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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 July 13, 2021, 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 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).

b) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION  
(Subdivision (c) of Government Code Section 54956.9)

- **Appeal to the County's Civil Service Commission re: CLERB Case #17-150/Horsey**

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 (8)****ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE****20-012**

1. Death Investigation/In-Custody Drug Related – Blake Edward Wilson died while in the custody of the San Diego County Sheriff's Department (SDSD) on 01-26-20.

Board Finding: Not Sustained

Rationale: On 01-16-20, upon his entry into Sheriff's custody, and during his medical intake screening, Blake Edward Wilson reported daily use of heroin and alcohol consumption. Based on his screening, Wilson was placed on Standard Nursing Procedure for Heroin/Opiate Withdrawal. On 01-26-20, Wilson

was found down and unresponsive in his cell at the San Diego Central Jail. Deputies immediately began cardiopulmonary resuscitation (CPR), summoned jail medical staff and activated 911. Jail medical staff provided life-saving measures, including the administration of Naloxone. SDSB DSB P&P Section M.6 titled, Life Threatening Emergencies, states in part, an opioid overdose requires immediate medical attention. Naloxone is the antagonist of choice for the reversal of acute opioid toxicity. Naloxone should be administered to any inmate who presents with signs of opioid overdose or when opioid overdose is suspected. When paramedics arrived on scene, they took over advanced life-saving measures and administered several rounds of epinephrine. Despite aggressive attempts at resuscitation, Wilson failed to respond and his death was pronounced via radio by a UCSD Medical Center doctor. Wilson was transported to the San Diego County Medical Examiner and on 01-27-20, an autopsy was performed on Wilson. No trauma or foul play was noted. Based on the autopsy findings, toxicologic tests and circumstances surrounding Wilson's death, the cause of death was ruled acute fentanyl, acetyl fentanyl, butyryl fentanyl, and heroin intoxication and the manner of death was an Accident. Review of jail records and inmate witness statement/interviews, revealed that Wilson obtained the heroin with fentanyl from another inmate. The inmate confessed to providing the drugs to Wilson and he was charged with sale/furnishing of fentanyl and personal infliction of great bodily injury, in connection with Wilson's death. He pled guilty to the charges. Records indicated Wilson was housed appropriately during his incarceration. Wilson was last known to be alive, at approximately 10:51pm, when deputies entered his cell and conducted a hard count. At 10:53pm, the cell door to Wilson's cell closed and did not open again until approximately 8:20am the next morning, for medication distribution. According to jail records and jail surveillance videos, security and safety checks were conducted hourly, as required by policy, however, a "proof of life" soft count check at 4:43am, although conducted, was not done per policy. SDSB DSB P&P Section I.43 titled, Inmate Count Procedure, states in part, Soft Count ["proof of life"] – A count of the number of inmates in a facility or housing unit which verifies each inmate's well-being through verbal or physical acknowledgement from the inmate. The deputy conducting the "proof of life" soft count was unable to confirm that he viewed "signs of life" from the inmates in Wilson's cell. As such, the evidence was insufficient to either prove or disprove that deputy actions could have prevented Wilson's death.

2. Misconduct/Procedure – Deputy 1 failed to conduct an inmate "Soft Count."

Board Finding: Sustained

Rationale: On 01-26-20, detention records indicated that an inmate "proof of life" soft count was conducted at 4:43am. Sheriff's Detentions Policy I.43 titled, Inmate Count Procedure, requires that Hard and Soft Counts of inmates are regularly conducted throughout the day and evening to physically count and verify the well-being of all inmates within the facility. All soft and hard counts require sworn staff to verify each inmate's well-being through verbal or physical acknowledgement from the inmate. Deputy 1 conducted the "proof of life" count on the bottom tier, where Wilson's cell was located. Jail surveillance video showed Deputy 1 at Wilson's cell, that housed three inmates, from 04:27:01–04:27:02. Following this incident, Homicide Detectives interviewed Deputy 1 to confirm compliance with detention policies and specifically signs for "proof of life" during the soft count. While "not confident" he observed "proof of life," Deputy 1 confirmed it was his practice to do so. Additionally, Section I.64 titled, Safety Checks of Inmates in Housing Units and Holding Cells, states in part, sworn staff will conduct safety checks of inmates through direct visual means observing the inmates for any obvious signs of medical distress, trauma or criminal activity. In cell style housing modules, sworn staff shall stop at or enter each cell and observe each inmate. As evidenced in the jail surveillance video, Deputy 1 did not enter the cell but stopped and looked into it for approximately one second. CLERB believes that this action was not sufficient or long enough to obtain verbal or physical acknowledgement from all three inmates, including inmate Wilson. Deputy 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. Deputy 1 exercised his right to decline participation in an interview with CLERB investigators present pursuant to Penal Code Sections 832.5, 832.7, and the Public Safety Officers Procedural Bill of Rights, Government Code Sections 3300 et. Seq. Based upon surveillance video, interviews, and policy review, a preponderance of evidence showed that Deputy 1 failed to conduct an inmate "Proof of Life" Soft Count and his actions were not justified.

## **20-040**

1. Excessive Force – Deputy 2 “punched” the complainant.

Board Finding: Summary Dismissal

Rationale: The complainant stated, “on Oct-19-18, I see Deputy 2 coming in the cell fixing his gloves he puts a foot on the bottom bunk grabs on to the top bunk. All I see was his fists coming towards me.” 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. According to information from the Division of Inspectional Services and confirmed through the complainant’s SDDS booking records, this allegation was from a prior incarceration, where the complainant was booked on 10-18-18 and released on 11-28-18. As such, the complaint was not filed timely and the Review Board lacks jurisdiction.

2. Excessive Force – Deputies “slammed” the complainant’s head on the ground.

Board Finding: Summary Dismissal

Rationale: The complainant stated, “on Oct-19-18, I was on the ground getting punched with several deputies on me yelling to stop resisting then slammed my head on the ground.” See Rationale #1.

3. Misconduct/Procedure – Deputies kept the complainant in “the hole” for five days.

Board Finding: Summary Dismissal

Rationale: The complainant stated, “I refused to sign some papers so they kept me in the hold for 5 days.” See Rationale #1.

4. Misconduct/Procedure – Deputies placed a “mentally unstable” inmate in mainline housing.

Board Finding: Action Justified

Rationale: The complainant stated, “They put an inmate in my cell that was ‘mentally unstable.’ I talked to him and he told me he had mental issues and needed his medication. He felt that everyone was out to get him.” SDDS records, as well as jail surveillance video, documented, on 10-12-19, that the alleged “mentally unstable” inmate assaulted the complainant, which caused a fight to break out amongst several inmates in the module dayroom. According to SDDS DSB P&P Section Q.51 titled, Crimes Committed by “In Custody” Inmates, whenever sufficient information becomes available to charge an inmate with a crime, appropriate detention facility staff will complete appropriate reports. All assaults, whether prosecution is desired or not, will be documented in a crime report. The Crime Report indicated the “mentally unstable” inmate was identified as the instigator, as such, he was read his Miranda Rights and charged. The complainant reported that he had been telling deputies that the inmate was acting “paranoid and stressed.” Jail records produced one filed grievance, by the complainant, for an unrelated issue. There was no documented evidence to corroborate the complainant’s report that he had been alerting deputies to the inmate’s behavior. The complainant reported he did not believe the inmate should have been housed in general population housing because he was “mentally unstable,” and for that reason he did not desire to press charges. SDDS DSB P&P Section R.1 titled, Inmate Classification, states in part, an inmate’s initial classification is determined by their original booking charges, criminal history information, medical and psychiatric issues or additional special conditions, and information obtained from the inmate interview. The inmate will be assigned to the most appropriate housing location based on their classification designation. As CLERB did not have a signed complaint from the other inmate, CLERB was not privy to his records, however, a Classification Deputy responded to a Sheriff Employee Response Form with a signed statement, and confirmed the inmate was properly classified at the time of this incident. The evidence showed deputies actions were conducted per policy and were lawful, justified and proper.

5. Misconduct/Procedure – Deputies shortened the complainant’s dayroom time.

Board Finding: Action Justified

Rationale: The complainant stated, “Due to this Corona virus, they have us on modified program where we get 1 hour in the morning, 1 in the afternoon and 1 at night, however, they let us out at 1:15 and lock us back up at 1:45.” Sheriff’s Press Releases and associated Training Bulletins pertaining to the COVID-19 virus indicated that inmate services were restricted to be in compliance with the Governor’s and Chief Health Officer’s orders related to isolation/quarantine, testing/tracking, temperature checks, face coverings, social distancing, and cleaning & sanitization of the facilities; in a collective effort to protect inmates and staff. Title 15 Guidelines in accordance with detention policies specifies the procedures pertaining to Inmate Rights and Services/Programs, which were reduced/restricted during the COVID-19 pandemic and per DSB Policy M.37, Communicable Disease Control. Dayroom restrictions were deployed for the protection of inmates and staff. The evidence showed that the conduct that occurred was lawful, justified and proper.

6. Misconduct/Retaliation – Deputies transferred the complainant because he complained about “shortened dayroom time.”

Board Finding: Unfounded

Rationale: During his incarceration, the complainant was transferred between facilities. He alleged the transfer was retaliatory in nature, and stated, “I had the floor deputies call the sergeant’s so we could talk about [shortened dayroom time], and they said we’ll talk to the lieutenant, give us 3 days. Ok fine next day they ask me to transfer to another facility.” According to SDSA records, the complainant was a known gang member and the transfer was a result of gang conflicts and his high influence over other inmates. Additionally, inmates are routinely transferred to different detention facilities based upon the inmate census and a variety of other individualized factors. The evidence showed that the complainant was not transferred as retaliation for complaining but as a result of gang conflicts and high influence over other inmates. The alleged conduct did not occur and was, therefore, unfounded.

7. Excessive Force – Deputies 5 and 6 shot the complainant with less lethal munition rounds.

Board Finding: Action Justified

Rationale: The complainant stated, “On May 7, 2020, a riot happened in the dayroom and I ended getting shot over 13 times.” According to SDSA records, after the fight broke out and in an attempt to gain control of the situation, deputies issued commands for the inmates to stop fighting, return to their cells and lock down. Several of the inmates, including the complainant, ignored commands and continued to fight. Upon entering the module, deputies continued to issue commands to the complainant to get on the ground, however, he entered a cell, took a fighting stance and stated, “Lets fucking go, Fuck you, I’m not getting on the floor!” The complainant was in violation of Inmate Rules and Regulations for disobeying staff instructions, engaged in aggressive behavior and interfering with jail operations. Deputies 5 and 6 shot a total of 16 less lethal munition rounds at the complainant, targeting his abdomen, back and legs, however, they were ineffective in gaining his compliance. In his Use of Force Report, Deputy 5 provided that he deployed a total of 11 rounds at the complainant and another inmate, as both were refusing to “turn around and place their hands behind their back. Deputy 5 did not specify or identify how many rounds actually made contact with the complainant. Sheriff’s Addendum Section F Policy titled, Use of Force Guidelines, states in part, “less lethal specialty munitions are projectiles used to stop assaultive behavior, which if not stopped, may result in injury or death.” When used properly, by trained personnel, this type of munition is less likely to result in death or serious injury. Additionally, Detentions Policy I.85, Use of Defensive Devices, states in part, when targeting, deputies should avoid aiming for the head, neck, throat, spine or groin. Inmates subjected to any of the less lethal devices will be assessed/treated by medical staff as soon as practical. The complainant’s injuries were documented, photographed and he was taken to medical immediately following the incident. The complainant was referred to the hospital for follow-up care, however, he refused to go and signed a Refusal to Accept Medical Care/Treatment, and stated reason as, “I’m good, no X-ray & No E.R.” The evidence showed that Deputies 5 and 6’s use of force was reasonable

and necessary per Detentions Policy I.89, Use of Force, Detention Services personnel may use physical force to the extent that is necessary and objectively reasonable to overcome resistance, and maintain or restore order. The evidence showed that Deputy 5 and 6's conduct was lawful, justified and proper.

8. Excessive Force – Deputy 1 sprayed the complainant with Oleoresin Capsicum (OC) spray.

Board Finding: Action Justified

Rationale: The complainant stated, "There was nobody around me or was anyone in danger. I sat on the toilet and passed out to wake to them spraying pepper spray." According to SDSD records, jail surveillance video, and the timeline of events, there was no evidence to corroborate the complainant's statement that he "passed out," prior to Deputy 1 using OC spray. Detentions Policy I.85, authorizes deputy use of defensive devices to gain compliance and overcome resistance. As deputies repeatedly issued commands to the complainant, to "get on the ground," and after less lethal munition rounds were ineffective, and as a result of the complainant's continued defiance, Deputy 1 utilized OC spray on the complainant in an attempt to gain compliance. In his Use of Force Report, Deputy 1 provided that the use of the OC spray was partially effective in that it caused the complainant to close his eyes, however, he remained standing with his fists clenched. The evidence showed that Deputy 1's actions were lawful, justified and proper.

9. Excessive Force – Deputies 1, 4, 3 and 7 "punched and/or kicked" the complainant.

Board Finding: Action Justified

Rationale: The complainant stated, "I passed out and woke to them punching me kicking me." SDSD DSB P&P Section I.89 titled, Use of Force, states in part, during the course of their official duties, Detention Services Bureau personnel, may use physical force to the extent that is necessary and objectively reasonable to overcome resistance, and maintain or restore order. Personnel shall use the Department approved techniques, equipment and tactics in controlling the inmate or incident. Additionally, SDSD DSB P&P Section O.3 titled, Inmate Rules and Regulations, states in part, Inmates shall obey staff instructions, shall not take part in aggressive or boisterous activity, shall not threaten, assault, or attempt to intimidate jail staff and inmates shall not engage in any activity that impairs or interferes with the operation of the facility. The complainant was in violation of these Rules and Regulations. According to Deputy 1, 4, 3 and 7, as documented in their Use of Force Reports, due to the complainant's active resistance and defiance to obey staff instructions, force was utilized nine times to gain his compliance. Deputy 1 provided that after spraying the complainant with OC spray and due to the complainant's refusal to follow commands, as well as assaultive behavior, he entered the cell and delivered one closed fist strike to the complainant's head. Deputy 7 provided that the complainant, after the PepperBall rounds and OC spray were ineffective, remained in a fighting stance and screamed obscenities at deputies. Deputy 7 entered the cell and delivered three strikes with his leg to the right side of the complainant's body but they were ineffective. Deputy 4 provided that he entered the cell and grabbed the complainant and began pulling him to the floor. The complainant remained on his hands and knees and resisted being placed in a prone position. Due to the complainant's assaultive behavior and refusal to follow commands, Deputy 4 delivered three knee strikes to the side of the complainant's torso. Deputy 3 provided that he was able to get the complainant on his stomach but when he attempted to place handcuffs on the complainant, the complainant resisted and pulled his hands under him. Deputy 3, in a closed fist, delivered two strikes to the side of the complainant's torso. The complainant then put his hands at his side, allowing deputies to secure the handcuffs on him. The evidence showed that the alleged conduct did occur and was lawful, justified and proper.

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## **20-041**

1. Misconduct/Procedure – Deputy 4 took the complainant's "manufactured" shorts.

Board Finding: Action Justified

Rationale: The complainant stated, "The deputy 4 noticed I had on some manufacture shortz what I wear to bed. Me and the deputy couldn't come to an agreement. He took tha shortz. I ripped them up before

giving them to him.” According to SDSD records, the complainant had several jail issued t-shirts that he had “manufactured” into pants. When Deputy 4 instructed the complainant to give him the “pants,” the complainant, before giving them to Deputy 4, ripped them up and then called Deputy 4 a “faggot.” SDSD DSB P&P Section O.3 titled, Inmate Rules and Regulations, states in part, Clothing and bedding shall be used for intended purposes only, and shall not be damaged or destroyed in any way. Additionally, the policy states, inmates shall treat members of facility staff in a civil fashion and obey staff instructions. The evidence showed that the alleged act or conduct did occur and that Deputy 4’s actions were lawful, justified and proper.

2. Misconduct/Procedure – Deputy 4 placed the complainant in Ad-Seg (Administrative Segregation).

Board Finding: Action Justified

Rationale: The complainant stated, “The deputy [4] got mad and placed me in Ad-Seg Lyin’ saying, I’m a kill him to somethin’ I can make in my sleep (now I’m in greenz fighter a fake threat charge).” On 04-18-19, during an inmate safety check, Deputy 4 noticed that the complainant was wearing “manufactured” shorts that he made from several jail issued t-shirts. Inmate Rules and Regulations directs that clothing shall be used for intended purposes only. SDSD records provided that when Deputy 4 instructed the complainant to give him the shorts, the complainant used profanity and threatened him. When Deputy 4 addressed the rule violations and placed the complainant in an isolation cell pending a hearing, the complainant threatened Deputy 4’s life, in the presence of two other deputies. SDSD DSB P&P Section J.3 titled, Segregation; Definition and Use, states in part, Disciplinary Separation may be used pending a hearing or investigation for a rule violation or criminal act. Furthermore, when administrative segregation housing is used as pre-disciplinary housing pending a hearing, the decision must be based on the need to segregate for security reasons, rather than an attempt to limit privileges pending a hearing. The evidence showed that the actions taken by Deputy 4 were lawful, justified and proper.

3. Misconduct/Procedure – Unidentified deputies failed to respond to the complainant’s grievances.

Board Finding: Unfounded

Rationale: The complainant stated, “I started writing grievances, more than six grievances I wrote about health and hygiene matterz.” SDSD DSB P&P Section N.1 titled, Grievance Procedure, states in part, Informal resolution of an issue before it becomes a written grievance is both desirable and recommended. Furthermore, written grievances can often be resolved without the intervention of a supervisor, and every effort should be made by a deputy or staff member who receives a grievance to handle it at his or her level. Informal resolution of an issue before it becomes a written grievance is both desirable and recommended. SDSD records produced 17 grievances submitted by the complainant. Each of the 17 grievances was responded to by a sergeant, with a copy provided to the complainant, acknowledging the grievance and confirming corrective action. The evidence refuted the complainant’s allegation and showed that the alleged conduct did not occur.

4. Misconduct/Discourtesy – Deputy 3 mocked the complainant.

Board Finding: Not Sustained

Rationale: The complainant stated, “Deputy 3 walked the top tier being unprofessional sayin’, all you do is cryin’ and write grievancez.” SDSD P&P Section 2.2 titled, Courtesy, states in part, Employees shall be tactful in the performance of their duties, shall control their tempers, exercise patience and discretion even in the face of extreme provocation. Except when necessary to establish control during a violent or dangerous situation, no member shall use coarse, profane or violent language. In review of the complainant’s filed grievances and his complaints against sworn staff, none documented this alleged incident. Attempts were made to contact the complainant for an interview to obtain additional information and/or witness contacts, however, the complainant is currently in custody at a California Department of Corrections and Rehabilitation (CDCR) facility and attempts to arrange a phone interview were unsuccessful. Absent an independent witness or available audio of the verbal exchanges between the complainant and Deputy 3, there was insufficient evidence to prove or disprove the allegation.

5. Misconduct/Procedure – Deputies 3 and 5 placed the complainant on “lock-down.”

Board Finding: Action Justified

Rationale: The complainant stated, “Yes I did reply telling that deputy 3 to shut tha fuck up little boy. At 1:00 Deputy 5 and 3 came to my door placing me on lock-down.” According to SDSD records, the complainant was placed on lock down for disrespect to staff, threatening staff and interfering with jail operations. SDSD DSB P&P Section O.1 titled, Disciplinary Action, states in part, a sworn supervisor may make the determination an inmate is required to be placed in administrative segregation housing while the incident report is being written and pending the disciplinary hearing. Additionally, SDSD DSB P&P Section J.3 titled, Segregation: Definition and Use, states in part, when administrative segregation housing is used as pre-disciplinary housing pending a hearing, the decision must be based on the need to segregate for security reasons, rather than an attempt to limit privileges pending a hearing. According to SDSD records, the complainant was placed on “lock-down” thirteen different times for continued rule violations and failure to conform to the minimum standards expected of inmates in mainline housing, as well as his unpredictable, aggressive and threatening behavior. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

6. Misconduct/Intimidation – Deputy 3 threatened the complainant.

Board Finding: Not Sustained

Rationale: The complainant stated, “After dinner Deputy 3 walked in tha unit turning off tha television so tha hole unit 5-C could hear his threat. ‘You guys want to keep writing grievances, I’ll take your family from ya’ll.’ I grievanced him for that.” In review of the complainant’s filed grievances and his complaints against sworn staff, none documented this alleged incident. Attempts were made to contact the complainant for an interview to obtain additional information and/or witness contacts, however, the complainant is currently in custody at a California Department of Corrections and Rehabilitation (CDCR) facility and attempts to arrange a phone interview were unsuccessful. Absent an independent witness or available audio of the verbal exchanges between the complainant and Deputy 3, there was insufficient evidence to prove or disprove the allegation.

7. Misconduct/Procedure – Deputy 6 failed to investigate a deputy who threatened the complainant’s family.

Board Finding: Not Sustained

Rationale: The complainant stated, “A deputy threatened my family and when I wrote him up, tha Deputy 6 DIDN’T investigate my clamez.” In review of the complainant’s filed grievances and his complaints against sworn staff, none documented this alleged incident. Attempts were made to contact the complainant for an interview to obtain additional information and/or witness contacts, however, the complainant is currently in custody at a California Department of Corrections and Rehabilitation (CDCR) facility and attempts to arrange a phone interview were unsuccessful. Absent an independent witness or available audio of the verbal exchanges between the complainant and Deputy 3, there was insufficient evidence to prove or disprove the allegation.

8. Misconduct/Truthfulness – Unidentified deputies lied.

Board Finding: Not Sustained

Rationale: The complainant stated, “Five deputies came to my cell door all hourz of tha day LYING loquaciously like I understand B.S.” SDSD P&P Section 2.46 titled, Truthfulness, requires that all written and verbal reports will be truthful and complete. In review of the complainant’s filed grievances and his complaints against sworn staff, none documented this alleged incident. The complainant transferred to a CDCR State prison and attempts were made to make contact, however, he was unavailable for clarification. There was insufficient evidence to either prove or disprove the allegation.

9. Misconduct/Procedure – Deputy 2 did not sign the complainant’s grievance form.

Board Finding: Not Sustained

Rationale: The complainant stated, "On 2-24-2020 I asked Deputy 2 to only sign a grievance so I can get my yellow copy 'instead' he walked away with my grievance to bring it back with a response. I grievance him." SDSL DSB P&P Section N.1 titled, Grievance Procedures, states in part, 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. The deputy or other staff member who receives and signs for a grievance will be responsible for entering it into the Jail Information Management System (JIMS), making sure to link the inmate(s) to the grievance report. According to SDSL records, all the complainant's grievances, on file, were signed by the receiving deputy and entered into the JIMS system. As the complainant was not available for clarification or to provide evidence of unsigned grievances, there was insufficient evidence to either prove or disprove the allegation.

10. Misconduct/Retaliation – Deputy 2 placed the complainant in Ad-Seg (Administrative Segregation).

Board Finding: Action Justified

Rationale: The complainant stated, "The next day [02-25-2020] he [Deputy 2] placed me in Ad-Seg because the unit boarded up. Deputy 2 stated, I was the initial instigator when the module boarded up." According to SDSL records, the complainant was deemed the instigator in a documented incident where he and other inmates covered their cell windows. The incident report noted, "the complainant has violated the Inmate Rules and Regulations on a consistent basis and shown that he has influence over the other inmates." SDSL DSB P&P Section O.3 titled, Inmate Rules and Regulations, states in part, Inmates shall not cover vents, intercoms, lights, windows, etc. Additionally, DSB P&P Section J.3 titled, Segregation: Definition and Use, states in part, the following are types of inmates who may be placed into administrative segregation, inmates who demonstrate influence over other inmates, including influence to promote or direct action or behavior that is criminal or disruptive to the safety and security of other inmates and/or facility staff, as well as to the safe operation of the facility. The evidence showed Deputy 2's placement of the complainant into Ad-Seg was lawful, justified and proper.

11. Misconduct/Procedure – "Team One" did not provide cleaning supplies.

Board Finding: Unfounded

Rationale: The complainant stated, "On 2-29-2020, team one didn't give unitz cleaning cartz on inspection 'knowing' most inmatez is dirty. First officer I'd asked was 3, then 2, 1, and last 5... I wrote a grievance and deputy 5 started responding on it seeing it state, give to deputy." According to SDSL records, the complainant filed repeated grievances about not getting cleaning supplies. On the day in question, 02-29-20, a JIMS Incident Report noted the complainant gave his grievance to Deputy 5, grieving that cleaning supplies were not provided, even before the actual required time per policy. According to the records, the cleaning cart was provided and available as required per policy. SDSL DSB P&P Section L.4 titled, Housekeeping Plan, states, each facility will have a plan, written on a policy green sheet, explaining the daily cleaning and housekeeping activities that will occur on a regular basis. SDSL San Diego Central Jail (SDCJ) Green Sheet Policy titled, Housekeeping Plan – Module Cleaning Carts, states in part, a fully stocked cleaning cart will be placed into all mainline inmate housing modules during the restricted movement time between 11:00am and 1:00pm and during the lockdown time after night count. Records indicated the cleaning cart was provided at 12:30pm. The evidence showed that the alleged act or conduct did not occur.

12. Misconduct/Retaliation – Team one was "unprofessional" toward the complainant.

Board Finding: Not Sustained

Rationale: The complainant stated, "Team one started being unprofessional towardz me for writing up their deputy." The complainant did not offer and evidence to support his allegation. Attempts were made to make contact with the complainant for additional information regarding the alleged "unprofessional" conduct by deputies, but he was unavailable. Absent witnesses and/or audio evidence of the verbal exchanges between the complainant and deputies, and as the complainant was unavailable for clarification, there was insufficient information to prove or disprove the allegation.

13. Misconduct/Retaliation – Team One deputies placed the complainant in Ad-Seg.

Board Finding: Action Justified

Rationale: The complainant stated, “Team One was taking me back to Ad-Seg retaliating with Deputy 6 approval.” SDSA records documented numerous rule violations by the complainant resulting in his placement into Ad-Seg. SDSA records provided that the complainant consistently violated the Inmate Rules and Regulations, he threatened and attempted to intimidate deputies, he wrote vexatious grievances and encouraged other inmates to do the same, he consistently interrupted jail operations and exhibited unwillingness to conform to the minimum standards expected of inmates in mainline housing. SDSA DSB P&P Section J.3 titled, Segregation; Definition and Use, states in part, the following are types of inmates who may be placed into administrative segregation. Those who have displayed a continual failure to adjust and conform to the minimum standards expected of those in mainline housing or designated special housing. The inmate's behavior is either criminal in nature or disruptive to the safe operation of the facility. Those who have shown a propensity for violence towards other inmates and/or staff, or participatory action in a conspiracy, or known premeditated thoughts or indications by a single inmate, to assault or harm other inmates and/or staff. Those who demonstrate influence over other inmates, including influence to promote or direct action or behavior that is criminal or disruptive to the safety and security of other inmates and/or facility staff, as well as to the safe operation of the facility. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

14. Misconduct/Procedure – The Vista Detention Facility (VDF) did not provide video visits for inmates in Administrative Segregation (Ad-Seg).

Board Finding: Action Justified

Rationale: The complainant reported, “Vista don’t get video visit being in Ad-Seg why? I’m really in Ad-Seg because I’m a clean man and I gotta TNA paper trail to prove it too.” According to the Sheriff’s website: VDF offers Home User video visitation for most housing units. With video visitation, you can visit remotely using a computer with a web camera connected to the Internet. Video visits at the facility are 20 minutes in length, with no visitation on Wednesdays; all other days and times vary according to the housing unit. The complainant was housed in Upper West 5 which allowed visits on Monday and Saturday, however, according to SDSA DSB P&P Section O.1 titled, Disciplinary Action, inmates placed in Ad-Seg for disciplinary reasons are only allowed professional visits. The evidence confirmed the complainant was placed in Ad-Seg for disciplinary reasons and he was ineligible for video visits. The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

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**20-054**

1. Misconduct/Procedure – PO 1 required the complainant to attend an in-patient drug program during the pandemic.

Board Finding: Action Justified

Rationale: In the complainant’s written statement, he reported, “*My P.O has been putting me in unnecessary danger during this pandemic by forcing me to attend drug inpatient program. This program has larger population making it riskier compared to staying at home. I think any rational judge would agree with me on this matter because we are only being prudent by staying at home. Just the same as everyone in the state under stay at home order and school is not in session. This rehab can always be completed on a later date or change. My PO claims that the rehab is safe but let me address this by saying that [is] untrue. The first thing that concerns me is fact that the rehab has larger population. The state has policy of no crowds over 2 people at anyone time while at rehab (TFC) has currently population of around 40 clients. The risk goes up the bigger the crowd. Now they quarantine new clients for 20 days (which sounds unpleasant) but there is also big flaw in this plan the employees are free to come and go as they please that makes quarantine almost ineffective. Staying at home with far less people coming and going is safer. Ask any doctor. I don’t think any place with large population like rehab can be safe during a pandemic and*

*there are alternative treatments to inpatient. I will repeat again I don't feel like my safety made number one priority. There are differences between taking a risk yourself and forcing that same risk on someone else. I think any reasonable judge would agree with me to at least delay treatment until it's safer or look into other treatments options."* As a condition of his early release from his incarceration, the complainant agreed to certain terms. According to the complainant's terms of his probation, in addition to other terms, the complainant agreed to the following: Follow such course of action of conduct that the PO communicates to the defendant, Participate and comply with any assessment program if directed by the PO, Participate in treatment, therapy, counseling, or other courses of contact suggested by validated assessment test, Attend and successfully complete psychiatric, individual, group, Substance abuse, dual diagnosis, and programs provided by the PO as directed or if directed by the PO. Complete a program a residential treatment and aftercare as directed by the probation officer, and to attend and successfully complete a counseling program for individual, stalker, probation departments certified 52-week better program as directed by the PO authorize the counselor to provide progress reports to the PO when requested. According to the complainant's PO's contact notes, the complainant was informed that the rehabilitation program he was assigned to undergo was taking precautions to quarantine new intakes and all programs were abiding by the imposed state and federal regulations. PO 1 reminded the complainant that she could not change his case plan, that any change to his plan was not to be altered by her. The complainant's case plan was determined via a substance abuse assessment. According to a SDCPD Department Information Source, probationers were ordered by the Court to participate with a Residential Drug Treatment Program (RTP) during the Coronavirus Pandemic. If a client was required to participate in an RTP (either by the Court or as determined by the ASAM Substance Abuse Assessment), Probation directed the probationer to comply with this requirement. Local RTP's remained open and all programs-imposed procedures (per CDC guidelines and complied with the Governor's Orders) to prevent the spread of Coronavirus during the pandemic. The terms of the complainant's probation were not dictated by PO 1. As a probation officer, PO 1 was responsible for supervising and disciplining the complainant who was to complete a probation program as one of the conditions of his sentencing. PO 1's duties included recommending rehabilitation programs, conducting drug tests, and monitoring the complainant's location. The complainant's case plan, which was determined through the courts, required him to maintain his mental health and to enroll, participate, and complete a residential drug treatment program. The evidence showed that the alleged act did occur, and it was lawful, justified, and proper.

2. Discrimination/Other - PO 1 treated the complainant "unfairly."

Board Finding: Unfounded

Rationale: In the complainant's written statement, he reported, *"I have also heard from reliable sources that most probationers are allowed to stay at home during this crisis. I believe that my physical health should be first priority along with the safety of others and I feel like my health is not being made a first priority just because I am on probation. My other concern here is that she is not treating me fairly. I called The fellowship center and they said most probationers are allowed to stay home during the pandemic. Why is my po policy so drastically different from everyone else? Is my safety not same as other probationers? She also says all rehabs are in session again not true. I think I deserve to be treated fairly. I also have uneasy feeling she might be harder on me. All po are suppose help there probationers pass probation. I do think I should be given a chance to stay with my family during this pandemic before being punished and moved to riskier situation. I have had issues with inpatient in past but I think those issues are irrelevant to the situation. Far as I know stay at home order is still active and will be for a while. Why put me in unnecessary risk? Staying at home is safest option for me and everyone else.* According to the complainant's PO's contact notes, PO 1 inquired about the complainant's health, recommended he seek medical attention, and routinely requested updates on his medical concerns and treatment. The evidence indicated that PO 1 was concerned and prioritized the complainant's mental and physical health during the course of his probation. According to the San Diego Probation Department's Policy and Procedures Manual, Policy 400 was adopted to ensure officers utilize Evidence Based Practices (EBP) for Community Corrections, the Department's Supervision Practice Model, and a balanced approach to monitor offenders in the community. Probationers are assessed using EBP for Community Corrections; approaches and interventions that have been scientifically tested in controlled studies and proven effective with at least one offender subgroup. The complainant was assessed and was determined to be a high-risk re-offender.

The complainant was supervised on high-risk supervision due to the Ontario Domestic Assault Risk Assessment, which determined he was high risk for domestic violence recidivism. The case plan required the complainant to maintain his mental health and participate in residential drug treatment programs. The complainant was non-compliant with the terms of his probation. Coupled with the complainant's high-risk status, PO 1 determined that the best course of his rehabilitation was to for him to abide by the terms of his probation. The evidence showed PO 1 treated the high-risk complainant/offender in compliance with departmental policy. The evidence showed that PO 1 did not treat the complainant "unfairly."

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## **20-056**

1. Excessive Force – Deputy 1 used force when he arrested the complainant.

### Board Finding: Action Justified

Rationale: In the complainant's written statement, she reported, "*I was basically wanting to see about the damages that was caused which caused me to lose my teeth from him. I'm just traumatized by everything that just happened that happened at night... the abuse that he was causing me... with using all that fours [force] now causing me to lose my teeth I have sharp pains in my neck.*" The complainant was the suspect in a criminal case. Upon locating the complainant, who had fled the scene, Deputy 1 attempted to detain the complainant. The complainant resisted Deputy 1's detention, and Deputy 1 used force to subdue her and arrest her. According to California case law, regarding duty to stop and use of force to stop a suspect, a peace officer has the legal authority to detain someone to investigate reasonable suspicion or to issue a "cite and release" citation. In both situations, the suspect has an obligation to stop and has "no right to resist" a lawful detention. If a suspect does not stop, they have violated Penal Code section 148 by obstructing or delaying an officer in the performance of their duties and physical force may be used to make them stop. According to Deputy 1's SDSA Arrest Report, the complainant began violently kicking her legs around and saying, "*Get off of me.*" In order to prevent the complainant from kicking, Deputy 1 placed his right knee on the complainant's legs and applied downward pressure. The pressure he applied to the complainant's legs was effective in allowing Deputy 1 to gain control of the complainant and prevent her from kicking. During the course of this investigation, Deputy 1's Body Worn Camera (BWC) was reviewed. In the BWC recording, the complainant was observed to be noncompliant with Deputy 1 when he attempted to detain her. The complainant was observed to actively resist deputies' detention and her subsequent arrest, resulting in force being used to subdue and restrain her. The force that Deputy 1 used coincided with the wording in his report. The force used was not excessive. Deputy 1 restrained the complainant's legs from kicking and her arms and wrist when placed in handcuffs. The complainant's face was not assaulted. In the BWC recordings, the complainant spoke freely and clearly and did not complain of facial or jaw pain. The complainant's jail medical records were reviewed, as she was transported immediately after the incident. Due to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) that information will not be disclosed, so as to protect sensitive patient health information. According to SDSA 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 SDSA P&P Section 2.49 titled "Use of Force," employees shall not use more force in any situation than is reasonably necessary under the circumstances. Employees shall use force in accordance with law and established Departmental procedures, and report all use of force in writing. According to SDSA P&P Addendum "F" titled "Use of Force Guidelines," the enforcement of law and performance of law enforcement duties may require the use of physical force and physical restraint. Both law and department policy authorize the use of force. It shall be the policy of this Department whenever any Deputy Sheriff, while in the performance of his/her official law enforcement duties, deems it necessary to utilize any degree of physical force, the force used shall only be that which is necessary and objectively reasonable to effect the arrest, prevent escape or overcome resistance. Deputies shall utilize appropriate control techniques or tactics which employ maximum effectiveness with minimum force to effectively terminate or afford the deputy control of the incident. The use of force and subsequent reporting must be in accordance with the procedures set forth in these guidelines. The evidence showed that the alleged act did occur, and it was lawful, justified, and proper.

2. False Reporting - Deputy 1 “fabricated” information in a police report.

Board Finding: Unfounded

Rationale: In the complainant’s written statement, she reported, “*The way that he wrote up that police report which pretty much the victim only had to take Tylenol and ice. The way he wrote that report maybe seem like I physically hurt somebody which I really didn't so he fabricated on the police report...*” In Deputy 1’s SDSA Arrest Report, he articulated the chronology of events based on witness statements; the statements of the complainant’s grandmother and aunt who witnessed the assault. Additionally, Deputy 1 documented the scene in which the alleged assault occurred, documenting the evidence that supported and confirmed the witness statements. The elderly victim in the case, whom the complainant allegedly assaulted, was transported to a hospital where she was medically assessed for being battered and choked. The victim had complaints of soreness to her neck, a sore throat, and spoke to the investigating deputy with “a raspy, very low, soft voice.” The victim was noted to have sustained swelling and bruising to both eyes, bruising to her cheeks, and bruising to her right hand. In conformance with California Penal Code, SDSA Policy and Procedures, and SDSA Patrol Manual Procedures, Deputy 1 filed a Report of Suspected Dependent Adult/Elder and notified Adult Protective Services Elder Abuse, as well as a host of other agencies. In a follow-up investigation, it was noted that the elderly victim complained of severe headache, eye twitch, and bodily pain. She underwent a Domestic Assault Forensic Examination. During the course of this investigation, Deputy 1’s Body Worn Camera (BWC) was reviewed. In the BWC recording, Deputy 1 was witnessed to interview the victim in the case. The victim spoke in a raspy voice and had complaints of pain. According to SDSA P&P Section 2.46 titled “Truthfulness,” when asked by the Sheriff, the Sheriff’s designee or any supervisor, employees will always answer questions, whether orally or in writing, truthfully and to the fullest extent of their knowledge. All written and verbal reports shall be truthful and complete. The evidence showed that Deputy 1 did not “fabricate” information in a police report.

3. Misconduct/Procedure - Deputy 1 failed to take into account the complainant’s disability.

Board Finding: Action Justified

Rationale: In the complainant’s written statement, she reported, “*I also come from a background of abuse from my husband abused as a childhood and causing me to be disable which I was letting him know that I would was disable and wondering why he didn't handed [handled] me a certain type away.*” During the course of this investigation, Deputy 1’s Body Worn Camera (BWC) was reviewed. In the first BWC recording, after the use of force, the complainant was handcuffed and assisted to her feet. Once upright, she again began to kick, thrash, and resist the deputies. In an attempt to restrain the complainant, she was pinned against the exterior building wall. While pinned against the wall and actively resisting the deputies, the complainant informed the deputies that she was disable, but did not elaborate on the time of disability, physical or mental. In the third BWC, after being escorted to jail and as Deputy 1 departed the jail, the complainant again informed Deputy 1 that she was disable. Deputy 1 suggested that if the complainant did not want to engage deputies in a use of force, and to protect herself from injury, he recommended that she comply with their instructions. During the course of this investigation, the complainant submitted documents that confirmed her temporary disability. Due to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) that information will not be disclosed, so as to protect sensitive patient health information. According to SDSA 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. According to SDSA 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 SDSA P&P Section 2.49 titled “Use of Force,” employees shall not use more force in any situation than is reasonably necessary under the circumstances. Employees shall use force in accordance with law and established Departmental procedures, and report all use of force in writing. The evidence showed that the alleged act or conduct did occur, but was lawful, justified and proper.

**NOTE:** Potential misconduct discovered through the course of investigation included: 1) Misconduct/Procedure - Deputy 1 failed to activate his BWC in a timely manner. Failing to activate his BWC upon arrival to the scene resulted in the loss of crucial evidence. According to SDDS P&P Section 6.131 titled, "Body Worn Camera," it is the intent of the Sheriff's Department to record all law enforcement related contacts, and other contacts deemed appropriate. Deputies/community services officers shall activate the BWC to record all law enforcement related contacts. The record mode of the camera should be activated prior to actual contact with a citizen (victim/witness/suspect), or as soon as safely possible, and continue recording until the contact is completed. Deputies should begin recording prior to arriving to an incident if the call has the potential to involve immediate enforcement action upon arrival. The aforementioned violation was not a part of this complaint against the deputy but was discovered during the course of investigation and will be referred back to the SDDS.

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## **20-073**

1. Discrimination/Racial – Deputies 1-4 treated a black male differently from a white male.

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

**Rationale:** The complainant forwarded a video that was taken on June 13, 2020 in Lemon Grove, CA. where a protest took place. "As the protesters came near a park on School Lane and Center Avenue, a young White male spoke out loudly saying 'I hope that they don't come here with this Black Lives Matter shit.' A young Black male spoke to the White male and said 'what do you mean man'. The complainant was told the White male begin calling the Black male the nigger word. This argument started a fight between the 2 of them. I'm told the White male stroke 1st the Black male. Four sheriff officers on bikes came to the scene because they were nearby. I believe they may have been assigned to the protest. Three officers I'm told taser the Black male, held him down on the ground face down on hot pavement and handcuffed him. The Black male begin to tell them he was having difficulty breathing and his heart was hurting. The witnesses said the officers never taser the White male not one time." Deputies on a Special Detail Bike Patrol observed a verbal confrontation that progressed into a physical altercation. Body Worn Camera (BWC) evidence confirmed that deputies intervened, tasered a black male, placed both men prone on the ground for handcuffing, then separated each for questioning. The two parties offered different accounts of what led up to the altercation and witness statements corroborated different aspects of the conflicting statements. Deputies determined the black male was the dominant aggressor based upon their observations and his own admission of holding the victim by his hair and throat. Deputies issued commands for the black man to "let go," but he failed to comply. As it was not heard on BWC audio, which is delayed by 30 seconds, it was unknown whether deputies announced their presence to two combatants who were actively involved in a physical altercation. The black man reported he did not let go because he was unaware deputies were on scene and "thought he was getting jumped." Neither of the men desired prosecution and were released. Fire Department personnel responded to the scene and assessed the black male who refused further medical treatment. The BWC evidence confirmed that the men were treated differently based upon their conduct and the ensuing actions of the deputies were lawful, justified, and proper.

2. Excessive Force/Taser – Deputy 4 "tasered" a black male.

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

**Rationale:** This was a third party complaint with no association to the involved parties. The complainant was told by witnesses at a protest that three deputies tasered a black male multiple times. A Taser or Conducted Energy Device (CED) is an "intermediate" force option that produces 50,000 volts of electricity that cause involuntary muscle contraction and temporarily incapacitates a subject. As a force option, the CED shall only be used as a means of subduing and gaining control where there is an immediate threat justifying an intermediate level of force. Use of the CED shall be restricted for use under circumstances where it is deemed reasonable and necessary to minimize the potential for human injury. Deputies on a special enforcement bike patrol overheard and observed a verbal altercation between two male subjects who were yelling profanities at each other. As deputies approached, the males began to hit one another

with their fists. Six citizens attempted to pull the two fighters apart. Deputies gave verbal commands to “let go, let go” and attempted to separate the males, but the black male pulled the white males hair violently causing them to fall to the ground and would not release his grip on the victims hair and throat. Deputy 4 reported that after observing the dominant aggressor and in an attempt to immediately stop his assaultive behavior toward the victim, he made the decision to deploy his department issued CED. Due to the close proximity, he anticipated deploying both cartridges from the CED to effectively achieve neuromuscular incapacitation (NMI). Deputy 4 deployed the first cartridge toward the suspect’s chest area with successful contact made, but it was unsuccessful in achieving NMI. He simultaneously aimed the CED toward the suspect’s buttocks area as he turned around and deployed the second cartridge from the CED. The second cartridge successfully contacted the suspects right buttocks and achieved NMI. Deputy 4 reported he only deployed one simultaneous, five (5) second electrical cycle with both cartridges from his CED. After the suspect landed on the ground, he was detained in handcuffs. Body Worn Camera (BWC) and the Taser download evidence corroborated the reported information. The evidence showed that the conduct that occurred was within policy.

3. Illegal Search & Seizure – Deputies 2 and 3 restrained a black male.

Board Finding: Action Justified

Rationale: The complainant reported she was told by protest witnesses that deputies held a black male facedown on the hot pavement and handcuffed him. A "seizure" of a person occurs when a peace officer physically applies force or when a person voluntarily submits to a peace officer's authority. A detention may not last longer than is necessary to resolve the circumstances that justified its initiation. Body Worn Camera (BWC) evidence corroborated that both males were placed prone on the ground and handcuffed. The victim was subsequently led away from the scene and placed sitting on a transformer box on the sidewalk. In compliance with policy following a taser application, the suspect was rolled onto his side into a recovery position. When he complained about the hot pavement, he was assisted into a sitting and then standing position. Deputies obtained statements and then released both males. The evidence showed the conduct that occurred was lawful, justified and proper.

4. Misconduct/Procedure – The San Diego Sheriff's Department (SDSD) failed to document/record an excessive force incident on 06-13-20.

Board Finding: Unfounded

Rationale: The complainant reported she called the Lemon Grove Sheriff's Station and spoke to several dispatchers to obtain the names of the officers and the Black male who was tasered. When no one called her back she called again and said there was no report filed nor could she get an event number of the incident. “Nothing to my understanding is on file.” The complainant did not provide identifying information for whom Communication records, Deputy reports and Body Worn Camera (BWC) evidence documented this event that occurred on 06-13-20, in Lemon Grove. The evidence proved that the event was documented/recorded and there was no failure by SDSD.

**NOTE:** Potential misconduct discovered through the course of investigation included: 1) There was insufficient evidence to determine if Deputies 1-4 announced their presence. 2) Deputy 4 neglected to have his Body Worn Camera (BWC) “due to an oversight.” 3) Deputy 1 failed to activate BWC until after a use of force. Policy states that the record mode of the camera should be activated prior to actual contact with a citizen and/or prior to arrival to an incident if the call has the potential to involve immediate enforcement action upon arrival. These issues discovered through the course of CLERB’s investigation were referred back to the Sheriff’s Department for review.

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## **20-076**

1. Misconduct/Procedure – Deputy 4 stopped the complainant’s phone call.

Board Finding: Action Justified

Rationale: The complainant stated, "On March 28<sup>th</sup>, 2020 around 3:15 at George Bailey, I was in the Day room on the phone and the tower Deputy shut the phone off on me. I then raised one hand to the tower shaking it back and forth... After that I went back into the Dorm and push the call box, the deputy said ("awe what happened"), I said you must be a Rookie, he said talk to the Deputy when they walk, so when officer 3 did his next walk I explained that By the tower Doing that and saying that kind of things it makes it unsafe for all of us." An Incident Report dated 03-28-20, documented this event in which the complainant failed to comply with Inmate Rules and Regulations to lockdown when dayroom time ended. When Deputy 4 turned off the module phone(s) the complainant threatened him and later complained to Deputy 3. SDS DSB P&P Section O.3 titled, Inmate Rules and Regulations, states in part, "Inmates shall obey staff instructions, and shall not threaten, assault, or attempt to intimidate any other inmate or any member of the Jail Staff." The evidence showed that the alleged conduct did occur and was lawful, justified and proper.

2. Misconduct/Discourtesy – Deputy 4 "mocked" the complainant.

Board Finding: Not Sustained

Rationale: The complainant stated, "...I then raised one hand to the tower shaking it back and forth, after that I went back into the Dorm and push the call box, the deputy said ("awe what happened")." SDS DSB P&P Section 2.22 titled, Courtesy, states, "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." There was no available audio of the verbal exchanges between the complainant and Deputy 4. Additionally, there were no independent witness statements to corroborate the complainant's allegation. Absent audio and/or any independent witness statements, the evidence was insufficient to prove or disprove the allegation.

3. Misconduct/Intimidation – Deputies 2 and 3 threatened the complainant.

Board Finding: Not Sustained

Rationale: The complainant stated, "...after dinner deputies 2 and 3 walk in and say "come with us to the Rec Yard I can finish eating. He said no get of your bunk or we will take you off your bunk. "...2 says your going to the hole, I say no I want to speak with a sergent he said when you get their you can, I said I'm not going till I speak to a sergent, he said "that's what I want to hear" stand up and cuff up..." SDS DSB P&P Section 2.48 titled, Treatment of Persons in Custody, states, "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." There was no available audio of the verbal exchanges between the complainant and Deputies 2 and 3. Additionally, there were no independent witness statements to corroborate the complainant's allegation. Absent audio and/or any independent witness statements, the evidence was insufficient to prove or disprove the allegation.

4. Excessive Force – Deputies 2 and 3 handcuffed the complainant.

Board Finding: Action Justified

Rationale: The complainant stated, "I said I need two pairs of cuffs I can't fit into one, I put my shoes in front of me stand up and put my hands in the air 2 grabs my right wrist and puts one hand cuff on turns me around with 3 on my left arm the trys and force my arms into one set of cuffs... I put Both my arms under my stomach... they Forced one set of handcuffs on me." SDS DSB P&P Section I.89 titled, Use of Force, states in part, "During the course of their official duties, Detention Services Bureau personnel, may use physical force to the extent that is necessary and objectively reasonable to effect an arrest, prevent escape, overcome resistance, and maintain or restore order. Personnel shall use the Department approved techniques, equipment and tactics in controlling the inmate or incident." Deputy 2's Use of Force Report documented the complainant's refusal to place his hands behind his back. When Deputies 2 and 3 attempted to get the complainant's compliance and secure him in cuffs, the complainant stated, "you're not putting me in handcuffs," and violently pulled his right arm away, which still had an unsecured handcuff attached to it." Jail surveillance video captured the incident. The evidence was consistent with, and corroborated deputy reports. The evidence showed that the alleged conduct by Deputies 2 and 3 did happen and was lawful, justified and proper.

5. Excessive Force – Deputy 3 “choked” the complainant.

Board Finding: Unfounded

Rationale: The complainant stated, “...they continue to Force one cuff deputy 3 puts his Finger on my nose, the trys to choke me by rear naked head lock.” The complainant identified “deputy 3” as the deputy who “choked” him, however the evidence identified Deputy 2. The evidence showed the alleged conduct against Deputy 3 did not occur.

6. Excessive Force – Deputy 2 “choked” the complainant.

Board Finding: Action Justified

Rationale: The complainant stated, “...they continue to Force one cuff deputy 3 puts his Finger on my nose, the trys to choke me by rear naked head lock.” Video surveillance captured the incident and showed the complainant moving around, attempting to prevent the deputies from putting handcuffs on him. In his Use of Force Report, Deputy 2 documented, “Knowing that he could use the handcuff as a weapon and to gain control, I encircled the complainant’s neck with my left arm and pulled him onto the ground.” SDSL Addendum Section F titled, Use of Force Guidelines, states in part, “Deputies shall not lose their right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or overcome resistance (per 835(a) P.C.). Deputies shall utilize appropriate control techniques or tactics which employ maximum effectiveness with minimum force to effectively terminate or afford the deputy control of the incident. The use of force and subsequent reporting must be in accordance with the procedures set forth in these guidelines. The evidence reviewed on the jail surveillance video showed that Deputy 2 encircled the complainant’s neck and immediately took him to the ground. Video showed that once on the ground, the complainant thrashed and bucked his body and continued to resist. The evidence showed the alleged act or conduct did occur and was lawful, justified and proper.

7. Excessive Force – Deputy 3 “slammed” the complainant to the ground.

Board Finding: Unfounded

Rationale: The complainant stated, “...he then slams me to the ground I put Both my arms under my stomach.” The complainant identified “deputy 3” as the deputy who “slammed” him to the ground, however the evidence identified Deputy 2. The evidence showed the alleged conduct against Deputy 3 did not occur.

8. Excessive Force – Deputy 2 “slammed” the complainant to the ground.

Board Finding: Action Justified

Rationale: The complainant stated, “...he then slams me to the ground I put Both my arms under my stomach.” The complainant admits he was not going to comply with the order to cuff up. See Rationale #6.

9. Excessive Force – Deputy 2 “knead and punched” the complainant’s face.

Board Finding: Action Justified

Rationale: The complainant stated, “...he then slams me to the ground I put Both my arms under my stomach and officer 3 is holding me down while 2 is kneeing and punching me in the face.” SDSL DSB P&P Section 1.89, states in part, “If the employee determines that the use of force is necessary, he/she shall use only that force which is necessary and objectively reasonable for the situation. Force shall never be used as a form of punishment or discipline. In all circumstances the force used must be consistent with Addendum F.” According to Deputy 2’s Use of Force Report, and as evidenced in the jail surveillance video, the complainant continued to fight by kicking his legs and thrashing his body around. Deputy 2 documented the following in his Use of Force Report, “The purpose of my strikes was to overcome the complainant’s resistance and quickly neutralize the immediate threat to my partners and myself. These strikes proved effective allowing Deputy 3 to pull his left arm behind his back while I pulled his right arm behind his back. Once both of his arms were placed behind his back I was able to secure them in

handcuffs.” The jail surveillance video corroborated the documentation of the incident. The evidence showed the alleged conduct did occur and was lawful, justified and proper.

10. Excessive Force – Deputy 1 shackled the complainant’s legs.

Board Finding: Action Justified

Rationale: The complainant stated, “...they Forced one set of handcuffs on me, and officer 1 putt shackles on my legs.” According to his Use of Force Report, Deputy 1 heard yelling in the House 2 Recreation Yard. He went to the recreation yard to provide security for Deputies 2 and 3. Deputy 1 stated, “While attempting to secure the complainant into handcuffs a use of force ensued and Deputies 2 and 3 took the complainant to the ground. Once the complainant was lying face down on the ground, I grabbed the complainant’s ankles to prevent him from kicking me or anyone else. Once he was secured in handcuffs, I applied the leg chains to his ankles. The evidence showed the alleged conduct did occur and was lawful, justified and proper.

11. Excessive Force – Deputy 2 placed a spit sock on the complainant.

Board Finding: Action Justified

Rationale: The complainant stated, “...they then put me on a gurney and put a spit mask on me cause my face was poaring Blood.” According to his Use of Force Report, Deputy 2 documented that the spit sock was placed on the complainant for precautionary reasons, to protect deputies, due to the fact that the complainant was bleeding from his nose and yelling, which was causing blood and spit to spray. Deputy 2 recorded that the spit sock was on the complainant for approximately 10 minutes and was utilized to avoid blood contamination. SDSD Addendum Section F, Use of Force Guidelines – Spit Sock, states in part, “When placed over a subject’s head and face, neither vision nor breathing is impaired; however, saliva will not penetrate the material.” The evidence showed the alleged conduct did occur and was lawful, justified and proper.

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**20-093**

1. Misconduct/Procedure – Deputy 1 failed to provide his name and badge number to the complainant.

Board Finding: Not Sustained

Rationale: The complainant reported that Deputy 1 failed to provide his badge number and responded, “Why do you need my badge number?” Sheriff’s Policy 2.20 Identification, mandates that while on duty, all employees shall furnish their first and last name and ARJIS number to any person requesting that information, except when the withholding of such information is necessary for the performance of police duties. According to Sheriff’s records and surveillance video, Deputy 1, a Classification Deputy, conducted a weekly Administration Segregation review with the complainant on 08-30-20. Deputy 1 also provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. Deputy statements are protected by the Peace Officer Bill of Rights and cannot be publicly disclosed. Due to the absence of an audio-recording of the conversation between Deputy 1 and the complainant, there is insufficient evidence to prove/disprove the allegation.

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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.