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

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**FINAL NOTICES**

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its September 9, 2014 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) **Discussion & Consideration of Complaints & Reports / Officer Discipline Recommendation:** 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).
  - 12-083 / Block

<b>DEFINITION OF FINDINGS</b>	
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 (21)**

**ALLEGATIONS, FINDINGS & RATIONALE**

**12-110**

1. Death Investigation/Overdose – Bernard Victorianne was found unresponsive during an opening shift soft count.

Board Finding: Sustained

Rationale: There was no complaint of wrongdoing, and a review was done in accordance with CLERB Rules and Regulations. San Diego Sheriff's Department personnel observed a series of behaviors and indicators which, with proper response, could have prevented the decedent's untimely death. Observed swallowing a baggie of methamphetamine at the time of his arrest, the decedent received limited close observation during portions of his incarceration. On three separation occasions, decisions were made to transfer the decedent to another facility, only to be cancelled because of his unstable and bizarre behavior. Determined, "...not able to maintain the minimum standards expected of those in mainline housing," when found possibly in medical distress in his cell, the decedent was placed in Administrative Segregation rather than Medical Observation, where he would have been closely monitored. Inmate count procedures were violated, resulting in the failure to monitor the decedent's well-being, and when last seen, deputies failed to properly respond to a medical

emergency. Based on the information available at the time of this report, including the autopsy findings and results of ancillary testing, the Medical Examiner determined the cause of death to be methamphetamine toxicity, and the manner of death was classified as accidental. The evidence demonstrated that the actions and/or inactions of Department personnel were not justified.

2. Misconduct/Procedure – Deputy 2 failed to conduct an inmate night count procedure according to policy.

Board Finding: Sustained

Rationale: Sheriff's Detentions Policy I.43, Inmate Count Procedure, requires that Hard and Soft Counts of inmates are regularly conducted to physically count and verify the well-being of all inmates within the facility. The Hard Count requires deputies to come in close contact with inmates to ensure that inmates are in the proper cell, verify their wristband information, and assess the inmate's overall well-being through verbal or physical acknowledgement from the inmate. Deputy 2 reported that during the Hard Count on the night preceding Victorianna's death, the batteries in the Bar Code Reader weakened, necessitating the use of an alternate procedure in the decedent's module. Despite this modification to procedure, inmate verification and well-being was still required, and Deputy 2 failed to comply. Deputy 2 reported that he verified the decedent's well-being; however, video surveillance showed that Deputy 2's rapid passing of the cell was insufficient to verify Victorianna's information and well-being. The evidence supported the allegation and the act or conduct was not justified.

3. Misconduct/Procedure – Deputies 1 and 2 failed to conduct an inmate Soft Count procedure according to policy.

Board Finding: Sustained

Rationale: Sheriff's Detentions Policy I.43, Inmate Count Procedure, requires that Hard and Soft Counts of inmates are regularly conducted throughout the day and evening to physically count and verify the well-being of all inmates within the facility. The well-being of the inmate should be verified through verbal or physical acknowledgement from the inmate. This policy further directs that a Soft Count is conducted during the breakfast meal. Deputy 2 entered Victorianna's cell after he failed to come to the cell door food flap to receive his breakfast. Deputy 1 stood in the doorway providing cover. Deputy 2 stated that he attempted to awaken Victorianna, but Victorianna did not respond. Deputy 2 further stated that Victorianna's back appeared to rise and lower, as if he was breathing, so he and Deputy 1 exited the cell, believing Victorianna was sleeping. Deputy 1 did not observe Victorianna breathing, but relied on Deputy 2's observation. Deputies 1 and 2 were in the decedent's cell for approximately 41 seconds during this Soft Count, but acknowledged that at no time did Victorianna verbally or physically acknowledge that he was okay and not in any medical distress at the time of this well-being check. Deputies 1 and 2 failed to conduct this Soft Count procedure according to policy, and their actions were not justified.

4. Misconduct/Procedure – Deputies 1 and 2 failed to take appropriate action in recognizing, reporting, or responding to an inmate's emergency medical needs.

Board Finding: Sustained

Rationale: Deputy 2 reported that while conducting a Soft Count on Victorianna, the decedent failed to respond to attempts to awaken him; however, Victorianna's back "appeared to be moving up and down as if he was breathing," so Deputy 2 believed him to be sleeping, and exited the cell. Deputy 1 did not personally assess Victorianna's condition, nor observe Victorianna breathing, but relied on Deputy 2's reported observation. Neither deputy received verbal or physical acknowledgement from the decedent that he was okay and not in any medical distress at the time of this well-being check. Sheriff's Detention Policy M.5, Medical Emergencies, provides guidelines for responses to medical emergencies and requires that all facility staff be responsible for taking appropriate action in recognizing, reporting or responding to an inmate's emergency medical needs. Deputies 2 and 1 assessed Victorianna for 41 seconds before Deputy 2 reportedly detected what appeared to be breathing motion from the decedent's body. When Victorianna's body was discovered just 3 hours later by deputies beginning their shift, it was cold to the touch; stiff, and some level of lividity and rigor mortis had already set in. Deputies 2 and 1 observed Victorianna for an extended period of time without response and, per

policy, failed to contact Medical personnel. The evidence supported the allegation and the act or conduct of these deputies was not justified.

5. Misconduct/Truthfulness – Deputy 2 failed to truthfully answer a question on a Sheriff’s Employee Response Form.

Board Finding: Sustained

Rationale: Department Policy and Procedure 2.46, Truthfulness, requires all personnel, “...to answer questions, whether orally or in writing, truthfully and to the fullest extent of their knowledge.” Deputy 2 attested to the truthfulness of his responses in this investigation; however, video surveillance disproved the actions he described in one of his responses. The evidence supported the allegation, and the conduct was not justified.

6. Misconduct/Procedure – Deputy 4 failed to conduct a thorough in-custody death investigation.

Board Finding: Sustained

Rationale: Sheriff’s Policy M.7, Inmate Deaths, provides direction to Detentions Bureau personnel responding to, and reporting inmate deaths, and directs that the Homicide and Detentions Investigations Unit will generally conduct all interviews of possible witnesses. Per department information sources and investigating detectives on scene, all involved deputies are considered possible witnesses, and will typically write a deputy’s report detailing their involvement and/or any information they may have regarding the incident. Sheriff’s Policy 6.33, further requires that department personnel responding to and involved in the investigation of any major crime... secure all evidence and information and identify and interview victims and witnesses. Deputy 4 noted that Deputies 1 and 2 were presumably the last deputies to see the decedent alive, yet did not interview these deputies nor require of them the submission of deputy reports. This omission prevented Deputy 4 from thoroughly investigating this in-custody death, as their statements and/or reports as witnesses, would have been relevant and important to Homicide’s investigation. While Deputy 4 reported that her supervisor, Deputy 3, informed her that she would not be receiving reports from Deputies 1 and 2, Sheriff’s Policy 2.3, Violation of Rules, prohibit deputies from committing or omitting any acts which constitute a violation of any of the rules, regulations, directives, orders or policies of the department, and state that deputies are responsible for their own acts, and they shall not shift to others the burden or responsibility for executing, or failing to execute, a lawful order or duty. Moreover, Deputy 4 did not report, nor were there any documented indications that she questioned this breach of investigative protocol, but instead acquiesced without resistance or minimal discussion. The evidence supported the allegation and the act or conduct was not justified.

7. Misconduct/Procedure – Deputy 3 failed to supervise an in-custody death investigation according to policy.

Board Finding: Sustained

Rationale: Sheriff’s Policy M.7, Inmate Deaths, provides direction to Detentions Bureau personnel responding to, and reporting inmate deaths, and directs that the Homicide and Detentions Investigations Unit will generally conduct all interviews of possible witnesses. Deputies 1 and 2 were pivotal witnesses in this case, as they were presumably the last persons to have direct contact with the decedent; yet they were not interviewed nor required to submit deputy reports in support of the investigation. As the supervisor of this in-custody death investigation, Deputy 3 was tasked to ensure that the investigation was conducted properly, with key witnesses interviewed, and their statements included in Homicide’s Investigative Books. Deputy 3 observed video evidence which showed Deputies 2 and 1 contact the decedent, but failed to ensure that the investigation included their statements. The evidence supported the allegation and the act or conduct was not justified.

8. Misconduct/Medical – Sheriff’s Medical Staff failed to monitor the medical status and well-being of an inmate who had ingested a baggie of an unknown illicit drug.

Board Finding: Summary Dismissal

Rationale: The decedent was booked into San Diego Central Jail, where during Medical Intake, it was documented that he had been evaluated and released from Alvarado Hospital after swallowing a baggie of unknown illicit drugs during his arrest. Approximately 24 hours following booking, and over an extended period of time, the decedent exhibited symptoms of possible methamphetamine overdose. On three separate

occasions, Medical staff noted that the decedent appeared to be “Responding to internal stimuli,” culminating in the decedent screaming while reporting that he was “On fire”; that “Something was burning his insides” when he was last seen by Medical. Yet, he was placed in Administrative Segregation housing, rather than the Medical Observation Unit, where his condition could be closely monitored. The symptoms and effects of the decedent’s drug overdose or toxicity were clearly evident, but went largely untreated by medical staff; particularly given that it was known and documented in medical records that the decedent had ingested drugs prior to his arrival at SDCJ. The Review Board, however, lacks jurisdiction over Medical staff, and this matter is referred to the Sheriff’s Department for follow up.

## **POLICY RECOMMENDATIONS:**

1. To help prevent further loss of life, we recommend that the Sheriff’s Department reviews the detentions policy and protocol on tracking and monitoring inmates who come into county detention facilities with drug overdose and drug-ingestion risk indicators. The Department policy or protocol, if not in effect, should specifically address the monitoring of incoming inmates who have been observed ingesting unidentified substances and/or presenting with symptoms related to drug overdose.
2. It is recommended, that the San Diego Sheriff’s Department ensure compliance with Sheriff’s Policy M.7, Inmate Deaths, that explicitly directs the Homicide and Detentions Investigation Units to conduct all interviews of possible witnesses during the investigation of an in-custody death; and that this duty not be circumvented by any other units or agencies.

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## **13-063**

1. Misconduct/Procedure – Deputy 1 left a door open between housing units, which allowed inmates to enter a protective custody unit and attack another inmate.

### Board Finding: Not Sustained

Rationale: The complainant stated Deputy 1 intentionally left the door open between two George Bailey Detention Facility (GBDF) housing modules after he passed through the door during a security check. Shortly after the security check was completed, two inmates from the adjacent housing module were able to enter the complainant’s module and assault unidentified inmates before both modules were locked down. Deputy 1 stated he closed the crossover door between housing modules, and the Tower Deputy reported that Control Panel Indicator Lights on the panel turned green, which indicated the door closed properly. Video surveillance captured the incident; however, because the video was grainy and of poor quality, it could not be determined which inmates were involved, or the method inmates used to breach the door and move between the modules. GBDF Maintenance was notified of the security breach and investigated the crossover doors. There were no reports of mechanical failures to the door. There was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Discourtesy – Deputy 2 told the complainant, “I hope you die,” or used words to that effect.

### Board Finding: ~~Not Sustained~~ Sustained

Rationale: The complainant stated Deputy 2 approached him without provocation, and made a statement such as, “I hope you die.” Deputy 2 acknowledged making such a statement; however, he indicated the statement was made in a humorous manner and tone. Detentions personnel reportedly use humor with the inmates as a means to develop rapport and a working relationship. ~~There is dispute over the context and the manner in which the statement was delivered. Absent an audio recording of Deputy 2’s statement, the context and tone cannot be ascertained, and therefore it cannot be determined whether or not this statement rises to the level of a discourtesy.~~ However, Department Procedure 2.22, Courtesy, requires Deputies to be tactful and not use coarse, violent, or insolent language in the performance of their duties. The evidence supported the allegation and the conduct and was not justified.

1. Criminal Conduct – Deputy 2 “forged” an illegal Arrest Warrant.

Board Finding: Unfounded Summary Dismissal

Rationale: The complainant said Deputy 2 created a false warrant which resulted in his arrest. The complainant and aggrieved were present in San Diego Superior Court at a Postrelease Community Supervision Revocation Hearing, and the defendant’s Probation Officer requested that the Courtroom Clerk check to see if the complainant had any wants/warrants. The warrant check revealed a 2012 warrant abstract initiated by Vista Superior Court, and the Court Clerk relayed the information to Deputy 2, who then passed it to Deputy 7. Further review of the warrant showed that the warrant had been posted; however, it had not been activated because the complainant had appeared in the matter. The evidence showed that Deputy 2 did not prepare an illegal arrest warrant. The investigation revealed that the function of warrant data entry is normally performed by clerks who are non-sworn personnel, over whom CLERB has no jurisdiction. CLERB lacks authority to investigate this complaint due to the following CLERB Rules & Regulations: Section 4: Authority, Jurisdiction, Duties and Responsibilities of Review Board. 4.1, Citizen Complaints, Authority.

2. Excessive Force – Deputies 3, 4, 6, and 7 used excessive force to take the complainant into custody.

Board Finding: Action Justified

Rationale: The complainant said a Deputy contacted him and told him to turn around because he was under arrest. When the complainant asked why he was being arrested, Deputies used force to take him into custody. Deputy 7 had been provided information which indicated the complainant may have been the subject of an arrest warrant, and attempted to detain him to investigate. Video surveillance showed the complainant backed away as Deputy 7 approached and actively resisted the deputy’s contact. Deputies 3, 4, 6, and 7 utilized Department-approved verbal commands, empty hand control, control hold, knee strikes, and takedown techniques, to gain compliance and overcome the complainant’s resistance. The evidence showed that force was used, but was lawful, justified and proper.

3. False Arrest – Deputy 7 arrested the complainant.

Board Finding: Action Justified

Rationale: The complainant stated Deputy 7 arrested him based on an inaccurate arrest warrant. Deputy 7 was notified by Deputy 2 that the complainant may have had a warrant for his arrest. Deputy 7 attempted to detain the complainant to investigate the warrant abstract provided by the Courtroom Clerk; the complainant resisted the Deputy’s efforts, resulting in a use of force. Subsequent investigation revealed that the arrest warrant had been filed, but had never been activated. Deputy 7 did not arrest the complainant because of the arrest warrant; the arrest was effected because the complainant resisted contact and was cited for violation of Penal Code § 148(a)(1), Obstructing/Resisting a Peace Officer. The evidence showed that an arrest did occur, but was lawful, justified and proper.

4. Excessive Force – Deputy 5 used force in moving the aggrieved.

Board Finding: Not Sustained

Rationale: The aggrieved said that she sustained bruises from the force used by Deputy 5 during the altercation in the Courthouse corridor. Deputy 5 denied using any force during his contact with the aggrieved. Video surveillance showed Deputy 5 in close contact with the aggrieved as he attempted to keep her from approaching deputies trying to take her son into custody. Deputy 5 moved from side-to-side with his arms spread wide to prevent the aggrieved from contacting the complainant or the deputies. Deputy 5 steered the complainant toward a corridor wall, out of camera range for approximately 4 seconds, and his actions could not be confirmed. There was insufficient evidence to prove or disprove the allegation.

5. Misconduct/Procedure – Deputy 1 demanded that the aggrieved delete photographic evidence from her cell phone.

Board Finding: Action Justified

Rationale: The aggrieved stated she was approached by a deputy and told she must delete a photograph from her cell phone which had been taken in the Courthouse. Deputy 1 acknowledged he directed the aggrieved to delete a photograph taken in the Courthouse from her cell phone. General Order of the Presiding Department 010213-03, prohibits photography in any Superior Court of California, County of San Diego Courthouse facilities (including lobbies and hallways), unless authorized by a judicial officer or in specifically designated areas. Violation of the General Order may result in a citation for contempt, confiscation of the personal electronic devices, and/or an order imposing monetary or other sanctions. The aggrieved did not have authority to take photographs in the Courthouse, and Deputy 1 directed the aggrieved to delete the photograph rather than confiscate the telephone. The evidence showed that the act did occur, but was lawful, justified and proper.

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**13-067**

1. Misconduct/Procedure – Deputy 3 assigned the complainant to a top bunk contrary to medical orders.

Board Finding: ~~Not Sustained~~ Sustained

Rationale: The complainant said he was assigned to a top bunk contrary to medical orders. Medical record review noted a Lower Bunk order, however, that same order did not appear in the Jail Information Management System (JIMS) Hazards & Instructions available to Classification and/or Housing Deputies. As such, the complainant was assigned to top bunks on more than one occasion throughout his incarceration. A review of the complainant's booking jacket did not reveal any instances where he objected to a top bunk assignment, or that he reported the lower bunk requirement to detentions personnel. ~~There was insufficient evidence to prove or disprove Deputy misconduct in designating the complainant's bunk assignment.~~ The Lower Bunk order was properly documented in medical records, and Deputy 3 did assign the complainant to a top bunk contrary to the order. The investigation did not reveal why the medical orders were not shown in the JIMS Hazards and Instructions, and/or how to prevent this from occurring in the future; therefore, this matter has been referred to the Sheriff's Department for follow-up. The evidence supported the allegation and the act was not justified.

2. Misconduct/Procedure – Deputies 1 and 2 ~~and 3~~ failed to take action after watching the complainant fall, which resulted in injury.

Board Finding: Not Sustained

Rationale: The complainant said Deputies watched him fall from the top bunk and failed to take any action. Deputies 1 and 2 ~~and 3~~ reported that they heard a loud noise come from the complainant's cell as they were conducting night count at the adjacent cell. The complainant's cellmate stated that he was at the cell door and told Deputies the complainant had fallen. Deputies denied seeing the complainant fall from the top bunk, but did observe him on the cell floor when they arrived. Deputies spoke with the complainant about his foot injury, and advised him they would contact medical at the conclusion of the Night Hard Count. The complainant and his cellmate also contacted House Control to report the injury; the House Control Deputy contacted Medical and was advised they were attending an inmate injured earlier and would respond when completed. Deputy 2 ~~3~~ and Medical personnel returned to the complainant's cell approximately 34 minutes after the incident occurred, and transported the complainant for medical evaluation. There is dispute as to whether the Deputies observed the complainant fall from the top bunk, and if the injury, later determined to be a fracture dislocation of his foot, required emergency medical treatment; therefore, there was insufficient evidence to prove or disprove the allegation.

3. Misconduct/Medical – The complainant did not receive follow-up medical care after a serious injury.

Board Finding: Summary Dismissal

Rationale: Sheriff's medical records were reviewed and detailed the complainant's medical treatment received after his fall, as well as medical care following this incident. However, medical care and treatment are performed by non-sworn personnel over whom CLERB has no authority. Since the Review Board lacked jurisdiction, this matter was referred to the Sheriff's Department at the onset of this investigation.

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### 13-069

1. Misconduct/Procedure – Deputy 1 failed to provide the complainant access to showers for a period of approximately six days.

Board Finding: Sustained

Rationale: The complainant stated he was not allowed access to showers during a six-day period while in Disciplinary Isolation. Per California Code of Regulations, Title 15, and Department Policies and Procedures, L.11, Personal Hygiene, inmates are to be allowed to shower after assignment to a housing unit, and at least every 48 hours thereafter. Video surveillance proved that the complainant did not leave his cell to shower during the isolation period. Additionally, Deputy 1 failed to document the complainant's access to, and/or shower refusal, in the complainant's inmate history as required by San Diego Central Jail Policy and Procedure J.3.C.1, Segregation: Definition and Use. The evidence supported the allegation and the conduct was not justified.

2. Misconduct/Procedure – Deputy 1 did not return the complainant's personal property and hygiene products after he was moved to a new housing unit.

Board Finding: Not Sustained

Rationale: The complainant stated that after he was moved to a new cell he was not provided his personal property or hygiene products. There were no Inmate Requests or Grievances recorded in the complainant's Jail Information Management System file to reveal reports of lost or missing property. Video evidence showed Deputy 1 delivered what was believed to be a new bedroll to his cell, but it could not be determined if the material provided included the complainant's module property. There was insufficient evidence to either prove or disprove the allegation.

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### 13-070

1. Criminal Conduct – Deputies 1 and 2 violated the law when they failed to comply with subpoenas to appear in Superior Court in San Diego.

Board Finding: ~~Unfounded~~ Action Justified

Rationale: The complainant stated Deputies 1 and 2 violated the law when they failed to comply with subpoenas to appear in San Diego Superior Court, and desired the issuance of warrants for their arrest. Deputies 1 and 2 notified superiors upon receipt of the subpoenas per Department Policy and Procedure, and were advised by Sheriff Legal Advisors not to comply because the subpoenas were not valid. Court records revealed that the complainant failed to submit proper documentation and his request subsequently denied. San Diego Superior Court later confirmed the complainant had not properly completed and served a Summons, and again, the hearing was denied. No further subpoenas were issued related to this matter. The Courts determined that filing procedures had not been followed; and the evidence showed that Deputies 1 and 2 were not in violation of the law when they did not comply with the subpoenas. The Deputies were not required to be present, ~~and the alleged act did not occur;~~ the evidence showed that the alleged acts did occur, but were lawful, justified and proper.

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### 13-071

1. Misconduct/Procedure – Deputies 1 and 2 allowed a restrained party to violate a Restraining Order and vandalize property belonging to the complainant's family.

Board Finding: ~~Not Sustained~~ Sustained

Rationale: The complainant stated Deputies saw the subject of a Restraining Order vandalize and access his property in violation of the Restraining Order. The Sheriff's Analysis Driven Law Enforcement (SADLE) team, were conducting a warrant search on property adjacent to the complainant's, when a restrained party in a Civil

Harassment Restraining Order approached the deputies and requested assistance in serving legal documents to the complainant. The restrained party was advised to wait until the warrant service was complete and was later contacted by SADLE Deputies 1 and 2. Deputies denied they saw the restrained party vandalize the complainant's property, and reported they were unaware of a Restraining Order until the complainant and his fiancé were contacted at the residence. Once the Restraining Order was presented, Deputies 1 and 2 directed the restrained party away from the residence, and a Patrol Unit was reportedly requested to take over case processing. There were no records to indicate what, if any, Patrol Unit was assigned to take the restrained party into custody, and there was no documentation that Sheriff's Communications was requested to confirm the Restraining Order was valid. The restrained party left the scene without further contact, and the complainant and his fiancé proceeded to a Sheriff's Station later that day and reported the incident. ~~Because of the large number of Deputies present at the warrant service, the number of arrests, and the large amount of evidence impounded, there was insufficient evidence to either prove or disprove that Deputies 1 and 2 allowed the restrained party to vandalize and access the complainant's property.~~ The investigation showed that Deputies 1 and 2 were aware that the restrained party was in violation of a Civil Harassment Restraining Order and failed to take action in accordance with Department Policy and Procedures. The evidence supported the allegation and the acts were not justified.

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### 13-073

1. Misconduct/Procedure - Probation Officer 2 was unable to assist the juvenile complainant with an alternative placement.

Board Finding: Action Justified

Rationale: The complainant said PO 2 did not know where to place her, so she went to an acting supervisor for suggestions. Officer 2 assessed, investigated, and informed her superiors of the minor's request for an alternate placement. After assessment and/or input from various entities, including family members, the PO determined the minor's safety was not at risk and a joint decision was agreed upon between the PO, the minor, and her mother for the minor to return home. The PO then maintained regular contact with the family, and implemented numerous community resources, to ensure the minor's continued safety while residing in the care of her mother. The evidence showed the actions of PO 2 were lawful, justified and proper.

2. Misconduct/Procedure - Senior Probation Officer 1 told the juvenile complainant to get family counseling, a job, and/or go to church when she disclosed that it was unsafe to be at home.

Board Finding: Action Justified

Rationale: The complainant said she told SPO 1 her side of the problem and although he saw how bad it was, he insisted that the minor get family counseling, get a job, or go to church. The Probation Officer first assessed the home environment and determined there were no hazards that proposed risk(s) to the minor. Reportedly, in an effort to minimize the minor's unproductive time and potential for negative interactions, SPO 1 advised the minor to enroll in community service, as she had been directed on previous occasions, and suggested other positive activities, such as participating in church related activities. He also instructed her to participate in family counseling to assist in improving relationships and communication within the home. Assisting juveniles/families with community referrals is one of the many functions of a probation officer. The evidence showed the Probation Officer's conduct was lawful, justified and proper.

3. Misconduct/Discourtesy - SPO 1 would not listen to the juvenile complainant and "yelled" at her.

Board Finding: ~~Not Sustained~~ Action Justified

Rationale: The complainant said SPO 1 would not listen, yelled at her, and told her she needed family therapy. SPO 1 reportedly listened to, acknowledged, and empathized with the minor, but stated he also used a stern/authoritative tone when the minor's behavior necessitated it. The minor asked for placement outside of the home, a matter which was scheduled to be heard by the Juvenile Court. In an effort to mend and/or improve family's relationships, as well as assist the minor in completing her court-ordered requirements, SPO 1 Board a number of community resources. The investigation revealed the minor's mother, a youth program advocate, and

PO 2 were present during this interaction. The Probation Department said the others did not make any complaints regarding SPO 1's behavior/conduct, but CLERB was unable to verify this with the individual parties. This meeting was unrecorded and there is insufficient evidence to make an alternate finding.

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### **13-074**

1. Misconduct/Procedure - Deputy 2 twice refused to honor the complainant's request for a supervisor.

Board Finding: Action Justified

Rationale: The complainant said he observed a "seemingly illegal traffic stop," and "briefly requested a supervisor to avoid interfering with the deputy's investigation." Deputy 2 said the complainant obstructed and delayed him in the course of his duties, but never requested a supervisor. Deputy 3 attempted to gather information from the complainant, but he would not provide his name, citing that he was exercising his first and fifth amendment rights. A duty night shift patrol sergeant, was monitoring the radio and responded to the scene upon Deputy 2's request for additional units. There was dispute over the complainant's request for a supervisor and/or making a citizen's arrest, but ultimately a superior officer did respond to the scene and determined the actions taken by the involved deputies were lawful, justified and proper.

2. Misconduct/Procedure - Deputy 2 led the complainant to a place of danger.

Board Finding: Action Justified

Rationale: The complainant said Deputy 2 led him to an unspecified place of danger. Deputy 2 reported that the complainant interjected himself into an official police investigation as he was executing a traffic stop. The complainant began to follow Deputy 2 around and converse with the suspects that their rights were being violated. For the complainant's safety, Deputy 2 moved from the street to a sidewalk. After Deputy 2 concluded his investigation of the traffic stop, the complainant stood in front of Deputy 2's patrol vehicle and also moved in front of his moving vehicle; placing himself in harm's way. Deputy 2 explained that he had criminal and non-criminal options to address the complainant's bizarre actions and chose the best option within the spirit of the law; placing him under a 5150 hold. The complainant interfered with an official police investigation and was in violation of PC§ 148. Resist, Obstruct, Delay of Peace Officer. The evidence showed the actions taken by Deputy 2 were lawful, justified and proper.

3. False Arrest - Deputy 2 fabricated an excuse to arrest the complainant without cause.

Board Finding: Action Justified

Rationale: The complainant said Deputy 2 "fabricated a cause" for placing him under a 5150 hold. The complainant, an unrelated third party, entered a crime scene and disrupted Deputy 2's investigation. The complainant then attempted to place Deputy 2 under a citizen's arrest by standing in front of his patrol vehicle to prevent him from leaving. When deputies questioned the complainant, he was not forthcoming with information, did not obey their commands, and subsequently resisted arrest. Deputies determined the complainant was a danger to himself and took him to a hospital for evaluation. Deputy 2's actions were in compliance with WI§ 5150, In-custody 72-hour treatment and evaluation for mentally disordered person.

4. Misconduct/Procedure - Deputies 1 and/or 2 ignored the complainant's attempt to make a complaint and instead "yelled illegal orders to distract the complainant and/or inflict emotional distress".

Board Finding: Action Justified

Rationale: The complainant said he spoke with Deputy 3 and told her what he thought Deputy 2 did that was wrong, until Deputy 1 invaded his personal space and the complainant began to feel threatened. Deputy 3 spoke with the complainant who was uncooperative with the investigation. Video evidence confirmed that the complainant, wearing a bulky sweatshirt, put his hand(s) in his pocket, which was a concern for officer safety. Audio evidence corroborated that Deputy 3 told the complainant to take his hands out of his pocket and explained it made them nervous because the complainant had not been forthcoming with whether or not he had

any weapon(s) on his person. The evidence showed the alleged acts or conduct did occur and were lawful, justified and proper.

5. Excessive Force/Taser - Deputies 1 and 2 "assaulted and battered" the complainant while Deputy 3 tasered his back "for no real reason he could readily ascertain."

Board Finding: Action Justified

Rationale: The complainant said that Deputy 3 instructed the other deputies to sweep his legs, and after they all fell, Deputy 3 tasered his back. Videotape evidence corroborated the Deputy Reports, in that as they approached and placed hands on the complainant, he struggled and pulled away. During a takedown attempt, the suspect pushed back and Deputies 2 and 3 both lost their balance, with the complainant falling on top of Deputy 2. The complainant pushed himself away and violently rolled around on the ground with Deputy 2. Fearing the struggle would continue and someone would be injured, Deputy 3 deployed a taser and struck the complainant's back. This use of force had the desired effect, which allowed Deputy 2 to handcuff the complainant. California case law states that when told to stop, one must comply with peace officers in the performance of their duties; and the amount of force used was reasonable and necessary to overcome the complainant's resistance. The taser deployment was lawful, justified, and proper.

6. Misconduct/Procedure - One of the deputies threatened the complainant with electrocution if he got up, while Deputy 2 handcuffed him.

Board Finding: Action Justified

Rationale: The complainant said after he was tasered, one of the deputies threatened him by telling him that he would be "electrocuted" if he got back up. All of the involved deputies were questioned and denied that the complainant was threatened, or that anyone used the ascribed word. An audible recording was also reviewed and did not support the complainant's assertion, however, not all of the recording was distinct. The complainant was given clear instructions to comply with commands pertaining to officer safety, and when the complainant did not obey instructions, force was subsequently utilized to overcome his resistance. While there was no evidence to support the complainant's assertion, it would be appropriate for deputies to issue commands to a suspect to stay down until deputies were able to handcuff him for officer safety.

7. Criminal Conduct - Deputy 3 withheld a police report from the complainant who was representing himself in court, Propria Persona (Pro Per).

Board Finding: Action Justified

Rationale: The complainant said Deputy 3 withheld a police report from the complainant, thereby limiting the scope of his defense. The incident occurred at almost midnight on August 10th, and Deputy 3 submitted her Officer's Report on August 11th at 2:33 a.m. While the complainant is legally entitled to the crime reports, it is the responsibility of the District Attorney's Officer, per Discovery motions/rules, to provide the complainant (defendant/defense) with all related/requested reports. The evidence showed Deputy 3's actions were lawful, justified and proper.

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## **13-076**

1. Excessive Force – Deputy 1 grabbed the complainant from behind and took him to the ground in response to the complainant's use of profanity against him.

Board Finding: Action Justified

Rationale: The complainant said the deputy used "malicious and excessive force" toward him while his back was turned, then drug him across the floor and out of the module. The complainant was admittedly in violation of Inmate Rules & Regulations; prohibiting boisterous activity so as to not incite other inmates. Deputy 1 was forced to take action when the complainant refused to comply with his instructions. The complainant resisted the deputy's arm guidance, pulled away, and fell to the floor. Video evidence showed Deputy 1's conduct was in compliance with Sheriff's Policy I.89, Use of Force, and was lawful, justified and proper.

2. Misconduct/Discourtesy - Deputy 1 “taunted” the complainant by saying he was “faking,” and “you’re not fucking hurt” after force was used against the inmate.

Board Finding: Not Sustained

Rationale: The complainant initially reported that he cursed at Deputy 1, but never identified any profanity associated with the involved deputy. Later, he submitted a signed statement specifying the above stated profanity. Deputy 1 concurred that the complainant swore at him, but disputed that he used any type of expletive toward the complainant. Surveillance video did not include an audible recording and therefore there was insufficient evidence to either prove or disprove this allegation.

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### **13-099**

1. Misconduct/Procedure – Deputy 1 denied the complainant a diabetic snack when his blood sugars were low.

Board Finding: Not Sustained

Rationale: Deputy 1 refuted that he denied the complainant a diabetic snack, reporting that he was not assigned to the complainant’s floor during the shift in question, and had only come into the module to provide assistance during a lockdown. Deputy 1 was unsure if snacks had been provided before his arrival, but denied any involvement with snack distribution that evening. There is insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Discourtesy – Deputy 1 used profane language while interacting with the complainant.

Board Finding: Not Sustained

Rationale: Deputy 1 denied that he used profane language while interacting with the complainant. In the absence of witnesses or an audio recording of the complainant’s interaction with Deputy 1, there is insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Discourtesy – Deputy 1 twice spat in the complainant’s face.

Board Finding: Not Sustained

Rationale: Deputy 1 denied that he spat in the complainant’s face. Surveillance video camera angles, and their distance from the contact, did not offer indisputable evidence that Deputy 1 spat in the complainant’s face, and there was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Intimidation – Deputy 1 told the complainant he would “toss the mod” and blame it on him.

Board Finding: Not Sustained

Rationale: Deputy 1 denied that he told the complainant he would “toss the mod” and blame it on him. Deputy 1 and the complainant were alone when this statement was allegedly made, but absent an audio recording of this interaction, there is insufficient evidence to either prove or disprove the allegation.

5. Misconduct/Procedure – Deputy 1 left the complainant in the Rec Yard for several hours.

Board Finding: Action Justified

Rationale: The complainant reported that he was left in the Rec Yard for “approximately 3½ hours,” when surveillance video showed that he was actually in the Rec Yard for 1½ hours before being relocated to the multipurpose room. Deputy 1 reported that he had placed the complainant in the Rec Yard in preparation to write him up for a rule violation, when he was summoned to assist with a razor search in the complainant’s module; which he reported, took priority over the rule violation. The evidence showed that the complainant was not left in the Rec Yard for an unreasonable length of time, and the alleged act was lawful, justified and proper.

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## 14-020

1. Excessive Force – Deputy 1 “assaulted” the complainant at the County Courthouse.

Board Finding: Not Sustained

Rationale: The complainant reported that she had been assaulted by Deputy 1 in an elevator at the San Diego County Courthouse. Deputy 1 contacted the complainant when she was observed using her cell phone to video inside the courthouse. This was a violation of a court directive, and when instructed to cease filming, the complainant refused, becoming loud and disruptive to courthouse operations. Deputy 1 led the complainant into an elevator and subsequently out of the building, but denied that he “assaulted” the complainant or used any level of force during his contact with her. A witness deputy was present in the elevator where the alleged assault took place, but denied that Deputy 1 or any other deputy assaulted the complainant or used any level of force against her. The elevators of the courthouse do not have interior cameras, and the complainant failed to provide cell phone video that purportedly supported her allegation. There was insufficient evidence to either prove or disprove the allegation.

2. Excessive Force – A San Diego Police Officer “bruised” the complainant’s arm while preventing her from retrieving her video camera.

Board Finding: Summary Dismissal

Rationale: This allegation is against a member of the San Diego Police Department. Pursuant to Section 15(a), Summary Dismissal, of CLERB’s Rules and Regulations, the Review Board does not have jurisdiction over the subject matter of this allegation.

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## 14-022

1. Misconduct / Procedure – Deputy 2 questioned/interrogated the complainant without mirandizing him.

Board Finding: Summary Dismissal

Rationale: From the onset, the complainant was asked to release his medical records to corroborate evidence of alleged injury. The complainant was contacted multiple times to comply, and advised to maintain contact or the case would be closed for non-cooperation. Subsequent attempts to reach the complainant at his last known address and by telephone were unsuccessful. However, the complainant was discovered to be housed at the CA Department of Corrections (CDC) and correspondence was sent there. The complainant has not responded, nor submitted a medical release form necessary for this investigation.

2. Misconduct / Procedure – Deputy 2 extensively detained the complainant in a patrol vehicle without proper ventilation.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct / Procedure – Deputy 1 and/or 2 initially ignored the complainant’s repeated medical requests for a head injury.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Procedure – Deputy 2 refused to press charges against a person who assaulted the complainant.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Procedure – Deputy 2 “stole the complainant’s property and gave it away without consent.”

Board Finding: Summary Dismissal  
Rationale: See Rationale #1.

6. False Arrest – Deputy 2 arrested the complainant for “criminal threats, but the DA dropped the charges.”

Board Finding: Summary Dismissal  
Rationale: See Rationale #1.

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#### **14-032**

1. Misconduct/Discourtesy – Unknown “fingerprint woman officer on duty was aggressive and rude.”

Board Finding: Summary Dismissal

Rationale: The complainant failed to provide further identifying information concerning the fingerprint person. Normally, this function is performed by clerks who are non-sworn personnel over whom CLERB has no jurisdiction. The complainant also had a number of other issues regarding non-sheriff personnel, a missing aspirin case, machine malfunction(s), jailhouse conditions such as hard benches, bright lights, poorly working phones, no food/sleep, etc. CLERB lacks authority to investigate this complaint due to the following CLERB Rules & Regulations: Section 4: Authority, Jurisdiction, Duties and Responsibilities of Review Board. 4.1, Citizen Complaints, Authority and 4.2, "Misconduct" Defined.

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#### **14-035**

1. Misconduct/Procedure – Deputy 1 threatened the aggrieved with arrest in lieu of explaining options to her.

Board Finding: Action Justified

Rationale: This complaint was filed by a third party, unrelated to the incident, as permissible by CLERB Rules & Regulations, as well as the County Administrative Code. The aggrieved driver, and her passenger husband were fearful for her to sign a citation promising to appear in court, because they were temporarily in San Diego from out of state. They said that Deputy 1 explained they had two options; to either go to jail or sign the ticket, so the driver signed it under duress. Deputy 1 refuted the driver and passenger statements and said he explained to the aggrieved that she would not necessarily have to appear in court, and there were several ways to resolve the citation that would be explained after signature. Deputy 1 admittedly told the driver that if she did not sign, he would be forced to take her directly before the court per VC§ 40302, Mandatory Appearance, which is essentially an arrest. The evidence showed Deputy 1’s conduct was lawful, justified and proper.

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#### **14-051**

1. Misconduct/Discourtesy – Deputy 1 said, “Listen!! I don’t know what your fuckin problem is but I’m gonna be here for 7 days and I don’t want no shit from you! I want you to understand me, I will write your ass up and I will throw your ass in Ad-Seg. So I don’t want no shit from you!!!”

Board Finding: Not Sustained

Rationale: The complainant said Deputy 1 singled him out, yelled the above-stated profanities while posturing aggressively. Deputy 1 denied ever using any profanity while interacting with the complainant during their numerous, and different day-to-day encounters. Surveillance video does not afford audio recordings. There was insufficient evidence to corroborate or refute this verbal exchange.

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#### **14-054**

1. Discrimination/Sexual Harassment – Deputy 1 asked to see the complainant’s penis during laundry exchange.

Board Finding: Action Justified

Rationale: The complainant stated that Deputy 1 refused to provide fresh linen to the complainant without inspecting his penis; and that other inmates did not have to display their genitals. Deputy 1 did not specifically recall his interaction with the complainant, but stated he treated all inmates equally. Detentions Policy I.52, Inmate Searches, authorizes deputies to check genitalia for contraband during laundry exchange, unless it is obvious that nothing is concealed. Surveillance videotape refuted that the complainant was treated differently from other inmates or that there was any evidence of inappropriate sexual contact. The evidence showed that Deputy 1's actions were lawful, justified and proper.

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**14-058**

1. Sexual Harassment – Deputy 1 rubbed the complainant's hands in an "inappropriate manner" during medication pass.

Board Finding: Action Justified

Rationale: The complainant reported that Deputy 1 rubbed his hand in a sexual manner during medication pass. Deputy 1 acknowledged that he grasped and maneuvered the complainant's hand while assisting with the distribution of medication, but denied "rubbing" or touching him inappropriately. The deputy reported the necessity to touch and maneuver inmate's hands when checking wristbands to ensure proper distribution of medication to inmates. Surveillance video showed that Deputy 1 checked inmate's wristbands during medication pass in accordance with Department Policies and Procedures, and his actions were lawful, justified and proper.

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**14-062**

1. Misconduct/Procedure – Court deputies failed to take proper action when an out of state peace officer breached security at the courthouse on July 23, 2013.

Board Finding: Summary Dismissal

Rationale: The incident giving rise to the complaint occurred in July of 2013 and CLERB did not receive a signed statement from the complainant until August of 2014; more than one year from the date of the incident. The complainant failed to submit a signed complaint in a timely manner and CLERB lacks authority to investigate based upon CLERB Rules & Regulations 4.4, Jurisdiction.

(Please Note: Other matters concerning personnel of the State Bar, State Attorney General, Superior Court, District Attorney and/or any other entity, reside outside CLERB's jurisdiction and also will not be investigated by this office.)

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**14-080**

1. False Report – Deputy 1 provided "biased" and "fabricated" information about the complainant to the Sheriff's Parole Board.

Board Finding: Summary Dismissal

Rationale: The complainant formally withdrew his complaint against Deputy 1 on August 18, 2014. CLERB no longer has authority to investigate this complaint based upon the following CLERB Rules & Regulations: 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.

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**14-093**

1. No Allegation(s) against Sheriff deputies and/or Probation Officers.

Board Finding: Summary Dismissal

Rationale: On July 25, 2014, the complainant submitted a statement via the CLERB website. A complaint packet was sent and the complainant was asked to provide further clarifying information. On August 19, 2014, the complainant and the aggrieved submitted signed statements, but did not allege misconduct by Sheriff's Deputies or Probation Officers. Per CLERB Rules & Regulations 4.1, Jurisdiction; CLERB does not have any authority to investigate inmates, medical staff, San Diego Police Officers, Judges, the District Attorney's Office, Attorneys, "Exodus", and/or other Hospitals/Treatment Centers. The complainant was contacted and referred to the Sheriff's Department for alleged discourtesy by non-sworn personnel.

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*End of report*