

County of San Diego



2006 ANNUAL REPORT

"SERVING THE COMMUNITY AND THE JUSTICE SYSTEM FOR 15 YEARS"

**2006 CLERB ANNUAL REPORT
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About the Citizens' Law Enforcement Review Board

In November of 1990, the citizens of San Diego County voted to establish the Citizens' Law Enforcement Review Board. The Review Board is composed of 11 citizens who are appointed by the Board of Supervisors. The Review Board was established for the purpose of receiving and investigating complaints of misconduct by peace officers and custodial officers performing their duties while employed by the Sheriff's Department or the Probation Department. The Review Board is also able to investigate any deaths, which occurred while in the custody of, or in connection with, actions of peace officers or custodial officers employed by the Sheriff's Department or the Probation Department. The Review Board advises the Board of Supervisors, the Sheriff and the Chief Probation Officer on matters related to the handling of citizens' complaints or deaths, or departmental policies and practices.

Mission Statement

To increase public confidence in government and the accountability of law enforcement through the investigation and reporting of citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's or Probation Departments which allege improper conduct by the officers, or which allege policy or procedural violations.

2006 Board Members

Robert Winston, Chairperson
Otto Emme, Vice Chairperson
Patrick Hunter, Secretary
Edward Castoria
Kourosch Hangafarin
Thomas Iniguez
Mark Marchand
Allen Miliefsky
Glenn Quiroga
Don Warfield
Louis Wolfsheimer

Staff

John Parker, Executive Officer
Lynn Setzler, Special Investigator
Julio Estrada, Special Investigator
Victoria Ollier, Administrative Secretary III

Office Information

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**RÉSUMÉS OF THE CURRENT
REVIEW BOARD MEMBERS**

Robert Winston
Chairperson

A resident of Carlsbad, Mr. Winston is a Senior Vice President for Morgan Stanley. He holds degrees in Criminal Justice Administration from San Diego State University and in Behavioral Science from Indian Valley College. Mr. Winston has served on the Board of Directors of the UCSD Cancer Center Foundation. He volunteered as a reserve police officer for the San Diego Police Department from 1993 through 1999. He also serves as a director for the San Diego Police Foundation.

Otto Emme
Vice Chairperson

A resident of San Diego, Otto Emme is owner and operator of his family-owned real estate business, which specializes in apartment rental properties. Additionally, Mr. Emme is a captain in the California Army National Guard. He serves as commander of a heavy maintenance ordinance company in Gardena, California. Locally, he serves on the San Diego Historic Resources Board and is a member of the 2005-06 County Grand Jury. He has been the past chair of the Pacific Beach Community Planning Board, Recreation Council and a member of Sigma Delta Parliamentarian Society. Mr. Emme is a graduate of the University of San Diego with a degree in International Relations.

Patrick Hunter
Secretary

A resident of the Rancho Penasquitos community in San Diego, Mr. Hunter is employed at Highland Partnership, Inc., a Chula Vista-based general contracting firm. He is a retired Naval Officer where he served in senior administrative positions during a 22-year career. Significant assignments included the Navy Fighter Weapons School (TOPGUN), USS John F. Kennedy, the Pentagon, and U.S. Naval Forces Europe in London. He received his undergraduate degree from Norfolk State University and his Master of Public Administration from National University in San Diego. Mr. Hunter became involved in the civilian oversight of law enforcement in 1997,

accepting an appointment to the City of San Diego Citizens' Review Board on Police Practices. He was elected Chair of that Review Board for the 2003-2005 terms.

Kouros Hangafarin

A resident of Rancho Santa Fe, Mr. Hangafarin is an operations and public affairs professional with 20 years of experience in private enterprise and political organizations. He has served on the Republican National Committee Chairman's Advisory Board, President of the Iranian American Republican Council, a member on the Board of Director's of the San Diego Lincoln Club and on the World Future Society and World Affairs Council. He has held positions on the San Diego County Planning Commission and the San Diego Port Commission.

Edward Castoria

A resident of the Tierrasanta area of San Diego, Edward Steven "Eddie" Castoria, M.A., J.D. is President and CEO of TeleTran Tek Services, a San Diego-based consulting company which, among other projects, manages the region's motorist aid call box system. He holds a B.A. in Psychology from the University of San Francisco, as well as an M.A. in Counseling Psychology and a J.D. in law from the University of New Mexico. Before entering private business, Mr. Castoria worked as a government public works program manager for both San Diego County and Nueces County, Texas. As an attorney, he prosecuted major fraud cases for the U.S. Department of Justice in Washington, D.C., and practiced civil litigation in New Mexico and California. Before law school, Mr. Castoria managed an in-house inmate counseling program in the Bernalillo County, NM jail system. He was a decorated Army Infantry Airborne Ranger officer who served as a Pathfinder commander during the Vietnam war. He is an avid golfer.

Thomas Iniguez

A resident of Bonita, Thomas Iniguez is currently employed by Walters Management as a Community Director and Property Manager for the Eastlake Community of Chula Vista. He served in the U.S. Navy from 1970-1974. Mr. Iniguez is retired from the Chula Vista Police Department and had served

previously with the Imperial Police Department and the San Diego Sheriff's Department. Mr. Iniguez is a member of the Bonita Optimist Club; the Bonita - Sweetwater Civic Association, and the Bonita Highlands Homeowners Association.

Mark Marchand

A 14-year resident of the Bonita/Chula Vista area, Mr. Marchand is CEO of the Pacific Southwest Association of Realtors, manages the San Diego County Commercial Association and the Coronado Association of Realtors. He serves on the SR 125 Advisory Committee, Chula Vista Bayfront Master Plan Advisory Committee, The Salvation Army Board of Directors, Christmas in October, Boy's and Girl's Club, as well as five corporate boards. He has also been on the Chula Vista Mobile Home Rent Review Commission. Mr. Marchand served in the Navy Security Group and is a graduate of Dallas Baptist University, North Texas State University, and Duke University.

Allen Miliefsky

A resident of San Diego, Allen Miliefsky is a retired Air Force Officer and flew 256 combat missions in Vietnam. He is a graduate of the University of Nebraska, the University of Southern Mississippi, Industrial College of the Armed Forces, Air Command and Staff College and the Air War College. He is presently employed as a Transition Service Officer for the Disabled American Veterans at Miramar MCAS, and is commander of the local Jewish War Veterans of the U.S.A. Mr. Miliefsky is also a member of the San Diego Police Department RSVP currently serving in the Traffic Division,

Glenn Quiroga

Glenn Quiroga is a life-long resident of San Diego County. He serves as the elected Tribal Treasurer for the Sycuan Band of the Kumeyaay Nation. As Treasurer, Mr. Quiroga oversees the financial affairs of all the business enterprises of the Tribe, works closely with auditors to ensure compliance with applicable regulations and laws, and reports regularly to his constituents on the financial health of the businesses. He continues to serve as Director of the Sycuan Medical Health Plan, a position that he has held for four years. Mr. Quiroga is a member of the

California Nations Indian Gaming Association, the National Indian Gaming Association, and the Society of Professional Business Administration. He is a graduate of El Cajon Valley High School and attended Marymount College and the University of San Diego. He and his wife Toni reside in Granite Hills with their son.

Don Warfield

A San Diego native, Mr. Warfield is owner of Donald Warfield & Associates, a real estate firm dealing in the sales of investment properties & residential real estate. Mr. Warfield is a graduate of San Diego State University and the Graduate School of Savings & Loan at Indiana University, and served in the United States Air Force. He has worked in the banking industry for 28 years and served on various boards, including Boys & Girls Club; the Mother Goose Parade Association; Rotary Club; the El Cajon Chamber of Commerce; the El Cajon Police Selection Board; the City of El Cajon & County of San Diego United Way Boards; Tax Payers Association and Chaired Cajon Valley School Tax Override. Mr. Warfield was also a member of the Crime Commission. Mr. Warfield currently serves as a member of the San Diego Police RSVP in Central Division and is the Treasurer of the Del Cerro Heights Home Owners' Association

Louis Wolfsheimer

Originally from Baltimore, MD, Mr. Wolfsheimer has been a resident of San Diego since 1962. He was First Lieutenant in the United States Air Force. Mr. Wolfsheimer currently practices law with the firm of Milch & Wolfsheimer. He is a graduate of the University of North Carolina and California Western School of Law. Presently, Mr. Wolfsheimer is a member of the State Bar of California, and is "Of Counsel" with the law firm of Procopio, Cory Hargreaves and Savitch, LLP. In the past, Mr. Wolfsheimer has served on a multitude of board committees such as Francis W. Parker School, American Jewish Committee, Episcopal Community, Combined Arts of San Diego (COMBO), Salvation Army and Human Subjects Committee of UCSD Medical School, to name a few.

MESSAGE FROM THE CHAIR

The year has again been challenging for CLERB. I am happy to report that CLERB staff members continue to work tirelessly to investigate complaints against sworn personnel of the both the Sheriff's Department and the Probation Department. With limited resources, John Parker and his staff continue to achieve the goals of CLERB. All complaints are taken seriously and investigated thoroughly and professionally.

The board consists of 11 dedicated volunteers, nominated by the Chief Administrative Officer and appointed by the Board of Supervisors. It is the Review Board members who determine whether allegations of misconduct are valid, not the staff. The investigators are professional fact finders who answer to the board and they do a phenomenal job. I am happy to report that most allegations of misconduct by county law enforcement personnel are deemed to either be justified actions or unfounded. When the board finds that either the law or proper procedure has not been followed, we report this finding to either the Sheriff or the Chief Probation Officer as appropriate and recommend disciplinary action.

Your board, with the assistance of the investigative staff, also analyzes law enforcement and detention procedures, and makes policy recommendations when warranted by the facts of a case. Most of our recommendations are well received by the Sheriff and Chief Probation Officer and many are ultimately put in place.

My only disappointment is that 2006 was another year of conducting our meetings in closed session. When CLERB was created by a majority of voters in 1990, the intent was to have complainants be privy to our entire deliberative process and give those accused of misconduct an opportunity to defend themselves in public. Various legal actions by the Deputy Sheriffs' Association and other law enforcement groups have forced us behind closed doors. The threat of an injunction and advice of County Counsel forced us to close our case hearings to the public. The legal battle to get back into "open session" has gone all the way to the California Supreme Court. At this point, a deputy's right to privacy regarding the investigative and hearing process has been upheld.

I believe that voter's are best served when the activities of CLERB are out in the open. It appears that one of the only solutions available to us is legislative action that would exempt CLERB and other Review Boards in California from the current confidentiality laws. Your Review Board remains dedicated to supporting and achieving that end.

The citizens of the county should take comfort in the knowledge that the overwhelming majority of law enforcement personnel act in a legal and professional manner in all contacts with public. When allegations of misconduct are made by the public and the facts support that the allegations are true, the CLERB staff and board members will continue to be strong advocates for the truth.

ROBERT WINSTON
Chairperson – 2006

EXECUTIVE OFFICER'S SUMMARY

As I approach completion of my tenth year at CLERB I also have begun winding down a 39 year combined public service career including 22 years in municipal law enforcement from 1968 to 1990, and then 17 years in the field of civilian oversight of law enforcement. I have announced my retirement effective in March 2007.

During this near-four decade period, I have witnessed considerable progress in the development of higher professional standards within the law enforcement community. I am also astounded to recall back to the early and somewhat rocky development of the civilian oversight field, believing it could never survive let alone proliferate into what we see today, with many if not most big cities employing some type of police oversight, and several other large, medium and small municipalities and counties in the process of forming their own systems of police oversight.

With the continued growth of law enforcement oversight, it is long past due that the many diverse oversight functions look towards the creation of its own professional standards and code of ethics. At their annual conference in Boise, Idaho this past September, NACOLE, the National Association for Civilian Oversight of Law Enforcement, discussed at length the adoption of professional standards for oversight professionals and approved in concept a code of ethics.

While the professional standards and code of ethics will likely be advisory, I believe every oversight body in the country, especially here in California, would do

well to enact and adhere to them. As individual agencies, we are dedicated to fulfilling our mandate of ensuring responsible, professional law enforcement that is accountable to our communities. Therefore, we too must be equally professional, ethical and accountable.

Unfortunately, the expected transparency of civilian oversight in this state was dealt a severe blow when the California Supreme Court issued its opinion in the Copley Press case on August 31, 2006. I recently wrote a short article for an upcoming NACOLE newsletter which puts this issue in perspective and have included it as an attachment to this report.

It is my belief that it is in everyone's best interest for a sensible middle ground of transparency, beyond mere complaint data, as now reported. The public has an inherent right to know how their grievances are being dealt with and resolved by the various internal or external systems in place. While I hold some hope that some jurisdictions may be able to reach some level of additional transparency through negotiations, we can expect to see a legislative solution attempted in the near future. Any change in law will require considerable support throughout the state.

As a footnote to the major issues carried forward from 2005, the Sheriff contracted with the Office of Independent Review out of Los Angeles in mid-2006 for an audit of their use of force policies and procedures including how they investigate officer involved shootings. While a number of interim findings have been made and apparently agreed with by the Sheriff's Department, we have no specifics. The last estimate for completion of this audit was the

end of March 2007. I urge the Sheriff to share the findings and his department's efforts to implement the recommendations with the public.

COMPLAINT DATA REVIEW

Contrary to last year's sharp increase in complaints received, 2006 saw a significant drop in complaints received. We went from **182** complaints with 440 allegations¹ in 2005, to **108** complaints with 280 allegations in 2006. These figures indicate an approximately 41% drop in total complaints and a 36% drop in total allegations. When looking at complaint trends over a period of several years, spikes both upward and downward exist without the presence of specific events as causal factors.

Sheriff's facilities or units with double digit complaint totals dropped from six in 2005 to three in 2006. Leading in complaint totals was George Bailey Detention Facility with 22, followed by San Diego Central Jail with 19. The next highest in complaints was Santee Station with 10. The Probation Department went from an overall total of 14 in 2005, to seven in 2006. (Refer to Table 1 on page 9)

The total complaints are traditionally broken into three main departmental segments by count and percentage: Sheriff's Detention with 53, or 50%; Sheriff's Law Enforcement & Other with 48, or 44%; and Probation (all) with 7, or 6%. (See Graphs 4 & 5, page 11) I have also included a comprehensive

¹ Allegations are individual acts – or categories of misconduct. Complaint cases typically have multiple allegations. Allegation totals can also be compounded by the number of deputies named in a given case. Finally, as case investigations are completed, the allegation totals are subject to change as factual information is established.

breakdown of all complaints and allegations closed in 2005. (Table 6, page 13)

The Review Board closed a total of 141 cases during the year. From this total, 39 were *Procedurally Closed* because a signed complaint was not returned to the office, or because we lacked jurisdiction. Another 29 cases were submitted to the Review Board for *Summary Dismissal* following a "truncated" or abbreviated investigative process. The remaining 73 cases were fully investigated and submitted to the Review Board with a variety of recommended findings. Of the 76 "fully investigated" cases, five, or 7%, had *Sustained* allegations.

During this period of decreased overall complaint totals, the Review Board has managed to reduce the pending open cases to 36 at year-end, the lowest backlog in over ten years. The only case investigations that have gone beyond one year were death cases where the Sheriff's Department has delayed providing the Homicide files. We will attempt to reach agreement so we can obtain the files and begin our review, pending the District Attorney's ruling in those cases. Obviously, the Review Board would not make a ruling on any affected death cases where a DA review has not been concluded.

THE CHANGING TIMES

During 2006, there has been little transition at CLERB. While board member Allen Miliefsky's term of office expired at the end of June, he agreed to serve until replaced by the Board of Supervisors. No replacement had been named by year end.

CLERB Special Investigator Joseph Garcia transferred to a position in the Health and Human Services Agency. He was replaced by Julio Estrada, who was previously a Medical Examiner Investigator III with the San Diego County Medical Examiner's Office.

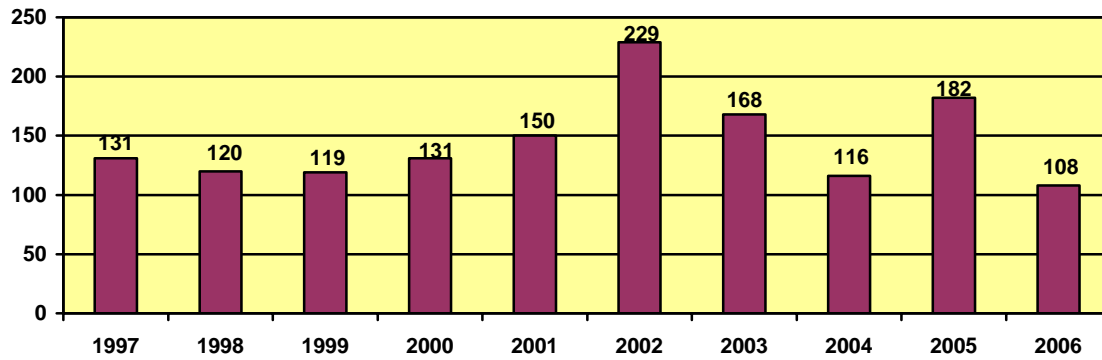
At the Sheriff's Department, Bill Kolender was reelected to a fourth term as Sheriff. Assistant Sheriff Lynne Pierce, who has been the department's official liaison with CLERB for the past four years has retired and was replaced by Assistant Sheriff Michele Braatz.

It is my hope that the new leadership at CLERB can build on the excellent relationship we have established with the Sheriff and his command staff, as well as the Chief Probation Officer and his staff. There will be some challenges in the future in order to better fulfill the intent of the voters when CLERB was established

Finally, I wish to thank the Board of Supervisors and their staff; CAO Walt Ekard, DCAO Harold Tuck and their staff; Sheriff Bill Kolender, Chief Probation Officer Vince Iaria, and their key staff members; the members of CLERB both past and present, and my fellow staff members for all the assistance over the years and helping to make the past ten years the most rewarding of my life.

JOHN PARKER
Executive Officer
1997-2007

Graph 1: TOTAL COMPLAINTS RECEIVED BY YEAR 1997 - 2006



Graph 2: COMPLAINTS RECEIVED BY QUARTER – 2005/2006

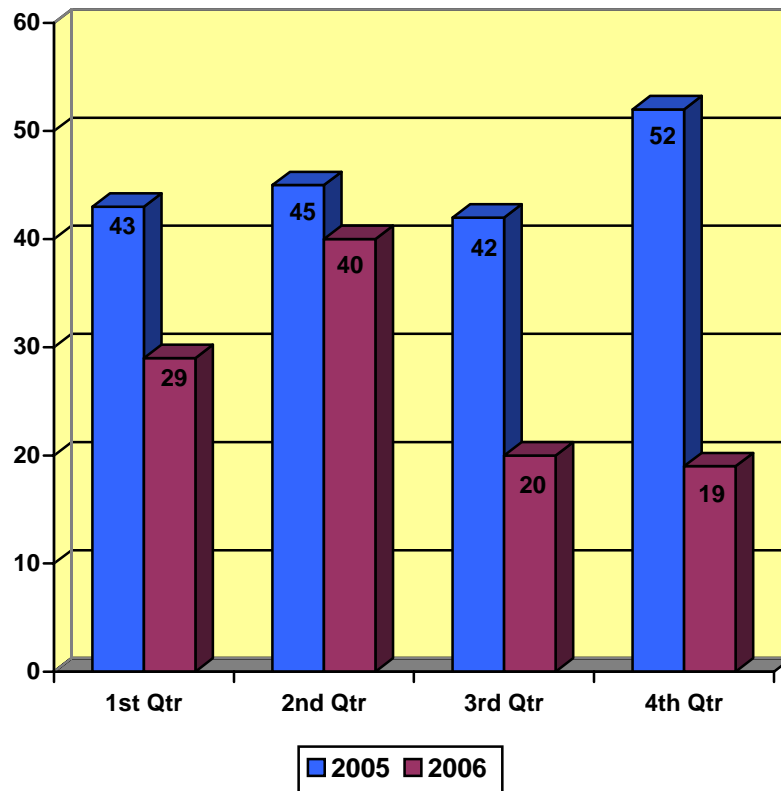


TABLE 1: COMPLAINTS & ALLEGATIONS RECEIVED BY UNIT OR FACILITY IN 2006

STATIONS/UNITS:	Complaint Totals	CC	Deaths	Discr.	EF	FA	FR	ISS	IDF	Misconduct	Allegation Totals
ALPINE SUBSTATION	1	0	0	0	0	0	0	0	0	2	2
CAMPO/TECATE SUBSTATION	2	0	1	0	3	0	0	3	0	6	13
COURT SERVICES	3	0	0	0	0	0	0	0	0	4	4
CSB:PRISONER TRASPORTATION	1	0	0	0	0	0	0	0	0	1	1
EAST MESA DETENTION FACILITY	1	0	0	0	0	0	0	0	1	2	3
ENCINITAS STATION	3	1	2	0	1	0	0	0	0	0	4
ESD:ASTREA	1	0	0	0	0	0	0	0	0	1	1
ESD:BOMB/ARSON	1	0	0	0	0	0	0	0	0	3	3
ESD:SED	1	0	0	0	0	0	0	0	0	1	1
FALLBROOK SUBSTATION	4	0	0	2	1	2	0	0	0	6	11
FUGITIVE INV/JAIL CLAIMS	1	1	0	0	0	0	0	0	0	1	2
GEO. BAILEY DETENTION FACILITY	22	0	4	3	7	0	1	0	0	41	56
IMPERIAL BEACH STATION	1	0	0	0	2	2	0	0	0	3	7
LAS COLINAS DETENTION FACILITY	7	0	3	0	0	0	0	0	0	5	8
LEMON GROVE STATION	6	1	2	0	0	0	0	1	0	11	15
POWAY STATION	3	1	0	0	0	0	2	0	0	5	8
RAMONA SUBSTATION	1	0	0	0	0	0	0	2	0	2	4
SAN MARCOS STATION	1	0	0	0	0	0	0	0	0	4	4
SANTEE STATION	10	0	2	0	5	10	2	3	0	13	35
SAN DIEGO CENTRAL JAIL	19	0	3	0	6	0	0	0	0	31	40
VALLEY CTR/PAUMA SUBSTATION	1	0	0	0	0	1	1	1	0	5	8
VISTA DETENTION FACILITY	4	0	2	0	2	0	0	0	0	4	8
VISTA STATION	7	0	3	2	1	5	2	1	0	12	26
PROB:ADULT SERVICES	5	0	0	0	0	2	2	3	0	7	14
PROB: INST. SERVICES	2	0	0	0	0	0	0	0	0	2	2
Totals:	108	4	22	7	28	22	10	14	1	172	280

NOTES:

- 1) CC= Criminal Conduct; Discr= Discrimination; EF= Excessive Force; FA= False Arrest; FR= False Reports; ISS= Illegal Search & Seizure; IDF= Improper Discharge of Firearm.
- 2) Allegation totals always exceed complaint totals and are multiplied by the number of personnel involved.

GRAPH 3: ALLEGATION TOTALS FOR COMPLAINTS RECEIVED IN 2006

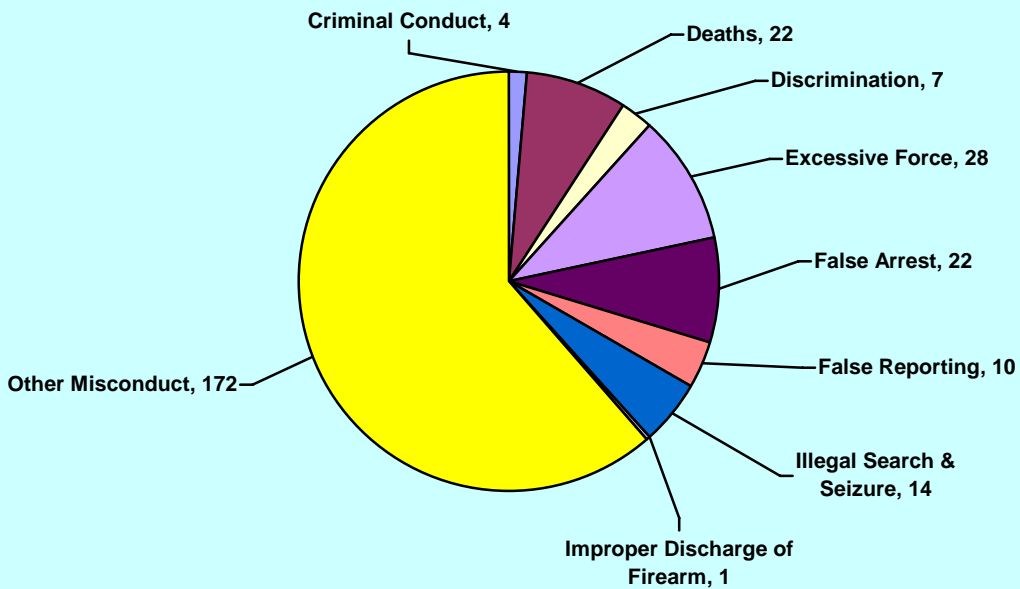


Table 2: TOTAL COMPLAINTS BY MAJOR ORG / BUREAU		
Organization/Bureau	2005	2006
Sheriff's Detention Facilities	104	34
Sheriff's Law Enforcement Services	64	67
Probation Department-All	14	7
Unknown	-	-
TOTAL	182	108

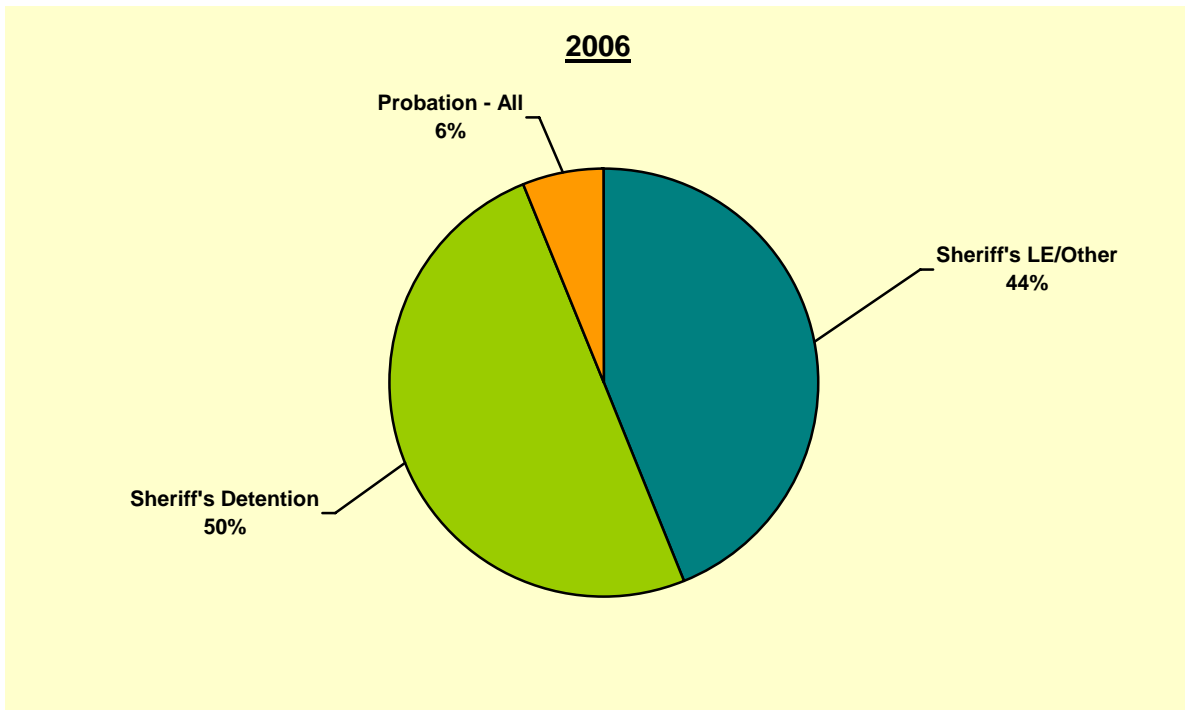
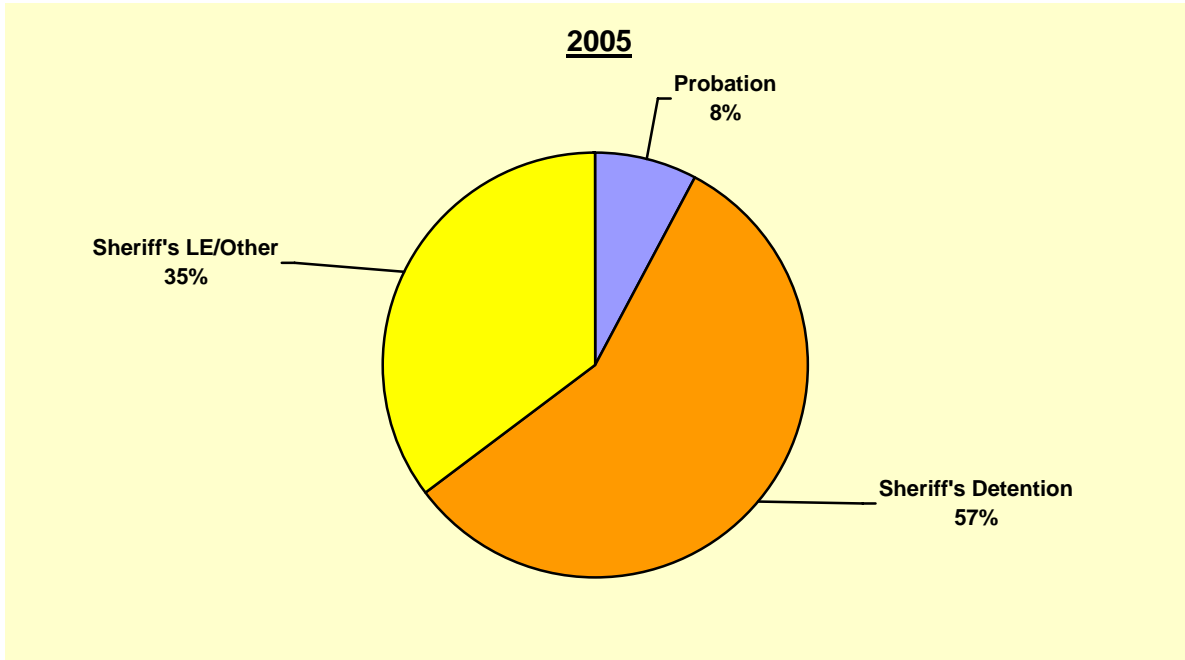
Table 3: BREAKDOWN OF DISCRIMINATION ALLEGATIONS		
Description	2005	2006
National Origin	-	-
Other	1	-
Racial	5	4
Religious	-	2
Sexual/Gender	-	1
TOTAL	6	7

Table 4: BREAKDOWN OF MISCONDUCT ALLEGATIONS		
Description	2005	2006
Discourtesy	29	46
Harassment	3	6
Intimidation	1	2
Medical (I/O)	5	5
Procedure	219	104
Retaliation	1	6
Truthfulness	5	3
TOTAL	263	172

Table 5: BREAKDOWN OF EXCESSIVE FORCE ALLEGATIONS		
Description	2005*	2006
Baton/Impact Weapon	-	1
Carotid Restraint	-	-
Drawn Firearm	-	-
K-9 Bites	-	1
OC Spray	-	-
Other	-	24
Taser	-	-
Tight Handcuffs	-	-
Unspecified	-	2
TOTAL		28

*Note: Excessive Force Allegations were not broken down in prior years.

GRAPHS 4 & 5: COMPLAINT PERCENTAGES BY MAJOR ORG / BUREAU – 2005/2006



GRAPHS 6 & 7: ALLEGATIONS BY PERCENTAGE – 2005 / 2006

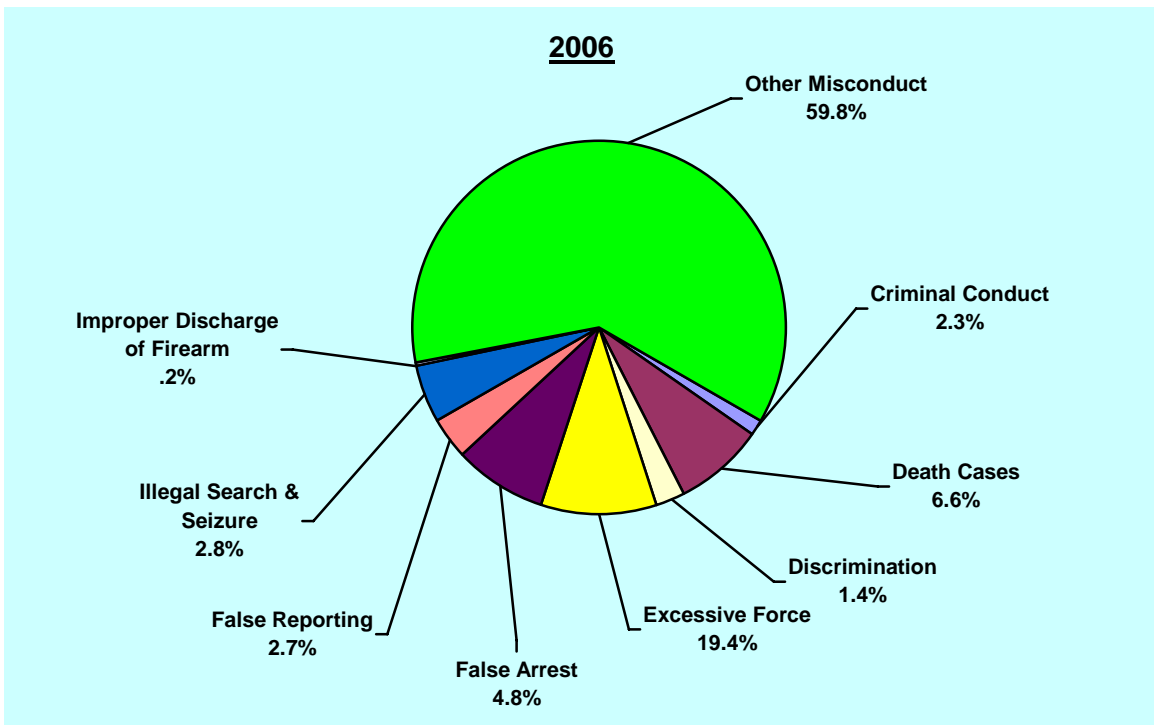
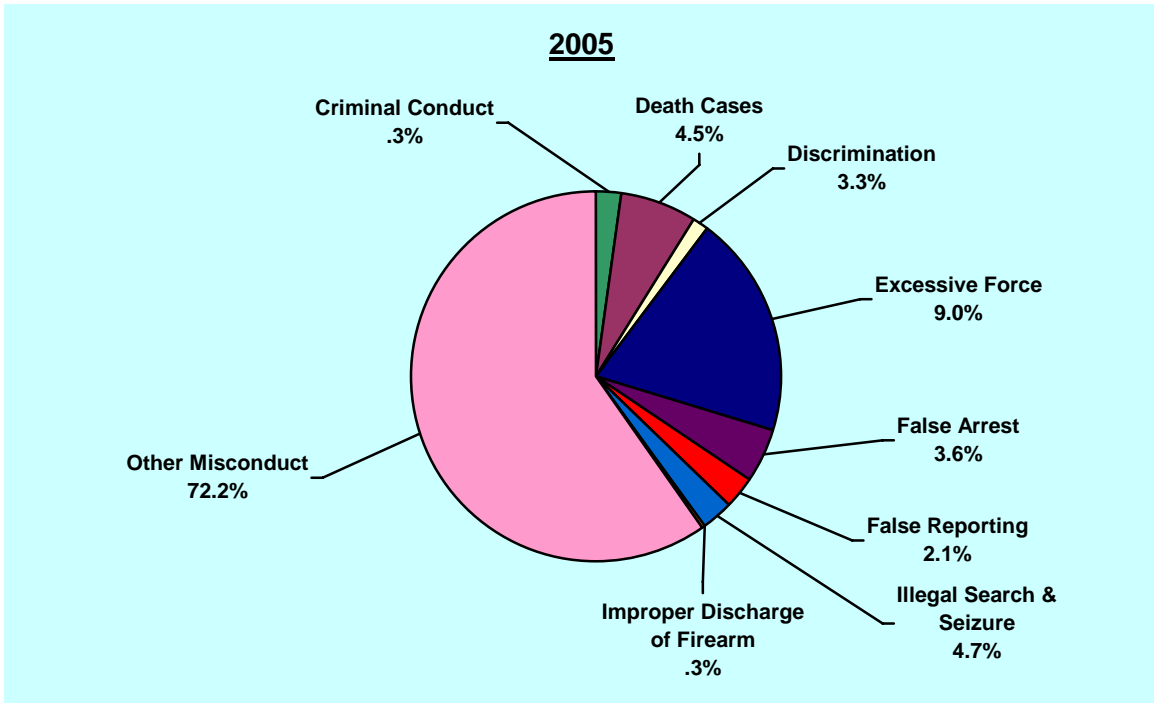


TABLE 6: COMPLAINTS & ALLEGATIONS CLOSED BY UNIT OR FACILITY IN 2006

STATIONS/UNITS	Complaint										Allegation Totals
	Totals	CC	Deaths	Discr.	EF	FA	FR	ISS	IDF	Misconduct	
ALPINE SUBSTATION	1	0	0	0	0	1	4	0	0	4	9
CAMPO/TECATE SUBSTATION	2	0	1	0	3	0	0	3	0	6	13
COD:DOMESTIC VIOLENCE	1	0	0	0	0	0	0	0	0	4	4
COURT SERVICES	7	0	0	0	4	0	0	0	0	15	19
CSB:PRISONER TRANSPORT	1	0	0	0	0	0	0	0	0	1	1
DESCANSO DF	1	0	0	0	6	0	0	0	0	0	6
EAST MESA DETENTION FACILITY	2	0	1	0	0	0	0	0	0	2	3
ENCINITAS STATION	1	1	0	0	0	0	0	0	0	0	1
ESD:ASTREA	1	0	0	0	0	0	0	0	0	1	1
ESD:BOMB/ARSON	1	0	0	0	0	0	0	0	0	3	3
FALLBROOK SUBSTATION	2	0	0	0	0	0	0	0	0	7	7
FUGITIVE INV/JAIL CLAIMS	1	1	0	0	0	0	0	0	0	1	2
GEO. BAILEY DETENTION FACILITY	26	0	4	4	18	0	1	0	0	48	75
IMPERIAL BEACH STATION	4	0	1	0	5	3	1	0	0	6	16
LAS COLINAS DETENTION FACILITY	13	1	2	0	7	0	0	0	0	12	22
LEMON GROVE STATION	5	1	0	0	0	1	0	1	0	11	14
POWAY STATION	5	1	11	0	1	0	2	0	0	9	24
SAN MARCOS STATION	5	2	2	1	0	3	1	4	0	3	16
SANTEE STATION	8	0	1	0	5	8	1	2	0	7	24
SAN DIEGO CENTRAL JAIL	25	0	3	0	22	0	0	0	0	48	73
VISTA DETENTION FACILITY	7	1	2	1	1	0	0	0	0	9	14
VISTA STATION	12	0	6	2	4	5	2	3	0	16	38
PROB:ADULT SERVICES	7	0	0	1	0	2	3	3	0	8	17
PROB:INST. SERVICES	3	0	0	0	1	0	1	0	0	3	5
Totals:	141	8	34	9	77	23	16	16	0	224	407

NOTES:

- 3) CC= Criminal Conduct; Discr= Discrimination; EF= Excessive Force; FA= False Arrest; FR= False Reporting; ISS= Illegal Search & Seizure; IDF= Improper Discharge of Firearm.
- 4) Allegation totals always exceed complaint totals.

GRAPH 8: ALLEGATION TOTALS FOR COMPLAINTS CLOSED IN 2006

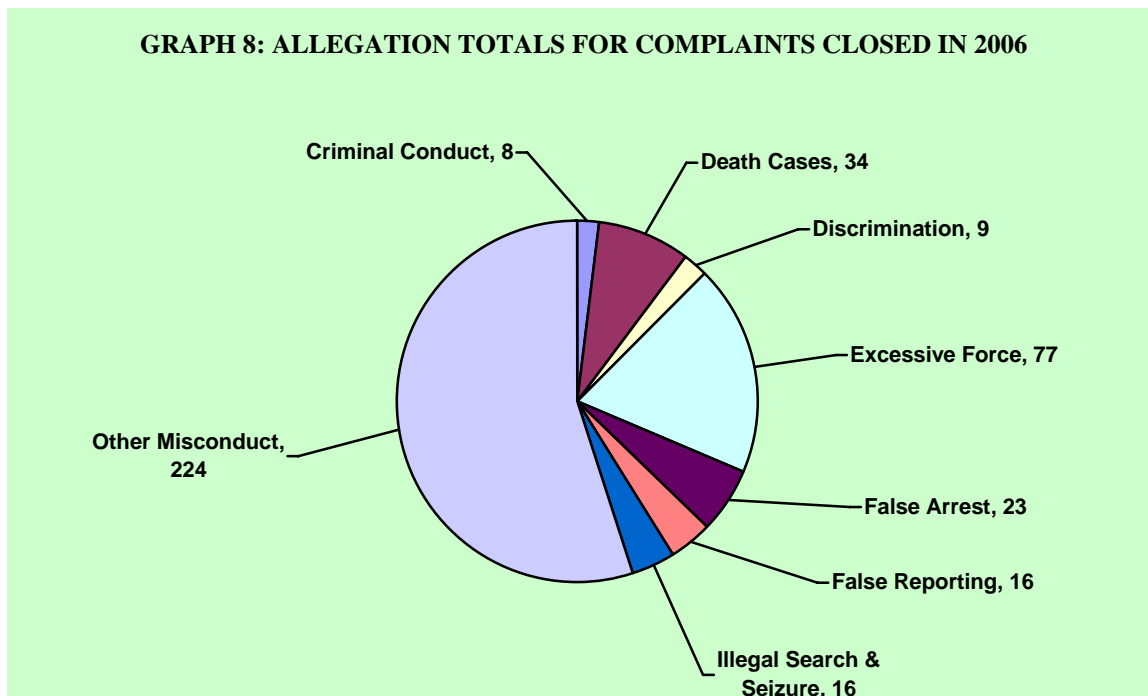


TABLE 7: INVESTIGATED CASES CLOSED / FINDINGS BY DATE - 2006
(Procedurally Closed & Summary Dismissal Cases are listed separately.)

CASE #	COMPLAINANT	FINDINGS					DATE CLOSED
		Sustained	Not Sustained	Action Justified	Unfounded	Summary Dismissal	
05-088	Bates			4	1		01/10/2006
05-093	Aphavavong			1	1		01/10/2006
05-102	Carter				1		01/10/2006
05-118	Sellers			1			01/10/2006
05-013	Stephens		1	1			02/14/2006
05-027	Mendoza			1			02/14/2006
05-061	Hill		2	3			02/14/2006
05-075	Anderson		1		1		02/14/2006
05-080	Mercado			1			02/14/2006
05-081	Mercado			1			02/14/2006
05-112	Dickenson		1		1		02/14/2006
05-110	Tripp			1	1		03/14/2006
05-116	Zinns		2	1	1		03/14/2006
05-126	McGhee			2			03/14/2006
05-144	Hammons			2	2		03/14/2006
05-151	Jackson		1				03/14/2006
05-163	Hurst			1		1	03/14/2006
05-181	Leibel			2			03/14/2006
05-063	Torres			1			04/11/2006
05-134	Perez			1			04/11/2006
05-136	Medina			3			04/11/2006
05-145	Heupel		1				04/11/2006
05-152	Corathers			2	1		04/11/2006
05-155	Moore				1		04/11/2006
05-158	Saddler et al.						04/11/2006
05-170	Moore		3				04/11/2006
05-174	Edwards	1			1		04/11/2006
06-014	Zaslow				1		04/11/2006
05-083	Garcia			2	2		05/09/2006
05-108	Wooten				1		05/09/2006
05-122	Sandez			1			05/09/2006
05-147	Fairley			2			05/09/2006
05-150	White			2			05/09/2006
05-171	Johnson				1	1	05/09/2006
05-173	Rodriguez		1	1			05/09/2006
06-012	Lasure				1		05/09/2006
05-095	Tizoc					1	06/13/2006
05-138	Elmore		5	1	1		06/13/2006
05-139	Elmore	1	1		1		06/13/2006
05-146	Winston		1	1			06/13/2006
05-180	Taylor		1	1			06/13/2006
06-007	Adair		2			1	06/13/2006
06-024	Marshall				1		06/13/2006

CASE #	COMPLAINANT	FINDINGS					DATE CLOSED
		Sustained	Not Sustained	Action Justified	Unfounded	Summary Dismissal	
06-030	Meyers					2	06/13/2006
06-032	Cook					2	06/13/2006
05-156	Ayala		1		2		07/11/2006
06-009	Russell	1	1		1		07/11/2006
06-011	Lunow		1			2	07/11/2006
06-019	Cook		2	1			07/11/2006
06-021	Meyers		1				07/11/2006
06-041	Ostrander				1		07/11/2006
05-067	Cook			1			08/08/2006
05-153	Rhodes					1	08/08/2006
05-175	Wynberg for Winebarger				2		08/08/2006
06-002	Thompson		1		1		08/08/2006
06-004	Wynberg for Winebarger		1	2	1		08/08/2006
06-010	Egan		2		2		08/08/2006
06-022	Luevano		1				08/08/2006
06-026	Wynberg for Winebarger			1	3		08/08/2006
06-036	Garcia		1	1			08/08/2006
06-043	Warren		1	1			08/08/2006
06-045	Castillo					1	08/08/2006
06-055	Peacock					3	08/08/2006
05-096	Thompson					1	10/10/2006
06-003	Merkel					1	10/10/2006
06-015	Barron					2	10/10/2006
06-031	Cook			1		1	10/10/2006
06-038	Sexton		3				10/10/2006
06-039	Loomis		2				10/10/2006
06-049	Kelly		1		1		10/10/2006
06-056	Sinclair		3				10/10/2006
06-058	Reddick			1	1		10/10/2006
06-060	Bergeson				1		10/10/2006
06-075	Redds		2				10/10/2006
06-088	Barno					4	10/10/2006
05-106	Vasquez			1			11/14/2006
05-107	Ramirez					1	11/14/2006
05-109	Manzo			1			11/14/2006
05-115	Lazos					1	11/14/2006
06-050	Mott		2	2	1		11/14/2006
06-067	Goodwyn		1	1	1		11/14/2006
06-073	Jenkins					1	11/14/2006
06-087	Turner a.k.a. Hutchinns					1	11/14/2006
06-008	Drinkard			1			12/12/2006
06-023	Arnhart		1				12/12/2006
06-044	Sneed	1	1				12/12/2006
06-068	Bitz	1	2	1			12/12/2006
06-101	Wyatt					2	12/12/2006
	TOTALS	5	54	56	39	30	

TABLE 8: SUMMARY DISMISSAL / PROCEDURALLY CLOSED CASES BY DATE - 2006

CASE #	COMPLAINANT	FINDINGS		DATE CLOSED
		SUMMARY DISMISSAL	PROCEDURALLY CLOSED	
05-140	Gentaras	X		01-10-2006
05-142	Mott	X		01-10-2006
05-157	Rorabaugh	X		01-10-2006
05-117	Dossey	X		02-14-2006
05-132	Huggins	X		02-14-2006
05-141	Mott	X		02-14-2006
06-005	Goodwyn	X		02-14-2006
05-148	Hammond	X		03-14-2006
05-182	Leibel	X		03-14-2006
06-013	Brooks	X		04-11-2006
06-016	Washington	X		05-09-2006
06-030	Meyers	X		06-13-2006
06-032	Cook	X		06-13-2006
06-055	Peacock	X		08-11-2006
06-015	Barron	X		10-10-2006
06-088	Barno	X		10-10-2006
06-101	Wyatt	X		12-04-2006
05-154	Spinks / Sewell		X	01-03-2006
05-165	Lippert for Dawes		X	01-03-2006
05-166	Cartwright		X	01-03-2006
05-169	Cochran		X	01-03-2006
05-176	Bayles		X	01-04-2006
05-177	Algarme		X	01-04-2006
05-172	Wentler		X	01-17-2006
05-178	Stephens		X	01-17-2006
05-179	Oliphant		X	01-17-2006
06-001	Pratt		X	02-08-2006
06-006	Hernandez		X	02-22-2006
06-017	Schaffer		X	03-14-2006
06-018	McGavock		X	03-16-2006
06-020	Desmond		X	03-16-2006
06-025	Adair		X	04-03-2006
06-027	Yanez for Yanez		X	04-17-2006
06-028	Desarno		X	04-24-2006
06-029	Doby for Martinez		X	04-24-2006
06-033	Goodwyn		X	04-26-2006
06-035	Flores		X	05-04-2006
06-037	Jimenez		X	05-09-2006
06-040	Pizzini		X	05-22-2006
06-051	Hallman		X	06-16-2006
06-053	Cicchetti		X	06-16-2006
06-059	Tongate		X	06-27-2006

CASE #	COMPLAINANT	FINDINGS		DATE CLOSED
		SUMMARY DISMISSAL	PROCEDURALLY CLOSED	
06-061	Carter for Miller		X	06-27-2006
06-062	Stovall		X	06-27-2006
06-066	Lewis		X	07-17-2006
06-069	Page		X	07-31-2006
06-071	Kinser		X	07-31-2006
06-072	Kinser		X	07-31-2006
06-074	Smith		X	08-07-2006
06-080	DeSarno		X	09-07-2006
06-083	Leonard for Torbert		X	09-20-2006
06-084	Ponce		X	10-02-2006
06-090	Bright		X	10-30-2006
06-096	Parker		X	11-16-2006
06-097	Bashkin		X	11-16-2006
06-098	Lopez		X	11-20-2006
06-100	Carman		X	11-28-2006
TOTALS		17	40	

TABLE 9: POLICY RECOMMENDATIONS - 2006

CASE #	NAME	SUMMARY OF POLICY RECOMMENDATIONS	DATE TO BOARD	DEPT. RESPONSE
06-087	Turner, Dominique a.k.a Hutchinns	CLERB has recently reviewed inmate suicides at two different detention facilities. The manner in which these two cases developed and were addressed by the department causes concern. To prevent further loss of life, we request the Sheriff's Department review their Suicide Prevention Policy and implement modifications (similar to the Orange County model), which errs on the side of safety in order to reduce and/or prevent inmate deaths.	11/14/2006	12-12-06*

* Presentation of new procedures to Review Board.

TABLE 10: CLERB TWO-YEAR OPERATIONAL BUDGET

LINE ITEM CATEGORY	2006-07	*2007-08
Salaries & Fringe Benefits	\$420,918	\$454,732
Services & Supplies	102,129	104,231
Total Expense	523,047	558,963
General Revenue	\$523,047	\$558,963
Full Time Employees	4	4

*Subject to change due to Salary Negotiations & Op-Plan revision.

GLOSSARY OF TERMS & DEFINITIONS

Action Justified:

The investigation showed the alleged act did occur, and was lawful, justified and proper.

Not Sustained (Insufficient Evidence):

The investigation failed to support the allegation, but the allegation could not be shown to be false.

Procedurally Closed:

Cases closed by the Executive Officer when they lack a signature under penalty of perjury.

Summary Dismissal:

- (a) CLERB had no jurisdiction over the complaint (or an allegation) subject matter; or
- (b) CLERB had no jurisdiction because the complaint was not timely filed; or
- (c) The complaint was so clearly without merit that no reasonable person could sustain a finding based on the facts.

Sustained:

The investigation proves that the allegations were true and not justified.

Unfounded:

The investigation showed the alleged act(s) did not occur.

Lodged versus Filed Complaints:

Complaints are "lodged" when a person describes an incident about which s/he wants to complain, but has not sworn to the truth of their statement. Many

complainants phone in their complaints; these complaints are deemed "lodged only" until the complainant submits a signed statement attesting or swearing to the truth of the complaint.

Preponderance of the Evidence:

Evidence that has more convincing force than that opposed to it. "Preponderance of the evidence" is the standard of proof used in the Review Board's investigations.

Summary Hearings:

The Review Board considers the staff reports on complaint investigations. In most cases the Review Board makes its findings on the allegations at Summary Hearings without taking public testimony. Summary Hearings are conducted in accordance with the Review Board's Rules and Regulations, and California's Public Meeting statutes.

Investigative Hearings:

At a Summary Hearing, the Review Board may vote to hold an "Investigative Hearing" on a complaint. It will then schedule such a hearing at which public testimony will be taken. Investigative Hearings are conducted in accordance with the Review Board's Rules and Regulations, and California's Public Meeting statutes.

APPENDIX A:
CHARTER OF THE COUNTY OF SAN DIEGO

Section 606: Citizens Law Enforcement Review Board.

- (a) The Board of Supervisors, by ordinance, shall establish a Citizens Law Enforcement Review Board consisting of not less than nine (9) nor more than fifteen (15) members nominated by the Chief Administrative Officer and appointed by the Board of Supervisors. Members of the Citizens Law Enforcement Review Board shall serve without compensation for terms not to exceed three years as established by ordinance, and members shall be appointed for not more than two consecutive full terms. County employees and persons employed as peace officers or custodial officers shall not be eligible to be members of the Citizens Law Enforcement Review Board.
- (b) Members of the Citizens Law Enforcement Review Board shall serve at the pleasure of the Board of Supervisors, and they may be removed at any time by a majority vote of the Board of Supervisors.
- (c) Vacancies on the Citizens Law Enforcement Review Board shall be filled for the balance of the unexpired term in the same manner as the position was originally filled.
- (d) The Citizens Law Enforcement Review Board shall have the power to subpoena and require attendance of witnesses and the production of books and papers pertinent to its investigations and to administer oaths.
- (e) The Citizens Law Enforcement Review Board may appoint in accordance with its established procedures such personnel as may be authorized by the Board of Supervisors. Notwithstanding any other provision of this Charter, any authorized executive director and investigators of the Citizens Law Enforcement Review Board shall be in the classified or the unclassified service as determined, by ordinance, by the Board of Supervisors.
- (f) The Board of Supervisors, by ordinance, shall establish the duties of the Citizens Law Enforcement Review Board and its duties may include the following:
 - (1) Receive, review and investigate citizens 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) the improper discharge of firearms, (D) illegal search or seizure, (E) false arrest, (f) false reporting, (G) criminal conduct or (H) misconduct. All action complaints shall be in writing and the truth thereof shall be attested under penalty of perjury. "Misconduct" is defined to mean and include any alleged improper or illegal acts, omissions or decisions directly affecting the person or property of a specific citizen by reason of:
 - 1. An alleged violation of any general, standing or special orders or guidelines of the Sheriff's Department or the Probation Department; or
 - 2. An alleged violation of any state or federal law; or

3. Any act otherwise evidencing improper or unbecoming conduct by a peace officer or custodial officer employed by the Sheriff's Department or the Probation Department.
 - (2) Review and investigate the death of any individual arising out of or in connection with actions of peace officers or custodial officers employed by the Sheriff's Department or the Probation Department, regardless of whether a citizen complaint regarding such death has been filed with the Citizens Law Enforcement Review Board.
 - (3) Prepare reports, including at least the Sheriff or the Probation Officer as recipients, on the results of any investigations conducted by the Citizens Law Enforcement Review Board in respect to the activities of peace officers or custodial officers, including recommendations relating to the imposition of discipline and recommendations relating to any trends in regard to employees involved in citizen complaints.
 - (4) Prepare an annual report to the Board of Supervisors, the Chief Administrative Officer, the Sheriff and the Probation Officer summarizing the activities and recommendations of the Citizens Law Enforcement Review Board, including the tracking and identification of trends in respect to all complaints received and investigated during the reporting period.
 - (5) Notify in writing any citizens having filed a complaint with the Citizens Law Enforcement Review Board of the disposition of his or her complaint. The Chief Administrative Officer shall also receive appropriate notification of the disposition of citizen complaints.
 - (6) Review and make recommendations on policies and procedures of the Sheriff and the Probation Officer.
 - (7) Establish necessary rules and regulations for the conduct of its business, subject to approval of the Board of Supervisors.
 - (8) Perform such other duties as the Board of Supervisors, by ordinance, may assign to the Citizens Law Enforcement Review Board.
 - (9) Established rules and procedures for receipt of complaints from detention facility inmates.
- (g) In the event that a County Department of Corrections is established, the Citizens Law Enforcement Review Board shall have the same powers and duties in respect to that Department, its Director, and its peace officer and custodial officer employees, as the Citizens Law Enforcement Review Board has in respect to the Sheriff, the Probation Officer and their departments and employees.

(Added, Effective 12-26-90)



APPENDIX B:
CITIZENS' LAW ENFORCEMENT REVIEW BOARD
Rules and Regulations
(With Proposed Amendments)

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CITIZENS' LAW ENFORCEMENT REVIEW BOARD
RULES AND REGULATIONS
Adopted by the CLERB on March 9, 1992
(DRAFT --Proposed Amendment 08-18-03)

SECTION 1: PURPOSE.

The purpose of these rules and regulations is to facilitate the operation of the Review Board, including the review of citizen complaints filed against peace officers or custodial officers employed by the County of San Diego in the Sheriff's Department or the Probation Department, as authorized by San Diego County Ordinance #7880, as amended (Article XVIII, Section 340-340.15 of the Administrative Code of the County of San Diego). Complaints subject to review are those which allege improper or illegal conduct of peace officers or custodial officers arising out of the performance of their duties or the exercise of peace officer authority, within the jurisdiction of the Review Board, as more fully described in Section 4 below.

In order that this purpose can be achieved, the Citizens Law Enforcement Review Board, hereafter referred to as the Review Board, shall receive, review, investigate and report on citizen complaints in accordance with these rules and regulations. These rules are to provide for the fair, impartial, independent and prompt investigation of citizen complaints in a manner which a) protects both the public and the Departments, Sheriff and Probation, which are involved in such complaints, and b) enhances the relationship and mutual respect between the Departments and the public they serve.

The Review Board shall publicize the review process in a manner which encourages and gives the public confidence that they can come forward when they have a legitimate complaint regarding the conduct of peace officers or custodial officers designated above. The Review Board shall also make every effort to ensure public awareness of the seriousness of the process, and that fabricated complaints will neither be tolerated nor reviewed. The statutory and constitutional rights of all parties shall be safeguarded during the review process.

SECTION 2: DEFINITIONS.

Wherever used in these rules, unless plainly evident from the context that a different meaning is intended, the following terms mean:

2.1 "Subject Officer" **The peace officer or custodial officer employed by the County of San Diego in the Sheriff's Department or the Probation Department against whom has been filed a Citizen complaint alleging improper or illegal conduct as set forth in sections 4.1 and 4.2 or about whom an investigation is undertaken without the filing of a complaint as set forth in section 4.6.** As provided in Section 8 of these Rules and Regulations, the Subject Officer shall be identified in the Review Board's agenda, its public documents and public reports, and at any public meetings or hearings only by a coded identifier which maintains the confidentiality of the Subject Officer's name. The coded identifier will relate to the individual complaint only. In disclosing information to the public, the name of the Subject Officer shall not be disclosed. The Subject Officer's presence at a hearing before a Hearing Panel or the Review Board for purposes of providing testimony shall be in closed session, if appropriate, where requested by the Subject Officer.

2.2 "Aggrieved Person" Any person who appears from a complaint to have suffered injury, harm, humiliation, indignity, or any other damage as a result of actions by a peace officer or custodial officer in the performance of his or her official duties or the exercise of peace officer authority.

2.3 "Citizen Complaint" A complaint received from any person without regard to age, citizenship, residence, criminal record, incarceration, or any other characteristic of the complainant alleging an improper act or misconduct, as further defined in sections 4.1 and 4.2 below, of a peace officer or custodial officer in the performance of his or her official duties or the exercise of peace officer authority.

2.4 "Chair" The Chairperson of the Citizens Law Enforcement Review Board, or the Vice Chairperson if the Chairperson is not able to preside.

2.5 "Complainant" Any individual who files a complaint regarding the conduct of a peace officer or custodial officer in the employ of the Sheriff's Department or the Probation Department arising in the performance of his or her official duties or the exercise of peace officer authority and who files a complaint with the Review Board.

2.6 "County" County of San Diego, California

2.7 "Ordinance" County Ordinance #7880, as amended, Article XVIII (commencing with Section 340) of the Administrative Code of the County of San Diego adopted by the Board of Supervisors of the County of San Diego, California, which became effective on May 2, 1991.

2.8 "Review Board" The eleven (11) members of the Citizens Law Enforcement Review Board nominated and appointed in accordance with the provisions of the Ordinance.

2.9 "Hearing Panel" A three (3) member subcommittee of the Review Board selected to conduct an investigative hearing of a citizen complaint, and make appropriate findings and recommendations to the Review Board based on the hearing.

2.10 "Presiding Member" The member of a three person Hearing Panel appointed by the Chair to preside at an investigative hearing.

SECTION 3: ORGANIZATION AND MEETINGS.

3.1 Composition of the Review Board. The Review Board shall consist of eleven (11) members nominated by the Chief Administrative Officer and appointed by the Board of Supervisors. Each Review Board member shall be a qualified elector of San Diego County and shall possess a reputation for integrity and responsibility and have demonstrated an active interest in public affairs and service.

3.2 Term of Membership. Each member shall serve a term of three (3) years. A member shall serve on the Review Board until a successor has been appointed. A member shall be appointed for no more than two (2) Consecutive full terms. Appointment to fill a vacancy shall constitute appointment for one term. The term for all members shall begin on July 1 and end on June 30. The terms for all persons who are the initial appointees to the Review Board shall be deemed to commence on July 1, 1991.

Members of the Review Board serve at the pleasure of the Board of Supervisors and may be removed from the Review Board at any time by a majority vote of the Board of Supervisors.

3.3 Vacancies on the Review Board. A vacancy shall occur on the Review Board on the happening of any of the following events before the expiration of the member's term:

- (a) Death of the incumbent,
- (b) Resignation of the incumbent,
- (c) Ceasing of the incumbent to be a resident of the County of San Diego,
- (d) Absence of the member from three consecutive regular meetings of the Review Board, or,
- (e) Failure to attend and satisfactorily complete the required training course within three months of the beginning of a member's term or of the member's appointment to fill a vacancy.

When a vacancy occurs the Board of Supervisors and, where appropriate, the member shall be notified of the vacancy by the Chair. Vacancies shall be filled within forty five (45) days for the balance of the unexpired term, and in the same manner as the position was originally filled.

3.4 Compensation. Members of the Review Board shall serve without compensation, except that they shall be reimbursed for necessary expenses incurred in performing their duties in accordance with provisions of the County Administrative Code.

3.5 Officers of the Review Board. The members of the Review Board shall elect annually from its membership a Chair, a Vice Chair and a Secretary. The term of office shall be for one year or until the successor has been elected. The duties of the Officers shall be as follows:

- A. Chair: The Chair shall preside over all meetings of the Review Board and shall have the right to vote on all questions. The Chair shall ensure that the laws of the County pertaining to the activities of the Review Board and the rulings of the Review Board are faithfully executed. The Chair shall act as the spokesperson in all matters pertaining to the Review Board.

The Chair shall sign all documents on behalf of the Review Board after the same have been approved by the Review Board and shall perform such other duties and delegated responsibilities as may be imposed upon him or her by the Review Board. The Chair shall appoint all subcommittees, and, ex-officio, be a member of all subcommittees.

- B. Vice-Chair: In the absence of the Chair, the Vice-Chair shall perform all the duties of the Chair with the same force and effect as if performed by the Chair.
- C. Chair Pro Tem: If both Chairs are absent at any meeting of the Review Board and have not selected a Chair Pro Tem, the Review Board shall select a Chair Pro Tem who shall perform all the duties of the Chair.
- D. Secretary: The Secretary shall keep a true and correct record of all proceedings of the Review Board. The Secretary shall have custody of all reports, books, papers, and records of the Board.
- E. Secretary Pro Tem: In the absence of the Secretary, the Review Board may appoint a Secretary Pro Tem.

3.6 Orientation and Training. The Chief Administrative Officer is responsible for the establishment of an orientation and training program for the members of the Review Board. Each member of the Review Board shall attend and satisfactorily complete a training course within three months of the beginning of the member's term, or of the member's appointment to fill a vacancy. Failure to attend and satisfactorily complete the course within the prescribed time shall result in the member's removal from the Review Board and automatically create a vacancy.

The orientation and training program includes familiarization with the following:

- (a) County Government structure and the Review Board;
- (b) County Charter, Brown Act and State Law pertaining to the Review Board;
- (c) State Law relating to Peace Officers' rights and privacy;
- (d) Operations of the Sheriff's Department and the Probation Department;
- (e) Disciplinary process for Deputy Sheriffs and Probation Officers;
- (f) Sheriff and Probation Departments' training programs;
- (g) Community perspective on Law Enforcement;
- (h) Constitutional and civil rights law relating to police misconduct and citizen's rights.
- (i) Memoranda of Agreement between the County of San Diego and the Deputy Sheriff's Association or San Diego Probation Officers' Association.

3.7 Transaction of Business. The Review Board shall establish a regular meeting schedule and shall give public notice of the time and place of the meetings. The official address of the Review Board is:

Citizens' Law Enforcement Review Board
1168 Union Street, Suite 400
San Diego, CA 92101-3819

All regular and special meetings of the Review Board shall be held at the County Administrative Center, or at any other public place as designated by the Chair.

The meetings and business of the Review Board will be conducted in accordance with the following:

- (a) The agenda for each meeting will normally be provided to all members in time to be received at least one week prior to the regularly scheduled meeting.
- (b) The agenda for each meeting will be posted, distributed, and otherwise made public in accordance with the requirements of State and County law applicable to advisory boards.
- (c) All meetings shall be held in accordance with the requirements of the Ralph M. Brown Act, Section 54950 et seq., of the California Government Code.
- (d) A majority of members currently appointed to the Review Board shall constitute a quorum.
- (e) The affirmative vote of the majority of the members currently appointed to the Review Board shall be required to carry a motion or proposal.
- (f) The Review Board's legal counsel will normally be present for all meetings of the Review Board.
- (g) In all procedures not provided for by these Rules, or the enabling Ordinance #7880, as amended, the Review Board shall be governed by Robert's Rules of Order, Newly Revised.
- (h) The Review Board shall keep written minutes of all meetings and a copy shall be filed with the Clerk of the Board of Supervisors.
- (i) Subcommittees may be established by the Review Board as appropriate, however, no more than five (5) members of the Review Board (including the Chair as an ex-officio member) shall serve on any one subcommittee.
- (j) Members and the Chair of each subcommittee shall be designated by the Chair of the Review Board.
- (k) As noted in Section 3.3 above, a member's absence from three (3) consecutive regular meetings of the Review Board shall result in the member's automatic removal from the Review Board.
- (l) Normally, the order of business for the Review Board meetings shall be as follows:
 1. Roll Call.
 2. Approval of Minutes.
 3. Special order of business; announcements; communications.
 4. Public comment.
 5. Executive Officer's report.
 6. General policy items.
 7. Subcommittee reports.
 8. Unfinished business.
 9. New business.
 10. Discussion and consideration of complaints and reports.
 11. Recess to closed session, if appropriate.
 12. Adjourn.

3.8 Special Meetings of the Review Board. Special meetings may be held at the call of the Chair, or the vice-Chair in the absence of the Chair. Upon petition of six (6) members of the Review Board, the Chair shall call a meeting of the Review Board within one (1) week. Review Board members will be given at least twenty-four (24) hours notice prior to any special meeting. The notice and agenda for any special meeting will be distributed in accordance with Section 54956 of the Government Code. No business other than that specified in the special meeting agenda shall be considered.

3.9 Review Board Staff. The Review Board shall appoint personnel in support of the Review Board as may be authorized by the Board of Supervisors. The Board of Supervisors has also authorized the hiring of outside, independent legal counsel for the Review Board.

The Executive Officer shall recommend to the Review Board the filling of any staff position for approval by the Review Board; and shall supervise the administrative, clerical, investigative and other personnel as necessary to discharge the functions of the Review Board. The Executive Officer shall promulgate internal office procedures and prepare necessary standardized forms for the conduct of the investigations and the receipt of citizen complaints. The daily operations of the Review Board, including the conduct of investigations, shall be managed by the Executive Officer who shall oversee the regular functioning of the staff assigned to help carry out the duties of the Review Board.

SECTION 4: AUTHORITY, JURISDICTION, DUTIES AND RESPONSIBILITIES OF REVIEW BOARD.

4.1 Citizen Complaints: Authority. Pursuant to Ordinance #7880, as amended, (Article XVIII, Section 340-340.9 of the San Diego County Administrative Code), the Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department, which allege:

- (a) Use of excessive force;
- (b) Discrimination or sexual harassment in respect to members of the public;
- (c) The improper discharge of firearms;
- (d) Illegal search or seizure;
- (e) False arrest;
- (f) False reporting;
- (g) Criminal conduct; and/or
- (h) Misconduct.

4.2 "Misconduct" Defined. "Misconduct", as referred to in section 4.1 (h) above, is defined to mean and include any alleged improper or illegal acts, omissions or decisions directly affecting the person or property of a specific citizen arising out of the performance of the Peace officer's or custodial officer's official duties or the exercise of Peace officer authority by reason of:

- (a) An alleged violation of any general, standing or special orders or guidelines of the Sheriff's Department or the Probation Department; or,
- (b) An alleged violation of any county ordinance or state or federal law; or,
- (c) Any act otherwise evidencing improper or unbecoming conduct by a peace officer or custodial officer employed by the Sheriff's Department or the Probation Department.

4.3 Citizen Complaints: Pre-requisite. The Review Board shall have no authority with respect to alleged improper activities and misconduct, as set forth in sections 4.1 and 4.2 above, to take action in regard to incidents for which no citizen complaint has been filed with the Review Board.

4.4 Citizen Complaints: Jurisdiction. The Review Board shall have jurisdiction in respect to all citizen complaints arising out of incidents occurring on or after November 7, 1990; provided, however, that the Review Board shall not have jurisdiction to take any action in respect to complaints received more than one year after the date of the incident giving rise to the complaint, except that if the person filing the complaint was incarcerated or physically or mentally incapacitated from filing a complaint following the incident giving rise to the complaint, the period of incarceration or incapacity shall not be counted in determining whether the one year period for filing the complaint has expired.

The complainant shall bear the burden of demonstrating that he/she was incarcerated or physically or mentally incapacitated from filing a complaint within one year from the incident giving rise to the complaint by submitting a written statement to the Review Board. Prior to determining whether it has jurisdiction over the complaint, the Review Board will notify the subject officer, provide him/her with a copy of the complaint and the complainant's statement, and give him/her the opportunity to submit a statement limited solely to the issue of whether there was such an incarceration or physical or mental incapacity. This matter shall be scheduled for consideration by the Review Board at its regular meeting and the agenda materials distributed prior to the meeting shall include the written statements submitted by the complainant and subject officer.

The written statement submitted to the Review Board pursuant to this section shall be attested to under penalty of perjury as provided by Section 5.5 of these rules.

4.5 Citizen Complaints: Notification of Disposition. The Review Board shall have authority to notify in writing any citizen having filed a complaint with the Review Board of the disposition of his or her complaint. The Chief Administrative Officer shall also receive appropriate notification of the disposition of citizen complaints. Such notifications shall be in writing and shall contain the following statement: "In accordance with Penal Code section 832.7, this notification shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court or judge of California or the United States."

4.6 Citizen Complaint Not Required: Jurisdiction with Respect to Actions Involving Death. The Review Board shall have authority to review and investigate the death of any individual arising out of or in connection with actions of peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department, arising out of the performance of his or her official duties or the exercise of peace officer authority, regardless of whether a citizen complaint regarding such death has been filed with the Review Board. The Review Board shall have jurisdiction in respect to all deaths of individuals coming within the provisions of this subsection occurring on or after November 7, 1990; provided however, that the Review Board may not commence review or investigation of any death of an individual coming within the provisions of this subsection more than one year after the date of the death, unless the review and investigation is commenced in response to a complaint filed within the time limits set forth in section 4.4.

4.7 Other Duties and Responsibilities. The Review Board shall have authority to:

- (a) Prepare reports, including at least the Sheriff or the Chief Probation Officer as recipients, on the results of any investigations conducted by the Review Board in respect to the activities of peace officers or custodial officers, including recommendations relating to any trends in regard to employees involved in citizen complaints. The Review Board is not established to determine criminal guilt or innocence.
- (b) Prepare an annual report to the Board of Supervisors, the Chief Administrative Officer, the Sheriff and the Chief Probation Officer summarizing the activities and recommendations of the Review Board including the tracking and identification of trends in respect to all complaints received and investigated during the reporting period.
- (c) Review and make recommendations on policies and procedures of the Sheriff and the Chief Probation Officer to the Board of Supervisors, the Sheriff and the Chief Probation Officer.
- (d) Annually inspect county adult detention facilities and annually file a report of such visitations together with pertinent recommendations with the Board of Supervisors, the Presiding Judge of the Superior Court, the Sheriff, the Board of Corrections and the Attorney General. Inspections shall be concerned with the conditions of inmate employment, detention, care, custody, training and treatment on the basis of, but not limited to, the minimum standards established by the Board of Corrections.
- (e) Establish necessary rules and regulations for the conduct of its business, subject to approval of the Board of Supervisors.

SECTION 5: PROCEDURES REGARDING COMPLAINTS.

5.1 Policy. The following shall provide a framework for the receipt, screening, processing, and disposition of citizen complaints regarding alleged illegal or improper conduct (set forth in Sections 4.1 and 4.2) by employees of the County of San Diego in the Sheriff's Department and the Probation Department:

- (a) It is the policy of the Review Board to encourage citizens who have complaints concerning the conduct of peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department to bring the same to the attention of the Review Board. The Review Board will attempt to assist and accommodate complainants regarding the complaint filing process.
- (b) The investigation of complaints shall be conducted in a fair, impartial, objective and ethical manner.
- (c) Complaints will be considered, investigated (where appropriate), and disposed of in accordance with the procedures set forth herein.
- (d) As promptly as possible, citizen complaints received by the Review Board shall be transmitted by the Executive Officer to the Sheriff or the Chief Probation Officer.
- (e) The Review Board will make every effort to ensure that no adverse consequences will result to any person or witness as a result of having brought a complaint or having provided information in any investigation of a complaint.
- (f) The Review Board will make every effort to consider and to respond to citizens' complaints against peace officers or custodial officers, and, where investigation is necessary; will conduct an impartial and fair investigation into any such complaints in accordance with the procedures set forth herein.
- (g) The right of any complainant to bring a complaint shall be absolute and unconditional. The reluctance or refusal of the complainant to prepare a complaint form shall not impair his or her right to lodge a complaint. No complaint shall be investigated, however, until a complaint signed by or on behalf of the person aggrieved has been received by the Review Board or a member of its staff.
- (h) The investigation of a complaint will be conducted in a manner designed to avoid unnecessary inconvenience or embarrassment to the complainant, the aggrieved person, the witnesses, the subject officer, and any agency or instrumentality of the County.
- (i) To the extent possible consistent with its duties and responsibilities, the Review Board shall coordinate its activities with other public officers, such as the Sheriff, the District Attorney, the Grand Jury, the U. S. Attorney, and the Public Defenders Office, so that the other public officers and the Review Board can fully and properly perform their respective duties.

5.2 Lodging and Filing of Complaints. Complaints may be lodged in writing, in person, by telephone or by any other means of Communication. A complaint may be lodged with the Review Board on behalf of oneself or on behalf of another person by any interested person or group. A complaint shall be considered received by the Review Board at the time it is lodged.

No complaint will be deemed to have been filed with the Review Board unless and until it has been reduced to writing, and signed by the complainant or his/her representative, in accordance with the following procedures:

- (a) If the complaint is lodged in person, the Review Board employee shall furnish the complainant with a blank complaint form. The complainant shall be asked to fill out the form and to sign the form in the space provided. A copy of the completed form shall be given to the complainant to serve as a record of the filing of the complaint.
- (b) If the complaint is lodged by mail, the complaint form shall be completed by the Review Board staff on the basis of the information contained within the correspondence. The Review Board staff shall mail a copy of the completed complaint to the complainant as a record of the lodging of the complaint, together with a request that the complainant review the complaint form for accuracy, and if accurate, sign the same and return it to the Review Board office.
- (c) If the complaint is lodged by telephone, the Review Board staff shall fill out an original complaint form and prepare one duplicate copy of the complaint form as a record of the lodging of the complaint. The Review Board employee taking the complaint shall give his or her name to the complainant. The Executive Officer shall furnish the complainant with a copy of the completed form, together with a request for verification of the accuracy and a signature.

- (d) In those cases where the complainant is incarcerated in a detention facility in the County of San Diego, the complaint will be handled as outlined in (b) or (c) above.

5.3 Who May File Complaint. Citizen complaints shall include complaints received from any person what so ever without regard to age, citizenship, residence, criminal record, incarceration, or any other characteristic of the complainant.

5.4 Time Limitations for Filing Complaints. All complaints shall be received within one year after the date of the incident giving rise to the complaint, except that if the person filing the complaint was incarcerated or physically or mentally incapacitated from filing a complaint following the incident giving rise to the complaint, the time duration of such incarceration or physical or mental incapacity shall not be counted in determining whether the one year period for filing the complaint has expired, subject to the provisions of Section 4.4 of these Rules and Regulation, pursuant to the provisions of Section 4.4 of these rules.

5.5 Complaint Form. The Review Board shall cause all complaints received by it to be reduced to writing on the complaint form. Unless the Review Board has received another writing setting forth the substance of the complaint and signed by the complainant, the completed form shall be furnished to the complainant advising that the complaint will not be deemed to have been filed with the Review Board until and unless it is reduced to writing. The truthfulness of a written complaint shall be attested to under penalty of perjury in the following manner, or by words of similar effect: "I hereby certify that, to the best of my knowledge, and under penalty of perjury, the statements made herein are true".

5.6 Recording of Complaints. The Review Board shall cause a central register of all complaints filed with it to be maintained in its office. The central register shall record actions taken on each complaint. The central register shall contain the following:

- (a) Name of the Complainant, the Aggrieved Party, and the Subject Officer,
- (b) Number of complaint,
- (c) Date complaint was filed,
- (d) A brief description of the subject matter of the complaint,
- (e) Date the complaint was transmitted to the Sheriff's Department or the Probation Department,
- (f) Results of the Review Board's consideration and/or investigation, if any,
- (g) Date and content of the final disposition of the complaint.

In disclosing information from the central register to the public, the name of the Subject Officer shall not be disclosed.

5.7 Withdrawal of Complaints. A complaint may be withdrawn from further consideration at any time by a written notice of withdrawal signed and dated by the complainant. The effect of such withdrawal will normally be to terminate any further investigation of the complained of conduct, unless the Executive Officer or a Review Board member recommends that the investigation continue and the Review Board, in its discretion, concurs.

5.8 Termination, Resignation or Retirement of Subject Officer. The Review Board shall have the discretion to continue or terminate an investigation, if, after a complaint is filed and before the Review Board completes its investigation, the subject officer terminates employment with the Sheriff's Department or the Probation Department. The Sheriff or the Chief Probation Officer or the subject officer shall notify the Review Board when the subject officer's employment is terminated.

SECTION 6: COOPERATION AND COORDINATION.

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

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

The Review Board shall attempt to avoid contacting any subject officer at his or her home. The Review Board shall attempt to get the subject officer's work schedule prior to scheduling an interview or investigative hearing. The Review Board shall attempt to avoid scheduling interviews or investigative hearings on an officer's regular days off, scheduled vacation or authorized leave of absence.

SECTION 7: SUBPOENAS, OATHS.

The Review Board shall, pursuant to the Charter of the County of San Diego, section 606(d), have the power to subpoena and require the attendance of witnesses and the production of documents and papers pertinent to its investigations; and shall have the power to administer oaths.

SECTION 8: CONFIDENTIALITY OF RECORDS.

Any personnel records, citizen complaints against County personnel in the Sheriff's Department or the Probation Department, and information obtained from these records, which are in the possession of the Review Board or its staff, shall be confidential and shall not be disclosed to any member of the public, except in accordance with applicable law. The Review Board shall not obtain or consider personnel records, including internal affairs reports, or information obtained from personnel records, in connection with an investigation or hearing. The Review Board shall keep no records which are maintained by Subject Officer name. Copies of records and complaints of the Review Board shall be made available to the Sheriff or the Probation Officer upon completion of the investigation of the Review Board unless prohibited by applicable law.

The Subject Officer shall be identified in the Review Board's agenda, its public documents and public reports, and at any public meetings or hearings only by a coded identifier which maintains the confidentiality of the Subject Officer's name. The coded identifier will relate to the individual complaint only. In disclosing information to the public, the name of the Subject Officer shall not be disclosed.

The Subject Officer's presence, or the presence of any other employee of the same employer, at a hearing before a Hearing Panel or the Review Board for purposes of providing testimony shall be in closed session, if appropriate, where requested by the Subject Officer.

SECTION 9: INVESTIGATION OF COMPLAINTS.

9.1 Transmittal of Complaints. Citizen complaints filed with the Review Board shall be transmitted forthwith to the Sheriff or the Chief Probation Officer.

9.2 Screening of Complaints.

- (a) Complaints shall be referred to the Executive Officer for investigation. Each complaint will be initially screened by staff and classified as follows:
 - 1. "Category I" Complaint against a peace officer or custodial officer employed by the County in the Sheriff's Department or the Probation Department which requires an immediate and thorough investigation.
 - 2. "Category II" Complaint which does not warrant an immediate and full investigation, and/or is appropriate for deferral.
 - 3. "Category III" Miscellaneous. Essentially a request for information -- complainant needs satisfied after explanation of County Sheriff's Department or Probation Department operations.
 - 4. "Category IV" Complaint not within the jurisdiction of the Review Board. Such complaints will be referred to the Review Board for Summary Dismissal.

5. "Category V" Complaints not alleging facts establishing a prima facie showing of misconduct. Such complaints may be referred to the Review Board for Summary Dismissal.
- (b) The classification of each complaint, as set forth in section 9.2 (a) (1)-(5), must be reviewed and approved by the Review Board before significant further action is taken by staff with respect to such complaint.
- (c) The Executive Officer shall periodically advise the Review Board as to the progress and status of each complaint.
- (d) The Executive Officer may periodically advise the complainant and the subject officer(s) as to the status of a complaint.

9.3 Scope of Investigation. The investigation of a citizens complaint may include, but need not be limited to, the following:

- (a) Interviews with the Complainant, the aggrieved party, each Subject Officer, and witnesses or other persons likely to have information concerning the complaint; examination of the scene of the incident; viewing and analyzing physical evidence, if any, associated with the alleged incident; review, analysis and preservation of other physical evidence, if any. Such investigations must be conducted in a manner that will not obstruct the criminal investigations conducted by the Sheriff, District Attorney, or other law enforcement agencies. In the event that the Subject Officer is compelled to cooperate in an investigation, the Subject Officer shall be provided the "Lybarger warning" when required under the appropriate circumstances.
- (b) It shall be the responsibility of the investigator to record each step in the investigation and the result thereof in an investigation report which shall be made a part of the complaint file.
- (c) The Review Board investigators shall attempt to secure written statements under oath from all participants in and witnesses to the alleged incident. Where any witness or participant is unwilling to make a signed written statement, the assigned investigator shall prepare a verbatim transcript or written summary of the oral statement, if any, provided by such participant or witness. Where a written statement is given and signed by a participant or witness, the assigned investigator shall provide the person making such statement with a copy of the statement.
- (d) Interviews and statements may be tape-recorded by the investigator. Such recordings shall be kept and preserved until the case is finally disposed of by the Review Board and its findings reviewed by the Board of Supervisors or other appropriate agency or official, or for such longer period as may be required by law.
- (e) The general policy of the Review Board will normally be to defer its investigation of a complaint for the period of time during which formal criminal proceedings relating to the subject matter of the complaint are pending against the subject officer. The Review Board reserves the right to commence immediate investigations, or to defer investigations, in all other cases depending upon Review Board priorities and available resources.

9.4 Investigation Report. At the conclusion of the (pre-hearing) investigation, the investigator shall complete an appropriate written report setting forth the names of the complainant, **and** the aggrieved party, and **the identifying code of** the subject officer; and summarizing what investigation was conducted and what information was disclosed by the investigation. **The coded identifier will relate to the individual complaint only.** The report shall also contain a procedural recommendation by the Executive Officer to the Review Board as to what further action should be taken by the Review Board, such as whether an investigative hearing before a three-member Hearing Panel is appropriate, or before the full Review Board, or whether the case is appropriate for Summary Dismissal, or any other appropriate action or disposition. **Neither the investigator nor the Review Board shall obtain or consider personnel records, including internal affairs reports, or information obtained from personnel records in connection with an investigation. Statements of the Subject Officer, or any other employee of the same employer, given during an interview shall not be included in investigation reports; recommendations of the Executive Officer may reflect, but may not disclose, information obtained from an interview with the Subject Officer, or any other employee of the same employer.**

The Investigative Report shall be submitted to the Chair of the Review Board who may attach his or her own recommendation and submit the entire report to the Review Board, either orally or in writing, or both.

9.5 Review Board Options After Receipt of Investigative Report. After receipt of the Investigative Report, the Review Board shall take whatever further action it deems appropriate for disposition of the allegations of the Complaint, including the following options:

- (a) Conduct an investigative hearing or hearings, pursuant to Sections 10-16; or
- (b) Review and determine the Complaint based on the Investigative Report and the evidence in the investigative file, but without an investigative hearing, pursuant to Section 9.6; or
- (c) Summarily dismiss the Complaint, in whole or in part, pursuant to Section 15; or
- (d) Refer the Complaint back to staff for further investigations; or
- (e) Defer further action on the Complaint; or
- (f) Any other appropriate action or disposition, consistent with the Ordinance.

9.6 Disposition By Review Board without a Hearing. If the Review Board decides to review and determine a Complaint based on the Investigative Report and investigative file evidence, but without an investigative hearing, the Review Board shall apply the standard of proof set forth in Section 14.9 and shall follow the Final Report process set forth in Sections 16.5-16.8. If the Executive Officer recommends that the Review Board make a determination on a Complaint without an investigative hearing, the subject officer and representative shall have an opportunity to: (a) review the Investigative Report and; (b) submit additional evidence prior to the determination of the Complaint by the Review Board.

9.7 File Accessibility. Every member of the Review Board shall have full access to all complaints and files maintained by the Review Board or its staff.

9.8 Notification to Parties. Upon completion of the Investigative Report, the Chair shall provide the Complainant, aggrieved party, and each Subject Officer the following:

- (a) Written notice that the Complaint will be considered by the Review Board; and an explanation of the process to be utilized by the Review Board.
- (b) Any recommendations dealing solely with summary disposition or procedural matters.
- (c) A copy of the Investigative Report and the summary supplied to the Review Board. A notification that all additional statements, records, reports, exhibits, and other items contained in the file will be available on request; except for any evidence that can not be so made available because its disclosure is prohibited by law.
- (d) Written notice that the parties may consult an attorney if desired, and that an attorney or other representative may represent him/her at any hearing, but that an attorney or other representative is not mandatory.
- (e) A summary or copy of these rules and regulations, and any other similar informational items appropriate to the individual case.

SECTION 10: DETERMINING WHEN A HEARING IS NECESSARY.

10.1 Requests for Investigative Hearing. The Complainant, Subject Officer, Executive Officer, or a member of the Review Board may request an investigative hearing (as set forth in Sections 12-14) for some or all of the allegations of a complaint.

10.2 When is a Hearing Necessary. An investigative hearing will be conducted, in accordance with the procedures for such hearings set forth in Sections 11-15, when the Review Board determines that such a hearing may facilitate the fact-finding process.

An investigative hearing may be deemed to facilitate the fact-finding process when:

- (a) There has been an undue lapse of time since the occurrence of the incident which is the subject of the Complaint; or
- (b) There are additional witnesses, evidence, or information that contradicts or supplements, or is not disclosed by the Investigative Report; or
- (c) There is reason to question the conclusion of the Investigative Report; or
- (d) A hearing would advance public confidence in the Complaint process; or
- (e) An appearance in person by the parties would facilitate the fact finding process.

10.3 Scope of the Investigative Hearing. The scope of an Investigative Hearing may vary. It may consist of a single, narrowly drawn issue; of multiple issues; or of the entire complaint. The scope should be determined by the Review Board when authorizing a hearing; and all interested parties to the complaint shall be informed of any limitation in scope when notified of the hearing.

SECTION 11: NO CONTEST RESPONSE.

A Subject Officer may enter a written response of "no contest" at any time before a hearing. A response of "no contest" indicates that the Subject Officer accepts the allegations of the Complaint as substantially true in fact and interpretation. The Subject Officer shall be bound by the terms of the no contest response in any further consideration of the Complaint by the Review Board.

SECTION 12: INVESTIGATIVE HEARING PANELS.

12.1 Composition of Hearing Panel. A Hearing Panel of the Review Board shall normally consist of three (3) members of the Review Board, selected pursuant to Section 12.2 below, with one member designated as the Presiding Member. In cases involving the death of a person, and in such other cases as the Review Board shall decide, the Review Board will sit as a Board of the Whole with a minimum of six (6) Board members present.

12.2 Selection of Three-Person Hearing Panels.

- (a) Selection of three-person Hearing Panels under this section shall be made by rotation among the Review Board members, as appointed by the Chair using any basis (including lottery) that balances the workload among Board members. A Review Board member may request that he or she be temporarily excused to equalize caseload, avoid conflicts of interest, or for other good cause. In the event a Review Board member is so excused, another Board member shall be reassigned by the Chair.
- (b) If a Hearing Panel is unable to meet to convene a hearing on a scheduled date due to the unavailability for any reason of one or more of its members, or if a Panel agrees to reschedule a hearing due to the unavailability for any reason of the complainant(s) or subject officer(s) or legal counsel for either, the case or cases assigned to such panel may be re-assigned to another Hearing Panel. However once a hearing of a case has been convened by a Hearing Panel, the same Panel shall consider the case to final disposition.

12.3 Challenges of Board Members.

- (a) Challenge for Conflict of Interest or Bias. A Board member sitting on a Hearing Panel shall consider all complaints in a fair and impartial manner. A Board Member who has a personal bias or prejudice, or the appearance thereof, in the outcome of a complaint shall not sit on the Hearing Panel hearing that complaint. Personal interest in the outcome of a complaint does not include holding or manifesting any political or social attitude or belief, where such belief or attitude does not preclude objective consideration of a case on its merits. Examples of personal bias include, but are not limited to:

1. Familial relationship or close friendship with parties material to the inquiry;

2. Witnessing events material to the inquiry from a non-neutral perspective;
 3. Being a party to the inquiry;
 4. Having a financial interest in the outcome of the inquiry;
 5. Holding a bias against a particular party that is sufficient to impair the Board member's impartiality.
- (b) Procedure for Challenges. Within five (5) calendar days after the date on which the Review Board furnishes notice of a Hearing, including the names of the Board Members constituting that Panel, either party to the complaint may file a written challenge for cause to any Board Member hearing the complaint. Challenges for conflict of interest or bias must substantiate the challenge in terms of the standard set forth in Section 12.3 (a) above.

When a challenge for cause is filed, the Chairperson shall contact the challenged Board Member as soon as possible, and if the Member agrees that the challenge is for good cause, or otherwise agrees, the Chairperson shall ask another Board Member to serve. If the challenged Board Member does not agree that the challenge is for good cause, the Chairperson shall poll the other members of the Panel, and if both agree that the challenge is for good cause the Chairperson shall so notify the challenged Board member and ask another to serve. If a challenge to a Board member is rejected and the member serves, the written challenge and the Board member written response shall be incorporated in the investigative packet as part of the record of the Complaint.

- (c) Replacement of Challenged Board Member. Any Board member removed, or who removes him/her self, from the Hearing Panel due to a challenge for cause shall be replaced by the Chair with another Board member.

12.4 Public Comments. Board members shall avoid public comment on pending complaints, investigations, and hearings.

SECTION 13: INVESTIGATIVE HEARING PROCEDURES.

13.1 Schedule of Investigative Hearings. Investigative hearings may be scheduled by the Chair for any regular or special meeting of the Review Board; or, as to hearings before a Hearing Panel, by the Presiding Member for any other appropriate time.

13.2 Notice Requirements. Ten (10) days notice of an investigative hearing shall be given to the Complainant, each Subject Officer, and any other person whose attendance the Review Board deems appropriate. The notice shall state the date, time and place of the investigative hearing, and the names of the Hearing Panel.

13.3 Hearings Open to Public. All hearings shall be open to the public, to the extent permitted by law, except that the Subject Officer's presence, or the presence of any other employee of the same employer, at a hearing before the Review Board or Hearing Panel for purposes of providing testimony shall be in closed session, if appropriate, where requested by the Subject Officer.

13.4 Authority to Compel Appearance. The authority of the Review Board's subpoena may be used to compel the appearance of witnesses, including Subject Officers, and/or the production of documents. Subpoenas may be requested through the Chair of the Review Board.

13.5 Conduct of the Investigative Hearing. Hearings should be informal, and should be conducted in the following manner unless the Chair or Presiding Member orders otherwise:

- (a) The Presiding Member will conduct the investigative hearing subject to being overruled by a majority of the Hearing Panel. Members of the Board shall be primarily responsible for obtaining testimony. One Board member may be assigned by the Chair or Presiding Member to do the initial questioning of witnesses when a complaint is called for investigative hearing. Additional questions may be asked by any Board member, or by a party or party's representative, or by an assigned staff members.

- (b) At the discretion of the Review Board, opening statement(s) may be made on behalf of the Complainant and the Subject Officer(s) involved.
- (c) The investigative hearing will generally then proceed as follows: The Complaint will be presented, and witnesses, if any will be introduced. The Board may assign a staff member or counsel to assist in the presentation of a complaint where such assistance appears necessary to facilitate a fair and orderly hearing of the complaint. The Subject Officer may then respond to the Complaint, and introduce witnesses, if any. Each person testifying, and each party to the Complaint, may be questioned by the Board and by the parties or their attorneys. In the event that the Subject Officer is compelled to cooperate in an investigative hearing, the Subject Officer shall be provided the "Lybarger warning" when required under the appropriate circumstances. After the Board has taken all relevant evidence, each party may, in the discretion of the Presiding Member, be given an opportunity to make a closing statement.
- (d) At the conclusion of any witness' testimony, either the complainant or the officer involved may request that the Hearing Panel cover any additional areas of inquiry they feel need to be covered. The Presiding Member shall determine whether any further questions will be asked.
- (e) Unless otherwise ordered by the Chair or Presiding Member, the entire investigative hearing on a given complaint should be conducted on one occasion. However, if the Hearing Panel determines that additional evidence is necessary to reach its findings, it will continue the investigative hearing to a future date unless the parties agree to allow the Hearing Panel to receive such material in writing without reconvening.

13.6 Deliberation. After obtaining evidence, the Hearing Panel will deliberate in closed session. The Hearing Panel shall not consider any information not received as part of the investigative hearing. The Hearing Panel may reconvene in the presence of all parties to ask further questions, and each party shall have the opportunity to respond to any such questions.

SECTION 14: EVIDENCE.

14.1 What Evidence May be Considered. The investigative hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence.

Evidence shall be taken in accordance with the following provisions:

- (a) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness to testify; and to rebut the evidence against the party. If the Subject Officer does not testify in his/her own behalf he/she may be called and examined as if under cross-examination.
- (b) Oral evidence shall be taken only under oath or affirmation.
- (c) Upon the request of either party or a Board member, witnesses may be excluded from the hearing until they are called to testify.
- (d) Irrelevant and unduly repetitious evidence shall be excluded.
- (e) The rules of privilege shall be effective to the extent that they are otherwise required by constitution or statute to be recognized at hearings before the Review Board.

14.2 Representatives. The Complainant, aggrieved party, Subject Officer, and any witness shall have the right to have a representative of his or her choice present at all times during his/her own fact-finding interviews or investigative hearings conducted by or on behalf of the Review Board. The representative shall not be a witness or a person subject to the same investigation.

14.3 Interpreters. The Chair shall have discretionary authority to provisionally qualify and utilize interpreters. Each party in need of an interpreter shall give notice to the Chair within seven (7) days of receipt of the notice of hearing so that appropriate arrangements can be made.

14.4 Authority to Compel Appearance. The authority of a Review Board subpoena may be used to compel the production of documents and/or the appearance of witnesses, including the Subject Officer.

14.5 Failure to Appear. When either the Complainant or the Subject Officer fails to appear, the Board Panel may receive statements from those persons present and relying on the evidence received, continue with the investigative hearing.

14.6 Confidentiality of Review Board Records. The Review Board shall not disclose to the general public any reports, statements, files, records, documents, tapes or other items whose confidentiality is protected by law. This confidentiality may be waived in accordance with applicable law, statute, ordinance, or legal proceedings. Moreover, evidence contained in a Review Board's investigative file may be disclosed to the Complainant and the Subject Officer, but only to the extent and in the manner authorized by these Rules and Regulations. In disclosing information to the public, the name of the Subject Officer shall not be disclosed.

14.7 Discovery.

- (a) By the Review Board. The Review Board, through its staff and agents, may utilize whatever formal or informal methods for the discovery of evidence as are authorized and available under federal, state, or local law.
- (b) By the Parties. Prior to a hearing, the Complainant and each Subject Officer may have access to or receive copies of evidence contained in the Review Board's investigative file for the complaint, except for any evidence that can not be so made available because its disclosure is prohibited by law. Parties seeking such discovery must give at least forty eight (48) hours advance notice to the Review Board, either in writing or by telephone.

14.8 Record of Investigative Hearing. All hearings shall be tape- recorded by the Review Board. At the option of the Chair, a stenographic record may be kept, and, if kept, shall be available upon payment of the cost of duplicating or transcribing the same, to a Complainant or Subject Officer requesting a transcript, **except that a Complainant shall not be provided any portions of the transcript which consists of testimony of the Subject Officer, or any other employee of the same employer, given in closed session, or in which the Subject Officer is identified by name.** Any record of the investigative hearing shall become part of the case file.

14.9 Standard of Proof. No finding with respect to an allegation of a complaint shall be sustained unless it is proven by a preponderance of the evidence presented at the hearing(s) or otherwise contained in the investigative record. "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it.

SECTION 15: SUMMARY DISMISSAL.

After reviewing the Investigative Report and records, the Review Board may summarily dismiss a Complaint by majority vote, upon recommendation of the Executive Officer, its own motion, or that of the Subject Officer. Parties to the Complaint shall be notified of a proposed summary dismissal, and may appear to argue for or against summary disposition. Summary dismissal will be appropriate in the following circumstances:

- (a) The Review Board does not have jurisdiction over the subject matter of the Complaint.
- (b) The Review Board does not have jurisdiction because the Complaint was not timely filed.
- (c) **The Complainant and/or key witnesses fail to participate or cooperate in the investigation.**
- (d) **The Subject Officer is no longer with the department or subject to discipline.**
- (e) The Complaint is so clearly without merit that no reasonable person could sustain a finding based on the facts.

SECTION 16: REVIEW BOARD FINDINGS AND RECOMMENDATIONS.

16.1 Finding and Report by Three-Member Hearing Panel. At the conclusion of an investigative hearing before a Hearing Panel, the Panel members shall deliberate in closed session and, by majority vote, adopt a recommended finding with respect to the Complainant. **The Hearing Panel shall not obtain or consider personnel records, including internal affairs reports, or information obtained from personnel records in connection with an investigative hearing.** The Panel shall then prepare a written report summarizing the evidence, the recommended finding, the reasons for the recommended finding, any dissenting opinion, and any other information that may be useful to the full Review Board in its consideration of the case. **The written report by the Hearing Panel shall not include statements of the Subject Officer, or any other employee of the same employer, given during any closed sessions of the hearing. The recommended finding of the Hearing Panel may reflect, but shall not disclose, information obtained from the Subject Officer, or any other employee of the same employer, during any closed session of the hearing.** The Panel shall take into account any rule, regulation, or policy of the subject officer's employing department brought to its attention by the subject officer or representative that the Panel determines to be pertinent to the complaint being investigated

16.2 Submission to full Review Board. The written Panel report referred to in Section 16.1 shall be forwarded to all members of the Review Board, and the matter placed on the next scheduled regular or special meeting of the Review Board.

A copy of the written Panel report referred to in section 16.1, above, shall be forwarded to each Complainant and Subject Officer, together with a notice of the time and place of the Review Board meeting at which the complaint will be considered. All Complainants and Subject Officers shall be notified that the Review Board may accept written objections to the panel report within ten (10) days of the date of the report.

16.3 Consideration by full Review Board. The Review Board shall consider the report of the Hearing Panel and any other information that may be brought to its attention at the meeting. Thereafter, the Review Board may:

- (a) Vote to conclude the matter without further investigation, review, or hearings;
- (b) Request further information or review by staff, by the Hearing Panel, or through other appropriate means
- (c) Vote to conduct further proceedings on the matter before the entire Review Board;
- (d) Take such other or additional action as it deems necessary and appropriate, such as the making of recommendations regarding policy or rule changes, referral to appropriate governmental agencies, or other appropriate action.
- (e) Accept the Panel report as the Final Report of the Review Board.

16.4 Investigative Hearings before entire Review Board. In cases that are initially heard before the entire Review Board, the interim steps required when a case is heard before a three-member Hearing Panel are inapplicable.

16.5 Final Report by Review Board. At the conclusion of a matter before the entire Review Board, the Board shall deliberate and, by majority vote, shall adopt and prepare a final report with respect to the complaint or matter under consideration. **The Review Board shall not obtain or consider personnel records, including internal affairs reports, or information obtained from personnel records in connection with a matter before it.** This report shall include findings as to the facts relating to any complaint, as well as an overall conclusion as to any complaint as specified in Section 16.6 below. Dissenting members may set forth reasons for their dissent in writing and any such dissent(s) shall be included in the final report. **The final report adopted by the Review Board shall not include statements of the Subject Officer, or any other employee of the same employer, given during any closed sessions of the hearing. The final report of the Review Board may reflect, but shall not disclose, information obtained from the Subject Officer, or any other employee of the same employer, during any closed session of the hearing.**

16.6 Conclusions in Final Report. The Final Report of the Review Board shall contain an overall finding as to each allegation of the complaint in the following manner:

- (a) If the investigation shows the alleged act did not occur, the finding shall be "Unfounded".

- (b) If the investigation fails to support the allegations but the allegations cannot be shown as false, the finding shall be "Not Sustained".
- (c) If the investigation shows the alleged act did occur but was lawful, justified and proper, the finding shall be "Action Justified".
- (d) If the investigation supports the allegations and the action is not justified, the finding shall be "Sustained".

A finding of "Sustained" should include an explanation of the finding of improper conduct; recommendations relating to the imposition of discipline, including the facts relied on in making such recommendations, and recommendations relating to any trends in regard to employees involved in citizen complaints; and/or recommendations for remedial changes in policies or practices where appropriate.

16.7 Consideration of Subject Officer's Disciplinary History. Only after a finding of "sustained" with respect to an allegation of improper or illegal conduct by a Subject Officer, should the Review Board consider the Subject Officer's disciplinary history in determining the appropriate recommendation for discipline. The details of the Subject Officer's disciplinary history will be held confidential by the Review Board and will not be made a part of the Final Report.

16.8 Transmittal of Final Report. The final report adopted by the Review Board shall be immediately forwarded to the Board of Supervisors, the Sheriff or Chief Probation Officer, the Complainant, and each Subject Officer. **Any report to the Complainant or a Subject Officer, or any report made public, shall use a coded identifier which maintains the confidentiality of the Subject Officer's name.**

16.9 Reconsideration of Final Report. Upon request by the complainant, subject officer or their representatives, the Final Report may be re-opened for reconsideration by the Review Board provided that: (a) previously unknown relevant evidence is discovered which was not available to the Review Board before it issued its Final Report, and; (b) there is a reasonable likelihood the new evidence will alter the findings and recommendations contained in the Final Report. A Final Report may also be re-opened for reconsideration by the Review Board at the request of the Board of Supervisors or upon initiative of the Review Board when such reconsideration is in the public interest.

Every party to the proceeding or their representative(s) shall be notified of any request or proposal for reconsideration and shall be given the opportunity to respond to the Review Board before the request or proposal is acted upon.

SECTION 17: PROCEDURES WHEN NO CITIZEN COMPLAINT REQUIRED.

In cases involving death arising out of or in connection with activities of peace officers or custodial officers employed by the County, and in such other matters where the Review Board is authorized to act pursuant to Ordinance #7880, as amended (Article XVIII, Sections 340.9(c)-(h) of the San Diego County Administrative Code), the Review Board has authority to review and investigate regardless of whether a citizen complaint has been filed. In such cases:

- (a) The Review Board will undertake such review and investigation when a Board member requests the action and a majority of the Review Board then votes to initiate the review and investigation.
- (b) The review and investigation, including the investigative hearing procedures for such cases, shall otherwise proceed in the same manner, pursuant to these rules as regulations, and in cases initiated by a citizen complaint.

SECTION 18: DELEGATION OF FUNCTIONS TO EXECUTIVE OFFICER.

The Review Board may, in its discretion, from time to time delegate to the Executive Officer certain of the procedural and administrative functions or duties assigned to the Review Board by these Rules and Regulations. The Review Board shall not, however, delegate to the Executive Officer any functions, duties or responsibilities which are required by the Ordinance to be performed by the Review Board.

SECTION 19: AMENDMENTS TO RULES AND REGULATIONS.

These Rules and Regulations are subject to approval by the Board of Supervisors of the County of San Diego, as required by the Ordinance. Once approved, these Rules and Regulations may only be amended by a majority vote of the Review Board, and any such amendments are subject to approval by the Board of Supervisors.

APPENDIX C:**IS CIVILIAN OVERSIGHT IN CALIFORNIA DOA?****The ramifications of the “Copley” decision by the CA Supreme Court**

By John Parker, San Diego County CLERB

In California, the “tides of change” have eroded the public’s right to know in a distressing progression, just as the ocean’s tides create havoc to our coastline. In my 2001 article for the NACOLE newsletter regarding the California Supreme Court’s “Caloca” decision, I described what can only be looked upon now as the first of a one-two punch for civilian oversight in this state. The Caloca decision essentially stated that any adverse findings made by a civilian oversight board or agency constitutes “punitive action” against the named officers, triggering a right to appeal granted by the California Peace Officers Procedural Bill of Rights, even in cases where no disciplinary action is taken by the employing agency.

As we begin to recover from the shock of what is now referred to as the “Copley” decision, also from our State Supreme Court, it is time to understand what happened and what realistic options may be available to California civilian oversight practitioners. Copley Press publishes the *San Diego Union-Tribune* (UT) newspaper. The UT sought to gain access to a closed San Diego County Civil Service Commission (CSC) hearing regarding a Deputy Sheriff’s appeal of a termination order. The CSC hearing had been closed in accordance with two California Appellate Court decisions, one dating back to December of 2002, and the other from March 2003.

Both decisions arose out of cases involving the San Diego Police Officers’ Association (SDPOA) versus the City’s Civil Service Commission. The earlier decision² was also directed at the County of San Diego’s Civil Service Commission. In this case, the court essentially ruled that the City and the County, as public entities, regularly violated the confidentiality rights of peace officers by holding public disciplinary appeal hearings in violation of Penal Code section 832.7, and the law enforcement officers’ constitutional rights to privacy.

The second case³ stemmed from the city manager’s release to the public of a report by the Citizens’ Review Board on Police Practices (CRBPP). This report, consisting largely of information

² SDPOA v. City of San Diego Civil Service Commission [2002] 104 Cal. App. 4th 275

obtained from a police department Internal Affairs investigation, was the first ever public release of a CRBPP investigative report. The report concerned an officer-involved shooting death that had generated considerable public outcry. In issuing this report, the CRBPP departed from its practice of [nonpublic] scrutiny of Internal Affairs investigations wherein they more typically determine whether there is agreement with the content and findings of the police investigation without divulging the specifics of the actual investigation.

These cases ultimately enabled peace officer associations and/or unions around the state to legally challenge the open hearings of not only Civil Service Commissions, but civilian review agencies. Also lost was the ability to issue publicly available investigative or hearing reports. All around the state, oversight bodies of all stripes have lost most of their transparency. The public no longer has an automatic right to know, in detail, the results of their grievances against peace officers. Is this the death knell of meaningful civilian oversight, or is it an opportunity for our state legislators and the electorate to correct a flawed law that resulted in the Supreme Court's decision?

An in-depth study of the published findings in Copley cannot be made within this article, but there are a couple points for consideration. The court indicated their ruling was based on its interpretation of state law concerning confidentiality of peace officer personnel files. Review Boards with independent investigative functions, separate records and a clear distinction from the "employing agency," may be able to challenge the restrictions in the ruling, depending on how their agency operates. The court also noted that a legislative change to state law could negate the restrictions of their decision in Copley.

At this time, both approaches are under consideration. State law makers from the San Francisco bay area in conjunction with the ACLU of Northern California are exploring the legislative possibilities. On the litigation front, the Berkeley Police Review Commission has challenged the decision and its application to independent review boards through the local Superior Court. If they prevail at that level, there is no doubt that the Berkeley POA will appeal, and ultimately, the California Supreme Court will determine once and for all whether their previous ruling applies to independent civilian oversight agencies and boards.

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³ Charles Davis et al. v. City of San Diego [2003] 106 Cal. App. 4th 893