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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 March 8, 2016 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:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (8)

ALLEGATIONS, FINDINGS & RATIONALE

14-129

POLICY RECOMMENDATIONS:

1. It is recommended that the San Diego Sheriff's Department revises Sheriff's Policy 6.2, Juvenile Procedures, to align more accurately with WI§ 625, Temporary custody by peace officer; advisement of constitutional rights, by removing language from the policy that allows advisements to be provided "*prior to being released from custody,*" and incorrectly requires advisements only if "*the juvenile is to be questioned about a specific offense.*"
2. It is also recommended that Sheriff's Policy 6.2, relative to WI§ 627, Parent or guardian notification of custody; minor's right to telephone calls, be further revised by removing from the policy the added stipulation "*and transports that juvenile to a place of confinement, such as a substation, station or Juvenile Hall,*" as this additional language inaccurately reflects what is stated in the code relative to parent notification, and the minor's rights to telephone calls.

1. Misconduct/Procedure – Deputy 1 failed to arrest the complainant’s ex-wife for violating a court order.

Board Finding: Sustained

Rationale: The complainant alleged that Deputy 1 failed to arrest his ex-wife for violating a temporary restraining order (TRO). The complainant contacted 911 to report that his ex-wife had violated a TRO when she entered his home during a scheduled custody exchange, argued with his girlfriend, and later smashed her fist against his car window. The complainant showed Deputy 1 the TRO, which in part stipulated that all child custody exchanges were required to be conducted in a peaceful manner. Deputy 1, however, declined to arrest the restrained party, despite the complainant’s corroborated statements about the restrained party’s non-peaceful behavior. PC§ 836, Peace Officer Arrests, requires that when a peace officer responds to a call alleging a violation of a domestic violence protective or restraining order, and the peace officer has probable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer shall make a lawful arrest of the person. Deputy 1 failed to execute his lawful duties to arrest the restrained party, and this act was not justified.

2. Misconduct/Procedure – Deputy 2 failed to arrest the complainant’s ex-wife for violating a court order.

Board Finding: Sustained

Rationale: The complainant alleged that Deputy 2 failed to arrest his ex-wife for violating a temporary restraining order (TRO). The complainant contacted 911 to report that his ex-wife had violated a TRO when she entered his home during a scheduled custody exchange, argued with his girlfriend, and later smashed her fist against his car window. The complainant showed Deputy 1 the TRO, which in part stipulated that all child custody exchanges were required to be conducted in a peaceful manner. Deputy 1, however, declined to arrest the restrained party, despite the complainant’s corroborated statements about the restrained party’s non-peaceful behavior. PC§ 836, Peace Officer Arrests, requires that when a peace officer responds to a call alleging a violation of a domestic violence protective or restraining order, and the peace officer has probable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer shall make a lawful arrest of the person. Deputy 2 did not arrest the restrained party, deferring to Deputy 1’s investigation. This, however, does not absolve him of his duties and responsibilities under the law. Sheriff’s Policy 2.3, Violation of Rules, states: “Employees shall not commit or omit any acts which constitute a violation of any of the rules, regulations, directives, orders or policies of this Department, whether stated in these Rules of Conduct or elsewhere. Employees shall be 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.” In this regard, Deputy 2 was equally culpable as Deputy 1 for his failure to execute his lawful duties to arrest the restrained party, and this act was not justified.

3. Misconduct/Procedure – Deputy 1 failed to write a report when the complainant reported his ex-wife’s violation of a court order.

Board Finding: Sustained

Rationale: The complainant alleged that Deputy 1 failed to write a report when he reported his ex-wife’s violation of a temporary restraining order. Deputies 1 and 2 were dispatched to a PC§ 415, Disturbing the Peace, call and were informed by the complainant that his ex-wife had violated a temporary restraining order when she acted non-peacefully during a custody exchange. PC§ 13730, Recording Domestic Violence Calls for Assistance, requires that all domestic violence-related calls for assistance shall be supported with a written incident report. Sheriff’s Patrol Manual Policy 33, Domestic Violence - Reporting Procedures, further requires that when an incident has been evaluated, and the deputy has reason to believe that a crime has occurred, a domestic violence Crime Report must be prepared. The deputy must also prepare a report if he concludes that a crime has not occurred, but the incident was associated with domestic violence. Deputy 1 failed to document a domestic violence-related call for service. The evidence supports the allegation, and his actions were not justified.

4. Misconduct/Procedure – Deputy 2 failed to write a report when the complainant reported his ex-wife’s violation of a court order.

Board Finding: Sustained

Rationale: The complainant alleged that Deputy 2 failed to write a report when he reported to deputies his ex-wife’s violation of a temporary restraining order. Deputies 1 and 2 were dispatched to a PC§ 415, Disturbing the Peace, call and were informed by the complainant that his ex-wife had violated a temporary restraining order when she acted non-peacefully during a custody exchange. PC§ 13730, Recording Domestic Violence Calls for Assistance, requires that all domestic violence-related calls for assistance shall be supported with a written incident report. Sheriff’s Patrol Manual Policy 33, Domestic Violence - Reporting Procedures, further requires that when an incident has been evaluated, and the deputy has reason to believe that a crime has occurred, a domestic violence Crime Report must be prepared. The deputy must also prepare a report if he concludes that a crime has not occurred, but the incident was associated with domestic violence. Deputy 2 failed to document a domestic violence-related call for service. The evidence supports the allegation, and his actions were not justified.

15-032

1. False Arrest – Deputy 1 arrested the aggrieved when he attempted to visit the complainant in jail.

Board Finding: Action Justified

Rationale: The complainant reported that the aggrieved was arrested when he attempted to visit him in jail. The aggrieved did not submit a written statement, signed under penalty of perjury as required by CLERB rules, to attest to the facts of his arrest. Based upon Sheriff’s documents, the aggrieved was a felon prohibited from detention facility visits, as outlined in Detentions Policy & Procedure I.71, Persons Authorized to Enter Sheriff’s Detention Facilities. The aggrieved submitted an electronic request to visit the complainant and the online process provided explicit directions for convicted felons that approval was required before entering a jail facility; the aggrieved failed to submit the required information and/or obtain authorization. Deputy 1 contacted the aggrieved and directed his attention to displayed signage that prohibits visitation, until and unless a Watch Commander grants approval. Deputy 1 issued the aggrieved a warning. Two days later, the aggrieved once again attempted a visit without obtaining the necessary approval and was arrested for violation of PC§ 4571, Ex-Convict in Custodial Facility. The evidence showed that due to the aggrieved’s prior prison commits and his failure to obtain facility commander approval, his arrest was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 confiscated a vehicle “pink slip” from the aggrieved, but failed to document it in his property.

Board Finding: Action Justified

Rationale: A witness reported that the aggrieved was arrested and the Sheriff’s department held onto the pink slip for his vehicle. The aggrieved did not submit a written statement, signed under penalty of perjury as required by CLERB rules, to attest to the facts of this allegation. Sheriff’s Case #14131553, Follow-Up Report, by Deputy 1 verified that a CA Certificate of Title was seized and placed into evidence at the San Diego Central Jail. Search & Seizure subsequent to an arrest, authorized a search of the aggrieved’s wallet. Deputy 1 reportedly discovered and seized the item in question to conduct an investigation. A law enforcement database confirmed the vehicle title belonged to an unrelated third party. The aggrieved said he purchased the vehicle “from the streets,” and confirmed that he did not transfer the title within 10 days of purchase as required by the Department of Motor Vehicles. The evidence showed that the vehicle title seizure and placement into evidence was lawful, justified and proper.

15-037

1. Misconduct/Procedure – Deputy 1 denied the complainant’s application for participation in the County Parole and Alternative Custody “CPAC” program.

Board Finding: Summary Dismissal

Rationale: The complainant alleged that Deputy 1 denied his request for participation in the County Parole and Alternative Custody “CPAC” program. CPAC staff assess and determine the eligibility of inmates for placement in the County’s Home Detention Electronic Monitoring Program. There is an extensive eligibility criteria used to screen inmates for program participation. According to the complainant, CPAC staff contacted him and informed him that his application for participation in the CPAC program had been denied, due to his arrest history, and other significant charges. Deputy 1 and CPAC staff acted within their authority in determining program eligibility for the complainant. Efforts were made to contact the complainant to seek information supportive of his allegation; but to no avail. The complainant’s assertion that he was denied participation in the CPAC program, demonstrates no prima facie showing of misconduct by Deputy 1, or any other sworn staff. Such complaints are referred to the Review Board for Summary Dismissal, pursuant to CLERB Rules & Regulations: Section 9: Investigation of Complaints; Subsection 9.2: Screening of Complaints.

15-044

1. Misconduct/Procedure – PO 1 failed to serve court documents to a probationer.

Board Finding: Not Sustained

Rationale: The complainant stated that PO 1 had been uncooperative, and failed to serve court documents to a probationer. The complainant has unsuccessfully sought restitution for damages through San Diego small claims court following a 2010 assault. Probation Department records showed that the complainant was made aware of, but did not pursue, restitution through the State Victim's Compensation program, which is operated under the auspices of the District Attorney’s Office. Court records showed the parties stipulated that the Restitution Review would be taken off calendar, and there was no further documentation pertaining to restitution. A Probation Department information source reported that since the complainant opted to pursue restitution via small claims court prior to the probationer’s sentencing, the collection was considered a civil matter, and not under the purview of a probation officer. PO 1 reported that the complainant delivered a writ of execution to the Hall of Justice, and subsequently received a copy of the same writ by mail, which requested delivery of the documents to a probationer. PO 1 stated that the documents were delivered to the probationer; however, there was no documentation to demonstrate that the Writ of Execution was served. There was insufficient evidence to prove or disprove the allegation.

2. Misconduct/Procedure – PO 1 failed to provide the complainant with information required to serve court documents to his assailant.

Board Finding: Action Justified

Rationale: The complainant stated that PO 1 refused to provide contact information of a probationer so that court documents could be served. PO 1 reported that the complainant did contact her for the requested information; however, Probation Department Policies and Procedures 1410, Confidentiality and Probation Cases, states that, “Case information is confidential and shall be shared only with those who have the right and the need to know. Information possessed by the Probation Department shall be disseminated only in accordance with state statutes, case law, court directives, concerns for public safety and departmental policies and procedures.” The act did occur, but was lawful, justified and proper.

15-059

1. Misconduct/Discourtesy – Deputy 1 stated to the complainant, “I will beat your toothless bastard ass,” or words to that effect.

Board Finding: Not Sustained

Rationale: The complainant stated that he pulled over to the side of the road because he saw a patrol vehicle, and believed deputies regularly followed him on the rural county road. Deputy 1 reported he observed the

complainant pull to the side of the road, and attempted to make contact to determine if the complainant needed assistance. The complainant said he initiated a profanity-laced exchange, because he felt deputies were stalking him; to which Deputy 1, allegedly responded, “I will beat your toothless bastard ass,” or words to that effect. Deputy 1 denied that he made any such statement, and reported that he did not use any profanities during the contact. Deputy 1 also reported that once he learned the complainant was not in need of assistance, he returned to his patrol vehicle and left the area. There were no audio recordings of the encounter, nor were there any independent witnesses, leaving insufficient evidence to prove or disprove the allegation.

2. Excessive Force – Deputy 1 slammed the car door on the complainant’s legs.

Board Finding: Not Sustained

Rationale: The complainant stated after the verbal exchange, both parties started to return to their respective vehicles. However, before the complainant could get into his vehicle, Deputy 1 returned and attempted to slam the complainant’s legs in the door. Deputy 1 denied that he made any attempt to slam the complainant’s legs with the car door. There were no audio or video recordings of the encounter, nor were there any independent witnesses, leaving insufficient evidence to prove or disprove the allegation.

15-071

1. False Arrest – Deputy 1 arrested the complainant.

Board Finding: Action Justified

Rationale: The complainant said that Deputy 1 arrested him for placing items already purchased into his pocket. The complainant said that he was stopped by store security personnel as he left the store, and charged with failing to pay for merchandise. He did not have a receipt for the previously purchased merchandise, and told store security that he unintentionally placed store merchandise in his pocket. The complainant offered to pay for the merchandise; however, security declined the offer and contacted the Sheriff’s Department. Security personnel submitted documentation supporting their observations, signed a Citizens’ Arrest Declaration, and provided deputies with video evidence. Deputy 1 took custody of the complainant per California Penal Code § 847, Private Person Arrest, and transported him to the sheriff’s station, where he was cited and released for violation of Penal Code § 459.5, Shoplifting. The evidence showed that the arrest did occur, but was lawful, justified and proper.

2. False Report – Deputy 1 failed to document the complainant’s explanation of the incident which caused him to be arrested.

Board Finding: Action Justified

Rationale: The complainant stated that there was no mention of his explanation of the incident in the arrest report; the complainant acknowledged, however, that he had not seen the report. The complainant reported he attempted to tell deputies his story, but this angered store personnel, so he decided to remain quiet. When Deputy 1 admonished the complainant, he responded “I would like to talk to my lawyer,” precluding Deputy 1 from asking any further questions or documenting the complainant’s statement. Deputy 1 documented the purpose of the contact in the Arrest Report, and cited the Citizen’s Arrest Declaration and evidence provided by security personnel. Based on the complainant’s statements and the evidence documented in the arrest report, the actions of Deputy 1 were lawful, justified, and proper.

16-022

1. Misconduct/Procedure – Deputy 2 threw the complainant into the “Psych ward” when he attempted to report a crime.

Board Finding: Summary Dismissal

Rationale: The complainant contacted the Sheriff’s Department to report a crime and said he was ignored. He

persisted in pursuing this matter until a PERT (Psychiatric Emergency Response Team) clinician threw him into the psych ward under false pretenses. The complainant believed that the medical staff who evaluated him were corrupt and that his mental illness was used as a “red-herring to facilitate the theft of his intellectual property.” The evidence showed that the complainant was evaluated by Deputy 2 and PERT Clinician 1, who made the determination that the complainant was unable to care for his basic needs and he was taken to a hospital for further evaluation. Once there, a psychiatric team determined observation and care were needed over the course of several days. Psychiatric professionals, over whom CLERB has no jurisdiction, were ultimately responsible for the complainant’s hospitalization. Therefore, such complaints are referred to the Review Board for Summary Dismissal, pursuant to CLERB Rules & Regulations: Section 9: Investigation of Complaints; Subsection 9.2: Screening of Complaints.

2. Misconduct/Intimidation – Unknown deputies have “intimidated” the complainant for a number of years.

Board Finding: Not Sustained

Rationale: The complainant reported that unidentified deputies followed him around town and intimidated him on a daily basis. Sheriff’s documentation included law enforcement contacts with the complainant on 6/18/15, on 8/18/15 and on 8/19/15. There was insufficient evidence provided by the complainant to adequately evaluate this allegation for any other contacts than those recorded.

End of Report