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County of San Diego

CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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REGULAR MEETING AGENDA

Tuesday, May 11, 2021, 5:30 p.m.

Remote Meeting via BlueJeans Platform

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

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 shall 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 the below link 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**: <https://primetime.bluejeans.com/a2m/live-event/tyzewish>. 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) CLERB Overview (*Attachment F*)

5. EXECUTIVE OFFICER'S REPORT

- a) Overview of Activities of CLERB Executive Officer and Staff
- b) Workload Report – Open Complaints/Investigations Report (*Attachment B*)
- c) Case Progress and Status Report (*Attachment C*)
- d) Executive Officer Correspondence to Full CLERB (*Attachment D*)
- e) Policy Recommendation Pending Responses
 - i. 17-150 / Horsey – SDSD
 - ii. 18-150 / Morris – SDSD
 - iii. 19-018 / Thornton – Probation
 - iv. 19-091 / Brooks – SDSD
 - v. 20-014 / Pace – SDSD
- f) Policy Recommendation Response
 - i. None
- g) Sustained Finding Pending Responses
 - i. None

6. BOARD CHAIR'S REPORT

7. NEW BUSINESS

- a) Proposed Revision to CLERB Board Policy and Procedure Guidelines (*Attachment E*)

8. UNFINISHED BUSINESS

- a) Detention Facility Inspection, Subcommittee Update
- b) In-Custody Death Review, Subcommittee Update

9. BOARD MEMBER COMMENTS

10. SHERIFF/PROBATION LIAISON QUERY

11. CLOSED SESSION

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

b) PUBLIC EMPLOYEE PERFORMANCE EVALUATION
 Notice pursuant to Government Code section 54957
 Title: Executive Officer, CLERB

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.

NOTICE: THE CITIZENS LAW ENFORCEMENT REVIEW BOARD (CLERB) MAY TAKE ANY ACTION WITH RESPECT TO THE ITEMS INCLUDED ON THIS AGENDA. RECOMMENDATIONS MADE BY STAFF DO NOT LIMIT ACTIONS THAT THE CLERB MAY TAKE. MEMBERS OF THE PUBLIC SHOULD NOT RELY UPON THE RECOMMENDATIONS IN THE AGENDA AS DETERMINATIVE OF THE ACTION THE CLERB MAY TAKE ON A PARTICULAR MATTER.

CASES FOR SUMMARY HEARING (7)

20-026

1. Misconduct/Procedure – Deputy 4 denied hair care services to the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant stated, “I had gone to get my hair and beard trimmed like I had since being arrested. I sat down and the guy started cutting my beard. After about 30 seconds, Deputy 4 started screaming at me stopped my haircut and said get out of the chair we are done.” The complainant’s classification records indicated he had medical instructions for clipper shaves. SDS DSB P&P Section L.7 titled, Razors, states in part, All inmates will have access to a razor on a daily basis except those inmates who have a razor restriction for health and/or safety reasons. Inmate's with a red "M" next to their name indicates a Medical Instruction placed by medical/psychiatric staff. These inmates may be offered an electric razor (clipper shave) in lieu of a razor during scheduled barber days. According to jail area activities, haircuts and clipper shaves were conducted at the time of the alleged incident. The complainant provided witness information and correspondence was sent to the named witnesses, however, none responded to CLERB’s request for information. Deputy 4 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 (POBR) and cannot be publicly disclosed. Absent video surveillance, audio recording, witness statements and jail records of the alleged incident, the evidence was insufficient to either prove or disprove the allegation.

2. Misconduct/Intimidation – Deputy 4 threatened to “slam” the complainant to the ground and take him to the “whole,” (solitary confinement).

Recommended Finding: Not Sustained

Rationale: The complainant stated, “Deputy 4 had a very aggressive demeanor and said if you don’t stop talking to me like this I will slam you to the ground and take you to the whole.” There were no records of any incidents involving the complainant on the day and time of the alleged conduct. According to SDS DSB P&P Section F.5 titled, Inmate Incident Reports, All inmate movements, other than for population management reasons, including applicable inmate actions, shall be documented in the incidents module within the Jail Information Management System (JIMS). Completed incident reports shall be reviewed, approved, forwarded and disseminated as required. Deputy 4 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 (POBR) and cannot be publicly disclosed. Absent video surveillance, audio recording, witness statements and jail records of the alleged incident, the evidence was insufficient to either prove or disprove the allegation.

3. Misconduct/Discourtesy – Deputy 4 “screamed obscenities” at the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant stated, “I thought surly I would be physically harmed. Deputy 4 began to scream at me obscenities.” According to SDSD P&P Section 2.48 titled, Treatment of Persons in Custody, Employees shall not mistreat, nor abuse physically or verbally, persons who are in their custody. Employees shall handle such persons in accordance with law and established Departmental procedures. Deputy 4 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 (POBR) and cannot be publicly disclosed. Absent audio of the interactions between the complainant and Deputy 4 and absent witness statements, there was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Intimidation – Deputy 5 screamed obscenities at the complainant and threatened to “slam” him to the ground.

Recommended Finding: Unfounded

Rationale: The complainant stated, “Deputy 5 told me to sit down on the ground, his actions were very aggressive. He began to scream at me obscenities and told me to shut my mouth or I’m going to slam you to the ground.” At the time of the alleged incident, and confirmed by Jail Deployment Logs, Deputy 5 was not on duty. Attempts were made to contact the complainant for additional information, however, no response was received. As Deputy 5 was not on duty at the time of the alleged incident, the evidence showed that the alleged act or conduct did not occur.

5. Discrimination/Racial – Deputy 4 referred to the complainant as a “white boy, dirtbag piece of shit.”

Recommended Finding: Not Sustained

Rationale: The complainant stated, “Deputy 4 told Deputy 5, all those white boys are the same all piece of shit dirt bags.” It was discovered in the course of CLERB’s investigation that Deputy 5 was not on duty at the time of the alleged incident. Attempts were made to make contact with the complainant for the purpose of obtaining information in order to identify the correct deputies involved. The complainant did not provide a response. SDSD P&P Section 2.22 titled, Courtesy, states in part, Employees 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. Deputy 4 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 (POBR) and cannot be publicly disclosed. Absent audio of the interactions between the complainant and Deputy 4 and absent witness statements, there was insufficient evidence to either prove or disprove the allegation.

6. Excessive Force – Deputies 1-3 “beat up” the complainant.

Recommended Finding: Unfounded

Rational: The complainant stated, “I had been beaten up by the cops, they busted my eardrum in the altercation.” On 10-26-19, jail surveillance video captured a use of force incident between Deputies 1-3 and the complainant. This incident was the only documented use of force with the complainant. The video refuted the complainant’s allegation that Deputies 1-3 “beat him up.” The complainant is observed in the video, as he forced his way past the module gate and into the staff corridor. SDSD DSB P&P Section I.89 titled, Use of Force, states in part, If the employee determines that the use of force is necessary, he/she shall use only that force which is reasonable and necessary for the situation. According to their Use of Force Reports, Deputies 1-3 did not know the complainant’s intent and immediately acted to gain control of the situation. They were observed to take the complainant down to the ground, and detain him. Once on the ground, and in handcuffs, the complainant was reported to be compliant. Records indicated the complainant was taken to medical to be checked and was released back to the module with no injuries noted. There was no evidence that Deputies 1-3 “beat up” the complainant. The evidence showed that the alleged act or conduct did not occur.

20-036

1. Misconduct/Procedure – The aggrieved’s public defender “misled” him.

Recommended Finding: Summary Dismissal

Rationale: In the complainant’s written statement, she reported, “*He [the aggrieved] feels she misled him when she told him to plead guilty and that he would likely only have to spend a couple more months in custody.*” Public Defenders are non-sworn personnel and reside outside CLERB’s 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 or the Probation Department. As such, CLERB lacks jurisdiction and it is requested that this allegation be summarily dismissed.

2. Misconduct/Procedure – Unidentified court personnel miscalculated the aggrieved’s incarceration term.

Recommended Finding: Summary Dismissal

Rationale: In the complainant’s written statement, she reported, “*However, even though the control in case only carried two years, a different judge than his original sentencing judge gave him the upper sentence term including an additional year which is three years. He had already done six months of time in 2017 which was half his term but says he is in currently in custody with the projected release date of 07-22-20, he will end up doing two years of jail time. He believes that is an illegal sentence.*” Court Processing staff members are non-sworn personnel and reside outside CLERB’s 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 or the Probation Department. As such, CLERB lacks jurisdiction and it is requested that this allegation be summarily dismissed.

3. Misconduct/Procedure – The aggrieved’s public defender failed to return the complainant’s and the aggrieved’s phone calls.

Recommended Finding: Summary Dismissal

Rationale: In the complainant’s written statement, she reported, “*He [the aggrieved] has called [his public defender] about 20 times and her boss about 10 times but they have never gotten a return phone call or any response. His mother has also called multiple times and left messages with no response.*” Public Defenders are non-sworn personnel and reside outside CLERB’s 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 or the Probation Department. As such, CLERB lacks jurisdiction and it is requested that this allegation be summarily dismissed.

4. Misconduct/Retaliation - Unidentified court staff “retaliated” against the aggrieved.

Recommended Finding: Summary Dismissal

Rationale: In the complainant’s written statement, she reported, “*Due to the pending civil lawsuit, he [the aggrieved] feels jail and court personnel have tried to retaliate, harass, and treat him unfairly and worse when he otherwise with this is happened at all three other jail he has been to. For example he was transferred from Vista to San Diego Central in October. He had his walker and CPAP machine with him in medical wouldn’t hurt one of the girls on the phone saying, “Yes, he is here in medical with his walker and CPAP machine.” The next thing he knew those were taken and removed to his “property” and he was put in a regular cell and has not had any use of his medical equipment since.*” Non-sworn employees are non-sworn personnel and reside outside CLERB’s 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 or the

Probation Department. As such, CLERB lacks jurisdiction and it is requested that this allegation be summarily dismissed.

5. Misconduct/Procedure - Deputies 1-5 and other unidentified deputies "retaliated" against the aggrieved.

Recommended Finding: Unfounded

Rationale: In the complainant's written statement, she reported, "*Due to the pending civil lawsuit, he [the aggrieved] feels jail and court personnel have tried to retaliate, harass, and treat him unfairly and worse when he otherwise with this is happened at all three other jail he has been to. For example he was transferred from Vista to San Diego Central in October. He had his walker and CPAP machine with him in medical he overheard one of the guards on the phone saying, "Yes, he is here in medical with his walker and CPAP machine." The next thing he knew those were taken and removed to his "property" and he was put in a regular cell and has not had any use of his medical equipment since.*" According to medical records, a jail physician evaluated the aggrieved for his need to have a CPAP. The aggrieved was seen during medical sick call and was not only approved to use a CPAP machine, he was allowed to use his own personal CPAP machine, which his family brought to the jail from home. During his incarceration, the aggrieved was allowed to use his CPAP machine, which was evident in the nightly medical observation reports. According to jail documents and medical records, on the morning of 10-18-19, the aggrieved was transferred from the Vista Detention Facility, to the San Diego Central Jail and ultimately the George Baily Detention Facility. During his transfer between the three jails, deputies made notations in the jail computerized documents; they notated that the aggrieved was transferred with his CPAP, that he was to be housed in the jail's medical unit because of the CPAP, and that medical / health care staff were aware that he had a CPAP machine. Another deputy made a notation that the aggrieved's property was received and described the received property as "1 Bag." On a related note, on 08-07-19, Deputy 1 advised jail nursing staff that the aggrieved arrived to jail with metal reading glasses. Per jail rules and regulations, inmates are not permissible to possess metal framed reading glasses, as they pose a security threat. For this reason, the aggrieved was not allowed to keep the metal frame reading glasses. Nursing staff advised the aggrieved that he could request for an eye examination through medical. In none of the medical records, nor in any of the jail documents, was it noted that the aggrieved used or was approved to use a walker. In the aggrieved's intake medical questioner, it was noted that when the aggrieved was accepted into the jail, that he walked into the intake area without any assistance. The evidence showed that the alleged act or conduct did not occur.

6. Misconduct/Harassment - Unidentified deputies "harassed" the aggrieved.

Recommended Finding: Action Justified

Rationale: In the complainant's written statement, she reported, "*He [the aggrieved] was sent to George Bailey and was greeted by guard saying, "Mr. Diya, welcome back. We've been waiting for you." He was made to wait alone two and one half hours in a cold room while all the other prisoners were immediately processed. Finally he flag down a lieutenant who told them [the deputies/jail staff] to process him.*" According to a SDSD Departmental Information Source, it is possible that an inmate may have been temporarily held in a processing holding cell for a multitude of reasons. An inmate may be held in in a processing holding cell during a Tactical Team callout, last minute housing change from classification, restricted movement due to count, restricted movement due to some spontaneous incident, or any number of reasons due to the operations of the facility. It is not unusual for an inmate to wait in a processing holding cell, as incidents and events sometimes occur within the facility. According to the GBDF Watch Commander's Log, dated 10-18-19, facility count was completed at 11:45am. Additionally, there was a tactical team incident that occurred at approximately 1:00pm. Both of these documented incidents would have delayed jail operations, and thus prevented the aggrieved from being moved to his assigned housing in a timelier manner. The evidence showed that the alleged act or conduct did occur but was lawful, justified, and proper.

7. Misconduct/Procedure - Unidentified deputies failed to return the aggrieved's commissary items.

Recommended Finding: Unfounded

Rationale: In the complainant's written statement, she reported, "*He [the aggrieved] had many purchase items from the store such as cans of tuna many bags of candy and chips when he transferred to George Bailey, but they were never give them back to him.*" According to jail documents, on the morning of 10-18-

19, the aggrieved was transferred from the VDF, to the SDCJ, and ultimately the GBDF. The aggrieved was accepted into housing on 10-18-19, at 1:46pm. Per jail documents, on 10-19-19, at 3:26am, a deputy made a notation that the aggrieved's property was received and described the received property as "1 Bag." A request for the aggrieved's SDSD Inmate Grievance revealed that the aggrieved had not filed any grievances regarding missing commissary. Additionally, there was no other documentation indicating that the aggrieved did not receive his items. The evidence showed that the alleged act or conduct did not occur.

8. Misconduct/Procedure - Unidentified staff failed to give the aggrieved a reduction on his sentence.

Recommended Finding: Summary Dismissal

Rationale: In the complainant's written statement, she reported, "*He [the aggrieved] says that in January, virtually all the other inmates were given a 10% "kick" or reduction in their time. He said that as a non-violent offender with no write-ups, he also should have an eligible for 108 days credit but was not been given any reduction whatsoever.*" Non-sworn employees are personnel and reside outside CLERB's 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 or the Probation Department. As such, CLERB lacks jurisdiction and it is requested that this allegation be summarily dismissed.

9. Misconduct/Procedure - Unidentified deputies tampered with the aggrieved's mail.

Recommended Finding: Not Sustained

Rationale: In the complainant's written statement, she reported, "*He [the aggrieved] gets his mail 1 to 2 weeks late and it has always been open and tampered with and sometimes papers are missing. On one occasion, a court document for his civil suit requiring his signature have a signature line cut off.*" According to SDSD jail documents, there was no evidence that the aggrieved's mail had been held, monitored, or was recorded pursuant to an investigation. The aggrieved did not file any Inmate Grievances to document the complainant's claims that his mail was damaged or never received. It is understood that normally, mail is intact and is provided to inmates; however, sometimes mail is torn when it is inspected for contraband or when it is sorted. Without a specific date to investigate, or a specific deputy named, CLERB was unable to confirm or refute that the complainant's mail was tampered with during his incarceration. According to SDSD P&P Section P.3 titled, "Inmate Mail," inmates shall 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. 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. Absent an audio or visual recording, there was insufficient evidence to either prove or disprove the allegation.

10. Misconduct/Medical - Unidentified Health Care staff failed to provide the aggrieved with medical care.

Recommended Finding: Summary Dismissal

Rationale: In the complainant's written statement, she reported, "*...he [the aggrieved] believes his medical care has been inadequate. He has cancer in his thyroid for which he has not had surgery that was promised to him while in jail. Last fall, his ear, nose and throat doctor, Dr. Bruce Reisman, ordered he be given a pillow or four blankets to help keep his airway open during sleep but he has not been provided any of those. He said many of the other inmates have been provided tennis shoes which he has also asked for, but has only been given hard plastic flip-flops which are exacerbating his swollen ankles and calves and painful feet as well as plantar fasciitis. He reports that he is disable and request help walking but he has not been given any assistance walking by jail personnel or the use of his walker. Four and half months ago he broke his hand. He was not given a cast but just a makeshift wrap and splint. His hands and his thumb especially, have not healed properly. In mid-February, he saw an orthopedic doctor by teleconference call his hand was not set properly and would have to be re-broken and reset with seven screws and a plate. That doctor also said he should be given extra blankets to place under his hand and elevate his swollen legs during sleep. So far he has only the standard one blanket even though two doctors have said he should be given four.*" Jail medical staff are non-sworn personnel and reside outside CLERB's 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 or the Probation Department. As such, CLERB lacks jurisdiction and it is requested that this allegation be summarily dismissed.

11. Misconduct/Procedure - Unidentified deputies failed to take the aggrieved to medical.

Recommended Finding: Not Sustained

Rationale: In the complainant's written statement, she reported, "*In the middle of February, he [the aggrieved] felt chest pain and his arm going numb so he rang the bell. They [unidentified Sheriff's deputies] told him to sit down and wait. He sat there for many hours even through a shift change without getting any medical attention. Instead, the officers [deputies] just ignored him, or told him to be quiet and quit bugging them when he asked a different officer for help. None of them did anything whatsoever for him.*" According to jail medical records, during the month of February 2020, the aggrieved was seen in medical five times for various complaints and for follow-up request. Additionally, it was found that the aggrieved submitted Inmate Request and/or Inmate Grievance for medical issues on five separate occasions. In none of the medical grievances or medical request did the aggrieved have complaints of "chest pain and his arm going numb." In none of the medical records did it indicate that the aggrieved experienced a medical emergency. When an inmate experiences a non-life threatening or emergent medical issues, they are directed to complete and submit a Medical Sick Call Request form. According to SDS DSB P&P Section 2.23 titled, "Request for Assistance," when any person requests assistance or advice, or makes complaints or reports, either by telephone or in person, 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. The purpose of SDS DSB Section M.5 titled, "Medical Emergencies," is to provide guidelines for response to 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. 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 availability of evidence was limited; jail surveillance video recordings were no longer available. Without a specific incident date or named subject deputy to investigate, and absent an audio or visual recording, there was insufficient evidence to either prove or disprove the allegation.

20-047

1. Misconduct/Procedure - Unidentified deputies failed to respond to the complainant's grievances and/or Internal Affairs (IA) complaints.

Recommended Finding: Not Sustained

Rationale: The complainant stated, "I have filed previous Internal Affairs form but still have had no vail. insinuating that it has gotten disposed of as have my grievances that I've submitted in box." Sheriff's Policy 3.2, Complaints against Sheriff's Employees, states that matters that have more appropriate methods of resolution, to include Inmate Grievances, are not subject to investigation. Grievances are handled in accordance with Detentions Policy N.1, which states that Informal resolution of an issue before it becomes a written grievance is both desirable and recommended. Furthermore, written grievances can often be resolved without the intervention of a supervisor, and every effort should be made by a deputy or staff member who receives a grievance to handle it at his or her level. SDS records produced one grievance from the complainant, which was responded to by a sergeant on 01-26-20 and confirmed that corrective action was taken. The complainant reported they had copies of unanswered grievances, but failed to produce them prior to leaving custody and is currently transient. As it was unknown if those grievances were not logged in accordance with policy, there was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Medical (IO) – Medical staff did not provide the bipolar complainant with his "psych meds," pending an evaluation.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, "I am a transgender on hormonal therapy housed at Vista Detention facility. I'm also diagnosed w/ Bipolar Type II; extreme depression. I am currently off my psych meds. Pending a medication evaluation." Detentions Policies M.1 Access to Care, means that, in a timely manner, a patient is seen by a qualified health care professional, is rendered a clinical judgment, and receives care that is ordered, and M.15 Sick Call, specifies that this occurs on a daily basis. Section 4 of CLERB Rules & Regulations outlines CLERB's jurisdiction over sworn personnel only. This allegation did not specify any deputy misconduct and the Review Board lacks jurisdiction.

3. Misconduct/Discourtesy – Unidentified personnel "disparaged" the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant stated, "(I) Have written dates where I was treated with Disspaired treatment and a tremendous amount of detest and abhor." Sheriff's Policy, 2.22 Courtesy, mandates that employees be courteous, tactful in the performance of their duties, control their tempers, exercise patience and discretion even in the face of extreme provocation and are prohibited from using coarse, profane or violent language. The complainant did not provide additional information pertaining to the person, date, and time of this incident and did not respond to further requests for information. There was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Procedure – Unidentified deputies placed the complainant "in the hole" (Administrative Segregation) on 01-07-20.

Recommended Finding: Action Justified

Rationale: The complainant stated, "1/7/20 I was placed in hole for 6 days after defending myself when an inmate assaulted me, choked me and attempted to urinate on me. I was the only one who was sent to hole." According to a Follow-Up Report from the Detentions Investigations Unit (DIU) the complainant and another inmate were involved in a physical altercation and sustained injuries; both inmates claimed they were defending themselves and neither desired prosecution. The complainant was determined to be the suspect for a misdemeanor battery, which was based on the extent of the injuries of both inmates. The case was closed by "exception" due to the victim's expressed desire for the suspect not to be prosecuted. A Hearing Report dated 01-08-20, determined both the suspect and victim were in violation of Inmate Rules & Regulations 103 and 713, and were given 5 days lockdown as punishment in accordance with Detentions Policy O.1, Disciplinary Action, which provides a method for bringing inmate behavior into compliance with established rules and regulations. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

5. Misconduct/Procedure – Unidentified deputies gave the complainant's commissary items to other inmates.

Recommended Finding: Not Sustained

Rationale: The complainant stated, "\$40 of my store bought items were given to the other inmate who had no commissary purchases @ facility." Inmates may purchase a variety of commissary items to be delivered to them in their housing units. The items available for purchase include, but are not limited to: food items, hygiene products, stationery, reading glasses, pre-paid telephone time and over-the-counter medication. An Account Activity Report documented the complainant's commissary purchases from October 2019 through April 2020. Detentions Policy T.9, Commissary, states that Commissary staff are solely responsible for delivering commissary with deputies standing by for security only and they will not assist with deliveries. Inmates may address any disputes and/or discrepancies via a J-21 form addressed to commissary staff. Commissary staff are non-sworn personnel over whom CLERB maintain no jurisdiction. Without further clarifying information from the complainant there was insufficient information to either prove or disprove this allegation against sworn personnel.

6. Misconduct/Procedure – An unidentified deputy did not retrieve the complainant's belongings on 01-14-20 and/or 01-15-20.

Recommended Finding: Not Sustained

Rationale: The complainant stated, "I asked officer on duty of East rover on 1/14/20 + 1/15 to please retrieve my belongings but refuge was never sought." The Jail Information Management System (JIMS) verified that the complainant was on lockdown status then moved to new housing on 01-15-20. Detentions Policy Q.63, Lost Inmate Money or Property states that whenever an inmate claims to be missing personal property (including money or other valuables) or module property (such as commissary or hygiene products), the watch commander shall be notified. If the claim regarding personal property is not immediately resolved, a crime report shall be completed. The grievance process should be followed for claims of missing module property (to include commissary and hygiene products). And that when an inmate is moved from mainline housing to administrative segregation or to disciplinary housing, the deputy shall indicate in the written report (inmate status report, administrative segregation report, etc.) where the inmate's module property was stored, including how it was labeled. There was no documentation found for this event. Deployment Logs for the dates/position were reviewed and identified numerous personnel; without further clarifying information from the complainant there was insufficient evidence to either prove or disprove this allegation.

7. Misconduct/Procedure – An unidentified deputy segregated the complainant after he was assaulted by other inmates.

Recommended Finding: Action Justified

Rationale: The complainant stated, "A month+ went by and 3 inmates were in Dayroom of Mod. E3 challenging others assaulted me and started a rumble w/ a couple of other inmates again I was the only one sent to the hole pending investigation." According to an Incident Report, dated 02-12-20, a physical altercation occurred during dayroom hours between inmates, and surveillance video confirmed that the complainant was one of four suspects who assaulted a victim. Detentions Policy O.1, Disciplinary Action, allows for a sworn supervisor to make the determination that an inmate be placed in administrative segregation housing while the incident report is being written and pending the disciplinary hearing. The evidence showed that the alleged act or conduct that occurred was lawful, justified and proper.

8. Misconduct/Discourtesy – Unidentified deputies told the transgender complainant to "speak like a man."

Recommended Finding: Not Sustained

Rationale: The complainant stated, "Officers have harassed me telling me to "Speak" like a man "when" it is evident that I am transitioning from male to female soon to under go sex reassignment surgery! I've already had A Pre-Op." According to the complainant's classification records, they were a transgender female. Deputies are prohibited from expressing any prejudice or harassment concerning sexual orientation, sexual or gender identity, lifestyle or similar characteristics. The complainant did not provide additional information pertaining to the person, date, time of this incident and did not respond to further requests for information. There was insufficient evidence to either prove or disprove the allegation.

9. Misconduct/Procedure – Unidentified deputies improperly housed the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant stated, "2/20 I was displaced and housed w/ same inmates who challenged me prior I let officer know & I was punished deprived of dayroom and taunted by inmates! Ultimately the tension defused and I switched mod. After having my excutor call facility watch commander. I was informed that I shouldn't be placed in the hole A.D. Seg or punished for not feeling safe or uncomfortable in any unit." Classification deputies individually assess each inmate, including Transgenders, and place them in the most suitable housing, with consideration given to each individual's needs and the ability to maintain facility security. JIMS records did not show movement for the complainant on 02-20-20. An Incident Report dated 03-15-20 notated that the complainant refused to be housed with an inmate (who was not identified on his keep separate list). According to the report, the complainant requested an Internal Affairs form and a grievance, and stated their excutor was going to complain about the cell assignment. The deputy moved the other inmate to prevent an altercation from occurring. It was documented that the complainant had manipulated housing numerous times and regularly attempted to control who they were housed with, in their cell. Without further clarifying information from the complainant there was insufficient evidence to prove or disprove this allegation.

10. Misconduct/Retaliation – An unidentified deputy “threatened” the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant stated, “I placed grievance in Box but had no response. I let a SRGNT know on his routine walk of 4/1/20 8:15am He threatened me w/ 1st Being shipped out of facility then saying he was going to place me in A.D. Seg. Because I asked to please be moved to other Mod I have no K’s and my mental state is at liberty i.e Manic Depression. I’m already locked in cell daily the last thing I need is to be placed in A.D Seg. fueling an episode.” Staff training consists of ensuring the rights of inmates to be free of retaliation for reporting misconduct. Without further clarifying information from the complainant there was insufficient information to prove or disprove this allegation.

11. Misconduct/Procedure – Unidentified deputies “deprived” the complainant and/or other inmates.

Recommended Finding: Action Justified

Rationale: The complainant stated, “We have been deprived of dayroom constantly have had no razors forced to grow facial hair w/ breast and treated unjustfully! This ordeals could and would lead to me becoming suicidal; dealing w/ my illness and being a transgender minority.” Title 15 Guidelines in accordance with detention policies specifies the procedures pertaining to Inmate Rights and Services/Programs, which were reduced/restricted during the COVID-19 pandemic by order of the Health Officer and per DSB Policy M.37, Standard Precautions and Infectious Agents/Communicable Disease Control. Section 4 of CLERB Rules & Regulations outlines CLERB’s jurisdiction over sworn personnel only, and defines misconduct as any alleged improper or illegal acts, omissions, or decisions directly affecting the person or property of a specific person arising out of the performance of the peace officer’s or custodial officer’s official duties. CLERB has no authority over the decisions/actions of the Health Officer. Razor and Dayroom restrictions were deployed for the protection of inmates and staff. The evidence showed that the conduct that occurred was lawful, justified and proper.

12. Misconduct/Retaliation - Unidentified deputies “threatened” the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant stated, “ When my executor contacted the facility about these issues 3/31/20 I was threatened w/ Ad.Seg, 23 hr lockdown! When I expressed to Gore’s employees that I couldn’t be housed in current Mod. Due to being extremely depressed which could cause harm to my person, I was threatened w/ Ad. Seg! and when I attested 3/29/20 why I was being deprived of Day Room I was threatred w/ Ad Seg! Quote “Do you want to go to Ad. Seg” Unquote. I currently fear to ask the officers for any assistance. I have been locked in the Hole, had my stuff given away 2/20 left in mod w/ inmates threatening to beat me up, harassed and mocked by staff and threatened to be placed in solitary confinement / Ad. Seg and I don’t deserve to be treated as such.” According to the Inmate Suicide Prevention Practices & Safety program outlined in Detentions Policy J.5, inmates who are recognized and observed as being a potential self-harm or suicide risk shall be assessed for consideration of placement into one of the defined Inmate Safety Program (ISP) housing options as further described in Detentions P&P J.1 and J.4. Sworn staff shall immediately notify medical staff and the watch commander of any inmate that presents a potential or actual danger to self, danger to others or is unable to care for self. JIMS records showed no movement for the complainant between 02-27-20 through 04-21-20. The complainant was classified as a Transgender inmate with Protective Custody status in Mainline housing with Keep Separate orders from numerous inmates. The complainant’s executor (mother) was contacted for further information, but was not forthcoming with her records pertaining to these events. Detentions Policy J.3, Segregation, outlines the guidelines for inmate segregation and consists of separate and secure housing, but shall not involve any other deprivation of privileges, other than is necessary to obtain the objective of protecting the inmates, staff, or public. Without further clarifying information from the complainant there was insufficient information to prove or disprove this allegation.

13. Misconduct/Procedure – Deputy 1 served the complainant’s meal on the floor with his foot.

Recommended Finding: Unfounded

Rationale: The complainant stated, “Officers placed our meals on dirty floor of mod. then kicked it w/ his dirty

unsanitary shoes which led me to write grievances and had no avail until I wrote second one.” The complainant filed a grievance regarding this matter to which a sergeant responded and reported that corrective action was taken. Deputy 1 also provided confidential information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. The evidence supported a finding that the act occurred. However, a review of Sheriff’s Policies, specifically 2.4-Unbecoming Conduct, 2.22-Courtesy, and 2.48-Treatment of Persons in Custody, did not support a policy violation. As there was no specific policy covering the action(s) as alleged, “Unfounded” is the most appropriate finding. In an attempt to ensure that this action does not reoccur, CLERB recommends that the San Diego Sheriff’s Department create or amend the appropriate applicable policies and procedures to reflect that sworn members serving food to inmates do so in a professional, courteous, and sanitary manner.

14. Misconduct/Procedure – An unidentified deputy ignored the complainant’s request for a plunger.

Recommended Finding: Not Sustained

Rationale: The complainant stated, “Officers also ignored request for a plunger leaving my cellmates fecal matter in toilet for 3 ½ hrs causing me to hold my urine for that long & causing a safety hazard in cell.” Detentions Policy I.64, Safety Checks, states that entries may be logged into JIMS if maintenance issues are encountered during deputies hourly checks, such as a clogged toilet. The complainant’s Inmate History did not reveal any such documentation. Detentions Policy G.1, Maintenance Procedures, establishes guidelines for expeditious handling of maintenance requests with routine maintenance performed by the Department of General Services, Facilities Maintenance. Facility maintenance is performed by non-sworn personnel over which CLERB has no authority. The complainant did not provide additional information pertaining to the person, date, time of this incident(s) and did not respond to further requests for information. There was insufficient evidence to either prove or disprove the allegation.

15. Misconduct/Procedure – Unidentified deputies “mistreated” the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant stated, “I have at most of the time been treated w/ Misconduct and Intimidation. And now with Retaliation due to my executor calling and I requesting an Internal Affairs form. I have copy/yellow sheets of grievances w/ Dates and times of every incident & can avail it @ any given time. Right now. I am having extream Manic Depression and Anxiety also feeling uncomfortable in the current Mod but I am afraid that officers will place me in solitary confinement Due to vendettas and the Detest they have against me. I go about the Rules and protocol correctly I have also contacted my lawyer & Department of Justice.” Complainants are asked to submit all available evidence with their signed complaints, however, none was forthcoming. The complainant did not provide additional information pertaining to the person, date, time of this incident(s) and did not respond to further requests for information. There was insufficient evidence to either prove or disprove the allegation.

PROPOSED POLICY RECOMMENDATION:

1. It is recommended that the San Diego Sheriff’s Department create or amend the appropriate applicable policies and procedures to reflect that sworn members serving food to inmates do so in a professional, courteous, and sanitary manner.

20-066

1. False Arrest – Deputies 1 and 2 “arrested” the complainant.

Recommended Finding: Action Justified

Rationale: The complainant reported receiving spoiled goods at a grocery store and that she engaged in a physical altercation with the store manager. Deputies responded to this disturbance and detained the complainant. A detention occurs when a person is not free to leave or otherwise disregard the police and go about their business. According to the Deputy’s report, on 05-04-20, the complainant was detained pursuant

to 5150 WI. She reportedly chased customers in a grocery store and took their cellphones, believing they had stolen her cellphone. She urinated in the store as she screamed at customers. She was incoherent in speech and erratic in her behavior. Based on how she presented, she was detained for 5150 WI as a danger to others. Deputies transported and released her to Palomar Medical Center under a 72-hour mental health evaluation. Body Worn Camera (BWC) evidence was reviewed and corroborated the reported information. The evidence showed that the complainant's detention was lawful, justified and proper.

2. Excessive Force/Tight Handcuffs – Deputies 1 and/or 2 handcuffed the complainant.

Recommended Finding: Action Justified

Rationale: The complainant said that deputies applied handcuffs that were too tight and injured her wrists. The complainant submitted photographed evidence of her injuries. Any Deputy Sheriff, in the performance of official law enforcement duties, who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance. A suspect has "no right to resist" a lawful detention. If a suspect does not stop, they have violated Penal Code section 148 by obstructing or delaying a peace officer in the performance of their duties and they may use physical force to make them stop. Handcuffs are a component of a deputy's full duty leather uniform and utilized for every prisoner in their custody for safety purposes. As evidenced on Body Worn Camera, (BWC) the complainant was non-compliant with deputies' efforts to detain and handcuff her for a mental health evaluation. The application of force was reasonable and not excessive. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

3. Excessive Force – Deputy 1 pushed and then pinned the complainant on the ground.

Recommended Finding: Unfounded

Rationale: The complainant said the arresting deputy forcibly pushed her down and pinned her to the ground with such strength that the complainant presented urinary incontinency. This incident left her with numerous bruises and damaged her physically, emotionally and psychologically. According to the Arrest Report, the reporting party who contacted 911 stated the complainant was urinating in the store as she screamed at customers, and when deputies arrived, it was apparent the complainant had urinated on herself. Also, during the handcuffing process, the complainant again urinated on herself. This information was corroborated by BWC evidence. BWC evidence also refuted that Deputy 1 pushed/pinned the complainant to the ground. The complainant was found not to be credible in her recall of this event. The evidence showed that the alleged act or conduct did not occur.

4. Misconduct/Discourtesy – Deputies 1 and/or 2 laughed at the complainant.

Recommended Finding: Unfounded

Rationale: The complainant said deputies placed her in the back of a patrol vehicle and they laughed at her because of her urinary incontinence. While the complainant was detained in the patrol vehicle, deputies took a witness statement and were cordial with the reporting party, however, it was evident that their relationship was nothing other than a contact evidenced by requesting the name and spelling of the witness. During this time they also expressed their concern for the complainant. The evidence refuted that deputies laughed at and/or disrespected the complainant in any way. The complainant was found not to be credible in her recall of this incident and the available evidence showed that the alleged act or conduct did not occur.

5. Misconduct/Procedure – Deputies 1 and/or 2 left the complainant in a patrol vehicle for an extended period.

Recommended Finding: Unfounded

Rationale: The complainant said deputies placed her in the back of a patrol vehicle for over two hours. Communication records verified that deputies arrived on scene at approximately 3:04pm, the complainant was detained by 3:12pm and a Psychiatric Emergency Response Team (PERT) was requested for evaluation. During the interim, deputies took a witness statement while the complainant remained inside a patrol vehicle. When deputies were notified that PERT was unavailable at approximately 3:21pm, they transported the complainant to Palomar Medical Center for an in-custody 72-hour treatment and evaluation for mentally disordered person, arriving by 3:35pm. The evidence refuted that the complainant was kept in a

patrol vehicle for two hours. The complainant was found not to be credible in her recall of this incident and the available evidence showed that the alleged act or conduct did not occur.

6. Misconduct/Procedure – Deputies 1 and/or 2 left the complainant stranded at a hospital.

Recommended Finding: Action Justified

Rationale: The complainant said she was taken to a hospital for evaluation where deputies left her without a citation and/or means to return to her vehicle. The complainant was detained per WIC§ 5150, In-custody 72-hour treatment and evaluation for mentally disordered person. The decision/actions by hospital personnel do not reside within CLERB’s authority. As required by PEN§ 851.6, a Detention Certificate, verified the taking into custody of the complainant was a detention only, not an arrest and she was released by the SDSD on 05-04-20 at 3:20pm. Deputies are not required to provide transportation to those released from their custody, and the evidence showed that the actions that occurred were lawful, justified and proper.

21-011

1. Misconduct/Procedure – Deputy 1 did not arrest the complainant’s step-daughter.

Recommended Finding: Action Justified

Rationale: The complainant stated, “My 76 year old husband had to physically pull his daughter off of me & remove her from our home. I am disabled and not able to defend myself or stand up when this attack occurred. After 20 or so minutes after my call, Deputy 1 arrived & his demeanor was less than one of concern. When I came outside the first thing I said was that I wanted her arrested immediately & that I would definitely press charges. Clearly I was distraught, crying & upset. Deputy 1 told us that he could not do anything & if we wanted to put a stop to her we must go & file a restraining order that next day. He said he could not arrest her because she was no longer at our home. Deputy 1 didn’t even look at me. He just kept telling us we needed to get a restraining order. I still could not understand why he would not go & arrest her. His response was that she was no longer on the property. I told him that she lives just a few houses away & that I was fearful of her retuning with a knife or a gun.” The complainant is a Dependent Adult with physical limitations. According to the Sheriff’s Patrol Manual, misdemeanors involving violent or potentially violent elder/dependent abuse crimes can be booked into county jail for 243.25 PC–Battery Against Elder or Dependent Adult. Per 836(d) PC, a field arrest can be made for misdemeanor elder abuse crimes involving assault or battery that were not committed in their presence. The complainant did not disclose to Deputy 1 that she was a Dependent Adult. Deputies have discretion to effect an arrest, and in this situation an arrest was not mandated. Deputy 1 advised the complainant to seek a TRO and provided information regarding a Citizen’s Arrest. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 failed to document injuries of an assault.

Recommended Finding: Not Sustained

Rationale: The complainant stated, “Deputy 1 asked if I wanted an ambulance to go to the hospital. I physically hurt from her hitting me repeatedly in the head & neck (which is where I have hardware); I didn’t feel it was worth the risk of covid. I know I had marks on my forearm & scratches on my neck & after a couple days, my arm began to bruise & I was having headaches. Deputy 1 didn’t even look at me. He just kept telling us we needed to get a restraining order.” Communication records provided the following pertinent information: “Contacted reporting party, other half gone upon arrival, no injuries, reporting party will get a TRO against suspect.” Body Worn Camera (BWC) evidence also did not confirm obvious evidence of any injuries at that time and Deputy 1 asked the complainant if she needed an ambulance, which she declined. A detective followed-up one week later and placed digital photographs of the complainant’s reported injuries into evidence. There was insufficient evidence to prove or disprove the allegation.

3. Misconduct/Procedure – Deputy 1 disclosed confidential information.

Recommended Finding: Not Sustained

Rationale: The complainant stated, "While Deputy 1 was talking to my husband & I, the suspect's roommate/boyfriend comes driving up. As he exits the car, he is telling Deputy 1 that "I didn't look like I had been in a fight" & "I didn't look hurt to him" & went on to say that "he didn't see any blood & no one was in cuffs" so there was no need for law enforcement to be involved. He kept talking to Deputy 1 & us as if nothing had happened & it was no big deal. I was so upset, I just walked away. Deputy 1 should have told him as soon as he drove up, that unless he was a witness to this incident, he needed to leave so that he could finish up with us. This was a private matter & he was not a neutral party. He should not have been allowed to stand there & give his opinion. He heard everything Deputy 1 had to say to us regarding filing the restraining order & that we needed to go that next day & file it. As a direct result, he made sure that I did not get to the courthouse for several days following this incident." The complainant filed a TRO (DV-130) on 11-05-20 and reported she was dependent upon her husband for transportation. According to the SDDS Patrol Manual, when possible, (emphasis added) deputies are to respect and protect the confidentiality and the wishes of the elderly/dependent victim regarding the notification and participation of others throughout the investigation. The complainant did not disclose to Deputy 1 that she was a Dependent Adult. The BWC evidence was reviewed and corroborated the complainant's testimony in part, however it did not verify a disclosure of confidential information. There was insufficient information to prove or disprove a policy violation.

4. Misconduct/Procedure – Deputy 1 failed to contact/interview the suspect in a reported crime.

Recommended Finding: Unfounded

Rationale: The complainant stated, "I called the sheriff's department a short time later to see if any follow up with the suspect had been done. I asked Deputy 1 if he had driven to her residence to question her or drug test her or anything & he said no. I asked about calling her so at least she would know it had been reported & that law enforcement was involved. Deputy 1 said he would try calling her but that nothing else would be done. I could not understand then & I cannot understand now how someone could break the law; trespass & assault a disabled person (or any person) in their own home & then not be held accountable for those actions. How law enforcement could be so unprofessional & not do their job which is to serve & protect the people. Deputy 1 did not care about me at all or that I was assaulted. It's like he did not want to be bothered." During his initial contact with the complainant, Deputy 1 stated he would instruct the suspect to stay away from the complainant. As verified in a detective's follow-up report, Deputy 1 spoke with suspect over the phone and confirmed to him she would have no more contact with the complainant. The suspect also confirmed she was contacted by Deputy 1 following this incident. The evidence proved the allegation did not occur.

5. Misconduct/Procedure - Deputy 1 failed to take a report.

Recommended Finding: Sustained

Rationale: The complainant stated, "I could not understand then & I cannot understand now how someone could break the law; trespass & assault a disabled person (or any person) in their own home & then not be held accountable for those actions. How law enforcement could be so unprofessional & not do their job which is to serve & protect the people. Deputy 1 did not care about me at all or that I was assaulted. It's like he did not want to be bothered. A friend had told me over the weekend, that I needed to call Deputy 1's sergeant on Monday and demand answers. Had I not done that, I would have never known he didn't even file a report." A request for records determined that Deputy 1 did not file any reports related to this incident. Sheriff's Policy 6.71-Crime Case Reports, mandates that a Crime/Incident Report be completed for a Battery. 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 supports the allegation and the act or conduct was not justified.

6. Misconduct/Procedure – Deputy 1 failed to refer the incident for follow-up.

Recommended Finding: Not Sustained

Rationale: The complainant stated, "Deputy 1 didn't turn it over to a detective to follow up with me. A Sgt. ended up sending another deputy out to my house 8 days later to take a report. Then it went from a domestic

violence case to elder abuse.” On 09-23-20, a detective responded to the complainant’s residence and took a Crime Report and submitted the case to the District Attorney’s Office for review of issuance of violation 368(c) PC Elder Abuse. As documented in the SDSA Patrol Manual, deputies are “mandated reporters.” Failure to report elder/dependent adult abuse is a misdemeanor under WIC Section 15630. Mere suspicion of abuse must be documented in a Report of Suspected Dependent Adult/Elder Abuse. First responders must also notify the Adult Protective Services Elder Abuse Hotline of the Sheriff’s Department involvement as soon as practical, but no later than the end of shift. Adult Protective Services (APS), a division of the County’s Aging & Independence Services, is the designated agency to accept reports of suspected abuse of elders and dependent adults that happens in a person’s home or out in the community. If deputies observe suspicious circumstances, they are to err on the side of caution and conduct a thorough preliminary investigation including: identify victim(s), suspects, and witnesses, identify and preserve the crime scene. When possible, respect and protect the confidentiality and the wishes of the elderly/dependent victim regarding the notification and participation of others throughout the investigation.” The 55 year old complainant has been a Dependent Adult since 2003 when the Social Security Administration (SSA) deemed her as disabled due to her physical limitations. However, this pertinent information was never conveyed to Deputy 1 at the time of the incident. There was insufficient information to prove or disprove the allegation.

21-021

1. Misconduct/Medical (I/O) – Medical staff did not respond to the complainant’s request(s) for dental services.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, “On multiple occasions I submitted medical request to see the dental staff regarding an infected tooth that was and still is as of (4-13/21) causing me a tremendous amount of pain.” Dental/Medical staff are non-sworn personnel and therefore, CLERB lacks jurisdiction to investigate this allegation. CLERB Rules & Regulations: 4.1 titled, Complaints: Authority, 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.

2. Misconduct/Medical (I/O) – Medical staff treated the complainant differently from another inmate.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, “When it came time for treatment the dentist told me there was nothing he could do and could not provide me with a filling because the jail did not permit him to provide fillings, however, on that same day another inmate received a filling from this same dentist on staff that day.” Dental/Medical staff are non-sworn personnel and therefore, CLERB lacks jurisdiction to investigate this allegation. CLERB Rules & Regulations: 4.1 titled, Complaints: Authority, 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.

3. Misconduct/Medical (I/O) – Medical staff failed to respond to the complainant’s grievances.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, “Grievances I have filed have gone unanswered.” Dental/Medical staff are non-sworn personnel and therefore, CLERB lacks jurisdiction to investigate this allegation. CLERB Rules & Regulations: 4.1 titled, Complaints: Authority, 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.

21-036

1. Misconduct/Procedure – An unidentified Food Service Division staff member did not don a “sanitation cap or net.”

Recommended Finding: Summary Dismissal

Rationale: On 04-15-21, the complainant contacted CLERB with a signed complaint alleging procedural misconduct by a San Diego Sheriff’s Department Food Services Division employee. The complainant reported, “*Neither employee Barrera or his assistant were wearing the policy required food server sanitation cap or net. It is stated in the California code of regulations, title 15, section: 3052(f).*” The complainant stated that the allegation was against a male food service worker. CLERB was unable to identify a food service worker employed by the SDSA with the name “Barrera” or by any similar spellings of the 110 food service workers assigned to the Sheriff’s Department. Without additional identifying information, the unidentified subject officer was listed as “unidentified.” Members of the San Diego Sheriff’s Department Food Services Division are not sworn Sheriff’s deputies. Jail food service staff are non-sworn personnel and reside outside CLERB’s 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 or the Probation Department. As such, CLERB lacks jurisdiction and the allegation is summarily dismissed. The complainant was referred to the San Diego Sheriff’s Department Internal Affairs Division.

2. Misconduct/Procedure – An unidentified Food Service Division staff member served a meal “unusually late.”

Recommended Finding: Summary Dismissal

Rationale: On 04-15-21, the complainant contacted CLERB with a signed complaint alleging procedural misconduct by a San Diego Sheriff’s Department Food Services Division employee. The complainant reported, “*The food server violation: Food servicing was unusually late, at approximately 12 noon.*” See Rationale #1.

End of Report