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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 July 14, 2015 meeting, held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at www.sdcounty.ca.gov/clerb.

CLOSED SESSION

- a) **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).
- 14-043 / Moline (Sustained – Deputy 1)

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 (13)

ALLEGATIONS, FINDINGS & RATIONALE

14-046

1. Misconduct/Procedure – Deputy 1 denied the complainant's request to make a Citizen's Arrest.

Board Finding: Not Sustained

Rationale: The complainant reported that he asked Deputy 1 if he could make a citizen's arrest, and was told that he could not. The complainant had reported to Sheriff's Communications that an assailant grabbed him by the throat, pointed a gun at him, threatened him with violence, and ordered him to leave the property. Deputies 1 responded to the call, interviewed all parties, and determined that no crime had been committed. The complainant and other parties involved with the incident provided conflicting statements as to what initiated the confrontation near the residence of the alleged assailant. The complainant reported he observed his son's friend "flip him off," and began to follow him to find out why he was being taunted. The individual being followed stated there was a dispute over money, and that the complainant had followed him for approximately four miles before he stopped at the scene. Upon arrival at the residence of the alleged assailant, the complainant was told to leave, and he refused. The alleged assailant stated he did not know if the complainant had a weapon, and

pointed his gun at him and yelled for him to leave. The complainant retreated and called 911. Deputy 1 interviewed all parties at the scene, viewed available video surveillance, and determined that no crime had been committed. Department Procedure 6.110, Private Person Arrest, permits deputies to accept custody if they are satisfied that the private person's arrestee committed the offense and the arrest is supported by probable cause. If a private person insists on a physical arrest and the deputy determines there is no probable cause for that arrest, the deputy may complete a Case Report without the arrest element. Deputy 1 denied that the complainant requested the citizen's arrest of his alleged assailant, and the incident was documented in an Incident Report per Department Policy and Procedure. There were no independent witnesses to corroborate that a citizen's arrest was requested and denied; therefore, there was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Procedure – Deputy 1 failed to take a complete report from the complainant.

Board Finding: Unfounded

Rationale: The complainant stated that Deputy 1 did not include information about him being grabbed by the throat, and having a gun pointed at his head. The complainant reported that he attempted to obtain a copy of the report but was unsuccessful, and made the allegation without seeing the report. However, Deputy 1's Incident Report documented the complainant's statement that the alleged assailant "pointed a gun at him and choked him." The evidence showed that the alleged act did not occur.

3. Misconduct/Procedure – Deputy 1 gave preferential treatment to a suspect in an assault complaint.

Board Finding: Unfounded

Rationale: The complainant stated that his assailant was wearing a shirt with the word SWAT on it, and believed Deputy 1 offered the alleged assailant preferential treatment because he was a member of law enforcement. Deputy 1 denied that the alleged assailant was a member of law enforcement, or that he offered any preferential treatment. The investigation revealed that the alleged assailant was employed by a local healthcare facility. The evidence showed that that the alleged act or conduct did not occur.

14-047

1. Misconduct/Procedure – Deputy 2 failed to order a physical examination of the complainant's son.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 2 refused to order a physical examination of her son following reports of a child abuse allegation. Deputy 2 reported that the investigation revealed the alleged incident occurred approximately 8-10 days prior to being reported. The local hospital involved normally only authorizes and conducts medical examinations within 72 hours of an alleged molest incident, and the 8-10 days, per Deputy 2, far exceeded this time frame. Due to the extended period of time in reporting, and given that there was no disclosure of a sexual assault by the minor, Deputy 2 determined that she would not order a medical examination and begin the investigation with a Forensic Interview, as a physical examination was unlikely to provide any evidentiary evidence. A Forensic Interview was conducted in accordance with Department and local hospital protocol, and this act was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 2 failed to secure possible evidence from the complainant during the initial stages of the investigation.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 2 failed to secure possible evidence from her during the initial stages of the investigation. Deputy 2 reported that she did not collect any evidence (i.e. clothing or underwear) because the complainant provided no evidence when originally reported, nor were details provided by the complainant regarding the allegations, that would have allowed detectives to determine a crime scene or potential items of evidence. Additionally, the complainant's son was seen 8-10 days after the sexual abuse incident had allegedly occurred, and had since showered and changed his clothes. It was later reported by the complainant that she had laundered these articles of clothing; therefore they were unlikely to provide any

evidentiary evidence. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 1 refused to provide the complainant the phone number of his supervisor when requested.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 refused to provide her the phone number of his supervisor when requested, told her “Good luck” and hung the phone up on her. Deputy 1 denied this allegation, stating that he informed the complainant that his supervisor (Lieutenant) was not available at the time of her call, but could be reached at the same number at which he was contacted, and her call would be forwarded. Per Deputy 1, the complainant had previously contacted several personnel in his unit and was well aware of the contact number to his unit. Per Deputy 1, the complainant disregarded his statement that his Lieutenant was not in the office, and still demanded to speak with the Lieutenant. After speaking with the complainant for a period of approximately 10 minutes, during which time the complainant allegedly yelled at him, talked over him and repeated her complaints against Deputy 3, Deputy 1 hung up on the complainant after warning her at least three times that he had to leave. Absent an audio recording of this phone conversation, there is insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Discourtesy – Deputy 1 hung the phone up on the complainant.

Board Finding: Not Sustained

Rationale: See Rationale #3

5. Misconduct/Procedure – Deputy 3 failed to receive possible evidence offered by the complainant.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 3 refused to accept possible evidence she offered, that was supportive of her allegations. The complainant contacted Deputy 3 several days after their initial contact, stating that she had in her possession case evidence. Upon questioning, the complainant reported that all of the articles in her possession had been laundered since the alleged incident. Deputy 3 reported that he did not collect these articles because of the elapsed time from the date of the alleged incident, and given that the articles had been laundered, they would provide no evidentiary evidence. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

6. Misconduct/Discourtesy – Deputy 3 stated to the complainant, “Lady, here in the office we are laughing at you” in response to the complainant’s efforts to provide DNA evidence.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 3 stated to her, “Lady, here in the office we are laughing at you” in response to the complainant’s efforts to provide DNA evidence. Deputy 3 denied making this statement, and absent an audio recording of this phone conversation, there is insufficient evidence to either prove or disprove the allegation.

7. Misconduct/Procedure – Deputy 3 failed to reopen a case after being provided evidence and a referral from Children’s Hospital.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 3 refused to reopen a case after being provided evidence and a referral from a local hospital. Deputy 3 reported that the complainant’s case had not been closed at the time of his subsequent contact with her, and had been submitted to the District Attorney’s Office for review and criminal prosecution. Upon review by the District Attorney’s Office, they determined that there was insufficient evidence to move forward with the case. Additionally, the complainant’s case had been re-assigned to another detective, who was provided the additional information reported by the complainant, and a second Forensic Interview was conducted. Sheriff’s Department records related to this case are protected, pursuant to Penal Code Section 11167.5, Confidentiality of Reports, and were not available for CLERB’s investigation. CLERB

was therefore unable to specifically determine case opening and closure dates, as well as case dispositions. The evidence available showed that the alleged act did occur, but was lawful, justified and proper.

14-053

1. Misconduct/Procedure – Deputy 1 classified the aggrieved into general population where he was assaulted.

Board Finding: Action Justified

Rationale: The complainant stated that Classification Deputies failed to consider the aggrieved's charges and history prior to placement in general population housing. The aggrieved had been arrested with charges of violation of Penal Code §§ 236, False Imprisonment, and 368(b) and 368(c), Elder Abuse: Dependent Adult Abuse, and 243(a), Battery on a Person. Upon arrival at San Diego Central Jail (SDCJ), the aggrieved was placed in a Safety Cell on the recommendation of mental health officials. In accordance with Detentions Policies and Procedures J.1, Safety Cells: Definitions and Use, the aggrieved remained in the safety cell until he was released by medical officials to complete the booking process, and assigned to main line housing population. Deputy 1 stated that the aggrieved's charges and history were considered when determining the appropriate housing assignment, as required by Detentions Policies and Procedures R.1, Inmate Classification, and R.3, Inmate Classification Code – Descriptor Definitions. There were no medical conditions or psychiatric holds that required special housing consideration, nor were there any documented hazards and instructions, administrative alerts or housing modifiers precluding mainline housing. Additionally, the aggrieved did not express any concerns for his safety while incarcerated. The evidence showed that the aggrieved's classification was lawful, justified and proper.

2. Misconduct/Procedure – The Sheriff's Department neglected to obtain a psychiatric evaluation in a timely manner for the aggrieved while incarcerated.

Board Finding: Summary Dismissal

Rationale: The complainant stated that the Sheriff's Department did not obtain a timely psychiatric evaluation after the aggrieved was placed into custody. Medical records of the aggrieved were reviewed in their entirety. The aggrieved was placed into a safety cell upon receipt at SDCJ, which required a mental health evaluation within 24 hours of placement, to determine the need for mental health services, and/or the suitability for retention in the safety cell. The aggrieved was evaluated by a certified and licensed psychiatrist approximately seven hours after placement, and was cleared for transfer to main line housing. The aggrieved was also evaluated by a certified and licensed psychiatrist two days after his release to main line housing, and then again one week later. Medical staff and care reside outside CLERB's jurisdiction, and this matter was deferred to the Sheriff's Department upon notification of this complaint.

14-059

1. Illegal Search or Seizure – Deputy 2 detained the aggrieved juveniles in response to an anonymous tip.

Board Finding: Action Justified

Rationale: The complainant reported that Deputy 2 detained the aggrieved juveniles in response to an anonymous tip. Deputy 2 reported that he detained the complainant and the aggrieved juveniles after receiving a report that the juveniles had just attempted to sell drugs to other juveniles in a local park. Case law permits deputies to detain individuals when they have reasonable suspicion that criminal activity has occurred. Deputy 2 was approached about an attempted drug transaction, and had reasonable suspicion to believe that criminal activity may have been afoot, and the person detained were connected with that possible criminal activity because two of the juveniles detained matched the descriptions provided. The evidence showed the alleged act did occur, but was lawful, justified and proper.

2. Excessive Force – Deputy 2 choked the aggrieved when he asked why he was being detained.

Board Finding: Not Sustained

Rationale: The complainant reported that Deputy 2 choked an aggrieved juvenile. Deputy 2 reported that the aggrieved juvenile lashed out at him when contacted, leading the deputy to believe that the juvenile would resist detention. Deputy 2 denied that he used a choke hold, and further reported that he used verbal commands to warn the aggrieved that force would be used if necessary, and positioned himself behind the aggrieved in preparation for using a department approved control hold. The juvenile reportedly said he would not resist the deputy, resulting in Deputy 2's use of department-approved empty hand control. The aggrieved juveniles did not cooperate with the investigation, and there was insufficient evidence to prove or disprove the amount of force used.

3. Illegal Search or Seizure – Deputy 1 detained the complainant and the aggrieved for recording a contact.

Board Finding: Not Sustained

Rationale: The complainant stated that Deputy 1 detained him and another aggrieved juvenile because they were recording the contact. Deputy 1 reported that three or four juveniles were detained, because he did not know if they were involved in the incident under investigation. In audio evidence provided by the complainant, an unidentified deputy can be heard telling the juveniles that an investigation was underway and they need to refrain from interfering. Unidentified juveniles argued with deputies, and the unidentified deputy repeatedly advised the juveniles to sit down and not interfere or they may be subject to arrest. Deputy 1 did not recall observing any juvenile recording the incident, nor did he recall telling any juveniles to stop recording. The audio recording provided by the complainant did not reveal any statements by the aggrieved or deputies pertaining to the recording of the contact. The aggrieved juveniles did not cooperate with the investigation, and there was insufficient evidence to prove or disprove whether the actions of the juveniles warranted detention.

4. Misconduct/Procedure – Deputy 1 handcuffed the aggrieved because he “didn’t sit down fast enough.”

Board Finding: Action Justified

Rationale: The complainant reported that Deputy 1 handcuffed an aggrieved juvenile because he did not sit down fast enough. An audio recording provided by the complainant captured part of the interaction between deputies and the juveniles, including approximately 1.5 minutes where deputies can be heard telling the juveniles to sit down. At one point an unidentified juvenile stated, “I said I was going to sit down, and you put me in handcuffs,” to which an unidentified deputy responded, “Well, you didn’t sit down fast enough. You got to sit down.” Deputy 1 stated he did handcuff juveniles during the contact, for failure to follow instructions. Deputy 1 further stated it is an officer safety issue when possible suspect(s) are standing behind or near law enforcement officers/deputies while an investigation is being conducted. The evidence showed that an aggrieved was handcuffed, but only after failing to comply with deputy orders, and the act was lawful, justified and proper.

5. False Arrest – Deputy 2 arrested two aggrieved juveniles.

Board Finding: Action Justified

Rationale: The complainant reported that two aggrieved juveniles were arrested by Deputy 2. Deputy 2 arrested one aggrieved juvenile for violation of Penal Code §§ 148(a)(1), Obstructing / Resisting a Peace Officer, and 308(b) Possession of Smoking Paraphernalia. The second aggrieved juvenile was arrested for violation of Penal Code § 148(a)(1), Obstruct/Resist a Peace Officer because he refused to identify himself or his parents, preventing his release in the field. The aggrieved were arrested, transported to the Sheriff’s Station, and turned over to family members. The arrests were legal, justified and proper.

14-060

1. Excessive Force – Deputy 1 grabbed the complainant by his shirt, constricting his breathing and creating a “noose type effect” on the complainant’s neck.

Board Finding: Not Sustained

Rationale: The complainant reported that Deputy 1 grabbed him by his shirt, constricting his breathing and creating a “noose type effect” on his neck, while helping to move him from his wheelchair to another seat. Deputy 1 reported that he contacted the complainant to inform him that his medical approval for a wheel chair had expired, and that he needed to move from his wheelchair into another chair located nearby. Deputy 1 stated that he had taken “hold of his (the complainant’s) shirt” in an effort to assist the complainant from his wheelchair to another chair, when the complainant purposely lunged forward toward the chair, falling down onto the floor. Deputy 1 denied using unreasonable force on the complainant when lifting him, and denied throwing the complainant onto the ground. An inmate witness stated that he observed the entire incident and reported that he believed the complainant was “faking it.” Surveillance video of this incident was not available, leaving insufficient evidence to either prove or disprove the allegation.

2. Excessive Force – Deputy 1 lifted the complainant out of his wheelchair, and physically “threw” him onto the ground.

Board Finding: Not Sustained

Rationale: See Rationale #1.

3. Misconduct/Procedure – Deputies 2 and 3 failed to respond appropriately to the complainant’s report of being in desperate need of medical attention.

Board Finding: Unfounded

Rationale: The complainant alleged that Deputies 2 and 3 failed to respond appropriately when he informed them that he was in desperate need of medical attention. Deputy 3 reported, that upon being informed by the complainant of his need for medical attention, he immediately escorted the complainant to medical, where he was evaluated, treated and scheduled to see a doctor later that day. The complainant’s treatment in medical was documented in medical records, as well as Deputy 3’s Incident Report. Per Detentions Policy M.5, Medical Emergencies, staff is directed to take appropriate action in recognizing, reporting or responding to an inmate’s emergency medical needs, with efficiency and speed. Deputy 3 acted within the second hour of his shift, demonstrating an appropriate response which possibly circumvented Deputy 2’s need to act. Deputy 2 had no recollection of this incident. Jail records provided evidence that the complainant was brought by detentions staff to medical in a timely manner, clearly documenting that the alleged act did not occur.

4. Excessive Force – Deputy 2 “slammed” the complainant onto a medical transport backboard and tightly handcuffed him to the board.

Board Finding: Unfounded

Rationale: The complainant alleged that Deputy 2 “slammed” him onto a medical transport backboard and tightly handcuffed him to the board, before transporting him to medical. Deputy 2 did not recall this incident, however surveillance video documented that several deputies were involved in lifting the complainant from the floor, and carefully placing him onto a gurney. Video clearly showed that the complainant was not “slammed” onto a gurney, nor did it show that handcuffs were aggressively placed on the complainant. The video evidence showed that the alleged act or conduct did not occur.

5. Misconduct/Procedure – Deputies 2 and 3 conducted a search of the complainant’s cell, resulting in missing property.

Board Finding: Not Sustained

Rationale: The complainant alleged that personal property was missing following Deputies 2 and 3’s search of his cell. Deputies 2 and 3 did not recall searching the complainant’s cell in particular, or conducting a regularly scheduled health and hygiene inspection of the complainant’s cell, but denied that they would ever take property from an inmate’s cell unless it was contraband. In that instance, Deputy 2 stated that he would inform the inmate of the confiscated contraband, place the item into their property bag with the appropriate "Incoming Inmate Property" form, and provide the inmate a copy of the form after the item was placed into property. Detentions Policy Q.63, Lost Inmate Money or Property, requires that the Watch Commander is notified whenever an inmate claims to be missing personal property. The complainant reported that he spoke with

Deputy 4 regarding missing property, but did not recall to whom he spoke or the date and time of this conversation, rendering it virtually impossible to identify and name the deputy responsible to report this incident to the Watch Commander. Therefore, there was insufficient evidence to either prove or disprove the allegation.

6. Misconduct/Procedure – Deputy 4 failed to respond to the complainant’s grievance regarding his missing property.

Board Finding: Not Sustained

Rationale: The complainant reported that he filed a grievance regarding his missing property, but never received a response. The undersigned did not receive from sheriff’s records a copy of a grievance related to this matter, nor did the complainant provide a copy receipt of this grievance. Inasmuch as there is no documentation of this grievance on record or available, there is insufficient evidence to either prove or disprove the allegation.

14-069

1. Illegal Search & Seizure –PO 1 and other members of the probation department “unlawfully entered” and searched the complainant’s home.

Board Finding: Action Justified

Rationale: The complainant reported that PO 1 and other members of the probation department, “unlawfully entered” and searched her home while neither she nor a probationer residing in her home, were present. The probationer had been released in October 2012, on Post Release Community Supervision (PRCS), pursuant to Penal Code Section 3450, Post Release Community Supervision Act of 2011, and was subject to community supervision to be provided by the San Diego County Probation Department. One probationary condition required that the probationer submit his person, vehicle, residence, property, personal effects, computers and recordable media to search, at any time with or without a warrant, and with or without reasonable cause, when required by his Probation Officer or law enforcement officers. The probationer had previously reported to PO 1 as required, a change of address, listing the complainant’s address as his official address of record. Case law allows for the entry and search of a probationer’s home even if no one is present, and where there is a joint tenant or roommate involved, all shared areas of the residence are permitted to be searched. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

14-076

1. False Arrest – Deputy 2 arrested the complainant.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 2 arrested him without cause. Deputies 1 and 2 responded to a family disturbance involving the complainant, his mother and other family members. While taking a statement from the complainant, deputies immediately noticed the smell of alcohol emitting from the complainant’s breath and person. The complainant also had difficulty standing upright, leaning against their patrol vehicle for support, and his speech was slurred. When deputies began to question the complainant about details of the family dispute, he became angry and aggressively advanced toward Deputy 1 with his fists clenched. Fearing that the complainant would assault him, Deputy 1 grabbed control of the complainant’ arms and secured them behind his back. Deputy 2 placed the complainant under arrest for PC §§ 647(f) PC, Drunk in Public and 148(a) (1), Resisting a Peace Officer. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

2. Excessive Force – Deputy 1 placed handcuffs on the complainant too tightly.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 placed handcuffs on his wrists too tightly, causing them to be

numb for several minutes after being removed. Deputy 1 denied placing the handcuffs on too tightly, stating that after placement, he checked the spacing by placing a finger between the wrist bone and the handcuff to ensure there was enough space to allow for circulation. He then reported double locking the handcuffs to ensure they did not tighten down when the complainant was sitting in the patrol vehicle. Deputy 1 further stated that when the complainant complained of tight handcuffs, he checked numerous times to ensure that the cuffs were not too tight on the complainant's wrists, suggesting that the complainant sit sideways in the patrol vehicle to take some of the pressure off of his wrists. The investigation could not determine whether or not handcuffs were placed too tightly on the complainant's wrists, as there was insufficient evidence to either prove or disprove the allegation.

14-077

1. Misconduct/Procedure – Deputy 1 did not write a traffic report following a collision.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 failed to write a traffic report following a collision between her vehicle and the driver of an EDCO garbage truck. The complainant's vehicle was struck on its side by the garbage truck, as the complainant prepared to make a left hand turn at an intersection. The complainant had just crossed into the opposite lane to pass the truck on its left side, while the truck was stopped at a stop sign. This maneuver was in violation of Vehicle Code Section 21750, Overtake and Pass to Left, which requires that when a vehicle is overtaking another vehicle proceeding in the same direction, the driver must pass to the left at a safe distance, without interfering with the safe operation of the overtaken vehicle. When Deputy 1 arrived on scene to investigate the accident, the complainant acknowledged that she was at fault in causing the collision. Deputy 1 stated that he did not write a traffic report at that time because it was a non-injury, civil collision that was considered an information exchange only. At the time of the collision, neither party requested a report, and per Traffic Policy 3.1, Collision Documentation, there was no requirement for Deputy 1 to write a report. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 failed to take a statement from an eye witness on scene.

Board Finding: Unfounded

Rationale: The complainant alleged that Deputy 1 “dismissed an eye witness without even hearing what the witness had to say,” when the witness allegedly approached Deputy 1 at the scene of an accident, introduced himself and offered to make a statement regarding the observed collision. Deputy 1 denied that he was approached at the scene by the complainant's witness, and spoke to him for the first time during an interview conducted several weeks later. In another recorded interview conducted by Deputy 1, the complainant is heard acknowledging that her witness did not contact Deputy 1 at the scene, and only approached her after Deputy 1 had left the scene. Additionally, this witness was contacted and questioned by the CLERB investigator, and denied that he approached Deputy 1 at the scene, and only spoke to the deputy several weeks later when he was contacted at his home. The evidence, including information provided by the complainant, showed that the alleged act did not occur.

3. Misconduct/Intimidation – Deputy 1 attempted to “intimidate” the complainant during an unannounced visit to her home, accusing her of lying to an insurance claim representative.

Board Finding: Unfounded

Rationale: The complainant alleged that Deputy 1 attempted to “intimidate” her during an unannounced visit to her home, and accused her of lying to an insurance claim representative. Deputy 1 contacted the complainant at her home after an involved insurance company requested a traffic collision report. Audio evidence revealed that Deputy 1 was courteous during this contact with the complainant, and conducted himself in an appropriate and professional manner throughout the entire interview. Deputy 1 did not use any language or tone that was remotely “intimidating,” and he did not accuse the complainant of lying to her insurance company. He only stated that the complainant provided a different and conflicting statement to her insurance company than was provided to him at the scene. The recorded evidence clearly showed that the alleged conduct did not occur.

4. Misconduct/Intimidation – Deputy 1 attempted to “intimidate” the complainant into admitting that she had caused an accident, during an unannounced visit to her home.

Board Finding: Unfounded

Rationale: The complainant alleged that Deputy 1 attempted to “intimidate” her during an unannounced visit to her home into admitting that she had caused an accident. The complainant had already provided Deputy 1 a statement while on scene, acknowledging her fault in causing a collision. She reiterated her admission in a subsequent interview with Deputy 1, and at that time acknowledged that she had changed her statement when she reported the accident to her insurance company. Audio recorded evidence revealed that Deputy 1 was appropriate and professional during this contact and did not, through language or tone, attempt to “intimidate” the complainant into any such admissions. The recorded evidence clearly showed that the alleged conduct did not occur.

5. False Reporting – Deputy 1 submitted a form to the Department of Motor Vehicles with “untrue and perjured observations.”

Board Finding: Unfounded

Rationale: The complainant alleged that Deputy 1 submitted a form to the Department of Motor Vehicles with “untrue and perjured observations.” Deputy 1 reported that he submitted a request for re-examination of driver form to the DMV, as result of his investigation of a collision caused by the complainant, and because of statements made by the complainant that seem to indicate a lack of understanding of the basic safety rules of the road. The reported information to the DMV provided by Deputy 1 was initially attested to by the complainant at the scene, and later corroborated by an eye witness. The evidence showed that the alleged act did not occur.

14-081

1. Misconduct / Procedure – Deputy 2 placed the complainant into a holding cell in full restraints.

Board Finding: Summary Dismissal

Rationale: The complainant stated that sometime in 2012, Deputy 2 placed him into a holding cell without removing full restraints. The complainant was advised of CLERB Rules and Regulations 4.4, which require the complainant to submit a written statement, under penalty of perjury, attesting that his incarceration, or was physically/mentally incapacitation, prevented filing the complaint within one year from the incident giving rise to the complaint. The complainant did not cooperate with the investigation, therefore Review Board lacks jurisdiction.

2. Excessive Force – Deputies 1 and 2 dragged the complainant from a holding cell and slammed his face into the ground, causing injury.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

14-083

1. Misconduct/Intimidation – Deputy 1 told the aggrieved to stop complaining or he would be transferred from Protective Custody to General Population.

Board Finding: Summary Dismissal

Rationale: The complainant and the aggrieved stated that Deputy 1 told the aggrieved that he would be transferred from Protective Custody to the General Population housing if he did not stop submitting complainants against the Sheriff’s Department. The complainant and the aggrieved have failed to provide identification of the deputies allegedly making these statements. Without sufficient information to conduct an investigation the allegation lacks merit, and this allegation is submitted to the board for summary dismissal.

2. Misconduct/Procedure – Deputy 1 failed to produce the aggrieved to appear telephonically before the court.

Board Finding: Sustained

Rationale: The complainant reported that Deputy 1 told the aggrieved there was no requirement to comply with court ordered appearances on civil matters. Detentions Policies and Procedures F.3, Commitments and Court Orders, states that every effort will be made to comply with valid court orders, provided they are received in a timely manner and do not impact the security of the inmate, facility or staff. Two valid Superior Court Minute Orders were sent to the aggrieved and to the Sheriff's Department, ordering the aggrieved to be made available for a telephonic appearance before the Court. The Minute Orders were issued well in advance of the scheduled date; however, the aggrieved was not made available to appear. The evidence supported the allegation and the conduct was not justified.

14-089

1. Misconduct/Discourtesy – PO 1 yelled at the complainant during their phone conversation.

Board Finding: Not Sustained

Rationale: The complainant alleged that PO 1 yelled at her, “mocked” her and “laughed” at her during a phone conversation regarding the complainant’s probationer son. PO 1 denied these allegations, stating that it was the complainant who yelled at her, and became immediately irate during their conversation, when informed about a court’s error in a minute order. PO 1 also denied that she “mocked” or “laughed” at the complainant during this conversation, and stated that at no time did she speak condescendingly to the complainant. A subsequent meeting between the complainant, PO1 and probation supervisory staff, proffered that the complainant’s perception of the conversation could have impacted how she interpreted many of PO 1’s statements versus PO 1 engaging in discourteous behavior. That withstanding, absent an audio recording of this telephone conversation, there was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Discourtesy- PO 1 “Mocked” and “Laughed” at the complainant during their phone conversation.

Board Finding: Not Sustained

Rationale: See Rationale #1.

3. Misconduct/Discourtesy- PO 1 yelled at the probationer, “Aren’t you a smart ass,” or used words to that effect.

Board Finding: Unfounded

Rationale: The complainant, relaying information from the probationer, alleged that PO 1 stated to him, “Aren’t you a smart ass,” or used words to that effect. PO 1 denied that she used profanity toward the probationer, or referred to him as a “smart ass.” PO 1 had just arrested the probationer on several probation violations, when he began to discuss the limitations of the charges against him. The probationer was later interviewed by probation supervisory staff and reported that PO 1 made a reference to him being either “so smart” or “so educated,” but never used any profanities toward him. This statement was corroborated by the probationer in a telephonic interview with CLERB staff, in which he reiterated that PO 1 never used profanities toward him during any of their contacts, and only stated “Aren’t you being smart” in response to a statement he made. Additionally, several probation staff members present on scene denied hearing this alleged statement. The evidence, including first hand statements by the probationer, showed that the alleged conduct did not occur.

4. Misconduct/Discourtesy- PO 1 stated to the probationer, “Have fun in jail you little shit,” or used words to that effect.

Board Finding: Unfounded

Rationale: The complainant alleged that PO 1 stated to the probationer, “Have fun in jail you little shit,” or used words to that effect. PO 1 denied making this statement, reporting that at no point in her interactions with the probationer did she use profanity or tell the probationer to "have fun in jail," or use words to that effect. All

officers present and having contact with the probationer, denied that PO 1 used profanity toward the probationer or state to him, "have fun in jail" or use words to that effect. In a statement to the CLERB investigator, the probationer reported that he did not recall anyone making the statement, "Have fun in jail" but vaguely recalled someone stating "Have fun," but he did not recall with certainty who made this statement. The evidence, including first hand statements by the probationer, showed that the alleged conduct did not occur.

5. Excessive Force – PO 2 “jerked” the probationer’s arms while arresting him.

Board Finding: Not Sustained

Rationale: The complainant reported that the probationer informed her, that PO 2 “jerked” his arms while arresting him. PO 2 denied that he “jerked” the probationer’s arm, stating that the probationer was calm and compliant while being handcuffed and arrested, precluding the need for the use of force. Probation staff on scene assisting PO 2, denied that any officer used excessive force during the cuffing and arrest process, nor did the probationer report any physical discomfort or injury as a result of this process. The probationer reported to CLERB staff however, that excessive force was used during his arrest, as his arms were allegedly lifted up by PO 2, as he was being walked away. Absent a video recording of this incident, there was insufficient evidence to either prove or disprove the allegation.

14-095

1. False Arrest – Deputy 2 issued the complainant a citation for passing a stopped school bus.

Board Finding: Action Justified

Rationale: The complainant stated that Deputy 2 issued her a citation for passing a stopped schoolbus, when her view of the schoolbus had been obstructed. The complainant observed approximately six vehicles stopped in the number 2 lane, and followed a van into the number 1 lane, thereby passing the stopped schoolbus. The school bus was stopped for the loading/unloading of schoolchildren, and had displayed its flashing red light. Deputy 2 observed the complainant and the van pass the school bus, and initiated a traffic stop. Both the complainant and the van driver were cited for violation of California Vehicle Code § 22454, Schoolbus: Meeting and Passing. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 ordered the complainant to sign a citation without providing any explanation; then incorrectly said she refused to sign, when she asked to speak to the arresting officer.

Board Finding: Not Sustained

Rationale: The complainant said she was ordered to sign the citation without explanation, and then misquoted after she requested to speak with a supervisor. Traffic Enforcement Deputy 1 had a vague recollection of the traffic stop because of the number of traffic stops made in the intervening time since the September 2013 incident. Absent audio recordings of the encounter, there was insufficient evidence to prove or disprove the allegation.

3. Misconduct/Intimidation – Deputy 2 threatened the complainant with arrest, vehicle impoundment, and placing her kids into protective custody, when she questioned the violation.

Board Finding: Not Sustained

Rationale: The complainant stated that Deputy 2 yelled at her, threatening arrest, vehicle impoundment, and placing her kids into protective custody. Deputy 2 stated that the complainant contested the citation because her view was obstructed, and stated that she should not have been issued a citation. Deputy 2 denied that he threatened the complainant; however, he reported that he did explain the reason for the citation, and that if she refused to sign the citation, she would be subject to arrest for violation of California Vehicle Code § 40302, Mandatory Appearance. The arrest of the complainant could have resulted in vehicle impound, and release of her children into the custody of another adult. Deputy 2 stated that he also explained to the complainant, that signing the citation was not an admission of guilt, but a promise to appear in traffic court where the matter of her obstructed view could be addressed. Deputy 2 and the complainant offered conflicting accounts regarding

the attitude and tone of their communications, and absent an audio recording of the encounter or independent witnesses, there was insufficient evidence to prove or disprove the allegation.

14-117

1. Misconduct/Procedure – Probation Officers 1, 2, and 3 would not allow the complainant’s son to relocate and transfer his Post Release Community Supervision to Kern County.

Board Finding: Action Justified

Rationale: The complainant stated that Probation Officers 1, 2, and 3 refused to authorize a jurisdictional transfer for the aggrieved’s Post Release Community Supervision (PRCS). In March 2014, the aggrieved was released by the California Department of Corrections and Rehabilitation, transported to San Diego County for supervision under Probation, and executed a PRCS Agreement. California Penal Code § 3460, Post Release Community Supervision; Change in Jurisdiction, permits the change in jurisdiction; however, the statute states that, “No supervising agency shall be required to transfer jurisdiction to another county unless the person demonstrates an ability to establish permanent residency within another county without violating the terms and conditions of post release supervision.” Over a period of seven months, the aggrieved did not maintain substantial compliance with the terms of his agreement. Probation Officers 1, 2, and 3 documented a series of violations, including: the failure to complete a residential treatment program, leaving the county without permission, use/possession of controlled substances, failure to report changes in his address, failure to report release from confinement, and failure to provide law enforcement with his identification. As a result of these violations, the requests for jurisdictional transfer were denied. The evidence showed the alleged act or conduct did occur, but was lawful, justified and proper.

End of report