

CITIZENS' LAW ENFORCEMENT REVIEW BOARD (CLERB)

SUMMARY

The Citizens' Law Enforcement Review Board of San Diego County came to the attention of the 2017/2018 San Diego County Grand Jury (Grand Jury) after November 2017 news reports questioned the Board's summary dismissal of 22 death-case investigations. CLERB investigates citizen complaints against the Sheriff's and Probation departments. Due to the seriousness of issues raised, the Grand Jury decided to investigate CLERB, how it handles cases, and how it is managed.

During its investigation the Grand Jury found that prior to 2018:

- The Board had not been fully staffed at 11 members for several years
- The Special Investigative Unit experienced periodic staff shortages going back to November 2016
- The Board did not provide adequate oversight of the Investigative Unit

The Grand Jury recommends the following:

- That the Investigative Unit's Executive Officer not be involved in the application process for the selection of new Board members.
- That the Rules & Regulations manual be updated and a training manual be developed for the Investigative Unit.
- That the Rules & Regulations manual be updated for Board members.
- That the Investigative Unit develop a system to track death-case investigations to ensure that they are completed within one year to comply with the Peace Officers Bill of Rights (POBOR) and CLERB Rules & Regulations.
- The Board be directed to conduct an annual performance evaluation of the Executive Officer.
- Since the Public Safety Group, part of County government to which CLERB is currently assigned, includes the Sheriff's and Probation departments as well as CLERB, the Grand Jury recommends that CLERB supervision move to another Group in the County in order to avoid a potential conflict of interest.

INTRODUCTION

The Grand Jury reviewed news reports that in November 2017, CLERB had summarily dismissed 22 death-case investigations. The Grand Jury wanted to know what factors led to these dismissals, and if CLERB operated in an independent, fair, and impartial manner.

PROCEDURE

The Grand Jury interviewed:

- Current and former CLERB employees
- CLERB Board members
- Representatives of San Diego County government

The Grand Jury reviewed:

- The CLERB Rules & Regulations, last revised June 27, 2017.
- News articles and reports relating to CLERB.
- The ordinance and bylaws establishing CLERB, its duties, powers and operating procedures.
- POBOR, the intent behind POBOR, and court rulings on POBOR as it relates to citizen review boards.

The Grand Jury consulted with a representative from the State Attorney General's office regarding POBOR.

DISCUSSION

In 1990, the citizens of San Diego County amended the County Charter through passage of Proposition A to establish a Citizens' Law Enforcement Review Board. The proposition passed by a vote of 62% in favor.

The Mission Statement of CLERB is:

To increase public confidence in government and the accountability of law enforcement by conducting impartial and independent investigations of citizen complaints of misconduct concerning Sheriff's Deputies and Probation Officers employed by the County of San Diego.

The duties established by San Diego County Charter Section 606, San Diego County Code of Administrative Ordinances sections 340 through 340.5 include the following:

1. Receive, review, and investigate citizen complaints which charge peace officers or custodial officers employed by the Sheriff's Department or the Probation Department with:
 - (a) use of excessive force
 - (b) discrimination or sexual harassment in respect to members of the public
 - (c) improper discharge of firearms
 - (d) illegal search or seizure
 - (e) false arrest
 - (f) false reporting
 - (g) criminal conduct or
 - (h) misconduct.
2. Review and investigate the death of any individual resulting from actions by or negligence on the part of peace officers or custodial officers employed by the Sheriff's Department or the Probation Department.

Also included in Proposition A was the power to subpoena witnesses, to administer oaths, and to produce materials pertinent to CLERB investigations.

CLERB is the separate set of eyes expected to ensure transparency of the activities of the Sheriff's and Probation departments.

CLERB has two components: A Board consisting of 11 volunteers representing the five Supervisorial Districts, and an Investigative Unit including the Executive Officer and Special Investigators.

The Grand Jury learned that the process for appointing Board members has changed subsequent to the 22 death-case dismissals. Previously, the Investigative Unit's Executive Officer recruited citizens to serve as Board members. The applications were gathered by the Investigative Unit's Executive Officer then submitted for review and background checks to the County of San Diego Deputy Chief Administrative Officer (DCAO) representing the Public Safety Group. Applications were reviewed by the San Diego Public Safety Group and then submitted to the San Diego County Board of Supervisors, who appointed applicants to the CLERB Board.

Currently, the only requirements for prospective candidates are that they must be registered to vote in San Diego County and demonstrate interest in public service. County employees, peace officers, and custodial officers are not eligible to be members of the review board. Interested candidates complete application forms that are collected by the Investigative Unit's Executive Officer and submitted to County Public Safety. Candidates undergo a background check by the Department of Justice. Applications are reviewed by the San Diego County Public Safety Group and then nominations are submitted to the San Diego County Board of Supervisors, which appoints applicants to the Board. This differs from the earlier process in that the Executive Officer plays a reduced role, but still compiles applications for CLERB members and forwards them to the DCAO. The Grand Jury recommends that the selection process for Board members be completely independent of the Executive Officer.

Members serve a three-year term with the option for a second term. Members spend up to 15 hours preparing for and participating in monthly or bi-monthly meetings. They must complete training provided by the Sheriff's and Probation departments and by the Office of County Counsel within three months of beginning their term. They also participate in law enforcement ride-alongs and tour detention facilities. CLERB board members receive no compensation.

The second CLERB component is the Investigative Unit which currently consists of:

1. An Executive Officer, whose responsibility is to manage the Investigative Unit and maintain a caseload as an investigator.
2. Three Special Investigators, who examine complaints about actions by the Sheriff's and Probation departments as well as death-case investigations.
3. An administrative assistant, who performs office support.

Prior to March 2018, the staff operated with three people investigating cases, one of whom was the Executive Officer. Intermittently from 2015 to 2017 the Investigative Unit was short of investigators due to absences and staff turnover. Some cases were not investigated due to these staff shortages.

In the course of its investigation, the Grand Jury learned CLERB has a Rules & Regulations manual that is currently under review but awaiting a significant set of updates clarifying nearly every operating procedure for both the Board and the Special Investigative Unit.

There is no training protocol or training manual for the Executive Officer or Investigative Unit which would clarify their duties and responsibilities.

It was and continues to be the Board's responsibility to supervise and review the performance of the Executive Officer. The Grand Jury could not find evidence that the Board had completed a performance review of the Executive Officer.

The Complaint Process

Any citizen may submit a complaint involving the actions by Sheriff's or Probation departments but it must be in writing and signed under penalty of perjury. A complaint, with few exceptions, including incarceration or physical and / or mental incapacity must be received within one year of the alleged action. The Investigative Unit interviews the complainant and reviews any documentation provided. The Investigative Unit summarizes the complaint in writing and submits it to the complainant for review, signature, and return. Following what should be a thorough investigation, complainants, the involved Sheriff's deputies or Probation officers and their departments are notified in writing of Investigative Unit recommendations and the date CLERB will consider the complaint.

Board members examine case evidence and review investigative reports in preparation for their meeting. Generally, CLERB meets on the second Tuesday of each month. CLERB meetings have open and closed sessions. In the first part, the open session, complainants and members of the public may address CLERB for up to three minutes during the public-comment portion of open session. After open session concludes, CLERB goes into closed session with only Board members, investigators, and legal counsel present. CLERB reviews the Investigative Unit's reports and recommendations and makes decisions on complaints behind closed doors.

The Board makes the following findings included in publicly released reports:

- Sustained Finding (Evidence supports allegations and conduct was not justified)
- Not Sustained (Insufficient evidence to prove or disprove allegations)
- Action Justified (Evidence shows alleged conduct occurred but was justified)
- Unfounded (Evidence shows alleged conduct did not occur)

CLERB must prepare an annual report to the Board of Supervisors, the Chief Administrative Officer, the Sheriff, and the Chief Probation Officer. The report summarizes the activities and recommendations of CLERB, including tracking and identification of trends with respect to all complaints received and investigated during the reporting period.

Complaints are investigated in the order received, but cases involving death or allegations of serious injury now take priority.

This was not the procedure prior to the November 2017 dismissal of the 22 death cases.

CLERB has a history of summarily dismissing cases back to 2010. 53 cases were dismissed in 2010, none were death cases.

On an annual basis, CLERB receives and investigates between 100 and 200 complaints. As of November 2017, CLERB had received a total of 140 complaints including death cases.

The Grand Jury has received testimony that County Counsel has advised that CLERB is subject to certain terms of POBOR including investigative time limitations.

In 1999, the Court of Appeals issued a ruling (*Caloca v. County of San Diego* 72 Cal. App. 4th 1209) concluding that the findings of law enforcement citizen review boards could result in harm to law enforcement officers and therefore are punitive in nature under POBOR. The results of citizen review board findings can therefore be damaging to an officer seeking promotion or employment with a new law enforcement agency.

The San Diego Police Officer's Association (SDPOA) took exception to the public release of citizen review board findings about peace officers and filed suit in San Diego County Superior Court. The Court ruled in favor of SDPOA, The City appealed. The Trial Court ruling was upheld (*Davis v. City of San Diego*, 106 Cal. App. 4th 893). As a result, CLERB reports regarding peace officers are heavily redacted before release to the public.

CLERB's responsibility is to review and investigate reports and recommend policy changes to the Sheriff's deputies or Probation department officers as appropriate. Complainants along with Sheriff's deputies, Probation officers, their respective departments, and the Board of Supervisors are notified of decisions in writing.

POBOR has a time limit for completing investigation of cases. The Grand Jury heard testimony indicating any investigation beyond the POBOR time limitations may subject CLERB members to potential liability. Investigative Unit vacancies contributed to a backlog of investigations which were not completed. At the time the 22 death cases were summarily dismissed (some of them pending as long as six years), only one of those cases had been reviewed or investigated. The Investigative Unit was unaware that POBOR's one-year limitation on investigations also applied to death cases. Death cases should not have been set aside.

The Public Safety Group's Human Resources staff, when informed of problems and conflicts within CLERB and its Investigative Unit, left unresolved issues brought to their attention by CLERB's county employed staff.

In November 2017, a CLERB employee raised questions as to whether or not the Peace Officer's Bill of Rights (POBOR) statute of limitations applied to investigation of cases by CLERB. The issue was referred to County Counsel. Based upon its consultation with County Counsel, the Board summarily dismissed 22 death cases awaiting investigation.

The Grand Jury has received conflicting opinions as to whether or not POBOR and its statute of time limitations applies to citizen review board investigations and actions.

In the opinion of the Grand Jury, in order for CLERB to do its mandated duty it should seek non – governmental legal advice on whether or not POBOR and its time limitations applies to its investigations.

Depending upon the death cases involved County Counsel may not have been the appropriate adviser if there was a question of county liability. Under such circumstances, the Board should seek outside private counsel.

The Grand Jury, through its investigation, learned additional information that the CLERB investigations were incomplete at the time of dismissal. Contributing to the summary dismissals included the lack of an updated Rules & Regulations manual and a training manual for the Investigative Unit.

The disorganization of and vacancies in the Investigative Unit allowed cases to go unaddressed. A lack of supervision by the Board caused case status or progress to be ignored. County Counsel and CLERB leadership believe that POBOR applies to citizen review boards. Consequently CLERB applied a POBOR one-year limitation on death investigations. CLERB did not consult special outside counsel for advice regarding whether POBOR applies to death investigations but did agree that findings by a civilian review board are considered punitive action against a peace officer.

FACTS AND FINDINGS

Fact: In November 2017, based on a recommendation from a CLERB employee, and after consultation with staff from County Counsel, CLERB summarily dismissed 22 death cases then awaiting investigation.

Fact: All but one of the dismissed 22 death cases, going as far back as 2011, had no review and no investigation by CLERB, although other departments had previously performed independent reviews.

Finding 01: It is CLERB's mission and responsibility to investigate, review and recommend policy changes to the Sheriff's or Probation departments respectively.

Fact: CLERB has a history, dating back to 2010, of summarily dismissing cases.

Fact: The Board consists of 11 volunteers from the five Supervisorial Districts.

Fact: The CLERB Investigative Unit currently consists of five county employees, an Executive Officer, three Special Investigators, and an administrative assistant.

Fact: There is no training manual for the Investigative Unit.

Fact: The Rules and Regulations manual is in need of updating.

Fact: The Board is responsible for hiring and reviewing the performance of the Executive Officer.

Fact: The CLERB Investigative Unit has experienced periodic personnel shortages since November 2016 due to personal leave and staff vacancies.

Fact: The Executive Officer is responsible for hiring and reviewing the performance of the investigators and administrative assistant.

Finding 02: The position of Executive Officer remained vacant at times, impeding the ability of remaining staff to handle investigative workloads.

Finding 03: Board and Investigative Unit shortages contributed to death cases not being investigated within POBOR time limitations. A responsibility CLERB did not meet resulting in 22 death cases being dismissed.

Fact: POBOR has a time limit for completing investigation of cases.

Fact: The CLERB Investigative Unit was not aware that the one-year limitation on investigations as specified in POBOR applied to death cases nor did they seek a legal opinion on that issue prior to June 2017.

Fact: The CLERB Board supervises the Executive Officer.

Fact: The Executive Officer supervises the special investigators and the administrative assistant.

Finding 04: Lack of Board oversight of the Investigative Unit contributed to death cases remaining uninvestigated well beyond POBOR time limitations.

Fact: The Executive Officer has compiled applications for Board positions in the past.

Finding 05: There exists a potential for bias toward the selection of Board membership when the Executive officer is involved in the selection process.

Fact: CLERB falls under the Public Safety Group of the County of San Diego.

Fact: The Public Safety Group includes the Sheriff, Probation Department.

Finding 06: Removing CLERB from the Public Safety Group will provide additional independence from those departments that CLERB reviews.

Fact: County Counsel has a duty to advise and defend the County on legal matters.

Finding 07: County Counsel may have a conflict of interest when CLERB investigates issues that may raise liability to the County.

RECOMMENDATIONS

The 2017/2018 San Diego County Grand Jury recommends that the San Diego County Board of Supervisors consider:

18-26: Funding another Special Investigator position thus allowing the Executive Officer more time to supervise the Special Investigators and conduct more community outreach.

The 2017/2018 San Diego County Grand Jury recommends that the Board Members for CLERB consider:

- 18-27: Removing the CLERB Executive Officer from any involvement with consideration of applicants so as to avoid any question of bias in the selection of board members.**
- 18-28: Updating regulations for the selection of Board Members in the CLERB Rules and Regulations manual.**
- 18-29: Directing the Executive Officer to develop and monitor a checklist, including time limitations with possible exceptions, to track all case investigations.**
- 18-30: Ensuring that the CLERB Board evaluate the performance of the Executive Officer annually as required in the CLERB Rules and Regulations.**

The 2017/2018 San Diego County Grand Jury recommends that the Executive Officer for CLERB consider:

- 18-31: Filling open positions in the Investigative Unit as soon as they become vacant.**
- 18-32: Developing a Training Manual for the Investigative Unit.**

The 2017/2018 San Diego County Grand Jury recommends that the Chief Administrative Officer for the County of San Diego consider:

- 18-33: Moving CLERB from the Public Safety Group to another Group in the County to separate oversight from the same group that supervises the Sheriff and Probation Departments to avoid the possibility of a conflict of interest.**

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
- (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

Responding Agency	Recommendations	Date
San Diego County Board of Supervisors	18-26	8/29/18
CLERB Board	18-27 through 18-30	8/29/18
Executive Officer, CLERB	18-31 through 18-32	8/29/18
San Diego County Chief Administrative Officer	18-33	8/29/18