

**CITIZENS' LAW ENFORCEMENT REVIEW BOARD
POLICY RECOMMENDATION
CLERB RESPONSE TO SAN DIEGO SHERIFF'S DEPARTMENT SCENES OF DEATH UNDER CLERB'S
JURISDICTION**

BACKGROUND:

San Diego County Code of Administrative Ordinances (County Administrative Code), Section 340, directly states "the purpose and intent of the Board of Supervisors to establish a Citizens Law Enforcement Review Board" (CLERB) includes "... to receive and investigate specified citizen complaints and investigate deaths arising out of or in connection with activities of peace officers and custodial officers employed by the County in the Sheriff's Department or the Probation Department."

The Board of Supervisor's unequivocal intent for CLERB to investigate and report on these deaths is reflected in CLERB's legal authority and required duties. The San Diego County Charter (Charter), Section 606, County Administrative Code 340.9(b)(1), and CLERB's Rules and Regulations (R&Rs), Section 4.3(a) all address CLERB's clear authority to "investigate" without a signed complaint "the death of any individual arising out of or in connection with actions of peace officers or custodial officers employed" by the County in the "Sheriff's Department or the Probation Department". As detailed by CLERB's R&Rs, Section 4.3(a), CLERB shall have the "authority to review, investigate, and report on...regardless of whether a Complaint has been filed [,] [t]he death of any individual arising out of or in connection with actions of peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department, arising out of the performance of official duties. CLERB shall have jurisdiction in respect to all deaths of individuals coming within the provisions of this subsection occurring on or after November 7, 1990."

Cases without a filed complaint are entitled to the same level of investigation as those with a complaint and the investigation may include an examination of the scene of the incident. CLERB's R&Rs, Section 17, states "in cases not requiring a Complaint as set forth in Section 4.3 above, the review" and "investigation...shall otherwise proceed in the same manner, pursuant to these Rules and Regulations, as in cases initiated by a Complaint." CLERB's R&Rs, Section 9.2(b), states that "the investigation...may include, but need not be limited to...examination of the scene of the incident."

CLERB's R&Rs, Section 6, states that **(emphasis added)**:

In the discharge of its duties, CLERB shall receive **complete and prompt cooperation from all officers and employees of the County. CLERB** and other public officers, **including the Sheriff**, the District Attorney, and the Grand Jury, **shall coordinate their activities so that the other public officers and CLERB can fully and properly perform their respective duties.**

Such cooperation shall include responding to written questions during the investigation, appearing at and answering questions during interviews, appearing at and answering questions during hearings, **assisting with access to physical evidence**, and **cooperation with any other relevant investigation procedures.**

CLERB's R&Rs, Section 9.2(b) states that "investigations must be conducted in a manner that will not obstruct the criminal investigations conducted by the Sheriff, District Attorney, or other law enforcement agencies." However, a new California law recently addressed the powers of a sheriff oversight board, such as CLERB, and clarified that CLERB's issuing of subpoenas or exercising its investigative functions is not considered obstructing the Sheriff's investigative function. This new law, Government Code Section 25303.7(d), states that "the exercise of...other investigative functions performed by a...sheriff oversight board...vested with oversight responsibility for the sheriff shall not be considered to obstruct the investigative functions of the sheriff."

As of this writing, CLERB is notified, within hours of the death, of all "in-custody" deaths and those deaths arising out of or in connection with actions of peace officers or custodial officers employed by the San Diego Sheriff's Department (SDSD). The notification of these deaths, while expeditious, occurs after the death scene has been

initially investigated, processed, and cleared by personnel from several entities to include the SDSD Homicide Division, SDSD Division of Inspectional Services, SDSD Internal Affairs, SDSD Detentions Investigations Unit (when applicable), SDSD Crime Laboratory, District Attorney's Office, and Medical Examiner's Office.



In response to a CLERB subpoena, SDSD forwards completed Homicide Investigation files to CLERB after the criminal investigations into the deaths are closed. These files are received several months, at minimum, and sometimes well over a year after the death. At that time, CLERB is able, for the first time, to assess evidence and visualize the scene and decedent in the condition upon which the other investigative personnel saw and evaluated them. It is at that time that CLERB is made aware of witnesses which, in the case of in-custody deaths, are oftentimes fellow inmates. CLERB's subsequent investigation of these deaths is strictly limited to a review of the information provided by the SDSD, as opposed to a truly independent investigation in which "relevant investigation procedures," i.e., scene response, witness identification, and evidence analysis are utilized. Responding to scenes after they have been processed, decedents and evidence removed, and subsequently cleaned will provide a general overview of the scene itself, e.g., a jail cell, a parking lot in which a deputy-involved shooting occurred, an intersection in which a traffic fatality occurred after a deputy-initiated pursuit, etc., but is void of those items and evidence that should be independently evaluated during a death investigation. The subsequent attempts to independently contact witnesses are often fruitless, as many times those witnesses are no longer in custody and unable to be located.

CLERB does not wish to compromise or obstruct any investigation and is committed to coordinating its activities so that other public officers can fully and properly perform their duties. CLERB also understands that the release of information could influence witness statements. These are times of increased public scrutiny about deaths occurring in the SDSD detention facilities and in addition to ever-present concerns about law enforcement-related shootings or activities resulting in deaths. Unfortunately, CLERB's ability to conduct an independent death investigation as intended and delineated by the Board of Supervisors is currently limited by the difficulties explained above. CLERB believes there is a solution that is consistent with the legal authorities establishing CLERB's investigatory functions as well as the law governing criminal investigations. CLERB believes that a CLERB staff member with extensive experience in death investigation should be present at a death scene and any related incident scene to receive a briefing, participate in a scene walk-thru, and have any questions about the circumstances surrounding the events leading up to, and including the death, answered without compromising or obstructing the law enforcement investigation. CLERB's presence during these initial death scene investigations will contribute to public trust in the investigatory process and result in more accurate and independent CLERB findings and, in attempts to reduce deaths, more relevant and applicable CLERB policy recommendations.

POLICY RECOMMENDATION:

Pursuant to Section 340.9(g) of the San Diego County Administrative Code, the Citizens' Law Enforcement Review Board (CLERB) shall have the authority to review and make recommendations on policies and procedures of the San Diego County Sheriff's Department and San Diego County Probation Department. As such, CLERB makes the following policy recommendation to the SDSD:

1. Allow a CLERB staff member with extensive death investigation experience to be present at the initial death scene and any related incident scene and, without compromising or obstructing the law enforcement investigation, receive a briefing, participate in a scene walk-thru, and have any questions about the circumstances surrounding the events leading up to, and including the death, answered.

Submitted by:  Paul R. Parker III, Executive Officer	Date: 10-05-21	Reviewed by:  Lynn Setzler, Supervising Special Investigator	Date: 10-05-21
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