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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 June 9, 2020, meeting held via the BlueJeans Platform. 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 PERFORMANCE EVALUATION  
Notice pursuant to Government Code Section 54957  
Title: Executive Officer, CLERB
- b) RECONSIDERATION OF FINAL REPORT  
Per CLERB Rules and Regulations 16.5  
Title: CLERB Case 17-150
- c) CONFERENCE WITH LEGAL COUNSEL  
Notice pursuant to Government Code Section 54956.9 Subdivision (c)  
Title: Existing Litigation
- d) 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 (7)****ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE****17-101**

1. Death Investigation/Inmate Homicide – Keith Gill was twice assaulted by inmates at the San Diego Central Jail and subsequently died from his injuries.

Board Finding: Action Justified

Rationale: There was no complaint of misconduct in this case. Jurisdiction was invoked pursuant to the

County of San Diego Charter, Article VI, Section 606, which authorizes CLERB to investigate the death of any individual arising out of or in connection with actions of peace officers employed by the Sheriff's Department, regardless of whether a citizen's complaint has been filed. On 05-28-17, Transient Keith Gill was arrested by the San Diego Police Department for Battery with Bodily Injury and booked into the San Diego Central Jail. While incarcerated, he was often disruptive and staff referred him for psychological evaluations, but Gill repeatedly refused medication and/or treatment. A psychiatric evaluation was conducted on 07-28-17, at which time Gill said he was doing fine and did not need anything; staff also reported that Gill was caring for food, clothing and hygiene appropriately. Gill then had a sick call visit on 08-02-17 for a tooth abscess, which had been an ongoing issue according to his file. Non-sworn personnel, to include medical staff/practices, reside outside of CLERB's purview. On 08-11-20, inmates assaulted Gill and he sustained cuts and bruising. After being treated by jail medical staff, Gill was separated from his aggressors and moved to a different floor and housing module. Post assault, Gill was observed on surveillance video moving freely about in the dayroom. He leaned against a pillar while watching television, sat/read at a table, and walked/exercised around the dayroom before returning to his cell. Gill did not appear to be afraid or paranoid of his surroundings or other inmates. Approximately twelve hours after the first assault, a different inmate attacked Gill and severely injured him. Upon discovery post assault, sworn personnel responded and initiated life-saving measures. Gill remained hospitalized until he succumbed to his injuries and died on 09-23-17. According to the Medical Examiner's records, the death was attributed to complications following blunt force injury of the head with diffuse traumatic brain injury, and heart disease was a significant contributory factor. The manner of death was classified as a homicide. A review of the evidence contained in the Homicide file revealed that Gill was labeled by other inmates as a "snitch/rat," and that he was "crazy." Detentions Policy R.1, Inmate Classification stated that any employee who received information that could change an inmate's classification code and/or housing assignment had the responsibility of advising a JPMU (Jail Population Management Unit) deputy, who would then evaluate the information to determine whether it required the inmate to be reclassified. During the Homicide investigation, some inmates expressed concerns about Gill's mental and physical well-being, but did not state that they relayed that information to sworn staff prior to the assaults. The evidence supported that Gill was properly classified upon his entry into the SDDS jail system, after subsequent interactions with SDDS medical personnel - to include psychiatric staff, and also after he was victimized. The Detentions Investigations Unit (DIU) gathered all available evidence and submitted the case to the District Attorney's Office for review for prosecution. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

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## **17-150**

1. Death Investigation/Natural – While in the custody of the Sheriff's Department at the San Diego Central Jail, Inmate Joseph Carroll Horsey was found unresponsive in his bed on 12-24-17.

Board Finding: Action Justified

Rationale: Per CLERB Rules and Regulations Section 17, In cases involving death arising out of or in connection with activities of peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department, and in such other matters where CLERB is authorized to act pursuant to the Ordinance, CLERB shall review, investigate, and report regardless of whether a Complaint has been filed. Joseph Carroll Horsey was being treated at Patton State Hospital after he was found mentally incompetent to stand trial. While at Patton State Hospital, Horsey experienced a seizure and this medical event was added to his medical history. The evidence supported that Horsey was properly classified upon his transfer from Patton State Hospital to the SDDS jail system on 11-17-17. His medical history justified him being housed in the Psychiatric Security Unit (PSU). During his incarceration, Horsey continued to receive the medications he was prescribed at Patton State Hospital. He did not show any decline in his health and there were no new symptoms, complaints, or recent injuries. Jail Surveillance video footage on 12-23-17, showed he retired to bed after using the restroom at 7:45 p.m., and never woke up. On 12-23-17 at 11:59 p.m., his cellmate noted that Horsey showed labored breathing and movements that appeared to be consistent with a seizure event. The cellmate thought that Horsey was "throwing a tantrum." On 12-24-17, at 3:50 a.m., Horsey was found unresponsive in his bed. Jail nurses and

responding paramedic personnel provided resuscitative efforts, but when Horsey failed to respond, his death was pronounced at 4:24 a.m. An autopsy revealed a bite on his tongue. According to the autopsy report, “the activity described as ‘heavy breathing’ and ‘convulsing’ may have been agonal respirations and nonspecific terminal movements. However, “it is also possible that this truly represented seizure activity, despite the lack of an established and documented ongoing seizure disorder. The apparent bite mark on the tongue could support this.” Policy M.6, Life Threatening Emergencies, Code Blue states, “Upon discovery of a victim, sworn staff shall, assess the victim’s condition without leaving the victim, immediately call for help.” During the course of CLERB’s investigation, Deputy #2 provided information that was considered in arriving at the recommended finding. While policy stipulated a deputy was not to leave the victim, the deputy’s actions did not impact or cause Horsey’s death and were reasonable given he was the only deputy present with unsecured psychiatric patients. According to the Medical Examiner’s Office reports, during the initial body examination at the scene, the decedent’s body had undergone postmortem changes that suggested that Horsey had been dead hours before he was discovered. Resuscitative efforts were impractical as rigor mortis and livor mortis had already set in. The autopsy determined that the cause of death was arteriosclerotic cardiovascular disease and the manner of death was classified as natural. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Deputies 1, 2, and 3 violated Detentions Policies I.43 Inmate Count Procedure and I.64 Security Checks of Housing Units and Holding Cells.

Board Finding: Sustained

Rationale: Inmate Joseph Carroll Horsey was found unresponsive in his bed inside the San Diego Central Jail Psychiatric Security Unit. DSB P&P Section I.43, mandates a hard count be conducted. A Hard Count is a count which verifies each inmate’s well-being, and uses a Bar Code Reader, an Emergency Evacuation List, Face Cards or Floor Sheets to confirm the identity of the inmate. Likewise, DSB P&P Section I.64, mandates that sworn staff will observe each inmate for any obvious signs of medical distress, trauma, or criminal activity. During safety checks in cell style housing modules, sworn staff will physically enter each module and look in each cell; sworn staff are required to stop at, or enter a cell/holding area, to properly observe the inmate(s). Additionally, the policy states, “During safety checks in dorm style housing, sworn staff will walk by each bunk in a manner that permits them to observe each inmate for any obvious signs of medical distress, trauma, or criminal activity. This may require sworn staff to stop at a bunk to properly observe the inmate(s).” A review of the Jail Information Management Systems Area Activities Reports indicated that on 12-23-17 and 12-24-17, Deputy 1 documented that all safety/security checks were logged. However, the jail surveillance video recordings showed sworn staff and nursing personnel walking by the module, versus physically entering the unit to observe each inmate for obvious signs of medical distress. The jail surveillance video recordings did not reveal any deputy entering the module to conduct a Hard Count; counting inmates with the use of a Bar Code Reader, an Emergency Evacuation List, Face Cards or Floor Sheets to confirm the identity. Deployment logs confirmed that Deputies 1, 2, and 3 were assigned/responsible for performing and logging in all security and safety checks. The video evidence supported the allegation and the act or conduct was not justified.

3. False Reporting – Deputies 1, 2, and 3 falsified Jail Information Management System entries.

Board Finding: Not Sustained

Rationale: Inmate Horsey was found unresponsive in his bed in the San Diego Central Jail Psychiatric Security Unit (PSU). According to the JIMS Area Activities Report all security/safety checks were documented as being conducted in accordance with DSB P&P. However, a review of jail documents and in reviewing jail surveillance video recordings, the investigation revealed that the security/safety checks were not performed in accordance with DSB P&P 1.43 and I.64.

The deputies’ actions were in violation of SDSD P&P Section 2.41, Departmental Reports, Employees shall submit all necessary reports on time and in accordance with established Departmental procedures. The policy mandates that all San Diego Sheriff’s Department Employees shall be truthful and complete; no employee shall knowingly enter or cause to be entered any inaccurate, false, or improper information, nor omit pertinent information reasonably expected to be included. After this investigation had concluded,

CLERB obtained new evidence related to different and unpublished standards that apply to the security checks performed in the psychiatric housing unit. This unwritten standard stated that the Detention deputies assigned to the psychiatric unit need not physically enter each cell, or wake up each inmate, given the security concerns for this particular housing unit. Further analysis of the video surveillance indicated that a security check was performed; however, no deputy entered the module to conduct a Hard Count; counting inmates with the use of a Bar Code Reader, an Emergency Evacuation List, Face Cards or Floor Sheets to confirm the identity. A different type of security/safety check was performed; the security check that was performed at that time, was not according to SDSD P&P. There was insufficient evidence to either prove or disprove the allegation.

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## **18-137**

1. Death Investigation/Officer Involved Shooting – On 11-12-18, Deputies 1, 2, and 3 shot and killed Daniel Ayala.

### **Board Finding: Action Justified**

**Rationale:** On the afternoon of 11-12-18, Ayala was involved in a verbal altercation with another male. Neighbors and the apartment manager called 911 and summoned law enforcement officers to the scene to intervene and diffuse the altercation. San Diego Sheriff Deputies 1, 2, and 3 arrived on scene and began their investigation. The deputies attempted to contact Ayala at his apartment; however, Ayala refused to comply with the deputies' instructions. For unknown reasons, Ayala stabbed a large butcher/kitchen knife through the metal screen of his front door. A second later, Ayala emerged from the apartment and advanced towards the deputies while brandishing the large knife, lunging at the deputies with the knife. In response to Ayala's actions, Deputies 1, 2, and 3 fired their department assigned .40 caliber Glock guns at him. Ayala sustained multiple gunshot wounds and collapsed on the balcony. The deputies immediately radioed to the San Diego Sheriff Communications Center and reported the incident. Additionally, the deputies initiated cardiopulmonary resuscitation (CPR) and summoned paramedics to the scene for assistance. A fire department engine and paramedic unit arrived and assumed resuscitative efforts. Despite aggressive life-saving attempts, Ayala could not be revived, and his death was pronounced on scene. The San Diego County Medical Examiner's Office was notified of the death and invoked jurisdiction. On 11-13-18, an autopsy was performed on Ayala's body. Multiple gunshot wounds were noted to the body. According to the Medical Examiner's autopsy report, thirteen gunshot wounds were documented on the body. There were six penetrating gunshot wounds of the torso, with five entrance wounds on the right and left chest regions, and a single entrance wound on the right mid back. The cause of death was multiple gunshot wounds, and the manner of death was homicide. Toxicology testing detected a blood alcohol level of 0.13%. Additionally, the following drugs of abuse were also detected in Ayala's body: Methamphetamine, amphetamine, cannabinoid, heroin, morphine, and codeine. Based on the facts, evidence, and the law, the use of deadly force by Deputies 1, 2, and 3 was reasonable and did not bear criminal liability for their actions. Deputies 1, 2, and 3's use of deadly force was appropriate, as Ayala's actions posed a clear deadly threat to on-scene peace officers. SDSD P&P Section 2.49 entitled, "Use of Force," states, "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." SDSD P&P Section 2.50 entitled, "Use of Lethal/Less Lethal Weapons," states, "employees shall not use or handle lethal in a careless or imprudent manner. Employees shall use these weapons in accordance with law and established Departmental procedures. The applicable content of SDSD P&P Section 8.1 entitled, "Use of Firearms/Deadly Force," states, "it is the policy of the San Diego County Sheriff's Department that deputies shall use deadly force only as a last resort and only after the deputy reasonably believes that the force used is necessary: In defense of human life, including the deputy's own; or, In defense of any person in immediate danger of death, or the threat of serious physical injury. Moreover, SDSD P&P Addendum F Section entitled, "Use of Force Guidelines," states, "Deputies shall use deadly force only after the deputy reasonably believes that the force used is necessary. Lastly, according to California PC§ 196 entitled "Justifiable Homicide by Public Officer," homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, or when necessarily committed in overcoming actual resistance to the execution of some

legal process, or in the discharge of any other legal duty. The facts, evidence, and perceptions of each deputy justified the use of deadly force against Ayala. Absent conflicting witness statements, there was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

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## **19-001**

1. Misconduct/Procedure – Deputies 1, 5, 11 and 18 delayed documentation of a crime committed against the complainant.

### **Board Finding:** Action Justified

**Rationale:** The complainant alleged unidentified deputies delayed the process of taking a courtesy crime report on his behalf to be sent to the San Diego Police Department (SDPD). The complainant alleged that he began requesting this courtesy report in August 2018, stating “through several verbal request and several grievances thru many deputies and Sgts. It took 4 months being on 12/5-6/2018 for the San Diego Sheriff Department to figure a simple reference letter from SDPD, for the SD Sheriff staff to provide and assist me with filing a courtesy police report or complaint and forward it to SDPD for processing.” The complainant reported that he had been the victim of repeated sexual assault between 2014 and 2016. The complainant stated, “this complaint affects my case in a positive and exculpatory way to explain away my guilt.” On 12-05-18, the complainant reported that he showed Deputy 18 the letter from SDPD requesting a courtesy report by SDSD. On 12-05-18, Deputy 18 directed Deputy 1 to interview the complainant. On 12-05-18 and 12-06-18, Deputy 1 met with the complainant, interviewed him and completed the courtesy report. SDSD jail documents provided that the courtesy report was faxed to SDPD on 12-11-18 by Deputy 5. Additionally, a second courtesy report was completed on 06-26-19, by Deputy 11, after the complainant requested it. Deputy 5 faxed the second courtesy report to SDPD on 07-11-19. In review of jail documents, there was no record indicating that the complainant requested a courtesy report prior to December 2018. The evidence showed that the alleged act or conduct that occurred was lawful, justified and proper.

2. Misconduct/Procedure – Unidentified deputies lost the complainant's property.

### **Board Finding:** Not Sustained

**Rationale:** The complainant stated, “I have suffered a loss of material evidence due to the SD Sheriff Department delivering my property to me 15 days after being taken to the hospital for surgery.” The complainant reported that the property lost was significant for his court case and provided exculpatory evidence that would dismiss the charges against him. Court documents reviewed, noted the following: “The Court is aware of the claims that the Sheriff lost or destroyed property, but there is an insufficient description of the property and no explanation of why the property has exculpatory value for trial.” The complainant alleged that these documents were lost during his hospitalization. SDSD P&P DSB Section I.41 titled, “Inmate Cell Searches,” states in part, To ensure protection for inmates and staff by providing a safe and secure environment free of contraband, weapons, excessive personal property (which would provide fuel for fire), contagious diseases and vermin and to protect inmates from unreasonable searches. While conducting inmate cell searches and/or inspections, privileged communications (i.e. correspondence from State and Federal courts, any member of the State Bar or holder of public office, Citizens Law Enforcement Review Board (CLERB), Internal Affairs, Office of the Sheriff, the Board of State and Community Corrections (BSCC), PREA Auditor and facility commander or the assistant facility commander) may be examined for contraband pursuant to the search and/or inspection. However, privileged communications shall only be scanned for security concerns and validation of privileged content in the presence of the inmate. SDSD P&P DSB Section N.7 titled, “In Propria Persona Status (Pro Per Inmates), states in part, All facilities will provide fair and equitable treatment for inmates in propria persona status. SDSD P&P DSB Section P.3 titled, “Inmate Mail,” states in part, Inmates shall be allowed to receive and possess U.S. mail, incoming letters, confidential/legal mail and mail from official government agencies. There shall be no limit on the amount of mail an inmate may send, and no limit on the amount of mail that an inmate may receive, except to the extent that possession of such materials may constitute a fire hazard, or pose an unacceptable security risk by providing the means to hide contraband. Each inmate shall be

allowed to possess up to a combination of six (6) magazines and/or new soft cover books. The inmate shall choose to have all excess periodicals and/or books be donated to the jail library, thrown away, or mailed out of the facility at the inmate's expense. Inmates shall not be allowed to release reading material to outside parties or to have the items placed in their property prior to release. This total does not include any authorized religious or legal material. According to SDDS Incident Report by Deputy 16, the complainant filed a grievance about receiving his personal property several days late. Deputy 16 noted on the grievance response, "when an inmate moves to another jail facility or has a housing unit change, we strive to move the property with the inmate however, there are delays due to jail operations or other factors and in the complainant's case, he eventually received all of his property." The complainant never provided a description of what was lost, other than "material evidence," as stated in his grievance. SDDS JIMS Inmate History Report had no entries for property collection or movement at the time the complainant went to the hospital and returned to the detention facility. SDDS DSB P&P titled, "Transfer of Inmate Property," states in part, When transferring inmate property between facilities/agencies, employees shall observe proper handling procedures to minimize damage or loss. Once all inmate transfers for the day have been scheduled in the Jail Information Management System (JIMS), the housing deputy will print out the daily transportation list. Absent a lost property claim form and insufficient property records, there was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Procedure – Unidentified deputies failed to issue a warrant for the arrest of an inmate that attacked the complainant.

Board Finding: Action Justified

Rationale: The complainant alleged that he was physically attacked by another inmate, stating, "Around December 19, 2016, while housed at the detention facility and between 6pm – 9pm, I was physically attacked with fist punches by another inmate." In his written statement, the complainant reported he was informed a warrant could be issued at the prison the alleged perpetrator was located at. According to his written statement, the complainant stated that he did not file a report at the time of the attack stating, "I requested pain meds from medical, but didn't report the incident from concern of more attacks due to snitch rule." A year later, in December 2017, the complainant reported the attack and Deputy 2 documented the incident in a Crime/Incident Report, dated 12-19-17. Deputy 2 asked the complainant if he desired prosecution and the complainant stated that he did. On 12-27-17, a deputy, who is no longer with the SDDS, conducted a follow-up investigation regarding this alleged incident. The deputy reported that he talked with the complainant and told him that he needed to know the exact month the alleged attack occurred to determine whether this fell within the statute of limitations. The complainant reported that the assault happened in the first week of December 2016. The deputy informed the complainant that his year to prosecute was up and there was nothing that could be done. The deputy also told the complainant the chances of the District Attorney bringing the suspect back for a misdemeanor assault was unlikely. The deputy reported that the complainant changed his mind about prosecution and reported the case closed by exception. California PC§ 240 titled, "Assault," states, An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another. Most California misdemeanors have a statute of limitations of one year. Based on the timeline of when the incident occurred and when the complainant reported the incident, the evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 4 groped the complainant during a pat-down.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 4 "groped" him while conducting a pat-down search of his person prior to being escorted to court. On 11-30-17, Deputy 12, completed a Crime/Incident Report of the alleged incident. Deputy 12 asked the complainant how he was inappropriately touched, and the complainant stated, "the deputy, swiped and flicked my genital area with her right hand, and again with her left." The complainant identified the deputy, "4, by the name tag on their uniform." According to Deputy 15, he reviewed Deputy 12's report, which documented the complainant's statement about having his genitals "inappropriately touched." Deputy 15 obtained and reviewed jail surveillance video, interviewed witnesses, and met with the complainant in the presence of his attorney for an interview to obtain additional

detailed information. In his report, Deputy 15 stated, "I watched this pat-down numerous times while preparing this investigative report. I did not observe any "swiping or flicking" of the complainant's genitals by Deputy 4's left or right hands, as the complainant indicated in his statement to Deputy 12. I did not observe any other type of inappropriate touching by Deputy 4." On 12-13-17, Deputy 15 attempted to interview the complainant in the presence of his attorney, stating, "the complainant refused to speak to me citing, "Shady things were going around him involving Sheriff's Deputies." The complainant's attorney also explained his rights to him, to include he did not have to speak to me if he did not want to. I informed the complainant I was there to speak to him as a victim in this investigation. The complainant told me he did not want to speak to me." Additionally, in his investigative report, Deputy 15 concluded, "Upon obtaining statements of both witnesses present during the pat-down and reviewing the video surveillance of this incident, the evidence shows there was no inappropriate touching of the complainant and no "swiping or flicking" of the complainant's genitals by Deputy 4 or any of the other deputies present." SDDS P&P DSB Section 1.52 titled, "Inmate Searches" states in part, all inmate searches shall be conducted with the purpose of providing a safe and secure environment for inmates and staff in compliance with legal standards. Absent exigent circumstances, deputies will at a minimum, pat down inmates under the following conditions: Prior to the inmate being transported out of the facility. Prior to a professional or social contact visit. Following a professional or social contact visit. Returning to housing unit from programs. At any time, all inmates are subject to pat down searches, metal detector screenings, and examinations of their clothing and belongings. Video and audio recordings refuted the complainant's allegation that Deputy 4 "groped him," or "touched him inappropriately." The evidence showed that the pat-down did occur and was lawful, justified and proper.

5. Misconduct/Retaliation – Unidentified deputies retaliated against the complainant for reporting deputy abuse.

Board Finding: Action Justified

Rationale: The complainant alleged that detention deputies retaliated against him, took his snacks, for reporting the groping incident by Deputy 4. According to the grievance the complainant filed, he stated, "the deputy grabbed my paper bag and removed 2-3 bread packs and lettuce. I told the deputy my medical condition and he said it's not for diabetes cause med call hasn't started." The complainant stated he saved the items from the night prior because he is diabetic, and the snacks help him control his sugar levels. The grievance response indicated that diabetics are allowed to keep their snacks, that they receive in the morning during medication pass, however, medication pass had not been completed yet, therefore, the complainant should not have been in possession of multiple bread packs. According to SDDS P&P Section O.3 titled, "Inmate Rules and Regulations," states in part, "Inmates shall not save food from the daily meals for future consumption. Any food not consumed shall be removed with the meal carts." Additionally, the complainant stated, "Commissary is allowed in the dorm, but we all can't afford it." Commissary invoice were reviewed and confirmed that the complainant made frequent snack purchases from the commissary, several times each month, throughout his incarceration. The evidence showed that the items were removed per policy, not "stolen" in retaliation as the complainant alleged. The alleged act or conduct did occur and was lawful, justified and proper.

6. Misconduct/Procedure – Deputy 5 failed to respond to the complainant.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 5 failed to respond to him, stating, "Deputy 5 who has not followed up with me presently even after inmate request and letter to her directly." Deputy 5 was the detective assigned on the two Crime/Incident Reports that were written on the complainant's behalf, as a courtesy, for the San Diego Police Department (SDPD). According to information obtained from the SDDS Information Source, an investigator is always assigned to Crime/Incident Reports, regardless if it for the SDDS or as a courtesy for another agency. Crime/Incident Reports, as a courtesy, do not require that the assigned investigator contact the victim. The detective assigned to the case ensures that the courtesy report is forwarded to the investigating agency. SDDS jail records indicated that Deputy 5 forwarded both Crime/Incident Reports to the SDPD. As Deputy 5 had no requirement to follow up with the complainant,

the evidence supported that the actions of the alleged act or conduct did occur and were lawful, justified and proper.

7. Misconduct/Procedure – Unidentified deputies failed to respond to the complainant's grievances.

Board Finding: Unfounded

Rationale: In the complainant's written statement, he stated that unidentified deputies never responded to his numerous grievances. The complainant reported, "I've filed several grievances, with no response." A review of jail documents revealed that the complainant had filed numerous grievances and each one was properly addressed by jail staff. Additionally, a report dated 06-12-18, documented an incident where the complainant handed a jail nurse three grievances during morning medication distribution. The deputy who provided security during medication distribution noticed that the complainant had a 1-inch stack of grievances on his desk, with "1 of 3" written on the top. The deputy reported that he asked the complainant if he could address any grievances or issues for the complainant. The deputy reported that the complainant responded by laughing and stating, "Not yet, but stand by its going to be an everyday thing." SDSD DSB P&P Section N.1 titled, "Grievance Procedures," stated in part, Inmate Grievances can be submitted in writing by any inmate. Inmates may submit written grievances directly to deputies or other employees at any time. Absent exigent circumstances, any deputy or other staff member who is presented with a written grievance will accept it. The deputy or other employee who initially receives a grievance will sign his or her name and ARJIS number on the J-22 form along with the date and time. The second page of the J-22 form will immediately be given to the inmate as a signed receipt for the grievance. As an alternate means for submitting grievances, secured boxes may be provided for inmates to deposit their grievances into. Any grievance retrieved from one of these dedicated grievance boxes will be signed by the sergeant or designee who collected it, and the signed second page of the J-22 form will be returned to the corresponding inmate as soon as practical. The deputy or other staff member who receives and signs for a grievance will be responsible for entering it into JIMS, making sure to link the inmate(s) to the grievance report. The evidence showed the alleged act or misconduct did not occur.

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**19-056**

1. Misconduct/Procedure – Deputy 1 failed to investigate the complainant's allegation that she was being stalked.

Board Finding: Action Justified

Rationale: In her written statement, the complainant stated, "*The next morning on May 8, I contacted the Sheriff Department to see if the video from the previous night had been reviewed, but instead I was informed the report written by Deputy 1 stated that my claim was "unfounded", which to my understanding means the event had never occurred. To my knowledge at the time Deputy 1 wrote her report she had not reviewed any of the video footage, nor preformed any investigative inquiries that could have led her to conclusion of "unfounded" at that point. Essentially, Deputy 1 carelessly used the loaded term "unfounded" on an official written report without having performed any due diligence to ascertain the facts of the matter. I believe that the Sheriff Department has engaged in obstruction of justice by refusing to obtain the requested video footage related to my complaint for the very reason that it may involve law enforcement officers. I have made a claim of stalking and harassment, and I have stated that I have seen this man on prior occasions, at different locations, several miles apart from one another.*" According to a SDSD Background Event Chronology, as well as the associated audio recording, the complainant reported that an unknown male was following her around a store. Deputy 1 was dispatched to the store. She contacted the complainant who stated that she believed the unknown male subject followed her for a short period while she was in the store. The complainant advised Deputy 1 that she had an ongoing case with the FBI in Los Angeles and that she believed she was being harassed and stalked by law enforcement officers from the San Diego and Los Angeles area. At the conclusion of her interaction with the complainant, Deputy 1 advised that no crime had been committed and the complainant was possibly mentally ill. The call was closed, and Deputy 1 did not take a report for the complainant's allegation. During the course of this investigation, Deputy 1 responded to a Sheriff's Employee Response Form (SERF) and provided

relevant information in response to CLERB questioning finding; however, due to confidentiality statutes per the Peace Officer Bill of Rights (POBR), that information cannot be publicly disclosed. The information provided was considered in arriving at the recommended finding. According to SDSD P&P Section 2.23 titled, "Request for Assistance," when any person requests assistance or advice, 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 California Penal Code Section 646.9, any person who willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety is guilty of stalking. The complainant had the burden of proof to prove that she had been stalked. The complainant had to prove that the suspected male willfully, maliciously, and repeatedly followed or harassed her, the suspected male made a credible threat, and the suspected male who made the threat did so with the specific intent to place the complainant in reasonable fear for her safety. The evidence indicated that Deputy 1 responded to the scene and interviewed the complainant. Upon completion of Deputy 1's investigation, she determined that a crime had not been committed. Based on her oral report to Deputy 1, the complainant was unable to prove that the elements of a stalk had occurred. The evidence showed that Deputy 1 did investigate the complainant's stalking allegation and it was lawful, justified and proper.

2. Misconduct/Discourtesy – Deputy 1 laughed at the complainant when she interviewed her.

Board Finding: Not Sustained

Rationale: In her written statement, the complainant reported, "*While explaining the situation to the deputy I noticed that she was laughing as I described the past and present events related to the service call. When I remarked that the matter was not funny, but actually very serious she responded that she was laughing because I said that it might be police harassment, or that police were involved in some manner.*" According to a letter from the SDSD Internal Affairs division, written to the complainant, the investigating lieutenant wrote, "The initial responding deputy's lack of empathy or concern will be addressed within her command." During the course of this investigation, Deputy 1 responded to a SERF and provided relevant and conflicting information in response to CLERB questioning; however, due to confidentiality statutes per the Peace Officer Bill of Rights (POBR), that information cannot be publicly disclosed. The information provided was considered in arriving at the recommended finding. According to SDSD P&P Section 2.4 titled, "Unbecoming Conduct," employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on this Department. Unbecoming conduct shall include that which tends to bring this Department into disrepute or reflects discredit upon the employee as a member of this Department, or that which tends to impair the operation and efficiency of this Department or employee. According to SDSD P&P Section 2.22 titled "Courtesy," employees shall be courteous to the public and fellow employees. They shall be tactful in the performance of their duties, exercise patience and discretion. Absent any audio or video recordings of the contact between the complainant and Deputy 1, or any additional information provided by an independent witness to the incident, there was insufficient evidence to prove or disprove the allegation that Deputy 1 laughed at the complainant.

3. Misconduct/Procedure – Deputy 2 failed to investigate the complainant's allegation that she was being stalked.

Board Finding: Action Justified

Rationale: In her written complaint the complainant stated, "*I asked to speak with the Duty Sargent, and later received a call from Deputy 2. I explained the above situation to him, and formally requested that the Sheriff Department obtain the footage from the store of the events from the previous night. I explained to him that the report in question was made in reference to the incident that had occurred – he then stated that he had no evidence leading him to believe that a stalking occurred because I had to know the person in question to be stalked by them. I asked Deputy 2 if he had seen any of the footage that I was requesting BE OBTAINED AS EVIDENCE, which could help establish that stalking had occurred, and his response was that he had not.*" Deputy 2's supervisory duty was to oversee that Deputy 1 had completed her duties as a peace officer. In doing so, Deputy 2 re-interviewed the complainant, and upon completion of his interview with her, he, like Deputy 1 determined that a crime had not been committed. The evidence indicated that Deputy 2 did conduct an investigation. The evidence showed that the alleged act or conduct

did occur and was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 3 “interrogated” the complainant.

Board Finding: Action Justified

Rationale: In her written complaint, the complainant reported, *“I spoke with Deputy 3 again three days later (after the holiday weekend), and after asking me several identifying and probing questions, Deputy 3 had already determined that he was not going to help me, but yet subjected me to what could be considered a soft interrogation to gather facts for whatever reason he required.”* In a telephonic interview with a liaison for the SDSD, it was learned that when the complainant was unsatisfied with both Deputy 1’s and Deputy 2’s response to her request to further investigate her allegation, she was referred to the area detective, Deputy 3. In doing so, Deputy 3 re-interviewed the complainant, and upon completion of his interview with her, he, like Deputy 1 and Deputy 2 before him, determined that the elements of a crime had not been committed. In re-interviewing the complainant and to gather additional information, Deputy 3 questioned the complainant with the goal of eliciting useful information. The evidence indicated that the complainant was interviewed, versus interrogated; the difference being that the interview was less formal and accusatory conversation with the main purpose to elicit information, whereas an interrogation would have been formal and is typically designed when addressing a suspect. By contrast, an interrogation is an interaction between police officers and a suspect. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

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## **19-061**

1. Misconduct/Procedure – Unidentified deputies failed to keep the complainant safe.

Board Finding: Action Justified

Rationale: The complainant reported, “On 4 June 2018 I was arrested and housed in An (Ad-Seg) Module due to me not agreeing to be housed in (General Population) or wanting to be around other inmates due to past assaults and being hospitalized. Each time I advised classification Deputy’s of my concerns and even had a family member call with further concerns. My concerns were being given a blind eye, and I was verbally forced to be housed back around other inmates. I sent multiple (request slips) to classification Deputy’s regarding my concerns, I’ve even approached Sargents, luetenits, and a Captain. Even though my concerns have been addressed to classification by myself, my mother, and even Detectives with the San Diego County Sheriff’s Department. As of 26 May 2019 Class attempted to get me to go to a (General Population) Housing unit. Ignoring my concerns and asking why am I in Ad-Seg. Allow me to state before the last past 2 assaults occurred Deputy Sheriffs had knowledge that it was likely to have had happen and made no attempt to stop it. ...I wrote everything down on line paper that I wanted to address to classification due to the confidentiality of it, stating detectives have me housed, and are keeping me away from a few inmates etc. stuff I can’t openly speak due to other inmates that can over-hear in all the other tanks it’s a small and tight hallway on the 1st floor at S.D.C.J. and all words echo. I than say I’m just trying to be sure I’m safe. They then leave without acknowledging my concerns and facts. What happens soon as I get to G.B.D.F. I got to a module that I was not suppose to go to. Around inmates I was not suppose to be around per detectives. If they would have just listened to my concerns it could have been prevented. They cant just keep doing this to me. I have my mom calling, I have mental healthy clinicians and Detectives talking to Classification Sargents and Lutenits to no avail, nor respect to what had been addressed to them and all this is all in the month of June 2019. I feel that they are retaliating against me due to my complaints. Classification Deputy’s are not even listening to there own regarding all my concerns. Some things need to happen.” During a prior incarceration, separate from this complaint, a Crime Report dated 03/23/17, confirmed a battery against the complainant by three other inmates. However, the District Attorney’s Office did not move forward with prosecution based upon the complainant’s non-cooperation as a victim/witness to the event. Following that assault, “Keep Separate” orders were placed into the Jail Information Management System (JIMS) that prohibited housing with known enemies. Upon the complainant’s subsequent booking in June 2019, and in accordance with Classification policies, the Jail Population Management Unit (JPMU) assessed the complainant’s charges

and past history and designated placement into Administrative Segregation (AD-SEG) housing where he remained until his release from custody. AD-SEG inmates are segregated from the inmate general population for their own safety. Staff conducted weekly placement reviews and according to all associated documentation, advised further segregation into Protective Custody (PC), but the complainant repeatedly refused PC placement. The complainant left custody without maintaining contact with CLERB and was unavailable for clarification. Evidence supported that the complainant had a history of attempting to manipulate inmates and housing, and also displayed a high level of criminal sophistication, which caused limited housing options. The evidence showed that the complainant was properly classified, and deputies actions were lawful, justified and proper.

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## **19-089**

1. Misconduct/Procedure – Unidentified deputies contacted the complainant using synthetic telepathy, as well as using electromagnetic energy and other DEWs (Directed Energy Weapons).

### **Board Finding: Summary Dismissal**

**Rationale:** On 07-23-19, CLERB received a signed complaint in which the complainant alleged that unidentified deputies and/or other law enforcement agencies were contacting him “using synthetic telepathy, Electromagnetic energy, and other DEWs (Directed Energy Weapons).” Additionally, the complainant contacted CLERB in September 2019 and alleged that unidentified deputies and/or other law enforcement agencies were contacting him via a radio attenuator (a device consisting of an arrangement of resistors which reduces the strength of a radio or audio signal.) In the previous investigation conducted by CLERB, as well as this investigation, it was determined that there was no report of wrongdoing, and/or evidence of misconduct. The following CLERB rules and regulations apply: Rule 9.2 titled “Screening of Complaints,” 5.) "Category V" Complaints not alleging facts establishing prima facie showing of misconduct. Such complaints may be referred to the Review Board for Summary Dismissal. Additionally, Section 15 titled Summary Dismissal states that 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. 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.

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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.