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County of San Diego
CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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REGULAR MEETING AGENDA

Tuesday, June 8, 2021, 5:30 p.m.

Remote Meeting via BlueJeans Platform

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

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/bhqwgqyyt>. 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) N/A

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 – SDS
 - ii. 18-150 / Morris – SDS
 - iii. 19-018 / Thornton – Probation
 - iv. 19-091 / Brooks – SDS
 - v. 20-014 / Pace – SDS
 - vi. 20-047 / Cheatom – SDS
- f) Policy Recommendation Responses
 - i. None
- g) Sustained Finding Pending Response
 - i. 21-011 / Satallante – SDS
- h) Letter of Concern Response
 - i. 20-015 / Montoya – SDS (*Attachment E*)

6. BOARD CHAIR'S REPORT

7. NEW BUSINESS

- a) CLERB Officer Ad Hoc Nomination Committee
- b) In-Person CLERB Meetings

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 (8)

19-143

1. Death Investigation/In-Custody Natural – On 11-27-19, Inmate Matthew Godfrey died while in the custody of the San Diego Sheriff's Department (SDSD) and while incarcerated at the San Diego Central Jail (SDCJ).

Recommended Finding: Action Justified

Rationale: Inmate Matthew Godfrey was incarcerated at the San Diego Central Jail since his 11-03-19 arrest. Godfrey was in custody for violation of a domestic violence restraining order. He was housed in the jail's Administrative Segregation housing unit due to his inability to conform to the minimal jail standards. Godfrey had an unspecified mental health diagnosis and was provided a daily medication regimen during his incarceration. On the late morning of 11-27-19, deputies were conducting a safety/security check in Godfrey's housing unit. During the safety/security check, the deputies found Godfrey lying on the floor of his jail cell. Godfrey was the only inmate assigned to the jail cell. Upon initiating the safety/security check in Module E, a deputy approached Godfrey's jail cell and looked into the cell. The deputy remained at Godfrey's cell for 38 seconds before he continued and completed his safety/security check of the bottom tier of Module 6E. It took the deputy 24 seconds to complete the safety/security check before he immediately returned to Godfrey's jail cell. The deputy summoned a second deputy to assist him at Godfrey's jail cell, per deputy safety protocol. The second deputy arrived to assist the first deputy within three seconds. With both deputies standing at Godfrey's jail cell, the cell door was opened, and the deputy stepped into the jail cell and assessed Godfrey. Within seconds of assessing Godfrey, the second deputy advised of a man down, via his radio. Numerous deputies responded to Godfrey's jail cell with jail medical staff following shortly thereafter; arriving to the jail cell within three minutes of the radio call. In addition to summoning jail medical staff, deputies initiated life saving measures and paramedics. Prior to paramedics' arrival on scene, deputies used an automated external defibrillator on Godfrey during their resuscitation attempts. Paramedics arrived on scene and took over life saving measures; paramedics provided advanced cardiovascular life support procedures; however, they were unsuccessful in reviving Godfrey and his death was pronounced while on scene. Godfrey's body was transferred to the San Diego County Medical Examiner's Office for examination on 11-29-19. Godfrey's autopsy revealed that his cause of death was hypertensive and atherosclerotic cardiovascular disease, and the manner of death was determined to be natural. Toxicology testing of blood

specimens taken revealed negative results for alcohol or common drugs of abuse. The evidence indicated that Godfrey was properly classified upon his entry into the SDSD jail system after his 11-03-19 arrest. In review of jail medical records, it was evident that during his medical interactions with SDSD medical personnel, to include psychiatric staff, Godfrey never expressed suicidal intent and did not report a suicide attempt history. There was no evidence that Godfrey expressed any concerns about his mental or physical well-being to other inmates or any member of the SDSD, sworn or professional. Upon finding Godfrey down and unresponsive in his cell, sworn personnel expeditiously responded and immediately initiated life-saving measures. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

20-018

1. Illegal Search & Seizure – Deputy 4 searched the aggrieved's purse.

Recommended Finding: Action Justified

Rationale: In the complainant's written statement, he reported, "*On Sunday, January 26, 2020 around 9:30 AM, Deputy 4 approached my sister [the aggrieved] and started to dig into her purse during our social visit.*" According to Deputy 4's report, while conducting a check of the inmate's visitor's passes and their identifications, he noticed that the aggrieved was carrying a purse. Deputy 4 explained to the aggrieved that purses and cell phones were not allowed in the jail, on the visit floors. Deputy 4 told the aggrieved that because she brought the purse to the visit, her purse was now subject to search. The complainant directed his attention to Deputy 4 and told Deputy 4 that he was not allowed to touch the aggrieved's property. In review of the jail surveillance video recording, Deputy 4 was not observed to search through the aggrieved's purse; however, part of his interaction with the aggrieved in the visit area was out of view of the jail's surveillance video camera. According to the jail's rules and regulations, had Deputy 4 chose to exercise this discretion, it would have been within this authority. According to the SDSD SDCJ Green Sheets Section P.9.C1 titled "Social Visiting," it is the visit deputy who conducts safety checks of all visitors and visit areas. Those persons at the jail to attend social visits are expected to submit to a pat-down and/or property search (at the discretion of the visit deputy). If a visitor refuses to submit to the search, he or she will be directed to leave the facility. According to the SDSD SDCJ Post Orders for the Visit Deputy Position, the primary duty of the Visit Deputy is to ensure a security and safety presence in the SDCJ Information Lobby and visit areas. According to the 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 evidence showed that the alleged act or conduct did occur, and it was lawful, justified and proper

2. Misconduct/Procedure - Deputy 4 searched the aggrieved's purse during the complainant's visit.

Recommended Finding: Action Justified

Rationale: In the complainant's written statement, he advised, "*The search of my sister's purse should have been done prior to our visit.*" According to Deputy 4's report, Deputy 4 explained that when he arrived to the visit area to inspect "Pass and ID's" on all visitors, he observed the aggrieved, in the visit area. After viewing their passes and identifications, Deputy 4 noticed that the aggrieved was carrying a purse, and Deputy 4 explained to the aggrieved that purses and cell phones were not allowed on the visit floors. Deputy 4 told the aggrieved that because she brought the purse to the visit, her purse was now subject to search. According to the SDSD SDCJ Green Sheets Section P.9.C1 titled "Social Visiting," the visit deputy may conduct searches on adult visitors. Additionally, the visit deputy will conduct safety checks of all visitors and visit areas. Social visitors will be expected to submit to a pat-down and/or property search (at the discretion of the visit deputy) prior to entering the visit area. If a visitor refuses to submit to the search, he or she will be directed to leave the facility. Though it is ideal for a property search to be conducted prior to the visit, CLERB understands that there are a multitude of reasons that the search may not occur prior to the visit. Some of the reasons that a Visit Deputy may not be able to conduct a search prior to the visit are some spontaneous incident, he/she is unavailable, or any event that may delay jail operations. As incidents and events occur

within the facility, the Visit Deputy may be delayed in his duties. According to the SDSD SDCJ Post Orders, the primary duty of the visit deputy is to ensure a security and safety presence in the San Diego Central Jail Information Lobby and visit areas. The Visit Deputy will preserve the peace and maintain order in his designated areas of responsibility. The Visit Deputy will conduct checks on visitors to ensure the security of the facility. 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. In review of the jail surveillance video recording, Deputy 4 was not observed to search through the aggrieved's purse. Part of his interaction with the aggrieved was out of view of the jail's surveillance video camera. However, according to the jail's rules and regulations had Deputy 4 chose to exercise this discretion, it would have been within this authority. The evidence showed that the alleged act or conduct did occur, and was it lawful, justified and proper.

3. Misconduct/Procedure - Deputy 4 did not summon a female deputy.

Recommended Finding: Action Justified

Rationale: In the complainant's written statement, he alleged, "*Deputy 4 should have summoned a female deputy.*" 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. Deputy 4 who was a male deputy, addressed the aggrieved, who was a female. According to SDSD DSB P&P Section 1.52 titled, "Inmate Searches," stripe searches are the only act that shall be of the same gender as the inmate [person] being searched. CLERB was unable to find any other written rule or regulation requiring that a deputy be of the same sex/gender as the subject he is addressing. Deputy 4 did not conduct a search of the female aggrieved. The complainant alleged that the male deputy searched the female's purse; however, in review of the jail surveillance video recording, Deputy 4 was not observed to search through the aggrieved's purse. Part of his interaction with the aggrieved was out of view of the jail's surveillance video camera. Nonetheless, a deputy does not need be of the same sex/gender to search one's property. The evidence showed that the alleged act or conduct did occur, and it was lawful, justified and proper.

4. Misconduct/Discourtesy – Deputy 4 ignored the complainant and the aggrieved.

Recommended Finding: Action Justified

Rationale: In the complainant's written statement, he reported, "*Deputy 4 was taking away time from my visit. He was belligerent, disrespectful, and continue to ignore me. My sister and I continue our visit [Deputy] 4 interrupted our visit. Deputy 4, in a destructive manner, use his middle finger to hang up my conversation.*" According to Deputy 4's report, Deputy 4 was conducting his normal duties as the Visit Deputy at the SDCJ when he encountered the complainant and the aggrieved. While the complainant and the aggrieved were engaged in their social visit, Deputy 4 interrupted the visit to check the aggrieved's and her boyfriend's identifications and their visitor's passes. According to the SDSD San Diego Central Jail's Post Orders, the deputy who works the Visit Deputy Position is responsible for checking the persons entering the jail. Deputy 4 was responsible for proving security and safety during the visits. His primary duty was to ensure a security and safety presence in the jail lobby and visit areas. Deputies assigned to the Visit Deputy position are to check the visitors and the visit rooms regularly. The Visit Deputy is the deputy responsible for ensuring that only designated visitors are in the visit areas by checking visit passes and identifications. According to Deputy 4's report, when he discovered that the aggrieved's boyfriend was unauthorized to attend the visit, Deputy 4 instructed the aggrieved's boyfriend to terminate the visit. Additionally, during the visit check, Deputy 4 found that the aggrieved was in possession of her purse, which was against jail rules and regulations. According to Deputy 4's report, while he explained the jail's rules and regulations to the aggrieved and her boyfriend, the complainant became upset and began yelling at Deputy 4. Deputy 4 told the aggrieved that because she brought the purse to the visit, her purse was now subject to search. The complainant began to yell and instructed the aggrieved not to allow Deputy 4 to search her purse. The complainant directed his attention to Deputy 4 and told Deputy 4 to leave, and that Deputy 4 was not allowed to touch the aggrieved's property. The complainant went on to tell the aggrieved not to listen to Deputy 4. For these reasons, Deputy 4 terminated the visit. Jail surveillance video recordings of the incident were viewed by CLERB. In the video

recordings, Deputy 4 was observed to interrupt not only the complainant's and aggrieved's visit, but every person who attended visits was checked for their identifications and visitor's passes, as he was responsible and authorized to do. When the complainant's visitors were found to be out of compliance with the jail's rules and regulations, Deputy 4 terminated the visit by approximately 2-4 minutes early. The jail surveillance video recording was without audio, so it was unknown what Deputy 4 said to the aggrieved; however, his actions that were observed in the video were not "belligerent or disrespectful." Deputy 4 did ignore the complainant while he addressed the aggrieved and her boyfriend, but that was not unreasonable as a Plexiglass separated him from the complainant and while he directed his attention to the aggrieved. According to SDCS DSB 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. In the jail surveillance video recording of the incident, Deputy 4 was not observed to use his middle finger towards the complainant, the aggrieved, nor the aggrieved's boyfriend. According to SDCS DSB 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. The evidence showed that the alleged act or conduct did occur, and it was lawful, justified and proper.

5. Misconduct/Procedure – Deputy 4 asked the aggrieved and her boyfriend for their identification.

Recommended Finding: Action Justified

Rationale: In the complainant's written statement, he reported, "*Deputy 4 continue to check my sisters boyfriends identification, as well as everyone who is in attendance for my visit.*" According to Deputy 4's report, Deputy 4 was conducting his normal duties as the Visit Deputy at the SDCJ when he encountered the complainant and the aggrieved. While the complainant and the aggrieved were engaged in their social visit, Deputy 4 interrupted the visit to check the aggrieved's and her boyfriend's identifications and their visitor's passes. According to the SDCS San Diego Central Jail's Post Orders, the deputy who works the Visit Deputy Position is responsible for checking the persons entering the jail. Deputy 4's primary duty was to ensure a security and safety presence in the jail lobby and visit areas. Deputies assigned to the Visit Deputy position are to check the visitors and the visit rooms regularly. The Visit Deputy is the deputy responsible for ensuring that only designated visitors are in the visit areas by checking visit passes and identifications. Jail surveillance video recordings of the incident were viewed by CLERB. In the video recordings, Deputy 4 was observed to interrupt not only the complainant's and aggrieved's visit, but every person who attended visits was checked for their identifications and visitor's passes, as he was responsible and authorized to do. The evidence showed that the alleged act or conduct did occur, and it was lawful, justified and proper.

6. Excessive Force – Deputy 4 struck the aggrieved on her shoulder with her visit documents.

Recommended Finding: Not Sustained

Rationale: In the complainant's written statement, he reported, "*Deputy 4 lost his temper and smacked [the aggrieved] with the visitor documents; he smacked her on her shoulder.*" According to Deputy 4's report, during the visit, when he attempted to address the aggrieved, the complainant told the aggrieved not to listen to Deputy 4. Deputy 4 attempted to address the aggrieved; however, the aggrieved refused to follow his instructions, ignored him, and instead followed the complainant's instructions to defy him. While the aggrieved purposefully ignored Deputy 4, the complainant began banging on the window and yelled at Deputy 4. Both the aggrieved and her boyfriend refused to acknowledge Deputy 4's instructions to leave the visit area while the complainant instructed them to remain seated and to defy Deputy 4. Jail surveillance video recordings of the incident were viewed by CLERB. In the video recordings, Deputy 4 was observed to enter the visit room and interrupt the complainant's and aggrieved's visit to check for identification and visitor's passes. Upon entering the room, Deputy 4 was not noted to have any paperwork in his hands. During their interaction, Deputy 4 stood out of view of the jail surveillance video camera's scope of view for a few minutes. As such, not all of his actions were viewable. According to his report, Deputy 4 attempted to engage the aggrieved to explain to her the rules and regulations of the jail, and how she was in violation of said rules and regulations. When the aggrieved purposefully ignored Deputy 4, Deputy 4 attempted to regain her

attention. Deputy 4 was partially out of view of the camera, and it was unknown if and how he may have attempted to gain the aggrieved's attention. Upon conducting a scene investigation/inspection of the jail's fifth floor visit area, it was noted that there was an approximate three-foot space where the aggrieved sat that was out of view of the surveillance video. From what was observed in the jail surveillance video recording, Deputy 4 was not witnessed to strike or "smack" the aggrieved. According to SDSD P&P Section 2.22 titled "Courtesy," employees shall be courteous to the public and fellow employees. They shall be tactful in the performance of their duties, shall control their tempers, exercise patience and discretion even in the face of extreme provocation. Employees shall not use insolent language or gestures in the performance of his or her duties. There was insufficient evidence to either prove or disprove the allegation that Deputy 4 struck the aggrieved on her shoulder.

7. Misconduct/Intimidation – Deputy 4's actions "frightened" the aggrieved and all the visitors.

Recommended Finding: Action Justified

Rationale: In the complainant's written statement, he reported, "*I noticed all the visitors were frightened by Deputy 4's actions [the aggrieved] was scared and signal to me to stay calm. I was upset at Deputy 4. In response to being frightened, [the aggrieved] got up and walked out of the visit area. She was afraid because she is in minor; she is still in high school and did not know the rules for visiting. I instructed [the aggrieved], to stand her ground, [Deputy] 4 continue to lose his temper. Deputy 4 steps back, put his two fingers to his neck, as if he was checking his blood pressure, as if the signal that his blood pressure was rising and then he was trying to keep calm. My sister till this date is still frightened to come visit me due to the actions of Deputy 4.*" Jail surveillance video recordings of the incident were viewed. The recordings were without sound or audio. In the video recordings, Deputy 4 was observed to approach and address the aggrieved; however, it was unknown what was said. According to Deputy 4's report, after the aggrieved and her companion were found to be in violation of the jail's rules and regulations, he instructed the aggrieved to terminate her visit with the complainant and exit the visit room; however, the aggrieved and her companion initially refused. In the jail surveillance recordings, after approximately seven minutes of instructing the aggrieved and her boyfriend to cease the visit, they finally complied with his orders and Deputy 4 escorted them out of the visit room. In the last two minutes before the aggrieved and her boyfriend exited the visit room, Deputy 4 was observed to use hand jesters. He waved his hand and arms to signal to the aggrieved and her boyfriend to exit the room. As the jail surveillance video recording was without sound or audio, the tone of Deputy 4's voice was unknown; however, his actions were observed and would not be described as intimidating, escalating, or aggressive. According to SDSD P&P Section 2.22 titled "Courtesy," employees shall be courteous to the public and fellow employees. They shall be tactful in the performance of their duties, shall control their tempers, exercise patience and discretion even in the face of extreme provocation. Employees shall not use insolent language or gestures in the performance of his or her duties. The aggrieved purposely ignored Deputy 4's lawful, justified, and proper commands. How the aggrieved interpreted Deputy 4's actions are of no fault of the deputy. The evidence showed that the alleged act or conduct did occur, and it was lawful, justified and proper.

8. Misconduct/Procedure – Deputies 1, 2, and 4, and/or other unidentified deputies refused the complainant visits.

Recommended Finding: Action Justified

Rationale: In the complainant's written statement, he reported, "*As for now I am unable to get any visits furthermore, since this incident.*" According to jail documents, the incident involving the aggrieved and her companion occurred 01-26-20. After the incident, the complainant's visits were temporarily terminated as the result of a rule violation report was written against him for the actions and behaviors he displayed during the visit. According to the rule violation report written against the complainant, it was reported that the complainant became "belligerent, disruptive, and argumentative" and threatened Deputy 4 during the visit. For these reasons, the complainant was written up for being in violation of the following jail rules and regulations: Disobeying staff Instructions, threatening to assault staff, and boisterous activities. Additionally, the complainant was written up again on 03-07-20, by Deputy 2. According to the rule violation report, the complainant was found to be in possession of a sharpened toothbrush, known as a jail made shank or weapon. After that weapon incident, the complainant was placed in disciplinary isolation for five days. During his five days in disciplinary isolation, 03-07-20 to 03-12-20, the complainant was not allowed to have visits.

Additionally, the complainant had his visits taken away for one additional week; 03-12-20 to 03-19-20. Deputy 2 wrote the rule violation report, and Deputy 1 approved the report and authorized the discipline. Per SDDS DSB P&P Section O.1, CLERB found that an inmate being placed in disciplinary isolation for five days and having his visits taken away for an additional week was a reasonable disciplinary decision for an inmate who had previous rule violations reports written against him and for the severity of his offense. Lastly, prior to the discipline completing, the complainant was transferred to prison on 03-11-20. The evidence showed that the alleged act or conduct did occur, and it was lawful, justified and proper.

9. Misconduct/Procedure – Unidentified deputies denied the complainant mail and email.

Recommended Finding: Not Sustained

Rationale: In the complainant's written statement, he reported, "*I do not have any mail, even though my family has advised that they have sent me emails for the past month please help me with the situation. my email has been stop.*" According to SDDS jail documents, there was no evidence that the complainant's mail had been held, monitored, or was recorded pursuant to an investigation. The aggrieved did not file any Inmate Grievances to document the claims that his mail was withheld or never received. It is understood that normally, mail is intact and is provided to inmates. Without a specific date to investigate, or a specific deputy named, CLERB was unable to confirm or refute that the complainant's mail was not received with during this incarceration. According to SDDS 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. 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. Absent an audio or visual recording, there was insufficient evidence to either prove or disprove the allegation. There was insufficient evidence to either prove or disprove the allegation that unidentified deputies denied the complainant mail and email.

10. Misconduct/Retaliation - Deputy 3 and other unidentified deputies wrote a rule violation report against the complainant.

Recommended Finding: Not Sustained

Rationale: In the complainant's written statement, he reported, "*I've been getting false accusations by other deputy's as for Deputy 3 try to write me up, for something he's making up; he was the deputy that went to visit to arrested me, I feel I'm getting bully.*" According to jail documents, on 01-30-20, Deputy 3 wrote a rule violation report against the complainant for hanging a makeshift clothesline along his bunk. The makeshift clothesline blocked the view of Deputy 3 as he attempted to conduct a safety/security check of the complainant's cell. When Deputy 3 instructed the complainant to remove the clothesline, the complainant refused. Deputy 3 wrote a rule violation report against the complainant for disobey staff instruction, being in possession of contraband items, destroying/altering clothing or bedding, and interfering with jail operations. As an inmate charged with a violation of the jail's rules and regulation, the complainant was referred to the Disciplinary Hearing Officer (DHO) for disposition. No hearing was conducted within the required 72 hours, so per the DHO, the rule violation report was "purged from the queue. The DHO was no longer employed by the SDDS and was unavailable for questioning as a witness. Absent an audio or visual recording, there was insufficient evidence to either prove or disprove the allegation.

20-038

1. Illegal Search and Seizure/Person – Deputy 5 detained the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated, "Deputy 5 approached my car driver window. I did not want to talk to him." According to Sheriff's Department records, Deputy 5 responded to the scene to investigate the welfare of the complainant, after a call came in requesting Sheriff assistance. A U.S. Border Patrol agent was flagged down by a citizen who reported that the complainant had been walking in and out of traffic stating he "wanted to die." After the Border Patrol (BP) agent made contact with the complainant, and out of concern for the complainant's mental well-being, the BP agent requested the assistance of the Sheriff. When Deputy 5

arrived on scene, the complainant was sitting in his vehicle, with the driver side door open. Relevant case law, per the Peace Officers Legal Sourcebook, Section 2 titled, Search and Seizure Persons, states in part, You can base a detention on information you receive from an eyewitness, victim, police officer, dispatcher, or if accurate other "official channels" because the law generally considers such persons or sources to be automatically reliable. When Deputy 5 approached the complainant's car, the complainant closed and locked the door. Deputy 5 attempted to talk with the complainant, however, the complainant would not respond. Deputy 5 Body Worn Camera (BWC) captured the interaction. Deputy 5 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. The evidence showed that the alleged conduct did occur and was lawful, justified and proper.

2. Illegal Search and Seizure – Deputy 5 seized the complainant's cell phone.

Recommended Finding: Action Justified

Rationale: The complainant stated, "Because of the large amount of cops behind me, surrounding my vehicle I pulled out my cell phone to record them. Till this day they are denying me my right to recover it." Body Worn Camera (BWC) video captured the entire incident and there was no evidence observed on the video footage that showed the complainant videoing. Initially, the complainant had his cell phone on the car dash with loud music playing. The complainant was observed a few times with his phone in his hand, however, not videoing the deputies. The complainant's smart phone was seized as evidence as documented in the Arrest Report. SDSO P&P Section 6.29 titled, Property Control System, states in part, The Property/Evidence Manager is designated to assume custody of all physical evidence and found property acquired by the Sheriff's Department. The Property/Evidence Manager is responsible for the accountability, preservation, safeguarding and disposition of all property/evidence delivered to him/her. According to a Sheriff Department Information Source, the complainant's cell phone was not releasable as the case has not yet cleared the courts and it is still in evidence. The evidence showed there was no violation of policy, and the actions that occurred were lawful, justified and proper.

3. Misconduct/Procedure – Deputy 5 stopped the complainant from closing his car door.

Recommended Finding: Action Justified

Rationale: The complainant stated, "I started getting really hot so I opened my driver side door to get some air. In less than one minute Deputy 5 seeped in between me and my door & told me, I am not going to let you close the door." After further discussion with the BP agents and the arrival, on scene, of Deputy 6, Deputy 5 approached the complainant for the second time. According to his Officer's Report, Deputy 5 planned to assess the complainant's well-being. In his report, Deputy 5 provided that he stood in the door well and placed his left hand on the door so the complainant could not close it. As Deputy 6 stood next to him, Deputy 5 asked the complainant, "Are you okay right now? Do you need our help?" The complainant stated, "I need a bullet in between my eyes." BWC footage captured the interaction, with audio, between the complainant and Deputy 5. The complainant appeared upset and agitated, as he yelled and cried, about how he wanted to die. Deputy 5 provided information during the course of CLERB's investigation that was also considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

4. Misconduct/Intimidation – Deputies 5 and 6 considered placing the complainant on a "5150 hold" (mental health).

Recommended Finding: Action Justified

Rationale: The complainant stated, "He [Deputy 5] told Deputy 6 he wanted to place me on a 5150 hold." According to his Officer's Report, Deputy 5, reported, based on the complainant's behavior and statements, he advised Deputy 6 that he was going to place the complainant on a 5150 hold. California Welfare & Institutions Code WIC§ 5150, states in part, when a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, designated members of a mobile crisis team, or professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and

crisis intervention. Deputy 5 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. BWC captured the event and corroborated the written statements regarding the complainant's erratic/unstable behavior and actions. The evidence showed that there was no violation of policy, and the actions that occurred were lawful, justified and proper.

5. Misconduct/Procedure – Deputy 5 “neglected” to call the Psychiatric Emergency Response Team (PERT) to the scene.

Recommended Finding: Action Justified

Rationale: The complainant stated, “He [Deputy 5] told Deputy 6 he wanted to place me on a 5150 hold but he neglected to tell me that, instead of calling the PERT team after doing a background check.” According to Sheriff's Department records, another deputy requested PERT assistance and was informed by the Sheriff's Communication Center that PERT was not available. SDSD Patrol Procedures Manual Policy 23 titled, Psychiatric Emergency Response Team (PERT), states in part, the responding deputies after their initial assessment may request through dispatch the assistance of an available PERT Team. Should the PERT team not be available for response and the situation is not considered critical, the deputy may submit a referral form for PERT follow-up. Deputy 5 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. The evidence showed that PERT was requested but unavailable and those actions were lawful, justified and proper.

6. Excessive Force – Deputy 5 “placed his hands” on the complainant and “pushed him.”

Recommended Finding: Action Justified

Rationale: The complainant stated, “Deputy 5 making me feel very uncomfortable & extremely overwhelmed I sensed hostility instantly he placed both his hands on my left arm & pushed me. I reacted I grabbed my spray with my right hand & sprayed him.” According to his Officer's Report, Deputy 5 asked the complainant to step out of his vehicle and advised the complainant that he wanted to get him some help. The complainant would not comply, and instead, reached for a can of Bear Pepper Spray, that was between the driver seat and the door well. BWC video captured the struggle that ensued, as both Deputy 6 and Deputy 4 stepped in to assist Deputy 5. The complainant sprayed all three deputies in the face with his Bear Pepper Spray Canister. Deputy 5 Officer's Report indicated, because of the OC spray he was unable to see, so in an attempt to gain control of the complainant, he pushed him to try and place him off balance. SDSD P&P Addendum Section F titled, Use of Force Guidelines, states in part, Deputies shall not lose their right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or overcome resistance (per 835(a) P.C.). Additionally, California Penal Code PC§ 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. Deputy 5 provided additional information, in response to CLERB questions, 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. The incident was captured on BWC video and the evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

7. Illegal Search and Seizure – Deputy 6 shattered the complainant's car window.

Recommended Finding: Action Justified

Rationale: The complainant stated, “Deputy 6 hit my window, shattering it to pieces.” BWC video captured the incident and showed immediately after the complainant sprayed the deputies, he was able to re-enter his vehicle and he closed and locked the door. In his Use of Force Report, Deputy 6 stated, “Fearing that the subject was going to produce another weapon, I used my expandable baton to break the driver's side front window of the vehicle. I immediately began to order him to show me his hands and exit the vehicle. The Peace Officers Legal Sourcebook Section 2 titled, Search and Seizure Persons, states in part, during a lawful detention, officers are "authorized to take such steps as [are] reasonably necessary to protect their personal

safety.” The BWC video evidence along with Deputy 6’s Use of Force Report showed the actions of Deputy 6 were handled per policy and were lawful, justified and proper.

8. Excessive Force – Deputy 4 released his K-9 on the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated, “The asshole deputy K-9 [Deputy 4] released his Partner after me with the order to bite me after he was consciously aware I had a large blade in my hand.” SDS D P&P Addendum Section F titled, Use of Force Guidelines, states in part, Law enforcement trained canines are a viable force option and utilized for deputy protection and to apprehend armed suspects. In his Officer’s Report, Deputy 4 documented that based on the complainant’s actively spraying deputies and refusing to obey simple commands he retrieved his K-9 partner. Per his report and as evidenced in the BWC video, he gave verbal canine announcements, alerting the complainant he would release his K-9 if he did not exit his vehicle with his hands up. The complainant refused to follow orders, and not knowing if he had any other weapons, Deputy 4 deployed his K-9. Once the K-9 made contact with the complainant, the complainant brandished a knife and stabbed the K-9 on the head/face area, which then alerted deputies that the complainant did have additional weapons. Deputy 4 called off his K-9, however the complainant continued to resist lawful commands to exit his vehicle. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

9. Excessive Force – Deputy 6 sprayed the complainant with Oleoresin Capsicum (OC) spray.

Recommended Finding: Action Justified

Rationale: The complainant stated, “Deputy 6 instantly sprayed me 3 times for 5 seconds each time.” SDS D P&P Section 2.49 titled, Use of Force, states in part, Employees shall not use more force in any situation than is reasonably necessary under the circumstances. Additionally, SDS D Addendum Section F titled, Use of Force Guidelines, states in part, Peace officers may use non-lethal chemical agents in an offensive manner. They may deploy OC where their presence and verbal commands have been ineffective. In his Officer’s Report, Deputy 6 reported that he produced his department issued OC spray, and in an attempt to get the complainant to drop the knife, he sprayed him, three times, each burst for approximately five seconds. Deputy 6 reported the OC spray appeared to have minimal effect, and the complainant refused to follow his commands. As he holstered his OC spray, Deputy 6 reported the complainant produced a handgun. In the BWC video, faint shots are heard and Deputy 6 wrote in his report, when the shots were fired he immediately realized it was a pellet gun and alerted his partners as such. BWC video captured the complainant’s continued refusal to follow lawful commands issued by Deputy 6 and other deputies. The evidence showed the alleged conduct did occur and was lawful, justified and proper.

10. Illegal Search and Seizure – Deputy 5 broke the complainant’s car windows.

Recommended Finding: Action Justified

Rationale: The complainant stated, “In my moment of distress and anguish I moved to the passenger window they broke that one too, I then moved to the back & they broke the back windows too.” SDS D Patrol Procedures Manual Policy 1 titled, Use of Discretion, states in part, When Deputies are faced with a situation where discretion can be exercised, they must evaluate the circumstances, consider the available resources, and rely on their training, Sheriff’s Department policies and procedures, statutory law, information-led policing, and supervision in making the appropriate decision. Additionally, per the Peace Officers Legal Sourcebook Section 2 titled, Search and Seizure Persons, During a lawful detention, officers are “authorized to take such steps as [are] reasonably necessary to protect their personal safety.” As evidenced in the BWC video footage, the complainant refused to follow issued lawful commands to show his hands and exit the vehicle. The evidence showed that Deputy 5 exercised discretion and acted per policy. His conduct was lawful, justified and proper.

11. Excessive Force – Deputies 1, 3 and 4 used less lethal munitions on the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated, “They procided by shotting me with bean bags, rubber bullets pepper-balls. They blew up my lips by shotting me in the mouth, 12 pepper balls in the chest.” SDSD P&P Addendum Section F titled, Use of Force Guidelines, states in part, Less lethal specialty munitions are projectiles used to stop assaultive behavior which, if not stopped, may result in injury or death. Generally, it is the intent of law enforcement to use this type of munition to increase the chances of not having to use lethal force. Trained personnel may use less lethal munitions as deemed reasonable and necessary based upon the circumstances of the incident. Additionally, SDSD P&P Section 6.48 titled, Physical Force, states in part, It shall be the policy of this Department whenever any Deputy Sheriff of this Department, while in the performance of his/her official law enforcement duties, deems it necessary to utilize any degree of physical force shall only be that which the Deputy Sheriff believes necessary and objectively reasonable to effect the arrest, prevent escape or overcome resistance. According to SDSD Use of Force Reports, completed by the involved deputies, the complainant refused to exit his vehicle after repeated lawful commands to do so. Deputy 1 reported that he deployed two less-lethal super sock rounds that struck the complainant on his left arm. Deputy 3 reported that he deployed the pepper ball launcher twelve times and aimed at the complainant’s chest, however, at the same time, Deputy 2 deployed the Taser which caused the complainant to move his body and some of the pepper balls struck the complainant in the face. Deputy 4 reported that the force used on the complainant was necessary and utilized to attempt to apprehend the complainant who physically assaulted deputies with OC spray, was armed with a knife, air soft gun and was refusing to obey lawful commands. Photographs taken of the complainant and the BWC videos confirmed that the complainant was struck in the face/lips, however, the preponderance of evidence showed that the actions of the deputies were lawful, justified and proper.

12. Excessive Force/Taser – Deputy 2 shot the complainant with a “TASER” (Conducted Energy Device-CED).

Recommended Finding: Action Justified

Rationale: The complainant stated, “To finish me off, shot me with the taiser.” Addendum Section F titled, Use of Force Guidelines, states in part, 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 subject’s force level. The CED is a less lethal, electronic control device that is extremely effective for temporary immobilization of subjects. As a force option, the CED shall only be used as a means of subduing and gaining control of a subject displaying assaultive behavior. In his Use of Force Report, Deputy 2 provided that the complainant had been given many warnings to comply with deputies commands to drop the weapons and exit his vehicle, however, he continued to refuse commands and when the complainant raised the pellet gun toward deputies, Deputy 2 deployed the Taser. The evidence confirmed Deputy 2 deployed two CED cartridges for five seconds each, but only one of those cartridges made contact. The evidence showed that Deputy 2’s deployment of the Taser was lawful, justified and proper.

13. Misconduct/Procedure – Deputies 1- 5 and/or 6 refused to “rinse off” the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated, “I was begging them to rinse me off, just please rinse me off they refused.” SDSD Addendum Section F, states in part, it is the responsibility of the deputy deploying non-lethal chemical agents to ensure that appropriate decontamination measures are undertaken as soon as practical after application. The subject should be handcuffed prior to decontamination. Move the subject to an uncontaminated area. Flush the face with cool water. After deputies handcuffed the complainant, he was moved from the contaminated area to a patrol vehicle to await emergency response. A spit sock was applied to protect deputies from the complainant’s blood/saliva (or bodily fluids). SDSD Addendum Section F, states in part, because of the inherent health risks, deputies may deal with spitting assaults / attacks on persons or property by use of a department approved “Spit Sock.” When placed over a subject’s head and face, neither vision nor breathing is impaired; however, saliva will not penetrate the material. In his Officer’s Report, Deputy 1 stated, “the force used when placing the spit sock on the complainant was necessary to avoid the complainant spitting his blood and other bodily fluids at deputies and fire personnel.” In his Officer’s Report, Deputy 6 reported that the complainant suffered what appeared to be non-life threatening injuries from the incident and transported to the hospital for further evaluation and treatment. The evidence showed the alleged act or conduct did occur and was lawful, justified and proper.

14. Misconduct/Procedure – Deputies 1- 5 and/or 6 refused to provide the complainant with medical attention.

Recommended Finding: Unfounded

Rationale: The complainant stated, “They gave me zero medical attention just to make me suffer even more.” Following the use of force, in which the complainant sustained non-life threatening injuries, emergency medical personnel were summoned to provide care and to transport the complainant to the hospital. SDDS P&P Addendum Section F titled, Use of Force Guidelines, states in part, all suspects will be transported to a medical facility for booking clearance after all probe or drive stun applications and removal of the CED probes, and whenever a subject is struck by a specialty munition, first aid will be administered, if necessary. Sheriff Communication Center (CAD) records confirmed deputies summoned emergency medical personnel approximately nine minutes prior to apprehending the complainant. After the complainant was handcuffed, it was approximately four minutes until deputies cleared medical personnel to enter the scene. Once on scene, it was approximately 23 minutes for medics to clear the scene en route to the hospital. Medical decisions/care (or lack thereof) was provided by health care personnel over whom CLERB has no jurisdiction. The evidence showed that the alleged act or conduct did not occur.

20-043

1. Discrimination/Gender – Unidentified deputies issued inappropriate garments to the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant reported, “*Since my incarceration on 02-01-2020, I feel that I am being discriminated against based on my gender. I am transgender and I have not been issued the appropriate undergarments; I have been given briefs, instead of panties.*” According to the SDDS DSB P&P Section L.1 titled “Laundry Schedule,” upon request, transgender and intersex inmates will be given jail issued undergarments that match with their gender identity (e.g., female undergarments for a transgender female inmate or male undergarments for a transgender male). According to the policy, dated 01-17-20, inmates are permitted to obtain the undergarments that match with their gender identity. The purpose of SDDS DSB P&P Section R.13 titled “Transgender, Intersex, and Non-Binary Inmates,” is to ensure decisions regarding the searching, housing, programming, and in-custody services such as clothing, commissary and toiletries are applied in a manner consistent with an inmate's declared gender identity. It is the policy of the SDDS to receive, evaluate, house, and provide secure, safe and humane custody of all persons, including transgender, intersex and non-binary which are committed or held for confinement by the Sheriff until their lawful and appropriate release. In section VI of the policy, titled “Hygiene, Commissary, and Inmate Clothing,” transgender, intersex or non-binary inmates will be given jail-issued clothing that matches their gender identity (e.g. female undergarments for a transgender female inmate or male undergarments for a transgender male), upon request. According to SDDS P&P Section 2.53 titled “Discrimination,” employees shall not express any prejudice or harassment concerning race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, pregnancy, marital status, gender, age, political beliefs, sexual orientation, lifestyle or similar personal characteristics. Without a specific date or named deputy to investigate, CLERB was unable to identify a specific incident where the complainant was issued inappropriate garments. There was insufficient evidence to either prove or disprove the allegation.

2. Discrimination/Gender – Unidentified deputies refused to allow the complainant to order cosmetic items on commissary.

Recommended Finding: Not Sustained

Rationale: The complainant reported, “*Since my incarceration on 02-01-2020, I feel that I am being discriminated against based on my gender. I am not permitted to purchase make-up from commissary like other inmates.*” According to SDDS DSB P&P Section T.9 titled “Sheriff's Commissary,” the purpose of the policy is to enable inmates to purchase certain personal items, snacks and stationery, and provide consistent procedures for the operation of the Sheriff's Commissary. The purpose of SDDS DSB P&P Section R.13 titled “Transgender, Intersex, and Non-Binary Inmates,” is to ensure decisions regarding the searching,

housing, programming, and in-custody services such as clothing, commissary and toiletries are applied in a manner consistent with an inmate's declared gender identity. In section VI of the policy, titled "Hygiene, Commissary, and Inmate Clothing," transgender, intersex or non-binary inmates will be allowed to order available commissary items in accordance with their gender identity. The policy indicates that the Sheriff's Department has a policy and procedure in-line that enables all inmates, regardless of their gender identify, to purchase commissary items, including cosmetic items. According to SDSD P&P Section 2.53 titled "Discrimination," employees shall not express any prejudice or harassment concerning race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, pregnancy, marital status, gender, age, political beliefs, sexual orientation, lifestyle or similar personal characteristics. Without a specific date or named deputy to investigate, CLERB was unable to identify a specific incident where the complainant was unable to order cosmetic items on commissary; there was insufficient evidence to either prove or disprove the allegation.

3. Discrimination/Gender – Unidentified deputies limited the housing options available to transgender inmates.

Recommended Finding: Action Justified

Rationale: The complainant reported, "*Since my incarceration on 02-01-2020, I feel that I am being discriminated against based on my gender. There is limited housing for people of transgender. We are confined to three modules at the Vista Detention Facility, instead of being allowed to reside at other jails.*" The Prison Rape Elimination Act (PREA) Resource Center reports that research has shown that lesbian, gay, bisexual, transgender, and/or intersex (LGBTI) people face a higher risk of sexual victimization in confinement. The Resource Center cited Bureau of Justice Statistics surveys which found that adults and youth in confinement who identify as lesbian, gay, or bisexual were much more likely to have experienced sexual victimization by another inmate than their heterosexual counterparts. Further investigation revealed that transgender inmates are more vulnerable to sexual victimization. To protect this population, the Sheriff's Department implemented PREA procedures in April 2014, with publication of SDSD P&P Section 6.127 titled, "Prison Rape Elimination Act." SDSD P&P Section 6.127, is in conformance with PREA requirements, wherein Classification deputies are directed to ask detainees for their own perception of vulnerability during intake. As a safety precaution, transgender inmates in Sheriff's custody have been assigned protective custody status. Classification deputies had accommodated the complainant's housing requests during her incarceration. The complainant was individually assessed and placed in the most suitable housing unit, with consideration to her needs and their ability to maintain facility security. The evidence showed that the complainant, and transgender inmates, have been classified as required by PREA and the Department's Policies and Procedures. According to jail documents, at the time of the written complaint, the complainant had been incarcerated for less than two months, and in that timeframe, she been assigned to only one specialized housing unit: general population Protective Custody at the Vista Detention Facility. According to SDSD P&P Section 2.55 titled "Non-Biased Based Policing," employees may take into account a reported descriptor such as race, ethnicity, religion, national origin, sexual orientation, gender, or lifestyle of a specific suspect or suspects based on credible, reliable and relevant information that links a person(s) of a specific descriptor to a particular criminal incident(s). In a custodial setting, appropriate consideration of race, ethnicity, origin, sexual orientation, and gender may be used for purposes of housing, classification, transportation or any other matters affecting the status of a person in departmental custody when necessary for the safety and security of the person or the facility. On 07-06-20, the Department updated its P&P Section 2.55, include a number of updates and additions, to include the following: "In a custodial setting, appropriate consideration of race, ethnicity, origin, sexual orientation, and gender may be used for purposes of housing, classification, transportation or any other matters affecting the status of a person in departmental custody when necessary for the safety and security of the person or the facility." According to SDSD DSB P&P Section R.11 titled, "Inmate Facility Assignment Criteria," the Department established guidelines which were meant to clarify the basic inmate housing criteria each facility can accommodate. Inmates are assigned to the seven various facilities based on their individual housing needs and criteria. The Jail Population Management Unit (JPMU) completes the inmate screening. After the inmate has been assessed, and assigned any applicable hazards, the inmate is assigned to an appropriate housing area. According to SDSD DSB P&P Section R.13 titled, "Transgender, Intersex, and Non-Binary Inmates, upon identifying an individual as transgender, intersex or non-binary, based on the inmate's response to the gender identity intake screening question, medical staff will immediately notify the Jail Population Management Unit (JPMU). JPMU will respond immediately to conduct an individualized housing assessment with the inmate.

JPMU staff will be consulted to determine individualized housing assignments for all transgender, intersex or non-binary inmates in custody. JPMU staff will use the information obtained from the J-350 form along with other factors, such as the inmate's safety, the safety of other inmates and the safety of staff to determine the most suitable housing assignment. An inmate's own views with respect to their safety shall be given serious consideration. In deciding whether to assign a transgender, intersex or non-binary inmate to a facility for male or female inmates, and in making other housing and programming assignments, the department shall consider, on a case-by-case basis, whether the placement would ensure the inmate's health and safety and whether the placement would present a security risk to the inmate. Additionally, in subdivision titled, "Screening for Risk of Sexual Victimization and abusiveness," lesbian, gay, bisexual, transgender or intersex (LGBTI) inmates will have housing and programs assigned by individual assessment. LGBTI inmates will not be classified into facilities or housing units solely based on their identification as LGBTI, unless such a dedicated unit exists for the purpose of protecting such inmates. At the time of the complaint, the complainant was housed at the Vista Detention Facility (VDF). Though the San Diego Central Jail, George Baily Detention Facility, Las Colinas Detention and Re-Entry Facility, South Bay Facility, and the VDF all housed Protective Custody inmates, only the VDF housed those inmates who identified an individual as transgender, intersex or non-binary in a dorm style housing unit. The evidence showed that the alleged act or conduct did occur, and it was lawful, justified and proper.

4. Misconduct/Procedure – The San Diego Sheriff's Department restricted razor use to inmates.

Recommended Finding: Action Justified

Rationale: The complainant alleged, "*Sheriff William D. Gore restricted razors due to COVID-19 with the exception of trustees [inmate workers]. Being a full-time transgender on estrogen with breast, mental health staff and myself find his current practice unjust. Passing out razors [is] no more of a threat than his deputies not being mandated to wear masks... Transgenders are being made to grow full facial hair, breast-chest hair. This is causing severe depression throughout the transgender population.*" The COVID-19 situation rapidly evolved, and based on information and mandates provided and issued at the Federal, State and local levels, the Department initiated department wide operational changes. One of the changes implemented was a phase plan. The SDSO outlined phases that were developed to maintain safety and consistency within the jail's operations during the current COVID-19 situation. One of the decisions the Department made was to minimize contact between inmates/inmates and deputies/inmates. For this reason, precautionary measures were taken, including changes made to some Title 15 mandates. At the time of the complainant's complaint, the Department was operating at Phase One. Within a month, they progressed to Phase Two, and subsequently to Phase Three. One of the many decisions made was that razors were only to be distributed to inmate workers, and those inmates who had court the next day. Eventually, by Phase Three, razor exchange was suspended all together. As outlined in the Department's Detention Services Bureau (DSB) In-Service Training Unit Training Bulletins, rapid changes were made department wide in dealing with the COVID-19 pandemic. The evidence shows that the alleged act or conduct did occur, and it was lawful, justified and proper.

5. Misconduct/Procedure – The San Diego Sheriff's Department did not require detention deputies to don masks.

Recommended Finding: Action Justified

Rationale: The complainant reported, "*Passing out razors [is] no more of a threat than his deputies not being mandated to wear masks being they are more prone to bring inmates COVID-19 due to them coming and going to and from the facilities.*" In an Inter-Departmental correspondence from Assistant Sheriff to all DSB staff, dated 03-20-20, it was explained that the COVID-19 situation rapidly evolved, and based on information and mandates provided to the Department at that time, issued from Federal, State and local levels, the Department initiated department wide operational changes. One of the changes implemented was a phase plan. The SDSO outlined phases that were developed to maintain safety and consistency within the jail's operations during the current COVID-19 situation. At the time of the complainant, dated 02-01-20, the Department had not yet implemented any operational changes. The Department initiated departmental wide operational changes regarding COVID-19 starting on 03-20-20. As such, and based on the information provided and available at that time, detention deputies were not yet required to don

mandatory PPE (N-95 masks, glasses/goggles, gloves). The evidence showed that the alleged act or conduct did occur, and it was lawful, justified and proper.

20-053

1. Illegal Search and Seizure – Sheriff Gore ordered a search of the complainant’s property.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, “Mr. Gore, having first-hand knowledge and accepting the status and standing of the foreign TRUST and my foreign ESTATE TRUST, ordered SWAT to raid the property.” CLERB maintains no authority over the actions of Sheriff Gore, an elected official. Additionally, a records request submitted to the Sheriff revealed that the alleged search at the complainant’s residence was initiated and conducted by members of the District Attorney’s (DA) office. As members of the DA are not sworn personnel employed with the Sheriff or Probation Departments, CLERB lacks jurisdiction to investigate the complaint, per CLERB Rules and Regulation 4.1 Complaints: Authority. Pursuant to the Ordinance, CLERB shall have authority to receive, review, investigate, and report on complaints filed against peace officers or custodial officers employed by the County in the Sheriff’s Department or the Probation Department. The Review Board lacks jurisdiction.

2. Misconduct/Procedure – Internal Affairs failed to respond to the complainant.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, “These affidavits were submitted to internal affairs on 3/9/2020 and 4/4/2020 with no response, non-performance.” A records request submitted to the Sheriff revealed that the Sheriff had no records to provide to CLERB, and reported that the DA’s office handled the investigation and not the Sheriff. As the DA are not sworn personnel employed with the Sheriff or Probation Departments, CLERB lacks jurisdiction to investigate the complaint, per CLERB Rules and Regulation 4.1 Complaints: Authority. Pursuant to the Ordinance, CLERB shall have authority to receive, review, investigate, and report on complaints filed against peace officers or custodial officers employed by the County in the Sheriff’s Department or the Probation Department. The Review Board lacks jurisdiction.

20-073

1. Discrimination/Racial – Deputies 1-4 treated a black male differently from a white male.

Recommended Finding: Action Justified

Rationale: The complainant forwarded a video that was taken on June 13, 2020 in Lemon Grove, CA. where a protest took place. “As the protesters came near a park on School Lane and Center Avenue, a young White male spoke out loudly saying ‘I hope that they don’t come here with this Black Lives Matter shit.’ A young Black male spoke to the White male and said ‘what do you mean man’. The complainant was told the White male begin calling the Black male the nigger word. This argument started a fight between the 2 of them. I’m told the White male stroke 1st the Black male. Four sheriff officers on bikes came to the scene because they were nearby. I believe they may have been assigned to the protest. Three officers I’m told taser the Black male, held him down on the ground face down on hot pavement and handcuffed him. The Black male begin to tell them he was having difficulty breathing and his heart was hurting. The witnesses said the officers never taser the White male not one time.” Deputies on a Special Detail Bike Patrol observed a verbal confrontation that progressed into a physical altercation. Body Worn Camera (BWC) evidence confirmed that deputies intervened, tasered a black male, placed both men prone on the ground for handcuffing, then separated each for questioning. The two parties offered different accounts of what led up to the altercation and witness statements corroborated different aspects of the conflicting statements. Deputies determined the black male was the dominant aggressor based upon their observations and his own admission of holding the victim by his hair and throat. Deputies issued commands for the black man to “let go,” but he failed to comply. As it was not heard on BWC audio, which is delayed by 30 seconds, it was unknown whether deputies announced

their presence to two combatants who were actively involved in a physical altercation. The black man reported he did not let go because he was unaware deputies were on scene and “thought he was getting jumped.” Neither of the men desired prosecution and were released. Fire Department personnel responded to the scene and assessed the black male who refused further medical treatment. The BWC evidence confirmed that the men were treated differently based upon their conduct and the ensuing actions of the deputies were lawful, justified, and proper.

2. Excessive Force/Taser – Deputy 4 “tasered” a black male.

Recommended Finding: Action Justified

Rationale: This was a third party complaint with no association to the involved parties. The complainant was told by witnesses at a protest that three deputies tasered a black male multiple times. A Taser or Conducted Energy Device (CED) is an “intermediate” force option that produces 50,000 volts of electricity that cause involuntary muscle contraction and temporarily incapacitates a subject. As a force option, the CED shall only be used as a means of subduing and gaining control where there is an immediate threat justifying an intermediate level of force. Use of the CED shall be restricted for use under circumstances where it is deemed reasonable and necessary to minimize the potential for human injury. Deputies on a special enforcement bike patrol overheard and observed a verbal altercation between two male subjects who were yelling profanities at each other. As deputies approached, the males began to hit one another with their fists. Six citizens attempted to pull the two fighters apart. Deputies gave verbal commands to “let go, let go” and attempted to separate the males, but the black male pulled the white males hair violently causing them to fall to the ground and would not release his grip on the victims hair and throat. Deputy 4 reported that after observing the dominant aggressor and in an attempt to immediately stop his assaultive behavior toward the victim, he made the decision to deploy his department issued CED. Due to the close proximity, he anticipated deploying both cartridges from the CED to effectively achieve neuromuscular incapacitation (NMI). Deputy 4 deployed the first cartridge toward the suspect’s chest area with successful contact made, but it was unsuccessful in achieving NMI. He simultaneously aimed the CED toward the suspect’s buttocks area as he turned around and deployed the second cartridge from the CED. The second cartridge successfully contacted the suspects right buttocks and achieved NMI. Deputy 4 reported he only deployed one simultaneous, five (5) second electrical cycle with both cartridges from his CED. After the suspect landed on the ground, he was detained in handcuffs. Body Worn Camera (BWC) and the Taser download evidence corroborated the reported information. The evidence showed that the conduct that occurred was within policy.

3. Illegal Search & Seizure – Deputies 2 and 3 restrained a black male.

Recommended Finding: Action Justified

Rationale: The complainant reported she was told by protest witnesses that deputies held a black male facedown on the hot pavement and handcuffed him. A “seizure” of a person occurs when a peace officer physically applies force or when a person voluntarily submits to a peace officer’s authority. A detention may not last longer than is necessary to resolve the circumstances that justified its initiation. Body Worn Camera (BWC) evidence corroborated that both males were placed prone on the ground and handcuffed. The victim was subsequently led away from the scene and placed sitting on a transformer box on the sidewalk. In compliance with policy following a taser application, the suspect was rolled onto his side into a recovery position. When he complained about the hot pavement, he was assisted into a sitting and then standing position. Deputies obtained statements and then released both males. The evidence showed the conduct that occurred was lawful, justified and proper.

4. Misconduct/Procedure – The San Diego Sheriff’s Department (SDSD) failed to document/record an excessive force incident on 06-13-20.

Recommended Finding: Unfounded

Rationale: The complainant reported she called the Lemon Grove Sheriff’s Station and spoke to several dispatchers to obtain the names of the officers and the Black male who was tasered. When no one called her back she called again and said there was no report filed nor could she get an event number of the incident. “Nothing to my understanding is on file.” The complainant did not provide identifying information for whom Communication records, Deputy reports and Body Worn Camera (BWC) evidence documented this

event that occurred on 06-13-20, in Lemon Grove. The evidence proved that the event was documented/recorded and there was no failure by SDSD.

NOTE: Potential misconduct discovered through the course of investigation included: 1) There was insufficient evidence to determine if Deputies 1-4 announced their presence. 2) Deputy 4 neglected to have his Body Worn Camera (BWC) "due to an oversight." 3) Deputy 1 failed to activate BWC until after a use of force. Policy states that the record mode of the camera should be activated prior to actual contact with a citizen and/or prior to arrival to an incident if the call has the potential to involve immediate enforcement action upon arrival. These issues discovered through the course of CLERB's investigation were referred back to the Sheriff's Department for review.

20-074

1. Illegal Search & Seizure – Deputies 1-6 "broke into," searched the complainant's apartment, and confiscated his weapons.

Recommended Finding: Action Justified

Rationale: The complainant stated, "On 18 Mar 2020, my girlfriend was intoxicated and punched holes in the apartment. She also smashed many items inside the residence. On 19 Mar 2020, my girlfriend called the San Diego Sheriff's Department to file a false police report. Deputy 5 arrived on location on or around 6:25 pm with a pre-signed Restraining Order and order to confiscate weapons which orders were not signed. Documents were presented w/in 15 minutes of arrival. Four of the Deputies broke into my apartment and searched the premises, confiscating 2 fire arms. 1 x 16 mm handgun & 1 x 12 gauge shotgun. Both were removed from the home." Both the United States and California Constitutions guarantee everyone the right to be free from unreasonable governmental intrusion. It is illegal for a peace officer to physically enter into an area where a person has a "reasonable expectation of privacy" in order to conduct a search or for the purpose of seizing something, unless you have a warrant; or an emergency or exigent circumstances exist; or you have obtained a valid consent. On 03-23-20, the complainant's girlfriend called 911 to report domestic abuse when the complainant locked her out of their residence following an argument. The complainant refused to cooperate and would not allow deputies access. The girlfriend/victim provided consent and deputies entered the residence and detained the complainant. The complainant told deputies that the government was trying to "poison him and steal his inventions." According to Communication records, Deputy reports dated 03-23-20, and Body Worn Camera (BWC) evidence, the victim had control/custody of the apartment where the complainant resided and permission was provided to law enforcement to enter, therefore a warrant was not needed. However, a judge granted an emergency protective order which then mandated deputies to take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present. Two guns were confiscated pursuant to PEN§ 18250(a)-Temporary Taking of Weapon at Domestic Violence Scene, for the safety of all and were available 48 hours after the seizure. The evidence showed that the alleged acts or conduct did occur and were lawful, justified and proper.

2. False Arrest – Deputy 5 arrested the complainant based on a "false" police report.

Recommended Finding: Action Justified

Rationale: The complainant stated, "On 18 Mar 2020, my girlfriend was intoxicated and punched holes in the apartment. She also smashed many items inside the residence. On 19 Mar 2020, my girlfriend called the San Diego Sheriff's Department to file a false police report." The Domestic Violence Prevention Act is designed to prevent the recurrence of acts of violence and to provide for a separation of the persons involved in domestic violence for a period sufficient to enable them to seek a resolution of the causes of the violence. On 03-22-20, the complainant's girlfriend contacted 911 to report domestic violence. She stated she was awoken by the complainant who said "the government was trying to kill him." When she attempted to leave the room, the complainant pushed her against a wall, which she punched in frustration. PEN§ 836-Peace Officer Arrests, states if a suspect commits an assault or battery upon a current or former cohabitant, a peace officer may arrest the suspect without a warrant when the peace officer has probable cause to believe that

the person to be arrested has committed the assault or battery, whether or not it has in fact been committed and the peace officer must make the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed. The evidence showed that the complainant's arrest was lawful, justified and proper.

3. Discrimination/Gender- Deputy 5 deemed the male complainant as the aggressor.

Recommended Finding: Action Justified

Rationale: The complainant stated, "The officer also stated based upon my physical sex it was I who should be locked up & generally it is the male who is locked up during such an event: Harassment/Discrimination based on sex." The complainant's girlfriend provided a statement to deputies in which she reported the complainant pushed her against a wall to prohibit her from leaving. The complainant invoked his right to counsel and did not provide a statement. There was no evidence to support that the complainant was discriminated against based on his sex. The arrest was based on the complainant's actions, not his sex, and it was lawful, justified and proper.

4. Misconduct/Procedure - Deputy 5 did not mirandize the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated, "Deputy 5 was the arresting officer on Duty. No Miranda Rights were read before entering the Cruiser handcuffs." The Fifth Amendment protects a suspect from self-incrimination and only applies during custodial interrogation by the police; both "custody" and "interrogation" must co-exist at the same time before Miranda advisements are required. "Absent 'custodial interrogation,' Miranda simply does not come into play." The Arrest Report notated that the complainant was not mirandized because he was uncooperative and requested a lawyer. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

5. Misconduct/Procedure – Deputy 5 denied the complainant's request for legal representation.

Recommended Finding: Action Justified

Rationale: The complainant stated, "Deputy 5 was the arresting officer on Duty. Upon request, access to legal representation was denied." The Arresting Officer (Deputy) is not responsible for ensuring legal representation for suspects. After subjects are booked into jail, they then have the ability to obtain legal representation. First they are searched, medically screened, photographed, fingerprinted; and their personal information and charges are entered into a computer system, for bail to be calculated, and a court date set. Those who are eligible, then have access to telephones to arrange bail with a list of bail agents available at each facility. Inmates not released on their own recognizance or who are unable to make bail, are given a classification interview and their housing criteria are determined. Inmates then have access to unlimited collect telephone calls to their attorneys during their leisure time, or the facility correctional counselor can also provide the inmate with various in-house and community legal resources. Deputy 5's denial was legal, justified and proper.

6. Misconduct/Procedure – Deputy 5 refused the complainant's verbal and/or written statement.

Recommended Finding: Action Justified

Rationale: The complainant stated, "Requests to give a written statement was also denied, both onsite and while at the County jail at 1173 Front St. San Diego 92101. Per case law, "A suspect (who is in "custody" and is being, or is about to be, "interrogated") may invoke his right to silence or his Miranda right to counsel at any time before or during an interview. Once he invokes either of these rights, the invocation must be "scrupulously honored," meaning that "the interrogation must cease." The Arrest Report notated that the arresting officer did not obtain the complainant's statement because he was uncooperative and requested a lawyer. Once the complainant invoked his right to legal representation deputies were lawfully unable to obtain the complainant's statement. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

7. Misconduct/Intimidation – Deputy 5 threatened the complainant to submit to a medical test.

Recommended Finding: Not Sustained

Rationale: The complainant stated, "Before admittance to the County jail, I was sent to UC San Diego Health @ 4251 Front St. San Diego, CA While Onsite, Deputy 5 requested if I would submit to a medical exam without a warrant. I refused. The officer increased intensity with his demands., stating no warrant was needed to perform medical test. I indicated to the officer and the examiner that I may have a gag reflex which may cause a sputum reflex or sneezing as a natural reflex. The officer increased intensity demanding the examination of the nasoendoscopy be performed without a warrant. I requested again a warrant. Deputy 5 began to use wording which caused me to fear for my life. He stated that he would physically assault me while performing the nasoendoscopy if I did not submit without a warrant. I asked him if he would call a 2nd deputy or submit to a Citizens arrest. Deputy 5 continued to affirm he would perform aggravated assault with a deadly weapon. He stated he would not submit to a citizens arrest, affirming that this procedure he performed regularly against the citizens of San Diego. He stated the other officers also used aggravated assault to encourage persons in custody to submit to the illegal practice of requiring medical procedures without a warrant." According to a Sheriff's News Release, individuals being booked into county jails are asked to take a COVID-19 test and the test is voluntary, as there is no legal authority requiring the test. According to medical records, the complainant was medically screened at the jail where it was notated he was symptomatic. He was then transported to a hospital where he initially refused treatment, but subsequently submitted to COVID-19 testing. Deputies are sensitive to patients' rights to privacy when in a hospital. The verbal exchange between the complainant and Deputy 5 was unrecorded and there was insufficient evidence to either prove or disprove that Deputy 5 "threatened" the complainant.

8. Misconduct/Procedure – Deputy 5 "disposed of evidence."

Recommended Finding: Unfounded

Rationale: The complainant stated, "Upon admittance to the precinct. Deputy 5 reviewed the law on his phone and threw the warrantless medical exam in the trash to hide the evidence. The exam was taken at UC San Diego 4251 Front Street. On 19 mar 2020." Sheriff's Policy 2.40-Abuse of Process/withholding Evidence, prohibits employees from destroying evidence. The complainant's hospital records dated 03-22-20, were a part of his SDSA case file, which were reviewed by CLERB. The complainant was found not to be credible in his recall of the date for this event and the conduct as alleged by the complainant did not occur as evidenced by the medical records.

9. Misconduct/Procedure – Unidentified deputies denied the complainant access to an attorney.

Recommended Finding: Not Sustained

Rationale: The complainant stated, "Once admitted, I was incarcerated for several days without being allowed to contact legal representation." Penal Code §851.5-Arrestee Phone Calls, states that immediately upon being booked and, except where physically impossible, no later than three hours after arrest, an arrested person has the right to make at least three completed telephone calls for legal representation. And Detentions Policy N.5-Access to Courts/ Attorneys/ Legal Advice, ensures that all inmates have the availability of unlimited collect telephone use for communication with their attorneys. According to his booking records, the complainant was incarcerated from 03-22-20 through 03-25-20. He was on Isolation protocol due to flu like symptoms and while awaiting a COVID-19 test result. The housing records verified the complainant was placed into a negative pressure cell equipped with a telephone. However, the telephone provider was unable to verify any phone calls associated with the complainant. The complainant had one scheduled visit that was a "no show" and there were no recorded professional visit(s). Facility records also confirmed that telephones were unavailable on 03-24-20. The evidence showed that the complainant did, and did not have access to a telephone while incarcerated; however there was no deputy misconduct associated with the events.

21-045

1. Criminal Conduct – A San Diego Police Department (SDPD) officer lied under oath.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, "Official-Attack. A purguring San Diego Police Officer, officially, under oath stated and spelled his name in San Diego Superior Court. The officer stated he personally verified one of the complainant's of an investigation by California DMV driver's licence. The officer's under oath statement is a official lie." As the allegations are not against a San Diego County Sheriff's deputy, nor a San Diego County Probation officer, CLERB lacks jurisdiction to investigate the complaint, per CLERB Rules and Regulation 4.1 Complaints: Authority. Pursuant to the Ordinance, CLERB shall have authority to receive, review, investigate, and report on complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department. The Review Board lacks jurisdiction. Therefore, this case is submitted for Summary Dismissal. The complainant was referred to the Commission on Police Practices (CPP), which investigates allegations of misconduct against officers employed by the City of San Diego.

2. False Reporting – A SDPD officer falsified documents.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, "Official verification will prove that the officer's under oath statement is a official lie including falsifying official inquiry." See Rationale #1.

End of Report