

MINUTES
CITIZENS' LAW ENFORCEMENT REVIEW BOARD MEETING
September 11, 2018

Attachment A

- Roll Call** ▪ The meeting was held at the County Administration Center and came to order at 5:30 p.m. All Board members were present except Lourdes Silva.
- Public Comments** ▪ N/A
- Minutes Approval** ▪ The August 2018 meeting minutes were approved by motion by Jim Lasswell and seconded by Jordan Gascon. The word "**peach**" will be corrected to "**peace**" on page 3.
- Presentation/Training** ▪ N/A
- Board Chair's Report** ▪ For personal reasons, Lynn Setzler has declined the Interim Executive Officer position.
- Executive Officer's Report** ▪ Overview of Activities of CLERB Executive Officer and Staff for August 2018 presented by Sandra Arkin
- On August 27, San Diego Sheriff's Department (SDSD) Division of Inspectional Services CLERB liaison Aaron Meleen visited CLERB office for the new monthly meeting series.
 - Lenore Aldridge, Aron Hershkowitz, Tamicha Husband, and Lynn Setzler toured the Vista Detention Facility on August 29.
 - Ms. Aldridge, Gary Brown, Ms. Husband, Mr. Gascon, Paul Parker, Ms. Setzler, and Lourdes Silva attended a WRAP Device demonstration arranged by SDSD Sergeant Aaron Meleen and conducted by SDSD Sergeant Marilyn Mendez with assistance from SDSD Corporals Luis Gomez, Ysidro Granillo, and David Legler. All attendees left the demonstration and overview with a much better understanding of the device, its parameters for usage, its limitations, and, most importantly, its apparent safety when utilized correctly.
 - Mr. Parker's last day at CLERB was Thursday, September 6. As of that date:
 - The remaining 2015 death case, for which records had been recently received, was completed and calendared for the September meeting.
 - The 2016 death case for which CLERB had records was also completed and calendared for the September meeting, thus leaving only one 2016 case (a death case for which records have yet to be received).
 - Only 11 death cases for which records have been received remained.
 - Only three cases due in 2018 remained.
 - The most recent version of the Rules and Regulations Revision was compiled and forwarded to Board members for discussion at the September meeting.
 - Investigative Workload Report for August 2018
 - There were 17 new cases (as compared to 22 for August 2017).
 - At the end of August there were 84 active cases (seven in "lodged" status and 77 open and active).
 - There were 34 open death cases.
 - CLERB had documents for 12 cases and was awaiting documents on the remaining 22.
 - There were three new death cases in August (one in-custody unknown causes, one in-custody possible natural, and one possible restraint/conducted energy device-related).
 - CLERB is on pace for 185 cases for Calendar Year 2018. This pace is on par with the caseload as identified when Mr. Parker became Executive Officer in June 2017 and instituted consistent case documentation practices.
 - CLERB's low open caseload totals are impressive considering the dramatically increased number of cases documented and investigated by CLERB since June 2017.

- Case Progress and Status Reports
 - Deferred pending appointment of Interim Executive Officer.
- SDSD Policy Recommendation Responses
 - 16-093/Helton
 - The Department indicated that using a visual indicator of an inmate's prior suicide attempt is both a violation of the inmate's privacy and counter therapeutic to recovery. In addition, its use is contrary to the standards of patient confidentiality and best practices of suicide prevention. This recommendation will not be implemented.
 - 17-147/Moore
 - The Medical Services Division is working with the Court Services Bureau and the Public Defender's office to create notification steps and offer training regarding inmates that are sentenced to life, death, or other "severe" sentences. This recommendation was implemented.
 - The Suicide Prevention and Focused Response Team is working on education and advertisement of suicide prevention to include external stakeholders, i.e., family, friends, and inmate peers. This recommendation was implemented.
 - N/A: P&P 6.111, "High Risk Entries"
 - The SDSD believes that the policy, as written, already serves its goals. This recommendation will not be implemented.

New Business

- Formation of Nominating Committee
 - As required by the Policy and Procedures Guidelines approved last month, Ms. Arkin will be forming a nomination committee for next year's officers. If you have an interest in serving, please let Ms. Arkin know tonight by email, by telephone, write a letter, whatever; Ms. Arkin will take all of the names and figure out who can serve on this as long as we have less than five people.

Unfinished Business

- Update of Proposed Revisions to CLERB Rules and Regulations provided by Kim-Thoa Hoang
 - The subcommittee has met five times between April 2017 and the end of July 2017.
 - The subcommittee presented its first draft of the proposed revisions of the Rules and Regulations to the full Board on October 10, 2017. The first draft was then presented to County Counsel for review and input.
 - On February 12, 2018, Ms. Hoang, Mr. Parker and County Counsel met; County Counsel provided feedback at this meeting.
 - The subcommittee met on August 27, 2018, to review the final draft before again presenting it to the Board for review.
 - On September 11, 2018, Ms. Hoang was advised by County Counsel that there are still remaining issues with the draft of the Rules and Regulations, therefore, this item will have to be tabled until there has been another subcommittee meeting including County Counsel to discuss the remaining matters.
 - Ms. Hoang suggested that the subcommittee meet on Monday, September 17, 2018.
 - Ms. Arkin stated that the item would be brought back to the Board in October 2018. After that it would go to the Unions and then to the Board of Supervisors. The goal is to have the Rules and Regulations approved by December 2018.
 - Mr. Brown: Regarding 4.4.4, Other Duties and Responsibilities, paragraph D as in dog, it says annually inspect County of San Diego adult facilities, I am wondering if juvenile facilities come under the purview of the Sheriff and the reason why we have limited ourselves to adult detention facilities. Does anyone know the history?
 - Ms. Hoang: I believe the juvenile detention facilities are handled by the County Probation Department and not the Sheriff's Department.
 - Mr. Brown: We also make comments to the Probation Department, don't we? Once again, I am just wondering if this Board would like to include the juvenile facilities as well. Perhaps that is a question for the subcommittee, I am just

throwing it out there.

- Mr. Gascon: I believe we would need to refer to the Charter regarding what we are supposed to be doing.
- Ms. Arkin: It is not in the Charter or in any Ordinance that we have the ability to inspect jails, although it has been in the Rules and Regulations since 2004. At some point the Board of Supervisors approved it, but it was not a legitimate approval. In order to for this item to remain a part of the Rules and Regulations we have to have it made an Ordinance by the Board of Supervisors. That is something that can be done, but if they chose not to move forward jail inspections would have to be removed from the Rules and Regulations.
- County Counsel: We will need to go before the Board of Supervisors for approval of the Rules and Regulations, so it would not be difficult to send an Ordinance along with that document.
- Mr. Brown: Have the rules in the past been approved by Ordinance.
- County Counsel: They were approved by the Board of Supervisors, but not by Ordinance and the Administrative Code requires an Ordinance.
- Mr. Brown: So Mr. Gascon, I guess we do not currently have the authority to conduct inspections, but we hope to get that authority.
- County Counsel: I would not say that CLERB does not have the authority. It is a cleanup item and the Board would want to make sure that it is done by Ordinance.
- Mr. Brown: As you say, the Ordinance that created CLERB says that CLERB's scope of duties are covered under an Ordinance and it takes an Ordinance to add things, correct?
- County Counsel: That is correct, there are other interpretations that you would have the ability...
- Mr. Brown: Well are you saying that we have authority to do this? To inspect jails? And if we do already, why do we need an ordinance?
- County Counsel: Like I said, it is an interpretation of the authority back in 2004, and I was not here at that time. That was the interpretation at that time. Looking at this with fresh eyes, since CLERB is going to the Board anyway, this can be done by Ordinance.
- Mr. Brown: Okay, so do we want to add juveniles in this or not?
- Mr. Gascon: Were the jail inspections or the issue of CLERB not completing them in the Grand Jury Report?
- Ms. Arkin: It was mentioned in the DRC Report, not in the Grand Jury Report.
- Ms. Hoang: I believe at this time, we have some staffing issues and we need our staff to concentrate on the matters at hand. The addition of jail inspections is a big task and given our circumstances at this time, it would be premature to add the inspection of the juvenile detention facilities. CLERB could always go back in the future and revise the document on that one particular matter.
- Ms. Arkin: Setting aside the fact that we are short-staffed at the moment; the intention was not to totally ramp this up in 2019 to inspect all of the jails. If we are going make changes to the Rules and Regulations, knowing how long this has already taken, if we have an interest in including the juvenile facilities, it would be easier to include that now rather than to try to go back and re-invent the Rules and Regulations.
- Susan Youngflesh: I agree with Ms. Hoang and my concern is that it says annually inspect County adult detention facilities. So we are setting ourselves up for an annual inspection and that would be the implication if we are going to include juvenile detention facilities as well. Considering that CLERB is short-staffed, that would be my concern as well.
- Ms. Arkin: I agree, but if we put the regulations in place now, when we have the staff they will already have the authority to begin conducting inspections.
- Mr. Brown: In response to your concern, it doesn't say CLERB shall annually inspect, it says CLERB shall have authority to. So we have the authority to

conduct inspections annually, but we do not have to.

- Mr. Lasswell: Madame Chair, my suggestion here...we are focusing on the words of the Rules and Regulations that we wrote as the overriding reason for existence. The best approach would be to present this to the Board of Supervisors to determine if it is in their interest that CLERB conduct these types of inspections and if so, implement that by an Ordinance and then put it in the CLERB Rules and Regulations. If CLERB is going to conduct inspections, the inspections should include both juveniles and adults.
- Mr. Brown: That is my very hope, that if an Ordinance is formed it would bring it to their attention.
- Mr. Lasswell: They have to understand that if they direct CLERB to do that, they have to follow through with the resources to support that level of tasks.
- Mr. Brown: That is the whole point of bringing this as a matter before them real clearly and requiring an Ordinance change in addition to the Ordinance because the current Ordinance says that the review board shall have no authority pursuant to the subdivision to take action in regard to incidents for which no citizens complaint has been filed to the review board.
- Ms. Arkin: Let me get a sense of the Board whether or not inspection of the juvenile facilities should be included in the Rules and Regulations if we choose to go the inspection route. When the committee meets to discuss the changes in the Rules and Regulations and also in the Ordinance, as long as the Probation Department is on board, we would like to include the juvenile facilities as well; that's part A. Part B is whether or not we want to inspect jails and juvenile facilities at all. I believe we approved the outline for conducting jail inspections at the last meeting. It seems that since we approved the outline for conducting jail inspections that we approve conducting jail inspections, we just do not have the written authority at the moment. The Rule and Regulations Subcommittee will need to get County Counsel input during an upcoming meeting regarding the Ordinance and the jails, in addition to the input County Counsel was already planning to provide.
- Mr. Lasswell: And to convince the Board of Supervisors that this is an appropriate asking for our organization to accomplish and in so doing, invoke that Ordinance.
- County Counsel: Keep in mind that this is not new, the inspection language is in here. As the Chair mentioned, the language is already in the document from 2004.
- Ms. Arkin: This has been approved before and we are hoping that they will approve it again and to recognize that this would be a burden to the staff unless there was another staff person involved. This item will be tabled until the October 2018 meeting. The subcommittee will meet on September 17, 2018, to receive input from County Counsel.
- Update of CLERB Executive Officer Selection and Appointment Committee presented by Delores Chavez-Harmes
 - The Committee consisting of Ms. Silva, Mr. Gascon, Ms. Arkin and Ms. Chavez-Harmes has had several conference calls to determine how we would like to move forward.
 - The job description has been edited and submitted;
 - The salary range has been determined and submitted;
 - Requested posting of the position no later than September 12, 2018, in order to give the applicants one month to complete the application;
 - An expenditure has been requested, and needs County approval, so this position may be posted on the listserv of the National Association of Civilian Oversight of Law Enforcement (NACOLE); and
 - The dates for the open recruitment has been determined, the first day is tomorrow, September 12, 2018, and the recruitment will close on October 10, 2018. The County will review and sort the initial applicants on October 15, 2018.

The committee will meet on or around October 31, 2018, to review the applicants and the semi-finalists. The committee will interview the candidates on November 13, 2018. The goal is to have the Board interview the final candidates on December 11, 2018, at 3pm, in a closed session meeting.

- Ms. Arkin: Please note on your calendars that the Board will have a closed session meeting at 3pm, on December 11, 2018, to interview the final candidates. The Board will then adjourn to an open session meeting, we will adjourn to a closed session meeting to discuss the appointment, and then we will re-open to announce the appointment.
- Mr. Brown: Not the name; that's what we agreed...not the name of the person.
- Ms. Arkin: It is subject to completion of the background check.
- Ms. Chavez-Harmes: Madame Chair that concludes my report.

Board Comments

- Mr. Gascon: I would like to thank the Sheriff's Department and the Probation Department, I participated in the WRAP Demonstration that was held down in the basement here. In my opinion it is a great device that subdues anyone that is willing to fight or put up a challenge to a Sheriff's Deputy or Probation Officer. It took about one minute for them to completely immobilize me and carry me away. I was able to move my legs; bend my legs. When fully in the device, it was fairly comfortable. I had a sense of swaddling. My body temperature heated up because I was wrapped. I was able to lean back completely. There was no pressure on my chest or anything along those lines. The only possible stressor at the time would have been when they kind of push you forward and lock it. It was an absolutely amazing experience. Most of the attendees participated in it. The device could be loosened up so that you could walk if you were being transported to a specific location. You were still immobilized but able to move.
- Ms. Arkin: You were not fighting. What happens if a person is combative or on drugs? How does that work?
- Mr. Gascon: I fought a little bit, but I did not want to hurt anybody. With the three deputies or probations officers that would be responsible for putting it on, it was pretty difficult to move. One person holds down your legs, the other one holds your head in place or your shoulders, and the other person is essentially putting the whole thing on. I thought it was very safe, it was very eye-opening.
- Ms. Arkin: Anybody else. Thanks Mr. Gascon.
- Mr. Brown: Just by coincidence I came across something for the probation people; the Statement on Community Corrections. Back on August 28, 2017, I guess this was associated with the Harvard Kennedy School; about thirty-four top people in their field including Mr. Adolfo Gonzalez, signed comments about changing the probation system. Trying to keep the supervision to a minimum; trying to reduce the length of stays under community supervision, and so on, I think including minimizing the charges to parents for juveniles. I am wondering if we can have someone at the Probation Department brief us at one of the CLERB meetings about the changes that have been made? I will be happy to send this to the staff and they can get it to you all.
 - <https://www.hks.harvard.edu/centers/wiener/programs/criminaljustice/research-publications/executive-session-on-community-corrections/publications/less-is-more-how-reducing-probation-populations-can-improve-outcomes/statement-on-the-future-of-community-corrections>
- Ms. Arkin: I would advise that we wait until the Executive Officer position has been filled.

Sheriff/Probation Liaison Query

- Ms. Chavez-Harmes: This is for probation. This is a very basic question and I just want clarification. Please explain the difference between probation and parole.
- Supervising Probation Officer Brian Barnum: You would think that would be a very simple question, however, with all of the legislative changes that have transpired, several different nuances take place. The Probation Department now deals with probationers; and when we talk about probation, we are talking about people that have been sentenced to local custody. With the advent of "mandatory supervision", we now have people that are sentenced to the local prison and they come out on mandatory supervision. That is

not probation and that is not parole, it is mandatory supervision. Parole, in the sense of the term, are individuals that have gone to State prison and are then released on a form of supervision. However, with AB109 there is a certain component of that population that the Probation Department now supervises and they are referred to as PRCS Offenders, which are Post Release Community Supervision Offenders. So those are offenders who have actually gone to State prison, however, given the crime that they went to State prison on they return back to the County when they get released for supervision. So to answer your question, it is not as easy as it used to be. Back in the old days, the difference between probation and parole was whether you went to local custody or State custody. Nowadays, the County deals with offenders at all levels. That's why we have expanded the department and have different divisions. That's why the Sheriff's Department creates new programs, because with mandatory supervision, they now have offenders that are in custody for lengthy periods of time. I am sorry it was not such an easy answer.

- Ms. Chavez-Harmes: I thought it was a little simpler. I am glad that I asked.

The Board entered closed session at 6:07 p.m.

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 to government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).
- b) PUBLIC EMPLOYEE APPOINTMENT
 Notice pursuant to Government Code section 54957(b)
 Title: Interim Executive Officer, CLERB

CASE NO.	LAST NAME	CASE NAME	LAST NAME
15-112	Fernandez	16-107	Asaro
17-095	Odanga	18-066	Trammell

The Board re-entered open session at 6:21 p.m.

Aron Hershkowitz was appointed the Interim Executive Officer for CLERB effective September 12, 2018. Mr. Hershkowitz accepted the appointment.

The meeting was adjourned at 6:22 p.m.

Minutes prepared by Tamicha Husband, Administrative Secretary


 ARON HERSHKOWITZ
 Interim Executive Officer

KIM-THOA HOANG
 Secretary to the Board