

**AUGUST 6, 2025**

**ITEM NO. 6**

**CIVIL SERVICE COMMISSION**

**COUNTY OF SAN DIEGO**

In the Matter of the Appeal of )  
**2023-050P** and **2023-051P** ) FINDINGS, CONCLUSIONS  
Regarding the Citizens' Law ) AND RECOMMENDATIONS  
Enforcement Review Board's )  
Sustained Findings )

The matter of the appeal of 2023-050P ("Deputy 1"), and 2023-051P ("Deputy 2"), Deputy Sheriffs (collectively referred to as "Deputies"), from the Findings of the Citizens' Law Enforcement Review Board, ("CLERB"), in which it sustained allegations against Deputies in the Sheriff's Department, was presented to the Civil Service Commission ("CSC" of "Commission"). The Commission appointed Commissioner Will Rodriguez-Kennedy to hear the appeal and submit findings and a proposed decision to the Civil Service Commission. Thereafter, the matter was duly noticed, and a hearing was held on June 11, 2025.

The following were present at the hearing: Will Rodriguez-Kennedy, Hearing Officer; Morgan Foley, Esq., Commission Legal Advisor, and Todd Adams, Executive Officer, and Karen Bernardy, Commission Analyst II, assisting the Hearing Officer; Commissioner Laura Bassett, observing; Deputy 1, and Deputy 2, Appellants, on their own behalf and as represented by Rico Dominguez, Esq.; and Christopher Pisano, Esq.; assisted by Brett Kalina, CLERB's Executive Officer, and Lynn Setzler, CLERB's Supervising Special Investigator, representing CLERB.

1 The official file of the proceedings contains the  
2 following documents:

- 3 a. Letter from Employee's representative dated November  
4 17, 2023, appealing CLERB's sustained finding of  
5 misconduct to the Civil Service Commission.
- 6 b. CLERB's written statement, required by Civil Service  
7 Rule XV, Section 15.1.3, of the specific improper  
8 conduct which CLERB found was sustained and which is  
9 being appealed, and a summary of the evidence  
10 supporting the finding of sustained, which may  
11 include any report or findings adopted by CLERB.

12 The Commission's authority to hear this appeal is derived  
13 from Civil Service Rule XV, Section 15.1.1 g, in that the CLERB  
14 Finding charges Deputies as follows: "Illegal Search and Seizure  
15 - [Deputy 1] and [Deputy 2] forced entry into [the Restrained  
16 Person]'s residence."

17 Section 15.1.7 states as follows: "The burden of proof  
18 shall be on CLERB to demonstrate through a preponderance of the  
19 evidence that the incident or act, which was the basis for the  
20 complaint sustained by CLERB, occurred and did constitute  
21 improper conduct."

## 22 **TESTIMONY AND EVIDENCE**

### 23 **Summary:**

24 CLERB reviewed this case and found that Deputy 1 and  
25 Deputy 2 committed misconduct in the procedures they followed  
26 to serve a domestic violence ("DV") temporary restraining order  
27 ("TRO") with an Order for Removal ("Order") issued by Superior  
28 Court Judge Alana W. Robinson upon the Restrained Person of the

1 applicant for the DV TRO ("Restrained Person") on February 1,  
2 2022, at an apartment complex located at 1603 Elmwood Drive,  
3 Apt. 406, San Diego, California ("Residence"). (Exhibit 4.)  
4 CLERB accepted jurisdiction on the basis that the San Diego  
5 Sheriff's Office forwarded the incident due to the fact that  
6 (1) At one point, after leaving, the Restrained Person returned  
7 to the apartment and attempted to prevent the Deputies from  
8 reentering, resulting in force to gain entry and enforce the  
9 Order, and (2) the Restrained Person required medical treatment  
10 for a broken *digitus minimus manus* (commonly referred to as a  
11 "pinky finger") on his right hand, at its top knuckle, which he  
12 suffered in his struggle with the Deputies.

13 The Deputies first arrived at the Residence at or about  
14 5:16 p.m., on February 1, 2022. Upon locating Unit No. 406  
15 Deputy 2 knocked on the door, paused, then shouted, "Sheriff's  
16 Department" and after a pause, repeated, "Sheriff's  
17 Department," and hearing a voice from within added, "Can you  
18 come to the door? Please?" The Restrained Person opened the  
19 door approximately four (4) inches, and Deputy 1 asked, "Can we  
20 come in? Please?" Deputy 1 then confirmed that the person at  
21 the door was the Restrained Person, and told him "We have some  
22 paperwork for you, okay?"

23 The Restrained Person opens the door a bit wider and  
24 reaches out the door with his right hand, indicating he wanted  
25 to receive the paperwork from Deputy 1. Deputy 1 then places  
26 his fingertips on the door, saying to the Restrained Person,  
27 "Open the door for me." The Restrained Person raises his  
28 fingers up as if to indicate that they needed to remain

1 outside, saying "You can't come in," to which Deputy 2 replied,  
2 "Yes we can." Deputy 1 also repeats, "Open the door for me." At  
3 all times the Restrained Person's left hand remained behind the  
4 door, not visible to the Deputies.

5 The Restrained Person then allows the Deputies to enter,  
6 at which point Deputy 1 further elaborates on the nature of  
7 their visit as he goes through the TRO and Order page by page.

8 Except when initially announcing their arrival through the  
9 closed door, at no other point were voices raised as Deputy 1  
10 explained the purpose of their visit.

11 The Restrained Person remained uncertain of the legitimacy  
12 of the presence of the Deputies, and they allowed him to call  
13 9-1-1 to confirm with dispatch that they were, in fact, to  
14 serve him with the papers.

15 After going through the TRO and Order, the Restrained  
16 Person seemed reluctant to leave the Residence. Deputy 1 told  
17 him that there were two options, "One is, you can stay here,  
18 and we'll force you out, put you in handcuffs, and take you to  
19 jail, or two, you abide by the court order, which is temporary,  
20 get your stuff and just move out." After the Restrained Person  
21 continued to try to indicate that he wanted to stay at the  
22 Residence, Deputy 2 pointed out that a violation of the "terms  
23 and stipulations" of the TRO and Order is "an arrestable  
24 offense" and he agreed to collect his belongings and leave. The  
25 Restrained Person still stated that the Deputies could leave  
26 but was informed that they needed to stay there while he  
27 gathered his things and leaves, and that they would hand over  
28 the paperwork once he leaves the unit.

1       As the Restrained Person gathered his belongings, he  
2 appeared to be collecting everything of his to take. Deputy 1  
3 explained to him that it was only temporary, and that he  
4 doesn't need to take everything; that if he needed to return  
5 for something that he needed during the pendency of the Order  
6 he could call San Diego Police and tell them he needs a  
7 "preserve the peace" to assist in picking up more belongings.

8       Almost 15 minutes after he began collecting belongings,  
9 the Restrained Person steps out of the front door of the  
10 residence, and when he turns to return inside Deputy 1 blocks  
11 his entry, telling him, "You're out, you're out, you're not  
12 getting your bike, that's it. You're out." There were some  
13 personal belongings outside the door that the Restrained Person  
14 was unable to carry while holding a bundle of clothes.

15       Deputy 1 followed the Restrained Person as he walked along  
16 the common balcony/walkway, towards his car. He then stops,  
17 turns around, walks past Deputy 1 and walks back towards the  
18 Residence to retrieve a trash bag from his neighbor to hold his  
19 clothes and make it easier to carry. Deputy 1 also takes a  
20 trash bag from the neighbor. Walking past Deputy 2, Restrained  
21 Person is now in front of both Deputies and increases his pace  
22 so that he has made some distance from Deputy 2 by the time he  
23 reaches the front door of the Residence. Deputy 2 speeds up a  
24 bit when she sees the Restrained Person re-enter the Residence  
25 and attempts to shut the door on the Deputies. Deputy 2 places  
26 her foot across the threshold and stops the door from closing,  
27 pushing with her hands to get back in as the Restrained Person  
28 is now in violation of the TRO and Order.

1 After Deputy 1 and Deputy 2 regain entry into the  
2 Residence they quickly act to arrest the Restrained Person for  
3 violating the TRO and the Order. Resisting the arrest, the  
4 three wrestle around the Residence, ending up in a bathroom,  
5 where the Deputies are finally able to get handcuffs on him,  
6 two minutes and nine seconds after the Deputies forced their  
7 way back in. San Diego Police show up, and medical assistance  
8 is called when the Restrained Person complains of an injury to  
9 his hand.

10 **Undisputed Evidence:**

11 Except as set forth in the "Disputed Evidence" section of  
12 this Decision, the Summary, set forth above in the Testimony  
13 and Evidence section of this Decision is undisputed.

14 It is further undisputed that unless a complaint is filed,  
15 CLERB does not have jurisdiction to review, investigate, and  
16 report on the use of force by the Deputies unless it resulted  
17 in great bodily injury.

18 **Policies:**

19 All parties agree that the San Diego County Sheriff's  
20 Deputies are bound by the San Diego County Sheriff's Department  
21 Court Services Bureau Policy and Procedures Manual, Number D.3,  
22 "*Order for Removal*".

23 **Disputed Evidence:**

24 Initially, the Deputies argue that CLERB lacked  
25 jurisdiction from the start, contending that it never should  
26 have investigated the events that occurred on February 1, 2022,  
27 since no complaint was ever filed (the Department regularly  
28 forwards all cases where use of force is reported) and arguing

1 that without such a complaint, and because the Restrained  
2 Person's injury was a broken pinky finger, the arrestee, the  
3 Restrained Person, did not suffer a "great bodily injury."  
4 (Citizens' Law Enforcement Review Board, *Rules and Regulations*,  
5 Section 4, subsection 4.3) (Exhibit 25.)

6 CLERB argues that, first, this Commission does not have  
7 authority to resolve a question of CLERB's jurisdiction to  
8 review, investigate, and report on any complaint submitted to  
9 CLERB and, second, CLERB is required to review, investigate,  
10 and report on any incident involving County law enforcement  
11 where, *inter alia*, there is use of force that resulted in  
12 "great bodily injury".

13 Because the definition of "great bodily injury" is unclear  
14 and in dispute, the Commissioner agreed to allow the parties to  
15 brief the issue in a timely fashion, and their arguments have  
16 been considered in this Decision.

17 Second, in addition to the jurisdictional question, CLERB  
18 (as a result of investigating the use of force, but without a  
19 complaint from the Restrained Person) reviewed, investigated,  
20 and reported on the factual circumstances related to the  
21 Deputies' initial actions to gain entry at the Residence. This  
22 resulted in a finding that their entry was non-consensual, and  
23 CLERB sustained a finding of misconduct for the violation of  
24 San Diego County Sheriff's Department Court Services Bureau  
25 Policy and Procedures Manual, Number D.3, "*Order for Removal*"  
26 ("P&P No. D.3").

27 The Deputies contend that even if CLERB had received a  
28 complaint that they had violated P&P No. D.3, the evidence does

1 not support a finding of "Sustained," since Restrained Person,  
2 while initially unwilling to allow entry, quickly acceded to  
3 their assertion that they were entitled to enter the Residence  
4 as a part of their service of the TRO and Order.

### 5 **FINDINGS**

#### 6 *1. Use of Force Resulting in Great Bodily Injury.*

7 It is agreed that this Commission does not have the  
8 authority to determine the jurisdiction of CLERB. However, this  
9 Commission is allowed to evaluate the findings and conclusions  
10 of CLERB if appealed by a County employee under Rule XV. This  
11 appellate review is limited to reviewing a "sustained  
12 complaint," that a peace officer committed or engaged in nine  
13 (9) specifically described conduct including, at Section  
14 15.1.1.

15 In the instant action CLERB found that the Deputies' use  
16 of force was justified; the Deputies did not appeal the  
17 determination of "Action Justified," seeking a different  
18 finding. Therefore, there is no appealable issue before this  
19 Commission requiring that we resolve the argument whether the  
20 Restrained Person sustained a great bodily injury when the  
21 Deputies used justified force in his arrest.<sup>1</sup>

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23 <sup>1</sup>This is not the first time that the definition of "great bodily injury" has  
24 come before this Commission, and we do not have the power by Charter,  
25 ordinance, or rule to create a definition. That must come from legislative  
26 action. However, because the parties were invited to brief the issue, we  
provide the following analysis based on the facts of this appeal:

27 CLERB points to Government Code section 12525.2 for assistance in  
28 defining "great bodily injury." Section 12525.2 does not use the term,  
"great bodily injury," choosing instead to use the term, "serious  
bodily injury." These two distinct adjectives, "great," and "serious,"  
are not always synonymous. "Great," can be synonymous with "huge,"



1       2.    *Initial Entry into Restrained Person's Residence was*  
2 *not a Forced Entry.*

3       Even though there is the argument that CLERB should not  
4 have even considered this charge, since it normally wouldn't be  
5 within its jurisdiction without a "complaint," we respect the  
6 Board and the work they perform and will consider this Rule XV  
7 appeal, as the alleged misconduct occurred during an incident  
8 that fell within CLERB's jurisdiction pursuant to CLERB's Rules  
9 and Regulations Section 4.3 which lay out the specific  
10 incidents which CLERB may ". . . review, investigate, and  
11 report on the following categories of incidents, regardless of  
12 whether a Complaint has been filed: . . . (C) The use of force  
13 by peace officers or custodial officers employed by the County  
14 Sheriff's Department or custodial officers employed by the  
15 County Sheriff's Department or the Probation Department  
16 resulting in great bodily injury."

17       In considering the body worn camera video of the initial  
18 entry into the Restrained Person's residence, it is clear that  
19 the Restrained Person, briefly, hesitated in allowing the  
20 Deputies entry. His "resistance," if any, was brief, and after  
21 the explanation provided by Deputy 1 and Deputy 2, he did not  
22

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23       while "serious" can be synonymous with "not trifling." Webster's *New*  
24 *Collegiate Dictionary*. (1973 ed.)

25       Therefore, observing "great" as something higher in intensity than  
26 something described as "serious," the question is: Can Restrained  
27 Person's injury, the fracture of the top knuckle of his right *digitus*  
*minimus manus* meet the definition of "great bodily injury," supporting  
"Action justified," by CLERB?

28       Our answer, under these facts, would be: yes.

1 oppose their entry. Deputy 1 had his fingertips on the door;  
2 had Restrained Person truly opposed their entry he could have  
3 provided more resistance against Deputy 1's fingers so that the  
4 Deputies would have needed to resort to forced entry by other  
5 means. Further, at the time of this entry *the Restrained Person*  
6 *is the individual who opened the door*, allowing the Deputies to  
7 enter; this wasn't a situation where the door was closed but  
8 not locked, and the Deputies, finding the door unlocked, turned  
9 the doorknob and opened the door. Therefore, the initial entry  
10 into the residence was not a "Forcible Entry" and thus Penal  
11 Code 844 is not relevant.

12       3.     *The injury in question occurred in a second entry*  
13 *which was lawful and compliant with relevant law.*

14       The Restrained Person did not sustain an injury during the  
15 initial entry, but rather as the result of a second entry. This  
16 entry occurred after the Deputies served the Restrained Person  
17 with the DV TRO, and after the Deputies had escorted the  
18 Restrained Person out of the residence. At this point, the  
19 Restrained Person had been identified, the purpose of the  
20 Deputies visit had been explained, the unlawfulness of his  
21 return to the Residence had been explained, and the Restrained  
22 Person decided to violate the Order and return to the Residence  
23 while attempting to prevent the Deputies from entering while he  
24 was in the active commission of a crime (Violation of Penal  
25 Code 273.6).

26       Penal Code Section 844 which reads "To make an arrest, a  
27 private person, if the offense is a felony, and in all cases a  
28 peace officer, may break open the door or window of the house

1 in which the person to be arrested is, or in which they have  
2 reasonable grounds for believing the person to be, after having  
3 demanded admittance and explained the purpose for which  
4 admittance is desired." Thus, this second entry was lawful and  
5 compliant with Department policy. Finally, Commission finds  
6 that CLERB's evidence does not indicate a violation of  
7 Department policy or relevant law as the injury in question  
8 occurred during a second entry when all conditions of Penal  
9 Code 844 had been met and thus a forced entry was lawful and  
10 compliant with policy.

11 Therefore, the evidence supports a finding of "Unfounded,"  
12 on the part of both Deputy 1 and Deputy 2.

### 13 RECOMMENDATIONS

14 Based on the findings set forth above, I hereby recommend  
15 the following decision:

16 1. That the allegation sustained by CLERB against Deputy  
17 1 and Deputy 2 related to forced entry into Restrained Person's  
18 residence, referred to as CLERB Case #22-027 be deemed  
19 **Unfounded;** and

20 2. That this proposed decision shall become effective  
21 upon the date of approval by the Civil Service Commission.

22  
23 Dated: August 6, 2025

24 \_\_\_\_\_  
WILL RODRIGUEZ-KENNEDY  
25 Hearing Officer  
26  
27  
28

1 **CIVIL SERVICE COMMISSION**

2 **COUNTY OF SAN DIEGO**

3  
4 In the Matter of the Appeal of )  
5 **2023-050P** and **2023-051P** )  
6 Regarding the Citizens' Law ) DECISION  
7 Enforcement Review Board's )  
8 Sustained Findings )

9 The matter of the appeal of 2023-050P ("Deputy 1"), and  
10 2023-051P ("Deputy 2"), Deputy Sheriffs (collectively referred  
11 to as "Deputies"), from the Findings of the Citizens' Law  
12 Enforcement Review Board, ("CLERB"), in which it sustained  
13 allegations against Deputies in the Sheriff's Department, was  
14 presented to the Civil Service Commission ("CSC" of  
15 "Commission"). The Commission appointed Commissioner Will  
16 Rodriguez-Kennedy to hear the appeal and submit findings and a  
17 proposed decision to the Civil Service Commission. Thereafter,  
18 the matter was duly noticed, and a hearing was held on June 11,  
19 2025.

20 The Hearing Officer has reported back to the Commission  
21 his Findings, Conclusions and Recommendations; and a Proposed  
22 Decision, a copy of which is attached hereto and incorporated  
23 herein, and the Commission hereby adopts and approves the  
24 Findings, Conclusions, and Recommendations, and the Proposed  
25 Decision that the Hearing Officer has submitted.

26 ACCORDINGLY, IT IS ORDERED:

27 1. That the allegation sustained by CLERB against Deputy  
28 1 and Deputy 2 related to forced entry into Restrained Person's

1 residence, referred to as CLERB Case #22-027 be deemed

2 **Unfounded.**

3 2. That this proposed decision shall become effective  
4 upon the date of approval by the Civil Service Commission.

5 3. Any exhibit introduced in this proceeding may be  
6 returned to the party to whom it belongs at any time after the  
7 effective date of this Decision. The party seeking return of  
8 the exhibits shall file with this Commission a written request  
9 for the return of the exhibits accompanied by proof of mailing  
10 a copy thereof to the other party, who may have ten (10) days  
11 from the date of mailing to object to the return of said  
12 exhibit(s). If no objection is filed, the Executive Officer of  
13 the Commission may return the exhibit(s) to the party  
14 requesting it.

15 4. Upon approval of this Decision, a copy thereof,  
16 together with the Findings, Conclusions and Proposed Decision  
17 incorporated by reference, be certified and served on the  
18 parties and their representatives.

19 A written request for the preparation of the record of  
20 proceedings shall be filed with the Executive Officer of the  
21 Civil Service Commission of San Diego County, 1600 Pacific  
22 Highway, San Diego, California 92101. A deposit sufficient to  
23 cover the estimated cost of preparation of such records shall  
24 be filed with the written request for the record of the  
25 proceedings.

26 Approved by the Civil Service Commission on the 6<sup>th</sup> day of  
27 August 2025.

1 AYES: BASSETT, COLEMAN, MCGOVERN, MONTENEGRO,  
2 RODRIGUEZ-KENNEDY

3 NOES: NONE

4 ABSENT: NONE

5 ABSTENTIONS: NONE

**AUGUST 6, 2025**

**ITEM NO. 4**

**CIVIL SERVICE COMMISSION**

**COUNTY OF SAN DIEGO**

In the Matter of the Appeals )  
of **2024-037P, 2024-038P** and ) FINDINGS, CONCLUSIONS  
**2024-039P** Regarding the ) AND RECOMMENDATIONS  
Citizens' Law Enforcement )  
Review Board's Sustained )  
Findings )

The matter of the appeals of 2024-037P ("Deputy 1"), 2024-038P ("Deputy 2"), and 2024-039P ("Deputy 3"), Deputy Sheriffs (collectively referred to as "Deputies"), from the Findings of the Citizens' Law Enforcement Review Board, ("CLERB"), in which it sustained allegations against Employees in the Sheriff's Department, was presented to the Civil Service Commission ("CSC" of "Commission"). The Commission appointed Commissioner P. Kay Coleman to hear the appeal and submit findings and a proposed decision to the Civil Service Commission. Thereafter, the matter was duly noticed, and a hearing was held on May 29, 2025.

The following were present at the hearing: P. Kay Coleman, Hearing Officer; Morgan Foley, Esq., Commission Legal Advisor, Todd Adams, Executive Officer, and Karen Bernardy, Commission Analyst II, assisting the Hearing Officer; Commissioner Joe O. Montenegro, observing; Deputy 1, Deputy 2, and Deputy 3, Appellants, on their own behalf and as represented by Rico Dominguez, Esq., assisted by Miguel Peñalosa, Esq.; and Christopher Pisano, Esq., assisted by Lynn Setzler, Supervising

1 Special Investigator, and Claudia Wigfall, Special  
2 Investigator, representing CLERB.

3 The official file of the proceedings contains the  
4 following documents:

5 a. Letter from Deputies' representative dated July 23,  
6 2024, appealing CLERB's sustained finding of  
7 misconduct to the Civil Service Commission.

8 b. CLERB's written statement, required by Civil Service  
9 Rule XV, Section 15.1.3, of the specific improper  
10 conduct which CLERB found was sustained and which is  
11 being appealed, and a summary of the evidence  
12 supporting the finding of sustained, which may  
13 include any report or findings adopted by CLERB.

14 The Commission's authority to hear this appeal is derived  
15 from Civil Service Rule XV, Section 15.1.1, in that the CLERB  
16 Finding charges: Deputy 1 with use of excessive force and  
17 misconduct for failing to utilize de-escalation techniques;  
18 Deputy 2 with use of excessive force; and Deputy 3 with  
19 misconduct for failing to provide identifying information upon  
20 request.

21 Section 15.1.7 states as follows: "The burden of proof  
22 shall be on CLERB to demonstrate through a preponderance of the  
23 evidence that the incidents or acts, which are the basis for the  
24 complaints sustained by CLERB, occurred and did constitute  
25 improper conduct."

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## TESTIMONY AND EVIDENCE

### Summary:

CLERB reviewed this case and found that on January 22, 2023, while driving by Richmar Park, in San Marcos, Deputy 3 heard a shout coming from the park, which he interpreted as a request for assistance. Alerted by this shout from the park Deputy 3 pulled over and initiated an investigation. Deputy 3 immediately observed two adult males engaged in an argument. In order to gain control of the situation, Deputy 3 used his radio to call in an "active 415 between two adult males," then attempted to speak with both of the individuals involved.

The person who alerted Deputy 3 of the confrontation, Person 1, was contacted by Deputy 3 along with the other individual involved, Person 2". From the start, Person 1 was uncooperative, pacing back and forth, yelling over Deputy 3, and seemed agitated. Within 25 seconds of Deputy 3's initial contact Person 1 asks Deputy 3, "What's your name? Identify your fucking self, man." Deputy 3 paused for approximately one second while Person 1 was pacing and talking loud and rapidly and never answered. Deputy 3 continued to seek Person 1's cooperation to find out what was going on between him and Person 2, and Person 1 would not answer questions or allow Deputy 3 the chance to de-escalate the situation. It appeared to Deputy 3 that Person 1 might be under the influence of a controlled substance. During the initial 48 seconds Deputy 3 remained calm and stated to both Person 1 and Person 2 to "sit down, so we could figure out what's going on." At 48 seconds from when he initiated the contact Deputy 3 told both Person 1

1 and Person 2, "I can't deal with both of you talking at the  
2 same time; if one of you wants to come talk . . . ."

3 By this time Person 1 had walked away, still angry and  
4 talking loudly. Just over one minute had passed and Person 1  
5 was seen picking up a basketball and returned toward Deputy 3  
6 and Person 2, switching the basketball from his left to right  
7 hand when he stopped to re-engage with Person 2. At one minute  
8 and 11 seconds, Deputy 3 called in to dispatch, reporting,  
9 "I've got an active 415 going on."

10 At approximately one minute and 45 seconds after Deputy  
11 3's arrival, Person 1 again walked away while Deputy 3 told  
12 Person 2, "I'm not going to mess with him. What's up with you?"  
13 Less than 15 seconds later Person 1 returned to where Deputy 3  
14 and Person 2 were standing, continuing his rant the whole time.

15 It was at this point, within 45 seconds of Deputy 3's call  
16 to dispatch, Deputy 1 arrived on the scene, and after asking  
17 Deputy 3, "What happened," confronted Person 1, immediately  
18 ordering Person 1 to "sit down," "sit down you're gonna get  
19 tased!" then a third order to sit down. At that point Deputy 1  
20 transferred his conducted energy device ("CED", commonly  
21 referred to as a "taser") from his left to his right hand.

22 After Deputy 1 again ordered Person 1 to sit down, Person  
23 1 replied, "Hell no; dawg," while turning around and flexing  
24 his biceps as he walked away from Deputy 1 and Deputy 3. Deputy  
25 1, with his CED in his right hand, then followed Person 1 away  
26 from Deputy 3, toward basketball courts located in the park.

27 At approximately two minutes and 20 seconds after Deputy 3  
28 first made contact with Person 1 and Person 2, Deputy 2 arrives

1 and joins Deputy 1 in following Person 1 to the basketball  
2 court. Deputy 1 continued to order Person 1 to "get on the  
3 ground," adding, "or you're going to get tased." Deputy 2 was  
4 positioned at an approximately 90 degree angle from Deputy 1  
5 with Person 1 the center of the compass. Person 1 still refused  
6 to comply, shooting the basketball once, and after getting the  
7 rebound, bouncing the basketball. For a brief moment, Person 1  
8 appeared to comply with the commands to get on the ground,  
9 lowering himself cross-legged when he places his left hand on  
10 the ground and suddenly pushes himself back up. At this point  
11 Deputy 1 commands him to "get on the ground; on your stomach."  
12 When Person 1 stands up quickly Deputy 1 shouts, "Get down on  
13 the ground, now!"

14 Person 1 continues to ignore the commands, and yells at  
15 Deputy 1, "Identify yourself," to which Deputy 1 states,  
16 "Officer [omitted]." Deputy 1 and Deputy 2 begin circling  
17 Person 1 135 to 180 degrees from one another. Person 1 again  
18 asks the officers to identify themselves, and Deputy 1 replies  
19 that he already did, and Deputy 2 replies, "We're deputy  
20 sheriffs." Person 1 then shoots the basketball, and as Deputy 1  
21 got closer Person 1 stiffens up, raising his arms away from his  
22 body, standing more erect and lifting his head up slowly, then  
23 slowly turning to face Deputy 1, stating, "Do what you're going  
24 to do, bitch. Go ahead." Deputy 1 raises his CED, then  
25 discharges it toward Person 1, but it failed to work. Still  
26 standing and facing Deputy 1, Person 1 began to slightly  
27 shuffle his feet when Deputy 2 discharges his CED, which was  
28 effective in stopping Person 1's movements, as he dropped to

1 the ground, onto his back. Both Deputy 1 and Deputy 2 then  
2 rushed in to take control of Person 1 as he lay on the ground.  
3 Only one second separated the discharge of the CEDs by the two  
4 deputies.

5 Person 1 later filed a complaint with CLERB, which  
6 investigated the complaint and determined that some of the  
7 allegations result in violations of policies of the San Diego  
8 Sheriff's Department's ("SDSO" or "Department").

9 **Undisputed Evidence:**

10 The parties do not dispute that the events described  
11 occurred on January 22, 2023, in San Marcos, California. Body  
12 worn camera video (Exhibit Nos. 7, 8, and 9, from Deputy 3,  
13 Deputy 1, and Deputy 2, respectively) records the actions taken  
14 by the three deputies during that short period of time. From  
15 arrival on scene by Deputy 3, until Deputies 1 and 2 used force  
16 (CEDs) to finally take Person 1 into custody slightly less than  
17 three and one-half minutes had passed. (Exhibit 2; Exhibits 8  
18 and 9.)

19 **Policies:**

20 San Diego County Sheriff's Department Policy and Procedure  
21 ("P&P") section 2.20 *Identification*, which provides, in part,  
22 "While on duty, all [sworn] employees shall furnish their first  
23 and last name or ARJIS number to any person requesting his or  
24 her identity, except when the withholding of such information  
25 is necessary for the performance of police duties." (Exhibit  
26 15, page 4.)

27 P&P section 2.49 *Use of Force*, which provides, "Employees  
28 shall not use more force in any situation than is reasonably

1 necessary under the circumstances. Employees shall use force in  
2 accordance with law and established Departmental procedures and  
3 report all use of force in writing." (Exhibit 15, page 8.)

4 Because the courts continue to interpret acceptable versus  
5 excessive force by law enforcement, section 2.49 is further  
6 supplemented by Addendum F, *Use of Force Guidelines*, last  
7 modified on December 31, 2021 ("Addendum F"). Addendum F  
8 provides that deputies may use "objectively reasonable force"  
9 to effect an arrest of a person that the deputies have  
10 "reasonable cause to believe" that the person "has committed a  
11 public offense . . . to prevent escape, or to overcome  
12 resistance." (Exhibit 15, page 13.) Addendum F also provides  
13 that deputies "may only use a level of force they reasonably  
14 believe is proportional to the seriousness of the suspected  
15 offense or the reasonably perceived level of actual or  
16 threatened resistance." (*Id.*)

17 Addendum F also provides guidance on the use of "de-  
18 escalation" tactics with "[the] goal . . . to gain voluntary  
19 compliance of subjects, when feasible, and or [sic] to  
20 potentially reduce or eliminate the need to use force on a  
21 subject." (*Id.*)

22 **Disputed Evidence:**

23 CLERB has evaluated the complaint and has determined that  
24 Deputy 3 violated P&P section 2.20 by failing to identify  
25 himself with his first and last name or ARJIS number when  
26 Person 1 had asked them to "identify themselves."

27 Deputy 3 does not dispute that he failed to provide his  
28 identity to Person 1; however, Deputy 3 contends that the

1 withholding of the information, at the time of the request,  
2 "was necessary for the performance of police duties," an  
3 exception to the requirement found in P&P section 2.20.

4 CLERB has determined that Deputies 1 and 2 both violated  
5 P&P section 2.49, and Addendum F by using excessive force in  
6 the arrest of Person 1 when both deployed their CED. Deputy 1's  
7 CED was not effective (the second prong missed striking Person  
8 1) but Deputy 2, very shortly thereafter, deployed his CED  
9 successfully, resulting in Person 1 dropping to the ground and  
10 being taken under control. CLERB's findings after reviewing the  
11 evidence is that describing Person 1's movements just prior to  
12 Deputy 1's deployment of his CED was not assaultive behavior.  
13 Person 1's description of his positioning of his body was  
14 "standing up for myself" and that he was preparing "to get on  
15 the ground."

16 Deputies 1 and 2 contend that based on the totality of the  
17 circumstances, Person 1 was not preparing to get on the ground,  
18 and that his conduct in stretching his body straight and  
19 taller, puffing his chest out, jutting his jaw out, and  
20 spreading his arms away from his body, then turning slowly to  
21 face Deputy 1, was an indication that he was preparing to  
22 assault Deputy 1. They believed that when Person 1 then stated,  
23 "Do what you're going to do, bitch. Go ahead," shuffling his  
24 left foot forward toward Deputy 1, was assaultive behavior.

25 Finally, CLERB evaluated the conduct of Deputy 1, from his  
26 arrival to his discharge of his CED, as inconsistent with the  
27 de-escalation guidance set forth in Addendum F. It determined  
28 that Deputy 1 was acting in an "authoritative manner," as

1 opposed to a "calm demeanor." Evidence to support its position  
2 includes the fact that Deputy 1 had his CED unholstered and in  
3 his hand from the very start of his engagement with Person 1;  
4 immediately ordering Person 1 "to the ground under threat of  
5 taser."

6 Deputy 1 contends that he arrived at the park in response  
7 to the "active 415" call from Deputy 3, which could be a fight  
8 or argument, but he assumed it could be a dangerous situation;  
9 that he came to the scene without any information of the  
10 circumstances other than it involved two adult males arguing;  
11 that he observed Deputy 3 with one individual but the other  
12 approaching Deputy 1 and Person 2, yelling, angry, aggressive,  
13 and erratic; and that he recognized that he needed to de-  
14 escalate the situation right away. Deputy 1 advised Person 1  
15 that he needed to get to the ground (as having him seated  
16 achieves de-escalation of the situation) or he would be tased  
17 with the CED.

18 When Person 1 would not comply, and walked away, Deputy 1  
19 followed from a distance, seeing Person 1 "flex" his arms. He  
20 told Person 1 he was "going to be tased," as a "ruse," and as  
21 he followed Person 1 he noticed a child with an adult male in  
22 the playground nearby. Deputy 1 then continued to follow Person  
23 1 across the park to the basketball court, pausing on his way.  
24 Joining him was Deputy 2, traversing on a parallel course to  
25 the basketball court. Person 1 took a shot with the basketball,  
26 gathered the rebound, shot two baskets from underneath the  
27 basket, dribbled out and attempted another shot, then gathered  
28 up the rebound. The two deputies continued to keep their

1 distance with CEDs drawn, as Person 1 continued to yell and  
2 argue with them, holding the basketball and refusing to  
3 cooperate. At one point it appears that Person 1 would finally  
4 sit on the ground, bending to the ground cross-legged, but he  
5 abruptly springs back up to the standing position. After Person  
6 1 took one last basketball shot, Deputy 1 stepped closer, while  
7 attempting to holster his CED, and making another command for  
8 him to get to the ground. That is when Person 1's demeanor  
9 changes as he stiffens up his body and took what was described  
10 by Deputy 2 as a "bladed stance". Deputy 1 stops his efforts to  
11 re-holster the CED, steps back, shifts the CED to his right  
12 hand while still commanding Person 1 to sit down. When Person 1  
13 moved his left leg slightly Deputy 1 then discharged his CED.

#### 14 **FINDINGS**

15 Deputy 1 - Excessive Force. It is important to note that  
16 Person 1 was given many opportunities to cooperate with the  
17 commands given to him to get to the ground from each of the  
18 Deputies. Deputy 1 ultimately discharged his CED directed at  
19 Person 1 while on the basketball court and while it  
20 malfunctioned in its operation or wasn't aimed yet to have both  
21 probes land on the body, it remains that it is what is defined  
22 as "use of force."

23 Immediately prior to the point that Deputy 1 discharged  
24 his CED, Person 1 was (for the first time in this entire event)  
25 quiet and standing in place, but then he straightened his body  
26 up, puffed up his chest, jutted his chin out, and stared down  
27 Deputy 1. These behaviors could be interpreted as preparing for  
28 an assault on Deputy 1, particularly when it was clear that at



1 that time Deputy 1 was attempting to re-holster his CED while  
2 continuing his commands. Person 1's change in demeanor was  
3 sudden, not reflective of a concession that it was time to end  
4 his resistance and comply with the commands to sit (or get)  
5 down; rather, it was as if he was going to take a final stand.

6 In determining whether there was excessive use of force it  
7 is conceded that use of a CED is considered "less than lethal"  
8 force (P&P section 2.50; Exhibit 15). The guidelines found in  
9 Addendum F (mirroring Penal Code section 835a(b)) provide  
10 deputies "who have reasonable cause to believe that the person  
11 to be arrested has committed a public offense may use  
12 objectively reasonable force to effect the arrest, to prevent  
13 escape, or to overcome resistance."

14 It is clear from the BWC video of each of the deputies  
15 that none of them knew why Person 1 and Person 2 were engaged  
16 in an argument enough for Person 1, apparently, to shout to  
17 Deputy 3 for assistance when he was driving by the park. Not  
18 knowing if this argument had been, or could become, violent,  
19 Deputy 3 was the first attempting to calm Person 1 down, get  
20 him to sit down (for the deputy's safety) while investigating  
21 what had happened and if a crime was committed. Deputy 1 knew  
22 only that there was an "active 415 between two males," and upon  
23 his arrival Person 1 was the only uncooperative and belligerent  
24 one.

25 Finally, when given a chance to sit and cooperate, Person  
26 1 lowered himself toward the ground, reversed himself,  
27 continued his ranting, and when Deputy 1 attempted to re-  
28 holster his CED Person 1 suddenly changed his demeanor to one

1 of a threat with the stiffening of is body, puffing out his  
2 chest, sticking out his jaw, turning his head quickly to face  
3 Deputy 1, then making a slight movement in Deputy 1's direction  
4 with his feet while telling him, "Do what you're going to do,  
5 bitch. Go ahead."

6 Objectively, Deputy 1 reasonably believed that use of the  
7 CED at that point was necessary within the guidelines of  
8 Addendum F, P&P section 2.49, and Penal Code section 835a.  
9 Therefore, CLERB failed to meet its burden that Deputy 1 used  
10 excessive force.

11 Deputy 1 - Failure to De-escalate. While it can be argued,  
12 as Deputy 1 has contended, that under the totality of the  
13 circumstances his efforts to seek the cooperation of Person 1  
14 through potential de-escalation tactics (e.g., following him to  
15 the basketball court from a distance, continuing to shout  
16 commands from a distance, providing warning of the possible use  
17 of his CED, and even re-holstering his CED just prior to Person  
18 1's final act of defiance) could have worked, it is his initial  
19 conduct when arriving upon the scene that is most concerning.

20 Recognizing that Deputy 1 had no information on the nature  
21 of Deputy 3's call for an "active 415," upon his arrival,  
22 Deputy 1 immediately ordered Person 1 to "sit down," "sit down  
23 or you're gonna get tased!" despite the fact that Person 1  
24 proved to be no immediate threat and Deputy 3 was not in any  
25 sort of struggle or conflict with Person 2. Deputy 1's second  
26 command was delivered in a voice louder than his first command  
27 while Person 1, still acting strangely, would not comply. This  
28 initial encounter and his initial tactics did not de-escalate

1 the situation with Person 1, who continued his pacing,  
2 swearing, shouting, and verbal attacks on the deputies.

3 Therefore, CLERB has met its burden to prove that Deputy 1  
4 did fail to de-escalate the situation.

5 Deputy 2 - Excessive Force. Deputy 2 was the second unit  
6 to respond to the "active 415" call from Deputy 3, arriving  
7 approximate 30 seconds after Deputy 1. Deputy 2 also followed  
8 Person 1 to the basketball court but had no contact until  
9 reaching the court at the same time as Deputy 1, where Person 1  
10 was shooting baskets. Deputy 1 continued to take the lead in  
11 efforts to gain control of the situation and Deputy 2 joined in  
12 issuing commands while Person 1 was at the court.

13 Like Deputy 1 and Deputy 3, Deputy 2 had no information to  
14 determine the history of the altercation, and Person 1  
15 continued to display erratic behavior, moving around, shouting  
16 and swearing at the deputies. As Deputy 1 was directing Person  
17 1's focus to himself Deputy 2 was providing cover to his  
18 partner.

19 What is apparent, however, is that Deputy 2 only  
20 discharged his CED once Deputy 1's CED failed due to only one  
21 barb hitting Person 1, and Person 1, likely realizing that,  
22 shuffled his feet, which could reasonably be interpreted as the  
23 start of a movement after the CED failed in its purpose. Deputy  
24 1 was too close to avoid any attack that might have come from  
25 Person 1 and, as his cover, Deputy 2 acted appropriately.

26 Therefore, CLERB's finding that Deputy 2's use of his CED  
27 was excessive force is not supported by the evidence and his  
28 actions are justified.

1        Deputy 3 - Failure to Identify Self. The complaint of  
2 Person 1 included the allegation that none of the deputies  
3 provided their identification upon his request. CLERB found  
4 this allegation sustained as to only one of the deputies,  
5 Deputy 3.

6        Deputy 3 agrees that shortly after his arrival, while he  
7 was attempting to determine why Person 1 had called out to him  
8 as he drove by, Person 1 asked for his name. It is clear, and  
9 Deputy 3 does not dispute, that he did not provide his name  
10 when requested. It is assumed that he heard the request as he  
11 did pause, for approximately one second, after Person 1's  
12 question, "What is your name? Identify your fucking self, man,"  
13 which came in the middle of his argument with Person 2, in  
14 front of Deputy 3, who was trying to keep both men calmed.

15        P&P section 2.20 mandates that sworn employees of the San  
16 Diego County Sheriff's Office ("SDSO"), while on duty, are to  
17 "furnish first and last name and/or ARJIS number to any person  
18 requestion his or her identity, except when the withholding of  
19 such information is necessary for the performance of police  
20 duties." (Exhibit 15.) Deputy 3 testified that he took a pause  
21 - a quick pause - to make a decision whether to respond but  
22 felt to do so would give control of the scene to Person 1. He  
23 added that it was a conscious decision because he, himself, did  
24 not have control, and Person 1 was erratic and pacing back and  
25 forth.

26        The mandate that on duty sworn employees must furnish  
27 their name upon request from any person has an exception, which  
28 is "when the withholding of such information is necessary for

1 the performance of police duties." Deputy 3 did not articulate  
2 why withholding his name was "necessary for the performance of  
3 police duties," although he did explain that he didn't have  
4 control of the situation at that time, and that he didn't want  
5 Person 1 to gain control over the scene by providing his name.

6 CLERB produced sufficient evidence that supports a finding  
7 that the exception does not apply, having met its burden,  
8 bolstered by Deputy 3's own admission that he did not provide  
9 his name. Deputy 3's explanation - that things were hectic,  
10 that he did not yet have control, and that he felt by providing  
11 his name or ARJIS number to Person 1 it would somehow give  
12 control of the situation to Person 1 - is not supported by the  
13 evidence, where Person 2 was not demonstrating any threat and  
14 Person 1, while a distraction, also did not appear to be a  
15 threat to his safety. In considering his explanation, his  
16 conduct should be compared to the situation with Deputy 1: He  
17 was in the middle of a standoff with Person 1 to the extent  
18 that his CED was out of its holster, yet he was able to provide  
19 his name to Person 1 when demanded. By contrast, Deputy 3 was  
20 in a less threatening situation, with Person 2 and Deputy 3  
21 speaking calmly, and yet he failed to identify himself when  
22 asked.

23 CLERB has met its burden of proof that Deputy 3 did not  
24 identify himself to Person 1, in violation of P&P section 2.20.  
25 Upon consideration of the facts presented by Deputy 3, they are  
26 insufficient to support a finding that the exception applies,  
27 and he fails to meet his burden of proof.





1           2.     That the allegation sustained by CLERB in the  
2 Complaint against Deputy 1 referred to as CLERB Case # 23-071  
3 regarding Misconduct (failed to utilize de-escalation  
4 techniques) be deemed **Sustained;**

5           3.     That the allegation sustained by CLERB in the  
6 Complaint against Deputy 2 referred to as CLERB Case # 23-071  
7 regarding Excessive Force be deemed **Action Justified;**

8           4.     That the allegation sustained by CLERB in the  
9 Complaint against Deputy 3 referred to as CLERB Case # 23-071  
10 regarding Misconduct (failed to provide identifying information  
11 upon request) be deemed **Sustained;** and

12          5.     That this proposed decision shall become effective  
13 upon the date of approval by the Civil Service Commission.

14          6.     Any exhibit introduced in this proceeding may be  
15 returned to the party to whom it belongs at any time after the  
16 effective date of this Decision. The party seeking return of  
17 the exhibits shall file with this Commission a written request  
18 for the return of the exhibits accompanied by proof of mailing  
19 a copy thereof to the other party, who may have ten (10) days  
20 from the date of mailing to object to the return of said  
21 exhibit(s). If no objection is filed, the Executive Officer of  
22 the Commission may return the exhibit(s) to the party  
23 requesting it.

24          7.     Upon approval of this Decision, a copy thereof,  
25 together with the Findings, Conclusions and Proposed Decision  
26 incorporated by reference, be certified and served on the  
27 parties and their representatives.



1 A written request for the preparation of the record of  
2 proceedings shall be filed with the Executive Officer of the  
3 Civil Service Commission of San Diego County, 1600 Pacific  
4 Highway, San Diego, California 92101. A deposit sufficient to  
5 cover the estimated cost of preparation of such records shall  
6 be filed with the written request for the record of the  
7 proceedings.

8 Approved by the Civil Service Commission on the 6<sup>th</sup> day of  
9 August 2025.

10  
11 AYES: BASSETT, COLEMAN, MCGOVERN, MONTENEGRO,  
12 RODRIGUEZ-KENNEDY

13 NOES: NONE

14 ABSENT: NONE

15 ABSTENTIONS: NONE  
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**AUGUST 6, 2025**

**ITEM NO. 5**

**CIVIL SERVICE COMMISSION**

**COUNTY OF SAN DIEGO**

In the Matter of the Appeals )  
of **2024-040P** and **2024-041P** ) FINDINGS, CONCLUSIONS  
Regarding the Citizens' Law ) AND RECOMMENDATIONS  
Enforcement Review Board's )  
Sustained Findings )

The matter of the appeals of 2024-040P ("Officer 1") and 2024-041P ("Officer 2"), Probation Officers (collectively referred to as "Officers"), from the Findings of the Citizens' Law Enforcement Review Board, ("CLERB"), in which it sustained allegations against Employees in the Probation Department, was presented to the Civil Service Commission ("CSC" or "Commission"). The Commission appointed Commissioner Joe O. Montenegro to hear the appeal and submit findings and a proposed decision to the Civil Service Commission. Thereafter, the matter was duly noticed, and a hearing was held on June 2, 2025.

The following were present at the hearing: Joe O. Montenegro, Hearing Officer; Morgan Foley, Esq., Commission Legal Advisor, Todd Adams, Executive Officer, and Karen Bernardy, Commission Analyst II, assisting the Hearing Officer; Commissioner Sam McGovern, observing; Officer 1 and Officer 2, Appellants, on their own behalf and as represented by Rico Dominguez, Esq., assisted by David Lopez, Esq.; and Christopher Pisano, Esq., assisted by Lynn Setzler, Supervising Special Investigator, and Spencer Klew, Special Investigator, representing CLERB.

1 The official file of the proceedings contains the  
2 following documents:

- 3 a. Letter from Officers' representative dated July 25,  
4 2024, and received by the Commission office via email  
5 transmission on July 25, 2024, from the Appellants'  
6 representative appealing CLERB's sustained finding of  
7 misconduct to the Civil Service Commission.
- 8 b. CLERB's written statement, required by Civil Service  
9 Rule XV, Section 15.1.3, of the specific improper  
10 conduct which CLERB found was sustained and which is  
11 being appealed, and a summary of the evidence  
12 supporting the finding of sustained, which may  
13 include any report or findings adopted by CLERB.

14 The Commission's authority to hear this appeal is derived  
15 from Civil Service Rule XV, Section 15.1.1, in that the CLERB  
16 Finding charges: Officer 1 and Officer 2 used excessive force  
17 against a youth housed at the Youth Transition Campus.

18 Section 15.1.7 states as follows: "The burden of proof  
19 shall be on CLERB to demonstrate through a preponderance of the  
20 evidence that the incidents or acts, which are the basis for the  
21 complaints sustained by CLERB, occurred and did constitute  
22 improper conduct."

23 **TESTIMONY AND EVIDENCE**

24 **Summary:**

25 CLERB reviewed this case and found that on August 12,  
26 2023, at approximately 5:12 p.m., during the dinner time at  
27 Cottage Succeed at the Youth Transition Campus ("Facility"),  
28 Officer 1 and Officer 2, along with one other probation officer

1 ("Officer 3"), were supervising 12 male youths in the day room  
2 setting ("Day Room") while the youths were eating dinner.<sup>1</sup> The  
3 probation officers allowed the youths to watch television,  
4 mounted on one of the walls, during dinner time, and the  
5 television was on a channel showing the Padres baseball game  
6 being broadcasted at that time.

7 At all times pertinent to this incident, Officer 1 and  
8 Officer 3 were standing near two (2) desks within or  
9 immediately adjacent to the smaller alcove described in  
10 footnote 1. The desk immediately adjacent has one corner  
11 abutting the alcove wall and is positioned at a 45° angle off  
12 of the corner of the alcove. Both Officer 1 and Officer 3  
13 positioned rolling desk chairs in front of themselves.

14 Officer 2 was located close by, with his back to the wall  
15 that is parallel to the wall at the further end of the Day  
16 Room, where the second television is located. (See footnote 1.)

17 One youth ("Youth") finished his dinner, stood up, asked  
18 permission to throw out the disposable dinner container and  
19 utensils, and after being given permission, left his table and  
20 threw away his dinner trash. Youth then continued walking to  
21 the television and, without asking permission, turned on an  
22 attached video gaming system that caused the television in the  
23

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24 <sup>1</sup> The Day Room is viewed from the CCTV video as (more or less) a rectangular room with two sides  
25 parallel from the top of the CCTV video screen, and a larger alcove situated on the left side,  
26 approximately halfway along that side of the room. It is in this alcove that a television is  
27 mounted on a wall. The wall along right side of the room is longer but before it connects to  
28 the wall at the bottom of the room there is a second, smaller, alcove, where one of two desks  
is located, along with office equipment such as telephones, computer terminals, a printer,  
binder, etc. In front of the one desk, on the wall, is a whiteboard with a simple map of the  
rooms in Cottage 16, and the names of the youths written in their respective rooms. At the top  
of the Day Room there is a second television monitor. The Day Room contains a variety of easy  
chairs, gaming chairs (one in front of either television) a ping pong table, a foosball table,  
two circular tables, and one rectangular table where the youths are eating. (See Exhibit 3; see  
also, Appellants' Exhibit E.)

1 larger alcove to automatically change the input source away  
2 from the live television feed of the baseball game. Youth and  
3 another youth (who had been eating dinner at the same table as  
4 Youth, had already walked over to the television and gaming  
5 system) then sat down in chairs in front of the screen to play  
6 a video game.

7       Officer 1, having observed Youth turn on the video game,  
8 reached to a desk located to his right, opened a drawer, pulled  
9 out a remote control for the television, and turned the  
10 television off from across the room. Youth then got out of his  
11 chair, stood on the small table where the gaming device was  
12 housed, and manually pushed the power button for the  
13 television, without permission. Officer 1 then again used the  
14 remote control to turn the television off from across the room.

15       Youth then got up from his chair, stated "This is my TV, I  
16 can do what I want," and proceeded to walk with a deliberate  
17 stride, grasping his waistband with his right hand, across the  
18 Day Room and confronted Officer 3. He argued that he had the  
19 right to use the television, yelling profanities toward the  
20 officers. Officer 1 told Youth that it was he who turned it  
21 off. Youth then moved to Officer 1, continuing to yell  
22 profanities, and argue with Officer 1. While arguing with  
23 Officer 1 Youth made the comment, "This is my house, and you  
24 gonna find out . . . crack it off!"<sup>2</sup> Officer 1 had a desk chair  
25 in front of himself, but off to his left, with his left foot  
26 resting on top of the base, and with his left hand on top.

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27  
28 <sup>2</sup>The phrase, "crack it off," is a slang term for an officer assault. (Exhibit 10,  
page 2 [from long synopsis from Officer 1's incident report]. See also, Appellants'  
Exhibit 2, page 2 [same synopsis].)

1 Approximately 19 seconds into his argument with Officer 1, at  
2 least 8 of the other youths were now watching the argument.  
3 Eighteen seconds later Officer 1 takes his left foot off the  
4 base of the desk chair, stepping back and squaring his feet  
5 with his body but with his left hand remaining on the top of  
6 the back of the chair. This action created more space between  
7 him and Youth Six seconds later (forty-three seconds into the  
8 argument) Youth steps forward within less than two feet between  
9 them and one second later he takes another step moving to  
10 within four or five inches away from Officer 1. Officer 1  
11 testified that he continued efforts to de-escalate the  
12 situation.

13 During much of the time that he was standing in front of,  
14 and arguing with, Officer 1, Youth had one or both hands shoved  
15 into his waistband and kept them there until he and Officer 1  
16 entered into a fight. Officer 1's initial movement was to place  
17 the palm of his left hand on Youth's chest, and to swing his  
18 right hand toward Youth's left shoulder. Youth's initial  
19 movement was to pull his right hand out of his waistband,  
20 swinging his right fist toward Officer 1's body, and ducking  
21 from Officer 1's right hand. Once the fight began, Officer 1  
22 pushes the chair away toward Officer 2, Officer 3 (who has been  
23 watching the argument closely for the past 7 seconds) moves  
24 toward the fight, and Officer 2 (who had been watching Youth  
25 and Officer 1) grabs the chair and moves it out of the way  
26 while at the same time he joins Officer 1 in wrestling Youth to  
27 the ground in an effort to subdue and control Youth Officer 3  
28 is seen following the three combatants, motioning to the other

1 youths in what appears to be his command to "cover." It is  
2 clear that this "Cover" command was no later than 7 seconds  
3 after the fight began as by this time all 11 of the remaining  
4 youths have complied in the command.

5 While Officer 1 and Officer 2 work to gain control of  
6 Youth, who is on his stomach with his arms tucked close to his  
7 body, with his right hand up around his head and face, Officer  
8 3 remained alert as cover. In efforts to gain control Officer 1  
9 first places pressure on the side of Youth's head while at the  
10 same time using his body and left arm to try to gain control of  
11 Youth's arms. To do so Officer 1 applies two (2) knee kicks to  
12 Youth's right torso. Officer 3 then moves to Youth's feet and  
13 grabs them, spreading them apart to prevent body-twisting on  
14 the part of Youth

15 **Undisputed Evidence:**

16 The parties do not dispute that the events described  
17 occurred on August 12, 2023, in the Day Room of Cottage  
18 Succeed. A closed-circuit television video recording (Exhibit  
19 3; Appellants' Exhibit E) in the Day Room, from that date and  
20 time, supports the description of the actions taken by Officer  
21 1 and Officer 2, and others, that late afternoon, as set forth  
22 above.

23 **Policies:**

24 San Diego County Probation Department Institutional  
25 Services Policy Manual ("Policy Manual") Policy 514, section  
26 514.3 *Use of Force*, which provides, in pertinent part,  
27 "Officers may use force as reasonably appears necessary in the  
28 performance of their duties, but excessive force shall not be

1 used. Officers must use only that amount of force that appears  
2 reasonably necessary under the circumstances in order to gain  
3 control of the youth; protect and ensure the safety of youths,  
4 staff, and others; . . . obtain compliance with facility rules  
5 and staff orders; or ensure the institution's security and good  
6 order . . . ." (CLERB Exhibit 14; Appellants Exhibit D.)

7 Section 514.3 of Policy 514 further provides, in its fifth  
8 paragraph, "Prior to resorting to the use of force, officers  
9 should, when practicable, attempt verbal persuasion, order, or  
10 other tactics to avoid or mitigate the need for forceful  
11 action," citing to California Code of Regulations ("CCR") Title  
12 15, section 1357. (*Id.*)

13 Subsection 514.3.1 provides 20 examples (listed from (a)  
14 to (t)) of factors to be used to determine the reasonableness  
15 of force. Some of these factors relate to factors set forth in  
16 Penal Code section 835a. (*Id.*)

17 **Disputed Evidence:**

18 CLERB has evaluated the complaint and has determined that  
19 Officer 1 and Officer 2 both violated Policy Manual section 514  
20 by using excessive force in their efforts to control Youth when  
21 he engaged in a fight with Officer 1 after continuing to argue  
22 with Officer 1 about changing the input to the television  
23 without permission. CLERB's determination also includes the  
24 actions on the part of Officer 1 when he attempted to gain  
25 physical control of Youth in attempting an "inside head  
26 takedown" as the two were arguing, implying that Officer 1's  
27 use of force, initially, was unnecessary and excessive.



1       Officer 1 contends that Youth's actions leading up to the  
2 struggle made it reasonably necessary to use force to gain  
3 control of the situation. His actions include, earlier that  
4 day, during free time, telling a probation officer, "What's  
5 Brackin" (where the term, "Brackin" is a gang slogan as a  
6 challenge to fight); and earlier, during a routine weekly room  
7 search, probation officers noticed that Youth wrote in his  
8 journal, "the only thing that will make me smile is if [I kill]  
9 an Officer." (Exhibit N, pp. 105, 106.<sup>3</sup>) Youth also failed to  
10 follow commands related to his attempts to use the television  
11 for video gaming without first obtaining permission; turning  
12 the television on, including standing on the furniture to reach  
13 the power button on the unit, after Officer 1 turned it off  
14 with the remote; arguing with, first, Officer 3, and then  
15 Officer 1 over his desire to control the use of the television;  
16 standing in front of Officer 1 with hands tucked in his  
17 waistband, stating, "This is my TV, I can do what I want,"  
18 then, "This is my house, and you gonna find out . . . crack it  
19 off," then twice closing the space between himself and Officer  
20 1 (the first to within 2 feet of each other, the second - after  
21 Officer 1 had stepped back to regain some distance - within  
22 approximately 5 inches) while arguing with Officer 1, then  
23 flinching, are all indications of a youth trying to take  
24 control of the situation and showing complete disregard for the  
25 rules applicable to his situation as a ward of the court and  
26 resident of the facility.

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27  
28 <sup>3</sup> CLERB objected to admission of Appellants' Exhibits N through S as irrelevant. The Commissioner overruled the objection noting, however, that he would give the evidence the weight it deserves.

1 Similarly, Officer 2 contends that in order to gain  
2 control of Youth, while he was on the ground, the force used  
3 was necessary and reasonable, as Youth was not compliant in  
4 efforts to remain still, allow access to his arms, and cease  
5 his struggle.

6 Finally, as to the struggle on the floor, Officer 1 and  
7 Officer 2 contend that the actions of Officer 3 to take control  
8 of Youth's legs by grabbing his ankles and spreading his legs  
9 apart, were both reasonable and necessary.

10 In support of their position that the use of force was  
11 within Departmental guidelines and California law, the  
12 Appellants offered the testimony of a Deputy Probation Officer  
13 ("Expert Witness"), an expert witness who is a nearly 18-year  
14 veteran of the Department as of the day of the hearing,  
15 assigned to the "Weapons and Training Unit." Expert Witness  
16 testified that he reviewed the CCTV video the first time,  
17 shortly after the incident, when asked by his supervisor for  
18 his thoughts. His opinion was that the handling of the  
19 situation by Officer 1, Officer 2, and Officer 3, was "pretty  
20 close to . . . textbook," based on the interactions each had  
21 with Youth First, none of the officers advanced toward Youth at  
22 any time during the incident; second, there was no "retreat" by  
23 any of the officers; and third, Officer 1 and Officer 2  
24 maintained their composure when Youth challenged their actions  
25 in turning off the television.

26 Expert Witness also provided his opinion related to  
27 Youth's conduct, and how each of the officers responded. For  
28 example, officer control of a situation is important as it

1 avoids a youth versus youth fight. With respect to Youth's  
2 conduct, just getting up from his chair and walking over to the  
3 officers, without permission, and without even having asked for  
4 permission, demonstrates Youth's assertiveness. Pulling up his  
5 pants as he walks over and when confronting Officer 1 is a  
6 "pre-assaultive indicator." When Youth stepped into the space  
7 between himself and Officer 1 it means they are wanting  
8 confrontation.

9 With respect to the struggle on the floor, where the  
10 officers were attempting to gain control of Youth and stop his  
11 wriggling to get free, Expert Witness opines that knee strikes  
12 to the body, shoulders, and thighs; spreading the legs apart;  
13 and pressure on the head to keep it from moving ("Where the  
14 head goes, the body follows"), are all within use of force  
15 guidelines in Policy 514.

## 16 **FINDINGS**

### 17 **Excessive Force - Officer 1**

18 The youth involved in the incident on August 12, 2023,  
19 Youth, was a resident at Cottage Succeed, at the Facility,  
20 where Officer 1 and Officer 3 were assigned. Cottage Succeed  
21 was described as housing for the most violent of juveniles,  
22 where the most serious of youths are housed. Youth had a known  
23 history of challenging authority, both within and without the  
24 Facility.

25 On the day of the incident Youth had already stated to one  
26 officer, "What's Brackin." On or around that day a routine  
27 weekly inspection of his room resulted in the discovery of an  
28 entry in Youth's journal, where he wrote, "the only thing that

1 will make me smile is if [I kill] an Officer." After the  
2 evening meal, when Youth took control of the television and  
3 turned on the video gaming system, he was given many  
4 opportunities to cooperate with the commands given to him to  
5 restore the television to the channel broadcasting the Padres  
6 game, and keep it there, but chose, instead, to immediately  
7 attempt to take control and ignore procedures.

8       Having been rebuffed twice in his effort to take control  
9 of the television without permission, Youth then walked across  
10 the room to confront Officer 3 and Officer 1. He did not ask  
11 permission to approach, and his demeanor was such that it was  
12 clear a likely confrontation would follow. Youth did not like  
13 that he was told, "no," confronting Officer 1, shoving his  
14 hands into his waistband, yelling and arguing with the officer,  
15 then stepping closer when Officer 1 made a slight step back to  
16 create some distance. Finally, Youth shuffled even closer, to  
17 within approximately 5 inches of Officer 1, continued his  
18 arguing, and flinched, when Officer 1 moved to restrain Youth  
19 with an "inside head takedown."

20       CLERB believes that de-escalation efforts were not  
21 sufficient to avoid the confrontation, pointing out that  
22 Officer 1 "could easily have taken a steps or steps back away  
23 from [Youth] to give space between himself and [Youth], and  
24 that [Officer 1] did not do so." But to do so would only  
25 embolden youths who are challenging the authority of officers,  
26 which could lead to even worse consequences. As pointed out by  
27 Expert Witness, Officer 1 had no obligation to "retreat," and  
28 Penal Code section 835a (d), recognizes that there is no such

1 obligation, but subdivision (d) does not equate "repositioning  
2 or other de-escalation tactics" to retreating.

3       The CLERB points out that there is inconsistency with  
4 Officer 1's statement, that he thought stepping back again was  
5 not possible due to the location of the nearby desk. The CCTV  
6 video showed that the desk was not directly behind Officer 1  
7 but, instead, was to his right almost two feet away from him.  
8 Officer 1 maintained that at that time he thought that his  
9 position was such that the desk would impede additional  
10 movements back.

11       Finally, CLERB goes to length to question whether Officer  
12 1 used the "Cover" command prior to the physical efforts to  
13 take Youth under control and while it is unclear from the CCTV  
14 video recording, as there is no audio element to the recording,  
15 there is no evidence, other than the timing of compliance with  
16 a Cover command when Officer 1, Officer 2, and Youth, were  
17 wrestling on the floor. Even then, the other youths were more  
18 interested in watching and not "covering," right away, and they  
19 didn't comply until Officer 3 points to the youths and appears  
20 to be addressing them to cover.

21       After CLERB considered the staff's recommendation the  
22 first time, it directed staff to go back and try to obtain  
23 interviews with Officer 1 and Officer 2, to try to clear up the  
24 inconsistencies it saw between statements and the video.  
25 Officer 1 and Officer 2 declined the request by CLERB staff to  
26 be interviewed, and it returned to CLERB with a recommendation  
27 that CLERB approve a finding of "not sustained," meaning there  
28 was insufficient evidence to either prove or disprove the

1 allegation. CLERB did not agree with the recommendation and  
2 made changes to the findings as identified above.

3 With the testimony of Officer 1 in this action, and  
4 consideration of the evidence presented at the hearing and  
5 Policy 514, it is the finding of the hearing officer that the  
6 use of force of Officer 1 was justified, and that the issue of  
7 whether Officer 1 gave the Cover command, prior to his efforts  
8 to take Youth under control using force, is not sustained by  
9 the evidence. Therefore, the finding of CLERB that Officer 1  
10 used excessive force is overturned.

11 Excessive Force - Officer 2

12 Officer 2 was not involved in the arguments that Youth had  
13 with Officer 1 and Officer 3. His only involvement is that when  
14 the argument turned physical, with Officer 1 and Youth  
15 fighting, that he jumped in to assist Officer 1 in seeking to  
16 control Youth

17 Expert Witness's analysis and opinion of the fight  
18 supported Officer 2's use of force on Youth in efforts to take  
19 him into custody and control the situation. The strikes (if  
20 any) delivered by Officer 2 to Youth's body were "textbook"  
21 examples of how to gain control of a fighting youth. Likewise,  
22 using his hand or arm to press Youth's head to the floor are  
23 within Policy 514, and CLERB has not met its burden to support  
24 its finding that he used excessive force. Therefore, his  
25 actions are justified.

26 As with Officer 1, the finding of CLERB that Officer 2  
27 used excessive force is overturned.



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In the Matter of the Appeals )  
of **2024-040P** and **2024-041P** )  
Regarding the Citizens' Law ) DECISION  
Enforcement Review Board's )  
Sustained Findings )

The Hearing Officer has reported back to the Commission his Findings, Conclusions and Recommendations; and a Proposed Decision, a copy of which is attached hereto and incorporated herein, and the Commission hereby adopts and approves the Findings, Conclusions, and Recommendations, and the Proposed Decision that the Hearing Officer has submitted.

1. That the allegation sustained by CLERB in the Complaint against Officer 1 referred to as CLERB Case # 23-118 regarding Excessive Force be deemed **Action Justified**;



1           2.     That the allegation sustained by CLERB in the  
2 Complaint against Officer 2 referred to as CLERB Case # 23-118  
3 regarding Excessive Force be deemed **Action Justified;** and

4           3.     That this proposed decision shall become effective  
5 upon the date of approval by the Civil Service Commission.

6           4.     Any exhibit introduced in this proceeding may be  
7 returned to the party to whom it belongs at any time after the  
8 effective date of this Decision. The party seeking return of  
9 the exhibits shall file with this Commission a written request  
10 for the return of the exhibits accompanied by proof of mailing  
11 a copy thereof to the other party, who may have ten (10) days  
12 from the date of mailing to object to the return of said  
13 exhibit(s). If no objection is filed, the Executive Officer of  
14 the Commission may return the exhibit(s) to the party  
15 requesting it.

16           5.     Upon approval of this Decision, a copy thereof,  
17 together with the Findings, Conclusions and Proposed Decision  
18 incorporated by reference, be certified and served on the  
19 parties and their representatives.

20           A written request for the preparation of the record of  
21 proceedings shall be filed with the Executive Officer of the  
22 Civil Service Commission of San Diego County, 1600 Pacific  
23 Highway, San Diego, California 92101. A deposit sufficient to  
24 cover the estimated cost of preparation of such records shall  
25 be filed with the written request for the record of the  
26 proceedings.

27           Approved by the Civil Service Commission on the 6<sup>th</sup> day of  
28 August 2025.

1 AYES: BASSETT, COLEMAN, MCGOVERN, MONTENEGRO,  
2 RODRIGUEZ-KENNEDY

3 NOES: NONE

4 ABSENT: NONE

5 ABSTENTIONS: NONE