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County of San Diego

CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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SPECIAL MEETING AGENDA

Tuesday, December 7, 2021, 5:30 p.m.

Remote Meeting Zoom Platform

<https://zoom.us/j/95591491608?pwd=c08vbE94RnhvV0tqVjdnUUovcVFOUT09>

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://zoom.us/j/95591491608?pwd=c08vbE94RnhvV0tqVjdnUUovcVFOUT09>. Please contact CLERB at clerb@sdcounty.ca.gov or 619-238-6776 if you have questions.

3. MINUTES APPROVAL (Attachment A)

4. PRESENTATION/TRAINING

a) None

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. 20-063 / Morton (Death) – SDSD
 - ii. 20-097 / Huie – SDSD
 - iii. CLERB Staff Response to Death Scenes – SDSD
 - iv. CLERB Staff Response to Death Scenes – Probation
- f) Policy Recommendation Response
 - i. Discontinue Standard Practice of Sealing In-Custody Death Cases – SDSD (*Attachment E*)
- g) Sustained Finding Pending Responses
 - i. None
- h) Sustained Finding Response
 - i. None

6. BOARD CHAIR'S REPORT

7. NEW BUSINESS

- a) Continuance of Teleconferencing Meeting Option Pursuant to Government Code Section 54953(e)

8. UNFINISHED BUSINESS

- a) Update: Authority for the Executive Officer to Work with County Staff to Pursue Legislation and/or to Add a Policy to the County Legislative Program in Support of Increased Transparency in Civilian Oversight of Peace Officers and Custodial Officers
- b) Update: Authority for the Executive Officer to Work with County Staff to Request that the County Board of Supervisors Expand CLERB's Jurisdiction to Include Personnel Involved in Providing Medical Care in County Detention Facilities
- c) Update: In-Custody Death Data Review Subcommittee

9. BOARD MEMBER COMMENTS

10. SHERIFF/PROBATION LIAISON QUERY

11. CLOSED SESSION

a) PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

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

DEFINITION OF FINDINGS	
Action Justified	The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.
Not Sustained	There was <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 (9)

20-113

1. Death Investigation/In-Custody Drug Related - Lazaro Javier Alvarez was found unresponsive in a holding cell at San Diego Central Jail (SDCJ) on 11-22-20. He was transported via ground ambulance to UCSD Medical Center where he was pronounced dead shortly after arrival.

Recommended Finding: Not Sustained

Rationale: The evidence supported that Lazaro Alvarez was properly classified as “book and release” (B&R) upon his entry into the SDCJ jail system after a trespassing arrest by the San Diego Police Department. There was no evidence that Alvarez expressed any concerns about his mental or physical well-being to any member of the SDCJ, sworn or professional. Safety checks were conducted in accordance with policy at 12:13AM, 1:08AM, 2:04AM, and 3:00AM. Since safety checks do not require proof of life, the last time Alvarez was known to be alive was 11-21-20 at 11:20PM after an interaction with a release deputy. Upon discovering Alvarez was unresponsive in his cell, the deputies conducting a “welfare check” failed to provide emergency medical care until relieved by either SDCJ medical staff or medics as required by DSB Policy M.6 Life Threatening Emergencies: Code Blue. Deputy 1 indicated he attempted CPR for two quick compressions but stopped due to not wanting to disrupt a crime scene. As per POST training, CPR should be administered when there is any doubt on whether or not the victim is alive. Deputy 1 indicated that he did not administer naloxone since he did not have it on him at the time. Since the incident, section M.6 has been updated to require deputies to carry naloxone on their person. Additionally, it should be noted it does not appear there is any formal documentation in place to notify deputies when an inmate is under opioid withdrawal protocol. The cause of death was sudden cardiac arrest due to acute myocardial infarction and methamphetamine and fentanyl toxicity and the manner of death was accident. As such, the evidence was insufficient to either prove or disprove that the deputies’ appropriate application of CPR could have prevented Alvarez’s death.

2. Misconduct/Procedure –Deputy 1 failed to provide emergency medical care to Inmate Lazaro Alvarez.

Recommended Finding: Sustained

Rationale: Deputy 1 failed to provide emergency medical care to Alvarez. According to Commission on Peace Officer Standards and Training (POST), when the situation involves a medical emergency, peace officers assume the role of EMS first responder. POST training states if any doubt exists as to whether or not the victim is alive, then CPR should be started. As per M.6 Life Threatening Emergencies: Code Blue

that was in place at the time, CPR should be initiated by sworn staff and continued until additional help has arrived, by way of switching to two-person CPR and/or when relieved by MSD staff or paramedic emergency response team. Deputy 1 did not continue CPR until medical arrived, and only performed “two quick chest compressions”. SDSA DSB P&P Section M.5 entitled, “Medical Emergencies,” in effect at the time states “when the severity of the medical emergency requires it, and as soon as it is safe to do so (unless death is obvious, such as decapitation, obvious rigor mortis, etc.), deputies acting as first responders will provide basic life support and first aid.” Deputy 1 provided information during CLERB’s investigation that was also considered in arriving at this recommended finding. Deputy 1 exercised his option to decline participation in an interview pursuant to a long-standing agreement between CLERB and the Deputy Sheriff’s Association. Based on SDSA records, interviews and policy, a preponderance of evidence showed Deputy 1 failed to continue CPR on Inmate Alvarez and these actions were not justified. Policy mandated for Deputy 1 to initiate and continue life-saving measures until relieved, and his actions were not justified.

3. Misconduct/Procedure –Deputy 2 failed to provide emergency medical care to Inmate Lazaro Alvarez.

Recommended Finding: Sustained

Rationale: Deputy 2 failed to provide emergency medical care to Alvarez. According to Commission on Peace Officer Standards and Training (POST), when the situation involves a medical emergency, peace officers assume the role of EMS first responder. POST training states if any doubt exists as to whether or not the victim is alive, then CPR should be started. As per M.6 Life Threatening Emergencies: Code Blue that was in place at the time, CPR should be initiated by sworn staff and continued until additional help has arrived, by way of switching to two-person CPR and/or when relieved by MSD staff or paramedic emergency response team. Deputy 2 did not initiate CPR at all. SDSA DSB P&P Section M.5 entitled, “Medical Emergencies,” in effect at the time states “when the severity of the medical emergency requires it, and as soon as it is safe to do so (unless death is obvious, such as decapitation, obvious rigor mortis, etc.), deputies acting as first responders will provide basic life support and first aid.” Deputy 2 agreed with Deputy 1 that Alvarez was already deceased and did not initiate any life-saving measures. Deputy 2 provided information during CLERB’s investigation that was also considered in arriving at this recommended finding. Deputy 2 exercised his option to decline participation in an interview pursuant to a long-standing agreement between CLERB and the Deputy Sheriff’s Association. Based on SDSA records, interviews and policy, a preponderance of evidence showed Deputy 2 failed to initiate and/or continue CPR on Inmate Alvarez and these actions were not justified. Policy mandated for Deputy 2 to initiate or continue life-saving measures until relieved, and his actions were not justified.

POLICY RECOMMENDATIONS:

1. It is recommended that the San Diego Sheriff’s Department (SDSD) revise its Detention Policies and Procedures Section I. 64, entitled, “Safety Checks: Inmates, Housing, and Holding Areas,” to mandate proof of life verification through visual checks every 60 minutes during the booking process.
2. It is recommended that San Diego Central Jail (SDCJ) only utilize cells with operable cameras unless all cells with operable cameras are in use.

20-116

1. Misconduct/Procedure – Deputies 1 and 2 refused to take a report.

Recommended Finding: Action Justified

Rationale: In the complainant’s written report, he stated, “*On December 4th and December 7th, 2020 I went to the local Rancho San Diego Sheriff Station to report threats of gun violence and great bodily injury, together with documented threats of stalking coordinated and to be performed by a group of people. I asked to initiate a police Report there as I physically reside in Spring Valley, CA. These threats are being made by postings on internet and specifically on publically [publicly] available social media platforms and targeted to the geographically close area audience. I stated to the Sheriff’s office that I take these threats very seriously,*

especially when there are posting like "Those dogs oughta be shot," "The dogs needs to be put down.... I also wish we could put the owners down as well, if not first", and "I will join you in the stalking, Sara! It makes me want to find this guy and punch him in the throat." I stated that myself and my household lives in fear, and a loud pop sound from the street caused almost a panic at the house. We have to check out surrounding and live in danger of violent acts against us and our domestic pets. On December 4th, 2020 on around 2pm I spoke with a plain closed deputy behind the plexiglass at the Station (deputy 2) and a uniform deputy dispatched to speak with me as the Station asked me to use the lobby phone and to report my presence to a dispatch. Both deputies stated that they will not initiate a police Report as the threats have to be imminent only and that "people can post and say anything on internet," and "there are no laws of protection against threats of violence and stalking published on internet." I returned on December 7th on around 12pm to same Station with a print out of appropriate statutes in California law stating that threats of violence, gun violence, and other violations are offenses under multiple statutes. I requested to initiate a police Report. 2 uniformed officers were dispatched. I told him I assert I am a victim of threats of gun violence and have a credible fear for myself and my household. Both deputies stated that they will not initiate a police Report as the threats have to be imminent only and that "people can post and say anything on internet," and "there are no laws of protection against threats of violence and stalking published on internet." I presented the print out to point out the other statutes.... I told him I was a citizen who made a serious decision to come to report a crime, and a victim of a crime." Deputies 1 and 2 responded to Sheriff's Employee Response Forms (SERFs) with signed statements and provided information in response to CLERB questions. According to SDSO P&P Section 6.71 titled "Crime Case Reports," a Crime/Incident Report shall be completed for the following Uniform Crime Reporting: Part 2 Crimes: All other reported misdemeanor crimes. Deputy's Reports: An Officer's Report may be completed to report a miscellaneous incident or provide supplemental information when appropriate. Though there was no violation of the law or Sheriff's policy by not taking a written report, CLERB believed it would have been obliging and at the very least would have given the complainant peace of mind, if a miscellaneous incident report had been taken. According to SDSO Policy and Procedure (P&P) Section 2.23 titled "Request for Assistance," when any person requests assistance or advice, or makes complaints or reports, either by telephone or in person, all pertinent information will be obtained in an official and courteous manner, and will be properly and judiciously acted upon consistent with established Department procedures. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Discourtesy - Deputy 1 was rude to the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant reported that Deputy 1 was rude to him. In the complainant's written report, he stated, "*The supervising officer, deputy 1 was abrasive, aggressive, interrupted me midsentence, and in acted to escalate the conversation and situation when a deputy ought to deescalate. deputy 1 was talking about and he got very irritated, exhibiting behavior unbecoming of a sheriff deputy. I filed an online complaint with SDC Sheriff regarding deputy 1 unwarranted behavior and unbecoming a police officer. While Dep 1's partner remains courteous, calm and expressed compassion Deputy 1 was abrasive, aggressive, interrupted me midsentence, and in acted to escalate the conversation and situation when a depute ought to deescalate. I remained calm when Deputy 1's behavior was completely unwarranted. Based on what I observed I attest Deputy 1 is prone to quick anger, unreasonable actions and others in contradiction of deescalating tactics a deputy should follow. If he behaves in such manner with a victim of the crime, I have grave concerns about his fitness for duty, carry deadly weapons and to administer his duties carefully and thoughtfully.*" In review of Deputies 1's BWC recording, as well as his trainee's BWC recordings, Deputy 1 was abrasive, aggressive, assertive and repeatedly interrupted the complainant as he spoke. Deputy 1's display of disrespect was illustrated when he first addressed the complainant. Deputy 1 stepped close to the complainant, took his documentation, then told the complainant to step away from him. There was a minimal amount of room where the complainant was standing, and it would have been more feasible and more appropriate if Deputy 1 stepped away from the complainant and returned to his stance. Rudeness is generally defined as a display of disrespect, a breaking of social norms or expectations, or a breach of etiquette. Rudeness may be measured by behaving inconsiderately, aggressively or deliberately offensively. Nonetheless, rudeness is the perception of the other person as to whether a statement or action is rude. Essentially, rudeness is measured in the eyes of the offended party. It's truly a matter of perception. It should be noted that Deputy 1 verbally addressed Deputy 2 in the same fashion as he addressed the complainant, therefore an argument

could be made that this was Deputy 1's professional tone. Deputy 1 responded to a Sheriff's Employee Response Form (SERF) with a signed statement and provided relevant information in response to CLERB questions. According to SDSL 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. There was insufficient evidence to either prove or disprove the allegation.

3. Discrimination/Other – Deputy 1 was biased toward the complainant.

Recommended Finding: Not Sustained

Rationale: During his interaction with Deputies 1 and 2, the complainant expressed a feeling of bias. In his written statement, the complainant reported, "*Both deputies stated that they will not initiate a police Report as the threats have to be imminent only and that "people can post and say anything on internet "; and "there are no laws of protection against threats of violence and stalking published on internet." I told him I assert I am a victim of threats of gun violence and have a credible fear for myself and my household. Both deputies stated that they will not initiate a police Report as the threats have to be imminent only and that "people can post and say anything on internet "; and "there are no laws of protection against threats of violence and stalking published on internet". I presented the print out to point out the other statutes besides 495 deputy 1 was talking about and he got very irritated, exhibiting behavior unbecoming of a sheriff deputy.* In a follow-up telephonic interview, the complainant explained that he did not want to play "the race card," but felt that he was not treated fairly or judiciously by Deputy 1. In review of the available BWC recordings, the complainant appeared fair complexed; however, he spoke with a very heavy accent. The complainant felt that his accent may have made Deputy 1 dissociate with him. Deputy 1 responded to a SERF with a signed statement and provided relevant and conflicting information in response to CLERB questions. According to SDSL P&P Section 2.55 titled "Non-Biased Based Policing," except as provided in this procedure, employees shall not consider race, ethnicity, religion, national origin, sexual orientation, gender, or lifestyle in establishing either reasonable suspicion or probable cause. There was insufficient evidence to either prove or disprove the allegation that Deputy 1 was biased toward the complainant.

4. Misconduct/Procedure – SDSL "systematically does not take reports, deputies offer incorrect legal advice to citizens, and that deputies 'mistreat citizens/victims' of crime".

Recommended Finding: Not Sustained

Rationale: In the complainant's written statement, he explained, "*Based on what I observed and my experiences on Dec 4 and Dec 7, I believe SDC Sheriff Office has a systemic problems of 1) not taking a police Report, even when threats of gun violence and great bodily injury, and stalking are involved; 2) offering an incorrect legal advice and disregard to the CA law statutes when presented related to grave threats issued over internet; 3) mistreating citizens when they present themselves at the station as victims of crimes. I believe an inappropriate stance of the Sheriff's deputies to...make legal determination and to offer legal advice, which turned out to be incorrect. offering incorrect legal advice and disregard to the CA law statutes.*" In the complainant's written statement, he explained, "*Based on what I observed and my experiences on Dec 4 and Dec 7, I believe SDC Sheriff Office has a systemic problems of 1) not taking a police Report, even when threats of gun violence and great bodily injury, and stalking are involved; 2) offering an incorrect legal advice and disregard to the CA law statutes when presented related to grave threats issued over internet; 3) mistreating citizens when they present themselves at the station as victims of crimes. I believe an inappropriate stance of the Sheriff's deputies to...make legal determination and to offer legal advice, which turned out to be incorrect. offering incorrect legal advice and disregard to the CA law statutes.*" Deputies 1 and 2, as well as a witness deputy responded to SERFs with a signed statement and provided relevant information in response to CLERB questions. A determination of whether or not the Department or the Sheriff's Rancho Station has a systemic problem of not taking crime reports when appropriate, of deputies offering unsolicited and/or incorrect legal advice, and/or mistreating victims/citizens would require a multifaceted approach, including an inspection of processes and an audit of the Department's operations which is not within CLERB's jurisdiction. These allegations and concerns were forwarded to the Department for follow-up. There was insufficient evidence to either prove or disprove the allegation.

21-003

1. Misconduct/Procedure – SDSD Maintenance Division failed to service inmate showers.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, “The shower room has been broken for over a week without maintenance. Inmates have to use a broom to move the dirty shower water to the next drain before, during, and after each shower because the drain has not been fixed.” Detentions Policy G.1, Maintenance Procedures, establishes guidelines for expeditious handling of maintenance requests with routine maintenance performed by the Department of General Services, Facilities Maintenance. Facility maintenance is performed by non-sworn personnel over which CLERB has no authority. The Review Board lacks jurisdiction.

2. Misconduct/Procedure – Inmate workers failed to clean facility showers.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, “The workers are not cleaning the shower areas they have just been spraying disinfectant.” SDSD has publicly reported in the media that “since the start of COVID-19, they have put in place pandemic-related safeguards to protect the inmate population such as the stepped-up cleaning of modules, with a focus on high touch areas such as tables and floors.” A review of the Sheriff’s Press Releases and associated Training Bulletins pertaining to the COVID-19 virus indicated that inmate services were restricted to be in compliance with the Governor’s and Chief Health Officer’s orders related to isolation/quarantine, testing/tracking, temperature checks, face coverings, social distancing, and cleaning & sanitization of the facilities; in a collective effort to protect inmates and staff. Title 15 Guidelines in accordance with detention policies specified the procedures pertaining to Inmate Rights and Services/Programs, which were reduced/restricted during the COVID-19 pandemic by order of the Health Officer and per Detentions Policy M.37, Standard Precautions and Infectious Agents/Communicable Disease Control. Additionally, according to Detentions Policy M.37, section IV, “facility staff are responsible for ensuring all suspected/known contaminated surfaces are clean.” Inmate Workers are non-sworn personnel and the Review Board lacks jurisdiction.

3. Misconduct/Procedure – Deputy 1 placed the facility on lockdown.

Recommended Finding: Action Justified

Rationale: The complainant stated, “Inmates have been on lockdown for over 30 days.” According to SDSD records, an email correspondence dated 12-11-20 from Deputy 1 “with the current outbreak we are dealing with at our facility, I am going to make an attempt in preventing a bad situation from getting worse”. The lockdown was ordered to prevent further outbreak and was appropriate. Dayroom use was suspended until 02-08-21, followed by a modified tier program. SDSD implemented measures to prevent further outbreak by order of the Chief Health Officer and per Detentions Policy M.37, Standard Precautions and Infectious Agents/Communicable Disease Control. The evidence showed that the actions that occurred were lawful, justified and proper.

4. Misconduct/Procedure – Unidentified deputies failed to distribute hygiene packs.

Recommended Finding: Not Sustained

Rationale: The complainant stated, “inmate has only received 2 hygiene packs.” Detention Policy, L.11 entitled Personal Hygiene, states only inmates with less than \$2.00 on their account during the previous week will be issued hygiene packs. An Account Activity report documented the complainant’s commissary purchases from October 2019 through December 2020 and showed two hygiene packs were delivered to the aggrieved. After 12-14-20, Commissary was suspended in an effort to protect inmates and staff due to a COVID-19 outbreak. However, during that time period, welfare packs that included hygiene items were distributed to every inmate. Without further clarifying information from the aggrieved, there was no way to investigate further. The evidence was insufficient to either prove or disprove the allegation.

5. Misconduct/Procedure – SDSD restricted Commissary.

Recommended Finding: Action Justified

Rationale: The complainant stated, “Inmates do not have access to canteen since lock down so have not been permitted to purchase their own essential items, food, or envelopes to mail letters to friends and family during lockdown.” Inmates may purchase a variety of commissary items to be delivered to them in their housing units. The items available for purchase include, but are not limited to: food items, hygiene products, stationery, reading glasses, pre-paid telephone time and over-the-counter medication. An Account Activity Report documented the complainant’s commissary purchases from October 2019 through December 2020. Inter-Departmental Correspondence entitled “COVID-19 Continuity of Operations Phase Plan” dated 12-14-20 stated commissary was suspended in an effort to protect inmates and staff due to COVID-19, furthermore welfare packs were distributed once a week for all inmates during lockdown. Detentions Policy T.9, Commissary, states that Commissary staff are solely responsible for delivering commissary with deputies standing by for security only and they will not assist with deliveries. Inmates may address any disputes and/or discrepancies via a J-21 form addressed to commissary staff. Commissary staff are non-sworn personnel over whom CLERB maintains no jurisdiction. The evidence showed that SDSD restricted Commissary due to COVID-19 precautions and the actions were lawful, justified and proper.

6. Misconduct/Procedure – SDSD failed to quarantine inmates exposed to COVID-19.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, “Since lockdown, they first removed 14 people from the facility who tested positive for COVID, after two weeks they tested again and removed the 7 people who tested positive for COVID, leaving behind their cellmates because they tested negative but who were obviously exposed since they have been in 24hour lockdown in the cells for over a month.” M.37 Standard Precautions and Infectious Agents/Communicable disease control states the detention facility health staff identifies inmates with health problems and indicates when an inmate needs special housing. Facility health staff are non-sworn personnel over whom CLERB has no jurisdiction. The Review Board lacks jurisdiction.

7. Misconduct/Procedure – Unidentified deputies instructed Inmate Workers to serve inmate meals on the floor.

Recommended Finding: Not Sustained

Rationale: The complainant stated, “Deputies ordered workers to serve food on the floor in front of the door and then open the door for the inmates to retrieve the trays off the floor.” Video evidence corroborated that inmate workers served food on the floor on 12-28-20. A review of Sheriff’s Policies, specifically 2.4-Unbecoming Conduct, 2.22-Courtesy, and 2.48-Treatment of Persons in Custody did not support any policy violation(s). A similar allegation was made in CLERB case #20-047 and CLERB recommended Detentions Services Bureau (DSB) P&P K.15 be updated to reflect a requirement to distribute meals in a sanitary manner. On 09-27-21, SDSD reported the policy was modified to include distribution of meals “in a sanitary manner”. While the evidence showed an inmate meal was served on the floor, there was insufficient evidence to prove whether it was at the direction of sworn personnel or at the discretion of inmate workers. There was also no specific policy in place at the time of the incident covering the action(s) as alleged. There was insufficient evidence to either prove or disprove this allegation.

8. Misconduct/Procedure – Deputy 2 instructed Inmate Workers to serve inmate meals on the floor on 12-28-20.

Recommended Finding: Not Sustained

Rationale: The complainant stated, “Deputies ordered workers to serve food on the floor in front of the door and then open the door for the inmates to retrieve the trays off the floor. Deputy 2 in particular on 12-28-20.” Surveillance video dated 12-28-20, confirmed that food was served on the floor. A review of Detention policies showed no violations in effect at the time of this incident. Deputy 2 provided information during CLERB’s investigation that was considered in arriving at the recommended finding. There was insufficient evidence to either prove or disprove this allegation.

9. Misconduct/Procedure – Sheriff’s Food Services failed to serve proper meals.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, “food portions are not well-balanced. They have not been proportioned to fill a person and do not have extra food because there has not been store. The food has thrown on the trays and not into the compartments making a mess.” Detentions Policy K.1, Provision of a Nutritionally Adequate Diet, states the Sheriff’s Food Services Manager compiles a cyclical menu that meets or exceeds Title 15 regulations. Sheriff’s Food Service Managers are non-sworn staff and as such do not fall under CLERB’s jurisdiction. The Review Board lacks jurisdiction.

10. Misconduct/Procedure – SDSD failed to provide cleaning supplies.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, “Workers are only given a limited amount of towels to clean up. They have to use the same towels to wipe down tables and clean the spoons therefore causing cross-contamination.” Detentions Policy K.25 Safety and Protection Standards states the Food Service Supervisor at each facility is responsible for proper and safe food handling. The Food Service Supervisor is non-sworn staff and as such CLERB has no jurisdiction. The Review Board lacks jurisdiction.

11. Misconduct/Procedure – SDSD and/or unidentified deputies failed to abide by social distancing guidelines.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, “They are not following quarantine procedures in the jail. They are using the crossover to entire the next module when it clearly states not to.” Also, “When inmates are transported to court they are placed in holding cells with 10 or more inmates not abiding by social distancing guidelines.” M.37 Standard Precautions and Infectious Agents/Communicable disease control states the detention facility health staff identifies inmates with health problems and indicates when an inmate needs special housing. Facility health staff are non-sworn personnel over whom CLERB has no jurisdiction. The Review Board lacks jurisdiction.

12. Misconduct/Procedure – SDSD failed to provide soap.

Recommended Finding: Not Sustained

Rationale: The complainant stated, “They are not given access to soap even after using the restroom.” M.37 Standard Precautions and Infectious Agents/Communicable disease control states “hand washing is an effective means of infection control. When properly done, hand washing removes infectious organisms. Any hand washing product, whether antibacterial or microbial, will achieve this goal”. Without further clarifying information from the aggrieved, there was no way to determine if deputies did not deliver soap. The evidence was insufficient to either prove or disprove the allegation.

13. Misconduct/Procedure -SDSD failed to respond to inmate grievances.

Recommended Finding: Not Sustained

Rationale: The complainant stated, “these grievances were placed by the inmate multiple times over the last 30 days and has not received a response”. SDSD records produced one grievance with a submission date of 01-06-21, related to covid exposure, broken shower, and hygiene packs. The grievance was acted upon by a deputy and addressed on 01-14-21. In the response from a deputy, he noted the facility was COVID free, the shower had been unclogged for weeks, and confirmed hygiene pack delivery in the module. As it was unknown if other grievances were not logged in accordance with policy, there was insufficient evidence to either prove or disprove the allegation.

21-033

1. Misconduct/Procedure – Deputy 1 ordered the complainant to remove his face mask.

Recommended Finding: Action Justified

Rationale: The complainant stated that a Judge and Deputy 1 asked him to remove his mask during a virtual court hearing and he responded, "No, it's against the law." Witnesses were interviewed and reported that in order for the Court to properly identify a defendant (inmate), the Judges would order them to remove their masks. If a defendant did not comply, the Judge would then order the deputy to remove the mask. Deputy 1 and another deputy provided information during the course of CLERB's investigation that was also considered in arriving at the recommended finding. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

2. Excessive Force – Deputy 1 hit the complainant.

Recommended Finding: Unfounded

Rationale: The complainant stated that in a "fit of rage", Deputy 1 struck his right cheek and neck area. DSB P&P Section 1.89 Use of Force, requires that all use of force incidents be documented with a report; furthermore, there was no evidence that there was force used on the complainant. Witness statements refuted the excessive force allegation(s). Deputy 1 and another deputy provided information during the course of CLERB's investigation that was also considered in arriving at the recommended finding. The evidence showed that the alleged act or conduct did not occur.

3. Excessive Force – Deputy 1 used force to remove the complainant's face mask.

Recommended Finding: Unfounded

Rationale: The complainant stated that Deputy 1 "forcefully removed his mask." DSB P&P Section 1.89 Use of Force, states that during the course of their official duties, DSB sworn staff, may use objectively reasonable force to maintain or restore order. In addition, deputies are required to document their actions in a written report. A witness did not corroborate the complainant's allegation. There were no written reports related to this incident. Witnesses were interviewed and reported that in order for the Court to properly identify a defendant (inmate), the Judges would order them to remove their masks. If a defendant did not comply, the Judge would then order the deputy to remove the mask. Deputy 1 and another deputy provided information during the course of CLERB's investigation that was also considered in arriving at the recommended finding. The evidence showed that the alleged act or conduct did not occur.

4. Misconduct/Medical (I/O) – Health staff denied the complainant's request(s) for medical services.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated that his neck hurt, so he put on three sick calls requests and all were denied. Jail Medical staff are non-sworn employees of the SDSD in which CLERB has no authority per CLERB Rules & Regulations 4.1 Complaints: Authority. The Review Board lacks jurisdiction.

21-046

1. Misconduct/Procedure – Unidentified deputies failed to follow COVID protocol.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, "There have been numerous COVID outbreaks due to the ill and inappropriate response to COVID-19 by the Sheriff. COVID cleaning is mostly insufficient or VOID." The complainant failed to provide any identification of sworn personnel and he did not provide where or when these alleged incidents occurred. Attempts to obtain this information were unsuccessful. The evidence provided did not establish a prima facie showing of misconduct arising out of the performance of sworn personnel's duties. As such, this case is submitted for summary dismissal in accordance with CLERB Rules and Regulations Section 4.1 titled, Complaints Authority, "Pursuant to the Ordinance, CLERB shall only have authority to receive, review, investigate, and report on complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department," and Section 15

titled, Summary Dismissal, which states in part, "After reviewing the Investigative Report and records, CLERB may summarily dismiss a case, ("Summary Dismissal") upon recommendation of the Executive Officer, its own motion, or that of the Subject Officer. Parties to the Complaint shall be notified of a proposed Summary Dismissal, and may appear to argue for or against Summary Dismissal. Summary Dismissal may be appropriate in the following circumstances: Lack of cooperation by the Complainant such that CLERB is unable to continue its investigation, such as a failure by the Complainant to respond to repeated inquiries when such response is necessary to the ongoing investigation." The Review Board lacks jurisdiction.

2. Misconduct/Procedure – Unidentified deputies denied inmates food, clothing, bedding, day room, recreation yard, and/or showers.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, "We are denied sufficient food, sufficient clothing, sufficient bedding, day room, recreation yard, showers. Everything leads to mental and physical injuries to prisoners without any care of concern by Sheriff." See rationale #1.

3. Misconduct/Procedure – Unidentified deputies did not follow grievance procedures.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, "Custodial staff do not honor, respect or follow Grievances and Procedures." See rationale #1.

4. Misconduct/Procedure – Unidentified deputies searched legal documents and confiscated evidence.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, "The District Attorney had deputies search my legal documents without my being present to remove evidence. I informed the judge of this and he refused to take proper action, once again abusing his power and discretion." See rationale #1.

5. Misconduct/Discourtesy – Unidentified deputies used the PA system to single out inmates.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, "Deputies are disrespectful and single out the inmate and offense over the P.A. system which is a deliberate and intentional act to incite hostility amongst inmates." See rationale #1.

6. Misconduct/Harassment – Unidentified deputies created hostile living conditions.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, "Custodial staff create hostile living conditions, they cuss at inmates, threaten inmates, provoke inmates, incite inmates and demean inmates on a daily basis." See rationale #1.

7. Misconduct/Procedure – Unidentified deputies delayed distribution of grievance forms.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, "Custodial staff often refuse to process grievances properly. When inmates ask for Grievance forms they're told, 'in a minute' or 'next time I come around, in a little while or when I get time.'" See rationale #1.

21-060

1. Misconduct/Procedure- Unidentified deputies failed to properly classify the aggrieved.

Recommended Finding: Unfounded

Rationale: The complainants stated, “the failure on the part of the San Diego Sheriff’s Department to properly classify my son and review his incarceration history to protect him from further assault is unacceptable.” SDSD records show the aggrieved was properly classified as a level “4 High” in accordance with Detentions Policy Section R.1, Inmate Classification due to his prior assaultive charges. Upon review of his incarceration history, only one incident which occurred on 11-07-19 had a suspect identified and a Keep Separate (K/S) order was issued on the classification record of the aggrieved. In an interview with the aggrieved and a Detentions Investigations Unit (DIU) detective, the aggrieved identified the source of the 06-21-21 and 12-27-19 assaults were due to an investigative interview (relating to the 11-07-19 incident) at San Diego Central Jail (SDCJ) which occurred in the module where other inmates could view. The other inmates assumed the aggrieved was a “snitch” even though he did not identify any further aggressors. The subsequential assaults that occurred on 12-27-19 and 06-21-21 yielded no suspects due to the aggrieved’s unwillingness to participate in the investigation and identify suspects. Additionally, the one inmate identified in the prior K/S was not present at either assault. The aggrieved was offered protective custody for the incident that occurred on 06-21-21 but refused. The evidence shows that the alleged act did not occur, and the aggrieved was properly classified.

POLICY RECOMMENDATION:

1. It is recommended that the San Diego Sheriff’s Department (SDSD) create a policy that mandates conducting all Detentions Investigative Unit (DIU) interviews in a private area, out of view from other inmates.
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21-066

1. Use of Force Resulting in Great Bodily Injury – Deputy 1 deployed his K-9 partner on Derik Reyes and as a result, Reyes suffered K-9 bites.

Recommended Finding: Action Justified

Rationale: On 06-11-21, at approximately 6:50pm, Derik Reyes entered the home of the victim and attempted to rape her. The victim’s Ring camera, located at the front entrance of her home, captured audio of the incident and video of the front door entrance, the driveway, and the front gate of her property. When the victim was unable to fight off Reyes, she screamed for help. Neighbors heard her screams and ran to her aid. Neighbor 1 had a handgun and ordered Reyes to get off of the victim. Reyes became aggressive toward neighbor 1 and attempted to take the gun. Reyes stated to neighbor 1, “shoot me.” Reyes’ parents arrived on scene and attempted to take him away. Another neighbor, neighbor 2, arrived and he and neighbor 1 held Reyes at gunpoint to prevent him from leaving before deputies arrived. When deputies arrived, Reyes was seated in the passenger side of his parents’ truck. Not knowing if Reyes had any weapons, deputies positioned themselves, with lethal and less lethal weapons drawn, prepared to apprehend Reyes. K-9 Deputy 1 announced “You in the truck, this is the Sheriff’s department with K-9. Do exactly as I say or I am going to send my dog and he will bite you. Slowly get out of the vehicle, with your hands up and face away from me.” Reyes exited the vehicle, however, he faced the deputies and was ordered, again, to turn around and face away. Deputy 1 stated, “Hands up, face away from me or you’re going to get bit by the dog. Slowly step back toward the sound of my voice. Keep coming, straight back.” Reyes complied, until he was approximately 10 feet away from deputies. Reyes turned, faced the deputies and started toward Deputy 1 and his K-9 partner. Deputies yelled for Reyes to get on the ground. Reyes did not comply and continued forward. Deputy 1 deployed his K-9 and immediately followed and tackled Reyes to the ground. Deputies were able to subdue and handcuff Reyes. The great bodily injury Reyes suffered were solely K-9 bites. Reyes was transported and treated at the hospital. Reyes was medically cleared and booked into custody at the Vista Detention Facility (VDF). Upon review of this incident, in its entirety, there was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff’s Department sworn Personnel. The evidence, BWC videos, Ring videos and documented reports, verified that the K-9 use of force used, was lawful, justified and proper.

21-067

1. Use of Force Resulting in Great Bodily Injury – Deputies 1-8 used force to subdue and handcuff Inmate Pablo Santiago.

Recommended Finding: Action Justified

Rationale: According to jail documents, Inmate Pablo Santiago was incarcerated at the San Diego Sheriff's Department (SDSD) George Bailey Detention Facility (GBDF). On 01-09-21, Santiago was booked into custody for corporal injury to spouse/cohabitant, criminal threats, false imprisonment with violence and assault with force likely to cause great bodily injury. On 06-18-21, Santiago assaulted deputies when they responded to reports of inmates fighting in a cell. When deputies attempted to de-escalate the situation and subdue Santiago, he resisted, became argumentative, yelled obscenities and displayed aggression toward deputies. Deputy 5 utilized his Conductive Energy Device (CED), in an attempt to gain Santiago's compliance. SDSD Addendum F Policy titled, Use of Force Guidelines, states in part, "the CED shall only be used as a means of subduing and gaining control of a subject displaying assaultive behavior." The attempt was ineffective, and due to Santiago's assaultive behavior and continued resistance, deputies utilized the WRAP device to subdue Santiago. SDSD DSB P&P Section I.93 titled, Restraint Devices, states in part, "A restraint device is a device utilized to maximally secure an inmate due to their violent or uncontrollable actions when it appears less restrictive alternatives would be ineffective. Restraint devices include the restraint chair, cord cuffs and the WRAP restraint system." During the placement of the WRAP, Santiago attempted to bite Deputy 2, and he spat saliva and blood that made contact with Deputy 2's and Deputy 3's face, mouth and eyes. SDSD DSB P&P Section I.89 titled, Use of Force, states in part, "During the course of their official duties, DSB sworn staff, may use objectively reasonable force to effect an arrest, prevent escape, overcome resistance, and maintain or restore order. Sworn staff shall use Department approved techniques, equipment and tactics in controlling the inmate or incident." Several deputies noted in their reports, "based on their training and experience," that Santiago displayed symptoms likened to being under the influence of jail-made alcohol, with bloodshot eyes and slurred speech. According to Deputy 6's Officer Report, Santiago admitted to being under the influence of "pruno" (jail-made alcohol), and stated, "Man I took like six cups of pruno." As a result of force used, Santiago sustained a small right orbital floor fracture and right eyelid laceration. Several deputies sustained injuries, all of whom advised they desired prosecution. Santiago was admonished his Miranda Rights. As a result of his actions, Santiago was found to be in violation of California Penal Code PC§ 69 Resisting Executive Officer, PC§ 243.9 (A) Battery by Gassing and PC§ 4573.8 Possession Drugs/Alcoholic Beverage in Prison/Jail. The force executed by the deputies to overcome Santiago's resistance and gain his compliance was noted to be necessary, and objectively reasonable. The preponderance of evidence, based on the video surveillance, deputy reports and the investigative follow-up, showed deputies acted according to policy and there was no evidence to support any procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel. The evidence showed that force was utilized, and the force was lawful, justified, and proper.

21-087

1. False Reporting – Deputy 1's report was inaccurate and/or incomplete.

Recommended Finding: Sustained

Rationale: The complainant stated, "In summary, the report is incorrect and incomplete. The most glaring omission from the report is its failure to document in any way that this was a hit and run traffic incident. I was rear-ended at the intersection of Manchester and El Camino real, as the report states. But the report fails to say that the suspect fled the scene and only was identified by me chasing after him along Manchester, calling 911, and relaying his license plate to the 911 operator." According to California Highway Patrol (CHP) Collision Investigation Manual, Chapter 3, Instructions for Completing a Traffic Collision Report, section 4, states "Mark an "X" in the applicable box when the facts and evidence indicate either a felony or a misdemeanor hit and run violation was committed. A collision resulting in "Complaint of Pain" or "Other Visible Injury" should be investigated as a felony hit and run. The District Attorney's Office will ultimately decide which charges will be filed." Deputy 1 failed to mark an "X" in the applicable box even though the facts and

evidence indicated a misdemeanor hit and run violation was committed. VEH§ 20002. Duty Where Property Damaged, states, “the driver of any vehicle involved in an accident resulting only in damage to any property, including vehicles, shall immediately stop the vehicle at the nearest location that will not impede traffic or otherwise jeopardize the safety of other motorists”. SDDS P&P 2.41 Departmental Reports states, “Employees shall submit all necessary reports on time and in accordance with established Departmental procedures. Reports submitted by employees shall be truthful and complete; no employee shall knowingly enter or cause to be entered any inaccurate, false, or improper information, nor omit pertinent information reasonably expected to be included.” Deputy 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Deputy statements are protected by the Peace Officer Bill of Rights and cannot be publicly disclosed. An interview was requested with Deputy 1 to see if there was any further information that can be provided as to why the accident was not marked a hit and run, but he exercised his right to decline pursuant to a long-standing agreement between CLERB and the Deputy Sheriff’s Association. The evidence supported the allegation, and the act was not justified.

2. Misconduct/Procedure - SDDS failed to report “charges”/information to the District Attorney’s (DA) office.

Recommended Finding: Unfounded

Rationale: The complainant stated the Sheriff’s office was “not interested in reporting or allowing the District Attorney (DA) the chance to prosecute, and ultimately justice is not being done”. As per the SDDS records a Crime/Incident Report was completed on 09-01-21 and reviewed 09-07-21 documenting the hit and run with property damage. Additionally, a declaration in support of arrest warrant for the suspect with a charge of 20002(A) CVC-Misdemeanor Hit and Run was executed on 09-01-21. The evidence showed the discovery package was shared with the DA on 09-28-21. SDDS reported the charges to the DA, the DA office ultimately decides if/which charges will be filed. The evidence showed that the alleged act did not occur.

3. Misconduct/Procedure – Deputy 1 disclosed the complainant’s personal information.

Recommended Finding: Action Justified

Rationale: The complainant stated, “Deputy 1 also shared my personal information with the other driver; my name, phone, and address. Deputy 1 told me this was standard procedure, but I can’t believe that in the case of a crime the victim’s information is shared with another party.” Body Worn Camera evidence confirmed Deputy 1 provided the suspect with the complainant’s name and phone number. SDDS P&P 2.37 Dissemination of Information states, “Employees shall treat the official business of this Department as confidential. Information regarding official business shall be disseminated only to those for whom it is intended, in accordance with established Departmental procedures.” According to California Code VEH§ 20012 entitled “Reports Confidential: Exceptions”, the law enforcement agency to whom the accident was reported shall disclose the entire contents of the reports, including, but not limited to the names and addresses of persons involved to any person who may have a proper interest. PEN§ 841.5, Nondisclosure of Victim Information (d) states, “Nothing in this section shall preclude a law enforcement agency from releasing the entire contents of an accident report as required by Section 20012 of the Vehicle Code.” Additionally, GOV§ 6254 Exceptions to Disclosure of Records, does not list a victim of a crime defined by VEH§ 20002 Duty Where Property Damage as an exempt from disclosure. As such, the contact information was disseminated in accordance with policy. The evidence showed the disclosure of the complainant’s personal information was in compliance with Sheriff’s Policies and Procedures as well as California Code; the alleged action was justified.

4. Misconduct/Procedure – Deputy 1 showed preferential treatment/professional courtesy to the suspect.

Recommended Finding: Sustained

Rationale: BWC evidence showed Deputy 1 expressed not arresting the suspect due to his father being prior law enforcement. As per SDDS P&P core values, Fairness, “we are just and impartial in all of our interactions. Our decisions are made without personal favoritism.” In BWC footage, Deputy 1 stated, “how we typically handle hit and runs is, the driver gets arrested for hit and run and the vehicle gets impounded. Okay, so that was the plan because that is usually what the program is. But I sent my partner up to your home and he spoke with your dad. Out of respect for your dad and his wishes, we decided to go a different route. So we got your info now and I am going to pass that along to the other driver. But quite honestly, dude, your dad

really stepped in and defended you. Based on his history and his service and stuff like that and our respect for him. That's the only reason you're not being arrested, and your car is not being impounded." As per SDSO P&P Core Values, Fairness, "we are just and impartial in all of our interactions. Our decisions are made without personal favoritism." As per SDSO P&P, 2.4 Unbecoming Conduct states "unbecoming conduct shall include that which tends to bring this Department into disrepute or reflects discredit upon the employee as a member of this Department, or that which tends to impair the operation and efficiency of this Department or employee." Additionally, SDSO P&P 2.30 Failure to Meet Standards states "employees shall properly perform their duties and assume the responsibilities of their positions. Employees shall perform their duties in a manner which will tend to establish and maintain the highest standards of efficiency in carrying out the mission, functions, and objectives of this Department". Furthermore, it states "failure to meet standards can be demonstrated by the failure to take appropriate action on the occasion of a crime". The evidence confirmed Deputy 1 extended a professional courtesy to the suspect based on his father's history in law enforcement. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. An interview was requested with Deputy 1 to see if there was any further information that could be provided but he declined pursuant to a long-standing agreement between CLERB and the Deputy Sheriff's Association. The evidence supported that the alleged act did occur and was not justified.

End of Report