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# County of San Diego

## CITIZENS' LAW ENFORCEMENT REVIEW BOARD

555 W BEECH STREET, SUITE 220, SAN DIEGO, CA 92101-2938  
TELEPHONE: (619) 238-6776 FAX: (619) 238-6775  
www.sdcounty.ca.gov/clerb

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its September 14, 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).

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 (14)

### ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

#### 20-057

1. Misconduct/Procedure – Deputy 1 failed to serve the complainant's Restraining Order.

Board Finding: Action Justified

Rationale: The complainant filed a Temporary Restraining Order (TRO) against other residents within her apartment complex and had requested that a Sheriff's deputy serve the other parties. In the complainant's written statement, she alleged that Deputy 1 failed to serve the restrained party. The complainant stated, "...when came she walked up and down hallway. Like she was looking for someone, then she walked up to Stephanie and other female states I am at it again looking for people who does live here. I was coming out of my unit [when] I noticed a reddish brown haired sheriff deputy serving Stephanie C. Asking her for her ID and spelling of her name. The restraining order was served on Stephanie C and her daughter [for] weapon charges with [a] friend. Restraining order was approved as served." Deputy 1's Body Worn

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Camera recording was viewed. Deputy 1 responded to the residence and addressed the occupants. Deputy 1 asked for the restrained party by the name listed on the TRO documents; however, she learned that the names on the documents were incorrect. Deputy 1 advised that she would not relinquish the court documents to the residents due to the difference in the restraining party's name. The evidence indicated that the complainant failed to provide correct names or correct addresses for the parties that were to be served with the TRO. The information that the complainant provided to the courts was inaccurate. The evidence indicated that Deputy 1 attempted to serve the complainant's TRO; however, the information provided by the complainant was inaccurate and thus Deputy 1 was unable to complete the service. As such, the evidence showed that the alleged act or conduct did occur, and it was lawful, justified, and proper.

2. Misconduct/Procedure – Deputy 1 informed another how to lawfully violate a Restraining Order.

Board Finding: Unfounded

Rationale: The complainant filed a TRO against other residents within her apartment complex and had requested that a Sheriff's deputy serve the other parties. The complainant alleged that while serving one of the parties, Deputy 1 informed that other party on how to lawfully violate the TRO. In the complainant's written statement, she reported, *"She exited out of the building. Two females sit outside asking questions. About what you can and can't do be a person of interest."* Deputy 1's Body Worn Camera recording was viewed. Deputy 1 was observed to address a female resident of an apartment that she attempted to serve the TRO, filed by the complainant. After learning of the incorrect identification of the recipient, Deputy 1 informed a female that she would not serve her the court documents, as the female's name was different than the name listed on the documents. Deputy 1 further acknowledged that she suspected the female was the correct recipient of the court documents; however, due to the different name, she would not complete service of the service. Additionally, Deputy 1 advised the female that she would not inform the complainant of her correct name. Deputy 1 informed the female that the courts would notify the complainant that no service was made, and that the complainant may make another attempt to have the TRO served. The evidence showed that the alleged act or conduct did not occur.

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## **20-063**

1. Death Investigation/In-Custody Suicide – Joseph Earl Morton hanged himself by the neck in his cell at the Vista Detention Facility (VDF) on 05-17-20.

Board Finding: Not Sustained

Rationale: On 05-11-20, Joseph Earl Morton was arrested and booked into San Diego Sheriff Department (SDSD) custody at the Vista Detention Facility (VDF). At the time of his arrest, Morton made suicidal statements to the arresting deputies. Upon his booking into custody, arresting deputies alerted jail medical staff and intake deputies of the statements Morton had made. Morton reported, during the booking process, that he had been released the day prior from a psychiatric hospital, after being placed on a 5150 hold, for a suicide attempt. California Welfare and Institutions Code Section (WIC§) 5150 titled, In-custody 72-hour Treatment and Evaluation for Mentally Disordered Person, states in part, "When a person, as a result of a mental health disorder, is a danger to himself or herself, a peace officer, professional person in charge of a facility designated by the county for evaluation and treatment, designated members of a mobile crisis team, or professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention." During his intake screening, Morton was evaluated by a Qualified Mental Health Practitioner (QMHP). The QMHP determined Morton should be placed in the Enhanced Observation Housing (EOH) Unit, however, as low risk, based on, "He is not actively suicidal at the present time and does not have any plans." SDSD DSB P&P Section J.5 titled, Inmate Suicide Prevention Practices & Inmate Safety Program, states in part, "Suicide risk assessment for the Inmate Safety Program (ISP) will be conducted by the facility gatekeeper. The gatekeeper is a Qualified Mental Health Provider (QMHP), or assigned designee in their absence." Additionally, DSB P&P Section J.4 titled, Enhanced Observation Housing, states in part, "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 and who do not require placement in a safety cell, shall be temporarily housed in Enhanced Observation Housing for the purpose of receiving closer observation and assessment for permanent housing. Within 24 hours of placement into EOH, and every 24 hours thereafter, an inmate shall have a mental health consultation/evaluation by a QMHP to determine the inmate's need for mental health services and their suitability for continued retention in the ISP." On 05-12-20, Morton was re-evaluated by a QMHP and cleared from EOH to the Jail Population Management Unit (JPMU), based on, "Inmate denied suicidal ideation. He has hopefulness about future, has plans to return to rehab and desires to resume psych meds." SDCS CLERB liaison provided the following information, the Enhanced Observation Housing (EOH) Unit has a "High" and a "Low" designation level. The QMHP conducts assessments to determine which level is appropriate for the inmate. Inmates designated "High" require more assessments by a QMHP than inmates with a "Low" designation. Inmates must have two consecutive "Low" level assessments prior to being cleared to mainline housing. Morton had two consecutive "Low" level QMHP assessments prior to release from EOH to mainline housing. CLERB has no jurisdiction over QMHP personnel or their decisions. The Out Patient Step Down (OPSD) Unit is not the same as EOH and the criteria for placement into the OPSD Unit is not the same as the EOH. OPSD is available to all inmates, however, only offered at San Diego Central Jail (SDCJ) and Las Colinas Detention and Reentry Facility (LCDRF). Inmates assessed by a QMHP and meeting the criteria for OPSD placement are transferred to SDCJ or LCDRF. Morton was not placed in the OPSD unit as he did not meet the criteria. Morton was placed into a single occupancy cell for a seven-day mandatory quarantine, per COVID-19 protocol. After his release from EOH, jail records produced a documented incident, the same day, where Morton stated to a deputy that he was suicidal. Morton was escorted to the QMHP office for evaluation for possible placement back into EOH. Upon conclusion of the evaluation, the QMHP did not recommend placement back into EOH, based on Morton's statements that he was "not suicidal," and "that what he really wanted was to make some phone calls." Jail phone log records documented that Morton made 43 phone calls between 05-11-20 and 05-17-20. 32 of those calls were to bail bond companies. The remaining calls were to his mother and girlfriend. Morton stated, to both his mother and girlfriend his intentions to "end it all," if they did not bail him out. Jail records did not produce any evidence that Morton expressed any concerns about his mental or physical well-being to any member of the SDCS, sworn or professional, after his release from the EOH unit. On 05-17-20, SDCS records documented, at 6:55pm, as the last time Morton is seen on jail surveillance video, alive, at his cell window. Review of the jail surveillance confirmed this. SDCS DSB P&P Section I.64 titled, Safety Checks, requires deputies to look for obvious signs of medical distress, trauma or criminal activity with each inmate, every 60 minutes. SDCS records documented required safety checks were conducted at 7:40pm and 8:36pm. The 8:36pm safety check, although recorded on the jail Area Activity Summary Report, was unable to be confirmed through jail surveillance. During the course of the investigation, it was discovered that the video surveillance system was sporadically malfunctioning, which caused time lapses in the recorded video footage. The deputy that conducted the safety check, approximately one hour before Morton was discovered unresponsive, was not captured on video due to a lapse in recording. The deputy reported there was nothing obstructing his view into Morton's cell, he observed Morton and did not see anything concerning. At approximately 9:40pm deputies discovered Morton, in his cell, unresponsive, with a blanket wrapped around his neck, tied to the bunk above his. Deputies immediately cut the blanket, began CPR, summoned jail medical staff and activated 911. Despite attempts at resuscitation by deputies, jail medical staff and paramedics, Morton failed to respond and his death was pronounced. The cause of death was due to hanging and the manner of death was suicide. Due to the video surveillance malfunctioning, CLERB was unable to confirm that the safety check conducted approximately one hour prior to Morton being found unresponsive, was completed as documented. SDCS sworn staff are required to check the video surveillance system at the beginning of each shift, however, there is no requirement that those checks be logged. Therefore, the evidence was insufficient to either prove or disprove an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

#### **PROPOSED POLICY RECOMMENDATION:**

1. It is recommended that the San Diego Sheriff Department update its Detention Services Bureau (DSB) P&P Section I.19 Security Video Systems, to mandate that sworn staff document and keep a record of video system checks.

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**20-065**

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

**Board Finding:** Unfounded

**Rationale:** The complainant alleged he was attacked by another inmate who was a convicted felon (his cellmate) and he was not protected by deputies. According to a Crime Report dated 02-10-20, the complainant stabbed his cellmate two times in the face with a pencil. The cellmate overpowered the complainant, pushed him to the floor and punched the complainant multiple times until he was unconscious. The cellmate was medically treated at a hospital with five sutures for his nose, liquid adhesive above his ear, and for cuts to the inside of his mouth and redness to his stomach. The complainant was also taken to a hospital for an evaluation due to loss of consciousness and observation of a suspected concussion. A review of Sheriff's documentation confirmed the complainant and his cellmate were both classified as Level 5-Maximum; defined as having a combination of two of the following: current assaultive charges, prior assaultive history, are deemed an institutional behavior problem or an escape risk, per Detentions Policy R.3, Inmate Classification Code–Descriptor Definitions. Per the Jail Management Information System, (JIMS) there was no prohibition for the two inmates being housed together. While deputies were inside the module, a deputy was alerted to this incident by screams coming from inside the cell. He responded, gave commands to “stop fighting,” called for back-up, and subsequently escorted the complainant by gurney to Medical for evaluation; all in compliance with detention policies. The Detentions Investigations Unit (DIU) conducted an investigation and determined the complainant was the aggressor and forwarded the case to the District Attorney's Office for evaluation of 245(A)(1), Assault with a Deadly Weapon. The evidence showed that deputies did not fail to protect the complainant and the alleged act or conduct did not occur.

2. Misconduct/Procedure – Unidentified deputies “allowed” the complainant's property to be “stolen.”

**Board Finding:** Not Sustained

**Rationale:** The complainant reported, “County of San Diego deputies allowed his property to be stolen by the same person that attacked him on 02-11-20 [sic].” On 02-10-20, the complainant was involved in a physical altercation with his cellmate and was taken to a hospital for observation until the following day. Upon return to the detention facility on 02-11-20, he was housed in a different module/cell. Detentions Policy Q.63, Lost Inmate Money or Property states a Watch Commander must be notified whenever an inmate claims to be missing personal or module property; if the claim is not immediately resolved, a crime report must be completed. A review of Sheriff's records did not locate any documentation pertaining to this issue and the complainant failed to identify the missing items and/or involved personnel. There was insufficient evidence to investigate the allegation further.

3. Misconduct/Procedure – Deputies 1 and 2 placed the complainant in “the hole.”

**Board Finding:** Action Justified

**Rationale:** The complainant stated he was taken to medical and then the hospital for his injuries and when released, he was taken to the “hole.” Following medical intervention, the complainant was placed into Administrative Segregation pending a hearing/investigation for a rule violation/criminal act, and in accordance with Detentions Policy J.3, Segregation: Definition & Use. During a subsequent hearing, the complainant admitted assaulting his cellmate, but said it was done in self-defense. Due to the severity of the fight and delay in facility operations, 10 days of disciplinary separation was recommended. Detentions Policy O.1. Disciplinary Action, states that discipline should be progressive and commensurate with the seriousness of the violation and the behavioral history of the inmate. The evidence showed that the conduct that occurred was lawful, justified and proper.

4. Misconduct/Procedure – County of San Diego policies “violated” the complainant's constitutional rights.

Board Finding: Unfounded

Rationale: The complainant reported he is a pre-trial detainee awaiting trial. "My California Constitutional Rights in Art 1§§1, 3, 7(a), 13 and 17 were violated by the policies adopted by County of San Diego on 02-11-20 ongoing. The complainant is awaiting release from jail." The Articles delineated by the complainant include having the right(s) to: §1-be free/independent and have inalienable rights, §3-instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good, §7(a)-not to be deprived of life, liberty, or property without due process of law, §13-be secure in their persons, houses, papers, and effects against unreasonable seizures and searches, and §17-no infliction of cruel and unusual punishment or excessive fines imposed. The complainant was arrested by warrant on 09-20-19 and extradited to San Diego to await trial for murder. According to Court documents, the court denied bail and found the defendant to be a danger to public safety and a flight risk. While incarcerated, the complainant was charged with another crime related to the events discussed in rationales 1-3. The SDS D detention policies applied were lawful, justified and proper. The evidence showed the complainant's rights were not violated and the allegation did not occur.

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**20-070**

1. Misconduct/Procedure - Deputies 1 and 2 failed to respond to the complainant's call of service in a timely fashion.

Board Finding: Not Sustained

Rationale: According to the complainant, he summoned San Diego Sheriff's Department (SDSD) Sheriff's deputies to his apartment complex regarding a suspected case of elder abuse. In the complainant's written statement, he alleged that the responding Deputies 1 and 2 failed to respond to his call of service in a timely fashion. The complaint reported, "*I left and called the Sheriff. They arrived an hour later. On another occasion, "Subsequently on May 18, I called the sheriffs on him for a noise complaint which has been happening in the form of dropping heavy objects on the [floor] ceiling, loud obnoxious scratching noises and pounding football as well. The sheriff arrived an hour +45 minutes later.*" During the course of this investigation, CLERB sent the SDSD a request for records for all SDSD Communication Center reports, including the SDSD Background Event Chronology Event record, which would illustrate the date and time when a deputy was dispatched to a call, and when the deputy arrived on scene. In response to CLERB's request, the SDSD advised that pursuant to California Welfare & Institute (W&I) Code Sections 15633 and 15633.5, the SDSD cannot and would not release the documents for this investigation. According to California W&I Code Sections 15633 and 15633.5, reports of suspected abuse of an elder or dependent adult, and information contained therein, will not be disclosed. Reports of elder abuse shall be confidential and may not be disclosed except to certain agencies/entities as detailed in the code section. This section does not allow disclosure of any reports or records relevant to the reports of abuse of an elder or dependent adult if the disclosure would be prohibited by any other provisions of state or federal law. Information relevant to the incident of elder or dependent adult abuse shall only be given to an investigator from an adult protective services agency, a local law enforcement agency, the office of the district attorney, the office of the public guardian, the probate court, the bureau, the Department of Business Oversight, or an investigator of the Department of Consumer Affairs, Division of Investigation who is investigating a known or suspected case of elder or dependent adult abuse. Neither the complainant, nor CLERB, were identified as persons/entities who were permitted to obtain the records. For these reasons, the SDSD declined to disclose records or evidence that were pertinent to investigating the complaint. There was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Procedure – Deputies 1 and/or 2 omitted information in his report.

Board Finding: Not Sustained

Rationale: In the complainant's written statement, he reported that Deputies 1 and/or 2 failed to document his information in their reports. In his written statement, the complainant stated, "*I intercepted the two officers, gave them my name, driver license and a description of the male who threaten me. "John Doe" is 5'10", 200 pounds, black hair, black eyes, white male with a black stubble shadow of a beard. He drives a*

four-door, gray hybrid car with the license plate number [XXXXX]. He lives directly upstairs [from my residence]. I followed up with the sheriffs to get a copy of the case report so that I could file a restraining order and my property management could start signal processing against the neighbor. The case report copy was denied to me because my name is not on the report. How could it not be on the report when I gave the officer, identification and neighbor description to the deputies? They failed in doing their job by not taking down the facts.” The complainant was the reporting party in a call for service made to the SDSD. During the course of this investigation, CLERB sent the SDSD a request for the incident reports written by Deputies 1 and/or 2 and any audio and/or video recordings, to include Body Worn Camera (BWC) footage that pertained to the incident that the complainant was involved in on 05-04-20. CLERB’s request for records/evidence were declined, pursuant to California W&I Code Sections 15633 and 15633.5. CLERB’s liaison with the SDSD explained, via email, that Deputies 1 and 2 did take a report and they contacted all persons required. The deputies received a request for a welfare check and conducted the welfare check as requested. The welfare check was documented in a department case report. There was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Truthfulness – Deputies 1 and/or 2 and/or unidentified deputies provided false information to the complainant

Board Finding: Not Sustained

Rationale: In the complainant’s written statement, he documented that Deputies 1, 2, and other unidentified deputies gave him false information. The complainant reported, *“In all my attempts to push this case forward I have been told misinformation by five different sheriff representatives about how to approach the situation.”* According to the complainant’s written statement, he wanted documentation of his calls of service to the SDSD to support his filing of a restraining order against his neighbor and so his property management could start civil processing against the neighbor. However, the SDSD declined his request for evidence and reports. CLERB’s liaison with the SDSD confirmed, via email, that the complainant was not given copies of the investigation, as he had requested, as *“the complainant was not part of the investigation.”* CLERB’s liaison explained that the complainant fell under the same provision of California W&I Code Sections 15633 and 15633.5, *“as he is not part of the case report.”* There was insufficient evidence to either prove or disprove the allegation that the complainant was provided misinformation.

4. Discrimination – Unidentified members of the Department discriminated against the complainant.

Board Finding: Unfounded

Rationale: According to the complainant’s written statement, he felt the SDSD discriminated against him because of his appearance and his economic status. The complainant stated, *“I believe I am being discriminated against by the Sheriff’s Department because they can tell by the looks of this apartment complex but I do not have the funds at the time to get an attorney. As well, I believe I am being discriminated against because I have long hair.”* According to California Welfare & Institute (W&I) Code Sections 15633 and 15633.5, any evidence, reports, or documentation that fall under this section shall be confidential and may be disclosed only as provided to those persons or entities as described in the subdivision. Any violation of the confidentiality required by this chapter is a misdemeanor punishable by not more than six months in the county jail, by a fine of five hundred dollars (\$500), or by both that fine and imprisonment. The complainant was not identified as a person as provided in the subdivision section. For this reason, he was not provided with the evidence he sought from the SDSD. The evidence shows that the alleged act or conduct did not occur.

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## 20-072

1. Death Investigation/Drug Related – Joseph Nathanielle Jimenez was behaving erratically on a public street when contacted by Deputy 2 who utilized force to effect an arrest. Jimenez was restrained and during paramedic transport to a hospital, he went into medical distress. Life saving measures were taken, but Jimenez remained unresponsive and was on life support until he died on 02-24-20.

Board Finding: Action Justified

Rationale: On 02-18-20, Deputy 2 responded to a radio call of a subject running through the streets who appeared to be under the influence of methamphetamine. Several witnesses reported that Jimenez was in danger of passing motorists. Deputy 2 instructed Jimenez to lay on his stomach, and he complied. Jimenez was rigid, clenched his teeth, made unintelligible noises, and was sweating profusely. The deputy attempted to guide Jimenez' hands behind his back while giving verbal commands but Jimenez started to kick his feet. Deputy 2 felt he was losing control of Jimenez who had "superhuman strength and a thousand-yard stare." Deputy 2 utilized a carotid restraint to render Jimenez unconscious and gain control while awaiting cover deputies. The application of the carotid for a subject who was mentally ill or exhibiting excited delirium was permissible and allowed the deputy to gain control and handcuff Jimenez. Additional deputies arrived and a Cordcuff restraint was utilized to stop Jimenez from kicking the first responders. Paramedics also applied a Spit Sock to stop the transmission of any fluids. Jimenez was placed on a gurney, handcuffed in the prone position, with Cordcuff restraint and a Spit Sock for transport. Enroute to a hospital, Jimenez stopped breathing and oxygen was administered. Paramedics started chest compressions upon arrival to the hospital and medical care was turned over to hospital staff. Jimenez's condition worsened until he was pronounced dead on 02-24-20. An autopsy was conducted and determined the cause of death was anoxic-ischemic encephalopathy due to resuscitated cardiopulmonary arrest due to acute methamphetamine intoxication. The manner of death was determined to be an accident. The evidence confirmed that neither the carotid restraint nor the prone positioning caused or contributed to the death of Jimenez. When this incident occurred, the carotid restraint was included as a permissible option in the SDSD Use of Force Guidelines; as of June of 2020 its use has been prohibited. The application of the carotid restraint for a subject who was mentally ill or exhibiting excited delirium was permissible and allowed Deputy 2 to gain control and handcuff Jimenez. Deputy 2 also provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding. After review of all known evidence there were no policy violations and/or misconduct found on behalf of the SDSD, and the conduct that occurred was lawful, justified and proper.

2. Excessive Force – Deputies 1, 2 and 3 utilized force to arrest Joseph Jimenez.

Board Finding: Action Justified

Rationale: The complainant reported, "Based on information and belief, on or around February 17, 2020, Joseph Jimenez had an interaction with San Diego County Sheriff's Department with deputies whose identities are currently unknown, while he was arrested at or near the City of Vista, California. During this interaction with deputies, responding deputies used excessive force, battered, falsely imprisoned, knowingly, negligently, and/or recklessly failed to care for his impaired condition, and failed to provide sufficient and/or emergency medical treatment to Mr. Jimenez while restraining him, such that he sustained substantial injuries. After and due to the misconduct of deputies, and while detained or arrested by such deputies, and in their custody and care, Mr. Jimenez suffered acute respiratory failure and anoxic encephalopathy, which ultimately led to his death. As a result of San Diego County Sheriff's Department's and its deputies' improper and/or false detention, arrest, and imprisonment of Joseph Jimenez, their failure to exercise due care, their intentional infliction of wounds to Joseph Jimenez' body, their failure to provide sufficient and/or emergency medical care, their deliberate indifference to Joseph Jimenez' medical needs, and their battery or and excessive force on Joseph Jimenez, in violation of law and his civil rights, Mr. Jimenez suffered grievous injuries to his body resulting in his wrongful death." **See Rationale #1.** Deputy 2's use of a carotid restraint to render Jimenez unconscious was permissible, reasonable and necessary to gain control and handcuff Jimenez. Deputies 1 and 3's application of a Cordcuff restraint was reasonable and necessary to cease/subdue Jimenez from kicking. A paramedic placed a mesh sock over Jimenez's head and there was no deputy involvement. Jimenez became combative when an attempt was made to place him into a recovery position. The evidence showed the applications of force were within policy and lawful, justified and proper.

3. False Arrest – Deputies 1, 2 and 3 "falsely imprisoned" Joseph Jimenez.

Board Finding: Action Justified

Rationale: The complainant reported, “Based on information and belief, on or around February 17, 2020, Joseph Jimenez had an interaction with San Diego County Sheriff’s Department with deputies whose identities are currently unknown, while he was arrested at or near the City of Vista, California. During this interaction with deputies, responding deputies used excessive force, battered, falsely imprisoned, knowingly, negligently, and/or recklessly failed to care for his impaired condition, and failed to provide sufficient and/or emergency medical treatment to Mr. Jimenez while restraining him, such that he sustained substantial injuries. After and due to the misconduct of deputies, and while detained or arrested by such deputies, and in their custody and care, Mr. Jimenez suffered acute respiratory failure and anoxic encephalopathy, which ultimately led to his death. As a result of San Diego County Sheriff’s Department’s and its deputies’ improper and/or false detention, arrest, and imprisonment of Joseph Jimenez, their failure to exercise due care, their intentional infliction of wounds to Joseph Jimenez’ body, their failure to provide sufficient and/or emergency medical care, their deliberate indifference to Joseph Jimenez’ medical needs, and their battery or and excessive force on Joseph Jimenez, in violation of law and his civil rights, Mr. Jimenez suffered grievous injuries to his body resulting in his wrongful death.” **See Rationale #1.** SDSD P&P 2.51 Arrest, Search and Seizure states that employees shall not make any arrest, search or seizure, nor conduct any investigation or official Department business, in a manner which they know or ought to know is not in accordance with law and established Department policies and procedures. Jimenez was a danger to himself and or others while under the influence of methamphetamine. He was detained/arrested for Obstruction/Resist Executive Officer, 69 PC and Under the Influence of a Controlled Substance, 11550(A). The evidence showed his arrest was lawful, justified and proper.

4. Misconduct/Procedure – Deputies 1, 2, and/or 3 failed to provide medical treatment to Joseph Jimenez.

Board Finding: Unfounded

Rationale: The complainant reported, “Based on information and belief, on or around February 17, 2020, Joseph Jimenez had an interaction with San Diego County Sheriff’s Department with deputies whose identities are currently unknown, while he was arrested at or near the City of Vista, California. During this interaction with deputies, responding deputies used excessive force, battered, falsely imprisoned, knowingly, negligently, and/or recklessly failed to care for his impaired condition, and failed to provide sufficient and/or emergency medical treatment to Mr. Jimenez while restraining him, such that he sustained substantial injuries. After and due to the misconduct of deputies, and while detained or arrested by such deputies, and in their custody and care, Jimenez suffered acute respiratory failure and anoxic encephalopathy, which ultimately led to his death. As a result of San Diego County Sheriff’s Department’s and its deputies’ improper and/or false detention, arrest, and imprisonment of Joseph Jimenez, their failure to exercise due care, their intentional infliction of wounds to Joseph Jimenez’ body, their failure to provide sufficient and/or emergency medical care, their deliberate indifference to Joseph Jimenez’ medical needs, and their battery or and excessive force on Joseph Jimenez, in violation of law and his civil rights, Mr. Jimenez suffered grievous injuries to his body resulting in his wrongful death.” **See Rationale #1.** After Jimenez was subdued, Deputy 2 requested emergency medical response and attempted to place him into a recovery position but was unable due to Jimenez’s non-compliance. Paramedics responded and assessed Jimenez on scene and then transported Jimenez by ambulance to a hospital where hospital personnel assumed care. The evidence shows that the alleged act or conduct did not occur.

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## **20-080**

1. Misconduct/Procedure – Deputy 2 failed to investigate a call for service made by the complainant.

Board Finding: Unfounded

Rationale: In the complainant’s written statement, she advised, “a Sheriff’s deputy vehicle entered the parking lot where this event was taking place, drove around the parking lot without stopping to speak to the individuals. the 1st Deputy left the scene without talking to anyone or doing anything to enforce the public health officer’s orders.” According to an email from CLERB’s liaison with the SDSD, Deputy 2 was

identified as the deputy who drove through the area on the date and time of the incident. Deputy 1's Body Worn Camera (BWC) was viewed. The recording illustrated the callback that Deputy 1 made to the complainant addressing the allegation that Deputy 2 failed to investigate a call for service made by the complainant. During the callback, the complainant informed Deputy 1 that deputies were requested to respond to the incident location, and that one deputy "did a lap around the parking lot, did not say anything to a crowd of nearly one hundred people." The complainant demanded to know why the deputy did not address the crowd for their lack of social distancing or mask wearing. The complainant advised that the crowd violated the public health order, that the community felt unsafe, and that even though there was "photo and video evidence," the responding deputy did not investigate the call. According to the SDSA Training Bulletin: Enforcement of the General Public Health Orders, dated 06-30-20, individuals were required to follow Governor Newsom's Executive Orders, the Orders of the State Public Health Officer, and the County of San Diego Order of the Health Officer and Emergency Regulations. The San Diego County Public Health Order specified and ordered as follows: All persons are to remain in their homes or at their place of residence, except for employees or customers travelling to and from a reopened or essential business, or essential activity, or to participate in individual or family outdoor activity as allowed by the Order. All public or private events or convenings that bring together more than one person in a single room or single indoor or outdoor space at the same time, are prohibited. Mandatory Face Covering: All persons two years old or older shall have possession of a face covering when they leave their home or place of residence and shall wear the face covering in accordance with the California Department of Public Health Face Covering Guidance as set forth above. According to the Enforcement of Governor's Executive Order and County Public Health Order, all individuals were to follow the Governor's Executive order to stay home. Violations of either order were enforceable under Government Code Section 8665, which provided that any person who violated any of the provisions of the California Emergency Services Act or who refused or willfully neglected to obey any lawful order or regulation promulgated or issued as provided in the Act, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine of not to exceed one thousand dollars (\$1,000) or by imprisonment for not to exceed six months or by both such fine and imprisonment. Per their instruction, when deputies encountered a group that was in violation of an order, deputies were encouraged to use their discretion related to officer safety and their ability to manage the situation. If the group was involved in an unauthorized organized meeting, deputies were advised to attempt to detain and cite the organizer(s) to prevent future violations. The goal was to conduct enforcement that would deter future violations or dampen the public's interest in holding gatherings in violation of the orders. Deputy 1 counseled that if someone exercises their first amendment right, they will be allowed to, that deputies will provide education on the County Health Order, and there will be no enforcement order or citations made. Deputy 1 informed the complainant that he and his lieutenant had previously contacted the event organizer and counseled them on the County's Health Order. If the event organizer and demonstrator failed to abide by the Health Orders, deputies would not enforce the order for the sake of allowing the demonstrators to exercise their first amendment. According to SDSA Policy and Procedure section 2.23 titled, "Request for Assistance," when any person requests assistance or advice, or makes complaints or reports, either by telephone or in person, all pertinent information will be obtained in an official and courteous manner, and will be properly and judiciously acted upon consistent with established Department procedures. According to SDSA Policy and Procedure section 2.30 titled, "Failure to Meet Standards," 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 a lack of knowledge of the application of laws required to be enforced; an unwillingness or inability to perform assigned tasks; or the failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving police attention. According to SDSA Policy and Procedure section 6.31 titled, "Community Oriented Policing & Problem Solving," station/division commanders will be responsible for working with their staff, community and/or other identified "stake holders", to develop the most effective strategies for collaborative efforts in dealing with problems/issues of mutual interest. The evidence indicated that Deputy 2 was dispatched to investigate the call for service made by the complainant. She responded to the scene and was unable to establish the existence of a crime. It was determined that the crowd was authorized to gather; they had previously notified the city of the protest/demonstration, which was within

their first amendment right. For these reasons, the crowd was allowed to congregate. The evidence showed that the alleged act or conduct did not occur.

2. Criminal Conduct – An unidentified deputy failed to stop at a stop sign.

Board Finding: Not Sustained

Rationale: In the complainant's written statement, she alleged, "A 2nd Deputy approached the scene traveling on Riverwalk Drive towards Cuyamaca Street. That deputy did not enter the YMCA parking lot, instead choosing to blow through the stop sign at the corner of Riverwalk and Canopy Park." According to SDDS P&P Section 2.6 titled, "Conformance to Laws," employees shall obey all laws of the United States, of this state, and of local jurisdictions. According to SDDS P&P Section 2.30 titled, "Failure to Meet Standards," 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. According to the Santee Substation's Daily Deputy Deployment Log, 33 deputies were assigned to work the day of the incident. Thirty-three deputies filled the various positions of patrol, traffic, etc. Without any other identifying information, CLERB was unable to identify what deputy may have failed to stop at a stop sign at the corner of Riverwalk and Canopy Park. There was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Procedure – Deputy 1 and unidentified deputies failed to enforce the State's Public Health Officer's order and failed to enforce the County's Ordinance.

Board Finding: Action Justified

Rationale: In the complainant's written statement, she reported, "I asked [Deputy 1] why his deputy did nothing to enforce the Public Health Officer's order to which he responded that there is no enforcement of the order if individuals are exercising their first amendment right to assemble. I disputed this claim to no avail. [Deputy 1] said that his deputies were under instruction to "provide education" at gatherings such as this. that it wasn't necessary because both he and his lieutenant both spoke to the gathering organizer the day prior and they had provided education at that time. [Deputy 1], in his official capacity as a sworn peace officer, refused to protect and serve the community as required, instead choosing to side with a "pro-law-enforcement" crowd that was not only in clear violation of the Public Health Officer's orders, but also the specific individual that was documented on video committing multiple offenses." On 03-04-20, the Governor of the State of California proclaimed a State of Emergency as a result of the threat of COVID-19. The County Health Officer ordered all individuals living in the County to shelter in their place of their residence, except to provide or receive certain essential services, engage in certain essential activities, and work for essential businesses and governmental services (Order No. C-19-03). This health order was issued on evidence of increasing occurrence of COVID-19 within the community, and the need to slow the rate of transmission to protect the most vulnerable and prevent the health care system from being overwhelmed. Violations of Public Health Orders present an immediate threat to the public health and safety and increased the likelihood that the COVID-19 virus would spread throughout the County and overwhelm our health care systems, cause preventable illnesses and deaths, and inflict other significant harms, including economic and social effects, on our community. In an effort to slow the spread of COVID-19, state and local officials followed the advice of public health experts to impose restrictions, such as social distancing and shelter-at-home orders. Violations of either order were enforceable under Government Code Section 8665. Government Code Section 8665 provides that any person who violates any of the provisions of the California Emergency Services Act or who refuses or willfully neglects to obey any lawful order or regulation promulgated or issued as provided in the Act, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine of not to exceed one thousand dollars (\$1,000) or by imprisonment for not to exceed six months or by both such fine and imprisonment. The ordinances gave the county the ability to enforce current local and state health orders. The Department exercised discretion in enforcing the ordinances. According to the SDDS Training Bulletin: Enforcement of the General Public Health Orders, dated 07-14-20, when encountering a group that is in violation of an order, deputies were encouraged to use their discretion related to officer safety and their ability to manage the situation. It was recommended that deputies attempt to detain and cite the

event organizer(s) to prevent future violations. The goal was to conduct enforcement which would deter future violations or dampen the public interest in holding gatherings in violation of the orders. According to SDSA Patrol Procedures Manual, Policy 1 titled, "Use of Discretion," when deputies are faced with a situation where discretion can be exercised, they must evaluate the circumstances, consider the available resources, and rely on their training, Sheriff's Department policies and procedures, statutory law, information-led policing, and supervision in making the appropriate decision. In addition, within each situation, the appropriate decision should be the least restrictive that still accomplishes the intent of the law, complies with the Sheriff's Department policy, and does not compromise the deputies' safety. The Department issued numerous training bulletins, press/media releases, and their 'Blueprint for a Safer Economy' outlines to illustrate their goals. The SDSA reported that their goal of these tactics was to promote public awareness, instead of making custodial arrests. Deputies were encouraged to explain the rules, issue warnings, and engage the community through education. Although some public health orders gave deputies the authority to issue citations, deputies were encouraged to manage the orders through voluntary compliance, education, dialogue, and cooperation, informing the public of social distancing practices rather than enforcement. According to SDSA Policy & Procedure Section 2.30 titled, "Failure to Meet Standards," 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. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

4. Discrimination (Other) – Deputy 1 failed to enforce the law.

Board Finding: Action Justified

Rationale: In the complainant's written statement, she reported, "*I then advised [Deputy 1] that this individual was guilty of false imprisonment and trespassing on private property to which he stated they were not. that they are preventing the movement of community members who wish to leave/enter the community, but [Deputy 1] maintained that he would take no action to stop this criminal behavior. I asked several times for this individual to be cited/arrested for this crime, but [Deputy 1] refused, stating that no actions would be taken against those participating in this (pro-law-enforcement) gathering. I stated to [Deputy 1] that if he would not do something about the false imprisonment that I had documented on video, than to at least come out and cite/remove this individual for trespassing as he was not a member of our private community, was not invited by any community members, and was not conducting business within our community. [Deputy 1] advised me that this individual was not trespassing because the streets within the Riverwalk community were public streets that this individual free to occupy as he wished. I disputed this, advising [Deputy 1] that if that were the case, the speed limits would be set by the city/county and not the HOA, and that the HOA would not be responsible for paying for traffic signs within the community. [Deputy 1] insisted that I was wrong and suggested that I contact the city to discuss my complaint. I advised that I didn't need to contact the city for anything because I have read the CC&Rs of my community and fully understand the private nature of Riverwalk community streets. I even reminded [Deputy 1] that his deputies attended an HOA meeting in summer 2019 to inform the community that they were unable to proactively patrol the community to address trespassers unless the HOA signed an agreement with the Sheriff's department OR a community resident called to report specific instances of trespassing when they were taking place. [Deputy 1] insisted that I was wrong and that the individual was NOT in fact trespassing therefore he would not be cited or removed. Even if [Deputy 1] did not believe the crime amounted to felony false imprisonment as defined under California Penal Code § 236, it definitely amounted to a misdemeanor under California Penal Code § 237, which reads, "(a) False imprisonment is punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If the false imprisonment be effected [affected] by violence, menace, fraud, or deceit, it shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170."* According to California Penal Code Section 236, false imprisonment is defined as the unlawful violation of the personal liberty of another. Meaning that one person restrains, detains, or confines another person without their consent. Five elements of the crime of false imprisonment included: Was the person intentionally restrained, detained, or confined someone, the restraint, detention, or confinement forced the victim to stay or go somewhere, did the victim did not consent, was the victim was harmed, and was the suspects actions a factor in causing the

victim's harm. According to California Penal Code Section 602, trespassing is defined as entering the owner's land or property without permission. The elements of trespass are an unlawful intrusion or invasion upon a property and intent. In review of Deputy 1's BWC, he was witnessed to address the complainant in a telephonic interview. During the interview, Deputy 1 gathered information on the situation to determine if the elements of the two alleged crimes were met. During his interview, the complainant reported that a semi-truck was stopped along the street, blocking the entrance to the community entrance which was a public street within the City of Santee. The street entered into the private community. Upon determining that the elements for the crime of false imprisonment and trespassing were not meant, Deputy 1 advised that he would dispatch a deputy to investigate the incident as a traffic infraction/violation for blocking traffic. Prior to Deputy 1 dispatching a deputy to investigate, the complainant advised that the semitruck was moving away from the community's entrance. As such, a deputy was not dispatched to investigate. According to SDSD Policy and Procedure Section 2.30 titled, "Failure to Meet Standards," 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. According to SDSD Policy and Procedure Section 6.31 titled, "Community Oriented Policing & Problem Solving," station/division commanders will be responsible for working with their staff, community and/or other identified "stake holders", to develop the most effective strategies for collaborative efforts in dealing with problems/issues of mutual interest. The evidence showed that the alleged act or conduct did occur and was lawful, justified, and proper.

5. Discrimination (Other) – Deputy 1 failed to enforce the law.

Board Finding: Action Justified

Rationale: In the complainant's written statement, she reported, "[Deputy 1], in his official capacity as a sworn peace officer, refused to protect and serve the community as required, instead choosing to side with a "pro law-enforcement" crowd that was not only in clear violation of the Public Health Officer's orders, but also the specific individual that was documented on video committing multiple offenses. [Deputy 1] is guilty of the following: Failure to carry out obligation of protecting and serving the community - Despite my stating that I had video, clear convincing evidence of multiple crimes in progress, [Deputy 1] decided that we (residents of Riverwalk, myself, my disabled girlfriend) were not entitled to protection by the law enforcement agency tasked with doing just that. An acknowledgment of Santee Sheriff station pattern of ignoring crimes committed by white supremacists, even in the face of clear and convincing evidence. This pattern of unfair enforcement of the law only serves to embolden and empower white supremacists that carry out criminal acts, while alienating the rest of the community." According to SDSD Policy and Procedure Section 2.53 titled, "Discrimination," employees shall not express any prejudice or harassment concerning race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, pregnancy, marital status, gender, age, political beliefs, sexual orientation, lifestyle or similar personal characteristics. In review of Deputy 1's BWC recording of his telephonic interview with the complainant, Deputy 1 advised that he understood her frustration, but advised that as a law enforcement officer, they must remain neutral. Additionally, he counseled that if someone exercises their first amendment right, they will be allowed to, that deputies will provide education on the County Health Order, and there will be no enforcement order or citations made. If the event organizer and demonstrators failed to abide by the Health Orders, deputies would not enforce the order for the sake of allowing the demonstrators to exercise their 4th amendment. The Department exercised discretion in enforcing the ordinances. The SDSD reported that their goal was to promote public awareness, instead of making custodial arrests. Deputies were encouraged to explain the rules, issue warnings, and engage the community through education. Although some public health orders give deputies the authority to issue citations, deputies were encouraged to manage the orders through voluntary compliance, education, dialogue, and cooperation, informing the public of social distancing practices rather than enforcement.

6. Misconduct/Truthfulness – Deputy 1 lied to the complainant.

Board Finding: Unfounded

Rationale: In the complainant's written statement, she advised, "[Deputy 1] *LIED to a constituent seeking assistance to justify his dismissal his own responsibility to take action. Not only does this amount to gaslighting, but is a clear example of official misconduct. [Deputy 1] is guilty of the following: Lying in official capacity - [Deputy 1] stated that the individual restricting access to/from my community was entitled to do so, and was not guilty of false imprisonment. California Penal Code§ 236 reads, "False imprisonment is the unlawful violation of the personal liberty of another." California Penal code§ 236.1 (h) (3) reads, "'Deprivation or violation of the personal liberty of another' includes substantial and sustained restriction of another's liberty accomplished through force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, under circumstances where the person receiving or apprehending the threat reasonably believes that it is likely that the person making the threat would carry it out."*: California Penal Code § 236.1 (i) reads, "The total circumstances, including the age of the victim, the relationship between the victim and the trafficker or agents of the trafficker, and any handicap or disability of the victim, shall be factors to consider in determining the presence of "deprivation or violation of the personal liberty of another," "duress," and "coercion" as described in this section."

[Deputy 1] also lied in his official capacity by claiming that our community streets were open to the public and that myself as a residence of this community had no right to have an individual cited/removed for trespassing within my community. I have confirmed with my HOA and the city that the streets within our community are privately owned property that is maintained entirely by community resident funding with no allocations from the city of Santee or county of San Diego." The semi-private community is located within the City of Santee. The community has a population of 2504 residents of both homeowners and apartment renters. There is one entrance to the community which is opened to the public and is not gated. Canopy Park Lane enters the community from Riverpark Drive. The residential community does not have a strictly controlled entrance for pedestrians, bicycles, or vehicles. In review of Deputy 1's BWC recording of his telephonic interview with the complainant, Deputy 1 informed the complainant that the street outside the community of Riverwalk, Riverwalk Drive, was not a private street. The complainant reported, "the truck was parked all along the entrance [Riverpark Drive], completely blocking the entrance and exit" of the community. Upon explanation, Deputy 1 told the complainant that he would dispatch a deputy; however, the complainant went on to press for criminal charges to be pressed against the driver of the semitruck. According to SDSA Policy and Procedure 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 the alleged act or conduct did not occur.

7. Misconduct/Procedure – Deputy 1 failed to assist the complainant who summoned deputies for assistance.

Board Finding: Unfounded

Rationale: In the complainant's written statement, she alleged, "[Deputy 1] *is guilty of the following: Failure to carry out obligation of protecting and serving the community - Despite my stating that I had video, clear convincing evidence of multiple crimes in progress, [Deputy 1] decided that we (residents of Riverwalk, myself, my disabled girlfriend) were not entitled to protection by the law enforcement agency tasked with doing just that. Not only was this presence menacing because of the deprivation of liberty, but especially concerning due to the inability of a disabled individual to freely leave their own community. [Deputy 1] refused to take appropriate action regarding this offense, further victimizing myself, my girlfriend, and our community - leaving us with no recourse or entity to call for help.*" According to SDSA Policy and Procedure Section 2.23 titled, "Request for Assistance," when any person requests assistance or advice, or makes complaints or reports, either by telephone or in person, all pertinent information will be obtained in an official and courteous manner, and will be properly and judiciously acted upon consistent with established Department procedures. In review of Deputy 1's BWC recording of his telephonic interview with the complainant, Deputy 1 informed the complainant that would dispatch a deputy to investigate the complaint of a semitruck blocking the entrance and exit to the Community of Riverwalk. Moments after gathering the information to responded to the scene, the complainant advised that the semitruck had moved away from the entrance and exit to the community. In regard to the complainant's allegations of unlawful congregation and her press for deputies to respond and issue citations to the congregating

crowd, deputies were dispatched to the location to view and monitor the crowd; however, based on instruction and discretion, no citations were issued. The evidence showed that the alleged act or conduct did not occur.

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## **20-087**

1. Misconduct/Procedure – Mail Processing Center deputies delayed and/or rejected the complainant’s mail.

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

**Rationale:** The complainant stated, “My complaint is regarding possible misconduct by Sheriff’s Dept. Mail Operation Personnel. We are told deputies review/process all mail at Las Colinas Det. Facility, Mail Operations. Since last March 2020, and with increasing frequency, especially, since Jun/July, I have experienced a pattern of mail (letters, glasses, books, magazines) losses and disruptions that seems to be unsolvable. I have gone thru channels, using inmate requests (no help) and periodic inmate grievances, but problems continue, unabated!” SDSL DSB P&P Section P.3 titled, Inmate Mail, states in part, “All incoming non-legal inmate mail will be routed to the Mail Processing Center (MPC) warehouse located at Las Colinas Detention and Reentry Facility. Deputies assigned to the MPC and Prisoner Transportation Detail (PTD) will work collaboratively with detention facilities’ staff to provide the reasonably prompt delivery of incoming materials. Inmates shall be allowed to receive and possess U.S. mail, incoming letters, confidential/legal mail and mail from official government agencies. Inmates may also receive electronic email messages, periodicals, magazines, and new books.” SDSL records produced fourteen Contents Unacceptable Notices (Form J-320) for items sent to the complainant that were rejected and returned to sender. According to DSB P&P Inmate Mail, “In cases in which incoming mail is withheld, both the inmate and sender will receive a copy of a Contents Unacceptable Notice (J-320) form. Any of the following will cause incoming U.S. mail to be rejected: mail marked with paint, crayon, glitter, labels, cloth, string, watermarks, stains, lipstick, cosmetics, perfume, or stickers (excluding US postage stamps). Hard bound and leathered books of any nature. All items deemed to contain contraband or determined to be unacceptable will not be delivered to the inmate but will be retained pending the conclusion of the internal appeal process.” The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

2. Misconduct/Procedure – Mail Processing Center deputies “tampered” with the complainant’s mail.

### **Board Finding:** Unfounded

**Rationale:** The complainant stated, “With limited funds, I subscribe to TIME and Grapevine magazines. To date, I am missing ‘Grapevine’ magazines, issues May and June 2020.” This is a recovery publication so for anonymity the mailing label is not placed on the cover. The envelope, therefore, cannot be destroyed. If the envelope wasn’t trashed, I may not be missing the May and June 2020 issues.” SDSL DSB P&P Section P.3 titled, Inmate Mail, states in part, “All non-confidential/legal mail is subject to being scanned, copied, and read when there is a valid security concern and the facility commander approves.” The complainant filed eight grievances regarding issues with his mail. SDSL DSB P&P Section N.1 titled, Grievance Procedure, states in part, “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.” In a grievance dated 04-14-20, the complainant stated, “Mail & Email missing. 18 days at Vista, one letter no email! I feel my mail and email (to me) is in mail room at GBDF, Las Colinas (here)?” A Detentions Sergeant responded, stating, “All mail is delivered as soon as it is processed. If you recently transferred there could be delays. You will be informed of rejected mail in writing.” In another grievance dated 07-19-20, the complainant stated, “Still missing May and June 2020 issues of ‘Grapevine,’ is envelope being thrown away? I got two old ones: No envelope.” The grievance was responded to by a Detentions Deputy, who stated, “MPC does not throw away magazines, MPC forwards all mail to inmates as it comes in.” The evidence showed that the alleged act or conduct did not occur.

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## **20-089**

1. Illegal Search and Seizure – Deputies conducted a strip search on the complainant.

Board Finding: Action Justified

Rationale: The complainant stated, “I was hurt by Dep’s coming in to this jail, very badly, on a elegal strip search.” SDS DSB P&P Section I.52 titled, Inmate Searches, states in part, “All inmate searches shall be conducted with the purpose of providing a safe and secure environment for inmates and staff in compliance with legal standards. Any inmate may be strip searched before it is determined that he or she will be placed in general population housing, if a deputy has reasonable suspicion to believe the inmate is concealing contraband or weapons in a manner that would not be detectible by a pat down search.” Additionally, SDS DSB SDCJ Green Sheet I.52.C.1 titled, Inmate Searches, states in part, “No strip search will be conducted on an inmate, unless a minimum of three hours has elapsed from the time of initial booking. After the minimum waiting period has elapsed, inmates will continue through the booking process, starting with a strip search.” The evidence showed the alleged act did occur and was lawful, justified and proper.

2. Excessive Force – Deputies placed chains on the complainant’s ankles.

Board Finding: Unfounded

Rationale: The complainant stated, “When I was stripped searched #5-deputies took me in a room placed a big chain on my ankles very tight and then started pulling on the chain so very hard.” DSB P&P Section I.52, states in part, “Prior to strip searching non-cooperative inmates, deputies shall notify a supervisor and receive approval. The supervisor will have forced strip searches of non-cooperating inmates digitally recorded on a handheld device. The digital recording shall capture the supervisor explaining to the inmate that he/she is being recorded and requesting the inmate to voluntarily cooperate with the strip search procedures. A NetRMS Use of Force Report will be completed per Addendum F and Detention P&P I.89.” SDS DSB P&P Section I.89 titled, Use of Force, states in part, “On every occasion when physical force has been applied to overcome a subject’s resistance, deputies (or other employees involved) must verbally inform their supervisor as soon as practical. All deputies (or other employees) involved in the Use of Force incident must clearly articulate in written form, all facts surrounding the incident. After the use of any restraint equipment, defensive device, impact weapon or chemical agent upon a subject, a medical evaluation is required and the resulting treatment will be documented in the necessary reports.” SDS records did not produce any Use of Force Reports and there was no documentation that force was used on the complainant during his incarceration. Jail medical records had no documented evaluation for any use of force incidents. Based on the complainant’s inconsistent statements, and recall of the alleged events, he was found not to be credible. The evidence showed that the alleged act or conduct did not occur.

3. Misconduct/Procedure – Deputy 1 “assigned” the complainant to a top bunk.

Board Finding: Unfounded

Rationale: The complainant stated, “I was told to move out of my room on unit 5-C cell 8 at approximately 11:30PM 9-1-2020 in to cell 4 on 5-c to a top Bunk by staff. He rabad my bed and move my things hisself, so I had to. Elegally assigned to a top bunk.” A review of the complainant’s jail medical records did not indicate any “lower bunk” orders. Additionally, the complainant’s Jail Information Management System (JIMS) Hazards & Instructions, available to Classification and/or Housing Deputies, did not indicate “lower bunk.” The complainant’s Inmate History Summary Report (IHSR) documented that he was moved, within the same module from one cell to another, however, he was assigned the middle bunk as he was in the previous cell. The evidence refuted the complainant’s allegation. Based on the complainant’s inconsistent statements, and recall of the alleged events, he was found not to be credible. The evidence showed that the alleged act or conduct did not occur.

4. Misconduct/Intimidation – Deputies “threatened” the complainant.

Board Finding: Not Sustained

Rationale: The complainant stated, "I have been told over and over my Grievances will get me hurt or kill in this jail by Staff and inmate if I'm not careful." SDS D 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." The complainant did not provide information about when he was threatened and did not identify any deputies. Additionally, there were no witnesses and no audio of the conversations between the complainant and deputies. Therefore, there was insufficient evidence to either prove or disprove the allegation.

5. Misconduct/Procedure – Deputies did not return the complainant's grievances.

Board Finding: Not Sustained

Rationale: The complainant stated, "A lot of my grievances do not come back I see." SDS DSB P&P Section N.1 titled, Grievance Procedure, 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." A review of SDS D records confirmed that the complainant submitted nine grievances. Seven of them were determined not to be a grievance, but inmate requests. The complainant did not present any evidence to support his allegation, therefore, there was insufficient evidence to determine if additional grievances were submitted and/or there was a violation of policy for lack of a response.

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## **20-097**

1. Discrimination/Racial – Deputy 1 "racially targeted" the aggrieved on 10-01-20.

Board Finding: Unfounded

Rationale: The complainant stated, "On 10-01-20 the aggrieved was racially targeted by Dep. 1." The aggrieved/her counsel were contacted for a direct account of what occurred, but her statement was never forthcoming. SDS D employees are prohibited from expressing any prejudice or harassment concerning race. All investigative detentions, traffic stops, arrests, searches, and seizures of property by employees will be based on a standard of reasonable suspicion or probable cause as required by the Fourth Amendment of the U.S. Constitution, applicable case law and relevant statutory authority. The aggrieved was stopped due to an inoperable third light. She then refused to provide identification or comply with lawful orders issued by Deputy 1. Per the vehicle code, no person shall drive a motor vehicle upon a highway, unless he or she holds a valid driver's license. Furthermore, it is unlawful to willfully fail or refuse to comply with a lawful order, signal, or direction of a peace officer per VEH§ 2800, Obedience to Traffic Officers. The aggrieved was non-compliant in her words/actions and failed to provide her driver's license or submit to Deputy 1's authority as a peace officer. Combined with the aggrieved's traffic violation and failure to comply with lawful orders, absent derogatory comments or racial slurs and without the ability to analyze the perceived race data of Deputy 1's stops and contacts and compare it to other deputies working the same area, there was no evidence that the aggrieved was racially profiled/targeted and the alleged act or conduct did not occur.

2. Illegal Search & Seizure – Deputy 1 entered the aggrieved's vehicle and removed her seatbelt.

Board Finding: Action Justified

Rationale: The complainant stated, "A video the aggrieved posted to Facebook shows (Deputy) 1 telling the aggrieved she is not under arrest, yet he touches her and reaches into her car to remove her seatbelt". The aggrieved/her counsel were contacted for a direct account of what occurred, but her statement was never forthcoming. Body Worn Camera (BWC) evidence verified the aggrieved ignored the deputies multiple requests for her driver's license, as well as the deputy's commands for her to exit the vehicle. U.S. Supreme Court: Pennsylvania v. Mimms, 434 U.S. 106 (1977), "[O]nce a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures." Vehicle Code Section

(CVC) 12951(b): Failing To Present A Driver's License. The driver of a motor vehicle shall present his or her license for examination upon demand of a peace officer enforcing the provisions of this code. Per the CA vehicle code, no person shall drive a motor vehicle upon a highway, unless he or she holds a valid driver's license. Furthermore, it is unlawful to willfully fail or refuse to comply with a lawful order, signal, or direction of a peace officer per VEH§ 2800, Obedience to Traffic Officers. The aggrieved was non-compliant in her words/actions and failed to provide her driver's license or submit to Deputy 1's authority as a peace officer, which escalated the traffic infraction to an arrestable crime and gave Deputy 1 probable cause to conduct a search & seizure of the aggrieved and her vehicle. The evidence showed that the conduct that occurred was lawful, justified and proper.

3. Excessive Force – Deputy 1 pulled the aggrieved's hair.

Board Finding: Action Justified

Rationale: The complainant stated, "Picture posted show injuries from the aggrieved's interaction with (Deputy) 1 and she states that he pulled her by her hair." The aggrieved/her counsel were contacted for a direct account of what occurred, but her statement was never forthcoming. Body Worn Camera and scene photographs submitted into evidence confirmed the aggrieved's hair was pulled. Per SDSA policies, employees are only to use the amount of force that is reasonably necessary and are prohibited from mistreating or physically abusing anyone in their custody. Deputy 1 documented in his report and BWC evidence confirmed that the deputy gave lawful commands, provided a warning that force would be used, and then effected an arrest with the use of arm guidance, handcuffs, and arm control. Although not specifically listed as a use of force option, the pulling of hair is not prohibited by policy. Per the vehicle code, a driver must comply when a peace officer requests a driver's license and to step out of the vehicle. The aggrieved was in violation of PC 148 and CVC 12951(b), when she ignored lawful commands and delayed the deputy in the performance of his duties. The force utilized was in compliance with policy and based upon the aggrieved's active resistance. The evidence showed that the conduct that occurred was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 1 refused the aggrieved's request for a supervisor.

Board Finding: Action Justified

Rationale: The complainant stated, "She (aggrieved) repeatedly calmly requests his supervisor and ignores her requests though she states that she does not feel safe." The aggrieved/her counsel were contacted for a direct account of what occurred, but her statement was never forthcoming. BWC video confirmed the aggrieved repeatedly asked for a supervisor. While there is no policy that command staff be summoned, Computer Assisted Dispatch (CAD) records and Body Worn Camera evidence confirmed that Deputy 1's sergeant subsequently responded to the scene. Deputy 1 also provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however it is privileged information per the Peace Officer Bill of Rights and cannot be publicly disclosed. As there was no policy requirement for a supervisor to be called, and one did respond, the evidence confirmed the action that occurred was lawful, justified, and proper.

5. Illegal Search & Seizure – Deputy 1 "held" (detained) the aggrieved for several hours.

Board Finding: Action Justified

Rationale: The complainant stated, "Additionally, she states that (Deputy) 1 tried to book her into jail and the jail refused to. He then held her for several hours." The aggrieved/her counsel were contacted for a direct account of what occurred, but her statement was never forthcoming. Deputy 1 effected an arrest and transported the aggrieved to a detention facility for booking. Due to COVID-19 precautions, the jail refused acceptance and she was taken to a hospital for assessment. While there, the aggrieved refused to identify herself or be treated, and she was released from the hospital against medical advice. The aggrieved was then taken back to jail for booking but refused to exit the patrol vehicle. In lieu of another use of force to overcome her resistance, jail staff refused acceptance once again. The aggrieved was given a certificate of release per PC849(b)(1) and released from custody at a trolley station, which provided telephone and transportation services. Per the penal code, when an arrest is made without a

warrant, the suspect must be taken before a magistrate without delay to face charges. A certificate of release authorizes a suspect to be released from custody without going before a magistrate, if the officer is satisfied that there are insufficient grounds for making a criminal complaint; the arrest is then deemed a detention only. CAD records confirmed this process took approximately five hours. The evidence showed that the conduct that occurred was lawful, justified and proper.

6. Misconduct/Procedure – Deputy 1 released the aggrieved away from her vehicle.

Board Finding: Action Justified

Rationale: The complainant stated, “He then held her for several hours then dropped her away from her car.” The aggrieved/her counsel were contacted for a direct account of what occurred, but her statement was never forthcoming. The aggrieved’s vehicle was impounded pursuant to her arrest. SDSD Policy dictates that when a vehicle is impounded, any occupants not placed in custody will fall under the provision of Policy 6.78, Stranded Motorist Assistance, which requires providing assistance to see them to a place of safety. After her release, the complainant reportedly denied knowing any person in the San Diego area, so she was transported to the Santee Trolley Square due to it being well light, having payphones and bus and trolley transportation. The evidence showed that the conduct that occurred was lawful, justified and proper.

7. Illegal Search & Seizure – Deputy 1 released the aggrieved without her cell phone.

Board Finding: Action Justified

Rationale: The complainant stated, “He then held her for several hours then dropped her away from her car without her phone.” The aggrieved/her counsel were contacted for a direct account of what occurred, but her statement was never forthcoming. Another deputy completed the tow form documentation and attached photo and video evidence that displayed a cell phone within the vehicle at the time it was towed/impounded. There is no policy stating that deputies must retrieve an arrestee’s cell phone from an impounded car. The complainant was released at an area that had payphone services. The evidence showed that the conduct that occurred was lawful, justified and proper.

### **POLICY RECOMMENDATION:**

1. It is recommended that the San Diego Sheriff’s Department (SDSD) revise its Policies and Procedures Manual, Addendum F, entitled, “Use of Force Guidelines,” to mandate the use of de-escalation techniques (“shall”) when it is safe and reasonable to do so.

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### **20-105**

1. Death Investigation/In-Custody Medical – On 10-16-20, Nathan Lee Brogan, an inmate at the Vista Detention Facility (VDF), collapsed unresponsive in a housing module dayroom. He was transported to Tri-City Medical Center where he was pronounced dead the next day.

Board Finding: Action Justified

Rationale: On 09-03-18, Nathan Lee Brogan was arrested by the San Diego Police Department (SDPD) for attempted murder and other firearm related offenses. During the court proceedings, Brogan was deemed to be unfit to stand trial. On 02-20-20, Brogan was committed to Patton State Hospital. While at Patton State Hospital, Brogan was eventually deemed competent and transferred from Patton State Hospital and booked into San Diego Central Jail (SDCJ) on 09-17-20. Brogan was assessed for Outpatient Stepdown (OPSD) services but was deemed ineligible due to his age and the belief he would fare better in a protected module for older inmates. On 09-24-20, he was transferred to VDF. On 10-16-20, he exited his cell and sat on a table in the module dayroom where he was witnessed to become unresponsive a few moments later. Deputies and medical staff immediately responded and initiated lifesaving measures. Medics arrived and transported Brogan to Tri-City Medical Center (TCMC) via ground ambulance. He was admitted to the TCMC Intensive Care Unit where his condition continued to deteriorate, and he was

pronounced dead on 10-17-20. The cause of death was myocardial infarction (heart attack) due to atherosclerotic cardiovascular disease. The manner of death was natural. Toxicology testing of hospital admission blood was not performed. All evidence indicated that Brogan was properly medically screened and housed after his booking. The evidence also indicated that facility staff appropriately recognized and responded to Brogan's emergency medical needs. Sworn staff immediately worked with on-duty health staff and assisted with the provision of basic life support. There was no evidence to support an allegation of misconduct or negligence on the part of Sheriff's Department sworn personnel.

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## **20-112**

1. Death Investigation/In-Custody Medical – Edel Corrales Loredo died of natural causes at Sharp Chula Vista Medical Center following his incarceration at the George Bailey Detention Facility (GBDF).

Board Finding: Action Justified

Rationale: On 07-21-20, Edel Corrales Loredo was arrested by the San Diego Police Department and booked into San Diego Sheriff Department (SDSD) custody at the George Bailey Detention Facility (GBDF). On 11-13-20, Loredo informed a deputy that he was having difficulty breathing and he was escorted to medical for an evaluation. He was tested at the jail for COVID-19 and transported via ambulance to Sharp Chula Vista Medical Center. COVID-19 was subsequently detected later (from the test at the jail) when Loredo was at the hospital. Loredo was admitted and his health deteriorated until his death on 11-21-20. There was no evidence that Loredo expressed any concerns about respiratory issues to any member of the SDSD, sworn or professional, prior to the day he was transported to Sharp Chula Vista Medical Center. Upon being advised that Loredo was not feeling well, sworn personnel immediately notified medical staff and Loredo was transported to a hospital. The cause of death was respiratory failure, due to COVID-19 with asthma, diabetes mellitus, and hypertension contributing and the manner of death was natural. It should be noted that Loredo rejected medical care several times throughout his incarceration and continued to refuse medical care when he was transported to Sharp Chula Vista Medical Center. Upon review of all evidence associated with COVID-19 protocol, GBDF had implemented pandemic-related safeguards to protect the inmate population. Care/Treatment of the COVID-19 virus is a medical issue and medical staff and their decision(s) reside outside CLERB's purview. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel and their actions were lawful, proper, and justified.

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## **21-015**

1. Death Investigation/Barricade – On 02-16-21, Guillermo Vallin Morales shot himself and died at the scene while San Diego Sheriff's Department (SDSD) Special Enforcement Detail (SED) personnel conducted a search warrant at his Jamul residence in response to Vallin Morales shooting the homeowner a few hours earlier.

Board Finding: Action Justified

Rationale: According to SDSD records, Guillermo Vallin Morales was a caretaker for the owner of the home in which he resided. The property owner had died approximately five months earlier and the homeowner's son, Bruce Mueller, placed the property up for sale. Vallin Morales was to vacate the property and on 02-15-21, Mueller went to the residence and asked him to leave. Vallin Morales responded by shooting Mueller in the back. 9-1-1 was called and emergency personnel responded, including SED. Vallin Morales barricaded himself in the residence and deputies used less lethal weapons in their effort to have him exit the house. With no response by Vallin, a law enforcement canine was released into the attic where Vallin Morales was barricaded. After the canine entered the attic, he was heard to cry out and a single gunshot was heard. Deputies entered the attic and found Vallin unresponsive with a firearm in his right hand and a suicide note on scene. An autopsy determined the cause of death was a penetrating gunshot wound of the head, and the manner of death was suicide. Traumatic injuries consistent with a dog bite were noted to Vallin Morales's lower legs. All evidence indicated that SDSD personnel followed all

applicable policies and procedures pertaining to this 17-hour barricaded subject incident. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of SDDS sworn personnel.

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## **21-024**

1. Misconduct/Procedure – Deputy 2 took picture(s) of the complainant.

**Board Finding:** Action Justified

**Rationale:** The complainant reported, "On Monday, March 1st at 1:10 PM, I was filming two sheriff's vehicles parked next to the Dempsey-Holder Safety Center/ Lifeguard Tower in Imperial Beach. I observed a sheriff deputy walking west on Elder towards the two parked vehicles. While walking, the deputy took a picture of me with a cellphone and then walked to the driver's side window of the parked vehicle to speak with the deputy sitting in the driver's seat. I observed the deputy, whose back was to me, take several "selfies" of his own face and I could see from where I was standing on the sidewalk that I was visible in the background of the photos. I was uncomfortable and it was unclear to me whether the cellphone was government issued. His intentions in photographing me were unclear and I felt he may intend to use these photos to try to further intimidate or stalk me as a private female citizen." The portion of the complainant's statement referencing "intent" was a belief that was unsupported by any evidence. Photography is protected in the U.S. by the First Amendment to the Constitution and it is generally permissible for people, including law enforcement, to take photographs at any public place. Deputies 1 and 2 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 disclosed. The evidence showed that the conduct that occurred was lawful, justified and proper.

2. Misconduct/Discourtesy - Deputy 2 refused to acknowledge the complainant.

**Board Finding:** Sustained

**Rationale:** The complainant reported that she said "Excuse me, Officer" 4-6 times, and neither of the two deputies acknowledged her presence in any way." The complainant also submitted video and audio evidence that corroborated her allegation and proved that she politely requested identifying information from the deputies almost 20 times. Deputies 1 and 2 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. Sheriff's Policy 2.22-Courtesy mandates that employees be courteous to the public. Deputy 2's failure to acknowledge or respond to the complainant was discourteous. Deputy 2 exercised his option to decline participation in an interview pursuant to a long-standing agreement between CLERB and the Deputy Sheriff's Association. The complainant submitted video/audio evidence that supported the finding and Deputy 2's conduct was not justified.

3. Misconduct/Discourtesy - Deputy 1 refused to acknowledge the complainant.

**Board Finding:** Unfounded

**Rationale:** The complainant reported, "I moved closer so I was about 10 feet away from the deputy and asked for his name and badge number. The officer was in uniform and on duty but refused to acknowledge my presence in any way or to comply with a basic service at the request of a citizen which is required by law. I insistently but politely asked for this information repeatedly and was completely ignored by the officer standing outside the vehicle. The officer seated inside the vehicle then asked whether he could assist me. His nametag identified him as Deputy 1. I asked why the other officer refused to acknowledge me. Deputy 1 said "I can't speak for him." He then asked me if there was something else he could assist me with. I said no." Sheriff's Policy 2.23-Request for Assistance, states when any person requests assistance or advice, all pertinent information will be obtained in an official and courteous manner, and will be properly and judiciously acted upon consistent with established Department procedures. Deputy 1 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 disclosed. The complainant acknowledged that Deputy 1 ultimately asked if he could assist her with something which she refused. The evidence showed that Deputy 1 responded to the complainant and the allegation did not occur.

4. Misconduct/Procedure - Deputy 2 refused to provide identification upon request.

Board Finding: Sustained

Rationale: The complainant reported, "I moved closer so I was about 10 feet away from the deputy and asked for his name and badge number. The officer was in uniform and on duty but refused to acknowledge my presence in any way or to comply with a basic service at the request of a citizen which is required by law. I insistently but politely asked for this information repeatedly and was completely ignored by the officer standing outside the vehicle." The complainant submitted audio evidence in which she specifically requested Deputy 2's name and badge number 3 times, and attempted to get his attention almost 20 times. Sheriff's Policy 2.20-Identification, states in part that while on duty, all employees shall furnish their first and last name or ARJIS number to any person requesting his or her identity, except when the withholding of such information is necessary for the performance of police duties. Deputy 2 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding Deputy 2 exercised his option to decline participation in an interview pursuant to a long-standing agreement between CLERB and the Deputy Sheriff's Association. The evidence supported the allegation and the act or conduct was not justified.

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## **21-080**

1. Misconduct/Procedure – Allegations alleged against the San Diego Police Department.

Board Finding: Summary Dismissal

Rationale: On August 13, 2021, CLERB received a signed complaint concerning allegations against San Diego Police Department personnel. Per CLERB Rules & Regulations 4.1 Complaints: Authority. Pursuant to the Ordinance, CLERB shall have authority to receive, review, investigate, and report on Complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department... Summary Dismissal per Section 15(a), CLERB does not have jurisdiction over the subject matter of the complaint.

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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.