mouth. Deputies may deploy OC where their presence and verbal commands have been ineffective or when there is a potential for injury to deputies, suspects, or property. Per Deputy 5’s report, the complainant kicked the inside of the patrol vehicle after having disconnecting the cord cuffs and was no longer restrained. After being verbally warned to stop, Deputy 5 sprayed the complainant with OC to prevent her from injuring herself and causing damage to the vehicle, then removed the complainant from the vehicle to decontaminate her by giving her fresh air. Later, while en route to jail, the complainant hit the window with the cord cuff and yelled profanities. Deputy 5 pulled over on the freeway and deployed a five second burst to where the complainant was holding her sweater over her face. The complainant spit toward Deputy 5’s direction, but did not make contact. The window was rolled down to allow the complainant to decontaminate by getting fresh air. The uses of OC spray momentarily delayed, but did not stop the complainant’s destructive actions, as she continued to kick the vehicle and bang her handcuffs on the window while yelling obscenities. Both uses of a chemical agent were lawful, justified and proper.

10. Misconduct/Procedure – Deputy 5 took photographs of the complainant.

Recommended Finding: Action Justified

Rationale: According to the complainant, "When I got a glance at the front of the barricade, I witnessed the male cop with his phone facing my direction. I asked him "what the hell are you doing, taking pictures or what asshole?" He said "I just got to record this" I called him a lot of derogatory names, and he positioned his phone in different angles and continued laughing the entire time as the female officer transported me to Las Colinas. The female officer remained silent did not respond the entire time. It was not until the car went underneath the garage that the mail officer put his phone down." The Sheriff's Department provides department-issued cell phones to deputies for which they record evidence to include photographic documentation. Following multiple uses of force, and in accordance with policy, 48 photographs were placed into evidence for this event by Deputy 5. Thirteen photographs, taken in sequential order, were of the complainant inside of a holding cell. Deputy 3 also provided information during the course of CLERB's investigation that conflicted with information reported by the complainant. The complainant was found not to be credible in her recall of these events. The evidence showed that the conduct that occurred was lawful, justified and proper.

11. Misconduct/Procedure – Deputies 1-5 did not provide medical aid for the complainant following multiple uses of force, to include OC spray.

Recommended Finding: Action Justified

Rationale: According to the complainant, "Upon opening the rear passenger door the female officer asked for me to stand up, but I was not physically able to and I told her, I said to her 'no disrespect to you at all but my knees are severely injured I really need some serious medical attention may I please get some help please. She was quiet and at that point I then asked again, if I could get some medical attention and the male officer answered and said 'no, but you can exit the vehicle.' The female officer sort of helped me stand up. My knees collapsed, so the male officer grabbed me by the back part of the cuffs and the upper part of my arm and yanked me upward to a midway standing position. My right knee was swollen and bleeding I could not straighten it out, it remained at an angle and I had to drag my leg out. I only had one sandal on, and my foot was bleeding. My ear was dripping blood down my neck. My clothes were ripped and damaged. My eyes burned, the palms of my hands were scraped with gravel embedded into them and into the scrapes on my knees. My big-toe nail on my right foot had been damaged, in addition to my index and pinky fingernails on my left hand were ripped half-way off. I was in so much pain by the time I entered into the jail and still did not get any medical assistance for my eyes, they burned more with each blink. Every time I had asked for medical attention, the male officer denied me and would not allow for medical attention." As notated above (Rationale #4) deputies modified their application of maximum restraint to accommodate the complainant's disability. According to the Use of Force Guidelines, deputies that deploy non-lethal chemical agents are to ensure that appropriate decontamination measures are undertaken as soon as practical after application. The subject should be handcuffed, instructed to calm down and relax and moved to an uncontaminated area. Flush the face with cool water keeping in mind that the water may reactivate the agent in some instances. Continually monitor the subject for any abnormal reactions to the agent. Any unanticipated reaction requires immediate medical attention. If otherwise normal effects of agent exposure persist beyond forty-five minutes, medical attention must be obtained. During transport, deputies are to monitor the subject's breathing, skin color and level of consciousness, any abnormal or questionable physical presentation demands immediate medical attention. According to the documentation, deputies provided the complainant with fresh air after two applications of OC. Video evidence confirmed that while the complainant requested medical aid, she refused to comply with instructions and deputies were unable to take further action until she was properly restrained. Sheriff's medical records notated that when the complainant was screened prior to entry into the detention facility she was also angry, yelling, crying, while in maximum restraint with no respiratory distress noted. Medical staff were unable to obtain her vital signs because she was uncooperative and admitted to being under the influence of "street drugs." The complainant did not disclose use of OC spray and therefore was not treated for such by medical staff. During a secondary medical screening, the complainant disclosed back, knee and neck pain for which she was given Motrin with follow-up medical orders. Subsequent x-rays confirmed no injuries other than pre-existing condition(s). Once the complainant was placed into a holding cell, she had access to and utilized water from a sink. The actions taken by deputies 1-5 following their use of force, to include maximum restraint and deployment of a chemical agent, were lawful, justified and proper.

1. Excessive Force – Deputy 1 pushed the complainant.

Recommended Finding: Action Justified

Rationale: In the complainant's written statement, he reported, "*The sheriff deputy proceeded to ask me if I could grant him access to the apartment building. I responded by stating, "I don't help pigs." I then proceeded to walk up the stairs that lead to the front door of the apartment building and inserted my key into the keyhole. The sheriff deputy, without warning me, proceeded to push me through the doorway as I open the door in a very aggressive manner.*" According to Deputy 1's SDSA Officer Report documenting the incident, he explained that he went to the complainant's apartment complex to serve a temporary restraining order to an unrelated party. Upon his arrival to the apartment complex, he found the front controlled access door locked with a non-working intercom system. He observed the complainant making his way into the apartment complex and asked, "Excuse me, is there an onsite manager for this building?" The complainant replied, "Fuck you pig. Why don't you figure it out for yourself?" The complainant used his personal key to unlock the apartment complex entry door and continued to make oinking noises. Deputy 1 took hold of the door to follow the complainant into the building. The complainant turned to Deputy 1 and said, "Fuck off pig" as he tried to pull the door closed behind him. Upon doing so, Deputy 1 pulled the door open and walked into the foyer, using his arms to keep distance between he and the complainant. Deputy 1 reported that he pushed the complainant away from himself by using both of his hands on the complainant's left shoulder area. The push turned the complainant away from Deputy 1. Deputy 1 advised that had he not pushed the complainant away; the complainant may have injured him with the door or by standing so close to him while being verbally abusive. The complainant was within striking distance and could have assaulted Deputy 1. Deputy 1's push did not result in any injuries and the complainant did not fall down or bump into anything as a result. CLERB attempted to acquire a copy of the apartment complex's surveillance video recording; however, the attempts were unsuccessful. Per his report, Deputy 1 was equipped with a Department issued Body Worn Camera; however, the camera was not turned on when Deputy 1 attempted to activate it. As such, no recordings of the incident were available to view. According to SDSA 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. According to SDSA P&P Section 2.22, entitled, "Courtesy," employees shall be courteous to the public and fellow employees. They shall be tactful in the performance of their duties, shall control their tempers, exercise patience and discretion even in the face of extreme provocation. According to SDSA P&P Section 2.49 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 Addendum F entitled, "Use of Force," it shall be the policy of this Department whenever any Deputy Sheriff, while in the performance of his/her official law enforcement duties, deems it necessary to utilize any degree of physical force, the force used shall only be that which is necessary and objectively reasonable to effect the arrest, prevent escape or overcome resistance. Deputies shall not lose their right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or overcome resistance. The evidence indicated that Deputy 1 did not violate policy when he pushed the complainant away from him. The evidence showed that the alleged act did occur but was lawful, justified and proper.

2. Illegal Search & Seizure – Deputy 1 forced entry into the complainant's apartment complex.

Recommended Finding: Action Justified

Rationale: According to the complainant, Deputy 1 forced entry into his apartment complex. In the complainant's written statement, he reported, "*The sheriff deputy proceeded to ask me if I could grant him access to the apartment building. I responded by stating, "I don't help pigs." I then proceeded to walk up the stairs that lead to the front door of the apartment building and inserted my key into the keyhole. The sheriff deputy, without warning me, proceeded to push me through the doorway as I open the door in a very aggressive manner.*" According to Deputy 1's SDSA Officer Report documenting the incident, he explained that he went to the complainant's apartment complex to serve a temporary restraining order to an unrelated party. Upon his arrival to the apartment complex, he found the front controlled access door locked with a non-working intercom system. He observed the complainant making his way into the apartment complex and asked, "Excuse me, is there an onsite manager for this building?" The complainant replied, "Fuck you pig. Why don't you figure it out for yourself?" The complainant used his personal key to unlock the apartment

complex entry door and continued to make oinking noises. Deputy 1 took hold of the door to follow the complainant into the building. The complainant turned to Deputy 1 and said, "Fuck off pig" as he tried to pull the door closed behind him. Upon doing so, Deputy 1 pulled the door open and walked into the foyer..." According to Family Code Section 6272, a law enforcement officer shall use every reasonable means to enforce an emergency protective order. A law enforcement officer who acts in good faith to enforce an emergency protective order is not civilly or criminally liable. According to The California Peace Officers Legal Sourcebook, in regard to public places and business, if the premises are open to the public, there is no privacy to protect or surprise to avoid, so the requirements do not apply. In regards to exterior gates and fences, "Knock and notice" requirements normally do not apply to exterior gates and fences, at least where they are not an integral part of the house itself, there is no one present in the yard, there is no buzzer, intercom, or other easy means of contacting the persons in the house, and/or there is no purpose in attempting to comply until reaching the actual residence. An entry into a protected area without a warrant, search conditions, exigent circumstances, or consent will be invalid. In Deputy 1's circumstance, he was present at the location to serve/enforce a temporary restraining order. Per his report, he acted in good faith to serve the order. As such, was not civilly or criminally liable. Additionally, it is common knowledge that the common area of a multi-unit apartment complex is not considered private and there is no "reasonable expectation of privacy." The lawfulness of the entry by Deputy 1 was supported given the exigent circumstances of serving a temporary restraining order. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 1 broke the complainant's property and injured him.

Recommended Finding: Not Sustained

Rationale: The complainant reported that when Deputy 1 pushed him through the apartment's entrance door, that Deputy 1 injured his back and broke and damaged his personal property. The complainant reported, "In the process, he caused pain to my back, bent my door key, and broke my lanyard [lanyard] that was attached to my key." On 01-08-20, multiple attempts were made to contact the complainant to gather additional information. The complainant was non-contactable, so no additional information was gathered. CLERB attempted to acquire a copy of the apartment complex's surveillance video recording; however, the attempts were unsuccessful. Per his report, Deputy 1 was equipped with a Department issued Body Worn Camera; however, the camera was not turned on when Deputy 1 attempted to activate it. As such, no recordings of the incident were available to view. An Information Source with the County advised that as of 01-21-20, the complainant did not file a claim against the County for broken and damaged property after his interaction with Deputy 1 on 05-01-19. In Deputy 1's Deputy Report, he noted that in pushing the complainant away from the door and himself that the push turned the complainant away from Deputy 1 and propelled him into the foyer. The push did not result in any injuries and the complainant did not fall down or bump into anything as a result. Deputy 1 reported that their interaction lasted less than 30 seconds, and in that 30 second interaction, he did not note or document any damage to the complainant's personal property. There was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Truthfulness – Deputy 1 said the complainant pushed him.

Recommended Finding: Unfounded

Rationale: The complainant alleged that Deputy 1 lied when he said the complainant pushed him during their interaction. According to the complainant's written statement, he reported, "In the process of pushing me through the front door entryway, the sheriff deputy accused me of pushing him. Video footage of this incident clearly shows that I did not [no] such thing." According to Deputy 1's SDSA Officer Report documenting the incident, Deputy 1 did not report that the complainant pushed him back during their interaction. Deputy 1 reported that he held onto the door after the complainant entered the apartment complex and a brief tug of war ensued between the two. Deputy 1 pulled the door open and walked into the foyer using his arms to keep distance between him and the complainant, who in their brief contact, appeared to be irrational and unpredictable. Deputy 1 pushed the complainant away from the door and himself by using both of his hands on the complainant's left shoulder area. In Deputy 1's report, he did not report that the complainant pushed him. CLERB attempted to acquire a copy of the apartment complex's surveillance video recording; however, the attempts were unsuccessful. Per his report, Deputy 1 was equipped with a Department issued Body Worn Camera; however, the camera was not turned on when Deputy 1 attempted to activate it. As such, no

recordings of the incident were available to view. According to SDSD 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 complainant denied pushing Deputy 1. Deputy 1 did not report that the complainant pushed him. As such, the evidence showed that the alleged act or conduct did not occur.

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## **19-055**

1. Misconduct/Procedure— Deputy 1 demanded that information be placed into a police department's database.

**Recommended Finding:** Action Justified

**Rationale:** According to the complainant, Deputy 1 used her position of authority for personal gain by demanding that the complainant and her out-of-state police department agency enter her brother's information into their database system. Per the complainant's written statement, "*A police officer was then contacted by Deputy 1 who demanded that her brother's information be entered in [the National Crime Information Center] NCIC/ACIC.*" The police officer explained to Deputy 1 that her brother did not meet the criteria. She [Deputy 1] then called wanting to speak with me, a supervisor. I explained that her brother did not meet our criteria but as a courtesy we would enter him as an 'Attempt to Locate (ATL)' and see if we could ping his phone. Unfortunately, he did not meet the criteria to ping at that time. There were no other indicators that he may have met with harm or was a danger to self or others. He was entered for an ATL throughout their [out-of-state] county. The police officer repeatedly called and asked me for guidance as Deputy 1 was insisting that her brother be entered into NCIC/ACIC but he still did not meet the criteria. I spoke with Deputy 1 again on the morning of 05-11-19 and told her that per our communications officers her brother did not meet the criteria to be entered at this time but that we had numerous agencies responding to check the area. She was explained several times that our police department has its own policies and procedures." In a separate and clarifying email, the complainant went on to explain that generally her police department criteria, per their policies and procedures, for reporting a missing person and for entering their information in the NCIC system is as follows: "Generally speaking for an adult, there has to be some indication that they are endangered. That means they are currently experiencing a physical or mental disability, need medication, or are in some way imperiled. That would include being suicidal, if they are known to be suicidal. We do not enter adults who have simply gone off the grid or are behaving slightly outside of their normal patterns. In this case, there was no indication that subject was known to be suicidal. He was not mentally or physically disabled or drug dependent. Therefore, Deputy 1's brother was not entered [into the NCIC database]. Audio recordings of the numerous telephonic conversations between the complainant, the police department's staff, and Deputy 1 were reviewed. Additionally, during the course of CLERB's investigation, Deputy 1 provided information that was considered in arriving at the recommended finding; however, that information cannot be publicly disclosed due to confidentiality statutes per the Peace Officer Bill of Rights. In the end, Deputy 1's concern was warranted, as her brother was indeed found dead. According to SDSD P&P Section 2.4 titled, "Unbecoming Conduct" states employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on this Department. Moreover, SDSD P&P Section 2.18 titled, "Abuse of Position" states employees are prohibited from using their official position for personal or financial gain or for obtaining privileges not otherwise available to them except in the performance of duty. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure— Deputy 1 threatened to involve her command staff in this incident.

**Recommended Finding:** Not Sustained

**Rationale:** According to the complainant, Deputy 1 used her position of authority for personal gain. Per the complainant's written statement, she alleged, "*She then told me several times she was a Deputy and insisted he be entered, or she would involve her command staff. I became stern with her as my communications and officers had already reported her rude and demanding behavior to me. I also found her rude and demanding along with unprofessional for using her position for personal gain and threatening myself I and my officers with her command staff. I'm not sure what she felt that would accomplish, as even Command Staff cannot*

*change our procedures and requirements. I am not at liberty to override our policies for a fellow officer.”* During the course of CLERB’s investigation, eight audio recordings between the complainant, police department staff, and Deputy 1 were reviewed. In each telephonic conversation, Deputy 1 introduced herself as a deputy from the SDSD. She advised that she was not calling on behalf of the SDSD, but as a concerned family member to the missing person. In the last recording, Deputy 1 stated, “If I need to call my lieutenant or get my command staff involved I will. I’ve gone through this chain of command and have done everything necessary.” Deputy 1 provided information that was considered in arriving at the recommended finding; however, that information cannot be publicly disclosed due to confidentiality statutes per the Peace Officer Bill of Rights. According to SDSD P&P Section 2.18 entitled, “Abuse of Position,” employees are prohibited from using their official position for personal gain or for obtaining privileges not otherwise available to them. There was insufficient evidence to either prove or disprove the allegation that Deputy 1 attempted to use her position of authority for personal gain.

3. Criminal Conduct - Deputy 1 used Sheriff’s Department resources to access confidential information.

Recommended Finding: Unfounded

Rationale: According to the complainant, Deputy 1 used the Sheriff’s Department resources to access confidential information. Per the complainant’s written statement, she reported, “*My communications then called me advising that Deputy 1 had called and was demanding to know why he was not entered NCIC/ACIC. This prompted my communications officer to question if Deputy 1 used her NCIC privileges for personal use. I am not willing to overlook her using NCIC for personal use, if she did so, and suggest the matter be looked into. She also provided her brother's vehicle information, which she may have obtained using systems to which she has access. Pursuant to California DOJ standards Deputy 1 would have had to sign an HDC 0009 form prior to receiving access to CLETS and NCIC. This form states all information obtained through CLETS and NCIC is based on the need to know and right to know basis. This form also states misuse of these systems is in violation of CVC 1808.45, PC 11141-11143 and PC 13302-13304.*” During the course of CLERB’s investigation, Deputy 1 provided information that was considered in arriving at the recommended finding. The SDSD Confidential Record Admonishment form is a signed and dated form that the SDSD imposes on employees to keep the information confidential and discreet. It instructs employees not to disclose law enforcement confidential information and is a way for the Department to guarantee confidentiality. By signing the Confidential Record Admonishment form, Deputy 1 authorized that she read and understood the Department’s policy regarding misuse of criminal record information and misuse of confidential computerized information. Deputy 1 signed and dated the SDSD Confidential Record Admonishment form on 06-01-18. According to SDSD P&P Section 2.36 titled, “Use of Department Equipment,” employees shall utilize Department equipment only for its intended purpose, in accordance with established Departmental procedures and shall not abuse Department equipment. According to SDSD P&P Section 2.37 titled, “Dissemination of Information,” employees shall treat the official business of the Department as confidential. Information regarding official business shall be disseminated only to those for whom it is intended, in accordance with established Departmental procedures. According to SDSD P&P Section 6.24 titled, “Law Enforcement Data Base Use and Criminal Record Dissemination,” all employees having access to the computerized information systems shall participate in the state mandated Telecommunications Training Class. In accordance with state law, all employees of the Sheriff’s Department who have access to these information systems shall be required to submit to a background record. All employees of the Department needing access to CLETS/NCIC shall be required to sign the Department Confidential Admonishment Form. All authorized persons receiving Criminal Offender Record Information are reminded that subsequent disclosure is restricted by the California Penal Code. The California Penal Code makes it a misdemeanor to release information to an unauthorized person. The California Penal Code makes it a felony to access any departmental computer files for personal use, or subsequent release to unauthorized persons. According to SDSD P&P Section 7.6 titled, “Use of CLETS-NCIC-ARJIS and Local Information,” only authorized Sheriff’s Department personnel shall access Law Enforcement computer information. Information derived from this source shall only be used within the course of official duties as designated by the Sheriff’s Department. No employee of this Department (sworn or professional staff or volunteer) shall use any computerized informational source for anything other than the performance of official duties. Sheriff’s policy prohibits employees from using any computerized informational source for anything other than the performance of official duties. According to a thorough audit of SDSD records, neither Deputy 1, nor any member of the SDSD accessed any of the SDSD databases to run a query for any information

about Deputy 1's brother. The evidence indicated that Deputy 1 did not use Sheriff's Department resources to access confidential information for unofficial personal business. The evidence showed that the alleged act did not occur.

4. Misconduct/Discourtesy – Deputy 1 was “rude, demanding, and unprofessional” to the [out-of-state] police department's staff.

Recommended Finding: Not Sustained

Rationale: According to the complainant, Deputy 1 was discourteous to the police department's staff. Per the complainant's written statement, she stated, “*She [a dispatcher] told me that Deputy 1 was yelling at her on the phone and threatening. My communications called me advising that Deputy 1 had called and was demanding to know why he was not entered NCIC/ACIC. I became stern with her [Deputy 1] as my communications officers had already reported her rude and demanding behavior to me. I also found her rude and demanding along with unprofessional. I found Deputy 1's behavior and use of her position extremely unprofessional.*” A police dispatcher was invited to provide a statement to CLERB regarding her interaction with Deputy 1. The dispatcher reported she “*recalled a call for service to check the residence of a relative to Deputy 1 which an officer from their police department responded and conducted an investigation. Resources were utilized from Verizon to ping the relative's phone, attempt to locate were sent to other agencies, and other area departments were contacted.*” The dispatcher advised that she recalled Deputy 1 contacting her dispatch center and indicating that she was a deputy from the SDSD. The dispatcher recalled Deputy 1 as “*being very irate on the phone and explaining how the law works and what we should be doing. Deputy 1 contacted the dispatch center several times irate, she was always provided an opportunity to speak with an officer or supervisor.*” During CLERB's investigation, eight audio recordings between the complainant, other police department staff, and Deputy 1 were reviewed. In none of the eight audio recordings did the dispatcher address Deputy 1. Three other dispatchers were identified as those who took calls from Deputy 1. None of the three dispatchers provided CLERB with witness statements. In seven of the eight audio recordings received and reviewed, Deputy 1 was not irate, nor was she rude or unprofessional. Deputy 1 opened each conversation with introducing herself, and closed each conversation with a “thank you.” In the last audio recording, after numerous interactions with the different dispatchers, Deputy 1 was firm and assertive in her request. In review of the eight audio recordings supplied by the police agency, it was evident that Deputy 1, who acted as a lay person and not under color of authority, grew increasingly frustrated with the police agency's apparent lack of interpersonal sensitivity and social concern regarding her missing brother. When Deputy 1 contacted the police agency, she was cordial, professional, and introduced herself as a deputy. The context of the communication between Deputy 1 and the police department began as personal; however, when Deputy 1 identified herself as a deputy sheriff, she drew a nexus between her personal life and professional life. Though she introduced herself as a SDSD deputy, Deputy 1 advised that she was not calling on behalf of the SDSD, but as a concerned family member to the missing person. Deputy 1 responded to a Sheriff's Employee Response form with a signed statement and provided relevant and clarifying information; however, that information cannot be publicly disclosed due to confidentiality statutes per the Peace Officer Bill of Rights. According to SDSD P&P Section 2.4 titled, “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 titled, “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. 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 1 was discourteous to the police department's staff.

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**19-056**

1. Misconduct/Procedure – Deputy 1 failed to investigate a stalking/harassment complaint.

Recommended Finding: Action Justified

Rationale: In her written statement, the complainant stated, *“The next morning on May 8, I contacted the Sheriff Department to see if the video from the previous night had been reviewed, but instead I was informed the report written by Deputy 1 stated that my claim was “unfounded”, which to my understanding means the event had never occurred. To my knowledge at the time Deputy 1 wrote her report she had not reviewed any of the video footage, nor preformed any investigative inquiries that could have led her to conclusion of “unfounded” at that point. Essentially, Deputy 1 carelessly used the loaded term “unfounded” on an official written report without having performed any due diligence to ascertain the facts of the matter. I believe that the Sheriff Department has engaged in obstruction of justice by refusing to obtain the requested video footage related to my complaint for the very reason that it may involve law enforcement officers. I have made a claim of stalking and harassment, and I have stated that I have seen this man on prior occasions, at different locations, several miles apart from one another.”* According to a SDSA Background Event Chronology, as well as the associated audio recording, the complainant reported that an unknown male was following her around a store. Deputy 1 was dispatched to the store. She contacted the complainant who stated that she believed the unknown male subject followed her for a short period while she was in the store. The complainant advised Deputy 1 that she had an ongoing case with the FBI in Los Angeles and that she believed she was being harassed and stalked by law enforcement officers from the San Diego and Los Angeles areas. At the conclusion of her interaction with the complainant, Deputy 1 advised that no crime had been committed and the complainant was possibly mentally ill. The call was closed, and Deputy 1 did not take a report for the complainant’s allegation. During the course of this investigation, Deputy 1 responded to a Sheriff’s Employee Response Form (SERF) and provided relevant information in response to CLERB questioning; however, due to confidentiality statues per the Peace Officer Bill of Rights (POBR), that information cannot be publicly disclosed. The information provided was considered in arriving at the recommended finding. According to SDSA P&P Section 2.23 titled, “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 California Penal Code Section 646.9, any person who willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety is guilty of stalking. The complainant had the burden of proof to prove that she had been stalked. The complainant had to prove that the suspected male willfully, maliciously, and repeatedly followed or harassed her, the suspected male made a credible threat, and the suspected male who made the threat did so with the specific intent to place the complainant in reasonable fear for her safety. The evidence indicated that Deputy 1 responded to the scene and interviewed the complainant. Upon completion of Deputy 1’s investigation, she determined that a crime had not been committed. Based on her oral report to Deputy 1, the complainant was unable to prove that the elements of a stalking had occurred. The evidence showed that Deputy 1 did investigate the complainant’s stalking allegation and it was lawful, justified and proper.

2. Misconduct/Discourtesy – Deputy 1 laughed at the complainant when she interviewed her.

Recommended Finding: Not Sustained

Rationale: In her written statement, the complainant reported, *“While explaining the situation to the deputy I noticed that she was laughing as I described the past and present events related to the service call. When I remarked that the matter was not funny, but actually very serious she responded that she was laughing because I said that it might be police harassment, or that police were involved in some manner.”* According to a letter from the SDSA Internal Affairs division, written to the complainant, the investigating lieutenant wrote, *“The initial responding deputy’s lack of empathy or concern will be addressed within her command.”* During the course of this investigation, Deputy 1 responded to a SERF and provided relevant and conflicting information in response to CLERB questioning; however, due to confidentiality statues per the Peace Officer Bill of Rights (POBR), that information cannot be publicly disclosed. The information provided was considered in arriving at the recommended finding. According to SDSA P&P Section 2.4 titled, “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 SDSA P&P Section 2.22 titled “Courtesy,” employees shall be courteous to the public and fellow employees. They shall be tactful in

the performance of their duties, exercise patience and discretion. Absent any audio or video recordings of the contact between the complainant and Deputy 1, or any additional information provided by an independent witness to the incident, there was insufficient evidence to prove or disprove the allegation that Deputy 1 laughed at the complainant.

3. Misconduct/Procedure – Deputy 2 failed to investigate a stalking/harassment complaint.

Recommended Finding: Action Justified

Rationale: In her written complaint the complainant stated, *“I asked to speak with the Duty Sargent, and later received a call from Deputy 2. I explained the above situation to him, and formally requested that the Sheriff Department obtain the footage from the store of the events from the previous night. I explained to him that the report in question was made in reference to the incident that had occurred – he then stated that he had no evidence leading him to believe that a stalking occurred because I had to know the person in question to be stalked by them. I asked Deputy 2 if he had seen any of the footage that I was requesting BE OBTAINED AS EVIDENCE, which could help establish that stalking had occurred, and his response was that he had not.”* Deputy 2’s supervisory duty was to oversee that Deputy 1 had completed her duties as a peace officer. In doing so, Deputy 2 re-interviewed the complainant, and upon completion of his interview with her, he, like Deputy 1 determined that a crime had not been committed. The evidence indicated that Deputy 2 did conduct an investigation. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 3 “interrogated” the complainant.

Recommended Finding: Action Justified

Rationale: In her written complaint, the complainant reported, *“I spoke with Deputy 3 again three days later (after the holiday weekend), and after asking me several identifying and probing questions, Deputy 3 had already determined that he was not going to help me, but yet subjected me to what could be considered a soft interrogation to gather facts for whatever reason he required.”* In a telephonic interview with a liaison for the SDSD, it was learned that when the complainant was unsatisfied with both Deputy 1’s and Deputy 2’s response to her request to further investigate her allegation, she was referred to an area detective, Deputy 3. In doing so, Deputy 3 re-interviewed the complainant, and upon completion of his interview with her, he, like Deputy 1 and Deputy 2 before him, determined that the elements of a crime had not been committed. In re-interviewing the complainant and to gather additional information, Deputy 3 questioned the complainant with the goal of eliciting useful information. The evidence indicated that the complainant was interviewed, versus interrogated; the difference being that the interview was less formal and accusatory conversation with the main purpose to elicit information, whereas an interrogation would have been formal and is typically designed when addressing a suspect. By contrast, an interrogation is an interaction between police officers and a suspect. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

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**19-058**

1. Misconduct/Procedure – Unidentified deputies failed to investigate the complainant’s grievances.

Recommended Finding: Summary Dismissal

Rationale: The complainant claimed that unidentified deputies in the SDSD Internal Affairs division failed to investigate his complaints against numerous sworn staff members. Throughout the course of this investigation, attempts were made to contact the complainant to gather additional information; however, the complainant was transferred to prison and was uncontactable. A letter was mailed to the complainant, but to no avail. Telephone calls were made to the prison counselors, but no calls were returned. Telephone calls were made to the complainant’s spouse, but she was unable to provide any information. Two requests for records/evidences was submitted to the SDSD, requesting any releasable documents from the Internal Affairs Division concerning the complaint(s) initiated by the complainant. CLERB was advised that no Internal Affairs documents would be released, as they are not public record to which CLERB was privy to receive. It

was reported that the complainant had initiated three Internal Affairs investigations; however, no information would be disclosed. Any copies of the correspondence between Internal Affairs and the complainant would have to be obtained from the complainant. Being that the complainant could not be located, that the complainant's wife did not cooperate with investigation, that there was no identification of an accused member, and that critical documents were not made available, it was requested that the case be summarily dismissed.

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## **19-062**

1. Misconduct/Discourtesy – Deputy 2 would not allow the complainant to speak.

Recommended Finding: Not Sustained

Rationale: The complainant and a colleague reportedly went to a Courthouse to gather information from the Records Department. The complainant stated, "...a middle aged woman who works for the county came to the front area and said we could not take pictures and pointed to a picture on the wall and said that no pictures were allowed. She then said, 'I have to see your telephone.' I advised her that I would not take any more pictures and would erase them, but I would not submit my constitutional rights to search and seizure. She then said she would call the sheriff and I waited quietly. I did not take any more pictures or complete the research task we were working on. A sheriff came through the back office and I told him I deleted the pictures, but I would not submit to a search. I asked him if I was detained and he said, no. Two other sheriffs then came, including Deputy 2, who explained that he could speak but I could not." Deputies provided information during the course of CLERB's investigation that conflicted with information reported by the complainant. The complainant's colleague did not respond to CLERB's request for information. Absent an audio recording there was insufficient evidence to either prove or disprove the allegation.

2. Illegal Search & Seizure – Deputies 1-3 detained the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated, "...I asked again, 'Am I free to leave?' Deputy 2 said, 'No you are detained.' He told the other officer to run my background to see if I was on probation or parole. Why would I be detained because I requested information on how to file a complaint. I let the officers know that I would wait outside for this information. Still, I was detained against my will because I wanted to file a complaint. The reason for this detainment was to see if I was on probation or parole. What attributes do I have to make anyone believe that I am on probation or parole?" According to a Field Interview (FI) report, the complainant was detained in order to investigate a violation of PC§ 166. Criminal Contempt: In Presence of Court, pertaining to General Court Order 010118-02 and 010118-03. The complainant admittedly took photographs within the courthouse and was in violation of the cited court order. The evidence confirmed and the law allowed for her detention in order to conduct a field interview because she was in contempt of court, and not because she wanted to file a complaint. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

3. Misconduct/Retaliation – Deputies 1-3 detained the complainant after she requested a complaint form.

Recommended Finding: Not Sustained

Rationale: The complainant stated, "...I asked him if I was detained and he said, no. The officer said he wanted to escort me from the premises and no arrest was needed. I complied and walked of my own free will. I did not stop walking. While in the elevator I advised them that I wanted to make a complaint. I told the officers that I would leave the premises but inquired if one of them could bring me the information outside of the courthouse to make a complaint. The elevator stopped and Deputy 2 said, 'Now you're detained.' I asked him why and Deputy 2 responded, 'Because now you're talking about making complaints.' I was just threatened because I asked for information to make a complaint. The only thing I knew I could do at that point was to survive for my children. Deputy 2 immediately went from escorting me out of the building unlawful detainment and prolonged detention merely because I requested information for making a complaint. When my background check came back clean I was escorted out. Humans should not be threatened if they want

to complain. No human being should be threatened for basic human rights. Deputy 2 should have given me information to make a complaint. I should not have suffered a prolonged detention for questioning policies. He made it clear that I was only being detained for requesting information to make a complaint when I inquired why I was being detained, 'Now you're talking about making complaints.' He never provided any information on how to make a complaint. This detainment is now on my permanent record. I will now have to explain this detainment when I complete my moral character form after the completion of law school. This has impacted my constitutional rights and has affected my employment." The complainant's colleague did not respond to CLERB's request for information. Deputy 2 provided information during the course of CLERB's investigation that conflicted with information reported by the complainant, but cannot be publicly disclosed due to confidentiality statutes per the Peace Officer Bill of Rights (POBR). Absent an audio recording there was insufficient evidence to either prove or disprove the allegation.

4. Discrimination/Racial – Deputies 1-3 “racially profiled” the complainant.

Recommended Finding: Unfounded

Rationale: The complainant stated, “I believe I was racially profiled because the officer said he wanted to check to see if I was on probation or parole. According to the ACLU, ‘Racial Profiling’ refers to the discriminatory practice by law enforcement officials of targeting individuals for suspicion of crime based on the individual's race, ethnicity, religion or national origin. Criminal profiling, generally, as practiced by police, is the reliance on a group of characteristics they believe to be associated with crime. Examples of racial profiling are the use of race to determine which drivers to stop for minor traffic violations (commonly referred to as ‘driving while black or brown’), or the use of race to determine which pedestrians to search for illegal contraband. What would make an officer believe that a woman, training her staff on public records would be on probation or parole? Why would I be criminalized for asserting my fourth amendment right?” Sheriff's Policy 2.55, Non-Biased Based Policing, prohibits deputies from considering race in deciding whether or not enforcement intervention will occur. All investigative detentions must be based on a standard of reasonable suspicion or probable cause as required by the Fourth Amendment of the U.S. Constitution. The complainant was detained for refusing to comply with a lawful order. (see rationale #2.) While the complainant believed she was profiled, the evidence confirmed and the law allowed for her detention in order to conduct a field interview because she was in contempt of court. The evidence showed that the complainant was not racially profiled as alleged, and the act did not occur.

5. Misconduct/Procedure – Deputies 2 and/or 3 requested the complainant's identification.

Recommended Finding: Action Justified

Rationale: The complainant stated, “The officers walked me over to the side of the courthouse located downtown. I requested their badge numbers. I was asked to give my identification.” The Fourth Amendment prohibits unreasonable searches and seizures and requires warrants to be supported by probable cause. The U.S. Supreme Court established that it is constitutional for police to temporarily detain a person based on an articulable reasonable suspicion that a crime has been committed. The complainant was admittedly in violation of PC 166, for taking photographs within the Courthouse, an act posted and prohibited by Court Order No. 010120-02, to ensure the safe, secure, orderly and efficient handling of proceedings and court business. Deputy 2 instructed Deputy 3 to do a Field Interview (FI) report and request the complainant's identification. A request for identification is standard procedure to run/perform a records check and determine if there are any current warrants in effect. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

6. Misconduct/Procedure – Deputy 2 motioned instead of providing his badge number.

Recommended Finding: Action Justified

Rationale: The complainant stated, “I was surrounded by three sheriffs. I requested the badge number of Deputy 2 who motioned for me to look at his badge. I advised him that I did not want to walk that close to him because I was terrified.” A review of surveillance video, albeit without audio, corroborated a hand motion Deputy 2 made toward his badge. Sheriff's Policy 2.20, Identification, mandates that 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. ARJIS numbers do not

correspond to badge numbers. Deputy 2 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however, due to confidentiality statues per the Peace Officer Bill of Rights (POBR), it cannot be publicly disclosed. The evidence showed there was no violation of policy, and the actions that occurred were lawful, justified and proper.

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## **19-067**

1. Criminal Conduct – Unidentified deputies were involved in “human trafficking activities.”

Recommended Finding: Summary Dismissal

Rationale: The complainant's written statement appeared to be random, irrational, and disorganized statements. The complainant had two other CLERB investigations in 2016 and 2017. He was diagnosed with a mental disorder and experiences paranoid delusions. According to CLERB case #16-022, the complainant's psychiatric medical history was remarkable for acute psychosis, anxiety disorder, schizophrenia, and schizoaffective disorder for which he was not on a medication regimen. He had a history for increased paranoia and delusional ideations. A request for records from the SDSA revealed that no recent records were available, other than his 5150 Hold [mental health hold] from 11/2017. In regard to his current complaint, the complainant did not have any arrest in San Diego County, any records in the Jail Information Management System (JIMS), he did not have a criminal history, any parking citations, field interviews, or traffic citations. A records check for any CAD reports at the complainant's home address were futile. The complainant lacked credibility and his complaint was so clearly without merit that no reasonable person could sustain a finding based on the allegation. There was no prima facie showing of misconduct.

2. Criminal Conduct – Unidentified staff threatened the complainant with bodily harm.

Recommended Finding: Summary Dismissal

Rationale: See Rational #1.

3. Criminal Conduct – Sheriff Gore was “involved in a treasonous political program.”

Recommended Finding: Summary Dismissal

Rationale: See Rational #1.

4. Criminal Conduct – Unidentified deputies “conspired to infringe on” the complainant's civil rights.

Recommended Finding: Summary Dismissal

Rationale: See Rational #1.

5. Criminal Conduct – Unidentified deputies physically and sexually assaulted the complainant.

Recommended Finding: Summary Dismissal

Rationale: See Rational #1.

6. False Arrest – An unidentified deputy arrested the complainant.

Recommended Finding: Summary Dismissal

Rationale: See Rational #1.

7. Illegal Search & Seizure – An unidentified deputy searched and “groped” the complainant.

Recommended Finding: Summary Dismissal

Rationale: See Rational #1.

8. Illegal Search & Seizure – An unidentified deputy transported the complainant to the hospital.

**20-007**

1. Illegal Search & Seizure/Home – Deputies 1-5 “raided” the complainant’s house on 01-10-20.

Recommended Finding: Action Justified

Rationale: The complainant stated, “On 1-10-20 officers from the San Diego Sheriff’s Department raided my house. I feel that these officers broke a lot of protocols and violated our amendment rights. This event has affected all of us mentally and emotionally. We do not feel safe in our own home and feel that we cannot trust the police. I am not able to focus to take my medications and feel really depressed. They treated us like criminals, but in this country we are supposed to be innocent until proven guilty. I want an investigation to be opened on Deputy 2 and everyone involved in this invasion. Because that’s exactly what it was, a home invasion.” A Search Warrant related to this incident was sealed by the superior courts pursuant to People v. Hobbs (1994) 7 Cal.4th 948, 962.” In People v. Hobbs, evidence was seized under a search warrant for stolen property which was based on information provided by a confidential informant. Deputies provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding, however, due to confidentiality statues per the Peace Officer Bill of Rights (POBR), it cannot be publicly disclosed. The evidence showed there was no violation of policy, and the actions that occurred were lawful, justified and proper.

2. Misconduct/Procedure – Deputies 1-5 failed to provide the complainant with a search warrant.

Recommended Finding: Action Justified

Rationale: The complainant stated, “Upon their arrival I requested to see a search warrant and they declined to provide one. They searched everywhere in my house and on the property and they did not provide me with a search warrant even after multiple requests. Half way through their search a car pulled up and a man ran down with a piece of paper that was flashed in my face. I was never allowed to read it. When my brother came home from work he called Deputy 2. He told my brother that he couldn’t give him any information and to go to the Chula Vista court house for a copy of the warrant. At the court house they told my brother that they could not give him a copy or any information because it was a sealed case.” A Search Warrant related to this incident was sealed by the superior courts pursuant to People v. Hobbs (1994) 7 Cal.4th 948, 962.” In People v. Hobbs, evidence was seized under a search warrant for stolen property which was based on information provided by a confidential informant. Deputies provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding, however, due to confidentiality statues per the Peace Officer Bill of Rights (POBR), it cannot be publicly disclosed. The evidence showed there was no violation of policy, and the actions that occurred were lawful, justified and proper.

3. Misconduct/Procedure – Deputies 1-5 failed to accommodate the disabled complainant and/or family.

Recommended Finding: Not Sustained

Rationale: The complainant stated, “I had been released from Scripps Hospital the day before after being hospitalized for 5 days. I have diabetes, stage 5 kidney failure, congenital heart failure, and extreme poor eyesight, have had 5 spinal surgeries and suffer from anxiety and depression. I requested a chair to sit on and they ignored me. My father was being dropped off from his dialysis session. He is a double amputee, diabetic, has heart disease, high blood pressure, has previously suffered from a stroke, and suffers from depression and anxiety. He eats breakfast at 7:30 a.m. and immediately has to eat when he gets home from his dialysis. He was detained outside of the house and was prohibited from getting food to eat. I asked to have access to give my father food and the police officer just said they would try and hurry up.” Sheriff’s Policy 2.48, Treatment of Persons in Custody, mandates that deputies handle persons in accordance with the law and not mistreat anyone in their custody. A review of Body Worn Camera (BWC) was conducted but

did not capture the events described by the complainant. There was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Procedure – Deputy 2 attempted to “bribe” the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated, “After they realized that there was nothing to find here Deputy 2 began to bribe me. He told me he would give me 3 to 4 thousand dollars if I gave him any information on where to find packages of drugs. I told him I didn’t know what he was talking about.” Informants are compensated for the information they provide. Sheriff’s Policy 6.62, Informant Guidelines states that all funds allocated for the purchase of evidentiary items shall be documented in the same manner as set forth in Section 3.30, Sheriff’s Special Funds, used primarily for purchases that must be kept confidential due to the nature of an investigation. Deputy 2 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 evidence showed that the alleged act or conduct that occurred was lawful, justified and proper.

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## 20-011

1. Misconduct/Harassment – Unidentified deputies conspired against and harassed the complainant.

Recommended Finding: Summary Dismissal

Rationale: The complainant contacted CLERB and alleged that undercover Sheriff deputies harassed him all day and night. The complainant stated, “Undercover Officer – (Sheriff Deputy – 1 – Wife– Son). Cousin of my ex-wife who says that I was a danger to society, my ex and I was trying to dissolve our relationship. She didn’t want me to leave because she has dementia & we had to split the house. She didn’t want to do that. I didn’t want to endure the relationship anymore. After 24 years & 18 yrs of infidelity on her part, I wanted to dissolve our relationship. So she said someone was going to kill me so I look over my shoulder daily – day & night. Several cars follow me daily. I have between 75 – 100 license plates and up to 40 photos of persons who have followed me. Alleged Deputy is an Undercover Officer like 1 who has engaged in this conspiracy. Room #416 Alleged Deputy, #419, #420 & #422 (All undercover Sheriff). Stand by my door all day & night. When I leave they go in my room. #416 harasses me all day & night. He has undercover equipment in his room. They are in the telephones. I have a tracking device on my car. If I open my mail, if I clip my toe nails & fingernails, if I open a bottle of water, if I open a salad, if I open a can of soup, if I open a can of nuts, if I open a package of paper towels or toilet tissue, if I try to put away groceries, if I sneeze, if I cough, if I open a bag of chips or popcorn, if I open a package of cookies, if I open a package of pudding, if I open a 24 package of water, if I tear open or make any noise at all #416 will either turn up the water, bang on the counter, bang on the wall, bang on side of bed, slam a door close or even stump on the floor or sometimes they come knock on my door. For 15 months #416 played music (same song) “Another One Bites the Dust” from 2 to 20 times per day. CLERB was unable to identify the involved personnel based upon the submitted information and therefore, CLERB has no jurisdiction 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 of the Probation Department.

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## 20-027

1. False Arrest – Unidentified deputies arrested the complainant.

Recommended Finding: Summary Dismissal

Rationale: The complainant contacted CLERB and alleged that unidentified deputies illegally arrested her on a “5150” (mental health) hold. The complainant stated, “I was manhandled by Sheriffs. I went to the location to find out about the illegal technology and gang stalking being used on me. The arrest charges were dropped.”

According to information/verification from the Division of Inspectional Services (DIS), the arrest was conducted by the San Diego Police Department. CLERB Rules & Regulations: 4.1 Complaints: Authority. Pursuant to the Ordinance, CLERB shall 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 as the allegations did not involve any sworn personnel employed by the County Sheriff's Department or the Probation Department.

2. Misconduct/Procedure – Unidentified deputies ignored the complainant and failed to take her complaint of alleged abduction and sexual assault.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, "For reporting being human and sex traffick. I also went to the Sheriffs Dept to request an investigation into an abduction by 2 men and held, which the Fire Dept came to assist. And two onsite officers at the Sheriff station ignored my complaint for an investigation." According to information/verification from the Division of Inspectional Services (DIS), the alleged abduction and sexual assault happened in 2016. CLERB Rules & Regulations 4.1.2 Complaints: Jurisdiction, stipulates that 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 was never incarcerated, and did not submit evidence of mental incapacitation as required by CLERB rules. Therefore the complainant was required to file her complaint no later than one year after the alleged 2016 assault. The Review Board lacks jurisdiction as the complaint was untimely.

3. Misconduct/Procedure – Unidentified deputies filed a Restraining Order against the complainant.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, "There is also a false Restraining Order against me. This is showing in Court Records filed by a private party (law enforcement)." According to information/verification from the Division of Inspectional Services (DIS), the restraining order was filed by the complainant's ex-husband. CLERB Rules & Regulations: 4.1 Complaints: Authority. Pursuant to the Ordinance, CLERB shall 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 as the allegation did not involve any sworn personnel employed by the County Sheriff's Department or the Probation Department.

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## **20-030**

1. False Arrest – San Diego Harbor Police Department officers failed to investigate the complainant's complaint or arrest.

Recommended Finding: Summary Dismissal

Rationale: On 02-26-20, the complainant contacted CLERB and reported that either San Diego Harbor Police Department officers, or the San Diego Port of Authority, failed to investigate the complainant's grievance of her arrest. As the allegation is not against a San Diego Sheriff's deputy, nor a San Diego Probation officer, CLERB lacks jurisdiction to investigate the complaint, per CLERB Rules and Regulation 4.1 titled, "Complaints: Authority," which states that pursuant to the Ordinance, CLERB shall 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.

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## **20-033**

1. Excessive Force/Handcuffs - An unidentified deputy tightened the complainant's handcuffs.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, "I was in a room locked with chains and then it felt too hard on my bones and something happen where I called him N word. Because I felt pain and then he comes and opens the door. Took me to the elevators then cuffed me and broke my wrist with overtightened with the metal handcuffs." The complainant reported the timeline of his complaint was from 2013-2015. CLERB Rules & Regulations 4.1.2, Complaints: Jurisdiction, stipulates that 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. According to information/verification from the Division of Inspectional Services (DIS), the complainant's last booking was in 2018 and he was last released from custody on August 1, 2018. Therefore, the complainant was required to file his complaint no later than August 1, 2019. The Review Board lacks jurisdiction as the complaint is untimely.

2. Excessive Force/Other – An unidentified deputy "dumped" the complainant's head into a trashcan.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, "And then at the 6th or 7th floor I was dumped inside the trash can head first." See Rationale #1.

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*End of Report*