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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 August 13, 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 (11)****ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE****18-105**

1. Misconduct/Procedure – Deputies 1-2 placed a “combative” inmate with the complainant in a jail holding cell.

Board Finding: Action Justified

Rationale: According to the complainants, while complainant #2 was incarcerated in jail, he was placed in a jail holding cell while he waited to be booked. While in the holding cell, the complainants claimed deputies placed a “combative” inmate in the cell with him. As a result of the placement, complainant #2 was physical assaulted by the inmate. Complainant #2 stated that he heard one deputy tell the other, “I told you not to place that inmate in there! That something was going to happen.” In reviewing the multiple jail surveillance video recordings that were provided by the SDSD, the aggressor did not display aggressive behavior upon his admission to the jail; he was not noted to initially be aggressive towards staff or other inmates. As such, he was placed in the same holding cell as six other inmates who were waiting to go through the booking process. SDSD DSB P&P Section Q.7 entitled, “Inmate Processing,” is to ensure the processing of inmates entering the detention system is consistent, legal, and accurate. The policy was established to receive and process arrestees efficiently, in accordance with established state and federal laws. According to the policy, inmates will be placed into a holding area. The inmate will be given the opportunity to use the telephone. After being given the prescribed legal time limit in which to make phone calls, the inmate shall continue through the booking process. After the booking process is complete, the inmate will be taken to the designated holding area to await the classification process. The Jail Population Management Unit (JPMU) will

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determine the appropriate housing assignments for each inmate. SDS DSB P&P Section R.1 entitled, "Inmate Classification," is to screen, assess and house inmates in a manner that will protect the safety of the community, staff and other inmates. An inmate's initial classification is determined by their original booking charges, criminal history information, medical and psychiatric issues or additional special conditions, and information obtained from the inmate interview. The inmate will be assessed and assigned to the most appropriate location based on their classification designation. According to SDS DSB P&P Section R.11 entitled, "Inmate Facility Assignment, all new inmates shall be screened for the purpose of assignment to an appropriate detention facility. According to SDS DSB SDCJ Green Sheet Section Q.7.C.1 entitled, "Inmate Processing – Receiving Process Flow-Chart," the flow chart illustrated that after inmates enter the jail through the "Intake Sallyport," they are placed in "Inmate Holding." This is where all inmates are given access to telephones and await booking, fingerprinting, and classification. According to SDS DSB SDCJ Green Sheet Section R.1.C.1 entitled, "Inmate Classification," Inmates will be assigned a classification level by the JPMU. At the time of the assault, the aggressor, or suspect, and the complainant had not yet undergone the booking process. They had not yet been classified, and as such, would be placed together in the holding cell prior to undergoing the first steps of the booking process. In following and according to both inmate's classification evaluation updates, both inmates lacked criminal sophistication for high level housing and were later classified at lower levels. Of the six inmates in the holding cell, the complainant was the only one assaulted. The inmate's race was not a factor in the assault. The allegation that deputies placed a "combative" inmate with the complainant in a jail holding cell was lawful, justified and proper.

2. Misconduct/Procedure – Deputies 1 and 2 failed to intervene while an inmate assaulted the complainant.

**Board Finding:** Unfounded

**Rationale:** According to the complainant's written statement, he alleged that Deputies 1-2 failed to intervene in a timely fashion while an inmate physically assaulted him. The complainant reported that "the assault continued for approximately two to three or more minutes" before deputies intervened. In a follow-up letter to CLERB, the complainant further detailed, "...they [the deputies] stood at the door and watched as I was repeatedly kicked and beaten while unconscious and didn't stop it. Every minute counts and maybe I wouldn't have received life-changing injuries that I received if they would have intervened sooner." According to the SDS Crime/Incident Report, Deputies 1 and 2 were identified as the deputies who responded to the assault that had occurred in the jail holding cell. According to the jails Deployment Schedule, Deputies 1 and 2 were assigned to the "Intake Deputy" position. According to the crime report, the deputies were informed of a physical altercation between two inmates inside of the inmate holding cell. Deputies 1 and 2 arrived on scene a few seconds later and witnessed the assault. Upon their arrival to the holding cell Deputy 1 opened the cell door and instructed everyone inside of the cell to get on the floor. Once everyone was on the floor, Deputy 1 entered the cell and placed the aggressor/suspect into handcuffs and escorted him out of the holding cell. Eight jail surveillance video recordings were provided to CLERB. The jail surveillance video recordings were without sound/audio. In jail surveillance video recording #4, two deputies were observed in the control center position. They were seated in the control center and were viewing the surveillance monitors. The deputies were observed to suddenly get up and walked out of view of the surveillance camera. The deputies entered the hallway at 3:26:10am and quickly responding the holding cell. The cell door was manually unlocked, and Deputy 1 entered the cell. It took deputies six seconds to get from the control center to the holding cell. Jail surveillance video recording #5 captured the entire assault, as well as the before and aftermath. The assault began at 3:25:48am and ended at 3:26:16am, when Deputy 1 unlocked the door to the holding cell and entered. The assault was 28 seconds in duration. According to SDS DSB P&P Section 2.27 entitled, "Neglect of Duty" employees shall not read, play games, watch television or movies or otherwise engage in entertainment while on duty, except as may be required in the performance of duty. They shall not engage in any activities or personal business, which would cause them to neglect or be inattentive to duty. According to the jail surveillance video recordings, Deputies 1 and 2 did not neglect or were inattentive to their duties. According to SDS DSB P&P Section M.5 entitled "Medical Emergencies," all facility staff shall be responsible for taking appropriate action in recognizing, reporting or responding to an inmate's emergency medical needs. In any situation requiring medical response, emergency medical care shall be provided with efficiency and speed without compromising security. If the inmate is in a housing unit, proper security measures shall be taken prior to entry by the medical staff and/or responding deputies, i.e. locking down inmates, sufficient number of security staff standing by, etc. When the severity of the medical emergency requires it, and as soon as it is safe to do so, deputies acting as first responders, will provide basic first aid. According to the jail surveillance video recordings, Deputies 1 and 2 took appropriate action in recognizing, reporting or responding to the complainant's emergency medical needs. Proper security measures were enacted and basic first aid was supplied with efficiency and speed without compromising security. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

1. Misconduct/Procedure – Unidentified deputies searched the complainant’s personal belongings.

Board Finding: Action Justified

Rationale: The complainant stated upon her arrival to the Hall of Justice for her civil court hearing she was searched under “false Pretense.” As per CSB P&P section F.6 “Weapons Screening,” Court Services Bureau is required by order of the Superior Court to provide weapons screening at the designated public entrances to all court facilities. The legal authority for the screening is Section 171(b) of the California Penal Code and the standing general court order of the San Diego Superior Court Presiding Department, Order No. 010119-01, dated 12-31-18 which states in part. “All persons entering court facilities are subject to screening.” The complainant did not meet the criteria for the exceptions listed in CSB P&P’s section IV, therefore was subject to be searched by law. Deputies were not in violation of any CSB P&P’s or State Law when they searched the complainant upon her arrival to the Hall of Justice. Surveillance video to identify what may have led to the complainant’s personal effect being searched was not available. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 asked the complainant “personal” and “intrusive” questions about her case.

Board Finding: Not Sustained

Rationale: The complainant stated during her conversation with Deputy 1 he was asking her case-specific information and “intrusive questions.” According to CSB P&P Section C.1 Duties and Responsibilities Bailiff and Security, I. Courtroom Bailiff, A - C, in part, the primary function of the courtroom bailiff is to provide security and maintain order in the courtroom, thereby ensuring the protection of the court and facilitation of courtroom procedures. The bailiff should be informative, courteous, and maintain an impartial attitude toward all parties. The bailiffs conduct, demeanor or statements should never betray their opinion in regard to the verdict a jury should reach. Information obtained during this investigation indicated Deputy 1 may have asked questions of the complainant for no other reason than to relay the court’s decision/information that may have been decided in her absence. The possible inquiry by Deputy 1 of the complainant would not have been in violation of any P&P’s or laws as indicated in CSB P&P’s Section C.1 Duties and Responsibilities Bailiff and Security. Deputy 1 provided information during the course of this investigation that supported the recommended finding. The courthouse surveillance at the time of this incident was unavailable due to retention expiration. The incident occurred on August 6, 2018 and lodged complaint was received on August 20, 2018. There was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Discourtesy – Deputy 1 made a statement to the complainant about being fired from a job.

Board Finding: Not Sustained

Rationale: The complainant stated that during her conversation with Deputy 1, he made a statement to her about having conducted research about her and her having been fired from a job. Deputy 1 provided information during the course of this investigation that supported the recommended finding. The courthouse surveillance at the time of this incident was unavailable due to retention expiration. The incident occurred on August 6, 2018 and the lodged complaint was received on August 20, 2018. With no audio or video recording, there was insufficient evidence to either prove or disprove the allegation.

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## **18-119**

1. Misconduct/Intimidation – Deputy 2 intimidated the complainant when he threatened to issue a warrant for arrest.

Board Finding: Action Justified

Rationale: In the complainant’s written statement, he reported that Deputy 2 threatened to issue a warrant for arrest if he did not comply with his instructions. The complainant repeatedly noted, in his written statement, in his audio recording with Sheriff’s dispatchers, and in his telephonic interviews with CLERB Special Investigators, that Deputy 2 threatened arrest; via warrant, versus being placed under Citizen’s Arrest by his former significant other. In the complainant’s attorney’s written declaration, not signed under penalty of perjury, he reported, “Deputy 2 repeatedly threatened the complainant with arrest for theft if he did not return [a dog] that evening. Deputy 2 used the threat of arrest to strong-arm the complainant into returning [the dog].” Additionally, and according to the attorney, Deputy 2 did not mention that the complainant would be placed under Citizen’s Arrest. The complainant advised that Deputy 2 intimidated and lied to him in an attempt to manipulate him in returning the dog. The complainant complied with Deputy 2’s instruction under duress, claiming that Deputy 2 coerced and intimidated him. The incident was a civil matter, with Deputy 2 being unobligated to intervein in the matter. The complainant alleged that Deputy 2 used his authority, his privilege, and the threat of arrest to intimidate him. In a telephonic interview with the complainant dated 07-02-19, contrary to his initial statement, the complainant confirmed that Deputy 2 did not say that he would file a

warrant for his arrest, as he previously stated. The complainant quoted Deputy 2 as saying, "I'm going to take this to the next level." Deputy 2 did not specify what he meant, but the complainant assumed that Deputy 2 would be filing a warrant for his arrest. Additionally, the complainant advised that he was instructed to call and check in with Deputy 2 every half hour, further manipulated and pressuring him to comply with his instructions. During the course of this investigation, Deputy 2 responded to a Sheriff's Employee Response Form (SERF) and provided relevant and conflicting information. According to a telephonic interview with the complainant's former significant other, she confirmed that initially, she did tell the deputies/sergeant that she did not desire prosecution and was unwilling to sign a Citizen's Arrest form, that she just wanted her dog back. However, she was unsure how far the complainant was going to take the issue and she ultimately told the deputies that she would place the complainant under Citizen's Arrest. The complainant's former significant other advised that she was going to be persistent and was willing to escalate the issue; she was willing to do whatever was needed to get her dog back. By the complainant's former significant other confirming that she would place the complainant under Citizen's Arrest, Deputy 2's threat of arrest became legitimate. According to SDSD P&P Section 2.46 entitled, "Truthfulness," when asked by the Sheriff, the Sheriff's designee or any supervisor, employees will always answer questions, whether orally or in writing, truthfully and to the fullest extent of their knowledge. All written and verbal reports shall be truthful and complete. The incident was a civil matter, not criminal, and the allegation that Deputy 2's threat of issuing a warrant for arrest would have been unlawful. However, according to the complainant's former significant other, she agreed to file a Citizen's Arrest, and in doing so, Deputy 2's threat of arrest was legal, vindicated, and appropriate. The evidence indicated that Deputy 2 did not lie to the complainant when he threatened arrest, nor was his threat illegitimate. Deputy 2 was not in violation of SDSD P&P. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 2 demanded seizure of the complainant's property.

Board Finding: Action Justified

Rationale: In the complainant's written statement, he alleged that Deputy 2 demanded seizure of his dog. The complainant alleged that without conducting an investigation, without reviewing the complainant's declaration/documentation, or hearing his side of the story, Deputy 2 demanded that the complainant relinquish his dog. The complainant provided CLERB with evidence of proof of ownership of the dog. The investigation determined that the complainant and a second party shared custody and care of the dog. Deputy 2 responded to a SERF and provided relevant information in response to CLERB questioning. The second party informed Deputy 2 that she would place the complainant under Citizen's Arrest if the dog was not returned to her. The second party advised that she was going to be persistent and was willing to escalate the issue; she was willing to do whatever was needed in order to get her dog back. The initial responding deputy explained that if the complainant was not the owner of the dog, he needed to return the dog or criminal charges may be pursued. When the second party confirmed that she would place the complainant under Citizen's Arrest, Deputy 2's threat of arrest became legitimate and Deputy 2's demand for the complainant to relinquish the dog was justified. The allegation that Deputy 2 demanded seizure of the complainant's property was lawful, justified, and proper.

3. Misconduct/Procedure – Deputy 1 refused to accept the complainant's documentation.

Board Finding: Action Justified

Rationale: The complainant traveled to the Sheriff's substation. Upon his arrival, he was met by two deputies, Deputy 1 and a second deputy. He was hoping to meet with Deputy 2, but was informed that Deputy 2 had left for the day and was not there to accept his written declaration. A deputy took possession of the complainant's dog and Deputy 1 declined to accept the complainant's written declaration on Deputy 2's behalf, stating it was not of his concern. According to Deputy 1's BWC recording, upon approaching the complainant at the substation's back gate, the complainant greeted the deputies and handed Deputy 1 his declaration. Initially, Deputy 1 accepted the declaration and read over the document. After the dog was turned over to deputies, Deputy 1 returned the complainant's declaration to him. At first, the complainant declined taking the documents and stated, "No, that goes to my case file." Deputy 1 responded, "I don't need this." The complainant snatched his paperwork back from Deputy 1 and eventually departed the substation. According to SDSD P&P Section 2.39 entitled, "Processing Property," property which has been discovered, gathered or received in connection with Departmental responsibilities will be processed in accordance with established Departmental procedures. Employees shall not convert to their own use, manufacture, conceal, falsify, destroy, remove, tamper with or withhold any property found or obtained in connection with the performance of their duties, except in accordance with Department procedures. Deputy 1's refusal to accept the complainant's written documentation was not in violation of policy. The written declaration was not for Deputy 1 to determine its importance to the call of service and no case was filed for the declaration to be considered evidence and attached to. According to Deputy 1's BWC, he referred the complainant to follow-up with Deputy 2 and requested the complainant provide Deputy 2 with his written declaration for if and when a case was filled at a later date on the second party's behalf. According to SDSD P&P Section 2.22 entitled, "Courtesy," employees shall be courteous to the public and fellow employees. They shall be tactful in the performance of their duties, shall control their tempers,

exercise patience and discretion even in the face of extreme provocation. Deputy 1's refusal for not accepting the complainant's written declaration was not in violation of SDDS P&P, nor California law. Lastly, in Deputy 1's BWC, he advised the complainant that Deputy 2 would be available the next day and he instructed the complainant on where and how to contact him. The evidence shows that the alleged act did occur but was lawful, justified, and proper.

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## **18-120**

1. Misconduct/Intimidation – Deputies 3 and/or 4 threatened the complainant and said they were “gonna break my window and kill my dog and worse.”

### Board Finding: Action Justified

Rationale: The complainant stated that as he was driving, he was pursued by Deputy 3 in a patrol vehicle. Deputy 3 turned on his lights and sirens, which the complainant claimed, “caused him to become afraid for his life.” The complainant told Deputies 3 and 4 that he had the right to travel freely on public roads and the right to life and to live. In his complaint, the complainant added, “*They are trying to take me to jail and have me killed.*” In Deputy 3's report, he documented the events leading to the complainant's arrest. Deputy 3 and his partner, Deputy 4, were assigned to work together. On 08-18-18, at approximately 5:40pm, the complainant was seen driving in City of San Diego. In violation of Vehicular Code 5204, the vehicle displayed expired registration tags. Deputy 3 pursued the complainant's vehicle and he noted that the vehicle had dark tinted windows, as well as an inoperative brake light, both in violation of Vehicular Codes 26708.5 and 24603. As the complainant's vehicle proceeded, it abruptly crossed traffic lanes without signaling, which was in violation of Vehicular Code 22107, and entered a commercial parking lot. Deputy 3 pursued and activated his overhead lights and siren. The complainant eventually yielded at a gas station. Detective 3 contacted the driver at the driver's side window and Deputy 4 assisted him as the cover deputy. During his interaction with the deputies, the complainant in violation of Vehicular Code 12951.b, refused to furnish his driver's license and vehicle registration. The complainant continuously stated that deputies did not have the right to stop him and that he did not have to provide his registration. During the interaction, the complainant started the vehicle's engine. In Deputy 4's opinion, that was an indicator that the complainant would flee the scene. Body Worn Camera (BWC) footage showed the complainant continuously talking over the deputies, not complying to their commands, and defying their instructions to relinquish his driver's license and registration. In the deputies' BWC, the complainant's dog's barking overwhelmed the sound of the voice of the complainant and the deputies. Deputy 4 told the complainant, several times to produce his driver's license or he was going to be extricated from the vehicle. At that time, Deputy 4 added, “If your dog attacks us, we are going to have to shoot him.” After that statement, the complainant repeatedly stated, “*That's murder! That's murder! That's murder!*” Deputies provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. A deputy stated that it was explained to the complainant that if he did not cooperate, his actions would make it necessary for deputies to use force to remove him from the vehicle. Additionally, a deputy advised the complainant that if his dog inside the vehicle was not controlled, that they may be forced to use deadly force to protect themselves. A deputy added that he never used the phrase “kill his dog,” although it was explained to the complainant that deputies may need to break his window. As per the deputies BWC video, the complainant was uncooperative; his behavior was erratic and unpredictable. California Penal code 148 states that one must submit to authority. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

2. False Arrest – Deputy 3 detained the complainant.

### Board Finding: Action Justified

Rationale: In his written statement, the complainant's reported that deputies pulled him over when he had “done nothing wrong.” As noted in the deputies' BWC images as well as their written reports, the complainant was operating a vehicle which had expired registration tags; he was in violation of California Vehicle Code 5204 (a), which states that a tag shall indicate the year of expiration and a tag shall indicate the month of expiration. Current month and year tags shall be attached to the rear license plate assigned to the vehicle for the last preceding registration year in which license plates were issued. Vehicles that fail to display current month and year tags or display expired tags are in violation of this section. (d) This section is enforceable against any motor vehicle that is driven, moved, or left standing upon a highway, or in an off-street public parking facility. Additionally, the complainant's vehicle windows were heavily tinted. Furthermore, the complainant drove through an intersection and abruptly crossed traffic lane into a commercial parking lot. The complainant failed to signal his turn and it was noted that the third brake light was not functional. During the traffic stop, and as viewed in the deputies BWC recordings, the complainant refused to produce his identification/driver license and/or the vehicle's registration, even when it was requested several times by the deputies. According to law, the complainant was rightfully detained. As per allegation #1 and its rationale, the complainant's actions of resisting, obstructing and delaying the deputies, as defined in California Penal Code Section

148, were arrestable offenses. As per Penal Code 849, Deputy 3 exercised his discretion and offered the complainant the option to sign a citation and be released. During his interaction with Deputy 3, as permissible by Penal Code 849, the complainant was told that he would go to jail if he refused to sign his citation. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

3. Illegal Search and Seizure – Deputies 1, 2, 3 and/or Deputy 4 searched the complainant’s vehicle without consent.

Board Finding: Action Justified

Rationale: In his signed complaint, the complainant stated, *“They close the door Rolled up the window and turned on the air conditioner then begin to Search the truck. 2 or 3 officers. Hole truck Searched No Concert.”* The search of the vehicle was documented in Deputy 3’s report and in the SERF responses from all involved deputies. As per the California Peace Officers Legal Sourcebook, section 2.13, Search and Seizure – Persons, the duty to Stop/Use of Force to Stop Suspect is contemplated and justified in the following paragraph: Whether you are detaining someone (1) to investigate your reasonable suspicion or (2) to issue a "cite and release" citation, the suspect has an obligation to stop. A suspect has "no right to resist" a lawful detention. If the suspect does not stop, he has violated Penal Code section 148. The California Peace Officers Legal Sourcebook describes that in any vehicle detention situation where the driver, upon your request, "fails to produce" the necessary documentation, you have the right to conduct a limited search for the driver's license or identification and/or the vehicle registration. The vehicle was also lawfully searched incidental to the arrest. During the modified high risk stop, it was learned through a records check, that the complainant had relinquished his Fourth Amendment right as a condition to his latest arrest, as such, no consent from the complainant was needed to search the vehicle. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

4. Excessive Force – Deputies 3 and 4 brandished their weapons and aimed them at the complainant

Board Finding: Action Justified

Rationale: The complainant wrote in his complaint that he was *“surrounded AR-15 to the right pistols, shotguns, paint ball guns, everything.”* He added that he was scared to move as *“they would have him shot him dead like over kill.”* Deputies 3 and 4 documented in their reports that force was used, and Use of Force reports were submitted with their Deputy Reports and the Arrest Report. Deputies provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. According to their reports, Deputy 1 and 2 used less than lethal weapons to extricate the complainant from his vehicle. Deputy 2 stated in his report that he believed that the complainant posed a threat to him, to detectives, and to the public, having no other alternative but to use force to affect the driver to exit the vehicle. Deputy 2 used a 12-gauge shotgun Supersock with less than lethal (bean bag) to shatter the complainant’s vehicle back window; he aimed to the lower right corner of the window, on the passenger side. When the complainant continued to refuse lawful commands to exit the vehicle, Deputy 1 used a pepper ball launcher to launch pepper balls into the vehicle to force the complainant to exit the car. The evidence showed that when the complainant initially refused to comply with the deputies’ instruction, the deputies in compliance with SDSO P&P Section 6.48, responded by using force with the less than lethal weapons. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

5. Excessive Force – Deputy 2 used pepper spray on the complainant’s dog and threatened to shoot it.

Board Finding: Action Justified

Rationale: According to the complainant’s written statement, he reported, *“They are trying to take me to Jail and have me killed and kill my dog and worse. An shes a Service Animal, she knows Something wrong and was trying to protect me. My dog followed me out. I screamed dont shoot. Rosies a service Dog. Shes not gonna hurt you. Shes Just trying to protect me. The man was gonna shot gun my dog. I Said dont kill her. I said to my Dog “Rosie come here its ok,” they used a can of pepper Spray on Rosie, she moved away I said to them you have no concert. I kept my dogs attention while they handcuff me. So they wouldnt kill her.”* According to Deputy 4’s report, the complainant was warned numerous times that if his dog attacked any of the deputies, it would be shot. Deputies provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Upon viewing the deputies’ BWC it was noted that the words “kill your dog” were noted used. A deputy stated, “If your dog attacks us, we are going to have to shoot him.” According to Deputy 2’s report, a large and aggressive dog, described as a Pitbull, exited the complainant’s vehicle and charged at him and to the other deputies on scene. Deputy 2 attempted to deploy his less-than lethal shotgun at the dog, but the weapon experienced a malfunction. In Deputy 1’s report, he reported that the complainant’s dog became aggressive and attempted to bite him. In Compliance with Addendum F Use of Force Guidelines, Deputy 1 sprayed the dog with oleoresin capsicum (OC) spray to force the dog away from deputies. After several sprays, the dog retreated away from the deputies. The deputies BWC captured the incident. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

6. Excessive Force – Deputy 4 “rammed” the back of the complainant’s truck.

Board Finding: Action Justified

Rationale: In the complainant’s written statement, he reported, “*a third officer rolled up, he was instructed to pull his cruiser in front of me and box me in. I pulled off as the cruiser pulls in front of me, officer gun in hand, I said I’ve done nothing wrong, I don’t have a gun, I pulled off to make sure I was on camera.*” California Penal Code § 148 states that every person who willfully resists, delays, or obstructs any public officer, peace officer, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment. In his arrest report, Deputy 4 stated that the driver abruptly started his vehicle and based on his training and experience, he felt that the driver was getting ready to flee the scene or assault a deputy with the vehicle. Deputy 4 positioned his vehicle directly behind the driver’s vehicle in an effort to pin him and prevent him from driving off. BWC footage showed no evidence of a collision between Deputy 4 patrol vehicle and the complainant’s vehicle that fit the description of being “rammed.” As documented, Deputy 4 positioned his patrol car to prevent the complainant from fleeing the scene. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

7. Excessive Force – Deputy 2 broke the back window of the complainant’s truck and fired shots at the complainant.

Board Finding: Action Justified

Rationale: In the complainant’s written statement, he reported, that “*after the back window broke, I heard two shots I ducked almost having a heart attack.*” As stated in rationale #4, Deputy 2 documented in his report that he believed that the driver of the vehicle posed a threat to him, to detectives and to the public, having no other alternative but to use force to affect the driver to exit the vehicle. Once the driver’s vehicle was secured, preventing him to flee, Deputy 2 used a 12-gauge shotgun Supersock with less than lethal (bean bag) to shatter the complainant’s vehicle back window; he aimed to the lower right corner of the window, on the passenger side. After the window was broken, Deputy 1 deployed pepper balls when the driver failed to obey lawful commands; the combination of both less-lethal munitions succeeded in gaining the driver’s compliance by exiting the vehicle with his hands in the air. Deputy 3 initiated the vehicle stop and he witnessed the incident from beginning to end. Deputies provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. The incident was documented in BWC footage and it showed that only the Supersock shotgun, were fired during the incident. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

8. Misconduct/Procedure - Deputy 2 threatened to take the complainant to jail.

Board Finding: Action Justified

Rationale: The complainant wrote, “*A newer Officer Opened the door to ask me if I would sign a citation, and if not they were gonna take me to jail. I told them I would sign under distress. And thats what I did.*” The complainant identified Deputy 2 as the deputy who threatened to take him to jail if he did not comply with his instruction. Deputy 2 charged the complainant with violating California PC section 148, a misdemeanor which can be handled as a “cite and release.” During his interaction with deputies, the complainant had been uncooperative with the deputies and Deputy 2 was unsure whether the complainant would be willing to sign the citation. Deputy 2 asked the complainant if he was willing to sign a citation on his written promise to appear in court at a later date. Deputy 2 informed the complainant that if he opted to not sign the citation, then we would have no option but to transport him and book him into jail. The complainant replied that he would be willing to sign the citation “in distress.” Deputy 2’s BWC was viewed and corroborated his statement. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

9. Misconduct/Procedure - Deputy 2 called the complainant “Retardo.”

Board Finding: Unfounded

Rationale: In the complainant’s written statement, he advised, “*And a newer Officer Addressed me as Retardo, then asked me if I was ok. I said thats fucked up. Again I was addressed as Retardo .....and Continued to joke on me amongst them selves.*” Deputy 2 was identified as the deputy who addressed the complainant while he was in the back of the patrol vehicle. Two BWC recordings were viewed and illustrated the interaction between the complainant and deputies. Deputy 2 was not observed to address the complainant as “Retardo.” Deputy 2’s BWC revealed that he addressed the complainant by his first name and the complainant apparently misunderstood him. In the BWC, Deputy 2 said, “Hey buddy, what’s your name? Is your name Ricardo? How are you?” The complainant responded with, “Oh man, you just provoked me [raised his voice] and called me retardo. That’s how kids used to tease me when I was a kid in high school. You just called me Retardo, that is wrong man!” Deputy 2 responded, “I did not call

you that. I said, is your name Ricardo?" In the other BWC, none of the deputies were heard addressing the complainant as "retardo" or any other derogatory name or words to similar effect. The evidence showed that the alleged act or conduct did not occur.

10. Misconduct/Procedure - Deputies 1-4 joked amongst themselves about the complainant.

Board Finding: Not Sustained

Rationale: In the complainant's written statement, he advised that Deputies 1-4 "*continued to joke on me amongst themselves, smilen happy as they stood there watching me every move. Almost shot and killed and this was all fun and game and jokes.*" The deputies BWC recordings were viewed and illustrated the interaction between the complainant and deputies. The deputies were not observed to joke about the complainant; however, part of the BWC recordings were muted and it was not possible to determine what the deputies conversed about during those brief moments. Absent information provided by an independent witness to the incident or additional video or audio recordings of the interaction there was insufficient evidence to prove or disprove whether Deputies 1-4 joked amongst themselves about the complainant. There was insufficient evidence to either prove or disprove the allegation.

11. Misconduct/Procedure - Deputies 2 and/or 3 refused to call paramedics for the complainant at the complainant's request.

Board Finding: Not Sustained

Rationale: In the complainant's written statement, he advised, "*there was something in my left eye, I need paramedics to make sure glass wasn't there, I wasn't sure.*" The complainant added, "*one of the officers said that, that would be expensive.*" The complainant responded, "*Call them anyway.*" Deputies provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. In Deputy 3's Arrest Report, he stated that the complainant was not injured and did not complain of any injuries. In Deputy 2's BWC recording, Deputy 2 was heard asking the complainant to get out of the patrol car, and that once he was uncuffed, he could sign the citation and that the deputies will call an ambulance for him. An unidentified deputy is heard telling the complainant, "*that is going to be expensive.*" As per Addendum Section F, Use of Force Guidelines, Serious injury means a serious impairment or physical condition, including but not limited to: loss of consciousness, concussion, bone fracture, protracted loss of impairment of function of any bodily member or organ, a wound requiring extensive suturing, and serious disfigurement. The complainant did not show any of the above in the BWC and the deputies reports do not document an injury. The evidence showed that deputies were responsive to the complainant's request for paramedics; however, the evidence did not address the complainant's requests specifically. There was no evidence to assert that deputies refused to call paramedics, however, there were no entries in the SDSD Background Event Chronology Events, documenting the request for an ambulance. Absent information provided by an independent witness to the incident, or additional video or audio recordings of the interaction there was insufficient evidence to prove or disprove that Deputies 2 and/or 3 refused to call paramedics for the complainant.

12. Misconduct/Retaliation - Deputy 1 and/or Deputy 2 and/or Deputy 3 and/or Deputy 4 said they were going to have the complainant killed for preparing a claim.

Board Finding: Summary Dismissal

Rationale: In the complainant's written statement, he alleged that deputies threatened to kill him for preparing a complaint. The complainant reported, "*Mental harassment: An interference connection to my mind. Tool: Sting Ray Chat said they were gonna have me killed because I was preparareing a claim. I was already informed through listenen to what was being said through my left ear that I was in danger. An that that there were to have me killed because I was preparing a claim.*" Part of the complainant's written statement appeared to be random, irrational, and disorganized statements. In an attempt to validate the complainant's allegation, all the deputies involved in the incident were asked specifically if they made such a statement or words to that effect. Deputies provided information during the course of CLERB's investigation 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. There was no prima facie showing of misconduct. The Review Board lacks jurisdiction as the allegation clearly lacked merit.

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## **18-123**

1. Misconduct/Procedure – Deputy 6 refused to take the complainant's "medical emergency" request.

Board Finding: Action Justified

Rationale: The complainant alleged, "On July 11, 2018, I was in custody at the Jail, awaiting arraignment, when deputies refused to take my medical emergency request." Detentions policy M.5, Medical Emergencies states, "All facility staff shall be responsible for taking appropriate action in recognizing, reporting or responding to an inmate's emergency medical needs. In any situation requiring medical response, emergency medical care shall be provided with efficiency and speed without compromising security. If the inmate's condition is believed to be life threatening, sworn staff shall immediately notify on duty medical personnel and provide basic life support (BLS) and/or first aid care." Deputy 6 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Surveillance video refuted that the complainant experienced a "medical emergency." The complainant was found not to be credible in her recall of this event. The evidence showed that Deputy 6's response to the complainant's request for assistance was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 6 did not respond and/or denied medical care to the complainant's "medical emergency."

Board Finding: Action Justified

Rationale: The complainant alleged, "I was in medical distress, and used the emergency box to notify deputies. Instead of receiving acknowledgement and professional conduct, the deputy refused my request and purposely denied me medical care." Reports related to this incident, stated that the complainant was told numerous times to "lockdown." Detentions policy M.5, Medical Emergencies states, "If the inmate is in a housing unit, proper security measures shall be taken prior to entry by the medical staff and/or responding deputies, i.e. locking down inmates, sufficient number of security staff standing by, etc." Deputy 6 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Surveillance video refuted that the complainant experienced a "medical emergency." The complainant was found not to be credible in her recall of this event. The evidence showed that the complainant refused to "lockdown" and Deputy 6's response to the complainant's request for assistance was lawful, justified and proper.

3. Misconduct/Discourtesy – Deputy 6 responded with profanity when the complainant requested assistance.

Board Finding: Not Sustained

Rationale: The complainant alleged, "the deputy refused my request and started using profanity." Reports related to this incident reported that after the complainant refused to lockdown, she pushed on the module door and yelled, "Who are you bitch; Who am I!" Surveillance video corroborated that deputies remained calm while the complainant was clearly agitated and yelling toward Deputy 6. The complainant was found not to be credible in her recall of this incident. Deputies also provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. However, absent an audio recording, there was insufficient evidence to either prove or disprove the allegation.

4. Excessive Force – Deputies 2, 3, 4 and/or 6 "forcefully took the complainant down, and were excessive in their response" to her behavior.

Board Finding: Action Justified

Rationale: The complainant alleged, "When my symptoms got worse, I tried to get the deputy to see my symptoms by standing in front of the mod [module] door. When I was still ignored, I tried to push through the mod door, and was forcefully taken down by 5 deputies, including males. The excessive force used was not appropriate for the behavior. I was in medical distress, and was not behaving or portraying in a violent or threatening manner for deputies to make the decision to forcefully take me down." Based upon all available evidence, the complainant did not meet the criteria for a "medical emergency." A review of video evidence showed that deputies were responsive to the complainant, but she displayed boisterous/aggressive behavior. The complainant was found not to be credible in her recall of this event. The complainant violated Inmate Rules and Regulation Sections 100, by disobeying commands, threatening staff, and displaying aggression. In response to the complainant's oppositional behavior, one male and two female deputies took the complainant to the floor with minimal force. A review of the reports related to the incident, surveillance video, and confidential information provided by Deputy 6 corroborated that the complainant refused/ignored commands to lockdown and attempted to push herself through the module door. The complainant was taken to floor in compliance with detentions policy I.89, Use of Force, which allows deputies to use physical force to the extent that is reasonable to maintain or restore order with department approved techniques to control an inmate. Deputies used the least amount of force necessary to gain compliance, and their actions were lawful, justified and proper.

5. Misconduct/Procedure – Deputies 2, 4, and/or 6 did not give verbal warnings and/or instructions prior to their use of force.

Board Finding: Action Justified

Rationale: The complainant alleged, "I did not receive any verbal warnings or given any instructions to stop or given the opportunity to peacefully surrender." The complainant was found not to be credible in her recall of this event. According to the Use of Force Supplemental reports, Deputies 2 and 6 instructed the complainant several times to "lockdown," and Deputy 4 reportedly told the complainant, "Calm down and stop moving." Video evidence corroborated the deputies' attempts to talk to the complainant. Deputies then responded to the complainant's boisterous and aggressive behavior with a takedown in compliance with policy. The evidence showed that the verbal commands given by deputies to the complainant were lawful, justified and proper.

6. Discrimination/Other - Unidentified deputies abused their power and "discriminated against inmate rights."

Board Finding: Unfounded

Rationale: The complainant alleged, "the deputies' actions in addition to the comments and profanity used to deny medical care shows abuse of power and discrimination against inmate rights." The complainant was medically assessed at intake and placed on heroin/opioid protocol for "mild" withdrawal symptoms. Sheriff's policy 2.53, Discrimination, prohibits employees from expressing any prejudice or harassment concerning race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, pregnancy, marital status, gender, age, political beliefs, sexual orientation, lifestyle or similar personal characteristics. There was no use of verbal derogatory comments, slurs, or jokes, derogatory pictures, cartoons or posters and actions which resulted in the complainant being treated unequally. A preponderance of evidence based on video surveillance, deputies reports, and Deputy 6's confidential statement refuted that the complainant was discriminated against. Instead, the evidence determined that the complainant was not credible in reporting that she experienced a "medical emergency." The evidence showed that the allegation as reported by the complainant did not occur.

7. Misconduct/Procedure - Deputies 2, 4, and/or 6 violated policy and procedure in their recording of this incident.

Board Finding: Unfounded

Rationale: The complainant alleged, "the manner in which this incident was recorded, violates the SD Sheriff's policy and procedures for write-ups." Deputies 2, 4, and 6 documented their actions for the incident as required by Detentions policy I.89, Use of Force that stipulates all deputies involved in the Use of Force incident must clearly articulate in written form all facts surrounding the incident. And subsequently, supervisors and/or investigating deputies will make every attempt to interview all identifiable witnesses, including inmates. Inmate witnesses were identified in the associated reports, but those witnesses did not respond to CLERB's request for information. In addition, individual deputies completed Supplemental Use of Force reports documenting the force they utilized. The complainant was found not to be credible in her recall of this event and the evidence showed that the alleged act or conduct did not occur.

8. Misconduct/Procedure – Deputy 1 placed the complainant on lockdown.

Board Finding: Action Justified

Rationale: The complainant alleged, "I was placed on lockdown after the incident and did not receive a formal report of what I was put on lockdown for. I attempted to get details by asking the deputy on duty, but no explanation was given. After being on lockdown for 3 days, a sergeant asked me what happened and he did not provide any explanation, however I received a disciplinary action later that day. The discipline was lockdown for 4 days. Since I was on lockdown since July 11, 4 days would be July 15<sup>th</sup> that I would be taken off lockdown." On 07-14-18, in compliance with Detentions policy O.1, Disciplinary Action, Deputy 1 conducted a hearing with the complainant at her cell door. According to that documentation, she reportedly did not offer any witnesses in her defense. The complainant informed the sergeant that she was ready to proceed with the hearing and stated that she felt she was in medical distress and that staff was not taking her seriously. The complainant reportedly agreed that she should have dealt with the situation differently. Deputy 1 found that the complainant had no prior write-ups or rule violations, but determined four days of Disciplinary Separation was appropriate due to the impact her actions had on facility operations. Detentions policy O.1, provides a method for bringing an inmate's behavior into compliance with established inmate rules and regulations while establishing a fair and impartial process of review. It required that any discipline initiated against an inmate shall be impartially imposed without regard to race, sex, gender, or religious beliefs. The discipline shall be progressive and commensurate with the seriousness of the violation while being compared with the behavioral history of the inmate while in custody. Inmates have the right to appeal their discipline, which will cause their discipline to be reviewed by a disciplinary appeal officer. The complainant did not appeal discipline during her hearing. The policy also requires that no hearing on a pending charge may be held later than 72 hours after the inmate has been presented a copy of the charges in writing and notified of their right to a hearing by the Disciplinary Hearing Officer (DHO). Furthermore, the policy allows for a sworn supervisor to place an inmate in administrative segregation while the incident report is being written and pending the hearing. On 07-11-18, a

sergeant approved a Segregated Housing order for the complainant pending a hearing/investigation for her rule violation(s). The complainant was placed in segregated housing from 07-11 through 07-14, and then in Disciplinary Separation for the rule violations from 07-14 through 07-18-18. The complainant was found not to be credible in her recall of this event and there was no violation of policies. The evidence showed that the conduct that occurred was lawful, justified and proper.

9. Misconduct/Procedure - Unidentified deputies did not follow procedure in response to the complainant's grievance.

Board Finding: Action Justified

Rationale: The complainant alleged, "with the help of another inmate I was able to file a grievance regarding the discipline, to receive explanation from a supervisor. Again, the way my grievance was handled, violated my rights as an inmate. And the rules for how Inmate Grievances are handled. Also, since my my grievance was about the incident of forced takedown by deputies, I believe that conflict of interest, and deputies abusing power was the reason I did not receive the same treatment and my grievance was deemed invalid. I received no formal document stating which deputy/supervisor looked at the grievance, and why it was invalid." The complainant did not provide the identity of the other inmate who allegedly assisted her with this process or any type of evidence to corroborate that she filed a grievance. Upon, filing of this complaint, a request was made to SDSD for associated documentation to include grievances, however, no records were found. Further research of Detentions policy N.1, Inmate Grievances, revealed that appeals of discipline are processed in accordance with Detention policy Section 0.1, Disciplinary Actions, and are not processed as grievances. Therefore, deputies were not required to document the complainant's alleged appeal as a grievance and their actions were lawful, justified and proper.

10. Misconduct/Procedure - Unidentified deputies did not provide the complainant with jail policy upon request.

Board Finding: Action Justified

Rationale: The complainant alleged, "the deputy used the emergency call box to discuss my grievance, and the response to why my disciplinary action is not ending on July 15<sup>th</sup>, since that is 4 days, was because "the time doesn't start until the sergeant talks to me." I asked for the jail policies regarding this, but the answer was that is the rules, and my grievance is not valid." Allegation/Rationale #9 addressed the complainant's lockdown period in compliance with policy, and there was no grievance as explained in Rationale #10. Detentions policy O.3, Inmate Rules & Regulations, mandates that the rules and regulations be posted conspicuously in all inmate-housing areas, and staff ensures every inmate is aware of and understands these rules. Inmates routinely go through an orientation process in which this information is also provided. The evidence showed that the conduct that occurred was lawful, justified and proper.

11. Misconduct/Procedure - Unidentified deputies denied the complainant medical care, showers, and/or grievances during lockdown.

Board Finding: Action Justified

Rationale: The complainant alleged, "I was held on lockdown an additional 4 days, due to the sergeant not seeing me until the 3<sup>rd</sup> day after the incident. I was on lockdown from July 11-18 @ 12:30pm without any formal incident report and/or write-up explaining what reason I was being disciplined for. The treatment I received while locked down, violated my right to medical care, my right to be given a shower every other day, as well as my right to file grievances. There were 2 occasions where my medication was not given to me. After being violently taken down, I was extremely sore and not able to stretch my muscles to prevent long term injury." Portions of the complainant's allegations were addressed previously and are notated above. Medical personnel and protocol do not fall within CLERB's purview. Detentions policy L.11, Personal Hygiene mandates that an inmate be allowed a shower and additional showers at least every 48 hours thereafter. According to Sheriff's documents the complainant was offered, utilized, or refused a shower during lockdown from July 13 through July 18, 2018. There was no violation of policy and the complainant was found not to be credible in her recall of this incident. The evidence showed that the conduct that occurred was lawful, justified and proper.

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## **18-125**

1. Misconduct/Procedure – Deputies 1 and/or 2 refused to take a stolen vehicle report from the complainant.

Board Finding: Action Justified

Rationale: The complainant reported, "I went to the Sheriff's station and spoke with Deputy 1 and another officer who represented that he was Auto theft officer but didn't have time to speak with me beyond telling me that because my vehicle was stolen by a mechanic they would be unable to file a report until they spoke to the mechanic that stole my

vehicle, and that even if he claimed to have done work on the vehicle, it would be deemed a civil matter, and I was on my own. I was sent away without a report filed even though I provided the deputy reasonable proof by text message that I instructed the mechanic not to begin the work before he took my vehicle or did any work on it. Further later looked up the mechanic, and he is not listed as a licensed auto mechanic in the state of California per the consumer affairs website, so he had no legal right to file a lien or hold my vehicle. Also, at no time did he inform me he was taking the vehicle, where it is located, or even presented me with any kind of bill. Or demand for payment. It seems to me the deputies should have undertaken to discern whether the thief was a licensed mechanic prior to sending me away without filing a report—it should not be incumbent upon the citizen to do that, or to educate themselves about the law in order to get action. Further, Deputy 1 seemed more interested in verifying my identity than that of the thief.” Witnesses corroborated and refuted portions of the complainant’s testimony. Sheriff’s policy 6.71, Crime Case Reports, mandates that a Crime/Incident Report shall be completed for Part 1 Crimes: to include Auto Theft. VC§ 10851. Theft and Unlawful Taking or Driving of a Vehicle, defines auto theft for any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, or any person who is a party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a public offense. Deputies provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. The vehicle was never “stolen” as reported by the complainant, and no crime occurred, therefore, a crime report was not required. The complainant and a mechanic of his choosing, made a verbal contract for services which were subsequently disputed, making it a civil matter for which law enforcement was not permitted to take any action(s). In addition, the complainant’s vehicle was returned in working order without payment by the complainant for services rendered. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 told the complainant, "Do you want your vehicle back? You can have your vehicle back or you can press charges, not both."

Board Finding: Not Sustained

Rationale: The complainant reported, “I just had a contentious conversation with Deputy 1 in which she said the mechanic that stole my vehicle would give it back, but would not allow me to pick it up, but would deliver it. When I expressed that I still wanted to press charges she said that wasn’t an option. When I presented my case, and why I felt she was wrong she said to me, ‘Do you want your vehicle back? You can have your vehicle back or you can press charges, not both.’ Since when does returning stolen property negate the actual crime? And that shouldn’t be the decision of a deputy. If the District Attorney’s Office refuses to prosecute, that’s one thing, and I’ll fight that fight, but since when does a deputy get to determine whether I have the right to file a police report?” The complainant reported that his vehicle was returned to him in working order by the mechanic. Law Enforcement agencies are tasked with investigating/reporting crimes to the District Attorney’s Office who in turn decides whether or not to charge/prosecute. The investigation determined that the vehicle was never stolen as reported by the complainant, but there was a dispute over services requested/rendered. Deputy 1 provided information during the course of CLERB’s investigation that conflicted with information reported by the complainant. Absent an audio recording of their conversation, there was insufficient information to either prove or disprove the allegation.

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**18-128**

1. Misconduct/Procedure – Deputies 1 and 2 allowed “illegals” to “steal” the complainant’s property.

Board Finding: Action Justified

Rationale: The complainant reported, “deputies unethically allowed 6 illegals to steal almost everything from my yard and truck bed that was covered including my grandchildren’s toys, bicycles, scooters, riding toys, books/games (my work tools) camping/fishing gear, brand new tools, yard/home improvement items, hammock, flags, potting soil, plants, etc. Some in trash cans were stolen, too. The Border Patrol, the Elder Abuse and child abuse hotlines, Law and Elder Advocacy were contacted and complaints with the County were submitted. Also a dryer, refrigerator, microwave, toaster oven were stolen.” The “illegals” referenced by the complainant were Code Compliance workers employed by the County of San Diego. On 08-29-18, a judge authorized an Abatement Warrant “to enter the property with the use of necessary force for the purpose of abating the solid waste, trash, junk, old clothing, furniture, discarded household items, scrap metal and wood strewn about the front, side and rear yard areas. According to the warrant, any person who willfully refuses to permit the abatement authorized by this warrant shall be guilty of a misdemeanor. And that abatement may be conducted in the absence of the property owner(s).” On 09-10-18, a sergeant and Deputies 1 and 2, accompanied Code Compliance to the complainant’s residence to enforce a lawful order and preserve the peace. The evidence showed that the warrant was valid and the conduct that occurred was lawful, justified and proper.

2. Illegal Search & Seizure – Deputy 1 “trespassed” on the complainant’s property.

Board Finding: Action Justified

Rationale: The complainant said, “Deputy 1 trespassed.” Deputies were lawfully on the complainant’s property to execute an Abatement warrant and preserve the peace. (see Rationale #1) Deputy 1 assisted in serving a court order and preserving the peace while an Abatement warrant was executed; he was legally authorized to be on the complainant’s property. The evidence showed that the alleged act or conduct that occurred was lawful, justified and proper.

3. Misconduct/Discourtesy – Deputy 1 “yelled” at the complainant.

Board Finding: Action Justified

Rationale: The complainant said, “Deputy 1 yelled inches in front of my face.” Sheriff’s policy 2.22 Courtesy, mandates that employees be courteous to the public and fellow employees. They shall be tactful in the performance of their duties, shall control their tempers, exercise patience and discretion even in the face of extreme provocation. Except when necessary to establish control during a violent or dangerous situation, no member shall use coarse, profane or violent language. Employees shall not use insolent language or gestures in the performance of his or her duties. “Yelling” is an action that is subjective in nature and can be interpreted differently by each individual. Corroborated by BWC, Deputy 1 lawfully instructed the complainant numerous times to go into her home or leave the premises during the execution of an Abatement warrant. Deputy 1 was courteous and calm with his numerous instructions to the complainant. There was no violation of Sheriff’s Policy and the conduct that occurred was lawful, justified and proper.

4. Misconduct/Intimidation – Deputy 1 threatened to handcuff the complainant.

Board Finding: Action Justified

Rationale: The complainant said, “Deputy 1 put his right hand on his gun and threatened to handcuff me. I told him that I was going into my home (calmly and assertively) and to get back and take his hand off the gun.” Deputies were lawfully on the complainant’s property to execute an Abatement warrant and preserve the peace. (see Rationale #1.) Documented in an Incident report and corroborated by BWC, Deputy 1 gave the complainant several orders to go into her home or leave the property. The complainant was argumentative and disobeyed lawful commands. There were hazards obstructing a clear pathway between Deputy 1 and the complainant that created officer safety concerns. The complainant repeatedly told Deputy 1 to get away from her and said she was going into her house, but she remained still and disobeyed orders. Per the BWC, Deputy 1 told the complainant, “I’m gonna to put you in handcuffs, if you don’t go in the house right now.” Deputy 1 appeared to have his hand in front of his holstered weapon. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

5. Excessive Force – Deputy 1 “grabbed” the complainant.

Board Finding: Action Justified

Rationale: The complainant said, “Deputy 1 grabbed my arm.” Deputies were lawfully on the complainant’s property to execute an Abatement warrant and preserve the peace (see Rationale #1). As documented in the Incident report and corroborated by BWC, Deputy 1 gave the complainant several orders to go into her home or leave the property. The complainant initially walked toward a back entry to her home, but then stood outside a sliding glass door and pleaded, “Don’t take all my stuff.” The complainant continued to remain in place, while telling Deputy 1 who was in closest proximity, “I am going in the house, bye, move away.” There were hazards obstructing a clear pathway between the complainant and Deputy 1 that created officer safety concerns. The complainant repeatedly told Deputy 1 to get away from her and said she was going into her house, but remained still and disobeyed orders. Deputy 1 instinctively and momentarily placed his hand on the complainant’s wrist/arm area when she disobeyed lawful commands and said to him, “Get away from me, get away from me, right now or I’m gonna, you know what I’m gonna” and reached toward her purse. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

6. Misconduct/Procedure – Deputy 2 was the subject of numerous other allegations by the complainant.

Board Finding: Summary Dismissal

Rationale: The complainant said, “I am concerned that this Sheriff is allowed to have a gun. This sheriff has harassed me for 11 years. This sheriff has many misconducts, rudeness, harassment, intimidation toward myself and others in the community. The sheriff had helped a roommate steal my furniture and I had to call the sheriff on the sheriff. My trees have died due to his poisons he puts in his yard. This sheriff has complained about everything to try to have

me fined which is financial abuse. This sheriff needs a complete psychological evaluation and MMP test. Deputy 2 had tried to force me out of my home, so that his friends would by the home (another sheriff). Also, I have been cyber bullied by Deputy 2. One of the individuals that did work on my home this sheriff gave \$1,500 in tickets, so that the mixed race family would not be able to pay for their home and had to leave Pine Valley. This sheriff spreads lies and rumors. Also, the sheriff cons other to assist him with the harassment. This sheriff has yelled at me verbally and with a megaphone in the past. This sheriff poisoned his entire yard. Which gave me \$1,000 in medical bills and I was ill for 6 months. Also, this sheriff has unlawfully photographed me without my permission. This sheriff trespassed on my property without my permission. Perspective tenants, repair person's have been stalked by the sheriff, as well as myself. This man is so obsessed with harassing others and patrols on his own time. This sheriff has intimidation tactics-shining flashlights in my windows and at me at night. Stalking me at home by following me to the front and back yard. I do not feel safe in my own home and yard with this sheriff. This sheriff bragged about how he has murdered people and received time off with pay. Deputy 2 has had a roommate "investigate" me and he paid for this person to do this. My home and car have been broken into, my tires flattened, items vandalized, car windshield wipers broken right before a storm, glass put in my driveway broken in pieces, bowel movements put in the street by my driveway, my locks glued shut, my items smashed, bags of my work tools broken and thrown all over, my items stomped on and smashed, a letter with lies he wrote about me, he tried to run off car and home repair people, he tried to run off perspective tenants, financial abusive tactics were in place against me, he called and lied that my home was added onto, he called and lied that my dogs weren't cared for (and these lies were dismissed by government agencies) Also, I have chemicals to make a summer pool turn from green to blue in 15 minutes, but he calls constantly to say that I don't care for the pool. The sheriff is a criminal with a badge. This sheriff has individual live in his trailer on + off. He transported a metal piece 4x's length of his truck. He lights fires in his yard when there is high fire danger. Deputy 2 thinks he's above the law and constantly breaks the laws. The little children ran mostly naked in this sheriff's yard, which is inappropriate. This sheriff has had dog that bark constantly. The bon fires in this sheriff's yard have flames that go up 2 stories during fire season. The crimes that this sheriff is allowed to perform are uncalled for. The sheriff has a washer that drains outside onto the ground, which is not legal. This sheriff completes home improvements without a permit. Also, on + off there are individuals living in his trailer, which are against the rules. The sheriff would put food in the forrest to attract critters and make the neighbors dogs bark. Then, he would make complaints about their dogs. The sheriff lives in a home that was a 1 room cabin at one time that had 3 mortgages due to unpermitted add ons to the home. This sheriff doesn't think rules are for him." CLERB Rules and Regulations only allows for investigation of complaints that have occurred within the past year. Complaints subject to review are those which allege improper or illegal conduct of peace officers or custodial officers arising out of the performance of their duties or during the exercise of peace officer authority. These issues were referred to the Sheriff's Department as CLERB lacks jurisdiction to investigate off-duty conduct.

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## **18-130**

1. Misconduct/Procedure – Deputy 1 failed to investigate the complainant's complaint.

### Board Finding: Action Justified

Rationale: In the complainant's written statement to CLERB, he alleged that Deputy 1 of the SDSD Internal Affairs Division failed to investigate his complaint against a Sheriff's deputy. According to the SDSD Internal Affairs Policy and Procedures Manual Section 2.4 entitled, "Complaints," the Internal Affairs Unit is responsible for the administration of all formal complaints which includes: review the complaint for classification and assignment, review of the completed investigations, filing of completed investigations, and maintain an index of all complaints. Reasons for not immediately investigating a complaint may include: Pending criminal case which would conflict with the investigation, inmate grievance procedure not followed, frivolous complaint (per 832.5 PC) or no nexus to employment, and no policy or law violation. It shall be the policy of this Department not to investigate those complaints, of a minor nature, which are received 30 days or more after the date of the alleged incident. If a complaint of this nature is received in writing, it shall be the responsibility of Internal Affairs to respond to the complainant. Additionally, according to the SDSD Internal Affairs P&P Manual Section 2.5 entitled, "Investigations," the Internal Affairs Unit has the primary responsibility for the investigation of all complaints. The Internal Affairs lieutenant will make the determination when the complaint will be investigated. According to CLERB's liaison with the SDSD Department of Inspectional Services, the complainant had filed a complaint with the SDSD Internal Affairs division. CLERB's liaison confirmed that a preliminary investigation was performed; however, due to California's Police Officer's Bill of Rights, the details of the investigation were not disclosed to CLERB. The complaint was closed, via written correspondence, with no administrative investigation performed, as the allegation was found not have been a violation of Sheriff's policy, nor was the allegation a violation of the law. On 09-11-18, Deputy 1 wrote a letter in response to the complainant's letter, and that letter was provided to CLERB by the complainant. The letter advised that a cursory investigation was initiated, and no policy or criminal law violation was found upon receipt of the initial

complaint. The allegation that Deputy 1 failed to investigate the complainant's complaint was untrue/unfounded. The evidence showed that the alleged act or conduct did not occur.

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### **18-139**

1. Criminal Conduct – Deputy 1 was involved in illicit drug sales and/or drug trafficking.

Board Finding: Summary Dismissal

Rationale: According to the complainant, she alleged that on 11-11-18, Deputy 1 was involved in the sale and transportation of illicit drugs. In her written statement, the complainant reported that she learned Deputy 1 had been involved with the sale and transportation of cocaine, along with "other high-profile individuals." The complainant alleged that Deputy 1 was "a part of a network now known to have started in 1991." She alleged that Deputy 1 misused county property for his personal purpose. In the months after filing the initial complaint, the complainant sent more than 20 emails to CLERB. The emails illustrated extraordinary conspiracies involving the Federal Bureau of Investigations, Presidents Barack Obama, George W. Bush, and Donald Trump, as well as collusions involving the Department of Defense, and "the Los Angeles Police Department's unlawful surveillance" in her house. The complainant expressed suspicion that "some members of the Sheriff's Department were closely aligned with communist China," and addressed "changing the power to a Constitutional elected government." The complainant's numerous emails were unintelligible and incomprehensible. Though the additional emails were detailed, they did not outline any complaints of misconduct by the SDSD. The follow-up correspondence was unconceivable and appeared to be random thoughts unrelated to a grievance. CLERB's liaison with the SDSD, advised that Deputy 1 was a current employee with the SDSD. He was assigned to the Court Services Division in San Diego and according to personnel, he had never been assigned to the Aerial Support to Regional Enforcement Agencies (ASTREA) Division. According to the complainant, the date of incident was 11-11-18. CLERB's liaison with the SDSD advised that 11-11-18 fell on a Sunday and the courts were closed. Deputy 1 was not working that day. Additionally, the courts were closed on Saturday 11-10-18, and Monday, 11-12-18 was an observed holiday and the courts were again closed. The liaison further advised that Deputy 1 was a retired deputy who returned to the Department and worked part-time. As a re-hired deputy, Deputy 1 only worked 960 hours a year. During the course of the investigation, CLERB found no prima facie that Deputy 1 was involved in criminal activities. The complainant's allegation that Deputy 1 was involved in illicit drug sales and/or drug trafficking was clearly without merit. Per CLERB Rules and Regulation Section 15: Summary Dismissal, the complaint is so clearly without merit that no reasonable person could sustain a finding based on the facts.

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### **19-047**

1. Excessive Force – Deputy 1 bent the complainant's hands backwards.

Board Finding: Action Justified

Rationale: The complainant stated, "I ask you obtain a copy of the Deputy's Body Cam Tape to see the use of force used when Hand cuffing me how the grip on my hand was so very tight and how my hands were bent backwards so much at first they could not even cuff me. I never resisted to where this force should have been used." Body Worn Camera (BWC) footage was reviewed and corroborated that the complainant was compliant while being handcuffed by Deputies 1 and 2. According to a departmental information source, deputies are trained by the following method(s): The hand control method is taught to maintain positive control of the subject's hand and turn the subject's hand to align the wrist with the handcuffs. This allows the deputy to handcuff using the "pistol grip" method (dominant hand first). This can vary on the flexibility of the subject. However, if resistance is met they are also taught handcuffing from a "wrist lock" position. Again the tactics employed by the deputy may vary depending on the totality of the circumstance. Deputy 1 also provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Reasonable force is not brutal or excessive force, but rather only the degree of force that is necessary to overcome the suspect's resistance. When a suspect is detained, deputies are permitted to take whatever investigative actions are reasonable under the circumstances, and general practice is to use the least intrusive means available. During a lawful detention, deputies are "authorized to take such steps as [are] reasonably necessary to protect their personal safety and all suspects are handcuffed. The evidence determined that the force utilized for the complainant's arrest was lawful, justified and proper.

2. Misconduct/Truthfulness – Deputy 1 told the complainant he was being arrested on a Probation warrant.

Board Finding: Action Justified

Rationale: The complainant alleged, "Deputy 1 lied while leaving casino telling me I was being arrested on a Probation warrant [sic] for not registering." According to the complainant's arrest report, Deputy 1 conducted a records check and determined the complainant had an outstanding felony warrant for 3453(0) PC - Flash Incarceration with an original charge of 290.018 (B) PC - Failure to register with priors. Deputy 1 also provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Per PC§ 3455, Postrelease Community Supervision; Revocation, At any time during the period of postrelease community supervision, if any peace officer has probable cause to believe a person subject to postrelease community supervision is violating any term or condition of his or her release, the officer may, without a warrant or other process, arrest the person and bring him or her before the supervising county agency. The complainant was also in violation of HS§ 11364, Possession of Opium Pipe or Controlled Substance Paraphernalia and HS§ 11377, Unlawful Possession of Restricted Dangerous Drug. While there was dispute over the unrecorded exchange of information between the deputy and the complainant regarding the charges, the evidence corroborated that the complainant's arrest was lawful, justified and proper.

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## **19-054**

1. Misconduct/Procedure – Unidentified deputies "ignored" the aggrieved requests for sick call.

Board Finding: Unfounded

Rationale: The complainant stated that the aggrieved submitted several sick call requests to be seen for an infected foot that deputies have ignored. Evidence demonstrated that the aggrieved submitted four Sick Call Request Forms (Form J212), and one request on stationary paper, related to his foot injury. Every one of those requests were addressed within the same day they were submitted. The area activities report also showed that all Sick Call forms were collected daily. Medical records verified that the aggrieved was treated, and subsequent medical notes described that no further treatment was needed as the aggrieved healed properly. The evidence showed that the alleged act or conduct did not occur.

2. Misconduct /Procedure – The complainant made allegations of jail conditions, specifically residual sewer water in his cell.

Board Finding: Summary Dismissal

Rationale: The complainant and the aggrieved described an incident involving residual water entering the aggrieved's cell. Documents provided by the Sheriff's Department, documented an incident requiring a maintenance call as: "Upper shower drain plugged." Jail surveillance video recordings of the module where the aggrieved was housed showed evidence that there was water overflowing. Inmates, including the aggrieved, were seen wiping and drying off the jail floors. Complaints subject to review are those which allege improper or illegal conduct of peace officers or custodial officers arising out of the performance of their duties or during the exercise of peace officer authority. Evidence indicated that the incident occurred, but there was no associated deputy misconduct and per the documentation, maintenance procedures were followed for corrective action. The Review Board lacks jurisdiction over jail conditions.

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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.