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

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

**FINAL NOTICES**

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its May 10, 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](http://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).
  - 15-035 / Hamilton (Sustained x 2 - Deputy 1)

<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 (10)**

**ALLEGATIONS, FINDINGS & RATIONALE**

**15-036**

1. False Report – Deputy 1 reported false information to Sheriff's Medical personnel, resulting in the complainant being denied the use of a wheelchair and later a cane.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 reported false information to medical staff that resulted in his wheelchair, and later his cane, being confiscated and denied. During medical intake, the complainant reported a history of severe back pain caused by an automobile accident, and was provided medical authorization for the use of a wheelchair during his time of incarceration. The complainant's wheelchair was confiscated, however, and his request for use of a cane denied after the complainant was observed in surveillance video assaulting a disabled inmate. In surveillance video, the complainant was observed running down module stairs, walking briskly without an observable limp toward another inmate, and striking the inmate several times, requiring hospital treatment. Deputy 1 reported this confirmed incident to medical staff, resulting in medical discontinuing the complainant's authorization for use of a wheelchair, and later denial of his request for a cane.

Deputy 1 acted within policy in reporting an assault incident to medical staff, and this action was lawful, justified and proper.

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**15-038**

1. Excessive Force/Handcuffs – Deputy 2 placed handcuffs on the complainant’s wrist excessively tight, resulting in significant injury to his wrist.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 2 handcuffed him so tightly, that his wrist was severely injured. The complainant and several other inmates were being strip searched when the complainant was reported to be uncooperative, requiring removal from the housing unit. Deputy 2 placed the complainant in handcuffs prior to escorting him, but reported that he did not place them on the complainant tightly as alleged. Deputy 2 stated that after applying the handcuffs, he put one finger in between the handcuffs and the complainant’s wrist as taught in Detentions Academy, to ensure that they were not placed too tightly. Per Deputy 2, the complainant did not inform him that the handcuffs were on too tight, reportedly not speaking during the entire escort. There are no medical records from the date of this incident, and the next medical entry dated 6 days after this incident, only documented complaints of back pain and other medical problems unrelated to a wrist injury. Without medical documentation of a wrist injury, the investigation could not determine whether or not Deputy 2 handcuffed the complainant too tightly, consequently there is insufficient evidence to prove or disprove the allegation.

2. Misconduct/Procedure – Deputy 2 escorted the complainant to a holding cell while naked.

Board Finding: Not Sustained

Rationale: The complainant reported that Deputy 2 escorted him out of the module to a holding cell while naked. Deputy 2 stated that he escorted the complainant out of the module while naked because the complainant refused to put clothes on. Deputy 2 reported that the complainant was given ample opportunity to clothe himself before being escorted, and during the escort, but refused to do so, and would not acknowledge and respond to his instructions to get dress. Surveillance video of the complainant being escorted from the module was reviewed, but without audio provided inconclusive evidence as to whether or not the complainant was given sufficient time to dress before being escorted out of the module. There was insufficient evidence to prove or disprove the allegation.

3. Misconduct/Procedure – Deputy 4 ordered the complainant to be escorted while naked to a holding cell.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 4 ordered him to be escorted through the module while naked. Deputy 4 denied issuing such an order, stating that the complainant was escorted naked after refusing to get dressed. Per Deputy 4, clothing was provided to the complainant, but he refused to don them after being asked several times by multiple deputies. Absent an audio recording of this alleged order, there was insufficient evidence to prove or disprove the allegation.

4. Misconduct/Procedure – Deputy 4 ordered Deputy 2 not to provide the complainant clothing while he was in a holding cell.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 4 ordered Deputy 2 not to provide him with clothing while he was in a holding cell. Deputy 4 denied issuing this order, stating that he was unaware of the occurrences at the holding cell, as he was still in the housing unit immediately following this incident. Deputy 2 denied that Deputy 4 made such an order, and absent an audio recording of this alleged order, there was insufficient evidence to prove or disprove the allegation.

5. Misconduct/Procedure – Deputy 2 refused to escort the complainant to medical after being informed that his wrist was swollen and he was in excruciating pain.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 2 refused to escort him to medical after being informed that his wrist was swollen and he was in excruciating pain. Deputy 2 responded stating that the complainant did not complain of any pain or state that he required medical treatment. This allegation pits one person's word against another, and without an audio recording of this contact, there is insufficient evidence to prove or disprove the allegation.

6. Misconduct/Discourtesy – Deputy 3 stated to the complainant, “Stop riding my ass over a fucking lunch,” or used words to that effect.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 3 stated to him, “Stop riding my ass over a fucking lunch,” or used words to that effect, when asked about his lunch meal. The complainant had just returned from a hospital visit when he asked Deputy 3 about his lunch. Deputy 3 reportedly became upset and made the alleged statement. Deputy 3 denied making this statement, and absent an audio recording of this contact, there was insufficient evidence to prove or disprove the allegation.

7. Excessive Force – Deputy 3 “snatched” the complainant by his shirt, and pulled him out of a holding cell.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 3 “snatched” him by his shirt, and pulled him out of a holding cell after becoming upset about him asking about his lunch. Deputy 3 reported that he was conducting security checks in the holding cell area, when the complainant began yelling at him that he wanted his lunch. Per Deputy 3, the complainant was agitated and kept raising his voice. In order to prevent the complainant from inciting the other inmates, Deputy 3 decided to move the complainant to another holding cell until he calmed down. Deputy 3 instructed the complainant to exit the cell and step into another cell, but he refused. Surveillance video captured this contact and Deputy 3 is observed opening the complainant's cell door and pointing several times to a cell located across the hall. Deputy 3 is then observed pulling the complainant out of his cell and guiding him into another cell. Detentions Policy I.89, Use of Force, authorizes deputies to use force which is necessary and objectively reasonable in order to enforce a lawful order. Video evidence showed that the alleged act did occur, but was lawful, justified and proper.

8. Excessive Force – Deputy 3 choked the complainant and punched him in the face.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 3 choked him and punched him in the face. Deputy 3 denied these actions, stating that at no time during this incident did he strike the complainant. Deputy 1 denied that he observed Deputy 3 commit these acts, and stated that the only force used by him and Deputy 3 was pulling on the complainant's shirt and body with their hands in an attempt to get the complainant to the ground. Following this incident, the complainant was evaluated by medical, but was found to be without any visible injuries. The complainant alleged that he was attacked by deputies while in this second holding cell. Surveillance video did not capture what occurred during the 14 seconds that the deputies and the complainant were in the holding cell, leaving insufficient evidence to prove or disprove the allegation.

9. Excessive Force – Deputy 1 punched the complainant and twisted his wrists.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 punched him and twisted his wrists while attempting to control him. Deputy 1 denied these allegations and Deputy 3 denied observing Deputy 1 commit these acts. Following this incident, the complainant was evaluated by medical, but was found to be without any visible injuries. Surveillance video did not capture what occurred during the 14 seconds that the deputies and the complainant were in the holding cell, leaving insufficient evidence to prove or disprove the allegation.

10. False Reporting – Deputy 3 wrote a false report, charging the complainant with a crime that caused him to be placed in administrative segregation and dress greens.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 3 wrote a false report, charging him with PC§ 243, Battery on a Peace Officer; a crime that caused him to be placed in administrative segregation and dress greens. Deputy 3 reported that the complainant battered him when he pushed him while being removed from a cell, but did not batter him while in the second holding cell. Surveillance video captured Deputy 3's removal of the complainant from a holding cell, and the complainant could be observed resisting by pulling away from Deputy 3 and backing away. From the camera angle offered, the complainant cannot be observed pushing or battering Deputy 3. There is, however, a moment captured by video where the complainant possibly pushed Deputy 3 while pulling away, but this view is obscured and inconclusive, leaving insufficient evidence to prove or disprove the allegation.

11. Misconduct/Procedure – Sergeant 5 failed to respond to the complainant's grievances regarding excessive force.

Board Finding: Action Justified

Rationale: The complainant alleged that Sergeant 5 failed to respond to his grievances regarding excessive force used by Deputies 1 and 3. The Jail Information Management System (JIMS) documented a grievance response from Sergeant 5, in which she reported that she reviewed the surveillance video and investigated the allegations of force, determining that necessary and reasonable force was used to gain compliance. The complainant filed a subsequent grievance because he was dissatisfied with Sergeant 5's response. This grievance was reviewed by an Administrative Lieutenant who was in agreement with Sergeant 5's findings. The evidence showed that Sergeant 5 responded to the complainant's grievance per Detentions Policy N.3, Grievance Procedures, and this action was lawful, justified and proper.

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## **15-039**

1. Misconduct/Discourtesy – Deputy 1 spoke “disrespectfully” and “antagonistically” to the complainant while conducting a traffic stop, and used a “harsh tone” while speaking to him.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 spoke “disrespectfully,” “antagonistically” and used a “harsh tone” while speaking to him during a traffic stop. Deputy 1 conducted a traffic stop on the complainant when he was observed driving at night without any lights on. Deputy 1 denied that he spoke to the complainant in the manner alleged, stating that he was polite, yet direct while speaking with him. Two other deputies were briefly on scene, but were not present during the initial moments of this contact, left the scene shortly after arriving and had no recollection of the conversation between the complainant and Deputy 1. Absent an audio recording of this contact, there is insufficient evidence to either prove or disprove the allegation.

2. Illegal Search or Seizure – Deputy 1 ordered the complainant out of his vehicle.

Board Finding: Action Justified

Rationale: Deputy 1 acknowledged that he instructed the complainant to exit his vehicle, stating that he did so because he had initially suspected that the complainant was driving under the influence of alcohol. Deputy 1 suspicions were based on the following reasons: the complainant was operating a motor vehicle on a highway late at night with no lights on; he had failed to yield for a long distance after the traffic stop was initiated, and the complainant had taken his foot off the brake without putting the transmission in park or setting the parking brake, causing his vehicle to roll backwards downhill toward Deputy 1's patrol vehicle. Case law allows law enforcement officers to order drivers out of their vehicles in order to control their movements because of the court's acknowledgement of the inherent risks associated with traffic stops. Deputy 1 ordered the complainant out of his vehicle in order to handcuff him and check for weapons. This act did occur, and was lawful, justified and proper.

3. Illegal Search or Seizure – Deputy 1 placed handcuffs on the complainant, and ordered him to sit on a curb.

Board Finding: Action Justified

Rationale: Deputy 1 acknowledged that he placed the complainant in handcuffs and seated him on a nearby curb, doing so to check the complainant's person for weapons and to control his movements while he checked on his license status. Deputy 1 had initially suspected the complainant of driving under the influence of alcohol, requiring these measures for officer safety reasons. The evidence showed that the alleged acts did occur, but were lawful, justified and proper.

4. Misconduct/Discourtesy – Deputy 1 did not respond to the complainant when the complainant asked him what he had done wrong.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 failed to respond to him when he asked the deputy why he had been pulled over. Deputy 1 denied that he ignored the complainant's inquiry, stating that he informed the complainant that he had been pulled over because none of his vehicle lights were on. There were no passengers in the complainant's vehicle, and the deputies who arrived on scene were not present during the initial moments of this contact, and did not recall the conversation between the complainant and Deputy 1. This allegation pits one person's word against another; absent an audio recording of this contact or independent witnesses, there is insufficient evidence to prove or disprove the allegation.

5. Illegal Search or Seizures – Deputy 1 searched the complainant without his consent.

Board Finding: Action Justified

Rationale: The complainant reported that during a traffic stop, Deputy 1 searched him without his consent. Deputy 1 acknowledged that he searched the complainant's person without consent, patting him down to ensure that he did not have any weapons. Deputy 1 had suspected that the complainant was driving under the influence of alcohol based on his driving behaviors prior to the stop, and his behaviors during the stop, prompting the deputy to check the complainant for weapons for officer safety reasons. Case law allows officers to conduct a patdown or limited weapons search of persons who have been detained if there are specific facts that would make a reasonable officer feel in danger. Given the complainant's behaviors before and during the traffic stop, Deputy 1 had reasonable cause to search the complainant for weapons, and this action was lawful, justified and proper.

6. Misconduct/Truthfulness – Deputy 1 told the complainant that he was stopped because the complainant had “no lights at all,” when the complainant's headlights were functional, and on at the time of the traffic stop.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1's report of him driving with “no lights at all” was untrue, and that his headlights were functional, and on at the time of the traffic stop. The complainant reported being certain that his headlights were on because he had left from out of town when it was already dark, necessitating the immediate use of his headlights. Deputy 1, however, asserted that he conducted the traffic stop on the complainant because his lights were not on. The complainant produced a mechanic's invoice from the following day which indicated that, while the complainant's parking lights were inoperable, and all of the fuses for the tail lights were replaced, the headlights were operational. Absent video footage from the surrounding area of this traffic stop, there is insufficient evidence to prove or disprove the allegation.

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## **15-060**

1. Excessive Force – Deputies 1 and 4 threw the complainant to the ground.

Board Finding: Action Justified

Rationale: The complainant stated that deputies removed her from a patrol vehicle and threw her to the ground. Deputies 1 and 4 reported that the complainant was placed in a patrol vehicle and began kicking the roof of the vehicle, which necessitated her removal from the vehicle. Deputies denied the complainant was thrown to the ground, reporting that she was removed from the patrol vehicle and lowered to the ground into a seated position. Firefighters witnessed the contact and stated that they did not see deputies throw the complainant to the ground

or use any unnecessary force. The evidence showed that the amount of force used by deputies was reasonable and necessary, and the acts were lawful, justified and proper.

2. False Arrest – Deputy 4 arrested the complainant and transported her to a hospital for a 72-hour evaluation in June 2014.

Board Finding: Action Justified

Rationale: The complainant stated that Deputy 4 arrested her and transported her to a local hospital. Deputies responded to a radio call of a disturbance, and found the complainant wandering the streets. The complainant was believed to be under the influence of a controlled substance, and was also suspected of stealing equipment from a fire station. Per Health and Institutions Code §5150, In-custody 72-hour treatment and evaluation for mentally disordered person, Deputy 4 transported the complainant to a local hospital for evaluation. The evidence showed the alleged act did occur, but was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 4 confiscated the complainant’s telephone.

Board Finding: Action Justified

Rationale: The complainant said that Deputy 4 confiscated her telephone after she was arrested. Deputy 4 reported that the complainant’s telephone, located on the seat of a fire engine inside the fire station, was confiscated as evidence of her unauthorized presence in the fire station. After the case was adjudicated, the telephone was released to the complainant in accordance with Department Policies and Procedures, 6.29, Property Control Systems. The evidence showed that Deputy 4 did confiscate the telephone, but the act was lawful, justified and proper.

4. False Arrest – Deputy 4 arrested the complainant and transported her to a hospital for a 72-hour evaluation on August 7, 2014.

Board Finding: Action Justified

Rationale: The complainant reported an altercation which resulted in her boyfriend’s arrest, and her being taken to a hospital for evaluation. On the following day, deputies responded to a call to investigate a burglary, and the reporting party identified the complainant as the suspect. Deputies 1 and 4 contacted the complainant at her residence, described the complainant as fidgety, unable to stand still, and making nonsensical statements. Deputy 4 transported the complainant to a local hospital, per Health and Institutions Code § 5150, In-custody 72-hour treatment and evaluation for mentally disordered person. The evidence showed the alleged act did occur, but was lawful, justified and proper.

5. Excessive Force – Deputy 1 forcefully put the complainant into handcuffs.

Board Finding: Not Sustained

Rationale: The complainant stated that deputies forcefully placed her in handcuffs. Deputy 1 responded to a radio call to assist with a possible mentally ill person seen obstructing traffic and harassing customers at a local establishment. Deputy 1 contacted the complainant after she was observed walking in the street, wearing only a nightgown and shoes. The complainant complied when directed to turn around and place her hands behind her back, and no force was necessary to place her in handcuffs. Deputy 1 adjusted and repositioned the handcuffs after the complainant reported that the handcuffs were too tight. There were no independent witnesses to the event, or audio/video evidence, therefore, there was insufficient evidence to either prove or disprove the allegation.

6. False Arrest – Deputy 2 arrested the complainant and transported her to a hospital for a 72-hour evaluation on August 22, 2014.

Board Finding: Action Justified

Rationale: The complainant reported that deputies removed her from a local business, and took her to a hospital for a 72-hour evaluation. Deputy 2 assisted Deputy 1 after the complainant had been observed obstructing traffic and harassing customers at a local establishment. Deputy 2 and a Psychiatric Emergency Response Team

clinician determined that the complainant was a danger to herself and others, and determined she should be transported to a hospital for a 72-hour evaluation. Per the Health and Institutions Code § 5150, In-custody 72-hour treatment and evaluation for mentally disordered person, Deputy 2 took the complainant into protective custody and transported her to a local hospital. The evidence showed the alleged act did occur, but was lawful, justified and proper.

7. False Arrest – Deputy 3 arrested the complainant and transported her to a hospital for a 72-hour evaluation in September 2014.

Board Finding: Action Justified

Rationale: The complainant stated that Deputy 3 arrested her and transported her to a hospital for a 72-hour evaluation. Deputy 3 was dispatched to investigate a reported residential break-in. The complainant was still present in the residence and was taken into custody. Deputy 3 requested the assistance of a Psychiatric Emergency Response Team clinician, and the complainant was determined to be a threat to herself and not able to care of her own safety. Per the Health and Institutions Code § 5150, In-custody 72-hour treatment and evaluation for mentally disordered person, Deputy 3 documented the arrest, the complainant was taken into protective custody and transported her to a local hospital. The evidence showed the alleged act did occur, but was lawful, justified and proper.

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### 15-073

1. False Arrest – Deputy 1 arrested the complainant for violation of a restraining order.

Board Finding: Action Justified

Rationale: The complainant stated that he was arrested for a restraining order violation after he helped his wife (the protected party) and children enter the Family Court Building. Both parties acknowledged that the complainant approached the protected party and their children outside of the Family Court Building, and entered the building together. Deputy 1 observed the parties enter the Family Court Building, and then saw them standing together for an extended period of time after the children had been taken to the court's child care facilities. Deputy 1 contacted the protected party on two occasions and was reportedly told that she did not object to the contact with the complainant, because she was afraid to tell him to leave her alone, and she did not want to make him angry. During the complaint investigation, the protected party denied that she made any such statement. The complainant told Deputy 1 that the contact was made to assist with the children, and that this was his scheduled day for child custody. The complainant believed that contact with the protected party was permissible at any time, provided the parties were in agreement. The restraining order however, directed the complainant to stay at least 100 yards away from the protected party, except for brief and peaceful contact as required for the court-ordered visitation of the children. Once the child custody exchange was completed the parties should have separated to comply with the restraining order. Video evidence showed the parties enter the building together, and then again in close proximity as they waited through a check-in process. Penal Code § 273.6, Disobeying Domestic Relations Court Order, states that any intentional and knowing violation of a protective order is a misdemeanor. The complainant knowingly and willingly made contact with the protected party, both outside and inside the Family Court Building, in direct violation of a restraining order, and was arrested pursuant to Penal Code § 273.6, Disobeying Domestic Relations Court Order. The arrest did occur, but was lawful, justified and proper.

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### 15-075

1. Misconduct/Procedure – Deputy 1 delayed delivery of the complainant's mail.

Board Finding: Not Sustained

Rationale: The complainant stated that U.S. mail received was post-marked at least one week prior to delivery, and e-mails were unduly delayed. There was no video or documentary evidence available to track the flow of mail as it was sorted in the facility Custody Information Office, picked up by the housing deputies, and

delivered to inmates. Additionally, there was no video or documentary evidence available to demonstrate the printing and delivery of emails addressed to inmates. There was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Procedure – Deputy 1 failed to respond to three grievances.

Board Finding: Not Sustained

Rationale: The complainant stated he placed three grievances in the module grievance box and did not receive any responses. A facility sergeant received a fourth grievance which addressed the complainant's delayed mail and the three prior unanswered grievances. The sergeant accepted the grievance, met with the complainant, and provided written responses in accordance with department policy and procedure. The facility sergeant was unable to confirm that the complainant placed three grievances in the grievance box, and the complainant was unable to provide the inmate copy of the grievance. There was insufficient evidence to prove or disprove that three grievances were submitted, or that Deputy 1 failed to respond to the three grievances filed.

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## 15-086

1. Excessive Force – Deputy 1 shot the complainant with a shotgun.

Board Finding: Action Justified

Rationale: The complainant stated that deputies told him to get down from the top bunk or he would be shot, and as he tried to get down he was shot in the stomach. Deputy 1 reported that the complainant had been handcuffed and removed from his cell to allow deputies to do a scheduled hygiene inspection. At the conclusion of the inspection, the complainant was returned to his cell, and as deputies attempted to remove the handcuffs, the complainant pulled away, leaving one handcuff attached. The complainant refused to give deputies his hands to retrieve the handcuff. Deputies followed department policies and procedures for cell extraction, and the use of force to remove necessary to remove the complainant from the cell. The complainant's cell door was opened and he was ordered to get down from the top bunk; he was then ordered to get down on the floor and face away from the cell door. Video and audio surveillance showed that the complainant moved from the top bunk to the cell floor, but responded, "No," to Deputy 1's order to face away from away from the cell door. Deputy 1 fired one shot from the super-sock shotgun, hitting the complainant in the abdomen. Video evidence and medical records showed that the complainant was immediately provided with a medical assessment prior to placement in a safety cell; he also received regular medical care for injuries while he remained in custody. The act did occur, but was lawful, justified, and proper.

2. Excessive Force – Deputy 2 threw the complainant to the ground breaking his wrist.

Board Finding: Unfounded

Rationale: The complainant stated that during a transfer from George Bailey Detention Facility to San Diego Central Jail (SDCJ), he was thrown to the ground by Deputy 2 causing injury to his wrist. The complainant described Deputy 2 as an African-American. The only African-American deputy assigned on the date of the alleged incident was not assigned to the SDCJ intake area, and did not recall having contact with the complainant. Sheriff's documentation showed that the complainant was received at SDCJ for further transfer to a State Hospital; however, there were no incidents documented in the Jail Information Management System (JIMS) which may have recorded the alleged force, nor were there any medical entries pertaining to a wrist injury. On the following day, the complainant was transferred to a State Hospital where he remained for a period of approximately five months. Upon return to SDCJ, the complainant was medically rescreened, and there was no documentation to show any evaluation or treatment for a wrist injury. The complainant acknowledged that he did not receive any treatment by detentions medical personnel while incarcerated, did not recall if he sought treatment at the State Hospital, and did not seek any treatment from outside medical personnel after his release from custody. A lack of evidence indicated that the alleged act did not occur.

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## 15-087

1. Illegal Search – PO 1 broke into the complainant’s residence.

Board Finding: Action Justified

Rationale: The complainant stated that a multi-agency operation, led by Oceanside Police Department, damaged the door to his residence when they entered during a probation sweep. The Oceanside Police Department Arrest Report and Probation Department records documented that members of a multi-agency unit attempted to make contact; the complainant was seen through a residence window, and failed to open the door as required by Probation conditions, resulting in a forced entry. Per Penal Code § 3465, Postrelease Community Supervision; search or seizure, the complainant was subject to search of his person or residence at any time of the day or night, with or without a warrant. As a member of the multi-agency operation, PO 1 entered and searched the complainant’s residence. The evidence showed that the entry and search were lawful, justified and proper.

2. False Arrest – PO 1 arrested the complainant.

Board Finding: Action Justified

Rationale: The complainant stated that he should not have been arrested because he did not believe he had violated the terms of probation. The complainant failed to submit to a lawful search as required under Penal Code § 3465, and was arrested by PO 1 pursuant to Penal Code § 3455, Postrelease Community Supervision Revocation. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

3. Misconduct/Procedure – An unidentified officer failed to secure the complainant’s residence.

Board Finding: Summary Dismissal

Rationale: The complainant stated that the residence was not properly secured after his arrest, resulting in a break-in and theft of the complainant’s car, purse, and bank card. A review of the Arrest Report and Probation Department records showed that the residence was secured by an officer of the Oceanside Police Department. The break-in and theft of the complainant’s property was reported to, and documented by, the Oceanside Police Department. Per CLERB Rules & Regulations 4.1, CLERB has no jurisdiction over this officer, and the complainant was advised to follow-up with Oceanside Police Department.

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**16-013**

1. Criminal Conduct – Deputies 1 and 2 accessed a law enforcement database for the complainant’s records.

Board Finding: Sustained

Rationale: The complainant believed that Deputy 1, or someone acting on her behalf, accessed a law enforcement database to obtain her address and/or other unauthorized records. Sheriff’s deputies are prohibited from utilizing departmental computers and accessing computerized informational sources for anything other than business related matters. On 1/13/16 at 2:46 a.m., Deputy 2 accessed the California Law Enforcement Telecommunications System (CLETS) to run a license plate number that came back registered to the complainant’s vehicle. At 2:48 a.m., Deputy 2 accessed CLETS to run a driver’s license and warrants check for the complainant’s name. Deputy 2 reported that both of these queries were done at the request of Deputy 1, who stated that her vehicle computer was not working. Deputy 1’s pursuit of this information was not connected to a legitimate law enforcement request, and there was no legal justification to support her access to the confidential material. The evidence supported the allegation and the conduct was not justified.

2. Misconduct/Procedure – Deputy 1 took a picture of the complainant’s license plate and said, “You must not know that I work for the Courts,” and “I will find you.”

Board Finding: Sustained

Rationale: The complainant reported the allegation as stated. Deputy 1 failed to respond to a required questionnaire for information as mandated by Sheriff’s Policy & Procedure 6.107 Citizens’ Law Enforcement Review Board (CLERB,) and declined to be interviewed. Deputy 1 carried out her threat to find the complainant when she unlawfully accessed a confidential database for the complainant’s records, and then

drove to that residence to serve a restraining order. The evidence supported the allegation and the act or conduct was not justified.

3. Misconduct/Procedure – Deputy 1 drove to Orange County to serve the complainant a TRO and said, “I’m the police.”

Board Finding: Sustained

Rationale: Deputy 1 drove to Orange County with her family members and said, “I’m the police, you’re served;” and the Proof of Service form was filled out and signed by a third party according to the complainant. Video/Audio evidence supported the allegation as reported by the complainant. While it was confirmed that Deputy 1 was off-duty when she drove to the complainant’s home and contacted her, she can be heard in audio evidence stating that she is “the police,” thus placing herself in a position of authority over the complainant. Deputy 1 was noncompliant with the CLERB investigation and her actions are not in accordance with Sheriff’s Policy & Procedure 2.1-Rules Of Conduct for Members of The SD County Sheriff’s Department, 2.3-Violation of Rules, 2.4-Unbecoming Conduct, 2.6-Conformance to Laws, 2.18-Abuse of Position, 2.30-Failure to Meet Standards, 2.36-Use of Department Equipment, 2.37-Dissemination of Information, 6.24-Law Enforcement Data Base Use and Criminal Record Dissemination, 7.6-Use of CLETS-NCIC-ARJIS and Local Information, as well as 6.107-CLERB.

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## **16-023**

1. Misconduct/Procedure – Deputy 1 sped up and made an illegal U-turn.

Board Finding: Not Sustained

Rationale: The complainant said he observed a Sheriff’s vehicle that he thought was responding to an emergency call, because it sped up and made an illegal U-turn at Palm and 10th, heading westbound towards the beach. He continued walking until the officer turned on a siren and spotlight and told them to remain still. Deputies are to obey all traffic laws unless there are exigent circumstances; none of which were noted in this situation. An Automated Vehicle Locator recorded the deputy’s speed within legal limits. Palm Avenue is a two-way divided highway, with a median barrier that divides the lanes that run east and west; there are also designated left turn lanes at different intersections. Deputy 1 reported that she made a legal U-turn in the designated turn lane on 11<sup>th</sup> St., and then traveled westbound to Bowman’s Market where the complainant and his companion had stopped. As Deputy 1 was the sole occupant of her vehicle; there was insufficient evidence to prove if Deputy 1 illegally turned on 10<sup>th</sup> as described by the complainant, or legally on 11<sup>th</sup> as described by the deputy.

2. Misconduct/Procedure – Deputy 1 issued a citation to the complainant, when others who crossed outside the crosswalk were not cited.

Board Finding: Action Justified

Rationale: The complainant did not deny that he broke the law, but stated others doing the same thing were not cited. Deputy 1 is contracted specifically for traffic enforcement, which includes pedestrian violations. Deputy 1 said her attention was drawn to the complainant and his companion for violating Imperial Beach Municipal Code 10.52.020 Crosswalks –Use required in certain districts; for walking northbound from the south side of Palm Avenue to the north side of Palm Avenue. Deputy 1 had discretion to issue a verbal warning, but because of an increase in traffic fatalities in the area, law enforcement opted to issue citations. Deputy 1 and three witness deputies did not recall observing other pedestrians committing the same violation during their shift, and CLERB was not notified of any other offenses. The evidence showed the complainant’s conduct was unlawful, and the deputy’s response was justified and proper.

3. Discrimination/Racial – Deputy 1 contacted the Caucasian males because of their dark, baggie clothing and hoodies.

Board Finding: Action Justified

Rationale: The complainant explained he/they were wearing sweats and hoodies because it was about 45 to 55 degrees and the conditions were misty, but not raining or wet as mentioned by the officer on the ticket. He said he felt racially profiled because he is a “white male living in a city with predominately low income.” Deputy 1 said she had limited visibility due to the distance, weather conditions, and time of night, and refuted that the complainant’s appearance was the cause of the stop. Sheriff’s Policy & Procedure 2.55 Non-biased Based Policing, mandates that all investigative detentions will be based on a standard of reasonable suspicion or probable cause as required by the Fourth Amendment of the U.S. Constitution and relevant statutory authority. Deputy 1 denied profiling the complainant, and articulated specific facts and circumstances to support the probable cause for the pedestrian stop. Deputy 1’s conduct was lawful justified and proper.

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*End of Report*