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County of San Diego
CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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REGULAR MEETING AGENDA
TUESDAY, SEPTEMBER 8, 2020, 5:30 P.M.

Remote Meeting via BlueJeans Platform

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

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/udqrscsd> 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 or 619-238-6776 if you have questions.

3. MINUTES APPROVAL (Attachment A)

4. PRESENTATION/TRAINING

a) NA

5. EXECUTIVE OFFICER'S REPORT

- a) Overview of Activities of CLERB Executive Officer and staff for the month of July
- b) Workload Report – Open Complaints/Investigations Report (*Attachment B*)
- c) Case Progress and Status Report (*Attachment C*)
- d) Sheriff's Department Responses
 - 17-150/Horsey – SDSA Response to Sustained Finding and Policy Recommendation update
 - 19-037/Ortiz – SDSA Response to Sustained Finding and Policy Recommendation update
 - 19-083/Garris-Covington – SDSA Response to Sustained Finding

PENDING RESPONSES

Policy Recommendations

- 17-020 / Lindhardt – SDSA
- 17-150 / Horsey – SDSA
- 19-018 / Thornton – Probation
- 19-021 / Pitoau – SDSA
- 19-037 / Ortiz – SDSA
- 19-076 / Burgess – SDSA
- 19-091 / Brooks – SDSA
- 19-116 / July - SDSA

6. BOARD CHAIR'S REPORT

7. NEW BUSINESS

- a) N/A

8. UNFINISHED BUSINESS

- a) Executive Officer Recruitment, Subcommittee update
- b) Vote to approve proposed changes to CLERB's Nomination and Selection Process
- c) Detention Facility Inspection, Subcommittee update (deferred post pandemic)

9. BOARD MEMBER COMMENTS

10. SHERIFF/PROBATION LIAISON QUERY

11. CLOSED SESSION

- a) PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

Discussion & Consideration of Complaints & Reports: Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).

DEFINITION OF FINDINGS	
Action Justified	The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.
Not Sustained	There was insufficient evidence 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)

19-070

1. Misconduct/Procedure – PO 1 evicted the complainant from his house.

Recommended Finding: Action Justified

Rationale: The complainant stated, “I was falsely accused of verbally threatening the maintenance guy in the condominium community. Based on this false accusation, my probation officer told me I had to vacate my home within 24 hours when he came to my residence with several probation officers, or else I would be arrested and sent to jail.” On 06-07-18, per the San Diego County Probation Department Policy 363.5, Search by Waivers, PO 1 conducted an unannounced contact visit with the complainant at his residence. As part of his duties, PO 1 also interviewed the maintenance employees at the condominium complex the complainant lived in. The employees relayed to PO 1 that the complainant had accused them of closing the automated gate on him and had threatened them. The complainant told the maintenance worker, “you better watch yourself; I am not kidding.” The maintenance worker and his wife had previously filed a Temporary Restraining Order (TRO) against the complainant for previous threats. The maintenance worker contacted the Sheriff’s Department and although no crime report was written, the maintenance worker was given a Sheriff’s Department Incident Number. PO 1 believed the complainant posed an imminent risk to them, and therefore directed him to move out of the house. Per Probation Department Policy 16.14, Arrest Powers, and per Penal Code Section 1203.2(a), which gives Probation Officers authority to re-arrest probationers during the probation period (for probation violations,) PO 1 lawfully told the complainant that per Probation Policy 402.3, Violations of Supervision, he would be arrested if he failed to vacate the home. The evidence showed that the alleged act or conduct did occur but was lawful, justified, and proper.

2. Misconduct/Procedure – PO 1 required a second psychiatric opinion.

Recommended Finding: Action Justified

Rationale: The complainant stated, “PO 1 told me to leave my home. He said that I would need to get a psych evaluation stating that I am stable to be able to go back to my home.” Per the Superior Court of California Court, the complainant was sentenced to be placed on Supervised Probation in lieu of prison time. The terms of his probation included, but were not limited to: Follow such course of conduct that the Probation Officer communicates to the defendant, which included to participate in treatment, therapy, counseling, or other course of conduct as suggested by validated assessment tests and to attend and successfully complete psychiatric, individual, group, substance abuse dual diagnosis and cognitive behavioral therapy as directed. The complainant was directed to move out of his residence, and he complied. The complainant was also directed to contact an independent forensic psychiatrist for a second forensic psychiatric evaluation. The evidence showed that the alleged act or conduct did occur but was lawful, justified, and proper.

3. Misconduct Procedure – PO 1 did not allow the complainant to return to his house.

Recommended Finding: Action Justified

Rationale: The complainant stated, "A doctor evaluation stated I was healthy and stable. I then tried to contact PO 1 to inform him that my psychiatrist did an evaluation and she wrote that I am stable. Finally, after a week of trying to contact PO 1, I got a hold of him. When I told him I did what he said I needed to do to be allowed back at my house, by getting cleared as stable (not in a manic state), he still wouldn't allow me to go back to my house. He lied, and then stated I now had to get a second opinion on my mental health by another mental health professional." The complainant provided two clinical notes from the psychiatrist he was seeing. Both clinical notes were reviewed during this investigation and confirmed the complainant's diagnosis and stated that the symptoms that typically accompany the disease, were stable. The doctor confirmed that one of the characteristics of the disease was a manic state, which the complainant had admitted having. Despite the medical notes and the explanation provided by the complainant, he was ultimately not allowed to continue to live in his residence due to the allegations made against him. Probation contact notes do not list a psychiatric evaluation as a condition for the complainant to return to his residence. The reason for not being allowed to return was the violation of the terms of his condition, which included "do not use threats, or violence on another person." The evidence showed that the alleged act or conduct did occur but was lawful, justified, and proper.

4. Misconduct/Procedure – PO 1 required weekly appointments for the complainant when he was not going to be available.

Recommended Finding: Action Justified

Rationale: The complainant stated, "During this time, PO 1 also would make appointments for me to go see him on a weekly basis. Sometimes he wouldn't even be there when I came for our appointments." The evidence documented a total of 76 Contact Reports from 04-17-17 through 10-29-18, with the complainant at various Probation Offices and with various Probation Officers. PO 1 first contacted the complainant on 08-18-17 and saw him on more consistent basis as evidenced in the Probation Contact Log. All 76 contacts were reviewed and none of them showed PO 1 being unavailable for the complainant. Towards the end of his probation term, the complainant was given appointments at the North County Probation Office, as that office was closer to where the complainant was living. Conversely there were several notes indicating that the complainant failed to answer his phone when called by PO 1. The terms of the complainant's condition included to report to the PO as directed and follow such course of conduct that the PO communicates to the complainant. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

5. Misconduct/Procedure – PO 1 required the complainant return to San Diego from Los Angeles.

Recommended Finding: Action Justified

Rationale: The complainant stated, "Even during my transfer to Los Angeles, he would make me drive to San Diego to just check in, which was a waste of my time." The evidence revealed that on 07-11-18, the complainant's petition to transfer his supervised probation to the County of Los Angeles was accepted. By 08-14-18, the complainant had yet to submit the required documentation for transfer and failed to follow up on other requirements to complete his transfer. The complainant was given a 30-day travel pass to reside with his aunt in Los Angeles County. On 09-10-18, the complainant was notified that the court date to complete the transfer was set for November. The complainant was provided another 30-day travel pass for Los Angeles County. The complainant was given an appointment in October at the North County Probation Office. The Complainant continued to receive 30-day travel passes in anticipation of the Jurisdictional Transfer being granted. PO 1 reminded him of the upcoming jurisdictional hearing scheduled for 11-09-18 and that until the transfer was authorized for the court, per the County of San Diego Probation Department Policy 400.10 Transfers While Under Supervision, the complainant still needed to report as needed to the San Diego Probation Offices. He was told by PO 1, based on living outside the county, that for his convenience, he will report to a Probation Department Office in the North County on 10-12-18. The complainant reported as directed. When the Jurisdictional Transfer to Los Angeles County was completed, there were no further request to return to San Diego to report to any of the San Diego County Probation offices. The evidence shows that the alleged act or conduct did occur but was lawful, justified, and proper.

19-078

1. Death Investigation/In-Custody Drug-Related – Michael Bush was found unresponsive in a holding cell at the San Diego Central Jail (SDCJ) on 07-02-19.

Recommended Finding: Action Justified

Rationale: On 07-01-19, Michael Bush was involved in a domestic disturbance with his girlfriend's family members in Imperial Beach, and was placed under citizen's arrest by the Sheriff's Department. At approximately 9:22pm, Bush was scanned and booked into custody at SDCJ. During his medical evaluation, Bush was noted to have an elevated blood pressure reading, 191/110, and was placed into a holding cell on the second floor of the jail. On 07-02-19, during breakfast distribution at approximately 4:17am, a deputy discovered Bush unresponsive. Verified by surveillance video, Bush slid down the wall to the floor of his cell at about 3:20am and did not move again after 3:30am. Life-saving measures were undertaken by deputies, medical staff, and emergency personnel until approximately 4:46am, when Bush was pronounced dead. An autopsy was conducted and a plastic baggie was found near the exit of Bush's stomach. The cause of death was acute methamphetamine intoxication due to a ruptured plastic bag in the stomach with ischemic cardiomyopathy listed as contributing, and the manner of death was accidental. Toxicology testing was positive for methamphetamine, amphetamine, and doxylamine. According to Bush's estranged spouse, the decedent had a medical history significant for hypertension, unspecified cardiac issues, and past illicit drug abuse. The evidence supported that Bush was a Book and Release (B&R) inmate who was properly classified upon his entry into the SDSD jail system, and that hourly security checks were conducted in compliance with policy and there were no late entries. When specifically asked during his medical intake screening, Bush denied that he swallowed or hid drugs in any body cavity, and his Body Scan image did not detect contraband. Bush told another inmate that he had "swallowed his stash," but there was no evidence that Bush or the cellmate expressed any concerns about Bush's well-being to medical or sworn personnel. Surveillance video inside the holding cell, provided evidence of the measures taken upon discovery by deputies and medical staff, who followed medical emergency protocol in compliance with detention policies. 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 actions that occurred were lawful, justified, and proper.

19-079

1. Misconduct/Procedure – Unidentified deputies denied the complainant mail.

Recommended Finding: Not Sustained

Rationale: The complainant stated, "I been deprived of my manhood since day one. To be also denied my personal mail and other items such as books, phone calls, commissary etc. for no reason is sinister." On 05-08-19, the complainant received mail from Amazon that was rejected and returned to sender. The content of that mail was a hard bound book. According to SDSD DSB P&P Section P.3 titled, Inmate Mail, Inmates shall be allowed to receive and possess U.S. mail, incoming letters, confidential/legal mail and mail from official government agencies. Inmates may also receive electronic email messages, periodicals, magazines, and new books. Magazines, periodicals, and new soft covered books delivered to the facility by publishers or bookstores via the U.S. Postal Service may be accepted. All parcels containing new books will be forwarded to the watch commander or designee for inspection and approval. The subject matter of some magazines, periodicals and new soft covered books shall establish whether or not they are allowed in the detention facility housing units. The following items are not usually allowed inside the facility due to their construction or subject matter, hardbound books of any nature. Other than the item rejected per policy, there was no evidence that any additional correspondence and/or packages were rejected. The evidence received and reviewed did not support the allegations that the complainant was deprived of his mail. Attempts were made to obtain additional information from the complainant, however, after he was released from custody he failed to maintain contact with CLERB. Absent additional information from the complainant, there was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Procedure – Unidentified deputies denied the complainant commissary.

Recommended Finding: Not Sustained

Rational: The complainant stated, “I been deprived of my manhood since day one. To be also denied my personal mail and other items such as books, phone calls, commissary etc. for no reason is sinister.” SDDS Detention records received during CLERB’s investigation included the complainant’s commissary activity and invoices. The activity showed regular deposits to his account, providing him the opportunity, as indicated by the invoices, to make frequent commissary purchases for food and hygiene products. According to SDDS DSB P&P Section T.9 titled, Sheriff’s Commissary, the ability to order from commissary will be offered to inmates at all detention facilities. Inmates are limited to a bi-weekly purchase not to exceed \$200 or \$100 per order. Purchases of phone time and orders placed via website, by an outside party, are independent of these caps and can be ordered in unlimited quantities. The evidence received and reviewed did not support the allegation that the complainant was deprived of his commissary. Attempts were made to obtain additional information from the complainant, however, after he was released from custody he failed to maintain contact with CLERB. Absent additional information from the complainant, there was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Procedure – Unidentified deputies denied the complainant telephone calls.

Recommended Finding: Not Sustained

Rationale: The complainant stated, “I been deprived of my manhood since day one. To be also denied my personal mail and other items such as books, phone calls, commissary etc. for no reason is sinister.” Detention records received during CLERB’s investigation included the complainant’s commissary activity and invoices. The activity showed regular deposits to his account, providing him the opportunity, as indicated by the invoices, to purchase phone time on a frequent basis. Forty-two purchases for phone time were made by the complainant. The evidence received and reviewed did not support the allegations that the complainant was deprived of his phone calls. Attempts were made to obtain additional information from the complainant, however, after he was released from custody he failed to maintain contact with CLERB. Absent additional information from the complainant, there was insufficient evidence to either prove or disprove the allegation.

19-095

1. Misconduct/Discourtesy – Deputy 1 “exuded violence and hatred” toward the complainant.

Recommended Finding: Unfounded

Rationale: The complainant stated, “ma’am I don’t know how to describe this, this man was exuding just violence and hatred, I mean from the moment he spoke to me it was not like any other cop that had spoken to me before, just incredibly hostile.” According to SDDS 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. 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. Body Worn Camera (BWC) footage was reviewed of the incident. The complainant, from the beginning of the interaction with Deputy 1 was observed to be extremely disrespectful toward Deputy 1. In the BWC footage, the complainant displayed extreme anger and threatening behavior throughout the encounter. Deputy 1 was observed to be courteous, patient and was not disrespectful, violent or angry with the complainant. The BWC footage refuted the complainant’s allegation that Deputy 1 was disrespectful toward him. The evidence showed the alleged act or conduct did not occur.

2. Misconduct/Procedure – Deputy 1 gave no verbal instructions or warnings to the complainant.

Recommended Finding: Unfounded

Rationale: The complainant stated, “He was not being terribly communicative. He wasn’t really issuing any orders, he just said we’re taking the van, you have five minutes to get your stuff out of there.” From the time

of the encounter with the complainant, Deputy 1 communicated with the complainant, informing him that his vehicle was being towed due to the registration having been expired over six months and parked on a public street. Deputy 1 instructed the complainant several times to remove the items he wanted to take with him before the tow truck arrived. The complainant, displayed extreme anger and frustration due to his vehicle being towed and Deputy 1 listened while the complainant vented. Deputy 1 remained professional and displayed patience with the complainant, even when the complainant was yelling, using foul language and making threats. Deputy 1 provided information to the complainant about what steps he would need to take to get his vehicle back. Deputy 1 instructed the complainant several times to gather what property he wanted out of his vehicle. According to California Vehicle Code (VC) Section §22651 titled, Circumstances Permitting Removal of Vehicle, a peace officer may remove a vehicle located within the territorial limits in which the officer or employee may act, under the following circumstances: If a vehicle is found or operated upon a highway, public land, or an off-street parking facility with a registration expiration date in excess of six months. Additionally, according to SDSD P&P Section 6.37 titled, Towing Policy, when vehicles are towed and/or stored, the removal shall be in compliance with Vehicle Code Section 22651 or other lawful authority. Under no circumstances shall the act of towing and/or storing of a vehicle be used as a means of punishment against any citizen. Deputy 1 did not tell the complainant he had five minutes to get his belongings. Deputy 1 did inform the complainant that he had the time until the tow truck arrived. Once the tow truck arrived, additional time was given to the complainant. The BWC evidence refuted the complainant's allegation that Deputy 1 provide no verbal instructions. The evidence showed the alleged act or conduct did not occur.

3. Illegal Search and Seizure – Deputy 1 broke the window on the complainant's vehicle.

Recommended Finding: Action Justified

Rationale: The complainant stated, "at some point I got into the vehicle and just out of force of habit I slid the door closed and opened the widow at which point he attacked the side of the vehicle grabbing the window, broke the plastic tilt out latches and tried to put the window under his shoulder and shove it up to break the glass off the side of the door." Although the complainant stated he closed the door out of habit, BWC video showed that he had been sitting in the back seat off and on during the duration of his encounter with Deputy 1 and did not close the door. The complainant was sitting in the back seat when the tow truck arrived. As soon as the complainant saw the tow truck, he jumped up out of the back seat, checked the front door to make sure it was locked, then got back into the back seat and closed the sliding door. Deputy 1 informed the complainant that they would have to break the door if he continued. Per his Arrest Report, Deputy 1 stated, "The complainant then entered the van and closed and locked the side sliding door. I told the complainant to exit the van. The complainant refused. I could not see what the complainant was doing so I disengaged the bottom latched of the window attached to the sliding door. The complainant had put a towel up in front of the window so I could not see inside. I reached in and removed the towel and told the complainant to exit the van." Per BWC, Deputy 1 approached the sliding door, took a hold of the window, that was tilted out and pulled on it, causing the closure window latches to be pulled to the outside of the window. According to SDSD P&P Section 2.51 titled, Arrest Search and Seizure, employees shall not make any arrest, search or seizure, nor conduct any investigation or official Department business, in a manner which they know or ought to know is not in accordance with law and established Department policies and procedures. The California Peace Officers Legal Sourcebook (CPOLS) Section 4.18 titled, Search and Seizure – Vehicles, states in part, California law enforcement officers under certain conditions are authorized to impound a motor vehicle. An individual officer's decision to impound must be exercised according to standardized criteria, which include statutory authority for the impound, i.e., Vehicle Code Section 22651. The complainant had placed a towel, hanging on the inside, in front of the window that prevented sight into the vehicle. Deputy 1 reached in removed the towel and was able to hold the window open enough to keep an eye on the complainant. Deputy 1 asked the complainant several times to come out of the vehicle to which he finally complied. The evidence showed that the alleged act or misconduct did occur and was lawful, justified and proper.

4. Excessive Force – Deputies 1 and 2 grabbed the complainant and "slammed him flat into the ground."

Recommended Finding: Action Justified

Rationale: The complainant stated, “This is not the behavior on my part who was trying to resist arrest or someone who was doing anything other than collecting my property. In just a matter of a few seconds or a minute at the most they basically snuck up behind me. I did not see him at all, I guess I was grabbed by her, by my right arm and it was twisted inward rotated counter clockwise towards my body and he must have been right behind me and he must have had his hand on my head and drove me flat and into the ground and I was instantly paralyzed.” Per BWC footage, in the process of retrieving items from his vehicle, the complainant aggressively threw the bumper cover behind him, where Deputy 1 was standing. According to Deputy 1’s report, the car part hit him on the lower legs. BWC footage showed the complainant aggressively throwing the car part, however the footage did not show Deputy 1 getting hit as the deputy’s legs were out of view of the BWC. According to his Arrest Report, Deputy 1 believed the complainant was displaying assaultive behavior and he was going to reach for a larger object in the back of his vehicle to throw at him or Deputy 2 and attempt to cause them harm or great bodily injury. According to Penal Code Section §69 titled, Resisting Executive Officer, every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon the officer by law, or who knowingly resists, by the use of force or violence, the officer, in the performance of his or her duty, is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170, or in a county jail not exceeding one year, or by both such fine and imprisonment. Additionally, Penal Code Section §835(a) titled, Peace Officer Use of Force to Arrest, states in part, a peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance. SDSO P&P Addendum F titled, Use of Force Guidelines, states, 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 should choose the available force option, which is reasonable and necessary for the circumstances at the time. Subjects must not gain the advantage in a physical confrontation; therefore, deputies may need to use a force option that exceeds the subjects force level. Active resistance refers to overt physical actions intended to prevent a deputy’s control. Assaultive behavior is represented by conduct that suggest the potential for human injury. Such behavior may be conveyed through body language, verbal threats and/or physical actions. Aggravated active aggression refers to subject actions that will potentially result in serious injury or death to a deputy or any other person. A deputy encountering any of these suspect actions, can choose a **reasonable (emphasis added)** response to control that subject: Verbal direction or redirection. Refers to verbiage or command given by a deputy. Hands-on control is used as a means of overcoming resistive or assaultive behavior. Hard hands control, powerful hand or leg strikes, carotid restraint, etc., are techniques used to control more assaultive suspects. The BWC footage viewed provided evidence that the complainant was extremely upset about his vehicle getting towed and showed him get increasingly agitated, angry, aggressive and threatening throughout the encounter with deputies. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

5. Excessive Force – Deputy 2 “pulled the complainant’s head up, said, ‘You’re not hurt, get up,’ and dropped the complainant’s head back on the pavement.”

Recommended Finding: Unfounded

Rationale: The complainant stated, “I kept saying I couldn’t breathe and my head was hanging forward and she pulled my head up and said, ‘you’re not hurt, get up,’ and of course I couldn’t, and finally she said, ‘I’m not going to hold your weight up,’ and dropped my head back on the pavement.” After the use of force incident, Deputy 2 stayed with the complainant until emergency medical assistance arrived. The BWC footage showed Deputy 2 assisting the complainant, sitting him up and holding him in different positions. In the BWC footage, the complainant is heard asking Deputy 2 to place him in different positions so he is able to breathe better. According to her Officer Report, Deputy 2 stated, “the complainant began to yell for help and claimed he was paralyzed and could not breathe. I assured the complainant that medics were on the way. The complainant continued to say he could not breathe and even asked me to place him in certain upright positions which I agreed. After a few minutes with the complainant, he appeared to be breathing normally. A few minutes later paramedics arrived.” The BWC footage refuted the complainant’s allegation. The evidence showed that the alleged act or misconduct did not occur.

19-103

1. False Arrest – Probation Officer (PO) 1 re-arrested the aggrieved.

Recommended Finding: Action Justified

Rationale: The complainant reported the following, “My son and I were victims to false accusation and charges. He was a lovely man, he was not a criminal. The charges were false. We were dragged through 2 years of hell backward. He was convicted of some phoney misdemeanor and ended up being placed in jail. He is not jail material.” Based upon a San Diego Police Report dated 10-06-18, the aggrieved was re-arrested at a Probation Office by PO 1 when he violated the terms of his probation. According to Probation records, the probationer damaged a bedroom door, stole from his mother, dissuaded her from reporting the crime, and evaded police by hiding in the residence. Subsequent to the issuance of a Criminal Protective Order (CPO), the probationer violated the CPO on multiple occasions and there were several hundred calls for law enforcement service to the residence regarding family disturbances. According to the report, of particular concern was that the probationer was only out of custody for a couple of weeks prior to violating the Court issued CPO, and demonstrated a complete disregard for the Criminal Protective Order, the safety of the victim, and for the Court ordered conditions of Probation. The evidence showed that the probationer violated the terms of his probation and his arrest was lawful, justified, and proper.

2. Misconduct/Procedure – Deputy 2 failed to submit report(s) to the District Attorney’s Office.

Recommended Finding: Action Justified

Rationale: The complainant stated, “I received information that after a three month delay from the date of death Deputy 2 said he referred the case for prosecution against a suspect to the District Attorney office with the recommendation for prosecution because he strongly believed the suspect prescribed the aggrieved fatal drugs. This was after the token arrest of the suspect for the probation violation made in March even though the suspect admitted the violation of probation in December.? I contacted the DA recently and they responded the reason DA never evaluated the case was they never got the reports submitted and the Sheriff Deputy 1 said he could not determine the seller.” Sheriff’s Policy 2.41, Departmental reports requires that employees submit all necessary reports on time and in accordance with established Departmental procedures. Reports submitted by employees shall be truthful and complete; no employee shall knowingly enter or cause to be entered any inaccurate, false, or improper information, nor omit pertinent information reasonably expected to be included. Deputy 2 was part of a narcotics task force working in conjunction with local and federal authorities. Deputy 2 gathered evidence and presented this case to the District Attorney and US State Attorney’s Office for review. The evidence showed that the actions taken by the detective were lawful, justified, and proper.

3. Misconduct/Truthfulness – Deputy 2 “lied” to the complainant.

Recommended Finding: Unfounded

Rationale: The complainant stated, “Deputy 2 outright lied to me about this referral he said he made .. It was never made. Obviously the DA could not evaluate case. Many Times Deputy 2 represented to me that the suspect was the seller of the drugs that killed the aggrieved. That he was not an informant and sent to the aggrieved and Deputy 2 said he wanted to see suspect charged for this crime. Now I fear suspect a two times felon on probation for the sale of Heroin and Cocaine, (twice) at the time was working with someone else who is protecting him from prosecution for this offense and that is why the referral was not made.” Sheriff’s Policy 2.46, Truthfulness, requires that all written and verbal reports will be truthful and complete. Deputy 2 was part of a narcotics task force working in conjunction with local and federal authorities. Deputy 2 gathered evidence regarding the illicit substances involved in the aggrieved’s overdose, and presented the case to the District Attorney and US State Attorney’s Office for review. Absent an audio-recording there was insufficient evidence to corroborate the conversation(s) that occurred between the complainant and the detective. However, the evidence confirmed that the referral(s) were made and the alleged act did not occur.

4. Misconduct/Procedure – Deputy 2 failed to bring forth or file charges against a suspect in the aggrieved’s death.

Recommended Finding: Action Justified

Rationale: The complainant stated, “I pressed Deputy 2 on charge the suspect and investigate others for death of aggrieved.” When a crime is committed, it is the responsibility of law enforcement to investigate the crime and arrest the suspect(s). Sheriff’s Policy 6.29, Property Control System, outlines the chain of custody and acquisition of evidence, to include narcotics. Once a criminal investigation is finalized, the case is submitted to the District Attorney’s (DA) Office who evaluates whether there is enough evidence to support the charges. The Deputy District Attorney (DDA) represents the People of the State of California and is the entity responsible for bringing forth criminal charges against suspects in courts of law. The San Diego County District Attorney’s Office has the responsibility and authority to investigate and prosecute all felonies in San Diego County, however, they may decline to prosecute or “reject” a case when there is insufficient evidence. According to Deputy 2’s Follow-Up Report, he submitted this case to the DA’s office, as well as the US Attorney’s Office; both the local and federal entities declined to prosecute because of the lack of evidence. On 04-08-19, Deputy 2 informed the complainant that the case was declined because there was no definitive cause of death other than the mixture of narcotics, and because there was no way to prove who provided her son with the drugs that caused his death. The complainant twice refused to confer with the DDA reportedly because “the DA’s office and the judges were corrupt.” The evidence showed that the alleged act or conduct did occur, but was lawful, justified, and proper.

5. Misconduct/Procedure – The Sheriff’s Department “stonewalled/delayed” a case for prosecution.

Recommended Finding: Action Justified

Rationale: According to the complainant, “Sheriff stonewalled and delayed this case never pushing for prosecution as he stated I gave him I gave him a suspect on a “plate” I do not feel death accidental. Death was a planned event. Sheriff did opposite of what he said did not even investigate “blunt trauma” inaccurate external autopsy “another person” I want a criminally investigate and charges brought for death of my son” I got delays and no resolution at all. The suspect is free and back at “selling” not giving Heroin I do not believe the sheriff dept was candid “about death investigation” and intentionally delayed case...” The Medical Examiner’s (ME) Office conducted an autopsy and determined “the decedent died of a mixed drug intoxication due to the combined toxic effects of heroin, methamphetamine, cocaine, and alprazolam. There was no evidence of suicidal intent with his fatal drug overdose, and the manner of death was classified as accidental.” According to the ME report, the only traumatic injuries were several small abrasions on the head and chest, however, they did not contribute to his death. Pertinent dates in Deputy 2’s Follow-Up Report indicated that the death occurred on 12-21-18, and a suspect was interviewed on 01-15-19. Cell phone evidence was forensically evaluated on 02-22-19, but offered no evidentiary value. An additional voluntary statement from the complainant was obtained on 02-28-19. An additional voluntary statement from a suspect was obtained on 04-01-19. The case was forwarded to the DA’s Office and to the US Attorney’s Office, but both declined to prosecute. Sheriff’s Policy 6.95, Criminal Case Rejections: Review Procedure, states that each Sheriff’s command submitting cases to the District Attorney for issuance of a criminal case will establish a system for review of cases that are rejected and will ensure each complaint rejection is analyzed for legal/procedural improprieties and/or any necessary follow-up investigation. Copies of individual case rejections are forwarded to the reporting/arresting deputy and a supervisor for a critique, with the goal of improving performance and identifying training needs. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff’s Department sworn personnel, and the actions taken were lawful, justified, and proper.

20-077

1. Misconduct/Procedure – Unidentified Probation employees “monitored” the complainant.

Recommended Finding: Summary Dismissal

Rationale: The complainant contacted CLERB and lodged a complaint on 07-23-20, alleging unidentified Probation Department employees were “illegally, continuously and electronically monitoring him.” After receiving the signed lodge packet, this investigator completed a request to the Probation Department for records. According to information/verification from the Probation Department, after they reviewed the complaint, it was determined the complainant was not active to probation. Additionally, it did not appear as though the complainant had ever been supervised by the San Diego County Probation Department. The search in Probation records database did show one document from 02-28-96 which was a Presentence Investigation. There was also another case in the Probation system from 1994, however, there were no documents pertaining to it. CLERB Probation liaison conducted an additional check of SDLaw to see if there was any additional information which might help locate information pertaining to the complainant, but those searches did not reveal anything of relevance. Additionally, as the complainant’s complaint did not identify any specific officer or officers, Probation was unable to ascertain if someone may have contacted the complainant as a collateral contact. When Probation searched the complainant’s address, it returned 76 offenders who have provided that address at some point in time to probation. CLERB Probation liaison reached out to Parole and reported that the complainant was not active to Parole either. This case is submitted for Summary Dismissal per CLERB’s Rules and Regulations Section 15 (e) Summary Dismissal; The complaint is so clearly without merit that not reasonable person could sustain a finding based on the facts.

End of Report