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

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

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

**REGULAR MEETING AGENDA**  
**Tuesday, August 10, 2021, 5:30 p.m.**  
**Remote Meeting via BlueJeans Platform**

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

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/cuccpjbjbc>. Please contact CLERB at [clerbcomplaints@sdcounty.ca.gov](mailto:clerbcomplaints@sdcounty.ca.gov) or 619-238-6776 if you have questions.

**3. MINUTES APPROVAL** (*Attachment A*)

**4. PRESENTATION/TRAINING**

a) N/A

## **5. EXECUTIVE OFFICER'S REPORT**

- a) Overview of Activities of CLERB Executive Officer and Staff
- 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. 19-018 / Thornton – Probation
  - ii. 20-014 / Pace – SDS
  - iii. 20-047 / Cheatom – SDS
- f) Policy Recommendation Response
  - i. 17-150 / Horsey – SDS (*Attachment E*)
  - ii. 18-150 / Morris – SDS (*Attachment F*)
  - iii. 19-091 / Brooks – SDS (*Attachment G*)
- g) Sustained Finding Pending Responses
  - i. None
- h) Sustained Finding Response
  - i. None
- i) Letter of Concern Pending Responses
  - i. None
- j) Letter of Concern Response
  - i. None

## **6. BOARD CHAIR'S REPORT**

## **7. NEW BUSINESS**

- a) Outside Counsel Retirement
- b) Detention Facility Inspection Handbook Draft (*Attachment H*)
- c) NACOLE Key Principles and Practices (*Attachment I*)
- d) Permission for CLERB Executive Officer to Rebut Media Articles / Editorials

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

**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 (4)**

**20-063**

- 1. Death Investigation/In-Custody Suicide – Joseph Earl Morton hanged himself by the neck in his cell at the Vista Detention Facility (VDF) on 05-17-20.

Recommended Finding: Not Sustained

Rationale: On 05-11-20, Joseph Earl Morton was arrested and booked into San Diego Sheriff Department (SDSD) custody at the Vista Detention Facility (VDF). At the time of his arrest, Morton made suicidal statements to the arresting deputies. Upon his booking into custody, arresting deputies alerted jail medical staff and intake deputies of the statements Morton had made. Morton reported, during the booking process, that he had been released the day prior from a psychiatric hospital, after being placed on a 5150 hold, for a suicide attempt. California Welfare and Institutions Code Section (WIC§) 5150 titled, In-custody 72-hour Treatment and Evaluation for Mentally Disordered Person, states in part, “When a person, as a result of a mental health disorder, is a danger to himself or herself, a peace officer, professional person in charge of a facility designated by the county for evaluation and treatment, 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.” During his intake screening, Morton was evaluated by a Qualified Mental Health Practitioner (QMHP). The QMHP determined Morton should be placed in the Enhanced Observation Housing (EOH) Unit, however, as low risk, based on, “He is not actively suicidal at the present time and does not have any plans.” SDSD DSB P&P Section J.5 titled, Inmate Suicide Prevention Practices & Inmate Safety Program, states in part, “Suicide risk

assessment for the Inmate Safety Program (ISP) will be conducted by the facility gatekeeper. The gatekeeper is a Qualified Mental Health Provider (QMHP), or assigned designee in their absence.” Additionally, DSB P&P Section J.4 titled, Enhanced Observation Housing, states in part, “Inmates who have been determined by the facility gatekeeper to warrant placement in the Inmate Safety Program (ISP) because they present an increased risk for suicide and who do not require placement in a safety cell, shall be temporarily housed in Enhanced Observation Housing for the purpose of receiving closer observation and assessment for permanent housing. Within 24 hours of placement into EOH, and every 24 hours thereafter, an inmate shall have a mental health consultation/evaluation by a QMHP to determine the inmate’s need for mental health services and their suitability for continued retention in the ISP.” On 05-12-20, Morton was re-evaluated by a QMHP and cleared from EOH to the Jail Population Management Unit (JPMU), based on, “Inmate denied suicidal ideation. He has hopefulness about future, has plans to return to rehab and desires to resume psych meds.” Morton was placed into a single occupancy cell for a seven-day mandatory quarantine, per COVID-19 protocol. After his release from EOH, jail records produced a documented incident, the same day, where Morton stated to a deputy that he was suicidal. Morton was escorted to the QMHP office for evaluation for possible placement back into EOH. Upon conclusion of the evaluation, the QMHP did not recommend placement back into EOH, based on Morton’s statements that he was “not suicidal,” and “that what he really wanted was to make some phone calls.” Jail phone log records documented that Morton made 43 phone calls between 05-11-20 and 05-17-20. 32 of those calls were to bail bond companies. The remaining calls were to his mother and girlfriend. Morton stated, to both his mother and girlfriend his intentions to “end it all,” if they did not bail him out. Jail records did not produce any evidence that Morton expressed any concerns about his mental or physical well-being to any member of the SDSD, sworn or professional, after his release from the EOH unit. On 05-17-20, SDSD records documented, at 6:55pm, as the last time Morton is seen on jail surveillance video, alive, at his cell window. Review of the jail surveillance confirmed this. SDSD DSB P&P Section I.64 titled, Safety Checks, requires deputies to look for obvious signs of medical distress, trauma or criminal activity with each inmate, every 60 minutes. SDSD records documented required safety checks were conducted at 7:40pm and 8:36pm. The 8:36pm safety check, although recorded on the jail Area Activity Summary Report, was unable to be confirmed through jail surveillance. During the course of the investigation, it was discovered that the video surveillance system was sporadically malfunctioning, which caused time lapses in the recorded video footage. The deputy that conducted the safety check, approximately one hour before Morton was discovered unresponsive, was not captured on video due to a lapse in recording. The deputy reported there was nothing obstructing his view into Morton’s cell, he observed Morton and did not see anything concerning. At approximately 9:40pm deputies discovered Morton, in his cell, unresponsive, with a blanket wrapped around his neck, tied to the bunk above his. Deputies immediately cut the blanket, began CPR, summoned jail medical staff and activated 911. Despite attempts at resuscitation by deputies, jail medical staff and paramedics, Morton failed to respond and his death was pronounced. The cause of death was due to hanging and the manner of death was suicide. Due to the video surveillance malfunctioning, CLERB was unable to confirm that the safety check conducted approximately one hour prior to Morton being found unresponsive, was completed as documented. Therefore, the evidence was insufficient to either prove or disprove an allegation of procedural violation, misconduct, or negligence on the part of Sheriff’s Department sworn personnel.

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## **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. Deputies 5 and 6 also provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. 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. Deputy 5 also provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. 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 SDDS 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.

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**20-075**

1. Illegal Search and Seizure – San Diego Police Officers searched the complainant’s apartment on 07-07-19.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, “A San Diego PD officer asked me, ‘can we search your apartment?’ I asked, ‘do you have a search warrant?’ He stated, ‘we have an arrest warrant.’ I replied, ‘that is not a search warrant, so no!’” CLERB Rules and Regulations Section 4.1 Complaints Authority, states, “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 that allege use of force, discrimination, improper discharge of firearms, Illegal search and seizure, false arrest, false reporting, criminal conduct, and/or misconduct. CLERB has no authority over the actions of San Diego Police Department Officers. The complainant was referred to the Citizens’ Review Board on Police Practices (CRB), which reviews complaints brought by the public against the San Diego Police Department (SDPD). As CLERB lacks authority to investigate, the allegation is submitted for summary dismissal.

2. Illegal Search and Seizure – San Diego Police Officers seized the complainant’s property on 07-07-19.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, “Around the third week of July 2019, I began telephonically, and in letters, asking my assigned Public Defender about the status of my property. During at least one of our in-person meetings, my Pub Defender stated, ‘Oh, they (Police? he wouldn’t say) probably sent your property to a special county location where they’ll be thoroughly analyzed (down deep) for incriminating evidence against you.’ I said, there is none.” See Rationale #1.

3. Misconduct/Procedure – Deputies 1 and/or 2 classified/housed the complainant in a “solitary” cell.

Recommended Finding: Action Justified

Rationale: The complainant stated, “I was booked late Sunday night, ...and I recall clearly an employee asking me (twice), ‘are you suicidal?’ And twice I answered, ‘No.’ I did not know at the time, but I was deemed ‘suicidal,’ stripped of clothing, given a wrap-blanket, put in a solitary cell.” SDS DSB P&P Section J.4 titled, Enhanced Observation Housing (EOH), states in part, “Inmates who have been determined by the facility gatekeeper to warrant placement in the Inmate Safety Program (ISP) because they present an increased risk for suicide and who do not require placement in a safety cell, shall be temporarily housed in EOH for the purpose of receiving closer observation and assessment for permanent housing. EOH can be single cells, multiple occupancy modules, or medical isolation for temporary housing. EOH provides close observation and assessment of inmates who may be at an elevated risk for suicide.” In his Jail Inmate Management System (JIMS) Incident Report, Deputy 1 documented, “the complainant was charged with serious crimes, with a child. I determined he should be psychologically evaluated by a Qualified Mental Health Clinician (QMHC) based on the serious charges. The QMHC determined the complainant should be placed into EOH.” Deputy 2, in his JIMS Incident Report, documented, “During the classification interview, I informed the complainant of his charges. I asked the complainant if he understood the nature of the charges against him, the complainant replied ‘Yes.’ The complainant expressed to me he fears for his safety due to his current charges. In an effort to ensure his safety while in the County system and in compliance with Detentions Policy and Procedure Section J.3, the complainant will be housed in Protected Custody housing. The complainant will initially be housed in EOH. The complainant will remain there until he is cleared by the QMHP. Detentions Policy J.3 titled, Segregation: Definition and Use, states in part, “After individual review of inmate history, criminal charges, and information obtained from the inmate interview and/or medical staff, specified inmates will be properly segregated from the inmate general population. Reasons include, but are not limited to, inmates who require special housing for their own safety... Segregation shall be used only for those inmates who are classified for safety and/or security reasons. Protective Custody (P/C) is the voluntary or involuntary placement of an inmate into separate and secure housing when there is a verified threat against their life, whether stated or implied, or when an inmate's circumstances render them a target for physical violence. ... Has been accused of a crime of a nature that would place them in physical jeopardy if housed with the general population (e.g., child victim charges).” The evidence showed the actions of Deputies 1 and 2 were conducted per policy and were lawful, justified and proper.

4. Misconduct/Procedure – Deputies did not produce the complainant for a child custody hearing.

Recommended Finding: Action Justified

Rationale: The complainant stated, “On Monday July 8, 2019, I remembered a very important fact: I was to appear at a family court hearing scheduled for 1:45pm the next day. I asked (begged) the deputies to please let me attend this critical child custody hearing. The deputies just kinda ignored me.” In an e-mail with a former CLERB liaison, Department Information Source (DIS), when asked about the complainant’s allegation about the child custody hearing, the DIS responded, “In regards to the child hearing, there was no evidence in the docs that he had a child custody hearing. There was a criminal hearing and that would take precedence over a child custody hearing.” Records on the San Diego Superior Court website, Family Law Hearings, dated 07-09-19, showed there was a Request for Order Hearing at 1:45pm, however, the information available only showed that a hearing was scheduled and did not provide any details of the case/hearing. Superior Court records and the complainant’s JIMS Inmate History Report confirmed, as stated by the DIS, that the complainant was in criminal court on 07-09-19 at 1:30pm for arraignment. As such, the evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

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**20-081**

1. Misconduct/Procedure – The San Diego Sheriff’s Department (SDSD) confiscated the aggrieved’s sex offender card.

Recommended Finding: Action Justified



Rationale: In the complainant's written statement, she stated, "[The aggrieved] was registering to be in compliance with sex offender rules and had an 11:30 appointment at 9621 Ridgehaven Ct. when they arrested him and took him to Central Jail downtown. They claimed he had failed to register... The claim about him not registering is false. I personally drove him to do so last year and he had his card with him. His card was taken by someone at the appointment." In a Sheriff Employee Response Forms (SERFs), a Departmental Information Source explained that if the registration card from the previous transaction (a year prior) was provided to a clerk, the registration card would have been destroyed in their confidential shred bin. A new registration card from the current transaction would be provided to the registrant at the end of the transaction, along with a copy of the newly issued paperwork. The registrant is given a new registration card at every transaction. The registrant is not required to carry the sex registrant card by law, it is a courtesy that the Department provides to reflect the most recent transaction. According to SDSD Policy & Procedure Section 2.39 titled, "Processing Property," property which has been discovered, gathered or received in connection with Departmental responsibilities will be processed in accordance with established Departmental procedures. The evidence showed that the alleged act or conduct did occur, and it was lawful, justified, and proper.

2. Misconduct/Procedure – The SDSD failed to notify the aggrieved prior to issuing a warrant for his arrest.

Recommended Finding: Action Justified

Rationale: In the complainant's written statement, she reported, "[The aggrieved] was registering to be in compliance with sex offender rules and had an appointment when they arrested him and took him to Central Jail downtown. They claimed he had a warrant for his DUI. The warrant for the DUI was unknown to him. He had consulted with our local [deputy] 8 to 10 months ago. [The deputy] told him he was fine and didn't see any warrants. In December or January two officers came to our house to verify that [the aggrieved] was living with us. They didn't say anything about a warrant." When asked how persons are notified if and when a bench warrant is issued for their arrest, a Departmental Information Source explained in a SERF response that the Department does not make a notification when a warrant has been issued. In an email correspondence from a member of the Department to the complainant, dated 08-07-20, it was noted that a sergeant, assigned to the Sexual Assault Felony Enforcement (S.A.F.E.) Task Force went to the residence of the aggrieved in January, as required, pursuant to his sex registration requirements. The aggrieved was not home, but his father was, and the sergeant made the aggrieved's father aware the aggrieved had a warrant and that the aggrieved needed to take care of it. The aggrieved's father acknowledged that. At the time of the visit, the aggrieved was not home, so he was not arrested for the warrant. According to a SDSD Arrest Report, a deputy asked the aggrieved if he knew he had a warrant. The aggrieved told the deputy that he knew he had a warrant for his arrest, but that he lived in Borrego Springs and explained that it was difficult for him to take care of the warrant, as he could not drive a vehicle. Additionally, in review of the deputy's Body Worn Camera (BWC) recording, upon arriving at the Sheriff's Administration Office, the deputy questioned the aggrieved why he did not take care of his warrant. The aggrieved replied, "I live out in Borrego Springs. I don't have any way of taking care of anything right now. I thought this would happen, coming here." According to SDSD P&P Section 6.52 titled, "Warrants of Arrest," the Court Services Bureau has the primary responsibility for processing warrants of arrest generated by the San Diego County Courts. Members of this Department will follow the procedures set forth in this manual when executing any warrant of arrest obtained from any San Diego County Court. The evidence showed that the alleged act or conduct did occur, and it was lawful, justified, and proper.

3. False Arrest – The SDSD arrested the aggrieved on 08-04-20.

Recommended Finding: Action Justified

Rationale: In the complainant's written statement, she alleged, "[The aggrieved] was registering to be in compliance with sex offender rules and had an 11:30 appointment at 9621 Ridgehaven Ct. when they arrested him and took him to Central Jail downtown. They claimed he had failed to register and had a warrant for his DUI. You can imagine my dismay and shock when they arrested him and put him in jail during a Covid-19 pandemic and exposed him for a misdemeanor." According to a SDSD Arrest Report, while registering as a sex offender registrant, the aggrieved was found to have an active misdemeanor warrant. A deputy placed the aggrieved under arrest for the warrant and transported him to jail, where was booked into jail on the warrant. In an email correspondence from a member of the SDSD, the complainant was informed that it was

standard operating procedure that when individuals enter the SDSL Licensing Division, a record's check is conducted. The aggrieved's warrant was discovered, and as their procedure, Court Service Bureau deputies were notified, and they arrested the aggrieved on the outstanding warrant. The aggrieved was booked into the jail. In a SERF response from a Departmental Information Source, it was explained that a sex registrant audit was conducted in March of 2019. In the audit, it was learned that a deputy spoke with the aggrieved's father while at their residence. The aggrieved's father informed the deputy that the aggrieved had not resided at the registered address for three weeks and that he was living out of his car somewhere in San Diego, a direct violation of the aggrieved's probationary terms. For this reason, the aggrieved's probation violation case was submitted to the District Attorney's office. The evidence indicated that the aggrieved was not arrested because he failed to register as a sex registrant; the aggrieved was arrested for the warrant issued for him not being in compliance with the terms of his probation, coupled with his DUI. The evidence showed that the alleged act or conduct did occur, and it was lawful, justified, and proper.

4. False Reporting – The SDSL reported that the aggrieved failed to comply with sex offender registry.

Recommended Finding: Unfounded

Rationale: In the complainant's written statement, she stated, "[The aggrieved] was registering to be in compliance with sex offender rules when they arrested him and took him to jail. They claimed he had failed to register and had a warrant for his DUI. The claim about him not registering is false. I personally drove him to do so last year." An audit was conducted in March of 2019. The audit stated that a deputy spoke with the aggrieved's father at their residence. The aggrieved's father informed the deputy that the aggrieved had not resided at the registered address for weeks and was living out of his vehicle elsewhere. This was a violation of the terms of the aggrieved's probation. As such, the case was submitted to the District Attorney's office. In a SERF response, a Departmental Information Source explained that the aggrieved was not arrested for a new charge or for failing to register; the aggrieved was arrested for violating the terms of his probation and for his DUI offense. The warrant was issued for the violation of the terms of the aggrieved's probation. Because he was on probation for both charges, both violations were notated on the warrant. The aggrieved's only new charge was the violation of probation. The evidence showed that the alleged act did not occur.

5. Misconduct/Procedure – The SDSL failed to comply with COVID-19 health orders.

Recommended Finding: Unfounded

Rationale: In the complainant's written statement, she reported, "The jail gave him a mask but there was no temperature check, no soap, no hand sanitizer, and no social distancing. Jails are dangerous places for prisoners and staff contracting the virus. I cannot find any published statistics for Covid-19 cases in San Diego county jails." In an email correspondence from an Assistant Sheriff to the complainant, dated 08-07-20, stated that the aggrieved was booked into jail and spent a little over 12½ hours in SDSL custody. While in jail, the aggrieved was issued a mask and soap and was able to wash his hands. Medical screening, performed by jail medical staff, was conducted on all persons booked into the Sheriff's custody. It was reported that the aggrieved was never placed in the inmate population and was processed and released from the jail. Lastly, it was explained that the Department was highly confident in their ability to keep people safe who were in their care. According to the SDSL Media Relations regarding COVID-19 and a County Jails Update, dated 04-24-20, the Department reported that it had taken immediate action to safeguard the lives of people in their custody and those who work in their facilities. The SDSL created as much physical distancing as possible by actively reducing their inmate population. The SDSL implemented accelerated release credits, stipulated orders to release those deemed as medically high-risk, and began releasing inmates on zero bail per an order by the State Judicial Council. At the same time, the Department implemented an "emergency booking criteria" to reduce the number of people being booked into the jails. Additional measures that the Department implemented included: temperature checks for all entering the facilities, daily temperature checks of all inmates in custody, increased cleaning and disinfecting, education and awareness for the inmates, and identification and isolation of those being symptomatic. All inmates and staff were issued mask and there was an emphasis on hand washing and good hygiene. As of the date of that media release, out of a total jail population of 4,112, there was one person in Sheriff's custody who had tested positive for COVID-19. According to a SDSL statement on COVID-19 "Testing in County Jails," dated 05-21-20, it was noted that inmates have the right to refuse COVID-19 testing, and at that time, 72% of the inmate population had refused testing. Coupled with their strategy to quarantine those being booked into the

jails for a seven-day period and daily temperature checks, the Department effectively minimized the potential for any widespread outbreak of COVID-19. According to the County's Health and Human Services Agency Public Health Services regarding congregated facilities guidance for COVID-19, dated 05-19-20, the California Department of Public Health implemented COVID-19 requirements for protecting the vulnerable populations. It was stated that given the congregate nature and population served, the populations of detention facilities were at higher risk of being affected by COVID-19. The County of San Diego recognized that the jails were doing everything in their power to protect their jail populations from COVID-19 and its complications. The County of San Diego expected that facilities were taking the necessary precautions to follow the mandatory requirements, in addition to the Centers for Disease Control and Prevention (CDC) guidelines, to mitigate the risk of individuals at the jail facilities from contracting COVID-19. The evidence showed that the alleged act did not occur.

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***End of Report***