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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 February 14, 2017 meeting, held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at [www.sdcounty.ca.gov/clerb](http://www.sdcounty.ca.gov/clerb).

### CLOSED SESSION

a) PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

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

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 (14)

#### ALLEGATIONS, FINDINGS & RATIONALE

##### 12-046

1. Illegal Search or Seizure – Deputy 8 allegedly confiscated the complainant's materials authorized by medical documentation.

Board Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Discourtesy – Deputy 3 allegedly responded to the complainant's request in a discourteous manner.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure – Deputy 3 allegedly told the complainant to, “Fuck off.”

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Discrimination/Sexual-Gender – Deputy 3 allegedly said to the complainant, “You faggot ass bitch shut the fuck up.”

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Procedure – Deputy 3 allegedly refused to provide the complainant with a staff complaint form

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Procedure – Deputy 3 allegedly refused to allow the complainant to contact his attorney.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

7. Excessive Force – Deputies 1, 2, 4, and 7 allegedly used excessive force on the complainant.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

8. Misconduct/Discourtesy – Deputy 5 allegedly said to the complainant, “You’re not a fucking worker,” “fuck this and fuck that,” and “today is my day to work.”

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

9. Misconduct/Procedure – During laundry exchange Deputy 8 conducted a cell search on April 23, 2012, and left the complainant’s cell in disarray.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

10. Misconduct/Procedure – Deputy 6 stopped outside the complainant’s cell, stomped on a medication cup and said, “...Look Brown, your dreams ...” or words to that effect.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

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### **13-012**

1. Excessive Force – Deputy 7 allegedly hit the complainant with a closed fist while in custody at Las Colinas Detention Facility.

Board Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers’ Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A

review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Excessive Force – Deputy 7 allegedly kned the complainant while in custody at Las Colinas Detention.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Excessive Force – Deputy 7 allegedly slammed the complainant’s body into wheelchairs in the hallway while in custody at Las Colinas Detention.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Retaliation – Deputies 2-7 allegedly retaliated against the complainant because she filed complaints against deputies.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

5. False Report – Deputies 1, 5 and 8 allegedly falsely documented Rule Violation Reports against the complainant.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Procedure – Deputy 5 allegedly attempted to have other inmates attack the complainant.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

7. Misconduct/Procedure – Deputy 9 allegedly refused to take the complainant for medical treatment.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

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## **15-119**

1. Misconduct/Procedure – Deputy 12 allegedly housed the complainant on an upper tier in violation of medical orders.

Board Finding: Action Justified

Rationale: The complainant stated that he was housed in an upper tier cell in violation of department policy. The Jail Information Management System (JIMS) records showed that the complainant’s housing restrictions included assignment to a lower bunk. Due to the complainant’s High Risk, Level 6 Maximum security classification, he was required to wear leg and waist chains while in the Day Room (DRC), a requirement which the complainant believed placed his safety at risk. JIM’s records showed that the complainant was given the high risk classification, because he was an escape risk, and had a history of assaults on staff/inmates. These High Risk Indicators contributed to the complainant’s requirement to wear leg and waist chains while in the module Day Room. Medical personnel make the determination whether or not an inmate should be restricted to a lower tier housing assignment, and enter those restrictions in the complainant’s JIMS record. A Medical Information Source reported that inmates with certain diagnoses such as the complainant’s normally would be housed on a lower tier. However, medical personnel did not make the appropriate entries into the complainant’s JIMS record which would have alerted classification and/or housing deputies of a lower tier restriction. A Department Information Source reported that there were no restrictions limiting the housing DRC inmates to

lower tiers; therefore the complainant's assignment to upper tier housing was determined to be within Detentions policies and procedures.

2. Misconduct/Procedure – Deputy 12 allegedly denied the complainant's grievances to move to a lower tier.

Board Finding: Not Sustained

Rationale: The complainant stated that Deputy 12 denied multiple grievances requesting to be moved to a lower tier. The complainant was able to identify only one grievance which referred to a lower tier move. A shift sergeant responded to that grievance, indicating that the grievance was actually a complaint against a deputy, and while the grievance response indicated, "...your request for a cell move was not honored," there was no further documentation to support multiple requests or denials. The complainant was unable to provide further documentation of multiple denials, and a request to the Sheriff's Department documentation did not result in the production of any supportive materials. Subsequent to a fall, the complainant was moved to a lower tier in order to prevent a recurrence. There was insufficient evidence to prove or disprove that the complainant's multiple grievances had denied his move to a lower tier.

3. Misconduct/Procedure – Deputy 12 allegedly did not provide assistance as the "shackled" complainant descended the stairs, resulting in a fall and injuries to his head, neck, and back.

Board Finding: Action Justified

Rationale: The complainant stated that Deputy 12 did not assist him going down the stairs, even though he was required to wear leg and waist chains in the day room, which caused him to fall and sustain injuries. Video evidence showed that the complainant exited his cell with unidentified items in his left hand, and proceeded to the stairs. The complainant had his right hand on the handrail as he descended half-way down the 20-step stair, when he appeared to become unsteady, and began to fall down the stair; he briefly grabbed the handrail with both hands, before falling down the remaining steps. The video evidence did not show that the complainant's fall was caused by his leg chains. Medical personnel responded to the scene and evaluated the complainant for injuries. Per deputies and medical personnel, the complainant "was able to transfer himself to the gurney," and then was taken to medical for further evaluation and X-rays. X-rays did not reveal any injuries, and there were no other documented injuries resulting from the fall. A Department Information Source confirmed that there were no Detentions policies or procedures that required a DRC inmate to be escorted up/down stairs during their dayroom time; therefore, there was no violation of Detentions policies or procedures.

4. Misconduct/Procedure – Deputy 6 allegedly left the complainant restrained and unattended for an excessive period of time, causing him to urinate on himself.

Board Finding: Action Justified

Rationale: The complainant said deputies placed him on a gurney and transported him to medical for evaluation following a fall; then Deputy 6 left him in a holding cell for two hours, forcing the complainant to urinate on himself while strapped to the gurney. Deputy 6 reported that Clinic Deputies had indicated medical personnel wanted the complainant to remain securely strapped to the gurney until after X-rays were taken and evaluated. Medical staff confirmed that the complainant was to be held stationary, to prevent potential injury or aggravation to the complainant's neck or back because there were no obvious injuries. Video evidence showed that the complainant was monitored by deputies and/or medical personnel on a regular basis while housed in the 2<sup>nd</sup> floor holding cell, and later in a medical holding cell. The complainant said he told Deputy 6 that he needed to urinate; while Deputy 6 reported that the complainant demanded the straps be removed or he would urinate on himself. Deputy 6 reported that he told the complainant he would be able to urinate after the x-ray, and the complainant then purposefully urinated. The complainant was required to remain on the gurney at the direction of medical personnel, and deputies and/or medical personnel monitored the complainant on a regular basis; therefore, there were no violations of Detentions policies or procedures.

5. Misconduct/Procedure – Deputy 11 allegedly confiscated inmate grievances from the complainant's cell.

Board Finding: Not Sustained

Rationale: The complainant stated that Deputy 11 confiscated documents from his cell, while the complainant

was in the Rec Yard. Deputy 11 observed the complainant with an unauthorized cloth line used to communicate between cells, and took the complainant to the Rec Yard. While the complainant was in the Rec Yard, Deputy 11 conducted a cell inspection and located additional strips of linen and loose pencil leads, items which are considered contraband. Deputy 11 denied confiscating any grievance documents from the cell. There was no video evidence or independent witnesses available to determine if Deputy 11 removed any documents from the complainant's cell. There was insufficient evidence to prove or disprove the allegation.

6. Misconduct/Procedure – Deputy 4 allegedly tampered with the complainant's outgoing mail.

Board Finding: Not Sustained

Rationale: The complainant stated that he placed an unsealed letter addressed to CLERB under his cell door, for pick-up by a deputy and entry into the mail system. Six days later, portions of the envelope's contents were returned; the remainder of the legal mail never reached its destination. Mail addressed to CLERB is considered legal mail under Detentions Policy and Procedure P.3, Inmate Mail, which says legal mail may be sealed by the inmate in the presence of a deputy, after the deputy has inspected the envelope to ensure there was no contraband in it. Video evidence showed that Deputy 4 approached the complainant's closed cell door, briefly spoke with the complainant, picked up an envelope or document from the floor, and then left the housing module. Video evidence also showed Deputy 4 briefly looked at the envelope without removing its contents, and placed the envelope in an unseen location under a desk at the deputy station. Deputy 4 did not recall picking up the complainant's mail, but stated it is normal procedure to scan inmate mail for contraband prior to sealing envelopes and placing it in outgoing mail. Deputy 4 also did not recall scanning or reviewing the complainant's mail for contraband. A review of further video evidence could not determine when, or by whom, the envelope was retrieved from under the deputy station. The deputy that returned documents from the complainant's mail reported that the documents were found the module's mail tub, and assumed they had been left over mail from the previous night. There were no independent witness to the event, and there was no additional video evidence to show that the complainant's mail had been tampered with. There was insufficient evidence to prove or disprove the allegation.

7. Excessive Force – Deputies 1-3, 5, and 7-10 allegedly used excessive force to extract the complainant from his cell.

Board Finding: Action Justified

Rationale: The complainant stated that deputies used excessive force to remove him from his cell, after he had "tapped out" and complied with deputy orders. Following an earlier cell extraction for a cell inspection, the High Risk, Level 6 Maximum security complainant covered his cell window with a shirt, told deputies that he was going to start hurting himself, and that he wanted to go to a safety cell. Video evidence showed the complainant removed the window covering as the tactical team neared his cell door, but he failed to move away from the door and turn around as directed, which prevented the complainant from being handcuffed. Over a period of approximately 20 minutes, the complainant actively resisted tactical team efforts with the X-10 barricade probe to extract him from his cell. At one point the complainant raised his hands, placed his hands on his head, got down onto his knees, and then lay on the floor with his hands at his side. Seconds later, the complainant returned to his feet and began to pace in the cell. The complainant refused to be handcuffed and again actively resisted efforts to extract him from his cell. The tactical team entered the cell following the deputy holding the ICE Shield, pushing the complainant to the back of the cell and then to the ground. Video inside the cell was obstructed by deputies, but the force documented included: the ICE Shield, control holds, knee strikes, closed fist strikes, and a taser deployment. The complainant resisted efforts to extract him from the cell for over thirty minutes before deputies gained entry and control. Despite the complainant's claim that he was compliant, video evidence showed that he actively resisted deputies' efforts to extract him from his cell. The complainant's actions presented a danger to himself and to the tactical team extracting him from the cell, and the force used was reasonable and necessary. Deputies did use force to extract the complainant from his cell, but the actions were lawful, justified, and proper.

## POLICY RECOMMENDATION:

1. It is recommended that the San Diego Sheriff's Department add language in Detentions policies and procedures stating that detentions staff personnel *shall* ensure compliance with any medical restriction(s) concerning inmates wearing Day Room Chains (DRC) and Lower Tier housing. Sworn staff shall notify Medical Personnel of the DRC requirement to ensure appropriate medical instructions are recorded.
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### 15-122

1. Misconduct/Procedure – Deputy 1 allegedly failed to keep the complainant separate and away from another inmate, despite Keep Separate orders on file.

#### Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 housed him and an enemy inmate in the same housing module, despite Keep Separate (KS) orders in place. Keep Separate orders are documented in the Jail Information Management System (JIMS) and are designed to prevent certain inmates from coming into contact with each other. The complainant was accused by another inmate of having sexually assaulted him, in violation of the Prison Rape Elimination Act (PREA). The inmates were immediately separated following disclosure of this alleged crime, and the complainant was placed in Administrative Segregation, pending a PREA investigation. A Keep Separate order was placed on the alleged victim. The complainant and alleged victim were transferred to another facility on separate dates, and assigned to the same specialized housing module; on one occasion, they occupied the recreation yard at the same time. According to Deputy 1 and a Department Information Source, enemy inmates are generally not assigned to the same housing module. Given, however, the design of the facility and module in which these particular inmates were housed, and the limited specialized housing available at the time, it was permissible to house these enemy inmates together, but they were never assigned the same cell, nor did they come into direct contact with each other. It is also possible, per Deputy 1, for enemy inmates to be on the Recreation Yard together because inmates are placed into individual cells while in the Recreation Yard, prohibiting direct contact with each other. The complainant and the alleged victim were later housed in separate modules, but their temporary housing together was within policy, justified and proper.

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### 15-123

1. Misconduct/Discourtesy – Deputy 1 allegedly ignored the complainant and would not talk with her regarding an expired registration.

#### Board Finding: Unfounded

Rationale: The complainant alleged that Deputy 1 would not talk with her about the expired registration on her vehicle. Deputy 1 contacted the complainant due to an expired registration on a vehicle she was driving. He contacted sheriff's dispatch and was informed that the registration on the vehicle was expired 7 months, and pursuant to VC § 22651, Circumstances Permitting Removal of Vehicle, was subject to being towed and impounded. The complainant explained to Deputy 1 that the vehicle was recently gifted to her, and she was in the process of transferring title to the vehicle, and would update the registration at that time. An audio recording of this traffic stop revealed that Deputy 1 thoroughly discussed this matter with the complainant before making the lawful decision to tow and impound the vehicle. The evidence showed that the alleged conduct did not occur.

2. Misconduct/Procedure – Deputy 1 allegedly ignored the complainant's poor medical condition, and her complaints of feeling ill and nauseous while seated in her vehicle.

#### Board Finding: Unfounded

Rationale: Immediately upon being contacted by Deputy 1, the complainant explained that she was experiencing contractions. Deputy 1 responded, offering to contact an ambulance to transport her to the hospital, but this offer was declined. When the complainant reported to Deputy 1 that she was feeling sick and

requested to exit her vehicle, he allowed her to do so, and again offered to contact paramedics if needed. The complainant again declined this offer. The audio recording of this contact revealed that Deputy 1 responded attentively and appropriately to each of the complainant's requests and concerns, demonstrating that the alleged conduct did not happen.

3. Misconduct/Procedure – Deputy 1 impounded the pregnant complainant's vehicle and left her stranded on a busy street.

Board Finding: Action Justified

Rationale: The complainant alleged that when Deputy 1 impounded her vehicle, she was left stranded on the street while ill and nine months pregnant. The complainant was driving a vehicle with a registration that was 7 months expired. Pursuant to VC § 22651, Circumstances Permitting Removal of Vehicle, a vehicle can be towed and impounded when found or operated upon a highway, public land, or an off-street parking facility with a registration expiration date in excess of six months. Deputy 1 informed the complainant that he would be impounding her vehicle pursuant to this code, and offered to contact a Senior Volunteer Unit to provide her transportation to her appointment. The complainant declined, and stated that she would walk. This entire dialogue was captured in an audio recording, and the evidence showed that Deputy 1's actions were lawful, justified and proper.

4. Discrimination/Racial – Deputy 1 allegedly demonstrated discriminatory behavior toward the complainant that was “racially motivated.”

Board Finding: Unfounded

Rationale: The complainant alleged that Deputy 1's “behavior and reaction” to her changed once he observed that the complainant's father's name on the vehicle's title was of Middle Eastern origin. A review of an audio recording of this traffic stop, demonstrated that Deputy 1 conducted himself in an appropriate and professional manner throughout this contact with the complainant. There was no noticeable change in Deputy 1's voice tone or attitude upon receiving vehicle paperwork from the complainant, and he denied that any of his behavior toward her was racially motivated. The evidence showed that the alleged act or conduct did not occur.

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## 16-002

1. Misconduct/Procedure – An unknown deputy allegedly placed the complainant in confinement without medical treatment.

Board Finding: Action Justified

Rationale: The complainant said that he lost his composure during the booking process and tried to assault the nurse, resulting in his being placed in confinement. An Incident Report dated July 2, 2015, documented this incident in which the complainant refused to answer questions during intake, and then he used profanity and attempted to spit on the nurse. The complainant was found to be in violation of Inmate Rules & Regulations: Disrespected Staff, Disobeyed Staff Instructions, and Interfered with Jail Operations. The Incident Report was written by Deputy 3, the Discipline Hearing was conducted by Deputy 2, and subsequently approved by Deputy 1, for which the complainant received 10 days of disciplinary lockdown. The complainant was assessed by medical personnel during booking, but did not complete the process - refer to allegation #2. The evidence showed the complainant's conduct was a violation and the imposed discipline was lawful, justified and proper.

2. Misconduct/Medical – The complainant alleged that he was not provided with any medication for 13 days while he detoxed from heroin use.

Board Finding: Summary Dismissal

Rationale: The complainant stated that he was held for 13 days without medical help for withdrawals. The complainant had interrupted the booking process preventing the completion of medical intake questions. In a grievance filed three weeks after his arrest, the complainant indicated that he had submitted more than four medical slips requesting medical assistance; however, there was no documentation to support the statement. The

complainant's first documentation of the need for detoxification occurred 13 days after his arrest, when he told medical personnel that he had used heroin while at court two days before. Medical proceeded with standard nursing protocol for heroin withdrawal even though the complainant was evaluated and did not display withdrawal symptoms. Medication is approved and administered (or restricted) by medical personnel, over whom CLERB has no jurisdiction. The Review Board lacks jurisdiction and/or the complaint clearly lacks merit.

3. Misconduct/Medical – The complainant was assigned to a top tier, where he fell and injured himself causing hospitalization, only to be returned to the top tier after being released from the hospital.

Board Finding: Summary Dismissal

Rationale: The complainant stated that he was wearing a knee brace when arrested and should not have been assigned to housing on an upper tier. Shortly after the complainant was taken into custody he requested a knee brace, but medical personnel determined that a knee brace was not required. Approximately ten weeks later, the complainant was transported to hospital after falling down approximately three steps; he returned from a hospital later the same day wearing a knee brace. Medical personnel removed the knee brace and replaced it with an ace bandage. A subsequent examination by medical personnel did not result in restricting his housing assignment to a lower tier. Medical staff are non-sworn personnel and CLERB does not have jurisdiction over staff or their decisions.

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### **16-003**

1. False Arrest – Deputy 1 arrested the complainant for a residential burglary; allegedly without any evidence linking him to the crime.

Board Finding: Summary Dismissal

Rationale: The complainant submitted a signed complaint to CLERB for a lawsuit against the County of San Diego, and was referred to the County Claims division. He left local custody in February 2016, and was not found to be in state custody. An out-of-custody telephone number provided by the complainant was non-operable, and correspondence sent to his last known address went unanswered. The complainant's current whereabouts are unknown. The complainant was unavailable for clarification of any of the evidence produced by the Sheriff's Department. Upon submittal of his complaint, he was apprised that failure to maintain contact and cooperate with the investigation could result in dismissal of his complaint.

2. Illegal Search & Seizure – Deputy 1 allegedly searched the complainant's home on multiple occasions.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

3. Criminal Conduct – Deputy 2 allegedly searched the complainant's cell phone without a warrant.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

4. Misconduct/Procedure – Deputy 1 allegedly confiscated and/or held the complainant's phone for two months.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

5. False Reporting – Deputy 1 produced a police report during Discovery that allegedly fabricated a previous rape conviction against the complainant.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

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**16-008**

1. Illegal Search or Seizure – Deputy 2 allegedly placed the complainant in handcuffs because of his appearance and the complainant’s status as a recent parolee.

Board Finding: Action Justified

Rationale: The complainant alleged that he was placed in handcuffs based on his appearance, and because he provided a prison identification card to Deputy 2, indicating his status as a recent parolee. Deputy 2 reported that he was pursuing a stolen vehicle suspect, when he observed the complainant exiting a car that matched the suspect’s vehicle. He contacted the complainant, asked him his name, and asked if he was on probation or parole? The complainant reportedly responded, "I'm on AB109, motherfucker! I just got out," and proceeded to give Deputy 2 a California Department of Corrections identification card. A person with AB109 status is under Postrelease Community Supervision. Pursuant to Penal Code Section 3453, Postrelease Community Supervision; Conditions, such persons are subject to search at any time of the day or night, with or without a warrant, by an agent of the supervising county agency or by a peace officer. Deputy 2 placed the complainant in handcuffs for officer safety purposes, prior to searching the complainant’s person. This act did occur, but was lawful, justified and proper.

2. Excessive Force/Fists - Deputy 2 allegedly punched the complainant in his back while handcuffed.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 2 punched him in his back while handcuffed. Deputy 2 reported that in an effort to control the complainant, he executed a head control takedown on the complainant when he attempted to pull away from him. The complainant acknowledged that he initially pulled away from Deputy 2 while handcuffed. Deputy 2, however, denied striking the complainant at any time during this contact. Video of portions of this incident captured by a bystander did not show the complainant being struck by any deputy on scene. Absent video evidence or an independent witness to this alleged act, there is insufficient evidence to prove or disprove the allegation.

3. Excessive Force/Other – Deputy 3 allegedly “smashed” the complainant’s head into the pavement while handcuffed.

Board Finding: Not Sustained

Rationale: The complainant alleged that an unidentified deputy “smashed” his head into the pavement while handcuffed. Several deputies were on scene; however, Deputy 3 reported that he assisted Deputy 2 in controlling the complainant by placing both of his hands on the back of the complainant’s head and applying a head control takedown. Deputy 3 reported that the complainant was violently kicking and thrashing his body, and that he grounded the complainant in an effort to gain control and put him in a position of disadvantage. Deputy 3 denied that he “smashed” the complainant’s head into the pavement, or observed any deputy perform this action. Absent video evidence or an independent witness to this alleged act, there is insufficient evidence to prove or disprove the allegation.

4. Excessive Force/Taser – Deputy 5 allegedly tazed the complainant’s handcuffs.

Board Finding: Unfounded

Rationale: The complainant alleged that an unidentified deputy tazed his handcuffs while he was being hit by deputies. Deputy 5 was the only deputy on scene armed with a tazer and he denied deploying his taser during this incident. Deputy 5’s Taser Report, which automatically documents taser activity, corroborates this assertion and does not show that his taser was deployed at the time and date of the incident in question. The evidence showed that the alleged act did not occur.

5. Excessive Force/Other – Deputies 1, 2, 3, 4 and 7 allegedly picked the complainant up and “slammed” him to the ground on his face.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputies 1, 2, 3, 4 and 7 picked him up and “slammed” him to the ground on his face. Involved deputies reported that the complainant violently thrashed his body and kicked Deputy 3 in the groin area when they attempted to gain control of him. The surrounding crowd was growing increasingly agitated and deputies worked quickly to control the complainant’s movements so that he could be placed in maximum restraints and extracted from this hostile environment. Deputies reported that they safely placed the complainant on the ground to maintain a hold of him, as he continued to attempt to pull away from their grip. Deputies deployed a number of department approved control compliance techniques to control the complainant, but all deny “slamming” the complainant onto the ground. There is no video evidence or independent witnesses to corroborate this allegation, leaving insufficient evidence to either prove or disprove the allegation.

6. Excessive Force/Other – Deputy 6 allegedly kicked the complainant after being hogtied, resulting in multiple injuries.

Board Finding: Action Justified

Rationale: The complainant alleged that an unidentified deputy kicked him after he had been hogtied. The complainant was in maximum restraints when he arrived at the sally port of the Vista Detention Facility. Although in maximum restraints, the complainant was able to stand upright and was bent over at the waist onto the trunk of a patrol vehicle. The complainant continuously stated "Fuck you," attempted to bite anyone he could reach and threatened violence toward both law enforcement and the Vista Fire Department personnel present. At one point, the complainant wildly kicked backwards, striking Deputy 6 in the left thigh area. Deputy 6 reported that he delivered three knee strikes to the complainant’s left thigh in an attempt to stop his assaultive behavior, and to prevent him from injuring other personnel involved. Detentions Policy 6.48, Physical Force, authorizes deputies to utilize any degree of physical force deemed necessary and objectively reasonable to effect an arrest, prevent escape or overcome resistance. Deputy 6 applied a department approved force technique, and this conduct was lawful, justified and proper.

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## **16-011**

1. Illegal Search – PO’s 1-7 allegedly “searched” the aggrieved’s room.

Board Finding: Action Justified

Rationale: The complainant said that her son’s room was “illegally searched.” Fourth Waiver Searches are defined as a complete search of all areas accessible to an offender and where the offender and all occupants of the home are under control. All involved Probation Officers documented their actions and reported that a cursory protective sweep was conducted for officer safety purposes. Protective sweeps are permissible under terms of the 4<sup>th</sup> waiver search conditions. The evidence showed the Probation Officers conduct was lawful, justified and proper.

2. Discrimination/Racial – An unknown PO allegedly said that he hated black people.

Board Finding: Not Sustained

Rationale: The complainant reported that a Mexican Probation Officer said he hated “black people,” but she was unable to identify the accused with any further descriptors, which would allow for positive identification. All Probation Officers present during this incident, denied saying and/or hearing any discriminatory remarks. There was insufficient evidence to either prove or disprove the allegation.

3. Excessive Force – PO’s 1 & 4 handcuffed, and PO 7 drew a firearm on the aggrieved without cause.

Board Finding: Action Justified

Rationale: The complainant believed her son, the aggrieved, was treated like a criminal because he was handcuffed and a gun was drawn on him. Case law states that officers executing a 4th waiver search can lawfully detain its occupants whether or not they might be considered dangerous, in an effort to facilitate the

orderly completion of the search while minimizing the risk of harm to the officers. While performing their duties during a 4<sup>th</sup> waiver search, PO's 1 and 4 reported the aggrieved became verbally and physically defiant, used profanity and advanced toward them with clenched fists, all while highly agitated and yelling belligerently; they described his overall appearance as hostile and aggressive. When PO 1 instinctively raised her arms in a protective manner, PO 4 used a pressure point application, to stop him from further advancement, and then applied a wrist lock. When PO 7 observed the aggrieved verbally and physically resisting officers, he announced, drew, and energized his Taser. The aggrieved stated, "Please don't tase me," and became compliant. PC§ 834a., Duty to Cooperate in Arrest, mandates that citizens may not resist an arrest and should they, officers may use a reasonable amount of force to effect an arrest. The evidence showed the officers' conduct was in response to the aggrieved's noncompliance, and their actions were lawful, justified and proper.

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## **16-016**

1. Misconduct/Truthfulness – Deputy 1 allegedly “lied” about the complainant’s Fourth Waiver status.

Board Finding: Action Justified

Rationale: The complainant alleged the Deputy 1 lied about his Fourth Waiver status, after contacting him in a Walmart parking lot. Deputy 1 contacted the complainant after observing an expired registration sticker on the back of his vehicle. An expired Temporary Operating Permit was also located affixed to the rear window of the complainant’s vehicle, which had been altered to display an updated status. A computer check was conducted through dispatch, revealing a 4<sup>th</sup> waiver search provision on the complainant. Deputy 1 informed the complainant regarding his 4<sup>th</sup> waiver status, and this action was lawful, justified and proper.

2. Illegal Search & Seizure – Deputy 1 searched the complainant’s person without cause.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 searched his person without cause. Prior to attempting to locate the temporary sticker affixed to the vehicle’s rear window, Deputy 1 had the complainant step out of his vehicle and patted him down for weapons for officer safety purposes, before seating him on the side of his truck. During the pat down, Deputy 1 located and removed a folding razor blade knife from the complainant’s jacket pocket. Pursuant to case law, in potentially dangerous situations, officers are authorized to conduct a pat down, or limited weapons search of the outer clothing of someone who has been detained. When Deputy 1 contacted the complainant, he was seated in his vehicle cutting his hair with a pair of large scissors, and razor blades were observed on the front seat where he sat. Additionally, incident to a lawful custodial arrest, deputies are authorized to search the arrestee’s person to safeguard evidence and ensure their own safety during the process of a custodial arrest. The alleged act did occur, but was lawful, justified and proper.

3. Illegal Search & Seizure – Deputy 1 searched the complainant’s vehicle without cause.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 searched his vehicle without cause. The complainant was arrested pursuant to VC§ 4463(a) (1), Forge/Alter Vehicle Registration, and his vehicle impounded per VC§ 22651, Expired Registration over 6 Months. Prior to impounding the complainant’s vehicle, Deputy 1 was required to inventory the vehicle’s content before authorizing a tow. Additionally, deputies are authorized to search a vehicle incident to the lawful custodial arrest of either the driver or any other occupant of the vehicle. Lastly, the complainant’s Fourth Waiver status permitted the search of his person and any property under his control. The alleged act did occur, and for multiple reasons was lawful, justified and proper.

4. Misconduct/Discourtesy – Deputy 1 allegedly stated to the complainant, “Tough shit” while speaking with him about his probation status.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 stated to him, “Tough shit” while speaking with him about his probation status. Deputy 1 reported that he did not recall using these words, or words to that effect; and that

these were words that he would not normally use. Absent an audio recording of this contact, there is insufficient evidence to either prove or disprove the allegation.

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## **16-018**

1. Excessive Force/Other – Deputy 1 allegedly twisted the complainant’s arm.

**Board Finding:** Action Justified

**Rationale:** The complainant alleged that Deputy 1 twisted his arm while attempting to handcuff him. Deputies 1 and 2 were attempting to confiscate a pair of wire-rim sunglasses from the complainant, when he resisted and refused to relinquish them. Deputy 2 explained to the complainant that sunglasses were not allowed in jail because the wire frame could be used to create a weapon, which would be a safety concern for deputies and other inmates. The complainant again refused to surrender his glasses and proceeded to place the glasses in his pants in an effort to hide and secure them from deputies. Deputy 2 instructed the complainant to turn and face the wall so that he could be handcuffed and escorted to another area of the jail, where a strip search would be conducted. The complainant resisted the deputies’ efforts to handcuff him by tensing his arm muscles and pulling away. Deputy 1 grasped and controlled the complainant’s arm while Deputy 2 handcuffed him. He denied twisting the complainant’s arm while controlling him. Detentions Policy I.89, Use of Force, authorizes deputies to use force which is necessary and objectively reasonable to enforce a lawful order or to overcome resistance. Deputy 1 used department approved control compliance techniques to overcome the complainant’s resistance, and his actions were lawful, justified and proper.

2. Excessive Force/Other – Deputy 1 allegedly threw the complainant to the ground.

**Board Finding:** Unfounded

**Rationale:** The complainant alleged that Deputy 1 threw him to the ground while being escorted to another holding cell. Deputy 1 denied throwing the complainant to the ground, and denied observing any other deputies throw the complainant to the ground. Deputy 1 reported that the complainant fell on his own after saying out loud how he noticed that there were security cameras present. Witness deputies on scene corroborate Deputy 1’s report. Surveillance video captured this incident and clearly showed the complainant falling to the ground on his own accord, independent of any deputy action. The evidence showed that the alleged act did not occur.

3. Excessive Force/Other – Deputy 1 “intentionally” bumped the complainant’s head into a gate while escorting him.

**Board Finding:** Not Sustained

**Rationale:** The complainant alleged that Deputy 1 “intentionally” bumped his head into a gate during an escort. Deputy 1 denied this allegation and denied observing any other deputy do this action. The complainant was seen by medical, and there were no injuries to his head documented in the medical reports. There were four surveillance video angles that captured this escort from the strip search area to the complainant’s module; however, some of the escort was not available on camera. Given this, there is insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Procedure – Deputy 2 allegedly confiscated prescription glasses from the complainant that had been approved by medical.

**Board Finding:** Summary Dismissal

**Rationale:** Deputy 2 left the department in April, 2016 and is no longer subject to CLERB’s requests for information. The Review Board lacks jurisdiction based on CLERB Rule & Regulation 4.1, in that Deputy 2 is no longer employed by the Sheriff’s Department, and is not required to cooperate with this investigation.

5. Excessive Force/Tight Handcuffs –Deputy 2 allegedly placed handcuffs on the complainant too tightly.

**Board Finding:** Summary Dismissal

Rationale: See Rationale #4

6. Excessive Force/Other – Deputy 2 allegedly twisted the complainant’s arm.

Board Finding: Summary Dismissal

Rationale: See Rationale #4

7. Excessive Force/Other – Deputy 2 allegedly threw the complainant to the ground.

Board Finding: Summary Dismissal

Rationale: See Rationale #4

8. Excessive Force/Other – Deputy 2 allegedly “intentionally” bumped the complainant’s head into a gate while escorting him.

Board Finding: Summary Dismissal

Rationale: See Rationale #4

9. Misconduct/Procedure – Deputy 2 allegedly provided the complainant a delayed and incomplete property receipt.

Board Finding: Summary Dismissal

Rationale: See Rationale #4

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## **16-025**

1. Illegal Search – Deputy 1 ordered the complainant out of her vehicle and allegedly searched her person three times.

Board Finding: Action Justified

Rationale: The complainant reported that after her name came back "clear," Deputy 1 ordered her to exit her vehicle and put her hands on the police car so that he could pat her down for weapons. The complainant said, “I don’t see how the deputy would have a ‘reasonable suspicion’ that I had a weapon when I hadn’t done anything to arise any suspicion. The deputy patted me down once and then again. After he completed the second pat-down, he was going for a third.” Deputy 1 said he conducted a single patdown of the complainant, but there were several instances where he had to stop due to the complainant’s non-compliant behavior. Officers may conduct a patdown or limited search of someone they have detained, for weapons, on their outer clothing, and when they feel in danger. Case law stipulates that a detention based on officer safety concerns is lawful "when an individual's actions give the appearance of potential danger to the officer." You "need not be absolutely certain that the individual is armed." Officer safety is also grounds for detaining persons not the subject of an investigation if their detention is necessary for the officers to proceed in their investigation. Another passenger in the complainant’s vehicle had a 4th waiver search provision and the evidence showed Deputy 1’s conduct was lawful, justified and proper.

2. Illegal Search – Deputy 1 allegedly detained the complainant for over an hour while handcuffed.

Board Finding: Action Justified

Rationale: The complainant said she was handcuffed for over an hour and that her arms and shoulders hurt from being in handcuffs for the entire time that she was wrongfully detained. Deputy 1 reported and CAD records confirmed that this detention lasted for approximately one hour from the time of initial contact to their release with a citation for possession of a controlled substance and paraphernalia. Of that time, Deputy 1 said that the complainant was only placed into handcuffs for approximately 30 minutes. During a lawful detention, deputies are "authorized to take such steps as [are] reasonably necessary to protect their personal safety and to maintain

the status quo during the course of the stop." The evidence showed the alleged act did occur and was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 1 allegedly did not call for a female deputy to conduct a search of the female complainant.

Board Finding: Action Justified

Rationale: The complainant said that Deputy 1 did not ever attempt to call for a female officer, and Deputy 1 confirmed that information. No female deputies were working in the area at the time of the incident and Deputy 1 did not want to unduly delay the investigation. A female deputy was not required for this situation/search and Deputy 1's actions were lawful, justified and proper.

4. Misconduct/Procedure – Deputy 1 allegedly yelled, "Shut up and put your hands on the car" when she protested the way he was touching her body during a patdown.

Board Finding: Not Sustained

Rationale: The complainant said that Deputy 1 completely lost his temper and yelled, "Shut up and put your hands on the car!" As soon as she did, the complainant said the deputy brushed her pelvic area with the palm of his right hand to make her more uncomfortable. Deputy 1 reported that as soon as he asked the complainant to exit her vehicle, "she began to loudly protest the search of her vehicle and person." The Arrest Report and photographic evidence confirmed the complainant was wearing a large sweatshirt and a patdown search for weapons was permissible and necessary for officer safety, however there was insufficient evidence to confirm or refute that the complainant was touched inappropriately as she alleged.

5. Misconduct/Procedure – Deputy 1 allegedly yelled to the complainant, "You're being detained for mouthing off!"

Board Finding: Action Justified

Rationale: When the complainant asked why she was being handcuffed, Deputy 1 yelled, "You're being detained for mouthing-off." The complainant said she used a firm voice with the deputy, but denied "mouthing off." Deputy 1 admittedly made the statement and reported that the complainant was being verbally non-compliant and her body language suggested continual resistance. Deputies 1-4 believed that the complainant's behavior was atypical and suspicious. The basis for a lawful detention is reasonable suspicion of criminal activity. According to witness deputies, it was the complainant's actions that elevated their suspicion that she may have been hiding a weapon, although no weapons were found. There was no violation of policy related to this allegation and the detention was lawful and justified because of the complainant's non-compliance.

6. Illegal Search – Deputy 1 allegedly searched the complainant's service dog without permission.

Board Finding: Action Justified

Rationale: The complainant reported that Deputy 1 patted down her dog that was wearing a snug hoody and she did not consent to his search. Deputy 1 said there was a small dog in the car, but he had no recollection of it being a service dog, and did not have a means to verify whether it was a service animal or not. The dog was wearing some type of dog sweater/jacket so he did a brief search of the clothing, because it was located in the front right passenger seat, within the reach of the driver who was on probation and had a 4th waiver. After finding illegal narcotics and drug paraphernalia in the vehicle, it was reasonable for Deputy 1 to believe there may be further contraband concealed on the dog or in the clothing it was wearing and the search of the animal was lawful, justified and proper.

7. Illegal Search – Deputy 1 allegedly searched the complainant's vehicle, glovebox, and trunk without consent.

Board Finding: Action Justified

Rationale: The complainant said she made it clear that she did not consent to a search of her car when Deputy 1 inquired about her car keys and popped the hood. The complainant reported that Deputy 1 searched her entire car, including under the hood and in the engine fuse box. Deputy 1 was initially authorized to conduct a search

of the complainant's vehicle for those areas that were accessible to a probationer, because of her 4<sup>th</sup> waiver search conditions. Once Deputy 1 observed a baggie and pipe, there was probable cause to search the entire vehicle for further evidence of criminal activity. The evidence showed the vehicle search was lawful, justified and proper.

8. Discrimination/Racial – Deputy 1 “singled out,” and treated the complainant differently, allegedly because of her ethnicity.

Board Finding: Action Justified

Rationale: The complainant felt “discriminated against,” because she was the only one handcuffed and the only one who was not Caucasian; “I felt singled-out because of my ethnicity.” Deputy 1 reported that due to the complainant's non-compliant behavior, and the circumstances of the contact, he placed her into handcuffs for his safety. The other suspect was left unhandcuffed because she was reportedly calm and cooperative throughout the contact. There were no reported violations of Sheriff's Policy & Procedure 2.53, Discrimination and the actions that occurred were lawful, justified and proper.

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## 16-032

1. Excessive Force – Deputy 3 utilized force on 03/21/13, allegedly resulting in trauma to the complainant's head, eye, wrist, back and/or neck.

Board Finding: Summary Dismissal

Rationale: The complainant left local custody on an unknown date, was not found to be in state custody, and failed to provide out of custody contact information; his current whereabouts are unknown. The complainant was unavailable for clarification of named members and other evidence produced by the Sheriff's Department. Upon submittal of his complaint, he was apprised that failure to maintain contact and cooperate with the investigation could result in dismissal of his complaint.

2. Excessive Force – Deputy 3 utilized force on 12/03/13, allegedly while the complainant was nude, handcuffed and shackled, resulting in trauma to the complainant's neck.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Retaliation – Deputy 3 utilized force against the complainant on 12/03/13, for allegedly attempting to report sexual harassment.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Procedure – Deputy 3 failed to protect the complainant from injury on 12/17/15, from another inmate who was allegedly improperly housed.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Procedure – Deputy 3 allegedly housed three inmates in a two-man cell on 02/21/16.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Discourtesy – Deputy 2 allegedly responded to the complainant, “You can get a piece of this DICK” upon his request for food on 01/22/2016.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

7. Misconduct/Procedure – Deputy 1 allegedly placed his hand into the complainant’s “body cavity” and also “squeezed his testicles,” on or around 2/12/16.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

8. Misconduct/Procedure – Deputy 3 allegedly subjected inmates to a visual body cavity search on 2/21/16, while nude outside for night count, and told the complainant to spread his buttocks open wide and said, “I’ve seen a lot of ass tonight.”

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

9. Misconduct/Procedure – Deputy 3 allegedly opened the complainant’s legal mail on 3/1/2016.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

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**16-072**

1. Misconduct/Discourtesy – Deputy 1 allegedly said to the complainant, “Nigga shut up I’ll ‘blow’ your head off,” or words to that effect.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 1 entered his hospital room and stated, “Nigga shut up I’ll ‘blow’ your head off,” or words to that effect. Deputy 1 denied making any such statement. There were no independent witnesses or audio recordings; absent audio recordings, there is insufficient evidence to prove or disprove the allegation.

2. Criminal Conduct – Deputy 1 allegedly grabbed the complainant’s buttocks and performed a sex act in his hospital room.

Board Finding: Unfounded

Rationale: The complainant stated that Deputy 1 entered his hospital room, touched his buttocks, and then performed a sex act. In recorded interviews, the complainant initially stated that Deputy 1 entered his hospital room, then raped and sodomized him; later recanting that allegation, stating that Deputy 1 touched his buttocks, masturbated and ejaculated on his sheets. Deputy 1 reported that he had a conversation about meals with the complainant the day prior to the alleged incident, but had no further communication with him. Deputy 1 denied all allegations, stating that he entered the complainant’s room only to accompany nurses for the administration of medication. Once medications were administered, he and the attending nurse left the room. The attending nurse assigned to the unit confirmed Deputy 1’s statement. Hospital officials reported that video cameras are placed in patient rooms; however, the video was monitored only, and not recorded. Additionally, there was no video evidence from the adjacent hallway to support or dispute the complainant’s allegation. The inconsistency of the complainant’s statements, and the complainant’s documented/admitted mental health history, raise question as to the validity of the allegations and seriously impugn the complainant’s credibility. Based on the complainant’s lack of credibility it was determined that the alleged acts did not occur.

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*End of Report*