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# County of San Diego

## CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its September 11, 2018, 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).
- b) PUBLIC EMPLOYEE APPOINTMENT  
Notice pursuant to Government Code section 54957(b)  
Title: Interim Executive Officer, CLERB

| 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 (4)

### ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

#### 15-112

1. Death Investigation/In-Custody Homicide – On 10-09-15, while in the custody of the San Diego Sheriff's Department at the San Diego Central Jail, Francis Fernandez was bludgeoned by another inmate. Fernandez was transported to UCSD Medical Center where he died from severe head trauma. The cause of death was blunt force head trauma and the manner of death was homicide.

Board Finding: Action Justified

Rationale: The evidence indicated that Fernandez was properly classified upon his entry into the SDSD jail system after his 10-08-15 arrest for being Drunk in Public. During the booking process he was placed into a Holding Cell with one other inmate who had been arrested on 10-09-15 for being under the influence of a controlled substance. Security checks were conducted in compliance with DSB Policy I.64, Security Checks of Housing Units and Holding Cells, and at that time a deputy discovered an assault in progress. The deputy responded to the attack with a use of Oleoresin Capsicum (OC), in compliance with DSB I.85 Use of Defensive Devices, which had little to no effect on the assaultive inmate. Prior to the arrival of cover deputies, the assailant continued to strike Fernandez's head until he subsequently complied with instructions and laid down on the floor of the cell with his hands out away from his body. Deputies initiated life-saving measures in compliance with DSB M.6, Life Threatening Emergencies, but Fernandez had suffered multiple facial fractures and a severe intracranial hemorrhage from

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the attack. He was transported to UCSD Medical Center where he died from blunt force head trauma. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

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## **16-107**

1. Death Investigation/Natural Death – On 12-09-16, while as an inmate at the San Diego Central Jail (SDCJ), Bill Asaro was found lying unresponsive in his cell. Sworn personnel summoned medical attention and initiated cardiopulmonary resuscitation (CPR). Despite aggressive resuscitative efforts, death was pronounced while at SDCJ. The cause of death was hypertensive and atherosclerotic cardiovascular disease with a contributing cause of hepatic fibrosis (excessive connective tissue buildup in the liver) and steatosis (buildup of fat in the liver). The manner of death was natural.

Board Finding: Action Justified

Rationale: On 12-04-16, Bill Asaro was arrested on suspicion of assault and was eventually transported to SDCJ where he was placed into a sobering cell, as he was suspected to be under the influence of an unknown substance. He remained in the sobering cell for approximately 25 hours, during which time he was medically assessed every four hours pursuant to SDCJ Detentions Services Bureau Policy and Procedures (DSB P&P) Section J.2, "Sobering Cells: Definition and Use." Upon clearance from the sobering cell, he underwent medical screening and was deemed fit for booking. Approximately 10 hours later, on 12-06-16, after concern was raised for Asaro's mental wellbeing as he possibly made statements tending to indicate suicidal ideation, he was placed into an Enhanced Observation Housing (EOH) cell, a one-person cell, where he remained until he was found lying unresponsive in the cell during the early morning hours of 12-09-16. Sworn personnel conducted security checks every 30 minutes and in a manner that conformed with DSB P&P Section J.4, "Enhanced Observation Housing: Definition and Use" from the time of Asaro's placement into the EOH cell until a deputy discovered him lying unresponsive in his cell during a security check. Medical staff also observed Asaro every four hours from the time of his placement into the EOH cell until he was found unresponsive pursuant to DSB P&P J.4. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel and their actions were lawful, proper, and justified.

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## **17-095**

1. Discrimination – Deputy 2 stopped and detained the complainant because of the complainant's race.

Board Finding: Unfounded

Rationale: The complainant was detained and arrested by Deputy 2. According to the complainant, he "was not high or drunk" when he was detained. The complainant claimed, "I was Mexican." In essence, the complainant alleged he was stopped and detained based on his race. According to SDCJ P&P Section 2.55 entitled, "Non-Biased Based Policing," Members of the San Diego County Sheriff's Department are prohibited from inappropriately or unlawfully considering race, ethnicity, religion, national origin, sexual orientation, gender, or lifestyle in deciding whether or not enforcement intervention will occur. Employees shall not consider race, ethnicity, religion, national origin, sexual orientation, gender, or lifestyle in establishing either reasonable suspicion or probable cause. According to Deputy 2's Arrest Report and his Probable Cause Declaration for Warrantless Arrest, he and another deputy were on patrol in Lakeside when they noticed two males engaging in a verbal altercation, one of the males being the complainant. After detaining the individuals, Deputy 2 performed a "records check" and found that the complainant had an active felony warrant for his arrest. During Deputy 2's interaction with the complainant, he recognized that the complainant was under the influence of drugs and/or alcohol. The complainant "was so intoxicated that he was unable to care for his own safety and he posed a danger to public welfare and himself." He exhibited signs of alcohol intoxication: he had an odor of an alcoholic beverage emitting from his breath and person, had an unsteady balance while attempting to walk, had slow, slurred speech, had bloodshot reddened eyes, and engaged in loud, boisterous activity. Deputy 2 arrested the complainant for being intoxicated in public and for his outstanding warrant. The evidence shows that the alleged act or conduct did not occur.

2. Excessive Force – Deputies 2 and 3 used excessive force on the complainant.

Board Finding: Unfounded

Rationale: The complainant stated that he was involved in a use of force with Deputies 2 and 3 on 07-08-16. The complainant advised that the force executed by the deputies was "excessive," though he did not elaborate or detail the extent of the force executed against him. According to Deputy 2's Arrest Report and his Probable Cause Declaration for Warrantless Arrest, after the complainant was arrested, he was escorted to and placed in the deputy's patrol vehicle. While in the patrol vehicle, the complainant "slipped his handcuffs from behind him and kicked the vehicle's window." Additionally, the complainant used his hands and handcuffs to violently bang on the vehicle's windows and the Plexiglas partition, which separated the rear seat area from the front seat area. Deputies 2 and 3 ordered the complainant to stop, but the complainant refused to comply with the deputies' orders. As a result of the complainant's blatant disregard to deputies' orders and his attempts to damage property, Deputy 3 deployed his oleoresin capsicum (OC) [spray] on the complainant. The complainant

ceased his kicking and banging and “almost immediately became compliant.” According to SDSD P&P Section 2.49 entitled, “Use of Force,” Employees shall not use more force in any situation than is reasonably necessary under the circumstances. Employees shall use force in accordance with law and established Departmental procedures, and report all use of force in writing. According to SDSD P&P Section 2.50 entitled, “Use of Lethal/less Lethal Weapons,” employees shall not use or handle lethal or less lethal weapons in a careless or imprudent manner. Employees shall use these weapons in accordance with law and established Departmental procedures. According to SDSD P&P Section 6.66 entitled, “Chemical Agents Policy,” non-lethal chemical agents may be used to reduce violence, minimize property damage and protect the public, to incapacitate a suspect who is endangering life or property, and to apprehend suspects who refuse to submit to arrest. According to SDSD P&P Addendum F entitled, “Use of Force Guidelines,” non-lethal chemical agents are intended to reduce, limit or prevent injuries when lesser force options would not likely be effective in allowing a deputy to gain control of the subject. According to the policy, non-lethal chemical agents may be used on restrained prisoners who are violent. No other force was used during Deputies 3 and 2’s interaction with the complainant. In accordance with SDSD P&P, Deputies 2 and 3 documented their use of force in writing. The evidence indicated that Deputies 2 and 3 used force that was reasonable and necessary and in accordance with SDSD P&P. The alleged act of “excessive force” did not occur.

3. Criminal Conduct - Deputy 1 and two other unidentified deputies sexually assaulted a female on 09-08-16 while at the Lakeside Substation.

Board Finding: Unfounded

Rationale: The complainant stated he witnessed Deputy 1 kidnapped, rape, and mistreated a female. In a letter to CLERB, the complainant explained that Deputy 1 forced a female to perform fellatio while at the Lakeside Substation and in the company of two other unidentified deputies. Though the complainant alleged that the incident occurred in September 2016, he did not file a complaint until September 2017. CLERB contacted SDSD and requested any audio/video tapes, to include Body Worn Camera (BWC) footage and vehicle camera footage from both Deputy 1 and his patrol vehicle during the time he was in contact with the complainant on 09-08-16. The SDSD advised that no BWC was available, as Deputy 1 was not yet trained on BWC at that time. Additionally, an extended amount of time had lapsed since the date of the incident and the date the recordings were requested. No video or recordings were available. During the course of CLERB’s investigation, Deputy 1 and a witness deputy provided information that was considered in arriving at the recommended finding. The complainant lacked credibility and was so clearly without merit that no reasonable person could sustain a finding based on the allegation; however, due to the severity of the allegation a full investigation was performed. There was no prima facie showing of misconduct. The evidence shows that the alleged act or conduct did not occur.

4. Criminal Conduct – Deputies 4, 5, 6, 8, and 9 participated in or were aware of prostitution activities at the SDCJ on 09-08-16.

Board Finding: Unfounded

Rationale: After his arrest, the complainant was transported to SDCJ where he was booked into custody. Upon his arrival to jail, the complainant alleged that he witnessed numerous acts of sexual activities between the jail nursing staff, numerous inmates, and Deputies 4, 5, 6, 8, and 9. The complainant alleged that the aforementioned deputies either participated in or were aware of the sexual and prostitution activities at occurred at SDCJ on 09-08-16. Though the complainant alleged that the incident occurred in September 2016, he did not file a complaint with CLERB until September 2017. CLERB contacted SDSD and requested any audio/video tapes, to include jail surveillance footage during the time the complainant’s stay at SDCJ on 09-08-16. The SDSD advised that no jail surveillance video recordings were available, as an extended time had lapsed since the date of the incident and the date the recordings were requested. During the course of CLERB’s investigation, Deputies 4, 5, 6, 8, and 9 provided information that was considered in arriving at the recommended finding. The complainant lacked credibility and his complaint was so clearly without merit that no reasonable person could sustain a finding based on the allegation; however, due to the severity of the allegation a full investigation was performed. There was no prima facie showing of misconduct. The evidence shows that the alleged act or conduct did not occur.

5. Criminal Conduct – Deputy 7 participated in or was aware of prostitution activities at the SDCJ on 09-08-16.

Board Finding: Summarily Dismissed

Rationale: Deputy 7 is no longer employed by the SDSD as he retired on 03-15-18. As such, CLERB does not have jurisdiction per CLERB Rules and Regulations 4.1, “Citizen Complaints: Authority.”

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## **18-066**

1. Excessive Force – Deputy 1 “shoved” the complainant into his cell.

Board Finding: Action Justified

Rationale: The complainant stated while returning to his cell he was physically assaulted by Deputy 1. For his “lack of understanding” of the complainant’s medical condition, he was “shoved” into his cell and took an “aggressive stance”.

According to a report provided by the SDSD, the complainant started to enter his cell before it could be secured. Once the cell was secured, the complainant turned and looked at his cell. Deputy 1 noticed the complainant had his hands free. Deputy 1 placed both hands on the complainant's right arm and told him to step in his cell. While attempting to assist the complainant back into his cell using arm guidance, the complainant stiffened his body which made it difficult to escort him back into his cell. The complainant pulled his elbow back toward Deputy 1's body. Utilizing both hands, Deputy 1 pushed the complainant into his cell. He did this to create separation from the complainant and himself and to prevent him from turning to face the deputy as he would have been close enough to assault the deputy. The deputy's actions were effective in getting the complainant into his cell. A review of the surveillance video corroborated the statement provided by Deputy 1. Deputy 1 and three other deputies provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. SDSD DSB P&P Section I.89, entitled "Use of Force" states that "If the employee determines that the use of force is necessary, he/she will use only that force which is reasonable for the situation." SDSD P&P Section 2.49, entitled "Physical Force" states "Employees shall not use more force in any situation than is reasonable necessary under the circumstances." SDSD P&P Addendum F, entitled "Use of Force Guidelines" states "Whenever any Deputy Sheriff, while in the performance of his/her official law enforcement duties, deems it necessary to utilize any degree of physical force, the force used shall only be that which is necessary and objectively reasonable to effect the arrest, prevent escape or overcome resistance." In this matter the complainant did not follow directions and tried to enter his cell when he was not directed to. The complainant's hands were not in his waistband and when the deputy tried to use arm guidance to get the complainant back to his cell he stiffened his body. The stiffening of the complainant's body, subsequent pulling back of his elbow toward Deputy 1 and not following directions was justification by Deputy 1 to use force to get the complainant back to his cell. Deputy 1 used a minimal amount of force, as witnessed in the surveillance video, by pushing the complainant briefly with both hands until he was in the cell and the door was secured. Therefore evidence showed that the actions of Deputy 1 were lawful, justified and proper.

2. Misconduct/Discourtesy – Deputy 1 "verbally assaulted" the complainant.

Board Finding: Not Sustained

Rationale: The complainant stated while returning to his cell he was "verbally assaulted" by Deputy 1 but did not provide further details. Deputy 1 and four other deputies responded to a Sheriff's Employee Response Form (SERF) with a signed statement and provided the following relevant information in response to CLERB questions. Surveillance video of the incident did not have sound. There was no way to determine what, if anything, the deputy said to the complainant. Therefore absent information provided by an independent witness to the incident or audio recordings of the interaction there was insufficient evidence to prove or disprove the allegation.

3. Misconduct/Medical – The complainant contracted a flesh eating infection while in custody.

Board Finding: Summary Dismissal

Rationale: On 01-16-18 the complainant was injured trying to get on his bed. He hit his leg on the stall. He subsequently developed a flesh eating infection and had to be taken to the hospital for surgery. Medical records confirmed the complainant's allegation. As CLERB has no authority over medical personnel per CLERB Rules & Regulations 4.1 Citizen Complaints: Authority, this allegation of medical misconduct will be referred to the Sheriff's Department.

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***End of Report***

### **NOTICE**

In accordance with Penal Code Section 832.7, this notification shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court or judge of California or the United States.