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County of San Diego

CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its September 10, 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.

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****18-122**

1. Misconduct/Harassment – Unidentified staff mistreated the complainant.

Board Finding: Not Sustained

Rationale: The complainant said, "...she is a "gender variant inmate" (an individual that does not match masculine and feminine gender norms) and she was verbally and physically harassed and stalked by staff and inmates." However, the complainant did not produce evidence to corroborate the alleged mistreatment and also failed to provide specific details as to date, time, place, or persons associated with this allegation. Detentions Policy F.16, Sexual Assault Case Assignments & Investigations, mandates that whenever an allegation of sexual assault is reported, whether from an inmate/detainee, proper notifications and documentation shall be completed in a timely manner. There was no documentation of sexual harassment found pertaining to the complainant. Without further clarifying information, there was insufficient evidence to either prove or disprove this allegation.

2. Misconduct/Procedure – Unidentified deputies placed the complainant in Ad-Seg (Administrative Segregation).

Board Finding: Action Justified

Rationale: The complainant said, "she requested to be moved due to ongoing issues and write-ups. They put her in adseg 'unfairly,' when she could have been moved elsewhere, and she was 'misclassified.'" According to Sheriff's

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records, the complainant submitted grievances in which she expressed that staff locked her down due to her race, but her documented history showed disregard for staff and authority, and she continually expressed race-related profanities toward staff of different ethnicities; all violations of Inmate Rules & Regulations. Detentions Policy J.3, Segregation: Definition and Use stipulates that the guidelines for inmate segregation shall conform to all local and state laws. Inmates shall not be segregated solely because of race, color, creed, national origin, gender identity (lesbian, gay, bisexual, transgender, intersex [LGBTI]) or sexual orientation, as defined. Each inmate housing assignment is based on an individual assessment. Segregation is used only for those inmates who are classified for safety and/or security reasons, or who are pending disciplinary action or for investigative purposes. Based upon all available documentation, the complainant was determined to be properly housed. There were numerous Segregated Housing Orders by various sergeants pending a hearing/investigation for the complainant's rule violations; she displayed a continual inability to conform to the minimal standards expected of those in mainline housing. An Inmate History Summary Report documented the complainant's reviews from 07-15-18 through 09-16-18, and were conducted at least every seven days in compliance with Detentions Policy J.3. The evidence showed the complainant was properly classified and the actions taken were lawful, justified and proper.

3. Misconduct/Procedure – Deputies 1-10 “stole” from the complainant.

Board Finding: Action Justified

Rationale: The complainant reported that officers “stole” her mail, snacks, account deposits, commissary, visits etc. All have been involved in “theft” of her items, and food, and property, etc. She asked, “Please help me retrieve my deposit, email and mail that were taken ‘illegally. Please review the salary paycheck and credit card records of all officers in this complaint. Money laundering, theft, stalking are serious crimes even when done by staff. Border law enforcement can also get involved as some staff involved are sending stolen funds to foreign receivers, possibly and most likely.” She said, “I am not in jail to fund any activities.” The complainant submitted numerous jail grievances expressing her thoughts/beliefs pertaining to this allegation. Command staff responded to the grievances in accordance with Detentions Policy N.1 Grievance Procedure. In those responses to the complainant, jail staff documented that the complainant failed to cooperate with their investigation; there was no basis for her beliefs; or they determined there were no violations with what had occurred. Specifically, the complainant’s medically approved snack was reduced from three to one per day; she did not receive any legal mail; her account balance was reduced after commissary order(s); and her visitation was suspended during disciplinary separation. The evidence showed that the actions that occurred were lawful, justified and proper.

4. Excessive Force – Deputy 4 pulled the handcuffed complainant through a food slot.

Board Finding: Action Justified

Rationale: The complainant reported Deputy 4 “pulled her through a tray slot” while allegedly removing waist chain and cuffs, after court in/around May or June 2018. The complainant said she “sustained trauma and injuries, and disciplinary penalty.” An incident report by Deputy 4 documented that while at a Courthouse, the unprovoked complainant began yelling at other female inmates and was placed in a separate cell due to tension, and then placed on the bus separately to prevent further confrontation. Once back to the detention facility, she was also placed into a cell by herself where Deputy 4 asked her to back up to the door to remove her waist chains. Reportedly, the complainant became extremely agitated and began to yell. Deputy 4 asked her to turn and place her hands through the food access port to remove her handcuffs. The complainant only slightly placed her hands out before she quickly pulled the chains back into the cell. Another deputy assisted in holding the chains to prevent her from pulling them back into the cell again. During this time, the complainant yelled racial profanities and threatened Deputy 4. Later, during each security check, the complainant continued yelling derogatory and incoherent phrases at Deputy 4. The complainant then submitted a grievance to which a sergeant responded that he reviewed video of the incident and there was no evidence of misconduct by Deputy 4. “The video showed you pulled away as deputies attempted to remove the waist chains and there was no evidence you were ‘brutally attacked.’ You were in violation of rules and regulations and were placed on lockdown pending a hearing.” On May 24, 2018, a sergeant attempted to conduct a hearing, but the complainant was uncooperative with the hearing process and was found guilty. The evidence showed that the conduct that occurred was lawful, justified and proper.

5. Misconduct/Intimidation – Deputy 3 threatened the complainant with a Taser.

Board Finding: Action Justified

Rationale: The complainant said that Deputy 3 cancelled her dayroom time and pulled a taser threatening to shoot/taze her. The complainant said she felt this was extreme due to the possibility of her being pregnant. According to medical records, while the complainant professed she was pregnant, she refused all pregnancy tests, received no prenatal care, and requested sanitary products for her menstrual cycle. An incident report by Deputy 7 dated 08-11-18 documented that the complainant was let out for her dayroom time and instructed to go inside the South bubble

dayroom. The complainant did not follow instructions and went to speak with another inmate in the main dayroom. Deputy 3 and a corporal instructed the complainant to go into the bubble, but she refused. The complainant yelled, cursed, and made threatening statements toward the deputies who then escorted her back to her cell. There was no use of a taser during this incident and threat of use would have been appropriate to gain compliance from the complainant who was found to be in violation of Inmate rules & regulations of threatening to assault staff, disobeying staff instructions, and interfering with jail operations. The evidence showed that the conduct that occurred was lawful, justified and proper.

6. Misconduct/Procedure – Deputies 2, 3, 7, 8 and 9 placed inmates and staff at risk.

Board Finding: Summary Dismissal

Rationale: The complainant stated, “What my theory is, for these aggressive issues against me is that these officers were prostitutes and probably still are. They were looking for ways to get extra money to support their habits, etc. I suggest that these deputies be drug, alcohol, HIV and polygraph tested soon. They are a viral risk and annoyance to staff and inmates, etc.” The allegation as stated by the complainant was her “theory,” and was made without any supporting evidence; she was found not to be credible. CLERB Rules & Regulations 9.2 Screening of Complaints, states that complaints not alleging facts establishing a prima facie showing of misconduct may be referred to the Review Board for Summary Dismissal. In addition, Section 15: the complaint is so clearly without merit that no reasonable person could sustain a finding based on the facts; this allegation clearly lacks merit.

7. Misconduct/Procedure – Unidentified deputies denied the complainant various things.

Board Finding: Action Justified

Rationale: The complainant asked that we “investigate classification sergeants who may have her booking, bond, property, and account records wrongfully incorrect, delaying her release, visits, commissary, etc.” The investigation determined the complainant was not credible and formulated her beliefs without any supporting evidence. The complainant submitted numerous Inmate Grievances related to these issues that were addressed in compliance with Detentions Policy N.1, Grievance Procedure. A Detentions Processing Technician also informed the complainant that documentation from the arresting agency, booking records, and court records verified that her bail was set at \$50,000, and when/if paid would facilitate her release. An Inmate History report verified the complainant’s professional visits in compliance with P.15, Professional Contact Visits, and Policy T.9, Sheriff’s Commissary, enabled the complainant to purchase personal items, snacks and stationary with sufficient funds unless her commissary privileges were suspended for disciplinary reason. The evidence showed that the conduct that occurred was lawful, justified and proper.

18-129

1. Misconduct/Procedure – Unidentified deputies did not provide the complainant with a proper PIN to access the telephones.

Board Finding: Action Justified

Rationale: The complainant stated, “After 4 day of being in 6A suicide watch, I was put on 4th floor. I couldn’t use my PIN # for the phone I asked the deputy, a corporal told me he reset it 3 times still did no work but everybody elsles (sic) did after 2 more unsuccessful attempts I was moved to 6B still no pin #.” Per the San Diego Sheriff’s Department Policy & Procedure Section P.2, Telephone Access, and as prescribed by Penal Code§ 851.5, all inmates are provided access to a telephone upon being arrested, to call family or an attorney. Beyond those telephone calls, inmates are provided with a PIN number to use the jail telephones. Deputies provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding: Upon arrival to the San Diego Central Jail, an inmate is automatically issued a PIN to use the phones and make free phone calls from the housing units. As per the complainant, he was furnished with a PIN, but it was inoperable. The complainant admitted that sworn personnel made several efforts to assist him in resetting his PIN, but to no avail. PINs are automatically issued by the Detention Processing Technicians, who are non-sworn personnel. It was possible that the event was an isolated incident, as the complainant himself stated that other inmates were able to use their PIN. It was also unknown if the complainant attempted to make other calls on the other PIN he was issued; however, he was eventually provided with a valid PIN, which functioned properly, and eventually, he was able to make phone calls. Evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure – An unidentified deputy violated the complainant’s Attorney-Client privilege on 08-20-18.

Board Finding: Not Sustained

Rationale: As per the complainant, while at the San Diego Central Jail, he was visited by his attorney on 08-30-18. During the visit, *“a deputy was all in my conversation (at the door) violating attorney/client privacy. He stated something to my attorney she laugh, I got mad.”* As per the SDSD Detentions Services Bureau Policy & Procedure (DSB P&P), Section P.15 entitled, Professional Contact Visits, professional contact visits with inmates are permitted when such visits are necessary to the administration of justice. The complainant’s attorney verified that she visited the complainant while she was at the jail for unrelated business. She added that the visit was not in the Professional Visit Room, but outside the complainant’s “pod” and a deputy was present “standing by” during their conversation. The attorney nor the complainant were able to identify the involved deputy. The attorney provided additional information in regards to the nature of the visit and she reiterated that the information discussed was not confidential. SDSD had no documentation/verification of this visit as required by their policies, however, it appeared to be a happenstance type of encounter and a single/isolated incident. Absent an audio recording, there was insufficient information to determine the context of the conversation as it pertained to attorney/client privilege. There was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Procedure – Unidentified deputies failed to send out the complainant’s mail.

Board Finding: Not Sustained

Rationale: The complainant stated that he sent out outgoing mail; two periodicals and to two envelopes to two public officials. He reported, *“Don’t no (sic) if any got letters, were all sealed and marked legal mail. Mail started taking long time”* The complainant requested that CLERB weather or not his letters were sent to the intended recipients. CLERB followed up and as per the Governor’s Staff Office, there was no way to verify the receipt of the letter. A voicemail was left with the clerk of the Judge the complainant mentioned, and as of the completion of this report, no return calls were received to verify the receipt of the letter. Per the Detentions Services Bureau Policy & Procedure (P&P) Section P.1 entitled, Custody Information, the detention facility Custody Information Office shall screen inmate inquiries, clear jail visitors, sort incoming mail, and process incoming and outgoing inmate property, and other duties as assigned. As per the SDSD Detentions Services Bureau Policy & Procedure Section P.3, Inmate’s Mail, Detention facilities shall provide for the reasonably prompt delivery of incoming materials and outgoing correspondence. SDSD Department Information Sources provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Due to this enhanced security process, the mail may be delayed one to a few days. As no deputies were identified, and no specific dates were provided, there was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Procedure – Unidentified deputies did not provide the complainant with incoming e-mail messages.

Board Finding: Not Sustained.

Rationale: The complainant stated, *“A Email from one Christina Lacroix on 09-07-2018 I did not received until 09-13-18. I checked my other and a few people in this tank received Emails within 24 hours from it being sent.”* According to a telephonic interview between a CLERB Special Investigator and a SDSD Departmental Information Source, incoming inmate emails are received by non-sworn jail staff. The emails are printed by the non-sworn, professional staff on printers funded by the inmate welfare funded. Professional staff distribute the emails to the addressed facility and the individual housing units. Deputies collect the received emails and distribute the emails with the mail during nightshift. As per the SDSD Detentions Services Bureau Policy and Procedure P.3, Inmate’s Mail, inmates should be allowed to received U.S. Mail, letters and electronic mail. Detention facilities shall provide for the reasonably prompt delivery of incoming materials. The Custody Information Office is in charge of processing incoming mail. E-mails get forwarded to the housing deputies. The complainant’s s e-mail was received on Friday, September 8, 2018 and delivered on Thursday, September 13, 2019; there was a weekend in between. As per SDSD Departmental Information Source, it takes approximately six days to complete the delivery of an e-mail, not including weekends. The complainant received his e-mail in five days. The Sheriff’s Department public website <https://www.sdsheriff.net/emailaninmate.html> has instructions to send inmates e-mail and a disclaimer stating that Inmates will not receive the message electronically. The message will be received by jail staff, printed and delivered in printed form to the inmate. The evidence showed that the process was completed, and the complainant ultimately received his e-mail. However, other than his statement, there is no documentation of when he received it as such, there was insufficient evidence to either prove or disprove the allegation.

5. Misconduct/Procedure – Unidentified deputies did not inform the complainant that his attorney requested a call back.

Board Finding: Not Sustained

Rationale: The complainant stated, *“My Public Pretender (sic) sent me an e-mail stating, never received any message stating I needed to call her or any at all.”* The complainant provided a copy of an e-mail sent to him by his attorney in which she stated that she had attempted to call him back, but she had not received any return calls from him. As per the SDSD Detentions Services Bureau Policy and Procedure P.3, Inmate’s Mail, inmates should be allowed to

received U.S. Mail, letters and electronic mail. Detention facilities shall provide for the reasonably prompt delivery of incoming materials. Deputies provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding: When the first floor Information Lobby Detention Information Assistants field a call from an attorney, who would like to speak with their client, an "attorney Call Back" message (written note) is generated and sent to the housing floor. As soon as it is practical, the message is to be relayed to the inmate so he can contact his attorney. Documents provided by the Division of Inspectional Services were thoroughly reviewed and there was no documentation of any calls or messages from the attorney to the complainant. There was insufficient evidence to either prove or disprove the allegation.

18-142

1. Misconduct/Truthfulness – Deputy 5 lied to the complainants.

Board Finding: Action Justified

Rationale: In the complainant's written statement, they alleged that Deputy 5 lied to them. According to the complainant's, they "*informed him [Deputy 5] I would rather he would make it on Thursday because we were going to be gone that Friday and felt better if his dad and I were present when he would be able to come. He said he would try to aim for Thursday or so, but did not know for sure when he would make it. Deputy 5 assured us that they only wanted to TALK and that he would not be touching the aggrieved. He only wanted to get information from the aggrieved. DEPUTY 5, NEVER CALLED US BACK. Deputy 5 assured us that he would phone us as soon as they met with our son. He never phoned us back! The deputy did not return our call for more than two days after we went to his unit and complained about the way this was handled and the dishonesty of a deputy!*" In Deputy 5's written report, he advised, I did not tell them the circumstances or that the aggrieved was wanted, in fear they would notify him [of the pending arrest] and escalate the probability for a confrontation. Additionally, the complainant's reported, During the course of this investigation, Deputy 5 responded to a Sheriff's Employee Response Form (SERF) and provided relevant and conflicting information in response to CLERB questioning. In the complainant's written statement, they contradicted their statement regarding Deputy 5 failure to return their calls. Initially, they advised that Deputy 5 "never" returned their call. Then, the complainant's reported that Deputy 5 returned their call two days later, after they complained to "his unit." 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. Essentially, a Sheriff's deputy is not required to be truthful or forthcoming when addressing the public, as information may be of a sensitive and/or confidential in nature. A Sheriff's deputy needs only to be truthful when addressing a superior and in their written report. Deputy 5 lying to the complainant's was not a violation of SDSD P&P. The aggrieved was an adult; he was not a minor, he was not a legally designated public conservator, nor was he an adult dependent under the legal authority of his parent's authority. As such, Deputy 5 was not obligated to contact an adult arrestee's parents post arrest. Whereas it would have be a courtesy to communicate with the complainants, Deputy 5 did do just that two days later. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 5 did not request the assistance of PERT when taking the aggrieved into custody.

Board Finding: Action Justified

Rationale: The complainants alleged that Deputy 5 did not request the assistance of PERT when taking the aggrieved into custody. In the complainant's written statement, they stated, "*I immediately told him [Deputy 5], our son the aggrieved was mentally challenged and needed to have a PERT Team present when questioned at our house. I reiterated to him once again with an importance that I would rather he visit the aggrieved with a PERT Team and when we were also home. Deputy 5 assured us a Carlsbad PERT Team person would be available. Twice he assured us that PERT would be involved. All of this could have been avoided if Deputy 5 would of kept his promise of bringing a PERT Team and waiting for us to be home!!*" According to the SDSD reports associated with the aggrieved's arrest, the aggrieved made criminal threats towards a private citizen. In the past, the aggrieved had become combative and resisted. The use of a Taser was needed to subdue the aggrieved. The aggrieved was placed on a psychiatric hold. During that incident, the aggrieved was combative with deputies. Carlsbad Police Department (CPD) had contacted the SDSD in an officer safety notification and warned that the aggrieved had a propensity for violence and showed he would violently resist. For these reasons, it was determined that contacting the aggrieved would be a potentially dangerous situation and inappropriate for a PERT clinician. The aggrieved's propensity towards violence substantiated his credibility to his threats. PERT was deemed not the appropriate resource to utilize for initial contact with the aggrieved. According to P&P Section 6.113 entitled, "Psychiatric Emergency Response Team (PERT)," the Sheriff's Department is committed to providing a regional mobile response to the crisis needs of the mentally ill. The Sheriff's Department will participate in a multi-disciplinary partnership to provide regional crisis mobile response for

the mentally ill. This partnership will be identified as the Psychiatric Emergency Response Team (PERT). The PERT teams provide the most humane and appropriate dispositions for mentally disordered persons who have come to the attention of law enforcement. PERT teams will respond to any patrol units request for assistance when the unit is handling the mentally ill or individuals in crisis. PERT personnel will assess the situation, evaluate the individual(s) in question, and as appropriate, make referral(s) to community-based resources or treatment facilities. According to SDSA Patrol Procedures Manual, Policy 23 entitled, "Psychiatric Emergency Response Team (PERT)," the responding deputies, the PERT Unit advises patrol deputies on psychiatric issues that arise in the course of their law enforcement duties, and assists in transportation and processing of individuals deemed to need inpatient psychiatric treatment. The PERT Teams may be used to respond to calls/requests for assistance from Sheriff's or other police agencies' patrol units regarding individuals who may be in need of mental health assessment or crisis intervention. PERT's website provided an overview of its mission, history, law enforcement partners (of which SDSA is one), and law enforcement trainings. The PERT Director indicated there are calls in which a PERT Team cannot respond due to safety concerns, therefore they would be unable to assist. The requesting of a PERT Team is an option to deputies as detailed in the SDSA Patrol Procedures Manual, and the SDSA P&P, and are permissive actions, not mandatory requirements, therefore there was no evidence to support an allegation of misconduct or negligence on the part of Sheriff's Department sworn personnel. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

3. Illegal Search and Seizure – Deputy 5 instructed deputies to illegally enter the complainant's home.

Board Finding: Not Sustained

Rationale: The complainants alleged that Deputies 1-4, under direction from Deputy 5, entered their home without knocking or announcing their presence. In the complainant's written statement, they described, "*Later we found out, the sheriffs under Deputy 5's leadership entered our home with seven police units, WITHOUT KNOCKING and scared the aggrieved, who was in the kitchen at the time. NO DOORBELL WAS RUNG! Dear sirs, who on earth would allow police officers to enter any home unannounced, without ringing the doorbell and surprised a mentally challenged son? The aggrieved is in the police system with a note of his mental challenges; any police officer could see that.*" In Deputy 5's Arrest Report, he noted, "They [the complainants] gave me verbal permission to enter their residence to contact the aggrieved. We approached the residence and found the front door unlocked. Deputy 1 opened the door and announced our presence." In Deputy 4's Officer Report, he wrote, "On 06-20-18, Deputy 1 had received consent from the complainants to enter the residence to contact and arrest the aggrieved. Deputies arrived on scene and Deputy 1 was able to open the front door which was left unlocked. Deputy 1 opened the door and was able to make announcements." In Deputy 3's Officer Report, he reported, "On 06-20-2018, at about 1620 hours [4:20pm], the team of deputies arrived at the residence, and entered the residence through the unlocked front door while announcing their presence." According to Deputy 2's Officer Report, he reported, "Upon arrival at the aforementioned location, entry was made by deputies through an unlocked front door." According to Deputy 1's Officer Report, he reported, "We arrived on scene and discovered the front door of the residence was open. I opened the door and we made announcements." During the course of this investigation, Deputy 5 responded to a SERF and provided relevant information in response to CLERB questioning. In viewing the Body Worn Camera recordings, which the SDSA supplied to CLERB, the recordings revealed that upon arriving on scene, Deputy 1 opened the unlocked door and before entering the home, the deputies very loudly and clearly announced their presence four times. According to SDSA P&P Section 2.51 entitled, "Arrest, Search and Seizure," employees shall not make any arrest, search or seizure, nor conduct any investigation or official Department business, in a manner which they know or ought to know is not in accordance with law and established Department policies and procedures. According to the applicable content of P.C. § 1531, a peace officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance. According to the applicable content of P.C. § 1532, the peace officer may break open any outer or inner door or window of a house, for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation. California's search and seizure laws as applied to houses and other residences have their origin in the Fourth Amendment to the U.S. Constitution and in Article I, Section 13, of the California Constitution. These constitutional sections provide that all Californians have the right to be free from "unreasonable searches and seizures." The knock and announce rule is a legal rule mandating that police cannot force entry into someone's home/dwelling in order to execute a search warrant. Under the knock and announce rule, a peace officer needs to knock on the door, announce their authority, and wait a reasonable period of time before they enter. Pursuant to California Penal Code 1531, an officer of the law may use force to enter your home, car or place of business to execute the search warrant, only if, after notice of his authority and purpose, he/she is refused entry. In the aggrieved's case, deputies did not have a warrant. According to Deputy 5, he had the complainant's consent to enter the home. Consent is an exception to the knock and announce requirement. If someone in the home consents to the officer's entry, the officer does not need to proceed with knock-notice requirements. If a peace officer came to a home/dwelling to question a resident in connection to a case, they may only enter with an invitation. Absent information provided by an independent witness to the incident or additional

video or audio recordings of the interaction, there was insufficient evidence to confirm or refute that the complainant's gave Deputy 5 permission to enter their residence. There was insufficient evidence to either prove or disprove the allegation.

4. Excessive Force – Unidentified deputies used force when they took the aggrieved into custody.

Board Finding: Action Justified

Rationale: Deputies 1-5 used force when they took the aggrieved into custody. In the complainant's written statement, they advised that deputies used "excessive force," including less than lethal force, when they took the aggrieved into custody. In the complainant's written statement, they conveyed, "*SEVEN Sheriff units with the intent of taking him down one way or another. Is it NORMAL to take SEVEN police units for two misdemeanors? We found out the aggrieved was taken to an area hospital and had to be subdued! Believe me, Citizens' Law Enforcement Review Board, when we got home, there was evidence that was so hurtful, shocking and disheartening that our son was taken by force, chased, and thrown some kind of white powdery substance at within our house! Chairs were out of place from our kitchen table, a screen had been bent and from our sun room from one of the officers trying to catch him. Out on our patio was this white powdery substance, that when I try to sweep it, it caused all of us to cough severely and bring us to tears! The powder was all over our backyard when we got home. He was also tasered three to five times!!! At one point the aggrieved asked an officer why they were trying to arrest him, and the officer punched him in the face. I don't know if this was before or after he was handcuffed. This is not the way to treat a human being with a mental disorder, especially when they were well informed of his health and mental state of mind, well in advance!*" According to Deputy 5's Arrest Report, a use of force ensued when the aggrieved became non-compliant. The aggrieved refused to comply with the deputies' orders and attempted to evade arrest. In response, Deputy 1 deployed pepperball rounds. Deputies grabbed the aggrieved and attempted to take him to the ground. The aggrieved continued to resist and fight by flailing his legs violently and tried to hit and kick the deputies off of him. Deputy 1 deployed his Conducted Energy Device (CED) twice. The aggrieved was eventually subdued and was placed in handcuffs. He was placed in a WRAP device, rendering him immobile, and a "spit sock" was placed over the aggrieved's head. It was noted that the amount of force used was necessary to overcome the aggrieved's passive, active, and assaultive behavior. The initial force used was ineffective in controlling the aggrieved, requiring an escalation in the force used. If force had not been used to overcome the aggrieved's passive and resistance, the aggrieved would have been able to evade arrest. Due to the seriousness in the aggrieved's charges and his threats, he was an immediate threat to public safety and it was imperative that deputies apprehended him as quickly as possible. After the use of force, paramedics were summoned and treated the aggrieved while he was still on scene. In viewing the BWC recordings, the recordings confirmed the deputies use of force and coincided with what was reported in Deputy 5's Arrest Report and in Deputies 1-4's Officer Reports. The aggrieved was shot with a pepperball. A CED was deployed multiple times, he sustained knee strikes and closed fist strikes, his hair was pulled, and at one point, he was briefly placed in a "choke-hold." According to SDSO P&P Section 2.48 entitled, "Treatment of Persons in Custody," employees shall not mistreat, nor abuse physically or verbally, persons who are in their custody. Employees shall handle such persons in accordance with law and established Departmental procedures. According to SDSO P&P Section 2.49 entitled, "Use of Force," employees shall not use more force in any situation than is reasonably necessary under the circumstances. Employees shall use force in accordance with law and established Departmental procedures, and report all use of force in writing. According to SDSO P&P Section 2.50 entitled, "Use of Lethal/less Lethal Weapons," employees shall not use or handle lethal or less lethal weapons (including chemical agents, saps, batons, taser guns, etc..) in a careless or imprudent manner. Employees shall use these weapons in accordance with law and established Departmental procedures. According to SDSO P&P Section 6.48 entitled, "Physical Force," it shall be the policy of this Department whenever any Deputy Sheriff of this Department, while in the performance of his/her official law enforcement duties, deems it necessary to utilize any degree of physical force shall only be that which the Deputy Sheriff believes necessary and objectively reasonable to effect the arrest, prevent escape or overcome resistance (per 835(a) PC). Deputies shall utilize appropriate control techniques or tactics which employ maximum effectiveness with minimum force to effectively terminate, or afford the Deputy control of, the confrontation incident. According to SDSO P&P Section Addendum Section F, Use of Force Guidelines, the use of force must always be considered secondary to the desirability of voluntary compliance to law. It shall be the policy of this Department whenever any Deputy Sheriff, while in the performance of his/her official law enforcement duties, deems it necessary to utilize any degree of physical force, the force used shall only be that which is necessary and objectively reasonable to effect the arrest, prevent escape or overcome resistance. Deputies shall utilize appropriate control techniques or tactics which employ maximum effectiveness with minimum force. Force options are choices available to deputies concerning the methods outlined in these guidelines. Deputies should choose the available force option, which is reasonable and necessary for the circumstances at the time. Department issued Oleoresin Capsicum (OC) spray, PepperBall and Conducted Energy Device (CED) are authorize for use and are far less potential for injury than other less lethal munitions. Peace officers may use non-lethal chemical agents in an offensive manner. Punching techniques may be necessary. A fist strike to a subject's face when reasonable and necessary is not prohibited. Kicking techniques may be appropriate when a subject is judged to be assaultive. The carotid restraint

may be used on subjects who are actively resisting or assaultive. The intent of the hold is to render the subject unconscious to allow the deputy time to gain control. In certain situations, such as those involving a subject who is mentally ill, the carotid restraint may be more effective than using an impact weapon. Caution must be used in applying the carotid restraint. Deputies must take all precautions to ensure that the hold does not slip into windpipe chokehold. If circumstances do not permit proper application of the hold, it should not be attempted. If, during application of the hold, the deputy's arm slips, the deputy must make the necessary adjustments for proper application or release the hold and resort to another form of control. None of the aforementioned SDSD P&P discriminate against persons with mental health issues, as persons with mental health issues do not pose any less of a danger to peace officers. The evidence showed that the alleged acts or conduct did occur but was lawful, justified and proper.

5. Misconduct/Discourtesy – Deputy 5 did not return the complainant's phone calls.

Board Finding: Action Justified

Rationale: Deputy 5 did not return phone calls to the complainants. In the complainant's written statement, they reported, "*Deputy 5 assured us that he would phone us as soon as they met with our son. He never phoned us back! The deputy did not return our call for more than two days after we went to his unit and complained. Another deputy said that Deputy 5 should have phoned us by now and that he or their lieutenant would be phoning us. It was a few days for Deputy 5 to call us and left his voice message, but by then the harm had been done, and decided upon a formal complaint.*" During the course of this investigation, Deputy 5 responded to a SERF and provided relevant information in response to CLERB questioning. According to SDSD Policy & Procedure (P&P) Section 2.22 entitled, "Courtesy," employees shall be courteous to the public and fellow employees. Deputy 5 was not obligated to return a call to the complainants, and him not doing so was not a violation of SDSD P&P or California law. Deputy 5 did return a call to the complainants two days after the incident and at the request of his command after the complainants complained. In keeping a positive interaction between peace officers and the public, and as a courtesy to the complainants, a timely return phone call would have also been suitable. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

(Please note: Other procedural violations not brought forth by the complainant but discovered through the course of investigation were referred to the dept for investigation and resolution).

18-145

1. Misconduct/Procedure – Deputy 1 failed to investigate the complainant's grievance against a subject deputy.

Board Finding: Unfounded

Rationale: In the complainant's written statement to CLERB, she alleged that an Internal Affairs deputy failed to investigate her complaint against a Sheriff's deputy. According to SDSD P&P Section 2.21 entitled, "Citizen Complaints," employees shall courteously and promptly accept any complaint made by a citizen against any employee or any Department policy or procedure. The Internal Affairs Unit is the central controlling point for logging, assigning, investigating, and filing complaints. According to SDSD P&P Section 2.23 entitled, "Request for Assistance," when any person makes complaints, all pertinent information will be obtained in an official and courteous manner, and will be properly and judiciously acted upon consistent with established Department procedures. According to SDSD P&P Section 3.2 entitled, "Complaints Against Sheriff's Employees Policy," the Sheriff's Department will accept complaints of inadequate service or alleged employee misconduct, and process those complaints according to procedure. Complaint investigations shall be conducted in a fair, thorough, impartial, and timely manner. The Internal Affairs Unit is the central controlling point for logging, assigning, investigating, and filing complaints. All formal complaints shall be forwarded immediately to Internal Affairs. Investigations shall be conducted into off-duty criminal allegations. At the conclusion of the investigation, it shall be the responsibility of the Internal Affairs Lieutenant to notify the complainant of the complaint conclusion. Complaint Conclusion; the burden of proof in an administrative investigation is "preponderance of evidence," which is defined as such evidence, when weighed with that opposed to it, has more convincing force and the greater probability of truth. According to the SDSD Internal Affairs P&P 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 maintaining an index of all complaints. It is the responsibility of the Internal Affairs Unit to notify the complainant in writing that their complaint has been received and if the allegations will be investigated. Details of investigations will not be discussed with complainant. At the conclusion of an investigation, the Internal Affairs Unit will notify the complainant in writing of the disposition. 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 where the complaint will be investigated. Internal Affairs Unit will typically investigate complaints alleging criminal or serious misconduct, complaints alleging misconduct by officers holding the rank of Lieutenant or above, and complaints that could be compromised by a conflict of interest. Due to California's Police Officer's Bill of Rights, the details of the complainant's investigation regarding the subject deputy was not disclosed to CLERB. According to a Correspondence Letter from the SDSD, an administrative investigation was conducted, and the final disposition of the complaint was made on 07-03-19. In accordance with State law, the complainant was given written notification of the disposition of her complaint. The complainant was informed that the investigation resulted in the disposition of "Not Sustained" against the subject deputy as "the facts revealed in the investigation do not substantiate the allegation, or that insufficient evidence is available to prove the allegation and support disciplinary action against the employee." Additionally, the letter advised that "state law restricts the extent that additional information may be disclosed concerning citizen's complaints and law enforcement personnel records. For that reason, the San Diego Sheriff's Department may only disclose the final disposition of the complaint." The allegation that Deputy 1 failed to investigate the complainant's grievance was untrue/unfounded. The evidence showed that the alleged act or conduct did not occur.

19-015

1. Death Investigation/Accidental – On February 7, 2019, approximately seven hours after being brought into Sheriff's custody, Joseph Castiglione was discovered in medical distress.

Board Finding: Action Justified

Rationale: On 02-07-19, parolee Joseph Castiglione was arrested and booked into custody at 1:49 a.m. for possession of paraphernalia and substance consistent with methamphetamine. He reportedly did not exhibit signs or symptoms of being under the influence, which was corroborated by Body Worn Camera (BWC) evidence. At 8:45 a.m., Castiglione's cellmates alerted deputies to a medical emergency and life saving measures were initiated in compliance with policy M.6, Life Threatening Emergencies: Code Blue. An Intake Deputy was first on scene and observed Castiglione sweating profusely and said he appeared dazed as he stared at the walls/ceiling. The deputy removed the other four cellmates to an adjacent cell and requested assistance. Castiglione was repeatedly asked if he ingested any drugs, but was unable to respond. Castiglione's blood pressure was over 200 and medical staff determined he needed to go to a hospital. Narcan (Naloxone) was administered to counteract a possible drug overdose. Cellmates later reported Castiglione was initially sleeping and then was unable to stay still, shaking, agitated, sweated profusely, stumbled, and hit the back of his head on a sink so they alerted deputies. Deputies notated Castiglione sweated profusely, was dazed, mumbling, grunting, and unresponsive to questions. Castiglione resisted the oxygen by moving his head side to side. When his face turned purple, paramedics were called and CPR was initiated when Castiglione stopped breathing. He was transported to a hospital where Castiglione died at 9:52 a.m. During an autopsy, an exam of the small intestine revealed a small clear baggie with a zip closure. The bag appeared to be sealed and contained a small amount of translucent whitish fluid. Castiglione's toxicological testing detected a high level of methamphetamine and amphetamine. According to the Medical Examiner records, the cause of death was acute methamphetamine intoxication, with heart disease and obesity listed as contributing conditions, and the manner of death was accidental. The evidence supported that Castiglione was properly screened upon his entry into the SDSD jail system. When specifically asked during his medical intake screening, Castiglione denied that he swallowed or hid any drugs in any body cavity, and his Body Scan image did not detect any contraband. There was no evidence that Castiglione expressed any concerns about his well-being to any cellmates or any other member of the SDSD, sworn or professional. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

19-097

1. Criminal Conduct - Unidentified deputies and/or San Diego Police officers "sexually assaulted" the complainant daily with a "radio attenuator" (a device consisting of an arrangement of resistors which reduces the strength of a radio or audio signal).

Board Finding: Summary Dismissal

Rationale: According to the complainant: "...the sheriff's deputies and/or members of SDPD are sexually assaulting me every day and night using a radio attenuator, where I take up house keeping in private. I know this for a fact because they talk to me while molesting me and I can feel it. There are several witnesses as well. I also know this because two off duty SDPD officers came to my house a month ago, and told me they they never heard of a radio attenuator and could not help me, flat out refused to protect and serve. One officer was about 6' tall, 175 lbs, white

guy with dark hair and said he, "I can't help it if someone is shoving shit up your ass." He was accompanied by another officer about 6' tall 200lbs, shorter lighter hair, maybe a little gray, white. They said they were responding to a call from a female who reported rape wrote on house window. The police and or sheriff deputies are aiding and abetting because I have a protection order that has never been served and is over a month old and I listen to these officers talk to me everyday using synthetic telepathy. I know all about synthetic telepathy and DEWs (Directed Energy Weapons) because I have 3 friends who sell this equipment and work with some of these people who are members of Harassment agencies such as DRT. These people know I know them and what they do to people. I however am not on a gov't list of people to be harassed. These people have used psychotronic weapons on me, this is mind control. This led to me being raped. All these people talking to me know this is what happened. They also know that I know this is what happened. These people are all too afraid to turn off the mind tap, because they are afraid I will get help and sue them. They have thwarted my attempts to get help from any public agency, including the FBI. All this (illegible) due to housing discrimination. I have reported this to crime stoppers, FBI, and HUD. They are destroying my public title in order to stop me from getting relief, remedy, or justice. I have sustained major (illegible) and need help that is being denied by officers for fear of prosecution, in effect keeping me isolated or feeling kidnapped as I am sexually assaulted everywhere I go, I listen to these people set me up with fake phone conversations, using synthetic telepathy and a cell phone to "whitewash" an investigation. I will not be denied justice. I will not be tricked or duped by attempts to cover up an investigation. Due to the nature of these crimes a proper investigation must entail a in person conversation with me and at least one of the witnesses. I have listened to at least 30 different people talking to me over this time and I have never seen anyones authority. These perpetrators tell me that all of them are tired of doing this but they never stop. I have a lot of hard evidence any many witnesses. I have been raped and sexually assaulted for years now. This by every definition known as terrorism, ritual abuse, sex slavery, kid napping, sexual assault, discrimination, and conspiracy against rights, to name a few. These are federal crimes. I have evidence that needs to be reviewed but I have no idea who I can trust as these are members of police, army, sheriff deputies, other gov't agencies. These are serious crimes and I will not stop reported them until they are taking seriously as you and I both know these crimes are being reported all over California. They are claiming to defame my character so I will seem crazy to any agency I seek help from. The difference with me is I know who the perpetrators are and it's only a matter of time before I will be heard."

The following CLERB rules and regulations apply:

4.1 Citizen Complaints: Authority. Pursuant to Ordinance #7880, as amended, (Article XVIII, Section 340 340.9 of the San Diego County Administrative Code), the Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department...

4.4 Citizen Complaints: Jurisdiction. The Review Board shall have jurisdiction in respect to all citizen complaints arising out of incidents occurring on or after November 7, 1990; provided, however, that the Review Board shall not have jurisdiction to take any action in respect to complaints received more than one year after the date of the incident giving rise to the complaint, except that if the person filing the complaint was incarcerated or physically or mentally incapacitated from filing a complaint following the incident giving rise to the complaint, the period of incarceration or incapacity shall not be counted in determining whether the one year period for filing the complaint has expired.

9.2 Screening of Complaints.

5. "Category V" Complaints not alleging facts establishing a prima facie showing of misconduct. Such complaints may be referred to the Review Board for Summary Dismissal.

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:

(c) The Complaint is so clearly without merit that no reasonable person could sustain a finding based on the facts.

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.