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**EXECUTIVE OFFICER**  
JULIO ESTRADA

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

555 W BEECH STREET, SUITE 220, SAN DIEGO, CA 92101-2938  
TELEPHONE: (619) 238-6776  
FAX: (619) 238-6775

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

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

Remote Meeting via BlueJeans Platform

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

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/evwzaegu> 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 June
- b) Workload Report – Open Complaints/Investigations Report (*Attachment B*)
- c) Case Progress and Status Report (*Attachment C*)
  - 19-018/Thornton – Policy Recommendation (Pending)
  - 19-021/Pitoau – Policy Recommendations (Pending)
  - 18-118/Rosales – Sheriff's Response to CLERB Letter

## 6. BOARD CHAIR'S REPORT

## 7. NEW BUSINESS

- a) Election of Board Officers
- b) Revise Process of Nomination and Selection of CLERB Board Members

## 8. UNFINISHED BUSINESS

- a) Detention Facility Subcommittee Update
- b) 2019 Annual Report

## 9. BOARD MEMBER COMMENTS

## 10. SHERIFF/PROBATION LIAISON QUERY

## 11. CLOSED SESSION

- a) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Executive Officer (Subdivision (b)(1) of Government Code Section 54957)
- b) PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE  
**Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).

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

## CASES FOR SUMMARY HEARING (6)

### 17-134

1. Death Investigation/In-Custody Overdose – On 11-20-17, Shameka Phillips died while in the custody of the San Diego County Sheriff's Department (SDSD).

Recommended Finding: Action Justified

Rationale: On 11-20-17, while in the custody of the SDSD at the Las Colinas Detention and Reentry Facility (LCDRF), Phillips was found unresponsive in her cell. Deputies immediately initiated life-saving measures, requested jail medical staff, and summoned emergency medical services. Jail medical staff expeditiously responded and continued life-saving measures, and one dose of Naloxone was administered. Paramedics arrived on scene and took over advanced life-saving measures, administered two additional doses of Naloxone and transported Phillips, via ambulance, to Sharp Grossmont Hospital. Prior to transport, paramedics were able to get a return of spontaneous circulation and a pulse. Upon her arrival to the hospital, advanced cardiac life-support measures were continued. Phillips was admitted to the Intensive Care Unit (ICU). The night of 11-20-17, Phillips went into cardiac arrest and despite efforts to revive her, she failed to respond, and her death was pronounced. Phillips was transported to the County of San Diego Medical Examiner and on 11-21-17, an autopsy was performed on her body. No trauma was noted on Phillips body and her cause of death was determined to be methamphetamine, morphine, and gabapentin toxicity. The manner of death was determined to be accidental. A review of jail records and witness statements indicated Phillips had a history of illicit drug abuse. Detective's Investigative Reports indicated Phillips purchased illegal drugs from another inmate while in custody. On 11-19-17, after deputies received information of alleged contraband in the module, an unscheduled search was conducted and a K-9 was used, however, no other illicit drugs were found. San Diego Sheriff's Department Detention Services Bureau Policies and Procedures (DSB P&P) Section I.41 titled "Inmate Cell Searches" states in part, to ensure protection for inmates and staff by providing a safe and secure environment free of contraband, weapons, and excessive personal property. Unscheduled Cell Searches are for the purpose of preventing violence, preventing escape, or controlling contraband. The evidence indicated that Phillips was properly classified upon her entry into the SDSD jail system after her 11-17-16 arrest. And one day prior to her death, an unscheduled cell search with a canine, did not uncover any contraband. Jail records and video surveillance indicated that all safety/security checks were completed timely and per policy. 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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### 19-037

1. Death Investigation/In-Custody Suicide – Ivan Ortiz used a plastic bag to suffocate himself at the San Diego Central Jail on March 18, 2019.

Recommended Finding: Sustained

Rationale: On 03-18-19, while housed alone in a psychiatric medical observation cell, twenty-six year old Ivan Ortiz was discovered unresponsive with a plastic bag over his head. 911 was called and staff initiated life-saving measures until Ortiz was transported to UCSD Medical Center. While at the hospital, Ortiz went into cardiac arrest several times until his death was pronounced. The Medical Examiner's Office reported his cause of death was *asphyxiation due to plastic bag over head and neck and manner of death suicide*. According to Sheriff's records, Ortiz was placed in specialized housing in June 2018. After a suicide attempt on 12-06-18, he went to Tri-City Hospital for further treatment. Upon discharge, Ortiz was initially placed in a safety cell until cleared on 12-10-18 and the admitted to the Psychiatric Security Unit (PSU) where he remained until deceased. According to Detentions Policy J.4, Enhanced Observation Housing (EOH) is a temporary placement for staff to observe and assess those who present an elevated risk for suicide, but do not require placement in a safety cell, which is utilized for actively suicidal inmates. On 03-17-19, in-between a thirty minute check, Ortiz obtained a plastic bag that he placed over his head for approximately twenty-one

minutes. During a check shortly thereafter, a deputy found Ortiz with a furrow mark on his neck and a makeshift noose constructed of a towel. Ortiz relayed that he was “feeling sad and depressed” and he felt like “ending his life.” He was medically evaluated, placed in an Observation cell with suicide precautions, and provided a safety garment and security blanket. Please note that medical staff/determinations reside outside CLERB’s jurisdiction. On 03-18-19, at 3:58am, Ortiz was given a breakfast meal in a plastic bag, which he retained and concealed for almost twelve hours. Specific to San Diego Central Jail operations, Green Sheet J.4.C.1, EOH Housing, restricts all plastic bags (food, trash, etc.) in the EOH module and from every EOH inmate. Because Ortiz had “suicide precautions,” security checks were done every thirteen minutes. Video evidence confirmed that Ortiz’s last movement(s) were at about 3:40pm and he was discovered by staff approximately eight minutes later. The evidence supported that staff failed to keep a suicidal inmate safe from self-harm and the conduct was not justified. Following this event, SDSD updated their staff and policies to implement additional precautionary measures in an attempt to prevent further loss of life.

2. Misconduct/Procedure – Deputy 2 failed to remove an object Ortiz used for self-harm.

Recommended Finding: Sustained

Rationale: The complainant reported, “On March 19 [sic], 2019, my son Ivan Ortiz (DOB: 1/28/93) died in the custody of the San Diego County Central Jail. The Jail knew that Ivan suffered from a serious mental health condition. Ivan had previously hurt himself in the jail, breaking his jaw. Ivan had to be hospitalized. Ivan’s attorney had notified the Jail that Ivan was at risk for self-harm. A doctor at UCSD advised that Ivan died by suffocation by the use of a plastic bag. Given the fact that Ivan had a history of attempted suicide, Ivan should not have had access to a plastic bag or any other item used to commit suicide. We ask that CLERB investigate the circumstances around Ivan’s housing, monitoring, medical and mental health care, and the circumstances around Ivan’s death.” Ortiz was housed alone in an Observation Cell in a specialized housing unit, where safety checks were conducted every thirteen minutes. According to a Scene and Briefing Report, Observation Cell #2 had a metal door with clear glass on the top portion of the door and on the bottom portion of the door. Written on the top portion of the window were the words “Ortiz” “No Spoon” “SP,” (“suicide precautions”). Just above the intercom, mounted high on the ceiling of the cell, was a video surveillance camera. Deputy 2 was given instructions during briefing that Ortiz was not to receive a plastic spoon. On 03-18-19, at 3:58am., Ortiz was provided his breakfast meal by Deputy 2. The cold portion was not removed from a plastic bag. Ortiz took his meal, placed it on the floor, and returned to his bed to sleep. Detentions Policies J.1, Safety Cells, and J.4, Enhanced Observation Housing, mirror one another in their requirement that a deputy providing a meal must ensure there are no items that the inmate may use to inflict injury to self. The evidence supported that Deputy 2 gave Ortiz a meal in a plastic bag and (inadvertently) left the means for the inmate to self-harm. The evidence supported the allegation and the act or conduct was not justified.

3. Misconduct/Procedure – Deputies 1 and/or 3 prevented the decedent’s family from having a deathbed visit.

Recommended Finding: Action Justified

Rationale: The complainant reported, “After Ivan was found in his cell nonresponsive, they transported him to UCSD Hospital. Ivan was still breathing. The doctor attempted to take the family to see Ivan to say goodbye. A deputy prevented me and my daughter from seeing Ivan. The deputy told us to drive to the Jail to obtain a permit to see Ivan. We drove to the Jail and waited for over half an hour. The watch commander then told us that we would not see Ivan anyway because he had just died.” Deputy 3 was the guard assigned to Ortiz at the hospital, however, it was Deputy 1’s decision/responsibility to notify family members and/or permit visitation. Sheriff’s Policy M.5, Medical Emergencies, stated that when an inmate is admitted to a hospital for treatment of a serious illness or injury, the watch commander shall: In situations where the wishes of the inmate cannot be determined due to the severity of the illness or injury, contact shall be made. Detentions Policy P.9, Social Visiting outlines the requirements for visits with inmates at a hospital. Special visits are only allowed for inmates who are considered in grave condition and are under guard at hospitals and require that the person desiring a visit must make the request at the appropriate detention facility for a Hospital Visiting Pass (J-65 form) for approval. Deputies will not admit visitors to see inmates unless the visitors have in their possession an approved hospital pass and proper identification. Other policies that applied to this situation were M.7, Inmate Deaths, which states that the Medical Examiner will then notify the decedent’s family of the inmate’s death. If a family member calls to inquire about the status of a recently deceased inmate, the watch commander should take down the caller’s personal information (name,

relationship, and call back number). The watch commander shall contact the Medical Examiner's office and determine if the next of kin has been notified of the death. If the family has not yet been notified, the Medical Examiner will return the call. If the family has already received notification, the watch commander will call the family member back and provide information. According to a deputy's report, Ortiz was declared deceased at 8:27pm and Deputy 1 was notified by 8:30pm. At 11:00pm, a Medical Examiner Investigator permitted the family to enter the hospital room and be with Ortiz. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however it is privileged per the Peace Officer Bill of Rights and cannot be publicly disclosed. The evidence showed that the conduct that occurred, was lawful, justified, and proper.

#### **PROPOSED POLICY RECOMMENDATION:**

1. CLERB respectfully requests that the following stricken language from previous versions of this policy be reinstated into DSB Policy J.5, Inmate Suicide Prevention Practices & Inmate Safety Program, for subsection(s) I. A. 3 to specifically to include "medical, family, etc."

##### **I. RISK FACTORS FOR ISP HOUSING ASSESSMENT**

- A. The following are identified high suicide risk factors that when identified, require further assessment by the facility gatekeeper for consideration of placement into an ISP housing.

3. The inmate states he/she is suicidal and/or made suicidal statements to sworn staff, ~~medical, family, etc.~~

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#### **19-074**

1. Misconduct/Truthfulness – Unidentified deputies told a victim that the complainant mistreated her dogs.

Recommended Finding: Action Justified

Rationale: The complainant stated there was a false report to a victim about two dogs that he fed/nourished. Sheriff's Policies 2.41, Departmental Reports and 2.46, Truthfulness prohibits, inaccurate, false or improper information. According to an Arrest Report, the complainant was arrested for stealing a victim's vehicle that had dogs inside. Body Worn Camera (BWC) evidence at the scene confirmed that an elder canine was lethargic and unresponsive due to the excessive temperature inside the vehicle. The complainant left custody and was unavailable for clarification as he did not maintain contact with CLERB and was transient. Other BWC and medical records were reviewed and supported that the complainant was under the influence of illegal narcotics and/or suffering from mental illness; he was found not to be credible in his recall of these events. The evidence showed that the actions that occurred were lawful, justified, and proper.

2. Misconduct/Procedure – Unidentified deputies failed to take action against a victim who physically abused the complainant.

Recommended Finding: Action Justified

Rationale: The complainant reported that the victim "raped" him and "they" did not want to "report the claim." Sheriff's Policy, 2.51, Arrest, Search and Seizure prohibits deputies from making an arrest that is not in accordance with law and established departmental procedures. The complainant left custody and was unavailable for clarification as he did not maintain contact with CLERB and was transient. BWC confirmed that the complainant was interviewed; his statement and alleged injuries were documented and photographed. Other BWC and medical records were reviewed and supported that the complainant was under the influence of illegal narcotics and/or suffering from mental illness; he was found not to be credible in his recall of these events. The evidence showed that the actions that occurred were lawful, justified, and proper.

3. Misconduct/Procedure – Unidentified deputies did not forward photographic evidence to the District Attorney's Office.

Recommended Finding: Action Justified

Rationale: The complainant reported that three pictures of his "flesh wounds" were taken, but "they" failed to deliver them to the DA's office and failed to file charges. The complainant was under the influence of illegal narcotics and/or suffering from mental illness; he was found not to be credible in his recall of these events. The complainant left custody and was unavailable for clarification as he did not maintain contact with CLERB and was transient. According to an Officer's Report, case evidence was submitted to the District Attorney's Office for prosecution of the complainant. The Division of Inspectional Services confirmed that the complainant pled guilty to a felony via plea-bargain on this arrest. The evidence showed that the actions that occurred were lawful, justified, and proper.

4. Discrimination/Gender – Unidentified deputies treated the male complainant different from an elderly female victim.

Recommended Finding: Action Justified

Rationale: The complainant stated, "I've been discriminated due to gender male. And age. Since the victim is older." Sheriff's Policy 2.53, Discrimination, prohibits prejudice or harassment based upon gender or age. The complainant failed to provide further information and/or evidence to support his assertion. BWC evidence confirmed that there was no violation of policy or evidence of misconduct. The complainant was under the influence of illegal narcotics and/or suffering from mental illness; he was found not to be credible in his recall of these events. The evidence showed that the actions that occurred were lawful, justified, and proper.

5. Misconduct/Procedure – Unidentified deputies did not secure the complainant's property at the time of his arrest.

Recommended Finding: Not Sustained

Rationale: The complainant stated, "There was property of mine in the vehicle the sheriff did not obtain any of the property. I had a google chrome laptop. White, clothes, watch phone, debit cards. ID information. And the victim now may possess confidential information in the laptop and hack my bank account due to negligence." Sheriff's Policy 2.39, Processing Property, mandates that deputies cannot remove or withhold any property found or obtained in connection with the performance of their duties, except in accordance with Department procedures. BWC evidence verified the presence of a laptop computer amongst various items in the stolen vehicle. A Public Assistance "EBT" (electronic benefit transfer) card in the complainant's name confirmed he had dominion and control of the stolen vehicle. According to the Booking Intake/Personal Property Inventory form dated 06-10-19, "a sealed bag with inmate property was delivered to the jail;" notated for the complainant's signature was, "handcuffed/refused." Per the Division of Inspectional Services, there were no Incoming/Outcoming Property Receipts. The complainant left custody and was unavailable for clarification as he did not maintain contact with CLERB and was transient. There was insufficient evidence to either prove or disprove the allegation.

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**19-076**

1. Misconduct/Discourtesy – Deputy 1 contacted the complainant by calling, "Hey Bum, hey bum."

Recommended Finding: Not Sustained

Rationale: The complainant reported that on June 23, 2019, at approximately midnight, he finished using his metal detector at a beach, and walked up a park's pathway that allowed access to the beach, except for between the hours of 2-4 a.m. The complainant said he saw four "cop cars" that were escorting homeless transients from the park area. The complainant walked away from the scene to a trashcan to separate his garbage. He said that a bright light was shone into his face and Deputy 1 called to him, "Hey Bum, hey bum." The complainant responded, "I'm not a bum!" Sheriff's Policy 2.22, Courtesy, mandates that deputies be courteous to the public and prohibits insolent language. Sheriff's Policy 2.53, Discrimination states

employees shall not express any prejudice based upon a person's lifestyle or similar personal characteristics. Deputy 1 and a witness deputy provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however it is privileged per the Peace Officer Bill of Rights and cannot be publicly disclosed. According to the Patrol Manual policy for BWC, the goal of the BWC system is to provide an additional layer of documentation for events, actions, conditions, and statements... What started off as a simple exchange between Deputy 1 and the complainant escalated into a detention to which the complainant explained was because he was disrespected. Statements with respect to this allegation were in conflict and the lack of BWC problematic, as it would have been definitive proof. The complainant was consistent and credible throughout this investigation, but absent an audio-recording there was insufficient evidence to prove the allegation.

2. Misconduct/Procedure – Deputy 1 failed to activate his Body Worn Camera (BWC).

Recommended Finding: Sustained

Rationale: While investigating the complainant's allegations, a policy violation was found that the complainant would not have known was a requirement, but impacted the outcome. Deputy 1 detained the complainant, but failed to activate his BWC as required by policy. According to their guidelines, the Sheriff's Department is intent upon recording all law enforcement related contacts. Specifically, Sheriff's Policy 6.131, Body Worn Camera, (BWC) states that deputies shall activate the BWC to record all law enforcement related contacts to include issuing of citations, which is what subsequently occurred during this contact. Deputy 1 was trained and authorized to use Body Worn Camera, (BWC) however, a recording did not take place until a supervisor came on scene. Clarification could not be sought as Deputy 1 declined to participate in an interview as permissible by Penal Code Sections 832.5, 832.7, and the Public Safety Officers Procedural Bill of Rights, Government Code Sections 3300 et. Seq. According to the Patrol Manual policy for BWC, the goal of the BWC system is to provide an additional layer of documentation for events, actions, conditions, and statements... What started off as a simple exchange between Deputy 1 and the complainant escalated into a detention to which the complainant explained was because he was disrespected. Statements with respect to this allegation were in conflict and the lack of BWC problematic as it would have been definitive proof. The evidence supported the allegation and the act or conduct was not justified.

3. Misconduct/Discourtesy – Deputy 1 threatened to take the complainant's equipment.

Recommended Finding: Not Sustained

Rationale: The complainant reported that Deputy 1 threatened to take his metal detecting equipment. Sheriff's Policy 2.22, 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. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however it is privileged information per the Peace Officer Bill of Rights and cannot be publicly disclosed. Based upon evidence obtained through an Encinitas Parks supervisor, the justification provided by the deputy was disproven, and clarification could not be considered, as Deputy 1 declined to participate in an interview as permissible by Penal Code Sections 832.5, 832.7, and the Public Safety Officers Procedural Bill of Rights, Government Code Sections 3300 et. Seq. The complainant was consistent and credible throughout this investigation, but absent an audio-recording there was insufficient evidence to prove the conflicting statements.

4. Misconduct/Procedure – Deputy 1 refused to provide his badge number upon request.

Recommended Finding: Not Sustained

Rationale: The complainant reported that Deputy 1 refused to provide his badge number and said, "I also included a picture of the front and back of the card that the deputy provided me with after his multiple refusals of providing me with his badge number and supervisor's presence." A badge or ARJIS (Automated Regional Justice Information System) number is synonymous to a layman unfamiliar with law enforcement terminology. Sheriff's Policy 2.20 Identification states that sworn employees shall carry their identification cards on their persons at all times, except when impractical or dangerous to their safety or to an investigation. While on duty, all employees shall furnish their first and last name and ARJIS number to any person requesting that information, except when the withholding of such information is necessary for the performance of police

duties. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however it is privileged information per the Peace Officer Bill of Rights and cannot be publicly disclosed. The complainant provided a front/back copy of the business card he was provided by Deputy 1 that did not include a personal identification number as required by policy. However, a citation given to the complainant contained the required information. Deputy 1 exercised his right to decline participation in an interview with CLERB investigators present pursuant to Penal Code Sections 832.5, 832.7, and the Public Safety Officers Procedural Bill of Rights, Government Code Sections 3300 et. Seq. Statements with respect to this allegation were in conflict and the lack of BWC problematic as it would have been definitive proof. However, absent an audio-recording there was insufficient evidence to prove the conflicting statements.

5. Misconduct/Procedure – Deputy 1 refused to call for a supervisor.

Recommended Finding: Action Justified

Rationale: The complainant reported that Deputy 1 refused to call for a supervisor. While there is no policy that command staff be summoned, Computer Assisted Dispatch (CAD) records and Body Worn Camera evidence confirmed that Deputy 2 subsequently responded to this scene. Deputies provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however it is privileged information per the Peace Officer Bill of Rights and cannot be publicly disclosed. As there was no policy requirement for a supervisor to be called, and one did respond, the evidence confirmed the action that occurred was lawful, justified, and proper.

6. False Arrest – Deputy 1 issued the complainant a citation for accessing a beach after hours.

Recommended Finding: Sustained

Rationale: The complainant reported that Deputy 1 threatened to arrest him multiple times and Deputy 2 responded to the scene, and supported his deputy in issuing the complainant a citation for accessing the beach after hours. The complainant provided photographs of the posted signage and stated, "I have contacted parks and recreation and they too have confirmed the beach hours of closure 2am-4am." The complainant was cited for a violation of a city municipal code and on 06-25-20, Deputy 1 submitted a Citation Amendment for dismissal as permitted by Sheriff's Policy, 6.76 Citation Amendment And Dismissal, when, in the interest of justice, the issuing deputy determines the citation should be amended or dismissed. Encinitas Municipal Code 8.04.150 Hours of Operation, states that within any City beach, park, or recreational trail, it shall be unlawful for any person to remain upon such property or any part thereof, or use any of the facilities or equipment therein, or permit any vehicle to remain thereon, except between the posted hours of any day when such area is open for public use. An Encinitas Parks Supervisor provided a map to clarify this issue. The beach area has restricted hours from 2-4am. The park and parking lot are restricted from 10pm-5am. The complainant was lawfully on the beach during unrestricted hours. As he exited the beach to go to his vehicle - parked legally on a city street - he walked along a designated beach access pathway and stopped to throw away trash. It was at this point that Deputy 1 made contact on the incorrect belief that the beach was closed. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however it is privileged per the Peace Officer Bill of Rights and cannot be publicly disclosed. Deputy 1 exercised his right to decline participation in an interview with CLERB investigators present pursuant to Penal Code Sections 832.5, 832.7, and the Public Safety Officers Procedural Bill of Rights, Government Code Sections 3300 et. Seq. The evidence supported that the complainant was lawfully on a beach during unrestricted hours and used a designated pathway to exit the beach when detained by Deputy 1, who's conduct was not justified.



7. Discrimination – Deputy 1 “harassed and discriminated” against the complainant believing he was homeless.

**Recommended Finding:** Not Sustained

**Rationale:** The complainant reported, “Prior to the supervisor showing up, Deputy 1 threatened to arrest me multiple times even asked me “You ever have cuffs on before” in a very intimidating way. even though I had already answered the first time he had asked me. I told Deputy 1 four times that ‘I am not a bum’!. I’m attaching photos of the three different signs that clearly show I was not past hours. I have contacted parks and recreation and they too have confirmed the beach hours of closure 2am-4am. I believe Deputy 1 assumed I was homeless and an easy target to harass and discriminate against me by calling me a BUM!” Sheriff’s Policy 2.22, Courtesy states in part, that employees shall be courteous and tactful to the public, they must control their tempers, exercise patience and discretion even in the face of extreme provocation, and are prohibited from using insolent language in the performance of duties. Furthermore, Policies 2.53, Discrimination and 2.55, Non-Biased Policing prohibits prejudice or harassment for lifestyle or similar personal characteristics and employees must not consider lifestyle in establishing either reasonable suspicion or probable cause. Deputy 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding, however it is privileged per the Peace Officer Bill of Rights and cannot be publicly disclosed. Deputy 1 initiated this contact on the incorrect belief that the beach was closed; however the evidence supported the complainant’s contention that it was not restricted. The contact then escalated into a detention that should have been recorded by BWC, but Deputy 1 failed to activate it as mandated by policy. Statements with respect to this allegation were in conflict and the lack of BWC problematic as it would have been definitive proof. The complainant was consistent and credible throughout this investigation, but absent an audio-recording there was insufficient evidence to prove the allegation.

## **PROPOSED POLICY RECOMMENDATION(S)**

1. It is recommended that all employee business cards include assigned ARJIS number to comply with Sheriff's Policy 2.20, Identification, in that all employees shall furnish their first and last name and ARJIS number to any person requesting that information.
  2. It is recommended that Sheriff's Policy 3.40, Sheriff's Department Business Cards be modified to require/include an ARJIS number to be in compliance/uniform with Sheriff's Policy 2.20, Identification.
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### **19-091**

1. False Arrest – Deputy 1 and Deputy 2 arrested the complainant.

Recommended Finding: Action Justified

Rationale: According to the complainant's written statement, Deputy 1 and Deputy 2 arrested him. The complainant's reported, "During his questioning, Deputy 1 noticed that [he] was intoxicated and claimed to have smelt alcohol on the complainant's breath. Deputy 1 and Deputy 2 placed the complainant under arrest for Driving Under the Influence. The complainant went to court, but District Attorney's Office failed to file charges against the complainant; all charges were dismissed against the complainant." According to the complainant's SDSA jail booking documents, he was arrested on 01-31-19, by Deputy 1. He was arrested for violation of 23152(g) V.C. - Driving while Under the Influence of drugs and alcohol. According to Deputy 1's Probable Cause Declaration for Warrantless Arrest form, the complainant admitted to being involved in a motor vehicle accident. The complainant admitted to consuming one beer and several pain medications within one hour prior to driving. During his contact with the complainant, Deputy 1 noted that the complainant had slurred speech and an odor of an alcoholic beverage emitting from his person. Additionally, Deputy 1 noticed an open alcoholic beverage container in the complainant's vehicle. In Deputy 1's BWC recording, during his interview with the complainant, the complainant admitted to drinking an alcoholic beverage, consuming prescription medications, and driving a vehicle. Additionally, a witness observed the complainant drive through a parking lot and collide with a parked vehicle. According to California Vehicle Code Section 23152(g), it is unlawful for a person who is under the influence of any alcoholic beverage to drive a vehicle.(g) It is unlawful for a person who is under the combined influence of any alcoholic beverage and drug to drive a vehicle. For these reasons, Deputy 1 and Deputy 2 arrested the complainant for driving under the influence. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 failed to return the complainant's property.

Recommended Finding: Sustained

Rationale: According to the complainant's written statement, Deputy 1 failed to return his property. The complainant's reported, Deputy 1 "impounded property from the complainant; a folded pocketknife. Since approximately March 2019, the complainant has attempted to reacquire the property that the deputy impounded. The complainant claimed that he went to the Sheriff's substation, but deputies were unable to locate his property. The Gerber Pocketknife was a passed-on heirloom given to me by my dead brother that I still miss." In Deputy 1's Body Worn Camera (BWC) recording, as he detained the complainant, Deputy 1 informed the complainant that he was going to remove a knife that was on the complainant's pant pocket. Deputy 1 advised that he would place the pocketknife atop of a cement parking barrier pole and said, "It's just going to be right here for when we are done, okay?" With that, Deputy 1 set the folded pocketknife atop of the yellow, cement parking barrier pole, which was a few feet from where he and the complainant stood. After the complainant's arrest, Deputy 1 completed his scene investigation and left the scene. In his BWC recording, Deputy 1 walked past the cement parking barrier pole. The folded pocketknife was observed still placed atop of the cement parking barrier pole. Deputy 1 seemingly did not notice the pocketknife, and inadvertently walked pass the pole without confiscating or impounding the knife. Deputy 1 got into his patrol vehicle and departed the scene. Deputy 1 responded to a Sheriff's Employee Response Form (SERF) with a signed statement and provided relevant information in response to CLERB questions. Additionally, Deputy

1 voluntarily participated in an optional, in-person interview with CLERB and provided additional relevant information. The information Deputy 1 provided during the course of CLERB's investigation 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. The evidence supported the allegation and the act or conduct was not justified.

### **PROPOSED POLICY RECOMMENDATION**

1. It is recommended that the SDSD revises its SDSD P&P Section 6.131 - Body Worn Camera, as well as in its SDSD Patrol Procedures Manual, that deputies be required to activate their BWC, as well as the audio, for all dispatch calls involving contact with citizens and interviews, searches, traffic stops, and more, absent of discussing personal, tactical, and/or sensitive information.

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### **19-116**

1. Death Investigation/In-Custody Drug Related - On 09-16-19, Franklin James July died while in the custody of the San Diego Sheriff's Department.

Recommended Finding: Action Justified

Rationale: On the early morning of 09-16-19, while at the San Diego Central Jail, July was found lying unresponsive in his bunk. Upon being discovered, deputies immediately initiated life-saving measures, requested jail medical staff, and summoned emergency medical services. Sheriff's jail medical staff responded to the scene and continued CPR attempts upon paramedics arrived on scene. Paramedics took over lifesaving efforts and transported July, via ambulance, to UCSD Medical Center Emergency Department. Upon his arrival to the hospital, advance cardiac life-support measures were continued, but when he failed to respond, his death was pronounced. July was subsequently transported to the San Diego County Medical Examiner's Office, and on 09-17-19, an autopsy was performed. No trauma was noted to July's body and his cause of death was determined to be hypertensive and atherosclerotic cardiovascular disease, with diabetes mellitus, obesity, and the toxic effects of methamphetamine listed as contributing factors. The manner of death was "Accident." According to a review of jail documents and jail surveillance video recordings, security checks were performed in a timely manner and in compliance with San Diego Sheriff's Department Policies and Procedures (SDSD P&P). According to jail medical records, July had not requested to see medical and he did not have any complaints. The evidence indicated that July was properly classified upon his entry into the SDSD jail system after his 09-14-19 arrest. During his medical intake screening and subsequent interactions with SDSD medical personnel, July never expressed a concern for his medical well-being. Though toxicological testing was significant for methamphetamine, it was unknown if July was in possession of the illicit drugs prior to his arrest, or if he acquired the illicit drugs during his incarceration. There was no evidence that July 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 on his bunk, 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.

### **PROPOSED POLICY RECOMMENDATION**

1. It is recommended that the SDSD including 'medical emergencies' and 'death' as a reason to make an "Inmate Incident" notation in the Jail Information Management System, Area Activity Summary Report.

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*End of Report*