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CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its March 13, 2018 meeting, held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at www.sdcounty.ca.gov/clerb.

CLOSED SESSION

- a) PUBLIC EMPLOYEE APPOINTMENT
Notice pursuant to Government Code section 54957(b)
Title: Special Investigator, CLERB
- b) 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	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (8)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

17-013

- 1. Misconduct/Discourtesy – An unidentified deputy “flicked me off with his middle finger.”

Board Finding: Not Sustained

Rationale: The complainant reported that a deputy came to his cell window and flicked him off with his middle finger. He said this put him into a state of shock, fear, deeper depression, anxiety and fear for his life. The complainant was incarcerated for a 46 hour period and only specified the location where the alleged incidents took place. CCTV footage, without audio, was reviewed by Deputy 1 and the CLERB investigator and did not corroborate the complainant’s allegation. The complainant was arrested for HS§ 11550, Under the Influence of a Controlled Substance, and was found not to be a credible witness to his recall of these events, however, there was insufficient evidence to either prove or disprove the allegation.

- 2. Misconduct/Discourtesy – An unidentified deputy called the complainant a “child molester.”

Board Finding: Not Sustained

Rationale: The complainant reported that a deputy looked at him and said he was a “child molester.” Deputy 3 provided pertinent information that the complainant yelled out detrimental information, which prompted a cell change for the complainant’s own safety. There were no audio recordings available to corroborate or refute reported information and therefore insufficient evidence for this allegation.

3. Misconduct/Procedure – Deputy 1 and 3 refused to take a complaint from the complainant, about an unidentified deputy who also refused to take his complaint regarding allegations #1 and #2.

Board Finding: Unfounded

Rationale: The complainant said he informed Deputy 1 and 3 about what had happened to him, but neither of them was willing to take a formal written or verbal complaint from him. Due to the complainant’s level of intoxication while incarcerated, there are credibility issues with his recall of the events. Deputy 1 and 3 refuted the complainant’s allegation and provided information regarding their actions taken that were in compliance with Sheriff’s Policy & Procedure 2.21, Citizen Complaints. The evidence showed that the alleged act of refusing to take a complaint did not occur.

4. Misconduct/Procedure – An unidentified deputy delayed the complainant’s release from custody because he asked to file a complaint.

Board Finding: Not Sustained

Rationale: The complainant said he told unknown deputies that he wanted to file a complaint and that he was placed into different cells without any response to his complaint. When Deputy 3 took him to the Release Processing area, the complainant insisted on filing his complaint prior to departure. Incident Reports and Observation Log entries documented the complainant’s inability to care for himself while under the influence of a controlled substance and his need for placement in the sobering cell until he was cleared by medical staff. The complainant was found not to be a credible witness to his recall of these events, however, there was insufficient evidence to either prove or disprove the allegation without an audio recording of these contacts.

5. Misconduct/Procedure – Two unknown deputies (and clerical staff) misdirected the complainant to the Hall of Justice for a complaint form.

Board Finding: Not Sustained

Rationale: The complainant reported that an unidentified clerk and deputy did not provide him with a complaint form and that he was told the forms were at the Hall of Justice. Absent an audio-recording of this interaction, there was insufficient evidence to prove or disprove the allegation.

6. Misconduct/Procedure – Deputy 2 threatened the complainant with trespassing and ordered him from the jail lobby and the front of the building.

Board Finding: Action Justified

Rationale: The complainant said that after Deputy 2 gave him a complaint form, he was ordered to leave the lobby and threatened with arrest for trespassing. Deputies then followed the complainant outside and threatened him with arrest for being in front of the building. Deputy 2 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Video evidence corroborated the complainant’s contact with deputies in the jail lobby, and that he was provided a complaint form, but continued with his same animated behavior that consumed a moderate amount of staff’s time. The evidence showed the alleged act or conduct did occur but was lawful, justified and proper.

7. Misconduct/Procedure – Deputy 2 ordered the complainant off of a public sidewalk, as he tried to file a complaint.

Board Finding: Not Sustained

Rationale: The complainant said that deputies followed him outside and threatened him with arrest for being on the sidewalk. Deputy 2 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. There was no video or audio evidence available to corroborate or refute the dialogue that occurred between the involved parties.

17-021

1. Criminal Conduct – Deputy 1 committed perjury during his court testimony on March 14, 2017.

Board Finding: Unfounded

Rationale: The complainant stated that he witnessed the deputy commit perjury regarding a theft of a gun. The complainant reported that the officer was initially contacted by the defendant to escort her to a residence to retrieve items that belonged to her, but then under oath he swore that he was called to the residence for a suspected theft. Computer Aided Dispatch (CAD) records confirmed that on January 22, 2017, Deputy 1 responded to a radio call to investigate a report of theft. The Arrest Report specified that a witness saw the defendant steal items valued in excess of \$1000 with the intent to permanently deprive them from the victim. A subsequent Crime Report by a different deputy, dated January 28, 2017, documented the circumstances when the defendant went to her mother's residence to remove her belongings. These reports corroborated Deputy 1's courtroom testimony and proved that Deputy 1 accurately testified to his actions on January 22, 2017. The evidence showed that the criminal conduct alleged by the complainant did not occur.

2. Misconduct/Procedure – Deputy 1 engaged in physical contact while interacting with an assistant district attorney (ADA) at court.

Board Finding: Action Justified

Rationale: The complainant reported that he witnessed the officer being “overly friendly” with the ADA prosecuting the case that “bordered on complete inappropriateness” to include gestures of touching each other on the arms outside the courtroom, and while in conference. Deputy 1 provided information during the course of CLERB's investigation that conflicted with information reported by the complainant and clarified the interaction. There was no dispute that physical contact occurred between Deputy 1 and the ADA. Sheriff's Policy & Procedure 2.4, Unbecoming Conduct shall include that which tends to bring the Department into disrepute or reflects discredit upon the employee as a member of the Department, or that which tends to impair the operation and efficiency of this Department or employee. The subjective gestures described by the complainant do not rise to any violation of this policy. The evidence showed the conduct that occurred was lawful, justified and proper.

17-022

1. Excessive Force/Kick – An unidentified deputy kicked the complainant in the head and neck.

Board Finding: Unfounded

Rationale: According to the complainant, he refused to comply with deputies' orders to enter his cell because the housing conditions were allegedly unsafe and in violation of health and safety codes, as human feces and waste and urine were allegedly on the doorway and ceiling. A Tactical Response Team (Tactical Team), comprised of Deputies 1-6, was activated to place the complainant into his cell. During the Tactical Team's response, an unknown deputy on the Tactical Team allegedly kicked him in the head and neck. A review of deputies' reports, medical records, and video and audio of the entire use of force incident giving rise to this complaint and the complainant's actions prior to the incident, revealed that the force used against the complainant included grabbing, pushing, or pulling; control holds; two closed fist strikes to the complainant's facial area; and an unsuccessful carotid restraint attempt. An Immobilizing Control Electronics Shield was activated and a Spit Sock was placed. Six photographs of the complainant taken during his medical assessment and the only photograph the complainant permitted to be taken after he was placed into his cell revealed no visible trauma or unsafe or inhumane housing conditions. Based upon a review of SDSD Use of Force Guidelines, the force used in this situation was lawful, proper, and justified. There was no evidence that the complainant was kicked in the head and/or neck during the use of use of force incident and the evidence shows that the alleged act or conduct did not occur.

2. Criminal Conduct – Unidentified deputies “penetrated” the complainant with an unknown object.

Board Finding: Unfounded

Rationale: According to the complainant, he refused to comply with deputies' orders to enter his cell because the housing conditions were allegedly unsafe and in violation of health and safety codes, as human feces and waste and urine were allegedly on the doorway and ceiling. A Tactical Team, comprised of Deputies 1-6, was activated to place the complainant into his cell. During the Tactical Team's response, an unidentified deputy on the Tactical Team allegedly sodomized him, while in the presence of other deputies. CLERB staff watched video and listened to the audio of entire use of force incident giving rise to this complaint. There was absolutely no evidence to support the complainant's claims that an unidentified deputy “penetrated” him with an object or in any manner. The evidence shows that the alleged act or conduct did not occur.

17-024

1. Excessive Force – Deputies 1 and 2 “beat” the complainant after she “dropped for cover.”

Board Finding: Unfounded

Rationale: The complainant said that she told Deputy 1 that she was a “bitch with an ugly attitude” and the deputy rushed toward her so she “socked her once in the left cheek.” Then Deputy 2 started pounding on her so she “dropped for cover,” but they continued to beat on her for an “average of 35 seconds.” Detentions Policy and Procedure 1.89, Use of Force allows staff to use physical force to overcome resistance in order to achieve control or compliance. The complainant was the aggressor and struck and injured both deputies, who defended themselves and overcame the complainant’s assaultive behavior with department approved tactics. Deputy reports corroborated what was observed on surveillance video and refuted the complainant’s allegation. The evidence showed that the alleged act or conduct of deputies “beating” the complainant after she “dropped for cover” did not occur.

2. Misconduct/Procedure – Deputy 3 placed the complainant into lockdown following a use of force incident.

Board Finding: Action Justified

Rationale: As of March 22, 2017, the complainant reported that she had been in lockdown since February 18, 2017. Following a use of force incident involving the complainant on February 20th, Deputy 3 conducted a Disciplinary Hearing the following day in which the complainant was found guilty of several violations of Inmate Rules & Regulations. The complainant was placed into Disciplinary Isolation for ten days. Upon release from lockdown, the complainant was moved to Administrative Segregation because of her continual inability or unwillingness to adjust and conform to the minimum standards expected of those in mainline housing and violence towards others. The evidence showed the actions that occurred were lawful, justified and proper.

17-030

1. Misconduct/Procedure – Deputy 1 disclosed confidential information to an unauthorized person.

Board Finding: Sustained

Rationale: The complainant alleged that Deputy 1 disclosed confidential information to a friend, when he informed the friend that he was being dispatched to his home to conduct a child welfare check. The complainant contacted Children’s Welfare Services and requested a welfare check on her grandchildren. The children’s father had been hospitalized and when the babysitter arrived at the family home, she had to gain access through a window because the mother was asleep. Prior to conducting the welfare check, Deputy 1, who is a friend of the father, as they attended the police academy together, contacted the father and informed him that a child welfare report had been filed related to his children and that he was in the process of conducting the welfare check. The father was contacted during this investigation and confirmed that Deputy 1 called him and informed him that a child welfare report had been filed and a welfare check requested. Deputy 1 provided information during the course of CLERB’s investigation that was used in arriving at the recommended finding. There is no dispute that Deputy 1 notified the father of the pending welfare check prior to conducting the welfare check. This was a policy violation, as Sheriff’s Policy 2.37, Dissemination of Information, restricts the release of information regarding official business to only those for whom it is intended. Notifying a parent who lives in the home where a Child Welfare Services-requested welfare check is going to be conducted prior to actually conducting the welfare check is inappropriate in that it provides an opportunity for that parent to give a “heads up” to the other parent or persons at the site prior to law enforcement’s arrival. It is for this reason that CLERB staff contends Deputy 1 violated the cited policy, as the information pertaining to a pending welfare check was not intended for the father under the circumstances in which it was disseminated. If Deputy 1 did not telephone the father prior to arriving at the residence but, instead, interacted with him (if he had not been hospitalized) and/or his wife during the actual welfare check and subsequently advised him and/or her that he was at the residence to conduct a welfare check, that would have been an appropriate and reasonable dissemination of the information. Under those circumstances Deputy 1 would have been able to view the scene, conditions, children, and caretaker(s) without the possibility of them being “cleaned up” or otherwise cast in the best possible light. Deputy 1 disclosed confidential information to an unauthorized person, and this act was not justified.

2. Misconduct/Procedure – Deputy 1 disclosed confidential information that resulted in the identification of the reporting party of a child welfare check.

Board Finding: Sustained

Rationale: The complainant alleged that Deputy 1 disclosed information that identified her as the reporting party in a child welfare check at her grandchildren’s home. Deputy 1 refuted the allegation and provided information during

the course of CLERB's investigation that was considered in arriving at the recommended finding. The father's admission that Deputy 1 told him that a "grandparent" in a specific state (*redacted from this public rationale*) contacted CWS to request the welfare check is a critical piece of evidence. Even though the father cautioned he had been on heavy medication at the time of the initial conversation with Deputy 1 and was unclear about what was actually stated during it, there was a greater likelihood than not that Deputy 1 told the father that a "grandparent" in that specific state, or words to that effect, requested the welfare check. Disclosing information resulting in the identification of a reporting party of a child welfare check was a policy violation, as Sheriff's Policy 2.37, Dissemination of Information, prohibits deputies from identifying persons who provide confidential information, and Sheriff's Policy 6.17, Child Abuse Policy, mandates that the identity of the reporting party of a suspected child abuse remain confidential pursuant to Penal Code section 11167(d)(1). There is no dispute that Deputy 1 did not specifically identify the reporting party by name, but the totality of the circumstances, to include the independent statements made by the complainant, the complainant's husband, and the father, comprise a preponderance of evidence that Deputy 1 disclosed information resulting in the identity of the complainant as the reporting party of a child welfare check. This act was not justified.

17-031

1. Misconduct/Procedure – Unidentified deputies did not respond to the complainant's three inmate grievances.

Board Finding: Not Sustained

Rationale: The complainant said that after a month, he had not received a response to his three Inmate Grievances about moving to a different detention facility. Detentions Policy N.1, Grievance Procedures, states that inmates are given the second page of the J-22 form as a receipt. The San Diego Central Jail had no record of any Inmate Grievances filed by the complainant and he did not produce any copies as evidence. The complainant did not maintain contact with the CLERB office and was unavailable for clarification about this allegation. There was insufficient evidence to either prove or disprove this allegation.

2. Misconduct/Procedure – The complainants made numerous allegations about facility conditions to include laundry exchange, bible access, yard time, haircuts, nail clippers, court appearance, bed sheets and mattress, hygiene and unsanitary conditions, and the housing census.

Board Finding: Summary Dismissal

Rationale: Per CLERB Rules & Regulations 4.1, Citizen Complaints: Authority, the Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department, which alleged: (a) use of excessive force; (b) discrimination or sexual harassment in respect to members of the public; (c) the improper discharge of firearms; (d) illegal search or seizure; (e) false arrest; (f) false reporting; (g) criminal conduct; and/or (h) misconduct. The Review Board lacks jurisdiction.

17-034

1. Excessive Force/Taser – Deputy 2 tased the complainant.

Board Finding: Summary Dismissal

Rationale: The complainant said that a sheriff used "brute force" and tased him unnecessarily. Arrest Report #1610214 documented that during the complainant's arrest, Deputy 2 drive stunned the complainant in an attempt to gain compliance. The complainant's arms were underneath his stomach, not visible, and he actively attempted to keep them beneath him as deputies issued commands to give them up. Deputy 2 feared the complainant might attempt to access a weapon so he deployed two drive stuns to the complainant's lower back for one second. The complainant responded to the pain and freed his arms, but then attempted to stand up. The complainant was pushed back to the ground where he again hid his hands and arms underneath him. The force utilized by Deputy 2 was lawful, justified and proper. Deputy 2 resigned from the Sheriff's Department in January 2017, and CLERB lacks jurisdiction over him.

2. Excessive Force/Taser – Deputy 1 tased the complainant.

Board Finding: Action Justified

Rationale: The complainant said that a sheriff used "brute force" and tased him unnecessarily. Arrest Report

#1610214 documented that during the complainant's arrest, Sgt. 1 deployed his department issued X-26 Taser in order to immobilize his resistance to Deputies 2 and 3. The deputies were struggling with gaining control over the resistive complainant due to his size and strength. Since elongated struggles raise the probability for injury, Sgt. 1 deployed the Taser. The first contact was ineffective, but the second attempt immobilized the complainant so that deputies could apply handcuffs. The force utilized was necessary to gain compliance and was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 3 denied the complainant medical attention when he was injured at the time of his arrest.

Board Finding: Unfounded

Rationale: The complainant reported that when he was booked into custody at the time of this arrest, he was ignored and denied medical attention for a broken arm. After his arrest and following a use of force, the complainant was first evaluated at a hospital for clearance, and then processed by medical staff upon entry into a detention facility. The complainant expressed pain concerning injury to his arm during the medical screening process at the jail. Medical care and decisions are made by medical staff who are non-sworn personnel over whom CLERB does not maintain any type of authority. However, the evidence showed that the complainant received medical attention following his arrest and subsequent care for injury to his arm. Medical records confirmed that the allegation alleged by the complainant did not occur.

4. Misconduct/Discourtesy – Deputy 3 told the complainant to, “shut the fuck up!”

Board Finding: Not Sustained

Rationale: The complainant said that while being escorted to a hospital, the arresting deputy told the complainant to “shut the fuck up.” Deputy 3 provided information during the course of investigation that was considered, but absent an audio recording or an independent witness there is insufficient evidence to either prove or disprove the allegation.

5. Misconduct/Harassment – Deputy 3 harassed the complainant and told him to stay out of Imperial Beach.

Board Finding: Not Sustained

Rationale: The complainant said he was harassed in a “prejudiced manner” by Deputy 3 and that for no reason the deputy knew his whereabouts “as secret affairs took place to perpetrate him” and he told the complainant that he could not be in Imperial Beach, which violated his right as an American citizen to be in a public place. Deputy 3 provided information during the course of investigation that was considered, but absent an audio recording or an independent witness there is insufficient evidence to either prove or disprove the allegation.

18-023

1. Criminal Conduct – Escondido Police Officers failed to enforce Temporary Restraining Orders against the complainant's boyfriend who subsequently attempted to murder her.

Board Finding: Summary Dismissal

Rationale: Per CLERB Rules & Regulations 4.1 and 4.4, CLERB lacks authority over Escondido Police Officers and jurisdiction over the incident giving rise to this complaint that occurred in 2016.

End of Report

NOTICE

In accordance with Penal Code Section 832.7, this notification shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court or judge of California or the United States.