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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 February 9, 2021, special 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.

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 insufficient evidence 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 (8)**ALLEGATIONS, BOARD FINDINGS & RATIONALE****19-104**

1. Death Investigation/In-Custody Drug Related - On 09-06-19, Inmate Daniel James Pickett died while in the custody of the San Diego Sheriff's Department (SDSD).

Board Finding: Action Justified

Rationale: Daniel James Pickett was incarcerated at the San Diego Central Jail. He was arrested on 09-04-19, for charges of smuggling illicit drugs across the US/Mexico border. He was transported and booked in the San Diego Central Jail, where he remained incarcerated for two days. On 09-06-19, he was found unresponsive on his bunk in his jail cell. Upon being discovered, Sheriff deputies and jail medical staff were summoned to the scene and initiated life-saving measures. Paramedics were summoned to the jail and took over life-saving efforts. Despite medical intervention, Pickett failed to respond positively to medical intervention and his death was pronounced on scene. The Sheriff's Department Homicide Unit

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responded to the jail to investigate the death. Pickett was subsequently transported to the San Diego County Medical Examiner's Office and an autopsy was performed. The Medical Examiner concluded their autopsy report and determined the cause of death to be "Toxic Effects of Methamphetamine" and the manner of death was Accident. According to the Toxicology Report, testing revealed positive results for amphetamines and opiates. According to a review of jail documents and jail surveillance video recordings, security checks were performed in a timely manner and in compliance with SDSA P&P. The evidence indicated that Pickett was properly classified upon his entry into the SDSA jail system after his 09-04-19 arrest. During his medical intake screening and subsequent interactions with SDSA medical personnel, Pickett never expressed a significant medical history, other than illicit drug use. There was no evidence that Pickett expressed any concerns about his mental or physical well-being to his cellmate or any member of the SDSA, sworn or professional. Upon being discovered unresponsive, sworn personnel expeditiously responded and immediately initiated life-saving measures. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

19-128

1. Death Investigation/In-Custody Medical – Inmate Elisa Beatrice Serna died while in the custody of the Sheriff's Department.

Board Finding: Not Sustained

Rationale: Serna was incarcerated at the Las Colinas Detention and Reentry Facility (LCDRF) on 11-06-19, after her arrest for theft and drug related charges. Over the course of her incarceration, Serna had complaints of dizziness, vomiting, and fainting episodes. During the intake medical screening, it was noted that Serna confirmed experiencing heroin/opioid withdrawal; however, she denied experiencing seizure like activity. A medication protocol was immediately enacted, and Serna was housed in the jail's Medical Observation Unit (MOB) for further observation and care. The evidence indicated that Serna was properly classified upon her entry into the San Diego Sheriff's Department (SDSD) jail system after her arrest. It was noted that Serna was housed alone in her medical cell and there was no evidence of foul play. On 11-11-19, Serna was found unresponsive in her jail cell. Deputies, jail medical staff, and paramedics responded to the scene. Deputies initiated life-saving measures, requested jail medical staff, and summoned emergency medical services. Jail medical staff continued cardiopulmonary efforts until paramedic's arrived on scene and took over life-saving attempts. When Serna failed to respond her death was pronounced on scene. On 11-12-19, an autopsy was performed on Serna's body. The cause of death was "Complications of Chronic Polysubstance Abuse," with "Early Intrauterine Pregnancy" noted as contributing factor. The manner of death was determined to be natural. Serna's Toxicology Report was unremarkable for alcohol or any drugs of abuse. Upon being advised that Serna was found down and unresponsive in her jail cell, sworn personnel expeditiously responded and immediately initiated life-saving measures. According to SDSA Detention Services Bureau Policies and Procedures (DSB P&P) Section M.5, all facility staff shall be responsible for taking appropriate action in recognizing, reporting or responding to an inmate's emergency medical needs. In any situation requiring medical response, emergency medical care shall be provided with efficiency and speed without compromising security. CLERB does not have jurisdiction to investigate medical treatment or decision by SDSA medical staff and its contracted employees. As such, it was undetermined if Serna received proper and appropriate care for her known preexisting co-morbidities, and that if preventative care was administered, could her death have been prevented.

2. Misconduct/Procedure – Deputy 1 failed to ~~take appropriate action~~ **meet standards** in recognizing, reporting, or responding to Serna's emergency medical needs.

Board Finding: **Not** Sustained

Rationale: Deputy 1 was one of two deputies assigned to the jail's medical unit, and it was she who stood by with jail medical staff and provided security. While a jail nurse attempted to take Serna's vitals, Serna was witnessed to collapse against a wall, striking her head against the wall, before slumping down to the floor. Moments later, Serna exhibited seizure like activity and, according to statements by both Deputy 1

and the jail nurse, Serna was unresponsive to their commands. Deputy 1 assisted the jail nurse in medically assessing Serna after her medical emergency; however, Deputy 1 did not respond as Serna exhibited seizure-like activity. Additionally, Deputy 1 did not move Serna to a recovery position during or after she exhibited seizure like activity. Both Deputy 1 and the jail nurse exited Serna's cell and closed the door behind them. Serna subsequently died in the same position she was left in. This was evident as it was noted that when paramedics arrived on scene and assessed Serna, approximately an hour later, Serna was noted to have rigor mortis in her jaw. It is understood that medical staff oversee the majority of activities in a jail's medical unit, and that a deputy may defer decisions and some activities to medical staff. When the medical professional in the medical unit did not respond to the medical emergency, Deputy 1, who was not trained in advance medical response, deferred to the qualified, authorized, and trained medical staff for guidance. **According to SDSL P&P 2.30, employees shall properly perform their duties and assume the responsibilities of their positions. Employees shall perform their duties in a manner which will tend to establish and maintain the highest standards of efficiency in carrying out the mission, functions and objectives of this Department. Failure to meet standards may be demonstrated by...the failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving police attention.** According to SDSL DSB P&P Section M.5, all facility staff are responsible for taking appropriate action in recognizing, reporting, or responding to an inmate's emergency medical needs. According to jail training manuals, sworn staff assigned to the medical unit are to provide security and carryout routine activities. It is understood that a deputy working in a medical housing unit may often defer comprehensive medical decisions to the authorized and qualified medical staff. Deputies working in the MOB housing unit provide security to the medical staff; however, it is the medical staff who assumes medical decisional authority over inmates. **Regardless, Serna's condition was one that deserved attention. Deputy 1 had a responsibility to respond to Serna's emergency medical needs. This did not occur.** Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however, due to confidentiality statutes per the Peace Officer Bill of Rights (POBR), that information cannot be publicly disclosed. ~~Given the setting that Deputy 1 was present with a medical professional, Deputy 1 deferred to the expertise of the medical professional.~~ There was insufficient evidence to prove a violation of SDSL DSB P&P Section M.5 2.30, on the part of Deputy 1. There was insufficient evidence to either prove or disprove an allegation that Deputy 1 failed to take appropriate action ~~in recognizing, reporting, or responding to Serna's~~ during an emergency medical needs situation.

3. **Misconduct/Procedure – Deputy 1 failed to properly treat a person in custody.**

Board Finding: Sustained

Rationale: Deputy 1 was one of two deputies assigned to the jail's medical unit, and it was she who stood by with jail medical staff and provided security. While a jail nurse attempted to take Serna's vitals, Serna was witnessed to collapse against a wall, striking her head against the wall, before slumping down to the floor. Moments later, Serna exhibited seizure like activity and, according to statements by both Deputy 1 and the jail nurse, Serna was unresponsive to their commands. Deputy 1 assisted the jail nurse in medically assessing Serna after her medical emergency; however, Deputy 1 did not respond as Serna exhibited seizure-like activity. Additionally, Deputy 1 did not move Serna to a recovery position during or after she exhibited seizure like activity. Both Deputy 1 and the jail nurse exited Serna's cell and closed the door behind them. Serna subsequently died in the same position she was left in. This was evident as it was noted that when paramedics arrived on scene and assessed Serna, approximately an hour later, Serna was noted to have rigor mortis in her jaw. It is understood that medical staff oversee the majority of activities in a jail's medical unit, and that a deputy may defer decisions and some activities to medical staff. When the medical professional in the medical unit did not respond to the medical emergency, Deputy 1, who was not trained in advance medical response, deferred to the qualified, authorized, and trained medical staff for guidance. According to SDSL P&P 2.48, 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 SDSL DSB P&P Section M.5, all facility staff are responsible for taking appropriate action in recognizing, reporting, or responding to an inmate's emergency medical needs. According to jail training

manuals, sworn staff assigned to the medical unit are to provide security and carryout routine activities. It is understood that a deputy working in a medical housing unit may often defer comprehensive medical decisions to the authorized and qualified medical staff. Deputies working in the MOB housing unit provide security to the medical staff; however, it is the medical staff who assumes medical decisional authority over inmates. Regardless, Serna's condition was one that deserved attention. According to SDCSD P&P Section 2.3, employees shall be responsible for their own acts, and they shall not shift to others the burden, or responsibility, for executing or failing to execute a lawful order or duty. Deputy 1 had a responsibility to respond to Serna's emergency medical needs. This did not occur and, therefore, Deputy 1 mistreated Serna. Deputy 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however, due to confidentiality statues per the Peace Officer Bill of Rights (POBR), that information cannot be publicly disclosed. There was sufficient evidence to prove a violation of SDCSD P&P Section 2.48, on the part of Deputy 1. There was sufficient evidence to prove an allegation that Deputy 1 mistreated Serna.

19-135

1. False Arrest – Deputy Probation Officer (DPO) 1 arrested the complainant.

Board Finding: Action Justified

Rationale: The complainant stated, "On 11-25-19 while staying at a friend's house, I was arrested when probation officers visited and found illegal drugs." On 05-06-19, the court issued a felony bench warrant for the complainant's arrest due to his failure to report for supervision and continued non-compliance with the conditions of his probation. San Diego County Probation Department (SDCPD) Adult Field Services Policy Manual Section 23 titled, Warrants, states in part, if a probationer's failure to report and maintain contact is the basis for the revocation and the Probation Officer believes the probationer would not appear for a noticed hearing, the report and request for a Bench Warrant should be submitted ex-parte using forms in Probation Case Management System (PCMS). Additionally, Penal Code (PC)§ 1203.2 titled, Violation of Probation Terms, states in part, if any probation officer, parole officer, or peace officer has probable cause to believe that the supervised person is violating any term or condition of his or her supervision, the officer may, without warrant or other process and at any time until the final disposition of the case, rearrest the supervised person and bring him or her before the court or the court may, in its discretion, issue a warrant for his or her rearrest. DPO 1 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

2. False Arrest – San Diego Regional Fugitive Task Force Officers with the California Parole Apprehension Team (CPAT) arrested the complainant.

Board Finding: Summary Dismissal

Rational: On 11-25-19, four officers with CPAT accompanied DPO 1 to the residence of the complainant. Upon entry into the detached garage, where the complainant was residing, the complainant was located, handcuffed and a search ensued. Illegal drugs were found and a search was conducted that discovered several illegal items. The complainant was arrested. The CPAT Officers are not sworn staff employed with the Sheriff or Probation Departments. As such, CLERB does not have authority to investigate. According to CLERB Rules and Regulations 4.1, titled, Citizen Complaints: Authority, 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. CLERB lacks jurisdiction.

3. Illegal Search & Seizure – DPO 1 performed a search without a warrant.

Board Finding: Action Justified

Rationale: The complainant stated, “No search warrant was presented.” SDCPD P&P Section 363 titled, Fourth Waiver Search, Warrantless Search and Force Entry, states in part, searches of offenders may be conducted for reasons related to the rehabilitative and reformatory purposes of probation or other law enforcement purposes. Under the Fourth Amendment, a warrant is generally required in order for a search to be valid. However, there are several exceptions that permit a warrantless search. Prior to conducting a warrantless search, the P.O. should make every reasonable effort to verify that one of the following applies: The offender has waived his or her Fourth Amendment rights. Per the conditions of his probation, the complainant had a valid waiver of his 4th amendment rights. DPO 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. The evidence showed the alleged act or conduct did occur and was lawful, justified and proper.

4. Illegal Search & Seizure – CPAT Parole Officers performed a search without a warrant.

Board Finding: Summary Dismissal

Rationale: The complainant stated, “No search warrant was presented.” CPAT officers accompanied PO 1 during the event resulting in these allegations, however, they are not sworn staff employed with the Sheriff or Probation Departments. As such, CLERB does not have authority to investigate. According to CLERB Rules and Regulations 4.1, titled, Citizen Complaints: Authority, 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. CLERB lacks jurisdiction.

5. Illegal Search & Seizure – DPO 1 searched areas inaccessible to the complainant.

Board Finding: Action Justified

Rationale: The complainant stated, “Areas that I did not have access to were searched.” SDCPD P&P Sub-Section 363.9 titled, Dominion and Control, states in part, prior to conducting a warrantless search authorized by any of the previously discussed reasons, it is incumbent that the officer make all reasonable efforts to establish the subject’s dominion and control regarding the location and/or items to be searched. These efforts may include a thorough review of applicable law enforcement information that is reasonably available from local sources. When evaluating information used to verify dominion and control, care should be taken to utilize sources that are current. Further, the evaluation should attempt to separate fact from fiction. When the above conditions have been met, a search can be considered reasonable. While searching, the officer should make every effort to collect and/or document any item that would verify the original assessment that the subject has dominion and control. DPO 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. According to her arrest report, DPO 1 established that the complainant had dominion and control of all areas searched. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

6. Illegal Search & Seizure – CPAT Parole Officers searched areas inaccessible to the complainant.

Board Finding: Summary Dismissal

Rationale: The complainant stated, “Areas that I did not have access to were searched.” CPAT officers accompanied PO 1 during the event resulting in these allegations, however, they are not sworn staff employed with the Sheriff or Probation Departments. As such, CLERB does not have authority to investigate. According to CLERB Rules and Regulations 4.1, titled, Citizen Complaints: Authority, 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. CLERB lacks jurisdiction.

7. Misconduct/Procedure – DPO 1 failed to secure the residence.

Board Finding: Not Sustained

Rationale: The complainant stated, “The area was left unlocked and wide open, thus people have stolen stuff.” DPO 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. Unsuccessful attempts were made to contact the complainant for additional information, as he did not provide any details as to what was stolen or any evidence of a filed police report for stolen property. The complainant provided two witnesses, however, both those witnesses were unable to be located due to insufficient contact information. Without additional information or witness statements, there was insufficient evidence to either prove or disprove the allegation.

8. Misconduct/Procedure – CPAT Parole Officers failed to secure the residence.

Board Finding: Summary Dismissal

Rationale: The complainant stated, “The area was left unlocked and wide open, thus people have stolen stuff.” CPAT officers accompanied PO 1 during the event resulting in these allegations, however, they are not sworn staff employed with the Sheriff or Probation Departments. As such, CLERB does not have authority to investigate. According to CLERB Rules and Regulations 4.1, titled, Citizen Complaints: Authority, 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. CLERB lacks jurisdiction.

9. False Arrest – The District Attorney’s Office charged the complainant with possession of a controlled substance.

Board Finding: Summary Dismissal

Rationale: The complainant stated, “I’m being charged for possession of a controlled substance for sale for drugs that were not mine. The probation officers asked us whose it was and how to unlock it. I told them it wasn’t mine. I did not know how to unlock it. This was a combination type locked safe that I did not have the combination/keys to open it.” According to San Diego Superior Court records, criminal charges were filed, on 11-27-19, against the complainant for Health and Safety Code HSC§11378 Possession Controlled Substance for Sale. District Attorney personnel are not sworn staff employed with the Sheriff or Probation Departments. Therefore, CLERB does not have authority to investigate. According to CLERB Rules and Regulations 4.1, titled, Citizen Complaints: Authority, 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. As such, CLERB lacks jurisdiction.

19-138

1. Misconduct/Procedure – Probation Officer (PO) 1 disclosed confidential information.

Board Finding: Not Sustained

Rationale: The complainant alleged that PO 1 disclosed his identity to the “parolee” and told the “parolee” that the complainant was the one who reported the “parolee’s” supposed involvement in illegal activities. The complaint alleged that he informed PO 1 that he wanted to remain anonymous. San Diego County Probation Department (SDCPD) Policy Manual Policy 903 titled, Standards of Conduct, states in part, “this policy establishes standards of conduct that are consistent with the values and mission of the San Diego County Probation Department and are expected of all department employees. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions but they do identify many of the important matters concerning conduct. The following are illustrative of causes for disciplinary action: Unauthorized and inappropriate intentional release of confidential or protected information, materials, data, forms or reports obtained as a result of the member’s position with this department.” PO 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be

publicly disclosed. Absent any witness statements and/or audio recordings, there was insufficient evidence to prove or disprove the allegation.

2. Misconduct/Procedure – PO 1 failed to investigate a parolee’s “illegal activities.”

Board Finding: Unfounded

Rationale: The complainant stated, “Left probation officer messages of illegal activities. Nothing was investigated.” According to case management notes, dated 11-25-19, PO 1 placed a phone call to the In Home Supportive Services (IHSS) criminal reporting line to inquire about the alleged “fraud.” Additionally, on 12-16-19, PO 1 met with his parolee, at his reported address for a compliance check. During the visit, PO 1 conducted a Fourth Amendment Waiver search with the intention of looking for potential violations reported by the complainant and no evidence of involvement in “illegal activity” was found. PO 1 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding, however, it is privileged per the POBR and cannot be publicly disclosed. The evidence showed that the alleged act or conduct did not occur.

20-004

1. False Arrest – Unidentified deputies detained the complainant at the Vista Detention Facility.

Board Finding: Action Justified

Rationale: According to the complainant, he was detained against his will. In his letter to CLERB, the complainant stated, “*I was detained and held without any rights. I was subject to illegal ECT right in the solitary confinement where they took me. They took me into custody from CHP [California Highway Patrol] and held me over a week. Until I was able to get released from the Vista Detention Facility. I was at CHP station in Vista, California when Sheriffs took me into their isolation cells.*” According to jail documents, the complainant was detained and taken into custody on 06-29-19. He was arrested by an officer with the California Highway Patrol (CHP) for reckless driving, obstruction, false reporting, and child endangerment. The complainant was remanded to jail in pre-trial detention (custody) pending the investigation and his court hearing. The complainant was scheduled to attend court on 07-02-19; however, he was excused from appearing in-person, as he was unable to appear due to his enrollment in a “high-risk safety program.” He was released from custody on 07-04-19. The evidence showed that the alleged act did occur and was lawful, justified and proper.

2. Misconduct/Procedure – Unidentified deputies denied the complainant visits while he was incarcerated.

Board Finding: Action Justified

Rationale: In the complainant’s letter to CLERB, he reported, “*I was denied visits and visitors.*” According to jail documents, it was confirmed that the complainant did not have any social visits during the six days he was incarcerated. According to SDSA Detention Services Bureau Policies and Procedures (DSB P&P) Section J.4 titled, “Enhanced Observation Housing (EOH),” inmates who have been determined by the facility gatekeeper to warrant placement in the Inmate Safety Program (ISP) because they present an increased risk for suicide...shall be temporarily housed in EOH for the purpose of receiving closer observation and assessment... Access to personal property, recreation yard time or social visits is not permitted. The evidence showed that the alleged act did occur and was lawful, justified and proper.

3. Misconduct/Truthfulness – Unidentified deputies lied to the complainant.

Board Finding: Not Sustained

Rationale: In the complainant’s letter to CLERB, he advised, “*I was told I was not in the jail when I was.*” According to jail documents, the complainant was detained and taken into custody on 06-29-19. He was arrested by a CHP) officer for reckless driving, obstruction, false reporting, and child endangerment. The complainant was remanded to jail in pre-trial detention (custody) pending the investigation and his court hearing. According to the complainant’s SDSA Certificate of Release, it was verified that the complainant

was taken into custody as a detention only, pursuant to California Penal Code Sections (PC§) 849 and PC§ 849.5. The complainant was not incarcerated, but remained in pre-trial detention, pending the investigation and his court hearing. According to PC§ 849, it states, in part, when an arrest is made without a warrant by a peace officer or private person, the person arrested, if not otherwise released, shall without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the offense is triable, and a complaint stating the charge against the arrested person shall be laid before such magistrate. Any peace officer may release from custody, instead of taking such person before a magistrate, any person arrested without a warrant whenever; he or she is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested. Any record of arrest of a person released pursuant to paragraphs (1) and (3) of subdivision (b) shall include a record of release. Thereafter, such arrest shall not be deemed an arrest, but a detention only. Additionally, PC§ 849.5 states that in any case in which a person is arrested and released and no accusatory pleading is filed charging him with an offense, any record of arrest of the person shall include a record of release. Thereafter, the arrest shall not be deemed an arrest, but a detention only. The complainant was detained at the Vista Detention Facility (VDF); however, since he was unable to identify who told him otherwise, and absent information provided by an independent witness to the incident or video or audio recordings of the interaction, there was insufficient evidence to prove or disprove the allegation that the complainant was lied to.

4. Misconduct/Harassment – Unidentified deputies “humiliated” the complainant.

Board Finding: Not Sustained

Rationale: In the complainant’s letter to CLERB, he stated, “*I was humiliated.*” As of the completion of this report, the complainant was uncontactable and, as such, was unable to provide additional information on how he was humiliated. According to SDSD P&P Section 2.48 titled, “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 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, shall control their tempers, exercise patience and discretion even in the face of extreme provocation. Without additional information provided by the complainant, there was insufficient evidence to either prove or disprove the allegation.

5. Misconduct/Procedure – Unidentified deputies denied the complainant his court proceedings.

Board Finding: Action Justified

Rationale: In the complainant’s letter to CLERB, he reported, “*...denying me any charge sheet any appearance in front of a judge.*” According to the complainant’s SDSD Medical Court Report, the complainant was scheduled to attend court on 07-02-19. The complainant was excused from appearing in-person, due to his enrollment in a “high-risk safety program.” A SDSD Medical Court Report was completed and submitted to the courts by a Sheriff’s Detention Registered Nurse. Additionally, the report was approved by a facility lieutenant. The complainant’s criminal case was heard in court; he was arraigned, and given his enrollment in the program, he was excused from appearing in person to his arraignment. According to SDSD P&P Section J.4 titled, “Enhanced Observation Housing (EOH),” inmates who have been determined by the facility gatekeeper to warrant placement in the Inmate Safety Program (ISP) because they present an increased risk for suicide....shall be temporarily housed in EOH.... Inmates deemed high risk, will not attend court. Notification to the court will be made. The evidence showed that the alleged act did occur and was lawful, justified and proper.

6. Illegal Search or Seizure – Deputies 3 and 4 authorized the complainant to be transported to County Mental Health upon his release from jail.

Board Finding: Action Justified

Rationale: In the complainant’s letter to CLERB, he advised, “*...then at midnight after that they drove me in shackles to some hospital in San Diego. Illegal 2am transfer to another hospital jail.*” According to jail medical documents, the jail mental health staff was informed that the complainant was set to be released

that night. The mental health staff attempted to complete a suicide risk assessment, prior to his release; however, the complainant refused to respond to any questions related to his safety. As he continued to remain high risk, but was scheduled for release, it was recommended the complainant be placed on a psychiatric hold, a "5150 Hold," and be transported to County Mental Health (CMH) upon his release from jail, due to his inability to contract for his safety. The State of California Health and Human Services Agency Application for Placement for Assessment, Evaluation, and Treatment was completed, and Deputies 3 and 4 authorized the complainant to be transported to CMH upon his release from jail. For these reasons, the complainant was transported to CMH by (former) Deputies 1 and 2. According to SDDS Policies and Procedures Section 6.32 titled, "Mentally Ill Persons," upon determining an individual requires an evaluation for a 72-hour hold pursuant to 5150 of the Welfare and Institutions Code, the required documentation will be completed and the individual will be transported to the appropriate mental health facility. According to SDDS DSB P&P Section J.7 titled, "Emergency Transportation of Mentally Disordered Inmates," all inmates to be released from custody to include any inmate housed in a psychiatric stabilization unit (PSU/WPSU) or inmate safety program (ISP) is to be released from custody, the inmate may require transportation to San Diego County Psychiatric Hospital/Emergency Psychiatric Unit (EPU) or Tri-City Medical Center (TCMC). For these reasons, the evidence showed that the alleged act did occur and was lawful, justified and proper.

7. Illegal Search or Seizure – Deputies 1 and 2 transported the complainant to County Mental Health.

Board Finding: Summary Dismissal

Rationale: In the complainant's letter to CLERB, he advised, "...then at midnight after that they drove me in shackles to some hospital in San Diego. Illegal 2am transfer to another hospital jail." According to jail medical documents, Deputies 1 and 2 were identified as the deputies who transported the complainant to County Mental Health. The deputies acted on the authorization of Deputies 3 and 4. As of the time of this investigation, both Deputies 1 and 2 are no longer employed with the SDDS and were unavailable for questioning. CLERB does not have authority to investigate per CLERB Rules and Regulations 4.1, entitled, "Citizen Complaints: Authority," 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. As such, CLERB lacks jurisdiction.

POLICY RECOMMENDATIONS

1. It is recommended that the SDDS update their DSB P&P Section N.5 to correlate with the wording in SDDS DSB P&P Section J.4, which states that those inmates housed in the jail's high-risk EOH unit will not attend court.
2. Additionally, it is recommended that the SDDS update their DSB P&P Section P.9 to correlate with the wording in SDDS DSB P&P Section J.4, which states that those inmates housed in the jail's high-risk EOH unit are not permitted to have social visits.

20-023

1. Illegal Search and Seizure – PO 1 and PO 3 entered the complainant's residence without consent.

Board Finding: Action Justified

Rationale: In a written letter to CLERB, the complainant stated, "On or about January 28, 2019 at 7:42pm San Diego County probation officers hopped over my property gate and entered onto my home without consent. The probation officer entered my place of residency. There was no exigent [exigent] circumstances for this unlawful entry." PO 1 and 3 accompanied and acted under the direction of PO 2 when they conducted the unannounced, unscheduled, face-to-face contact with the aggrieved during the home visit. Officers, who acted under the direction of PO 2, lawfully entered the unlocked and open residence to conduct a safety sweep [cursory search] of the residence with regards to the terms of the aggrieved's probation. According to the aggrieved's court documents and his and probationary terms and

conditions, “The minor shall submit his her person, property, or vehicle and the property under his or her immediate custody or control to search at any time, with or without probable cause, with or without a search warrant, by any law-enforcement officer or peace officer, probation officers, school officials or officers, and any other state security officers or agents engaged in the lawful performance of their duties.” As such, a warrant was not needed for the home visit on 01-28-19. The probation officers entered the open home to conduct a protective sweep of the residence. In the report, PO 2 advised that a search was conducted through each room of the residence while loudly and repeatedly announcing themselves. When no one was located in the home, the probation officers vacated the residence without completing a fourth waiver. According to San Diego County Probation Department, Policies and Procedures Section 363, subcategory section 363.11 titled, “Protective Sweeps ,” upon entry into a home for the purpose of executing a search or to make an arrest, the officer is permitted to make a cursory search for other persons who could present a danger to the officer or interfere with the lawful process. Protective sweeps may extend to a cursory inspection of places where a person may be hiding. The sweep shall last no longer than is necessary to confirm that the area does not contain a person. A protective sweep of a residence, where the resident is subject to search is lawful with or without suspicion that others might be present. The evidence showed that the alleged act did occur, and was lawful, justified and proper.

2. Illegal Search and Seizure – PO 1 and PO 3 searched the complainant’s residence without consent.

Board Finding: Action Justified

Rationale: In a written letter to CLERB, the complainant stated, “*The probation officer entered my place of residency and roam through my private property.*” PO 1 and 3 accompanied and acted under the direction of PO 2 when they attempted to conduct the unannounced, unscheduled, face-to-face contact with the aggrieved during the home visit. Officers, who acted under the direction of PO 2, lawfully entered the unlocked and open residence to conduct a safety sweep of the residence with regards to the terms of the aggrieved’s probation. According to the aggrieved’s court documents and his and probationary terms and conditions, “The minor shall submit his her person, property, or vehicle and the property under his or her immediate custody or control to search at any time, with or without probable cause, with or without a search warrant, by any law-enforcement officer or peace officer, probation officers, school officials or officers, and any other state security officers or agents engaged in the lawful performance of their duties.” As such, a warrant was not needed for the home visit on 01-28-19. The probation officers entered the open and unlocked home to conduct a protective sweep [cursory search] of the residence. In the report, PO 2 advised that a search was conducted through each room of the residence while loudly and repeatedly announcing themselves. When no one was located in the home, the probation officers vacated the residence without completing a fourth waiver. According to San Diego County Probation Department, Policies and Procedures Section 363, subcategory section 363.11 titled, “Protective Sweeps ,” upon entry into a home for the purpose of executing a search or to make an arrest, the officer is permitted to make a cursory search for other persons who could present a danger to the officer or interfere with the lawful process. Protective sweeps may extend to a cursory inspection of places where a person may be hiding. The sweep shall last no longer than is necessary to confirm that the area does not contain a person. A protective sweep of a residence, where the resident is subject to search is lawful with or without suspicion that others might be present. The evidence showed that the alleged act did occur, and was lawful, justified and proper.

3. Illegal Search and Seizure – PO 2 searched the complainant’s residence without consent.

Board Finding: Summary Dismissal

Rationale: In a written letter to CLERB, the complainant stated, “*On or about January 28, 2019 at 7:42pm San Diego County probation officers hopped over my property gate and entered onto my home without consent. The probation officer entered my place of residency. There was no exigent [exigent] circumstances for this unlawful entry.*” CLERB received a signed complaint on 01-17-20, regarding an incident that occurred on 01-28-19. The incident involved Probation Officer (PO) 2. At the time of the incident, Officer 2 was an active member of the Probation Department. On 04-02-19, it was learned, per County News, that PO 2 had retired from the County on 02-27-19. Per CLERB Rules and Regulations 4.1, entitled, “Citizen Complaints: Authority,” 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. As such, CLERB lacks jurisdiction.

20-071

1. Death Investigation/In-Custody Suicide – Spiros Stavros Fonseca hanged himself by the neck in his cell at the San Diego Central Jail on 06-09-20.

Board Finding: Action Justified

Rationale: On 06-07-20, Spiros Fonseca was arrested for a parole violation and expressed to officers that he was being followed. As evidenced on Body Worn Camera, (BWC) he appeared scared/paranoid. Medical personnel cleared him for booking at the San Diego Central Jail where he was placed into a single occupancy cell for a seven day mandatory quarantine, per COVID-19 protocol. Detentions Policy I.64, Safety Checks, requires deputies to look for obvious signs of medical distress, trauma or criminal activity with each inmate, every 60 minutes. Jail records confirmed that deputies were in compliance with policy and Fonseca's last movements were observed on video surveillance at 2:45pm. Thirty minutes prior to that, he had met with his Parole Officer at the module gate and did not express any concerns. The Parole Agent later reported that he did not observe any signs in Fonseca that would indicate to him that he needed mental health attention. During a security check at 3:06pm, deputies found Fonseca suspended by the neck with towels attached to the top bunk in the cell. Deputies reported he appeared pale and was pulseless. Deputies used raptor sheers to cut the cloth and lowered Fonseca to the ground for cardiopulmonary resuscitation (CPR). Paramedics arrived, initiated advanced cardiac life support (ACLS), and transported the inmate to UCSD Medical Center where a scan of his head revealed an anoxic brain injury. Fonseca's health deteriorated until his death was pronounced that evening. The evidence supported that Fonseca was properly classified. During his medical intake screening, he never expressed any type of suicidal ideation or history. Fonseca's family stated that he had went to County Mental Health (CMH) for assistance on 06-05-20. CMH records revealed that Fonseca left the facility prior to being evaluated. There was no evidence that Fonseca expressed any concerns about his mental or physical well-being to any member of the SDCS, sworn or professional. Upon being discovered hanging in his cell, sworn personnel responded and initiated life-saving measures. The cause of death was asphyxia due to hanging and the manner of death was suicide. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

20-115

1. Misconduct/Procedure – An unidentified deputy placed the complainant on "suicide watch."

Board Finding: Summary Dismissal

Rationale: The complainant stated, "They proceeded to throw me into 'suicide watch' for 3½ days w/out telling me where I was nor why. I was told by a doctor 3½ days after being put into 'Suicide Watch' where I actually was and the doctor asked me if I knew where I was. I said not specifically. The doctor said, "You don't belong here" and released me." The complainant reported the timeline of his complaint was from 03-28-18 to 09-13-18. CLERB Rules & Regulations 4.1.2, Complaints: Jurisdiction, stipulates that CLERB 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 time duration of such incarceration or incapacity shall not be counted in determining whether the one year period for filing the complaint has expired. On 01-04-21, the complainant filed this complaint with CLERB. According to information from the Division of Inspectional Services and confirmed by the complainant, he was released from custody on 09-13-18. According to the complainant, he was taken back into custody on 12-20-19 and had not been in custody between 09-13-18 and 12-20-19. As such, the complainant was required to file his complaint no later than 09-13-19, which he did not do. Therefore, the Review Board lacks jurisdiction as the complaint is untimely.

2. Misconduct/Procedure – An unidentified deputy posted a notice on the Sheriff’s Department website indicating the complainant had engaged in “lewd acts with minors.”

Board Finding: Summary Dismissal

Rationale: The complainant stated, “Please assist me with the issue of “lewd act with minors” on Sheriff website. Was on there the entire 6 months of my incarceration despite my daily phone pleas to have removed.” See Rationale #1.

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.