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# County of San Diego

## CITIZENS' LAW ENFORCEMENT REVIEW BOARD

555 W BEECH STREET, SUITE 505, SAN DIEGO, CA 92101-2940  
TELEPHONE: (619) 238-6776 FAX: (619) 238-6775  
www.sdcounty.ca.gov/clerb

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its June 25, 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](http://www.sdcounty.ca.gov/clerb).

**CLOSED SESSION**

## a) PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

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

## b) PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Notice pursuant to Government Code section 54957  
Title: Executive Officer, CLERB

DEFINITION OF FINDINGS	
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 (29)****ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE****16-078**

1. Death Investigation/Officer-Involved-Shooting – On 08-18-16, Trenton Lohman stole a San Diego Sheriff's Department (SDSD) patrol vehicle, led deputies on a pursuit, and subsequently "carjacked" a vehicle in a Poway intersection. During these events, Deputies 1, 2, and 4 discharged their firearms at Lohman. Lohman was subsequently found unresponsive in the "carjacked" vehicle and pronounced dead at that scene.

Board Finding: Action Justified

Rationale: SDSD deputies received a call of a suspicious person, later identified as Trenton Lohman, in the parking lot of a Poway automotive center. Lohman pointed a stolen firearm at Deputy 1, the first arriving deputy, who discharged his department-issued firearm at Lohman in response. Deputies 2 and 4 arrived at the scene and discharged their department-issued firearms at Lohman, as he stole a marked SDSD patrol vehicle. A pursuit ensued and Lohman subsequently "carjacked" a vehicle at a Poway intersection. Deputies 1-3 discharged their firearms at Lohman immediately after the "carjacking." Shortly thereafter, the "carjacked" vehicle, with Lohman in the driver's seat, exited the roadway and came to rest in a dirt area. Deputies approached the vehicle, removed Lohman from the vehicle, handcuffed him, and noticed that he appeared to be dead. Medics arrived and pronounced

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death without resuscitative efforts. The cause of death was thoracic gunshot wounds and the manner of death was homicide. For death certification purposes, a "homicide" manner is not synonymous with murder or manslaughter and implies no criminal culpability.

Over the course of the entire incident, Deputy 1 discharged his department-issued firearm approximately 30 times, Deputy 2 discharged his department-issued firearm approximately eight times, Deputy 3 discharged his department-issued firearm approximately five times, and Deputy 4 discharged his department-issued firearm approximately nine times. The evidence indicated that Mr. Lohman did not fire any weapons during the incident. Lohman's actions posed a clear threat to on-scene deputies and nearby residents, thus resulting in the deputies' use of lethal force against Lohman. The facts, evidence, and perceptions of each deputy justified the use of deadly force against Lohman. Absent conflicting witness statements, there was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

2. Death Investigation/Officer-Involved-Shooting – On 08-18-16, Trenton Lohman stole a San Diego Sheriff's Department (SDSD) patrol vehicle, lead deputies on a pursuit, and subsequently "carjacked" a vehicle in a Poway intersection. During these events, Deputy 3 discharged his firearm at Lohman. Lohman was subsequently found unresponsive in the "carjacked" vehicle and pronounced dead at that scene.

Board Finding: Summary Dismissal

Rationale: At the time of this incident, Deputy 3 was an active member of the Sheriff's Department, but he has since retired. Per CLERB Rules and Regulations 4.1, entitled, "Citizen Complaints: Authority," CLERB lacks jurisdiction.

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#### **17-014**

1. False Arrest – Deputy 1 arrested the complainant on 01-28-17.

Board Finding: Action Justified

Rationale: The complainant reported that he was outside of his ex-wife's house speaking to an extended family member when a deputy falsely arrested him, failed to "Mirandize" him; disrespected, threatened, and assaulted him. An Arrest Report detailed the complainant's arrest for PC§ 69: Resisting Executive Officer and PC§ 422: Criminal Threats. Although the complainant was in custody, Miranda advisements were not warranted because there was no custodial interrogation. The evidence showed that the complainant's arrest was lawful, justified and proper.

2. Excessive Force – Deputy 1 threatened to tase and then "slammed" the complainant to the ground.

Board Finding: Action Justified

Rationale: The complainant reportedly asked for a supervisor, but said the deputy refused his request, so he became uncooperative. He explained that after he was handcuffed, the deputy attempted to pull him to his vehicle so he became "dead-weight." The deputy lost his grip and tried to tackle the complainant, who side-stepped him and the deputy fell on his face, which made the complainant laugh. He was then "slammed" to the ground. Sheriff's Policy 2.49, Use of Force, mandates that employees shall not use more force in any situation than is reasonably necessary under the circumstances. An Arrest Report specified that when Deputy 1 handcuffed the complainant and began to escort him, the complainant said he was not going and wanted a supervisor. When Deputy 1 said he was not going to call a supervisor at that moment, the complainant reportedly elbowed the deputy in the chest causing him to stumble backwards. Deputy 1 said he performed a leg sweep and held the complainant down, but the complainant resisted and called out to his friends for help. Deputy 1 reportedly issued verbal commands to those bystanders to stay back or he would release his canine and also unholstered his department issued Taser and pointed it at them. This tactic gained compliance from the bystanders and was permissible by Sheriff's Department policy. The complainant admittedly was noncompliant and the evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

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#### **17-015**

1. Misconduct/Procedure – Deputies 1, 2 and/or 3 "ignored" the complainant's medical emergency.

Board Finding: Unfounded

Rationale: The complainant said he had a medical emergency but was ignored. The complainant did not clarify the emergency and did not respond to further requests for information. A review of Sheriff's medical records corroborated

the complainant's request for pain medication on 01-29-17. He was scheduled for and subsequently seen by medical personnel on 01-31-17 and reportedly demanded narcotics, which were not provided because the detention facility was "narcotic free." The complainant then expressed, "I'm having chest pain!" but nursing personnel noted that he was not in any medical distress. The evidence showed that deputies escorted the complainant to medical where he was evaluated by medical personnel and was not ignored; the complainant was apparently dissatisfied with the medical decision making over which CLERB has no authority.

2. Excessive Force – Deputies 1, 2 and/or 3 “slammed” the handcuffed complainant to the ground.

Board Finding: Action Justified

Rationale: The complainant said that while walking down a hallway to medical he was “antagonized, threatened, assaulted and slammed on the ground while handcuffed.” Officer Reports related to this event corresponded with one another and corroborated video evidence that was reviewed. While outside his housing unit, the complainant removed his hands from his waistband and raised his right hand up in the air, a violation of Detentions O.3, Inmate Rules and Regulations. Deputy 3 feared for his safety and utilized a head control takedown, which was permissible by departmental policy. Video evidence verified that the complainant was handcuffed following this use of force incident and was not handcuffed during it, as alleged. The evidence showed that reasonable force was utilized to gain compliance from the complainant and it was lawful, justified and proper.

3. Misconduct/Procedure – Unidentified deputies put the complainant in the “hole.”

Board Finding: Action Justified

Rationale: The complainant said that he was put in the “hole” [isolation] for four days. Sheriff's policy O.1, Disciplinary Action provides a method for bringing an inmate's behavior into compliance with established inmate rules and regulations and allows for up to ten days of placement in segregated housing. An Incident Report by Deputy 3 dated 01-30-17 detailed the complainant's violation of O.3, Inmate Rules to include: Disrespect to Staff, Disobeyed Staff Instructions, and Boisterous Activity. A Hearing Report by a sergeant dated 01-31-17 found the complainant to be in violation of the specified rules based upon the complainant's admission of using profanities and derogatory statements toward deputies and kicking his cell door. It was also noted that the complainant had two prior rule violation reports and the discipline imposed was three days of Disciplinary Isolation (DI) in compliance with Detentions Policy J.3, Segregation: Definition and Use. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

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## **17-020**

1. Misconduct/Procedure - Deputy 1 authorized the transportation of the complainant's minor daughter to an unknown person's home without the complainant's permission.

Board Finding: Action Justified.

Rationale: The complainant said that after an argument with her minor daughter, the minor exited the complainant's vehicle and walked to an unknown location. The complainant summoned Sheriff's Deputies and a Missing Person Report was taken. During the course of the Sheriff's deputies' investigation, the minor was located at a church. During their interaction, the minor and Deputy 1 devised a “safety plan.” The complainant reported that Deputy 1 agreed to and authorized the minor to be transported by an unknown churchgoer to another location without informing or consulting the minor's parent, the complainant. During the course of CLERB's investigation, Deputy 1 provided information that was considered in arriving at the recommended finding. Deputy 1 allowed the minor to be transported by an unknown person to another location without informing or consulting the complainant. After reviewing San Diego Sheriff's Department (SDSD) Policy and Procedure (P&P) section 6.2, which pertains to Juvenile Procedures and which states, “Missing or runaway reporting procedures are explained in P&P section 6.57. In custody, runaways and incorrigible youth should be treated as family problems, not requiring law enforcement action. Deputies may offer referrals or information to local community-based organizations. The parent should be encouraged to contact the station Juvenile Detective the following workday. A Juvenile Contact Report must be submitted to outline the circumstances of the contact. The juvenile should be released to the parent unless it is obvious that the parent cannot or will not be able to control the juvenile or the juvenile is likely to flee. In such cases, contact is to be made with the Juvenile Intervention Detective or the Juvenile Probation Detention Control Unit to discuss placement in a community-based organization designed to provide short-term emergency housing for juveniles,” it was determined that Deputy 1 was not in violation of SDSD P&P as the noted policy pertains to those juveniles who are “in-custody.” The policy did not outline the procedures that deputies should take when locating and contacting a non-custodial runaway. The evidence supports the allegation and the conduct did not violate SDSD policy or statute.

2. Misconduct/Truthfulness – Deputy 1 lied to the complainant when he told her that he had searched for her daughter and was unable to find her.

Board Finding: Action Justified.

Rationale: According to the complainant, during the course of the Sheriff's deputies' investigation into the whereabouts of the complainant's missing daughter, Deputy 1 was dispatched to a local church, which was where he was informed that the minor would be. Upon his arrival to the church, Deputy 1 telephoned the complainant and informed her that he was unable to locate her missing juvenile. According to the complainant, Deputy 1 said the minor had left the church prior to his arrival and her whereabouts were unknown to him. It was later learned that during the course of his investigation, Deputy 1 had located the missing juvenile at the church and had met with her in-person, an action that was in conflict with his alleged statement to the complainant. During the course of CLERB's investigation, Deputy 1 provided information that was considered in arriving at the recommended finding. Although there is no dispute that Deputy 1 lied to the complainant, doing so was not a violation of Sheriff's Policy and Procedure 2.46, which pertains to truthfulness and states, "When asked by the Sheriff, the Sheriff's designee or any supervisor, employees will always answer questions, whether orally or in writing, truthfully and to the fullest extent of their knowledge." The evidence showed the alleged act or conduct did occur but was lawful and justified.

Note: Apparent procedural misconduct, not alleged by the complainant, but discovered during the course of CLERB's investigation, was referred to the Sheriff's Department for review. In Deputy 1's Missing Person Report, he omitted pertinent information regarding his contact with and the learned whereabouts of the complainant's minor daughter. By omitting this information, Deputy 1 was not truthful or forthcoming in his written report.

#### **POLICY RECOMMENDATION:**

1. It is recommended that the SDSD revise its P&P Section 6.2, entitled, "Juvenile Procedures," to mandate that a minor's parent or legal guardian be notified of the location and/or status of a missing or runaway juvenile when the location and/or status becomes known by any member of the SDSD, unless doing so would compromise a criminal investigation into the actions of the parent or legal guardian or jeopardize the welfare of the juvenile.

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#### **17-037**

1. Excessive Force – Deputies 2-5 "beat" the complainant on 04-27-17.

Board Finding: Action Justified

Rationale: The complainant reported that "force" took place sometime between 04-27-17 and 05-14-17, in the booking area at a jail when four to five deputies hit him and smashed his head for approximately two minutes. Video evidence was reviewed and while inconclusive, it did not substantiate the action(s) alleged by the complainant. Verification of injuries could not be confirmed because the complainant did not allow CLERB access to his medical records. Use of Force reports related to this incident on 04-27-18, documented all the involved deputies' actions in response to the complainant's statements and actions of self-harm, as well as his active resistance and assaultive behavior. The use of one closed-fist strike, a head controlled take down, and downward pressure was within policy and lawful, justified and proper.

2. Misconduct/Discourtesy – An unidentified deputy said, "Stay the fuck down."

Board Finding: Not Sustained

Rationale: The complainant reported that an unknown deputy said, "Stay the fuck down." Sheriff's Policy 2.22 permits profane language when necessary to establish control during a violent or dangerous situation. The complainant failed to describe/identify the involved personnel and the investigation did not produce a subject officer. There was insufficient information/evidence to either prove or disprove the allegation.

3. Misconduct/Procedure – Deputies 2-5 failed to take the complainant "to medical" following a force incident during which the complainant sustained injuries.

Board Finding: Unfounded

Rationale: The complainant reported that he was not taken "to medical" following a use of force, as described in Allegation #1. Although the complainant did not allow CLERB access to his medical records for verification, a preponderance of evidence presented through deputy reports and video surveillance corroborated that the complainant was escorted to medical for evaluation and/or treatment following the use of force. In addition, the complainant was subsequently housed in a safety cell which required evaluation by medical personnel. The available

evidence showed that the alleged act or conduct did not occur.

4. Excessive Force – Deputy 1 used force against the complainant on 04-28-17.

Board Finding: Action Justified

Rationale: The complainant reported that “force” took place sometime between 04-27-17 and 05-14-17. Officer Reports corroborated that another Use of Force incident took place on 04-28-17, at which time Deputy 1 administered Oleoresin Capsicum (OC) spray to gain compliance and subsequently placed a spit sock on the complainant’s head because he had reportedly spat at deputies. A sergeant told Deputy 1 to deploy OC due to the complainant’s demonstrated verbal and non-verbal noncompliance. Video footage did not denote any abuse of the complainant. Verification of injuries could not be confirmed because the complainant did not allow CLERB access to his medical records. The evidence showed that the actions taken by deputies to gain compliance was lawful, justified and proper.

5. Misconduct/Procedure – Unidentified deputies and/or personnel would not allow the complainant’s mother to visit him while he was in jail.

Board Finding: Action Justified

Rationale: The complainant reported that from the time of his arrest on 04-27-17 until sometime in May 2017, he was denied visits with his mother. Detentions Policy P.9, Social Visiting, mandates that all inmates will have the opportunity to receive two, one-half hour visits weekly, however visits are a privilege, and as such, may be suspended as part of a disciplinary action. Visitor information documented in the Jail Information Management System (JIMS) verified a visit between the complainant and family members, to include his mother, on 05-14-17, the date of his release. An Officer’s Report stated that during the booking process, a use of force occurred and the complainant said that he wanted to hurt himself and hit his head on the floor; deputies placed him into a Safety Cell until 04-29-17. Following his release from the Safety Cell, the complainant was admitted into the Psychiatric Security Unit (PSU). Court reports also documented that the complainant’s medical condition (uncooperative psychotic behavior) precluded his appearance at Court until after 05-11-17. The complainant was housed in a specialized unit and unable to receive visitors until his release from custody on 05-14-17. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

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## **17-041**

1. False Arrests – Probation Officer (PO) 2 and/or unidentified probation officers ordered the complainant’s arrest on/around 11-19-15 and 05-20-16.

Board Finding: Summary Dismissal

Rationale: The complainant reported he was arrested for “violating” [terms of his probation] three times. The first time they searched his mom’s house and found expired credit cards so they “popped” him. The second time the PO demanded to see him within the hour, but he could not leave his kids so they “popped” him again. The third time he was two weeks away from being off probation. The complainant submitted his signed complaint on 06-14-17. Because the first two arrests occurred more than a year previously, CLERB did not have jurisdiction to investigate per CLERB Rules & Regulations 4.4, Jurisdiction. NOTE: The complainant’s third arrest was addressed in Allegation #4.

2. Misconduct/Procedure – PO 2 requested a paycheck stub from the complainant.

Board Finding: Action Justified

Rationale: The complainant said that Officer 2 asked him three times for a paycheck stub from over a year ago, and he told her that his search for the old paycheck stub was unsuccessful. The Probation Department provided documentation of the complainant’s terms of probation, one of which was to provide proof of employment to the assigned PO. PO 2 provided information during the course of investigation that was considered in arriving at the recommended finding. The evidence showed that request(s) for employment verification were in compliance with the complainant’s terms of probation and was lawful, justified and proper.

3. Misconduct/Discourtesy - PO 2 said, "You can't harass my front end staff, I got a problem with that, that pisses me off..." or words to that effect.

Board Finding: Not Sustained

Rationale: The complainant said that he told a front office clerk that he was going to be late for work, and [Probation] Officer 2 could call him or find him at his residence. He said PO 2 emerged from the back office “brooding” and said,

"You can't harass my front end staff, I got a problem with that that pisses me off, take everything out of your pockets and go through the metal detector." The complainant said he complied with her commands and was handcuffed, but because PO 2 was "pissed off," she then "fished for a reason" to arrest him. Probation policy 1306.5, Standards of Conduct states that employees must exercise courtesy, tact, patience and discretion in performing their duties; must control their tempers and not engage in argumentative discussions; and shall not use profane or insolent language or gestures. PO 2 provided information during the course of investigation that was considered in arriving at the recommended finding. Office staff were also questioned as potential witnesses and their responses were taken into consideration. Absent an audio recording there was insufficient evidence to render an alternative finding.

4. False Arrest – PO 2 ordered the complainant's arrest on/around 05-04-17.

Board Finding: Action Justified

Rationale: The complainant said that [Probation] Officer 2 stated, "I have reason to believe you left the County." After initially rejecting that fact, the complainant admitted to taking his kids to Disneyland, and was placed under arrest for violating his probation condition with less than two weeks before he was set to be off probation. The complainant said that PO 2 explained that he was being arrested for leaving the County. According to his Conditions of Postrelease Community Supervision, the complainant agreed on 05-05-15, not to leave the County without permission and PC§ 1203.2. Violation of Probation Terms applied. The evidence showed that the complainant's departure outside of San Diego County violated the terms of his probation and the arrest was lawful, justified and proper.

5. Misconduct/Procedure – PO 1 presented herself as PO 2's supervisor.

Board Finding: Action Justified

Rationale: The complainant said that he asked to speak to PO 2's supervisor, and that is when PO 1 presented herself. He said he had learned from a previous experience that PO 1 was not the supervisor and explained that he wanted to speak to a supervisor, not PO 2's "senior officer." By Probation policy 200.4.1, the term "supervisor" may include any person (e.g. officer-in-charge, lead or senior worker) given responsibility for the direction of the work of others. Senior Probation Officers are responsible for carrying out assigned duties as received from supervisory levels and may involve supervision of subordinates. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

6. Misconduct/Procedure – PO 2's actions led to loss of the complainant's home and job.

Board Finding: Action Justified

Rationale: The complainant said that his arrest lasted ten days. He had explained to [Probation] Officer 2 that he had work to tend to, and that he needed money (work paycheck) to pay his rent, and his kids child support. Due to this arrest, he lost his job, and was served with an unlawful detainer which led to eviction. The complainant asked if the goal of probation was to harm the community and him by putting him in a desperate situation that may cause him to commit another crime. He also said that this was the third time PO 2 placed him under false arrest, disrupted his life, placed him into a bad situation, and caused emotional and financial stress to his family and him. Pursuant to PC§ 1203.2. Violation of Probation Terms, if any probation officer has probable cause to believe that the supervised person is violating any term or condition, the officer may rearrest the supervised person. The evidence showed that the complainant was arrested for probation violations on 11-19-15, 05-20-16, and 05-04-17. The arrests were found to be lawful, justified and proper; subsequent loss of his job and/or home was attributed to the complainant's actions of noncompliance and not through any fault of PO 2.

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## **17-051**

1. Misconduct/Procedure - Deputies 1-4 failed to move the complainant's cellmate from their shared cell, which ultimately led to an altercation where the complainant was deemed the aggressor and was subsequently disciplined.

Board Finding: Action Justified.

Rationale: According to the complainant, unknown deputies failed to move the complainant's cellmate from their shared cell, per his request. The complainant complained that his cellmate smelled and refused to shower. He did not want his cellmate housed with him and requested deputies remove his cellmate from their cell. The complainant's request was not urgent, nor was the situation life-threatening. The Sheriff's Department established SDSD Detention Services Bureau Policies and Procedures (SDSD DSB P&P), Section N.3, entitled 'Inmate Request Forms' which was to established uniform procedures for the expeditious resolution of inmate request. For non-urgent request, inmates are directed to submit their request in writing, via an Inmate Request form. That way, their requests are processed in an efficient and expeditious manner. The complainant did not submit his request in writing, via an Inmate

Request form. He claims he verbalized his request to deputies while they were performing their routine duties. The complainant felt that his request had been disregarded, so took matters into his own hands by forcefully removing his cellmate from their shared and dually assigned jail cell. The complainant claims that the deputies' failure to oblige his request in a timely manner is what ultimately led to the physical altercation. After the assault, an investigation was initiated. The complainant and his cellmate were interviewed, and jail module surveillance footage was reviewed. The investigation revealed that the complainant was the aggressor in the assault and as such, he was subsequently disciplined. The complainant's actions were in violation of SDS DSB P&P Section O.3, entitled "Inmate Rules and Regulations." As a result of the documented assault, and per SDS DSB P&P Section O.1, entitled "Disciplinary Action" the complainant was subsequently disciplined for his actions. During the course of CLERB's investigation, Deputies 1-4 provided information that was considered in arriving at the recommended finding. The complainant's request did not rise to a degree of urgency. After reviewing the evidence which was obtained, including, but not limited to all written reports, jail surveillance videos and photographs, and SDS DSB P&P, it was determined that the evidence supported the allegation, but the deputies' conduct and actions did not violate SDS policy or statute and the act or conduct was justified and lawful.

2. Misconduct/Procedure – Deputy 3 falsely accused the complaint of violating jail rules.

Board Finding: Unfounded

Rationale: According to the complainant, he was wrongfully accused of violating Inmate Rules and Regulations. According to an Incident Report/Rule Violation Report, written by Deputy 3, the complainant violated Inmate Rules and Regulations #103 – Threaten/Assault staff/inmate, #105 – Boisterous Activity, and #701 – Interfering with Jail Operations. SDS DSB P&P Section O.3, entitled "Inmate Rules and Regulations" defines each violation. Per his own admission, the complainant threatened the housing deputies that if they did not re-house the complainant's cellmate "the situation might escalate." Additionally, the complainant was witnessed to forcefully remove his cellmate from their cell by using both of his hands to push/shove his cellmate out of their cell. The complainant's actions were deemed an assault and were correctly recognized as a violation of the Inmate Rules and Regulations #103. As witnessed on Jail Surveillance videos, the complainant forcefully shoved his cellmate out of their shared jail cell and slammed the cell door shut behind him. The complainant's actions were deemed as "aggressive activity." As such, he was in violation of Inmate Rules and Regulations #105. When the complainant assaulted his cellmate housing deputies had to cease performing their duties and redirect their attention to the disturbance he had caused by forcefully removing his cellmate from their jail cell. Prior to the assault, the housing deputies were performing a soft count in another module. The complainant's actions interfered with the operations of the facility. By him doing so, he was in violation of Inmate Rules and Regulations #701. After reviewing the evidence which was obtained, including, but not limited to jail surveillance videos and SDS DSB P&P, it was determined that the complainant was not falsely accused of violating jail rules.

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**17-052**

1. False Arrest – Deputy 1 arrested the complainant.

Board Finding: Action Justified

Rationale: The complainant stated he was falsely arrested at a campground on 12-28-16. According to the California Peace Officers Legal Sourcebook, Section 2 entitled "Search and Seizure", it states "An arrest warrant is not required to enter someone's premises if, in addition to probable cause, exigent circumstances exist. Exigent circumstances mean an emergency situation requiring swift action to prevent imminent danger to life." In this matter Deputy 1 was dispatched to the complainant's residence for a possible drug overdose. Upon arrival he found an unresponsive woman. That was clearly an exigent circumstance based on the fact there was an unresponsive woman and the initial 911 call reported a possible drug overdose. In order to help her, Deputy 1 asked the complainant what she might have taken. He did not provide a response so Deputy 1 looked around the RV and noticed syringes on the ground near the bedroom door. He opened the door to look further which is when he saw a backpack which was open and had syringes and an unidentified white crystalline substance inside. The California Peace Officers Legal Sourcebook further states "Probable cause" exists when the totality of the circumstances would lead a person of ordinary care and prudence to entertain an honest and strong suspicion that the person to be arrested is guilty of a crime. Based on the exigent circumstances, Deputy 1 entered the complainant's home and in doing so located contraband that appeared to belong to the complainant. Therefore Deputy 1 had probable cause to arrest the complainant. His actions were lawful, justified and proper

2. Criminal Conduct – Deputy 1 "planted" evidence against the complainant.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 “planted” evidence. Deputy 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Absent information provided by an independent witness to the incident or video or audio recordings of the interaction there was insufficient evidence to prove or disprove the allegation.

3. Excessive Force – Deputy 1 used excessive force.

Board Finding: Not Sustained

Rationale: The complainant alleged that excessive force was used by Deputy 1. According to the reports provided by the Sheriff’s Department there was no use of force form or any mention that force was used during Deputy 1’s interaction with the complainant. Deputy 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Absent information provided by an independent witness to the incident or video or audio recordings of the interaction there was insufficient evidence to prove or disprove the allegation.

4. Misconduct/Procedure – Deputy 1 did not read a Miranda warning to the complainant.

Board Finding: Action Justified

Rationale: The complainant stated his Miranda rights were not provided to him. According to the Peace Officer Legal Sourcebook section 7.6 Statements, it states that Miranda applies during custodial interrogation by the police. Both custody and interrogation must co-exist at the same time before Miranda advisements are required. Without custodial interrogation Miranda does not come into play. The complainant was not in custody when Deputy 1 asked him questions. After the complainant was arrested no questioning by Deputy 1 occurred. The complainant was not required to have his Miranda rights read to him by Deputy 1. Therefore evidence shows the alleged act did occur but was justified, legal and proper.

5. Criminal Conduct – Deputy 1 denied the complainant his civil rights.

Board Finding: Unfounded

Rationale: The complainant stated his civil rights were violated. The complainant did not appear to meet any of the characteristics mentioned with relation to Civil Rights Violation as explained in the Peace Officers Legal Sourcebook Section 13.65 entitled Criminal Law. Therefore there was no evidence to show the alleged act occurred and was unfounded.

6. Criminal Conduct - Deputy 1 lied several times while on the stand.

Board Finding: Not Sustained

Rationale: The complainant stated that Deputy 1 lied on the stand. Deputy 1 provided information during the course of CLERB’s investigation that was considered at arriving at the recommended finding. The complainant’s attorney did not recall Deputy 1’s testimony. Absent information provided by an independent witness to the incident or video or audio recordings of the interaction there was insufficient evidence to prove or disprove the allegation.

7. Misconduct/Intimidation – Deputy 1 gave the complainant intimidating looks while on the stand.

Board Finding: Not Sustained

Rationale: The complainant stated that the deputy gave him intimidating looks while on the stand. Deputy 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. The complainant’s attorney was questioned and did not recall Deputy 1’s testimony. Absent information provided by an independent witness to the incident or video or audio recordings of the interaction there was insufficient evidence to prove or disprove the allegation.

8. Misconduct/Procedure – Deputy 1 refused to abide by a court order and return the complainant’s property.

Board Finding: Unfounded

Rationale: The complainant stated that his phones, seized on the day of the incident, along with his guns had not yet been returned. A court order was issued on 06-29-17 which released the complainant’s gun and \$620 in US Currency. I confirmed with the Sheriff’s Department, on 04-16-18, that the complainant just needed to contact Deputy 1 to get his phones released. Deputy 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Therefore since the gun was made available for release to the complainant and the phones were available for release from the Sheriff’s Department the complainant’s allegation was unfounded.

**17-056**

1. Misconduct/Procedure – Deputies 1-10 allowed members of opposing groups to physically intermingle at a public rally/march held at the San Diego County Administration Center on 07-02-17.

Board Finding: Action Justified

Rationale: Eight different people filed complaints about the SDSD's alleged failure to intervene when members of an opposing group disrupted the event, allowed members of opposing groups to physically intermingle at the rally, and failed to maintain a safe environment for the rally's attendees. Eleven other people lodged complaints alleging similar misconduct but did not submit complaints signed under penalty of perjury.

The First Amendment right of freedom of speech belongs not only to those who organize and agree with the underlying reason or message of a public rally/event but also to those who attend the event. This is especially true in the area of political speech. When the public is invited to an event, the public has a right to express an opinion which is contrary to the opinion of the organizers of the event. What constitutes the "disruption" of an assembly or meeting is subjective, as one attendee may believe that the acts of others are disruptive while another attendee may believe those same acts are simply a lawful way to voice or display opposition. Speech is no longer constitutionally protected when it becomes threatening or creates a danger of immediate violence. It is possible that persons opposed to the nature and content of the rally attended it for the purpose of willfully disturbing or breaking it up, a violation of Penal Code Section 403, or to use offensive words in a public place that were likely to provoke an immediate violent response, a violation of Penal Code Section 415. Deputies appeared to follow the SDSD's training and guidance as it pertained to public rallies/demonstration in existence at the time, which was to attempt to balance the First Amendment rights of people to express opposing views with the rights of the assemblers to conduct their meetings without unnecessary interference from others, all the while protecting the physical well-being of all attendees. Due to "verbal altercations," at some point during the event Deputy 3 did arrange for and coordinate the separation of opposing groups. There were no reported injuries or physical altercations that occurred during the event and the rally/march went on as planned.

As the SDSD had no Policies and Procedures (P&P) providing guidance for the physical separation of opposing groups at protest/demonstration events without violating the First Amendment rights of attendees in place on the date of the "Impeachment March San Diego" event, the actions taken by deputies during the event were lawful and not in violation of SDSD P&P.

NOTES:

- a. On 01-09-18, as CLERB believed civil disturbances at protest/demonstration events had become an increasing risk to public safety and first responders, CLERB approved and requested that the SDSD create policy and procedures that pertain to the issuance of "Temporary Area Restrictions" as detailed in Chapter 15, Division 2 of the San Diego County Code of Regulatory Ordinances. On 06-13-18, the SDSD responded to the recommendation as follows:

"The... recommendation was thoroughly reviewed. Previously, the Sheriff's Emergency Operations Manual did not list Temporary Area Restrictions or "TARs." The use of TARs was incorporated recently into operations and the manual has been updated in section 9.6.4.D adding the reference to the County of San Diego TAR as a section for enforcement."

- b. The issuance of a Temporary Area Restriction (TAR) at the CAC/Waterfront Park is not possible because TARs can only be issued in unincorporated areas of San Diego County. While the CAC/Waterfront Park is County property, it is in the City of San Diego. As the CAC/Waterfront Park is the site of numerous public gatherings/rallies throughout the year, the safety of the public and first responders at future events would be greatly enhanced if this "loophole" was closed as soon as possible. This has been brought to the attention of County Executive Management for review and possible action.
- c. On 01-09-18, CLERB approved and requested that the SDSD create policy and procedures that provide guidance for the physical separation of opposing groups at protest/demonstration events without violating the First Amendment rights of attendees. On 06-13-18, the SDSD responded to the recommendation as follows:

"The separation of opposing groups at events, this is an area of concern with any event that involves free speech and the protection of the rights of individuals and groups to gather and speak in a public forum. Each event deserves a full briefing to the involved staff to support the operational plan developed to preserve the

peace while protecting the rights of the individuals gathered. The Department's committed that guidance is given during each individual event on the appropriateness of separating opposing groups."

- d. In May 2018, SDSO held a mandatory four-hour training session for all sergeants, lieutenants, and captains who hold positions that may result in their response to civil unrest incidents, i.e., protests, riots, etc. The circumstances of CLERB Case #17-056 and this case were discussed, as was the content of CLERB's 01-09-18 policy recommendations.

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## **17-057**

1. Misconduct/Procedure – Deputy 1 prematurely terminated the complainant's legal phone call.

Board Finding: Unfounded

Rationale: The complainant stated the he was in an enclosure, in the dayroom at George Bailey Detention Facility, speaking with someone on the phone regarding legal matters when Deputy 1 told him time was up and he needed to come out. After being told by the complainant that he was consulting on a legal matter, Deputy 1 hung up the phone. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Also according to reports provided by the Sheriff's Department the complainant's dayroom time went over his allotted time by approximately 45 minutes. Since the complainant was in the enclosure in excess of his allotted dayroom time, the call was not terminated prematurely and the evidence shows this allegation was unfounded.

2. Misconduct/Discourtesy – Deputy 1 called the complainant a "J Cat"

Board Finding: Not Sustained

Rationale: The complainant stated the Deputy 1 called him a "J Cat," which is prison slang for a psychiatric patient. The complainant stated that other inmates began calling him this after hearing the deputy do so. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Absent information provided by an independent witness to the incident or video or audio recordings of the interaction there was insufficient evidence to prove or disprove the allegation.

3. Misconduct/Discourtesy – Deputy 1 threw the complainant's property off the upper tier to the dayroom floor.

Board Finding: Unfounded

Rationale: The complainant stated that Deputy 1 told him he was moving him to another cell and began throwing his personal property (mattress and bedding) off the upper tier. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Video provided by the Sheriff's Department, for the timeframe in question, did not show any items being thrown from, or falling from, the upper tier. Therefore the claim is unfounded.

4. Excessive Force - Deputies 2-6 used excessive force on the complainant while conducting a cell extraction.

Board Finding: Unfounded

Rationale: The complainant stated after refusing to leave an enclosure, at George Baily Detention Facility, an extraction team came in and used force which he felt was excessive to remove him from the enclosure. The complainant further alleged that the force resulted in a dislocated shoulder and that deputies punched him, kicked him and banged his head against the ground. Medical reports showed no evidence of a dislocated shoulder as claimed by the complainant. Based upon a review of SDSO Use of Force Guidelines, the deputies' reports, video surveillance and medical records, there is no dispute that deputies struck the complainant but there is no video evidence or documentation in officer reports that his head was "banged on the ground". It appears the deputies' use of force was within guidelines and there was no evidence to support any allegation of misconduct or negligence on the part of the Sheriff's Department sworn personnel. The deputies' actions were lawful, proper and justified and the allegation of excessive force is unfounded.

5. Misconduct/Procedure – Unidentified deputies ignored grievances filed by the complainant.

Board Finding: Unfounded

Rationale: The complainant stated that he continued to file grievances on the misconduct and appeal of discipline and they were ignored. Copies of the complainant's grievances were provided by the Sheriff's Department. There were 15 total grievances from 2016 and 2017 included in the documents provided by the Sheriff's Department.

Thirteen of these were responded to either by letter or another form of a written response. The remaining two were logged into Jail Information Management System (JIMS). Therefore there was no evidence to support the complainant's claim that his grievances were ignored and his claim is unfounded.

6. Discrimination/Religion – Deputy 1 and/or unidentified deputy(s) refused the complainant's request for religious counsel.

Board Finding: Action Justified

Rationale: The complainant stated that he requested counsel, because he is a Muslim, and since counsel was not provided his rights were violated. The complainant filed a grievance on 6-23-17 and asked for counsel. He stated in the grievance that Deputy 1 prevented him as an inmate effective communication/participation in a legal hearing. According to the evidence, and in reviewing video from the day of the incident, the complainant requested a deputy to contact his attorney and that he was in violation of the law. The deputy demanded the complainant comply with his requests to allow himself to be handcuffed and to leave the enclosure in the dayroom. The complainant refused to leave the enclosure and the tactical team was called to remove him. There is no known policy or procedure allowing for the right to counsel with regards to filing a grievance. Therefore the complainant's request for counsel was denied and it is deemed proper, lawful and justified.

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**17-070**

1. Illegal Search & Seizure – Deputies 1 and 2 entered the complainant's home.

Board Finding: Action Justified

Rationale: The complainant stated the Sheriff's deputies entered his home. According to an arrest report, provided by the Sheriff's Department dated 05-31-17, deputies were dispatched to the complainant's home after he reportedly threatened to go to Walgreens with a handgun and rob the pharmacy if his prescription was not filled. Upon arrival of Deputies 1 and 2, at the complainant's home, the complainant was verbally aggressive. Deputies eventually were able to get the complainant to calm down and step out on his porch. Once it was decided to detain the complainant for further evaluation, per the 5150 Welfare and Institution Code, the complainant invited deputies' entry into his house. Deputies 1 and 2 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. The PERT Clinician was unable to be interviewed due to confidentially and protected information based on the clinician's job. Therefore her statement could not be obtained. Therefore since evidence showed the complainant invited the deputies into his home the deputies' actions were proper, legal and justified.

2. Illegal Search & Seizure – Deputies 1 and 2 "ransacked" the complainant's home.

Board Finding: Not Sustained

Rationale: The complainant stated that Sheriff's Deputies entered his home and "ransacked" it. Deputies 1 and 2 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. The PERT Clinician was unable to be interviewed due to confidentially and protected information based on the clinician's job. Therefore her statement could not be obtained. Absent information provided by an independent witness to the incident or video or audio recordings of the interaction there was insufficient evidence to prove or disprove that the complainant's home was "ransacked".

3. Illegal Search and Seizure – Deputies 1 and 2 confiscated the complainant's guns.

Board Finding: Action Justified

Rationale: The complainant stated Sheriff's Deputies confiscated his guns. According to reports provided by the Sheriff's Department, and SERF responses from Deputies 1 and 2, the complainant invited deputies into his home. The PERT Clinician was unable to be interviewed due to confidentially and protected information based on the clinician's job. Therefore her statement could not be obtained. The complainant walked Deputy 1 and a PERT clinician throughout the residence and showed them where his firearms were kept. The located guns were confiscated, from his residence, pursuant to Welfare and Institution Code Section 8102(a). Evidence showed the complainant's guns were legally confiscated. Therefore the deputies' actions were lawful, justified and proper.

4. Misconduct/Intimidation – Deputy 1 or Deputy 2 held his hand on his service weapon.

Board Finding: Not Sustained

Rationale: According to the complainant, a short male deputy held his hand on his service weapon. Deputies 1 and 2 provided information during the course of CLERB's investigation that was considered in arriving at the

recommended finding. The PERT Clinician was unable to be interviewed due to confidentially and protected information based on the clinician's job. Therefore her statement could not be obtained. Absent information provided by an independent witness to the incident or video or audio recordings of the interaction there was insufficient evidence to prove or disprove that Deputies 1 or 2 had their hand on their service weapon.

5. Misconduct/Intimidation – Deputy 1 or Deputy 2 threatened to shoot the complainant's dog.

Board Finding: Not Sustained

Rationale: According to the complainant, a short male deputy threatened to shoot his dog which was a "standard two year old pit bull puppy". Deputies 1 and 2 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. The PERT Clinician was unable to be interviewed due to confidentially and protected information based on the clinician's job. Therefore her statement could not be obtained. Absent information provided by an independent witness to the incident or video or audio recordings of the interaction there was insufficient evidence to prove or disprove that either Deputy 1 or Deputy 2 threatened to shoot the complainant's dog.

6. False Arrest – Deputy 1 and Deputy 2 placed the complainant on a 5150 hold and transported him to Grossmont Hospital.

Board Finding: Action Justified

Rationale: The complainant stated that he was transported to Grossmont Hospital on a 5150 Welfare and Institutions hold, but medical staff promptly released him saying there was "nothing wrong with him". According to the Sheriff's Department arrest report, Deputy 1 and a PERT clinician responded to the complainant's home based on reports that stated he threatened two different people. It was reported that he said to those people that he was going to Walgreens pharmacy with a firearm. The PERT clinician conducted a psychological evaluation of the complainant. The report stated he suffered from Post-Traumatic Stress Disorder. The PERT clinician and Deputy 1 believed the complainant met the criteria for being a danger to others. The PERT clinician put the complainant on a 72 hour hold pursuant to 5150 and he was transported to Grossmont Hospital. The evidence showed that placing the complainant on a hold and transporting him to the hospital occurred but was lawful, justified and proper.

7. Misconduct/Procedure – Unidentified deputies did not authorize release of the complainant's guns.

Board Finding: Unfounded

Rationale: The complainant stated deputies confiscated his guns and would not release them. According to the complainant, after the incident, he received calls that his firearms would be released. He stated, "I continue to get calls that firearms will be released. My lawyer advised me, "Do not accept the firearms from the Sheriff's Department." By the complainant's own words he said he was contacted by the Sheriff's Department and his firearms would be released. Regardless of the advice provided by his attorney, the Sheriff's Department allowed the release his guns which are still, as of this report, in their custody. Therefore the evidence showed the alleged violation did not occur and was unfounded.

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**17-074**

1. Misconduct/Procedure – Deputies 1 and 2 handcuffed an 85-year-old Alzheimer's patient on hospice, and transported her in a patrol vehicle between her care facility and a hospital without medical aid.

Board Finding: Action Justified

Rationale: According to the complainant, Sheriff's deputies responded to a complaint about the complainant's 85 year old mother, at a care facility, with a patrol car, a deputy and no medical care or ambulance. The complainant stated a short time after deputies arrived, his mother was handcuffed and transported to a hospital, in the back of a patrol car, for what appeared to be "zero reason". Arrest reports, provided by the Sheriff's Department, show that on 06-28-17 Deputy 1 and Deputy 2 responded to a radio call of a violent elderly female at an assisted living facility. Present was a PERT clinician. Deputy 1 determined that the complainant's mother was a danger due to her mental illness and assaultive behavior towards others. Deputy 1 decided to handcuff her for her safety and the safety of others. While attempting to handcuff the complainant's mother she became extremely combative. The complainant's mother dug her fingernails into Deputy 1's forearm and spit in his face. Deputy 1 grabbed the complainant's mother's left wrist and pulled it to the small of her back. Deputy 2 assisted and grabbed the complainant's mother's right wrist. Together the deputies were able to handcuff the complainant's mother. Even after being handcuffed she kicked Deputy 2 in the leg. The PERT Clinician determined the complainant's mother was a danger to others due to her mental illness and needed immediate mental services. She was placed on a Welfare and Institutions code 5150

mental hold and transported to Palomar Hospital. Though no medical doctor or ambulance was called, a PERT Clinician was on site. There were no indications of physical injuries to the complainant's mother listed in the police report, and she was transferred directly to the hospital upon her arrest. As stated in the San Diego County Sheriff's Department Patrol Policy Manual: *If, during the arrest and transportation, a prisoner becomes sick or injured, the transporting deputy shall immediately seek medical attention for the prisoner.* According to the police report there were no indications that the complainant's mother needed medical help for any physical injuries. Both the PERT clinician and deputies determined medical attention was not needed while on scene. The evidence shows that the alleged act did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Professional staff members would not release information to the complainant, although he had power of attorney over the aggrieved.

Board Finding: Summary Dismissal

Rationale: The complainant stated that after his mother was arrested he called the Sheriff's department and spoke with a person who was later determined to be a non-sworn staff member. The complainant was told that they could not release any information because it was a "5150" and he would need a court order, even though he had a power of attorney. Evidence shows there was no policy that directly addresses the use of power of attorney to obtain records. Certain records can be released with a power of attorney. But in a matter such as in this case, arrest records would not have been released. Even if the complainant's mother wanted a copy of the report it would have been denied without a court order. Victims are generally the only people that can get copies of arrest reports. Arrest reports are typically obtained through a client's attorney. The complainant also mentioned a second person from the Sheriff's department who did not honor his request for records. After being provided with photos of all employees working the front desk at on the day of the allegation, the complainant could not positively identify the second person with whom he spoke. There is no indication that any sworn members worked the front desk on the date in question. As CLERB has no jurisdiction over non-sworn members of the Sheriff's Department, this allegation was recommended for summary dismissal.

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**17-091**

1. Misconduct/Discourtesy – Deputy 1 said to the complainant, "This whole thing is completely ridiculous! Your husband has done some bad things, but YOU've done some REALLY bad things!"

Board Finding: Not Sustained

Rationale: The complainant reported that on 08-07-17, at approximately 4:30 pm, while at a Sheriff's Patrol Station, a detective said to the complainant, "This whole thing is completely ridiculous. Your husband has done some bad things, but YOU've done some REALLY bad things!" Sheriff's Policy 2.22 mandates that employees be courteous to the public and tactful in the performance of their duties. Deputy 1 and his supervisor provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. The context and content of the verbal exchange are in dispute. The complainant supplied correspondence from Internal Affairs (I.A.) that stated they believed the emphasis of Deputy 1's comments was that the kids were the ones suffering. And that the comments were not made in any rude or disrespectful manner or intended to be offensive, but that comments can be intended in one way and received in another. Because the remarks are subjective, not sustained was the most appropriate finding.

2. Misconduct/Discourtesy – Deputy 1 also stated to the complainant, "How you think you are helping your children is actually not helping them."

Board Finding: Not Sustained

Rationale: See Rationale #1.

3. Misconduct/Procedure – Deputy 1 was unable to conduct a fair and impartial investigation of a suspect who was a fireman.

Board Finding: Not Sustained

Rationale: The complainant said she had done nothing wrong and felt that the detective's investigation was compromised because of law enforcement's affinity between police officers and firemen. The complainant presented no evidence to support her assertion, but did supply correspondence from I.A. that reported the investigation was factually driven and had been submitted to the District Attorney's Office for review. I.A. also determined this case appeared complete and unbiased. Deputy 1 was assigned to follow-up and investigate a report of child abuse. The Child Abuse and Neglect Reporting Act precluded CLERB from accessing protected material to include

Communication Center records, “Logged” evidence, and the Crime and Follow-Up Reports. Deputy 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Based upon the available evidence, Deputy 1 was not found to be in violation of any Sheriff’s Policies & Procedures. However, because CLERB was not authorized to review all materials associated with this case, there was insufficient evidence to prove or disprove the allegation.

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## **17-107**

1. Misconduct/Procedure – Deputy 1 refused to disclose to the complainant the reason for her arrest.

### Board Finding: Unfounded

Rationale: The complainant stated that after coming out of a 7-Eleven convenience store near her home, she was surrounded by four “cops” and told she was under arrest. The complainant asked the deputies “For what?” and they allegedly said “We don’t need to disclose.” According to an arrest report provided by the Sheriff’s Department, Deputy 1 stated that the complainant’s car matched the description of a suspect vehicle in a “Be on the lookout” (BOL) alert. The female who exited the vehicle at 7-Eleven resembled the suspect from the same BOL in which there was probable cause to arrest. The complainant was advised she was being detained while Deputy 1 verified she was the person in the BOL. Deputies 1, 2, 4 and 5 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. The preponderance of evidence showed the allegation was unfounded.

2. Illegal Search and Seizure – Deputy 1 seized the complainant’s vehicle.

### Board Finding: Action Justified

Rationale: The complainant stated she “lost her car” and that deputies had no right to seize her car. Reports provided by the Sheriff’s Department document that the complainant exited the vehicle from the driver’s side and went into the store. Since the complainant was placed under arrest, Vehicle Code 22651(h)(1) allows for the removal of a vehicle since she was the person driving or in control of the vehicle prior to her arrest. This is documented in the Notice of Stored Vehicle Report provided by the Sheriff’s Department. Therefore the towing of the vehicle was lawful, justified and proper and was deemed action justified.

3. Misconduct/Discourtesy – Deputies 1, 2 and 5 were “mean and insulting” to the complainant.

### Board Finding: Not Sustained

Rationale: The complainant stated Deputies 1, 2 and 5 were “mean and insulting” to her. Deputies 1, 2, 3, 4 and 5 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Numerous unsuccessful attempts were made to contact the complainant and witness for further clarification about the comments made by deputies. Absent information provided by an independent witness to the incident or video or audio recordings of the interaction there was insufficient evidence to prove or disprove the allegation.

4. Misconduct/Discourtesy – Deputy 4 was “mean and insulting” to the complainant.

### Board Finding: Not Sustained

Rationale: The complainant stated Deputy 4 was “mean and insulting” to her. Deputy 4 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Numerous unsuccessful attempts were made to contact the complainant and witness for further clarification about the comments made by deputies. Deputy 4’s comments could have been interpreted by the complainant as “mean and insulting” but without confirmation from the complainant it cannot be determined whether she perceived them as such. The actions of Deputy 4, discovered through the course of the investigation, were referred to the department for review. Yet without clarification from the complainant, regarding what she perceived as “mean and insulting” comments, there was not enough information to make a determination and the allegation was not sustained.

5. Misconduct/Procedure – Deputies 1, 2 and 3 left the complainant in the back of a patrol unit “for hours”.

### Board Finding: Action Justified

Rationale: The complainant stated that Deputy 1 and/or unidentified deputies were “mean and insulting” and left her in the back of a car for hours. Computer Aided Dispatch (CAD) reports, provided by the Sheriff’s Department, showed the complainant was detained at 4:29pm. She was transported to the Rancho San Diego Substation at 5:21pm. She was then transferred to Las Colinas Detention Facility at 6:51pm. Deputies 1, 2 and 3 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Evidence shows

that any delay in the complainant's transport that occurred was documented and was lawful, justified and proper.

6. Misconduct/Procedure – Deputy 1 did not issue Miranda advisements to the complainant.

Board Finding: Action Justified

Rationale: The complainant stated that Deputy 1 and/or unidentified deputies failed to “Mirandize” her. Deputy 1 provided information during the course of CLERB’s investigation was considered in arriving at the recommended finding. Also police reports confirm no statements were taken from the complainant prior to or during her transport to jail. The complainant was arrested and taken into custody but no interrogation occurred. Therefore Miranda advisements do not apply in this case. The actions taken were lawful, justified and proper.

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## 17-112

1. Misconduct/Discourtesy – Deputy 1 was untruthful toward the complainant.

Board Finding: Not Sustained

Rationale: The complainant alleged that on 10-07-17 he coughed up phlegm mixed with blood. Deputy 1 escorted the complainant to Medical. Once at Medical the complainant stated he could not be moved to regular mainline housing due to a pre-existing medical condition. A nurse told Deputy 1 that the complainant did not have any restrictions preventing him from being moved to another housing unit. When the complainant was asked to cough, no blood was present. Deputy 1 and Deputy 2 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Based on Deputy 1’s response it did not appear he was untruthful. Absent information provided by an independent witness to the incident or video or audio recordings of the interaction there was insufficient evidence to prove or disprove the allegation.

2. Misconduct/Procedure – Deputies 1 and 2 “instigated and manipulated the entire situation.”

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputies 1 and 2 “instigated and manipulated the entire situation,” as it pertained to all of the other allegations in this CLERB case. Deputies 1 and 2 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Absent information provided by an independent witness to the incident or video or audio recordings of the interaction there was insufficient evidence to prove or disprove the allegation.

3. Misconduct/Discourtesy – Deputies 1 and 2 made “unprovoked, unwarranted and inciteful remarks”.

Board Finding: Not Sustained

Rationale: The complainant stated that he was allowed to wear street tennis shoes and Deputies 1 and 2 made “unprovoked, unwarranted and inciteful remarks” about them. Deputy 1 and Deputy 2 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Based on their responses it did not appear either deputy made “unprovoked, unwarranted or inciteful remarks”. Absent information provided by an independent witness to the incident or video or audio recordings of the interaction there was insufficient evidence to prove or disprove the allegation.

4. Misconduct/Discourtesy – Deputy 1 stated to the complainant and his cellmates, “Hey 207! Close your fuckin’ door” or words to that effect.

Board Finding: Action Justified

Rationale: The complainant stated that on 10-06-17, at approximately 7:30pm the Deputy shouted through the open module door in exactly this manner “Hey 207! Close your fuckin’ door idiots,” in an attempt to have the complainant shut his cell door. According to the reports provided by the San Diego Sheriff’s Department, the complainant, and other inmates failed to follow multiple requests to lock down. One inmate responded “If you want the door shut, you can come shut it yourself.” The complainant and other inmates started making disrespectful comments. The complainant was heard saying “This is bullshit.” Deputy 1 and Deputy 2 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. San Diego County Sheriff’s Department Policy and Procedures Manual Section 2 Rules of Conduct 2.22, entitled “Courtesy,” stated that “Except when necessary to establish control during a violent or dangerous situation, no member shall use coarse, profane or violent language.” There is no dispute that Deputy 1 used profanity to control a dangerous situation and his actions were lawful, justified and proper.

5. Misconduct/Discourtesy – Deputy 1 called the complainant and/or his cellmates “idiots”.

Board Finding: Not Sustained

Rationale: The complainant stated that on 10-06-17, at approximately 7:30pm the Deputy shouted through the open module door in exactly this manner “Hey 207! Close your fuckin’ door idiots,” in an attempt to have the complainant shut his cell door. Deputy 1 and Deputy 2 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. San Diego County Sheriff’s Department Policy and Procedures Manual Section 2 Rules of Conduct 2.22, entitled “Courtesy,” stated that “Except when necessary to establish control during a violent or dangerous situation, no member shall use coarse, profane or violent language.” Absent information provided by an independent witness to the incident or video or audio recordings of the interaction there was insufficient evidence to prove or disprove that Deputy 1 called the complainant or his cellmates “idiots”.

6. Misconduct/Procedure – Deputy 1 placed the complainant in the recreation yard for over six hours in inclement weather.

Board Finding: Unfounded

Rationale: The complainant stated Deputy 1 accused him of a “phantom remark” while playing chess and disrespectfully placed him in the cold recreation yard with no blue shirt for over six hours. Upon reviewing video, provided by the Sheriff’s Department, of the recreation yard on 10-06-17 and 10-07-17, the complainant entered the yard at 9:50pm on 10-06-17. He wore a white t-shirt. The complainant left the yard around 12:40am on 10-07-17. According to Farmer’s Almanac the weather on 10-06-17 was a high of 86 degrees Fahrenheit, with a low of 60 degrees and an average of 70 degrees. Deputy 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. According to the videos the complainant was in the recreation yard for about three hours, in non-inclement weather, while he was wearing a white shirt. Based on the evidence, it shows the deputies placed the complainant in the recreation yard for a valid reason and he was not held there for over six hours in inclement weather. Therefore, the placing of the complainant into the yard was justified but as he was only there for three hours the allegation was unfounded.

7. Misconduct/Procedure – Deputy 1 did not allow the complainant to gather his legal mail prior to being moved to another cell.

Board Finding: Action Justified

Rationale: According to the complainant he repeatedly asked and pleaded to Deputy 1 the importance of allowing him to gather his personal property due to the sensitive legal paperwork and documents from his attorney. Deputy 1 and Deputy 2 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Evidence shows that the complainant refused to gather his property and initially refused to move to his new housing assignment. It appears the alleged act did occur but since the complainant refused to pack up his own property, deputies did it for him. Therefore Deputy 1’s actions were lawful, justified and proper.

8. Misconduct/Discourtesy – Deputy 1 stated to the complainant that due to his “fuckin’ trip to medical, other inmates packed his shit” or words to that effect.

Board Finding: Sustained

Rationale: According to the complainant, Deputy 1 stated that due to his “fuckin’ trip to medical, other inmates packed his shit.” According to policy 2.22 entitled “Courtesy” it stated with regards to Sheriff’s Deputies: “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.” Deputy 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. The evidence indicates that Deputy 1’s use of profanity during a non-violent, non-dangerous situation was a violation of the “Courtesy” policy, and his actions were not justified.

Note: Deputy 2 also admitted to using profanity after the complainant was verbally non-compliant and refused to follow instructions. As there was no signed complaint alleging use of profanity by Deputy 2, this information will be forwarded to the SDS for review.

9. Discrimination/Racial – Deputy 1 targeted the complainant and other inmates of color with racial bias.

Board Finding: Not Sustained

Rationale: The complainant stated that it was very clear Deputy 1 had gone outside the scope of his job responsibilities to target any and all inmates of color especially the complainant for some unknown reason. Reports provided by the Sheriff’s Department show the complainant, and other inmates, exhibited a pattern of disruptive behavior for a couple weeks prior to the incident. There was no indication, according to the evidence, that the

complainant or others were singled out by Deputy 1 based on race. Deputy 1 and Deputy 2 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Absent information provided by an independent witness to the incident or video or audio recordings of the interaction there was insufficient evidence to prove or disprove the allegation.

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### **17-118**

1. Misconduct/Discourtesy – An unidentified deputy stated to the complainant, “You’re in for a fucking misdemeanor. Be quiet and wait,” or words to that effect.

Board Finding: Summary Dismissal

Rationale: On 11-28-17, the complainant submitted a signed complaint alleging that while he was in-custody, an unidentified deputy said to him, “You’re in for a fucking misdemeanor. Be quiet and wait.” This same deputy also threatened to fight the complainant. Additionally, during his incarceration, and until his release on the 06-29-17, the complainant claimed that he was not permitted to make a phone call. On 05-31-18, the complainant requested that his complaint be withdrawn. In an email from the complainant, dated 05-31-18, the complainant advised that in regard to the Sheriff’s Department, “I feel we will work better with each other than against.” On 06-11-18, CLERB received the signed Withdrawal of Complaints form from the complainant. The complainant formally rescinded his complaint from CLERB. The following CLERB Rules & Regulations apply: 5.7 Withdrawal of Complaints. “A complaint may be withdrawn from further consideration at any time by a written notice of withdrawal signed and dated by the complainant. The effect of such withdrawal will normally be to terminate any further investigation of the complaint of misconduct, unless the Executive Officer or a Review Board member recommends that the investigation continue and the Review Board, in its discretion, concurs.”

2. Misconduct/Intimidation – An unidentified deputy threatened to fight the complainant.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

3. Misconduct/Procedure – Unidentified deputies failed to allow the complainant a phone call during his incarceration.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

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### **17-122**

1. Misconduct/Procedure – Deputy 1, Deputy 3, Deputy 4 and Deputy 5 failed to respond to the complainant’s report of violation of the park’s noise ordinance.

Board Finding: Unfounded

Rationale: The complainant stated that after calling the Sheriff’s Department multiple times, regarding a noise complaint at a park, nothing was done. She spoke to Deputy 1 who stated the people who rented the pavilion had a permit and could have amplified music. The evidence also showed that not only were they dispatched, they responded. Deputy 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Therefore, as deputies responded to the complainant’s report of a violation of the park’s noise ordinance, the evidence showed that the alleged act of not responding was unfounded.

2. Misconduct/Procedure – Deputy 1, Deputy 3, Deputy 4 and Deputy 5 failed to enforce the park’s closure hours.

Board Finding: Action Justified

Rationale: The complainant stated that after calling the Sheriff’s Department multiple times regarding a noise complaint at a park, and speaking with Deputy 1, the noise continued after dark. On the day of the incident giving rise to the complaint, the park was open until sunset. Deputies were dispatched, in the course of Deputy 1’s shift, twice during park hours per reports provided by the Sheriff’s Department. Deputy 5 responded at 2:37pm and Deputy 3 responded at 3:26pm. Deputy 1, though mentioned specifically by the complainant, did not respond nor was he in charge of the patrol officers on the day of the complaint. Since it was not yet sunset, during the two daytime responses, it would not have been possible to enforce the park’s closing hours. According to the Farmer’s Almanac Website sunset was at 6:07pm on the date of the incident. A shift change occurred at 6:00pm. During this time Deputy

4 was dispatched and arrived on scene at 7:24:10pm. Reports detailed that the party guests started leaving the park shortly after the deputy's arrival on scene. Evidence shows a deputy responded after sunset and the guests started leaving the park after his arrival. Since the party guests were already leaving the park upon the deputy's arrival there was no need to enforce the park's closure hours. Therefore the failure to enforce the park's closure hours was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 2 failed to return the complainant's calls.

Board Finding: Action Justified

Rationale: The complainant stated that Deputy 2 failed to return her calls. She stated she left voicemails twice during the week after the incident. Deputy 2 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. There is no dispute that Deputy 2 did not return the complainant's call but the evidence shows the act was lawful, justified and proper.

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### **17-128**

1. Misconduct/Procedure – Unidentified deputies classified the complainant out of programs based upon his prison associations.

Board Finding: Action Justified

Rationale: The complainant stated that he was placed in Administrative Segregation Unit (ASU) because he was documented as an associate with the Mexican Mafia. Records provided by the Sheriff's Department confirmed the complainant was documented as an Associate of Mexican Mafia (EME) while serving time in prison and that he was also housed at the Tehachapi Prison SHU (Segregated Housing Unit). During his intake interview it was noted that the complainant was an active gang member in San Ysidro. Based on records from the California Department of Corrections and Rehabilitation (CDCR) and the complainant's intake form, it showed he was properly classified as Level 5, Administrative Segregation (AD/SEG) by the Sheriff's Department. A review hearing was held every week once the complainant was in custody in the County jail, and each time it was determined he remain in AD/SEG. According to jail incident reports the complainant was also involved in multiple incidents while in custody, two of which were deemed major. Also no inmate request form was included along with the complainant's booking jacket and jail file. It appeared the complainant never formally requested to attend a specific program at the jail. Based on the complainant's gang affiliations, and his behavior while in custody, his classification in the County jail was lawful, justified and proper.

2. Misconduct/Procedure – Unidentified deputies did not answer the complainant's submitted "petitions" and grievances.

Board Finding: Not Sustained

Rationale: The complainant stated he submitted "petitions" and grievances and had not received an answer. He also stated one petition went all the way to Federal Court. All petitions and grievances were requested from the San Diego County Sheriff's Department. According to the Sheriff's Department no grievances were on file from the complainant. Absent information provided by an independent witness to the incident or video or audio recordings there was insufficient evidence to prove or disprove the allegation.

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### **17-136**

1. Misconduct/Procedure – Deputy 1 said to the complainant, "Get out of this station right now," or words to that effect.

Board Finding: Action Justified

Rationale: The complainant reported that when he asked this deputy (Deputy 1) who was his partner that had previously arrested him, the deputy said, "Get out of this station right now." Deputy 1 provided confidential information that was considered in arriving at the recommended finding. The evidence showed the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 4 instructed the complainant to talk to him instead of writing Sheriff Gore.

Board Finding: Not Sustained

Rationale: The complainant reported that Deputy 4 called him and said, "Please don't write to the Sheriff talk to me." So the complainant went to the station a week later and talked to him (Deputy 4). The complainant said, "He has not answered any of my questions to this date." Deputy 4 provided confidential information that was considered in arriving at the recommended finding. Absent an audio recording of their interaction(s) there was insufficient evidence to render any other finding.

3. Misconduct/Procedure – Deputy 2 hung up on the complainant when he requested video of his arrest.

Board Finding: Not Sustained

Rationale: The complainant said, "I want to know why Deputy 2 hung up on me when I requested video of my arrest at the transit center. I had filled out the paperwork and it was still denied." Internal Affairs records/evidence is confidential per the Peace Officer Bill of Rights (POBR) and cannot be disclosed. Deputy 2 provided confidential information that was considered in arriving at the recommended finding. Absent an audio recording of their interaction(s) there was insufficient evidence to render any other finding.

4. False Arrest – Deputy 3 arrested the complainant at the Oceanside Transit Center on April 7, 2016.

Board Finding: Summary Dismissal

Rationale: The complainant reported that he was at the Oceanside Transit center smoking a cigarette in a designated smoking area when a black male Sheriff's deputy told him there was no smoking anywhere in the Transit Station. The complainant was handcuffed and booked for an outstanding warrant. CLERB does not have jurisdiction per CLERB Rules & Regulations 4.4, the Review Board shall not have jurisdiction to take any action in respect to complaints received more than one year after the date of the incident giving rise to the complaint, except that if the person filing the complaint was incarcerated or physically or mentally incapacitated from filing a complaint following the incident giving rise to the complaint, the period of incarceration or incapacity shall not be counted in determining whether the one year period for filing the complaint has expired. There were no tolling exemptions that applied and the Review Board lacks jurisdiction.

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## **17-143**

1. Misconduct/Procedure – Unidentified deputies failed to keep members of opposing groups separate during the Border Wall Rally on 12-09-17.

Board Finding: Action Justified

Rationale: The complainant was concerned about the "violence caught on film" at the Border Wall Rally on 12-09-17. The First Amendment right of freedom of speech belongs not only to those who organize and agree with the underlying reason or message of a public rally/event but also to those who attend the event. This is especially true in the area of political speech. When the public is invited to an event, the public has a right to express an opinion which is contrary to the opinion of the organizers of the event. What constitutes the "disruption" of an assembly or meeting is subjective, as one attendee may believe that the acts of others are disruptive while another attendee may believe those same acts are simply a lawful way to voice or display opposition. Speech is no longer constitutionally protected when it becomes threatening or creates a danger of immediate violence. It is possible that persons opposed to the nature and content of the rally attended it for the purpose of willfully disturbing or breaking it up, a violation of Penal Code Section 403, or to use offensive words in a public place that were likely to provoke an immediate violent response, a violation of Penal Code Section 415. Deputies appeared to follow the SDSD's training and guidance as it pertained to public rallies/demonstration in existence at the time, which was to attempt to balance the First Amendment rights of people to express opposing views with the rights of the assemblers to conduct their meetings without unnecessary interference from others, all the while protecting the physical well-being of all attendees.

Over 60 deputies were assigned to this event. Evidence indicated that SDSD planned and attempted to keep members of opposing groups separate during the event. Members of one group were somehow able to breach established skirmish lines comprised of SDSD deputies and physically interacted with members of another group. As the SDSD attempted to keep members of opposing groups separate during the event and had no Policies and Procedures (P&P) providing guidance for the physical separation of opposing groups at protest/demonstration events without violating the First Amendment rights of attendees in place on the date of event, the actions taken by deputies were lawful and not in violation of SDSD P&P.

NOTES:

- a. On 01-09-18, as CLERB believed civil disturbances at protest/demonstration events had become an increasing risk to public safety and first responders, CLERB approved and requested that the SDSD create policy and procedures that provide guidance for the physical separation of opposing groups at protest/demonstration events without violating the First Amendment rights of attendees. On 06-13-18, the SDSD responded to the recommendation as follows:

“The separation of opposing groups at events, this is an area of concern with any event that involves free speech and the protection of the rights of individuals and groups to gather and speak in a public forum. Each event deserves a full briefing to the involved staff to support the operational plan developed to preserve the peace while protecting the rights of the individuals gathered. The Department’s committed that guidance is given during each individual event on the appropriateness of separating opposing groups.”

- b. In May 2018, SDSD held a mandatory four-hour training session for all sergeants, lieutenants, and captains who hold positions that may result in their response to civil unrest incidents, i.e., protests, riots, etc. The circumstances of CLERB Case #17-056 and this case were discussed, as was the content of CLERB’s 01-09-18 policy recommendations.

2. Misconduct/Procedure – Unidentified deputies “stood around” while people were being “brutalized” during the Border Wall Rally on 12-09-17.

Board Finding: Action Justified

Rationale: The complainant wanted CLERB to review video footage of SDSD deputies “standing around while citizens were being brutalized by men with protest flags on illegal sticks.” There was no dispute that members of opposing groups physically interacted, resulting in minor injuries and the eventual filing of four reports alleging simple assault and one report alleging aggravated assault with a deadly weapon. Video evidence indicated that it took over 50 seconds for law enforcement personnel, to include members of the SDSD, to attempt to break up a physical altercation involving several people, some of whom were armed with sticks. By the time the appropriate number of law enforcement personnel was available to safely address the situation (an “arrest team”), the assault(s) had ended and the persons involved dispersed. While it could be construed that the deputies were “standing around” while the physical altercations occurred, SDSD personnel who were maintaining the skirmish lines (those deputies visible in the public videos) appropriately continued to do so and the “arrest team” moved in when in the position to do so. Wading into a group of people involved in a physical altercation, with some participants armed with sticks, without a sufficient number of deputies to effectively address the number of participants increases the likelihood of a deputy having to use deadly force, thus placing innocent people, fellow deputies, and themselves at risk. As the SDSD had no Policies and Procedures (P&P) that detailed expectations about the timeliness of response to and extent of law enforcement action taken during physical altercations occurring at protest/demonstration events on the date of the “Border Wall Rally” event, the actions taken by deputies during the event were lawful and not in violation of SDSD P&P.

NOTES:

- a. On 01-09-18, as CLERB believed civil disturbances at protest/demonstration events had become an increasing risk to public safety and first responders, CLERB approved and requested that the SDSD create policy and procedures that detail expectations about the timeliness of response to and extent of law enforcement action taken during physical altercations occurring at protest/demonstration events. On 06-13-18, the SDSD responded to the recommendation as follows:

“The...recommendation relating to the timeliness of a response to and extent of law enforcement response to physical altercations occurring during protest/demonstration events is discussed in Mobile Field Force (MFF) training. Recently, the Department has reviewed its responsiveness of staff to protests and demonstration events, and as a result, additional MFF directions have been developed. While this is an area of focus for each protest/demonstration, as discussed above each event should be recognized as unique and planned for accordingly.”

- b. In May 2018, SDSD held a mandatory four-hour training session for all sergeants, lieutenants, and captains who hold positions that may result in their response to civil unrest incidents, i.e., protests, riots, etc. The circumstances of CLERB Case #17-056 and this case were discussed, as was the content of CLERB’s 01-09-18 policy recommendations.

3. Misconduct/Procedure – Unidentified deputies permitted attendees to possess “flags on sticks” during the Border Wall Rally on 12-09-17.

Board Finding: Action Justified

Rationale: The complainant was concerned that the “flags on sticks” were used as weapons. On 12-07-17, Helen Robbins-Meyer, the County’s Chief Administrative Officer, issued a Temporary Area Restriction (TAR) for 12-09-17 from 9:00am to 9:00pm for the area of “West side of Enrico Fermi Drive from Airway Road to Via de la Amistad; Enrico Fermi Place; Airway Road; Siempre Viva Road; Unnamed Public Road from Airway Road to Siempre Viva Road, and Viva de la Amistad east of Enrico Fermi Drive.” The TAR prohibited the following items:

Firearms, Knives and Daggers; Clubs; Pepper Spray and Mace; Axes and Picks; Axe and Pick Handles; Explosives; Slingshots; Bricks; Rocks; Baseball Bats; Shields; Ice Picks; Fireworks; Tasers; Bear Spray; Poles; Sticks; Dowels; Boards (including when used for signs and banners); Glass Bottles or Containers; Any other weapon generally considered an “implement of riot” that can be used as a weapon, for example, chains or hose.

There was no dispute that some people armed with flags on sticks attended the event. As noted, the TAR in effect during the Border Wall Rally prohibited the use of poles, sticks, dowels, or boards including when used for “signs” and “banners;” it did not specifically prohibit the use of those items for flags. Based upon the events that ultimately occurred at the 12-09-17 rally, in an obvious lesson learned, a subsequent TAR issued for President Trump’s March 2018 visit to the U.S./Mexico border occurring in the same area as that covered by the December 2017 TAR included the prohibition of poles, stick, dowels, or boards used for, but not limited to, signs, banners, and flags. As the TAR did not prohibit the possession of poles, sticks, dowels, or boards when used for flags, the actions taken by deputies during the event were lawful, justified, and proper.

NOTES:

- a. On 01-09-18, as CLERB believed civil disturbances at protest/demonstration events had become an increasing risk to public safety and first responders, CLERB approved and requested that the SDSD create policy and procedures that pertain to the issuance of “Temporary Area Restrictions” as detailed in Chapter 15, Division 2 of the San Diego County Code of Regulatory Ordinances. On 06-13-18, the SDSD responded to the recommendation as follows:

“The... recommendation was thoroughly reviewed. Previously, the Sheriff’s Emergency Operations Manual did not list Temporary Area Restrictions or “TARs.” The use of TARs was incorporated recently into operations and the manual has been updated in section 9.6.4.D adding the reference to the County of San Diego TAR as a section for enforcement.”

- b. In May 2018, SDSD held a mandatory four-hour training session for all sergeants, lieutenants, and captains who hold positions that may result in their response to civil unrest incidents, i.e., protests, riots, etc. The circumstances of CLERB Case #17-056 and this case were discussed, as was the content of CLERB’s 01-09-18 policy recommendations.

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**17-147**

1. Death Investigation/In-Custody Suicide – On 12-16-17, while in the custody of the San Diego Sheriff’s Department (SDSD) at the Facility 8 Detention Facility, and within hours of being sentenced to 12 years and eight months in prison, Chadwick Moore hanged himself by the neck with a probable t-shirt attached to a ventilation grate in his cell. Despite aggressive resuscitative efforts, Moore was pronounced dead at the scene. The cause of death was hanging and the manner of death was suicide.

Board Finding: Action Justified

Rationale: The evidence indicated that Moore was properly classified upon his entry into the SDSD jail system after his 07-12-17 arrest. During his medical intake screening and subsequent interactions with SDSD medical personnel, Moore never expressed suicidal intent and did not report a suicide attempt history. There was no evidence that Moore expressed any concerns about his mental or physical well-being to any member of the SDSD, sworn or professional. SDSD Detention Services Bureau Policy and Procedure (P&P) Section J.5 entitled, “Inmate Suicide Prevention Practices & Inmate Safety Program,” identified a life, death, or “severe” prison sentence as a high suicide risk indicator (“automatic trigger”) that required further medical staff assessment for consideration of placement into Inmate Safety Program (ISP) housing. The evidence indicated that Moore did not undergo further medical staff assessment for said consideration after being sentenced to 12 years and eight months in prison. Upon finding Moore hanging in his cell within hours of returning from court, sworn personnel immediately initiated life-saving measures. As the term “severe” was subjective and there were no guidelines defining “severe” as it pertained to sentencing and

the triggering of further medical staff assessment for ISP housing consideration, there was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

## **POLICY RECOMMENDATIONS:**

CLERB acknowledges that "severe," as it pertains to a prison sentence, is subjective and a totality of the circumstances must be considered when determining whether a specific sentence is "severe." CLERB also acknowledges the difficulty in determining what may be a "severe" sentence for an individual inmate and realizes the determination must be made on a case-by-case basis. Finally, CLERB acknowledges the near impossibility to define "severe" for policy and procedure purposes.

1. As there is no dispute that being sentenced to prison increases the risk of suicides and suicide attempts, it is recommended that the San Diego Sheriff's Department (SDSD) revise its Detention Services Bureau Policy and Procedures (DSB P&P) entitled, "Inmate Suicide Prevention Practices & Inmate Safety Program," to establish a process for Court Services Bureau personnel to relay to Medical Services Division personnel life, death, and other sentencing information that, under the known circumstances, may be considered "severe."
2. It is also recommended that the SDSD communicate to pertinent external entities its desire to conduct suicide prevention evaluations on inmates who may be in need of them and facilitate processes to ensure those entities can communicate concerns as expeditiously and easily as possible.

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## **17-151**

1. Discrimination/Gender – Unidentified deputies discriminated against transgender inmates at the San Diego Central Jail by not provided razors in a timely fashion.

Board Finding: Not Sustained.

Rationale: The complainant stated that transgender inmates are subjected to mental distress and discriminated against due to their transgender status by not being provided razors in a timely fashion. The complainant stated, as a transgender female with breasts, it is not appropriate to have facial or chest hair and as of the date of the CLERB complaint the complainant had an eight-day old beard. Reports provided by the Sheriff's Department showed razors were distributed from 12-12-17 to 01-15-18 on a daily basis to the complainant's housing unit. The only exceptions were on 12-21-17, 12-23-17 and 01-12-18 where no razors were distributed to any inmates in the complainant's unit. All inmates in the complainant's unit had access to razors daily except for the three dates mentioned above. There was no evidence to show that not providing razors in a timely fashion was targeted specifically against transgender inmates. Therefore there was insufficient evidence to prove or disprove the allegation.

NOTE: According to SDSD Detention Services Bureau San Diego Central Jail Green Sheet Section L.7.C.1, entitled "Razor Exchange," razors will be distributed daily at 8pm. During the course of this investigation it was determined, from 12-12-17 to 01-15-18, razors were only distributed around 8pm on 12-17-17 (6:51pm) and 12-28-17 (7:47pm) in the complainant's module. On other days during that timeframe, razors were distributed around 10pm or up to as late as 1am. Therefore this information was referred to the Sheriff's Department for review.

2. Misconduct/Discourtesy – Unidentified deputies made comments to the transgender complainant with words to the effect of, "You are a man, grow hair on your chest."

Board Finding: Not Sustained.

Rationale: The complainant stated that unknown deputies made comments to the effect of "You are a man, grow hair on your chest" and "You are someone else's son." Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Without further identification of Sheriff's deputies and absent information provided by an independent witness to the incident or video or audio recordings of the interaction there was insufficient evidence to prove or disprove the allegation.

3. Misconduct/Procedure – Unidentified deputies placed the complainant and other inmates on "restricted movement" status from 12-22-17 through 12-26-17.

Board Finding: Action Justified

Rationale: The complainant stated that from 12-22-17 to 12-26-17 he and other inmates were on restricted movement for no reason. There was no indication in the 12-22-17 documents provided by the Sheriff's Department that the complainant's unit was on lockdown; evidence indicated it was not on lockdown. Evidence indicated that the unit was

on restricted movement on 12-23-17 due to inspections and staffing. Reports stated that on 12-24-17 there was restricted movement in the complainant's housing unit due to facility staff shortage and a death investigation. Evidence indicated that the area was locked down on 12-25-17 due to a pending investigation and staffing. Reports also showed the complainant's unit was on restricted movement on 12-26-17. The Watch Commander's Log for that day showed four deputies assigned to guard four different inmates at the hospital. Deputy 1 also provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding with regards to restricted movement. Evidence showed the complainant's unit was on restricted movement during the period from 12-23-17 to 12-26-17 but it was justified, lawful and proper.

4. Misconduct/Procedure – Deputy 1, sometime between 12-22-17 and 12-26-17, refused to allow the complainant to telephone the complainant's family for the holidays.

Board Finding: Unfounded

Rationale: The complainant stated during the period from 12-22-17 to 12-26-17 Deputy 1 refused to allow the complainant to call his family for the holidays. Inmate Phone Logs for the complainant showed 41 calls were made during this period. The only day where no calls were logged was on 12-25-17. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Also documents, provided by the Sheriff's Department, showed inmates were allowed in the dayroom on two occasions on 12-25-17, once in the morning and once in the early evening so access to phones would have been allowed during those time periods. The unit was on restricted movement after Deputy 1 started his shift on 12-25-17, until the following morning, so inmates would not have been allowed to make phone calls during this time. Evidence does not support the claim that Deputy 1 refused to allow the complainant to call his family. Therefore the complainant's claims were unfounded.

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**18-009**

1. Misconduct/Procedure – Deputy 5 ordered a cell extraction team when the complainant refused to go to court.

Board Finding: Action Justified

Rationale: The complainant stated that the deputies wanted him to "transpack" which meant to wear 50,000DC of electricity on his arm while being escorted to and from court. He refused and requested to go back to his cell. He was placed in an enclosure in the recreation yard and a cell extraction team was called to remove him from the enclosure. According to an Officer's Report by Deputy 2, he was informed that the complainant was scheduled to attend court. The complainant refused to be transported by the prisoner transportation detail (PTD). PTD was to transport him to and from court utilizing the transpack REACT system (Bandit). The complainant was placed in the house five recreation yard. The complainant had a documented history of assaultive behavior and refused to be follow deputy instructions to allow him to be handcuffed while in the recreation yard enclosure. The extraction team was called based on the complainant's prior threat to "stab a deputy" and the refusal to cooperate with procedures and transport to court. The complainant continued to make threats and talked about his intentions to harm deputies and himself. Then it was determined the complainant needed to be admitted to the PSU and medicated prior to transport. He refused to be handcuffed or follow directions while in the enclosure. Therefore a tactical team was called to move the complainant from the recreation yard and transport him to the PSU. Deputy 5 provided information in her SERF that was considered at arriving at the recommended finding. Evidence showed that Deputy 5's ordering of the tactical team to extract the complainant from the enclosure was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 5 told the other deputies to "beat my ass".

Board Finding: Unfounded

Rationale: The complainant stated that Deputy 5 told deputies to "beat my ass". Evidence showed that Deputy 5 was not part of the tactical team and was not involved in briefing the team or present during the extraction of the complainant. Information provided in SERFs received from Deputies 1-6 provided no evidence that such words were used by Deputy 5. There was overwhelming evidence from the tactical team members, the video footage, as well as from Deputy 5 that this allegation did not occur. Therefore the complaint was unfounded.

3. Excessive Force – Deputies 1, 2, 3, 4, and 6, who were part of a cell extraction team, "slammed" the shackled complainant on the wall and to the ground.

Board Finding: Action Justified

Rationale: The complainant stated that the cell extraction team slammed him on the wall and to the ground while he was shackled at the waist and feet not being able to defend himself. Officer Reports provided by Deputies 1, 2, 3, 4 and 6 clearly described the use of force used to extract the complainant from the enclosure. Deputy 2, as part of the tactical team, used his ICE shield to push the complainant into the back wall of the enclosure and then on to the

ground so he could be restrained. Once the complainant was on the ground he did not appear to struggle and no deputy was observed using any force other than to cuff the complainant and put him on a medical gurney. Video footage concurred with the statements reported by the officers and conflicted with what the complainant reported. Therefore while the complainant stated he was “slammed” to the wall and the ground, the force used appeared necessary and not excessive to restrain the complainant. The evidence showed the use of force was lawful, justified and proper.

4. Misconduct/Procedure – Unidentified deputies only allowed the complainant five showers from 08-16-17 to 11-01-17.

Board Finding: Unfounded

Rationale: The complainant stated he was only allowed to take five showers from the period of 08-16-17 to 11-01-17. Reports provided by the Sheriff’s department showed, during the period mentioned by the complainant, there were over 40 opportunities for him to take a shower when the complainant was offered dayroom time or specifically just a shower. Access to the dayroom would have allowed the complainant the opportunity to take a shower. There was no documentation showing whether he afforded himself of that option. Therefore since the complainant had multiple opportunities to have taken a shower, from 08-16-17 to 11-01-17, his complaint of being allowed only five showers during that time frame was unfounded.

5. Misconduct/Procedure – Unidentified deputies took up to seven days to deliver the complainant’s emails and up to a month for letter from his family.

Board Finding: Not Sustained

Rationale: The complainant stated it took up to seven days for him to receive emails and up to a month to get letters from his family. The Sheriff’s department stated there was no detailed information to provide regarding email and mail distribution. Generally regular mail takes a week or two and emails take only a few days to reach the inmates. There was no tracking of the complainant’s mail so it was impossible to determine if there was a delay, as stated by the complainant, in receiving his mail. Based on the lack of evidence it was not possible make a determination in this matter and therefore the complainant’s allegation was not possible to prove or disprove and was not sustained.

6. Misconduct/Medical – Medical personnel took three months, after the complainant was assaulted on 08-14-17, to allow x-rays of the complainant’s injuries.

Board Finding: Summary Dismissal

Rationale: The complainant stated he was assaulted on 08-14-17 and he requested X-rays of the injuries. He stated it took three months before X-rays were taken. According to medical reports, X-rays were taken on 11-13-17. As CLERB has no authority over medical personnel per CLERB Rules & Regulations 4.1 Citizen Complaints: Authority, this allegation of medical misconduct will be referred to the Sheriff’s Department.

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## **18-018**

1. Misconduct/Harassment - Deputy 1 went to the complainant’s home multiple times.

Board Finding: Action Justified

Rationale: The complainant stated on 01-24-18 Deputy 1 went to her home as a means to “interject in a visitation”. Then on 01-25-18 a social worker along with Deputies 1 and 2 showed up at her door. According to reports, provided by the Sheriff’s department, Deputy 1 responded to a request for preserve the peace for a child exchange on 01-24-18. She was dispatched to the complainant’s home. She contacted the reporting party, the father of the complainant’s daughter. He advised her he hoped to pick up his child from the complainant. Deputy 1 walked to the complainant’s residence and knocked on the door. The complainant answered and Deputy 1 advised her that the reporting party was there to pick up his daughter for visitation. During the contact the father stated the child’s mother, the complainant, stabbed him on 12-24-17. Deputy 1 was dispatched to the scene in order to preserve the peace since the complainant would not allow the father of her daughter visitation. After speaking with the complainant, and later the father, Deputy 1 determined that a possible crime occurred when she learned the complainant allegedly assaulted the father. Based on the statement from the father it appeared a crime might have occurred and Deputy 1 re-approached the complainant’s door to gather information in order to investigate the allegations. After Deputy 1 left the scene, on 01-24-18, she contacted Child Protective Services regarding the allegations. She also faxed an emergency referral form to them. After notifying CPS, Deputy 1 was contacted by a CPS Social Worker regarding a visit to the complainant’s apartment. Deputy 1 returned to the complainant’s home the following day, 01-25-18, with the social worker to further investigate the allegations by the father. Deputy 1 confirmed she would assist in preserving

the peace. Deputy 1, along with Deputy 2, met the social worker on scene at the complainant's apartment. Deputy 1 stood back while the social worker contacted the complainant. Evidence showed Deputy 1 went to the complainant's home twice and on both occasions the deputy's presence was justified, lawful and proper.

2. Misconduct/Procedure - Deputy 2 did not intervene when Deputy 1 was hostile to her.

Board Finding: Unfounded

Rationale: The complainant stated there was another deputy there and she had not said anything to her or intervened in the hostility towards her. Body worn camera footage of contact with the complainant on 01-25-18 showed Deputy 1 acted calm and professional during her interactions with the complainant. The complainant refused to open her door all the way or invite the social worker into her home. Deputy 1 stood back while the social worker spoke with the complainant. Deputy 2 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Evidence showed Deputy 1 remained calm and professional during the entire contact. There was no need to intervene since both the social worker and Deputy 1 acted professionally. The complainant was uncooperative and made it difficult for both the social worker and Deputy 1 to conduct their investigation. The evidence showed Deputy 1 did not act in a hostile manner and there was no reason for Deputy 2 to intervene. Therefore the allegation was unfounded.

3. Misconduct/Discourtesy - Deputy 1 "verbally attacked" the complainant.

Board Finding: Unfounded

Rationale: According to the complainant Deputy 1 "verbally attacked" her. The complainant became fearful of being attacked by Deputy 1 who also terrified her guest. Body worn camera footage of the contact with the complainant on 01-25-18 showed Deputy 1 acted calm and professional during her interactions with the complainant. The complainant refused to open her door all the way or invite the social worker into her home. Deputy 1 stood back while the social worker spoke with the complainant. Deputy 2 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Evidence showed Deputy 1 remained calm and professional during the entire contact. The complainant was uncooperative and made it difficult for both the social worker and Deputy 1 to conduct their investigation. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. The evidence showed Deputy 1 did not "verbally attack" the complainant. Therefore the allegation was unfounded.

4. Misconduct/Discourtesy - A Social Worker "verbally attacked" the complainant.

Board Finding: Summary Dismissal

Rationale: Per CLERB Rules and Regulations 4.1, entitled, "Citizen Complaints: Authority," CLERB lacks jurisdiction over the social worker and therefore was unable to investigate the specific allegation.

5. Misconduct/Procedure - Deputy 1 delayed her departure from the complainant's property for 30 minutes after being told to leave.

Board Finding: Unfounded

Rationale: The complainant stated as she began to close the door, the social worker said, "Wait how about I come back another time?" The complainant agreed and closed the door. She said it took the deputies and the social worker about 30 minutes to leave the property. Deputy 2 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Dispatch logs showed the last entry as 11:59am. It did not provide the time when the deputies left the scene. Upon reviewing the body worn camera footage there is no point during the interaction of the social worker and the complainant when the social worker or the deputies were asked to leave. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. There was insufficient evidence to show when the social worker and deputies left the scene. Yet the evidence showed that the social worker and deputies were never asked to leave by the complainant. Therefore the complainant's allegations were unfounded.

6. Misconduct/Procedure - Deputy 1 "deliberately manipulated the timeline of the event/accusation" for harassment purposes.

Board Finding: Unfounded

Rationale: The complainant stated Deputy 1 "manipulated the timeline of the event/accusations to continue to harass her by exhausting government resources, used them as a tool to scare her and to possibly make her job easier since at that point she seemed to be an incompetent investigator". The timeline for Deputy 1's contacts with the complainant, as documented in a report provided by the Sheriff's Department, was reviewed. According to the

evidence there was no proof that Deputy 1 manipulated the timeline of events. Therefore the allegation was unfounded.

7. Misconduct/Procedure - Deputy 1 used a social worker as a tool in her investigation and was negligent in her duties to protect the complainant's daughter who was a victim of child abuse.

Board Finding: Unfounded

Rationale: Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. A Crime/Incident report, provided by the Sheriff's Department, stated the social worker contacted Deputy 1 to provide cover for her when she went to contact the complainant regarding allegations of child abuse. There was no evidence that Deputy 1 used the social worker as a tool in her investigation. There was nothing that showed Deputy 1 was negligent in any way in her duties. Evidence showed that the allegation did not occur and was unfounded.

8. Misconduct/Intimidation - Deputy 1 "used all resources to harass and coerce" the complainant

Board Finding: Unfounded

Rationale: The complainant stated Deputy 1 "used all resources to harass and coerce her into participating in something she was not a part of". Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Evidence showed Deputy 1 followed correct procedures in reporting the potential allegation, to CPS, after speaking with the alleged victim on 01-24-18. Deputy 1 was present on two occasions at the complainant's home to preserve the peace. The deputy only intervened once after the complainant was uncooperative with the social worker. The deputy asked the complainant to answer the social workers questions so she could conduct her investigation. There was no evidence that showed Deputy 1 used resources to harass and coerce the complainant and the complaint was unfounded.

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## 18-030

1. Misconduct/Procedure – Unidentified deputies placed/held the complainant in "solitary confinement" for 18 months.

Board Finding: Action Justified

Rationale: The complainant stated she was placed in "solitary confinement" at the Las Colinas Detention and Reentry Facility (LCDRF) and once she was transferred to the Vista Detention Facility (VDF) she was placed in "complete isolation/super max solitary confinement in a cell where no human contact existed". According to the Sheriff's Department there were no cells designated as "solitary confinement". The closest thing would have been Administrative Segregation (Ad Seg). According to the complainant's jail records she was never housed in disciplinary isolation which is the most secure housing for inmates. After her arrest, and initially being housed in Protective Custody (PC), she was moved to Ad Seg. Then she was moved from a more restrictive Ad Seg module to one with general female housing. Once she was no longer considered Ad Seg on 08-31-17, she was able to mix with other inmates. Therefore the evidence showed the complainant's housing classification was lawful, justified and proper and there was no designated housing called "solitary confinement".

2. Misconduct/Procedure – Unidentified deputies ordered the complainant to keep her cell door open.

Board Finding: Action Justified

Rationale: The complainant stated that she was ordered to keep her cell door open during dayroom hours. According to the Sheriff's Department there were no general policies and procedures regarding keeping a cell door open or closed. If inmates were housed in Ag Seg the cell doors would be kept closed unless they were out for dayroom/shower time. No policy or procedures were found that provided details regarding the opening and closing of inmate's cell doors. A response to the complainant's grievance, regarding her cell door, stated the decision was made for her to receive the same treatment regarding dayroom and open/close door privileges as all other inmates. Since the complainant was no longer in Ad Seg on 02-07-18, and there was no specific policy regarding keeping cell doors open or closed for mainline inmates, a deputy having ordered the complainant to keep her door open was not a violation of policy and therefore was lawful, justified and proper.

3. Misconduct/Procedure – Unidentified deputies treated the complainant differently because of her relationship with her spouse who was a former San Diego County Sheriff's Deputy.

Board Finding: Action Justified

Rationale: The complainant stated that because she was married to a former Sheriff's Deputy she was placed as a

“PC mainline inmate”. The complainant met with deputies on multiple occasions to discuss her concerns. Each time deputies addressed these concerns though not necessarily to the satisfaction of the complainant. Evidence showed that the complainant was treated differently due to her relationship with a Sheriff’s deputy. This treatment was to protect her from being assaulted by other inmates. Therefore based on the evidence she was treated differently but that treatment was lawful, justified and proper.

4. Misconduct/Procedure - Unidentified deputies failed to protect the complainant as a “PC” inmate.

Board Finding: Unfounded

Rationale: The complainant alleged the department failed to protect her as a PC inmate. Upon arrival into the jail, during a classification review, the complainant expressed safety concerns due to the fact her spouse was a Sheriff’s deputy. There were no reports documenting any physical altercations between the complainant and other inmates. Reports provided by the Sheriff’s Department showed that safety concerns were addressed by deputies. The evidence did not show any failure to protect the complainant and therefore the complaint is unfounded.

5. Misconduct/Procedure - Deputy 1 “orchestrated” the complainant’s transfer to a different detention facility on 07-06-16.

Board Finding: Unfounded

Rationale: The complainant stated that Deputy 1 “orchestrated” her move from LCDRF to VDF on 07-06-16 to “protect her staff”. Deputy 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Evidence showed that Deputy 1 did not “orchestrate” the complainant’s move to VDF and the complaint was unfounded.

6. Misconduct/Procedure – Unidentified deputies violated the complainant’s rights by restricting needed materials for her writ of habeas corpus, including the use of an ink pen, and by not allowing the complainant to make copies of her legal documents.

Board Finding: Unfounded

Rationale: The complainant stated she was not allowed to use a pen for legal documents even though the court rules required it. She stated she was given a pen by deputies to use in her legal matter. At some point the deputies took away her pen. The complainant further stated the facility refused to make copies of any legal documents even if the inmate was pro per and the court requires multiple copies. SDS D P&P DSB Section N.7 entitled, “Pro Per Inmates” stated: “An inmate shall be granted propria persona status by Court Order only. Pro per *privileges* are granted for criminal cases only. Civil, juvenile and family law cases are not eligible for pro per *privileges* but may be granted pro per status by the court.” In this matter the complainant never had pro per status. There was no court order on file and therefore she would not have been eligible for any of the privileges allowed for pro per inmates. A writ of habeas corpus is a civil filing that challenges the conditions of confinement. If the complainant was granted pro per by the court she still would not have been eligible for pro per privileges. Even if the complainant was designated pro per, and afforded the privileges that came with it, SDS DSB P&P N.7 stated she would not have been able to utilize a pen for more than signature purposes. With regards to copies the policy further states that the “Correctional Counselor will duplicate one copy of an inmate’s final legal (criminal case) work product upon his/her request. If the inmate needs additional copies made, the inmate will arrange for a legal assistant to have it done for him/her.” If the complainant was designated as pro per she would have had to arrange having additional copies made through a legal assistant. The evidence in this case showed that, without being granted pro per status, the Sheriff’s Department was under no obligation to provide the complainant with resources given to pro per inmates. There was no violation of policy, or of the complainant’s rights, and the complaint was unfounded.

7. Misconduct/Procedure – Deputy 2 provided the complainant with misinformation about filling out a writ of habeas corpus.

Board Finding: Summary Dismissal

Rationale: At the time of this incident, Deputy 2 was an active member of the Sheriff’s Department, but he has since retired. Per CLERB Rules and Regulations 4.1, entitled, “Citizen Complaints: Authority,” CLERB lacks jurisdiction.

8. Misconduct/Procedure - Deputy 2 wrote a third level grievance response to complainant’s second level grievance.

Board Finding: Summary Dismissal

Rationale: At the time of this incident, Deputy 2 was an active member of the Sheriff’s Department, but he has since retired. Per CLERB Rules and Regulations 4.1, entitled, “Citizen Complaints: Authority,” CLERB lacks jurisdiction.

9. Misconduct/Procedure – Deputy 2 reviewed the complainant’s Internal Affairs (IA) complaint.

Board Finding: Summary Dismissal

Rationale: At the time of this incident, Deputy 2 was an active member of the Sheriff’s Department, but he has since retired. Per CLERB Rules and Regulations 4.1, entitled, “Citizen Complaints: Authority,” CLERB lacks jurisdiction.

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**18-045**

1. Excessive Force – Probation Officer (PO) 1 “picked up” the aggrieved and “body slammed him headfirst into the cement floor.”

Board Finding: Action Justified

Rationale: The complainant said that an inmate allegedly attacked his son, who did not fall to the floor fast enough so the guard “picked him up and body slammed him headfirst into the cement floor.” Detainee Rules of Conduct 7.3 mandates that detainees shall not harm or threaten to harm one’s self; or fight with other detainees or officers. An Incident Report, corroborated by surveillance video, was reviewed in conjunction with Probation Department Policies & Procedures 1418.3 where physical contact can be used to control, restrain, or transport juveniles under probation authority. Other information obtained through the investigation is protected by law and cannot be disclosed. The actions taken by PO 1 were lawful, justified and proper.

2. Misconduct/Procedure – PO 1 failed to obtain appropriate medical care for the aggrieved in a timely manner.

Board Finding: Unfounded

Rationale: The complainant stated that after his son was “slammed headfirst” into the cement floor he lost consciousness and sustained head trauma that went unacted upon throughout the day even though requested by his son. During a visit with his father later that day, the aggrieved stated he thought he had a concussion. Probation records were reviewed and provided significant information that refuted this allegation, however, by law they cannot be disclosed. The evidence showed that the alleged act or conduct did not occur.

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**18-051**

1. Death Investigation/Suicide (Deputy Present) – On 04-12-18, San Diego Sheriff’s Department (SDSD) deputies were advised Michael South was suicidal and attempted to stop his vehicle to conduct a welfare check. South initially failed to yield to deputies but eventually stopped in a cul-de-sac in the City of Vista. South was subsequently found dead inside of the vehicle with a gunshot wound to the head and the manner of death was suicide.

Board Finding: Action Justified

Rationale: SDSD deputies were summoned to assist with a call of a suicidal subject with a firearm in the City of Vista. South was located driving his vehicle on city streets. Deputies attempted to stop the vehicle, but South failed to yield. Deputies pursued South’s vehicle into a residential neighborhood, where he eventually yielded. South’s vehicle had dark tinted windows all around and deputies were unable to view inside the vehicle. It was believed South was “barricaded” and was potentially a danger to the public and was potentially a danger to the public, so the Sheriff’s Crisis Negotiation Team (CNT) and the Sheriff’s Special Enforcement Detail (SED) were summoned to the scene. Upon the arrival of the SED and CNT, a plan was formulated and put into motion. SED deputies approached South’s vehicle and found South in his vehicle with a self-inflicted gunshot wound to the head. His death was confirmed on scene. The cause of death was “penetrating contact gunshot wound to the head.” The manner of death was suicide. None of the deputies discharged their weapons. Deputies expeditiously responded to this incident and despite their lawful and proper actions, Michael South took his own life. There was no evidence to support an allegation of misconduct or negligence on the part of Sheriff’s Department sworn personnel.

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**18-072**

1. Misconduct/Procedure – Unidentified deputies failed to return the complainant’s phone calls and letters regarding her complaint.

Board Finding: Action Justified

Rationale: The complainant alleged that her numerous calls and letters to the SDSD Internal Affairs Office went unanswered. She had complaints from an incident that occurred in 2003. (Reference CLERB Case #18-073).

Approximately four to five months ago, she attempted to contact the Internal Affairs Office by phone calls, had left voice messages, and by mail, all to no avail. The letters that the complainant mailed to both CLERB and the SDDS Internal Affairs Office were incomprehensible and appeared to be random thoughts unrelated to a complaint. The SDDS acknowledged that the complainant "has sent letters and made multiple phone calls over the last 20+ years;" however, her correspondences were "unintelligible and lacked any facts necessary to conduct an investigation." The correspondences were "unintelligible, incomprehensible, and did not outline any complaints of misconduct" by SDDS staff. SDDS concluded that there was no basis for any administrative investigation. Since no "complaint" was received from the complainant, Internal Affairs did not have an obligation to respond. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

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### **18-073**

1. False Arrest – An unidentified deputy arrested the complainant for a crime she did not commit.

**Board Finding:** Summary Dismissal

**Rationale:** CLERB received a signed complaint on 06-05-18, regarding an incident that had occurred in 2003. The complainant reported that she was falsely arrested for a crime she did not commit. An unidentified deputy claimed to have found illicit drugs in his patrol vehicle, which he claimed was left there by the complainant. The complainant said that she had been incarcerated for 17 years and was released three to four years ago. SDDS sworn staff verified that the complainant had served an approximate one-year sentence in 2003 and, after the term of her incarceration, she was released from custody. SDDS staff further advised that the complainant had been rearrested numerous times in the years that followed for other unrelated crimes. Between the time of the incident and the allegation, the complainant had been out of custody for over a year. The complainant had the burden of demonstrating that she was incarcerated and was unable to file a complaint within one year from the incident. She did not subsequently produce any documentation to attest to her lengthy incarceration. The complainant was advised of the tolling exemptions and none existed that would permit the invocation of CLERB jurisdiction. The Review Board lacks jurisdiction because the Review Board cannot take any action in respect to complaints received more than one year after the date of the incident giving rise to the complaint, per CLERB Rules & Regulations 4.4: Jurisdiction.

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***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.