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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](http://www.sdcounty.ca.gov/clerb)

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its March 12, 2019, 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 (6)****ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE****17-127**

1. Death Investigation/In-Custody Accident - James Kenyon was in custody at a San Diego Sheriff's Department (SDSD) detention facility. On the evening of 11-02-17, he was found down and unresponsive on his bunk in his jail cell. Cardiopulmonary resuscitative (CPR) measures were initiated by jail staff and paramedics were summoned. Kenyon was transported, via ambulance, to the hospital, where CPR efforts were continued. During resuscitation efforts, paramedics and hospital staff discovered an airway obstruction and had difficulty in securing an airway. Despite aggressive resuscitative effort, Kenyon's death was pronounced. The Medical Examiner's Office invoked jurisdiction and an examination was performed on 11-03-17. The cause of death was listed as "Asphyxia, due to Aspiration of Food Bolus," and the manner of death was Accident.

Board Finding: Action Justified

Rationale: According to a SDSD Homicide Detective's Follow-Up Investigative Report, James Francis Kenyon was housed at a SDSD detention facility. Kenyon was assigned to the bottom bunk and was the only inmate assigned to that cell. On 11-02-17, at about 6:57 p.m., housing deputies conducted a security check in the jail module. During the security check, a deputy located Kenyon in his cell; Kenyon was lying supine on his bunk and appeared unresponsive. The deputy called out to Kenyon several times through the food-flap, but Kenyon remained unresponsive. Deputies entered the jail cell and found that Kenyon was not breathing, was cold to the touch, and was without a pulse. Deputies immediately administered cardiopulmonary resuscitation (CPR), summoned jail medical staff, and summoned

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paramedics to the jail. After a series of life saving measures were performed, it was decided that Kenyon should be transported to a local hospital. While at the hospital, it was determined that Kenyon had an obstruction in his airway; possibly a food bolus (a piece of food). Despite medical intervention, an Emergency Department physician pronounced Kenyon deceased on 11-02-17, at 8:43 p.m. According to evidence, SDSD sworn personnel expeditiously responded to the medical distress and immediately initiated life-saving measures. The evidence indicated that Kenyon was properly classified upon his entry into the SDSD jail system after his 10-07-17 arrest. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

2. Misconduct/Procedure - Unidentified deputies failed to inspect jail surveillance cameras and ensure they were functioning properly.

**Board Finding:** Sustained

**Rationale:** During the course of the SDSD's investigation into the death of an inmate, it was discovered that the closed-circuit television within the housing unit was not functioning properly and had not functioned properly during the week prior to the incident. According to the reports, the housing surveillance camera was last known to be operational on the evening of 10-26-17. The failure was discovered on 11-02-17. According to SDSD P&P Section 1.19 entitled, "Facility Closed Circuit Television (CCTV), facility staff and supervisors shall inspect equipment daily to ensure that cameras, monitors, and recording equipment are functioning properly. Furthermore, it is the day shift sergeant in each facility equipped with closed circuit television equipment that will check the equipment daily to ensure proper focus. The policy stated, "The day shift sergeant" will check the equipment daily; however, there are three 'day shift sergeant' positions at the George Baily Detention Facility (GBDF); Processing Sergeant, South Side Sergeant, and the North Side Sergeant. Moreover, the GBDF Post Orders illustrate the duties that the deputy is tasked with while working any given position. Though the Department wide policy states that the day shift sergeant is responsible for ensuring camera functionality, the task is not designated to a specific position within the Post Orders, nor in the GBDF Green Sheet. The applicable content of SDSD GBDF Green Sheet Section 1.19.G entitled, "Facility Closed Circuit Television (CCTV)," reads in part as follows: Security personnel in each area of the facility equipped with closed circuit television and recording equipment will check such equipment daily to ensure proper focus and operation. It is the responsibility of all security personnel to report any discovered deficiencies to supervisors. Given the discrepancies and inconsistencies in the wording of the policy and the facility green sheet, CLERB was unable to identify the deputy tasked with ensuring that the jail surveillance cameras. Nonetheless, the evidence supports the allegation and the act or conduct was not justified.

**POLICY RECOMMENDATION(S):**

1. It is recommended that the SDSD revise its P&P Section 1.19 entitled, "Facility Closed Circuit Television (CCTV)," to designate the duty of ensuring the jail surveillance camera functionality be clearly allocated to a dayshift sergeant, instead of "facility staff and supervisors."
2. It is recommended that the jail surveillance cameras be inspected for functionality during each shift; dayshift and nightshift.
3. It is recommended that the facility post orders specifically illustrate which day shift sergeant position is tasked with ensuring the functionality of the facility's closed-circuit television.

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**18-024**

1. Discrimination/Other – The Sheriff's Department denied privileges/services to inmates in HU2B because of their charges.

**Board Finding:** Summary Dismissal

**Rationale:** The complainant stated, "On behalf of the population of House unit '2' module 'B' (up to 156 inmates), I am writing this request for investigation of discrimination towards inmates particularly housed in this unit (2B). This request mainly pertains to lack of privileges the other inmates in other housing units have access to. Detailed below is an outline of services that are offered to other housing units. Access to these services are supposedly by verification from the facility counselor, restricted because of the type of charges that the majority of the 2B population has. These charges are related to any form of assault or sexual allegations toward women and children. To put this in perspective, the neighboring housing unit '2A' housing PC (protective custody) inmates that do not, nor have had the above charges. These inmates have access to AA/NA meetings, High School Equivalency courses, and even gay friendly

church services. Inmates in 2B do not have this access. Other less important but still discriminatory issues are based upon Health, Gender, and Mainline Population.” The Sheriff’s Department’s Reentry Services Division seeks to enhance the welfare of inmates through a number of programs, but programs vary between facilities, and eligibility may be limited to certain security classifications. Correctional counselors (non-sworn personnel) meet with inmates and perform risk and needs assessments. A review of the complainant’s booking records verified that he was properly classified and housed in Protective Custody. There was no evidence of discrimination against the complainant, but because it does not involve any type of deputy misconduct, the Review Board lacks jurisdiction.

2. Misconduct/Intimidation – Deputy 1 “threatened to shoot the complainant if he tried anything.”

Board Finding: Action Justified

Rationale: The complainant stated, “I’ve had a deputy (name unknown) but (grievance filed) whom threatened to shoot me if I tried anything. He said he knew of my charges (not convicted). I understand criminals whom have a history of crime, and are cussed at, harassed, and have the Dorm doors slammed shut at all hours but there are quite a few of us who are not criminals and should not have to be treated as such.” The complainant provided no context or identifying information related to this allegation, but a review of Sheriff’s records located Inmate Grievance #174001123 reporting that the incident occurred on September 11, 2016. This issue was grieved by the complainant almost a year later on August 17, 2017. A sergeant responded the following day: “I spoke to Dragt in his housing unit. I explained that due to his current charges and his documented escape plans, the deputy’s comments were to ensure his compliance. The deputies actions were justified.” Detentions Policy I.89, Use of Force, states that during the course of their official duties, deputies may use physical force to the extent that is reasonable to maintain or restore order. Personnel shall use the Department approved techniques, equipment and tactics in controlling the inmate or situation. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

3. Misconduct/Procedure – Unidentified deputies failed to provide the complainant a receipt for his grievances.

Board Finding: Not Sustained

Rationale: The complainant reported that he “filed grievances on items 1-3, but did not receive proper attention, or a receipt copy of the grievances.” A review of SDSD records confirmed that the complainant submitted a grievance on October 4, 2015, in which he notated he did not receive a signed copy of his grievance that he turned in almost a month earlier on September 9, 2015, by an unidentified night deputy who picked it up from his cell, while on lockdown. A deputy responded to the complainant on October 5, 2015, that he checked and could not locate a grievance or response. There was insufficient evidence to either prove or disprove the allegation.

Please Note: The complainant reported additional allegations regarding detention facility conditions such as cleaning supplies, hot water, clogged toilets, lack of sweatshirts, underwear exchange, Incentive Based Housing privileges, and mail exchange that did not specify any deputy misconduct over which CLERB has jurisdiction. However, a review of Detention policies was conducted and found no violations associated with these issues.

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**18-064**

1. Misconduct/Procedure - An unidentified detention information assistant would not allow the complainants to schedule a visit with an inmate.

Board Finding: Summary Dismissal

Rationale: In the complainant’s written statements, they alleged that a detention information assistant would not allow the complainants to schedule a same day visit with an inmate. The complainant stated, “When my friend and I walked up and attempted to set our appointment up, the clerk said you have to go online and reserve it. I then told her that we always go in an hour early and book appointment she then said no we don’t do that here.” According to the SDSD website: <https://www.sdsheriff.net/jailinfo.html>, all visitors must check in one hour before the scheduled visit. If a visitor is late, the visit maybe cancelled. The website also notates, “Walk-in visitors will be accepted, on a space available basis, as long as the visitors check in one hour before the visit time.” In the co-complainant’s written letter, he wrote that he arrived at the jail at 12:35pm, but ‘corrected’ this error by over imposing the number one over the number three and changing the written time to 12:15pm. In the complainant’s written letter, she also stated that she arrived at the jail at 12:15pm. The jail surveillance recording confirmed that the two complainants arrived at the jail at 12:39pm. If the inmate was allotted a visit time from 1:30-2:00pm, the visitor is required to check in no later than 12:30pm. As stated, persons visiting an inmate must arrive and check in for the visit one hour prior to the visit. The complainants were nine minutes late to check in to the visit and as such, were denied their visit. Additionally, in the co-complainant’s written letter, he wrote, “The woman in front of [us] in line was able to sign up for a visit that same

day.” In the complainant’s written letter, she also stated, “An individual walked in as we did and checked in without a reservation and booked her appointment.” In the jail surveillance video, no one entered the jail lobby when the complainants entered. When the complainants approached the detention information assistant’s window, there was no other persons in line ahead of them as all other visitors had previously checked in prior to the complainant’s arrival. Contrary to the complainant’s statements, the discriminatory statement that the complainant’s witnessed the detention information assistant allowed a visitor to schedule a same day visit with an inmate but would not allow the complainants the same privilege in the same circumstances was untrue. For reference, the visitor instructions on how to schedule a visit with an inmate are found online and/or in the Public Information Plan folder located inside the jail information area. Lastly, the SDSA provided the following website: <https://www.sdssheriff.net/jailinfo.html> for reference. CLERB lacks jurisdiction over non-sworn SDSA staff. The allegation against a detention information assistant, does not describe any deputy misconduct. The Review Board lacks jurisdiction as it cannot take any action in respect to complaints against non-sworn SDSA employees, per CLERB Rules & Regulations 4.1 and 4.4.

2. Misconduct/Procedure - Deputy 1 informed the complainants that they could only schedule a visit/appointment with an inmate by scheduling the appointment the day before and online.

Board Finding: Not Sustained

Rationale: In the complainant’s written letter, she stated, “Deputy 1 then approached me and told us that we have always made visit online only.” In the co-complainant’s written letter, he stated, Deputy 1 “told us we had to make an appointment a day before. [The inmate] has been in jail for over three years and it is the first time we were told that.” Deputy 1 provided information during the course of CLERB’s investigation. The visitor instructions on how to schedule a visit with an inmate are found online and in the Public Information Plan Folder located inside the jail information area. Additionally, the detention information assistants verbally inform people of the process or direct them to go online. Reference the SDSA’s website: <https://www.sdssheriff.net/jailinfo.html>. According to the aforementioned website for the SDSA Jail Information, same day visits (up to two hours prior) and next day visits may be made online or by telephone. For detailed visit scheduling instructions, the requestor is instructed to select a link entitled, “eVisit Scheduling – English,” with further visiting instructions. Additionally, the website list “General Rules for Visiting Inmates.” The website also notates that “Walk-in visitors will be accepted, on a space available basis, as long as the visitors check in one hour before the visit time.” There was insufficient evidence to either prove or disprove the allegation that Deputy 1 provided wrong information to the complainants. There was insufficient evidence to either prove or disprove the allegation.

3. Discrimination/Other - Deputy 1 was informed that another guest was allotted the opportunity to make a same-day visit but did not allow the complainants the same privilege.

Board Finding: Unfounded

Rationale: In co-complainant’s written statements, he stated, Deputy 1 “told us we had to make an appointment a day before. [The inmate] has been in jail for over three years and it is the first time we were told that. The woman in front of in-line was able to sign up for a visit that same day.” In the complainant’s written statement, she stated, “Deputy 1 then approached me and told us that we have always made visit online only. I then said that’s not true, why did the lady in front of us get her visit then said you can’t do that anymore.” In the jail surveillance video, no one was observed to enter the jail lobby when the complainants entered. When the complainants approached the detention information assistant’s window, there was no other persons in line ahead of them, as all other visitors had previously checked in prior to the complainant’s arrival. Contrary to the complainant’s statements, the discriminatory statement that Deputy 1 allowed a visitor to schedule a same day visit with an inmate but would not allow the complainants the same privilege in the same circumstances was untrue. The visitor instructions on how to schedule a visit with an inmate are found online and in the Public Information Plan Folder located inside the jail information area. According to the jail’s procedures, entitled, ‘Social Visiting,’ visitors must check in with the detention information assistant at least one hour prior to the scheduled visit time. According to the aforementioned website for the SDSA Jail Information, same day visits (up to two hours prior) and next day visits may be made online or by telephone. Additionally, the website: <https://www.sdssheriff.net/jailinfo.html>, advised that if a visitor is late, the scheduled visit maybe cancelled. The website also notated that “Walk-in visitors will be accepted, on a space available basis, as long as the visitors check in one hour before the visit time.” Contrary to the complainant’s discriminatory statement that they witnessed Deputy 1 allowed a visitor to schedule a same day visit with an inmate but would not allow the complainants the same privilege in the same circumstances was untrue. The evidence shows that the alleged act or conduct did not occur.

4. Misconduct/Intimidation - When asked for his identification, Deputy 1 “put his hand on his gun” and walked away.

Board Finding: Unfounded

Rationale: In the complainant’s written statement, she said that she asked Deputy 1, “May I have your name and

badge number?" In response, the complainant claimed Deputy 1 placed "his hand on his gun and walked backwards towards the clerk door. He then gave me the badge number. He seemed like he had an itch trigger and could be a liability to your system." In the co-complainant's written statement, he stated, "[Deputy 1] was very rude to us." Deputy 1 provided information during the course of CLERB's investigation that conflicted with that of the complainant. Sheriff's Policy 2.22, Courtesy requires that employees be courteous to the public, tactful in the performance of their duties, and that they must control their tempers, and exercise patience and discretion even in the face of extreme provocation. The jail surveillance video recording of this incident was partial and did not record this interaction; it did not support the allegation. As attitudes are subjective in nature and there was no evidence to support a violation of policy. There was insufficient evidence to either prove or disprove the allegation that Deputy 1 put his hand on his gun; however, coupled with the complainant's clear lack of merit, evident by their aforementioned untruthful statements, the preponderance of evidence showed that the alleged act and conduct did not occur. During CLERB's investigation, the greater weight of the evidence was taken into consideration when deciding the favor of an Unfounded finding, versus a Not Sustained finding, and was based on the more convincing evidence and its probable truth or accuracy, and not based solely on physical evidence. As such, the evidence showed that the alleged act or conduct did not occur.

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### **18-154**

1. Misconduct/Harassment – Sheriff's deputies "targeted and harassed" the complainant.

Board Finding: Action Justified

Rationale: The complainant expressed that he has been stopped, frisked, photographed, and/or harassed by numerous individuals (believed to be law enforcement,) on numerous dates, at different locations since 2011. A review of Sheriff's records found one contact for the complainant within the past year. During a work shift on March 27, 2018, a store security guard reported the complainant pushed him and knocked his phone from his hands, so he initiated a citizen's arrest. Deputy 1 responded to the call for service and issued the complainant Citation #972906, then released him from the scene with a promise to appear in court. The security officer and Deputy 1 acted in compliance with the penal code and Sheriff's policy for this Private Person Arrest for Battery. The complainant subsequently pled guilty to the charge. The evidence showed that the alleged act or conduct during this incident was lawful, justified and proper. It was unknown if there were other law enforcement agencies that had contact(s) with the complainant.

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### **19-016**

1. No allegations of Misconduct in CLERB's purview could be identified.

Board Finding: Summary Dismissal

Rationale: The County Claims division confirmed that they do not have any claims or lawsuits filed by the complainant, and the Sheriff's Department reported that they checked their report writing system, Field Interview system, and jail bookings, and did not have record of the complainant. This complaint is submitted for Summary Dismissal in accordance with CLERB Rules & Regulations: SECTION 15: SUMMARY DISMISSAL. After reviewing the Investigative Report and records, the Review Board may summarily dismiss a Complaint by majority vote, upon recommendation of the Executive Officer, its own motion, or that of the Subject Officer. Parties to the Complaint shall be notified of a proposed summary dismissal, and may appear to argue for or against summary disposition. Summary dismissal will be appropriate in the following circumstances:

- (a) The Review Board does not have jurisdiction over the subject matter of the Complaint.
  - (b) The Review Board does not have jurisdiction because the Complaint was not timely filed.
  - (c) The Complaint is so clearly without merit that no reasonable person could sustain a finding based on the facts.
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### **19-027**

1. Criminal Conduct – Deputies engaged in sexual activities while on-duty.

Board Finding: Summary Dismissal

Rationale: The complainant reported that after his arrest on September 8, 2016, there was an unidentified woman in the patrol vehicle's trunk that Deputy 4 forced to provide oral sex to him and two other unidentified deputies. The complainant reported that during transport, Deputy 4 watched on his cellphone another patrol vehicle, "two cars

away," engaged in the same sexual activity. Once at the jail, the complainant reported that "people were having oral sex while people were getting fingerprinted by Deputy 5," and he observed continual sex acts as he progressed through the booking process. Deputy 1 confirmed to the complainant that "the girls were getting paid for their services" and that if the complainant wanted sex, to speak to Deputy 5. Deputy 6 told the complainant that he had nothing to do with "these nasty hookers," and Deputy 3 said, "the rape out there has nothing to do with sex in here." The complainant said he provided this information to Deputy 2 and his unidentified "partner" and requested that the recording be sent to Internal Affairs in Sacramento. On February 21, 2019, CLERB received this signed complaint regarding this incident that he said occurred on September 8, 2016, following the complainant's arrest. However, the complainant previously submitted a signed complaint regarding the same incident/allegations for CLERB Case #17-095/Odanga. Staff investigated and the Review Board determined the allegations were **Unfounded** on September 11, 2018. The complainant provided no evidence to support his assertions and was found not to be credible in his recall of these events. This complaint is so clearly without merit that no reasonable person could sustain a finding based upon the facts.

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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.